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Floor Debate
March 12, 2010

[LB98 LB258 LB497 LB510 LB689 LB701 LB728 LB742 LB820 LB864 LB880 LB881
LB901 LB924 LB948 LB950 LB970 LB979 LB1021 LB1048 LB1057 LB1079 LB1081
LB1090 LB1091 LR171 LR295CA LR374 LR375 LR376 LR377]

SPEAKER FLOOD PRESIDING []

SPEAKER FLOOD: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the forty-first day of the One Hundred First Legislature, Second Session. Our chaplain for today is Pastor Fay Hubbard of the Ellis and Odell United Methodist Churches from Odell, Nebraska, Senator Wallman's district. Please stand. []

PASTOR HUBBARD: (Prayer offered.) []

SPEAKER FLOOD: Thank you. I call to order the forty-first day of the One Hundred First Legislative Session, Second Session. Senators, please record your presence. Mr. Clerk, please record. []

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

SPEAKER FLOOD: Thank you, Mr. Clerk. Are there any corrections for the Journal? []

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

SPEAKER FLOOD: Thank you. Are there any messages, reports, or announcements? []

CLERK: Enrollment and Review reports LB1081 and LB948 to Select File. New resolution: Senator Cook offers LR374 and LR375; Senator Avery, LR376. Those will all be laid over. Reports received in the Clerk's Office and available for member review include from the Department of Administrative Services, the Auditor, Department of Correctional Services, Legislative Fiscal Office, the Department of Revenue, Nebraska Department of Roads, the University of Nebraska. And I also, and finally, have the report of registered lobbyists for this week. That's all that I had, Mr. President. (Legislative Journal pages 859-866.) [LB1081 LB948 LR374 LR375 LR376]

SPEAKER FLOOD: Thank you, Mr. Clerk. (Doctor of the day introduced.) Members, please find your seats in preparation for Final Reading. Members, we now turn to LR295CA. Mr. Clerk. [LR295CA]

CLERK: (Read LR295CA on Final Reading.) [LR295CA]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LR295CA pass? A reminder to the body: This vote does take

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40 votes to be placed on the May ballot. All those in favor vote aye; all those opposed vote nay. Record please, Mr. Clerk. [LR295CA]

CLERK: (Record vote read, Legislative Journal pages 867-868.) 42 ayes, 0 nays, 2 present and not voting, and 5 excused and not voting, Mr. President. [LR295CA]

SPEAKER FLOOD: LR295CA passes. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR295CA. Members, we now move to General File, 2010 Senator priority bills, the Avery division. We return to LB1021. Mr. Clerk. [LR295CA LB1021]

CLERK: Mr. President, excuse me, LB1021, a bill by Senator Avery. (Read title.) The bill was discussed yesterday, at which time the Education Committee amendments were presented. Senator Avery had pending, Mr. President, AM2033 as an amendment to the committee amendments. (Legislative Journal page 718.) I do have a priority motion, Mr. President. Mr. President, that priority motion is from Senator Lautenbaugh. He would move to bracket the bill until April 14, 2010. [LB1021]

SPEAKER FLOOD: Senator Lautenbaugh, you're recognized to open on your bracket motion. [LB1021]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. As I indicated yesterday, I don't believe that this bill gets us into an area that we need to get into. Even as amended, I don't think it's good precedent. I don't think it's an area we belong in. I don't think it's something we need to deal with. And, simply put, when that's how you feel, this is the motion you file. So I'll look forward to the discussion on this and I would urge you to vote for the bracket motion. [LB1021]

SPEAKER FLOOD: Members, you've heard the opening on Senator Lautenbaugh's bracket motion which would bracket LB1021 until April 14, 2010. Turning to discussion, Senator Coash, you are recognized. [LB1021]

SENATOR COASH: Thank you, Mr. President, members of the body. I'm going to rise in support of the bracket today. I've listened to the debate for the last couple of days. Like Senator Lautenbaugh, I am concerned about the precedent. And I work with nonprofits. Senator Gloor made a good comment yesterday about do we want to open the door? Does this do it? No, but it's where we start, and I think we need to be mindful of that. But beyond that, colleagues, I think we need to put this whole bill into context. NSAA deals with activities, sports. These are games, colleagues. Do we really want to start messing around with games this session? This isn't special education. This isn't teachers' salaries. This isn't how we fund our schools. This is about how we regulate games. Is this the most important educational thing we have to deal with? Is it important? Yes. But I don't think it rises to the level of needing to change the NSAA as LB1021 does do. And

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so I do rise in support of the bracket and I appreciate the body's support on that as well. Thank you, Mr. President. [LB1021]

SPEAKER FLOOD: Thank you, Senator Coash. Senator Avery, you are recognized. [LB1021]

SENATOR AVERY: Thank you, Mr. President. Good morning, colleagues. Let me address the issue of we should not be getting into this. As I said yesterday, the NSAA is not like other 501(c)(3)s. They are, in fact, a state actor. The U.S. Sixth Court of Appeals ruled in 1968, in a Louisiana case, that when certain conditions are met, the 501(c)(3) is, in fact, a state actor. And what are those? Well, for one, the NSAA exists only to serve a public purpose, and that is to organize and carry out school activities. Schools. Public schools, by and large. First...that's the first thing. Its only purpose is public. Second, a sizeable amount of the funding for the NSAA comes from tax dollars. It comes out of the state aid. Third, they use state facilities, state-owned facilities for all of their activities or most of them. And here's something I think that you can't ignore. It's important. NSAA employees are in the State Retirement System. If this were an entirely private institution with no public involvement and no public purpose, why would the employees be in the State Retirement System? The NSAA exclusively runs school activities. It is deeply intertwined with public activity. These are the kinds of conditions that the Sixth Circuit Court of Appeals said qualifies a 501(c)(3) as a state actor. And for our purposes here, we have to be asking ourselves if this is a state actor, then what is wrong with a minimal--a minimal--amount of involvement by this Legislature in requiring this association to open its meetings to the public and to the press, and to open its records? That is not unreasonable. Transparency, folks, is what makes for good government. It's the bedrock of accountability. Right now, the NSAA is largely unaccountable. Since I started working on this issue, they have adopted internal policies for open meetings and for public records. But I would remind you, that's an internal policy and they voluntarily comply with it or not. There's no enforcement. There's no enforceability at all in an internal voluntary policy. And, in fact, in the public records policy there is a provision for the executive director to unilaterally, by himself, at his own discretion, decide which documents will become public and which ones will not. So I think what we need here is a clear idea of what we are talking about. We're not talking about ordinary 501(c)(3)s. We are talking about a unique institution that has, by the U.S. court system, already been defined as a state actor, and as a state actor it is appropriate for us to look at some of their policies and to provide guidance. And that's what we will be doing with this committee amendment. I would remind you that AM2033... [LB1021]

SPEAKER FLOOD: One minute. [LB1021]

SENATOR AVERY: ...is simply a technical amendment to the most significant one which is AM1969. AM1969 is the bill. You vote for that. The green copy is no longer

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relevant. A lot of debate yesterday was on the green copy. This is not about the green copy. I do not plan to try to amend anything more after AM1969 is discussed. I would urge you to reject this bracket motion. It is...it serves no purpose other than to kill a good bill that I think has merit, and I would hope that you would agree. Thank you.
[LB1021]

SPEAKER FLOOD: Thank you, Senator Avery. Senator Adams, you are recognized.
[LB1021]

SENATOR ADAMS: Thank you, Mr. Speaker, members of the body. I find myself, again, I think even this week, as the committee Chair having one leg on both sides of an issue. And I intend to support the committee amendment. I said in introductory comments that I didn't believe--and I've said this to the committee--that we ought to be in the business of regulating activities. On the other side of that, we have spent a lot of hours in the Education Committee on hearings on this bill this session, a bill last session. I afforded Senator Avery an hour, hour and a half, during the fall on an interim hearing on this very subject. And I will tell you that even though personally I don't believe I want to see the Education Committee and the Legislature in the business of regulating activities, there was some testimony in several hours of hearings that was somewhat compelling. It was. And let me remind you again of what Senator Avery just said. What the committee amendment does is gut the bill and simply ask that NSAA comply with open meetings and public records, which doesn't go nearly as far as the green copy, and I wouldn't have supported that. I said that yesterday. I'm saying it again. But what the committee amendment is, is a compromise. That doesn't mean you have to accept it. But as a committee member, I'm going to tell you I'm going to respect the compromise we made on this and support what I believe is relatively minimum in compliance with open meetings and public records. And I'll say it for the tenth time. Do I want to have to start dealing with regulating activities every year in Education Committee? No, I don't. Thank you, Mr. President. [LB1021]

SPEAKER FLOOD: Thank you, Senator Adams. Senator Dubas, you are recognized.
[LB1021]

SENATOR DUBAS: Thank you, Mr. Speaker. Good morning, members of the body. I rise in support of the bracket motion but I don't do it lightly. I've thought about this ever since knowing that this amendment has been introduced. Much of what Senator Adams just said is where I am at. I don't think the Legislature needs to get involved with school activities. Granted, what Senator Avery said with the makeup of NSAA, that does put them kind of into our arena, but then not really. I've spoken with my schools and other people, you know, who all said that they have concerns with this bill. They've also, many of them, have said they have concerns with NSAA and the way NSAA works. I've spoken with members of the press who have been frustrated with some of the hoops that they have to jump through to take pictures and do things like that at sporting events

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such as state basketball, etcetera. So I think that this bill hopefully goes a long way at letting NSAA know that there are a lot of people who have issues with the way they do their business. And sometimes the best thing a piece of legislation can do is deliver that wake-up call and let a particular agency know that there are problems out there. And as I frequently tell people when they tell me there should be a law or we need to address this, I tell people, if you can find a solution outside of the legislative arena, it's usually a better solution because as a Legislature we don't have the ability to look at things just in a very singular fashion. When we pass legislation, it's very well going to have a statewide impact. And so if there are ways that you can improve yourself, make what you do better, then you need to do that so that we don't have to force you to make those changes legislatively. So I stand here, as I said, somewhat torn about whether I should or shouldn't support the bracket motion, but in the end deciding that I would, again for a lot of the reasons that Senator Adams said. This...you know, if we're going to regulate this, then what do we come back next year with? I understand some of the parents' frustrations. When our kids participate in school-sanctioned activities, those are the rules they must abide by, and I think they're there for a very good reason. So I hope that this does have the NSAA's attention. I hope school districts are communicating with the NSAA about what their issues are and try to address them internally and make their association a better, more responsive association. You know, if we have to come back in the next few years and continue introducing legislation to try to get some movement out of NSAA, I guess that's what we do. But I just think right now where we're going with this bill and, in particular, the amendment, is not a direction that the Legislature should go. So I do intend to support the bracket motion. [LB1021]

SPEAKER FLOOD: Thank you, Senator Dubas. Senator Schilz, you are recognized. [LB1021]

SENATOR SCHILZ: Thank you, Mr. President and members of the body. Good morning. I was wondering if Senator Avery would yield to a question? [LB1021]

SPEAKER FLOOD: Senator Avery, will you yield to a question from Senator Schilz? [LB1021]

SENATOR AVERY: I will. [LB1021]

SENATOR SCHILZ: Thank you, Senator Avery. When you were speaking before, you had mentioned...and I'm trying to understand exactly what you were explaining, but you were talking about NSAA and retirement. And from what I understand, they are not in the retirement pool for the state, and I think I heard that you said that they did. Could you clarify that for me? [LB1021]

SENATOR AVERY: The leadership of the NSAA is called the Board of Control. Those members are all either athletic directors or superintendents. They are in the State

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Retirement System. They actually...I think the secretaries and the administrative staff in the office are not. [LB1021]

SENATOR SCHILZ: Okay. But they're probably under that retirement plan because of the school that they're with and not necessarily with the NSAA, correct? [LB1021]

SENATOR AVERY: But that shows you, Senator, how intertwined the organization is with the public activities. [LB1021]

SENATOR SCHILZ: Okay. Well...thank you, Senator Avery. Well, I appreciate that. I guess where I'm at is...and I think everybody that was here yesterday heard what I had to say yesterday about the underlying bill and what we've come to try to...or what the Education Committee has come to try to find a compromise on. And as I've said before, you know, the LB1021, in whatever form it's in, has left a pretty bad taste in the mouth of folks out in my area. So they'd just like to see this thing gone, and I will be supporting the bracket motion. Thank you very much. [LB1021]

SPEAKER FLOOD: Thank you, Senator Schilz. Senator Council, you are recognized. [LB1021]

SENATOR COUNCIL: Yes, thank you, Mr. President. Good morning, colleagues. I rise in opposition to the bracket motion. I really don't believe that what LB1021 does is to inject the Legislature into an area where it should not be involved. Respectfully disagreeing with my friend and colleague, Senator Coash, this is not just about games. This is about the lives of young people. NSAA determines eligibility. NSAA decides and has an impact, particularly upon what opportunities are available to youngsters who want to participate in activities if they transfer between schools, if they transfer between districts. And I'm sure that those of you with an education background know that in many instances there are children who are on the fringe in terms of their educational direction who are lacking in motivation to pursue their academics. And the one thing that may serve as a motivator for these young people is the ability to participate in the very activities that are sanctioned, sponsored, controlled, and regulated by NSAA. NSAA has the ability to have a profound impact on the lives of the youngsters who attend public and private schools in this state. And what the bill does, as amended by the committee, merely opens that process up to some accountability in the sense that members of the public would be allowed to attend their meetings and members of the public would be allowed to access their records. Nothing in this bill, as amended, infringes upon the duties or the abilities of the NSAA Board of Control to continue in the role that it has occupied for tens of years, and that is establishing the rules by which youngsters in this state participate in school activities. That participation does have an impact on school budgets, and I'm not here trying to make that relationship, because as Senator Fischer stated accurately yesterday, there are other associations across the state which utilize public funds through dues. But there is a major distinction between those organizations

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and NSAA. Those organizations do develop legislative policy agendas. They do establish agendas in terms of what they want to seek from their particular boards of education. But what those organizations do has no binding effect on anyone. What NSAA does, does have a binding effect. And it has a binding effect on young people in our schools who want to participate in these activities. And how they participate in them and where they participate in them are all dictated by NSAA. Now Senator Adams is correct in saying that I don't think that we necessarily want to be involved in the administration of activities, but I think we absolutely have an interest in... [LB1021]

SPEAKER FLOOD: One minute. [LB1021]

SENATOR COUNCIL: ...ensuring that the public has access to an organization that has the ability to have as much power and influence over what happens to their youngsters who wish to participate in school activities that the minimal intrusion that is incorporated in the bill, as amended, is something that...a step that this body needs to take. We haven't addressed the real core issues that came out during the hearing about NSAA. And as someone indicated, the green version of the bill which addressed all of those has literally been killed by virtue of the amendment. So what is being done here for all of us who stand around and talk about accountability and transparency, that's all that this bill does, as amended, is just open what NSAA does up to the view of the public that it serves. [LB1021]

SPEAKER FLOOD: Time, Senator. Thank you, Senator Council. Senator Nelson, you are recognized. [LB1021]

SENATOR NELSON: Thank you, Mr. President and members of the body. I stand in support of the bracket motion and I do so for this reason. I can understand the committee Chairman's dilemma here--not dilemma, but a foot on each side of this issue. And the committee has done, I think, a very good job by their amendment of coming up with just a minimal intrusion. Nevertheless, it is an intrusion and I personally believe that this is something that we should not be doing. This is simply opening the door. I think that LB1021 should be thought of as a shot across the bow. It's a warning to the NSAA that there are some things that need to be corrected and my understanding is that they have corrected, at least those things as far as open meetings and open records, and they've done it voluntarily. So this is a warning shot, and I think a 501(c)(3) organization of this sort where it is a public actor would be well-advised to be careful in the future. So although I think the amendment is okay, I certainly would not have voted for the green copy and I think, having taken this action so far, that we should not do anything more at this point other than bracket the bill and see how things go for the next couple of years. Thank you, Mr. President. [LB1021]

SPEAKER FLOOD: Thank you, Senator Nelson. Senator Avery, you are recognized. [LB1021]

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SENATOR AVERY: Thank you, Mr. President. Let me reemphasize that this is not about the green copy. If you vote to approve AM2033 and AM1969, you will be getting what I think is a reasonable compromise in the committee, and that is accountability, transparency. I don't think I have heard a single person stand up and argue against the value of transparency in government. Not one. Nobody has stood up and said that the NSAA ought to be closed and unavailable to public scrutiny. What I'm hearing is that, well, maybe we shouldn't do this because it is a private organization. But again, let me emphasize, it's a private organization that only has a public purpose and its activities are public activities. It ought to be open to public scrutiny. Their meetings ought to be open so parents, students, and the press can attend. Their records should be open. We have, in Nebraska, some of the best open meetings and public record laws in the country. This institution right here, the Legislature, is I think the most open legislative body in the entire country. No other Legislature conducts business the way we do. In most states, bills don't even get public hearings unless committee chairs decide they want to. We guarantee the public access to what we do. And I think that we have to be very, very careful that we do not allow ourselves to shy away from taking action when it is needed. I believe that the NSAA needs to have an enforceable open meetings law and enforceable public records law. Now Senator Nelson made a point about this being a warning shot, a shot across the bow. That's not my purpose. In fact, I would suggest to you that if that's what we are trying to do by supporting this bracket motion is to send a message, then you are sending the wrong message. The message we'd be sending is that the Legislature doesn't have the backbone to do this and the NSAA can just go about their business and keep their meetings closed if they want to and hide their records if they want to and the Legislature is not going to do anything. The green copy would have gone much farther. I pledge to you that that green copy is not what we are talking about and I do not intend to try to amend it anymore beyond what the committee is recommending. The committee's recommendation is a reasonable one. Open meetings, open records, transparency: the bedrock of good government. Accountability. If we don't have accountability in our public institutions, then the legitimacy of what we do is in jeopardy. People look at what we do and look at our public institutions, and they want to have confidence in what the institutions are doing but they can't have confidence if they don't know what they're doing. You have to have access. That's the importance of transparency. It's directly tied to public trust... [LB1021]

SPEAKER FLOOD: One minute. [LB1021]

SENATOR AVERY: ...in our institutions, and public trust in our procedures. That's what this is about. This bracket motion would take us a step back from those cherished principles and I hope that you will vote against it. Thank you. [LB1021]

SPEAKER FLOOD: Thank you, Senator Avery. (Visitors introduced.) Senator Haar, you are recognized. [LB1021]

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SENATOR HAAR: Mr. President, members of the body, dealing with the NSAA, to me feels a little bit like that movie Groundhog Day. Since I've only been here two years, last year we heard and we thought that might pry them to do some things, and this year again we've heard from...and we're trying to get the message across, I believe, but I think we've fired enough warning shots and I think that this first step would be a very good step to take. Just saying, you have to have open meeting laws. There has to be access to certain documents. Parents do come to us and, you know, it's that same sort of thing when you go door to door, running for state senator, and then people ask you, well, what about the potholes in the streets and what about what the federal government is doing, and so on. Many citizens don't make these fine distinctions between who is who when it comes to those things that are perceived as public policy. And I think this is one of those areas where parents have a right to come to the Legislature because it is, in a way, a public policy. They are a public actor. And, you know, we can fire one more warning shot and then we're going to have it back here again and again and again and again. And I would like to take some kind of specific action to say that really we are going to take action at some point. So I stand against the bracket motion and I will vote for LB1021. Thank you. [LB1021]

SPEAKER FLOOD: Thank you, Senator Avery (sic--Senator Haar). Senator Gloor, you are recognized. [LB1021]

SENATOR GLOOR: Thank you, Mr. President. Good morning, members. I rise in support of the bracket motion. I would reiterate some of the comments I made yesterday. This, to me, is salvation through legislation. That we are here and we have this particular bill and its amendments because of an injustice that is perhaps real, perhaps perceived, perhaps nonexistent. But somebody didn't like what came out of NSAA or decisions made by NSAA, which is a private membership organization. It is established this way. And I worry about the impact and the precedent that we set for other private membership organizations. And we are, as Senator Avery has rightfully pointed out, all in support of transparency. It's a great thing. Nebraska is proud to be a very transparent state as relates to its laws. But this is a private membership organization. And as proud as we are and as strongly as we would defend transparency within the public parameters--arena--I think we also need to be cognizant of the fact that membership organizations have a right to privacy themselves. They deserve that right. And I believe LB1021, the amendments, threaten the privacy of private organizations. And I believe the precedent that we set here is a dangerous, dangerous precedent. I would urge support of the bracket motion and I would urge, if the bracket fails, that you vote down the amendments and LB1021. Thank you, Mr. President. [LB1021]

SPEAKER FLOOD: Thank you, Senator Gloor. Senator Council, you are recognized. [LB1021]

