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Floor Debate
January 21, 2010

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PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the tenth day of the One Hundred First Legislature, Second Session. Our chaplain for today is Senator Gloor. Would you all please rise.

SENATOR GLOOR: (Prayer offered.)

PRESIDENT SHEEHY: Thank you, Senator Gloor. I call to order the tenth day of the One Hundred First Legislature, Second Session. Senators, please record your presence. Please record, Mr. Clerk.

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

PRESIDENT SHEEHY: Are there corrections for the Journal?

CLERK: I have no corrections, Mr. President.

PRESIDENT SHEEHY: Are there messages, reports, or announcements?

CLERK: I have a Reference report referring LB963-987 signed by Senator Wightman as Chair of Reference. Enrollment and Review reports LB373 to Select File. Revenue Committee chaired by Senator Cornett reports LB698 to General File. Series of hearing notices: Education Committee, Natural Resources Committee, Agriculture Committee, Judiciary Committee, all signed by their respective Chairs. I have a motion to withdraw LB944; that will be laid over. It's offered by Senator Harms. I have a gubernatorial appointment letter to the Nebraska Arts Council; that will be referred to Reference for referral to standing committee for confirmation hearing. That's all that I have, Mr. President. (Legislative Journal pages 283-286.) [LB373 LB698 LB944]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Are there new bills for introduction?

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CLERK: There are. (Read LB1034-1052 by title for the first time.) That's all that I have at this time, Mr. President. (Legislative Journal pages 286-289.) [LB1034 LB1035 LB1036 LB1037 LB1038 LB1039 LB1040 LB1041 LB1042 LB1043 LB1044 LB1045 LB1046 LB1047 LB1048 LB1049 LB1050 LB1051 LB1052]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. (Doctor of the day and visitors introduced.) Senator Council, you are recognized for a motion.

SENATOR COUNCIL: Thank you, Mr. President. I move that a committee of eight be appointed to escort the Chief Justice of the Supreme Court to the Legislative Chamber for the purpose of delivering the State of the Judiciary Address.

PRESIDENT SHEEHY: Thank you, Senator Council. You have all heard the motion. All those in favor say aye. Opposed, nay. The motion is adopted. I would appoint the following committee to escort the Chief Justice to the Legislative Chamber: Senator Nelson, Senator Conrad, Senator Christensen, Senator Ashford, and Senator McGill. Would you please retire to the rear of the Chamber to escort the Chief Justice. The Chair recognizes the Sergeant at Arms. (Gavel)

SERGEANT AT ARMS: Mr. President, your committee now escorting Nebraska Supreme Court Chief Justice, Mike Heavican, and members of the Supreme Court.

PRESIDENT SHEEHY: Ladies and gentlemen, members of the Nebraska Legislature, the Nebraska Supreme Court Chief Justice Mike Heavican. (Applause)

MIKE HEAVICAN: Thank you, thank you. Mr. President, Mr. Speaker, members of the Legislature, fellow Justices of the Supreme Court, and friends of the Court, I would like to thank the members of this body, and specifically the Speaker, for inviting me to speak to you again this year. It is always a great honor for me to do so. Let me first introduce my fellow Justices of the Court. To my immediate right is Justice John Gerrard of Norfolk, and to his right is Justice Michael McCormack of Omaha. To my immediate left is Justice Kenneth Stephan of Lincoln, and to his left is Justice Lindsey Miller-Lerman also of Omaha. Justice John Wright of Scottsbluff and Justice William Connolly of Hastings were not able to be with us today. As the third branch of government, the judiciary is mindful of its role in providing citizens and litigants access to a swift and fair system of justice. As I have in past years, I will first speak to you about swift and fair justice for children in our juvenile courts. Consistent with the Nebraska Supreme Court's Strategic Agenda, the court's Office of Probation Administration has initiated a series of new and progressive programs. These programs are designed to prevent juveniles from becoming state wards and to address alternatives to detention for nonviolent juvenile offenders in the court system. Beginning in January 2009, the Office of Probation Administration has cooperated with the Department of Health and Human Services to provide community-based services for juveniles and families in the Omaha area in a

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pilot project entitled "The Nebraska Juvenile Service Delivery Project." Again, a goal of the project is for children to receive rehabilitative services without being made wards of the state. Prior to this project in order to access needed services, it has been a common practice for children to be made state wards supervised by the Department of Health and Human Services while at the same time being supervised by the court's probation officers. This was and is a costly, confusing, and redundant practice. The Juvenile Service Delivery Project is already showing promising results. Nearly 80 percent of all juveniles in the project are receiving needed services in their own home while on probation. There has been a 59 percent reduction in the number of these children being simultaneously supervised by both the court's probation officers and the Department of Health and Human Services. Access to all these services is greatly expedited through the new program, and I want to thank the Department of Health and Human Services for making funds available to probation so that the project can succeed. This project has the potential to be implemented statewide. The court's Office of Probation Administration is also working with members of the Legislature's Judiciary Committee, as well as officials from Douglas County, and other interested parties to reduce the number of juveniles housed in the Douglas County Juvenile Detention Center. The Office of Probation Administration is refining the screening instruments used in determining detention for probation violators and is developing alternatives to detention for those violators. The court's Minority Justice Committee and the Nebraska State Bar Association have given special attention to juvenile detention issues in Douglas County and are working closely with probation staff and this body's Judiciary Committee on this project. Our juvenile courts also deal with abused and neglected children. I have spoken to you in the past about our Through the Eyes of the Child Initiative. This initiative continues to be a major part of our efforts to improve court processing in abuse and neglect cases. The following improvements have been made: There has been a significant drop in Nebraska's foster care population, from 6,222 children in foster care in 2006 to 5,221 children in foster care in 2009. The role of our state's juvenile courts in facilitating that decrease has been to continue to emphasize front-loading in the juvenile court process. Prehearing conferences have been initiated throughout the state so that when children are placed in foster care, services are available for both the children and their parents and services are provided as quickly as possible. There has been a significant increase in the timeliness of adoptions. Only 18 percent of adoptions in abuse and neglect cases happened within 24 months in 2006; the number increased to 36 percent of adoptions within 24 months in 2009. Judges who host national Adoption Day celebrations in Omaha, Lincoln, Grand Island, and Hastings were joined this year by judges in Kearney, O'Neill, and Gering. Scotts Bluff County reports that in 2009 they had a record number of adoptions from foster care due, in part, to the Through the Eyes of the Child Initiative. Statewide, the number of adoptions increased from 397 in 2006 to 537 in 2009. There has also been a small but positive improvement in timeliness of permanency in child placement between 2006 and 2009. In 2006, 39 percent of cases achieved permanency within 12 months. Last year in 2009, 41 percent of cases achieved permanency within 12 months. The Supreme Court is also currently in the

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process of adopting new, tighter guidelines for timeliness of hearings, including permanency hearings in abuse and neglect cases. In September of 2009, all juvenile court judges and county court judges having juvenile court jurisdiction attended a training and planning session in Grand Island. This session was called the Children's Summit. Some of you attended all or part of that summit, and I want to thank you for doing so. Issues impacting children in the courts, including parenting time, reasonable efforts at family reunification, children's presence at court hearings, timely permanency hearings, and using mediation in the juvenile court process were all discussed at the summit. At the conclusion of the summit, three future priorities for the Through the Eyes of the Child Initiative were announced, including further reducing the time to family reunification; improving treatment opportunities for parents who abuse drugs and alcohol; and improving the use of parenting time in the family reunification process. These priorities will be the focus of action teams working throughout the state. Getting accurate data reports to those action teams is an integral part of our improving the performance of all participants in the juvenile court system. We have made great progress in the last year in providing data to our action teams. These data reports were distributed at the Children's Summit and are now publicly available on the Through the Eyes of the Child Web site, that is, www.throughtheeye.org. Although the data indicates that we still have room for improvement, the collection and analysis of the reports is a significant step in improving the work that we do on behalf of Nebraska's most vulnerable children. The Grand Island Summit was also part of an ambitious effort to provide excellent training around the state for guardians ad litem and other parties in the juvenile court system. Regional training is continuing in Lexington, Valentine, Hastings, and South Sioux City, as well as Lincoln, Papillion, and Omaha this spring. Attorneys around the state will have access to this excellent and inexpensive training. Coupled with Mandatory Continuing Legal Education requirements currently being implemented by the court, that is this year, these educational opportunities are part of an ongoing effort to increase the quality of legal representation for Nebraska's foster care children. Internally, the court's Office of Judicial Branch Education has increased opportunities for distance learning for judges, support personnel, and probation officers. We have instituted monthly on-line education sessions for all members of the court family about such things as the Through the Eyes of the Child Initiative, legislative updates, procedural changes in personnel matters. Delivery of on-line educational material is both timely and cost-effective. It allows us to improve our service to the public while significantly reducing the cost of providing that service. Providing education through technology is just part of the court's emphasis on technology. As you are aware, our courts are in the process of implementing other money-saving and productivity-increasing technology projects. For example, electronic payment of fines, which we call e-payment, is now available statewide. In December 2009, more than 2,580 payments were made using the e-payment system. In all, 18 percent of citations were paid on-line in December, a record for e-payment use. For all of 2009, on-line payments totaled \$3,408,806.62. The estimated staff time saved was 1,757 hours. The vast majority of these collections were for traffic or speeding tickets, but individuals can

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now pay all fines and fees on-line. Another major court technology initiative has been the implementation of electronic, or e-filing, throughout the state. At this point, the bulk of the state's district and county courts are accepting e-filings. By the end of March the court system will have reached a major milestone with every available court accepting those e-filings. Work continues in converting the computer system in the district and juvenile courts in Douglas County to our statewide computer network so that e-filing will be available in those courts soon. Also, we continue to automate the work of our court clerks around the state. A recent example is our program to computerize what we call "default judgments." A default judgment is given to a plaintiff when the defendant does not respond in court. This happens frequently in our county courts. In the past our staff had to go through a lengthy process of pulling files and issuing paperwork. Now after review by a county court judge, the default is entered into the computer and the system automatically does the rest of the work. The 38 county courts using the new default judgment system processed over 4,000 judgments and saved an estimated 1,000 hours in staff time in the past six months. Another example of how courts are using technology creatively is happening in the 10th Judicial District in south-central Nebraska. The Nuckolls County Court, for example, is using technological advances to assist other courts which have more filings and greater workloads. The Nuckolls County Clerk Magistrate typically processes 50 filings a day for the Lancaster County Court. The 10th Judicial District also utilizes a districtwide on-line calendar for scheduling. And the courts in the 10th Judicial District are also using Skype, a computer video camera that provides free video phone calls. Skype also allows for group interaction among judges, magistrates, attorneys, and interpreters, greatly cutting down on travel costs. In other courts across the state, interpreter services are being provided in various court processes also utilizing Skype. These innovations were pioneered in the Colfax County Court and are now being utilized in several other counties. We have also implemented a statewide system of on-call certified Spanish interpreters. This system uses telephones and Skype again, thereby increasing the quality of interpretation while, again, minimizing costs. I have emphasized the court's use of technology in this presentation so that you, as members of the Legislature and all citizens of Nebraska, understand that the court is mindful of the difficult economic times our state is facing. The court is also aware of the tough budget decisions that the Legislature has made and will need to make in the future. I want to acknowledge and thank the Legislature for recognizing the unique circumstances of the state's judiciary during its special session this past November. As I reported to the Appropriations Committee at that time, the Supreme Court had already taken action to reduce expenditures prior to the special session. Consistent with the executive branch initiatives, the court had restricted hiring, travel, and large purchases. We had previously reduced mileage reimbursement to a level below the amount which is given other state employees, and salary increases for many of our court employees were less than that given to most employees in the executive branch. We have since indefinitely postponed the hiring of necessary administrative positions. Because our budget is 95 percent salaries and benefits, budget reductions are particularly difficult for the judiciary. Nevertheless, this court is continuing efforts to

