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Floor Debate
March 16, 2010

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PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the forty-third day of the One Hundred First Legislature, Second Session. Our chaplain for today is Father Jim Hunt from St. Joseph's Catholic Church in Broken Bow, guest of Senator Coash but is from Senator Fischer's district. Would you all please rise.

FATHER HUNT: (Prayer offered.)

PRESIDENT SHEEHY: Thank you, Father Hunt. I now call to order the forty-third day of the One Hundred First Legislature, Second Session. Senators, please record your presence. Please record, Mr. Clerk.

CLERK: I have a quorum present.

PRESIDENT SHEEHY: Are there corrections for the Journal?

CLERK: I have no corrections.

PRESIDENT SHEEHY: Messages, reports, or announcements?

CLERK: Mr. President, you have an amendment from Senator Ashford, LB817, to be printed. Enrollment and Review reports LB880, LB901, LB701 to Select File. New resolution: LR398, Senator Nordquist. That's all that I have. (Legislative Journal pages 913-915.) [LB817 LB880 LB901 LB701 LR398]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We'll move to the first item under General File, LB510A. [LB510A]

CLERK: LB510A, Senator Pirsch. (Read title.) [LB510A]

PRESIDENT SHEEHY: Senator Pirsch, you're recognized to open on LB510A. Mr. Clerk, we will proceed to LB880A. [LB510A LB880A]

CLERK: LB880A is by Senator Rogert. (Read title.) [LB880A]

PRESIDENT SHEEHY: Senator Rogert, you're recognized to open on LB880A.

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[LB880A]

SENATOR ROBERT: Thank you, Mr. President. Good morning, members. LB880A is the A bill to go along with my fireworks bill from last week. It puts...there will be some savings from the bill just from the lack of the need for testing of about \$20,000. What we'll need to do is move some of that money over for some expenditures for overtime for the December 28 through January 1 time period. I believe it's estimated we're going to go ahead and put the A bill forward to get it done. As it shows, there is some revenue from that to offset most of that money. But also, you've got to also look that there will be about \$20,000 in savings from the overall bill. Thank you, Mr. President. [LB880A]

PRESIDENT SHEEHY: Thank you, Senator Robert. You've heard the opening to LB880A. Are there members requesting to speak? Seeing none. Senator Robert, you're recognized to close. Senator Robert waives closing. The question before the body is on the advancement of LB880A. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB880A]

CLERK: 30 ayes, 0 nays, Mr. President, on the advancement of LB880A. [LB880A]

PRESIDENT SHEEHY: LB880A advances. We will now return to LB510A. Mr. Clerk. [LB880A LB510A]

CLERK: LB510A is a bill by Senator Pirsch. (Read title.) [LB510A]

PRESIDENT SHEEHY: Senator Pirsch, you're recognized to open on LB510A. [LB510A]

SENATOR PIRSCH: Thank you, Mr. President and members of the body. And this is simply the A bill. This does not call for a General Fund appropriation. This is simply the...LB510 is self-sustaining so the funds that we spoke of yesterday that would be derived from offenders would first be used to pay back cash funds that would...small amounts of cash funds that would be necessary to implement the...kind of the setup for this bill. So there is, again, no General Fund effect of this. I'd urge you to vote yes. [LB510A LB510]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. You've heard the opening of LB510A. Senator Council, you're recognized. [LB510A]

SENATOR COUNCIL: Thank you, Mr. President. I rise in opposition to the appropriations bill to LB510 and principally due to the fact that I intend to introduce an amendment to LB510 to take the bill back to its original intent. When this bill was first introduced by Senator Pirsch, his objective was to provide funding solely for the Crime Victim's Reparations Fund. There was a concern about the use of the work release

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inmates' funding for victim's reparations and so the compromise was that a portion of those funds would go to the Office of Violence Prevention since that program, Violence Prevention, is something that all offenders should participate in the funding of efforts to reduce and eliminate crime. With a portion of the funds now going to the Reentry Cash Fund, that is completely inconsistent with the original intent of LB510. So there will be an amendment. And LB510A may go forward but it hopefully will ultimately be amended back to the original intent of this bill. I am planning to introduce an amendment to LB510 that will either take the bill back to the distribution of the funds between the Crime Victim's Reparations Fund and the Office of Violence Prevention or to have all of the funds go to the Crime Victim's Reparations Fund since that was the original intent of this legislation. And if you look at the committee statement on LB510, the committee statement shows that the funds were to be distributed 75 percent to the Crime Victim's Reparations Fund and 25 percent to the Office of Violence Prevention. If the Office of Violence Prevention is not going to receive any portion of these funds, then all of these funds should go to the Crime Victim's Reparations Fund. Now this bill may advance on General File, but there will be an amendment to the base bill which will, hopefully, result in amendment of the A bill. Thank you. [LB510A LB510]

PRESIDENT SHEEHY: Thank you, Senator Council. Seeing no additional requests to speak, Senator Pirsch, you're recognized to close. [LB510A]

SENATOR PIRSCH: Thank you, Mr. President. And I guess the comments that Senator Council has, and I guess her issue with the committee amendment, is something that really doesn't have immediate concern with respect to the passage of this A bill. This is necessary to effectuate even the underlying bill, the white copy. So again, this doesn't have any effect to our General Fund. This is simply...what the mechanism in the bill originally holds is that from...there's certain small, one-time, software setup costs that cash funds will cover and then the dollars that flow from this program will reimburse. And so there is no General Fund cost here and so I'd urge you to vote yes at this point in time. And we will, I'm sure, have in future days Senator Council presenting her issue with the committee amendment. So thank you. [LB510A]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. You have heard the closing to LB510A. The question before the body is on the advancement of LB510A. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB510A]

CLERK: 35 ayes, 1 nay on the advancement, Mr. President. [LB510A]

PRESIDENT SHEEHY: LB510A advances. (Doctor of the day introduced.) Mr. Clerk, we will move to next item under General File, 2010 senator priority bills, LB945. [LB510A LB945]

CLERK: LB945 by Senator Harms. (Read title.) The bill was introduced on January 14

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of this year, at that time referred to the Transportation and Telecommunications Committee. The bill has advanced to General File. There are committee amendments, Mr. President. (AM2098, Legislative Journal page 752.) [LB945]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Harms, you're recognized to open on LB945. [LB945]

SENATOR HARMS: Thank you, Mr. President and colleagues. Distracted driving, especially driving while talking on a cell phone or text messaging, has become a widespread problem in this state and this nation with the potential to become even worse as more exotic electronic devices are constantly being given to the public which allows you to take your eyes off the road. Over the past few years, distracted driving has gone from a dangerous practice to a deadly epidemic. The National Highway Traffic Safety Administration has shown that nearly 6,000 people in this great nation died and more than 500,000 people in this great nation were injured in crashes involving distracted driving. This problem is not being caused by just a few negligent drivers. The AAA Foundation for Traffic Safety, which is a nonprofit educational research organization, reported in July that two-thirds of the drivers admitted to talking on cell phones while driving during the past 30 days and 21 percent had sent or read text messaging or had e-mailed. John Lee, who is the Director of the Center for Human Performance and Risk Analysis from the University of Wisconsin-Madison, says, and I quote: Texting is an especially serious problem presenting a perfect storm of driver distraction. Drivers that take their eyes off the road, their hands off the wheel, and their minds off a critical task of controlling their car, end of quotes. Colleagues, this is a serious issue. Colleagues, this is truly a tragedy basically waiting to happen. Let me share with you some research which shows that texting while you're driving increases the risk of crashing. According to a study involving 40 motorists in a driving simulator, those who were texting were six times more likely to crash than those who weren't. A study published in the Journal of Human Factors led by the university psychologist, Frank Drews, found that drivers who text while driving were involved in more crashes, responded more slowly to brake lights, and showed more impairment in forward and lateral control than those who talked on cell phones while driving. Since 2002, the Nebraska Department of Roads has tracked the number of traffic accidents resulting from mobile device distractions. In 2008, in this great state, there were 141 such crashes, including 68 injuries and 1 fatality. In 2007, there were 121 cell phone related crashes with 59 injuries and, thankfully, there were no deaths. There was a study that was done that caught my eye and I wanted to share with you that was done by the Federal Motor Carrier Safety Administration that shows that drivers who send and receive text messaging take their eyes off the road of an average of 4.6 seconds out of every 6 seconds. That's not very much. But going 55 miles an hour, you'll go the length of a football field plus the end zones; shows the tragedy of this issue. The AAA Motor Club and Nebraska Safety Council are urging all states to outlaw any cell phones used during and texting while driving. Texting requires at least one hand to be off the wheel,

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diverts the driver's attention from the road for longer periods of time than just talking on the cell phone. Today there's 20 states--maybe more now because Wyoming just passed the law, Iowa is about to pass a law--including the District of Columbia have banned texting while driving for all drivers according to the Insurance Institute of Highway Safety and these bans come at a time that we have growing concern nationwide about the dangers of mixing cell phones and cars. President Barack Obama signed an executive order directing the federal employees not to engage in text messaging while driving government-owned vehicles or with government-owned equipment. Federal employees were required to comply with the ban by December 30, 2009. The President's action alone, colleagues, show that it's dangerous and distracting to text message while driving. On January 26, 2010, the federal Department of Transportation banned drivers of trucks and buses from using handheld devices to send text messaging while driving. The fine for that is over \$2,000 and they can also have civil or criminal charges brought against them. The U.S. Transportation Secretary, Ray LaHood, stated that the federal government would do everything it can in its power to send a message to the public that texting while driving is potentially a lethal activity with serious consequences. This is obviously, colleagues, a huge issue, not only in our state but nationally, and by at least addressing this bill we'll make people aware of what's happening in this great state. Nebraska can be one of the leaders in helping resolve this issue by passing this bill. Right now, U.S. Senator Charles Schumer is sponsoring a bill that would make it so that the states which don't ban text messaging while driving will lose 25 percent of their federal highway funds. I've talked to a number of you here on this floor and outside of this Chamber. And I know that there are people here today that feel like this will be hard to enforce. I've talked with law enforcement officers from every phase, from city police to sheriffs and to a representative from the highway patrol. And what they've said to me is that this will be somewhat of a judgment call. They agree with that. But they said they can distinguish whether you're texting or not texting. And I'm going to go into that in a little greater depth because I know there will be some questions coming up that I'd like to talk about but I want to concentrate on that aspect so I'm going to move on with this because I think it's important for us to understand that we can enforce it. And there are ways that we can enforce this. We also need to remember that the first people were...first, people were worried about how we going to enforce the DUI laws or the seat belts. Every law that we have has some difficulty in whether we can enforce it or not. But just having this law on the books makes a difference of how the public reacts. People sometimes don't necessarily agree with the law, but if they're facing a large fine they will pay attention to it, they will be more aware of it, and most people will not text. This legislation is important to this great state. I believe it will make the road safer. There is no driver...no driver should have any business text messaging while driving. The data and statistics that we'll get into a little bit later in this discussion are very clear. It's dangerous, it's harmful, and it kills. So simply put, lives are at stake every day and it's critical that we begin combatting distracted driving now. Thank you, Mr. President. [LB945]

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PRESIDENT SHEEHY: Thank you, Senator Harms. You've heard the opening to LB945. As was noted, there is a Transportation and Telecommunications Committee amendment, AM2098. Senator Fischer, you're recognized to open. [LB945]

SENATOR FISCHER: Thank you, Mr. President and members of the body. During discussion of LB945, there was some concern from the Transportation and Telecommunications Committee that the bill as introduced could lead to confusion as to what exactly is prohibited. The committee amendment, AM2098, provides clarifying language that LB945 only pertains to a written communication activity. Thank you, Mr. President. [LB945]

PRESIDENT SHEEHY: Thank you, Senator Fischer. You have heard the opening to the committee amendment, AM2098. Members requesting to speak are Senator Wightman, followed by Senator Price, Senator Hadley, Senator White, Senator Gloor, and others. Senator Wightman, you're recognized. [LB945]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I rise in support of LB945 and applaud Senator Harms for introducing the bill. I have made this my priority bill because I believe that in its first year it will save lives in Nebraska. I believe it will save lives every year. I submit that, short of reading a newspaper while driving, texting as you drive down the highway is the ultimate in distraction in driving. The AAA, American Automobile Association, reports 6,000 deaths per year from distracted driving. They don't publish statistics as to exactly how that is broken down as to various acts of distraction, but I think that there is no question that many of these deaths result from texting while driving. I know I've heard people say that they can text as they drive down the road and never look at their cell phone. I find that difficult to believe but perhaps some can, but I think it would be (laugh) a very small minority. But the companion of that, I guess, is that if you're going to text, you're probably going to receive messages as well. And I have yet to have anyone tell me that they can read the text message that they receive back without looking at their cell phone. I don't think that's possible. So I do believe that it is a great distraction and even sending messages and communicating, I believe, is a great distraction even if you don't read the returning messages that you receive. I know we're going to hear that enforcement is a problem. Enforcement, in my opinion, is a problem with many laws, and Senator Harms stated that. DUI, driving under the influence, how many people drive down the road daily or throughout the year and are guilty of having above the threshold of alcohol in their blood? I submit that many, many more than are arrested. We, not so many years ago, changed the threshold from .10 to .08. How many of these people weave as they go down the road? Probably not very many at that lower level of intoxication. But we still saw fit to pass a law because we felt it was dangerous to drive with that content of alcohol in your blood. So we have on the books many laws that there is difficulty in enforcing. So I don't think that the inability to detect everybody, the problems with enforcing means that we shouldn't make that the law. Senator Harms suggested that

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many times law enforcement officers can tell when they're driving. But above that, and again Senator Harms mentioned this, that many people will comply with that law. If that's the law, probably 70 or 80 percent will comply. I don't think we should assume that everybody is going to just go ahead and continue texting because maybe they can get by with it and maybe they won't be detected. I think we have to give the public more credit than that and I think most people will comply with the law if that is the law. So I do think it will save many lives. I think most people will comply. I furthermore think that if we don't have the law, it's going to continue, we're going to see many people killed. [LB945]

PRESIDENT SHEEHY: One minute. [LB945]

SENATOR WIGHTMAN: One of the statistics that we see is, and it's shown, I think, also on some AAA literature, that you're 23 more times likely to have an accident if you're texting than if you're driving under normal circumstances. So I think we should keep those statistics in mind as we continue debate on this bill. I will raise some additional issues and discuss some additional issues later. One of these, I know, is that we're going to have discussion as to whether this falls within reckless driving or willful reckless driving and I will discuss that later in this debate. Thank you, Mr. President. [LB945]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Senator Price, you're recognized. [LB945]

SENATOR PRICE: Thank you very much, Mr. President. Members of the body, good morning. I rise in general support of the concept of what we're trying to do here. As many of you drive to and from your districts at home on the weekends or each night, as I have the opportunity to do, there have been more times than I can count when I've been driving and I'm being passed as I'm doing 70 miles an hour, I'm being passed by someone who is texting and steering with their knees. And oftentimes a thought will come across my mind to honk my horn but I said, gosh, I couldn't do that because they'll have an accident, you know, when you try to call their attention to it. I think, though, we have to be very careful. And here are some questions I have and I will be listening to the debate to see how you will answer it. And the proponents of the bill already know that the question...some of the form of the questions. But I'm going to try to give it a degree of specificity just so that we're not floundering about in good intentions. Okay. So someone is texting. Well, you have to prove it. So you have one person's word against the other. The police officer says, I saw them with a device and their fingers were doing something. Now we don't know if they're playing Tetris. We don't know if they're just surfing the Web. I mean, I can surf the Web. I can do many things on this and my fingers have to touch it. Okay. Next thing. So now let's say you've decided that...you've been pulled over, you're going to be ticketed, you'll be given a citation for having been texting while driving. How do you prove that? I suspect that the police and the law enforcement will require access to your phone records. That's a hint of the Patriot Act to me. Because really, how are you going to actually definitively prove that

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someone was texting? Well, you'd have to show that they're in the process of transmitting a message. Now, as an amateur radio operator, license KC5AYS, I know about the idea of what these transmissions are, I mean what constitutes it. What if you were composing a text but you never sent the text? And as I said, what if you are reading and receiving a text? So I think you're going to require cell phone companies to open up their records if it goes to court to show at that exact point in time when you were seen, you were texting. I mean, when we have a seat belt, they have one way of doing it. It's not a primary offense, if I'm correct. So I'll be concerned to listen, how are they going to substantiate the charge? And now another thing you can do and we have technology already in the state. The technology that right now rides on police vehicles in Sarpy County and Douglas County area where what they have is they can, while the police vehicle is rolling, it does a look to read license plates and then that license plate can be run through a database and they're able to locate stolen vehicles or vehicles of interest while they're rolling. You don't have to have a stop and you don't have to take the attention of the police officer to engage in that computer scan. We do have the ability to do that but I suspect that you'll need some type of detection equipment that will be able to detect a transmission on cell phone frequencies. Before us, we all have to be careful. Even now as my phone blinks at me, everybody who has a phone similar to this, your phone wants to stay in contact with the network and the network wants to stay in contact with the phone, so there are automatic messages being sent. Matter of fact, we had a bill or we're going to have a bill here where we can find people who may be lost or may be hurt. [LB945]

PRESIDENT SHEEHY: One minute. [LB945]

SENATOR PRICE: And how do we do that? Well, we do that because there's always a transmission going off or nearly always a transmission by the phone. So the question comes, how are you going to differentiate between a message that has text characters that you initiated or otherwise? So I think this is going to be fraught...it's good, it's intended well, but I think will be fraught with difficulties. And then finally, the question is, is are we also going to make this for first responders, law enforcement? I've driven down the road plenty of times and seen people texting on their cell phones, not using a phone or radio off the car but texting, who are in law enforcement business. So...and I don't want to say that I'm totally against it. I'm also concerned when the federal government is going to hold our feet to the fire by taking away our highway money. I thought we didn't appreciate doing that down to the lower elements of government, into subdivisions of our government. We sure as heck didn't like it when they said you had to drive 55 or you lose your funding. Now we're going to have a federal mandate that could have us when they can't proof it? I'm very concerned. [LB945]

PRESIDENT SHEEHY: Time, Senator. [LB945]

SENATOR PRICE: Thank you. [LB945]

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PRESIDENT SHEEHY: Thank you, Senator Price. (Visitors introduced.) Continuing with floor discussion on AM2098 to LB945, members requesting to speak: Senator Hadley, followed by Senator White, Senator Gloor, Senator Schilz, Senator Christensen, Senator Rogert, and others. Senator Hadley, you're recognized. [LB945]

SENATOR HADLEY: Mr. President, members of the body, good morning. It's a great day to be in Nebraska. I stand in support of LB945 and AM2098. I must admit I've never sent a text message in my life. I've received a few of them but I don't really know how to even look at those. I think there's four or five questions that we have to ask ourselves. First of all, is this a dangerous activity? I think without question it is. Let's deal with some data. Let's just not talk about hyperbole. Let's just talk...not talk about anecdotes. Let's talk about data. A study was done, individuals were given a text to send and receive, then they were given enough alcohol to become legally intoxicated at the .08 level. At 35 miles an hour, one of the people involved, reaction time was .57 seconds, when he was legally drunk it was .64, when he was texting it was 1.36 seconds--almost twice as long when he was texting. At 70 miles an hour, unimpaired, the drivers took on average .54 seconds to brake when a red light came on. When they were legally drunk it added four feet. It took them four feet longer to react. When they were reading a text message, it added 36 feet. When they were sending a text message it added 70 feet. Seventy feet is a long ways when you're going 70 miles an hour. Is it dangerous? It takes 6,000 lives a year. Secondly, there's going to be talk about primary versus secondary offense. Right now seat belts are secondary. I'm going to make the argument that this should be a primary offense. The difference is, in seat belts, if you don't wear a seat belt you kill yourself. When you're texting, you're liable to kill somebody else. You're liable to get into an accident with somebody else. So I would make it a primary offense. We've talked about penalties. If you buy the premise that texting is more dangerous than DUI, under texting, if you're caught, the first offense is \$200. Under DUI it's a fine up to \$500, seven days in jail, possible license suspension. Second offense is \$300 if you're texting. If your found DUI, the minimum of 30 to 90 days in jail, fine up to \$500. So basically, the penalties for DUI are greater than the penalties for texting. So I don't believe the penalties for texting are out of line. Fourth, is it hard to enforce? Of course, all laws are hard to enforce. I don't think there's a law out there that is easy to enforce, easy to get a conviction, whether it be homicide down to speeding. But why do we have laws? One of the reasons we have laws and penalties is to deter people from doing it. Most of us don't speed because there's a potential of a penalty. [LB945]

PRESIDENT SHEEHY: One minute. [LB945]

SENATOR HADLEY: So consequently, the ability...because it's hard to enforce should not play into whether or not we should enact it. Lastly, let me ask you this. You're driving home from some late-night meeting of the Legislature and it's 11:00 at night and somebody is coming at you and they're weaving. What is your first thought? They're

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drunk, right? DUI, right? You get as far away as you can. What do you think when it's 2:00 in the afternoon and somebody is coming at you and they're weaving? What do you think? They're probably texting, aren't they? If you have a crash, is one better than the other? I don't think so. I would ask you to support LB946 and AM2098. I think it is a good bill that we need for the state of Nebraska. [LB945]

PRESIDENT SHEEHY: Time, Senator. [LB945]

SENATOR HADLEY: Thank you. [LB945]

PRESIDENT SHEEHY: Thank you, Senator Hadley. Senator White, you're recognized. [LB945]

SENATOR WHITE: Thank you, Mr. President. Oddly enough, though I completely support Senator Harms's goals in this, I stand firmly opposed to the law because it is completely unnecessary and also will undermine existing laws that are designed to prevent these problems. We have a law that prohibits negligent operation of motor vehicles. We have a law that prohibits the willful reckless operation of a motor vehicle. I will tell you right now, given the statistics that Senator Harms has brought forward, the operation of a vehicle while texting is reckless driving. That is already a profoundly severe violation. It is already a first offense. And the reason I'm opposed to this, because you would think, well, this won't hurt, but in fact it undermines the general prohibition to operate a motor vehicle in a method that is less than safe. I have seen people applying makeup driving motor vehicles. I have seen men shaving driving motor vehicles. I have seen people reading the newspaper on the interstate driving motor vehicles. I have seen them on cell phones. I've seen them adjusting their radios. I've seen them texting. And every one of those, every one of those activities under that situation is profoundly dangerous to themselves and the people around them in vehicles. And I really resent the idea that the federal government is again going to start controlling our roads and highways. I mean, they're going to turn us into nothing more than an enforcement agency for somebody in New York who thinks it's okay to tell Nebraskans how to operate. I have news for you. One of the issues that we're talking about here today is whether or not you can stop somebody and know whether they are texting or operating a cell phone. That shouldn't matter at all. If they're weaving, if they're operating it in a negligent or dangerous method, and I don't care why, that's a primary offense. A police officer should pull them over immediately for doing it, and we don't need to complicate that by saying are they operating a cell phone or are they texting. What were they doing? Were they checking the time on their clock on their cell phone? Were they checking whether or not they got phone messages? Were they checking one of the devices that tells you where you're at in terms of your location on the road? It doesn't matter. And if all we were doing was saying, look, what we're going to do here is make it clear to our citizens that this is a bad and dangerous thing. You know, let's do a legislative resolution. Let's authorize a public service campaign saying,