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SENATOR COUNCIL: Yes, thank you, Mr. President. I guess it was serendipitous that Senator Gloor ended his comments on precedent. Well, the interesting thing is, is that there is precedent. This body has on those occasions where a private 501(c)(3) not-for-profit organization is engaged in an activity that has an impact on the public in which this state has a public interest, we have, this body has subjected those organizations to the open meetings law and the public records law. I would direct your attention to legislation that was passed several years ago that allowed public housing authorities in this state to develop private not-for-profit development arms, and if they did do so and those organizations' membership consisted of a significant percentage of the members, employers, or board members from the actual public housing authority, this body said that their meetings shall be open to the public and shall be subject to the open records laws of this state. And I suspect that this body did that, recognizing that public housing is an issue of public concern that this body has an interest in, as well as members of the public have an interest in. So, colleagues, there is precedent for requiring such 501(c)(3)s who actually are engaging in activities that affect the public in ways similar to the way NSAA affects the public, we have subjected them to the open meetings law and the public records law. And the question that needs to be asked, and I suspect that that's why Senator Adams states, you know, this reluctance to get involved in school activities, because the fact of the matter is, if there was no NSAA, public schools would have to assume the responsibility and carry out the responsibility of regulating extracurricular activities within their districts. So what NSAA does is a service to public schools by virtue of taking over the governing of school activities so that local school boards and schools within regions don't have to do so. So there is a genuine, legitimate public interest involved in our making sure that NSAA is open to some public scrutiny. And that's all that this bill does is say that their meetings will be open to the public. And it's amazing to me...I mean, I, for all of those who think that this is some tremendous burden on the NSAA, do they believe that these meetings will be inundated? No. It provides people with the opportunity to be heard. Does the fact that their meeting has to be open, mandate that they take a particular course of action? No, it doesn't. And we provide members of the public with opportunities to be heard in other areas where the decisions of that body could have a profound impact on their lives. And we do that, in many times, knowing that the fact that the public has an opportunity to be heard will have absolutely no impact on the decision that that body is going to make, because they're going to make the decision they're going to make. But it does provide that opportunity... [LB1021]

SPEAKER FLOOD: One minute. [LB1021]

SENATOR COUNCIL: ...for the public to be heard. NSAA is performing a public service for school districts and the students within those school districts in the state of Nebraska. Members of the public have an interest and a right to hear and have an opportunity for input into those decisions that are being made. And, yes, I've heard, well, the NSAA, all the school districts have members on the various regionals, and they

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have input in selecting their representative to the governing body. But that does not cover the parents or the students themselves who have a right to have some input in decisions that affect not only their athletic lives, but their academic lives. And I would... [LB1021]

SPEAKER FLOOD: Time, Senator. [LB1021]

SENATOR COUNCIL: ...urge you to oppose the bracket motion. [LB1021]

SPEAKER FLOOD: Thank you, Senator Council. Senator Avery, you are recognized. [LB1021]

SENATOR AVERY: Thank you, Mr. President. I want to address Senator Gloor's comment about this being a dangerous precedent. I thought that Senator Council did a fine job. But I do want to mention that we already have at least two examples of nonprofits in the state of Nebraska that come under Nebraska statutes. Wyuka Cemetery Association is one. It's established as a 501(c)(3), but it has come under statutory authority of the state. Also the Nebraska State Historical Society is a 501(c)(3) that also comes under the authority of the state. Let me point your attention to other states. I have here a 50-state survey of regulation of high school interscholastic activities associations. And only nine states--only nine states have no regulation whatsoever. Twelve states have comprehensive, excessive...I mean, exceedingly intrusive laws and regulations. And those include Kansas and New Mexico and Oregon and Pennsylvania and Texas and Washington and many other states. Then you have nine states that have substantial involvement in regulating their interscholastic activities associations. And when you look at Nebraska, we have none and we are in a distinct minority. Now that itself is not a reason to vote against this bracket motion and that itself is not a reason to support the committee amendment. But I don't think that to say that this is a dangerous precedent is an accurate observation. This is not a dangerous...what's dangerous about accountability? What's dangerous about transparency? I would like to think that all of us support transparency, and the more transparency, the better. I'm a little bit surprised to hear arguments that seem to suggest that maybe we don't want transparency. This organization, as Senator Council just so eloquently explained, is a state actor. It does deal with public policy. It spends public money. Many of the members of its organizational structure are in the State Retirement System. It seems to me that it is a state actor, and that as a state actor, we have the right and the obligation to at least require it to open its meetings and its records. Thank you, Mr. President. [LB1021]

SPEAKER FLOOD: Thank you, Senator Avery. Senator Stuthman. [LB1021]

SENATOR STUTHMAN: Question. [LB1021]

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SPEAKER FLOOD: The question has been called. Do I see five hands? I do. The question is, shall debate cease? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB1021]

CLERK: 27 ayes, 0 nays to cease debate, Mr. President. [LB1021]

SPEAKER FLOOD: Debate does cease. Senator Lautenbaugh, you're recognized to close on your motion to bracket LB1021 until April 14, 2010. [LB1021]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. And at this time I would request a call of the house and a roll call vote when the time comes. [LB1021]

SPEAKER FLOOD: There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB1021]

CLERK: 38 ayes, 0 nays to place the house under call, Mr. President. [LB1021]

SPEAKER FLOOD: The house is under call. Senators, please record your presence. Those senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senators White, Cornett, Heidemann, Rogert, please record your presence. Senators White, Cornett, Heidemann, please return to the Chamber and record your presence. Senator Lautenbaugh, your time will continue to run. Would you like to proceed while we wait for the return of Senators White, Cornett, and Heidemann? [LB1021]

SENATOR LAUTENBAUGH: Yes, I would, Mr. Speaker. [LB1021]

SPEAKER FLOOD: You may proceed. [LB1021]

SENATOR LAUTENBAUGH: I think the issue on the bracket motion has been ably covered on both sides, and again, as with everything we do here, it's really just where do you draw the line? What things should we be getting into? What things are worthy of our attention and our intrusion and our regulation, if you will, and what things should we leave alone? And I don't think we err very often when we err on the side of leaving something alone. And this is one of those times where I think we're moving into an area that we don't need to move into. There may be other things that we have regulated, there may be other things that we've applied open meetings laws to that are in some way analogous to this entity, but they're also different from this entity. And again, simply put, I don't believe that this is something we should be getting into. I don't believe this is a bill that we should pass. I would urge you to vote for the bracket motion. [LB1021]

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SPEAKER FLOOD: Thank you, Senator Lautenbaugh. Senator White, please return to the Chamber. The house is under call. Yes, Senator Lautenbaugh, for what purpose do you rise? [LB1021]

SENATOR LAUTENBAUGH: I'm content to proceed, Mr. Speaker. [LB1021]

SPEAKER FLOOD: We shall proceed without Senator White. The question is, shall LB1021 be bracketed until April 14, 2010? Mr. Clerk, please call the roll in regular order. [LB1021]

CLERK: (Roll call vote taken, Legislative Journal pages 868-869.) 27 ayes, 13 nays, Mr. President, on the motion to bracket. [LB1021]

SPEAKER FLOOD: LB1021 is bracketed until April 14, 2010. Mr. Clerk, we now proceed to the next item on the agenda, LB1057. I do raise the call. Before we proceed to LB1057, Mr. Clerk, any items for the record? [LB1021 LB1057]

CLERK: I do, Mr. President. Thank you. Resolution: Senator Loudon would offer LR377. The constitutional amendment read this morning on Final Reading was presented to the Secretary of State as of 9:25 a.m. (Re LR295CA.) And an explanation of vote from Senator Harms (Re LB258). (Legislative Journal pages 869-870.) [LR377 LR295CA LB258]

Mr. President, the next bill, LB1057, offered by Senator Carlson. (Read title.) Bill was introduced on January 21 of this year, at that time referred to the Natural Resources Committee. The bill was advanced to General File. There are Natural Resources Committee amendments pending. (AM1895, Legislative Journal page 635.) [LB1057]

SPEAKER FLOOD: Senator Carlson, you're recognized to open on LB1057. [LB1057]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. It's my pleasure to introduce LB1057 which is my priority legislation for this session. LB1057 would create the Republican River Basin Water Sustainability Task Force. I also brought legislation which became a part of LB701 in 2007 which created an Invasive Vegetation Task Force. The group has worked two years and a great deal has been accomplished toward restoring the river stream beds to what they used to be. Environmental and sportsmen groups are happy with the results. The carrying capacity of the stream has greatly improved and the removal of vegetation has significantly saved...or saved significant amounts of water. One of the positive outcomes of the task force was the movement of several members from negative attitudes about possible unwanted consequences of the work to total and complete support on the results accomplished. Opponents became vocal proponents. The results of the work of the Vegetation Task Force encouraged you to authorize a continuation of the work for four

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more years through the passage of LB98 last session in 2009. LB1057 is also designed to bring interested stakeholders to the table. However, this task force will concentrate on water sustainability in the Republican Basin. Specifically, the task force will be charged with: (1) defining water sustainability for the Republican Basin, (2) developing and recommending a plan to reach water sustainability in the basin, and (3) developing and recommending a plan to help avoid a water-short year in the basin. The 22 voting members of the task force to be appointed by the Governor include two members from each of the four NRDs in the basin; four representatives from the irrigation districts in the basin; one representative each from the Department of Natural Resources, the University of Nebraska, Game and Parks, and the Department of Ag; one representative from a school district in the basin; one from a city in a basin; and one from a county in the basin; and also a member representing public power; and two representatives from associated ag businesses in the Republican Basin. Legislative members appointed by the Chair of the Executive Board shall include two senators who are residents of the basin and the Chair of the Natural Resources Committee. They would be ex officio nonvoting members. With the exception of state agency representatives, 18 of the 22 members will be from the Republican Basin. The Department of Natural Resources shall house the administrative and budgetary function of the task force. I strongly believe the task force will positively supplement the work of the Nebraska Republican River Management District Association. It will educate the other stakeholders in the basin whose futures rely heavily on the availability of adequate irrigation water for increased production in future years. The Water Resources Cash Fund will provide \$25,000 a year to fund the task force. This is not new money. It's previously appropriated and will not affect the General Fund. An amendment to follow will include the enabling language. The task force itself will hire a facilitator for the quarterly meetings. The task force will submit two yearly reports to the Governor and the work will terminate on June 30, 2012, unless the Legislature chooses to authorize an extension. The bill carries the E clause. A hearing was held on February 5, 2010. There were 14 positive testifiers, 1 negative, and 2 in a neutral position. I thank the Natural Resources Committee for their conduct at the hearing, the questions they asked, the information they received, and I thank them for the vote of 8-0 to advance the bill to the floor. With that, I'd be happy to answer any questions that the body may have, and I ask for your support of LB1057. Thank you, Mr. President. [LB1057 LB98]

SPEAKER FLOOD: Thank you, Senator Carlson. Senator Langemeier, there are Natural Resources Committee amendments. You are recognized to open on AM1895. [LB1057]

SENATOR LANGEMEIER: Mr. President and members of the body, thank you. Senator Carlson, in his opening, talked about the committee amendments and not the green copy. He had that incorporated in, and so we just want to stress a couple points. He did a great job with it. It does change it to there's 21 voting members with 2 members of this body on this as ex officio members, as well as the Chairman of the Natural Resources

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Committee. It's...that was one of the changes the committee amendment made. And the second amendment to follow, Senator Carlson, we're going to go right on to that because you've heard a good opening, I'm going to ask you to support the committee amendment, AM1895, as well as Senator Carlson's amendment which puts an enabling clause in so they can actually spend the \$25,000 that the department has. So we'd ask that you accept the committee amendment as well as the following amendment that Senator Carlson will open on next. Thank you. [LB1057]

SPEAKER FLOOD: Mr. Clerk. [LB1057]

CLERK: Mr. President, Senator Carlson would move to amend the committee amendments with AM2092. (Legislative Journal page 812.) [LB1057]

SPEAKER FLOOD: Senator Carlson, you are recognized to open on AM2092. [LB1057]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. Senator Langemeier has done a good job of introducing AM1895, and the purpose of AM2092 is simply to enable the money to be utilized out of the cash fund for this purpose. Thank you. [LB1057]

SPEAKER FLOOD: Thank you, Senator Carlson. You've heard the opening to AM2092 to AM1895. We now turn to discussion. Senator Hansen, you are recognized. [LB1057]

SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. Would Senator Carlson yield to a couple of questions? [LB1057]

SPEAKER FLOOD: Senator Carlson, will you yield to a question from Senator Hansen? [LB1057]

SENATOR CARLSON: Yes, I will. [LB1057]

SENATOR HANSEN: Senator Carlson, I appreciate you bringing this bill and I think sustainability is certainly something that we need to talk about. On the amendment...let me make sure we have the same amendment here. It's on AM1895. That's the one I had the question on. In the Middle Republican NRD, there are acres in my district, and there are the total acres in my district that are certified...certified irrigated acres are 76,851 acres. Total acres in my district that belong to the Middle Republican NRD is 455,032 acres. As I read the amendment that we're talking about, the AM1895--is that the one? Yes, that's the one I wanted to talk about. It appoints two nonvoting members of the Legislature, two of whom are residents of the basin and one is the Chairperson of the Natural Resources Committee. And I'm sure that was an oversight that you would leave a senator off that would be representing that much land in one of the natural resources districts. I will come to the meetings if notified and I would, as long as you're a

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nonvoting member, I would be equal with you and I would be very satisfied with that. But I just want to make sure that you know that District 42 has some property and a lot of taxpayers and a lot of ground that's covered in the Middle Republican. Your comments please. [LB1057]

SENATOR CARLSON: Thank you, Senator Hansen. And certainly you and the intent here was that anyone else in the body could attend the meetings and become an ex officio nonvoting member. We had some concerns in the hearing about the size of the task force and so that's one of the reasons for the amendment is we cut down the size, but we have no intent of leaving members of this body out that have an interest in what's happening on that task force. So I appreciate your question. [LB1057]

SENATOR HANSEN: Thank you, Senator Carlson. Thank you, Mr. President. Madam President. [LB1057]

SENATOR SULLIVAN PRESIDING []

SENATOR SULLIVAN: Thank you, Senator Hansen. (Visitors introduced.) We'll continue with discussion. Senator Haar, you're recognized. [LB1057]

SENATOR HAAR: Madam President, members of the body. It's good to see you up there. One of the things as I've been on the Natural Resources Committee that has really impressed me is to see that folks like Senator Carlson, in particular, and Senator Christensen, who have to live with the problem of the Republican River and the water issues there, are really trying to get across the message that local folks can and will solve the problem. The suggestion here of this bill to have a sustainability task force makes a great deal of sense to me. I believe that when you get people together to talk about solutions, you're always going to learn something new. And you get a lot more buy-in when you do that sort of thing, a lot of buy-in from the local people because they've been part of the discussion. I've seen what the vegetation task force has done, how it's been successful. I visited the river last summer and was very impressed. And I know that this group from that area, under the leadership of their state senators, will work hard to help solve the challenge. I like the way this task force has been set up. You know, we don't know what's going to come out of the task force but the likelihood is that there's going to be some suggestions that weren't there before, and so I stand and will support the amendments and LB1057. Thank you very much. [LB1057]

SENATOR SULLIVAN: Thank you, Senator Haar. The Chair recognizes Senator Christensen. [LB1057]

SENATOR CHRISTENSEN: Thank you, Madam President. I'll be brief this morning. I don't have much voice. A little too much basketball last evening. I do support looking at options to better handle the water issues in the Republican. We have multiple problems

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down there and that's dealing with not only hitting compliance with a 1943 compact, but we also have sustainable issues that we...of groundwater levels and things that can be addressed through this task force. I've been part of the vegetation task force and I can compliment Senator Carlson and the whole task force on how well they have worked together and brought parties of opposition together and made them all supporters. I can testify that we have improved the stream flows from that vegetation task force, and it has become a big benefit right now, as Harlan County is full, we're sending good surges down below towards Kansas to help scourge it and clean it up. And we hope to have as large of a positive impact with this bill also in bringing up long-term solutions to the basin, getting everybody to think outside the box, what can we do, because there are other ideas other states have implemented, as well as ideas that have been brought forth from constituents that we can use to better support this basin. Colorado has a lot of augmentation ponds on individual farms next to streams to help time flows in. There's a number of states move water around their state. They don't just look at it as, well, it's a certain region's problem. They look at it as a state resource. And the waters of this state are owned by the state so it is a state issue. But, locally, we like to find solutions that we can utilize together, so I'm going to ask you to support this bill and save a little voice. Thank you. [LB1057]

SENATOR SULLIVAN: Thank you, Senator Christensen. The Chair recognizes Senator Wallman. [LB1057]

SENATOR WALLMAN: Thank you, Madam President, members of the body. I do, too, appreciate what Senator Carlson and Senator Christensen worked on these water issues, forever it seems like. And the most important thing in this state is water. And so the sustainability, have a task force, have some expertise, people in the valley that know what's going on. We don't necessarily know what's going on in here but local residents, local NRDs, Game and Parks, they all work together. They will get it done. Thank you, Madam President. [LB1057]

SENATOR SULLIVAN: Thank you, Senator Wallman. Senator Dubas, you're recognized. [LB1057]

SENATOR DUBAS: Thank you, Madam President, members of the body. I rise in support of this bill and the amendments. You know, we have plenty of opportunities on the Natural Resources Committee to hear about water issues, and especially in the Republican River Basin, and the very difficult challenges faced by those producers in that particular region. And for those of us who are not directly impacted by what's going on down there, it's kind of hard to maybe relate to just how serious this is and just how far-reaching the ramifications this is for the financial future, not just of the producers in that region, but of the counties and the cities and the schools and the businesses that exist in this region. I think Senator Carlson's approach is the right way to go about it. It's bringing all of those stakeholders, everybody who is directly or indirectly impacted by

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the policy decisions that we make here at the Legislature and how to collectively work together and find some workable solutions that will help shore up that economy and keep it moving forward. You just don't make overnight decisions on the way you run your farm or ranch operation, and, you know, you don't go from irrigated to dryland in the blink of an eye. There's a huge capital investment with farming and ranching, and whether you're dryland or whether you're irrigated. And, you know, I know if I went to my banker one day and just said I've decided I'm going to change completely the way I operate, there would be a little bit of a raised eyebrow in that conversation. So I think again that this bill really does take that comprehensive approach. When I talked about LB689, Senator Langemeier's bill, which was my priority bill, and the fact that we as producers know by taking those checkoff dollars out of the funding mix for the Water Resources Cash Fund, that we're going to have to step up to the plate and find some other funding sources. I think an indirect contribution of this particular task force might be to help us find some other funding sources for that Water Resources Cash Fund and the work that it does. So as Senator Carlson said, this is not new money; this is money that's already there. So we aren't asking for any additional dollars for the state to invest in this. I think it will pay us back huge dividends, not just for that local area, but for our state as a whole. So I hope the body will give this bill and the amendments careful consideration and a green light. Thank you. [LB1057 LB689]

SENATOR SULLIVAN: Thank you, Senator Dubas. Seeing no further lights on, Senator Carlson, you're recognized to close on your amendment AM2092. [LB1057]

SENATOR CARLSON: Madam President, members of the Legislature, thank you for discussion concerning this bill. And again, AM2092 clarifies and enables the money to be spent, which as Senator Dubas has mentioned, as well as myself, that it's not new money. It's existing money that's already been appropriated. And so I would ask for your support of this and as well as the other amendment and the underlying bill. Thank you. [LB1057]

SENATOR SULLIVAN: Thank you, Senator. You have heard the closing on the amendment. The question is, shall the amendment be adopted? All those in favor vote aye; all those opposed vote nay. Has everyone voted that wants to? Record, Mr. Clerk. [LB1057]

CLERK: 35 ayes, 0 nays on adoption of Senator Carlson's amendment. [LB1057]

SENATOR SULLIVAN: The amendment is adopted. Is there any further discussion on the committee amendments? Seeing none...Senator Langemeier, you're waiving your closing, is that correct? Since Senator Langemeier waives closing, the question is to vote on the adoption of the committee amendment. All those in favor vote aye; all those opposed, nay. Have all voted who wanted to? Record, Mr. Clerk. [LB1057]

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CLERK: 37 ayes, 0 nays, Madam President, on adoption of committee amendments. [LB1057]

SENATOR SULLIVAN: The committee amendment is adopted. [LB1057]

CLERK: I have nothing further on the bill. [LB1057]

SENATOR SULLIVAN: Does anyone wish to speak on the advancement of this bill? Seeing none, Senator Carlson, you're recognized to close. [LB1057]

SENATOR CARLSON: Thank you, Madam President and members of the Legislature. Again I appreciate your support on the amendments; will ask for your support on LB1057. I will bring an amendment on Select File to take care of the concern that Senator Hansen had. And with that, thank you for your support. [LB1057]

SENATOR SULLIVAN: You have heard the closing on the advancement of LB1057 to E&R for initial. All those in favor vote aye; all those opposed vote nay. Have all those voted who choose to? Record, Mr. Clerk. [LB1057]

