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Floor Debate
April 14, 2009

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SENATOR ROBERT PRESIDING []

SENATOR ROBERT: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the sixtieth day of the One Hundred First Legislature, First Session. Our chaplain for today is Pastor Rod Lyon of the Conestoga Parish of the United Methodist Church, a guest of Senator Campbell. Those churches are in Pleasant Dale, Denton, and Raymond. Please rise. []

PASTOR LYON: (Prayer offered.) []

SENATOR ROBERT: Thank you. I call to order the sixtieth day of the One Hundred First Legislature, First Session. Senators, please record your presence. (Visitors introduced.) Mr. Clerk, please record. []

CLERK: I have a quorum present, Mr. President. []

SENATOR ROBERT: Thank you. Are there any corrections for the Journal? []

CLERK: I have no corrections, Mr. President. []

SENATOR ROBERT: Are there any messages, reports, or announcements? []

CLERK: Mr. President, your Committee on Enrollment and Review reports LB440 and LB286 to Select File. Enrollment and Review also reports LB164, LB206, LB292, LB292A, LB328, LB328A, LB340, LB355, LB396, LB449, LB458, LB463, LB464, LB464A, LB477, LB511, LB517, LB547, LB547A, LB555, and LB620 as correctly engrossed. An announcement: Appropriations will meet at 10:20 in Room 2022; Appropriations Committee at 10:20 a.m. this morning in Room 2022. That's all that I have, Mr. President. (Legislative Journal pages 1007-1008.) [LB440 LB286 LB164 LB206 LB292 LB292A LB328 LB328A LB340 LB355 LB396 LB449 LB458 LB463 LB464 LB464A LB477 LB511 LB517 LB547 LB547A LB555 LB620]

SENATOR ROBERT: Thank you, Mr. Clerk. We will now proceed to the first item on the agenda, General File, 2009 Speaker priority bills. []

CLERK: Mr. President, LB162, a bill by Senator Carlson. (Read title.) The bill was introduced on January 12 of this year, referred to the Revenue Committee, advanced to

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General File. There are Revenue Committee amendments. (AM357, Legislative Journal page 528.) [LB162]

SENATOR ROBERT: Senator Cornett, you're recognized to open on LB162. [LB162]

SENATOR CORNETT: Thank you, Mr. President and members of the body. LB162 would simplify contractor registration requirements for the purposes of the Revenue Act and the Contractor Registration Act. Currently, most contractors are required to register with both the Department of Labor and the Department of Revenue. LB162 would create a uniform definition of contractor and a single database of registered contractors for the purpose of the Revenue Act and the Contractor Registration Act. The registration process and database would be administered by the Department of Labor. LB162 also allows the Department of Revenue and the Department of Labor to share information for purposes of contractor registration. LB162 has two very positive outcomes: One, it creates a very easy mechanism to allow contractors to comply with two separate registration requirements in law today, and creates a very consumer-friendly mechanism for Nebraskans to check online regarding contractors they may be hiring. Thank you. [LB162]

SENATOR ROBERT: Thank you, Senator Cornett. Members, you have heard the opening to LB162. There are committee amendments. Senator Cornett, as Chair of the Revenue Committee, you're recognized to open on AM357. [LB162]

SENATOR CORNETT: Thank you, Mr. President and members of the body. AM357 essentially tightens the bill up. It retains the intent and spirit of the bill and merely clarifies the relationship between the Department of Revenue and the Department of Labor to ensure a one-stop registration process for contractors. The amendment more clearly states the intention of the departments to move to electronic filing, plus removes obsolete references to paper documents. The amendment more clearly spells out who is exempt by the law. Basically, the first cut for exemptions are those persons who are not contractors and, thus, the amendment specifies any person who performs work on their own property or persons who earn less than \$5,000 annually from construction services that need not register. Additionally in regards to small contractors, in other words, contractors who are self-employed and do not pay more than \$3,000 annually to employ others persons are exempt from paying the fee. They still have to register, but the fee is waived. Again, the amendment strengthens the intent of LB162 by cleaning up language the committee found confusing. I ask for your support for the amendment and the underlying bill. Thank you. [LB162]

SENATOR ROBERT: Thank you, Senator Cornett. Members, you have heard the opening to AM357 to LB162. Are there any members wishing to speak? Seeing none, Senator Cornett, you're welcome to close on the committee amendment AM357. [LB162]

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SENATOR CORNETT: Thank you, Mr. President. Again, I urge the body to support AM357 for the clarifying language to the underlying bill. Thank you. [LB162]

SENATOR ROBERT: Thank you, Senator Cornett. Members, you have heard the closing to AM357 to LB162. The question before the body is, shall AM357 be adopted? All those in favor vote yea; opposed vote nay. Have all those voted who wish? Mr. Clerk, please record. [LB162]

CLERK: 39 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB162]

SENATOR ROBERT: AM357 is adopted. Returning to discussion. Are there members wishing to speak on LB162? Seeing none, Senator Cornett, you're recognized to close on LB162. [LB162]

SENATOR CORNETT: Thank you, Mr. President. With that, I urge the body to support LB162. It simplifies the current Contractor Registration Act. Thank you. [LB162]

SENATOR ROBERT: Thank you, Senator Cornett. Members, you have heard the closing to LB162. The question before the body is, shall LB162 be advanced to E&R Initial? All those in favor vote yea; opposed vote nay. Have all those voted who wish? Mr. Clerk, please record. [LB162]

CLERK: 33 ayes, 2 nays, Mr. President, on the advancement of LB162. [LB162]

SENATOR ROBERT: LB162 does advance. Next item on the agenda, General File, 2009 committee priority bills, Lathrop division. Mr. Clerk. [LB162]

CLERK: Mr. President, LB495, a bill by Senator Friend. (Read title.) Introduced on January 20 of this year, referred to the Urban Affairs Committee. Bill was advanced to General File. Mr. President, at this time I have no amendments to the bill. [LB495]

SENATOR ROBERT: Senator Friend, you are recognized to open on LB495. [LB495]

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. LB495 deals with the approval of subdivisions by first- and second-class cities and villages. It also deals with the annexation...with annexation when these cities and villages create a subdivision and annex the subdivision at the same time. The bill...I'll get into the complication later, but this bill itself, LB495, is simple despite its appearance. If you look on your...if you look on your gadget, you will see what I'm talking about. The bill proposes to clarify when dedicated streets and public areas formally become the property of a municipality. It would also amend Section 19-916, which governs the

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approval of additions to a city of the first or second class or a village. An amendment to this same section, LB210, that was enacted back in 19...or, excuse me, 2001, created in the mind of some city attorneys questions relating to the ownership of dedicated streets in approved subdivisions. The current language, a stricken passage found on page 4 of the bill, lines 9 through 15 if you look on your Chamber Viewer, is replaced by the new language found on page 6 of this bill, lines 11 through 17. Again, members of the Legislature, this is a bill that clarifies language for city attorneys. We think that that language in lines 11 through 17 makes it clear that a municipality becomes the owner of the dedicated streets and public areas when they are formally annexed by the city or village and when the plat for the subdivision is approved. Since the Legislature adopted LB210 in 2001, the law has been clear that annexation is a separate process from platting and must follow upon the approval of the plat as provided in the process set out in this statute. This provision is the only substantive amendment in this bill. The remainder of the bill largely rearranges the existing provisions of the statute without substantively amending them. Now the twist, this is a committee bill, it's a committee priority bill, and you're probably going, well, this isn't really that significant. Here's what is significant. If you look on your Chamber Viewer, we have an amendment filed for Select File. I believe the number is AM1025. AM1025 includes four different bills. I would consider those bills, based on my experience, you can say whatever you want about my experience, but based on my experience I would consider those bills fairly innocuous. LB104, Senator Cornett's bill, changes annexation requirements for cities of the first class. That is in that amendment for Select File. LB338, I actually introduced the bill, changes weed height requirements for cities and villages. Now the original bill created a modicum of consternation. We actually amended that and took care of that modicum of consternation, I hope. That consternation was with the weed height so, in other words, if somebody's weeds or grass grows up to eight inches, the city doesn't have any right to come in and do it. I think we amended it to ten. If I remember right, that was the...that was a concern raised during the committee hearing. LB562, Senator Lathrop's bill, provides for the continued service of metropolitan utilities district board members after annexation. And also, LB647, Senator Christensen's bill, provides requirements for notice to property owners of a city or village in regard to annexation proceedings. I'm not trying to soft sell this. I recommend we go out and look at these, at each particular bill, also the committee statements, and also look at the amendment and try to analyze what we're doing. If, obviously, anybody in the body has concerns about any of these ideas, you can either raise them obviously with the individual senator or raise them with my office. We'll be happy to address those between General and Select File. Members of the Legislature, this bill...this bill looks confusing. When we go back to LB495, it's not. If you have any questions about it, I'd be happy to field those questions in the meantime. What I had issues with early on was trying to define exactly what these city attorneys were looking at and how they defined a plat. All a plat is, when you look through this language, if you didn't already know, is a map of a specific land or an area. It defines the area, defines in subdivisions the square footage, where the things are located. I wish I had an overhead. I could show you what those look like. Many of you

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have seen them. If you have any questions about any of these definitions or anything in the bill, I'd be happy to answer those. With that, Mr. President, I'd ask for the advancement of LB495 and that's all I'd have. Thank you. [LB495 LB104 LB338 LB562 LB647]

SENATOR ROBERT: Thank you, Senator Friend. Members, you have heard the opening to LB495. Those wishing to speak, Senator Campbell, you are recognized. [LB495]

SENATOR CAMPBELL: Thank you, Mr. President. I would like to ask Senator Friend if he would entertain a question this morning. [LB495]

SENATOR ROBERT: Senator Friend, will you yield to a question? [LB495]

SENATOR FRIEND: Absolutely. [LB495]

SENATOR CAMPBELL: Senator Friend, I am assuming that they're trying to create the difference in what is a final plat in the annexation from just the platting, which also would have to do with the assumption of who would take care of the roads. Is that accurate? [LB495]

SENATOR FRIEND: Mostly for an SID. I mean I don't know...could you...I don't know. Can you phrase that question again for me? [LB495]

SENATOR CAMPBELL: Sure. I'm assuming that if you just plat the roads and as people start to build out there, that the developer would not be...would not have to take care of them until they were fully annexed in, platted and ready to go. [LB495]

SENATOR FRIEND: I don't know. I don't mean to be...I don't...can you give me an example of what you're concerned about,... [LB495]

SENATOR CAMPBELL: Well, it would just... [LB495]

SENATOR FRIEND: ...Senator? [LB495]

SENATOR CAMPBELL: It would just be that the developer, as they plat, as they put it out and as they begin building it, they wouldn't have to assume snow removal and all kinds of other tasks until it was finally platted and annexed. [LB495]

SENATOR FRIEND: The city would. [LB495]

SENATOR CAMPBELL: Oh, the city would. Okay. [LB495]

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SENATOR FRIEND: Okay. I was talking to Senator Avery before I got on the mike, Senator Campbell, and one of the...I think that he was going down the same...he might have been going in the same direction with this question. A dedicated...the municipality...according to this bill, the municipality becomes the owner during annexation of that particular dedicated street, the street that's already been dedicated by the plat. [LB495]

SENATOR CAMPBELL: Okay. [LB495]

SENATOR FRIEND: So I don't know if that's answering the question appropriately but what...because I'm trying to...the reason that I asked you the question is, I'm trying to define a problem that you might have run into in an SID that might have sparked the question. [LB495]

SENATOR CAMPBELL: Senator Friend, I'm sorry, I don't have very much experience with SIDs. We did not have those in Lancaster County. I was just trying to clarify when the municipality would take responsibility for the lighting and streets and snow removal and all of that, and when it would be the developer's. And my assumption is that's why they ask you to clarify it. [LB495]

SENATOR FRIEND: Okay. Yeah, the clarification, we think that it makes it clear that when the municipality becomes the owner of the dedicated street and those public areas around that dedicated street, and they're formally annexed by the city or the village, that's when they are their responsibility, not when the plat actually occurred, not when the drafting was done for the plat. Does that make sense? [LB495]

SENATOR CAMPBELL: Absolutely. Thank you very much. Thank you, Mr. President. [LB495]

SENATOR FRIEND: Sure. [LB495]

SENATOR ROBERT: Thank you, Senator Campbell and Senator Friend. (Visitors and doctor of the day introduced.) Returning to discussion on LB495, are there members wishing to speak? Seeing none, Senator Friend, you're recognized to close on LB495. [LB495]

SENATOR FRIEND: Thank you, Mr. President. Members, I think I understand. I think I understand where Senator Campbell was going and I was trying to figure out maybe what type of problem exacerbated, because that's one of the things that I don't remember for sure but that's one of the things I believe that we usually bring up in committee to try to figure out what caused a change or what caused a thought process like LB495. What kind of problem occurred? Just once again really quickly, I think that it was a measure for some city attorneys and it was a little convoluted. So, in other words,

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they didn't know exactly, even before annexation, a dedicated street or a public area, I think that there were folks out there complaining, well, the city needs...I mean, we're right in the middle of the city and you haven't annexed this yet but we need to have this mowed. If I'm not mistaken, I mean that's the biggest part of the problem. Until that's annexed, the city just doesn't have that responsibility just because the thing has been platted. Members of the Legislature, like I said, I'd be happy to answer any other questions. If there are not, between General and Select, be happy to answer those. Right now I would ask for the advancement of LB495. Thank you, Mr. President. [LB495]

SENATOR ROBERT: Thank you, Senator Friend. Members, you have heard the closing to LB495. The question before the body is, shall LB495 advance to E&R Initial? All those in favor vote yea; opposed vote nay. Have all those voted who wish? Mr. Clerk, please record. [LB495]

CLERK: 31 ayes, 0 nays, Mr. President, on the advancement of LB495. [LB495]

SENATOR ROBERT: LB495 does advance. Next item on the agenda, Mr. Clerk. [LB495]

CLERK: Mr. President, LB622, a bill by Senator Nordquist. (Read title.) The bill was introduced on January 21 of this year, referred to the Business and Labor Committee, advanced to General File. There are Business and Labor Committee amendments. (AM875, Legislative Journal page 902.) [LB622]

SENATOR ROBERT: Senator Nordquist, you are recognized to open on LB622. [LB622]

SENATOR NORDQUIST: Thank you, Mr. President. I introduced LB622 to address proper application of penalties and prompt payments in work comp. Since the introduction, the committee has spent much time working on this issue, and they have a pretty substantive amendment. And I will let Senator Lathrop go into detail on that, so with that, I will yield my time to Senator Lathrop or actually I'll just end my opening and Senator Lathrop can open on the committee amendments. Thank you. [LB622]

SENATOR ROBERT: Thank you, Senator Nordquist. Members, you have heard the opening to LB622. There are committee amendments. Senator Lathrop, as Chair of the Business and Labor Committee, you're recognized to open on AM875. [LB622]

SENATOR LATHROP: Thank you, Mr. President. Colleagues, good morning. Senator Nordquist is exactly right. AM875 is the committee amendment. It also makes this one of our committee priority bills and AM875 is a full replacement of language of LB622 and becomes the bill. Let me explain AM875 this way. And it might require and be

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useful to have a little bit of background on work comp because this deals directly with work comp and it is responsive to an opinion from the Nebraska Supreme Court that's about six weeks old is all. In work comp, if an employee is injured in the scope and course of his employment, that employee is entitled to about three or four different benefits. One is temporary total disability benefits, which is intended to replace their earnings while they're totally disabled. That's two thirds of their average weekly wage. They're also entitled to permanent partial disability benefits, which is a much smaller number intended to compensate them for their loss of use of a part of their body or a loss of use of their earning capacity. They're also entitled to have their medical bills paid. And they're also entitled to vocational rehabilitation in the right circumstance. That's an overview of work comp. If an employer, and we use the term employer, we're really talking about an insurance company, one of these work comp insurance companies like Liberty Mutual, for example. If they do not pay a disability benefit to an employee, and this is current law, if they don't pay a benefit to an employee when there's no controversy whatsoever, the law currently imposes a 50 percent penalty. Why do we do that? We do that because when somebody gets hurt at work and they cannot work, they are...their income, and typically it's a blue collar person, their income is completely cut off. And so insurance companies or, yeah, insurance companies are given the incentive to pay those benefits in a timely manner so as not to starve out the employee. Here's where the amendment comes in. In Lagemann v. Methodist Hospital, this situation was presented. The employee files a claim in Work Comp Court and gets an award for total disability benefits and there's no dispute. There is a dispute over the loss of earning capacity, which is that permanent partial disability benefit, and the parties appeal that issue on up to the Supreme Court or the Court of Appeals. And the employer in the meantime didn't pay the part of the judgment that was undisputed. Nobody really questioned it. So in the meantime, the employee has a benefit that he was awarded in front of the Work Comp Court. The employer doesn't even dispute that it's due. They just don't pay it. And the Supreme Court said, well, we're not going to impose those penalties on an employer for undisputed amounts, for undisputed amounts--or these insurance companies I should say--for the undisputed amounts unless or until you've gone through the entire appeals process and everything is resolved, even if that part was uncontroversial or not disputed. All AM875 does is make a very, very simple change to the statute which was really done at the invitation of the Nebraska Supreme Court to clarify what is not clear in the statute and that is this: That if you have an award from the Work Comp Court and the employer does not dispute it or have a reasonable controversy with respect to some portion of that award, they have to pay it or be subject to a penalty. It is sort of the flip side of frivolous claims. If you don't have a defense to something, you need to pay the benefit. And that's a clarification that the Supreme Court acknowledged needed to be made by the Legislature. It is a simple common sense. In fact, I've also had conversations with those people in the work comp insurance industry regarding this matter. They don't have a problem with what we're doing today. They recognize that this is an appropriate change to Nebraska work comp and to the penalty provision. We will probably on Select File make a couple of

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language-type changes to accommodate some concerns expressed, and I think some legitimate concerns expressed by the business community. But generally to my knowledge, although sometimes the opposition shows up late, but to my knowledge there is no opposition to AM875. I would appreciate your support, and I would be happy to answer any questions. Thank you. [LB622]

SENATOR ROBERT: Thank you, Senator Lathrop. Members, you have heard the opening to AM875, Business and Labor Committee amendment to LB622. (Visitors introduced.) Returning to discussion on AM875 to LB622, senators wishing to speak: Senator Lautenbaugh, Dubas, and Gay. Senator Lautenbaugh, you are recognized. [LB622]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. I heard Senator Lathrop say he'd be happy to answer questions so I'd like to take him up on that if he'd yield. [LB622]

SENATOR LATHROP: I'd be happy to. [LB622]

SENATOR LAUTENBAUGH: Thank you, Senator Lathrop. Just so this is clarified in my mind as I'll be honest, I've not read that decision that this is meant to address yet, what would happen in a scenario where the employer/insurance company didn't appeal on, say, the award of temporary total disability benefits? So under this amendment, those would be paid within or have to start being paid within 30 days of the underlying award if they're not appealed? [LB622]

SENATOR LATHROP: I think that's going to be the idea. And that's the concern that I heard from somebody out in the lobby, and I'm not sure what interest they have, whether it's Work Comp Equity and Fairness, which is one group that represents employers and some self-insured or whether it's NFIB. Regardless, there is some concern about clarifying when the 30 days starts because of the appeals and the opportunities for cross-appeals. That's...I literally got an e-mail this morning at about ten minutes before we came to the floor about that. But our agreement is to clarify when we start counting that 30 days. [LB622]

SENATOR LAUTENBAUGH: Okay. And I appreciate that. You're kind of going in a different direction than I was even going with this. What happens if those benefits are not appealed, they are paid out, and at some point an appellate tribunal notices plain error and reverses those benefits even though they weren't appealed? [LB622]

SENATOR LATHROP: Well, it's hard to imagine that there would be plain error in something for which there's no controversy and for something for which the defense lawyer reviewed the circumstances and said, that's not an appealable issue for us and that the court would find plain error. I think that would be rare. But I, on the other hand,

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don't see that it's any different than a circumstance where an employer pays a benefit and later finds out at trial that it's...that they paid more than they needed to. [LB622]

SENATOR LAUTENBAUGH: Well, at that point there wouldn't be an award in place, though, correct? [LB622]

SENATOR LATHROP: Sure there would. If you paid...if you're the employer or Liberty Mutual, for example, and you pay out total disability benefits and something happens at trial and the court says you didn't need to pay those for as long as you did, then they just take a credit. And I would expect the same thing to happen here. [LB622]

SENATOR LAUTENBAUGH: In this scenario, though, is there a mechanism by which...what if there are no more benefits due in my hypothetical? Say the plain error is a statute of limitations or something like that that the court misapplied, but for whatever reason the defense counsel didn't appeal. How does the insurance carrier/employer recover those benefits? [LB622]

SENATOR LATHROP: I don't think this...that's a problem that may exist in a work comp case regardless of whether we're dealing with an AM875 situation. I'm not sure how they get their money back. I guess you'd have to ask somebody like Liberty Mutual. But I think that's a rare circumstance where the defense lawyer tries the case, says I'm not appealing the issue, and that there's no reasonable controversy, they then pay the benefits only to have the Supreme Court say there was an issue missed by the insurance company, by the insurance company lawyer, and there's no benefits due. I'd say that would be a difficult scenario to imagine. [LB622]

SENATOR LAUTENBAUGH: Well, it is an unlikely scenario, I'll grant you. But we often spend a lot of time here coming up with the unlikely scenario just because we don't want to leave that stone unturned. And I'm not even saying for sure how I'm going to vote on this bill. And thank you, Senator Lathrop, by the way. [LB622]

SENATOR ROBERT: One minute. [LB622]

SENATOR LAUTENBAUGH: I just, I do have that one concern is that generally when something is on appeal it's always been my understanding the appellate tribunal can notice plain error on its own, whether that specific issue has been appealed or not. And I have a concern that we are making it so that in the world of workers' compensation those issues are gone on appeal if they're not appealed by the defendant. That's a policy decision. Maybe that's the policy decision we're making, but it's just something I thought that we should at least discuss before moving forward. Thank you. [LB622]

SENATOR ROBERT: Thank you, Senator Lautenbaugh and Senator Lathrop. Senator Dubas, you're next and recognized. [LB622]

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SENATOR DUBAS: Thank you, Mr. President. Would Senator Lathrop yield to some questions, please. [LB622]

SENATOR ROBERT: Senator Lathrop, will you yield to a question? [LB622]

SENATOR LATHROP: Yes, I will. [LB622]

SENATOR DUBAS: Thank you, Senator Lathrop. I have really no understanding of workmen's comp issues so I apologize ahead of time if these questions seem rather basic or maybe you've already answered them and I just haven't quite caught it. You referenced and the committee statement references the Lagemann court interpretation and that comes into play in the amendment. Is that correct? [LB622]

SENATOR LATHROP: Yeah. The Lagemann case was decided by the Nebraska Supreme Court. In that decision, the court discusses these penalties. And they say we've made an interpretation. They're not due in a particular circumstance and it's up to the Legislature to change it. So that's the genesis of AM875. [LB622]

SENATOR DUBAS: Okay. So right now without this legislation, if this legislation weren't in place, what is the current practice to distribute an award? Is there a time frame? [LB622]

SENATOR LATHROP: Here's what the practice is or the consequence of the Lagemann decision. It's very simple because this is what happened in Lagemann. This person couldn't work for, and we'll make up a period of time, six months. So for 26 weeks they go with no money coming in and they go before the Work Comp Court and the judge says, you get an award. You are due total disability benefits for 26 weeks and we think you have a loss of earning capacity of 5 percent so you get some other permanent disability benefit. If the employer doesn't have an argument with that 26 weeks but they want to argue about whether they should have paid a doctor bill or some other part of the decision, they appeal it and pay nothing, even if they don't have a gripe with the 26-week part of the award. What the court said was, whether it's fair or not, that's the way the statute is written; and it's up to the Legislature to change it. All AM875 does is says something very simple. If the employer doesn't have any gripe about part of an award and they have a problem with another part, they can appeal what they want, but they need to pay the part that isn't subject to any further controversy. And the Supreme Court is not likely...I mean is it in a hypothetical? Sure, maybe, that Senator Lautenbaugh brought up, but not in reality are they going to find something in the record and look for something to reverse. [LB622]

SENATOR DUBAS: So in other words without this amendment, without this bill the court doesn't have the ability to do...to make this determination to get their money. [LB622]

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SENATOR LATHROP: The court, yeah, the court doesn't have authority to impose a penalty on an insurance company that refuses to pay an amount that's not even in controversy. [LB622]

SENATOR DUBAS: Thank you very much. [LB622]

SENATOR ROBERT: Thank you, Senator Dubas and Senator Lathrop. Senator Gay, you're next and recognized. [LB622]

SENATOR GAY: Thank you, Mr. President. I'd like to also ask Senator Lathrop a few questions. [LB622]

SENATOR ROBERT: Senator Lathrop, will you yield to a question? [LB622]

SENATOR LATHROP: Yes, I will. [LB622]

SENATOR GAY: Thank you, Senator Lathrop. I'm with Senator Dubas. I'm not real up to speed on all these issues on workers' comp. And I just want to continue to follow up what she was asking because that was the question I wanted to get to. But you had talked about the case or the Supreme Court comes down and they say, we should...we agree with this, go fix it, Legislature. So technical amendment in the current law, this is to fix that portion. I understand that. But then earlier I think you said to Senator Lautenbaugh, the parties involved. Who were the parties involved in working with you on this amendment? [LB622]

SENATOR LATHROP: Actually, there's the Work Comp Equity group which is primarily self-insureds and insurance company interests that also read the decision from the Supreme Court as did people that represent injured workers. And both of them expressed concern that the court is looking for guidance from the Legislature and this is a response to that. Now I drafted this amendment, put the language in there and now in fairness, the Work Comp Equity group and the lawyers that are involved in that group talked to me probably a week ago and told me, you know, we don't have a problem with the idea of amending the penalty statute. We do have a concern about some of the technical language. And we have agreed that we'll work on the technical language as in when do you start counting the 30 days for whether the payment is late or not. So I don't think we have a, you know, the plaintiff's bar over here and the defense bar over here or workers and employers, I think both sides recognize that we need an amendment to the penalty statute. There is, however, some concern over making it clear when we start counting those 30 days. [LB622]

SENATOR GAY: All right. Thank you. And then I know in all workers' comp there's...it's very hard to please everybody. But I did see on the bill, if I'm reading my monitor right,

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there was opponents. And was that more to the general bill? [LB622]

SENATOR LATHROP: Yes. Those were all to the general bill, recognizing that, yes, those were to the general bill. [LB622]

SENATOR GAY: Okay. And then also on page 1, and this is just for clarification for myself, it said on the state, when the state...we have to pass a...if there's a judgment against the state, apparently we pass a bill. Does that come to Business and Labor Committee and then you approve these bills? Because it says 30 days after legislative bill appropriating any funds necessary to pay the portion of the award or judgment in excess of \$100,000. So if we have an award over \$100,000, does that have to go to Business and Labor Committee or where does that go? [LB622]

SENATOR LATHROP: Boy, I don't think so. In three years on the Business and Labor Committee, I've never seen a work comp case come through there for approval. And in my experience in making claims with the state for different employees, that is...we don't have to go through the State Claims Board process, Senator Gay. We can bring the claim or a person, an injured worker can bring a claim just against the state of Nebraska as you would any other employer. [LB622]

SENATOR GAY: Okay, because it gets to the 30 days comes after this award or judgment in excess of \$100,000. So I'm just wondering why there's some law. Is there some law then if it's over (inaudible)? [LB622]