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make cuts while at the same time maintaining necessary court services. Nebraska has requested cost-free assistance from the National Center for State Courts. We are one of five states selected to participate in an intensive planning process to reshape courts for the twenty-first century. The Supreme Court and the judicial branch will continue to explore options which will allow Nebraska to save money yet better serve the citizens of the state. We will work with you in making any future budget sacrifices. Again, thank you so much for this opportunity to speak to you today. (Applause)

PRESIDENT SHEEHY: Thank you, Chief Justice Heavican. (Applause) Would the committee escort the Chief Justice and members of the Nebraska Supreme Court from the Chamber. Mr. Clerk, do you have items for the record and new bills for introduction?

CLERK: I do, Mr. President. First of all, hearing notices from the Health and Human Services Committee and from Appropriations signed by their respective Chairs. In addition, Mr. President, new bills. (Read LB1053-1072 by title for the first time.) In addition, Mr. President, Enrollment and Review reports they have examined and engrossed LB682, LB683, and LB684. Those are reported correctly engrossed. And that's all that I have at this time. (Legislative Journal pages 294-298.) [LB1053 LB1054 LB1055 LB1056 LB1057 LB1058 LB1059 LB1060 LB1061 LB1062 LB1063 LB1064 LB1065 LB1066 LB1067 LB1068 LB1069 LB1070 LB1071 LB1072 LB682 LB683 LB684]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. (Visitors introduced.) Mr. Clerk, we will continue to the first item under General File, LB306. [LB306]

CLERK: Mr. President, LB306 discussed yesterday, introduced originally by Senator Council. (Read title.) The bill was discussed yesterday, Mr. President. At this time I have a motion. Senator Council would move to indefinitely postpone LB306. Senator Council it's your option to lay the bill over as primary introducer. [LB306]

SENATOR COUNCIL: Lay the bill over. [LB306]

PRESIDENT SHEEHY: LB306 is laid over. Mr. Clerk, we will proceed to LB552. [LB306 LB552]

CLERK: Mr. President, LB552 is a bill introduced originally by Senator White. (Read title.) The bill was introduced on January 21 of last year. At that time it was referred to the Business and Labor Committee. The bill was advanced to General File, Mr. President. [LB552]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator White, you're recognized to open on LB552. [LB552]

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SENATOR WHITE: Thank you, Mr. President. LB552 is a very important bill, particularly in the economic circumstances facing Nebraska and most particularly facing the construction industry. What LB552 does is codify into law a reasonable time for payment from the owner of a project to the general contractor to the subcontractors. It allows every party who enters into a contract to know in advance what is going to be required under the law with regard to the terms of payment. It provides for reasonable disputes over quality or concerns about whether the job will be completed. What it does prohibit is a particularly predatory practice that some general contractors, particularly general contractors without ties to the state, have employed in dealing with our local crafts people. What they will do is enter into contracts and then, even though work is completed, they will not make payment to the subcontractors, essentially using our citizens and their businesses as their banks. And they will keep this money back and they will sometimes push subcontractors to the brink of insolvency and then negotiate even lower rates. It is a very vicious practice and one that the...I am pleased to say, that the Association of General Contractors agrees must be stopped. We have broad spread agreement across this bill between subcontractors, labor, and owners, and also general contractors. It protects all parties in the building process. And it will free up capital that is necessary to move through the system so we can start the recovery in the construction industry which has been particularly hard hit by the economic downturn. Now there will be two amendments and these amendments are quite important. These amendments will eliminate any finance...any cost to the state. We will have two amendments and both the university and the state agree that with those amendments we are aware of no objection by anybody, and there will be no fiscal note whatsoever. I ask you to join with our construction industry in putting into law a set of predictable rules so that that industry can recover and thrive. I will be happy to address the specific amendments as they come up. And I, of course, as always, would be pleased to try to answer any question any member may have. Thank you, Mr. President. [LB552]

PRESIDENT SHEEHY: Thank you, Senator White. You have heard the opening to LB552. Mr. Clerk, we will proceed to the first amendment. [LB552]

CLERK: Mr. President, Senator White would move to amend with AM1563. (Legislative Journal page 250.) [LB552]

PRESIDENT SHEEHY: Senator White, you're recognized to open on AM1563 to LB552. [LB552]

SENATOR WHITE: Thank you, Mr. President. This amendment simply moves the time for payment from owner to general contractor to forty-five days. At times there's a question whether our college or universities are part of the state or not. This will harmonize the law and with this I have been assured by the university that there will be no fiscal note. So I urge the adoption of AM1563. It removes the fiscal note to the university and other state agencies. Thank you, Mr. President. [LB552]

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PRESIDENT SHEEHY: Thank you, Senator White. You've heard the opening of AM1563. Members requesting to speak: Senator Stuthman, you're recognized. [LB552]

SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. I would like to ask Senator White a couple questions. [LB552]

PRESIDENT SHEEHY: Senator White, would you yield to Senator Stuthman? [LB552]

SENATOR WHITE: Certainly. [LB552]

SENATOR STUTHMAN: Senator White, changing this from the 30-day to the 45-day, is it just for the university, just for the colleges, or projects in that environment? [LB552]

SENATOR WHITE: No, Senator Stuthman, it changes it for everyone. So the 45-days would apply across the board. At times it's questionable whether the university is considered a private party or not and so it's to make sure that the university has no fiscal note. But it does apply to everyone. [LB552]

SENATOR STUTHMAN: Okay. But going to this 45-days, is that the first one that is invoiced or does that 45-days follow through the whole system down to the last sub, sub, subcontractor? [LB552]

SENATOR WHITE: No, it's just the first one. And then after that there are actually shorter periods of time, you know, for the various provisions as you go through the bill. [LB552]

SENATOR STUTHMAN: So they're all consistent after that but the first payment notice, the invoice notice to anyone that has contracted, that is a... [LB552]

SENATOR WHITE: It goes from 30 to 45 days, Senator. And then the other provisions aren't necessarily 30 days. You know, they're 10 days and they've been worked out between the contractor, subcontractors, and labor in negotiations. But this just moves the initial payment for the owner from 30 days to 45. [LB552]

SENATOR STUTHMAN: What would...explain to me again the reason why you went to, wanted to go to the 45 days instead of the 30 days. [LB552]

SENATOR WHITE: To remove the fiscal note. The university had a concern that this would cause a fiscal note, Senator Stuthman. And given the environment, the easiest method to dealing with it was to accede to their request to move it to 45 days, so we did. [LB552]

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SENATOR STUTHMAN: But in my opinion, the one that is billed the invoice, the one that is having the project constructed, he gets the use of that money for another 15 days. Is that correct? [LB552]

SENATOR WHITE: Yes. And that is much better than in existence, Senator. The one who right now, they will keep that money sometimes for a year. [LB552]

SENATOR STUTHMAN: Yes, but I would also like to say I truly support the idea, but the question that I have is the fact of why is the difference, and you said it's because of the fiscal note, and I don't know why there would be a fiscal note going from the 30 days to the 45 days? [LB552]

SENATOR WHITE: Because, Senator Stuthman, my understanding is because the university sometimes uses a 45-day pay period and there's a cost associated with moving to a 30. Now we'd originally drafted it with a 30, Senator, but given everyone's deep concern about fiscal notes, we just made the accommodation so we can get the bill because it's very necessary for industry as a whole. And if that can remove a fiscal note and the university's concern in that potential opposition as a pragmatic matter, we just did it. [LB552]

SENATOR STUTHMAN: Senator White, though, what is happening then with this situation because the first individual that is being invoiced to make payment and that payment trickles down to the last subcontractor of the project, that is actually delaying the payment for the last one on the list of the totem pole another 15 days. Would that be correct? [LB552]

SENATOR WHITE: Correct. [LB552]

SENATOR STUTHMAN: So the bottom contractor would be the one that's really going to see the difference between the 30 and the 45 days and he possibly has to pay his bills within 30 days. [LB552]

SENATOR WHITE: Actually, Senator, the bottom...every contractor would see it. The general would see it and then everything is staggered off of that. So every subcontractor down the line sees 15 extra days, if the owner chooses, you know, to pay it at 15. Now obviously, they can contract for 30 still. I mean, we're not saying it's illegal to contract... [LB552]

PRESIDENT SHEEHY: One minute. [LB552]

SENATOR WHITE: ...for a faster pay. We're saying you cannot contract or you cannot hold it longer than 45 days. Again, would I have preferred 30 days? Yes. But as a pragmatic matter to get it passed, Senator, because it's very necessary to get this

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industry back moving, I accepted 45 days. [LB552]

SENATOR STUTHMAN: Okay, Senator White, I would like to ask one more question. Senator White, would...you just stated that this 15 days, that applies to each one down. But in my opinion, it's really just a 15 extra... [LB552]

SENATOR WHITE: Well...let me explain, Senator. If the work is completed substantially on day 1, initial payment is on day 45, right? [LB552]

SENATOR STUTHMAN: That's right. [LB552]

SENATOR WHITE: That's when the general gets it. Now the general's time period is ten days, for example, but it runs from the date he gets payment. So it doesn't add additional time to each sub one, but if payment is made to the general, that's when his time clock starts running. We have not changed the times between general and sub. We've only from owner to general. [LB552]

SENATOR STUTHMAN: Okay. [LB552]

PRESIDENT SHEEHY: Time, Senator. [LB552]

SENATOR WHITE: So it does impact everybody down. [LB552]

SENATOR STUTHMAN: Thank you, Lieutenant Governor. [LB552]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Gay, you're recognized. [LB552]

SENATOR GAY: Thank you, Mr. President. Would Senator White yield to a question or two? [LB552]

PRESIDENT SHEEHY: Senator White, would you yield to Senator Gay? [LB552]

SENATOR WHITE: Certainly. [LB552]