CLERK: 34 ayes, 0 nays, Madam President, on the advancement of LB1057. [LB1057]

SENATOR SULLIVAN: The bill advances. Next bill, Mr. Clerk. [LB1057]

CLERK: LB728 by Senator Lautenbaugh. (Read title.) The bill was introduced on January 6 of this year, referred to the Judiciary Committee. The bill was advanced to General File. At this time I have no amendments to the bill. [LB728]

SENATOR SULLIVAN: Senator Lautenbaugh, you're recognized to open on LB728. [LB728]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. LB728, I believe, is a very important piece of legislation and I'm grateful to Senator Langemeier for prioritizing it. What it does in a nutshell is provide for civil relief for children who have been exploited by child pornography. It creates a civil cause of action in Nebraska for, I want to get this correct here, any child or parent or guardian of such child who was a participant or portrayed observer in any visual depiction of child pornography, a civil cause of action against any person who while in the state of Nebraska created the visual depiction, distributed the visual depiction, actively acquired the visual depiction or aided or assisted with the creation, distribution or active acquisition of the visual depiction. What this does is separate from the criminal sanctions that those who would traffic in child pornography would face under current law, this would provide the victims a route to seek a monetary recovery in civil court. I think it is a needed piece of legislation. There is an amendment to make it clear that this was not designed to apply

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to Internet service providers, cable companies and the like. I believe that's on file now, so it's hopefully available on your gadget. And I would urge you to support the amendment and support the underlying bill. Thank you. [LB728]

SENATOR SULLIVAN: Thank you, Senator Lautenbaugh. (Visitors introduced.) Mr. Clerk, do you have an amendment? [LB728]

CLERK: Madam President, Senator Lautenbaugh would move to amend with AM2157. (Legislative Journal page 871.) [LB728]

SENATOR SULLIVAN: Senator Lautenbaugh, you're recognized to open on your amendment. [LB728]

SENATOR LAUTENBAUGH: Thank you, Madam President. Simply put and as I alluded to previously, the amendment simply makes it clear, I believe, that this bill was not meant to provide a civil action against Internet service providers and the like. And I would urge your adoption to improve the bill. Thank you. [LB728]

SENATOR SULLIVAN: Thank you, Senator Lautenbaugh. Senator Council, you're recognized. [LB728]

SENATOR COUNCIL: Thank you, Madam President. I rise in opposition to the underlying bill, and I opposed the bill in the committee. And my opposition is not because I don't believe that victims of these Internet crimes should not have a remedy, my opposition is they currently have a remedy. Under federal law a victim of Internet distribution of pornographic images has the very right that is outlined in LB728 to bring an action in federal court and recover the exact same amount that's provided in LB728. And under the federal statute, just as in LB728, it allows the state Attorney General to prosecute the civil action on behalf of the victim. Under the federal law, the U.S. Attorney can prosecute the action in lieu of the victim. This does not grant any greater or additional rights to recovery. What it at best does is open the state courts to having these cases litigated in state courts, utilizing state resources as opposed to litigating these matters in federal court. That right is there, the recovery is there. Quite frankly, I don't see the need for duplication here again. It's not like we're providing a greater recovery to victims. We're just providing that they can pursue that recovery in state court instead of pursuing it in federal court. In my opinion, there is really no need for this bill. It certainly is an indication and will send the signal to residents of the state of Nebraska that this body is concerned about the rights of exploited children. But those rights are already protected, the remedy is already provided for, there is no need to duplicate that through LB728. [LB728]

SENATOR SULLIVAN: Thank you, Senator Council. Senator Hadley, you're recognized. [LB728]

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SENATOR HADLEY: Madam President, members of the body, would Senator Lautenbaugh yield to a question? [LB728]

SENATOR SULLIVAN: Senator Lautenbaugh, will you yield for a question? [LB728]

SENATOR LAUTENBAUGH: Yes, I will. [LB728]

SENATOR HADLEY: I certainly rise in favor of the bill. This is a terrible thing that can happen to children. The question I have is on the introducer's statement of intent it says, "in an effort to optimize a victim's ability to seek recovery and relief under this act, LB728 empowers the Attorney General's Office to pursue claims on behalf of victims." Is that common? I guess, I'm asking from a lack of knowledge. Is that common in criminal cases to have the Attorney General's Office seek civil damages for the victims? [LB728]

SENATOR LAUTENBAUGH: Well, Senator Hadley, I don't know if I can address whether or not it's common. I know that it can only be done here at the request of the victim. But I really don't...I can't tell you if there are other statutes that contain that, very many of them or not. I just don't know the answer to that. [LB728]

SENATOR HADLEY: I guess, my only question was, is that an appropriate function of the Attorney General's Office? Maybe we can get some information on that later and share it. Thank you, Senator Lautenbaugh. With that, I will yield the remainder of my time to Senator Lautenbaugh, if he would like to have it. [LB728]

SENATOR LAUTENBAUGH: Yes, I would. Thank you, Senator Hadley. And thank you, Madam Chair, Madam President. Senator Hadley, I'd be happy to check into that for you to get a better answer than what I gave, which wasn't much of one I'll grant you. And I do understand Senator Council's concerns. We both serve on Judiciary. She gave voice to them in committee as well. And it would not be correct, as she pointed out, to say that she is opposed to what this bill is trying to do. We do just disagree on whether or not it's necessary or proper to have a parallel remedy in state civil law, paralleling federal civil law. And I don't think it's unusual that we do that. I think it's important that we do that. And that's why I introduced the bill. [LB728]

SENATOR SULLIVAN: Thank you, Senator Lautenbaugh. Senator Howard, you're recognized. [LB728]

SENATOR HOWARD: Madam Chairman...President, thank you, and members of the body. I, too, rise in support, in general, on this concern and have long appreciated the Attorney General's work on this issue. I think this is a critical problem that we certainly can't ignore and can't turn our backs on. But I would appreciate being able to ask Senator Lautenbaugh some questions about this, if he would yield. [LB728]

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SENATOR SULLIVAN: Senator Lautenbaugh, will you yield? [LB728]

SENATOR LAUTENBAUGH: Yes, I will. [LB728]

SENATOR HOWARD: Thank you. My concerns are, and maybe you can better explain this to me, how does the system work at the present time? And I'm...from your bill, I'm thinking you find some flaws in the present system. What is it you intend to address? Or what do you see as an improvement that would result from your bill? Why did you bring this bill forth, if you can just explain that to me. [LB728]

SENATOR LAUTENBAUGH: Yes, Senator Howard, I'd be happy to. There may be paths to recovery that currently exist in existing civil law. The virtue of this bill, though, is that it clarifies what you do, who may be recovered from, what your remedy is, and does provide that additional avenue of having the Attorney General pursue it if the victim requests. I was advised, by the way, off the mike that there are fair housing laws and whatnot where the Attorney General is empowered to pursue a claim on behalf of a victim if requested. So to Senator Hadley's question, this is not a complete innovation in that regard. But I think the point in bringing the bill is that it provides a clear path to civil recovery. Now, I suppose, you could argue some theory under tort law regarding your damages and being victimized in this way. But I think this clarifies that there is a direct path to recovery with this bill. [LB728]

SENATOR HOWARD: Do you see this as being a faster method? Do you see this as being an easier method for the victim or the victim's family to address the problem? [LB728]

SENATOR LAUTENBAUGH: There is nothing that would make this faster than any other civil lawsuit. Again, it would just be a clearer remedy and a clearer right of recovery. [LB728]

SENATOR HOWARD: Is there a time frame? Is there...does the victim...is a victim subjected to a time frame to address this? [LB728]

SENATOR LAUTENBAUGH: Well, there is a three-year statute of limitations that would run from when the victim turns 18. I'm struggling to find the verbiage there because there's more to it than that. But as with any civil action, yes, there is a statute of limitations. [LB728]

SENATOR HOWARD: So three years past the time that the individual turns 18? [LB728]

SENATOR LAUTENBAUGH: Yes. [LB728]

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SENATOR HOWARD: And in our state the age of majority is 19. So does that change that? [LB728]

SENATOR LAUTENBAUGH: No, that would just...this bill says 18. [LB728]

SENATOR HOWARD: The bill says 18. And I also would appreciate it if you could go a little more into detail regarding the amendment. You referred to the Internet, could you explain that further. [LB728]

SENATOR LAUTENBAUGH: Well, this bill was not meant to provide a civil action against Internet service providers and cable companies. Those weren't who we...that was not who we were thinking of when we were talking about people who are actively engaged in trafficking in child pornography. The fact that they provided the means really didn't, as they would with any other Internet communication, we didn't think made them a proper target of civil action for this. And that's not a concern that I came up with. That was a concern that came to me from cable companies and whatnot. [LB728]

SENATOR HOWARD: So then am I correct in thinking that the broadcaster has no obligation regarding this? Do they monitor their service at all? [LB728]

SENATOR LAUTENBAUGH: Well, honestly, I can't say they have no obligation. I just don't know what other federal and/or state laws may apply to them in that regard. But this bill was not envisioned as a vehicle to address that with them. So I did not want this, after the problem... [LB728]

SENATOR SULLIVAN: One minute. [LB728]

SENATOR LAUTENBAUGH: ...after the problem was pointed out, thank you, Madam President, to ensnare them in this new civil remedy, if you will. [LB728]

SENATOR HOWARD: Well, thank you for the information. Again, I appreciate the work the Attorney General's Office does to address this. It's not an easy problem. And it's certainly something that we all need to be realistic about and commit ourselves to dealing with. I support efforts in addressing this. Thank you. [LB728]

SENATOR SULLIVAN: Thank you, Senator Howard. Senator Nelson, you're recognized. [LB728]

SENATOR NELSON: Thank you, Madam President, members of the body. I was called out for awhile and may have missed some of the questions. But I do have a question or two to address to Senator Lautenbaugh, if he will yield. [LB728]

SENATOR SULLIVAN: Senator Lautenbaugh, will you yield for some questions?

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[LB728]

SENATOR LAUTENBAUGH: Yes, I will. [LB728]

SENATOR NELSON: I did hear Senator Hadley's question about the Attorney General getting involved here and being authorized to pursue a cause of action. Why would we have the Attorney General's Office involved in a civil action at taxpayer expense when that cause of action, it provides here for attorney's fees, private attorneys and those that could bring a cause of action. It says to optimize, what do we mean by optimize? I guess, that's two questions. [LB728]

SENATOR LAUTENBAUGH: Well, did...and I think it's part of the same response though. The Attorney General would also be authorized to recover reasonable attorney's fees. So ideally that would not require the expenditure of any of their funds that were not recouped. But otherwise, again this is not an innovation in the law. We do this in fair housing and other areas. And this was modeled on, I believe, a federal law and a law from Florida, both of which similarly provide the Attorney General or the U.S. Attorney the ability to pursue it if requested. So this is just another avenue for victims, I guess. If they for some reason don't want to pursue this with their own private attorney, they could request the Attorney General do it. [LB728]

SENATOR NELSON: And the attorney's fees then would be set by the jury or the court? [LB728]

SENATOR LAUTENBAUGH: Generally, I believe, they'd be awarded by the court. [LB728]

SENATOR NELSON: All right. And so if attorney's fees are awarded and it's the Attorney General's Office that brings this action, then is that money...that comes into our General Funds then or comes into the funds that the Attorney General has for this purpose? [LB728]

SENATOR LAUTENBAUGH: Honestly, Senator, I would have to check exactly with the accounting aspects of how that money is processed once it's received. I don't know the answer to that. [LB728]

SENATOR NELSON: Okay. The other question I have, which is sort of puzzling to me, it provides for actual damages. And I suppose that means we're not talking about punitive damages here. Actual damages, and I'm reading from the statement of intent, not the bill itself, which cannot be less than \$150,000. That's something new to me that we in legislation would provide that there would be a floor to a certain extent that if there is recovery it has to be at least \$150,000, for example, for damages. Can you explain that a little bit, why we put that in there. [LB728]

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SENATOR LAUTENBAUGH: Well, but due, I guess, to the severity of what we're talking about here we wanted to make sure that there was at least a reasonable amount of damages that would be available, and hopefully send a message to people that you should not engage in this activity anywhere, but you certainly shouldn't do it in Nebraska. [LB728]

SENATOR NELSON: So regardless of what the testimony is on behalf of the minor or the person that's been victimized, there's no need for them to establish what their actual damages are in the way of monetary damages. They're going to get at least \$150,000, if I understand the way the bill is written. [LB728]

SENATOR LAUTENBAUGH: Well, I would suggest that they also should try to establish their actual damages, which on something like this I can't imagine they would not exceed \$150,000, considering what we're talking about. [LB728]

SENATOR NELSON: All right, thank you. That answers my questions at this time. Thank you, Senator. Thank you, Madam President. [LB728]

SENATOR SULLIVAN: Thank you, Senator Nelson. Senator Council, you're recognized. [LB728]

SENATOR COUNCIL: Yes, thank you, Madam President. With regard to the issue first of the Attorney General's involvement, first, on the financial side Senator Lautenbaugh is correct that the bill does provide for recovery of attorney's fees. But one of the questions I had posed during the hearing on this matter is if the accused is judgment-proof that is going to be a cost to the state of Nebraska. And if you pull up the fiscal note, there is no discussion of the possibility that there would be a cost to the Attorney General's Office in handling these civil litigation matters on behalf of citizens who, quite frankly, for whatever reason choose not to retain private legal counsel. And there can't be any suggestion that they would have difficulty obtaining private legal counsel because of their particular financial condition. I know, quite frankly, and I'm sure that many if not most of the other attorneys in the body know that if there is a statutory right to recover attorney's fees it increases the likelihood that an attorney will accept the case on your behalf without you having to put up any money in advance. Secondly, this is a little different situation than the Attorney General's involvement under the fair housing laws. I had the opportunity last session to become intimately familiar with that relationship, and it is markedly different because in the fair housing discrimination area it's after the NEOC has become involved and determined whether or not there is cause to believe that discrimination has occurred. And then it's the NEOC who asks, who requests the Attorney General to pursue the discrimination claim on behalf of the complainant. Under this bill, the individual could go directly to the Attorney General's Office and request that the Attorney General serve as essentially their private legal

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counsel to pursue this matter. I think the federal government, in enacting the legislation that currently exists, viewed this problem in the magnitude that it should be viewed. And I don't want my comments in opposition to this bill to diminish my concern about the underlying issue. But I think that concern has been reflected in the federal legislation which does provide someone aggrieved, if they would choose to go and ask the U.S. Attorney to become involved. Now I understand from some off the mike conversations that there's a concern about the resources. Well, I mean, the fact of the matter is that again, it's not like victims in these situations would be without recourse, that there are enough private attorneys, there are enough volunteer lawyers under the Volunteer Lawyers Project available to take these kinds of cases. So again, I question the necessity of parallel legislation or a parallel remedy in this regard. And there are other laws that I agree, Senator Lautenbaugh, where there's parallel legislation... [LB728]

SENATOR SULLIVAN: One minute. [LB728]

SENATOR COUNCIL: ...where there are some remedies and rights that extend far beyond the federal case. That's not the situation here. This bill virtually mirrors the federal legislation. And it's for that reason I don't see the necessity of enacting this measure. Thank you. [LB728]

SENATOR SULLIVAN: Thank you, Senator Council. Senator Harms, you are recognized. [LB728]

SENATOR HARMS: Thank you, Madam President, colleagues. Senator Lautenbaugh, would you yield? [LB728]

SENATOR SULLIVAN: Senator Lautenbaugh, would you yield for some questions? [LB728]

SENATOR LAUTENBAUGH: Yes, I will. [LB728]

SENATOR HARMS: First, Senator Lautenbaugh, thank you for introducing this bill. I am in support of it. The question I have for you, what kind of data and research do we have that shows whether this is a real major issue in this great state? I'm not familiar with the numbers. And is this truly an issue for our state? It would be helpful to have a little bit of an understanding. I support it, but I just wonder how many issues we actually have that...where people are exploiting our kids. [LB728]

SENATOR LAUTENBAUGH: I would say, Senator, that, and this is probably the second or third bill in this area that I've brought. And I would think we would all be horrified if this were a modest problem, but I think it's worse than we think, we're talking in the thousands. Just yesterday I was contacted by the Attorney General's Office and they brought to light or brought to my attention a case involving a 13-year-old, here in

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Nebraska, that was victimized in this way by a gentleman from Kansas, I believe it was. And they offered to make a presentation to some of our colleagues in here regarding the evidence and what this case involved. And as they described it to me, I said we don't need to do that, we don't need...they need to see that kind of horrific thing to prosecute. But we don't need to be exposed to it to know that it exists and it is beyond horrific. And if there were five cases it would be too many. But without giving you a specific number, because I can't do that, I know it is well in excess of that and definitely needing to be dealt with. [LB728]

SENATOR HARMS: Well, thank you very much, I appreciate it. A lot of people have a tendency to feel that we escape those things in a state that is rural. Quite frankly, that's just the opposite. And it is a horrible thing to have happen to any of our children. So I thank you for introducing this legislation and I support AM2157 and the underlying bill. So thank you, Madam President. [LB728]

SENATOR SULLIVAN: Thank you, Senator Harms. Senator Stuthman, you're recognized. [LB728]

SENATOR STUTHMAN: Thank you, Madam Chair, members of the body. I'm very sympathetic to children being victims of some sexual assault or something like that. But it has come to my attention, you know, with the portion of this bill of the \$150,000 that can't be less than that plus reasonable attorney fees. And I was told that this would come from the person that is doing the crime. But in the material that I read and the individuals that are doing this type of an activity, as Senator Harms says, it does happen in the rural areas, too, very much so. But I don't think that there is the opportunity to get the money from those individuals. Those individuals are generally placed in incarceration, they're in the prisons. They don't have that money. So where is this money going to come from? And I think it comes right back down to the taxpayers are going to be paying for it if there's an award being given, if that individual is going to receive the money or that individual will never receive any money. But there's reasonable attorney costs on there. I think if we pass this bill it's going to create, you know, a lot of problems down the road. I'm very sympathetic I will say again, you know, of these victims. But the fact is they're not going to be able to write out that check for \$150,000 to that individual, I would guarantee you that. That is the issue that I have. And I'm not educated enough as far as, you know, where is that money going to come from if that individual is ever going to get that \$150,000. The courts may award that individual, that victim \$150,000 minimum, but will that person ever see that money? And if they see it, where is it going to come from? Those are the questions that I have. So as Senator Council has stated, you know, there are mechanisms in place already and maybe there is no need that we need this bill. But the question that I really have is, many times when victims are awarded a settlement they never ever receive anything. And the fact is if they receive some where does it come from? Because, you know, these people that are engaging in this type of activity I'm sure they don't have a large

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financial backing for them. So with that, I'm undecided on this yet. But I'm very much concerned about where is that money going to come from to pay this \$150,000 plus the reasonable attorney fees. In my opinion, it will be at least \$200,000. Thank you, Madam Chair. [LB728]

SENATOR SULLIVAN: Thank you, Senator Stuthman. Senator Langemeier, you're recognized. [LB728]

SENATOR LANGEMEIER: Madam President and members of the body, I rise in support of this bill. As you already know, it is my priority bill. And a lot of things you've heard today, Senator Council has brought it up, this is mimicking federal legislation. But I think the creation of child porn and victims in Nebraska needs to be...I think this would justify some duplication. In regards to Senator Stuthman, you know, the question is always how people are going to pay the fine. But if we don't ask for it, if we don't give people the tools to try and get it, what's the point? I think we have to have these tools out there. I think Nebraska needs to send a message: You're not coming to a rural state to prey on our citizens. And I think it's worth duplicating. And with that, I would ask for your support of AM2157 as well as LB728. Thank you. [LB728]

SENATOR SULLIVAN: Thank you, Senator Langemeier. Seeing no further lights on, Senator Lautenbaugh, you're recognized to close on your amendment. [LB728]

SENATOR LAUTENBAUGH: Thank you, Madam President. As I indicated before, the amendment simply clarifies that this was not meant to create a cause of action against Internet service providers, cable companies and the like. And I would urge your approval of the amendment. [LB728]

SENATOR SULLIVAN: You have heard the closing on the amendment. The question is, shall the amendment be adopted? All those in favor vote aye; all those opposed vote nay. Have all those voted who choose to? Record, Mr. Clerk. [LB728]

CLERK: 29 ayes, 0 nays, Madam President, on the adoption of Senator Lautenbaugh's amendment. [LB728]

SENATOR SULLIVAN: The amendment is adopted. [LB728]

CLERK: I have nothing further on the bill. [LB728]

SENATOR SULLIVAN: You have heard...is there any further discussion? Senator Lautenbaugh, you're recognized to close on LB728. [LB728]

SENATOR LAUTENBAUGH: Thank you, Madam President. And I'll be brief while people are still near their buttons so we can get another green out of this, hopefully. I do