SENATOR LATHROP: There is. And one thing I didn't bring up that maybe I can clarify. And if I'm chewing up your time, I'll give you some of mine. In work comp, it's different. There's two kinds of lawsuits out there. One, a third party claim where you have one lawsuit, one trial, one chance at it. Both sides go into court, the judge enters an award and that's the way it is. In work comp, it's sort of a rolling controversy so as long as the parties...as long as the insurance company pays what it's supposed to, nobody files a lawsuit. But they can file a claim in the Work Comp Court over whether somebody should have an MRI or not... [LB622]

SENATOR ROBERT: One minute. [LB622]

SENATOR LATHROP: ...or whether the disability benefit. So this is kind of a rolling thing unlike a third-party claim over a car accident where you can have an award over \$100,000. That would be rare in a work comp award. [LB622]

SENATOR GAY: Okay. So if you're working on this and the 30 days...are you going to work on that on Select File then? You said something about getting (inaudible) when the 30 days takes effect? [LB622]

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SENATOR LATHROP: Right. The question is, it gets kind of technical here, plaintiff or the employee wants to appeal. He gets 30 days and then the employer gets 30 days to cross-appeal. So while they're deciding whether they should cross-appeal or not, should the penalties start to attach or not or when do we start counting those? That's the technical piece of this. It has to do with the timing because of one's right to appeal and the other party's right to cross-appeal. That sort of sets out the parameters of what's in controversy and what isn't. And so... [LB622]

SENATOR ROBERT: Time. Thank you, Senator Gay and Senator Lathrop. Speaker Flood, you're recognized for an announcement. [LB622]

SPEAKER FLOOD: Thank you very much, Mr. President. Good morning, members. We're off and going on another week this morning. And I thought what I would do for the benefit of the Legislature today is map out the work's week so that you get an idea as to what we will be discussing on the floor. Today and tomorrow it's my intention to continue with the General File agenda that you see in front of you. Today there may be some additions to it based upon what's been forwarded to General File. On Thursday, I intend to take up consent calendar bills. A complete listing of the consent calendar bills that have been selected will be made available in tomorrow's agenda. It will be taken up on Thursday. On Friday, we will take up Final Reading. We have a number of bills on Final Reading. It is my intention to take up Final Reading on Friday, and we will most likely work through the lunch hour. Please be advised of that. Finally, provided that LB545 is filed on General File tomorrow, that is Senator Adams' bill and the Education Committee's work on the TEEOSA K-12 school funding bill, it is my intention to take that up at 10:00 a.m. Monday morning of next week, provided that it is filed on General File tomorrow. I want to give people as much advance notice that that bill will be taken up Monday morning at 10:00 a.m., and I intend to stay with that until the Legislature resolves a course of action on General File. Thank you, Mr. President. []

SENATOR ROBERT: Thank you, Speaker Flood. Returning to discussion on AM875 to LB622. Members wishing to speak: Senators Janssen, Lathrop, and Gay. Senator Janssen, you're recognized. [LB622]

SENATOR JANSSEN: Thank you, Mr. President, members of the body. I hadn't planned on speaking on this today, and I've been listening in on the conversation. I'm going to actually do something a little different here. It seems like recently if we're not sure of a bill or we don't understand a bill on General we don't vote for it. I've read through the initial bill, and I did not agree with it. I have not read through the amendment, so I'm doing something different. I'm going to vote red this morning. It almost seems taboo anymore, but I'm going to vote red this morning with the hopes that I can maybe learn a little bit more about it and see if there's something that I agree with. I do understand workers' compensation, and I do know that rarely that it's not in dispute. There may be certain fragments that are in dispute of a certain case of dates, times. I

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mean I don't know how far that will reach into what is in and what is not in dispute. And at present, I've worked...I'm one of those evil people that employs people and churns the economy in not only Nebraska but also throughout the United States. I think last year we worked somewhere in the mid 30s in the number of different states. And I've dealt with work comp courts and review boards in all of those states at one time or another, I or my company. And it seems to me that the rules are pretty skewed toward the employee at this point in time or the claimant at this point in time. And a lot of times, it's thrown at the employer to prove something that did or didn't happen. So these can be drug out for quite a while. I've dealt with them and they've cost us hundreds of thousands of dollars. And my premiums, that's one of the major parts of our business, and that's a cost of doing business and we should have that because we should take care of the employees that actually make the business run. But let's don't forget a lot of times something isn't as it appears to be. And a lot of times fraud happens and that's why this costs a lot of money for my company in particular. So with that, I don't intend to support this bill or the amendment at this point in time. And I'll yield the balance of my time to Senator Gay. [LB622]

SENATOR ROBERT: Senator Gay, 2:50. [LB622]

SENATOR GAY: Thank you, Senator Janssen. I would like to continue if Senator Lathrop would yield to a question and just finish up where we were. [LB622]

SENATOR ROBERT: Senator Lathrop, will you yield to a question? [LB622]

SENATOR LATHROP: Yes, I will. [LB622]

SENATOR GAY: Thank you, Senator Lathrop. Just I guess when you're working on next...if this gets through General File on Select File on this amendment then, taking that portion of where 30 days starts has to be fairly difficult to get people to agree on that. Who would be at the table pulling that together? Or is that just something you're going to do or how are you going to get that done? [LB622]

SENATOR LATHROP: Yeah. I would expect to. And I don't expect it to be that difficult. In fact, the person that I'm speaking to is the representative of a group called Work Comp Equity. Okay? They are comprised of self-insureds, insurance companies, and guys that do defense work on work comp. They are the other side. There's employees on one side and there are employers and Work Comp Equity on the other. So we have essentially authoritative voice on the concerns. It's not going to be that hard. I think the two of us have agreed it won't be that hard. The problem was, he was out running the traps and couldn't get back to me before five minutes before I came on the floor. So I don't anticipate if you went out there and asked him, he'd probably tell you the same thing. We'll likely be able to work something out. If we can't, you'll know about it on Select File. But the concept here, very simple. The detail having to do with the timing,

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when we start counting the 30 days, has to do with one's right to appeal and the other person's right to cross-appeal. [LB622]

SENATOR GAY: Okay. Like when judgments come in and so I'll let you...I just wondered the process how that works because that sounds to me like it's going to be... [LB622]

SENATOR ROBERT: One minute. [LB622]

SENATOR GAY: ...the crux of this amendment is when you do that. And Senator Lautenbaugh, he being an attorney, too, he talked about all the different things. You talk about rolling. It's a constant ongoing process and I understand this much of it. But I just kind of wanted to follow up how you were going to do that and appreciate it. Thank you, Mr. President. [LB622]

SENATOR LATHROP: Thank you. [LB622]

SENATOR ROBERT: Thank you, Senator Gay. Senator Lathrop, you are next and recognized. [LB622]

SENATOR LATHROP: Thank you. I appreciate the discussion. I also appreciate the questions and maybe I'll take a minute to further explain work comp. Because work comp doesn't involve just a one-time lawsuit, it's sort of you go to the Work Comp Court and a lot of states it's an administrative tribunal. Okay? So we're not talking about a courtroom in the courthouse with a jury and, you know, taking up days and hours. Most of the Work Comp Court cases I've tried, I've tried in less than a couple of hours. It's simply going in front of the court, offering medical reports and things like that and having a judge decide a controversy. When you do that, when you do that, some things are going to be in controversy and some things aren't. And all this bill does is say if it's not in controversy, then the insurance company should have to pay it. And interestingly, the industry doesn't have a problem with this idea. Now Senator Janssen suggested that he read the bill and didn't understand it and it is complicated. That was Senator Nordquist's bill. But he hadn't read the amendment so he was going to vote red. If you're listening, let me suggest to you that this isn't really a great approach to legislating. The amendment is probably a fragment of a sentence. Okay? So if you've only read the bill and not the amendment, take a look at it. And here's maybe a better approach I might suggest to you--go ahead and ask me a question if you've got a problem with it. But to suggest that you'll vote red because you haven't read the amendment, it's only one sentence. Go ahead and read it. This is truly a procedural clarification at the invitation of the Nebraska Supreme Court. There's nothing antiemployer about it. In fact, what it does is it simply requires that if you're not fighting over something, if you don't have a defense, or if a defense would be purely frivolous, then you should pay that part of the award that isn't in controversy. Now what's the problem? That's in keeping with the way

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work comp is. Employers and employees can have...agree that a certain type of care should proceed, but disagree over what somebody's loss of earning capacity is. That employer or the work comp carrier needs to pay that benefit even though they got to fight on something else. That's just how work comp works. It works in pieces and the employee and the employer, either one of them, can file a claim in the Work Comp Court to have a dispute resolved. But just because you have a dispute on one portion of a benefit doesn't mean you can stop paying everything. And if you think it through, if you think it through, it makes sense because you don't want an employee to not get care and treatment because the employer disagrees about what the average weekly wage is. I wish if you don't understand this you would turn your light on and ask me questions, and I'd be happy to explain it because it is noncontroversial, it is straightforward, and it is simple. Thank you. [LB622]

SENATOR ROBERT: Thank you, Senator Lathrop. Senator Lautenbaugh, you're next and recognized. [LB622]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. And I would agree that this provision, this amendment is not overly complex and it is not something you can describe as antiemployer necessarily. But I think you could make that case more than you could say that it's antiplaintiff. I don't see where this in any way works to the detriment of the plaintiff, and that's neither here nor there, it just is. And I think we should question things on the floor, and there really hasn't been a lot of opposition from this generated that I've seen, except, you know, my own questioning of this, which I don't even think counts as opposition. So I did question some of this before. And twice in our hypotheticals and the responses the company Liberty Mutual was named just by happenstance--Liberty Mutual, Liberty Mutual. I should probably point out that I've defended Liberty Mutual in workers' comp claims before, and maybe that was an invitation for me to say I've represented Liberty Mutual before. I do workers' comp defense work from time to time. I don't think that should preclude me from questioning this, and I don't know if that was the intent of mentioning one of my clients specifically twice. But I think it is good that we ask questions. And if we say we're open to questions, then I take that at face value--we're open to questions, we're open to answers. There have been occasions where I have bristled at questions on the floor when I felt that they were being asked for purposes other than the seeking of an answer, if you will, but that's not this case. So in interest to full disclosure, yes, I do workers' compensation work; yes, I've worked for Liberty Mutual in the past. I even have some current cases for Liberty Mutual. But I do think it's important to underline that the questions I raised earlier were questions that I wanted an answer to. And we are giving up something here if you're an employer. What we're giving up is the ability to have the court maybe bail you out on plain error, if you will, if it's something your attorney doesn't pick up on and appeal on. And attorneys are not omniscient, I'm certainly not. We all make mistakes. That much is certain. So, yes, this is a technical correction. Yes, this isn't the biggest deal in the world, but it will work...if it works to the detriment of anyone,

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it's the employers and the insurance companies because it makes them start paying out an award sooner than they otherwise might; and in some admittedly unlikely circumstance where a matter isn't specifically appealed, an issue isn't appealed as part of a broader appeal and the court above says, oh, no, this whole thing was in error, we're noticing plain error here; we're throwing out the entire award, you shouldn't have paid anything, there's a mechanism I suppose for getting that back. But I don't know how successful that will be because you're usually dealing with someone who's been disabled and collecting benefits regardless of the source of the disability. So that's the question I raise. I do raise it in good faith. I do disclose what I do for a living. But, and no one has come to me before this bill came up and said, hey, we want you to say this, we want you to do this. These concerns are my concerns based upon what I've seen and what I do, and I'll not hesitate to raise them. Thank you. [LB622]

SENATOR ROBERT: Thank you, Senator Lautenbaugh. Senator Lathrop, you are next and recognized. [LB622]

SENATOR LATHROP: Oh, Senator Lautenbaugh. I want to be certain of one thing. One is none of those...none of my comments regarding Liberty Mutual were directed at you or meant to imply anything other than I chose the name that first came to my mind, and I chose them...maybe they came first to my mind because they are the biggest insurer to my knowledge in the work comp industry. And their name, like State Farm and Allstate might be synonymous with auto insurance, Liberty Mutual is oftentimes synonymous with work comp. And certainly I respect what you do. I don't know that you and I have ever tried a work comp case together. We've tried some others, but my comments aren't intended to be directed to you or imply anything about your practice and the practice of law as you do that work in your firm. But I do want to address the other concern that you raised, and I'm glad you are asking questions. You have a particular knowledge about work comp, and if you have questions, I'll stand here and answer them all day long because I think that's part of the process. Your concern is with respect to what happens if the court finds plain error, and that maybe requires that I give an explanation to people who are not involved in the litigation process about how an appeal works. When you get done trying a case in front of whatever court you try it in front of, and in this case we're talking about the Work Comp Court, and you don't like the outcome, the rules require that you identify the things you don't like about the outcome. And the other side, after you've done that, the other side gets to identify the things that they don't like about it. Now these are identified by the lawyers who have tried the case, the lawyers who practice in the area, the lawyers who understand the law, and the lawyers who understand the circumstance. So the issues before the appellate court are joined at that point. We know what the controversy is, and we can look at the list and say, this is an issue and all of these things are not at issue. All we're saying with this amendment is if it's not an issue, then you ought to pay it, which is consistent with how work comp and the process works kind of as an administrative court. Now what Senator Lautenbaugh is talking about is, well, what if the court finds something in the decision that wasn't on

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anybody's list of problems they had with the trial court's judgment? And I will tell you that occasionally it will happen. I don't know that I've ever seen it happen in a work comp case. Certainly I will acknowledge this: that Senator Lautenbaugh does an awful lot more work comp defense than I do plaintiff's work in the work comp arena. But I've never seen the court go in and find plain error and essentially say you, the employer or the insurance company, didn't need to pay that money. We reverse that judgment even though nobody thought it was an issue. I just don't think that's a...is it a hypothetical that theoretically might happen? Theoretically, but in practical terms, it won't happen or its occurrence would be very, very rare that the appellate court would reverse a work comp judgment on plain error not already briefed by the parties. So while I appreciate the questions from Senator Lautenbaugh, I don't agree that the hypothetical is as a practical matter something that's ever going to occur or likely to occur in a work comp appeal. But I do appreciate the questions and, again, Senator Lautenbaugh, I appreciate the questions and none of them were intended to call you out. I didn't know you did any work for Liberty Mutual so with that, I would ask your support of AM875. [LB622]

SENATOR ROBERT: Thank you, Senator Lathrop. Senator Price, you are next. [LB622]

SENATOR PRICE: Thank you, Mr. President, members of the body. I was wondering if Senator Lathrop would yield to a question. [LB622]

SENATOR ROBERT: Senator Lathrop, will you yield to a question? [LB622]

SENATOR LATHROP: Yes, I will. [LB622]

SENATOR PRICE: Thank you, Senator Lathrop. This is again another opportunity for you to educate me. On page 1, line 12 and 13, the sentence says "is being reviewed" so you have the various states of which I guess a claim could be in and one of them is a claim that is in review. And I was wondering if you could elaborate. As I read it, I was wondering, does that mean that there has been a partial award and adjudication and a contentious part and that there would be payment made on that which is agreed? [LB622]

SENATOR LATHROP: Can you give me that line again, Senator. [LB622]

SENATOR PRICE: That would be page 1, line 12 rolling into line 13 or 11 rolling into 12, excuse me, "is being reviewed" on the amendment. [LB622]

SENATOR LATHROP: Okay. And your question. [LB622]

SENATOR PRICE: My question is, is this to address a situation where there's been partial agreement and adjudication of a claim and there's another part that's being

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contested? [LB622]

SENATOR LATHROP: That's exactly what's happening. And if you think about, you know, in a third-party claim there's one judgment for one dollar amount, defendant pays the plaintiff and the case is over. In a work comp, we're litigating different pieces. One benefit might be whether somebody has to pay your doctor bills or another piece might be whether or not you're going to get an MRI, which the insurance company won't agree to. Another piece might be a time when you couldn't work at all and you've gotten an award of total disability benefits. So there's pieces to this award and what we're saying is, if there's a dollar amount you're supposed to pay and nobody argues over that, but the rest of the award is going to be appealed, you need to pay the part that isn't under...that no one has any controversy over. [LB622]

SENATOR PRICE: And so does that possibly allude to the fact that there are sometimes some protracted cases there on that part that is being contested? And I'm thinking about the individual, and I have friends who are disabled both from the military and nonmilitary. And they have, I mean, there's a lot of conversation about how long the process takes and once you have an appeal in place and nothing happens. So am I to understand that right now if there is any portion that's under appeal they would receive no payment? [LB622]

SENATOR LATHROP: Exactly. [LB622]

SENATOR PRICE: All right. Thank you very much, Senator Lathrop, I appreciate that. Thank you, Mr. President. [LB622]

SENATOR ROBERT: Thank you, Senator Price. Senator Lautenbaugh, you are recognized for your third opportunity to speak. [LB622]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I thank you for the clarification, Senator Lathrop. And I do note that when you were clarifying that nothing personal was meant by Liberty Mutual. You rolled out Allstate who I also work for so I can only assume you're trying to pick a fight here (laugh). And I'm joking when I say that. I thank you for addressing the question. I yield my time. [LB622]

SENATOR ROBERT: Thank you, Senator Lautenbaugh. Senator Janssen, you are next and recognized. [LB622]

SENATOR JANSSEN: Thank you, Mr. President, members of the body. I actually stepped aside and Senator Lathrop made his comments. I was in the senators' room and it's kind of an interesting feeling when somebody says your name when you're in there and you hear that overhead like that. So it's a unique experience already this morning for me. I do have a question for Senator Lathrop if he would yield. [LB622]

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SENATOR ROBERT: Senator Lathrop, will you yield to a question? [LB622]

SENATOR LATHROP: I will. [LB622]

SENATOR JANSSEN: And I apologize. I should have probably asked this in the beginning and I did take your advice that I got from the (inaudible) this morning and came back and read the amendment as well. But on a workers' comp case, and as you have said, it's a little different. It's not boom, you're done. And a lot of times from my view, these get drug out and hung on and added onto down the road. So that is my fear as an employer that, you know, so and so hurt their arm and we go to Work Comp Court. We don't dispute that they hurt their arm and they were carrying this box. Then it keeps it open and keeps it open and the next thing you know the shoulder is open because they're overcompensating for their arm now and that becomes work related. And even to the point of they're depressed now and then that becomes workers' comp. So this is the road I'm going down, and this is why I still do oppose this. And I appreciate the offer of the lesson on legislative maneuvers as far as voting. I do plan to vote red. But I would kind of like I guess an explanation of, if you would. [LB622]

SENATOR LATHROP: Sure. What you're saying is in some cases it seems unfair to you that people's benefits are paid out over time or that perhaps, in some cases, there might even be fraud. And the answer to that is this doesn't have anything to do with either one of those situations. Still you can vote red if you care to. But the amendment doesn't address fraud in a work comp setting. The best answer to fraud in a work comp setting is an aggressive defense lawyer. Every one of these cases are subject to the adversarial process where those lawyers that do this kind of work and insurance companies will send...insurance companies can send people out with...a film crew out to follow a plaintiff around when they've been hurt. They don't have to tell them they're doing it. They sneak around in the bushes and try to catch the plaintiff taking the trash out to the curb. That's the protection against fraud, and it doesn't happen near as much as you would think. Does it happen? It does from time to time. And maybe Senator Lautenbaugh can tell you how frequently that occurs, but it's rare. This AM875 doesn't have anything to do with expanding or extracting the duration of a work comp claim. It doesn't have anything to do with fraud. It doesn't make the likelihood of a claim or a fraudulent claim any longer. All it does is stop the defense equivalent of a frivolous practice, which is not paying when there's no controversy with respect to a benefit due an employee. [LB622]

SENATOR JANSSEN: Thank you, Senator Lautenbaugh (sic). I appreciate the answer to that. And that is a great concern of mine and a lot of employers. And I guess we may be talking about something that doesn't pertain directly to the bill. Would you say...if you'd yield to one more question. [LB622]

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SENATOR LATHROP: Sure. [LB622]

SENATOR JANSSEN: Would you say, though, that this amendment and bill, if I'm the employer of the employee, it benefits you more than myself? [LB622]

SENATOR LATHROP: Does it benefit the employee...what it does is it just requires that if there's...nobody is fighting over something that the employer pay it. And I think that's just fair. I don't think that's a benefit. I think it's something somebody is entitled to. So I wouldn't regard it as this is some boon for the plaintiffs or the injured workers of the world. [LB622]

SENATOR ROBERT: One minute. [LB622]

SENATOR LATHROP: This is just having the mechanism in place to enforce the requirement that the insurance company pay that part that's not in controversy, which is also part of the system, just in different respects already. [LB622]

SENATOR JANSSEN: Thank you, Senator Lathrop. I appreciate that and I in no way believe that we should withhold payments from workers' comp cases that are fully justified and not controversial. I just have found very few in my workings, but I appreciate you answering the questions. I yield my time. Thank you. [LB622]

SENATOR ROBERT: Thank you, Senator Janssen. Senators wishing to speak: Senators Loudon, Fulton, and Council. Senator Loudon, you are next and recognized. [LB622]

SENATOR LOUDON: Thank you, Mr. President and members of the body. Would Senator Lathrop yield for questions, please. [LB622]

SENATOR ROBERT: Senator Lathrop, will you yield to a question? [LB622]

SENATOR LATHROP: Yes, I will. [LB622]

SENATOR LOUDON: Senator, as I look this over, I was, you know, trying to figure out what this bill is supposed to do. And as I look the green copy over and the amendment, really it's on that line, you might say line 12 and 13 is the whole gist of the bill. And the way I understand it, what this bill does, and correct me if I'm wrong, is people will be allowed to get their compensation while their case is being reviewed. Is that in a thumbnail sketch? [LB622]

SENATOR LATHROP: Not entirely. If I answered that yes, it might mislead somebody. What it says is, if there is an appeal from the Work Comp Court, that portion of the judgment of the Work Comp Court that nobody disputes. In other words, the employer

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and the employee agree that the employer needs to do something or pay something, a benefit to the employee. The part that's not in dispute needs to be paid, even though they might want to argue about a doctor bill or a hospital bill or an appropriate plan of vocational rehabilitation that might be part of the court's judgment. [LB622]

SENATOR LOUDEN: Okay. Then if they're allowed some of the money that they would be allowed anyway under the compensation would be paid. All this does is separate that whereas before it was all in one piece. It wasn't separated. Is that what this bill would do then? [LB622]

SENATOR LATHROP: Yeah, sort of. Think about a work comp judgment, if you would. Somebody...two lawyers just get done trying a case in the Work Comp Court and an award comes out and it says this for total disability benefits, this for loss of earning capacity, this much for medical expenses, and this kind of additional retraining. Well, if the employer has a problem with three of the aspects of the award, they're going to want to appeal. But they shouldn't starve the person out and not pay that part of the award that they already agree to. It's that simple. [LB622]

SENATOR LOUDEN: Okay. And then in the original statutes then, that wasn't in there? [LB622]

SENATOR LATHROP: No. We do have penalties in the statute where there's no controversy and payment isn't received. It led to an ambiguity when there is an appeal, and that's what the Supreme Court said: Legislature, it's up to you to clarify whether this penalty applies when there is an appeal of part of a judgment and some part that's not in controversy isn't paid. [LB622]

SENATOR LOUDEN: And then, in other words, there wouldn't be any money paid out that they weren't already entitled to. [LB622]

SENATOR LATHROP: Exactly, that's well put. [LB622]

SENATOR LOUDEN: Okay. And this clarifies it in statute as what we had in the green copy, which was the statutes, like I say, those two lines is what you've added to it, and this is clarification for how the compensation would be, I guess, "piecemealed" out. It would be over what isn't controversial will be paid and what is controversial would be held until it was settled for. [LB622]

SENATOR LATHROP: That's it. You got it. [LB622]

SENATOR LOUDEN: Okay. Well, thank you, Senator Lathrop, and thank you, Mr. President. [LB622]

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SENATOR ROBERT: Thank you, Senator Louden. Senator Council, you're next and recognized. [LB622]

SENATOR COUNCIL: Yes. Thank you, Mr. President. I will be brief. I rise in support of AM875 and I think Senator Lathrop has more than adequately described what the purpose of AM875 and the underlying LB622 is. There's been a question raised as to whether it benefits the employer or the employee. I think what this bill is designed to do is just to provide fairness, particularly in a situation where there is no dispute as to the specific benefit and either the employer or the employee is appealing some other portion of the award. And that the employee should not be forced to suffer under particularly the weight of paying medical bills or having medical providers continuing to pursue the employee for these payments. It adversely affects their credit ratings and creates all other types of long-term problems for the employee when there is no controversy as to the employer's obligation to pay those medical benefits in particular. And so for those reasons, I believe that passage of this piece of legislation will provide more equity in terms of the workers' compensation benefit payment aspect when there are appeals taken from an award. So I would urge the body to vote in favor of AM875 and the underlying bill. [LB622]

SENATOR ROBERT: Thank you, Senator Council. Seeing no other members wishing to speak, Senator Lathrop, you're recognized to close on AM875. [LB622]

SENATOR LATHROP: Thank you, Mr. President. And I hope Senator Friend has been pleased with the discussion this morning. I think it's been thorough. I've appreciated the opportunity to answer the questions. I think they've been thoughtful questions and a good discussion on what I believe is a relatively simple amendment. Again, at the risk of repeating myself, all we're doing is responding to an invitation by the Supreme Court to clarify the language in 48-125 to provide that if there is an appeal and part of the Work Comp Court's judgment is not in controversy, that judgment portion needs to be paid or it's subject to a penalty, which is already provided for in the statute. And with that, I would urge you to support AM875, which will become the bill, and then I would ask you to support LB622. Thank you. [LB622]

SENATOR ROBERT: Thank you, Senator Lathrop. Members, you have heard the closing to AM875 to LB622. The question before the body is, shall the amendment be adopted? All those in favor vote yea; opposed vote nay. Have all those voted who wish? Mr. Clerk, please record. [LB622]

CLERK: 33 ayes, 1 nay, Mr. President, on adoption of committee amendments. [LB622]

SENATOR ROBERT: AM875 is adopted. Returning to discussion on LB622, seeing no other lights on, Senator Lathrop, you are recognized to close on LB...excuse me, Senator Nordquist, you're recognized to close. Senator Nordquist waives closing.