SENATOR GAY: Thank you, Senator White. Senator White, I had a constituent and he had called on a complaint. This is just a homeowner who had some work done at home and paid his bill to the contractor. Somehow the subcontractor filed a lien on it so he then was involved in this. Does this remove his...would he be then protected or does this not deal with...how does this affect me if I'm going to get some work done in my house? And my contractor, I don't know whether he's paying his bills or not. [LB552]

PRESIDENT SHEEHY: (Gavel) [LB552]

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SENATOR WHITE: Yes, excellent question, Senator. There's two aspects. First of all, this doesn't apply to residences of four units or less under the terms of the bill, so a homeowner would not be applied here. Second, it does nothing to change the lien liability of the homeowner. If you look at our existing law on lien liability as I understand it, it's been a long time since I've looked at it, but if he is not in the business and he just makes a contract with the general contractor, the subs cannot file liens against his home. That's in our existing lien law now. And that does not get changed at all, not one iota. Now there are exceptions in that and, you know, your constituent will have to get an attorney to look at his particular situation. But Nebraska law protects a homeowner in that situation now and this does not change that in any way. This is for projects of four homes or more and it doesn't change lien liability when subcontractors are not paid for homeowners. [LB552]

SENATOR GAY: Okay. When you say four homes or more, so you're talking general builders? [LB552]

SENATOR WHITE: We're talking big projects. Basically, you're building more than a four unit apartment complex, this applies. You're building a commercial building, it applies. [LB552]

SENATOR GAY: Residential, it doesn't? [LB552]

SENATOR WHITE: Residential, it doesn't apply in those situations under the terms of the bill. And it does...and more specifically to what your constituent was concerned with, which is a subcontractor putting a lien on his home, that's handled in a different part of the statute that's already protected and this does nothing to erode any protection for residential homeowners. [LB552]

SENATOR GAY: Yeah, I wondered if it increased protections actually because that's what I was kind of looking... [LB552]

SENATOR WHITE: It doesn't really affect residential. [LB552]

SENATOR GAY: But that's in another part of the law then is what you're saying, all right. [LB552]

SENATOR WHITE: Yeah, that's in our other part of our laws. It doesn't, by design, does not affect residential homeowners. [LB552]

SENATOR GAY: Okay. Then another question, and I don't if it's 45 days, you've got to pay, prompt pay. Does this create more paperwork for the industry? AGC is supporting this, so the general contractors' industry is, but a normal person, does it require more

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paperwork if I'm just a middle...I've got 30 employees working for me or a small business, 10-15 employees? [LB552]

SENATOR WHITE: Well, are you buying, like you're building a building or something? [LB552]

SENATOR GAY: Well, things happen. I don't know what... [LB552]

SENATOR WHITE: Well, not, not...unless you're involved in building a building. [LB552]

SENATOR GAY: Let's say I'm building a small office complexes. [LB552]

SENATOR WHITE: I would tell you, that actually it will take less cost and less pay. It does require that you pay more promptly. You know, you can't delay payment, you've got to pay within 45 days. It sets out specific rules. The worst thing you can have in terms of expense for a business owner, is a contract that's not clear, because then guys like me get involved, and then you really get buried in paperwork. What this does is say in a very clean and simple manner that applies across the state, this is what your agreement is when you go to build a home. It will...or not a home, I'm sorry, build a building, a commercial building. It simplifies and clarifies what your obligations are. If you've got substantial compliance, if they've hit it, you don't have a dispute, an honest good faith dispute about quality, you must pay within 45 days now under the amendment of the completion of that substantial work. If you don't, you don't get to use the general contractor or the subcontractor's money as a bank. You have to start paying interest. So it just tells the owner, you must... [LB552]

PRESIDENT SHEEHY: One minute. [LB552]

SENATOR WHITE: ...unless you have a good faith dispute, pay promptly within 45 days of the completion of the work. [LB552]

SENATOR GAY: Okay. Then I guess in that, are we then...it sounds like you covered your bases talking to people, but are we then as a Legislature getting involved? When you say a dispute, what if I do have a legitimate beef and I go...and it's 60 days now or...that happens. There's a lot of bills going back and forth. [LB552]

SENATOR WHITE: The law provides for that. That if you've got a legitimate dispute, the interest doesn't apply, you make a dispute and it talks about how you go through that process. [LB552]

SENATOR GAY: I'm going to hit my light again then, because in this then I just wanted a little bit more assurances. You know, that's why we're here. But just say kind of where that is, I'm just a little concerned though if you're out there, I like the idea of prompt pay.

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But what scares me a little bit here is the Legislature deciding for people what the version of prompt payment is in a different...maybe, and I'm not familiar with this industry that much but maybe prompt pay... [LB552]

PRESIDENT SHEEHY: Time, Senator. [LB552]

SENATOR GAY: Thank you. [LB552]

PRESIDENT SHEEHY: Thank you, Senator Gay. Members requesting to speak on AM1563, we have Senator Wallman, followed by Senator Stuthman, Senator Hansen, Senator Louden, and Senator Gay. Senator Wallman, you're recognized. [LB552]

SENATOR WALLMAN: Thank you, Mr. President and members of the body. Would Senator White yield to a few questions? [LB552]

PRESIDENT SHEEHY: Senator White, would you yield to Senator Wallman? [LB552]

SENATOR WHITE: I will. [LB552]

SENATOR WALLMAN: I've dealt a little bit with this prompt pay issue. Does this also deal with insurance companies? [LB552]

SENATOR WHITE: No, it's really about construction contracts, Senator. [LB552]

SENATOR WALLMAN: Also with construction management? [LB552]

SENATOR WHITE: Well, to the extent that it tells a construction manager when they need to make payment and when subcontractors need to be paid in those situations, yes. It codifies and clarifies what the rules are when you're building a building and that will reduce disputes hugely. And those are the most expensive things you can have because when people don't know what they can get away with and what they can't. [LB552]

SENATOR WALLMAN: Yeah, I like this bill. I dealt with millions of dollars, you know, tornado. And an insurance company don't pay, then the subcontractors don't get paid, so are we putting this onerous burden then on the construction management or the general contractor? [LB552]

SENATOR WHITE: I'm sorry, Senator. [LB552]

SENATOR WALLMAN: Say I'm a general contractor, myself. [LB552]

SENATOR WHITE: Yes. [LB552]

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SENATOR WALLMAN: And it's a millions of dollars and the insurance company doesn't pay me. [LB552]

SENATOR WHITE: Right. [LB552]

SENATOR WALLMAN: And then, you know, I'm up against it. But generally, general contractor will just stop the project until it's finished. So a turnkey operation you're allowed to hold so much, what 10 percent, is it? [LB552]

SENATOR WHITE: "Retainage." And that's provided in here, Senator. It allows for "retainage." It allows that if you have a dispute that you think the work wasn't done properly, or you have a question as to whether or not the general can complete the work, you have all kinds of rights that you would normally have in most construction contracts. You'd have them and they're protected in here so you can raise those issues and protect them. But if you don't have a good faith reason not to make payment, then you have...then instead of you getting interest-free use of the subcontractor, the tiler, the carpenter's money, you have to start paying interest to them. [LB552]

SENATOR WALLMAN: Okay. That...I think, too, subcontractors are always at the bottom of the page, or at the end of the ladder, whatever you want to say, so the people that actually do the work sometimes are the last to get paid. So prompt payment seems to make sense to me. Thank you, Mr. President. [LB552]

PRESIDENT SHEEHY: Thank you, Senator Wallman. Senator Stuthman, you're recognized. [LB552]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I would like to ask Senator White another question. [LB552]

PRESIDENT SHEEHY: Senator White, would you yield to Senator Stuthman? [LB552]

SENATOR WHITE: Certainly. [LB552]

SENATOR STUTHMAN: Senator White, I have the real concern about the fact of having the 45 days and then the 30 days, you know, from each one on the lower level that they get prompt payment. And I have a real concern about allowing, you know, the 45 days on the initial one which trickles down to everything else. Would you be willing to work between General and Select to try to, if we can get some concrete answers of why, like the university really wants to go to the 45 days? In my opinion, it's just being an institution that's utilizing someone else's money for another 15 days. Would you be willing to work between now and Select File to give me a couple answers and the body a couple of answers as far as how we could work that out and be consistent? [LB552]

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SENATOR WHITE: Oh, absolutely, Senator. I mean, I would prefer 30 like you, but I made a commitment to the university that I would work with this bill so it didn't have a fiscal impact. So consistent with whatever...because you know, I gave them my word on that. But if there's a way we can do 30 days and not hurt the university or cause a fiscal impact, would I do that? Gladly. And be happy to work with you but I don't want to mislead you into giving a vote to advance it. I mean, I made a commitment that we would work in a way that it wouldn't have the fiscal impact. But if you would sit down with the university and myself, be delighted to work with you. [LB552]

SENATOR STUTHMAN: Well, thank you, Senator White. You know that's what I would agree upon, but the fact is, you know, if a bill is due on the 30th, 30 days or 45 days, I can't see where there would be fiscal impact because the issue is going to have to be paid. The funds are going to have to go on. The staffing should be the same. The only difference is, is maybe the amount of money the interest accrued those 15 extra days that the university keeps the money. But what that is doing, in my opinion, is delaying everyone else another 15 days because of the one situation. So I'd be glad to help and work and get some of these questions answered. Hopefully, we can keep it fairly simple because I think this bill is very much needed to make sure that the last contractor of a project gets paid promptly, you know, on a system that's established here. And I truly support that. But the thing is, and like Senator White said, you know, if we can go for the 30 days and have it all and have the university satisfied, that's where I'd like to get to. So with that, thank you, Mr. President. [LB552]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Hansen, you're recognized. [LB552]

SENATOR HANSEN: Thank you, Mr. President and members of the Legislature. I'd like to ask Senator White a couple questions. [LB552]

PRESIDENT SHEEHY: Senator White, would you yield to Senator Hansen? [LB552]

SENATOR WHITE: Certainly. [LB552]

SENATOR HANSEN: Thank you, Senator White. Before I do ask you a question, I would just like to remind you, and I'm sure you've heard it, people in my district keep saying, the state ought to be run like a business, the state ought to be run like a business. Well, we pay our bills in 30 days. If you don't, you don't pay your newspaper bill, they cancel it. They quit bringing it. If you go to the equipment store, you don't pay your bill, they start adding interest after 30 days. Everything is 30 days. I mean, sometimes we get a bill on the 1st of the month and they say it's due on the 10th. So I try to pay those bills on time. That's my only job at the ranch anymore, Senator White. (Laugh) I go home every weekend to pay bills. It's not a fun job but I have to do that. But

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everything, you know, my well driller, if I don't pay his bill, he's going to come out and, you know, he says...you know, they put pressure on you. Every 30 days you're supposed to pay your bills. I can't see why...I still don't understand why we would exempt the state and the university for those 30 days. If the university constructs anything, they're going to do it with a contract. Is that correct? [LB552]