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believe this is an important bill and I do believe it's a needed bill. And I again thank Senator Langemeier for prioritizing this bill. It does provide, I think, a remedy for victims of child pornography that is not clearly existing under state law currently. And I think it is important in that regard. I appreciated the discussion this morning. And I would urge your approval and a green vote on this. Thank you. [LB728]

SENATOR SULLIVAN: You have heard the closing on the advancement of LB728 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have all those voted who choose to? Record, Mr. Clerk. [LB728]

CLERK: 32 ayes, 2 nays, Madam President, on the advancement of LB728. [LB728]

SENATOR SULLIVAN: The bill advances. Mr. Clerk, we will now proceed to General File, LB742. [LB728 LB742]

CLERK: LB742, by Senator McCoy, relates to government. (Read title.) The bill was introduced on January 6 of this year; referred to the Government, Military and Veterans Affairs Committee. There are committee amendments, Madam President. (AM1967, Legislative Journal page 622.) [LB742]

SENATOR SULLIVAN: Senator McCoy, you are recognized to open on LB742. [LB742]

SENATOR McCOY: Thank you, Madam President and members. I'm pleased to introduce LB742 to you this morning. It calls for increased transparency in settlement agreements involving public funds. I'd first like to take the opportunity to thank Senator Avery as committee Chair of Government and Military Affairs Committee, the other members of the committee, Senator Avery's staff and my staff as well for all their hard work on this legislation. And what you'll see is a resulting committee amendment, AM1967, and a follow-up amendment to that, AM2105, that will be introduced here shortly by Senator Avery, both of which I support and both of which are important pieces to this legislation as the committee amendment replaces the green copy of the bill. Because of everyone's commitment and willingness to work together, I'm proud to say that we now have support from all those who testified in opposition to the green copy of LB742 with the resulting committee amendment. Statute 84-712.01(3) addresses public records and concludes with "the citizens of this state shall have the full right to know of and have full access to information on the public finances of the government and the public bodies and entities created to serve them." This is the heart and motive behind LB742. I believe the citizens of Nebraska have the right to know where their tax dollars are being spent and for what reason. Nebraskans sacrifice every day to provide for their families and deserve a government whose transactions are transparent and available for review at all levels. Testimony from the hearing on LB742 and conversations with those who testified in opposition mainly surrounded concerns if LB742 would change what is considered a public record. Let me be very clear. LB742 in its amended form

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does not change what is and what is not a public record. And LB742 does not change what is currently exempt from public record as found in statute 84-712 and other areas of the law. You know, and let me share a brief description of a few of those exemptions are currently in statute. There are 18 of them that are mentioned not only in this section of the law but in a number of other places, personal information, Social Security numbers, and whatnot are all part of those 18 exemptions. And again, let me repeat, LB742 does not change what currently is and what is not a public record. And LB742 doesn't change what is exempt from public record. If a claim, settlement agreement or a portion of a claim or settlement agreement is currently exempt from public record, it remains exempt under the amended version of LB742. This also applies to exemptions that may be placed in statute in the future. What's important to note is what LB742 does is change how a public record is handled after it is in existence. I believe Senator Avery will go into a little more detail about that in the opening to the committee amendment, AM1967, in a few moments but I want to share a few brief things. LB742 requires that a public written or electronic record of all settlement...settled claims be maintained. Also a private insurance company or public agency providing coverage to public entity, must provide a copy of any claim or settlement agreement to the public entity without delay so it can be maintained as a public record. Recently the Omaha World-Herald made ten public records requests on public settlements across the state. Two of the requests made to the same public entity were not disclosed as the public entity stated that they could not locate a copy of the settlement. With LB742 in place, a copy of the public settlement agreement must be maintained and will prevent any public entity or public body from using this as a reason to withhold information. LB742 would also require a settlement agreement to be included as an agenda item at the next meeting of a public agency and as an agenda item on the next regularly scheduled public meeting for informational purposes if the financial amount of the settlement agreement is greater than \$50,000 or 1 percent of the total annual budget of the public entity, whichever is less. I think it's also important to note that this is not intended to get into the business of routine claims. That was one of the concerns that was raised in the hearing for the bill in committee. You know, I have an example here of what Omaha Public School District does at their board meetings where they list out their claims. It's routine claims, whatever they may be. That certainly is a great example of a public entity that does an exceptional job of listing out for the public what those claims are. Placing a settlement agreement on the public agenda allows for accountability and disclosure. We must remember that the taxpayers are the stakeholders and have a right to review where and how their tax dollars are being used. I've heard some concerns expressed that if large settlements are made available for review, it may harm future settlements and advertise what amounts can be paid by any public entity that might be involved. First, a settlement agreement is already a public record under law as long as it does not fall under one of the exemptions listed in statute that I mentioned a few moments ago. Second, if a public entity is trying to keep quiet the settlement agreement exists, without it falling within one of the exemptions listed in statute, then I would suggest that they may be in violation of existing state statute. Yes, a person can currently make a public records request. This is

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hard to do if you don't know that a settlement agreement actually exists. Will LB742 make it harder to obtain a settlement agreement or cause public entities to pay out more? I don't believe that it will. Remember, LB742 does not change what is a public record. If a public body or public entity is following the law and the intent of the law, they support the right of Nebraska citizens to have full access to public records as listed in our statutes. In closing, Senator George Norris' impassioned advocacy of a government's duty to be accountable to the public it serves is a foundation on which our 73-year-old Unicameral Legislature and our great state have securely rested. It's something we've held to be very valuable to this body in the past and currently. Clearly, Nebraskans through the passage of time have agreed with Senator Norris' oft quoted words: Every act of the Legislature and every act of each individual must be transacted in the spotlight of publicity. This is why we need to continue to strive for a higher degree of accountability and transparency within our government, public entities, and public bodies. I ask for your support for LB742, committee amendment, AM1967, and AM2105 that will shortly follow. Thank you, Madam President. [LB742]

SENATOR SULLIVAN: Thank you, Senator McCoy. There is an amendment from the Government, Military and Veterans Affairs Committee. Senator Avery, you're recognized to open on the committee amendment. [LB742]

SENATOR AVERY: Thank you, Madam President. This amendment, AM1967, came about through extensive negotiation. I repeat, extensive negotiation. I have to thank my committee counsel, Christy Abraham, for the long hours that she put into bringing together so many disparate entities and working out a compromise so that we could all agree to what I'm proposing here. The Attorney General was involved in that negotiation, the Auditor's Office was involved, Media of Nebraska, the League of Municipalities, the Nebraska State Education Association, Nebraska Power Association, School Board Association, MUD, and others. The hard work produced the following. The amendment strikes the original provisions of the bill and inserts new language. One, a public entity or a private insurance company or public agency providing coverage to a public entity, public official, or public employee will maintain a public record of all settled claims. Senator McCoy mentioned that in his opening. Second, the record for claims settled in the amount of \$50,000 or more or 1 percent of the total annual budget of the public entity, whichever is less, will include a written settlement agreement. So there will be a public record maintained and a written settlement agreement. The settlement agreement will contain a brief description of the claim, the amount of financial compensation, and the party or parties involved. Any claim or settlement agreement involving a public entity will be a public record. We had a long discussion this morning about transparency and we will do it again today, it looks like. Any claim or settlement agreement involving a public entity will be a public record, but to the extent permitted by other statutes, specific portions may be withheld from the public. Examples would be HIPAA laws or current exemptions under the open records act that is current law in the state, such as Social Security numbers, personal information like

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that. A private insurance company or public agency providing coverage to a public entity will provide a copy of the claim or settlement agreement to the public entity to be maintained as a public record. Except for settlement agreements involving the state, any settlement agreement with an amount of \$50,000 or more or 1 percent of the total annual budget of the public entity, whichever is less, will be included as an agenda item at the next meeting of the public agency or entity. So we are requiring a public record be maintained. We're requiring that a written settlement agreement be created and that these will be a public record, a copy of which will be maintained as a public record and we're also requiring that this be on the agenda if it meets the \$50,000 threshold or 1 percent of the total budget of the entity. There's another element of the amendment that has to do with confidentiality or nondisclosure clauses. If the settlement contains a confidentiality or nondisclosure clause, it will neither cause nor permit a settlement agreement or claim or any other public record to be withheld from the public. That's important. You cannot use a confidentiality or nondisclosure clause in an agreement to withhold the information from the public. It will be still a public record. Nothing in this bill requires a public official or employee or any party to the settlement agreement to comment on the agreement. We spent a long time talking about that in the negotiations but public officials or employees do not...any party involved in the settlement agreement is not required to comment on it. The amendment defines confidentiality or disclosure clauses, public bodies, public entities in settlement agreements. That you can find in the amendment. Let me explain in more detail the intent of this amendment to LB742. I have been asked why the bill is necessary at all. The status of the law is explained in the Nebraska Supreme Court case of Evertson v. City of Kimball and the current open records law. For the most part, this bill is codifying what is current law with some exceptions. And one of the reasons why we need this is that there have been different interpretations of what the current law means and there have been some rather inconsistent application of the law. The provisions of this bill that are new include, one, the requirement that settlement agreements above \$50,000 or 1 percent of the total annual budget of the entity be placed on the agenda. That's new. Also new is the requirement that private insurance companies provide claims and settlement agreements regarding public entities to the public entity to be maintained as a public record. Concerns have been raised about what needs to appear on the agenda of a political subdivision. The bill requires agreements over \$50,000 or 1 percent of the total annual budget to be placed on the agenda. The intent of this language is to require public entities to put enough information on the agenda so a member of the public will know what is being discussed or what is going to be discussed. The bill does not require that the entire settlement agreement be on the agenda, although members of the public and members of the governing body will have access to the supporting documents upon request. But a description of a settlement must be provided. There have also been questions asked about whether the regular payment of a bill constitutes a claim. The focus of this bill, this amendment, is settlement agreements, not payment of bills. The term "claim" is used throughout the bill to ensure records in which a public entity pays money to someone whether it is for pencils, snow removal, or to settle an harassment

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claim or if it involves public records, if a claim falls under the definition of a settlement agreement and is greater than \$50,000 or 1 percent of the total annual budget of that entity, then that claim will be on the agenda. The bill's intent is not to cover the regular payment of bills. Also various public entities deal with claims in different ways we discovered in the course of these negotiations. Many public entities have consent agendas where claims are listed. This bill is not attempting to change how public entities currently deal with claims, but only to ensure that if there is a large settlement agreement... [LB742]

SENATOR SULLIVAN: One minute. [LB742]

SENATOR AVERY: ...as defined in this amendment, it needs to appear on the agenda. There's been concerns raised about why the state is excluded from the requirement that we're discussing here. The reason for that is that the state of Nebraska has a claims process and they do not have a governing board with an agenda like political subdivisions do. The bill advanced from the committee as amended on a vote of 6-1 with one member absent. Thank you, Madam President. [LB742]

SENATOR SULLIVAN: Thank you, Senator Avery. (Visitors introduced.) Mr. Clerk, for an amendment. [LB742]

CLERK: Madam President, Senator Avery and McCoy would move to amend the committee amendments with AM2105. (Legislative Journal page 747.) [LB742]

SENATOR SULLIVAN: Senator Avery, you're recognized to open on your amendment. [LB742]

SENATOR AVERY: Thank you, Madam President. After the amendment was reported out of committee, the one I just described to you at length, two additional concerns were raised by interested parties who were not involved in the original negotiations. The first concern raised was that the committee amendment requires private insurance companies to maintain public records of all settled claims involving a public entity. This was not the intent of the amendment and it is not our intent to have private insurance companies be custodians of public records. The intent of this bill is expressed in (2) of the committee amendment which requires private insurance companies providing coverage to a public entity to provide the public entity a copy of any claim or settlement. The public entity would then maintain the public record. That's a clarification that is necessary. The second change in the amendment clarifies that this bill does not apply to claims made in connection with insured or self-insured health insurance contracts. It is our belief that health insurance contracts are already protected under current language in the bill, but this added language clarifies that intent. Thank you, Madam President. I would urge my colleagues to vote for both of these amendments to the main bill, LB742. Thank you. [LB742]

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SENATOR SULLIVAN: Thank you, Senator Avery. Senator Gloor, you're recognized. [LB742]

SENATOR GLOOR: Thank you, Madam President, members of the body. I've been sitting here reading through the bill and have some concerns, I think, about the reasonableness of the 1 percent of budget number. And I believe I need to direct a question, if I might, to Senator McCoy. [LB742]

SENATOR SULLIVAN: Senator McCoy, would you yield for a question? [LB742]

SENATOR McCOY: I would. [LB742]

SENATOR GLOOR: Senator McCoy, throughout Nebraska, and especially for our rural senators, there are a number of libraries in a number of small communities...could I get a gavel, please, Madam Chairman. Thank you. [LB742]

SENATOR SULLIVAN: (Gavel) [LB742]

SENATOR GLOOR: If I'm correct, I think many of those small community libraries would have budgets under \$100,000. One percent of their budget therefore, is \$1,000. And I can see an instance where the board of a community library, funded with public monies, has a dispute over their single employee, a librarian, over accrued vacation or at the time of dismissal unused sick hours that could very easily top \$1,000 when you consider. Do you understand the scope of my concern that maybe this 1 percent in that circumstance, we're casting too broad a net? [LB742]

SENATOR McCOY: That certainly is something that was discussed, Senator Gloor. And it certainly isn't a... in any way, shape, or form construed to be a problem in that case. It's merely that the original green copy of the bill didn't have a threshold at all, which brought in a lot of concerns from a number of entities, some of the utility companies, and whatnot, that routinely have settlements, whether it be a bill that might be in error or whatnot that would have created a lot of additional paperwork in those cases. This was a compromise number in a 1 percent that all parties involved felt was very fair from the biggest to the small public entities that the \$50,000 or 1 percent of the budget. And again, I think it's maybe important and, hopefully, this may help to note that this is not an action item on an agenda to note this to create additional concerns maybe on your part for a library or whatnot. This is just strictly a reporting item, not an action item on an agenda. [LB742]

SENATOR GLOOR: Well, I do understand that. My concern is the overall enforceability of a statute. I would imagine a lot of small township or city boards may, in fact, be somewhat oblivious, especially a small library board. And I use that as an example

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because there are dozens and dozens of them across the state. I think there is clearly that possibility that would otherwise as seen as a personnel dispute in discussion with an easy settlement on let's award half of the unused sick pay, would be in violation of statute if this went through. And so I think...with the 1 percent I understood as related to perhaps larger settlements, but I worry about it when it comes to much smaller budgets. I wonder if Senator Avery would yield to a question. [LB742]

SENATOR SULLIVAN: Senator Avery, would you yield for a question? [LB742]

SENATOR AVERY: I will. [LB742]

SENATOR GLOOR: Senator Avery, you understand I'm sure... [LB742]

SENATOR SULLIVAN: And by the way, 1 minute, Senator Gloor. [LB742]

SENATOR GLOOR: Thank you, Madam President. Senator Avery, I believe you've heard my question. Any thoughts that you might have on this matter? [LB742]

SENATOR AVERY: Yes, in fact, I had my light on to answer that question too. Many subdivisions are really quite small and almost never would have a claim that would reach the \$50,000 threshold and that's the reason for the 1 percent so that we make sure that we don't have some claims out there that are ignored and not open to the public. [LB742]

SENATOR GLOOR: Yet the 1 percent, if we're talking about a library that has a \$100,000 budget, that 1 percent ends up being \$1,000. That's an extremely low amount when it comes to somebody's salary amounts. [LB742]

SENATOR AVERY: That might be the case but if you don't have that threshold pretty low for some of these political subdivisions, then a lot of claims would simply not be disclosed, wouldn't be a part of the public record. [LB742]

SENATOR SULLIVAN: Time, Senators. [LB742]

SENATOR GLOOR: Thank you. [LB742]

SENATOR SULLIVAN: (Visitors introduced.) The Chair recognizes Senator Hadley. [LB742]

SENATOR HADLEY: Madam Chair, thank you so much. I appreciate that. Members of the body, I stand in support of both amendments and the bill. I think transparency is something that people expect in our government, and I think anything we can do to make sure that the actions taken by governmental units is transparent is appropriate.

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And I think the case that brought this to the attention is something that we don't want to live with. And so would Senator McCoy yield to a question? [LB742]

SENATOR SULLIVAN: Senator McCoy, would you yield for a question? [LB742]

SENATOR McCOY: Yes, I would if you don't mind repeating the questions, Senator Hadley. [LB742]

SENATOR HADLEY: Senator McCoy, I note...would the University of Nebraska system and the state college system come under this act? [LB742]

SENATOR McCOY: Yes, it would. [LB742]

SENATOR HADLEY: I notice that the University of Nebraska system said that they couldn't calculate the cost but they said something to the effect that it would be significant because of litigation. Why would something like this...do you have any idea of what they mean as to why there would be more litigation because they publish? [LB742]

SENATOR McCOY: I believe I can answer that, Senator Hadley, and that was a concern expressed in the green copy of the bill which didn't set a threshold for such claims to be reported. So you can imagine the myriad of claims and that's where that concern came out of and it's, to the best of my knowledge such a concern no longer exists. [LB742]

SENATOR HADLEY: Okay. Thank you, Senator McCoy. I would guess the only thing I would say about the bill is that I'm not sure that the \$50,000 is low enough. You know, we're basically having a reporting standard here. We're not having a detailed explanation of each claim and such as that and I think that's the duty of the citizens and the watchdog press and such as that. So the only thing I would be concerned about would be the fact that the \$50,000 might be a little high, that we might want even lower because I can see someone saying a \$40,000 claim might be something that should be disclosed. Thank you, and I would yield the rest of my time to Senator McCoy, if he would like to have it. [LB742]

SENATOR SULLIVAN: Senator McCoy, would you like the rest of the time? [LB742]

SENATOR McCOY: Please. Thank you, Madam President and thank you, Senator Hadley. I'd like to answer or attempt to answer to the best that I could, and I believe Senator Avery may do so in a moment as well, Senator Gloor's question. It goes back to his question regards to small library boards and the 1 percent. In specificity, the concern that he outlined in a hypothetical situation that might exist with personnel decision, again this doesn't get at the 18 different exemptions in statute currently where this information may not be able to be public knowledge. And in most cases a situation as

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he outlined, depending on what the specifics were, and they would have to be taken on a case-by-case basis, probably would not need to be...would fall under one of these 18 exemptions. Thank you, Madam President. [LB742]

SENATOR SULLIVAN: Thank you, Senators. Senator Avery, you're recognized. [LB742]

SENATOR AVERY: Thank you, Madam President. Senator Hadley raised an interesting point about the \$50,000 threshold being high. During the negotiations we actually started out at \$25,000 and we lost a lot of support at that level, and moving it to \$50,000 we gained a lot of support and then lost others, and that's the way these negotiations went. I mean, it was a rather arduous task where we make one change and you lose this group, and you gain support from another, then you try to change it to get the other group back in, and then you lose another one. And all of you have gone through those kind of negotiations and probably know what I'm talking about. Fifty thousand dollars is kind of high but that is the number that we finally arrived at to bring the most people together on this issue. But if you look, though, at the 1 percent of the total annual budget of the political subdivision, I think there you will see that a lot lower number, settlement amounts, will be reported and have to become a part of the public record because many of these small subdivisions don't have large annual budgets. And Senator Gloor was right on target when he mentioned how a \$100,000 annual budget could have a...would mean that a 1 percent settlement of \$100,000 would have to be disclosed. And that was intentional. We intended that that portion of the language to be there in order to capture the smaller settlements. I would call your attention to a handout that I passed around that reprints two editorials, one in the Lincoln Journal Star Tuesday, and the other in the World-Herald this morning. Strong endorsement for the concept of transparency, strong endorsement for public disclosure of the settlements. They point out that the amendment that the committee brought is a reasonable and balanced approach to this issue and they went on, the World-Herald went on to say that taxpayer-funded institutions need to show proper respect to the public by operating with appropriate transparency and accountability. I couldn't have said it better. I think that those are statements that we ought to all take to heart and take the recommendation that we're making that you vote for this amendment and for the underlying bill. Thank you. [LB742]

SENATOR SULLIVAN: Thank you. Senator Pirsch, you're recognized. [LB742]

SENATOR PIRSCH: Thank you, Madam President and members of the body. You know, inscribed in the facing of the State Capitol is the saying that I've...whenever I take a look at it I always am reminded of the importance, it says: The salvation of the state is the watchfulness in its citizens. And I believe very strongly in that statement. As the years kind of pass here in the state Legislature, I see the truth in that. And the question is, how can the citizenry...that the taxpayers be watchful if public data is not made