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Senator Fulton, you are recognized. [LB622]

SENATOR FULTON: Thank you, Mr. President, members of the Legislature. Senator Lathrop and I were having a conversation, and he was just about to provide that level of knowledge such that I could accept the bill when we got cut off because he had to close. So I'm going to go ahead and ask this question over the mike and into the record. Would Senator Lathrop yield to a question? [LB622]

SENATOR ROBERT: Senator Lathrop, will you yield to a question? [LB622]

SENATOR LATHROP: Yes, I will. [LB622]

SENATOR FULTON: Okay, Senator. For the sake of the record, I'll reiterate my question and then I'll turn it over to you and if you could provide the response it would be appreciated. I think I understand where the 30 days comes from. It's existing statutory precedent. The question that I had was, what happens after let's say 28 days or 26 days, something short of 30 days, and the employer decides to dispute that which was previously not disputed? What is the process then I guess? So that would affect the 30-day judgment, but how would it affect? So I wonder if you could describe that. [LB622]

SENATOR LATHROP: Well, remember, we're talking about an appeal. So we start in this discussion and this change to the law, we start with a judgment so an award has been entered by the Work Comp Court. Okay? Or by the three-judge review panel of the Work Comp Court. And now we'll assume that it's the employer has made a judgment that they want to dispute some part of that award. We also have in play the rules of the court that dictate how you appeal and what you do when you appeal. You have to file a notice of intent to appeal within a particular time frame and you have to delineate what your complaints are. You don't just file a one-line sentence with the court that says, I appeal or I appeal, I don't like what you did. You have to say, you know, the defendant is appealing and here are the issues for review on appeal and you set those out. And that will be done within this period of time. Now you're sort of creeping up to the issue that I need to work out with the defense folks and that is when do we start the 30-day...when do we count the 30 days? Is it after they've had a notice of appeal filed or a cross-appeal? And I don't want to get too far into that without confusing people. That's a piece we're going to work out. But recognize there are court rules about how to appeal and how you set forth what your complaints are or what you want to have reviewed by an appellate court because you don't try the case over there. They simply read the record and decide questions of law based on the record you had in the trial court. So I think that resolves it. But if that didn't answer your question, I'd be happy to answer the next one. [LB622]

SENATOR FULTON: That's great. Thank you, Senator Lathrop. I'm able to move this

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forward to Select File. I think it's reasonable to expect...to have some expectation on the part of employers. And I employ people. We work through, we pay our workers' compensation and go through all of that. It is reasonable, I think, to put some time limit. I guess that just catching up in the amendment, where that time limit begins, if that's what you're working on between General and Select, that's great because that's a question that I would have. I could see this occurring where, you know, after a certain period of days, 20-some days, something less than 30 days, there could still be question. And if indeed that goes through the proper processing, then I think we have to have something in statute to delineate or to identify and make...and explicate how we are to move forward so. Thank you, Mr. President. Thank you, Senator Lathrop. [LB622]

SENATOR ROBERT: Thank you, Senator Fulton. Other members wishing to speak. Seeing none, Senator Nordquist waives closing to LB622. Members, the question before the body is, shall LB622 advance to E&R Initial? All those in favor vote yea; opposed vote nay. Have all those voted who wish? Mr. Clerk, please record. [LB622]

CLERK: 32 ayes, 0 nays, Mr. President,...excuse me, 32 ayes, 2 nays on the advancement of LB622. [LB622]

SENATOR ROBERT: LB622 does advance. Next item on the agenda. [LB622]

CLERK: Mr. President, LB35 is a bill by Senator Ashford. (Read title.) The bill was introduced on January 8, referred to the Judiciary Committee. The bill was advanced to General File. There are Judiciary Committee amendments. (AM836, Legislative Journal page 866.) [LB35]

SENATOR ROBERT: Senator Ashford, you're recognized to open on LB35. [LB35]

SENATOR ASHFORD: Thank you, Mr. President and members. LB35 as originally introduced had a number of violence prevention measures in it. Most of those have been amended into LB63, which is a bill on Select File. So what I might do, Mr. President, is move on to the committee amendments, which include a number of provisions that the Judiciary Committee felt should be advanced to the floor. And we are suggesting that they be included in the committee amendments and adopted. So with that, I could go on to the committee amendments if that's appropriate, Mr. President. [LB35 LB63]

SENATOR ROBERT: Thank you, Senator Ashford. Members, you have heard the opening to LB35. There are committee amendments. Senator Ashford, as Chair of the Judiciary Committee, you're recognized to open on AM836. [LB35]

SENATOR ASHFORD: Thank you, Mr. President and members. What I will do now is go through a number of bills that are amendments, in the form of amendments to LB35

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in AM836. In addition to the committee amendments, I believe Senator Lautenbaugh has an amendment that deals with sheriff's fees not included in this amendment, AM836. And also Senator Pankonin, I believe, has an amendment not included in AM836 that deals with judges' retirement. So with the exception of those two provisions, that both provisions that were discussed by the committee, I'll now go into AM836 and the component parts. Many of these provisions are really very technical in nature. There are a couple that are more substantive, and I will delineate those when we come to them. LB40, initially introduced as LB40 by the Speaker, a very technical amendment, would clarify the language which describes the form of a motion for a new trial. The bill also would update a statutory reference to the Uniform Licensing Law to reflect a change in name to the Uniform Credentialing Act. And LB46...in fact, Senator Wightman introduced three bills all dealing with...in the area of probate law. We have included all three amendments. These are bills that were advanced to the floor. We've included these three as amendments to this, to LB35. LB46 would...did clarify that the actions taken and expenses incurred in the discharge of the statutory duties of personal representatives are properly considered costs and expenses of administration of the estate. Again, Senator Wightman does quite a bit of work in the probate area and this was an area that needed cleaned up and clarified. So that provision, the provisions in LB46, are in AM836. LB47, again by Senator Wightman, would amend a statute regulating the distribution of a decedent's property in the absence of a will. The change would update the fixed dollar lump sum that a surviving spouse is entitled to before the estate is divided up and among the decedent's surviving parents or surviving children if a will does not exist. Currently, the amount is \$50,000 and this amendment would raise that amount to \$100,000. The amount has not been increased since 1980. This is a necessary change and it is included in AM836. LB118, again by...originally introduced by Senator Wightman, would amend the law to allow for succession of personal property by affidavit for estates with personal property not exceeding \$50,000 and for estates with real property not exceeding \$30,000 in value. Currently, affidavits are allowed only for estates with a value not exceeding \$25,000. This change, again a needed inflationary change, has been recommended by the committee. Senator Council introduced LB305, an important provision which received unanimous support from the Judiciary Committee and is included in AM836. It would amend the law to add state identification cardholders to the group of people included in the jury pools. The bill is based on a recommendation from the Nebraska Minority Justice Committee's task force of the bar and...a task force and a joint effort of the Nebraska Supreme Court and the Nebraska Bar Association. This is an extremely thoughtful study that was presented to the committee and overwhelmingly endorses the expansion of the jury pool to include cardholders--individuals who have state IDs, and state IDs are obtained much the same way as a driver's license. It would meet many of the diversity standards which the committee felt should be met. LB332 was a bill that I introduced regarding the county court judges. It reflects a series of recommendations made by them. The bill would correct...or this amendment would correct vagueness in the term "court" in the statute, allowing for the appointment of a special prosecutor by any of the courts of the state

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upon the request of a county attorney for good cause. The bill would also add conflict of interest to the list of causes for an appointment which currently includes absence, sickness and disability. So again, a needed change regarding adding conflicts of interest to a criteria for the appointment of a special prosecutor. This amendment would also provide that a lower court would not have to swear in a certified interpreter who has been sworn in by the Supreme Court, a technical change but it comes up all the time. The bill would allow the court where the judgment was originally entered to issue a garnishment to any county in the state, again a cost-saving measure. There's a redundancy in our law that provides that a garnishment proceeding must be filed in each district where the garnishment is going to be affected. This would do away with that requirement. The amendment would also provide that upon the filing of a petition for adoption the hearing would be held not less than four weeks, no more than eight weeks after the filing of the petition unless any party, for good cause shown, requests a continuance of the hearing or all parties agree to the continuance. In addition, the bill would, in the county court jurisdiction, in the area of the county courts, the amendment would allow the county court to either provide a caregiver information form to foster parents to report on the status of the child in their care, or direct the applicant to the Supreme Court Internet Web site, where they could download the form--again, just a procedural, technical change. The bill...the amendment would add school personnel to the list of the holders of confidential information, confidential records of a child that could be...who is in the custody of the state which records could be shared with CASA volunteers and other juvenile court officials. The bill would add school districts and school personnel to the...or the amendment would add school districts and school personnel to the list of those who would be required to cooperate with requests for CASA volunteers. I'm getting to the end here, hopefully, for all of you. (Laugh) Going on just a bit further, LB333, a bill I introduced, would increase the Supreme Court automation fee from the current \$6 to \$7 per case, and we can get into this discussion later. Nebraska court fees are lower and, in some cases, significantly lower than the surrounding states. The district court civil case filing fee, which is the most common filing fee, is lower than the surrounding states. The automation fee is necessary. There are no General Fund dollars allocated to complete the automation of the court system. Douglas County Court system is the last district court that does not have the automation completed. This is a significant advancement in how we...basically how we run our courts and how the public and the lawyers interact with the court system, and in the long run it's a significant savings to have this completed. We did discuss this court fee issue. There were six bills introduced to increase court fees. This automation fee increase is the only fee that we approved. There will be some discussion about increasing that fee from \$7 to \$8 with an amendment that Senator Lautenbaugh is bringing and, as I suggested, Senator Pankonin also has an amendment dealing with retirement. But the committee was very careful... [LB35 LB40 LB46 LB47 LB118 LB305 LB332 LB333]

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SENATOR CARLSON: One minute. [LB35]

SENATOR ASHFORD: ...in going through these fees and we approved really the automation fee, as a committee, as being the fee that ought to be approved. A legislative bill which was LB344 would transfer the responsibilities for the administration of the Civil Legal Program...Services Program from the State Court Administrator to the Commission on Public Advocacy, a very technical change. It...the money that does...that we do appropriate that goes to...eventually goes out to Legal Aid and other agencies was going through the court system, and that State Court Administrator's Office, an extra step that is not needed. What was LB351 would amend the Limited Liability Company Act to clarify that a judgment entered by a court against a limited liability company... [LB35 LB344 LB351]

SENATOR CARLSON: Time, Senator Ashford. Your light is on next. You may continue. [LB35]

SENATOR ASHFORD: Thank you, Mr. President. Again, a limited liability company judgment may only be entered against the transferable interests in the LLC and not against the other partners to an LLC. LB352, also introduced by Senator Lautenbaugh, would amend the law to allow for delivery of a summons by a commercial courier. Under current law, certified mail is allowed if done through the U.S. Postal Service. This would expand that reach to include delineated companies: Airborne Express, DHL, Worldwide Express, Federal Express, and United Parcel Service. These are the accepted purveyors of summons under federal law and if we just adopted the federal law there. And again, this is...this will be a savings to the court system. A very technical change, what was LB353, this would amend a statute by changing "petition" to "complaint," to update the language with other civil procedure statutes. Senator Lautenbaugh, in LB354, provided for the right of a cross-appeal to a responding party of any review under the Administrative Procedure Act. Again, this is a change that would allow a cross-appeal by a respondent in a case brought under the Administrative Procedure Act. LB...what was LB433 would amend provisions that were enacted through LB1014 in 2008. Under current law, the district court has exclusive original jurisdiction over misdemeanor cases that arise from the same incident as a charged felony. LB433 would amend the law to expand the district court's exclusive jurisdiction to concurrent jurisdiction with the county court. Again, this is an efficiency issue brought to us by Douglas County to prevent bifurcated cases, cases that would be partly tried in the district court and partly in the county court, and this change would rectify that problem. Senator Coash brought to us what, I think, is significant legislation asking that we appoint five new judges to the district courts throughout the state. Last year, two years ago, the Judiciary Committee recommended and this body approved the addition of a judge in Kearney. At that time, Lancaster County made a strong case that there needs to be an additional eighth judge for Lancaster County and Lancaster County made its case for that additional judge. This is a situation, members, that cannot be put off. The

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number of new cases being heard in Lancaster County is significantly increasing. We're now at the point where we're bringing judges from Seward and other district courts into Lancaster County to hear these cases. As we...as we increase the reach, really, of the civil and criminal law, especially the criminal law where we're making tougher penalties, tougher drunk driving laws, where more and more cases are being tried in the district court because of the severity of the crime, and also the need for judges is going to be acute, also the particular problem of western Nebraska judges, where they don't have as many cases to try and it is...but they serve a very needed purpose. If we look at the judges out in the western part of the state, their caseload is in many cases significantly less than the caseload in Lancaster County and Douglas County; however, their services are... [LB35 LB352 LB353 LB354 LB433]

SENATOR CARLSON: One minute. [LB35]

SENATOR ASHFORD: ...are critical. Therefore, it seems necessary. We can no longer just transfer judges back and forth as we did in Kearney to Kearney last year and lose a judge in the western part of the state, and that's going to happen unless we add this additional judge in Lancaster County. When there's a retirement out west, there's going to be a change in the Judicial Resource Committee. There's no question. That's why we need, critically need, to address this issue of Lancaster County this year. With that, Mr. President, thank you for the 20 minutes. This is sort of the Rockefeller Center Christmas tree as opposed to the normal Christmas tree. (Laugh) So with that, I would certainly urge the adoption of AM836. [LB35]

SENATOR CARLSON: Thank you, Senator Ashford. (Visitors introduced.) Mr. Clerk, for an amendment. [LB35]

CLERK: Mr. President, the first amendment to the committee amendments, Senator Ashford, AM987. (Legislative Journal page 966.) [LB35]

SENATOR CARLSON: Senator Ashford, you're recognized to open on AM987. [LB35]

SENATOR ASHFORD: I was just corrected by Stacey, which is often the case. My amendment, this amendment, AM987, does increase the fee from--it's my amendment, not Senator Lautenbaugh's, and I apologize--increases the automation fee from...to \$8 from \$6, I believe, with the amendment and with AM836 and AM987 it does increase by \$2, as requested by the Chief Justice, to complete the automation project. Again, no General Funds are allocated to this project and the court fees, as I touched upon in Nebraska, trend lower than most any jurisdiction in the area. And with that, I would urge the adoption of this amendment. [LB35]

SENATOR CARLSON: Thank you, Senator Ashford. You've heard the opening on AM987. There are senators wishing to speak. Senator Lautenbaugh, you're recognized.

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[LB35]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. I'll be relatively brief, (laugh) if that's possible on this bill. I think Senator Ashford spoke for quite some time and with good reason, because this is a complex bill. It does a lot of things and there's a lot of heavy lifting involved in getting this done. I would say at the outset that the committee struggled with this quite a bit. None of us is interested in increasing fees, increasing costs, especially now but even in general really, but there are times and circumstances where that makes particular sense. And I would urge you to, hopefully, as it's a quarter to 12:00, spend the lunch hour familiarizing yourselves with this better, if you haven't yet, and come back with any questions this afternoon because there really isn't anything in here that's a throwaway provision. They're either technical corrections that are noncontroversial but won't otherwise get done, cleaning up laws that exist, but some of the other ones are very important and they aren't technical and they need to be done. An amendment I'll be speaking on in a bit deals with increasing the fees sheriffs can have or can charge for service of papers. This is crucially important to understand because this is not like, in my mind, some of the fees that we've looked unfavorably upon increasing earlier in the session. The sheriffs serve the papers regardless of what the fee is. The fee is what is charged to the attorney, generally, the party sending out the papers to be served, sending the sheriff out. I don't believe these fees have been increased in about 20 years. Understand that the actual cost of serving the papers is well in excess of what they're allowed to charge currently. There was a story on the front page of the World-Herald just this morning about that very topic. And if we don't make up the difference in some way by allowing them to charge the people actually using this service a little more, this money comes from property tax revenues. The counties still have to pay these process servers to do this so this is a circumstance where we are shifting over to a user fee, if you will, at least increasing the user fee on this to take the upward pressure off of property taxes. I think this is an important thing to do, it's an overdue thing to do, and it's definitely the right thing to do. That is an important part of this bill and I'm happy to be bringing that amendment and I hope you'll look favorably upon that. I know the representatives of the process servers and the sheriffs have worked very hard this session to hopefully speak to each and every one of us about this and this bill did come through Government Committee, Senator Avery's committee, and it was amended down through a compromise and, as is often the case, Senator Avery and I are working hand in glove to bring this to fruition. So with that said, I will hope that you will all look favorably upon this amendment and the bill. I know Brad will be happy to answer questions, which is easy for me to say since I'm promising Brad's availability, but I will do the same and I'm hoping the rest of the committee will do the same. This is important. It bears discussion. It bears reading and I urge you to support it as we go forward. [LB35]

SENATOR CARLSON: Thank you, Senator Lautenbaugh. Those wishing to speak: Senators Friend, Fulton, Rogert, Wightman, and Dierks. Senator Friend, you are

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recognized. [LB35]

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. Where to begin? I could start singing a song. I do believe, I could be mistaken, Mr. President, but I do believe this is the biggest Christmas tree I've ever seen. I could be wrong. I don't remember. And the question that occurs, you can't help but stop...by the way, if anybody is curious, there is no possible way that I think we should be done with this by the end of the day. Now you may say after all...after my temper tantrum on Thursday and some of the things that have happened, you might say, who cares? Well, the first thing that occurred to me was I'm reading a committee statement, after trying to follow it this weekend and try to follow exactly what the Judiciary Committee did...by the way, I don't think that I have any issues with what the Judiciary Committee did. You see what I'm getting at? I'm just saying this is the biggest Christmas tree I've ever seen. It's going to be hard to decorate. It's going to be hard to tear it down when you're done. One time after...it was...I'm going to share something you guys are going to think I'm really the devil. My wife was sitting...this was after Christmas. It was about a week and a half after Christmas and our Christmas tree is still sitting there and it's a mess in the house, right? And she goes...and for some reason I was somewhat angry with her, and the kids were all sitting on the couch, every one of them, and she said something fairly innocuous like, we need to take the Christmas tree down. I can't believe I'm saying this but I said, you want this Christmas tree down? (Laugh) I walked over and pushed it over, and there's stuff flying all over the living room and the kids...this was probably four or five years ago, the kids to this day, Dad, remember when you went crazy and knocked the Christmas tree over. And I say, oh, I didn't go crazy; I took the Christmas tree down for your mom. (Laughter) Members of the Legislature, I'm not going to go crazy and try to take this Christmas tree down. I don't know where to start. You could...we...and here's the part that is difficult, okay? If you divided this question, I don't think you're doing...I don't think you're doing a service to a bunch of what could be considered some easy to deal with legislation. So I think we could probably take most of the afternoon going through the fiscal impact, and there's fiscal impact to this legislation here, and I think...I would just say that I'd like to go through a little bit this afternoon and talk about the fiscal impact and talk about why there is a fiscal impact to some of these. Senator Lautenbaugh brought up a good point. There is a...we've all heard about the bill that he was discussing that actually came out of the Government Committee. These are fees that haven't been raised in, I think it's more than 20 years. I think it's approaching 24 years, if I'm not mistaken. There is a property tax implication there. At the beginning of the session, we made fees an issue. Fees are an issue with this bill, but I also think we have to prioritize and we have to also talk about what these fees are going to do and what they're going to do to property taxes. [LB35]

SENATOR CARLSON: One minute. [LB35]

SENATOR FRIEND: Because, let's face it, if there is a county impact and they don't

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have the capability to transition and we don't give them the capability in a cash fund, they're going to property tax. They're going to say, look, we need to accomplish government; we need to work on this. If you don't have the ability to work on it and you're up at the levy lid, the game is over. And by the way, they'll be back down here next year asking for this type of fee authority. So if you don't solve it in 1 of these 14 or 15 or 16 or 17 bills that we have, can I...will Senator Ashford yield to a question for me? [LB35]

SENATOR CARLSON: Senator Ashford, would you yield? [LB35]

SENATOR ASHFORD: You bet. [LB35]

SENATOR FRIEND: Senator Ashford, I was going to ask you this later but I saw you smirking up there. I don't know if it was a smirk. You were smiling. [LB35]

SENATOR CARLSON: Time. (Laughter) Thank you, Senator Friend and Senator Ashford. Senator Fulton, you're recognized. [LB35]

SENATOR FULTON: Senator Friend, don't go anywhere. If I can get done with my time, I'm willing to yield because that was an intriguing beginning. Would Senator Ashford yield to a question? [LB35]

SENATOR CARLSON: Senator Ashford, would you yield? [LB35]

SENATOR ASHFORD: Yes. [LB35]

SENATOR FULTON: You're smirking again, Senator. [LB35]

SENATOR ASHFORD: No, I just...my lip is quivering. [LB35]

SENATOR FULTON: Okay. (Laughter) So we're on AM987 and I am glad we're able to take this amendment and the time. [LB35]

SENATOR ASHFORD: Okay. [LB35]

SENATOR FULTON: I recognize that there is a need for increased court fees. I recognize the need exists because of the need for expenditure. I guess the question I have is there was a change in AM836, so what we're talking about here, what is X then is \$6... [LB35]

SENATOR ASHFORD: Correct. [LB35]

SENATOR FULTON: AM836, move that up to \$7. [LB35]

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SENATOR ASHFORD: Correct. [LB35]

SENATOR FULTON: AM987 moves it up again to \$8. [LB35]

SENATOR ASHFORD: Correct. [LB35]

SENATOR FULTON: So some time between \$7 and \$8, there was a change. [LB35]

SENATOR ASHFORD: Correct. [LB35]

SENATOR FULTON: Can you explain some more about that? [LB35]

SENATOR ASHFORD: Yeah. And you're correct, when we originally heard the bill, there was some confusion about where the money was going to be allocated from the court fee increase and what was determined was that the \$1 would be sufficient; that that would enable the court system Court Administrator complete the automation system, which is critical and which does not receive General Fund dollars. However, the Chief Justice asked to discuss this with us further and explained that, no, that the additional \$1 was needed because much of the first \$1 was really going to pay for the services of the statewide computer system and was not actually going to go to the upgrades that would be necessary to complete the system in Douglas County. It's a difference in function, and that essentially is the difference. And we didn't include that in the \$1, that... [LB35]

SENATOR FULTON: Okay. [LB35]

SENATOR ASHFORD: ...at least the information we had was not adequate so we needed additional information. [LB35]

SENATOR FULTON: Okay. About how much money is this...how much does \$1 represent, total money? [LB35]

SENATOR ASHFORD: It's about, yeah, \$400...between \$400,000 and \$435,000. [LB35]

SENATOR FULTON: So just south of a half million. [LB35]

SENATOR ASHFORD: Yeah. [LB35]

SENATOR FULTON: Okay. I appreciate that, Senator. I'm going to think through that a little bit. I guess, on its face, I look at this and say, well, there was some accord that was struck, some collaboration which was met that allowed the committee amendment to move forward at \$7, and between that time and the present moment it's moved up

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another...so we've doubled, we've doubled what we were going to do within the committee. I just...I have some concerns about that. Can I yield time to Senator Friend such that he might continue his conversation with Senator Ashford? [LB35]

SENATOR CARLSON: Thank you, Senator Fulton and Senator Ashford. Senator Friend, you have 1 minute and 50 seconds. [LB35]

SENATOR FRIEND: Thank you. Thank you, Senator Fulton. Thank you, Mr. President. Would Senator Ashford yield to a question? [LB35]

SENATOR CARLSON: Senator Ashford, would you yield? [LB35]

SENATOR ASHFORD: Yes. Uh-huh. [LB35]

SENATOR FRIEND: I have dozens of questions but I'll go to the most pressing one right now. [LB35]

SENATOR ASHFORD: Uh-huh. [LB35]

SENATOR FRIEND: Have you ever had a Christmas...have you ever been involved in a Christmas tree? You've been here longer than I have. How long have you been in the Legislature with the two years that... [LB35]

SENATOR ASHFORD: Eleven or so years. [LB35]

SENATOR FRIEND: And you've seen Christmas trees. [LB35]

SENATOR ASHFORD: I have. [LB35]

SENATOR FRIEND: Have you seen any like this, this big? Have you ever tried anything like this before? This is a... [LB35]

SENATOR ASHFORD: Have I ever... [LB35]

SENATOR FRIEND: ...this is, I'll tell you... [LB35]

SENATOR ASHFORD: ...have I ever attempted to put... [LB35]

SENATOR FRIEND: ...this is very brave (inaudible). [LB35]

SENATOR ASHFORD: ...something over on the body like this before? Never. This is the first time I've ever...no, I'm just... [LB35]

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SENATOR FRIEND: This is brave. [LB35]

SENATOR ASHFORD: This is close to I think 14 or 15. Let me, if I, could I answer that? [LB35]

SENATOR FRIEND: Yes. [LB35]

SENATOR ASHFORD: Okay. I think, first of all, it is the Rockefeller Center of Christmas trees, as I suggested. But the reason this was done, Senator Friend,... [LB35]

SENATOR CARLSON: One minute. [LB35]

SENATOR ASHFORD: ...primarily was because a number of these bills, primarily Senator Wightman's bills that deal with technical changes in the probate area, and Senator Lautenbaugh's bills which are technical changes, were very similar. We could have, I suppose, put them...suggested they go on the consent calendar, but they are so similar and they are so on the same topic that were introduced as separate bills that I felt that it was justifiable to include them in the larger bill. But it is...I don't know if there's ever been a larger one, Senator Friend, but I know when Senator Chizek was Chairman of the Judiciary Committee, I don't...I mean he did some whoppers. [LB35]

SENATOR FRIEND: Yeah, he was out of control. [LB35]

SENATOR ASHFORD: Yeah, but he's not here to defend himself. [LB35]

SENATOR FRIEND: No, I'm kidding. He wasn't out of control. I was just kidding. I would add... [LB35]

SENATOR CARLSON: Time. (Laughter) Thank you, Senator Friend, Senator Ashford. Mr. Clerk for an announcement. [LB35]

CLERK: Mr. President, items: Education Committee reports LB476 to General File with amendments. Senator Friend would like to print an amendment to LB495; Senator Price to LB626. Senator Howard offers LR85; that will be laid over. Senator Utter would like to add his name to LB675. (Legislative Journal pages 1009-1011.) [LB476 LB495 LB626 LR85 LB675]

And a priority motion: Senator Cornett would move to recess the body until 1:30 p.m. []

SENATOR CARLSON: We have a motion to adjourn. You've heard the motion...to recess, recess, excuse me, Speaker, Speaker Flood. We have a motion to recess. All those in favor say aye. Opposed, nay. Motion carried. We reconvene at 1:30. []

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RECESS

SENATOR LANGEMEIER PRESIDING []

SENATOR LANGEMEIER: Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. Senators, please return to the Chamber and record your presence. Mr. Clerk, please record. []

ASSISTANT CLERK: There's a quorum present, Mr. President. []

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Are there items for the record? []

ASSISTANT CLERK: I have no items at this time. []

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We will now proceed to the first item on this afternoon's agenda. We'll resume discussion on LB35 and the committee amendments and the amendment to the committee amendments. Senator Ashford, if you...Senator Ashford, would you give us, the body, kind of a two-minute briefing of where we left off on your bill... [LB35]

SENATOR ASHFORD: Sure. [LB35]

SENATOR LANGEMEIER: ...prior to the recess? [LB35]

SENATOR ASHFORD: Sure. [LB35]

SENATOR LANGEMEIER: Thank you. [LB35]

SENATOR ASHFORD: Thank you, Mr. President. I did hand around a sheet, a couple of pages that outlines the various bills that have gone into AM836 and at the end of this morning's session I suggested there were a number of very technical parts to AM836. And as we all know, for the legal profession or for the law generally, the statute books are really the rules. We don't have anyplace else to go other than statute and we can't change the statutes without legislative enactment. So oftentimes, though as Senator Friend suggests maybe this is the Rockefeller Center Christmas tree of Christmas trees, it has a number of very technical amendments, though important, and it has a few more substantive amendments. I've outlined a couple of those that I feel are exceedingly important, somewhat of a change of policy and more in the policy area. Senator Council's bill on encouraging diversity in the jury pool and expanding the jury pool is exceedingly important, we felt on the committee. The bill to complete the automation project on the district court level and to pay the fees to the CIO or to the state, in effect, for the services to provide the technology to make our courts work more efficiently,

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which...the result of which is a significant advancement. And I might add that the courts around the state have been completed. It is only Douglas County that is not completed. The additional \$800,000 and some in fees would go to the fees that are paid by the technology, by the court system to the CIO for the technology and the add-ons to complete the Douglas County...the last piece of the puzzle in completing statewide automation. Again, there are numbers of things that are done in the court system that do not take General Fund dollars. We're talking today about...the vast majority of what we're talking about today does not have an A bill because we're talking about fees, adjustments to fees, allocation of fees, and I might add fees that for the most part are quite a bit less than fees charged by other states. Senator Lautenbaugh will have an amendment that we will talk about that deals with sheriff's fees. Without any question, it's a dollar-for-dollar decrease in General Fund obligations of each county in our state when we increase to some extent, and this is only a 20 percent increase, from \$10 to \$12, the service fees. They have not been...I believe I... [LB35]