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if you text while you drive, that's willful reckless driving. Because what Senator Hadley just described to you, the impact of texting compared to alcohol consumption is overwhelming. I mean, this is absolutely a great issue. Senator Harms needs to be applauded for bringing it, but it will undercut our existing laws. Careless driving is defined as: Any person who drives any motor vehicle in this state carelessly or without due caution so as to endanger a person or property should be guilty of careless driving. That's already a primary offense, folks. And the police officer doesn't have to say why you're operating at that. It's a simpler, easier, enforcement mechanism. Just pull them over and say they were weaving and they were distracted using an electronic device or they were reading a newspaper or they were putting on makeup and you have made offense. You've proven it. You can take, I think, if I recall right, it's five points for that, almost half their points from their license for just that. And it's simpler. And it's simpler. And you don't, then, bless operating...well, I was on a cell phone and that's why I was doing it and somehow that's okay. That's not okay. You're operating your vehicle recklessly or negligently. [LB945]

PRESIDENT SHEEHY: One minute. [LB945]

SENATOR WHITE: Willful reckless driving is defined as, "Any person who drives any motor vehicle in such a manner as to indicate a willful disregard for the safety of persons or property shall be guilty of willful reckless driving." I'm tell you right now, if somebody is going down the interstate texting, that is willful reckless driving. And that is a very serious primary offense. You lose your ticket. By saying that somehow we're going to pick out texting and saying this is bad, we're saying all the other things that are bad operating habits are somehow lesser. They're not. What I would tell everyone right now is I would ask our law enforcement to start pulling people over. If they see them texting, pull them over and charge them with willful reckless driving. The facts clearly establish that that is what it is. It kills people. We don't need another law at all. And, in fact, this law, I believe, will weaken our ability... [LB945]

PRESIDENT SHEEHY: Time, Senator. [LB945]

SENATOR WHITE: Thank you. [LB945]

PRESIDENT SHEEHY: Thank you, Senator White. Senator Gloor, you're recognized. [LB945]

SENATOR GLOOR: Thank you, Mr. President. Good morning, members. I join the chorus of people thanking Senator Harms for bringing this forward, but I also would tell you that I'm not sure yet how I feel about this. And I've thought that ever since I recognized the fact that we would be involved in debate on this. A great discussion so far and much of what I might say would be redundant. I'll try and carve that out of my comments. I recall campaigning, going door to door and going to one particular door

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where a young woman in her 30s, I believe, told me that she was now back having to live with her parents because of a terrible car accident that happened as a result of somebody who was on their cell phone. It wasn't clear whether they were using a text approach or whether they were using the cell phone. Nonetheless, she was very, very seriously injured, clearly enough so that she needed rehab for a long period of time and needed to move in with her parents because of that. She had almost fully recovered and was headed back to her last visit with a physician to get released, traveling down the road and was hit again and reinjured again by somebody using a cell phone. Not clear whether they were texting or making a regular call. Her plea to me was, do something if you get elected to limit the use of cell phones in whatever capacity on our roads. And I have carried that thought with me for the past couple of years. But it is a predicament because I also know that we should not be passing laws we can't enforce and a lot of what Senator White has brought forward in the discussion are some of the questions I have about, was not the individual in this car accident responsible still penalized for willful reckless driving in whatever capacity they were using their cell phone? I think the answer to that would be yes. I also enjoyed reading the article that I'm sure all of you have in front of you that was handed out this morning. It gives Missouri as an example of the lack of the ability to have effective enforcement. Hold on, say traffic experts, the bans are virtually useless in practice. So we have a challenge here. I wonder if Senator Harms would yield for a question. [LB945]

PRESIDENT SHEEHY: Senator Harms, would you yield to Senator Gloor? [LB945]

SENATOR HARMS: Yes, I would. [LB945]

SENATOR GLOOR: Senator Harms, I agree with some of the argument brought forward that doing this, passing this law, raises awareness in ways that will be effective even if enforcement may not be. During the discussion and debate on this in the committee hearings and in your research on it, has there ever been any discussion about the Department of Roads, some state agency using this as a jumping off point for public announcements, public awareness campaigns of some kind? [LB945]

SENATOR HARMS: No, not that I have reviewed. [LB945]

SENATOR GLOOR: Thank you, Senator Harms. That to me is the only way that this might be effective, is if it serves as a steppingstone for a wider level of public awareness about the dangers inherent in this. Although, don't we understand and know that? It's hard to legislate common sense and, (laugh) as much as I want to support this bill, I am struggling with how difficult it is to do that very thing--legislate common sense. If anybody in the public who is watching who gets involved in driving, texting, you're idiots. You're just (laugh) idiots to do this, (laugh) and here we are debating a way to increase your IQ on doing something that you know better than to do. A predicament. I will enjoy listening to the rest of the debate. [LB945]

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PRESIDENT SHEEHY: One minute. [LB945]

SENATOR GLOOR: Thank you, Mr. President. [LB945]

PRESIDENT SHEEHY: Thank you, Senator Gloor. Senator Schilz, you're recognized. [LB945]

SENATOR SCHILZ: Thank you, Mr. President. Good morning, members of the body. I stand today in opposition to the bill and not because it's not the correct thing that you should not text while you drive. I think we all understand that. I think that Senator White is exactly right when we talk about the laws that we have in place and undermining what's going on there. I truly believe that. I do think education is needed. I don't think there's been enough emphasis put on that. So I think that's a better way to go there. I guess, and I didn't ask this, but would Senator White yield to a question? [LB945]

PRESIDENT SHEEHY: Senator White, would you yield to Senator Schilz? [LB945]

SENATOR WHITE: Certainly. [LB945]

SENATOR SCHILZ: Senator White, thank you very much and sorry I'm putting you on the spot here, but in the bill it talks about written communication and what that includes or what that doesn't include. Would dialing a number be a written communication? [LB945]

SENATOR WHITE: You got me. And the reason I raise this, and I appreciate this, is that asks the police officer to make minute determinations of what's going on inside of a car traveling at 75 miles an hour. And that shouldn't be the point. The point should be if your car is not being operated in a safe manner, which is readily observable from another vehicle or just from the side of the road, then you should be able to be stopped and ticketed right there. And if you're distracted by putting makeup on or on a cell phone and your car is operated in a manner like that and the police officer makes that judgment, they should just pull you over. I don't think it helps us to say what's written or not and that officer has to make that judgment. [LB945]

SENATOR SCHILZ: Yeah. Thank you. Thank you, Senator White, and I can't disagree at all. I...you know, as I look at this bill and I remember when I ran for office, which seems like (laugh) a long time ago but not that long ago, and you know everybody told me, maybe if you go down there for every bill that you introduce or that you put into place, maybe you need to repeal two. And I took that to heart in a sense, because I don't believe that we should...we need to be very careful about laws like this. I mean, let's talk about it. I mean, we're talking about a ticket that for the first offense has a \$200 fine and it's an infraction that gives the authorities a reason and the opportunity to

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subpoena your phone rights for a ticket. Is that the direction that we want to start going down? I'm not sure it is. And with that, I will go ahead and yield the rest of my time to Senator Harms, if he would like it. [LB945]

SENATOR HARMS: Thank you. [LB945]

PRESIDENT SHEEHY: Senator Harms, you're yielded 2 minutes 10 seconds. [LB945]

SENATOR HARMS: Well, thank you, Mr. President. Thank you, Senator Schilz. I do want to address the issue that we have in regard to careless/reckless driving. You know what bothers me here, folks, is that if we don't have a specific offense and have it identified, we're not going to be able to resolve this issue, regardless of whether it's willful reckless driving, reckless driving, careless driving. Law enforcement...I took great pain in talking with people in the business of law enforcement and what they've told me very clearly is this: If you leave it as it is today that can be done by willful reckless driving, careless driving, law enforcement will not do it. He said the problem with it is it has to be a specific...identified specifically for the issue so that you can get the people in focus that this is going to be...it is an issue and here are the penalties and here's how we're going to deal with this issue. To wait until the driver...the behavior of the driver reaches the level, first of all, of willful reckless driving is too late. By the time we pick that person up, it's too late. He's either killed...he or she has either been in an accident, killed themselves... [LB945]

PRESIDENT SHEEHY: One minute. [LB945]

SENATOR HARMS: ...or put themselves at harm. Do you realize when you look at willful reckless driving and the statistics of this, in 2009 only .8 percent, only .8 percent of total traffic convictions were for reckless driving. Only 1 percent were convicted for careless driving. What are we talking about here? The law that we have now, according to law enforcement, doesn't work that well. And what I'm saying to you, in order to deal with this issue, do you realize that 1 trillion, 1 trillion text messages occurred in 2008? It tripled in one year and it's going to triple next year and the year after that. One out of every five drivers in this great nation texts. You don't tell me you're at risk, folks? You don't tell me you don't want this bill identified specifically for text driving or for texting? That's where we're going to fail. [LB945]

PRESIDENT SHEEHY: Time, Senator. [LB945]

SENATOR HARMS: Thank you, Mr. President. [LB945]

PRESIDENT SHEEHY: Thank you, Senator Schilz. Thank you, Senator Harms. Senator Christensen, you're recognized. [LB945]

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SENATOR CHRISTENSEN: Thank you, Mr. President. You know, I agree with the concept here that no one should text and drive, that it's very dangerous, but I have to sit here and ask if this is something we need to legislate. My difficulty on this bill comes up with right now when people are texting, driving, I see them going down the road. Their hands are on the steering wheel, hands in the middle of the steering wheel. And if we make it illegal, the ones that are going to text are going to move it down into their laps. Now they're going to look down instead of forward. That is one reason I'm concerned about this. The other part is the fact that police enforcement, I've talked to some of mine, they're not sure how they're going to enforce this. I don't know what all we want to include in this but doing your makeup, reading a book, newspaper, playing games, Web surfing, all kinds of things are distractions. Using your phone is a distraction for a phone call. You can get into your music and be distracted. There's lots of things that takes our attention. It comes down to personal responsibility. I struggle with people doing this and have been guilty myself to combing my hair or doing a text or doing something else. I think a lot of people have. You get a text, it beeps, you grab it, you look, and go, oh, I can't be doing this. I'll set it to the side. I think everybody has been guilty of doing that, that uses the technology. So, again, what all are we going to regulate here? I agree with the concept. We shouldn't be texting. We shouldn't be doing this, but I do know if you're involved in a wreck they're going to check your records and they're going to get you for reckless if you're involved in that wreck. That doesn't stop the fact somebody has been hurt. That's where I struggle with this. I'm anxious to listen and go on. At this time, I'd like to give my time to Senator White. [LB945]

PRESIDENT SHEEHY: Senator White, you're yielded 2 minutes 40 seconds. [LB945]

SENATOR WHITE: Thank you for that courtesy, Senator Christensen. Senator Harms's passion is admirable. He's right about the risk of this, but he's dead wrong on what is the problem. The problem is not the law; it's the enforcement. And if Senator Harms has talked to police officers and say it's too late, I would tell them, those police officers aren't judges or juries. They are not ticketing people they should ticket, period. And you're going to make it harder and more invasive to get actual offenses, not easier. Now I don't dispute the need to stop texting while driving. I agree with it wholeheartedly. But I will tell you right now, given the statistics, if a police officer sees you driving in a distracted manner, not in full control of your car, with some kind of electronic device in your hand or a book or makeup or something else, that is, by definition, I think, in any judge or jury's reasonable estimation, willful reckless driving. What is willful reckless driving? I mean, let's look at it. Let's look what we have written. And understand, we only write the laws; we can't enforce them. So if there's a problem in enforcement, I would tell you that that is the executive department's job. They need to tell the State Patrol, they need to tell the police departments, enforce it, this meets the definition. What we can't do is go around micromanaging because what it does is ends up with a massive unworkable body of law. We don't say, you know, it is the crime of murder to shoot somebody, because then, in a way, if you bludgeon them to death, that's less serious. We say

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(laugh) it is wrong to kill people. That's a crime,... [LB945]

PRESIDENT SHEEHY: One minute. [LB945]

SENATOR WHITE: ...not the specific method in which you do it. That is the nature of the way we best legislate. Let's talk, what is careless driving? Any person who drives any motor vehicle in such a manner to indicate a willful disregard for the safety of persons or property, or property, shall be guilty of willful reckless driving. I'm tell you right now, if a police officer sees you texting or working your cell phone in a way and your car is being operated erratically, that is willful disregard. And anybody has an argument about that, I'd love to meet them in court. And I will take the statistics Senator Harms has and I will show the judge what those statistics mean, I will take what Senator Hadley said, and this is twice as deadly as being .8 intoxicated in terms of distraction and, I will tell you right now, that is a willful disregard of other people's safety and lives and your own. [LB945]

PRESIDENT SHEEHY: Time, Senator. [LB945]

SENATOR WHITE: Thank you. [LB945]

PRESIDENT SHEEHY: Thank you, Senator White. Members requesting to speak on AM2098 to LB945, we have Senator Rogert, followed by Senator Stuthman, Senator Sullivan, Senator Pirsch, Senator Harms, Senator McCoy, and others. Senator Rogert, you're recognized. [LB945]

SENATOR ROGERT: Thank you, Mr. President. Good morning, members. I stand in strong opposition to the committee amendment and the bill, LB945. Folks, we have to stop protecting everybody from everybody else. This is a bad bill. This is an unenforceable law. I passed around some information that a good friend of mine gave me in an article, and she supports this bill but she gave me this article anyway last week. In Missouri, statewide in five months, eight cases, and I assume that all of those were because they said, were you texting, and they said, yep, and they admitted it. I'd like to ask Senator Fischer a question, Mr. President. [LB945]

PRESIDENT SHEEHY: Senator Fischer, would you yield to Senator Rogert? [LB945]

SENATOR FISCHER: Yes, I will. [LB945]

SENATOR ROGERT: Senator Fischer, will you explain to me what the committee amendment actually does and explain to us, please? [LB945]

SENATOR FISCHER: The committee amendment, Senator Rogert, makes it clear that basically you can dial your phone and make a call but you cannot text or e-mail. That's

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why we came up with the language, written communication. [LB945]

SENATOR ROBERT: Okay. Does it say anything about using a calculator? [LB945]

SENATOR FISCHER: No, it does not. [LB945]

SENATOR ROBERT: Do you believe you could use a calculator in the car, according to this? [LB945]

SENATOR FISCHER: I believe, yes, you can. [LB945]

SENATOR ROBERT: Were there any law enforcement officials at the hearing? [LB945]

SENATOR FISCHER: No law enforcement officials testified at the hearing, not even in the neutral position. [LB945]

SENATOR ROBERT: Okay. Thank you, Senator Fischer. Mr. President, would Senator Cornett yield to some questions, please? [LB945]

PRESIDENT SHEEHY: Senator Cornett, would you yield to Senator Robert? [LB945]

SENATOR CORNETT: Yes. [LB945]

SENATOR ROBERT: Senator Cornett, will you explain to the body and the public what you did in your previous life? [LB945]

SENATOR CORNETT: I was a police officer for ten years. [LB945]

SENATOR ROBERT: What do you think about the enforcement of this issue? [LB945]

SENATOR CORNETT: I think that at best it would be very difficult, particularly with the committee amendment, the way it's drafted, where it does not include dialing. There's no way that you could observe and tell if a person was dialing or texting, so it would make it very difficult to pull someone over. And then if you did, to be able to determine if you could write a ticket or not you would have to subpoena or get a warrant for that cell phone for the records. [LB945]

SENATOR ROBERT: What do you think about opening the door in terms of probable cause for all kinds of other possible offenses with this bill? [LB945]

SENATOR CORNETT: I think that the possibility that officers would look at that as a probable cause for pulling someone over for suspicions of...that they've done something else are high. [LB945]

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SENATOR ROBERT: Would you consider that possibly in the realm of harassment?
[LB945]

SENATOR CORNETT: I don't know if I would go to the realm of harassment, but it could be...it could be used as probable cause to pull someone over if they believe that another offense had occurred but had no reason to pull them over except for texting. [LB945]

SENATOR ROBERT: Thank you, Senator Cornett. Members, I think Senator Cornett and Senator Fischer put it very plainly that I don't know how the heck you're going to enforce this law and how you're going to make the...prove that somebody was using a phone to text. Senator Hadley doesn't know how to text so he said we should make it illegal. I don't know how to scuba dive, but I don't think we should make it illegal and I think that's pretty dangerous. Five hundred dollars for a third offense and three points off your license, you could cause somebody to not drive for a long period of time because they sent a text message, 20 years later after they sent their first one, and got caught for it. The phone records issue...if I'm pulled over and I'm texting... [LB945]

PRESIDENT SHEEHY: One minute. [LB945]

SENATOR ROBERT: ...and I say...or a police officer said I was texting, I asked him saying, how do you know I was, he'll ask to see my phone. In 15 seconds I can erase every text message on my phone that I've sent in the entire life of it. So in order to prove it he's going to have to take me to court, have my record subpoenaed to prove that I was texting at the exact time that he drove by me. I may have been sitting in a parking lot, sent a text message, had the phone in my hand, pulled out into the street, he pulls me over, it shows I sent a text message five seconds before I actually was driving and they could maybe prove that...or try to prove that I was texting at the time. That is arbitrary, objective, and darn right un-American, in my opinion. And people are going to get pulled over for this because they're driving crappy cars, because they look like they're doing something wrong, because they look young. I'll make the argument that Senator McGill in her car... [LB945]

PRESIDENT SHEEHY: Time, Senator. [LB945]

SENATOR ROBERT: Thank you, Mr. President. [LB945]

PRESIDENT SHEEHY: Thank you, Senator Robert. Senator Stuthman, you're recognized. [LB945]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. One of the things that I want to talk a little bit about this morning is in the hearing that we had and the thing that really impressed me was the fact that we had youth, we had a group

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of students from a school that came and testified in support of this bill. Why did that impress me? I felt that with these youth, they were looking to the future, seeing things that, you know, that they could be doing but they felt it would be not the right thing to do, mainly because of the fact that you're driving a vehicle and you're distracted by something else. Your mind is in two places at one time. In my opinion, it isn't the fact of we should outlaw scuba diving, like Senator Rogert had stated. The fact is, it isn't the individual that's driving the vehicle and texting; it's the person that's in the vehicle ahead, oncoming traffic, maybe at an intersection, not paying attention. That, in my opinion, is the issue. As I came down yesterday morning, on the news there was an individual at Grand Island was texting, ran into a utility pole. Thank God it was a utility pole. It could have been a group of school children. Let's think about that. I really think, you know, something needs to be done. But as Senator Gloor had stated, you know, you can't legislate common sense. People should have enough intelligence not to text but with the technology of today, people are going to be texting. I see that in the body right here. People are texting, you know, all the time. The only issue that I have with this bill, which I truly support, is the fact of enforcement of it. You know, how is law enforcement going to, you know, prove that they were texting? And that's going to be an issue. I was following an individual the other day. He stayed by the red light, completely through the next green light, and then he finally took off when the next green light came. He happened to be looking down like this all the time. I didn't honk my horn or anything to get him moving because I thought I didn't want to disrupt his very, very important texting that he was doing, so I waited through that light. But people are detained. They're thinking of something else. They're thinking of talking to someone through the text messaging. You know, I didn't support initially, you know, the use of cell phones. It does distract also. The majority of the times I pull off the road and then do that. And the reason I do that is mainly because I live in a very hilly country and the fact is, is I don't get any reception on my cell phone in the valleys. So I pull over when I use my cell phone. But I think what we need to do here is we need to try to attempt to send a message, you know, that we need to be responsible what we're doing, especially when there are other lives that could be involved, could be lost because we are distracted by something else. I think that's very important, the fact that, you know, you're not the only one driving down the road. Maybe we should put rails on the road so that you could actually... [LB945]

PRESIDENT SHEEHY: One minute. [LB945]

SENATOR STUTHMAN: ...do a lot of texting, driving. You'd just get on like a rail car and you just go. You punch your GPS as to where you want to go and it shoots you right over to the spot. That may be in the future. But at the present time we have a lot of vehicles, a lot of people texting, but the lives of the other people are at stake when somebody is distracted with an issue that they are taking care of. So I think...I don't know whether this bill is going to pass. I do support the bill but I have a real issue with trying to enforce it. Thank you, Mr. President. [LB945]

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PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Sullivan, you're recognized. [LB945]

SENATOR SULLIVAN: Thank you, Lieutenant Governor. Good morning, colleagues. This discussion has been very helpful but it's also raised a number of questions in my mind. So first of all, Senator Harms, would you yield for some questions? [LB945]

PRESIDENT SHEEHY: Senator Harms, would you yield to Senator Sullivan? [LB945]

SENATOR HARMS: Yes, I would. [LB945]

SENATOR SULLIVAN: Thank you, Senator. You know, it just baffles me in all the conversation, not only today but in a lot of other circumstances. With so much attention being given to this concern, why has there not been more public awareness, a public information campaign focused on this? Can you shed some light on that? [LB945]

SENATOR HARMS: I don't know why people have not taken ahold of this. I think it's becoming now, since the President of the United States is beginning to move in this direction, is bringing more focus. In fact, if I may just take a few minutes here to help you better understand, that he's putting \$50 million already in his budget for 2011 to do the very thing you're talking about to help educate law enforcement officers better and tell the story to the teenagers and to the people who want to text the danger of texting. So it is in the process but I don't know why people have not "in tuned" into this particular issue. It is, of all the errors or of all the issues that we have of driving of cars, this is the worst one that of all. And so I'm assuming that after this debate, whether the bill passes or not, we're going to have a lot of focus on this. If the only thing we gain out of this is the public and the kids and people understand that it is dangerous and they could be picked up if they use the careless, willful reckless driving. [LB945]