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available to them, if it's not readily at their access? And there is so much distraction in people's lives, good distraction, you know, raising their...you know, with their family, keeping their jobs and whatnot that we should bend over backwards here in government to make sure that they do have that access to that information easily, as easily as we can. And so I see this bill as creating a mechanism for doing that, and I do think that this is about creating greater transparency. So I greatly support both the amendment and this bill. And I thank Senator McCoy and Chairman Avery for their work on this. And in respects to the words, the comments that were put forward by Senator Hadley, I agree with him. I would be very comfortable by lowering the amount from \$50,000 to some lower amount as well, so. Thank you. [LB742]

SENATOR SULLIVAN: Thank you, Senator. (Visitors introduced.) Senator White, you're recognized. [LB742]

SENATOR WHITE: Thank you, Mr. President, Ms. President, I should say. I have followed this bill with great interest, and I have practiced law now for a quarter of a century. I have entered into agreements that are confidential and often with great reservations. And I want you to know I do support Senator McCoy's bill. But I'd like everybody in this body to understand the various considerations that go into settlements, why people want secret settlements. Often you will get a charge and it brings to mind a certain United States Supreme Court Justice who was charged with sexual harassment. I don't know whether those are true or not. I actually have an opinion but I don't know and it's irrelevant. His career will never, ever be free of those charges. The fact when you are in public life just making a charge can ruin and end a career and ruin and end a public reputation--just the charge. That often coupled with the pressure from the county or your employer that says, and this is not at all unreasonable, it's going to cost us \$100,000, \$200,000 to defend this case. And even though you say you didn't do it, you know, come on. You're going to get drug through the mud. It hurts the taxpayer. We have to defend this so we want a confidential settlement. And the temptation is enormous because whether or not it's true or not, having a charge of sexual harassment, for example, leveled against you, will devastate your family. And the temptation just to have it go away quietly even though it's unfounded, is incredibly tempting. So what I'd tell you is, that's one hand. On the other hand, I will tell you right now we're in the midst of a great scandal on a very prominent automobile manufacturer. And as a person who has done not that kind of litigation with that car but other cars, I've settled cases on a confidential basis that I had great regrets in doing because clearly there was something wrong with the product that was in widespread use and the confidentiality did not serve the public at all. But it did serve my client enormously because they were able to get a lot more money to take care of themselves or their family members because they agreed to keep the amounts confidential. And the company had an economic vested interest in that because they didn't want news of the defects in their product being widespread and a history of verdicts against them that would bring their products into disrepute and encourage others who had been injured by

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them from bringing suit. So they wanted it quiet. Now I will tell you why this is particularly poignant right now. There is a gentleman that spent the last six or seven years in jail having drove...because while he was driving his car home and it was a Toyota, was driving the Toyota home, he said it suddenly and uncontrollably accelerated up an on-ramp and he struck a car in front of him at about 95 miles per hour. He was convicted by a jury and he has spent the last six years rotting in jail. Now, I wonder how many confidential settlements there have been with regard to that vehicle and what that might have meant to that man and his family had they not been hidden. This is an incredibly difficult area, my fellow members. I support what Senator McCoy is doing. I do support it. But understand the competing tensions... [LB742]

SENATOR SULLIVAN: One minute. [LB742]

SENATOR WHITE: ...the risk of being unfairly accused, and the opportunity for an amount of money that everybody recognizes is just no more than go-away pay. Just go and shut up because it's...you can't prove it but you're not going to make us spend the money and you're not going to destroy a good person's reputation and career. It's not something to be lightly dismissed. I will vote for this bill but I do so in recognition that by voting for it some people are going to be hurt. And if it passes, people will be hurt unfairly. But I also recognize that secret settlements hurt people all the time across the country. Thank you, members. [LB742]

SENATOR SULLIVAN: Thank you, Senator. Senator Lathrop. [LB742]

SENATOR LATHROP: Thank you, Madam President. Good morning, colleagues. I was listening to the debate and I thought, gosh, these lawyers that do this kind of work probably ought to weigh in and I didn't realize that Senator White had his light on. And as I listened to him, I have to agree completely with what he said. And so I might join Senator White in saying this, I intend to vote for this bill and my statements this morning might be, to use committee lingo, in a neutral capacity because while I recognize that we need transparency in government and the people whose tax dollars are being spent have the right to see where it's being spent, you ought to think about a few things before you decide what you want to do with this bill. The university has indicated that they're not really sure what's going to happen. They haven't provided this information in the past and now they expect there will be considerable additional expenses related to litigation. Senator Hadley asked a question about that. And I have some thoughts on why that's in the fiscal note. When you can settle cases and they're settled confidentially, you can settle more cases, you can avoid litigation. In my experience, which is not unlike Senator White's, most of the time in cases that I've resolved that have ended up with a confidential settlement, the confidential request comes from the defense side. Let me say that again. Most of the time the people that want a settlement confidential are the defense people. That would be our political subdivisions that we are now going to require that they make a disclosure. And why is that? Because when you

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make public, settlements, it sets a bar for everybody else who has a similar claim and it also encourages other people to make a claim. And very oftentimes, if you have a...I lost my train of thought. The...but the idea that if you begin to make settlements with people who are similarly situated and others see that settlements can be achieved or you can make a claim and make a recovery, then you're going to encourage people to make those kind of claims. And if the amount of the settlement is public, then people will say, well, you paid Joe \$70,000, I'm not going to take anything less than that where the political subdivision might be able to settle the second case for some number less than that. So there are some things to think about. There certainly will be more litigation. There will be more cases that go to trial instead of being settled with this. On the balance, I think it's probably a good policy for political subdivisions in the state to disclose this. But as you consider Senator McCoy's bill, you ought to consider that generally it is the defense folks, people who defend claims that generally want them to be confidential. And as a plaintiff's lawyer, somebody that prosecutes claims as Senator White does, we typically like to have that public so that we can see what similar cases are resolving for, whether there have been...whether a political subdivision has been on notice of a particular defect or a problem with its property or some liability situation. So there's much to think about. This isn't just transparency and we should move the bill. There is a lot to consider... [LB742]

SENATOR SULLIVAN: One minute. [LB742]

SENATOR LATHROP: ...and while I support the bill, I would encourage you to think about some of the things Senator White and I have shared with you. Thanks. [LB742]

SENATOR SULLIVAN: Thank you, Senator. Senator Nelson, you're recognized. [LB742]

SENATOR NELSON: Thank you, Madam President, members of the body. I guess as an attorney in private practice I share the same concerns that Senator White and Senator Lathrop have expressed here. Although I am supportive of the bill, I have a feeling that it's going to cost us quite a bit more in the long run because of the fact that people are going to demand more as a result of what they see here in the public record. And I am not so sure but what it's going to result in more lawsuits because they don't want to...the plaintiffs don't want to come under this type of public disclosure. I do have a question, just for clarification, and maybe I will start with Senator McCoy if he will yield. [LB742]

SENATOR SULLIVAN: Senator McCoy, will you yield for a question? [LB742]

SENATOR McCOY: Yes, I would. [LB742]

SENATOR NELSON: Senator, I'm looking at the committee statement here and it says,

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the settlement agreement will contain a brief description of the claim. Was there any talk about what a brief description...I mean, what has to appear in a brief description as far as this transparency is concerned? [LB742]

SENATOR McCOY: Well, it's just exactly that, Senator Nelson, a brief description very simply stating what the claim is and what it's for. Keeping in mind, however, the 18 exemptions that exist in current statute aren't being tampered with. So in other words, if such a settlement fell under one of those exemptions, then that would obviously change the statement of the claim. [LB742]

SENATOR NELSON: But the name of the claimant and the amount of money over \$50,000 is going to have to be expressed in that brief description, I would imagine. [LB742]

SENATOR McCOY: That would be correct unless again it falls under one of these exemptions... [LB742]

SENATOR NELSON: Right. [LB742]

SENATOR McCOY: ...when that wouldn't be the case. [LB742]

SENATOR NELSON: Then it says that this settlement and, of course, this would be after the fact after the settlement is made of a determination by the elected officials, will be included as an agenda item at the next meeting of the public agency or public utility. Now, I think we've talked about that a little bit but it's just going to be a statement on the agenda? Is all that required that a settlement was made such as a consent item as we see in Douglas County where there may be a whole list of claims and they just consent and publish that amount. What's the extent of what has to appear as an agenda item? [LB742]

SENATOR McCOY: I'll go back to what I said earlier and answer that question, Senator Nelson. That would be as that it's merely listed on the agenda. It's not an action item to be voted upon. It's merely just a reporting item on the agenda and that's simply all I mentioned earlier--Omaha Public Schools and that. [LB742]

SENATOR NELSON: All right. Does that prohibit someone, a member of the public then that comes into the meeting from having a discussion on what was done? [LB742]

SENATOR McCOY: Not to my knowledge, no. [LB742]

SENATOR NELSON: So it can be brought up and it can be discussed. [LB742]

SENATOR McCOY: That would be correct. [LB742]

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SENATOR NELSON: All right. The fact that that settlement was made. All right. Then finally here it says, nothing in the bill requires a public official or employee or any party to the settlement agreement to comment on the agreement. Now, as an elected public official and someone raises questions because of this item on the agenda, am I entitled then as the public official to say, I cannot comment in any way on this, according to this amendment? [LB742]

SENATOR McCOY: If you...if the settlement fell into one of these exemptions that would be exempted... [LB742]

SENATOR SULLIVAN: One minute. [LB742]

SENATOR McCOY: ...from being disclosed, yes, you could. [LB742]

SENATOR NELSON: Well, I don't think...I don't see anything about the exempt items here. I'm talking about what's on the agenda and if it's on the agenda, it's not exempt, is that right? [LB742]

SENATOR McCOY: If you don't mind repeating that, I'm not sure I completely understand the nature of your question. [LB742]

SENATOR NELSON: Well, all right. But I guess my point is, that it can appear on the agenda but it's not necessary for the members there of the...that were parties to the entitlement agreement or the public official to comment on their reasons or why they did it or anything or make any comment at all. I mean they were entitled to be silent if I read this correctly. [LB742]

SENATOR McCOY: That would be correct. [LB742]

SENATOR NELSON: All right. Thank you, Senator McCoy. I appreciate your answers. Thank you, Madam President. [LB742]

SENATOR SULLIVAN: Thank you, Senator Nelson. Senator Wallman, you're recognized. [LB742]

SENATOR WALLMAN: Question. [LB742]

SENATOR SULLIVAN: Senator Wallman, that won't be necessary, there's no further lights on. Seeing no further lights, Senator Avery, you're recognized to close on your amendment. [LB742]

SENATOR AVERY: Thank you, Madam President. Let me in my closing just mention

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that the state has never allowed confidentiality clauses or nondisclosure agreements. And, in fact, all of the claims, settlements that the state engages in are public record. And we don't have any evidence that this practice by the state has led to any significant increase in claims. So I'm not sure that's something we should worry too much about. Let me just say that this amendment, AM2105, is simply a further attempt on the part of the committee to meet objections that were raised and try to bring as many people in support of this as we could. This particular amendment that's before you right now was made necessary because some parties that were not involved in the original negotiations came to us and said, we'd like to see these things changed. We went back to the original negotiating group, got their agreement, and that's the result is this amendment, AM2105. I believe that AM2105 combined with AM1967 make LB742 a good bill. Public business should be conducted in public. Secret agreements withheld from the public undermine confidence in government, and I don't think any of us want to see that. So I urge you to support this amendment and AM1967 and the underlying bill. Thank you, Madam President. [LB742]

SENATOR SULLIVAN: Thank you, Senator Avery. You've heard the closing on the amendment to the committee amendment. The question is, shall the amendment be adopted? All those in favor vote aye; all those opposed vote nay. Have all those voted who choose to vote? Record, Mr. Clerk. [LB742]

CLERK: 35 ayes, 0 nays, Madam President, on the adoption of Senator Avery's amendment to the committee amendments. [LB742]

SENATOR SULLIVAN: The amendment is adopted. Is there any further discussion on the committee amendment, the amended committee amendment? Seeing no further discussion, Senator Avery, you're recognized to close on the amended committee amendment. [LB742]

SENATOR AVERY: Thank you, Madam President. I will just take a moment to clarify an issue that came up when Senator Nelson was engaging in conversation with Senator McCoy. If you look at the amendment, AM1967, you will see that if a public official is asked to comment on an agreement, they're not required to do so. But they are required to provide a copy of the agreement if requested. So I think that's an important part of the amendment. The amendment is a good amendment. The bill is a good bill. We did a lot of work on it over a long period of time. I urge you to vote for this amendment and the underlying bill. Thank you. [LB742]

SENATOR SULLIVAN: Thank you, Senator Avery. You have heard the closing on the amended committee amendment, AM1967. The question is, shall the amendment be adopted? All those in favor vote aye; all those opposed, nay. Have all those voted who wish to? Record, Mr. Clerk. [LB742]

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CLERK: 36 ayes, 0 nays on adoption of committee amendments. [LB742]

SENATOR SULLIVAN: The amendment is adopted. [LB742]

CLERK: I have nothing further on the bill, Madam President. [LB742]

SENATOR SULLIVAN: With nothing further on the bill...excuse me, Senator Gay, you're recognized. [LB742]

SENATOR GAY: Thank you, Madam President. I just wanted to say on the amendments and the bill I had not spoken on this but I just wanted to commend Senator Avery and Senator McCoy on their work on this. Unfortunately, I've had to vote against my friend, Senator Avery, on a few things but this is one I'm completely supportive of. But I just wanted to say I thought watching this process, I've been paying close attention to what they're doing and this is truly a good work in progress, a good bill, and I commend both Senator McCoy and Senator Avery. I think this is truly a...like I say, they took a very difficult, contentious issue, brought everybody on board, and I wanted to just publicly be on the record thanking them for their work. Thank you, Madam President. [LB742]

SENATOR SULLIVAN: Thank you, Senator Gay. Seeing no further lights on, Senator McCoy, you're recognized to close on LB742. [LB742]

SENATOR McCOY: Thank you, Madam President and members. Greatly appreciate again the work Senator Avery and his staff--as Senator Gay mentioned, there was a tremendous amount of work that went into getting this legislation to where it is today and I appreciate your support on the amendments thus far. It has been a difficult issue to try to chart a course as we went forward on it. And I greatly appreciate the comments of a number of the attorneys that we have in this body and their wisdom and understanding of these complex issues, and the knowledge and skill that they have to lend to this discussion. I believe, again, that this is an important issue about transparency, but as it's been mentioned, it is more than just that. And with that, thank you, Madam President, and would ask that you advance LB742. Thank you. [LB742]

SENATOR SULLIVAN: Thank you. You have heard the closing on the advancement of LB742 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have all those voted who wish to? Record, Mr. Clerk. [LB742]

CLERK: 35 ayes, 0 nays on the advancement of LB742. [LB742]

SENATOR SULLIVAN: The bill advances. The Chair recognizes Speaker Flood for an announcement. [LB742]

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SPEAKER FLOOD: Thank you, Madam President. Good morning, members. A quick note on today's agenda. We're going to continue in order here proceeding to LB820 from Senator Janssen. We'll continue down General File until we get to 12:30. At 12:30 we will take up the Speaker priority bills beginning with Senator Campbell's bill, LB970. As you know, we are working through lunch. A number of you have asked us to what the adjournment time will be today. I'd like to, hopefully, make as much progress on that entire division called the Wightman division, beginning at 12:30, but I do not see us working today past 2:00 p.m. As far as next week is concerned, we are going to continue with the General File bills for the most part that you see on your agenda here on Monday and then on Tuesday we will continue with the General File bills. Tuesday at 1:30 we will take up General File consideration of the Appropriations Committee budget. On Wednesday we are going to take up Select File in the morning and then return to General File debate in the afternoon. And on Thursday of next week, hopefully, we'll be able to consider Select File on the budget. That is all, of course, subject to how the body treats the bills that's in front of us, but I wanted to give you a road map next week so that you were prepared as we work our way through the month of March. Thank you, Madam President.

SENATOR SULLIVAN: Thank you, Speaker Flood. Items for the record. []

CLERK: Madam President, Retirement Systems, chaired by Senator Pankonin, reports LB950 and LB979 to General File with amendments. Business and Labor, chaired by Senator Lathrop, reports LB1091 to General File and LB1090 to General File with amendments. And that's all that I have. (Legislative Journal pages 872-877.) [LB950 LB979 LB1091 LB1090]

SENATOR SULLIVAN: (Visitors introduced.) Mr. Clerk, we will proceed to General File, LB820. [LB820]

CLERK: LB820, a bill by Senator Janssen. (Read title.) The bill was introduced on January 8 of this year; at that time referred to the Transportation and Telecommunications Committee; advanced to General File. There are committee amendments, Madam President. (AM1932, Legislative Journal page 592.) [LB820]

SENATOR SULLIVAN: Senator Janssen, you're recognized to open on LB820. [LB820]

SENATOR JANSSEN: Thank you, Madam President and members of the Legislature. LB820 would permit Nebraska's fire truck manufacturers to deliver their products to in-state and out-of-state markets in an efficient and more uniform manner. At present, fire truck manufacturers must obtain a permit from the Department of Roads for a nominal amount if their customer requires the manufacturer to deliver the product to them. If the customer sends a firefighter to pick up the order, this permit is not required. The Transportation and Telecommunications Committee heard LB820 on February 16.

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After the public hearing, the committee incorporated the suggestions of the testifiers at the hearing and adopted AM1932 to LB820. AM1932 becomes the bill. If we adopt AM1932 to LB820, Nebraska's fire truck manufacturers will be able to deliver their products to instate and out-of-state customers in the same manner regardless of who is driving the truck to the final market. Senator Fischer will introduce AM1932 to LB820. I fully support AM1932 to LB820 and encourage your support of this pretty straightforward bill. Thank you, Madam President. [LB820]

SENATOR SULLIVAN: Thank you, Senator Janssen. There is an amendment from the Transportation and Telecommunications Committee. Senator Fischer, you're recognized to open on the amendment. [LB820]

SENATOR FISCHER: Thank you, Madam President and members. The committee amendment, AM1932, strikes all original sections and becomes the bill. The amendment makes just one small change pertaining to overweight permits. Where the section discusses a special permit for the operation of an emergency vehicle for purposes of sale, demonstration, exhibit, or delivery, the provision now reads under the amendment, "No permit shall be issued for an emergency vehicle which weighs over sixty thousand pounds on the tandem axle." This is the only change made by AM1932 to the existing Nebraska law. This change is to be interpreted as permitting up to 60,000 pounds on the rear axle of the emergency vehicle with an additional statutorily permitted 20,000 pounds on the front single axle. The Nebraska Department of Roads is aware of this change and they concur with this interpretation of the statutory language. Thank you, Madam President. [LB820]

SENATOR SULLIVAN: Thank you, Senator Fischer. Senator White, you're recognized. [LB820]

SENATOR WHITE: Thank you, Mr. President. May I...would Senator Fischer yield to a question? [LB820]

SENATOR SULLIVAN: Senator Fischer, will you yield? [LB820]

SENATOR FISCHER: Yes. [LB820]

SENATOR WHITE: Senator Fischer, thank you for this. Literally, my constituents, one of the things most upsetting them at the moment are the incredibly rough shape of the metro area roads. If we put this additional weight on axles, is there going to be any fee to help compensate to repair the damage to roadways? [LB820]

SENATOR FISCHER: In truth, Senator White, this won't affect the metropolitan area at all because cities...what we're talking about here basically is very, very large fire trucks, that's what we're talking about. And they already have exemptions within city limits so

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that they can respond to emergency calls. So it wouldn't affect metropolitan areas, cities, towns, anything like that where you have these large vehicles currently existing. [LB820]

SENATOR WHITE: If I get this right then, Senator, there will be no other uses other than fire trucks for this exemption? [LB820]

SENATOR FISCHER: It's defined as authorized emergency vehicle. [LB820]

SENATOR WHITE: Okay. [LB820]

SENATOR FISCHER: So it...and Senator Janssen had handouts for the committee. I don't believe I have them in the file. But truly these are just the really large fire trucks that have the large extensions, the ladders on them. I can't see that it would be anything else. [LB820]

SENATOR WHITE: I appreciate your courtesy, Senator, and thank you for those responses. Thank you, Ms. President. [LB820]

SENATOR FISCHER: You're welcome. [LB820]

SENATOR SULLIVAN: Are there any other requests for discussion? Seeing none, Senator Fischer, you're recognized. She waives closing. The question is, shall the amendment, AM1932, be adopted? All those in favor vote aye; all those opposed, nay. Have all those voted who wish to? Record, Mr. Clerk. [LB820]

CLERK: 31 ayes, 0 nays, Madam President, on adoption of committee amendments. [LB820]

SENATOR SULLIVAN: The amendment is adopted. [LB820]

CLERK: I have nothing further on the bill. [LB820]

SENATOR SULLIVAN: Senator Janssen, you're recognized to close. Senator Janssen waives closing on LB820. The question is all those...on the advancement, excuse me, of LB820 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have all those voted who wish to? Record, Mr. Clerk. [LB820]