SENATOR WHITE: Yes, that is my understanding. And it would be implied if it's not written, so yes. [LB552]

SENATOR HANSEN: So at the end of that contract period, they would be expected, I would think, to pay their bill on time. [LB552]

SENATOR WHITE: Right. [LB552]

SENATOR HANSEN: And why would we want to give them another 15 days? [LB552]

SENATOR WHITE: Well, Senator, you're absolutely correct. The only thing I would point out, Senator, is that we have a Prompt Pay Act that's been in place for some time for the state and that has always been 45 days. And this specifically does not change that. If you're asking me, do I agree the state ought to pay its bills on 30 days like I must and you must, yes. But, you know, this is kind of like you have to fix what you can. And if we strove to change that 45 days statewide, I would have had every agency in here screaming. And I'll be honest with you, I'm a pragmatist, Senator. Would I prefer it be 30 days across the board and expect them to behave like business? Absolutely. Is that politically achievable right now? I didn't want to take the risk because the industry, the construction industry is on extremely tough times. There are people unfairly using our workers, I mean, our carpenters, our cement masons. They're using their money as a bank and we need to stop it. [LB552]

SENATOR HANSEN: I agree with that. If we vote against this AM1563, will we kill the bill? [LB552]

SENATOR WHITE: Well, I would tell you I had made a deal with the university that I would put this in and I need to support it. I think it would be much better to put this amendment in, Senator. Join Senator Stuthman with me, talk to the university, see what we can do. I think you'd start having large fiscal notes if we took 30 days across all state agencies. The Department of Roads would be concerned, all kinds of agencies would be deeply concerned. I don't think that's advisable. I think it's throwing the baby out with the bath water, Senator, and I want a bill to help industry, you know. And if we're going to take that up, I can see taking that up, but I would rather it be on a separate bill after this is passed and then we can take that issue up or down or clean. But I don't want our private sector to suffer while we hammer out different fights with different state agencies. [LB552]

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SENATOR HANSEN: Thank you, Senator White. I realize that we can't run the state as a business and I realize that, but the part that when the state buys something, when the state has something constructed, especially with a contract, I see no reason why they shouldn't be in with the rest of the state. Private businesses, private landowners, private anyone... [LB552]

PRESIDENT SHEEHY: One minute. [LB552]

SENATOR HANSEN: ...that gets bills and they pay their bills. Thank you, Mr. President. [LB552]

PRESIDENT SHEEHY: Thank you, Senator Hansen. Senator Louden, you're recognized. [LB552]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. Would Senator White yield for a question, please? [LB552]

PRESIDENT SHEEHY: Senator White, would you yield to Senator Louden? [LB552]

SENATOR WHITE: Certainly. [LB552]

SENATOR LOUDEN: Senator White, I understand what you're trying to do and I understand that sometimes you can't do what you want to do, but anyway you're trying to get it done. In Section 7 here, you have that goes down to four...residential property with no more than four residential units. That's a sizable, that could be a sizable contract or something like that. And I'm wondering how much of those problems are actually in that category of construction that are the ones that are slow getting payments out of? You know, why are we deleting that, I guess? [LB552]

SENATOR WHITE: Well, a combination of reasons. One is, Senator, the biggest problems that we've had reported to us are in the multimillion dollar huge contracts where an unscrupulous general contractor or owner can take advantage of not paying maybe \$2 million or \$3 million to a general contractor and he'll keep it for a year. And that's real money. That's one. So the biggest problem...and when you have a smaller deal, the money you save in the interest is not as great, so it tends to be not as big of a problem. [LB552]

SENATOR LOUDEN: Okay. [LB552]

SENATOR WHITE: The second thing is, Senator, we have a lot of smaller, less sophisticated people trying to build the smaller...you know, maybe they want to build a duplex, live on one side, those kind of things. This bill is aimed at the big boys. You

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know, the serious guys that understand the law, know better, know how to work the system. And again, it's to exempt, kind of the entry-level contractors doing the smaller projects or owners... [LB552]

SENATOR LOUDEN: Okay. [LB552]

SENATOR WHITE: ...but really aim at the more sophisticated people who can do it. [LB552]

SENATOR LOUDEN: Okay. And that's fine and I understand you're working for...what my concern then when we get into Section 7 then, if you just have residential property, what about, oh, buildings that are being constructed on...a farm or ranch building that doesn't, you know, cost that much but they would be included in this bill. And if anybody... [LB552]

SENATOR WHITE: Yes, they would. [LB552]

SENATOR LOUDEN: ...if you've ever built a Morton Building, I mean, they have their own contract that they set up and when they...you pay a down payment and then you, when they unload the materials you pay so much and so forth until they finish the job, and the day they drive off it's due and payable. And I'm wondering what effect that would have on those kind of contracts or should there be something in here to state that if their other...doesn't, what, waiver other negotiated contracts or something like that. I don't see anything like that in the bill. [LB552]

SENATOR WHITE: Well, the bill does not apply to any contract negotiated before its enactment date, first of all. So it doesn't change anything that's happened. Second, it does apply to all commercial buildings, okay. And that would include a ranch building or if my business built an office building. [LB552]

SENATOR LOUDEN: You say it does or doesn't? [LB552]

SENATOR WHITE: It does apply to all commercial buildings. [LB552]

SENATOR LOUDEN: To all commercial buildings. [LB552]

SENATOR WHITE: So if my law firm built a small office, Senator, it would apply to that. It would apply... [LB552]

SENATOR LOUDEN: And if I wanted to build a shed on my ranch, it would apply to this? [LB552]

SENATOR WHITE: I would think it would, because the only thing that's... [LB552]

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SENATOR LOUDEN: And what if there was a separate contract that you make with those companies that build those buildings though? Would that overrule that contract? [LB552]

SENATOR WHITE: Yes. Well, if it's entered into after this bill is passed, yes. [LB552]

SENATOR LOUDEN: Well, that's what I'm talking about, the future. We don't want to talk about the past. [LB552]

SENATOR WHITE: Well, anything that's been entered into a contract now, it does not apply to. [LB552]

SENATOR LOUDEN: Right. But I'm talking about if the bill is passed. [LB552]

SENATOR WHITE: If the bill is passed, it says no provision in any contract can provide for a longer period of time, if the amendment is adopted, than 45 days from owner to general, if... [LB552]

PRESIDENT SHEEHY: One minute. [LB552]

SENATOR WHITE: ...substantial work is completed, they don't have a good faith worry that the work is bad quality. If they have a good faith worry, it's bad quality or if they're worried that the general is not paying the subs, then they can go ahead and withhold more money. [LB552]

SENATOR LOUDEN: Okay. [LB552]

SENATOR WHITE: But it does apply to any commercial building, as I read it, Senator, from the time it's enacted going forward. [LB552]

SENATOR LOUDEN: And this is the reason I'm asking, in this bill should there be something about that people can't enter into a negotiated contract and it doesn't apply to a negotiated contract? [LB552]

SENATOR WHITE: It says that, Senator. I do believe it's in there. It says, notwithstanding any contract, you know, that this would control. I'd have to take a minute to find the provision but there is a provision that specifically says, it controls over a separate contract. [LB552]

SENATOR LOUDEN: Okay, I've been looking for it and if I can see that in there, why I can be supportive of the bill. Thank you, Mr. President. [LB552]

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PRESIDENT SHEEHY: Thank you, Senator Louden. Members requesting to speak on AM1563 to LB552: Senator Gay, followed by Senator Wightman, Senator Price, and Senator Campbell. Senator Gay, you're recognized. [LB552]

SENATOR GAY: Thank you, Mr. President. Would Senator White yield to a question? [LB552]

PRESIDENT SHEEHY: Senator White, would you yield to Senator Gay? [LB552]

SENATOR WHITE: Yes. [LB552]

SENATOR GAY: Thank you, Senator White. On the interest rate, let's say they're not paying and this takes effect, what is the interest rate that...? [LB552]

SENATOR WHITE: It's 1 percent a month right now on the amount. [LB552]

SENATOR GAY: At 1 percent a month, okay. [LB552]

SENATOR WHITE: Yeah, on the amount that's wrongfully withheld. And, obviously, if, for example, Senator Gay, I built a law office building for my business and I'm concerned the general doesn't have the money to really pay the subs, because I have some reason to believe...you know, I've got a notice of not being claimed or the lumber company called me and told me, I have every right to withhold the money and then I don't have any interest exposure. You know, because if I'm afraid that he's not paying his supplier, for example, that's a good faith dispute. Or if my architect says that roof isn't put up right, I have every right to withhold that money and there's no interest. You know, those are good faith, bona fide disputes. It's just...what's happening right now is companies are literally putting up projects and they're waiting six months, eight months, a year to make payments that they know they owe. And what that's doing is just stressing all the contractors and subcontractors throughout the state, and particularly becomes a problem with out-of-state contractors because they don't have to worry about coming back, some of them, or don't think they do, doing another project here. They just...they don't have the ties, they don't have the long-time business contacts, you know. So what we need to do is stop the predatory practice of wrongfully and knowingly withholding money to basically make them your banker, and you're not paying interest. [LB552]

SENATOR GAY: And I can understand that then. What you said though before, this is for the big boys and I'm afraid sometimes when we get involved in business transactions, inadvertently we create some more problems. And I'm sure, you're aware of that too, but hold on one minute. [LB552]

SENATOR WHITE: Well, always a danger. [LB552]

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SENATOR GAY: All these big...but then I heard on the prompt pay and I agree with what's been said. Everyone wants to be paid promptly if you're in business but sometimes that doesn't happen, or in different industries, prompt pay is different. We have our own state and it sounds to me that's why the 45-day clause was in here because we don't even pay our bills at that point. But even at 45 days, you talked about somebody taking a year to pay. [LB552]

SENATOR WHITE: Yes, I've had... [LB552]

SENATOR GAY: Now that's an extreme case, but even on the 45 days, I'm not saying it should be narrower. Maybe it should be longer because if you're trying to prevent extreme cases... [LB552]

SENATOR WHITE: The industry accepts 30 days, Senator. I mean, both the general contractors... [LB552]

SENATOR GAY: That's standard. [LB552]

SENATOR WHITE: Yeah, that's standard. Just like Senator Hansen said, that is generally accepted. I mean, if I completed the work, you know, and I'm entitled to, the foundation is done, I'm entitled to a 30 percent of the contract payment now and the work is done. And I say, it's ready, go and inspect it, right, I've delivered it. The industry accepts...the norm is pay it, like Senator Hansen said, in 30 days. What we have are people who are unscrupulous and they're abusing that. So, we're, this is... [LB552]

SENATOR GAY: Okay. And you have an earlier, I know, in your opening and I'm sorry, this is loud, but you had examples brought to you of this case. Can you repeat one of those again, like an example, a real life... [LB552]