SENATOR LANGEMEIER: Thirty seconds. [LB35]

SENATOR ASHFORD: ...that the last bill, the last bill on this was in 1987, a bill I carried actually, so it goes back too far for me to want to think about. Anyway, that's where we are, Mr. President. We're on AM987, which deals with, again, with the court automation fee. [LB35]

SENATOR LANGEMEIER: Thank you, Senator Ashford. (Visitors introduced.) Returning now to discussion on AM836, offered to the committee amendments to LB35. Those wishing to speak, we have Senator Rogert, Wightman, Dierks, Stuthman, Christensen, Lautenbaugh, Janssen, Friend, and others. Senator Rogert, you're recognized. [LB35]

SENATOR ROGERT: Thank you, Mr. President. Good afternoon, members. I feel like Senator Friend today. I'm talking myself into circles. I might talk myself out of supporting this. But I supported it coming out of committee, most of it. Senator Utter asked me a minute ago if I feel comfortable with all the 18 bills that will end up being in this package by the time we're said and done, and I took a deep breath and I said, well, I did and then we put a few more things on it, and this is one of them. I missed the Executive Session discussion part where we added this and then Senator Pankonin's amendment that's coming up. And I said before, a couple weeks ago, that I was not going to vote for any more fees if anybody wondered where I was at. Senator Council likes to let us know where she's at in case we're wondering. I took her stance by saying that. I believe Senator Lautenbaugh even called me some type of fee monitor or something while I was gone, but I missed that. I got...I did some research and it's kind of some unintended research, but I hold in my hand some papers that they call me the proud recipient of three Iowa Department of Transportation citations for doing something I didn't know that I was doing wrong, but got myself some tickets a couple weeks ago over in Iowa, and I

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looked at the fees on these tickets. One of the tickets was \$182; \$82 of that is fees--a \$32 criminal surcharge and \$50 in court costs. The other two were \$83 apiece and \$33 of those were fees. We're not as high as all our surrounding states when it comes to court costs. That's good and that's what keeps coming on. They keep bringing that to me and say, we're way lower than the rest of the states around us. Good! We should be. Our budget is less, we have fewer people. We like to say that we have fewer problems, we're leading the good life. I don't want to get us to a point where we are in competition with everybody else in terms of fees. So when you add these fees together and you add in the fees coming out of the Government Committee's sheriff's fee bill, it's a lot of fee increases. And I know they haven't been raised in a long time and I supported them all coming out of committee, but we need to think about them. We're raising fees on the people who have the least ability to pay them sometimes. So I supported them. I'll support this amendment. I told Senator Pankonin I wasn't going to beat him up on his amendment, but I think we should think about that one as well when it gets down here. And I'll support Senator Lautenbaugh's amendments that are coming on. I've signed on to those two bills. Those actually are...they make it easier for people, take some burden off some folks. But we made it an issue earlier in the year about raising fees. We made it a big issue. I want to make sure that that's the continued sentiment in this body if we're going to push fees out. We need to deliberate over them and make a hard decision of whether we want to raise them or not. And if that is the case, that's fine. We're not just going to green light them, say, yep, raise the fees, we haven't raised them in 25 years. Just hasn't worked in the past and it shouldn't work today. Support them if you do, don't if you don't, but think about it very carefully. I'm going to support them but it's with a heavy hand that I'll push the green light. Thank you, Mr. President. [LB35]

SENATOR LANGEMEIER: Thank you, Senator Rogert. Senator Wightman, you're recognized. [LB35]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. First of all, I want to thank the Judiciary Committee for including the three bills which we have that I had introduced and Senator Ashford has talked about those. I do want to suggest, as Senator Lautenbaugh and many of his bills address, is that while we look very carefully at increased user fees, whether they're fees that are charged back through the judiciary system, through various different committees, when we do that you have to keep in mind that we have mandated limits as far as what property tax levies can be. And when we go 20 years at a time, which we have so often, without addressing those user fees, and inflation has driven those user fees up, we run into a real problem with increasing property taxes. And I know I had a bill this year that would have increased fees in the register of deeds office for recording. It had been 20-30 years since...over 20 since those have been increased. It did not come out of committee because that was going to represent an additional fee, additional cost to the user. But when we do that and the budget of a particular...in this instance it would have been the register of deeds but most

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of these bills address sheriff's fees, all of those are supported by the county. And if we continually fail to take into account what inflation has done to those charges, it seems to me in mandating what the levy limit and lid limit can be to the county as far as property taxes are concerned, we are painting the county officials into a real corner. And I think that's something that we need to take a close look at, and I think we're addressing that in the bills. I think most of Senator Lautenbaugh's bills that have been incorporated into this bill address that issue. I would address just briefly, and I know this doesn't pertain to the amendments, it does pertain to the Judiciary amendment, not to specifically to AM987, we have three bills that are included in this. The first one is LB47, which does increase the amount that would pass in an intestacy proceeding, and that means where there's no will, to a spouse. That had not been addressed since 1980. It was set at the first \$50,000 and then half of the balance at that time. Well, we've had a lot of inflation since that time, which would have increased it to...we're asking it be increased to \$100,000 for the spouse. And this is a very limited case because usually when there's that much involved, an awful lot of that property is jointly owned anyway and would pass to the spouse if the spouse is a joint owner so...and it would require that there be no will. Well, there's a fairly limited number of cases where there's a substantial estate where there is no will. Now in doing that, we have not changed the amount that would pass to the surviving spouse if she's not the mother of all of the children of the decedent. We have two other issues. I think it's LB46 that addresses the issue...and this is to address a Supreme Court case that made it very uncertain as to how administration costs would be handled and whether they be considered as proper administration expenses. LB46 just clarifies that. And then the final one, I think it's LB118, provides that we increase the amount that could be passed under a small estate's affidavit. Again, that hasn't been addressed for a number of years and it would go from \$25,000 to \$50,000 with regard to personal property, and only \$25,000 to \$30,000 with regard to real estate. I think all of those are good bills and very...quite noncontroversial,... [LB35 LB47 LB46 LB118]

SENATOR LANGEMEIER: One minute. [LB35]

SENATOR WIGHTMAN: ...which is why they're included in this. So again, I think there are a lot of good parts. I want to address a little more...some of what the fiscal note would be for the addition of one judge to Lancaster County Court, and maybe that's been addressed. I'll turn my light on again. Thank you, Mr. President. [LB35]

SENATOR LANGEMEIER: Thank you, Senator Wightman. Senator Dierks, followed by Senator Stuthman. Senator Dierks, you're recognized. [LB35]

SENATOR DIERKS: Thank you, Mr. President. I guess I'm just a little bit underwhelmed here. I feel like I just went to Congress and they passed one of those 2,000-page bills in front of me. Isn't quite that bad but it's kind of remarkable that we would put this many bills in one. I'd like to ask Senator Ashford a question, if I may. [LB35]

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SENATOR LANGEMEIER: Senator Ashford, would you yield to a question from Senator Dierks? [LB35]

SENATOR ASHFORD: Yes, sir. [LB35]

SENATOR DIERKS: Senator Ashford, I see differing numbers and I've heard you speak about different numbers as far as the fiscal note on this bill. What is the final fiscal note? [LB35]

SENATOR ASHFORD: Fiscal note is just the one judge for Lancaster County District Court. That's the only fiscal note. It's \$225,000, I believe, or...I'd get you the exact. It's...I believe it's \$225,000. I believe it's \$225,000. I'll check, Senator Dierks. [LB35]

SENATOR DIERKS: Okay. Thanks, Brad. With that, I guess I'm sitting here on hold right now. I want to know exactly (laugh)...want to study a little bit more about the different bills that have been put in here. I appreciate all the work that Senator Ashford has done to bring this together. It just seems a little bit overwhelming. So with that, I'll just pass and listen a little bit. Thank you very much, Mr. President. [LB35]

SENATOR LANGEMEIER: Thank you, Senator Dierks. Senator Stuthman, you're recognized. [LB35]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I would like to ask Senator Ashford a couple questions. [LB35]

SENATOR LANGEMEIER: Senator Ashford, would you yield? [LB35]

SENATOR ASHFORD: Yes. [LB35]

SENATOR STUTHMAN: Senator Ashford, in one of the amendments, it was LB333, the Supreme Court automation fee, raising that from \$6 to \$7, can you tell me how many dollars total is collected right now with the \$6? [LB35 LB333]

SENATOR ASHFORD: It's \$2,792,628. [LB35]

SENATOR STUTHMAN: Is that what's in the account or is that how much is collected each year? [LB35]

SENATOR ASHFORD: That's the revenue on an annualized basis, 2007-2008. So it would be annually they receive that much money. [LB35]

SENATOR STUTHMAN: Okay. Then how many dollars, how many total dollars would

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that...would a \$1 increase be? [LB35]

SENATOR ASHFORD: \$400,000. [LB35]

SENATOR STUTHMAN: \$400,000. In the event that they get all of these 94 AS/400 computer systems in place, are we going to lower that fee in another year or what is going to happen then once that is in place, because they're asking for, you know, another \$1? They initially asked for \$2 and that could probably raise about \$3 million a year. [LB35]

SENATOR ASHFORD: Correct. [LB35]

SENATOR STUTHMAN: What I'm concerned about is the fact that if we raise these fees, and I'm initially opposed to raising fees in certain areas, but the fact is, you know, if the amount is generated that is needed, you know, are they going to continue these fees or are they going to say...come back with a bill and say we only need \$2 in place of the \$7? [LB35]

SENATOR ASHFORD: Senator Stuthman, I think you make an excellent point and, quite frankly, that's why we raised them \$1 in the committee and initially was that we thought that...at least our analysis of what we were given would be that \$400,000 would have been sufficient. We then kind of doubled back and looked at it again and it appeared that the...at least to get these new computers in place in Douglas County and complete the system and the other costs involved in that, that the additional \$400,000 was needed. You make a good point about how long is that \$400,000 needed or any other portion of the \$2,700,000 that's already been expended for other things, and that's something we'll look at I think between General and Select to get you a better answer, if possible. Because it may be that some of those fees could be sunsetted and...sunset so... [LB35]

SENATOR STUTHMAN: Okay. Thank you, Senator Ashford. I mean those are the issues that I have an interest in, is the fact that, you know, I don't mind raising a fee if there is a definite plan, a need and a use for it, but you know if they're going to generate another \$400,000 with a \$1 increase and they've got...and it generates, you know, two point some million dollars. And it is, it is needed in at the present time, I will agree to that, but the fact is I would like to see some type of a plan. And I respect Senator Ashford that, you know, maybe between now and Select we can look at, you know, the \$1 may be way plenty and then sunset that out after a year, because I just don't like to have these fees accumulate money and then they try to find a place to spend it. I mean that's the issue that I have. I have also an interest in the amount of amendments that are, you know, added into this one bill and I really have no problem with that, but I think the fact is, you know, it really...it really comes to my attention that we really have to do our homework because, you know, there may be an amendment of a bill in here that we

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have some real issues with. [LB35]

SENATOR LANGEMEIER: One minute. [LB35]

SENATOR STUTHMAN: So I think we have to be very cautious, you know, and have a lot of debate, as Senator Friend said. You know, we maybe...we should spend the whole afternoon on this, in my opinion, because there's quite a few bills in this and I do have an interest in this. But I, you know, hope to get some of this information and I do respect Senator Ashford for telling me that he will get me that information. Thank you, Mr. President. [LB35]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. Those still wishing to speak, we have Senator Christensen, Lautenbaugh, Janssen, Friend, Ashford, and others. Senator Christensen, you're recognized. [LB35]

SENATOR CHRISTENSEN: Thank you, Mr. President. Would Senator Ashford yield to a question? [LB35]

SENATOR LANGEMEIER: Senator Ashford, would you yield to a question from Senator Christensen? [LB35]

SENATOR ASHFORD: Yes. [LB35]

SENATOR CHRISTENSEN: Senator Ashford, what do judges pay for their part of the retirement now? [LB35]

SENATOR ASHFORD: Six and eight, 6 percent and 8 percent, 6 percent for single and 8 percent for, I believe, for family. I think I'm right. [LB35]

SENATOR CHRISTENSEN: Okay. [LB35]

SENATOR ASHFORD: Or for spouse. I'm sorry, not family but spouse. [LB35]

SENATOR CHRISTENSEN: Yeah. Okay. And then...because I've been asked several questions why we don't have them increase their contribution. What does a percent do on their side? Do you know how that works? [LB35]

SENATOR ASHFORD: It's 6 percent. I...and it's...you know, quite frankly, Senator Christensen, we could look at increasing their percentage. I mean I don't think that's something off the table. I think you raise a good point. They should probably pay a little bit of their share. [LB35]

SENATOR CHRISTENSEN: Okay. That was a couple of the points I'd been given I just

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thought would be good to discuss, so...and I would offer my time to Senator Ashford, if he needs any more. [LB35]

SENATOR LANGEMEIER: Senator Ashford, 3:50. [LB35]

SENATOR ASHFORD: Okay. Thank you, Senator Christensen. I wouldn't have too much to add to that except that we turned this matter over to Senator Pankonin, the expert in this area, and he may address the issue of contribution levels because he would have the full picture and at that point we can discuss it. I think...I like what Senator Stuthman said. I just want to underline that. I spent a number of years on the Appropriations Committee and I have great deference for their work, and I saw Senator Wehrbein over there. He's not there anymore, but I spent some days with him on the Appropriations Committee and really having a great degree of puzzlement over these cash funds that continue to accumulate within state government. And I think Senator Stuthman has raised a good point about cash funds and why don't they ever, you know, get changed, their sources get sunset and some of those cash funds get distributed to other purposes, and I think it's a very valid point. And Senator Friend made a great point earlier too. It seems to me that this discussion, whether it's on this bill or a succession of other bills that we're going to have certainly on state aid and on the appropriations bill that's coming out here soon, this is where the meat...this is the real meat of our work. Every decision we make on every dollar we spend will have an impact on the lives of somebody. It is clear that that's the case. And it is...and the experience that Senator Friend and Senator Stuthman bring to this discussion is valuable. The question is, does all this money need to remain in that fund? That's a very valid point. So having said that, I think this is a good discussion. We will, as these issues are raised, we can discuss them between General and Select, too, so that we can maybe answer them with more specificity. But I like the discussion. I think it's kind of a preliminary thinking process that we will go through in an elongated fashion when that bill comes on the floor where we are spending several billion dollars. So with that, thank you, Mr. President. [LB35]

SENATOR LANGEMEIER: Thank you, Senator Ashford and Senator Christensen. Senator Lautenbaugh, you're recognized. [LB35]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. And I have been listening to the talk about this bill as a Christmas tree bill and it's, I think, 16 bills rolled into 1, maybe 17, and that can be intimidating and frightening, maybe not as intimidating as Christmas at the Friend household but frightening just the same. I would like to go through some of these things, though, to hopefully lay your concerns to rest that a lot of these things are very minor adjustments. Senator Council's bill that's in here allows those who hold Nebraska IDs, not driver's licenses but Nebraska-issued IDs, to also serve on jury duty. We think that's an important measure to make sure that our jury pool most adequately reflects our population. There is no chance of any real fraud there; that the requirements for getting a license are very similar to getting an ID, and so

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that is a worthwhile change. Additionally, we've talked about the court costs and the automation fees. I am interested in the idea of maybe sunseting these on Select File because they should not go on forever, but it is important that these automation fees go forward at this time. The difficulty here is that we cannot point to a savings directly for the state by increasing these fees, and I will explain why that is. The savings go to the practicing attorneys and their clients, the users of this system. This automation makes it possible for attorneys in Omaha to view a file in Hall County without physically going to Hall County, spending that time or having it sent to Omaha, if that's possible, or paying for copies. We are putting everything on-line. So while these increased fees would be borne by the attorneys using the system and the litigants using the system, they are also the same people who recoup the savings in time not spent accessing these records. That's why it's difficult to point to a savings with this particular fee increase, but it is important that it go forward because it acknowledges that by increasing technology we are making the system much better for the user at a much smaller cost. And only we can do that. It's not something that can be privately done. I have several bills in here that I believe are just technical corrections that if we were standing here discussing alone you would say, I can't believe we're discussing these alone. One of mine makes it clear that when you sue a member of a limited liability company and you recover a judgment, you don't become a participating member of that limited liability company. You only have an interest in that person's interest in the limited liability company--very technical but it allows limited liability companies to continue with their operation uninterrupted even if one of the members is hit with a judgment personally. Another one would allow for the delivery of summonses not just by certified mail with the U.S. Postal Service but also by courier, such as Airborne Express, FedEx, DHL, and whatnot. This just provides another, and probably cheaper, way for papers to be served by attorneys. There's no cost to this to us and it just makes the system a little more user friendly, if you will. A few years ago, Nebraska went from calling the initial suit filings...from calling it a petition to calling it a complaint. One of my bills picks up a place in statute where we still call them petitions and changes it to complaint--once again, a very simple technical change. [LB35]

SENATOR LANGEMEIER: One minute. [LB35]

SENATOR LAUTENBAUGH: Regarding the judgeship, the initial judgeship, we struggled with trying to get five. We knew that wasn't going to fly. But this one is important for Lancaster County. The others will be, but this one we have to do. And we don't have a lot of choice here. The volume in Lancaster County simply dictates this. Our other choice is to have some sort of a reallocation where judges are taken from elsewhere in the state that don't have the same level of demand and shifted east, which no one likes to do. So while none of us wants to spend money, at the same time, this is something we need to do to keep Lancaster County, the court system in Lancaster County functioning. I applaud Senator Coash for bringing this. It was also his idea to maybe sunset some of these fees for automation, also a good idea. I haven't even

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gotten to my amendment yet on this turn speaking so I'll have to speak again. Basically, it makes it clear that the party to a lawsuit can recover court costs from the person who owes them without a judgment, which I'll explain more of, and does increase those sheriff's process serving fees that haven't been increased for 20 years. [LB35]

SENATOR LANGEMEIER: Time. [LB35]

SENATOR LAUTENBAUGH: Thank you. [LB35]

SENATOR LANGEMEIER: Thank you, Senator Lautenbaugh. Senator Janssen, you're recognized. [LB35]

SENATOR JANSSEN: Thank you, Mr. President, members of the body. I guess I'll start off with...if Senator Lautenbaugh would yield to a question. [LB35]

SENATOR LAUTENBAUGH: Yes, I will. [LB35]

SENATOR JANSSEN: Thank you, Senator Lautenbaugh. You just started talking about your amendment, AM1054, and I kind of wanted to ask you one question about that. That, I believe, includes in it LB273 that came out of the Government Committee for fees. [LB35 LB273]

SENATOR LAUTENBAUGH: Yes. [LB35]

SENATOR JANSSEN: Okay. We spent a lot of time on that bill in Government Committee and I believe in the end we had decided that both sides of the fee battle on this, I think were not so happy a little bit, both sides, so we thought we had a pretty good deal at 20 percent. So...and that's LB273 of this whole comprehensive package that we have here of bills. [LB35 LB273]

SENATOR LAUTENBAUGH: Yes, sir. [LB35]

SENATOR JANSSEN: So as I'm going through all these, I'm trying to catch up. Even Senator Ashford, the ones he sent out, this is great, I'm going through this, but there's been additional things added onto it so I'm fighting to figure everything out here. It was easy this morning reading Senator Lathrop's amendment, very much so easier than this one. So as I go through these, I just wanted to...I'm not sure where I'm at on all these yet and that's the reason I rise and thank you for answering the question. I guess I'd have a question for Senator Ashford, if he would yield. [LB35]

SENATOR LANGEMEIER: Senator Ashford, would you yield? [LB35]

SENATOR ASHFORD: Yep. [LB35]

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SENATOR JANSSEN: Senator Ashford, thank you. This is obviously a huge number of bills into one. [LB35]

SENATOR ASHFORD: Uh-huh. [LB35]

SENATOR JANSSEN: And I would assume that they're all germane. Did all these come through the Judiciary Committee? Or I know that one, LB273 didn't, for instance. Are there many different committees that came together on this or...? [LB35 LB273]

SENATOR ASHFORD: AM836 has only Judiciary Committee bills in it. Senator Lautenbaugh's amendment is from your committee that has to deal with sheriff's fees. But every one of the parts of AM836 was a bill at one time, introduced and, for the most part, advanced out of our committee. [LB35]

SENATOR JANSSEN: Okay. Okay. Thank you, Senator Ashford. Because as we put this together, I was just wondering if everything is germane and that's something that I'm trying to tie together as well, and it appears that they are, at least to this point. And I rise I guess a little bit in the holiday spirit that Senator Friend rose in. If we're talking about...I want to be a bit more relevant, I was coloring eggs with my children the other night and I put about six of them out. Actually, I started with a dozen. I ended with six. They're very small kids and it didn't work all that well. Then I had some friends that still...but older friends and they still make eggs, they like to do that, so they brought over two dozen more eggs. Next thing I know, I had 30 eggs and the Easter bunny had quite a task in front of him. And as I went around and people piled on these eggs, I hid them and I kind of lost track of some and I was told that, if I don't find them, they're going to end up smelling pretty bad pretty soon. So I would like to think what I'm trying to do, at least from my standpoint, is trying to find the poor-smelling eggs and I could also use some help in my household trying to find four eggs that my children did not and the Easter bunny forgot where he put them. With that, I yield the balance of my time. [LB35]

SENATOR LANGEMEIER: Thank you, Senator Janssen. Senator Friend, you're recognized. [LB35]

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. One of the clearly tough parts about...one of the clearly tough parts about a bill like this is you don't know where to begin, except for the fact that we do have a little bit of a blueprint, and we begin with AM987 to AM836. And if I understand correctly what's going on, Senator Ashford, you look like you're comfortable there, but I was wondering if he would yield to a question. [LB35]

SENATOR LANGEMEIER: Senator Ashford, would you yield to a question? [LB35]

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SENATOR ASHFORD: Yes, never too comfortable when you're up to bat, Senator Friend. [LB35]

SENATOR FRIEND: Yeah, in the room? Okay. [LB35]

SENATOR ASHFORD: Thank you. Or in the room, either one. [LB35]

SENATOR FRIEND: Senator Ashford, what...and you may have alluded to this so forgive me if you have and flat-out tell me on the microphone that you did and I should pay more attention. In the Judiciary Committee amendment, on line 23 of section...on page 21 of the Judiciary Committee amendment, in Section 21 on line 23, we're changing that court automation fee from \$6 to \$7. Your amendment now changes it from \$7 to \$8. Can you tell me--if you already have, again, forgive me--why? Was there a reevaluation? Did somebody come to you and say, look, I mean we see what the...or we see what the consequences are going to be of this particular item that you've put in here in the Judiciary Committee amendments; not enough? Am I summing it up pretty well? [LB35]

SENATOR ASHFORD: That's correct. [LB35]

SENATOR FRIEND: Can you tell me in the long run what the final piece of the...and I'm pretty sure you did mention this, that change itself will have how much of a fiscal impact? [LB35]

SENATOR ASHFORD: \$800,000. [LB35]

SENATOR FRIEND: Okay. Okay, thank you, Senator Ashford. And again, I won't belabor it but I appreciate if you've already gone through that. Members of the Legislature, I don't know...I don't know that I have an issue with this. They reevaluated. They said maybe that's not enough. We're essentially going from \$6 to \$8 on that particular item. One of the keys, I said this from the very outset, I mean people were making fun of me earlier because I said, well, wait minute, the only person that brought up fees early in the session were you; you're the only person, Mike; you, you're the one that did it. Okay. Fair enough. I'm telling you, based on some experience that there are those who would consider often fees and taxes noninterchangeable. You can't take one and say, here's what we're going to do, here's a user fee, instead of taxing someone. Under these circumstances, with AM987, I don't think that's the case. I think you've got judges coming in and saying, look, I mean this is...these are the reality, this is the reality of our situation right now; it hasn't been changed since year X; we feel like these are modest changes; we feel like even going to \$8 is fairly modest and let's see what the body feels about it from a policy standpoint. I said this during the Game and Parks fee situation. I said it then, I'll say it now. The keys to increasing...the keys or the thought process to increasing fees... [LB35]

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SENATOR LANGEMEIER: One minute. [LB35]

SENATOR FRIEND: ...are what's going to happen to a particular governmental subdivision if you don't allow for that particular fee increase? The second thing is, is that fee increase fair? Why are you doing it? Those are two questions, but if you answer why, you're going to be able to probably come up with a determination as to whether it's fair or not. Senator Ashford pointed out that a good portion of these were consent calendar style items. I would venture to guess, I've read through LB46, LB47, LB118, LB305, well, LB332 no, I would say no, LB333 no, LB344 possibly, LB351... [LB35 LB46 LB47 LB118 LB305 LB332 LB333 LB344 LB351]

SENATOR PIRSCH PRESIDING []

SENATOR PIRSCH: Time, Senator. Senator Ashford is recognized next, followed by Senators Wallman, Lathrop, Karpisek, Wightman, Campbell, and others. [LB35]

SENATOR ASHFORD: Thank you, Mr. President and members. And I'm not going to take my entire time but I do want to just refocus again on this fee issue when it relates to the court system. We, as a policy decision years ago, made the decision to automate the court system, to develop a technology system that would allow a state that has far...from the very furthest reaches of the state, from Scottsbluff to Omaha to Lincoln, wherever it is, that we could practice law, represent our clients in every court of the state utilizing technology so that the clients would not have to travel, the lawyers would not have to travel, and those...and, as such, would not have to pay the fees and costs of that travel. It was a policy decision that was made several years ago by this body and I think it was, without question, an appropriate decision, one that most, if not all, states have adopted. The decision on...there are two decisions, it seems to me. One is do we complete the automation system, and I think that's a fairly easy decision. We need...the largest court in the state needs to be on-line. There's no question about that to me. I mean that's...the policy decision has already been made. The question that Senator Stuthman raises, which is a good question--and Senator Coash and Senator Lautenbaugh as well have raised this issue and Senator Rogert--is, you know, do these fees need to continue on into the future without sunsets? And that's another question and it may very well be that they do not. And we can look diligently at this when we have some time between General and Select to see if we can cleanse these fees a little bit or these costs to make sure that they're accurately reflecting the needs of the courts. The budget...I mean the courts collect a substantial amount of money, \$60 million from fees, much of which goes back to the public schools, goes back to the General Fund, and in fact in the...on the automation fees a number of the dollars that are collected through fees go back to the state through the technology or the CIO that provides the technology support for these systems. So in some regards, it's a pass-through or money back to the state. But I think Senator Stuthman makes a great point. I think we should

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look...we should cleanse these fees, make sure that they are actually meeting a need. But I think the policy decision on the automation has been made and, as such, that's different somewhat maybe from other fees that are collected where a new policy decision must be made. This decision has been made. Thank you, Mr. President. [LB35]

SENATOR PIRSCH: Thank you, Senator. Senator Wallman, you are recognized next. [LB35]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. It looks like this is a Merry Christmas bill to some people, some people probably not. And I thought the fees for technology were supposed to save money for travel costs and everything that really probably should pay for itself, but so may...so it be. But we're tackling a lot of different issues here and fees are fees. Costs are going up. And we struggled with this with park fees. So a lot of us people, fees, your incomes went down, retirements went down, and yet we continue to make sure certain groups of people have the same or above. I think it's time that we hear from the Appropriations Chair, how we're going to spend this money. You know, how are we going to have counties spend this money? And we're going to try to put fees on somebody, the way it sounds. And I'd give the rest of my time to Senator Lautenbaugh. [LB35]

SENATOR PIRSCH: Thank you, Senator Wallman. Senator Lathrop, would you yield? Oh, I'm sorry. Senator Lautenbaugh, would you yield? Very good. Senator, did you want to yield the balance of your time then, Senator Wallman? Senator Stuthman, would you yield? [LB35]