CLERK: 30 ayes, 0 nays, Madam President, on the advancement of LB820. [LB820]

SENATOR SULLIVAN: The bill advances. Mr. Clerk, we will proceed with General File, LB924. [LB820 LB924]

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CLERK: LB924 by Senator Fischer. (Read title.) The bill was introduced on January 13, at that time referred to the Transportation Committee. The bill was advanced to General File. At this time I have no amendments to the bill, Madam President. [LB924]

SENATOR SULLIVAN: Thank you. Senator Fischer, you're recognized to open. [LB924]

SENATOR FISCHER: Thank you, Madam President and members of the body. LB924 is the result of a federal compliance issue. Under LB497 or after LB497 was passed in the 2009 legislative session, which made some changes to the ignition interlock law, the Nebraska Office of Highway Safety received notice from the National Highway Traffic Safety Administration that Nebraska was not in compliance with federal law, Sections 23, U.S.C. 164 and 23, U.S.C. 410 with regard to the use of ignition interlocks. In the case of a license revocation as the result of a DUI conviction under federal requirements, the reinstatement of driving privileges during the revocation period, such as an ignition interlock permit, must be limited to travel to and from places of employment, school, an alcohol treatment facility, or an ignition interlock service facility. LB497 expanded the authorized use of the permit to required visits with a probation officer. This expansion put Nebraska out of compliance with federal law and, according to NHTSA, put the state at risk of losing federal highway funds. The consequence of noncompliance is twofold. One, a portion of federal apportionments and appropriation for National Highway System Surface Transportation Program and Interstate maintenance would be transferred to the state's Section 402 safety program with the option to use all or part for activities eligible under the Hazard Elimination program. The 3 percent provision in the federal law would result in a transfer of approximately \$5.85 million based on FY '09 data. This shift in funds would result in the loss of federal funds that could be used for highway construction. And two, the Office of Highway Safety would annually lose \$1.3 million in Section 410, Alcohol Incentive Funding, 100 percent of which flows to law enforcement for their DUI enforcement activities, including funding for preliminary breath test equipment, data master evidentiary equipment used in blood alcohol content measurements, drug recognition expert training, and special enforcement of the DUI laws. NHTSA requested the removal of all provisions in Nebraska statutes that allow an individual an ignition interlock permit to drive to visits with his or her probation officer. The federal law does not allow for this particular use of an ignition interlock device. In addition, NHTSA requested that Nebraska statutes unequivocally impose a minimum 45-day waiting period on all repeat offenders and high-risk offenders who had a DUI conviction with a revocation period of more than one year. Federal law defines a high-risk offender as any person found to have a blood alcohol content of .15 or higher. LB925, excuse me, LB924 strikes the authorization of visits to a probation officer from the ignition interlock permit provisions. The bill also amends existing language to make it clear that any person with a revocation period of one year or more must serve a minimum 45-day no driving period before the person can drive with a court-ordered ignition interlock and permit for the balance of a one-year revocation period. NHTSA authorizes...NHTSA authorities were clear that Nebraska

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must amend the interlock laws to maintain compliance with federal standards. Prior to the introduction of this bill, several conference calls and drafts were pursued with federal authorities to arrive at a draft that ensures compliance. NHTSA authorities have approved LB924 as introduced as compliant with federal law. I would like to say, Madam President, that when we dealt with this law last year we did have the provision that offenders could drive to their probation officer. And I felt, as did this body, that that was important. However, it is important that we pass this bill as it is written in order that we are in compliance with federal law and we don't lose our highway funding. Thank you, Madam President. [LB924 LB497]

SENATOR SULLIVAN: Thank you, Senator Fischer. Senator Fulton, you're recognized. [LB924]

SENATOR FULTON: Thank you, Madam President, members of the body. My thanks to Senator Fischer and to the committee for this bill. I thought it was appropriate that I get up and say something on this, as this ignition interlock device and the policy that we implemented a few years ago has been something that I worked on and championed. And at the same time, it is worth mentioning here that here is an example where we have to do a great deal of work in order to put forward a policy that we senators want for the state of Nebraska, yet we have to do so in a way that acknowledges what the federal government would have us do in order to enact the laws that we'd like to. And this causes me trouble. I've talked about this on other issues, but it's worth pointing out that Senator Fischer has done yeoman's work on this in order to keep us in compliance such that we maintain our federal funding. So I thank her and stand in support of LB924. Thank you, Madam President. [LB924]

SENATOR SULLIVAN: Thank you, Senator Fulton. (Visitors introduced.) Senator Council, you're recognized. [LB924]

SENATOR COUNCIL: Yes, thank you, Madam President. I just rise to try to clarify what appears to be a conflict. As I read the committee statement, it said that Nebraska's noncompliance with the federal repeat offender statutes were the statutes that placed us at risk of losing the federal funding. And as I understood Senator Fischer during the opening that the federal authorities indicated that the way our law is currently drafted it, in its entirety, is out of compliance with the federal statutes. I just want to be clear. If Senator Fischer would yield to a question. [LB924]

SENATOR COASH PRESIDING []

SENATOR COASH: Senator Fischer, would you yield? [LB924]

SENATOR FISCHER: Yes, I will. [LB924]

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SENATOR COUNCIL: Okay. And, Senator Fischer, the committee note...the committee statement, the fiscal note says that the federal highway funds that are at risk are at risk because of noncompliance with the federal repeat offender statute. And as I understand the interlock statutes as it exists relative to allowing probationers to use the interlock device to drive to meetings with their probation officer, that the way our statute reads right now it applies across the board, whether it's a first offense or second or third offense. Could we not have...come into compliance by just limiting the prohibition against driving with the interlock device to your probation officer to repeat offenders? [LB924]

SENATOR FISCHER: Senator Council, this...what we heard from the feds on this was that it was high-risk and repeat offenders. So they both were covered under that. [LB924]

SENATOR COUNCIL: Okay, so is there any way though that people who are not at high risk and who are not repeat offenders could still be authorized to travel to meetings with their probation officers using the interlock device? [LB924]

SENATOR FISCHER: Senator Council, we would have to check on that. The time line on what happened with this bill was we were contacted, the Department of Motor Vehicles was contacted on it. There were conference calls, there were e-mails back and forth and LB924, as it is written, is what the feds have now approved and what they have said we need to pass in order to be in compliance. If we would go beyond that, I would like to be able to check with them before we would make any changes to this bill this year in order to allow those first-time offenders to use the device to go to their probation meetings. [LB924]

SENATOR COUNCIL: I mean because...and thank you, Senator Fischer, for yielding to the question because right now the bill is actually in conflict with what the fiscal note says is required to bring us into compliance. That's number one that needs to be addressed. Number two, if I'm correct in my understanding that what the federal statutes prohibit in terms of when you can use the interlock device to operate a vehicle,... [LB924]

SENATOR COASH: One minute. [LB924]

SENATOR COUNCIL: ...if it's designed to address those high-risk offenders and repeat offenders by denying low-risk offenders or first-time offenders the ability to get to their probation officers who in turn could have some influence on whether these individuals become repeat offenders is what is concerning me. And while I surely don't want us to risk losing these federal dollars, if...I don't want this to be so broadly drafted that a category of individuals who need to operate their vehicle to get to a probation officer meeting is not precluded from doing so because we've gone beyond what the federal

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law requires us to do. And I would be interested, Senator Fischer, in contacting the federal authorities to see if we carved out an exception for... [LB924]

SENATOR COASH: Time. [LB924]

SENATOR COUNCIL: ...first-time offenders and low-risk people. [LB924]

SENATOR COASH: Senator Fischer, you are recognized. [LB924]

SENATOR FISCHER: Thank you, Mr. President. Senator Council, I hit my light so we could continue this discussion, if you would like to do so. Senator or, Mr. President, would Senator Council yield, please. [LB924]

SENATOR COASH: Senator Council, will you yield? [LB924]

SENATOR COUNCIL: Yes. [LB924]

SENATOR FISCHER: Thank you. Again I'm concerned about the time line that we have. As you know, it's hard to get responses in a timely manner from any governmental agency, let alone the federal government. But I certainly would like to look into this with you. And hopefully, we can carve this out. As I said in my opening, I'm disappointed by the action of the federal government with regards to the law that we passed last year. I think we did an excellent job in here in trying to address concerns and problems but still have opportunities for individuals that would be able to use this device and attend meetings that we all felt were responsible that they should do so. So I would certainly be willing to work with you on that. My only concern would be that we wouldn't have time to address it this session, and I feel an urgency to get this passed so that we don't lose any highway construction funds. So I guess I'm asking, would you be willing to look into it, and if we can't do it this session, to address it next year then? [LB924]

SENATOR COUNCIL: And if I'm allowed to respond, yes, Senator Fischer. I mean, I don't want to put the roads dollars at risk. But if we can obtain a response from the federal authorities prior to Final Reading on this, I would like to know that you, as sponsor of the legislation, would be willing to entertain an amendment to accomplish that during this session, if we get a timely enough response. If not, I am certainly committed to working on seeing if we can accomplish that for the next session. [LB924]

SENATOR FISCHER: Most certainly, I look forward to working with you. And I would hope that we can get a response before we adjourn this year, but if not, we can work together and address this for next session. [LB924]

SENATOR COUNCIL: Thank you, Senator Fischer. Thank you, Mr. President. [LB924]

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SENATOR FISCHER: Thank you, Mr. President. [LB924]

SENATOR COASH: Thank you, Senator Council and Senator Fischer. Seeing no other lights on, Senator Fischer, you're recognized to close on LB924. Senator Fischer waives closing. The question before the body is, shall LB924 advance to E&R Initial? Have all voted who wish to vote? Record, Mr. Clerk. [LB924]

CLERK: 36 ayes, 0 nays, Mr. President, on the advancement of LB924. [LB924]

SENATOR COASH: LB924 is advanced. Mr. Clerk, we will proceed to General File, LB701. [LB924 LB701]

CLERK: LB701, a bill by Senator Hadley. (Read title.) The bill was introduced in January, at that time referred to the Health and Human Services Committee for public hearing. The bill was advanced to General File. I do have committee amendments, Mr. President. (AM1912, Legislative Journal page 600.) [LB701]

SENATOR COASH: Senator Hadley, you're recognized to open on LB701. [LB701]

SENATOR HADLEY: Mr. President, members of the body, thank you. I appreciate this opportunity to give some information about ICF/MRs. They are so very important. We've heard a lot about what's been going on in Beatrice over the years. But there are private ICF/MRs. LB701 amends the state ICF/MR Reimbursement Protection Act so that a specific portion of the proceeds raised attendant to the ICF/MR provider tax actually finds their way to the nongovernment ICF/MRs--Mosaic facilities in Grand Island, Axtell and Beatrice--that pay the taxes. Just so everybody knows, an ICF/MR is a funding stream emanating from Title XIX of the Social Security Act or Medicaid ICF/MR is financed by federal and state funds. ICF/MR is specifically designated to provide active treatment services to persons who are mentally retarded or persons with related conditions. Basic principles of ICF/MR facilities are: each individual has the capacity for growth and development; each individual should have access to services that enhance his or her development, well-being, and quality of life; each individual should have access to the most normal and least restrictive social and physical environments consistent with his or her needs; and each individual's services should be delivered in accordance with a single, comprehensive, individual rehabilitation plan that is developed, monitored, coordinated, and revised by members of a duly constituted interdisciplinary team. Just to let you know, we are dealing with the private ICF/MRs. Basically, they're in Grand Island, Axtell and Beatrice. They deal basically with Mosaic. As just a quick note, Mosaic, the largest services that Mosaic provides among its many states that it is in, is in Nebraska. In Axtell they support 107 people, 258 staff with an annual revenue of \$10.3 million. It was established in 1913, it is the oldest Mosaic facility. Beatrice has 168 people supported, 367 staff, \$12.3 million in annual revenue,

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started in 1956, the second oldest. Northeast Nebraska, 318 people supported; south central Nebraska 60; Tri-City is 168; a total of 821 people supported with a staff employment of 1,244. While the ICF/MR Reimbursement Protection Act was originally adopted in 2004, it came about from the nongovernment ICF/MRs taking to the state Medicaid agency a proposal to enact a provider tax which, through an intergovernmental transfer, would enhance state Medicaid reimbursement by more than \$2 million per year. The idea...the understanding behind the legislation was that some portion of the proceeds raised attendant to the tax would go to help the developmentally disabled disability waiting list and enhance Medicaid reimbursement to nongovernment ICF/MRs, with any remaining balance going to the General Fund. Again the three areas were to help with the waiting list, enhance Medicaid reimbursement to the ICF/MRs, with the remaining balance going to the General Fund. In actuality, the provider tax is contributed each year to helping fund the waiting list, but the entirety of the remaining available funds have gone to the General Fund, some \$1.5 million by direct transfer and an additional \$600,000 by only replacing funds that would have been reimbursed to the nongovernment ICF/MRs anyway. As a result, ICF/MR reimbursement rates have received only the very nominal increase appropriated for all other Medicaid providers, such as chiropractors, doctors, hospitals, etcetera. As a result, direct care staff salaries in these facilities remain \$2 to \$3 an hour below those paid at the state-operated ICF/MR, the Beatrice State Development Center, which we have come to know so much about in the past two years. If the nongovernment ICF/MRs are to avoid the kinds of problems that have engulfed BSDC, staff salaries at these facilities have to be increased significantly. And LB701, by making good on the state's original deal in this area, will enable these facilities to, over time, undertake these increases. The bill would do this by making available to providers proceeds from the ICF/MR provider tax that the Division of Medicaid and Long-Term Care has simply allowed to morph into the General Fund by incorporating them into the existing ICF/MR rates as opposed to utilizing such funds to enhance those rates as was intended by the original legislation. And if anyone doubts that these funds have not been made available to the ICF/MRs who pay the taxes used to realize them, you have to only look at the Medicaid Division's fiscal note which identifies that LB701 could occasion a \$600,000 impact on the General Fund. At the end of the day, all that LB701 does is to make good on the state's original commitment in undertaking to enact the ICF/MR Reimbursement Protection Act. Yes, it will have a General Fund impact. But think, if you will, how much greater that impact would have been if we had, since 2004, acted in good faith on our original commitment. By the time LB701 was implemented, effective July 1, 2001, we've had a half dozen years of what amounts to a free ride by ignoring the understanding that was part and parcel of the enactment of the original legislation. I would encourage the enactment of LB701 and the two amendments that follow. Thank you, Mr. President. [LB701]

SENATOR COASH: Thank you, Senator Hadley. As the Clerk has stated, there are amendments from the HHS Committee. Senator Gay, as Chair of the committee, you're recognized to open on the amendments. [LB701]

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SENATOR GAY: Thank you, Mr. President. The committee amendment just does a few things. One, it alters the date from fiscal year 2010-2011 to 2011-2012, when the changes in the bill actually go into effect. It also specifies the priority of the first through fifth allocation of the funds from the ICF/MR Reimbursement Protection Fund. It changes to "\$600,000 or such lesser amount as may be available in the fund the amount allocated for nonstate-operated intermediate care facilities for the mentally retarded, in addition to any continued appropriation percentage increase provided by the Legislature." And it also adds a fifth priority for any "remainder of the proceeds to go into the General Fund." Thank you, Mr. President. [LB701]

SENATOR COASH: Thank you, Senator Gay. There is an amendment to the committee amendment. Senator Hadley, you're recognized to open on AM2138. (Legislative Journal page 795.) [LB701]

SENATOR HADLEY: Thank you, Mr. President. AM2138 is very simple. We want to be sure that we're in compliance with the "federal Centers for Medicare and Medicaid Services of the department's annual application amending the Medicaid state plan reimbursement methodology." So we just want to make sure that this approval comes so that we're not having any concerns later on with the centers. Thank you, Mr. President. [LB701]

SENATOR COASH: Thank you, Senator Hadley. Is there any discussion on the amendment to the committee amendment? Seeing none, Senator Hadley, you're recognized to close on the amendment to the committee amendment. Senator Hadley waives closing. The question before the body is, shall AM2138 be amended to the committee amendments? Have all voted who wish to? Record, Mr. Clerk. [LB701]

CLERK: 30 ayes, 0 nays, Mr. President, on the adoption of the amendment to the committee amendments. [LB701]

SENATOR COASH: The amendment to the committee amendments is adopted. We are back to the committee amendments. Senator Utter, you are recognized. Senator Utter waives his opportunity. We are now on the Health and Human Services Committee AM1912. Senator Gay, you are recognized to close on your amendment. Senator Gay waives his closing. The question before the body is, shall AM1912 be adopted? Have all voted who care to? Record, Mr. Clerk. [LB701]

CLERK: 29 ayes, 0 nays, Mr. President, on the adoption of committee amendments. [LB701]

SENATOR COASH: The amendments are adopted. [LB701]

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CLERK: I have nothing further on the bill, Mr. President. [LB701]

SENATOR COASH: Senator Heidemann, you are recognized. [LB701]

SENATOR HEIDEMANN: Thank you, Mr. President, fellow members of the body. Just very briefly, appreciate the bill. I think the underlying intent of the bill is very good. I wasn't able to hear all the discussion. Your intent with this bill is what, Senator Hadley? If Senator Hadley would yield. [LB701]

SENATOR COASH: Senator Hadley, will you yield? [LB701]

SENATOR HADLEY: The intent, Senator Heidemann, is that we have had the Reimbursement Protection Act which started in 2004. And basically it was set up to take care of the waiting list and get funding back to the private ICF/MRs through a process where the federal government basically gives...matches up to 60 percent the tax that we send in. So the private ICF/MRs and Beatrice, when it was Medicare certified, taxed themselves, basically sent to the government, the government sent it back to us plus 60 percent. So it increased the amount we had available by 60 percent by doing this with the federal government. In the past, the extra money was to be used for the waiting list, \$312,000 for the waiting list, which it is, \$55,000 to the department for facilitating the fund, and to pay the ICF/MRs back for the original tax. And then it was to help with provider rates. The department since 2004 has basically taken the money, rolled it into the General Fund and just given back the ICF/MRs the normal provider rates. I believe the original intent of the bill was to give the provider rate increases plus to give them up to, in the original bill, \$300,000 to supplement the provider rates. [LB701]

SENATOR HEIDEMANN: And if we do that, you hope to accomplish what? I mean,... [LB701]

SENATOR HADLEY: I hope to increase salaries. For example, right now I could go into much more detail but I know we're getting a little short. But on average the starting salaries at Mosaic are \$2 to \$3 per hour less than Beatrice State Development Center. And they are having problems getting people, keeping people, and keeping the work force. The goal of this bill is to increase salaries to get them up to what the state is paying at the state-funded ICF/MR. [LB701]

SENATOR HEIDEMANN: And if these funds would go for what I would call the front-line workers, that's probably your intent, is there a guarantee that this money will actually be used for that? [LB701]

SENATOR HADLEY: Senator Heidemann, that is a great... [LB701]

SENATOR HEIDEMANN: Will it flow to the right people here is what I'm trying to say? Is

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there that guarantee or can it be used higher up? [LB701]

SENATOR HADLEY: My understanding it cannot be used higher up. They are capped with their administrative salaries. And I would support the fact that we would report every year exactly what we were using the money for and where it was going. It is my intent of the bill that it go to the front-line, "first-line" workers that are working directly with the patients. [LB701]

SENATOR HEIDEMANN: And if that was there then...because I think it is a good bill because I've...I know that these people are front-line people. They are not paid like they should. We should try to help that situation out. But I just want to make sure that this money, if we decide to do this, is going to the right place. [LB701]

SENATOR HADLEY: That...my understanding is that it will be going to the right place which is the front-line workers to do this, Senator Heidemann. [LB701]

SENATOR HEIDEMANN: Thank you, Senator Hadley. Thank you. [LB701]

SENATOR COASH: Thank you, Senator Heidemann and Senator Hadley. As the agenda states, we will now move to the 12:30 agenda. Mr. Clerk, we will proceed to LB970. [LB701 LB970]

CLERK: LB970, Mr. President, is a bill by Senator Campbell. (Read title.) Introduced on January 19 of this year, referred to the Government, Military and Veterans Affairs Committee. The bill was advanced to General File. There are committee amendments. (AM2023, Legislative Journal page 706.) [LB970]

SENATOR COASH: Thank you. Senator Campbell, you are recognized to open on LB970. [LB970]

SENATOR CAMPBELL: Thank you, Mr. President, and good morning, colleagues, good afternoon actually. I fully anticipate that this bill is not complicated nor is it controversial. So we're going to start out if you just kind of follow me along, I think you'll see where we're going. This bill was requested by the Lancaster County Board. And currently in the statute if the county board delegates to its planning commission conditional or special permit use, then if the individual person or developer comes forward and does not like the decision of the planning commission, that appeal must be made to the district court. What the Lancaster County Board wanted to do is to change that because they felt it was costly and it would delay many of the projects. And so the Lancaster County Board requested a change that would allow that once this went to the planning commission it could be heard on a special use or conditional permit, but then if it needed an appeal it would come back to the county board. We estimate that it would save two to four weeks in any development process, and it would obviously save dollars