SENATOR WHITE: Oh, as a lawyer I've had subcontractors come to me and had...they've been held up for, oh God, you know, a year, literally. And it was particularly brutal in the times, not just now where it's bad, but when, for example, an electrical subcontractor came to me. He had electrical cable put into a building for nearly a year and the cost when he puts that wire up, he has to buy the copper back in his shop... [LB552]

SENATOR GAY: Yeah, you can't get it out once it's put in. [LB552]

SENATOR WHITE: ...and it doubled. The price, the copper that he had put into that building that he hadn't been paid for, this was when the economy was very hot, the price to replace that wire doubled and he didn't have the capital from the first one. So it... [LB552]

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SENATOR GAY: Okay. Right there with that example then, Senator White, how would then this law...how does he then use this law... [LB552]

PRESIDENT SHEEHY: One minute. [LB552]

SENATOR GAY: ...to his benefit and say, I've got a problem, that's the problem. How does this law fix that? [LB552]

SENATOR WHITE: He says, now, he goes to the general and says, you have to pay me a percent interest a month. I'm not your bank anymore, or actually go get a better loan from your bank at 4 percent or 5 percent, but you're paying me 12 percent a year. So pay your bill. There's no profit in you for not paying your bill. It takes the profit motive away for being a slow-pay deadbeat. [LB552]

SENATOR GAY: To drag it out and borrow money. [LB552]

SENATOR WHITE: Right. And that person, he's an electrician, or he's a mason, or he's a carpenter. He's not a banker. And this is to get them out of the business of being bankers and let them do what they do, which is construct buildings. [LB552]

SENATOR GAY: Thanks, Senator White. Thank you, Mr. President. [LB552]

PRESIDENT SHEEHY: Thank you, Senator Gay. Senator Wightman, you're recognized. [LB552]

SENATOR WIGHTMAN: Thank you, Mr. President and members of the body. If Senator White would yield to a few questions, I would have a few. [LB552]

PRESIDENT SHEEHY: Senator White, would you yield to Senator Wightman? [LB552]

SENATOR WHITE: Yes. [LB552]

SENATOR WIGHTMAN: Senator White, you indicated we have some prompt pay construction act at the present time that... [LB552]

SENATOR WHITE: For the state. [LB552]

SENATOR WIGHTMAN: For the state. And that's the only entity that's covered by the... [LB552]

SENATOR WHITE: That's my understanding, yes. Everything else, you know, Senator, it's basically you got to buy a lawyer, hire a lawyer, go to court, and fight a contract.

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[LB552]

SENATOR WIGHTMAN: Thank you. Continuing on, I know Senator Loudon had some questions with regard to Section 7 and I'd have a follow-up question or two on that with regard to not being applicable to a residence consisting of no more than four residential units. Now if we were talking new construction, that obviously would be a pretty good sized contract. If we were talking renovation, say of a sixplex out in Lexington, Nebraska, would...then say it was a \$100,000 or \$200,000 contract, it might be considerably less than new construction, but it would apply in that instance, I assume. [LB552]

SENATOR WHITE: Yes, and Senator, the reason that language is there, it's standard language, not just in this state but in, you know, everything from zoning to different kinds of contracts. That's one of the points where we exempt certain things. It's just been residential units of four or more. It's not a dollar amount. And the problem with dollar amounts are, things change in inflation or deflation and you can't really, necessarily, control it. So it's to give a specific definition a defined. If you're doing substantial...or renovation, you know, of an apartment complex, six-units, I would say that's an apartment complex. You bet it applies and it should, in my opinion. Because at that point if you're running a unit of more than four, you're running a unit of five or six or forty or fifty or sixty, you're a big boy. You know you're in the business of providing living units and you should...the people who come to you and do the work in good faith should be paid promptly in good faith. [LB552]

SENATOR WIGHTMAN: I'd use an example, though, if you were in outstate Nebraska in some of the smaller communities, probably a four or a sixplex is a big apartment complex in many of those communities. And I can understand why if you were building a sixplex it might apply. On the other hand, it could be a \$50,000 or \$100,000 contract and maybe these contractors only do jobs of that size. It could apply to a fairly small contractor, could it not? [LB552]

SENATOR WHITE: Yeah, and the contractors, though, support this, Senator. I mean, they...the general contractors want it to apply. It defines their rights and their obligations. I mean, I would tell you if I'm doing work of even \$100,000 in a small town, and I'm a small contractor and I've got guys working for me, I need this to apply. I need to be able to pay my carpenter and pay my electrician promptly. This not only allows me to get payment from the owner promptly, but requires that I pay everybody down promptly. And I would say to you in a small town where you don't have a lot of construction, this is more important even than in a city like Omaha. Because you need your local contractors, your local electricians, your local plumbers to stay there and there's a problem getting electricians and plumbers in a lot of the western part of the state to stay in the business. So I would say to you, it's even more important when there are fewer craftsmen in your area than in Omaha. [LB552]

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SENATOR WIGHTMAN: Thank you. The primary purpose of this is to protect laborers, materialmen, and anybody who may be a subcontractor to a general contractor, is that correct? [LB552]

SENATOR WHITE: It is to literally protect everybody up and down the stream. It is to protect the general contractor... [LB552]

PRESIDENT SHEEHY: One minute. [LB552]

SENATOR WHITE: ...from the owner, it is to protect the subcontractor from the owner, or the general contractor. It also protects the owner because it defines, right now, when you have to pay this interest or not. I mean if you've got a reasonable good faith dispute, again, you didn't do the work right or I don't think you're paying your materialmen, you can withhold the money free from worry. [LB552]

SENATOR WIGHTMAN: Is this based upon other states? Do other states have similar laws? [LB552]

SENATOR WHITE: Overwhelmingly, they do. [LB552]

SENATOR WIGHTMAN: And have you based it on that of any particular state? [LB552]

SENATOR WHITE: Yes, we worked with the general contractors here. They've looked at other states. We've worked with various suppliers and owners trying to make it in an understandable manner. So, yes, it is patterned in large part, but not exclusively, it's patterned in large part off of other state laws. [LB552]

SENATOR WIGHTMAN: Thank you, Mr. President. Thank you, Senator. [LB552]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Senator Price, you're recognized. [LB552]

SENATOR PRICE: Thank you, Mr. President and members of the body. Would Senator White yield to some questions? [LB552]

PRESIDENT SHEEHY: Senator White, would you yield to Senator Price? [LB552]

SENATOR WHITE: Certainly. [LB552]

SENATOR PRICE: Thank you, Senator. If you would endure me, please, I was reading and my federal experience kind of clouds my view, in Section 10 where we talk about liquidating or unliquidating them for a claim. [LB552]

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SENATOR WHITE: Right. [LB552]

SENATOR PRICE: It talks to on line 24, it uses the words "substantial completion of construction contract." [LB552]

SENATOR WHITE: Right. That's a term of art normally used in the construction industry. [LB552]

SENATOR PRICE: Okay. [LB552]

SENATOR WHITE: That's everything but punch list items, Senator, generally. [LB552]

SENATOR PRICE: Okay. [LB552]

SENATOR WHITE: And it's often determined, you know...I guess what I can say is, it's a meaning that in construction law among contractors, owners, and lawyers that deal in the trade, it's a well-understood term. [LB552]

SENATOR PRICE: All right. And so in your professional work, you don't see the two entities ever discussing what substantial means? The one doesn't say it's not substantial yet? [LB552]

SENATOR WHITE: Well, generally speaking, certainly they will, you know, Senator. But it is a term that's been defined by so many different lawsuits and different opinions that it's pretty much based...it becomes a term that people in the trade accept. I'll give you an example. If everything is in and the roof is upright but you've got areas where the paint is bad, where you've got pieces of carpet that need to be replaced, where you have light switches that need to be put in, covers put on, things like that, those are considered punch list items. Okay. You don't stop payment of, you know, \$10 million for stuff that is worth \$100,000. It's deemed substantially complete. The punch list items remain. Everybody remains liable to complete them and money is retained. "Retainage" is to make sure it's completed. [LB552]

SENATOR PRICE: Right. Right. [LB552]

SENATOR WHITE: Again, the key in this, and the key for our economy is the movement of capital through the system. [LB552]

SENATOR PRICE: Okay. [LB552]

SENATOR WHITE: We need to make sure people are getting paid so the economy gets started again. [LB552]

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SENATOR PRICE: All right. And I follow that. I was just hoping that maybe you all could look at...I mean you all, all the people who are concerned about this, of trying to nail that down a little better than "substantial" so at least it would also give cover there. [LB552]

SENATOR WHITE: Senator, just so you know, you will create far more trouble by trying to further define "substantial" than just accepting that term. [LB552]

SENATOR PRICE: All right. [LB552]

SENATOR WHITE: Because if you say "substantial" means this, you will get a business where it doesn't. Oftentimes... [LB552]

SENATOR PRICE: Okay. And I understand that. It caught my eye so it was one question, because in the federal we have like a 35 percent bill, 50 percent, we've identified, and that's fine. The other part in Section 10 that led me to wonder, perhaps it's standard language, is the part where we talk about on page 7, paragraph 3, line 19, where we talk about earlier that you had 180 days to file a claim, then there's 90 days for the state or that entity to review and either accept in whole or deny in whole, it seems to me that if someone wanted to push a payment further, do things further, they would just deny the whole thing. Is this just standard language that we're using here or can we tighten that up a little bit to move things along? [LB552]

SENATOR WHITE: It's standard language and what happens is, anybody can always deny, Senator. I don't care what we write, they can deny it. The risk now with this law is if they...and you do want to let political subdivisions which this applies to, have the time to make sure the building is built right, that it's in conformance with specs. They got to get an engineer out, they got to get an architect to certify completion at a certain level. So they need that time, right? This, though, does speed it up but it allows time for the political subdivisions to protect themselves. But it then, again, says but you can't just ride for free. [LB552]

PRESIDENT SHEEHY: One minute. [LB552]

SENATOR PRICE: All right. Well, I appreciate you enduring me and educating me on that aspect there. Thank you, Mr. President. Thank you, Senator. [LB552]

PRESIDENT SHEEHY: Thank you, Senator Price. Speaker Flood, you're recognized for an announcement. [LB552]

SPEAKER FLOOD: Thank you, Mr. President and good morning, members. I've been advised by the Revisor's Office that all bill drafts and bills that have been prepared in three-part have been given to the individual senators' offices. If for some reason you do

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not have a bill that you're waiting for, please contact the Revisor's Office right away. We will be adjourning at noon today and that will be the deadline for new bill introduction. So if you don't have a bill down from Revisor's, make sure you call there right away and find out what the status of that is. But, again, they're reporting to me that they've sent everything back to senators. And if that's the case, you have until noon to get that in. This will be the last day for bill introduction upon adjournment today. Thank you, Mr. President.