SENATOR STUTHMAN: Thank you, Mr. President. I'll just take the rest of his time. Is that okay? [LB35]

SENATOR PIRSCH: Three minutes and twenty-six seconds. [LB35]

SENATOR STUTHMAN: Okay. Thank you. Thank you. As I had stated earlier was the fact that this automation fee, and I'm totally supportive of the practice that they're trying to do, get all of the systems together. And it's just like a new plan to do something, and the fact is that it takes equipment, it takes money to do that. But once all of that stuff is installed, in my opinion, the amount of dollars needed for that should nearly diminish except for the fact that there needs to be some upgrades, some new computers added to it, replaced and stuff like that. But the issue of raising it from \$6 to \$8, which raises \$800,000, with no sunset or anything like that on there, it's really an issue because I think we should know, you know, where these dollars are going to be utilized. I mean we're in times now, you know, where we should be watching all of our pennies and make sure of that. But I just think that...I think the \$6, in my opinion, is sufficient and, really, it's probably plenty. I would like to see a business plan that states with the current

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\$6 how many dollars that generates, how many dollars is needed, what type of programs or how many computers, and it does state in there what they're going to do and I think that's all well and good. But I think that we should know, you know, what we're getting into, what this money is going to be utilized for. Is it just build a large fund so that someday we got another idea and we got way plenty money so let's just use it, let's just spend it? I don't think that's the right direction to go. I would hope and I do respect Senator Ashford, the fact that, you know, we need to look into this as to what is on hand right now, the expected expenditures on attaining the goal that they want to do with this, not just,... [LB35]

SENATOR PIRSCH: One minute. [LB35]

SENATOR STUTHMAN: ...well, we need a little bit more money so let's add a couple bucks to it. And I appreciate the fact that the Judiciary Committee, that Senator Ashford and the committee realized that maybe \$7 was good enough. But now we have the amendment to raise it back to \$8 so I can't support that. I'm going to be, you know, really taking a serious look at the fact that do we need to raise it at all. I think I need to get some answers for that. And you know, hopefully it does pass on to Select File but, you know, between now and then we need to get some questions answered. So thank you, Mr. President, and thank you, Senator Wallman. [LB35]

SENATOR PIRSCH: Thank you, Senator Stuthman. Senator Lathrop, you are recognized next. [LB35]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I am one of the members of Judiciary Committee and I think I voted for every ornament on this tree and I'd like to talk about two of them, if I can. And it would be easy...the first one I want to talk about is the judgeship in Lancaster County, and it would be easy to look at Senator Coash's contribution to this tree and say it isn't in my district, I'm not worried about it, let the guys in Lancaster County work just a little bit harder. And I even see some of you kind of nodding your head like maybe that's the way you're thinking. Let me tell you how this, the whole judge situation works, because if you're out in the Panhandle, you got a stake in this judgeship, and let me tell you why. As soon as somebody retires out in the Panhandle, and this has happened to you twice, as soon as somebody retires out in the Panhandle, whether they die, retire, leave the bench, forced off, however they leave, what happens is a process is undertaken where we look at the allocation of judicial resources. And you're losing judges out west because you don't have the caseload, and they have huge caseloads in the eastern side of the state. So you might look at this and say this is Lancaster County's, how is it going to affect me? It directly affects you if you are in greater Nebraska because that's where we're getting our judges to make up for the increased caseloads in places like Lancaster, Douglas, and Sarpy County. You're losing judges. What this is likely to do besides giving needed relief to the district court in Lancaster County, is forestall the next vacancy out in your neighborhood being

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reallocated to Lancaster County. So you do have a stake in this. It will ultimately, ultimately probably keep a judge out in greater Nebraska that would otherwise be reallocated to Lancaster County. I would encourage you to vote for the bill and be comfortable with that contribution which is formerly LB669. I would like to talk about the fees, if I can, as well, since they seem to be generating all of the conversation on the floor, and rightly so. Who wants to vote for a fee increase? None of us do. None of us do. Understand something about this fee. It's not something that every taxpayer in your district is going to pay. It's not like increasing the cost to register a vehicle. It is the guy filing the lawsuit, guys like me, that will end up paying \$2 more to file a lawsuit. Now the question we should be asking and I hope to answer for you in the little bit of time I'm going to take up is whether that's worth it. And I think Senator Lautenbaugh gave a pretty good explanation and, at the risk of repeating his statement, let me suggest to you that if I'm filing a lawsuit and we now have the entire court system automated, I used to have to write, beg, send somebody to Hall County to check out a court file. Okay? Now for a lawyer to jump in the car or even to have the runner jump in the car and drive to Hall County to make a photocopy of a file is a grand waste of time and money. What we can do now, because of the automation, is to...sitting at my desk I can call up the pleadings in a file anywhere in the state except in Omaha. I don't know why they chose to wait till the last county...the biggest county last. There's probably a good reason for it, but they did. [LB35 LB669]

SENATOR PIRSCH: One minute. [LB35]

SENATOR LATHROP: Now we need to automate and get on-line Douglas County. Do the people who file lawsuits benefit by \$2 a lawsuit? I would suggest to you that they do, that this is worth it from an efficiency point of view. And let me tell you, as much technology as there is, it's expensive. But it's also going to save us on filing fees. It's going to save us on the people who have to process this paperwork coming in because, ultimately, when I want to file a lawsuit in Douglas County, I'm going to hand this paperwork to my secretary. She'll scan it, e-mail it, and it will be filed like that. There's no postage. There's no driving to the courthouse to file it. There's no running down there at 4:15 to try to meet the 4:30 deadline. I can file that lawsuit with a touch of the mouse. So ultimately, while we... [LB35]

SENATOR PIRSCH: Time. [LB35]

SENATOR LATHROP: Did you say time? [LB35]

SENATOR PIRSCH: I did. [LB35]

SENATOR LATHROP: Okay. [LB35]

SENATOR PIRSCH: Senator Wightman, you are recognized next, followed by Senators

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Campbell, Stuthman, Dubas, Hadley, Lautenbaugh, and others. [LB35]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I certainly agree with what Senator Lathrop said, that all of us are affected by whether there's a judge in Lancaster County, a new judge added. I know that our district judge out at Lexington, Nebraska, has spent a week and a half maybe or over a week out of his last month trying cases in Lancaster County. So not only are we looking at it on a long-term basis in that perhaps some district is going to lose a district judge down the road, but we're also looking at it as straining our judicial resources when judges come from their district and try cases in Lancaster County. So it is an issue that everybody should be concerned about and they shouldn't be looking at it strictly from a provincial point of view but looking at it as to what's best for the whole state. Having said that, I am interested, if Senator Ashford is here--I guess he's hiding behind Senator Langemeier--... [LB35]

SENATOR PIRSCH: Senator Ashford, would you... [LB35]

SENATOR WIGHTMAN: ...and wonder if he would yield to some questions. [LB35]

SENATOR PIRSCH: Would you yield, Senator? [LB35]

SENATOR ASHFORD: Yes. [LB35]

SENATOR WIGHTMAN: Senator Ashford, I have been gone and perhaps this has been addressed. I'm having a little problem with the fiscal note in that we have a fiscal note dated February 17 and then a couple of later dates, and the fiscal note primarily concerns what was originally LB35, which was your bill. [LB35]

SENATOR ASHFORD: That's correct and there's a new... [LB35]

SENATOR WIGHTMAN: And then also does it address the Lancaster County part of this? Is that the \$391,000 to \$415,000? [LB35]

SENATOR ASHFORD: The fiscal note now, and I believe the most current one, is \$234,000, Senator Wightman, and that is the Lancaster County district judge cost. The other costs in LB35 are no longer there. [LB35]

SENATOR WIGHTMAN: So none of the \$1,500,000. That's all been amended out of the bill. Is that correct? [LB35]

SENATOR ASHFORD: That's correct. [LB35]

SENATOR WIGHTMAN: So right now, the only cost we're looking at, and I realize we're

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looking at costs with regard to fees, but as far as... [LB35]

SENATOR ASHFORD: Right. [LB35]

SENATOR WIGHTMAN: ...state appropriations, all we're looking at is the Lancaster County judgeship. [LB35]

SENATOR ASHFORD: The General Fund dollars are \$230,000 and \$234,000; \$234,000 the first year and \$230,000 the second year. [LB35]

SENATOR WIGHTMAN: So they're even considerably below the \$391,000 to \$415,000. [LB35]

SENATOR ASHFORD: Correct. Yes. [LB35]

SENATOR WIGHTMAN: That includes a district judge and the staff that would usually come with a district judge. [LB35]

SENATOR ASHFORD: Yes. Correct. [LB35]

SENATOR WIGHTMAN: And what does that include, a bailiff and a clerk? [LB35]

SENATOR ASHFORD: It includes the court reporter at \$51,000; the benefits at \$52,000; the travel, \$4,700; capital improvements of \$900; and salary of \$125,690. [LB35]

SENATOR WIGHTMAN: Now when you addressed the benefits, were those the benefits of the new judge? [LB35]

SENATOR ASHFORD: Yes, and the court reporter, whatever the state employees are involved in that office,... [LB35]

SENATOR WIGHTMAN: Okay. Now a number of those... [LB35]

SENATOR ASHFORD: ...whichever state employees. [LB35]

SENATOR WIGHTMAN: ...have bailiffs. Do they share bailiffs or...? [LB35]

SENATOR ASHFORD: In Lancaster County, I think they have their own bailiffs. I believe each one has their own bailiff. [LB35]

SENATOR WIGHTMAN: And you have a bailiff in there, is that correct? [LB35]

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SENATOR ASHFORD: Yes. [LB35]

SENATOR WIGHTMAN: Okay. So you have three persons. [LB35]

SENATOR ASHFORD: Yes. Well, the state employees in the court would be the bailiff...I'm sorry, would be the court reporter and the judge. The bailiff is a county employee, I believe, Senator Wightman. [LB35]

SENATOR WIGHTMAN: Okay. Is that... [LB35]

SENATOR ASHFORD: Is a Lancaster County employee, I'm sure that's right. [LB35]

SENATOR WIGHTMAN: Is that shown anywhere in the fiscal note? [LB35]

SENATOR ASHFORD: No. [LB35]

SENATOR WIGHTMAN: So there will be an increase to Lancaster County if we do this that's not included in the fiscal note. [LB35]

SENATOR ASHFORD: That's correct. [LB35]

SENATOR PIRSCH: One minute. [LB35]

SENATOR WIGHTMAN: I think that answers my question. Thank you, Senator Ashford. Thank you, Mr. President. [LB35]

SENATOR PIRSCH: Thank you, Senator. Senator Campbell, you are recognized next, followed by Senator Stuthman and Dubas. [LB35]

SENATOR CAMPBELL: Thank you, Mr. President. I'm going to reverse my comments and stay on the Lancaster County judgeship because that's what we are on. I've had an opportunity to talk to several of the commissioners in Lancaster County and they do support this. And to respond to Senator Wightman, they realize that they will have a cost to bear because the county board does indeed pay for the bailiff. It also pays for the equipment and supplies, and obviously they need to find a place for the judgeship. But the situation in Lancaster County is becoming ever more aggressive in terms of the need. One comment that I would like to make that, as a former county commissioner, I always used to talk about and that is that Lancaster County District Court sits in the seat of state government and is the statutory location of nearly all state agencies. There are over 90 statutes, and I'm going to repeat that, 90 statutes designating Lancaster County as an option for appeals from agency matters or the initiation of original matters. So the judgeship in Lancaster County not only serves what is happening in our increasing population but also has to do with it being located as the seat of state government. I'd

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also like to speak in favor of AM987 on the fees. I, too, had a question why we would increase those fees by over \$2, and over the noonhour I requested some additional information from the Supreme Court. And basically what we are doing with that fee is paying for all the computer system across the state in all county courts, district courts, appeals, Supreme Court, the entire system. What this increase will do, as has been indicated, will bring on Douglas County, both in the adult and juvenile, and that is critical to the JUSTICE system, as has been pointed out. They also want to use the money to provide the equipment that will be needed in Douglas County for those court employees and they are looking at initiating an electronic filing system statewide. I do believe that some of the projects may be able to be sunset, but when you look at the JUSTICE system itself, most likely when Douglas County is brought on--and that project should end, according to this memo, in 2010--you will still need a substantial amount of money to support that system and keep it maintained across the state. Thank you, Mr. President. [LB35]

SENATOR PIRSCH: Thank you, Senator. Senator Stuthman, you are next. [LB35]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. First of all, I want to thank Senator Lathrop for explaining the issue of the judgeships, of the need in the metropolitan areas and the fact that, you know, if we don't increase this one in Lancaster County I feel that, you know, they're going to be taken away from those rural areas, and I think that's very true. I did receive an e-mail, when he was speaking on it from an attorney in my local area, the fact that, you know, just addressed the same issue that we must realize that we need to add another one here but we also need to maintain those out in the rural areas. So I do support that part of it. So with that, that's about the only comment that I have right now and I do support that part of the bill. I've got a lot of other issues on some other amendments, so with that, Mr. President, thank you. [LB35]

SENATOR PIRSCH: Thank you, Senator Stuthman. Senator Dubas, you are recognized next, followed by Senators Hadley, Lautenbaugh, Avery, Howard, and others. [LB35]

SENATOR DUBAS: Thank you, Mr. President. Would Senator Ashford yield to a question? [LB35]

SENATOR PIRSCH: Senator Ashford, would you yield? [LB35]

SENATOR ASHFORD: Yes. [LB35]

SENATOR DUBAS: Thank you, Senator Ashford. On page 12 of the amendment, we're talking about the Civil Legal Services Program is created. So there's no such program as that now? [LB35]

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SENATOR ASHFORD: In the fees? Are you speaking about the fee? [LB35]

SENATOR DUBAS: No. No, this is...I'm stepping away from fees here so I'm back to the amendment, the original amendment. [LB35]

SENATOR ASHFORD: Okay. I'm going to have to...I'm going to have to find the amendment here very quickly. Just a second. I'm sorry, page 12? [LB35]

SENATOR DUBAS: Page 12, be lines 6 through 11. [LB35]

SENATOR ASHFORD: Yes, I'm sorry, I had to see. That was...this is...this is...this is... [LB35]

SENATOR DUBAS: So that's what I said, I've completely shifted gears here. (Laugh) [LB35]

SENATOR ASHFORD: I should be able even...this may be the only one I can answer. Yes. Yes. [LB35]

SENATOR DUBAS: (Laugh) Okay. And so this will be, from what I understand, we're creating a grant program for programs like legal aid? Would that be... [LB35]

SENATOR ASHFORD: The program is already in place. [LB35]

SENATOR DUBAS: Okay. [LB35]

SENATOR ASHFORD: The reason for this amendment is that it was brought to us by the Court Administrator. The way the program is originally set up is the money was received from the court fees. It went to the Court Administrator. It didn't go to...it was an unnecessary extra step. The money is allocated by the...again, I know, the Commission for Public Advocacy. They allocate. They take grant applications. They determine who gets the money and then, for some reason, the Court Administrator was actually writing the checks. What this does simply is take the money, give it directly to the Commission on Public Advocacy, let them send the money out as opposed to the Court Administrator. It was an extra administrative step that the Court Administrator wanted to avoid. [LB35]

SENATOR DUBAS: That's what I wanted to understand. So we aren't creating more. We're actually creating some efficiency. [LB35]

SENATOR ASHFORD: It's not another...it's...right.. [LB35]

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SENATOR DUBAS: Okay. [LB35]

SENATOR ASHFORD: There's no increase in dollars going into the fund. It's just renaming the fund, giving it to the Public Advocacy group. [LB35]

SENATOR DUBAS: Okay. Thank you very much. [LB35]

SENATOR PIRSCH: Thank you, Senator. Senator Hadley, you are recognized next, followed by Senators Lautenbaugh, Avery, and others. [LB35]

SENATOR HADLEY: Mr. President, members of the body, someone told me that our Chamber was 52-foot high and it will hold a very big Christmas tree. I assume this is one of the bigger Christmas trees. Senator Ashford, will you yield to a question? [LB35]

SENATOR PIRSCH: Senator, would you yield? [LB35]

SENATOR ASHFORD: Sorry, Mr. President. Yes, I will. [LB35]

SENATOR HADLEY: We had Senator Flood talking about the consent agenda tomorrow. It would seem to me at least half to three-fourths of these bills could have easily been put on the consent agenda. Was there a reason that the committee decided not to put them on the consent agenda? [LB35]

SENATOR ASHFORD: A couple reasons: one is we do have several bills already on the consent agenda, Senator, I think that went through my committee and that and, number one; number two, for the most part, and I don't want to diminish the importance of these bills, but for the most part the bills in this group of bills that are now in the committee amendment are very technical in nature. And, yes, they could have been on consent calendar, but consent calendar gets so long as it is. At least in my experience on Judiciary, putting those technical bills into the committee bill, so to say, is not unusual. But I do...I agree with you it is a high ceiling, it's a high tree, it's all...you're right, absolutely correct. [LB35]

SENATOR HADLEY: Well, being new to the body, I guess I can ask questions like that. [LB35]

SENATOR ASHFORD: Oh no, I think it's a good question. [LB35]

SENATOR HADLEY: Secondly, I, you know, to me, it seems like we're talking about at least three or four very important things here. Whether it be a new judgeship, whether it be talking about a fee increase, these are very important things and putting them together in one bill kind of makes it tough when we go from one person talking about the fee increased to the next person talking about a judgeship in Lancaster County to a next

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person talking about something else. So this is a bill that requires a lot of attention, at least for a newcomer, to sort through these things as we go through. So I do appreciate the work that the Judiciary Committee has put through. Someone did say would you like to debate each of these singly on the floor? I would have to say no to that. But I do understand where you're coming from. I would yield the rest of my time to Senator Lautenbaugh, if he would like it. [LB35]

SENATOR PIRSCH: Senator Lautenbaugh, would you yield? [LB35]

SENATOR LAUTENBAUGH: Thank you, Senator Hadley. And addressing why some of these things aren't on the consent agenda, on the one hand, they do seem...well, they did proceed without opposition; on the other hand, they do seem kind of technical and it just probably seemed best to ball them all up in one bill here. I'd note, if any of us had the foresight, we probably could have filed a bill or initially introduced a bill that did all of these things and, while it would still be a hard read and difficult work, you know, it was certainly doable at the outset. It's just that we all came at this from different directions. Again veering back to the amendment that I'll be bringing on this as well, there are really three bills in that and two of them deal with something that we even struggled with on committee articulating and that was the ability to recoup costs if a judgment is not taken. And under the law as it currently exists, there was a question raised by a federal judge as to whether or not if someone filed suit against someone to collect a debt and didn't take it all the way to judgment, meaning the court enters a judgment saying you owe this money plus costs, whether or not there was a right to recoup the costs that you have to incur to file the suit in the first place. I believe it had been the practice and the belief, historically, that you are entitled to recover those costs. A federal judge suggested, I believe, that it might be a violation of the Fair Debt Collection... [LB35]

SENATOR PIRSCH: One minute. [LB35]

SENATOR LAUTENBAUGH: ...thank you...Fair Debt Collection Practices Act to in fact recoup those costs without a clear statement in the law without a judgment. That had the unintended result of requiring creditors to take a matter all the way to judgment to make it clear that they could recover their court costs. That wasn't good for the defendant, the debtor, to have a judgment against him. It wasn't good for the creditor to expend those additional costs. It wasn't good for the court system to have to deal with those additional pleadings and those additional judgments. So two of the three sections in my amendment that's upcoming here deal with that issue that says you can recover costs even absent a judgment, if the party is willingly willing to pay the judgment or willing up front to pay the judgment. I think that's important that we do that to avoid burdening the court system further with what I would say are unnecessary judgments and those judgments don't help... [LB35]

SENATOR PIRSCH: Time, Senator. (Visitors introduced.) Senator Lautenbaugh, you

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are recognized next and this is your final time. [LB35]

SENATOR LAUTENBAUGH: Thank you, Mr. President. As I was saying, by allowing those costs to be recouped clearly in the law without the need for the creditor to take a judgment, we are benefitting again the creditor who doesn't have to incur those costs to take it all the way to judgment, additional costs just to recoup the initial costs. We're doing probably a good thing by the debtor who does not have to have a judgment entered against him or her just so the costs can be recovered, and we're keeping unnecessary paperwork out of the court system. The third element in my amendment deals once again with sheriff's fees, and I want to make very clear that this is not a cost that will be passed on to the public in general. This increases the cost that has to be paid or that the sheriffs can collect for serving papers. This is a method of providing relief on the constant upward pressure for property taxes. I would urge you to support this when the time comes. Similarly, in the underlying bill we have the automation fees and, once again, I like the idea of sunseting them, I think it makes sense, but understand it is difficult to point to the savings for the taxpayers at large because they aren't necessarily the beneficiaries of all this automation, but the people who pay these fees will be. As Senator Lathrop and I previously pointed out, it is the attorneys and their clients who benefit from this automation. Under this proposal, it is the attorneys and their clients who will pay for the automation and that only makes sense. And with the sunset, as proposed by Senator Coash that I believe we'll be dealing with on Select, hopefully, I think it makes sense to proceed with this, to get this job done. We have the biggest county left to do so I understand why the expense would still be relatively great after several years of this. But there should be an end game after that, once that county is done. There will always be ongoing costs for upgrades and whatnot. And, you know, there's an open question as to whether or not every county needs its own computer system to be linked to the state system, but that's a topic for another time. As we heard in one of our Exec Sessions, these computers are scalable so the computer sitting out in Arthur County is not the same as the one sitting in Sarpy County as far as capacity and ability and whatnot, and that's important. But maybe there's more room for consolidation and savings down the road, but we don't have a mechanism to do that yet. So I think, once again, none of us like to be in this position of advocating for costs to go up, I certainly don't, but this is a bill that has been very well vetted, if you will. We considered it, we debated it, we argued about it, and I believe it is as lean as can be and everything in here is necessary if it costs anything, or relatively inconsequential if it is one of the many items that I discussed previously in the middle that only amount to simple technical changes. I would ask that you support this amendment and the amendments to come. Thank you. [LB35]

SENATOR PIRSCH: Thank you. Senator Avery, you are recognized next, followed by Senators Howard, Price, Friend, Dierks, Council, Wallman, and others. [LB35]

SENATOR AVERY: Thank you, Mr. President, colleagues. I'm going to speak to two

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amendments, one of which is up for consideration now, another one will be coming up later. The one coming up later, AM1054, is another example of Senator Lautenbaugh and I working closely together in the spirit of compromise and goodwill, as we have done on other bills. AM1054 contains a bill that was considered by the Government Committee back in early February, LB273, which increases fees to sheriffs. There was a lot of testimony on that bill and both sides were adequately represented, I think is the best way to put it. After much discussion and a great deal of negotiation involving all the parties, we, the committee, finally advanced a bill that raised five types of fees by 20 percent. And let me tell you a little bit about how we got there. The original bill included approximately 28 types of services in which the fee would be increased. The fees being proposed raised from 16 percent increase to over 100 percent. We worked with the Bar Association, the Collectors Association, and the Sheriffs Association, trying to get some agreement and, frankly, we were not able to fully satisfy all of those parties. The committee then decided that we would make our own decision and we recommended a 20 percent increase in five of the services provided by the sheriffs, and we considered this a fair compromise. The sheriffs had trimmed down their list of requests down to five categories. I just passed out a table on sheriffs' fees and you'll see the five categories. The service fees for civil writs, which was last...all of these were last increased in 1987, in LB273, the original bill, they were asking for an increase up from \$10 to \$20. We dropped that down to \$12. That was a 20 percent increase. You can go down the other four categories and see what we did. This meant that not everybody was happy. Everybody left the table a little bit unhappy but nobody was completely unhappy, which is the nature of compromise. We felt that there was a need for some increase in fees. The most common fees that...or most common services that sheriffs charge fees for are serving, of course, court documents. These are summonses to court, petitions outlining a litigant's claim for damages, a number of things of that sort. Most of the documents that require personal service upon an individual often require several visits by the sheriff before they can get the document served. The sheriff in Lancaster County testified and he noted that the fees collected from litigants cover less than half of the actual costs of the service and the remainder is made up by the taxpayers and, in some cases,... [LB35 LB273]

SENATOR PIRSCH: One minute. [LB35]

SENATOR AVERY: ...they don't come close to covering the cost. In Lancaster County in 2008 alone, the sheriff delivered over 28,000, nearly 29,000 documents for service. They had an average shortfall of \$14.74 per document. That meant that Lancaster County taxpayers paid over \$425,000 to make up the difference. The average shortfall statewide is over \$18. That's a 50 percent shortfall. That's subsidized by taxpayers. If you read this morning's World-Herald, on the front page there is a story about this issue and a chart that shows the disparity between the average cost of serving these documents and what the various counties can collect, and you can see it's quite substantial. [LB35]

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SENATOR PIRSCH: Time, Senator. [LB35]

SENATOR AVERY: Thank you, Mr. President. [LB35]

SENATOR PIRSCH: Senator Howard, you are recognized next, followed by Senators Price, Friend, Dierks, Council, and others. [LB35]

SENATOR HOWARD: Thank you, Mr. President and members of the body. If Senator Ashford would yield to a question or two. [LB35]

SENATOR PIRSCH: Senator Ashford, would you yield? [LB35]

SENATOR ASHFORD: Sure. [LB35]

SENATOR HOWARD: Senator Ashford, in looking through this CliffsNotes handout that you've provided to us, I see there's a reference to adoptions. [LB35]

SENATOR ASHFORD: I think that's part of the fee...part of the county court. Okay. [LB35]

SENATOR HOWARD: Well, that leads to my very question. Are you indicating that adoptions are done by county court? [LB35]

SENATOR ASHFORD: I don't think...I'm just...I think...are we looking at what I just handed out? [LB35]

SENATOR HOWARD: We are. [LB35]

SENATOR ASHFORD: What is your question? [LB35]

SENATOR HOWARD: My question is, are you indicating in this handout that adoptions are done by county court? [LB35]

SENATOR ASHFORD: Yes. [LB35]

SENATOR HOWARD: Do any other courts do adoptions? [LB35]

SENATOR ASHFORD: I don't believe so. I believe the county court has exclusive jurisdiction and... [LB35]

SENATOR HOWARD: You're wrong. Actually, juvenile court in three counties does adoption. That's Sarpy, Douglas, and Lancaster. [LB35]

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SENATOR ASHFORD: They have concurrent jurisdiction, I think, don't they? [LB35]

SENATOR HOWARD: Juvenile courts do adoptions on cases that have gone through juvenile court. [LB35]

SENATOR ASHFORD: Okay. [LB35]

SENATOR HOWARD: So my question to you is why does it solely indicate the county court would supply this form or this information when the higher number of adoptions go through the juvenile court? [LB35]

SENATOR ASHFORD: You know, Senator Howard, I will have to get back to you on that. I...my understanding is if you...there are two places to get adoptions. If it...obviously, if it goes through the juvenile court system, I agree, and I'm sorry for misspeaking. If it's just...if it's in the county court, it's done in a separate...by a separate petition. I think that's what this is referring to, but if it's more than that I can get that information to you. [LB35]

SENATOR HOWARD: I think this is an important point that really needs to be clarified. The juvenile court system has been doing adoptions for, I would guess, at least the last eight years. In November, there's an annual adoption day where the cases go through both juvenile court and county court. I'm concerned, if the language in this bill is written in such a way that indicates adoptions are done solely by the county court and this would tie the hands of the juvenile court, this really would be a step backward in time in terms of permanency for children and completion of adoptions. I think we need to look at this closely and see what this might indicate. Many times, the language that you use has an impact that you don't expect. Thank you, Mr. President and members of the body. [LB35]