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before the citizen had to go to district court. The body also needs to know that one of the other reasons that this bill was brought forward is that Lincoln and Lancaster County have a joint planning department and a joint planning commission. And this would...this bill would put in sync with what we also do on the planning side for the city of Lincoln. I must say that Lincoln and Lancaster County have worked for years and have 42 joint agencies and departments that they have consolidated. So this is another way that we can help in that process. Thank you, Mr. President. [LB970]

SENATOR COASH: Thank you, Senator Campbell. As the Clerk has stated, there are amendments from the Government Committee. Senator Avery, as Chair of the committee, you are recognized to open on the amendments. [LB970]

SENATOR AVERY: Thank you, Mr. President. The amendment, AM2023, replaces the original sections of the bill. The committee amendment provides that any county in which is located a city of the primary class an appeal of a decision by the county planning commission regarding a conditional use or special exception will be made to the county board. An appeal of a decision by the county board will be made to the district court. This process makes sense for Lancaster County because the city of Lincoln has a similar process for appeals. In every other county except Lancaster County, the current process will remain in use. The current process, as Senator Campbell indicated, provides that an appeal of a decision by the county planning commission or county board shall be made to the district court. That remains. There...during the committee hearing, one person appeared in opposition. And the committee amendment actually addresses the concerns that person raised. The bill was advanced as amended on a 7-0 vote with 1 person being absent. I urge you to approve this amendment and support the underlying bill. Thank you. [LB970]

SENATOR COASH: Thank you, Senator Avery. Seeing no lights on, Senator Avery, you are recognized to close on the committee amendments. Senator Avery waives closing. The question is, shall the committee amendment to LB970 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who wish to? Record, Mr. Clerk. [LB970]

CLERK: 29 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB970]

SENATOR COASH: The amendments are adopted. [LB970]

CLERK: I have nothing further, Mr. President. [LB970]

SENATOR COASH: Seeing no lights, Senator Campbell, you are recognized to close on LB970. Senator Campbell waives closing. The question before the body is, shall LB970 advance? Have all voted who wish? Record, Mr. Clerk. [LB970]

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CLERK: 29 ayes, 0 nays, Mr. President, on the advancement of LB970. [LB970]

SENATOR COASH: The bill is advanced. Mr. Clerk, we will proceed to General File, LB864. [LB970 LB864]

CLERK: LB864, a bill by Senator Pirsch. (Read title.) Introduced on January 11 of this year, referred to the Judiciary Committee, at that time advanced to General File. There are Judiciary Committee amendments pending. (AM1679, Legislative Journal page 787.) [LB864]

SENATOR COASH: Senator Pirsch, you are recognized to open on LB864. [LB864]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I should mention first LB864 advanced with an 8 to 0 vote as amended out of committee. There are...there were no opponents at committee and no fiscal note attached with this bill. I bring this bill forward as chairman of the LR171 Criminal Offenders Sentencing and Recidivism Task Force. The bill is the fruit of the labor of the task force, their work over this past year. I think that members...well, I would like to thank the members of the task force at this point in time--Vice Chairman Senator Council, Senator Ashford, Senator Carlson, Fulton, Giese and Senator Nelson--for their hard work. The LR171 task force has worked closely this past year with the Nebraska Community Corrections Council in arriving at the language of this bill. And Senator Council and I both serve on that body as well. A little background about the Nebraska Community Corrections Council: In 2003, the Legislature adopted the Community Corrections Act, legislation which was the culmination of several years of work by members of the community corrections working group formed by the Governor in 2001, created the Community Corrections Council composed of many, I believe, 15 representatives or so from all three branches of government, private providers, and other criminal justice stakeholders to work collaboratively to address the prison overcrowding issue. The mission of the council is to develop a comprehensive community corrections strategy in Nebraska for the purpose of reducing the, like I said, the overcrowding condition that did exist and can potentially exist here in the state as well in short order looking at nonviolent, low-risk offenders and looking towards reducing recidivism. As I mentioned, a key component of the mission is to use the continuum of community corrections programs, make sure that we reduce recidivism, and make sure that there are always jail cells available for hardened, violent offenders. So essentially, the goal is proactive, conscious, prioritized management of our inmate populations as opposed to letting things just happen as they have in other states, like California, where the court has intervened and ordered the state to immediately release 40,000 inmates. And so it's not at all clear if there's going to be any prioritized selecting in who is going to be released. And so that obviously has severe implications for public safety in the state of California. The council and this task force have spent cumulatively thousands of hours and quite a bit of resources in

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shaping this and so I appreciate their work. What this bill would approximately would do is it would...this bill would create an additional duty to the Community Corrections Council so that they would collaborate with the probation administration, Department of Parole, Department of Corrections to develop a plan for the implementation and funding of additional reporting centers in Nebraska. They are community-based facilities which provide substance abuse treatment, behavioral health services, vocational training, life skills training, other rehabilitation oriented programming on-site. They work closely with the SAS program, Specialized Substance Abuse participants. Currently, there are five reporting centers located in six judicial districts: Douglas County, Lancaster, Dakota, Sarpy, Otoe Counties and Buffalo, Dawson share facilities. And so this act would call for planning so that we can roll out in a conscious and prioritized fashion additional day reporting centers when appropriate in the future. Again, I remind you this bill has no fiscal note. That is the substance of it. Thank you. [LB864 LR171]

SENATOR COASH: Thank you, Senator Pirsch. As the Clerk has stated, there are amendments from the Judiciary Committee. Senator Lathrop, as Vice Chair of the committee, you are recognized to open on the committee amendments. [LB864]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Good afternoon. AM1679 would make two changes to Senator Pirsch's LB864. First, AM1679 would amend 47-624 which provides the duties of the Community Correction Council to include the following new duties: first, provide that the council shall educate criminal justice stakeholders and the general public about the availability and use of community correction facilities and programs. Second, research and evaluate existing community correction facilities and programs within the limits of available funding. Third, develop standardized definitions of outcomes, outcome measurements for community correction facilities and programs to include recidivism, employment and substance abuse. And fourth, provide an annual report to the Legislature and the Governor on the development and performance of community correction facilities and programs. The second change in AM1679 makes...that AM1679 makes is that it incorporates from the green copy of the bill the requirement that the council collaborate with the Office of Probation, the Office of Parole, the Department of Corrections in developing a plan for the implementation and funding of additional reporting centers. The plan requires the following items to be addressed in that respect. The plan shall include recommended locations for at least one reporting center in judicial districts that currently lack a reporting center and shall prioritize the order that these additional reporting centers are to be implemented based upon need. The plan shall also identify and prioritize the need for expansion of reporting centers in judicial districts which currently have a reporting center but currently have an unmet need for additional reporting center services. The council shall submit the reporting center expansion plan to the chairperson of the Sentencing and Recidivism Committee of the Legislature by December 1, 2010, and the plan shall be implemented as state funding allows until each judicial district has at least one reporting center. That is the essence of the amendment. I urge your support and

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adoption of AM1679 and the advancement of LB864. Thank you. [LB864]

SENATOR COASH: Thank you, Senator Lathrop. Seeing no lights on, Senator Lathrop, you are recognized to close on the committee amendment. Senator Lathrop waives closing. You have heard the closing on the committee amendments. The question is, shall the committee amendment to LB864 be adopted? All those in favor vote aye; all those opposed vote nay. Have all those voted who wish? Record, Mr. Clerk. [LB864]

CLERK: 31 ayes, 0 nays, Mr. President, on the adoption of Judiciary Committee amendments. [LB864]

SENATOR COASH: The committee amendments are adopted. [LB864]

CLERK: I have nothing further, Mr. President. [LB864]

SENATOR COASH: Seeing no lights, Senator Pirsch, you are recognized to close on LB864. Senator Pirsch waives closing. The question before the body is, shall LB864 advance? Record, Mr. Clerk. [LB864]

CLERK: 34 ayes, 0 nays, Mr. President, on the advancement of LB864. [LB864]

SENATOR COASH: The bill is advanced. Mr. Clerk, we will proceed to General File, LB880. [LB864 LB880]

CLERK: LB880, a bill by Senator Rogert. (Read title.) Introduced on January 11, at that time referred to the Judiciary Committee. The bill was advanced to General File. There are Judiciary Committee amendments pending. (AM2015, Legislative Journal page 789.) [LB880]

SENATOR COASH: Senator Rogert, you are recognized to open on LB880. [LB880]

SENATOR ROBERT: Thank you, Mr. President. Good afternoon, members. LB880 is a development between two bills that I started with at the beginning of the year, LB880 and LB881, one bill from the industry and one bill from the Fire Marshal dealing with fireworks. The committee amendments context is a compromise on the two bills that we wrapped into LB880. The legislation will be changed by an amendment that the Judiciary Committee Vice Chair, Senator Lathrop, will talk about shortly, although I will talk to the committee amendment as well as we go through here. The main mechanism of LB880 in its original and amended form eliminates the requirement that the State Fire Marshal test individual fireworks samples before the sample could be placed on an approved list allowing it to be sold in Nebraska. This individual testing process is replaced by some national testing standards and a list of categories ensuring a higher level of safety. It also continues to allow retailers to sell fireworks between two specific

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time frames in the year: between June 24 and July 5 but also adds a new selling period between December 28 and January 1 for the New Year's period. The purpose of this legislation is to expand the sale of fireworks in Nebraska, thus raising revenue and creating economic development but still maintaining a high level of public safety. The expanded sale will bring increased revenue as well as allow the State Fire Marshal to focus on enforcing new requirements along with the life safety code requirements. The State Fire Marshal will be able to save around \$20,000 a year in duplicative costs since the fireworks products are already being tested and approved nationally. There will be a clear list of very specific items that are not recognized as consumer fireworks in Nebraska. This list of specific items will eliminate the confusion that was often created regarding the name of individual products but still allow for increased safety in terms of what products may be legally sold in the state. LB880 also amends the revocation of a license for a jobber or distributor from one to up to three years as it is continually now. This expanded revocation period will allow for some discretion to be used to determine if the violation was a more serious nature than just a small accident or haphazard incident. Changes some terms: Currently the statutes read "common fireworks" and we're changing that to "consumer fireworks" because this is the term that's utilized in the federal CFR standards and eliminates a list of permissible items in Nebraska. However, it creates a very specific list of fireworks in Nebraska for those items that will not be classified as consumer fireworks. Those items are: bottle rockets with a stick or wire; wire sparklers with the exception of gold and silver which can be sold until January 14, 2010, excuse me, to 2014 to eliminate their current supply; nighttime parachutes; fireworks that return to the ground and cause an automatic ignition; firecrackers with more than 50 milligrams of explosive composition; or any items tested because of a complaint and deemed unsafe by the Fire Marshal's Office. The green copy of both bills proposed increases in fees which we've taken out with the committee amendment. It's been pretty evident through the past couple of years that increasing fees here is a tough thing to do. So we decided to pull that out. We provided for an effective operative date of October 1 of this year rather than the calendar part what it would kick in, to allow for more of a transition for the Fire Marshal's Office and the retailer in whole. We have a retailer protection provision. We inserted this protection provision in order to ensure proper safeguards for licensees and the public in the event that the State Fire Marshal deems a product to be unsafe based upon a complaint and testing. For instance, if a complaint is made on a firework and the firework is deemed to be unsafe, that particular firework is quarantined and then tested by a nationally recognized organization. If it is approved based upon the standards in the test and complies with Nebraska law, then they may continue to sell that firework. If the firework is approved based upon national standard tests but it does not comply with Nebraska law, the licensee may sell or transfer the firework to another state. If it is not approved, the bill reads they must be destroyed under the supervision of the State Fire Marshal or notification should be delivered to the State Fire Marshal with notarization that shows that it's done. We actually are putting in a due process hearing provision. We inserted this process and it states that the licensee will not incur...the revocation of the license will not occur until

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the licensee is afforded the opportunity for an administrative hearing before the Fire Safety Appeals Board. Currently, a license could be pulled on the spot for an alleged violation and if the alleged violation is determined later not to have occurred, after an appeal process, the damage to the licensee cannot be reversed as there were no sales made during that time because the license was revoked. In terms of fireworks that would be considered legal under this legislation, there are devices and conditions listed in order to recognize consumer fireworks in Nebraska. These conditions are: aerial devices that have 130 milligrams or less of explosive composition, ground devices that have 50 milligrams or less of explosive composition, a small device that produces an audible effect such as a whistle, and any small firework device designed to produce visible effects by combustion. We also have established the definition of recognized consumer firework in Nebraska includes Class C explosives as classified by the U.S. Department of Transportation. Once again, we are eliminating the permissible list by name but establishing conditions and device criteria if a consumer firework is going to be recognized in the state. I've mentioned several times the national testing standards that we are going to be reverting to rather than continuing to test all these. This would be the American Fireworks Standards Laboratory, as an example, would be one of these. It was established in 1989 with the mission of reducing injury from fireworks and as such it is an appointed committee that sets safety standards on 12 classifications of these fireworks. Those standards are in line with regulatory standards set by the Consumer Product Safety Commission and the US DOT. The intent of LB880 under the committee amendment is not changed. It's to give retailers in the state a broader range of items to sell, generating more revenue, and taking away some duplications by the State Fire Marshal that both sides have agreed to...that are unnecessary. This is a result of a major compromise. And I want to thank the State Fire Marshal's Office and the retailers and my staff and the committee staff for many hours of rewrites and getting this to something that everybody can agree on. With that, thank you, Mr. President. [LB880 LB881]

SENATOR COASH: Thank you, Senator Rogert. As the Clerk has stated, there are amendments from the Judiciary Committee. Senator Lathrop, as Vice Chair of the committee, you are recognized to open on the committee amendments. [LB880]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Good afternoon. LB880 with AM2015 attached advanced from the Judiciary Committee on an 8-0 vote. AM2015 would make the following changes to LB880. It would redefine the permissible fireworks. And Senator Rogert has gone through the changes in the definition of permissible fireworks. It would also identify those that are not allowed. And Senator Rogert has already addressed those and I won't relist them for you. The amendment also creates a mechanism for a licenseholder to appeal a designation by the Fire Marshal that a firework is unsafe by allowing the licensee to pay for retesting of the firework by an independent, nationally recognized testing facility to determine if the firework meets the U.S. Consumer Product Safety Commission requirement for

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designation as a consumer firework with the results sent to the Fire Marshal. The firework found in compliance by the testing facility would be allowed for sale in the state. A licensee to sell fireworks not eligible for sale in this state to be sold in a state where they are legal and fireworks not deemed legal be destroyed under the supervision of the State Fire Marshal or that notarized documentation to be provided to the State Fire Marshal certifying that the fireworks have been destroyed. The amendment also creates an additional period for retail sale of fireworks to include the time period between December 28 through January 1. It expands the current penalty available to a licensee to include in addition to revocation of the license, that the license may also be suspended or cancelled. And finally, AM2015 provides an operative date of October 1, 2010. I ask for your support of AM2015 and the advancement of LB880. Thank you. [LB880]

SENATOR COASH: Thank you, Senator Lathrop. Seeing no requests to speak, Senator Lathrop,...oh, Senator Fulton, you are recognized. [LB880]

SENATOR FULTON: Thank you, Mr. President. I'll be brief. If Senator Lathrop would yield to a question. [LB880]

SENATOR COASH: Senator Lathrop, will you yield? [LB880]

SENATOR LATHROP: Yes. [LB880]

SENATOR FULTON: Thank you, Senator. I was contacted by a few people about this asking about the provision for New Year's Day sales or New Year's Eve sales. And I'm not seeing that in this amendment. Can you speak to that, that concern. [LB880]

SENATOR LATHROP: The concern is they want to be able to buy it for New Year's Eve. [LB880]

SENATOR FULTON: It's just a concern that, and I believe it was found...I haven't followed the media on this, but there was a report that fireworks could possibly be sold on New Year's Eve. I'm not for or against that. Frankly, they get blown up on New Year's Eve. I'm just trying to find out where that is in this amendment. I've not found it. Is it in the bill not encompassed by the amendment or... [LB880]

SENATOR LATHROP: I'm going to...you know what I'm going to do is let you ask Senator Rogert that, if you don't mind. [LB880]

SENATOR FULTON: Yeah. Would Senator Rogert yield to a question? [LB880]

SENATOR COASH: Senator Rogert, will you yield to a question from Senator Fulton? [LB880]

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SENATOR ROBERT: Yes, sir. [LB880]

SENATOR FULTON: Senator, is there a provision in the bill or the amendment that now allows fireworks to legally be sold on New Year's Eve? [LB880]

SENATOR ROBERT: There is supposed to be, I'm digging for it right now, Senator Fulton. [LB880]

SENATOR FULTON: Okay. While you're doing that, I'm just going to say, this is what happens. I mean, in my neighborhood fireworks go up on New Year's Eve. And so long as there's a mechanism and some control and some legitimacy to it, I don't have a problem with it. The constituents that I received contact from were concerned that it's too loud and it disturbs their silence and their peace. And that may very well be, but the fact of the matter is that it occurs now anyway. By putting forward this statutorily that it can be done on New Year's Eve, it at least provides a mechanism for law enforcement to be prepared to deal with this and the State Fire Marshal to be prepared to deal with it. So I'm not opposed to it but I'm not finding it. [LB880]

SENATOR ROBERT: Yeah, Senator Fulton, it's going to be on page 11 of the amendment, lines 5 and 6. It mentions that...it puts a new section in there talking about December 28 to January 1. [LB880]

SENATOR FULTON: Okay, there it is. Thank you, Senator Robert. And it was worth bringing up. I had some constituent contact on it. There was some concern. I've thought through it a little bit and this happens already. That we make it statutory provides a mechanism for public safety to be at least encompassed by what we're doing in the Legislature through the Fire Marshal and then through local law enforcement. So I'll cease there. Thank you, Mr. President. [LB880]

SENATOR COASH: Thank you, Senator Fulton and Senator Robert. Senator Nelson, you are recognized. [LB880]

SENATOR NELSON: Thank you, Mr. President, members of the body. I have a question or two for Senator Robert, if he would yield. [LB880]

SENATOR COASH: Senator Robert, will you yield? [LB880]

SENATOR ROBERT: Certainly. [LB880]

SENATOR NELSON: Senator Robert, you've covered a lot of territory in this. I thought that...and I was looking at the fiscal note which is kind of a wash. But I thought I heard you say something about a \$20,000 savings somewhere. Could you give us a little more

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detail about that. [LB880]

SENATOR ROBERT: Yeah. The Fire Marshal's Office told us that in their budget they have about \$20,000 budgeted to spend a day throughout the year with their entire staff or whoever it takes to do it, testing these new products that folks want to sell. This would eliminate that requirement, saying that we're just going to go back to national testing standards, which are most...in all cases they're a little more stringent than we have and less arbitrary. And both sides agreed that they don't need to spend the days doing that. The only reason they were doing it before was because it was statutorily required, and that's where the money savings would be. [LB880]

SENATOR NELSON: Well, is...how is that \$20,000 represented? Is it...do we go from a full-time employee to a half-time employee? I'm just wondering where the savings occurs, the duplication that you're talking about. [LB880]

SENATOR ROBERT: Well, there are several people that work in the office and basically they were just taking the people that they needed in the office out to a field to test those things for a day. They're going to have...they won't have to do that anymore. And you know, when they put in their budget what they need to do, they say, well, for every day we spend we got a whole day that's spent on testing fireworks, we're not going to have to do that, if that makes sense. [LB880]

SENATOR NELSON: Okay, yes, it does. [LB880]

SENATOR ROBERT: Yeah. And, Senator, you've got mileage, travel expenditures, meals, salaries, overtime, that's where they figure that \$20,000 goes into their budget. [LB880]

SENATOR NELSON: I'm also interested in looking at the fiscal note because we're authorizing sales from December 28 through New Year's. We're incurring a cost of approximately \$29,000 additional, which pretty much eats up or even more so than the increase in the fees. And it talks about overtime here. What...let me ask first, what is the impetus for selling during that five-day period there? Doesn't that mean that the sellers, retailers are just going to have to set up a new facility or something like that just for that short period of time? [LB880]

SENATOR ROBERT: Yeah and they will. They know that the sales will be enough to pay...I mean, the market will determine what needs to be done. They're going to set up and they're going to...because we don't let them have just a blanket license and let them stand up all the time. They have to take everything down July 5, then they'll go back and get this license if they want to sell it for the New Year's period. Set it up...this is...the retailers are asking for it. So they believe that there's a market for it. They'll set up for that time period, sell whatever they need to for the New Year's Eve period, and then

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they'll take it back down after the first of the year. I think what they're saying is that we know people are going to other states and buying that stuff and they're shooting them off anyway for New Year's Eve. [LB880]