SENATOR SULLIVAN: This is one of the times when I feel my age because I can't text. My daughters get a kick out of me when they get a text message from Mom because I'm so clumsy at it. So that's the last thing that I would consider doing when I am driving. So, Senator Harms, is it more of a young person's issue and do we have documentation that there are more young people involved in accidents with texting? [LB945]

SENATOR HARMS: I don't have that kind of data. I can tell you it is not just young people. It is everyone across the board. That's what's really gotten people alarmed. At first, originally, they thought it was just teenagers but today it's really not. It's the whole variety of people. People my age, 70 years old, people on down or older are using text messaging. So that's the issue we have here, Senator, is the simple fact that it's all across the population base. It's just not isolated into one group. [LB945]

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SENATOR SULLIVAN: In this whole process of public awareness and education, are you aware that...are we updating our manuals with respect to defensive driving and driver's license examinations to take into account this issue of texting? [LB945]

SENATOR HARMS: I don't have any idea. That would be a good way to at least help start the process. [LB945]

SENATOR SULLIVAN: Thank you, Senator. I also have a question for Senator White, if he would yield. [LB945]

PRESIDENT SHEEHY: Senator White, would you yield to Senator Sullivan? [LB945]

SENATOR WHITE: Oh yes, I will. [LB945]

SENATOR SULLIVAN: Well, your conversation about existing statutes is interesting so I have to ask, why do you think the current laws are not being enforced? [LB945]

SENATOR WHITE: Well, I...it's a good question. I don't know. I've often wondered that. If you've ever had somebody drive by you going 80 miles an hour reading the paper, you got to wonder. If will tell you this. I think they need to be enforced but it is not just texting. It is so many other things and that's what we need to talk about. I mean, you can literally watch a movie on an iPhone now. So if we pass this law as it is, Senator, and we say texting is illegal, do you create a defense for a guy like me, if I'm defending somebody in court saying, judge, the Unicameral said texting is illegal but other uses of the cell phone aren't, here's the bill. I was just watching, I needed some inspiration for driving so I was watching Days of Thunder on my iPhone. Is that okay? [LB945]

SENATOR SULLIVAN: Shame on you. (Laughter) [LB945]

SENATOR WHITE: Well, but when you make one thing wrong, do you impliedly say that others are better? And that's the point. [LB945]

PRESIDENT SHEEHY: One minute. [LB945]

SENATOR WHITE: It shouldn't be. If you're driving your car distracted, that's careless driving which is...by the way, I was wrong on the points, Senator, if I can have a second to correct that. [LB945]

SENATOR SULLIVAN: Yes. [LB945]

SENATOR WHITE: Six points, which is half your points, for willful reckless; five for reckless; four points for careless. Willful reckless twice and you've lost your license. [LB945]

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SENATOR SULLIVAN: Thank you, Senator. And one final question for Senator Fischer. Can you give us an update, are we...on the federal legislation that possibly would keep federal funds from flowing to us if we didn't enact this legislation? [LB945]

PRESIDENT SHEEHY: Senator Fischer. [LB945]

SENATOR FISCHER: Thank you, Mr. President and members. Senator Sullivan, at the federal level right now, Secretary LaHood, the Secretary of Transportation, has spoken in favor of having a federal legislation to ban texting. There is currently a ban on any federal employee's texting while driving and also... [LB945]

PRESIDENT SHEEHY: Time, Senator. [LB945]

SENATOR SULLIVAN: Thank you. [LB945]

SENATOR FISCHER: Thank you, Mr. President. [LB945]

PRESIDENT SHEEHY: Thank you, Senator Sullivan. Senator Pirsch, you're recognized. [LB945]

SENATOR PIRSCH: Thank you, Mr. President and members of the body. As a prosecutor in Douglas County, I prosecuted thousands, quite frankly, of these cases over the years and so just a little bit of clarification with regards to a couple of points that have come up. With respect to...I guess I would, you know, my initial impression as I look at this, I do appreciate Senator, I think it was, Gloor's statements that maybe bringing about a public awareness or an idea that, you know, kind of a preventive approach to this, of the problem of cell phone...I'm sorry, of this texting usage as being a...causing, you know, problems insofar as accidents and other types of related problems, I think that might at the end of the day be the beneficial thing that you can glean from this. With respect to the idea that officers can pull you over for using your phone which has multiple uses, the legal standard that we employ is the officer must have or law enforcement must have a reasonable articulable suspicion that an illegal activity is being conducted. And so what would happen is for that, if somebody were stopped, pulled over and cited for that, doubtless a defendant's attorney would file a suppression motion and require the law enforcement officer to testify and to, under oath, state facts that he observed that would back that up, that standard that he must show a reasonable articulable suspicion. I think that might be a little challenging insofar as there's multiple usage. You could be entering into a calendar. And so I think that it would depend upon, and I have not had a chance to look at the way that the language is written in the bill, but what exactly, what is prohibited, is that observable conduct by the officer. Obviously, in cases of accident, especially severe accident, you can go back after the fact and check if death results or whatnot, whether or not there was...you can

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check with the cell phone provider and see if there was transmissions and what the nature of that is. Another clarification I would like to have with respect to the idea that willful reckless driving can be charged, that's not possible. The courts have held, and this is, as you recollect when I came with a bill in years past about extreme speeders and posited the statement that even if you're observed going 150-160 miles per hour, that that in and of itself is not enough, the higher courts have said, enough for you to charge a willful reckless driving charge and sustain that in court. So the law enforcement officers and prosecutors are going to look to the courts for guidance and the mere usage, in and of itself, of a cell phone would clearly, in my mind, not be adequate to sustain. I would not charge a willful reckless driving charge because I would feel clearly that would not be sustained by courts and I have to have a good-faith basis for going forward in charging somebody as a prosecutor. So that just does not happen in my estimation because of the courts' positions would not happen. So there...just wanted to add that clarification. Again,... [LB945]

PRESIDENT SHEEHY: One minute. [LB945]

SENATOR PIRSCH: Again, if there is, you know, for the benefit this may at the end of the day, as Senator Harms may state, whether the bill passes, whether the bill doesn't pass, a public awareness that putting forth the facts that does indicate that there is cell phone...when they're used for text messaging draws your attention, do cause quite a bit of accidents. I was wondering if somebody could comment on, seems to be kind of...two sets of facts, one that shows that cell phone usage does cause accidents, but that in other states where the law is similar to this, I wonder if they could comment, somebody could comment on how effective these are. It kind of bends the mind but I've understood that these haven't been exactly obtaining great results in other states. I wonder if somebody could comment on that as we continue our dialogue. Thank you. [LB945]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. Senator Harms, you're recognized. [LB945]

SENATOR HARMS: Thank you, Mr. President, colleagues. I wanted to talk just a little bit about the discussion that Senator White and I have been having in regard to a willful reckless driving. What I want you to listen to very carefully, is this the public policy that you want to have? And so let me walk you through this and then you have to make up your own mind. But under willful reckless driving that first conviction is a Class III misdemeanor. A maximum amount of money...you can lose your...you could go to jail for at least three months and be charged \$500 or you could have both. Now the second offense, it would be a Class II misdemeanor; six months potential prison and/or both, and/or both \$1,000. Reckless driving, the first conviction is a Class III misdemeanor; three months imprisonment or \$500 fine or both. Five points go off just as we recently talked. The second offense carries the same penalty as a second offense. Careless driving goes in this order. It's \$100, \$200, \$300. That's what you're going to have to

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decide, colleagues, about whether or not this is the public policy that you want to have. We've made a criminal of these people immediately. And so my point here is that I think this bill is fair as far as penalties is concerned and I think it does what needs to be done to make this happen. Let me talk to you now just a little bit. There's been a lot of discussion about law enforcement and there's been a lot of discussion about how can we enforce this. Law enforcement can effectively enforce this law because of the extent of the distraction. In addition to such factors as inappropriate speeds, not in the driving lane, drifting over or correcting, repeatedly looking down, the officer can also observe three things. One is how long are they typing on the keyboard. A cell phone takes about ten strokes. Did the driver type on the keyboard but never put it back up to his ear? Does the driver look at the device screen longer rather than just a quick glance? There are opportunities here for law enforcement to do it and I believe that if we give them the opportunity we will have better legislation, we will have the appropriate fines, and I think we will stop some of the accidents and some of the deaths that are going on. You know, when you look at truck drivers, for example, driving a truck, using a cell is 23 times greater opportunity for crash or near crashes. Recent support by the AAA shows a study that was done in this great state of Nebraska. Of the people they surveyed, 91 percent of the public that they surveyed said they do believe that there needs to be a law specifically to address the issue of texting in the state. If you look at the studies nationally, you will find it varies between 85 and 90 percent of the public across the nation says it's time to address the issue. Whatever we have on the law books now, is evident it's not working. We've had willful reckless driving in the books since 1935. And I would bet to tell you, folks, if you went into the records... [LB945]

PRESIDENT SHEEHY: One minute. [LB945]

SENATOR HARMS: ...in the last four or five years, you'll find very few people that have been arrested or been fined for using the text messaging on their cell phone. It doesn't work. Law enforcement told me it did not work and it won't work unless we specifically identify it and then can put the campaign together to let people know, to let young people and average older people know that this is dangerous and there are consequences for it. You know, I've heard arguments about the seat belt and the same issue about secondary versus primary. You know the difference between seat belt and this issue: the seat belt saves the driver; texting kills, potentially, the other driver or injures the other drivers. So I think that it's time that we address this issue. I can tell you this has been a great debate. I've enjoyed it. I think a lot of facts are coming out on the table. Whether the bill passes or not is up to you, colleagues. [LB945]

PRESIDENT SHEEHY: Time, Senator. [LB945]

SENATOR HARMS: Thank you, Mr. President. [LB945]

PRESIDENT SHEEHY: Thank you, Senator Harms. Members requesting to speak on

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AM2098 to LB945, we have Senator McCoy, followed by Senator Council, Senator Wightman, Senator Hansen, Senator Cook, Senator Fischer, and others. Senator McCoy, you're recognized. [LB945]

SENATOR McCOY: Thank you, Mr. President and members. I'd like to add my name to the long list of folks to thank Senator Harms and for introducing this legislation and wanting to talk about this important issue and also to Senator Wightman for prioritizing it. I think it is a valuable and very worthwhile discussion. It is a dangerous situation, what we currently have with technology, that folks from all walks of life and from all age groups, it appears, have issues with texting and...but, more importantly, distracted driving. I think there's been some worthwhile arguments made as to why this could be a concern from an enforcement standpoint. Perhaps there's a way to alleviate some of those concerns while at the same time addressing this issue. Because it is an important issue. I come from a generation and an age group that this technology, whether it be cellular technology, whatever the case may be, TVs in vehicles, it's very prevalent and it's what we know. From the time that my age group started driving, we've had cellular telephones and even before but particularly prevalent in my age group. It is a concern. Distracted driving is a problem, clearly, as the statistics show. How do we go about addressing that situation? Is it current existing statute or is it through a legislation such as LB945? This currently is the only piece of legislation I'm aware of that's been introduced in this session or in the last session and certainly in this biennium to address this, to try to address this situation. Perhaps, if there's other ideas on how it is addressed, someone should introduce such legislation or find a way to go about it in a different manner. But it clearly is an issue that needs addressed. And I want to applaud Senator Harms and Senator Wightman for wanting to have this discussion because I agree it's a discussion that we need to have. And I'd yield the balance of my time to Senator Wightman. [LB945]

PRESIDENT SHEEHY: Senator Wightman, you're yielded 2 minutes 40 seconds. [LB945]

SENATOR WIGHTMAN: Thank you, Mr. President. Thank you, Senator McCoy. I agree with Senator McCoy that it is important that we have this discussion. We've had great debate. Certainly there are enforcement issues. We all recognize that. I hardly think that is a reason not to pass the act. I disagree strongly with Senator White when he says this undermines existing law. Number one, I would like to have anyone in this body tell me of a single instance when somebody was charged with willful reckless driving while use of the...while texting on a cell phone. I doubt that anyone can tell me of a single instance that that has occurred. Now, it might have occurred if there's been an accident, somebody has been killed or seriously injured, but, again, I doubt that it has ever occurred. So to say that it is included under those offenses when no one has ever been charged, Senator Pirsch I think addressed that issue quite well when he said that even people driving 150 miles an hour down the road, there's been a real question as to

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whether that, in and of itself, constitutes willful reckless driving. So it seems to me that to make the argument that it's already included within those offenses is quite a stretch if nobody has ever been charged with any of those offenses for texting while driving. So we have some information from...that is... [LB945]

PRESIDENT SHEEHY: One minute. [LB945]

SENATOR WIGHTMAN: ...part of a...one minute? [LB945]

PRESIDENT SHEEHY: One minute. [LB945]

SENATOR WIGHTMAN: ...part of a U.S.--thank you--Department of Transportation that was published by Virginia Tech, I believe. And they say text messaging on a phone increases the odds of an accident by 23.24 percent...23 times, excuse me, 23.24 times that of normal driving. Some of the others: write on a pad or notebook, they find nine times; interact with a dispatching device, around nine times; use of a calculator, eight times. So all of these are about a third the distraction and increases the ratio or likelihood of causing an accident. So I know Senator Rogert made mention of the fact, and that's already been addressed by Senator Stuthman, that scuba diving is dangerous. Well, there's a lot of difference between an act that's dangerous to yourself and an act that endangers... [LB945]

PRESIDENT SHEEHY: Time, Senator. [LB945]

SENATOR WIGHTMAN: Thank you, Mr. President. [LB945]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Thank you, Senator McCoy. Senator Council, you're recognized. [LB945]

SENATOR COUNCIL: Yes, thank you, Mr. President. While I respect and appreciate the reason Senator Harms introduced LB945, I rise in opposition to LB945. If you've listened carefully to the debate that has occurred this morning, I don't think there's any disagreement that there is a real problem with distracted driving. However, LB945 does nothing, in my opinion, to impact distracted driving. Instead, it singles out one particular form of distraction while ignoring all other distractions. And, you know, clearly reasonable minds can differ whether simply dialing a cell phone is more distracting than a text message. Well, me, I'm not like some of my high-tech colleagues. I have a simple cell phone which allows me to send text messages, but I have to dial and hit the same numbers that I would be dialing and hitting to make a phone call. So am I any more distracted or less distracted when I use it to send a text message as I use it to dial a phone? And I respect the data that Senator Harms shared the last time he was on a mike about how you could determine whether or not an individual is in the act of texting, but if you paid careful attention to that, the only way an officer could make all of those

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determinations is if that officer is rolling alongside that driver. And I don't think that's the intent of this legislation, that the only people who would be subject to arrest or citation would be those who had the misfortune of rolling alongside law enforcement as opposed to passing law enforcement. And when we talk about our particular concerns, you know, all of us have had an experience at one point in time where we've passed someone who was distracted and they upset us when we saw that they were putting on makeup or Senator White talked about...I've seen people change their clothes while driving at high rates of speed. And the problem I have with this is it does, in fact, undercut existing laws designed to address all forms of distracted driving. I think it's regrettable that my respected colleague focused on willful reckless driving, but there are four categories of driving offenses related to distraction, and I'll focus on the lesser of the four which is careless driving, "Any person who drives any motor vehicle in this state carelessly or without due caution so as to endanger a person or property shall be guilty of careless driving." That results in losing four points on your driver's license and, as Senator Harms referenced, fines of \$100, \$200, \$300. And why can we not use this particular existing law? Well, I don't understand. The question was asked, why isn't law enforcement using this now? I can't answer that question. It certainly is written, the constitutionality of this language has been upheld that would provide law enforcement the same opportunities as this law that's specific to one particular form of distraction. What we want to do is address distracted driving. The careless driving laws address that, the reckless driving laws address that, the negligent driving laws... [LB945]

PRESIDENT SHEEHY: One minute. [LB945]

SENATOR COUNCIL: ...address that, the willful reckless laws address that. But my fundamental problem with this law is this is exactly the type of law that leads to law enforcement abuses. As a primary offense, rest assured, ladies and gentlemen, this law will be selectively enforced. There will be use of this law as a means of exercising what is referred to in my district as DWB--driving while black. And that my having a phone in my hand could subject me to being stopped on the pretense that I'm texting, when the reality is I'm being stopped for unknown reasons or, unfortunately, there are police officers who stop merely to harass people. This law opens the door to the kind of selective enforcement, I believe, that we as a body must take every opportunity... [LB945]

PRESIDENT SHEEHY: Time, Senator. [LB945]

SENATOR COUNCIL: ...to stop. [LB945]

PRESIDENT SHEEHY: Thank you, Senator Council. Senator Wightman, you're recognized. [LB945]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I would like to

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address the issue of willful reckless driving and all of the other offenses that have been discussed that this might fall within. We've talked about willful reckless driving. Senator Council suggests we should be talking about some of the lesser offenses, reckless driving, careless driving. I think whichever one we talk about, I think the thing that really differentiates this from those charges and all of the other charges that Senator White and Senator Council have said fall within reckless driving is the tremendous number of incidences of use. As Senator Harms and some of the literature that we have referred to, 1 trillion...I'm not sure what year that was, 1 trillion text messages being sent. I think that was 2008. So the suggestion has been made that maybe that's doubled or tripled by now. And many of these are made in an automobile. How many people take the newspaper with them and tend to read it as they drive down the road? I would suggest very few. Certainly it happens. I might even suggest that maybe some time in my many years that I have looked at a newspaper that happened to be sitting in the car as I drove down the road. But we're talking about incidences that happen so many times to get to a trillion. And let's say we're at a trillion and a half now but let's use a trillion. That means that the average person, if we divide that by 300 million people, is sending 3,000 text messages a year. Now, that's the average. My guess is that we can readily assume that those under five probably aren't using any and I think we can readily assume that those over 75 are using very few, so we could probably double or triple that, that the people who use text messaging a lot may send 10,000 text messages a year. What percentage of these are sent from vehicles? I suggest that probably a substantial number are sent from vehicles. So the number of incidences of violation, if it is a violation--it isn't now, violation is going to determine what this body determines to be a violation--but we're talking a tremendous number and it seems to me that this is worthy of special...of legislation, whereas driving a newspaper happens so...or, excuse me, reading a newspaper as you drive down the road happens so seldom that there's every reason, and it's a growing number. I think that people that use texting a lot may send thousands of messages in a year. So it makes sense to me that when we're talking about this dangerous an activity and the incidences within which it is happening, that this is worthy of legislation. Again, on careless driving, we're talking about a lesser charge. As I say, I don't know of a single person, I've never heard of a single person...if Senator White would yield to a question, perhaps he can answer whether he's heard of any. [LB945]

PRESIDENT SHEEHY: Senator White, would you yield to Senator Wightman? [LB945]

SENATOR WHITE: Certainly. [LB945]

SENATOR STUTHMAN: Senator White, do you know of a single instance where anybody has been charged with willful reckless driving, for example, when they have been texting? [LB945]

SENATOR WHITE: Not in the case of texting. I know a number of cases where willful reckless driving has been charged and careless and reckless. [LB945]

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SENATOR WIGHTMAN: For texting or... [LB945]

SENATOR WHITE: Not for texting but for other activities. [LB945]

SENATOR WIGHTMAN: Oh. Oh, no, I understand that. [LB945]

PRESIDENT SHEEHY: One minute. [LB945]

SENATOR WIGHTMAN: But as far as texting itself, do you know of a single incident that has been charged? [LB945]

SENATOR WHITE: No, I don't. [LB945]

SENATOR WIGHTMAN: So I would suggest it's not being used for that now. I think it's time that we send a message to law enforcement that this is a dangerous activity and that's one of the purposes that we are addressing in consideration of LB945. I think it's up to us as a Legislature to send messages to the people of the state of Nebraska and to law enforcement officers of what is dangerous. And I don't think we're pointing out something that is similar to eating a sandwich as you drive down the road or perhaps using your cell phone. We talked about this increasing the likelihood 23 times of having an accident. Nothing else is probably as high as the texting, at least not in the statistics that I have. Thank you, Mr. President. [LB945]

PRESIDENT SHEEHY: Thank you, Senator Wightman. (Visitors introduced.) Continuing with floor discussion on AM2098 to LB945, members requesting to speak: Senator Hansen, followed by Senator Cook, Senator Fischer, Senator Karpisek, Senator Hadley, Senator White, and others. Senator Hansen, you're recognized. [LB945]

SENATOR HANSEN: Thank you, Mr. President and members of the Legislature. I have some questions and I think I'll start with Senator Wightman, if he would yield. [LB945]

PRESIDENT SHEEHY: Senator Wightman, would you yield to Senator Hansen? [LB945]

SENATOR WIGHTMAN: Yes, I will. [LB945]

SENATOR HANSEN: Thank you, Senator Wightman. I have several questions on the class of different classes of distracted driving that we have now. And the question you keep asking is, has anyone ever been arrested for willful negligent driving while texting? Are there cases across the country where accidents, traffic accidents have occurred and those records have been subpoenaed to say, you know, this person was distracted while he was driving? [LB945]

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SENATOR WIGHTMAN: I can't answer that, Senator Hansen. I'm not aware of any, but it certainly could be the case. Again, it's been testified here by someone that you can erase those messages. There may be a permanent record on the telephone. I can't tell you that for sure. [LB945]

SENATOR HANSEN: Thank you, Senator Wightman. I think I'll...Senator White, would you yield, please? [LB945]

PRESIDENT SHEEHY: Senator White, would you yield to Senator Hansen? [LB945]

SENATOR WHITE: I will. [LB945]

SENATOR HANSEN: Thank you, Senator White. Do you know of any instances where court cases would uphold the willful reckless driving while using a cell phone in any manner, doesn't matter whether texting or just using a cell phone in a distracted manner? [LB945]

SENATOR WHITE: I have repeatedly in cases of serious accidents, Senator, done exactly that. We regularly ask in interrogatories: Were you using your cell phone? Were you adjusting your radio? Were you watching the DVD built (laugh) into the vehicle? And we often will follow up with subpoenas. Now, that's a civil context, but absolutely we do it. [LB945]

SENATOR HANSEN: Could you give me the idea of what law enforcement would go through to subpoena records? Is it a short process? Is it expensive? I mean, on a daily basis... [LB945]

SENATOR WHITE: It is an... [LB945]

SENATOR HANSEN: ...say I was texting. I say, no, I wasn't texting. The officer says, yes, you were. And so they're going to have to subpoena records to prove that I was texting. What is that process? [LB945]