PRESIDENT SHEEHY: Thank you, Speaker Flood. Continuing discussion on AM1563 to LB552, members requesting to speak: Senator Campbell, followed by Senator Louden, and Senator McCoy. Senator Campbell, you're recognized. [LB552]

SENATOR CAMPBELL: Thank you, Mr. President. I would like to make several comments and I don't see Senator Price, but I would like to back up and indicate that in most of the projects that we had on the county, in a lot of the contracts it was spelled out what substantial completion meant. I mean, we had a fairly good idea and I agree with Senator White that in most cases the entities have a fairly good idea. I appreciate this bill very much having...owning a family business that is often a subcontractor as well as being a general on a job and having subcontractors work for us. So I very much appreciate Senator White bringing this forward. My question really has more to do with the...going back to the university question that Senator Stuthman had and I was wondering whether Senator White would entertain a question. [LB552]

PRESIDENT SHEEHY: Senator White, would you yield to Senator Campbell? [LB552]

SENATOR WHITE: Certainly. [LB552]

SENATOR CAMPBELL: Senator White, in your discussion with the state and the university, is there concern that the scope of projects by size and dollar amount is...necessitates a longer review or would you say it has more to do with the requirements that they have as public entities? [LB552]

SENATOR WHITE: You know, Senator, I can't answer that honestly. I don't know what was driving the university's position, but when they said this will have a fiscal note but if you move it to 45, you can represent that we're okay with it and there's no fiscal cost. I bit. (Laugh) You know, I mean, but I'm more than pleased...I mean, it looks like we're going to have a conversation with Senator Stuthman, Senator Hansen, more than pleased that you should participate in that and let the university speak for itself. I don't want to mischaracterize...and the reasons may be very legitimate but I don't understand them, and I don't want to mischaracterize them. [LB552]

SENATOR CAMPBELL: And I would have to say that just watching some of the university projects, particularly when they built the stadium additions, and they're just

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very, very large projects and in some cases very complicated. And we do expect of public entities, both the state, any political subdivision, a thorough review of any contract and project that goes on because you're standing instead of the taxpayer and you want to make absolutely sure that it's done right. I appreciate the 30 days but on the other hand, we may be requiring of them more. So I appreciate Senator White's invitation and I would be happy to sit in on those conversations. Thank you, Mr. President. [LB552]

PRESIDENT SHEEHY: Thank you, Senator Campbell. Senator Louden, you're recognized. [LB552]

SENATOR LOUDEN: Thank you, Lieutenant Governor and members of the body. Would Senator White yield for a question, please? [LB552]

PRESIDENT SHEEHY: Senator White, would you yield to Senator Louden? [LB552]

SENATOR WHITE: Certainly. [LB552]

SENATOR LOUDEN: Senator White, as our discussion there when we were talking about this before, and as you pointed out off the mike that Section 9 should take care of it, well, the way I read Section 9 as far as a negotiated contract with some other...someone building a building, that would...Section 9 completely voids that because it says it goes against public policy shall be void and unenforceable. [LB552]

SENATOR WHITE: Right. Senator, what I was trying to convey to you is that this becomes the law. It becomes part of every contract, period. And if I put in a provision that says...and this is the predatory part. You've got an electrician in your neighborhood, my neighborhood, he's hurting for business. He needs work. He's got a crew he needs to get to work. Owner comes in and says, yeah, well, I won't pay you under this provision. I'll pay you... [LB552]

SENATOR LOUDEN: Well, now just a minute. Let's get back to such as some of where I've had some experience like a Morton Building or something. When you have the contract, you don't have the contract that if it's done and then it's due and payable in 30 days. You pay your contract as the parts are delivered and then they do the work. And that's a different kind of a contract so I'm wondering if this is in law then, do all of those contracts if they want to do that business in Nebraska then, are those...their contracts then have to be rewritten or they're unenforceable as they are written now? [LB552]

SENATOR WHITE: The contracts can provide for a lesser period of time than 45 days, Senator. They can't provide for a longer one. Okay? So, for example, if an owner says, yeah, deliver the building, right, the parts come here, but I'm not paying you in 45 days, I'm going to pay you in 90, that's void and unenforceable. You got to pay within 45 days.

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[LB552]

SENATOR LOUDEN: But when they... [LB552]

SENATOR WHITE: Now if the Morton said I'm not delivering unless I get cash on delivery, as I read this bill and it's my understanding, they have every right to do that. They can insist on a lesser time, but you can't insist on a longer time. [LB552]

SENATOR LOUDEN: Yeah, but what I'm trying to point out is a lot of times this is more than 45 days from the time they start with their contract because, see, they deliver and then there's a period of time before the people get there to do some of the construction and that sort of thing. So it sometimes runs more than the 45 days. [LB552]

SENATOR WHITE: Senator, though, that would be, for example, that would be a completed portion. For example, if the contract said you shall pay within, you know, 30 days of delivery of the equipment or on that...this metal you have to pay on delivery or you have to pay within 30 or 45 days, it can say that. [LB552]

SENATOR LOUDEN: Is there anything that can be put in here that if a contract is negotiated it would be, what would you say, viable rather than put in here that they're all null and void if they don't have this as public policy? [LB552]

SENATOR WHITE: Senator, that would defeat the purpose of the bill. I mean as... [LB552]

SENATOR LOUDEN: Well, no, I understand the purpose of the bill is to get people that have to pay your subcontractors and have it done in 45 days. In other words, I understand the reason for the bill is actually that this gives somebody authority to file a mechanic's lien in 45 days. That's what the bill actually does. Is that correct? [LB552]

SENATOR WHITE: No, no. [LB552]

SENATOR LOUDEN: Why doesn't it? [LB552]

SENATOR WHITE: It doesn't affect... [LB552]

SENATOR LOUDEN: Because there's nothing in the bill that says that they have to do it. It just says in there that it's got to be done in 45 days, but there's no penalty if they don't. [LB552]

SENATOR WHITE: No, Senator, let me explain the bill. I don't think you...at least as I understand it, the bill. Okay. What the bill says is, look, you have to pay. Every contract shall provide for payment within substantial completion within 45 days when that work is

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done. Okay? [LB552]

PRESIDENT SHEEHY: One minute. [LB552]

SENATOR WHITE: Or as work gets done. You cannot contractually force a general contractor nor can a general contractor force a subcontractor... [LB552]

SENATOR LOUDEN: Well, what's the penalty if they don't pay in 45 days? [LB552]

SENATOR WHITE: Senator, please. Interest runs at 1 percent a month on the unpaid amount automatically as a matter of law unless it's withheld for good interest. [LB552]

SENATOR LOUDEN: But in order to collect that, you'd have to have a judgment of some sort. [LB552]

SENATOR WHITE: No. What it means is that when...if the guy is not going to pay you, Senator, in the end you're going to end up in court, you know. And we can't change that. It's human nature. But what it does is if you end up in court, your lawyer says, look, they withheld my money wrongfully for a year, and let's say it was 100,000 bucks, I am now entitled to \$12,000 interest plus any other damages. [LB552]

SENATOR LOUDEN: Okay. [LB552]

SENATOR WHITE: What it does is takes the profit away from the person who is not paying their bill on time. [LB552]

SENATOR LOUDEN: Okay. Well, I understand. And that's the reason you're trying to do this is because at the present time there are no... [LB552]

PRESIDENT SHEEHY: Time, Senator. [LB552]

SENATOR LOUDEN: ...date. Thank you, Mr. President. [LB552]

PRESIDENT SHEEHY: Thank you, Senator Louden. Senator McCoy, you're recognized. [LB552]

SENATOR McCOY: Thank you, Mr. President and members of the body. I want to rise this morning to commend my colleague, Senator White, for introducing and speaking eloquently on this subject through LB552. As a member of the contracting industry for a good portion of my life, the difficulties that he describes for individual trade contractors are very real. And the construction industry has long been one of the engines that drives our commerce and free enterprise system. And in this economic time of economic downturn, it will be the construction and contracting industry that leads us out of that

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economic situation. And this legislation, this very common-sense legislation is an excellent tool in the hands of those trade contractors to allow them the full potential that they have to help our state. And again, I would commend Senator White for introducing this legislation. And I fully support it and would encourage my colleagues to do the same. Thank you, Mr. President. [LB552]

PRESIDENT SHEEHY: Thank you, Senator McCoy. Senator Nelson, you're recognized. [LB552]

SENATOR NELSON: Thank you, Mr. President and colleagues. I'd like to ask Senator White a question. [LB552]

PRESIDENT SHEEHY: Senator White, will you yield to Senator Nelson? [LB552]

SENATOR WHITE: Certainly. [LB552]

SENATOR NELSON: Thank you, Senator White. Looking at page 6 of the bill and it provides what shall be against public policy right up there at the top and then number one. I understand the first part of that, but then it talks about an exception there to provide a waiver or release of such rights as a condition for pay. Could you just give me an example of what that exception is intended to cover. [LB552]

SENATOR WHITE: Sure, Senator. That is known as a progress payment. You know, if you're building a big project, what it says is I can require you release your claim for money to the extent I paid you. And that's all it does. So it's only that if the contract says, okay, you release any rights as to money I've actually been paid under the Prompt Pay Act. In other words, you acknowledge receipt of the money and you say, yeah, I've got no claim for that money under the Prompt Pay Act. In other words, you're saying to them, okay, you acknowledge that I've paid payment within the time line and you release any claim for interest to the extent you've received money. [LB552]

SENATOR NELSON: All right. [LB552]

SENATOR WHITE: It's just the ability to give a full release for consideration paid. [LB552]

SENATOR NELSON: All right. All right. Thank you. That answers my question. Thank you, Senator White. [LB552]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Seeing no additional requests to speak, Senator White, you're recognized to close on AM1563. [LB552]

SENATOR WHITE: I want to thank all my colleagues for the questions, and I want to

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thank Senator McCoy for his support as a member of the industry. That's particularly important to me. This is a really important bill. It's very important for us, whether it's in small towns or in the cities that our contractors, our subcontractors, our craftsmen get the money they need to keep in business. One of the things we're facing on a national crisis is that capital is not moving from the banks into business and through businesses to other businesses. This bill will help move that. It will take the profit away from people who unscrupulously use the labor and material of subcontractors as a form of a bank. Banks should be in the business of lending money. Owners who contract ought to be in the business of putting up good, sound buildings and then promptly paying the people who did it. Hopefully, this bill moves it forward. I do invite any senator...Senator Loudon, if you bring the popcorn, you're welcome to the big conclave too, to talk about the bill and see if we can make it better. Happy to do that. I'd ask you to adopt the amendment and the bill. [LB552]

PRESIDENT SHEEHY: Thank you, Senator White. You have heard the closing. The question before the body is on the adoption of AM1563 to LB552. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB552]

CLERK: 39 ayes, 0 nays, Mr. President, on the adoption of Senator White's amendment. [LB552]