SENATOR NELSON: Well, I think that makes sense, yes. Now the additional cost here, the Fire Marshal's Office, the \$29,000 again, why are we incurring that much for such a short period of time? [LB880]

SENATOR ROBERT: Well, I think they figure that it's...that's an estimate. They're figuring that's what it's going to cost to...they got to go back out and they spot check and inspect a lot of these sites to make sure that they're selling what they're supposed to be, set up like they're supposed to be in the places that they're supposed to be. And so that's where the extra cost...and they're going to have to process the fees or the permits that come in at that time, the license applications. [LB880]

SENATOR NELSON: All right. Thank you, Senator, for your answers. Thank you, Mr. President. [LB880]

SENATOR COASH: Thank you, Senator Nelson and Senator Robert. Senator Hansen, you are next and recognized. [LB880]

SENATOR HANSEN: Thank you, Mr. President, members of the Legislature that are still here. Would Senator Schilz yield? [LB880]

SENATOR COASH: Senator Schilz, will you yield to a question from Senator Hansen? [LB880]

SENATOR SCHILZ: Sure. [LB880]

SENATOR HANSEN: Thank you. Senator Schilz, I know you in your district have experienced some control of fireworks over the Fourth of July at Lake McConaughy. Could you give us just a real quick synopsis of what that means financially to your district, to your county, and to your main city of Ogallala. [LB880]

SENATOR SCHILZ: Senator Hansen, thank you very much. I can sure try. It is true that the community of Ogallala does do a rather large fireworks display. I think it's the largest between Denver and Omaha, it runs about 25 to 30 minutes. It's all synced up with the radio station. And I know the fireworks display for this year is going to run the community somewhere between \$20,000 and \$35,000. I'm not exactly sure where that's at. But I can't give you any solid dollar figures, numbers like that, but I can tell you that... [LB880]

SENATOR HANSEN: Are fireworks still illegal at Lake McConaughy? [LB880]

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SENATOR SCHILZ: The fireworks, depending on where you're at, yeah. You know what, I really can't tell you if they're illegal or not. But depending on when the time of year and the weather situation and stuff, they can put out a...they can issue an alert and say, please don't fire them off. But... [LB880]

SENATOR HANSEN: I understood that they were illegal. I'm not sure if that's right. But you do have kind of a Catch-22 when the lake comes up and it's good for agriculture, the beaches get smaller and the fireworks get closer together. So I know it's... [LB880]

SENATOR SCHILZ: They do and besides that they get closer to the grass there as well, yeah. [LB880]

SENATOR HANSEN: Right, correct. Thank you, Senator Schilz. Would Senator Rogert yield? [LB880]

SENATOR COASH: Senator Rogert, will you yield? [LB880]

SENATOR ROBERT: Absolutely. [LB880]

SENATOR HANSEN: Thank you, Senator Rogert. I read or I was listening to you and going through your bill as you were explaining it. And then Senator Lathrop had the Judiciary Committee amendments. And I know that that struck your bill. Are there any differences between the two? Or what is the main difference? What was the need for the amendment? [LB880]

SENATOR ROBERT: Between the green copy and the amendment? [LB880]

SENATOR HANSEN: Correct. [LB880]

SENATOR ROBERT: Well, the amendment has more provisions. It's a compromise between LB881 and LB880. So we've taken some provisions out of each bill and made one that both the industry and the Fire Marshal's Office came to a compromise on. [LB880 LB881]

SENATOR HANSEN: The Fire Marshal came to the Appropriations Committee a year ago and it was a real problem for them to test the new fireworks. And so I'm glad that you submitted LB880 and got this...got these figured out. The fireworks stands I see take an increase in fees. Does that go to the Fire Marshal? [LB880]

SENATOR ROBERT: It would. We actually took those out in the amendment, though. All the increased fees we took out and we left them the same. [LB880]

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SENATOR HANSEN: They what? [LB880]

SENATOR ROBERT: If you're looking at the green copy, there were fee increases there. [LB880]

SENATOR HANSEN: Yes. [LB880]

SENATOR ROBERT: We took them out in the amendment. [LB880]

SENATOR HANSEN: There are no fee increases. Okay. Then the Fire Marshal still... [LB880]

SENATOR ROBERT: Senator Lathrop wouldn't let me have any fee increases. [LB880]

SENATOR HANSEN: ...still can do his work with what's in there then? [LB880]

SENATOR ROBERT: Yeah. [LB880]

SENATOR HANSEN: I think the New Year's Eve fireworks, making those legal, I think that's a great idea. I don't know if...how many stands will be put up, but I think it's a great opportunity to do that and the Fourth of July too. But I think, you know, we need to listen to Senator Robert as he closes. And I'm sure that he will remind us of the American dream, motherhood, apple pie, fireworks and handguns. Thank you. (Laughter) [LB880]

SENATOR COASH: Senator Hansen, thank you and Senator Robert. Senator Robert, you are next. [LB880]

SENATOR ROBERT: Members, I would like to announce a couple of guests. We have Senators Utter and Hadley under the north balcony. (Laughter) They should stand and be recognized. I wanted to address Senator Nelson's questions on the fiscal note. And I got some better answers for you. The fiscal note is to the original bill which did require us to test a certain sample of those items on the list. We have taken that out and so that fiscal note basically goes away. There will be an increase in costs for the New Year's Eve time line. So there will be an A bill that comes behind us here, Senator Nelson, that will a little more clearly describe what the heck is going to go on here. Because we are going to save them some costs in terms of testing, but we're going to cost them a few more dollars in terms of setting up and taking care of the New Year's Eve time period. I believe and I still think we're going to end up with a positive A bill before it's all said and done. And if you have any questions, I'd let you ask them at this point. But that's all I have for the moment. Thanks, Mr. President. [LB880]

SENATOR COASH: Thank you, Senator Robert. Seeing no other lights on, Senator

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Lathrop, you're recognized to close on the committee amendments. Senator Lathrop waives closing. The question is, shall the committee amendments to LB880 be adopted? All those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB880]

CLERK: 38 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB880]

SENATOR COASH: The amendment is adopted. Seeing no other lights on, Senator Rogert, you're recognized to close on LB880. [LB880]

SENATOR ROBERT: Thank you, Mr. President. Thanks, members. I wanted to quick mention that between now and Select File I'm working with a couple groups to make sure that we have everything drawn correctly in terms of the commerce clause. I just wanted to give them notice that we're not kicking them off the bill. So there may be some language changes when we come to Select File. I don't anticipate it but it is possible. I also wanted to thank everybody who worked on this bill. There were many hours put into the compromise. And those guys behind the scenes know who they are and I appreciate their work. And I ask for your support to advance this to E&R Initial. Thank you, Mr. President. [LB880]

SENATOR COASH: Thank you, Senator Rogert. You've heard the closing on the advancement of LB880 to E&R Initial. All those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB880]

CLERK: 38 ayes, 0 nays on the advancement of LB880, Mr. President. [LB880]

SENATOR COASH: The bill advances. Mr. Clerk, we will proceed to General File, LB901. [LB880 LB901]

CLERK: LB901, a bill by Senator Wightman. (Read title.) Introduced on January 12 of this year, at that time referred to Judiciary, advanced to General File. I have no amendments at this time...I have committee amendments pending at this time, Mr. President, excuse me. (AM1926, Legislative Journal page 761.) [LB901]

SENATOR COASH: Senator Wightman, you are recognized to open on LB901. [LB901]

SENATOR WIGHTMAN: Thank you, Mr. President, colleagues. First, I'd like to thank Speaker Flood for designating this as a Speaker priority bill. LB901 addresses two issues. First, it addresses the restoration of specific factors the courts are to consider in determining custody and parenting issues in dissolution of marriage cases. Second, it grants the courts very limited authority to waive the requirement for mediation of custody and parenting time disputes. In determining custody and visitation

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arrangements, current law, which is under Section 42-364, as adopted by the 2008 Legislature, now provides that custody is to be determined "on the basis of the best interest of the child as defined in the Parenting Act, LB554, One Hundredth Legislature, First Session, in 2007." Enacted...the Parenting Act...an amended Section 42-364, Revised Statutes of 2008. LB554 removed a list of factors that the district court previously considered in determining the child's best interest in custody and visitation matters. The legislative history and court cases to date indicate that the complete elimination of the custodial factors applied under the "best interest standard" was not intentional. To remove any uncertainty, LB901 restores previous statutory language concerning the specific factors the court shall consider in determining custody and parenting arrangements. By adding back this language, we are adding back all of the statutory interpretations that have been made in past court decisions. This will aid judges to make good decisions. The reinstated language is found on page 8 of LB901 and on page 7 and 8 of the committee amendments, AM1926. The second issue that LB901 addresses is a requirement that becomes effective July 1, 2010. After that date, the law requires referral of all cases without a parenting plan to mediation as provided in the Parenting Act. In some limited circumstances, a waiver of this mediation requirement is justified. For example, where one parent leaves the United States and is unwilling to participate in any effort to resolve the issues or where the parents of an older child who preferred one parent did not want to mediate. To deal with the extraordinary situations, LB901 authorizes the court to waive mediation if good cause is shown and when both parents agree and such parental agreement is bona fide and not asserted to avoid the purposes of the Parenting Act or, two, when mediation or specialized alternative dispute resolution is not possible without undue delay or would cause a hardship to either parent. And I might say that we have this situation often in Dawson County and particularly areas, I think, throughout the state that have a large number of immigrant population in that one of the parents leaves, it's impossible to have mediation and when the mandatory mediation goes into effect on 2010 would create a problem in resolving those issues. In cases where a waiver is sought, the court is required to hold a separate evidentiary hearing and the burden of proof for the party or parties seeking the waiver is clear and convincing evidence. These changes are found on page 2 of LB901 and on page 1 of AM1926, the committee amendment. As reported in the committee statement, no one appeared in opposition to LB901. And LB901 was advanced from the Judiciary Committee as amended by AM1926 on a unanimous vote. I might also state that the bar association appeared in support of the bill. The mediation center also appeared in support of the bill. LB901 addresses these key issues that should be addressed as soon as possible in the Parenting Act. And I think Senator Lathrop will be explaining the committee amendment. One of the things that the committee amendment does is to add the emergency clause. That might have been in the original bill, I'm not sure, but I know it's in the committee amendment and partly for the reason it was in the green copy of the bill as well, because right now the mandatory mediation would go into effect on July 1, 2010. And we would like this bill to supplant at least the mandatory provisions that would go into effect. And they wouldn't go into effect

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until after that. I might also say that since the Parenting Act was a bill that the Speaker was very much involved in when it was passed, we have worked with the Speaker and...in getting the language of LB901 so that it didn't create any problems as far as getting rid of the necessary or what I think very good provisions of the Parenting Act would be. So with that, I will step aside and let Senator Lathrop explain the committee amendments. Thank you, Mr. President. [LB901]

SENATOR COASH: Thank you, Senator Wightman. As the Clerk has stated, there are amendments from the Judiciary Committee. Senator Lathrop, as Vice Chair of the committee, you are recognized to open on the amendments. [LB901]

SENATOR LATHROP: Thank you, Mr. President, colleagues. AM1926 to LB901 includes three changes, each of these changes were in response to concerns expressed by Senator Wightman after we had a hearing on the bill. The first change includes language to harmonize the provisions of the bill with the terminology and the definitions found in the Parenting Act. The second change was brought to Senator Wightman in response to concerns expressed by the mediation center that LB901 should add the waiver language to the Parenting Act. Mandatory mediation language is found in both the dissolution statute, which is Section 1 of LB901, and the Parenting Act. The committee agreed that Section 43-2937 of the Parenting Act should be amended with the same waiver language. And the third change is appropriate to add...it is appropriate with this change to add to LB901 to allow waivers in modification proceedings as well concerning child custody and visitation times. If the courts are given a limited ability to waive mediation in the initial proceedings, the courts should have the same authority in situations where custody and visitation times may be modified. As reported in the committee statement, no one appeared in opposition to LB901 and the bill was advanced by the committee as amended by AM1926 on a unanimous vote. I urge your support of both the amendment and the bill. Thank you. [LB901]

SENATOR COASH: Thank you, Senator Lathrop. Speaker Flood, you are recognized. [LB901]

SPEAKER FLOOD: Thank you, Mr. President. Good afternoon, members. I do support the Judiciary Committee amendment and I support the underlying bill. I was the sponsor of LB554 and then I had a provision in LB1014 that has made changes to this. We have made progress across the state in reducing the number of times that parents end up in a trial over the custody of their children. And let me remind this Legislature as to why I think that's important. Have you ever been in a courtroom where a 13-year-old has to sit on the stand and tell the judge who he or she wants to live with, essentially pick one parent over another? I don't know about you but it's unacceptable. We cannot put children in the middle of a fight between adults and expect the child to pick one over the other. And I introduced this bill and have been working on this issue because I don't want to see 13-year-olds or 14-year-olds or 16-year-olds having to pick one parent over

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another. Although reluctant to make any changes, I do recognize there are situations where waiving mediation may be appropriate in very limited circumstances. The case that was presented to me was Judge Doyle in Lexington said they had a party to a child custody action who refused to return from the country of Mexico to weigh in on an issue. And mom was left without guidance on how to have custody over her child. I get that. And by clear and convincing evidence, I think undue delay was being used there. But I want to be very clear to the courts if they ever read this legislative history this bill as amended by the Judiciary Committee is not a license to walk away from mandatory mediation. It's clear and convincing evidence, it's specific, and it's tailored. And I know there are some judges in this state who have not bought off on the idea of mandatory mediation. I would offer you a great majority have. But the Legislature is being very clear here, these are limited circumstances. And you are to implement the laws of this state and this Legislature and you will, as this Legislature defined in LB554, and LB1014 and today in LB901, require parties to a child custody action to mediate. I believe that people in one of those actions as adults should work for the best interests of their child and not kick it to an adversarial proceeding where kids are bouncing around like pinballs in the middle of an immature process between two parents trying to "win." That is unacceptable and it is not going to be tolerated and you're going to mediate. And we're going to expect the very best. I understand that not all mediations will be successful, but Douglas County is the shining star in the state. Since 1994 they've had a court rule and the judges in Douglas County tell me 40 percent of their child custody litigation has dropped off since they put that in place. And I think this is important for children. You can say we do a lot of things for children, but I want you to think about that 13-year-old used as a pawn in an ugly, bitter, immature game played out in our courts where mom and dad can't agree or maybe somebody doesn't want to pay child support or it's about winning and it's not about the child. If they can't work it out in mediation, there is a process there that they can go through. But I don't want to see these kids sitting on the stand having to pick. So I feel very strongly about this. I have worked with Senator Wightman and the Judiciary Committee and I respect... [LB901]

SENATOR COASH: One minute. [LB901]

SPEAKER FLOOD: ...what the Judiciary Committee has done here. They've expanded it to modification proceedings, which was an oversight. And I think this is legitimate. But I just would caution the courts, we and I feel strongly about this. And I don't want to see mandatory mediation dissolve because somebody has found an out. This is only as described in the bill and it's clear and convincing evidence. I just do not think we want to go down a road where we walk away from the good things we've done because judges across the state that have embraced this, I think, are seeing good results. Thank you, Mr. President. [LB901]

SENATOR COASH: Thank you, Senator Flood. Senator Nelson, you are next and recognized. [LB901]

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SENATOR NELSON: Thank you, Mr. President, members of the body. I have a question here on the committee amendment but I think I'll direct my questions to Senator Wightman, if he will yield. [LB901]

SENATOR COASH: Senator Wightman, will you yield? [LB901]

SENATOR WIGHTMAN: Yes. [LB901]

SENATOR NELSON: Senator, I used to get involved in divorce proceedings years ago and so...but not recently. I'm looking at the committee amendment. And it appears to me that 42-364(1) there deals with modification. And it says that the parents and their counsel shall develop a parenting plan as provided. If they don't develop a parenting plan, why, then the case may be referred to mediation. And then we get down here to the committee amendment: For good cause shown and when both parents agree and such parental agreement is bona fide, then the court may waive the mediation. Can you give me an example of when this would come up or when this might be waived? You're supposed to develop a parenting plan. And this is not for avoidance but what are the parents coming in and saying to the court at this time, and there has to be an evidentiary hearing, I guess. [LB901]

SENATOR WIGHTMAN: Well, in my opinion, what would happen, what would cause this to be invoked at this point would be that the parents have put together a plan. There has been no mediation yet. They come in with the plan and for good cause shown at that point, the court could waive mediation. [LB901]

SENATOR NELSON: So they do develop a parenting plan then. [LB901]

SENATOR WIGHTMAN: They would in this instance. But there would be other instances where it could be waived, where maybe one of the parties was not available because they were out of the country and refused to participate in the plan. [LB901]

SENATOR NELSON: Okay. So this is pretty limited right here. And the Speaker has spoken about the necessity and the good reason for doing this mediation so that we avoid trials. But I just...I'm just wondering in what particular circumstances here, how we're dealing with this here by waiving the mediation and holding an evidentiary hearing. So you have any further explanation? [LB901]

SENATOR WIGHTMAN: The court, if I might respond to that, the court must find there was good cause shown for waiving the mediation and determine that there was a bona fide plan and not done for the purpose of avoiding the Parenting Act. [LB901]

SENATOR NELSON: But if you look at line 11, it says the case may be referred to

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mediation, it doesn't say shall. So the court has an option there, that's on line 11 of the committee amendment. [LB901]

SENATOR WIGHTMAN: What page are you looking at, Senator Nelson? [LB901]

SENATOR NELSON: I'm looking at page 1, I'm sorry. [LB901]

SENATOR WIGHTMAN: Page 1. [LB901]

SENATOR NELSON: Of the committee amendment. It says if there is no plan the case may be referred to mediation, and then we go on down and say when it may be waived. [LB901]

SENATOR WIGHTMAN: Well, and I think the undue delay would be when one of the parties is out of the country, perhaps out of the state and refuses to participate. But certainly when they're out of the country and that's what we're looking at a good deal in Dawson County and I think probably other counties as well. [LB901]

SENATOR NELSON: All right, okay. Excuse me just one moment. All right, thank you, Senator Wightman. I think I have an answer to my question on that. And I appreciate your response. Thank you, Mr. President. [LB901]

SENATOR COASH: Thank you, Senator Nelson and Senator Wightman. Senator Lautenbaugh, you are next and recognized. [LB901]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. And I do want to clarify something. I don't know if there's a point in doing this but I feel like I should. At the committee I sort of discussed this with Senator Wightman and I questioned the need for the clear and convincing standard and the evidentiary hearing to accomplish a waiver of mediation. And I said, can't we entrust this to the judge's discretion? And I am here to utterly and completely retract those comments, especially after listening to Speaker Flood explain the rationale for this. While I do believe that a year or two ago when we gave district court judges the right to order mediation if they so choose on all civil cases, I don't think that's gone as well. I understand the rationale for this. I think this has gone very well in the domestic law world. And I understand now the need for the higher standard. I thank Senator Wightman for bringing this bill and I would support the amendment and the bill itself. [LB901]

SENATOR COASH: Thank you, Senator Lautenbaugh. Seeing no other requests to speak, Senator Lathrop, you are recognized to close on the committee amendment. Senator Lathrop waives closing. The question is, shall the committee amendments to LB901 be adopted? All those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB901]

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CLERK: 36 ayes, 0 nays, Mr. President, on adoption of committee amendments.
[LB901]

SENATOR COASH: The amendment is adopted. [LB901]

CLERK: I have nothing further on the bill, Mr. President. [LB901]

SENATOR COASH: Seeing no other requests to speak, Senator Wightman, you are recognized to close on LB901. [LB901]

SENATOR WIGHTMAN: Thank you, Mr. President. I'll take just a minute or less. As the Speaker stated earlier, this is a very limited right to waive mediation. The courts are still going to be required to have mediation in virtually all of the cases I suspect. So it is very limited. It does restore some of the considerations that the court was required to consider in determining custody. And so it's more specifically set out. So I do urge your support for LB901. Thank you, Mr. President. [LB901]

SENATOR COASH: You've heard the closing on the advancement of LB901 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.
[LB901]

CLERK: 40 ayes, 0 nays, Mr. President, on the advancement of LB901. [LB901]

SENATOR COASH: LB901 advances. Items for the record. [LB901]

CLERK: Mr. President, your Committee on Revenue reports LB1079 to General File with amendments attached. That's signed by Senator Cornett. Senator Pirsch, an amendment to LB510 to be printed; Senator Fulton to LB948. Name adds: Senator Pirsch to LB742; and Senator Mello to LB1048. (Legislative Journal pages 878-879.)
[LB1079 LB510 LB948 LB742 LB1048]

Mr. President, a priority motion. Senator Harms would move to adjourn the body until Monday morning, March 15, at 10:00 a.m. []

SENATOR COASH: You've heard the motion to adjourn. All those in favor say aye. Opposed, nay. We are adjourned. []