SENATOR WHITE: Well, it would be very difficult because what would happen is you'd have a hearing. The prosecutor would issue a subpoena. The defense attorney would file a motion to quash the subpoena and would argue that here's an affidavit from the defendant and they weren't texting, they were dialing their phone, or they were looking up phone numbers. That's why they were there more than ten strokes. And at that point the judge would have to decide whether or not there was probable cause sufficient to support, you know, a subpoena. It is much easier, Senator, much easier law to just say that person was driving erratically and they were looking at a handheld electronic device and they were being careless about the people around them. [LB945]

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SENATOR HANSEN: So the underlying case is a case of careless driving? [LB945]

SENATOR WHITE: Absolutely, and it's easier to prove. You don't have to prove what they were doing inside or what their intent was with that little device. All you have to say is: Look, I saw them with a device in their hand; their car was not under proper control; they weren't paying attention, so I wrote him a ticket. [LB945]

SENATOR HANSEN: Would this be a logical place to put the texting legislation that Senator Harms desires to have in statute? [LB945]

SENATOR WHITE: Personally, I think it isn't because it tends to say it's okay if...and my point of view is if you're running your car and you're using a cell phone and you're not able to do that and operate your car safely, I don't want to say that's okay. I mean, a person who's operating their car inattentively, carelessly is a danger, period. And given the statistics that Senator Hadley and Senator Harms came up, I'm very comfortable with these penalties. I mean, this is much more dangerous apparently than being intoxicated at a .8 and yet we won't completely take their license. We only take half the points. [LB945]

PRESIDENT SHEEHY: One minute. [LB945]

SENATOR WHITE: I don't think it's overcharge and it's easier to prove, Senator. [LB945]

SENATOR HANSEN: Do you think it should be willful reckless driving then with an actual penalty? [LB945]

SENATOR WHITE: I think it depends on the facts. I think the police can charge, write a ticket for either or both, and the prosecutor can decide what to pursue or what he can prove. But I'm telling you right now, if a police officer tells a judge or a jury: They were swerving; they had a handheld device; I followed them for a while; they weren't paying attention and they were careless and they were using an electronic device, that's a case. I think you make it. And if they say, well, it's not really a threat to property or lives, bring out the statistics. Believe me, they'll pop a judge and a jury's eye open. [LB945]

SENATOR HANSEN: Okay. Thank you, Senator White. I've started a year ago trying to make a list of distracted driving of, you know, what all is distracted driving. That list gets pretty long and it gets pretty weird after a while, but there's a lot of things that can be in that. Should be up to law enforcement to make up his own mind whether that is distracted driving. If Senator... [LB945]

PRESIDENT SHEEHY: Time, Senator. [LB945]

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SENATOR HANSEN: Thank you, Mr. President. [LB945]

PRESIDENT SHEEHY: Thank you, Senator Hansen. Senator Cook, you're recognized. [LB945]

SENATOR COOK: Thank you, Mr. President. And good morning, members of the body. I also rise in opposition to the bill as it is drafted at this point and absolutely respect the spirit in which it was brought and prioritized. But I, too, like my colleague Senator White, do have the privilege of driving home most nights to sleep in my own bed and I have seen many, many things conducting my automobile east on Interstate 80. I've witnessed a soccer mom switching out the DVD for her little angels in the back of the SUV. I also witnessed a young man in the left lane with boxes stacked up beyond the back window and the back seat who was texting and conducting the automobile. My concern and my sense is that the young man with the boxes stacked up would be a little bit more likely to have this law applied against him, and I have some real concerns of it being a primary offense. When I think about how this might unfold in Legislative District 13 with somebody being pulled over, perhaps having points or some other issue, it could mean the loss of a job and a loss of support for that person and for her or his family. Then I started to think a little bit more deeply. I was quite a bit down the list about some of the things that I did this morning coming down in my vehicle, and we talked a little bit about makeup. I did need to apply some lipstick, did reach into my purse, pulled out the wrong lipstick but wanted to be safe so I didn't go fishing around for the one that I really wanted, applied the lipstick. Is that going to be a problem? These are all things that I'm fully willing to admit. I'll also admit that I switch the radio dial a few times up and down to the seventies, the eighties, the R&B station. That was a little bit boring, so I pulled out my iPod. That is very unsafe. So we don't have a bill proposal before us today for that kind of behavior and thank goodness because I've just probably given evidence that I've done it. But those are also ungood things to be doing while you're conducting your automobile. I'd also like to make a point or address a point that my good colleague, Senator Hadley, made earlier dealing with the assumptions associated with what somebody is doing when they're conducting their automobile and what their capacity is. He suggested that somebody swerving at 2:30 in the afternoon probably isn't drunk, and what I might suggest is that people are drunk all day long and all night long and, unfortunately, conduct their automobiles incapacitated. So thank you very much, Mr. President. [LB945]

PRESIDENT SHEEHY: Thank you, Senator Cook. Senator Fischer, you're recognized. [LB945]

SENATOR FISCHER: Thank you, Mr. President and members of the body. I wanted to continue my answer to Senator Sullivan. I think that was quite a while ago. She asked me the question on what is the federal government doing now with the ban on texting

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while driving. Secretary of Transportation LaHood has made it well known that he is in support of banning texting while driving. Federal workers currently cannot text while they drive. Commercial drivers, truck drivers cannot text while they drive. There is a bill in committee, it is stuck in committee and it doesn't seem to be a high priority, so that won't be happening any time soon. There has been some talk about tying in of a texting ban to SAFETEA-LU, which is a reauthorization of highway funding that probably will not take place until 12 to 18 months. For the last four years, we hear that it will take place in...the reauthorization in 12 to 18 months, so take that for what it's worth. You may have noticed on the committee statement that, as Chair of the committee, I am the lone no vote on this bill. And I voted against the bill for many reasons. We've heard a lot of them this morning. One of the main reasons I voted against this bill in committee was that it is a primary offense. I believe if anything is passed, and I'm not convinced on that, but if anything is passed it should be a secondary offense. How can law enforcement tell if you are texting or if you are dialing a number? The committee amendment, which we are discussing right now, the committee amendment is there because members of the committee wanted to be able to dial their phone and still make phone calls. They wanted that distinction up there, and I did vote in favor of the committee amendment. But how can you tell, how can a law enforcement official tell if you are dialing a number or if you are texting? I certainly would not be qualified to look in somebody's vehicle and make that determination. I think that raises all sorts of concerns and I think everybody in this body and everybody in the state of Nebraska should be concerned about that. Not to say that law enforcement sometimes targets groups but, however, sometimes law enforcement targets certain groups. And if you pass this bill, how will law enforcement determine if you are dialing or if you are texting? My personal opinion would be that if you are a young male, no matter your race, you will be stopped more frequently if you have a device in your hand. I think I'm in the clear because I'm an older white woman and I don't think that law enforcement will pull me over. As I said to my committee members when we were discussing this bill in Executive Session, I told some of my male colleagues, yes, I'll support the amendment so you can still dial your phone, but my guess is that you fellows are well-dressed, you're middle-aged, and you're driving nice vehicles so you're not going to be pulled over anyway. [LB945]

PRESIDENT SHEEHY: One minute. [LB945]

SENATOR FISCHER: That's something all of us need to keep in mind on this bill when it is a primary offense. So I hope you will consider that as we move forward. With that, I would give Senator White the few seconds I have left. Thank you, Mr. President. [LB945]

PRESIDENT SHEEHY: Thank you, Senator Fischer. Senator White, you're yielded 35 seconds. [LB945]

SENATOR WHITE: Thank you, Senator Fischer. Members of the body, what we are

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talking about is life and death. What we are talking about is an increasing problem. As law enforcement recognizes that problem, we need to understand we have already given them the most effective, flexible tool possible. And I would like to let Senator Harms know I am very comfortable with someone who is willfully, recklessly driving spending time in jail if the judge determines that the conditions of the offense were such that it is merited. [LB945]

PRESIDENT SHEEHY: Time, Senator. [LB945]

SENATOR WHITE: Thank you. [LB945]

PRESIDENT SHEEHY: Thank you, Senator Fischer. Thank you, Senator White. (Visitors introduced.) Senator Karpisek, you're recognized. [LB945]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. Would Senator Rogert yield to a question, please? [LB945]

PRESIDENT SHEEHY: Senator Rogert, would you yield to Senator Karpisek? [LB945]

SENATOR ROGERT: Certainly. [LB945]

SENATOR KARPISEK: Senator Rogert, we all know that you were recently involved in a little traffic mishap, correct? [LB945]

SENATOR ROGERT: (Laugh) That is correct. [LB945]

SENATOR KARPISEK: And I think, as I recall, you were a pedestrian and you were hit by a vehicle, right? [LB945]

SENATOR ROGERT: That is correct. [LB945]

SENATOR KARPISEK: There was some talk about the person driving may have been texting. Do you know, is that true? [LB945]

SENATOR ROGERT: Senator Karpisek, I never witnessed the vehicle until it had stopped, so I'm not for certain but according to the police report that's not the case. She was just simply looking the other direction or not paying attention. [LB945]

SENATOR KARPISEK: But she may have been texting. [LB945]

SENATOR ROGERT: It's possible, yes. [LB945]

SENATOR KARPISEK: Thank you, Senator Rogert. My point is it would be very hard to

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prove one way or another. Senator Rogert didn't see the vehicle, neither did the officer who wrote the report, and I don't know that there was anyone else there that could vouch that the driver was or was not texting. I agree that Senator Harms did bring this bill for the good of...what he feels, the good of Nebraska. I cannot support the bill, especially as a primary offense. I don't know if I could even support it as a secondary offense, but I would be able to think about it a little more. In my opinion, it's just one more time that the state, this body, wants to stick their nose into what people do. I've brought it up many times on this floor in my four years here. I think that we just do things because we feel it's right but maybe we shouldn't be involved. I'm probably guilty of that myself. I know that Senator Harms does feel this is the right thing, and Senator Wightman also, and I respect that, but I just can't go into this where it's hard enough to prove. There are so many other distractions which we're all guilty of and we should not be because we know that it is dangerous. Senator Wightman has said, yes, scuba diving is only dangerous to yourself. True. This can affect other people, so does putting on makeup, reading a paper, yelling at the kids in the back of the minivan. There's a lot of distractions out on the road. The other thing that I think about is out in my district a lot of times you can't get cell phone service. How can you get a message out if you're a couple hundred miles away from Lincoln, your staff is here? We have a lot of people out on the road who work. There are traveling salesman. They sell seed corn. They do all sorts of things. They need to get information back and forth. Of course they should pull over and do these things. It's not a reality, folks. It just isn't a reality to pull over every time to make a phone call, to do a text. Should we? Yes, we should, but we don't. People aren't going to. Again, I think that the fines are too stiff in this bill. The points are too many to take away. Senator Rogert brought up a great point about there's not a time limit anywhere in there. The third offense could be 20 years down the road. I would say in 20 years the technology will be far different but we don't know that right now. I do thank Senator Harms and Senator Wightman. This is a topic that needs to be discussed on the floor. Sometimes we all bring bills that we want discussed. Of course we'd like them to be passed. [LB945]

PRESIDENT SHEEHY: One minute. [LB945]

SENATOR KARPISEK: But we know that it's going to be an uphill battle but we're not scared of that. And I think it is good to talk about things, talk it out, out here on the floor. It's the only way to get it out here on the floor, is through a bill. So I do appreciate that but I will not be voting for LB945. Thank you, Mr. President. [LB945]

PRESIDENT SHEEHY: Thank you, Senator Karpisek. Senator Hadley, you're recognized. [LB945]

SENATOR HADLEY: Mr. President, members of the body, I'll make this short. I don't think there's anyone that is willing to argue that this isn't dangerous. Obviously, we have a whole list of things in distracted driving that are dangerous. I think this leads the list. I

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guess the question I have is, where do we start? We know it's dangerous. Do we just throw up our hands and say, oh, it's terribly dangerous but we're worried about enforcement? I would suggest that that's the law enforcement job. We pass laws and we expect the law enforcement to enforce them. I want to read you a quote from the Virginia Transportation Institute that I think sums it up: Texting should be banned on moving vehicles for all drivers. This cell phone has the potential to create a true crash epidemic if texting type tasks continue to grow in popularity. And that generation of frequent text message senders reach driving age in larger numbers. This is going to continue to grow. The number of people texting is going to continue to grow. The second thing I'd like to get to is that we have laws right now against speeding, driving under the influence, illegal passing, illegal turns, all kinds of laws. I would argue that each of those could be prosecuted under careless driving or negligent driving, willful reckless driving. Why do we have laws if we have these other ways of taking care of it? Because we specifically want to talk about certain actions that we want to deter. We want to deter speeding. We want to deter driving under the influence, illegal passing, illegal turns. I would argue that's the reason that we have...we need to pass this law, is to send the message this is dangerous, we don't want you to do it; if you're caught there is a serious penalty for doing it. I would yield whatever remaining time I have to Senator Harms, if he wishes. Thank you, Mr. President. [LB945]

PRESIDENT SHEEHY: Thank you, Senator Hadley. Senator Harms, you're yielded 2 minutes 30 seconds. [LB945]

SENATOR HARMS: Thank you, Mr. President, colleagues. Senator Fischer, would you yield, please? [LB945]

PRESIDENT SHEEHY: Senator Fischer, would you yield to Senator Harms? [LB945]

SENATOR FISCHER: Yes, Mr. President. [LB945]

SENATOR HARMS: Thank you, Mr. President. Senator Fischer, you had a bill that you had six-parted that dealt with the same questions we have before our body today. Is that correct? [LB945]

SENATOR FISCHER: My staff worked on a texting ban bill this summer, Senator Harms, as you're aware, and we did have it six-parted because I knew that you would probably present something. [LB945]

SENATOR HARMS: Could you tell me, and maybe just tell the body, how did the two bills differ so that maybe we could have a better understanding what you were interested in? [LB945]

SENATOR FISCHER: I don't recall exactly, Senator Harms. My counsel is telling me

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that they were similar. The definitions were a little different on the way we had it first drafted. [LB945]

SENATOR HARMS: Would we... [LB945]

SENATOR FISCHER: The penalties were not as severe. [LB945]

SENATOR HARMS: Okay. In what areas were we similar, can you recall? I'm not trying to pin you down here. I'm just wanting to know what you were thinking at the time you drafted it. [LB945]

PRESIDENT SHEEHY: One minute. [LB945]

SENATOR FISCHER: As I said, my committee counsel is reminding me here. The basic premise, he says, was similar. I believe if you're asking me was it a primary offense in the bill I had drafted, as it was drafted, that's the way staff drafted it, yes. But as you know, I never introduced the bill. [LB945]

SENATOR HARMS: Yes, I understand that but I'm just wanting to know where your thoughts were in regard to this. I appreciate your comments. [LB945]

SENATOR FISCHER: As we talked about the bill in Executive Session, if I recollect the discussion, I suggested to the committee a secondary offense. And I had talked to you and Senator Wightman on the floor about that before we acted on the bill to make it a secondary offense and to lessen the penalties. The committee did not agree with my suggestion. [LB945]

SENATOR HARMS: Well, thank you very much. How much time do I have, Mr. President? [LB945]

PRESIDENT SHEEHY: Time. [LB945]

SENATOR HARMS: That's good. Thank you. [LB945]

PRESIDENT SHEEHY: Thank you, Senator Harms. (Visitors introduced.) Continuing with floor discussion on AM2098 to LB945, members requesting to speak are Senator White, followed by Senator Howard, Senator Rogert, Senator Schilz, Senator Carlson, Senator Harms, and others. Senator White, you're recognized. Senator Howard, recognized. [LB945]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I stand in support of Senator Harms's LB945 and in support of Senator Wightman's priority bill. And before I forget it, I want to say that (laugh) I agree with Senator Wightman when he

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says that he has seen people reading newspapers when they're driving the car. I've seen many drivers on cell phones but actually I've only seen one person reading a newspaper and that was a lobbyist. (Laughter) Frankly, there are many...these are many of the same arguments that I heard on LB92 last year--this was the "move over" bill--and how can we enforce this, we can't legislate common sense, the laws that we already have should address this, and on and on and on. Well, everyday I drive Interstate 80 to Lincoln and then back again at night. And before LB92, very few drivers moved from the far lane to give the troopers or the emergency vehicles the opportunity to assist drivers that were pulled over. Now since LB92 went into effect, I've really tried to pay attention because I wanted to see if this made a difference. And the majority of drivers, the vast majority of drivers that I see are moving away from the outside lanes to give those troopers and tow trucks or emergency assistant vehicles who are working on the side of the road the opportunity to work safely. No, we can't legislate common sense but we can certainly raise awareness and put laws in place that make our roads safer. And apparently common sense evades even the most educated of us. And I'm going to tell you a little story that happened about...the event happened about a week ago when I was driving down here to Lincoln, but I wanted to remember this just so I could bring it up when we discuss this bill. It was one of those terrible days where it was sleeting, it was dark, and there were warnings out regarding black ice. And I notice that the car on my right-hand side--it actually was a small truck--was having trouble staying in its own lane and it kept veering closer and closer and closer over to my car. And when I got up even with it, I looked over, and the driver in that car was not even looking at the road. He was busy texting with his phone. And we were approaching the division where you decide if you're going to go in north Omaha, you decide if you're going to stay on I-80 and go toward Lincoln. And I watched this driver and I tried to stay as far away from him as I could as he made his way toward the north freeway. But things like this, when people are driving vehicles and are not even looking at the road on a day...especially on a day when there are warnings out about ice on the highway, sleety, it's the worst conditions, but they don't seem to have any regard. No, we can't legislate common sense unfortunately. We'd probably be the best legislative body ever if we could do that. But we can put laws in place that make our highways safer for all of us, all of us that have to be out there, whether it's the soccer mom, whether it's a truck driver, whether it's a person just headed off on the north freeway. We can put laws in place that make driving safer. And, again, I support Senator Harms and I thank him for bringing this bill to us. Thank you. [LB945 LB92]

PRESIDENT SHEEHY: Thank you, Senator Howard. Senator Rogert, you're recognized. Senator Rogert. [LB945]

SENATOR ROBERT: Thank you, Mr. President. Members, I'll continue on what I was talking about earlier. And I wanted to thank Senator McCoy for bringing up earlier that this is a generational thing. And as technology continues to move forward and new things continue to come out, there will be discussions like this more and more and

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more, I do believe. I'm certain at one time when CBs became very popular that somebody thought, boy, those are a dangerous thing to have, you shouldn't be talking on those while you're going down the road; or maybe not. I don't know. There is a technology today that isn't distinguishable in this bill. I'm trying to figure out whether it would cover it or not, but on my phone I have right here, I have a program called speak to text. And without touching the button or without looking down I can tell my phone a command and it will acknowledge that it's received it. I can speak into my Bluetooth device or just into the air into my vehicle and it will recognize what I'm saying, it'll turn into a text message, and I can say send and it will go. And I will never have touched my cell phone. I never will have looked down. That is probably a technology that will become pretty prevalent and will be very popular in the coming years. I don't know that...I think that this bill could still say that I just violated a law in the spirit that I never looked down, looked away, or grabbed ahold of my cell phone and that has issues with me. And also we're not leaving...we're not distinguishing that between...we are distinguishing between, we're saying you can't use a cell phone or a text messaging machine but you can use the same device as an iPod or as a MP3 player. Almost every cell phone today has an MP3 player on it. I've got a list of...I've got a pile of items sitting back here that I've been...people have been stopping by to look at. I've got a phone, I've got an iPod, I've got credit card holder, I've got a pack of gum, and I have a mouse, all of which I could be holding in my hand going down the road and somebody could pull me over because it looks like I might be texting. Whether I was or not is a different issue. I could have been driving down the road shuffling through my iPod to look for a new song or to listen to a book I want to hear on the...while I'm going down the road. That would be legal. But I couldn't have sent a text message with the same device at the same time. We'll talk about what Senator Fischer was talking about and Senator Council--selective enforcement. We all know it as profiling. And with all due respect to all individuals aforementioned, Senator McGill drives an old Oldsmobile. It's not a sweet car. She would fully admit it. It's been broke down three or four times in the last two weeks. Senator Sullivan drives a Lexus. Both women are quite beautiful in their own way. I certainly believe that Senator Sullivan will never be pulled over for this and Senator McGill could be pulled over daily, if she chose. Senator Fulton, he drives a junky Honda. You've seen it out there in the parking lot. He looks like he's in his 20s. Senator Lathrop drives an Acura. I probably would believe that Senator Lathrop texts more than Senator Fulton but I don't think that Senator Lathrop will ever be pulled over for this, not to mention his car has tinted windows, couldn't see the darn thing. I mentioned that article that I handed out talking about Missouri passing this law and in five months they had picked up eight folks across the entire state. All right. So in a year that's about 17 in a 6 million population state. Translate that to Nebraska, it's a 2 million population state in a year and that's 5,... [LB945]

PRESIDENT SHEEHY: One minute. [LB945]

SENATOR ROBERT: ...5 infractions for a law we just passed in a year, statewide. And I

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still maintain the fact...well, okay, here's another thing in the bill: A law enforcement official, a firefighter, or an ambulance driver, it's okay to text if you're doing that. An ambulance driver can text according to this bill or any person operating a vehicle in an emergency. Well, I got an emergency. I've got to use a rest room (laughter) so I can text. And it also doesn't distinguish between...it says a laptop computer now is a wireless device. I got a laptop computer that is not a wireless device and now it makes it illegal to use a laptop computer in a vehicle. Not saying that it's safe to use it, but now you're calling devices that are wireless...not wireless, you're putting them in the same loop. Thank you, Mr. President. [LB945]

PRESIDENT SHEEHY: Thank you, Senator Rogert. Senator Schilz, you're recognized. [LB945]

SENATOR SCHILZ: Question. [LB945]

PRESIDENT SHEEHY: There has been a call for the question. Do I see five hands? I do. The question before the body is, shall debate cease on AM2098? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB945]

CLERK: 26 ayes, 4 nays to cease debate, Mr. President. [LB945]

PRESIDENT SHEEHY: Debate does cease. Senator Fischer, you're recognized to close on the Transportation and Telecommunications amendment, AM2098. [LB945]

SENATOR FISCHER: Thank you, Mr. President and members. This is a very simple amendment. The committee wanted to be sure that you could still dial a cell phone while driving, even though the bill itself bans texting, and so the language only pertains then to a written communication activity. Thank you, Mr. President. [LB945]

PRESIDENT SHEEHY: Thank you, Senator Fischer. You have heard the closing. The question before the body is on the adoption of AM2098 to LB945. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB945]

CLERK: 37 ayes, 3 nays, Mr. President, on the adoption of committee amendments. [LB945]