PRESIDENT SHEEHY: AM1563 is adopted. Mr. Clerk, we will move to the next amendment. [LB552]

CLERK: Senator White would move to amend with AM1591. (Legislative Journal pages 298-299.) [LB552]

PRESIDENT SHEEHY: Senator White, you're recognized to open on AM1591. [LB552]

SENATOR WHITE: Thank you, Mr. President. This is also, Senator Stuthman, I think we've had this discussion, Senator Campbell, Senator Hansen. The state, the Department of Administrative Services was concerned that it unduly interfered with the existing claim processes laws. And this exempts it and makes it clear that the existing prompt pay law that provides the state is not touched. So it exempts the state from these provisions because they are already governed by a different prompt pay law. Again, I accept it as a pragmatic matter. Once they made that complaint, I said, fine, you already got a law. This isn't about that. And so what this does, it's kind of a...I guess it's a belt and suspenders. But it relieves concerns of the Department of Administrative Services. It would remove any kind of objection or fiscal note so I urge the adoption of this for the same reason. Again, I'd invite the Department of Administrative Services and any interested senators again to sit down and talk about the issues already well stated and argued by Senator Hansen and Senator Stuthman and Senator Campbell. But at this point to move it forward, I've agreed to exempt them. I don't think our mission is to

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change the state's prompt pay law. That's at least not the point of this bill. That may be a good bill sometime that we would take on, but it seems to me to be a separate fight. So I'd ask all of your support to advance this amendment as well. Thank you, Mr. President. [LB552]

PRESIDENT SHEEHY: Thank you, Senator White. You've heard the opening of AM1591 to LB552. Senator White, there are no requests to speak. You're recognized to close. Senator White waives closing. The question before the body is on the adoption of AM1591 to LB552. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB552]

CLERK: 37 ayes, 0 nays, Mr. President, on the adoption of Senator White's amendment. [LB552]

PRESIDENT SHEEHY: AM1591 is adopted. We will now return to floor discussion on LB552. Seeing no requests to speak, Senator White, you're recognized to close. [LB552]

SENATOR WHITE: I want to thank all of my colleagues for their questions and their support. Again, I invite anyone who has concerns...I will have my staff make time available to meet with the various representatives of the university and Department of Administrative Services and we can talk about those concerns. If in the process between now and Select other ideas come up or concerns, again, we're always willing to help work them out. Thank you and I ask your support in advancing the bill. [LB552]

PRESIDENT SHEEHY: Thank you, Senator White. You have heard the closing. The question before the body is on the advancement of LB552. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB552]

CLERK: 38 ayes, 0 nays, Mr. President, on the advancement of LB552. [LB552]

PRESIDENT SHEEHY: LB552 advances. Mr. Clerk, we will proceed to LB216. [LB552 LB216]

CLERK: LB216 is a bill by Senator Wallman. (Read title.) Introduced on January 13 of last year, at that time referred to the Judiciary Committee. The bill was advanced to General File. I have no amendments to the bill at this time, Mr. President. [LB216]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Wallman, you're recognized to open on LB216. [LB216]

SENATOR WALLMAN: Thank you, Mr. President. LB216 is not a complex bill. Its purpose is simply to repeal the marriage penalty in car crashes and other negligent

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cases. Prior to 1981, a passenger in a motor vehicle injured through the negligence of the driver of that vehicle could not recover damages for his or her injuries unless the driver was found to be guilty of gross negligence. This was known as a guest statute since it allowed a guest in your vehicle to collect against your insurance company. In 1981 then the Legislature passed LB54 which amended the guest statute so that it was applicable only to those related to the driver within the second degree by blood or marriage. This means that most guests in your vehicle can recover against your insurance company if you are negligent. But your spouse, children, parents, or others who are related within two steps of you cannot. This leads to some results that I don't believe reflect how Nebraskans think. For example, if you're driving and are negligent, your spouse could not get the insurer to pay for her medical bills and other damages, but if you were just living with your girlfriend, she could get her medical bills and other damages paid. I don't think married couples should be penalized in a car wreck. Another example, if you're driving your son and a friend to a baseball game and are negligent, your son's friend could get the insurer to pay for his medical bills and other damages, but your son could not. This just doesn't make sense to me. So some of the insurance companies opposing this I think will tell you that they have a fear that there will be a collusion between family members making a claim. So my response would be that argument was made 30 years ago when the repeal of most of the guest statute occurred. It did not lead to big rate increases or an epidemic of fraud claims. Fraud is already illegal. So if family members or anyone else pursue fraudulent claims, they should be prosecuted. And insurance companies do a pretty good job of screening out fraud claims, but we shouldn't penalize good people because some bad people are out there. Thank you, Mr. President. [LB216]

PRESIDENT SHEEHY: Thank you, Senator Wallman. You have heard the opening to LB216. Members requesting to speak: Senator Lathrop followed by Senator Price. Senator Lathrop, you are recognized. [LB216]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Good morning. I'm in support of LB216 and I'd like to visit with you a little bit about the facts or the...put this bill into some perspective. When somebody gets hurt in an automobile collision, they have a right to make a claim against the person who caused the accident, even if they're a passenger, but we have a limitation. And by the way, if they make that claim, the driver, to the extent there's a judgment taken against him, that judgment is paid for by the auto insurance. Right? That's why we buy insurance. Currently, if the person that's in the car with you is a family member, the guest statute prohibits a recovery against or by that family member, in other words, access to the auto insurance liability, if they are related, reasonably closely related. And I'll skip the consanguinity and affinity description, but just to tell you that right now there's a limitation on that. The practical effect of that is this. And Senator Christensen made this observation in Judiciary Committee and I think it's very appropriate. He called it the marriage penalty and it is. So if somebody is in the car driving their girlfriend down the street and gets in an

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accident, the girlfriend can make a claim against the driver, even if they live together they can make a claim against the driver; but if they're married, they can't. Why is this important to us at this time in history? When this law was originally put in place, we had health insurance plans with \$100 deductibles. Right? And people who got in automobile collisions could turn to their health plan and their health plan would pick up the cost of the care and it was pretty much taken care of. And you took your lumps because it was a family member that was driving. But now it has practical implications. And the practical implication is that your own auto policy, the one you buy to insure yourself and your family, is not available to your family so that that liability coverage is not there for you to pay doctor bills and hospital bills with. And I think that is probably the most sensible argument for why LB216 should pass. It's a different time. And you all have bought health plans, sometimes through your employers, maybe privately, and they have bigger and bigger and bigger deductibles. And your own auto insurance is something you can't access if it's your family member that's been hurt. All Senator Wallman's bill will do is permit those people to access the auto liability policy that you bought to protect yourself and to protect your family. In the old days when these bills came into being or these laws, these guest statutes came into being, the concern was collusion--that a husband and wife would get together and make something up. And I can tell you that defense lawyers have access to all the discovery, the depositions, they can take depositions, they can do...look into all of the matters relating to these kind of claims to ferret out fraudulent claims. I'll tell you the risk of doing that with any passenger is true. That's always there. But the process, the process of defense lawyers testing the evidence, taking the depositions, ferreting out the fraudulent claims is a process that will sort the fraudulent claims out from the legitimate claims and allow people to use their liability policy for their own families, which is why we buy them in the first place. [LB216]

PRESIDENT SHEEHY: One minute. [LB216]

SENATOR LATHROP: So I think the bill makes eminent sense. I think the time has come. These families that buy auto policies should have them available to pay the doctor bills that their loved ones incur in automobile collisions. And it's time to move LB216 and repeal the guest statute. Thank you. [LB216]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Price, you're recognized. [LB216]

SENATOR PRICE: Thank you, Mr. Speaker, excuse me, Lieutenant Governor, and body. I'd like to ask would Senator Lathrop yield to a question? [LB216]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to Senator Price? [LB216]

SENATOR LATHROP: Yes, I would [LB216]

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SENATOR PRICE: And I ask this question because I believe you will have the acumen to help me understand. This says negligence and the party...if you're negligent, and I'm wondering is there a difference between fault and negligence as it's used here? [LB216]

SENATOR LATHROP: No. They're typically used interchangeably. Fault would be something that we'd label somebody who is found negligent. [LB216]

SENATOR PRICE: Okay, great because just so you know in my mind's eye it seemed that negligent had a connotation of I was driving down the highway with my feet or something like that or I was on my...I do something more egregious than I was at fault, you know. And that's my question. That's where that came from and... [LB216]

SENATOR LATHROP: Right. And negligence is essentially failing to do something that is reasonable. And in automobile liability claims it's usually a violation of the rules of the road. So if you run a red light, make a left turn in front of somebody, those are the kinds of negligent acts that we'd be talking about. [LB216]

SENATOR PRICE: All right. Thank you very much. Thank you, Mr. President. [LB216]

PRESIDENT SHEEHY: Thank you, Senator Price. Senator Fischer, you're recognized. [LB216]

SENATOR FISCHER: Thank you, Mr. President and members. In listening to the discussion on this bill and listening to representatives in the lobby, you know, I don't think it sounds like a bad idea. And I was wondering if Senator Lathrop would yield for some questions, please. [LB216]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to Senator Fischer? [LB216]

SENATOR LATHROP: I'd be happy to. [LB216]

SENATOR FISCHER: Senator Lathrop, am I wrong in thinking this isn't a bad idea? (Laugh) I have a lot of people telling me I'm wrong. [LB216]

SENATOR LATHROP: No, I don't think it is. [LB216]

SENATOR FISCHER: What I'm kind of hearing is that if you are related to the driver, and it's not just the spouse, it's if I'm driving and I have my mom in the car and I've got my nephew in the car and if your grandson is in the car they are not covered if there is an accident. Could you clarify that. [LB216]

SENATOR LATHROP: That's true. If you were to be going to their softball game or something like that, you turn in front of an oncoming car and the people in the car are

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injured, and say you have your son's pal along with them, nobody that's related to you, closely related to you is going to be able to make a claim, but that little buddy that's in the car will. And if it were a girlfriend or a boyfriend or somebody that lived in the home but is unrelated, they could make a claim but not family. [LB216]

SENATOR FISCHER: So in order for family members to be covered they would have to use their health insurance if they had health insurance. Am I right in thinking that way? [LB216]

SENATOR LATHROP: Yes. They will...if the guest statute stays in place, somebody hurt in, for example, a left-turning situation will make no claim against the auto policy liability coverage and they will be left with making a claim against the health insurance, if they have any, or having to pay the bills out of pocket. [LB216]

SENATOR FISCHER: And if you carry a health insurance policy, which many self-insured people do, that has a high deductible, you'd have to meet that high deductible before you would receive any insurance benefits. Correct? [LB216]

SENATOR LATHROP: Any...you can...yeah. You won't make any liability claim and you will be left with whatever your health plan provides. And now, you know... [LB216]

SENATOR FISCHER: Okay. [LB216]