SENATOR PIRSCH: Thank you, Senator. Senator Price, you are recognized next, followed by Senators Friend, Dierks, Council, Wallman, and others. [LB35]

SENATOR PRICE: Thank you, Mr. President, members of the body. In reviewing the item at hand, I had a few questions, a few comments, and I was wondering, would Senator Ashford yield to a question? [LB35]

SENATOR PIRSCH: Senator Ashford, would you yield? [LB35]

SENATOR ASHFORD: Yes. [LB35]

SENATOR PRICE: Okay. Senator Ashford, in looking this over and having had LB273 in our committee, you know, first and foremost what they wanted, they came seeking

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100 percent, and we gave them 20, they wanted 100 percent, which actually would seem to equal up to 100 percent of the costs. And we think... [LB35 LB273]

SENATOR ASHFORD: Yeah, I think that's right. I think they went from 10 to 20. [LB35]

SENATOR PRICE: Yeah. They actually wanted...they came in wanting 100. [LB35]

SENATOR ASHFORD: Correct. [LB35]

SENATOR PRICE: We settled, we settled on a 20 percent increase. Okay, these dollars, they go to General Funds, correct? [LB35]

SENATOR ASHFORD: County funds, yes, to...funds of the county, not the state. [LB35]

SENATOR PRICE: Right. Right. But I'm saying when they collect fees, they go to a General Fund. They don't go back to that department. [LB35]

SENATOR ASHFORD: I believe that's correct, at least in Douglas County that's my understanding. [LB35]

SENATOR PRICE: And I do believe, in a rhetorical nature, that is the question. Okay. So my question is, will we...do you foresee that the counties are going to take less property taxes now that they raise more money? Because they're operating now. They're going to get an infusion of dollars, user fees. Are we going to see a reduction on our property taxes anywhere in any of this? [LB35]

SENATOR ASHFORD: Probably not. [LB35]

SENATOR PRICE: Okay. Great. So we've bloated... [LB35]

SENATOR ASHFORD: But it will have an...I mean it's hard to say that \$100,000 or \$150,000 is going to reduce property taxes because the General Fund is so significantly much larger than that, but there could be a cumulative impact with other savings that could impact... [LB35]

SENATOR PRICE: Did I not understand earlier that the increase in court fees would be in the hundreds of thousands of dollars? [LB35]

SENATOR ASHFORD: \$800,000. [LB35]

SENATOR PRICE: Okay. So if we have an \$800,000 cash infusion into the General Fund and that's from one area, and we have multiple areas, this Christmas tree, these ornaments all over the place on this Christmas tree, all of them bring...now a lot of them

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bringing in revenues and if one of them is \$800,000, let's say you got \$800,000 here, \$100,000 there, pretty soon you're talking real dollars,... [LB35]

SENATOR ASHFORD: (Laugh) Yes, you are. [LB35]

SENATOR PRICE: ...you know. So is there opportunity that we're going to see that our property taxes would be lowered or is it just probably not the case? [LB35]

SENATOR ASHFORD: You ask a great question. The answer is the \$800,000 would not go into the general. That's a state...that would be a state impact but...not a county impact, but those dollars would go to automation of the state district court, county court, juvenile court system. So it would never...the county court would not see any particular impact or the counties would not except, Senator Lathrop makes a great point, and that is that the county district court clerk's office is a county function. As...if we invest \$800,000 in, let's say, Douglas County, Sarpy is done but if it was in Douglas County, we invest \$600,000 in Douglas County with state dollars, which is what we're doing here, what that should do is it should at least put a cap on the number of additional employees would be needed to take filings in or whatever it is. And eventually through attrition, hopefully it will reduce the number of employees that are needed to run the court system. That's the best answer I can give you. [LB35]

SENATOR PRICE: Okay. Thank you very much. I was wondering if Senator Lautenbaugh had a moment, he would yield to a question. [LB35]

SENATOR PIRSCH: Senator Lautenbaugh, would you yield to a question? [LB35]

SENATOR PRICE: I'm going to go ahead and pose that question while he's walking. Okay, Senator Lautenbaugh, in one of your bills we've talked about where the debt collection agencies would be able to recover some of their costs, correct? [LB35]

SENATOR PIRSCH: One minute. [LB35]

SENATOR LAUTENBAUGH: Yes. [LB35]

SENATOR PRICE: Okay. Who are they recovering the costs from? [LB35]

SENATOR LAUTENBAUGH: Generally, the debtor, to the extent they're recoverable, or in any case a defendant normally, if the defendant is found to be liable or owe the money, whatever the case may be, they can recover the costs. [LB35]

SENATOR PRICE: So let me ask this question. The client, let's say some medical ones. My understanding from committee hearings is the client generally tends to be of a medical facility who's asking to have the funds recovered, correct? [LB35]

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SENATOR LAUTENBAUGH: Yes. [LB35]

SENATOR PRICE: They enter into a contract and they don't have to pay afterwards once they get their money? It's going to be the debtor who's going to pay? [LB35]

SENATOR LAUTENBAUGH: Well, if it has to go all the way to suit, that is a cost that's caused by the debtor. Believe me, both the hospital in your hypothetical and even the collection agency don't want to file suit. There's no money in that. All other things being equal, they don't get their attorneys' fees back. [LB35]

SENATOR PRICE: Right, but... [LB35]

SENATOR PIRSCH: Time, Senator. [LB35]

SENATOR PRICE: Thank you. [LB35]

SENATOR PIRSCH: Senator Friend, you are recognized next and this is your final time. [LB35]

SENATOR FRIEND: (Microphone malfunction)...members, I don't need a microphone. That's all right. Thank you, Mr. President, members of the Legislature. Two hours ago I didn't know how I felt about this amendment. As a matter of fact, I probably would have voted against it. A lot of folks are thinking, well, why don't...you know, why wasn't the question called? Oh, some might say, well, Friend would have thrown another one of his temper tantrums. First of all, I'm sure you would answer that, who cares, let him throw it, let's go ahead and call the question. I'm saying this debate has been good for me. I'm saying I learned something in regard to need that I didn't know two hours ago. Let me give you an example. Senator Lathrop stood up and spoke to...it was a little off the subject of AM987 but that's okay. It helped me. Second thing is that I received, and I didn't have this when I started, a handout from Senator Ashford not only that went through what the Supreme Court automation fee was going to do for us. See, you can look at the bill and realize we're going from \$6 to \$8 and say either one of two things: that's fairly nominal, what's the big deal; or you can say, no, why do they need 8 bucks, forget it, live on \$6. Here's why, and I got this about 45 minutes ago. Currently, \$6 on every new case filed and every appeal docketed is what it is. The fee was initiated by the Legislature in 2002 to offset General Fund dollars that were being cut due to the budget crisis. The fees deposited into the automatic or, excuse me, Automation Cash Fund administered by the Supreme Court, administrative offices of the courts. Each \$1 generates approximately \$400,000 annually. Here's the need. Currently we pay \$849,000 annually to the Office of the CIO for updates and maintenance of the statewide JUSTICE system. This annual fee will increase by \$265,000 on July 1, 2009. There is a need, that that's the argument right there. Two and a half hours ago I didn't

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know it. And the thing is, we all could have had a lovefest and, by the way, this isn't a lovefest--I've seen them out here, they're sickening, I've been involved in them, they're sickening--this is not a lovefest. I went up to Senator Ashford off the mike and I said...and he was not really aloof but he said, yeah, 6 to 8 bucks, what's...and he didn't say this but I kind of got the feeling, what's the big deal? The big deal is this. Every time we increase fees, every time we increase court costs, we are potentially limiting the people who have access to our courts. I've heard it over and over again. I heard it when I was on Judiciary Committee and people fought this type of thought process, \$1, \$2, \$4, \$10, \$50, \$100, it's going to eventually limit somebody's access and any lawyer I've ever talked to doesn't want that to happen. Every individual that understands the ramifications doesn't want that to happen. For what it's worth, I've gained something from this discussion on AM987. Let's jump forward real...I would...I'll speak later on the other need or the thought process that I've come to. I'm going to yield the rest of my time to Senator Lautenbaugh. [LB35]

SENATOR PIRSCH: Senator Lautenbaugh, you have 1:23. [LB35]

SENATOR LAUTENBAUGH: Thank you, Mr. President. Thank you, Senator Friend. Senator Friend is correct. We don't want to limit access to the courts. The problem we have here is that we have not been keeping pace with inflation or real costs here and, with that said, these adjustments are overdue for that reason. And again, when we're talking about the automation fee, we are trying to spend a little more money to save a lot of money. [LB35]

SENATOR PIRSCH: One minute. [LB35]

SENATOR LAUTENBAUGH: Every time we don't have to run down to the courthouse and charge our client for that, every time we don't have to struggle to get a copy of a pleading out of North Platte or wherever, that's time that we aren't charging the client for. So on the one hand, yes, we're charging an additional cost but we're saving a much greater cost, I would argue, and competition being what it is, that will be passed on. To address Senator Price's point regarding these collection suits, they differ from hiring someone else. I think he was trying to make the point that, well, if Alegent hires you to collect a hospital bill, why shouldn't they have to pay the cost? The problem is, it's not the same as hiring a landscaper where you just want your yard landscaped. This is Alegent, who finally has to go the step of hiring a collection agency or whatever hospital has to do it because someone won't or can't pay a bill. On those facts, it is proper for Alegent to be able to recover the costs of the collection suit. [LB35]

SENATOR PIRSCH: Time, Senator. Speaker Flood, you are recognized for a Speaker's announcement. [LB35]

SPEAKER FLOOD: Thank you, Mr. President. Members, good afternoon. A quick

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update for you: Tomorrow afternoon, following adjournment, we will be recognizing former members of the Nebraska Legislature in an annual ceremony we have to honor the service of those who are living and have gone before us in this Chamber. I would encourage all of you to stick around tomorrow at the conclusion of our work to help us recognize former members of the Legislature. That will happen at adjournment tomorrow. As far as today is concerned, it's my intention to stay in session until at least 4:00, if possible. If the body feels that there's a willingness to resolve this one way or the other, being LB35, we'll stay beyond 4:00 but no later than 4:30. Thank you, Mr. President.

SENATOR PIRSCH: Thank you, Speaker Flood. We resume debate. Senator Council, you are next, followed by Senators Wallman, Harms, Janssen, Coash, and others. [LB35]

SENATOR COUNCIL: Thank you, Mr. President. I rise to call the question. [LB35]

SENATOR PIRSCH: Thank you, Senator. The question has been called. Do I see five hands? I do. The question is, shall debate cease? All those in favor vote aye; all those opposed vote nay. Has everyone voted? Record, Mr. Clerk. [LB35]

CLERK: 25 ayes, 11 nays to cease debate, Mr. President. [LB35]

SENATOR PIRSCH: Debate does cease. Senator Ashford, you are recognized to close on your amendment. [LB35]

SENATOR ASHFORD: Thank you, Mr. President, and thank you to the body for the questions, and some are unresolved. Hopefully we can, if they are, we can move on to Select File and resolve some of the questions for you. But I have this particular amendment, AM987, refers solely to the \$1 fee increase that would supplement the \$1 fee increase in AM836. It's a little bit disjointed in the way we're doing it, but it is...the impact would be this \$1 combined with the \$1 in AM836 would be a \$2 fee. I did hand out, and I appreciate Senator Friend referencing it, the information that sets forth how this money is spent and how it will be spent. The money that's already in the fund, the \$2.4 million that's already in the fund, the money that is...the additional \$800,000 would go in the fund. Having said all that, I think Senator Stuthman has raised some good points on this, Senator Coash has reflected that and Senator Lautenbaugh, and we will definitely take a look at these fees between now and Select File to make sure that they're being allocated properly and for a good purpose. With that, Mr. President, I would urge the adoption of AM987. [LB35]

SENATOR PIRSCH: Thank you, Senator Ashford. You've heard the closing on the amendment. The question is, shall the amendment to the committee amendment to LB35 be adopted? All those in favor vote aye; all those opposed vote nay. Has

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everyone voted? Record, Mr. Clerk. [LB35]

CLERK: 29 ayes, 4 nays on adoption of the amendment to the committee amendments. [LB35]

SENATOR PIRSCH: The amendment is adopted. Mr. Clerk, next amendment. [LB35]

CLERK: Mr. President, I do, but before, if I may, Senator Karpisek has an amendment to LB286 to be printed; new A bill. (Read LB463A by title for the first time.) (Legislative Journal pages 1012-1015.) [LB286 LB463A]

Mr. President, the next amendment to committee amendments, Senator Pankonin, AM934. (Legislative Journal page 990.) [LB35]

SENATOR PIRSCH: Senator Pankonin, you are recognized to open on your amendment. [LB35]

SENATOR PANKONIN: Thank you, Mr. President, members of the body. You may remember in early March I shared with you some information about actuarial projections of the state's funding obligations for the two cash balance and three defined benefit retirement plans. The three defined benefit plans include the judges, schools, and State Patrol. AM934 addresses one of the funding mechanisms available to increase funding for the judges retirement plan. You have on your desk a chart which shows the actuarial projections for the judges plan through fiscal year 2014 and 2015. As you can see, even though additional revenue is not needed this or next fiscal year, by the end of fiscal year 2014-15 the actuary projects that between \$3.3 million and \$9.1 million will be needed to fund the plan, depending on whether we see slow, modest, or strong economic recovery in the coming years. With our school and patrol plans, there is an employee-employer match, and if you think of the judges plan, the fees that are collected are the employer contribution. The judges retirement plan is funded from contribution rates paid by the judges and various court filing fees. If these funding mechanisms are not adequate to fully fund the obligations, then the state is obligated to make up any remaining deficit with General Funds. AM934 would increase the court filing fee from \$5 to \$6 on civil and criminal causes of action filed in district and county courts beginning July 1 of this year. The \$1 increase would generate approximately \$400,000 a year and generate a total of \$2 million in five years. Even with the funds raised by this fee increase, we are still looking at a shortfall of \$1.3 to \$7.1 million, depending on the strength of the economic recovery. I agreed to file this amendment to raise fees with the understanding that the judges will work with the Retirement Committee regarding an increase in the judges' contribution rate. Thank you. [LB35]

SENATOR PIRSCH: Thank you, Senator Pankonin. Senator Harms, you are now recognized to speak on this amendment, followed by Senator Janssen, Senators

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Coash, Fulton, and others. [LB35]

SENATOR HARMS: Thank you, Mr. President, colleagues. I rise in support of this. I'm not, quite frankly, excited about raising fees but I can understand the issue here. I'd like to move, if I can, to a question I'd like to ask Senator Lathrop that I did not get that opportunity to do in regard to the amendment that we just passed. Senator Lathrop, would you yield? [LB35]

SENATOR PIRSCH: Senator Lathrop, would you yield to a question? [LB35]

SENATOR LATHROP: Yes, I will. [LB35]

SENATOR HARMS: Senator Lathrop, you referred on several occasions in regard to the judge, moving judges around, and you identified the Panhandle in regard to that issue. I wanted to talk just a little bit about that so that people can understand truly what those issues are in rural Nebraska. Quite honestly, when things get tough, always seem to reach out to the rural environment because maybe we don't quite have enough people to support it. Senator Lathrop, do you know how many judges we have in the Panhandle? [LB35]

SENATOR LATHROP: I don't know...no, I don't. I don't know the exact number. I know that you've lost two out there with the last two retirements. They've been, after they've gone through the reallocation process, you've ended up... [LB35]

SENATOR HARMS: That's correct. [LB35]

SENATOR LATHROP: ...losing (inaudible) eastern part... [LB35]

SENATOR HARMS: Senator, do you know...do you know geographically what their districts are like and the actual miles it takes to handle some of these cases? [LB35]

SENATOR LATHROP: I know that that's certainly an issue and, while the judges out in greater Nebraska, the Panhandle for example, don't have the caseloads, they have what we call the windshield time, which means they got to get up in the morning and go from their hometown to different jurisdictions because they have more than one county courthouse they need to administer justice in. [LB35]

SENATOR HARMS: Senator Lathrop, do you anticipate, as maybe the population base in the Panhandle or other parts of rural Nebraska declining if we don't stop that, that more of this will be done through technology in the future? I mean where we have some hearings, do we anticipate this to be done through technology? [LB35]

SENATOR LATHROP: I don't know, maybe, but we're not at a place where a judge is

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going to sit in front of a monitor in Scottsbluff and try a case that's going on in Chadron. We won't get to that place yet. Now whether we can do...Senator Heidemann had this bill where we didn't bring the prisoner up from Tecumseh to Omaha for an arraignment. If we can do some of those things by television, that's going to help avoid some of the windshield time, whether it's for the prisoner or the judge. [LB35]

SENATOR HARMS: Thank you, Senator Lathrop. I guess the thing I want to bring forward is to...and I've talked with a number of the judges, that windshield time is time-consuming. We travel...they travel a lot of miles out there and I just want to make sure, as we continue to look at this, that we don't always look at rural Nebraska. Even though maybe our cases are not as high as they are, we still need to plug in that issue about travel, about the distance and about representing people fairly and equitably, and that's just my point. I want to make sure, as we continue to look at where we're going here, that we keep that at least in mind. I don't object to what we're doing here. I just object, to a certain degree, about every time something gets a little difficult or it's short in funds we start to look rural, and that's the one place that quite honestly we need to help. As I would just ask you, as colleagues, as we think through this process, that we're very careful about that and making sure that the people who are in those areas are truly represented appropriately, and that's my issue. It's not an issue. That's just my concern. In rural America, when you travel, it's a long ways in many cases. In Lincoln and Omaha, it may just be across the community. [LB35]

SENATOR PIRSCH: One minute. [LB35]

SENATOR HARMS: And in rural Nebraska it may be several hours or an hour-and-a-half or two-hour drive to one of the courthouses. And so that's all I'm just saying, that I think it's important for us to keep that in focus. I don't object to any of these things but I'm just telling you that I think that's how people view it and I would be in hopes that we will continue to keep that in mind as we progress with this legislation and this Christmas tree. And I thank you, Mr. President. [LB35]

SENATOR PIRSCH: Thank you, Senator Harms. Senator Coash, you are recognized next, followed by Senators Fulton, Avery, Stuthman, Ashford, and others. [LB35]

SENATOR COASH: Thank you, Mr. President, members of the body. Senator Harms, it's timely that you asked the questions. I do have an answer for you. Out in the Panhandle, which is District 12, you have four county judges and four district judges spread throughout the whole...the whole Panhandle, which is 11 counties, so the distance is pretty great. Members of the body, Merry Christmas. I got the most expensive ornament on the tree. (Laughter) It's the big star on top. But I think it's incumbent upon me to answer some questions that have been asked as to why this judgeship is in need and I'll address some of the other fees as well. Senator Lathrop, thank you for addressing some of the questions as to why it's important Lancaster has

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this judge. This is not just a Lancaster County issue. This is a statewide issue. Let me illustrate a couple of things here. Since 1995, which was the last time Lancaster County had a district judge, we had filings go up a little over 20 percent. In addition, the population of Lancaster County has increased a little over 20 percent. And if Senator Council is here, well, I would ask her some questions, but I'll wait and see if she shows up. I'll move on. One of the things that we've come to realize is when you have a filing or when judges hear these cases, criminal cases go first, which pushes civil cases way to the end. That makes a lot of plaintiffs, I believe, unhappy. Now the last...or not the last thing. Here's another thing. Why not redistrict? That was a question that I've had a few members ask me and here's what...we'll say that we've done that. Lancaster County took a judge from out west so we got to worry about that. In 2006, this body saw it important to increase DUI penalties. DUI penalties were created in 2006 as a Class IIIA felony and what that means is that there are a lot more felony cases being heard in district court. Let me give you an example. In 2004, there were 21 DUI felony hearings; in 2005, 23; in 2006, 42. After this law was passed in 2006 that 42 jumped up to 102; and in 2008, up to 155. So Senator Friend keeps asking a good question. He said, well, what do we need this for? That's a good question. Well, we're getting what we asked for. We don't want aggravated drunk drivers on the streets so we have to put them through the court system. There's a cost to that. Want to just talk quickly about the fees before my time is up. I think the sunset on the judges retirement is a prudent move. I like the idea of sunseting the automation fee. We were told this was a one-time fee to get Douglas County on board. Let's get them on board and let's take a look at that fee at a different time. So I'm going to work with Senator Ashford on that. As far as the automation fee goes, thank you, members, for passing that. I'll just say that I think our judicial resources have been stripped. Our courts are running about as bare bones as we can ask them to run. Court employees are running bare bones. And the only way we're going to keep from adding more positions... [LB35]

SENATOR PIRSCH: One minute. [LB35]

SENATOR COASH: ...is by streamlining our process. The only way to streamline the process is to use the technology and that's part of what that automation fee is for. So with that, members, I appreciate your indulgence in these questions, I appreciate your support for AM934 and the underlying amendment, which is the bill, AM836. Thank you, Mr. President. [LB35]

SENATOR PIRSCH: Thank you, Senator Coash. Senator Fulton, you are recognized next, followed by Senators Stuthman, Ashford, Nordquist, and Lautenbaugh. [LB35]

SENATOR FULTON: Thank you, Mr. President, members of the Legislature. We passed AM987 previous to AM934, and the concern that I have there is we're increasing fees, which I think is a concern that should...it ought to be shared by everybody. I think it probably is. The fact that there's a sunset on those fees, on Select File I'm hopeful that

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that gets accomplished. Here we have another fee increase and I'm going to need to ask Senator Pankonin or maybe Senator Ashford a question, if Senator Pankonin is available. [LB35]

SENATOR PIRSCH: Senator Pankonin, would you yield for a question? [LB35]

SENATOR PANKONIN: I certainly would. [LB35]

SENATOR FULTON: Okay. Senator, the fee here is going to be \$6. Is this a fee...help me understand, is this a fee increase? Is this a new fee? It looks to be a fee increase from \$5 to \$6, but maybe...and I may have missed this earlier. Can you clarify that? [LB35]

SENATOR PANKONIN: Senator, you're correct. We already have a \$5 fee. The last time it was increased was when the markets had the early 2000 decrease, the 2002 market. It was increased to \$5. And if you think of it as the employers' contribution, the state being the employer, this is how we generate the funds to make that match in relation to what the judges pay. So because of the plan, the financial decrease in the markets, this money is needed to help shore up the plans, bring them back up to where they need to be. [LB35]

SENATOR FULTON: Now what we accomplish in AM987 was a fee set on some particular service provided within the judicial branch of government. AM934 is a fee increase from \$5 to \$6 on some separate and distinct service within the judicial branch of government. Not being involved in that branch, not being a lawyer, I look at this as simply A and B: over here we have a fee increase on services A; over here we have a fee increase that's envisioned under AM934 over services B. What's the difference between service A and service B? Did you follow what I was... [LB35]

SENATOR PANKONIN: Well, yeah, I... [LB35]

SENATOR FULTON: ...pointing to there? [LB35]

SENATOR PANKONIN: Well, service A, the technology fee is regarding the, to my notion, the network and some of the services the judicial system provides. This fee, fee B in your instance, is needed for the retirement plan that we're obligated to fund. And if you think of it this way, if we do not increase this funding from this and the judges' contribution, the taxpayers are on the line to pay this. [LB35]

SENATOR FULTON: Okay. [LB35]

SENATOR PANKONIN: So it's important, you being on the Appropriations Committee, if we don't have this fee increase, eventually it will come out of General Funds. That's the

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other side of it. [LB35]

SENATOR FULTON: I guess the...not so much what we are funding but what...that service that others are funding, so it costs \$5 for....as a...taxed as costs in each of (a) a civil cause of action, a criminal cause of action, a traffic misdemeanor or infraction. There are a list of things that this \$5 fee...\$5 tax is attached to. Okay? [LB35]

SENATOR PANKONIN: Yes. [LB35]

SENATOR FULTON: So that's where I'm going with my nomenclature here, A and B. In AM987, which we just passed, we increased that tax or that fee from \$6 to \$8. That is a tax on something. AM934, we're increasing the tax on some other thing, so what is the difference between the something that we just got through doing in AM987 and that some other thing that we're doing in AM934? There are an awful lot of fee increases here that I'm seeing. I'm trying to... [LB35]

SENATOR PIRSCH: One minute. [LB35]

SENATOR FULTON: ...identify which ones. Are we just increasing fees on everything? Maybe this is more suited for Senator Ashford. [LB35]

SENATOR PIRSCH: Senator Ashford. [LB35]

SENATOR FULTON: Why don't...yeah, I... [LB35]

SENATOR PIRSCH: Are you asking him to yield to a question? [LB35]

SENATOR FULTON: Yeah, if I could have him yield. [LB35]

SENATOR PIRSCH: Senator Ashford, would you yield? There's 40 seconds. [LB35]

SENATOR ASHFORD: Yes. Yeah, this is a fee. This is a filing fee. It's an additional \$1 filing fee in the court system for criminal and civil cases. [LB35]

SENATOR FULTON: And that's different... [LB35]

SENATOR ASHFORD: It's three additional dollars, \$2 for automation, \$1 for retirement. [LB35]

SENATOR FULTON: So it's the same filings... [LB35]

SENATOR ASHFORD: Corpus. It's the same corpus of activity. It's the filing of cases... [LB35]

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SENATOR FULTON: Okay. [LB35]

SENATOR ASHFORD: ...of various kinds. [LB35]

SENATOR FULTON: So why didn't we have...I guess then why didn't we have just a simple increase of fees of \$3 then? [LB35]

SENATOR ASHFORD: I think it's...well, you would know that from the appropriations process, we have to delineate... [LB35]

SENATOR PIRSCH: Time, Senator. [LB35]

SENATOR ASHFORD: ...how those (microphone malfunction) track. [LB35]

SENATOR PIRSCH: Senator Stuthman, you are next recognized, followed by Senators Ashford, Nordquist, Lautenbaugh, Haar, and Wallman. [LB35]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. In listening to the discussion between Senator Ashford and Senator Fulton, I really think there's a little bit of a misunderstanding. In my opinion, this increase in fees of \$1 is in addition to the \$5 that is collected. When an individual pays a fine, let's say just any type of a fine, for failure to stop at a stop sign, \$25 and costs. Well, the costs are the court costs of it. I think...I don't know what they are all around, but I think they're around \$44; \$5 of that \$44 goes to the judges retirement fund. That's where the \$5 go. And they want to increase, increase that to \$6. What this fund has, has right now this year, the court fees collected during the year is \$3.28 million. The state appropriation for the year is about \$72,000, and the member contributions, which would be the judges, is \$1.15 million. The majority of the money is collected from the fines, from the fees of fines and the court costs, because that has the \$5. And like Senator Pankonin said, that was increased in the years of 2002, in that area. In 2002-2003, the contributions from the court fees was \$565,000 and we had an appropriations here from our budget of \$726,000. So it has increased, the contributions from the court fees, the increase to \$5, \$5 for court fees per the fines that were paid, you know, increased from \$564,000 in '02-03 to \$3.35 million in '08-09. The main interest that I have is the fact that I feel that there should be some more member contributions to this, and I would like to ask Senator Pankonin a question. [LB35]

SENATOR PIRSCH: Senator Pankonin, are you available? [LB35]

SENATOR STUTHMAN: Yeah, he's coming. [LB35]

SENATOR PIRSCH: Senator Pankonin, would you yield to a question? [LB35]

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SENATOR PANKONIN: From Senator Stuthman? [LB35]

SENATOR PIRSCH: Correct. [LB35]

SENATOR PANKONIN: Oh, okay. (Laugh) [LB35]