PRESIDENT SHEEHY: AM2098 is adopted. We will now return to floor discussion on LB945. Members requesting to speak: Senator Carlson, followed by Senator Harms, Senator Gay, Senator Council, Senator Wightman, and Senator Hansen. Senator Carlson, you're recognized. [LB945]

SENATOR CARLSON: Mr. President and members of the Legislature, Senator White, please don't leave the Chamber. I'd like to have a little discussion with you in a minute

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or two. Thank you. One of the things that concerns me is at the hearing on this bill there was nobody representing law enforcement. And this kind of thing often happens, it seems like, as we have bills that come up that I believe are substantial and groups that ought to be interested for whatever reason are not there to voice an opinion and their opinion would be it would matter. I appreciated Senator Gloor's statement early in the day. I won't repeat it. I'll just say that I think anybody that texts when they drive has got a serious gray matter problem. But I like to use my cell phone when I drive. I do have a question on the enforcement, concern there could be selective enforcement, there could be harassment enforcement, and that would not be a good thing. I also have some concern that a bill like this, a law like this is a feel-good law but one that's really difficult to make work. With that, I would like to address a question to Senator White, if he would yield. [LB945]

PRESIDENT SHEEHY: Senator White, would you yield? [LB945]

SENATOR WHITE: Yes, I will. [LB945]

SENATOR CARLSON: Thank you, Senator White. You talked about reckless driving. [LB945]

SENATOR WHITE: Yes. [LB945]

SENATOR CARLSON: And we have current laws to deal with reckless driving. [LB945]

SENATOR WHITE: Yeah. [LB945]

SENATOR CARLSON: Would you clarify, what's the difference between reckless and willful reckless? [LB945]

SENATOR WHITE: Well, under the definition that the Legislature has drafted, willful reckless is, "Any person who drives any motor vehicle in such a manner as to indicate a willful disregard for the safety of persons or property shall be guilty of willful reckless driving." That's almost an intentional level, Senator. It would be somebody, for example, in a downtown area burning out their tires, going 50, 75 miles an hour, blowing through a stoplight. You know, they just don't care. Reckless, by contrast, is rash, heedless, dangerous driving--five points, Class III misdemeanor. That would say for me, for example, would probably better fit texting. You know, that's a person who's just oblivious to everybody's rights around them, oblivious to anything but their need to communicate on their device the way they want. [LB945]

SENATOR CARLSON: Okay. I'm going to stop you, Senator White, because I got a couple more questions. Don't want to run out of time here. Where does dozing off fit? [LB945]

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SENATOR WHITE: Well, that was probably careless driving, to be honest with you, or you could prove reckless if, for example, the person you could prove they'd been nodding off, you know, and they woke up and then they went to sleep. They nodded off, woke up, then they had an accident. And other people travelling down the interstate stop, for example, and say, no, I saw him nodding off, was swerving, then he'd wake up. And not pulling over at that point could be as high as, I suppose, willful reckless. [LB945]

SENATOR CARLSON: Okay. Where would DUIs fit? [LB945]

SENATOR WHITE: DUIs have their own separate category. And it's interesting, Senator, and that's something I don't think we can overemphasize, given the statistics that we were given here today, it is far more likely to prove hazardous to members of the public on the road with somebody texting than on somebody with a .8, and yet we mandatorily will revoke their license for a period of time with a .8, but this at its highest level will only take away half their points. [LB945]

SENATOR CARLSON: Well, the law says that it's mandatory to take away their license but how often does that happen and how many DUIs do we have to put up with before that really occurs with someone? [LB945]

SENATOR WHITE: Well, I don't know about you, Senator, (laugh) the judges in my jurisdiction take away your license the first offense and they really take it away. [LB945]

SENATOR CARLSON: Well, that would be a good thing and that would be very, very helpful. [LB945]

PRESIDENT SHEEHY: One minute. [LB945]

SENATOR CARLSON: I'm getting off track a little bit here, but another thing that I brought up before that just is horrendous is when we see an accident and somebody is driving while intoxicated and it's their fifth offense. So you wonder how and why do these things happen. [LB945]

SENATOR WHITE: Well, you know, obviously we can pass laws, we can try to enforce them, but we can't change the hearts of man, Senator. [LB945]

SENATOR CARLSON: Okay. Thank you, Senator White. I think the discussion has shown that texting is very, very dangerous, but how can we effectively control it and how can we effectively have a law that will eliminate it? Because the goal is to save lives, not really to punish people. Thank you, Mr. President. [LB945]

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PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Harms, you're recognized. [LB945]

SENATOR HARMS: Thank you, Mr. President and colleagues. I just want to thank you, first of all, for all of the I think discussion that's taken place here. I think it's been good and if the only good thing that comes out of this whole discussion is that the public has an awareness of how dangerous text messaging is, on the one half of it we've accomplished part of this. This is not a feel-good bill for me. I want you to understand this. I have a genuine interest and concern about the safety of people. I would never introduce a feel-good bill, period. So I want you to understand that. I do have concerns about where we're headed. When you have a trillion, in 2008, a trillion text messages and one out of five drivers in America do this, we are putting ourselves at risk. There's no way that you can look at it any differently. The question then centers around, you know, enforcement. And in my discussion with law enforcement, they felt that at least they could do this comfortably. I also want you to understand that I think that the fact that the federal government has now moved into this aspect of trucks and busses, I believe that the \$50 million that the President has put in would give us the opportunity, if you have a text messaging bill, it would give us the opportunity to educate the public and to help law enforcement find better ways, even technologically, to address this issue. And I think it's not very far out that we will be able to determine from your cell phone whether you were actually text messaging by law enforcement. They may be able to scope that to a point where they can determine where you're at. We're headed in that direction. We're just not quite there. One of the things that I wanted to bring to your attention is that there's 120 legislative bills that are pending in 26 states on this very topic that we're having this discussion about. So it's not only in the state of Nebraska or surrounding states. There are concerns about the safety of people. And, you know, this is what this is about for me. It's about the safety of teenagers, about the safety of my own children, not making wise decisions, and the consequences are not there other than an accident maybe or death. There's been some discussion about primary versus secondary. I would tell you, when you look at secondary, it's almost a flawless premise because what we're really saying on the secondary side of it is it doesn't make any difference. If I'm good enough, I'll get by with this. If I can hide it, I'll get by with it, with really no regard to the safety of the public, and this is really what this bill is about. It's about the safety of the public. By the time a distracted driver has caused harm, it's way too late. It's too late. The distracted driver would have already either hit another car or a pedestrian, run a stoplight, exceeded the speed limit, and the problem may already have occurred. And that's what this for me is about, is the fact that we have to find a solution in some form or some manner to deal with this issue. [LB945]

PRESIDENT SHEEHY: One minute. [LB945]

SENATOR HARMS: Thank you, Mr. President. And I think that this is a public policy that we've had good debate on. I think when we look around the Chamber, I think the

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lines are pretty well divided and I don't think, to be frank with you, for us to go much further on the debate of this bill I think we will find that we're not going to change people's views. So as time progresses, I think that we've had a good conversation. I've learned a lot from it. I hope, more importantly, the public has learned from this. I hope that teenagers understand how dangerous this is. So I'm at a point that I think it's time that we maybe talk about the bill for a little bit longer and then take a vote and let's just see how it shakes out because we still have Select to go to. And so I would thank you very much, Mr. President and colleagues. And thank you very much for the dialogue because it's been good. And I... [LB945]

PRESIDENT SHEEHY: Time, Senator. [LB945]

SENATOR HARMS: Thank you. [LB945]

PRESIDENT SHEEHY: Thank you, Senator Harms. Senator Gay, you're recognized. [LB945]

SENATOR GAY: Thank you, Mr. President. I rise in support of the bill. I've been listening to the conversation and we've already got a ban on young people texting while driving. But those young people then are growing up with this technology and now all of a sudden, you know, it was unsafe, you shouldn't be doing this now but go ahead and do it after you reach a certain age. That's kind of what we're saying. More and more people, though, when we talk...I don't want to throw ages out, but more and more people...texting is becoming very common. I've got friends using it and I don't consider myself extremely old but I'm not young either. But, you know, people are using the technology that's more and more available and that's what texting is, so I'm kind of concerned about the issue that we're talking about, texting and other things, like reading a newspaper driving on the interstate. I don't see that that often and I'm on the interstate a lot. But we can use all sorts of examples that we've seen of people who are, in our minds, reckless driving. When I was listening to the statistics, though, of reckless driving, it sounds like we're not enforcing that. Senator Pirsch talked about how hard it was to prove that on reckless driving, so he passed a bill on that high speeds, that there's increased fines on that just a few years ago. So the one thing that I think and I was going to talk on the amendment and I'm glad we passed that amendment, I was one who said, you know, I like talking on the phone as well when I'm driving. I dial and I try not to read text and I don't text and I try not to read my e-mails or anything like that. I don't, quite honestly, but I do dial and do the Bluetooth thing and it works very well, and even at times I find myself a little bit distracted. However, I got an e-mail from a constituent and it was pretty much saying with all this new technology they're putting in cars, navigation systems and all these things, he was concerned. Well, don't be that concerned about that because that amendment just took care of that. This deals specifically with written communications. And we had a discussion at length in committee, that's why that amendment was there. I was glad to see it passed. I think

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that makes this bill much better and the facts are actually, texting versus dialing, texting is much more dangerous, and you've heard statistics on that. I'm not going to go over all those. So I think we just made this bill better either way. Right now I know primary versus secondary offense is going to come up. I'm torn on that, quite honestly. I go back and forth. I voted this out on a primary offense and I'm going to listen to more debate on that. It's interesting that Senator White talked about DUIs have their own separate category, but some of the statistics we're just learning or just talking about was texting could be as dangerous as DUIs. So this is a separate category than the willful reckless driving or negligent driving, because that was also discussed I thought in committee or at least maybe, if it wasn't discussed, it was going through our minds of how this is different than that. So because I think this is much more prevalent in today's society than you get to see--I've seen some crazy things, again, and you have, too--but this, as it becomes more prevalent and more people are using it, I think we need to address it. Twenty-one other states so far have addressed this and we'll see where we go with this. Senator Carlson brought up about support on the statement. Since then, there's been other people who have been supporting this, and State Farm Insurance Company, the State Volunteer Firefighters Association wrote a letter, the state Sheriffs Association wrote a letter. So we're seeing Project Extra Mile, Nebraska Information Services, so there are other people who do support this through letters and other things. But I do think it's common. So at this point, as we get a discussion, Senator Harms said let's continue to discuss it. There's been some great conversation and discussion. But like I say, I do think this requires something to be done. Whether it's primary or secondary, I'm not... [LB945]

PRESIDENT SHEEHY: One minute. [LB945]

SENATOR GAY: ...quite sure on that. But I would urge you to support this whichever way. I could live with it either way, primary or secondary. I'm still making up my mind on how to go there. But I do think the bill became a much more better bill just because of that amendment that we all seem to pass and support. It specifically says written communication, so all these other things that are out there that can be brought up, technology, people talk...I've heard about TVs in a car and this and that. Well, of course you shouldn't be doing that. And they don't put those up in the front where the driver is distracted. Those are all in the back. So sticking to the texting, the dangerous activity of texting I think is an important issue to address. And, again, I rise in support of the bill and look forward to hearing more discussion on it. Thank you, Mr. President. [LB945]

PRESIDENT SHEEHY: Thank you, Senator Gay. Senator Council, you're recognized. [LB945]

SENATOR COUNCIL: Yes, thank you, Mr. President. Again, I've heard some interesting commentary and, in fact, Senator Gay, by his statements a few minutes ago, suggested, and I don't think he intended to, suggested that the amendment that was just

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passed banned the use of GPS systems. And if that's the case, there are an awful lot of people in the state of Nebraska who are going to have concerns about it because you emphasize the fact that you're talking about a written communication. Well, that's what a GPS system is. When you program in an address and want the directions, you send by writing a message to a satellite that sends you back the information you've requested. That's written communication. You cannot provide that...you cannot receive that information without taking the time to punch the very kind of numbers and letters into a GPS system that you would input into a cell phone or a smartphone or a BlackBerry, whatever you want to call it, so. And it gets back to the point that I tried to make early on with regard to the existing law and, you know, whether or not you think that law enforcement has or hasn't been enforcing it, they certainly have the tools to enforce with regard to any activity while driving a vehicle that results in you not operating that car with due caution so as not to endanger a person or property. Is Senator Cornett still in the Chamber? Senator Cornett, talking about tools, I know there have been discussions about how we would enforce this, and just merely holding a device I would suspect...do you...if Senator Cornett would yield to a couple of questions. [LB945]

PRESIDENT SHEEHY: Senator Cornett, would you yield? [LB945]

SENATOR CORNETT: Yes. [LB945]

SENATOR COUNCIL: As a former law enforcement officer, if you saw me driving down the highways and byways with my cell phone open like this, would that give you reasonable cause to believe that I was violating an antitexting ban? [LB945]

SENATOR CORNETT: Yes. [LB945]

SENATOR COUNCIL: So just the mere fact that I had this open would give you reasonable cause to stop me? [LB945]

SENATOR CORNETT: It might not even be a cell phone. If you have any electronic device like one of the...like Garmins, you were talking about for finding direction, the GPS, an iPod, anything, it would be grounds for pulling you over at that point. [LB945]

SENATOR COUNCIL: Okay. And if you pulled me over and I had this open like this and there was no indication from my phone that I had been engaging in texting, what, if anything, could you do? [LB945]

SENATOR CORNETT: The question is how would I actually know if there was anything on your phone to show me if you had been texting unless I took that phone from you, which I could not do. [LB945]

SENATOR COUNCIL: And that's the point I want to make. You know, there's been a

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suggestion out here that you could confiscate my phone and then somehow subject me to some prosecution. If there was not readily available evidence on my phone that I had sent a text message, there would be no basis for you to ticket me or otherwise cite me. Am I correct? [LB945]

PRESIDENT SHEEHY: (Gavel) [LB945]

SENATOR CORNETT: I believe you are correct. I think all you would have to do is close your phone or turn your phone off while I was walking up to the car and I don't believe that I would be able to,... [LB945]

PRESIDENT SHEEHY: One minute. [LB945]

SENATOR CORNETT: ...under the search and seizure laws, to confiscate that phone without a warrant. [LB945]

SENATOR COUNCIL: Okay. So, I mean, that's the...the practical effect of this legislation, I mean, it's not practical. While the ultimate objective is noble and that is to reduce the distractions that drivers operate their vehicles on, this is not the means to accomplish that, particularly when you're talking about a primary offense. You're going to have law enforcement officials devoting their attention to stopping people, wasting time, pulling people over when they're not going to be in a position to even issue a citation. And if I have any time remaining, if Senator Cornett would yield to one other question. [LB945]

SENATOR CORNETT: Yes. [LB945]

SENATOR COUNCIL: Senator Cornett, if I'm driving down the road and my tire crosses onto the white line on the shoulder, does that provide law enforcement with a means to stop me? [LB945]

SENATOR CORNETT: Yes. That would be an offense called failure to maintain lane. [LB945]

PRESIDENT SHEEHY: Time, Senator. [LB945]

SENATOR COUNCIL: Okay. Thank you. [LB945]

PRESIDENT SHEEHY: Thank you, Senator Council. Senator Wightman, you're recognized. [LB945]

SENATOR WIGHTMAN: Thank you, Mr. President, colleagues. We have had interesting debate, lots of points of view, and I appreciate that. I think if we raise the

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awareness...I hope we pass the bill but at least if we raise the awareness I think we will have taken a step in the right direction. It's interesting, as I listen to the debate, Senator White would have us not pass a law because we have laws on the books--willful reckless driving, reckless driving, careless driving--all of which provide stiffer penalties than this. Senator Karpisek opposes the bill. He says the fines are too stiff under it, even though Senator White would be willing to have all of these prosecuted under present laws that have stiffer penalties. I think it goes to prove what I have heard many times and that is that politics and war make strange bedfellows. I will assure everybody in this body that people will be killed, texters will be killed during the next year because they're texting on their cell phones. I will also assure every member of this body that not only will texters be killed, but texters will kill other people while sending written communications on their cell phones. And I think, as Senator Gay said, the prevalence of this is so much greater than most of the other actions that we're talking about--reading a newspaper, putting on lipstick, whatever it might be. But we're ignoring the fact that I think will be...is true that 50 or 60 percent of the people, if we pass a law, will decide to follow that law. I don't think we can automatically assume that nobody is going to follow the law and I think we will pick up some people, apprehend some people who are in violation of the law. So I think the prevalence of these activities, communicating by written messages on a cell phone, point this out as something completely separate from many of the things we're talking about. With that, if Senator Fischer would yield, I'd have a question for her. [LB945]

PRESIDENT SHEEHY: Senator Fischer, would you yield to Senator Wightman? [LB945]

SENATOR FISCHER: Yes, I will. [LB945]

SENATOR WIGHTMAN: Senator Fischer, it's my understanding you serve as the Chair of Transportation and Telecommunications. Is that correct? [LB945]

SENATOR FISCHER: Yes, I do. [LB945]

SENATOR WIGHTMAN: And it's my understanding that you have a ban or a restriction on the use of texting while serving on your committee. Is that correct? [LB945]

SENATOR FISCHER: Every day that we have a hearing, in my opening comments I always state that now is the time to turn off your cell phones and that means no texting, please. [LB945]

SENATOR WIGHTMAN: And so you separate that as a separate offense. Do you have a similar ban on chewing gum or eating or something else? [LB945]

SENATOR FISCHER: I would like to have a ban on chewing gum, Senator Wightman. I

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have a ban also on computers. I think, as a matter of courtesy, the members on the committee should be looking at those people that travel to the hearing and listen to what they say. It is a hearing and I think myself and my colleagues need to pay attention and show respect and courtesy to individuals that testify, and I think it's only right that those people who come to observe a hearing and sit in the audience also show courtesy by paying attention and listening. And if you want to text or work on your computer, you can step into another room and watch the hearing on TV. [LB945]

SENATOR WIGHTMAN: Thank you, Senator Fischer. And I submit that the biggest reason that we would have a ban on texting is because of the prevalence of it. And, true, it isn't considerate of the people that are there. I also submit that it's far worse than not being considerate of other drivers. It's placing other... [LB945]

PRESIDENT SHEEHY: One minute. [LB945]

SENATOR WIGHTMAN: ...drivers and passengers and everyone else on that highway at risk, and I think it is a subject to be separately mentioned. I think we could find that almost every traffic offense is in violation of some other law that is on the records. I think speeding is in violation of probably the three laws we've been talking about--willful reckless, reckless, and careless driving. I think running a stop sign is in violation. And so just because another law is on the books doesn't mean that we don't point it out by a separate law, and I think there's none better justified than texting which has been indicated as one of the most dangerous actions that you can take out on a highway. So I do hope that you will support LB945. I think it is worthy legislation. Thank you, Mr. President. [LB945]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Senator Hansen, you're recognized. [LB945]

SENATOR HANSEN: Question. [LB945]

PRESIDENT SHEEHY: There has been a call for the question. Do I see five hands? I do. The question before the body is, shall debate cease on LB945? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB945]

CLERK: 26 ayes, 0 nays, Mr. President, to cease debate. [LB945]

PRESIDENT SHEEHY: Debate does cease. Senator Harms, you're recognized to close on LB945. [LB945]

SENATOR HARMS: Thank you, Mr. President, colleagues. First of all, thank you, colleagues, for the good debate. I think it's an important piece of legislation. And quite honestly this is about a public policy that you want to decide whether or not we're going

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to attempt to save some lives or not. But the issue is, how do we do that? The issue is, how do we enforce it? I believe that I have enough faith in law enforcement that they'll do the appropriate thing. As I stated earlier, my intent here has never been one that would go beyond wanting to help people. And this is about helping people because the decisions that we're seeing today are serious, they have serious consequences. And the fact is that we've had in 2008, as I mentioned earlier, we had over a trillion text messages and one out of every five drivers text messages. To me that's of real concern. So what we have before us then today is to decide, do we want a public policy to truly address this issue or do we want it to go ahead and go through willful reckless driving which it's pretty evident to me that that's probably not going to happen? So that's the decision we have and however it comes out is okay, because I think what we have gained out of this is people need to understand the tragedy that's happening and will happen in the future with text messaging. What it boils down to is the text messenger will probably kill...hopefully not someone that's close to us but will kill someone, will injure someone, and it will continue. And as the electronics becomes more technologically sound, we'll be able to do things in those automobiles that are...it is unbelievable. And somewhere in this basis we're going to have to decide in this great nation what is important, how can we protect the people that are here, and how can we safeguard their safety. And for me, that's what this is about, Mr. President, so thank you. [LB945]

PRESIDENT SHEEHY: Thank you, Senator Harms. You have heard the closing. The question before the body...Senator Wightman. [LB945]

SENATOR WIGHTMAN: I would request a roll...a call of the house and a roll call in regular order. [LB945]

PRESIDENT SHEEHY: There has been a request for the call of the house. The question before the body is, shall the house be placed under call? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB945]

CLERK: 35 ayes, 0 nays, Mr. President, to place the house under call. [LB945]

PRESIDENT SHEEHY: The house is placed under call. All unexcused senators please report to the Legislative Chamber. All unauthorized personnel please step from the floor. The house is under call. Senators, please record your presence. Senator Heidemann, Senator Pankonin, Senator White, the house is under call. Senator Harms, all members are present and accounted for. Members, you have heard the closing to LB945. There has been a request by Senator Wightman for a roll call, regular order on the advancement. Mr. Clerk. [LB945]

CLERK: (Roll call vote taken, Legislative Journal page 916.) 27 ayes, 19 nays, Mr. President, on the advancement. [LB945]

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PRESIDENT SHEEHY: LB945 advances. The call is raised. Mr. Clerk, do you have items for the record? [LB945]

CLERK: I do, Mr. President. Your Committee on Health and Human Services reports LB999 to General File, signed by Senator Gay, as Chair. New resolutions: Senator Christensen offers LR399, LR400, LR401, LR402; Senator Pankonin, LR403. And I have an amendment to be printed, Senator Christensen to LB1051. Name adds: Senator Fischer would like to add her name to LB1036. (Legislative Journal pages 916-919.) [LB999 LR399 LR400 LR401 LR402 LR403 LB1051 LB1036]

A priority motion: Senator Louden would move to recess the body until 1:30 p.m.

PRESIDENT SHEEHY: You have heard the motion to recess until 1:30 p.m. All those in favor say aye. Opposed, nay. We stand at recess.

RECESS

SENATOR ROBERT PRESIDING

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

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

SENATOR ROBERT: Do you have any items for the record?