SENATOR LATHROP: ...\$3,000, \$5,000 deductibles are not uncommon. [LB216]

SENATOR FISCHER: That's...I agree with you there. How does the process work? I know that you have to sue the driver in order to receive benefits in a case like this. And it sounds horrible, but that's just the language that the law requires. Could you explain how that process works in order for people to receive coverage in an accident. [LB216]

SENATOR LATHROP: I would be glad to. And the reality, Senator Fischer, is while you may make a claim...may file suit against somebody, the reality is if the guest statute goes by the wayside that the auto insurance liability company will, in 95 percent of the cases, settle it. It's only the unusual or the rare case where that liability insurance company wouldn't settle a reasonable claim and a lawsuit would have to be filed. But ultimately that's the recourse someone has if they cannot persuade a liability insurance company to pay. [LB216]

PRESIDENT SHEEHY: One minute. [LB216]

SENATOR FISCHER: Thank you, Mr. President. And a lot of times I know my fear is that if we expand laws that would expand coverage, my insurance costs are going to increase. And that's what I hear from insurance companies. That's what I hear from a lot

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of my constituents that are concerned with this bill, too, that if we expand this I'm going to have to pay higher premiums. How would you answer that? [LB216]

SENATOR LATHROP: Well, to the extent that more people can make claims against liability policies, there probably will be some nominal difference in premiums. But I would suggest to you this: that people are probably willing to pay a nominal increase in premiums if they're now covering their family instead of every stranger on the road. [LB216]

SENATOR FISCHER: Okay, thank you, Senator. Thank you, Mr. President. [LB216]

PRESIDENT SHEEHY: Thank you, Senator Fischer. Senator Nelson, you're recognized. [LB216]

SENATOR NELSON: Thank you, Mr. President and colleagues. I have a question or two for Senator Lathrop. [LB216]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to Senator Nelson? [LB216]

SENATOR LATHROP: Yes, I will. [LB216]

SENATOR NELSON: I'm not too involved in insurance, Senator, but it's my understanding and I always thought that in my automobile policy that if I purchased medical pay coverage that that was going to cover members of my family. Am I wrong in that? [LB216]

SENATOR LATHROP: Medical payment coverage, which is typically \$1,000, will cover anybody in the car regardless of whether they are family or not. That's true. [LB216]

SENATOR NELSON: So if you have low medical pay then it's to your advantage if we adopt Senator Wallman's bill here then if there is negligence on the part of the driver you can file a claim and you could recover considerably more than, say, \$1,000. Is that right? [LB216]

SENATOR LATHROP: Well, it depends on the nature of the injuries and what your losses are. But if you are...if the husband is driving the son-in-law, the guy is driving his son-in-law and he turns left in front of oncoming traffic and now his son-in-law can never work again, the son-in-law and his daughter are destitute. And so it does provide liability coverage to family members where it's not available at the present time. [LB216]

SENATOR NELSON: Right. Okay. So traditionally medical pay has been pretty low, like maybe \$5,000. That's counting probably a normal policy. But if you want to purchase additional medical pay coverage, it's available. You could purchase \$50,000 or

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\$100,000 if you thought that you needed it for severe injuries to any member of your family. Would that be correct? [LB216]

SENATOR LATHROP: I...there are some companies and I can tell you the ones that you see advertised on TV, for example, in my experience, the Progressive policies that I've dealt with, and they write a lot of policies in the state of Nebraska, it's \$1,000 period. Are there some policies that have more medical pay? Yes. And you can probably buy more if you have a top-end policy. But the med pay doesn't take care of turning your son-in-law into a quadriplegic and not being able to work again. [LB216]

SENATOR NELSON: If you are able to purchase a higher amount of medical pay, such as \$15,000, \$20,000 worth, that would cover the gap here between that and what you should be able to obtain from your health insurance, in other words, cover the amount of a higher deductible on your health insurance, would it not? [LB216]

SENATOR LATHROP: If you can get access to that. I can tell you my experience is that the typical plan has about \$1,000 in med pay, which is a fraction of the deductible and copay amounts, plus there's uncovered medical to certain things like the number of trips to a physical therapist, the number of times that you can see a chiropractor. Your health plan is going to have those limitations. And once you reach those, it's coming out of your own pocket. And a low med pay like \$1,000 won't help you. [LB216]

SENATOR NELSON: All right. Are there any other ways in an insurance policy as things exist now to recover on the part of a family member other than the medical pay? [LB216]

SENATOR LATHROP: No, no. No. That's the problem is that a family member...somebody you live with, your girlfriend, if you lived with your girlfriend, she could make a claim, but your wife can't. And that really is what's wrong with the guest statute. And in modern society with high health deductibles and with people cohabitating, from an auto liability claim point of view, and that should be the last consideration in deciding whether you get married or not, but from a liability auto policy point of view, you're better off living with your girlfriend than marrying her. [LB216]

SENATOR NELSON: Maybe we might want to do an amendment to prohibit that sort of thing if we're going to pass this. Is that possible? (Laugh) [LB216]

SENATOR LATHROP: I don't know what committee we would reference that one to. [LB216]

SENATOR NELSON: (Laugh) Thank you, Senator Lathrop. Thank you, Mr. President. [LB216]

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PRESIDENT SHEEHY: Thank you, Senator Nelson. Senator Campbell, you are recognized. [LB216]

SENATOR CAMPBELL: Thank you, Mr. President. Would Senator Lathrop yield to a couple of questions? [LB216]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to Senator Campbell? [LB216]

SENATOR LATHROP: Certainly. [LB216]

SENATOR CAMPBELL: I was taking some time this morning looking at the transcript of the hearing trying to get a handle on the issues. Could you explain...my two questions, Senator Lathrop, have to do could you explain household exclusion, which is used in some states? I mean, I saw it in the transcript. And the second one is, I think part of the testimony for the insurance industry had to do with their concern about the uninsured. And I just thought could you explain. [LB216]

SENATOR LATHROP: Yeah. I'm going to...the household exclusion is something that's found in policies. [LB216]

SENATOR CAMPBELL: Ah. [LB216]

SENATOR LATHROP: And I'm going to tell you, Senator Campbell, it seems to me that our Supreme Court determined that that was unconstitutional or that it violated Nebraska statute. I don't think we have household exclusions... [LB216]

SENATOR CAMPBELL: Okay. [LB216]

SENATOR LATHROP: ...in our policies anymore. And the concern about the uninsured I'm not sure what that's directed at unless it's somebody with no health coverage in which case they are completely, completely uninsured in that situation if they're a family member. And so your son-in-law, if he were in the car with you and had no health insurance, would now be paying those bills out of pocket or going through bankruptcy. [LB216]

SENATOR CAMPBELL: And after reading the transcript, it's obvious that they do think that there is going to be an increase in what the policies are. But in the transcript I didn't hear anyone testify in terms of other states and have those costs increased, which goes, I think, to what Senator Fischer was also questioning. Has there...in the research on the bill, did anybody look at what other states and what's happened to their costs? [LB216]

SENATOR LATHROP: I can tell you most states have done away...my understanding is

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most states have done away with or the court has concluded that these are nonenforceable or unconstitutional. Our court said, they looked at it, the Supreme Court said it's constitutional in Nebraska. That's why it's still there. But as for...well, I think that answered your question, didn't it? [LB216]

SENATOR CAMPBELL: Yes, it did. [LB216]

SENATOR LATHROP: Other states, most states don't have this anymore I don't believe... [LB216]

SENATOR CAMPBELL: Okay. [LB216]

SENATOR LATHROP: ...in answer to your question. And the other issue about premiums in Nebraska, I'll share this with you. If you open up or expand the number of people that can make a claim, you can't help but have some increase in premiums, as nominal as it may be. But understand one thing about Nebraska and that is we are, and you probably saw this in the State Chamber of Commerce when they put their book out and talk about places to have litigation, we are the first or the second most conservative place to try an injury claim. And as a consequence, our premiums are as reasonable as anywhere in the country. [LB216]

SENATOR CAMPBELL: So there's not really been a court case brought about whether this is constitutional in the state? [LB216]

SENATOR LATHROP: No, it has. I'm going to tell you that our Supreme Court looked at this. The argument was, is it or isn't it? The Supreme Court said, it is. It's a...for whatever reason, and I'm not going to go in...or I couldn't because I wasn't a party to that, relate all the arguments that were made. They were probably based on whether we're creating a class of people unfairly and treating them differently in an unfair way. And the Supreme Court said that this is not an unconstitutional law as it sits. Whether it's good policy, of course, is up to us and whether we continue to allow family members to not avail themselves of an auto liability policy where a stranger or a girlfriend can, that's for us to decide. [LB216]

SENATOR CAMPBELL: Thank you, Senator Lathrop. Thank you, Mr. President. [LB216]

PRESIDENT SHEEHY: Thank you, Senator Campbell. Mr. Clerk, you have new bills for introduction and items for the record. [LB216]

CLERK: I do, Mr. President. New bills: (Read LB1073-1109 by title for the first time.) In addition, Mr. President, new resolutions: LR298 is by Senator Dubas congratulating the Aurora High School state football team; Senator Ashford offers LR299, proposed

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constitutional amendment to Article VII, Section 18...adding a new Section 18 to Article VII; Senator Nelson offers LR300CA, an amendment to Article III, Section 2 of the Nebraska Constitution; LR301CA is by Senator Price. It's a proposed constitutional amendment to Article III, Sections 2, 3, and 4. Senator Karpisek offers LR302 congratulating the Nebraska Petroleum Marketers on their 90th anniversary. New A bill: (Read LB638A by title for the first time.) In addition, Mr. President, Committee on Judiciary chaired by Senator Ashford reports LB226 to General File with committee amendments attached. An amendment to be printed: Senator Rogert to LB261. A priority bill designation: Senator Harms has selected LB258 as his priority bill for this session. Name adds: Senator Cornett to LB754; Senator McCoy to LB1103. Reminder: Reference will meet upon adjournment. (Legislative Journal pages 299-311.) [LB1073 LB1074 LB1075 LB1076 LB1077 LB1078 LB1079 LB1080 LB1081 LB1082 LB1083 LB1084 LB1085 LB1086 LB1087 LB1088 LB1089 LB1090 LB1091 LB1092 LB1093 LB1094 LB1095 LB1096 LB1097 LB1098 LB1099 LB1100 LB1101 LB1102 LB1103 LB1104 LB1105 LB1106 LB1107 LB1108 LB1109 LR298 LR299CA LR300CA LR301CA LR302 LB638A LB226 LB261 LB258 LB754]

And a priority motion. Senator McCoy would move to adjourn the body until Friday morning, January 22, at 9:00 a.m.

PRESIDENT SHEEHY: You have heard the motion to adjourn until Friday, January 22, at 9:00 a.m. All those in favor say aye. Opposed, nay. We are adjourned.