SENATOR STUTHMAN: Senator Pankonin, the member contributions paid this year was \$1.15 million. Is there any interest in increasing that amount? Are the judges willing to pay, pay a little bit more into that to keep the fund going, or is it mainly they want to just increase the \$1 to take care of it so that the people that are paying the fines have got to pay another \$1? [LB35]

SENATOR PANKONIN: Senator Stuthman, very good question and the answer, I think, is we need both. We need the fee increase. We also need the judges to come and contribute more. Senator Nordquist is going to talk about some history on that and I think answer some of your...some of that question. But quite frankly, because of the deficit we have right now in the retirement plan, we need both. And I do expect the judges to participate. We are going to have...we've started the process. We're going to have discussions and I'm very hopeful that they will and I think they should, under the circumstances. But I do think.... [LB35]

SENATOR PIRSCH: One minute. [LB35]

SENATOR PANKONIN: ...the fee increase is warranted as well with both. [LB35]

SENATOR STUTHMAN: Okay. Thank you, Senator Pankonin. That is my interest. You know, I'm not totally against the \$1 increase, but I am against that if that's going to be the only contribution towards it. I would like to see that there will be an equal amount contributed by the judges to that also, mainly so that we don't have to dip into the General Funds to make this retirement fund whole. So that is the issue that I have. I want to make sure that the members contribute also in an equal amount as collected by the court cost. Thank you, Mr. President. [LB35]

SENATOR PIRSCH: Thank you, Senator. Senator Ashford, you are next recognized, followed by Senators Nordquist, Haar, Wallman, Loudon. [LB35]

SENATOR ASHFORD: Thank you, Mr. President. I'm going to give my time to Senator Nordquist and I don't want to...in a second, but I just wanted to respond to Senator Harms. He's made a very thoughtful point and that is that every time we start having these discussion, it seems as if Scottsbluff is going to have to give up a judge or...and that's...and we had this dilemma two years ago when we dealt with the Kearney district judge, moving the judge from the 9th District, I believe, to Kearney. And I think Senator

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Harms makes a great point. There are 55 judges, district judges, in the state. Many of the judges represent districts with much fewer numbers of citizens in those particular judicial districts. However, that doesn't mean their workload is any less. And their workload may be less casewise because they have fewer people living in those areas (laugh) so the number of civil cases tried and the number of criminal cases tried is less. However, there...you know, that's obvious, but their workload and the necessity for them to travel from place to place is not. I think we really need to be sensitive to what Senator Harms is doing and that's why I know that's...this is a little off point and that's why I'm going to give Senator Nordquist the rest of my time, but it's a very important point. We are asking at least the criminal justice system to try more difficult cases in district court, whether they're DUIs, violent crime, drug-related crime, drug courts, whatever it is. We have a static number of judges. They can't receive a pay increase unless we give them the pay increase, and their retirement is determined by us in this body. And what's even more interesting is there are only 55 of them. In some sense they're an easy target because they are paid a lot relative to other state employees. They are because we want to attract the best people into the court system to be judges, so it makes it difficult. But we are again talking about \$3 total and we're dealing with a court system of 55 district judges. And Senator Harms's point is well taken. I'd be happy to give the rest of my time to Senator Nordquist. [LB35]

SENATOR PIRSCH: Senator Nordquist, would you yield? You have 2 minutes and, I'm sorry, 2 minutes and 40 seconds. [LB35]

SENATOR NORDQUIST: Thank you, Mr. President. Thank you, Senator Ashford. We are in tough times. The market has taken a hit and our judges retirement plan is in a real predicament. Even with a strong growth over the next five years, we're still going to be short, in the neighborhood of a little over \$3 million. But I understand the need for the fee increase. But we need to have...and Senator Pankonin is starting some larger discussions on what we need to do, who we need to pull together and work out a compromise for the judges retirement plan. Just a little bit of history: When we were going through a similar economic rough spot around 2002, we...the state raised contribution rates on our three defined benefit plans. We have judges, teachers, and the State Patrol plans. And there was a federal lawsuit in which they said we couldn't do that as a state, the federal lawsuit that the judges filed. They said that our defined benefit plans are a contractual promise. Basically, when you start as a public employee in a defined benefit plan, your benefits couldn't be decreased and your contributions couldn't be increased. Unless there was a contribution increase along with a benefit enhancement, you couldn't have your benefits decreased and your contribution rates increased. So last year, obviously, markets were a little different. We were sitting...the judges retirement plan was about 107 percent funded. [LB35]

SENATOR PIRSCH: One minute. [LB35]

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SENATOR NORDQUIST: It was the healthiest, it was the healthiest of our retirement plans and they came to the table and asked for a benefit enhancement at the time. And what that benefit enhancement was, it amounted to an early retirement option for them. Up until that time, the normal retirement age was 65. We passed a bill last year with an amendment in the Legislature that would have granted an early retirement option, starting at age 62, 63, and 64, and their benefits would be reduced on a certain percentage basis. But at the time, we knew because of the past history, especially with the judges plan in 2002 and the lawsuit, we knew at the time that giving them this benefit enhancement would potentially cause us to be liable down the road if the plan were to hit hard times, which we're in now. So luckily last year... [LB35]

SENATOR PIRSCH: Time, Senator, however, you are next up in the queue. You are recognized to continue. [LB35]

SENATOR NORDQUIST: Thank you, Mr. President. Luckily last year, the Retirement Committee made it clear that they wanted something they can put in the legislative record, some legislative history about the judges willing to come to the table when the plan hits hard times to look at contribution rate increases. And I have copies of the letters, I know Senator Pankonin does, if anyone is interested, from both the county and district court associations saying, we realize you're giving us a benefit enhancement this year, and in the future there may be need for enhanced contribution rates to meet the needs of the plan. So we have them on record. There was a...Senator Gay actually was involved in a lengthy discussion with my predecessor, John Synowiecki, and Senator White also was involved in that discussion, saying...getting it clearly on the record that the judges, both the county and district court association were willing to sit down and talk about their contribution rates. So I think Senator Pankonin is leading that. The fee increase, the amendment that's pending right now, AM934, will need to be a part of that, will need to be a part of the discussion. And I hope that we can come to a solution that's equitable to all members of the defined benefit plan and the taxpayers of this state. Thank you, Mr. President. [LB35]

SENATOR PIRSCH: Thank you. Senator Haar, you are next recognized to speak, followed by Senators Wallman, Loudon, and Karpisek. [LB35]

SENATOR HAAR: Mr. President, members of the body, I'd like to ask Senator Ashford some questions. [LB35]

SENATOR PIRSCH: Senator Ashford, would you yield for a question? [LB35]

SENATOR ASHFORD: Yes. [LB35]

SENATOR HAAR: Of all the baubles on the Christmas tree now, which ones could we label, which ones of these on the outline can we label then as fee increases? It's this

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one for the judges retirement, and then the other for the electronic... [LB35]

SENATOR ASHFORD: The other one, essentially, is the \$2 for automation are the only...well, those are the fee increases. [LB35]

SENATOR HAAR: Okay. The second is kind of an interesting question. When I was going door to door doing my campaign, I found that not only were constituents confused, but I was confused by the fact that we take things like the car tax and we give some of that to schools and some to the counties. And now we have a court fee where some of it's going to judges retirements. How do we explain that? And I will vote for this, but how do we explain that to constituents? [LB35]

SENATOR ASHFORD: The reason that we take so much of operations out of court fees is really because of the downturn in the economy in 2000-2001. And there was a shift then of dollars out of General Fund into court fees. That's why you saw, we all saw the explosion of court fees throughout the last five or six years. It was really a replacement for General Fund dollars that were not available after the downturn. And it's more than that, but that's where a lot of the change occurred, shift occurred. [LB35]

SENATOR HAAR: So we're really looking at more and more in terms of things as user fees instead of just general taxes. [LB35]

SENATOR ASHFORD: Yeah, it really is a user fee because you have to use the court system in order to have to pay it. But...and I think that's what they were looking...I wasn't there then but that, I believe, they were looking for those kinds of things that were clearly user fees, not...well, you know, someone had to actually use something that the general population was not required to use in order to pay the fee, essentially. [LB35]

SENATOR HAAR: Okay. Thank you very much. [LB35]

SENATOR PIRSCH: Thank you, Senator Haar. Senator Wallman, you are recognized next, followed by Senators Loudon and Karpisek. [LB35]

SENATOR WALLMAN: Thank you, Mr. President. Would Senator Ashford yield to a question? [LB35]

SENATOR PIRSCH: Senator Ashford, would you yield for a question? [LB35]

SENATOR ASHFORD: Sure. [LB35]

SENATOR WALLMAN: I noticed on this sheet you handed out, it says we went from Lotus Notes to Outlook e-mail during 2009 and our cost went up for \$2 to \$10.81. [LB35]

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SENATOR ASHFORD: Uh-huh. [LB35]

SENATOR WALLMAN: Why would that be? [LB35]

SENATOR ASHFORD: When we went to Microsoft? [LB35]

SENATOR WALLMAN: Yes. [LB35]

SENATOR ASHFORD: You know, we talked about that at some...but I can't give you a specific reason other than it was an upgrade from Lotus to Microsoft but I...and that there was...it was an upgrade and was much more sophisticated software. It was necessary in order to link all these. The problem, the problem I think, Senator Wallman, is that not all of the platforms, not all the CPUs or computers themselves are the same; that there are different sizes. Senator Lautenbaugh is not here, his coat is here but...(laugh) which can't talk, but he has a better bead on it, but I think it was really to get a more sophisticated software that would better integrate the computers. [LB35]

SENATOR WALLMAN: Thank you. I'd like to ask Senator Lautenbaugh a question, please. [LB35]

SENATOR PIRSCH: Senator Lautenbaugh, would you yield for a question? [LB35]

SENATOR LAUTENBAUGH: Yes, I will. [LB35]

SENATOR WALLMAN: Can you explain that a little better? [LB35]

SENATOR LAUTENBAUGH: I didn't hear the question though. [LB35]

SENATOR WALLMAN: Lotus Notes was...and to Outlook e-mail increased from \$2 to \$10.81 for e-mail for trial, for trial courts. (Inaudible) increase. [LB35]

SENATOR LAUTENBAUGH: My supposition is, and once again this is probably an incomplete answer that I'd be happy to run down, I think it probably had to do with compatibility and ongoing support. I don't know if Lotus Notes was going forward into the future and I don't know if it was compatible with the other systems that we were trying to integrate it with, would be my guess, my quasi-educated guess. [LB35]

SENATOR WALLMAN: Thank you. I'd like to ask Senator Pankonin a question, if he would. [LB35]

SENATOR PIRSCH: Senator Pankonin, would you yield for a question? [LB35]

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SENATOR WALLMAN: That's okay. [LB35]

SENATOR PIRSCH: Senator Wallman, how would you like to proceed? [LB35]

SENATOR WALLMAN: I'd like to ask Senator Stuthman a question. (Laugh) [LB35]

SENATOR PIRSCH: Senator Stuthman, would you yield for a question? [LB35]

SENATOR STUTHMAN: Yes. [LB35]

SENATOR WALLMAN: Senator Stuthman, if you have employees and their IRA funds go down, do you chip more in to make up the difference? [LB35]

SENATOR STUTHMAN: Well, in my opinion, in my opinion, I think there should be more contributions from the employee. That is my opinion of it. And I don't want to take up a lot of your time but my opinion is, is the fact that it's the individual's retirement plan. It's money that he wants to utilize in years to come. And I think...and I think, you know, truly if they want to make sure that they've got those dollars available, I feel they should contribute a little bit more themselves because then they will see that they'll get their dollars back. [LB35]

SENATOR WALLMAN: Thank you, Senator Stuthman, and I so agree. That's called ownership of your own plan. And when times are...we all...we keep saying when times are tough, we should contribute. If my retirement plan went down, Senator Stuthman's went down, we don't have the state picking that up or court costs. So if we increase our court cost, we are literally taking it away from the people who probably can't really afford it in the first place. That's not our fault. It's their fault. But still, it's probably from a segment of society that we really don't want to take any more money from. Thank you, Mr. President. [LB35]

SENATOR PIRSCH: Thank you. Senator Louden, you are next recognized, followed by Senators Karpisek, Gay, Council, and Pankonin. [LB35]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. As I look over this amendment and this bill, there's parts in it that I think probably will do western Nebraska some favors, especially when we're going to increase the judgeships, because that's been a problem for a long time. Every time they had a larger caseload in the eastern part of Nebraska, they usually pulled a judgeship from the other parts of the state and that was because there was only room for so many judges. And by just adding one in there, that will help hold the numbers that are out in the western end of Nebraska. I think it's called the Judicial District 12 out there. But there was times when we had a judge got sick and another one passed away and retirements, a few things like that, that they were actually short on them. There was judges running quite a lot of

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distance. And his must be a pretty hard job out there because I remember when Judge Moran was a judge out there, he used to have his court reporter do the driving for him and then he studied his court cases while they were driving between some of the towns. And of course, every day they were driving usually three or four times a week, usually four times a week, and it must have been a pretty tough job because Judge Moran passed away young, that's for sure. And he covered a lot of miles while he did that in western Nebraska. He probably knew more about the roads in western Nebraska than anybody else. So I certainly support that amendment part that Senator Coash put in there to increase the judgeship. I think this is something that will help quite a little. As far as the judges retirement, I was here years ago when...and I think Senator Nordquist mentioned it, at that time I think he was legal counsel for the Retirement Committee, that the judges retirement fund had taken a hit, whatever, in 2002 or '03, whenever it was. And at the time, I think they were going to have the state was just going to have the judges increase their contributions and, of course, the judges took it to court. Well, that isn't hard to figure out. I mean, if you take a lawyer to court it's bad enough, but take a judge to court? Where do you think you're going to end up on that? Of course, the judges won and, consequently, this is where we've been since. And so now we find ways to increase the judges retirement and this is probably one of the better ways, as they mentioned, a user fee, and it's either that or else the state will pony up the bucks. That's how it works. So you have your choice but you're going to pay it either way, because they won the court case once and I'm sure if you take judges again they'll certainly win it again. So there's something that's probably a place where there isn't any room for debate on that, on that subject, as near as I can see it. So with this, I usually support...support most of this. Some of the other bills I've looked over that have been put into the other judiciary bill, and there's some I question, some of them I think could have been on consent calendar. But for the most part, I guess it will probably do everybody some good and at this present time I support what we've done and I certainly support the Retirement Committee's amendment, AM934, to the overall amendment. Thank you, Mr. President. [LB35]

SENATOR PIRSCH: Thank you, Senator Louden. Senator Karpisek, you are recognized next, followed by Senators Gay, Council, Pankonin, and Stuthman. [LB35]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I just rise to say that I do support the underlying bill and I will also support the Judiciary Committee amendment and also Senator Lautenbaugh's amendment that will be coming on that is the work of the Government Committee. I did not vote for the last amendment. This amendment, I don't know how I feel yet because we really haven't sat down with the judges and gotten them to commit. Last year I recall them saying, as Senator Nordquist talked about, well, if we need to we'll come back. I'm just a little bit...little nervous about that. I agree with Senator Stuthman and Senator Wallman that they need to...they need to contribute a little more, too, and I suppose that we can negotiate on that. At this time, I don't think I can vote for this amendment. I don't know if it would be better to try to

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bring it back on Select after we have some sort of a compromise, but right now I'm just a little concerned about making this moving on and the judges not being to the table yet. So we have talked about this over the last three years in Retirement Committee. I know that Senator Pankonin is working with them and will go to the table with them. I just want to make very sure that they do come to the table, sit down, realize that we do have a shortfall, as with the other people that we've worked with, the school teachers, the State Patrol. We've been in negotiations with all of them. Senator Pankonin has done a great job and we're coming to the table on...in the middle on most of these issues. I would just feel a little bit better about that...maybe I'll ask Senator Pankonin a question. [LB35]

SENATOR PIRSCH: Senator Pankonin, would you yield to a question? [LB35]

SENATOR PANKONIN: Yes, I would. [LB35]

SENATOR KARPISEK: Thank you, Senator Pankonin. Have...I know that you've talked to the judges. Have you talked any strategy or where you expect to go on this whole issue? [LB35]

SENATOR PANKONIN: Senator Karpisek, we do have a meeting slated for this week. We have talked to their representatives. I think they know that we're serious about having them come to the table in good faith and what our expectations are. I will also mention that Speaker Flood has talked to the Chief Justice and the representatives as well and there's another bill that I think they're interested in, which is increases in their salary, that Senator Flood will control when that bill hits the floor and I think he is...I talked to him about that as well, that this issue is important and it does tie to that issue. [LB35]

SENATOR KARPISEK: Okay. Thank you, Senator Pankonin. Maybe I stole some of what you have your light on for, but I do think that it's very relevant. I do agree with Senator Fulton, too, that we're talking about increases here, there, over here, over there. It's adding up. It all comes to the same person, the same person that goes to court, and that does concern me. The Government Committee did deliberate long and hard on the amendment that Senator Lautenbaugh will have. So that was kind of hard because we knew there were other fee bills out there and we didn't know how they were going to come along. And I think the Judiciary Committee did a fine job and I know the Government Committee did, but I do want to say that... [LB35]

SENATOR PIRSCH: One minute. [LB35]

SENATOR KARPISEK: ...well, that's because of our Chair, Senator Avery. But we did...we did do a lot on it and it does all accumulate to the same person paying and that is my concern. Thank you, Mr. President. [LB35]

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SENATOR PIRSCH: Thank you, Senator Karpisek. (Visitors introduced.) Senator Gay, you are recognized next, followed by Senators Council, Pankonin, Stuthman, Lautenbaugh, and Nelson. [LB35]

SENATOR GAY: Thank you, Mr. President. I just want to follow up on what Senator Karpisek was talking about because I do agree with what he's saying and others here. I think we need to recognize our side of the match here. Senator Pankonin and his committee have done a good job and they're in a tough situation here. However, we need to make sure that when we have a negotiation it's...those are long, involved negotiations. I'm a little concerned here. I'm going to support this, this amendment right now, AM934, if we vote on it today, but I am concerned between now and Select and even Final that we get some kind of an agreement going. I know that's hard to get done, but if we're going to have a little bit of...well, more get in the game, I'd like to see the participants also to put some kind of match in there. And I know we can't force that. That is a negotiation and I fully respect Senator Pankonin's ability to get things done, not just with this but with other retirement issues that he's facing. It's a huge challenge now, as we all know with our own personal finances and we're watching the markets go south. But he put in here on...this could be the shortfall, from \$1.7 million to \$7.1 million, depending on where we're at in the economy. So we know we have something, best-case scenario over worst-case scenario, but even midrange, let's say, we're into \$4 million or \$5 million. I just need some kind of, you know, if we have some kind of commitment or something in this, whether it's an amendment on Select File or something like that, that this would be done if there were a match or something like that, so throwing that out for suggestions. I know Senator Pankonin had said he's got a meeting Thursday. But I do think it's important. I think most of us in here are saying the same thing, that, you know, we're willing to come to the table but also we want to make sure that the judges come to the table on their end and kind of do what needs to be done. I think everyone would recognize that. Senator Louden made a good point, though, too. I think this is something we need to work out. Let's don't go all the way where you have to go to court or something like that. There's no need there. So I do support this amendment. When it comes to fees in general, we've been having that discussion, I just voted prior on that, that other fee, I do think it's important here. We're getting, you know, Senator Pankonin made the point, if we don't do this it comes from General Funds, and we all know where we're at there. But I do think we need to allow these people who are users of the system to pay for the system, and that's what's being done here on numerous of these amendments. I think we need to take a hard look at that. I know that's hard to swallow and I know we don't like to do that, but when we're looking at these things of how to run a whole branch of our government, it's important that they're giving us what they think is solutions. We got to decide, hey, do they make sense? I understand that. That's our role. But you do have a whole one-third of the government here telling us here's what we need to do our job, do it effectively. And I'm kind of watching some of the attorneys in the room to see what they're doing, taking a

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little guidance from those that are in the field and listening to them, so I encourage them to keep talking. But anyway, I would turn my time over to Senator Pankonin, the remaining time. Thank you, Mr. President. [LB35]

SENATOR PIRSCH: Thank you, Senator. Senator Council, you are...oh, I'm sorry. [LB35]

SENATOR PANKONIN: How much time do I have? [LB35]

SENATOR PIRSCH: Oh, Senator Pankonin, you have 1:30. I apologize. [LB35]

SENATOR PANKONIN: Thank you. Senator Gay, thanks for the yield of the time and I think, from hearing the discussion today, that I'm going to pull this amendment and refile on Select. I think good points have been made and I think in our negotiations to come this will be helpful so that the judges and the representatives know that the Legislature is very serious about this negotiation. [LB35]

SENATOR PIRSCH: One minute. [LB35]

SENATOR PANKONIN: And so at this point, I am going to go up front and pull the amendment and hope to refile it on Select when the other side of the equation has been negotiated successfully. Thank you. [LB35]

SENATOR PIRSCH: Thank you, Senator. The amendment is withdrawn. Mr. Clerk. [LB35]

CLERK: Mr. President, Senator Lautenbaugh would move to amend, AM1054. (Legislative Journal pages 1016-1019.) [LB35]

SENATOR PIRSCH: Senator Lautenbaugh, you are recognized to open on your amendment. [LB35]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. And I have spoken to this amendment previously so I'll be brief and be happy to take any of your questions you might have. There's really two facets to it. On the one hand, it does clarify that a plaintiff who files a lawsuit can collect his costs from the defendant without taking it all the way to judgment. Again, there is an alleged ambiguity in the law as it currently exists where some have said that you have to take, once you file a collection suit, you have to take it all the way to judgment to collect your costs. I don't believe that's what is intended under current law. I also don't believe that that is good policy because it creates additional work for the courts; it creates additional paperwork and, arguably, costs for the plaintiffs; and it forces us to take judgments against the defendants or debtors in a suit so that the costs can clearly be recovered. That seems

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to be in no one's best interest. There was a little bit of opposition to these in committee because some of the...I believe it was the insurance industry perhaps wanted to make it clear that you could settle a suit and agree to waive costs and that would supersede this, so the amendment does take that language into account as well. So that's one-half of my amendment. The other half deals again with the matter I was speaking to of increasing the sheriffs' process serving fee for the first time in 20 years. Again, I would urge you to support this. I know you've all been visited by representatives of the sheriffs and let me very simply explain this again. They will serve these papers regardless of how we act on this amendment. The question becomes whether this continues to be something that is paid for out of county funds, because what they can currently charge does not cover the cost of service so that has to come from county funds and those are property tax dollars. By increasing this user fee, we are allowing them to recoup a little bit more of their costs from the people who actually use the service rather than from the taxpayers as a whole. This is different than a lot of the other fee increases that we've discussed and not looked favorably upon. It is certainly necessary, judging from the incredible amount of time that has passed, the amount of inflation alone that we've had since the fees were last set. And I would just urge you to please support this. It is not everything the sheriffs wanted. It was a compromise crafted by the Government Committee. My amendment is basically the Government Committee's amendment, not what the sheriffs were initially asking for. I don't even know if I can say it's half a loaf, but it's something and it is an important something and I'd be happy to take your questions and I would...I don't want to plead with you to support this. Well, maybe I do want to plead with you to support this. As it's 4:00, I am pleading with you to support this. Thank you. [LB35]

SENATOR PIRSCH: Thank you, Senator Lautenbaugh. Senator Nelson, you are next up. [LB35]

SENATOR NELSON: Thank you, Mr. President and fellow members of the body. I had intended to speak on another bill but I'll use this opportunity to address a couple of questions to Senator Lautenbaugh, if he will yield. [LB35]

SENATOR PIRSCH: Senator Lautenbaugh, would you yield for a question? [LB35]

SENATOR LAUTENBAUGH: Happy to. [LB35]

SENATOR NELSON: Thank you, Senator. Would you explain just briefly what court costs are involved that could be recovered without going to a judgment, kind of how this process works on a collection suit. [LB35]

SENATOR LAUTENBAUGH: Generally, we're talking about the filing fee and the service fee. There's a filing fee that differs between county court and district court that we've been discussing regarding the automation fee that we previously discussed, I

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should say, and the cost of sending out the sheriff to serve the papers. That's kind of why these two thoughts go hand in hand. On the one hand, it is normally the case that the losing party pays the costs. Generally, the order reads that way. The problem comes in, in that in a lot of cases there are not final orders entered. Say the suit is filed and then the judgment...or not the judgment, debtor, the debtor comes in and pays the underlying amount. The costs are left unpaid and the question is, who bears those costs? If we leave this alone, there will have to be a judgment taken to make it clear that those costs are borne by the defendant. That's not in anyone's interest. But again, to answer your question, the costs we're talking about deal with just the service of process and the filing cost for the suit, the filing fee for the suit itself. [LB35]

SENATOR NELSON: And that could probably range in the area from \$40 to \$50, depending on... [LB35]

SENATOR LAUTENBAUGH: I'd suggest that in a typical county court case, it's probably \$50 or \$60 with service; with...in the district court with service of process, it's probably closer to \$100. [LB35]

SENATOR NELSON: All right. Going back to county court, if the defendant doesn't show up, you can go ahead and take a default judgment. Is that correct? [LB35]

SENATOR LAUTENBAUGH: That's correct. [LB35]

SENATOR NELSON: And so as part of that judgment, your court costs, your fees would be awarded in most cases and you could recover those by garnishment. [LB35]

SENATOR LAUTENBAUGH: That's correct. [LB35]

SENATOR NELSON: All right. Now if the defendant comes to you before the 30 days is up, they can file an answer or try to negotiate with you. What you're saying is here, you can negotiate something with them where they agree to pay the proposed judgment or the amount due over a period of time, but you can also ask them to include in that the costs that you have advanced. Is that correct? [LB35]

SENATOR LAUTENBAUGH: Well, Senator, what you're touching on is actually the reason for these two bills. [LB35]

SENATOR NELSON: Uh-huh. [LB35]

SENATOR LAUTENBAUGH: There was a federal judge that suggested that somehow Nebraska law was unclear so if you're asking these defendants to pay these costs short of a judgment, you're trying to collect something that you don't have a legal right to so you're violating the Fair Debt Collection Practices Act. [LB35]

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SENATOR NELSON: So generally in a collection case, you're going to write a letter to the defendant and say, this is what you owe and, you know, you might want to take into consideration that if you actually owe it and don't show up, you know, and a judgment is taken, then you're going to have to bear the costs here and pay those costs. So in this case, I'm just...this is a plus really for those who have to go out and try to collect from a debtor because they may not recover all of their costs but at least they can recover part of them through negotiation and it works out probably better in the long run for everyone concerned. Is that...would that be true? [LB35]

SENATOR LAUTENBAUGH: I would agree this works better for everyone concerned. [LB35]

SENATOR NELSON: So just because of that, I think it will expedite the process and save time, and I really think it's a good amendment and I would urge the body to support it. Thank you, Senator. Thank you. [LB35]

SENATOR PIRSCH: Thank you, Senator Nelson. Senator Stuthman, you are next recognized, followed by Senator Dubas, Lautenbaugh, and White. [LB35]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I truly support this amendment in the fact of the sheriffs' fees because, have serving on the county board of supervisors/commissioners at one time, a person doesn't realize how many times that the sheriff's department has to come to the board at the end of the year to get some reallocations of funds because of the fact that they have spent more than they had anticipated on a lot of these issues. So I do support this and I'm very much in favor of that. So thank you, Mr. President. [LB35]

SENATOR PIRSCH: Thank you, Senator. Senator Dubas, you are recognized next, followed by Senator Lautenbaugh. [LB35]