CLERK: I do. Thank you. (Read LB800A by title for the first time.) And I have an appointment letter from the Governor, appointment to the Foster Care Review Board. That's all that I have, Mr. President. (Legislative Journal pages 919-920.) [LB800A]

SENATOR ROBERT: Thank you, Mr. Clerk. Members, as the agenda states, we are at 1:30, we will move to General File, the budget. Mr. Clerk.

CLERK: Mr. President, the bill, LB935, was a bill originally introduced by the Speaker at the request of the Governor. (Read title.) Introduced on January, referred to the Appropriations Committee, advanced to General File. There are committee amendments, Mr. President. (AM2117, Legislative Journal page 830.) [LB935]

SENATOR ROBERT: Thank you, Mr. Clerk. (Visitors introduced.) Senator Heidemann, as Chair of the Appropriations Committee, you're recognized to open on LB935. [LB935]

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SENATOR HEIDEMANN: Mr. President, the committee amendment replaces the bill. Would it be all right to open up on the committee amendment? [LB935]

SENATOR ROBERT: Senator Heidemann, why don't you go ahead and open up on the amendment. Thank you. [LB935]

SENATOR HEIDEMANN: Okay. Thank you very much. Mr. President and fellow members of the body, I bring to you the committee amendment to LB935 which will become the bill. This is what the Appropriations Committee has been doing since early January. There will only be two bills in the budget train, actually three, two of them that I will carry. Senator Nordquist has one, LB1106, that will follow that we incorporated into the budget train. LB935 or the amendment thereto is the work of the Appropriations Committee over the last two and a half months. After the special session that we had last fall, there was probably hope that we were going to have a little bit slower session, and actually at first it was a little bit on the slower side. But it was probably a session, for Appropriations, of anticipation, and that was anticipation of what the February Forecasting Board was going to do to us. And we probably thought from the very first that we were going to take a little bit of a downward revision in revenue, and if you would have asked us very early on, we would have thought it was going to be significant. As time went on, we realized that it was probably not as significant as we thought, and when the Forecasting Board did meet we actually lost a little bit over \$30 million, because of that and an increase in state aid to education that we probably weren't anticipating as much as we should have been. Usually in downward times state aid will always cost a little bit more money than what you would like, and that was once again the case. When you take that factor in, which at that time we had recognized at \$15.1 million, and the downward revision of a little bit over \$30 million, we was pushing a \$50 million shortfall. To make up for that, the amendment and what's in the amendment and the actions of the Appropriations Committee are a somewhat short list of things that we did. There was maybe some minor things that were also done, but the majority of what we'd done is in a list that I will read to you right now. I had talked to you already about the \$15.1 million TEEOSA state aid. We also had...and we did this in the preliminary budget, was a homestead exemption of \$3.6 million. We had \$300,000 of replace one-time cash for the Rural Health Professional Incentive. It was actually some money that we had intended to put in last year but had unintentionally got left out, so the Appropriations Committee thought it only appropriate to put that back in. State claims, which I believe will be a bill that will be following the budget bills, at \$370,000; defined benefit plans at \$48,674, actuarial amount needed to make them, I think, sound at the time. Then we had some reductions that also helped us out. One of the larger ones, as soon as the Forecasting Board had told us that we had lost our \$30 million, we became aware of some ARRA claw-back payment reductions, actually Medicaid, for a total of \$18.7 million. Something that the Appropriations Committee also spent a lot of time, talk, and discussion on, where you capture the cost for the prenatal service to unborn children. This is a program that you are all aware of ended as of the 1st of March. And

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usually when a program has ended and we have funded it for a longer period of time that it runs, the Appropriations Committee will recapture that money, and we did this in this action for a total of \$6,865,587. As I said, there will be a bill that was included in the budget package. It's Senator Nordquist's bill, LB1106, shows a savings of \$1.2 million and you'll hear about that later on. We also included 2 percent across-the-board cuts for operations for a savings of \$5,791,825, and a 2 percent across-the-board cuts for state aid at \$1,305,042. I think it's very important for this body to remember that...if you remember special session, we actually did a 2.5 percent spending cut in the first year and a 2.5 percent spending cut in the second year. These two 2 percent cuts that we did, we'll do in this amendment, we'll actually be on top of that for a total of 7. We actually pretty much mirrored the cuts that we...or the agencies in the groups and the programs that we had did the 5 percent across-the-board cuts. We put the 2 percent across so they're very similar. And also the last action of salary and savings on the court system of \$80,000. You go to the financial status and it would show, and this is from memory, about \$3.7 million, \$3.8 million, above the 3 percent minimum reserve. The Appropriations Committee had intended to leave money for A bill or A bills, and that was our intent. And we actually...in order to achieve that after everything that was threw to us so late in the game, we had to have a \$3 million Cash Reserve transfer which we will...will be a bill that will be following LB935. But it was our intent to leave some money for the floor for something that might be coming up. Unfortunately, there will be an amendment to this committee amendment that will fully fund TEEOSA very late in the game. Actually after all our actions had taken place, we found out that state aid was going to be recertified after it had been certified. I think on a Friday early the next week, found out it was going to be recertified. At that time, we found out it was going to cost us an additional \$3 million. So there will be an amendment to the committee amendment that will actually appropriate that money to fully fund TEEOSA, thus, leaving us less than a million dollars, if that amendment gets adopted, for anything that might happen on the floor. It wasn't an easy process. Sometimes it seems like...or you might say looking out from the outside that what did we do for a while until way at last. There were a lot of decisions made after the February Forecasting Board that...some were accepted right away, some were not. You're probably fully well aware, for a while the Appropriations Committee was not unified whatsoever. About a week ago, there was a lot of work done over the weekend and we got to a point where all nine of us was maybe not 100 percent satisfied but okay. And because we got everybody okay, I'm proud to say that LB935 and the amendments were adopted 9 to 0. Was not an easy process, but I think in the end, I think the end result is something that not only the Appropriations Committee can get behind but hopefully the body as a whole. And hopefully in the end, it will be the best thing for Nebraska as we see it now. I will say that there is a lot of discussion about the out-biennium, and we might hear a little bit about that today on the floor when we start discussion on the budget bill. I'm not going to deny that fact that it is a concern of mine. We tried to make a little headway with that with across-the-board 2 percent cuts, that will not only affect this year but the out-year. So we're starting on that process, probably not to the extent that some people would like

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to see. It is a concern and it is something that when you look at it in out-years, it's a little bit daunting. But we always do things responsibly in this state and I think, once we get to that point, we will once again do that responsible action that we have to do. Next January we'll start on that process and we'll do it right. [LB935 LB1106]

SENATOR ROBERT: One minute. [LB935]

SENATOR HEIDEMANN: With that, I'm going to go ahead and close. If there's questions, I encourage them. If you have something you want to know, I think it's important that we get that out here on the floor, ask the questions, and we can get it read into the public record and we can go from there. Thank you. [LB935]

SENATOR ROBERT: Thank you, Senator Heidemann. Members, you have heard the opening to LB935 and the Appropriations Committee amendment, AM2117. Mr. Clerk for an amendment. [LB935]

CLERK: Mr. President, the first amendment to the committee amendment, Senator Heidemann, AM2185. (Legislative Journal page 851.) [LB935]

SENATOR ROBERT: Senator Heidemann, you're recognized to open on your amendment, AM2185. [LB935]

SENATOR HEIDEMANN: Thank you, Mr. President and fellow members of the body. If you were listening when I was opening up on the committee amendment, I had talked about TEEOSA, and very late in the process, actually too late for us to take action on it, we found out that they were going to recertify. And at that time, we found out that, because of that, to fully fund TEEOSA it was going to take another \$3,018,661. And at first we didn't know how we were going to handle this, but this body has a little bit of a history of always fully funding TEEOSA. And we decided at that time as a committee, and the committee...actually, this is my amendment but everybody signed onto it, that we should fully fund TEEOSA. So that's actually what AM2185 will do, is to fully fund TEEOSA. And it was a priority of the committee because everybody signed on. Hopefully it will be a priority of this body. Thank you. [LB935]

SENATOR ROBERT: Thank you, Senator Heidemann. Members, you have heard the opening to AM2185, the amendment to the committee amendments. Members wishing to speak: Senators Mello, Wightman, Conrad, Utter, Stuthman, and Sullivan. Senator Mello, you're recognized. [LB935]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. I rise in support of LB935 and the underlying committee amendment and other amendments that Senator Heidemann will be presenting to the body shortly. I'd like to take a point of personal privilege to thank Senator Heidemann through what has been a very, I think,

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very difficult budget session for the Appropriations Committee. Not only has the committee been tasked with dealing with the initial shortfall as we've begun the session, but through the Forecasting Board change at the end of February, as well as the continual change in the TEEOSA formula, the Appropriations Committee and the Fiscal Office was constantly trying to hit a moving target. And I think most members in the body can understand and appreciate that Senator Heidemann and myself don't always agree on every issue. And I think the leadership that he's shown this session in particular in working with all of the committee members of trying to find a compromise that works for the entire committee is extremely commendable. I think it's exactly the kind of leadership that the Legislature needs to produce in very tough fiscal times. With that being said, this budget is a very balanced approach and I think that's why the compromise amongst the committee is so strong. It deals with across-the-board cuts in state agencies that result in long-term cost savings that deal with the out-years. It also deals with moving cash funds that are available to the Legislature to use in the short term. And it also took a small amount of funding from the Cash Reserve to initially leave funding for potential A bills, with one particular A bill in focus, LB1110. As what Senator Heidemann stated with some of his amendments, due to the changing number that was given with the certification of state aid, it appears there really won't be any additional money left over for A bills with the existing budget. But if there is an A bill or a bill that the Legislature does deem to pass that does come with a fiscal note, there is a Cash Reserve bill that is available for the Legislature, if it so chooses to, to help fund that particular bill or that project. And that bill and project I'm alluding to is LB1110. More importantly, I think there will be conversations that other members will bring up through this budget debate in regards to looking to the out-years and looking to 2011-12 and beyond. I think everyone in the body knows the fiscal challenges that face our state. We roughly have over a...we almost have a \$700 million budget deficit starting with next year's biennial budget. That translates into what probably will be one of the most difficult decisions that at least my class and the body has ever dealt with and probably the class that's currently up for election this year as well in a sense that we have now, as Senator Heidemann alluded to, through the special session and this budget, we have roughly taken 2.5 percent this year already, 5 percent next year from the special session, an additional 2 percent next year across-the-board cuts. That is...we are starting to generally cut down into agencies to a point that they haven't seen in years. Now, some of the other aspects that are included in this budget is part of what the Appropriations Committee has discussed this year at the beginning of the session, was looking at ways that we can start addressing next year's biennial budget problem. There's some language in the budget that focuses state agencies to try to provide the Legislature as a whole information from their agencies on how they can start to make better efficiencies within their state agencies... [LB935 LB1110]

SENATOR ROBERT: One minute. [LB935]

SENATOR MELLO: ...how they can consolidate programs, how they can possibly have

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the state government look to operate from a five-day workweek to a four-day work week. Once again, these are all ideas, and these are ideas that need to be considered by agencies, need to be thought through, and then presented to the Legislature during the interim so that we as a Legislature and various committees can start to look at what the approaches might be available for us come next year to deal with the out-year biennial budget. With that, Mr. President, this is a good budget. It was done in good compromise. It was done in good faith. And a lot of credit goes out to Chairman Heidemann in his work of working with all the committee members of trying to find a budget that works not only for the committee but works for the Legislature and state government. Thank you, Mr. President. [LB935]

SENATOR ROBERT: Thank you, Senator Mello. Senator Wightman, you are next and recognized. [LB935]

SENATOR WIGHTMAN: Thank you, Mr. President, colleagues. I, too, rise in support of AM2165...85, I'm not sure I'm reading correctly with my...even my improved vision, AM2117 and LB935. I agree with Senator Mello that our Chairman has done a great job of listening to all of the voices of not only the committee members but those outside the committee and I think we have fashioned a good budget. Senator Mello addressed the out-years, the next biennium. Certainly that's going to be a problem that gives all of us heartburn as we continue on. The figures are awesome, really, as we look at what would apparently or appear to be right now the problems that we're going to be faced with when we come back next year. We have saved the Cash Reserve or the major part of it, but we're looking at a \$675 million shortfall, and that is projecting a 7.2 percent increase in revenues in each of the two years of the next biennium. And if we don't meet those projections, it wouldn't take much to go awry and we could be looking at a billion dollar shortfall. When you compare that to a \$3.5 billion or approximately that annual expenditure, we're talking about sums that are really very difficult to even grasp. So while I'm sure there were people...are people probably that would like to spend more money on different programs, there are also people that would like to cut. I think we have to maintain our perspective. Actually, there's three ways we can meet the budget. Senator Hadley always likes to talk about the three-legged stool and I think that applies to the budget. As we try to match our revenues and expenditures, we can look at cutting spending and we've done a lot of that. We can look at using Cash Reserve and other cash funds, and we have used a lot of other cash funds. We've tried to save the Cash Reserve except for about a \$3 million expenditure. Or we can look at the terrible word "IT" which some of us talk about, information technology, but I'm afraid it might be increased taxes. And so those are the three things that we can look at in trying to bring a balance, a budget within balance. And I know there's been a great reservation on my part as well as everybody else's in this body to talk about increased taxes. And it's something you don't want to talk about in an election year and this is an election year. But I think we have to be realistic at looking down the road. We may need to look at all of those resources as far as bringing our budget in balance a year from now. So I think

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we've done a good job. I know that Senator Utter is up to speak behind me and he asked the question this morning--I don't mean to preempt him in any way--as to whether we maybe should have looked harder for ways to have softened the blow a year from now, and perhaps that's true. But it is a difficult task and I think our Chairman has done a great job of working with the Fiscal staff and working with the committee in trying to bring the budget within balance this year. One of the problems with a budget bill is everybody can take a second guess, I guess,... [LB935]

SENATOR ROBERT: One minute. [LB935]

SENATOR WIGHTMAN: ...as to what we should be doing and what we could be doing, and there's 10,000 moving parts as we move forward and, obviously, things could be cut, things could be increased, and to bring that budget within balance takes a lot of work. And our Chairman has done a great job. I suppose that had we taken bigger cuts across the board maybe we would have reduced the likelihood that we might have to look at increased taxes a year from now. That's hard to say but there really wasn't a lot to be cut. There were a lot of agencies and a lot of elements of the budget that, because of taking ARRA funds, we could not address at this point. So with that, I hope you will keep those comments in mind and hope you will advance LB935 with the amendments. Thank you, Mr. President. [LB935]

SENATOR ROBERT: Thank you, Senator Wightman. (Visitors introduced.) Returning to discussion, Senator Conrad, you are recognized. [LB935]

SENATOR CONRAD: Thank you, Mr. President. Good afternoon, colleagues. I rise for two reasons this afternoon: number one, in support of the amendment, the committee amendments, and the underlying legislation, and the package of legislation that lays out our budgetary proposal for this cycle; and also to offer a sincere thank you to our Chairman, Senator Lavon Heidemann, who many of you know has worked tirelessly on these issues and this process not only this year but every year that he's been a member of the Legislature. And to be clear, colleagues, as Senator Mello and others noted, we sometimes operate in a veil of misunderstanding over in the Appropriations Committee. As many of you other senators are busy on jurisdictional committees and have a chance to interact and build relationships in regards to your service in those jurisdictional committees, we operate in a fairly insular manner on Appropriations, that being our only standing committee that we enjoy membership of and is charged with the awesome task of putting forth a balanced budget for the state which in total ranges to about \$7 billion to carry out our state obligations. And I want to just not only offer Senator Heidemann a sincere thank you for his leadership and willingness to work because he didn't have to. If we operated in a manner that signified politics as usual and the gridlock and the partisanship that happens on the federal level or in other institutions of government, Senator Heidemann basically had the votes to move forward without offering his hand in compromise, without offering to build a bridge on issues and with members who had

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concerns or disagreements about the budget as a whole, and he did so because it was the right thing to do and because it honors our traditions of being a nonpartisan Legislature. And I hope the citizenry understands how well this system serves us and how proud we are as Nebraskans to have this unique and special Unicameral Legislature that does in fact operate in a nonpartisan manner and does in fact seek consensus, common sense, and common-ground solutions to tackle difficult issues in a responsible way. We hear a lot that government is broken and it doesn't work. Well, not this Nebraska Legislature and not this Appropriations Committee. We worked hard. We worked long. We battled hard to find the middle ground, to find a solution that worked. Is it perfect? No, but many things in life are not perfect. And rather than let perfect be the enemy of good, it's important that we put something forth that is good. This budget balances the budget in a difficult economic time with no tax increases, it fully funds our obligations to K-12 education, it fully funds our property tax relief program, and it moves forward without making additional cuts to our system of higher education, which many of you know is of great concern to me and my district and of course the state as a whole. We've also heard that there is a dire warning being sounded with the passage of this budget package in terms of what our budget forecast and projections look like for the out-years. And the out-years, colleagues, is the biennial budget that will be before us in the next session of the Legislature... [LB935]

SENATOR ROBERT: One minute. [LB935]

SENATOR CONRAD: ...and that we'll need to be mindful of as we not only address these short-term solutions in terms of finding a balanced budget and meeting our obligations as put forward today, but also preparing for the issues that we'll have to deal with in the future because that's the responsible, that's the conservative, that's the appropriate thing to do. And the way that we do that, colleagues, is I think by moving forward in a positive way on this budgetary package and not letting up our attention or our work for one minute, not going home to our respective districts and getting reengaged in our citizen life of being citizen legislators but staying focused every day, every month from sine die forward in terms of how are we going to reform Nebraska state government to meet the challenges that are in front of us. We can look at the experience of other states... [LB935]

SENATOR ROBERT: Time. [LB935]

SENATOR CONRAD: Thank you, Mr. President. [LB935]

SENATOR ROBERT: Thank you, Senator Conrad. Senator Utter, you're recognized. [LB935]

SENATOR UTTER: Thank you very much, Mr. President and colleagues. I hope that you will all take what I'm about to say in good faith. To begin with, I do want to tell you

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that I respect the Appropriations Committee. I certainly respect the hard work that they have done, and I certainly respect Senator Heidemann's leadership. I don't want what I'm about to say to make me incredibly unpopular but it may. I'm reminded a little bit of the words of Will Rogers when he said, when you find yourself in a hole, quit digging. And I guess I'm...this is more of what I see as a warning rather than questions about specific items in the budget. But I'm really concerned, as we are heading down this road, about the next biennium. And sometimes I'm a little bit fearful that we have not done enough to prepare for the next biennial budget that's going to be upon us come January. I think maybe we could have done a little more to help our citizens prepare for what may be coming if the projections are anywhere near accurate, that if in fact we are going to be looking for \$670 million based on a 7.2 percent growth rate or maybe, if the growth rate isn't 7.2 percent but something less, we're maybe looking toward a billion dollars, something closer to a billion dollars. And we're going to be looking at that after we have pretty well drained, I think, the easy money, the cash funds that we've had in the various agencies. There's certainly not near as much money in the cash funds as there used to be. We may have taken about as much of that as we can possibly take. And so when budget time comes around in January, we're going to be looking at the taxpayers, at the state agencies, and somehow or another we have to come to a realistic solution to that problem. And we've applauded ourselves, and I think rightfully so, on being fiscally prudent in this state, and I think we have been fiscally prudent. But I think next year, folks, we're going to be feeling the pain that our sister states around us have already felt. And the thing that I'm concerned about is that this pain may actually end up prolonging this ungodly recession that we have been in. And some of the things I guess that I think that we've got to take a really close look at, state aid to education I think is one of them. And I think it is clear to all of us that we cannot sustain the continued increases that we have in state aid to education in years when our revenues are down and the state aid to education, the TEEOSA formula, calls for more revenues. It's almost a tail-wagging-the-dog situation as we look at that. And so I think that we have to... [LB935]

SENATOR ROBERT: One minute. [LB935]

SENATOR UTTER: ...take a look at those areas and what we're going to do about them. Schools are also going to have to learn to become more efficient, to spend their money more prudently. And I know there's some critical issues out there. There's critical issues with regard to the collective bargaining agreements, and there's critical issues with regard to the CIR, and certainly those things all enter into that. And I know I'm about to run out of time, so I just want to say to you, I appreciate the fact that you are giving this grumpy old man, this frustrated old man, an opportunity to vent, but I really think that we need to try to avoid the moaning and the groaning and the gnashing of teeth that's going to take place in this... [LB935]

SENATOR ROBERT: Time. [LB935]

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SENATOR UTTER: ...body in January and to be prepared to take the consequences... [LB935]

SENATOR ROBERT: Time, Senator. [LB935]

SENATOR UTTER: ...that we're going to need to take. Thank you. [LB935]

SENATOR ROBERT: Thank you, Senator Utter. Senator Stuthman, you're recognized. [LB935]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I would like to ask Senator Heidemann a question. [LB935]

SENATOR ROBERT: Senator Heidemann, will you yield to a question? [LB935]

SENATOR HEIDEMANN: Yes. [LB935]

SENATOR STUTHMAN: Senator Heidemann, this morning...first of all, thank you for your work on this. And I would like to ask you, the fact that this morning you stated that the state aid to counties or cities is going to be decreased by 2 percent. Is that correct? [LB935]

SENATOR HEIDEMANN: I believe so, yes. [LB935]

SENATOR STUTHMAN: Okay. Now going into the book a little bit further, the aid to counties, the aid to counties, there was a lot of attention drawn to that when we had the special session. LB218, the fact there's three areas that are going to be eliminated, that is the general aid to counties under the State Treasurer's budget, county property tax relief program from the Department of Revenue, and the county jail reimbursement. These will all be stopped in July 1, 2011, which would be a good year from now. Is that correct? [LB935 LB218]

SENATOR HEIDEMANN: Yes. [LB935]

SENATOR STUTHMAN: Okay. What...and there's a little bit of a replacement for that. The issue that I have...and that's all the questions that I'm going to ask you at this present time. Thank you, Senator Heidemann. The issue that I have is the fact that, you know, the state is responsible in doing what they have to do. The issue with the aid to counties and cities, municipalities, the issue is what is the effect going to be on those? I hope that those entities, you know, can adjust to that and not spend as much or what is going to happen. And, in my opinion, what is going to happen is it's going to be an increase in property tax. Because of those issues of the aid coming to those