SENATOR DUBAS: Thank you, Mr. President, members of the body. I, too, rise in support of this amendment. The sheriffs' duties that they have to perform in delivering these papers has greatly increased over the years. Hall County, which I represent a part of Hall County, are delivering well over 10,000 of these filings in a year. That takes a lot of manpower, manpower that really needs to be directed other places that have a much higher priority. And so it is taking a great deal of time. This is actually the first request for a fee increase in over two decades, so I don't think that they've been coming to us with their hat in hand very often. I do have a concern, though. It has been brought up that these fees do go into the county general fund rather than to the actual sheriff's department. So I was wondering if Senator Lautenbaugh would yield to a question, please. [LB35]

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SENATOR PIRSCH: Senator Lautenbaugh, would you yield to a question? [LB35]

SENATOR LAUTENBAUGH: Yes. [LB35]

SENATOR DUBAS: Thank you, Senator Lautenbaugh. Will these fees continue to go to the counties' general fund and not to the actual sheriff department? [LB35]

SENATOR LAUTENBAUGH: Yeah, this doesn't change where the fees go. It just changes the amount they can charge. [LB35]

SENATOR DUBAS: Okay. Was that a concern or was that addressed during the hearing on your bill dealing with raising these fees? [LB35]

SENATOR LAUTENBAUGH: Well, honestly, the short answer is it wasn't my bill and I wasn't at the hearing (laugh), so I don't really know the answer to that but... [LB35]

SENATOR DUBAS: Okay. All right. That's...I guess that's the question I would have, if there was any consideration for these fee increases to actually go to the sheriff's department to cover some of their expenses. [LB35]

SENATOR LAUTENBAUGH: I believe that just, since it's an obligation of the county to fund anyway, it was thought that these user fees, however they get there, will still offset some of the cost of funding this service, whether it passes through the county or goes directly to the sheriff. [LB35]

SENATOR DUBAS: Okay. Well, thank you, Senator Lautenbaugh. And again, I do stand in support of this fee increase and it truly would be some direct property tax relief for our taxpayers in our counties because they are subsidizing this. I think \$10 is what sheriffs are allowed to collect now for delivering these papers and that's about half or less of what it actually takes them as far as costs go. And so those costs have to be made up somewhere, generally through property tax dollars, so I don't think that this request is anything too far out of hand. So I rise in support of the amendment. Thank you. [LB35]

SENATOR PIRSCH: Thank you, Senator Dubas. Senator White, you are recognized next, followed by Senator Loudon. [LB35]

SENATOR WHITE: Thank you, Mr. President. I have full support of increasing the fees for the sheriffs as property tax relief but also as a reasonable user fee. I do, however, have a number of concerns regarding the automatic award of costs as a matter of course to the plaintiff under any circumstances, and would ask if Senator Lautenbaugh would be kind enough to yield to a few questions. [LB35]

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SENATOR PIRSCH: Senator Lautenbaugh, would you yield to a question? [LB35]

SENATOR LAUTENBAUGH: Yes, I will. [LB35]

SENATOR WHITE: First of all, Senator Lautenbaugh, what are costs as contemplated by this statute? Is it defined anywhere? [LB35]

SENATOR LAUTENBAUGH: The costs, court costs, in my mind, are defined elsewhere in statute. In this circumstance, it would be the cost of filing suit, the cost of serving process, not necessarily attorneys' fees. [LB35]

SENATOR WHITE: Not necessarily? [LB35]

SENATOR LAUTENBAUGH: No. And I say not necessarily because for particularly small judgments, in current law under \$2,000, this would change that to \$4,000, by the way, so assuming this passes, under \$4,000 there's a statutory schedule of a limited attorney's fee that is recoverable for those types of judgments. But otherwise, in the general suits, no, there's no attorneys' fees absent a specific provision otherwise. [LB35]

SENATOR WHITE: Well, I think that's an important point that the members of the Legislature should recognize. Are you indicating that this bill in fact allows an award of course, and means automatically, correct? [LB35]

SENATOR LAUTENBAUGH: Actually, I think existing law allows that. [LB35]

SENATOR WHITE: Is it of course, I mean that automatically you get attorneys' fees? [LB35]

SENATOR LAUTENBAUGH: Regardless of how it's done, this law doesn't change that aspect of it. [LB35]

SENATOR WHITE: Well, it may though. If attorneys' fees are part of costs, are they or are they not? I mean let's make the record clear. Are attorneys' fees costs under this bill? [LB35]

SENATOR LAUTENBAUGH: Except as provided otherwise in statute, no. [LB35]

SENATOR WHITE: Okay. So attorneys' fees will not be considered a cost as part of this bill. Is that correct? [LB35]

SENATOR LAUTENBAUGH: Except for those small judgments. [LB35]

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SENATOR WHITE: Well, now let's talk about that because you're going to move the amount of attorneys' fees awarded of course from claims under \$2,000 up to claims to \$4,000, correct? [LB35]

SENATOR LAUTENBAUGH: Yes. [LB35]

SENATOR WHITE: All right. Understand that's a major incentive for folks to file lawsuits. I mean, all of a sudden, if I have a claim assigned to me as an attorney, I cannot only recover...hopefully recover the amount owed but now I've got an incentive to file a lawsuit because I'm going to nail somebody else for those costs. [LB35]

SENATOR LAUTENBAUGH: I don't believe...the thing to keep in mind is that that attorney's fee provision that exists in there was set, if memory serves, in the fifties at \$2,000. I may be wrong on the year but, adjusted for inflation, it should be, if memory serves, \$5,500 now. We're bumping it to \$4,000. And the modest level of attorneys' fees, and I have to do the math every time so as I stand here I can't even tell you what the attorney's fee is on a \$4,000 judgment as provided by statute if this passes, but I want to say it's in the range of \$250 to \$300, if that. I don't know if that creates an incentive to file suit. If it does, it already exists for amounts under \$2,000. [LB35]

SENATOR WHITE: Does costs include depositions, the costs of serving interrogatories, requests for admissions, accountings and assembly of information to prove your claim if the same is introduced through an expert witness, in your opinion? [LB35]

SENATOR LAUTENBAUGH: Well, I don't know where...if there's no trial and no judgment, I don't know where we would get the cost of an expert that... [LB35]

SENATOR WHITE: Well, maybe you prepared that opinion coming in. And if it's awarded of cost, is that one of the items now will be covered by this bill? [LB35]

SENATOR LAUTENBAUGH: Well, I want to be clear on this. You keep saying items that are now covered. This does not change the definition of costs. So whatever your understanding of costs is, that remains the same. This just clarifies whether or not... [LB35]

SENATOR PIRSCH: One minute. [LB35]

SENATOR LAUTENBAUGH: ...you can recover costs absent a judgment. [LB35]

SENATOR WHITE: And before we extend this and make...and one of the things is, is the language "costs must be awarded as a matter of course" new language? [LB35]

SENATOR LAUTENBAUGH: Costs must be awarded as a matter of course? [LB35]

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SENATOR WHITE: That's new language under your amendment, correct? I mean, it's underlined. I assume that's your language and it's new to the law. [LB35]

SENATOR LAUTENBAUGH: And honestly, I don't have it open in front of me so I have to double-check myself. [LB35]

SENATOR WHITE: Well, I guess what I would say to you is before I think anybody ought to vote to allow costs to be awarded as a matter of course, we ought to know what costs are and they ought to be defined. And you've practiced in this area, I've practiced in this area, and I can tell you right now I don't think it's defined and I think different judges have different ideas. Some courts award the costs of expert fees, so I hire an accountant on a \$400 note to assemble the records of payment. Now I've got a \$3,000 bill. Is that a cost that shall be awarded as matter of course on a \$400 debt and the attorneys' fees? [LB35]

SENATOR PIRSCH: Time, Senator. Senator Louden, you are recognized next, followed by Senator White, Karpisek, Ashford, and Lautenbaugh. [LB35]

SENATOR LOUDEN: Thank you, Mr. President. As I was listening to the dialogue between Senator Lautenbaugh and Senator White, I probably got some of my questions answered but they were lawyers so I don't know if I can understand what they said. Senator Lautenbaugh, would you yield to questions, if you would, please? [LB35]

SENATOR PIRSCH: Senator Lautenbaugh, would you yield to a question? [LB35]

SENATOR LAUTENBAUGH: Yes. [LB35]

SENATOR LOUDEN: Okay. And as I noticed, and you talked about it, that was one of the problems I have on your amendment there, line 12 on the first page. It goes on to say about agreement to the payment of costs of the action. Now any time I've ever been mixed up in any of those things, the loser usually had to pay the costs of the court costs. But I...when it come to some of your other work, your lawyer fee, it didn't matter whether you won or lost, you had to pay your own lawyer. In other words, I always thought you had to pay for your own mouthpiece, as they told me. And is that still in there or does that cost of the action cover that? [LB35]

SENATOR LAUTENBAUGH: Short answer, no, it does not cover that. What we're talking about is really two different things. Generally, the rule is, you are correct, you do not recover your attorney's fee. There's a separate provision for just small judgments that provides...currently in law it's \$2,000, this would raise it to \$4,000, that says you get some mathematically calculated attorney's fee based upon the amount of the judgment. That would be recoverable. But in general, attorneys' fees, no, this is not meant to

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change the recovery of attorneys' fees from the general rule. [LB35]

SENATOR LOUDEN: Now on the second page there, on line 11, where the new language is, and it says, if payment is made to the plaintiff on behalf of the defendant after the filing of the suit and before the judgment, why would anybody want to do that? I mean isn't that the reason you go to court, is to see whether or not you have to pay anybody? And so I'm wondering. And then it says, plaintiff shall be entitled to receive the costs of the suit whether by voluntary payment or judgment. I'm wondering what that language means because I'm wondering why it's even in there, if that...if anybody would ever do anything like that. [LB35]

SENATOR LAUTENBAUGH: Well, generally, yes, suits are settled all the time. I mean you file the thing and you negotiate it. But to answer your specific question, why that language is in there, it is designed to preserve the right of people to agree to settle this and agree who bears the cost. Current law, generally you have to take something all the way to judgment to get the recovery of costs. This would make it clear that the parties can agree to pay costs and that a collection agency can say, and since we had to file this suit you do need to pay costs. [LB35]

SENATOR LOUDEN: Well, in these situations like this, in these civil...this is a civil lawsuit, I presume, you can settle that out of court any time. You don't have to necessarily have a recipe to do it by, do you? I mean if you decide to settle out, I've seen a case where you, you know, the jury would be chosen actually and then it would be settled and the jury would all go eat dinner and go home. And I'm wondering why this language is in there, if that was really something that's a problem someplace or what is...what led you to put it in, I guess. [LB35]

SENATOR LAUTENBAUGH: Well, and to answer your question, I don't think the dinner or the jurors would be a court cost that would be taxable. But why we put the language in there is...and I want to make...I'm not sure I understand exactly which portion of the language you're asking about, but, no, it has been a matter of practice that you are entitled to recover costs and you can get a judgment for costs if you're the prevailing party. But if someone comes in and pays the amount owed without paying costs after suit is filed, this law clarifies it to say that you can also say, and you have to pay court costs because we had to file suit. [LB35]

SENATOR LOUDEN: Okay. Thank you, Senator Lautenbaugh. [LB35]

SENATOR PIRSCH: One minute. [LB35]

SENATOR LOUDEN: As I look this over, why, I see it's kind of a simple amendment but then, on the other hand, I guess it's a little bit hard to understand just what we're trying to do with it, I guess. And when you talk about the costs of the actions, I'm wondering if

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that should be...should be probably defined a little bit better someplace on what the costs of the action. If it's just paying the court costs and having the sheriff serve notices and serve warrants or something like that, that's one thing, but when you say payment of costs then I'm wondering, if that takes it away, then you would pay all kinds, as Senator White said, accounting fees and everything else. It's something I've never dreamt, never thought about. Thank you, Mr. President. [LB35]

SENATOR PIRSCH: Thank you, Senator Louden. Senator White, you are next recognized, followed by Senators Karpisek and Ashford. [LB35]

SENATOR WHITE: Thank you, Mr. President. I'd like to read the language to the body, and this becomes very important, folks, because what's going to happen is the following scenario that we're going to see more and more as the recession deepens, unfortunately. Somebody falls behind, they lose their job, they start charging necessities of life on their credit card, okay, because they got to eat or they need gas to get to a part-time job, whatever it is. They fall behind on their credit card. The credit card company now doesn't have an incentive to call them up and try to work with them. What they have an incentive is they say, look, if we file suit and you make any payment, doesn't say payment in full, it just says if the defendant makes a payment to the plaintiff, then automatically in the matter of course there will be an award of, quote, costs. Well, here's what happens. You got some guy who's a working stiff. He fell behind. He got in trouble. He wants to make it right, maybe makes half of his payment or a third of his payment to the credit card after they file suit. And he said, hey, will you dismiss this; I mean, this is all I can do, I continue to keep working with you? The credit card company smiles and says, sure. So he pays. He owed \$500 bucks; he pays \$300 bucks, right? Guess what. Without even telling him, without even him knowing because he's not sophisticated and he can't afford an attorney, they now say to the judge, we want attorneys' fees and costs automatically on top of it, even though we took his money. Doesn't say they have to disclose it. Doesn't say they have to agree. As a matter of fact, they automatically get it unless the bill collector affirmatively waives it in writing. Now that's the sophisticated person. This is a trap for working people. They think they're in good faith negotiating, trying to pay what they can pay, and now all of a sudden they're paying for attorneys' fees and costs and other money they didn't even have a clue could land on their heads. And those, quote, costs or those attorneys' fees could exceed what they owe. This is fundamentally unfair. Well, Senator Lautenbaugh says it's not true. Please stand up. If Senator will yield to a question, explain to me why I'm not being fair, sir, and we'll talk. [LB35]

SENATOR PIRSCH: Senator Lautenbaugh, would you yield? [LB35]

SENATOR LAUTENBAUGH: Yes, I will. The attorneys' fees are a percentage of the judgment obtained. So it is false to say the attorneys' fees could ever exceed the amount of the judgment because it's a mathematical impossibility. [LB35]

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SENATOR WHITE: But the costs can. For example, I've had cases, and you can win \$1 and have \$100,000 in costs. [LB35]

SENATOR LAUTENBAUGH: Yes, but you said attorneys' fees could exceed it. I'm saying that's incorrect. [LB35]

SENATOR WHITE: I said the costs and attorneys' fees could because you say attorneys' fees are part of costs. [LB35]

SENATOR LAUTENBAUGH: Costs could, certainly. [LB35]

SENATOR WHITE: Okay. Well, now all of a sudden, somebody could end up settling a case and finding out they paid three-quarters of it but they owe more money than they began when they began, and they never knew it. It doesn't say you have to tell them how much the costs are. It doesn't say they have to understand that they're still liable for these costs. It doesn't say you have to justify them to the court. It just says the court shall award them automatically as a matter of course. It's a trap, isn't it? [LB35]

SENATOR LAUTENBAUGH: If that's a question, the answer is, no, because when you file suit against someone, you serve them with papers. Court costs are of record. It even says on the papers, I believe, normally what the service cost is. All of these things are knowable. And to say that it is a trap, that these groups are making money by going out and filing the suits, that's a loser. You don't make money when you have to actually sue. You make money with voluntary payments. [LB35]

SENATOR WHITE: No offense, but there are a lot of lawyers make a very good living being debt collectors and taking a percentage of what they collect, and the higher they can drive that, the more they collect, the more money they make. I mean there are a lot of firms, we won't even name names,... [LB35]

SENATOR LAUTENBAUGH: That's true. [LB35]

SENATOR WHITE: ...that make a lot of money this way. And all you're doing here, the part I object to, first of all, is we're dealing with people who are on the raw edge usually anyway. We're talking about debt collection of people who are having trouble paying their bills. But two, under your bill... [LB35]

SENATOR PIRSCH: One minute. [LB35]

SENATOR WHITE: ...is there any provision that says that the plaintiff, before they, quote, accept payment, must tell the debtor how much the costs are and how much they may end up owing, or that even there are any? [LB35]

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SENATOR LAUTENBAUGH: Well, the costs...no, there's no provision that says before you accept a voluntary payment you have to disclose what the court costs are, but... [LB35]

SENATOR WHITE: Well, but your bill then automatically awards them against this guy just for making a payment. [LB35]

SENATOR LAUTENBAUGH: No, not for making a payment, for causing suit to be filed by not making a payment. [LB35]

SENATOR WHITE: Well, it says if payment is made, read your language, Senator, if payment is made to the plaintiff by or on behalf of the defendant after filing suit but before judgment is taken, except as otherwise agreed in writing by the plaintiff, then costs shall be awarded. I mean... [LB35]

SENATOR LAUTENBAUGH: Yes, that's the kicker, after filing suit if payment is made. [LB35]

SENATOR WHITE: But so, okay, somebody files... [LB35]

SENATOR PIRSCH: Time. Senator Ashford, you are next recognized, followed by Senators Lautenbaugh and Senator White. [LB35]

SENATOR ASHFORD: Thank you, Mr. President. And I think Senator White has raised an issue that I think is worthy of attention and the issue is notice to the debtor. I don't know how...and there are other issues, but I think the issue of notice to the debtor is a realistic one. I don't...this bill came through Judiciary and we assessed the pros and cons. There was a...on the flip side of this, there is a gap where someone makes a voluntary payment, knows what they're doing, somehow is absolved from paying the costs or doesn't pay the costs, and then the plaintiff doesn't get the costs recovered. I think there's that case. But I think there's also the case that Senator White is talking about which has to do with the...just being unsophisticated, and a lot of debtors are, being unsophisticated, not understanding the process, making a payment thinking that they've settled the matter and then get another bill for \$50 or \$75--legitimate point. What I would to commit to Senator White is that the committee will reconvene on this issue and between now and Select File and we'll figure out a way to address your concerns, and hopefully we can, Senator White. But it is a point. He has made a valid point. And I...but I understand Senator Lautenbaugh, that's not his intent. But I think there is a gap here and I think the committee should get together, think about it, and we have time to do that. And I would ask Senator White if that's...well, I'll ask him on the record, I guess. [LB35]

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SENATOR PIRSCH: Senator White, would you yield to a question? [LB35]

SENATOR WHITE: I will. [LB35]

SENATOR ASHFORD: And I don't need to put you (laugh) on the record, but if that's all right with you, Senator White, you have my commitment that we will address your issue. [LB35]

SENATOR WHITE: I'm delighted and will accept your commitment, but, Senator Ashford, I'd point out, I disagree. The plaintiff in this situation, in terms that there's a gap, and I have been in that situation, if I have a \$500 bill that I owe...that I am suing on and I'm suing you on it and I say to you, I'm not going to...you say take \$300, will you? All I have to say is no. [LB35]

SENATOR ASHFORD: Right. [LB35]

SENATOR WHITE: Okay. All I say is, no, I want the \$500 and I want these costs that I'm out of pocket that I will recover before I dismiss my claim. The plaintiffs in this case aren't losing anything. They don't have a whole but what they want here is this is going to really nail a lot of honest, working people who want to try to settle their debts as best they can and they're going to walk right into a trap. [LB35]

SENATOR ASHFORD: And I get that and maybe I didn't enunciate the gap well enough, but I think in reality what you have is you have debtors with lots of debts, and they have lots of these debts floating around and they are not sophisticated. They don't address them in a sophisticated, orderly, systematic way. I think we need to address it. We will address it in committee before the bill comes up on Select File and we'll work with Senator White on that issue. [LB35]

SENATOR PIRSCH: Thank you, Senator. Senator White, you are next recognized to speak, followed by Senator Lautenbaugh. [LB35]

SENATOR WHITE: I appreciate what Senator Ashford said and I'll be happy to work with the committee. But I'd like the members of the Legislature to understand, first of all, this is a very lucrative area of practice for a lot of lawyers. Number one, there's money to be made collecting debts. Number two, you don't want to incent people not to try to accept reasonable compromise offers. If we're in tough economic times and people are losing their jobs, the last thing you want to do is punish them out of an ambush when they try to pay what they can. Right now one of the biggest incentives for creditors to work with people is, look, I can't pay you this, there's no way in the world; this is what I can pay you and I'm sorry you had to file suit. You know what the creditor can say? That's not good enough, okay. I want a judgment debt against you and I want you to pay my out-of-pocket costs, attorneys' fees or expenses. And the creditor has every legal

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right to insist on that and they often do. That's not a problem. Senator Lautenbaugh can, if he's representing a creditor, he can say, for example, no, that won't do it; my client is not made whole and we're not going to go there; pay us everything and then we're done. But what is not acceptable when you're dealing with people who are not sophisticated is to say, yeah, we'll take that \$250 on that \$500 debt you owe. And he pays it, right? And they think they've settled the case, right? All of sudden, not only do you still owe the \$250 because they haven't given you a full release, you owe costs. Well, those, quote, costs we can't even agree. Senator Lautenbaugh, I've only done hundreds, hundreds of lawsuits in my career. I grew up in a legal family. I cannot define for you what costs are in this state right now and I don't think any lawyer can because, I'll tell you what, it changes from court to court. Some judges will tell you...if I hire an expert, in this case an accountant, to put together the records of what was owed and reconcile it, that's a cost. Some judges will say I won't get that unless he testifies in a deposition. Other judges will say, you won't get it unless he's in court. Other judges will say, no, that's a reasonable cost that you assembled, part of your attorney's cost to put it together. We don't even know what they are. We haven't even defined it. So now I got some poor working schmuck in there. He doesn't even know this exists. He gives me the \$250. Unless he gets a very sophisticated entity, a debt collection practice group or a bank or something else to, in writing, in writing waive their claim for costs, they automatically get all of them. And we're telling the court, don't even look at them too hard; we want you to award them, quote, of course, automatically. This is going to be one of the most abused laws to put the foot on the neck of working people who are struggling to pay their bills and it's exactly the wrong thing. What we want to do is tell creditors, we're in tough times, you're not going to get everything you want, work with these people, rehabilitate them when you can, settle your claims where you can, don't incent people to go to court and drive the hardest bargain. It's the wrong message. It's unfair. So I welcome Senator Ashford's agreement to look long and hard at this, but I warn all members here, as a member of the law, as a lawyer, do not incent people by awarding automatically costs and attorneys' fees. It's bad policy. Thank you, Mr. President. [LB35]

SENATOR PIRSCH: Thank you, Senator White. Senator Lautenbaugh, you are recognized, and there are no other lights on. Well, would you like to treat this as your closing on your amendment? [LB35]

SENATOR LAUTENBAUGH: Yes, I would, Mr. President. I would urge the body to support this and I'm happy, of course, to look at it, as always, between General and Select. But I have to be honest, a lot of the concerns that we just heard about this border on sheer fantasy. Yes, there are law firms that make money collecting debts, but they don't make the money by going out and incurring the costs of filing suit. They make the money by settling short of that. And to say that this provision, which just clarifies that they'll be able to collect costs, actually would incentivize them to go incur the costs so they could have the thrill of collecting an extra \$100 out of someone who owes \$500

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when they may very well get none of it, that's a business model that I would submit to you no one is following. This is not a threat. This is not something targeted at the working man. The existing law allows the debt collection attorney to go to court and seek costs. We're incentivizing them to take the thing all the way to judgment, which is not in the interest of the working man, just so it is clear they can recoup their costs. This is designed to make it clear that you can recoup your costs short of judgment so you don't have to put the debtor through getting a judgment against him or her. This is not meant to target anyone. This is not meant to be a threat to the working man. And I'd remind you that coupled with this, as this amendment is meant to have something for everyone, on the one hand, it makes it clear you can recoup your costs short of a judgment, on the other hand it actually provides that the sheriffs can charge a little more for the service they have to provide anyway. It is an important amendment. I'm happy to try to work on it to the extent there are legitimate issues with it, but I would urge you to advance it on so that we can continue to work on this bill which has very many important working parts and I would urge you to support them. Thank you. [LB35]

SENATOR PIRSCH: Thank you, Senator. You have heard the closing on the amendment. The question is, shall the amendment to the committee amendment to LB35 be adopted? All those in favor vote aye; all those opposed vote nay. Has everyone voted who care to? Senator Lautenbaugh, for what purpose do you rise? [LB35]

SENATOR LAUTENBAUGH: I'd request a call of the house. [LB35]

SENATOR PIRSCH: There has been a request for the call of the house. All in favor of such a request of call of the house vote aye; all opposed vote nay. Record, Mr. Clerk. [LB35]

CLERK: 38 ayes, 0 nays to place the house under call, Mr. President. [LB35]

SENATOR PIRSCH: The house is placed under call. All members please return to your seats. All unauthorized persons should leave the floor. The house is under call. Senators Cornett, Nordquist, Harms, and Pahls, the house is under call. Please report to your seats. Senator Cornett, if you would check in. Thank you. Senator Lautenbaugh, how would you like to proceed? There has been a request for a roll call vote. Mr. Clerk, please call the roll. [LB35]

CLERK: (Roll call vote taken, Legislative Journal page 1019.) 26 ayes, 13 nays on the amendment to the committee amendment. [LB35]

SENATOR PIRSCH: The amendment is adopted. Raise the call, please. Mr. Clerk. [LB35]

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CLERK: I have nothing further pending to the committee amendments, Mr. President. [LB35]

SENATOR PIRSCH: Is there any further discussion on the committee amendments? Seeing none, Senator Ashford, you are recognized to close on LB35... [LB35]

SENATOR ASHFORD: Uh... [LB35]

SENATOR PIRSCH: I'm sorry, on the amendment... [LB35]

SENATOR ASHFORD: Okay. [LB35]

SENATOR PIRSCH: ...AM836 to LB35. [LB35]

SENATOR ASHFORD: Thank you, Mr. President. We're beyond the bewitching hour here. I would just urge the adoption of AM836. [LB35]

SENATOR PIRSCH: Very good. You have heard the closing. We will now proceed to a vote on the adoption of the Judiciary Committee amendments. All those in favor vote yea; all opposed vote nay. Please record, Mr. Clerk. [LB35]

CLERK: 29 ayes, 1 nay on adoption of committee amendments, Mr. President. [LB35]

SENATOR PIRSCH: The amendments do pass. [LB35]

CLERK: I have nothing further on the bill, Mr. President. [LB35]

SENATOR PIRSCH: Is there any discussion on LB35? Seeing none, Senator Ashford, you are recognized to close on LB35. [LB35]

SENATOR ASHFORD: Thank you, Mr. President. I've heard Senator Stuthman's comments and I think he's made reasoned arguments. I've certainly heard Senator White's comments. They're reasoned and thoughtful. This obviously is a big bill. They often are. I believe we're getting at some significant issues in the judiciary system, judicial system that are meaningful. The issue of Lancaster County is critical to the judicial system throughout the state. I would certainly appreciate your vote to advance this bill to E&R with the caveat that Senator Stuthman's concerns need to be addressed as do Senator White's. Thank you. [LB35]

SENATOR PIRSCH: Thank you, Senator. You have heard the closing on LB35. The question is, shall LB35 pass? Vote yea...oh, all those in favor vote aye; all those opposed vote nay. Please record, Mr. Clerk. Are there any other senators who would like to vote? Okay, please record, Mr. Clerk. [LB35]

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CLERK: 40 ayes, 0 nays, Mr. President, on the advancement of LB35. [LB35]

SENATOR PIRSCH: LB35 does advance. Items for the record, Mr. Clerk? [LB35]

CLERK: Mr. President, an amendment to LB630 to be printed, and an amendment to LB160. An announcement: the Executive Board will hold an Executive Session tomorrow morning at 8:30; Executive Board at 8:30 in Room 2102. (Legislative Journal page 1020.) [LB630 LB160]

And a priority motion: Senator Giese would move to adjourn the body until April 15 at 9:00 a.m. []

SENATOR PIRSCH: The question before the floor is, shall we adjourn? All those in favor say aye. Opposed? We are adjourned. []