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municipalities and coming to those counties, they will not be able to receive that money from the state because of the lack of revenue of the state, but if those programs are needed and demanded by the people in the county, it definitely is going to be a property tax increase. Hopefully, it isn't and it really don't have to be if the leaders of those communities, you know, can adjust it in their spending and take care of it that way. But the thing that I have seen time and time again is it comes down to the last one on the ladder and that comes down to property tax. The state is taking care of their issue. They can cut, they can cut. Counties, they can cut also. But are the people willing to eliminate some type of service? Are they willing to have less gravel on their roads? Are they willing to give up something on the county level or is it going to be a little bit of a property tax increase? What I have heard time and time again on this legislative body, the issue when all of you are campaigning is the issue of do something about my property tax. Well, we may be doing something about the property tax right now. We might be raising their property tax, but it don't have to happen. And we as individuals, you know, hopefully can make sure that it don't happen, an increase in property tax, but we got to convey that message to the property owners, to the governing bodies that they must also cut. [LB935]

SENATOR ROBERT: One minute. [LB935]

SENATOR STUTHMAN: But that's going to be very, very hard to convince them of that. The only way that they can cut is to eliminate some type of service to those individuals. So I just take...I'm trying to be very considerate of what the effects of this is going to be. The state is doing the right thing, but what's going to be the effects in the long term? I was very involved in the county jail reimbursement, which was passed many, many years ago. The counties never, ever did get totally reimbursed for that county jail reimbursement. Thank you, Mr. President. [LB935]

SENATOR ROBERT: Thank you, Senator Stuthman. Those wishing to speak: Senator Sullivan, Dubas, Adams, Carlson, Harms, Gay, and others. Senator Sullivan, you are recognized. [LB935]

SENATOR SULLIVAN: Thank you, Mr. President. Good afternoon, colleagues. I'd like to thank Senator Heidemann and the members of the Appropriations Committee. His explanation is very straightforward and clear. The committee presents the information to us in this package, makes it look easy, but I know it hasn't been and it's at times, I'm sure, been a very difficult process. So I value the work that they've done. I also appreciate Senator Conrad's comments because we are on a path, particularly looking ahead to the next biennium and the real budget challenges that perhaps we'll be facing, looking at the strong possibility of actually reinventing the government as we know it, meaning that there will be some significant changes. It's a process, in addressing Senator Utter's concern that maybe we're not doing it fast enough and enough. It's a little like changing an institution that maybe has been in place for 100 years; you don't

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do that overnight and it's a very painful process at times. I'm hopeful, quite frankly, that the Legislative Planning Committee that you created in statute last year will ultimately provide some direction in some of the hard choices that we're going to have to make down the road. But getting back to the original comment, I wondered if, with respect to this budget proposal, if Senator Heidemann would yield for a couple of questions. [LB935]

SENATOR ROBERT: Senator Heidemann, would you yield to a question? [LB935]

SENATOR HEIDEMANN: Yes. [LB935]

SENATOR SULLIVAN: Thank you, Senator. With respect to some of the cutbacks, the 2 percent across-the-board cut to agencies, do you have any sense of what sort of impact that's going to mean? [LB935]

SENATOR HEIDEMANN: Well, we did look at a few and the one that we are most familiar with is the Legislative Council. And we was already aware that we have no...it's hard for us to look at other places when you're so much salary and benefit based, and there are other agencies like the Legislative Council. And we was already aware before this last 2 percent cut that there was probably going to be a furlough day or two. We're also aware that we, as senators, won't be able to do as much travelling anymore possibly. With this action, and this would be all up to what the Exec Board decides to do with what we have given them, I mean it's a possibility that the staff that works for us and in every other division will see more furlough days. And sometimes that process, looking at what's going to happen to us, is a good process, what will happen to everybody else. The 5 percent across-the-board cuts in the special session, a lot of agencies were going to be able to absorb some of it with the cash they had on board, some were leaving vacant positions open, and maybe some with some layoffs. This 2 percent cut I think will be felt and will be a little bit more painful. [LB935]

SENATOR SULLIVAN: In your one amendment you're accommodating what the unexpected increase in the TEEOSA formula, but is it fair to say that, had we not done what we did in the special session to slow the growth of TEEOSA, that we would have been looking at an even larger shortfall? Is that correct? [LB935]

SENATOR HEIDEMANN: Yes. We was hoping that we was going to be able to slow things down a little bit with I think it was LB5 I believe. Unfortunately, all those savings weren't realized. [LB935]

SENATOR SULLIVAN: And correct me if I'm wrong. As I understand it, we're not looking at any extra money for any additional A bills. Is that right? [LB935]

SENATOR HEIDEMANN: Right now, if that amendment...if this amendment gets

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adopted, I think we'll be approximately a little over \$700,000, maybe \$750,000 left over for A bills, not saying that even that money should be spent. [LB935]

SENATOR SULLIVAN: Can you also shed a little light on I guess sort of your philosophy with respect to using the Cash Reserve? You alluded to that a little bit at your briefing this morning, but... [LB935]

SENATOR ROBERT: One minute. [LB935]

SENATOR SULLIVAN: ...I think your caution, if you will, in terms of using that. [LB935]

SENATOR HEIDEMANN: Looking into the out-years and realizing the situation and the challenges that we have out there, it probably would have been my hope and intentions and the Appropriations Committee that we wouldn't have to use that. You have to realize with what we got hit with so late, with the Forecasting Board coming in right at \$1 million less revenue, we had to account for that, and then state aid coming in for a total of \$18 million, it was just too much for us to overcome. And for that reason, we was able to overcome the majority of it, but there was about a \$3 million shortfall that we wasn't able to overcome and that's why we went to the Cash Reserve. I will like to say, though, even on the mike here that \$3 million is just 1 percent of the Cash Reserve, so even though it is not the most significant amount, it was something that we had to do to make things work. [LB935]

SENATOR ROBERT: Time. [LB935]

SENATOR SULLIVAN: Thank you very much. [LB935]

SENATOR ROBERT: Thank you, Senator Sullivan and Senator Heidemann. Senator Dubas, you are next. [LB935]

SENATOR DUBAS: Thank you very much, Mr. President. Good afternoon, members of the body. I, too, would like to chime in with my thanks and appreciation to the Appropriations Committee and the very tough, tough job that they have. And I think they are a great example of what happens when you can put partisanship aside and collectively work towards a consensus and put out something that, while not everybody agrees with everything totally, they are at least comfortable enough to put it out and recognize we're doing it because we have to and for the greater good, hopefully. You know, in the special session we talked a lot about transferring from cash funds into the General Fund to help us cover our budget shortfalls, specifically an issue that was important to me was taking money out of the checkoff funds and we were able to keep that from happening. But we heard from a lot of other agencies who are strictly cash funded. They don't get...they don't receive any taxpayer support; they're all cash funded for the purpose that they serve. And really what kind of a precedent do we set when

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we're taking that money out of there? In fact, it says right in the statutes that we need to have authorizing language in order to take that money because of the way that it's set up. I introduced this session LB793. Basically it wasn't a bill that changed anything. It just brought attention to the fact that cash-funded agencies are set up with support, revenue support, from their particular area of interest and we shouldn't be going to those cash funds. I remember early on as a freshman senator going through the cash-funded agency book and looking at those big pots of money that it looked like they had and wondering why we weren't using...putting those dollars to better use, and was quickly told that, you know, those cash-funded agencies have to make that money last. That's their budget for the year, that's their revenues for the year, they have to make it last. So while it may look at that particular point in time like they have a lot of money, that's something that they use throughout the budget cycle and so that it wasn't a good idea to go into cash funds. As I said, I introduced that bill to just kind of put a red flag up in place for future legislators that if you're looking at going into cash funds to help you balance your General Fund budget, this is why we really shouldn't do that. I also used it as an opportunity to let these agencies come in and make their case. And one such cash-funded agency that we're looking to take some money out to help us with this budget balancing process is the Affordable Housing Trust Fund. That money is solely from an additional fee charged to the documentary stamp when real estate transactions take place. It was established in 1996 with that sole purpose of funding housing in our state, and the increase in that documentary stamp was conditioned on establishing the fund for this housing. It helps leverage federal money. This Affordable Housing Trust Fund helps us leverage federal money for housing. It provides down payment and closing cost assistance to home buyers, pays for infrastructure projects that spur affordable housing production, and supports nonprofit housing organizations that help low-income homeowners maintain their homes. I understand why we're going into this fund. I'm not happy about it. I think this is a trust fund, again, established for a very specific purpose with very specific funding resources. So while I understand why we're doing it, I just really want the body to understand what it is we're doing, the funds that we're using to help us get through these tough times and what it could in the long run do to these types of projects. We're in a downturn in our economy. One of the best things that this particular program does is stimulate the economy. It helps us... [LB935 LB793]

SENATOR ROBERT: One minute. [LB935]

SENATOR DUBAS: It helps us build homes. It was estimated that a \$10 million investment in this trust fund generates wages equivalent to 2,333 workers, \$1,250,000 in state income tax revenue, \$2.5 million in sales tax revenue for material sales, and \$2.5 million in property tax revenue. So when we're taking money out of this particular pot to help us balance our budget, we're also putting our local economies in a tough place. I believe the affordable housing trust fund does incredible work, it has a proven track record. Again, while I understand the Appropriations Committee's decision to go here, and I know they've ratcheted the dollars down that they were going to take out of

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this program and I appreciate that, it still is kind of a slippery slope we stand on when we resort to these types of budget balancing tactics... [LB935]

SENATOR ROBERT: Time. [LB935]

SENATOR DUBAS: Thank you. [LB935]

SENATOR ROBERT: Thank you, Senator Dubas. Senator Adams, you are next and recognized. [LB935]

SENATOR ADAMS: Thank you, Mr. President. I thought that given the role that TEEOSA plays in this I needed to say a couple of things. And like everyone else, I would join in the thank you to the Appropriations Committee and to Senator Heidemann, and particularly, Senator Heidemann, your understanding on that extra \$3 million and the best way you and I know to handle that, and I appreciate the way the committee and you decided to deal with that. Let me speak for just a moment to the numbers as they came in. If you will recall, one year ago at this time, we reduced aid. We decreased the increase in aid. We decreased the increase. During the special session, we decreased the increase and it was the special session right now that created a problem for the Appropriations Committee. We were in November, the committee, the Education Committee and staff, looking at how to move the shells to reduce needs so that we could get to, I believe it was, about a \$33 million cut, \$33 million reduction. And in that formula it is an estimate, it is an estimate. And we were looking at valuations, we were looking at so many moving parts, plugging them in and saying where are we at. And when LB5 came to the floor during special session, we believed that we were within a million bucks of that target mark of leaving aid flat at \$933 million. We believe we were within a million bucks of doing that. Valuations came in; they came in, in an desperate way. There were a couple of other factors in the aid formula that we underestimated, and unfortunately for Senator Heidemann and the committee, and I feel somewhat guilty, we were off on our estimate and it pushed an additional burden on them. But it was an estimate that we made in November and we thought we were on the mark. And to put things in perspective, and Senator Heidemann may or may not agree, if we were in what might resemble normal revenue years, and TEEOSA, approaching a billion dollar appropriation, was only off \$14 million, \$15 million, \$16 million, that's pretty darn close to hitting the mark. Unfortunately, in the time that we're in right now, and I feel bad about it, we didn't give this Appropriations Committee much wiggle room but they got it done, they got it done. Now, as we go ahead, I've said this to a number of people, I've said it to Senator Heidemann more than one time, I've said it to my committee, when this session is over already in April I'll be pulling that state aid review committee that I have together and we're going to start looking at what we have to do because we know, we did a year ago, we did during the special session, and we particularly know headed into the next biennium, K-12 has to play a part in this fix. And I very much appreciate, and I'd like to think 253 school districts also, the fact that we have held things together

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this time. Many of you have come to the microphone and said, we need to tell school districts, look out in the next biennium. I've been telling every one of them for two years that very thing--look out. I've also told NSEA look out... [LB935]

SENATOR ROBERT: One minute. [LB935]

SENATOR ADAMS: ...because we're going to have issues. We're going to make the adjustments we need to, but I would tell you this, and I'll say it again and again and again between now and a year from now, we'll look at the fairest thing that we can in the Education Committee to do here, as fair as we can possibly be, get the number where we think it needs to be to help out on the budget, and I bet everybody is fine with that until the spreadsheets come out. Right? Until the spreadsheets come out and then my school got hit harder than somebody else's school, there's something wrong. We will be as fair as we can and K-12 needs to be and will be part of the fix in the next biennium. Thank you, Mr. President. [LB935]

SENATOR ROBERT: Thank you, Senator Adams. Senator Carlson, you are next and recognized. [LB935]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. And certainly I've listened to Senator Adams for three years, going on four, but what he's telling is the truth. Every time I've heard him speak in the last year, he's talked about watch out and certainly that is going to become a reality. I would like to address a question to Senator Hansen, if he would yield. [LB935]

SENATOR ROBERT: Senator Hansen, will you yield to a question? [LB935]

SENATOR HANSEN: Yes. [LB935]

SENATOR CARLSON: Senator Hansen, you and I and others have talked quite a bit since the special session we had. And in asking you this question, I'm not leveling any criticism whatever at Appropriations Committee because the work that you do is extremely difficult and you do it well. But we've been concerned about money that was transferred out of cash funds, and as you look at this budget, are you comfortable with the transfers that are requested or how do you feel about that? [LB935]

SENATOR HANSEN: Yes, I am. And, Senator, if you'd turn in the blue book to page 15, General Funds transfers in, and start on that page half way down the page, this is what we've done in the last two years, including the special session. And then if you go on page 16, toward the bottom of the smaller boxes, you will find the cash transfers that we did this year, and those amount to four. Are you in the boxes, the small boxes on page 16? [LB935]

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SENATOR CARLSON: Yes. [LB935]

SENATOR HANSEN: Okay. Securities Act Cash Fund, we have take \$12,250,000 out of that; Department of Insurance Cash Fund, \$2,500,000; the Affordable Housing Trust Fund, \$1,609,000; and then the Clerk of the Legislature Cash Fund, we've taken \$100,000 out. Those total up to \$16,459,000. [LB935]

SENATOR CARLSON: And that is a different looking picture than what we looked at in special session, would you agree? [LB935]

SENATOR HANSEN: Yes, it is and I hope it's one that we can continue because I understand where you're coming from. The cash funds that we did dip into, that we swept, that we raided, whatever the adjective you want to use last special session, we took some cash funds out of those strictly cash-funded agencies that they use to create...they do what the agency was created to do. And if we continue to take cash out of there, those agencies are not going to be able to function like they were intended to do. [LB935]

SENATOR CARLSON: Okay. Thank you, Senator Hansen. [LB935]

SENATOR HANSEN: Okay. [LB935]

SENATOR CARLSON: I'd like to address a question to Senator Heidemann, if he would yield. [LB935]

SENATOR ROBERT: Senator Heidemann, will you yield to a question from Senator Carlson? [LB935]

SENATOR HEIDEMANN: Yes. [LB935]

SENATOR CARLSON: Senator Heidemann, in my little discussion with Senator Hansen here and talking about cash funds, and in my own mind, I've defined a pure cash fund as one that is entirely made up of fees and dollars other than sales and income tax. In my mind, I define a blended cash fund as one that has both types of dollars in it. And then another cash fund would be that that's strictly funded by General Fund dollars. And maybe Senator Hansen has identified this for me and I'll study it a little further, but in your mind, are there any pure cash funds that money has been transferred from where none of those dollars came from sales and income tax? [LB935]

SENATOR HEIDEMANN: I actually would have to think about that a little bit and get back with you on that one. [LB935]

SENATOR CARLSON: Okay. Okay. All right. I want to go to another item because I

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think our process, particularly when times are difficult, is a process that really is not fair to Appropriations. And I'd like to ask a question. How could we, the balance of the Legislature, help you in preparing for the 2011 Session? Because you've talked about it's not going to be fun. [LB935]

SENATOR ROBERT: One minute. [LB935]

SENATOR CARLSON: Now, I'll make a couple of suggestions. We could have the committees that we're on rate the importance of agencies and services that those committees relate to. That could be an assignment for committees. We could try and identify services that we think we could let go. And we're going to have a diverse recommendation on that kind of a thing. We could identify the most important services and rank them. But would any of these kinds of procedures be helpful to the Appropriations Committee? [LB935]

SENATOR HEIDEMANN: We actually have this very idea and we might present this even as a legislative resolution or something to get everybody else involved. You're right on because we've actually assigned so much money as you would spend normally to each committee and then you will have to find so many savings. And exactly as you said, you look for the priorities and then if you find savings that you can accomplish... [LB935]

SENATOR ROBERT: Time. Thank you, Senator Heidemann and Senator Carlson. Senator Harms. Senator Harms, you're recognized. [LB935]

SENATOR HARMS: Thank you, Mr. President, colleagues. This budget, I rise in support of the amendments as well as the underlying bill, LB935. I want to thank Senator Heidemann for what he did to bring this bill before you. I don't know, unless you've had the opportunity to work with Appropriations Committee, I'm not sure people really understand what goes on in that committee and how tough some of these issues can actually be. And he's been a master of bringing different thoughts and different views together and blend it so that it works for this body and works for the great state of Nebraska. And I simply call that leadership because that's what he has and that's what he has done for this body today. Coupled with that, Mike Calvert and his Fiscal staff, who are sitting right over here, are part of the reason why we are able to deal with the issues that we deal with because they are some of the best staff that I've ever had the opportunity to work with. And I will continue to compliment them because you can go to them with many different issues and they always give you the right information and I thank them for that and I applaud them for it. I want to talk now just a little bit about the out-years here. What we're hearing today and what you're...what's being discussed, this has been the easy part, colleagues. The hard part is yet to come and I don't think I'm looking forward to that because I'm here to tell you that there will be...I don't think there will be anything off the table. And all of us have special projects, all of us has our own

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interests that we want to make sure that we protect in some form or manner. All of those will be put on the table. I do not see any hope of us resolving this issue unless we're all agreeable and understand that that \$700 million or \$600 million or \$500 million or \$400 million--pick any figure, we don't know where it's going to end up--is going to be really tough for this body and tough for the Appropriations Committee. And I can tell you if we would happen...and I don't know if this will be true, but I can tell you if we would happen to have to have a special session to adjust this budget to match that kind of shortfall, I can tell you we cannot do it in 12 days, period. I don't think it's humanly possible. And so what I'm saying is I believe that the work for the Appropriations Committee is just beginning, and I would be in hopes as we begin to plan for the future in these out-years that we need to be doing that now. We need to start as soon as we approve this and move forward. We need to start the discussions now about where we want to go, how we want to go, and what it's going to take for us to reach the \$500 million or the \$400 million or the \$300 million, just pick your figure. It will not be easy and I would tell you that I think that, as colleagues, this is the opportunity for you as you think about where we are, where we're headed, and you know the out-years and we know that that cliff is really sharp and it's straight down, and we know that that revenue is not going to match up, and if it does, it just simply will not go far enough for us. You need to be thinking about what you're willing to give up. I used to say when I went home to the citizens who live in my district and I talk about what is coming, the first thing I ask them, tell me today or tomorrow or next week what are you willing to give up, because that's what it's going to be about. [LB935]

SENATOR ROBERT: One minute. [LB935]

SENATOR HARMS: And so thank you, Mr. President. So I think that as you look at this and we go through and we approve this, this is a good budget. It's a blended budget. We agreed to it in the Appropriations Committee. You need to start thinking about where you would like to cut and what you would like to see given up because it will take this body in order for us to do this. The Appropriations Committee can bring a recommendation, but it's going to take your support, your involvement to make sure that we're walking down the pathway that will still keep us healthy for the future, because I believe that's what we're talking about. We are talking about how will we be able to handle the future with these kinds of cuts. So I would urge you to give it some thought. We have plenty of time to think about it. And I would urge you to support LB935 and the amendments. And I also say again to Senator Heidemann, thank you very much. Thank you, Mr. President. [LB935]

SENATOR ROBERT: Thank you, Senator Harms. Those wishing to speak: Senators Conrad, Pirsch, Wallman, Council, Wightman, Dubas, and others. Senator Conrad, you're recognized. [LB935]

SENATOR CONRAD: Thank you, Mr. President. Thank you, colleagues. This is a

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fantastic dialogue on important issues before us. And I want to particularly commend Senator Utter and Senator Stuthman and Senator Carlson for their very astute commentary in regards to these issues. And to be clear, just because there is consensus doesn't mean there aren't significant impacts; there are. You've heard me talk on other issues before this body about how I'm concerned with the resources that are available for law enforcement and public safety. And these cuts that continue to come down the pike have inhibited our ability to field a new class in the State Patrol and otherwise or fund our obligations at the state crime lab, and these kinds of real issues and real obligations will continue to remain and exist. And so by having the partnership and the work and the ideas and the perspective of the other jurisdictional committees that Senator Carlson offered up and that we have discussed in a significant manner in the Appropriations Committee I think will be critical to our effort as we move forward to sort through what our priorities are in terms of where we want to be as a state and meeting our many important obligations while being responsible stewards of the taxpayer dollar. And that partnership extends not only to the other jurisdictional committees' members and leadership, but it has to also work in concert and in conjunction with the Governor and the executive branch. And we can take an example from some sister states in terms of how they've dealt with much more significant budgetary issues in the recent economic downturn. And, for example, we can look no further than just across the river, across the border to Iowa where they have...the governor and the legislature has worked together to find real governmental reform and real efficiencies in terms of providing additional tax savings to the taxpayers and changing the way government looks and operates. And these are the kinds of long-range, strategic issues that are going to be necessary as we move forward to ensure that we have a sustainable and responsible system in place in dealing with our many critical obligations, whether it be K-12, public safety, infrastructure, or otherwise. And to be clear, in terms of the real impacts that do exist, it's the smaller agencies that have the least ability to really absorb those costs and continue to drill down and find efficiencies. And one thing that comes to mind is, for example, the Department of Agriculture. I have great concerns in terms of how they're going to be able to implement these budgetary efficiencies and still continue to do the important work that they are charged with. So I'm hopeful that by a true partnership amongst the other jurisdictional committees and with the executive branch and the Governor, we can move forward to ensure that Nebraska has a strong and sustainable future in terms of its governmental structure. And Senator Stuthman is right, there are impacts to local governments through this budgetary solution, but there are also real impacts to state government, in particular our separate and distinct branches of government being in the courts and here in the legislative branch, and we have to be "protectful" of the integrity of... [LB935]

SENATOR ROBERT: One minute. [LB935]

SENATOR CONRAD: ...these separate and distinct branches of government. So I'm looking forward to a robust, strategic planning process that begins anew, the moment

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after this budgetary package moves forward and ultimately, hopefully is adopted. Because while this did take a great deal of work to find the consensus necessary for short-term solutions, we need to recognize and come together to ensure that we can find the same kinds of consensus in terms of a long-term vision and a long-term, sustainable solution for the future of our great state. Thank you, Mr. President. [LB935]

SENATOR ROBERT: Thank you, Senator Conrad. Senator Pirsch, you are recognized. [LB935]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I was wondering if Senator Heidemann, as Chair of the Appropriations Committee, might answer a couple of...or clarify a couple of questions. [LB935]

SENATOR ROBERT: Senator Heidemann, will you yield to a question? [LB935]

SENATOR HEIDEMANN: Yes. [LB935]

SENATOR PIRSCH: Great. I guess...and I'm harkening back to Senator Utter's statement that the next...according to the predicted growth, the...and we're using certain models that is predicated on the assumption that we will have 7.2 percent growth each of the next two years. Is that correct? [LB935]

SENATOR HEIDEMANN: Yes, that's what's plugged in right now. Those are LFO numbers. [LB935]

SENATOR PIRSCH: Okay. I guess what would happen...historically, what has our rate of growth been this current year? [LB935]

SENATOR HEIDEMANN: The current year... [LB935]

SENATOR PIRSCH: Do you know what that is? [LB935]

SENATOR HEIDEMANN: I'll look here quick. Historical revenue growth is 5.2 percent a year. I'd have to go to the financial status. Current year is minus 2.4. [LB935]

SENATOR PIRSCH: So we're negative 2.4. And we're using models that are based then on historical data, is that right, cyclical type of data? [LB935]

SENATOR HEIDEMANN: I think they call it a capped historical method, I believe is what they call it for the out two years, yes. [LB935]

SENATOR PIRSCH: And I would assume, just as when you use models for predicting weather, that there are different or varying methods, econometric models, correct?

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[LB935]

SENATOR HEIDEMANN: I'm not for sure what...yes, I would say you're right. [LB935]

SENATOR PIRSCH: Does this particular model, is this a conservative...I mean, what we...you know, nobody ever is alarmed when it ends up we're in better shape than we thought we'd be in, but problems often result when we're in worse shape than we thought we were in. Is this a fairly conservative model that we employ then? [LB935]

SENATOR HEIDEMANN: What this model does, it tries to always get you back to the averages. And if you would use it over a longer period of time, it would almost be right on because it always pushes things back to the average. Where you're going to see some wide swings is when you have...you're seeing a large percentage negative revenue growth or a large increase of revenue growth. That's where you're probably going to miss it a little bit more with this model. [LB935]

SENATOR PIRSCH: Okay. Overall, over long periods of time, it tends to be accurate but in terms of no one can predict when the upswing is going to be and within, you know, we know over a long period of time but in short periods of time, one, two, three year out, it's hard to...it's just a guess. Would you say that's accurate? [LB935]

SENATOR HEIDEMANN: Well, I don't want to say it's a guess. I mean, we try to forecast a little bit to that. I suppose some people would characterize it as that but, I mean, it's our best effort to get us some kind of numbers for those out-years until the October Forecast Board meets and give us what we then have to build the biennium budget off of. [LB935]

SENATOR PIRSCH: Yeah. Well, I appreciate that and I thank you for your hard work and the work of the Appropriations board members. It is an extremely challenging task and, again, you're dealing with incredible uncertainties that are hard to quantify in a very dynamic shifting economic...or economy both on the federal and since we don't operate in a vacuum in a statewide basis. So I appreciate that. I would say that, you know, counting on and budgeting for... [LB935]

SENATOR ROBERT: One minute. [LB935]

SENATOR PIRSCH: ...7.2 percent, you know, growth in each of the next two years and, you know, the chances for that occurring are, you know, between slim and none, as they say, slim has left town. So I do appreciate all your responses in any event and I would just say that we need to I guess forewarn others that, as Senator Adams has said, there are extremely tough times that we find ourselves in and we'll continue to find ourselves in. Nebraska is usually last in a recession and unfortunately last out, just the nature of the dynamics. So thank you. [LB935]

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SENATOR ROBERT: Thank you, Senator Pirsch. Senator Wallman, you're recognized. [LB935]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. This should concern us all because looking at the property tax valuations across the state, over 22 percent of the valuation is ag land. My county is over 36. Over half the counties, it's over 50 percent, and that's what we got to look out. Like Senator Stuthman would say, I'm concerned. And would Senator Heidemann listen to a question, please? [LB935]

SENATOR ROBERT: Senator Heidemann, yield to a question? [LB935]

SENATOR HEIDEMANN: Yes. [LB935]

SENATOR WALLMAN: Thank you, Senator Heidemann. I notice like health insurance costs some of these, you project 10 percent increase over two years? [LB935]

SENATOR HEIDEMANN: I think that's what's pegged in, yes. [LB935]

SENATOR WALLMAN: And that's a sizeable amount of money, isn't it? [LB935]

SENATOR HEIDEMANN: For us, yes. It is for school districts and anybody that has to pay that, yes. [LB935]

SENATOR WALLMAN: And I don't know how to get ahold of the cost of that, do you? [LB935]

SENATOR HEIDEMANN: You mean to try to reign it in a little bit, is that what's... [LB935]

SENATOR WALLMAN: Yes, yes, that's what I mean. Yes. [LB935]

SENATOR HEIDEMANN: If I had that answer, I probably should be in Congress. (Laughter) [LB935]

SENATOR WALLMAN: So these are issues I think we're going to have to deal with the next two...the next biennium, and developmental disabled money. HHS takes a big bite of this budget as well as TEEOSA. So I appreciate what the committee has done. I know it's hard work and I know it's hard to keep a reign on cost. So thank you, Mr. President. [LB935]

SENATOR ROBERT: Thank you, Senator Wallman. Senator Council, you're recognized. [LB935]

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SENATOR COUNCIL: Yes, thank you, Mr. President. First, I appreciate and respect the hard work of the Appropriations Committee. I have had the opportunity to review LB935, all 112 pages of it, although, I can tell you I have not studied it point-by-point but I've had the opportunity to review it and I sincerely appreciate the difficult task that was faced by the Appropriations Committee. Also like to thank Senator Heidemann for providing the briefing session this morning on the bill that was to be presented this afternoon. It gave me a little insight and provided me a little direction in my consideration of the budget. First, I'd like to echo a point made by my colleague Senator Dubas with regard to the Affordable Housing Trust Fund. And I think we need to be very, very careful about our continual reliance upon transfers out of these cash funds, these trust funds which were established for a specific purpose. And the Affordable Housing Trust Fund was designed to facilitate and to encourage housing development for low to moderate income families across the state of Nebraska. And those funds are used in rural communities and low income and moderate income urban communities. And I can tell you that they're used efficiently and effectively in providing housing. And I want to just commend the members of the Appropriations Committee who at least saw the wisdom and the value of maintaining the balance in this fund to the extent that they could, because it was my understanding that there was an effort to transfer considerably more than the \$1.6 million that is reflected in LB935. So I want to thank you for not further gutting this very important program, and I truly wish that there was a way for us to avoid having to transfer any of these dollars. Because, as Senator Dubas indicated, one of the ways to improve our economy and get our economy back on its feet is to add to our property values and our economic base in this state. And we do that through the development of affordable housing. We provide jobs for those who are involved in the construction of these housing developments. So I just want to echo that and hope that there's an opportunity for us through this process to see what, if anything, can be done to restore those dollars. But during the briefing session this morning and again today in the opening on this bill, there was a discussion about across-the-board cuts in addition to the across-the-board cuts that were a part of the action we took during the special session. But in my review of the budget, I see places where those cuts aren't reflected and I have some questions, if Senator Heidemann would yield to a couple of questions. [LB935]

SENATOR ROBERT: Senator Heidemann, will you yield to a question from Senator Council? [LB935]

SENATOR HEIDEMANN: Yes. [LB935]

SENATOR COUNCIL: Senator Heidemann, I'm looking at page 6 of what is AM2117 and it's the Department of Aeronautics. And it shows increases in both permanent and temporary salaries for the Department of Aeronautics. During fiscal year '09-10 there's a \$53,000 increase, and during '10-11 there's a \$6,000 increase. Why isn't the

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Department of Aeronautics... [LB935]

SENATOR ROBERT: One minute. [LB935]

SENATOR COUNCIL: ...being subjected to these across-the-board cuts? [LB935]

SENATOR HEIDEMANN: I think when we did our special session last year, we didn't...there was certain ones that we did exclude, others that we didn't exclude, Department of Aeronautics being one of them, because there were certain agencies that we didn't touch, like the university, higher education, because of ARRA funding mandates. This was probably an agency that it looked like we could access some money. I'm not probably answering your question to your... [LB935]

SENATOR COUNCIL: No. First of all, if they were saved from the budget cuts that other departments...and particularly in the area of personnel, I want to know why the Department of Aeronautics is being spared from having to face personnel budget cuts. Instead, at least from my reading of the budget... [LB935]

SENATOR ROBERT: Time. Thank you, Senator Council. Senator Wightman, you're recognized. [LB935]

SENATOR WIGHTMAN: Thank you, Mr. President, colleagues. I wanted to rise once more to discuss some of the problems in cutting budgets. I discussed the fact that we can't always rely upon budget cuts, we may have to look at other sources. But as we do discuss budget cuts and as we consider budget cuts in the appropriation, one of the things that has to be remembered is that many things are pretty much off the table to us. A typical budget of an agency will probably consist of somewhere in the 60 to 80 percent range of personnel costs. Unfortunately, we as a Appropriations Committee find ourselves in the position where we cannot cut the per-employee cost in many instances because those costs are set by the CIR, the wages or increases are set by the CIR, and so we may have in many agencies as much as 80 percent that we can't cut without cutting personnel. Now when it gets to micromanaging, it becomes very difficult to be able to determine who needs to be cut or how many people should be cut unless we get into micromanaging, and I don't think the Appropriations Committee is the proper place for micromanaging. We may have to close down entire programs and I think that's very likely what we're going to have to do when we come back next year. And I do...I'm thankful to Senator Carlson for bringing up the possibility of various committees looking at programs under their jurisdiction and making suggestions as to where priorities ought to be. I think that the committee Chairs are probably going to be very much involved next year in setting these budgets and helping the Appropriations Committee make suggestions as to whether programs may be able to be cut. Senator Wallman brought up the health insurance and 10 percent increase. Again, that is set. It's been set by statute. It provides that 79 percent is paid by the state and it's part of the benefit

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program that is set by CIR. And I think sometimes the CIR, regulations and rules that they live by make it very difficult to respond in economic hard times. I know there have been bills from time to time that might change the powers and the considerations, statutory considerations, that the CIR takes into account in their determination. I think we may have to look at a lot of things like that, but you have to remember that employees are under usually two-year contracts that are set and it becomes very difficult to make those changes without changes in the CIR statutes. So there are so many things that are beyond the reach of the Appropriations Committee. Cash funds were brought up. You know, we have raided cash funds a lot. And Senator Carlson is right that there are different types of cash funds, some that are hybrids funded partly by tax dollars, partly by fees, some that are checkoff dollars, and we got into that during the special session. But of the \$3.5 billion that we look out annually, which is the approximate amount of the General Fund appropriations, a lot of those are beyond the reach of the Appropriations Committee, which means that cuts in other areas have got to be much higher than what we're talking about in across-the-board cuts. [LB935]

SENATOR ROBERT: One minute. [LB935]

SENATOR WIGHTMAN: So I'd ask you to keep that in mind. Obviously, I agree with Senator Utter, in part, that we need to be more probably proactive and less reactive. We do have the strategic Planning Committee that were working on this, this year, under Senator Harms's bill. I think we need to take a hard look at that and take some of these things into consideration as we move forward on the strategic planning. Thank you, Mr. President. [LB935]

SENATOR ROBERT: Thank you, Senator Wightman. Senator Dubas, you're recognized. [LB935]

SENATOR DUBAS: Thank you, Mr. President, members of the body. It's become quite evident that we've got some tough times that we're dealing with right now and the appropriate warnings are going out that tougher times are coming; we need to be paying attention. As Senator Wightman just stated, I think we've got some things in place, so that may help us turn these lemons into some lemonade, to a degree anyway. We've got the strategic Planning Committee. I think they're going to do some great things. I think the idea of getting the individual committees involved with the appropriations process and kind of prioritizing some things, I think that will be a good strategy also in making sure that we're not going to be causing the things, that give the best bang for our buck, problems by cutting into their budget. So I think while it's hard to be in these economic times, it also causes us to maybe become a little more creative and a little more aware and a little more willing to think outside the box and get some things going and never hurts to look for ways to be more efficient. And as we continue to ask government to do more with less, I think we're going to figure out ways to make that happen. Again, I, too, appreciate the comments that Senator Council made about

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the Affordable Housing Trust Fund. I would encourage you, if you don't know what this trust fund has done in your particular district, to contact the Department of Economic Development and ask them. Just in the year 2010, just this year, in my district I'm looking at over \$500,000 worth of help in housing funds. That's a nice little shot in the arm for my district. I would have a couple of questions for Senator Heidemann, if he would yield. [LB935]

SENATOR ROBERT: Senator Heidemann, you yield to a question from Senator Dubas? [LB935]

SENATOR HEIDEMANN: Yes. [LB935]

SENATOR DUBAS: Thank you, Senator Heidemann, and again thank you for the work that you've done with the Appropriations Committee. I notice that we have a lot more qualified applications for the homestead exemption and that, I'm going to guess, is due to the downturn in the economy and the incomes of the people that qualify for this program have suffered. Do you think as our economy turns around that this trend will be ongoing or are we going to continue to look at these kinds of deficits with the homestead exemption? [LB935]

SENATOR HEIDEMANN: This was a deficit for, I believe, the '09-10 year. If we would have to guess right now, the '10-11 year will still be a shortfall and we will have to...they will come in as a deficit, because we did not address that at this time. If we had to guess right now, it will probably be about \$5 million, just guessing. We did not address that so I will say that in the next budget cycle they will come in for another deficit, probably as big if not bigger than what we're seeing right now. [LB935]

SENATOR DUBAS: So we still are looking at this in the future but hopefully, as the economy improves, this particular part of the budget will follow suit. [LB935]

SENATOR HEIDEMANN: We would hope so. I think it was almost anticipated that this was going to be a little bit bigger than what we had originally planned for because of the economy. [LB935]

SENATOR DUBAS: Okay. And then on the Medicaid, the claw-back issue, now are these dollars that are coming in that we're counting as revenue or are they showing up as a savings in that we're spending less money? [LB935]

SENATOR HEIDEMANN: It's less of an appropriation. We will have \$18.7 million less as an appropriation because of this claw-back provision. [LB935]

SENATOR DUBAS: Will this be ongoing into the next biennium or is this just for now? [LB935]

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SENATOR HEIDEMANN: This is tied, the way I understand, to that ARRA funding. Just it's a different match rate and because of the different match rate we save this \$18.7 million. That would be my thought. Then it would be going away. [LB935]

SENATOR DUBAS: Okay. I appreciate that. Thank you, Senator Heidemann. [LB935]

SENATOR ROBERT: Thank you, Senator Dubas and Senator Heidemann. Senator Fischer, you're recognized. [LB935]

SENATOR FISCHER: Thank you, Mr. President and members. As I have looked through the blue book that we were given on the budget and also reading the amendment, AM2117, some things kind of jump out at me. And first off, I want to say I do appreciate the work the Appropriations Committee has done. I don't envy them their job and certainly in the out-years, in the future when we deal with budget issues, it will be a very difficult task for who's ever on that committee, and it will also be a difficult task for the members within this body. But if you look on page 15 of the blue book and you look at the transfers out of the General Fund, some things kind of strike me. First of all, the EPIC Fund, I was visiting with Senator Langemeier, you can see there there's some growth in that fund and then it goes away, and that's because we passed a bill this session that eliminates the fund because there's no longer a need for it. That money was used for incentives for credits for ethanol plants. Since I've been in this body, no new ethanol plants have qualified for those funds. They have gone away. And that's what we need to look at. We need to look at things that no longer need the help or possibly should go away because they are, in the opinion of some of us, no longer needed or not a function of state government. That brings me to another item on page 15. We have the Cultural Preservation Endowment Fund. We passed a bill this year on that too. We have a fund there that's \$500,000 in '09-10, we have another \$500,000 in '10-11, and then it jumps up to \$1.5 million. You know, I was on an arts council board for many years. I appreciate the arts. I love the arts. Is that a function of government? You know, in my opinion, it's not and I believe it's not certainly in the times that we are in right now and the budget concerns we have. I mentioned in an earlier debate on another item that we were discussing, if you look through state aid you'll see a lot of school districts that are being cut this year. Valentine High School or Valentine Community Schools now, we are no longer a Class I-Class VI, we had \$1.5 million we received in state aid to schools. It's being cut over \$900,000 this year. I think that \$1 million from Cultural Endowment would work really nicely in some of that. I don't know if I'll be putting an amendment on the budget on General File, maybe I'll wait till Select File or maybe we'll see how the discussion goes, but I think all of us need to be aware of what's in this budget and what you think are the responsibilities of government. As I said, I appreciate the work the Appropriations Committee does. They are nine people. They represent diverse values, diverse views that represent all the citizens in this state and they come forward with ideas. My good friend Senator Heidemann, I certainly

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appreciate the work that he does. But I think we need to stand up and look at this. Next year is going to be worse. [LB935]

SENATOR ROBERT: One minute. [LB935]

SENATOR FISCHER: Thank you, Mr. President. If you look at the amendment on page 2, I see that we're going to have, in Section 7, agency efficiency review plans, all state agencies shall develop this efficiency review plan, and then it outlines it. Why do we need that? What's that going to do? I would imagine...it sounds good, we're going to have efficiencies, we're going to have streamlining. Isn't that going to add to the costs of these agencies? Isn't it going to add more of a burden? Senator Wightman spoke about next year maybe the committees need to offer their suggestions. I can tell you, I can offer suggestions on the agencies that my committees deal...that my committee deals with and I'm sure every other committee in here can do that too. So why are we requesting this? We're not requesting it; we're demanding it. We're saying they shall come up with these plans. So I would be... [LB935]

SENATOR ROBERT: Time, Senator. [LB935]

SENATOR FISCHER: ...interested in hearing why. Thank you, Mr. President. [LB935]

SENATOR ROBERT: Thank you, Senator Fischer. Senator Dierks, you're recognized. [LB935]

SENATOR DIERKS: Thank you, Mr. President. I really hadn't intended to talk about this. I think that we all know what the problem is and we all know what...the efforts have been made to take care of it for this year. I just wanted to read you a little bit of a letter I got or an e-mail I got yesterday. It said...it's from the superintendent of schools at O'Neill. She said, Senator Dierks, I'm writing to be sure that you are aware of the impact the current state funding formula has had on districts in Holt County, O'Neill's loss being the most significant at over \$760,000. I know that times are tough and we all have to do our share. This does not help the property taxpayers of Holt County, as they are likely to be asked to pay more to make up some of the deficit funding. And then she concludes by saying, I appreciate your work on behalf of our district. I asked the question this morning at the briefing about what do we do about the needs, because as long as we have the needs the taxes are going to go up. I'm told today we're going to have to tighten the belt. I've been told that for a long time. How much tighter can that belt get? You've got property taxpayers out there that are paying \$150 a year property taxes per cow. I just have to say a little thing that happened to me last week. I was paying bills for the ranch and I got a bill from a guy that puts...does well work for us and he came over to put two leathers in the well. Now those are just little leather things that go in the cylinder to help suck the water out of the deal. The price of the two cylinders or the two leathers was \$16.16, that included the sales tax, \$16.16. I sent him a check for \$466.16:

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\$50 labor...\$400 labor and \$50 mileage. He drove about 20 miles. I can bellyache, but if I want him to do any work for me, I got to pay the bill. I got a bill the other day from a man that we buy metal from, mower repairs, guards and sickles, sections, rivets, and at the end of the bill he had a surcharge of 10 percent, so I called him up--I've known him since he's a little kid--and I said, what's that surcharge for. Well, he said, you know, everything I order costs a little bit more and, he said, instead of me going through after I get a new order and going to change the price on stuff, I just decided I'd put a surcharge on everything and work on it that way. Well, that's just wonderful. So what happens to my neighbors out there when they get ready to sell the calves? They can't go to the market after they get the calf sold and saying, look, I want a surcharge of 10 percent on these calves. We're sitting at the bottom of the totem pole. There's no give back there and belt tightening is going to have to stop. I don't understand how it's going to happen, but somehow we've got to cut the need. We've got to remove that need so that the property taxes are not going to be the only answer for these problems and I'm willing to work with you any way we can to do that. But this has been a big problem and I think, until we can do something about the need for the taxes, we're in trouble. Thank you, Mr. Speaker. [LB935]

SENATOR ROBERT: Thank you, Senator Dierks. Senator Council, you're recognized. [LB935]

SENATOR COUNCIL: Yes, thank you, Mr. President. I would like to continue with a couple of questions and I hate to put Senator Heidemann on the spot but he has the distinction of being the Chair of the committee. If he would yield to a couple more questions, please. [LB935]

SENATOR ROBERT: Senator Heidemann, will you yield to a question? [LB935]

SENATOR HEIDEMANN: Yes. [LB935]

SENATOR COUNCIL: Senator Heidemann, again looking at AM2117, on page 45, it's in the area of the Department of Health and Human Services, it refers to the program, the Rural Health Provider Incentive Program. And I was just wondering why the shift in funding. Prior to LB935 there was \$343,000 or almost \$344,000 from General Funds with about \$1.5 million coming from cash funds, and now \$300...\$643,000 is coming from General Funds and only \$1.1 million is coming from cash funds. Why the shift of the \$300,000 from a cash fund to a General Fund for this program? [LB935]

SENATOR HEIDEMANN: I'm going to do this from memory because this isn't before me right now. But if I remember right, this fund, we identified at the beginning of the biennium budget process, had quite a high fund cash...high cash fund limit or there was a lot of money in the cash funds. When we see that in Appropriations and we see that we can maybe access some of that money and reduce General Funds at that time, we

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access that cash fund money and save General Funds. [LB935]

SENATOR COUNCIL: Right. [LB935]

SENATOR HEIDEMANN: Unfortunately, right now then we draw down on those cash funds and then we have to come back in with General Funds to replace that to make that program whole. [LB935]

SENATOR COUNCIL: Okay, so that's what occurred in this situation. There's no...it's just maintaining that program at its existing funding level. [LB935]

SENATOR HEIDEMANN: Right. We were just...for momentarily we was getting it from a different source, from the cash fund instead of cash fund, General Fund. It changed the funding mix just a little bit but now we're getting back to where we need to be. [LB935]

SENATOR COUNCIL: Okay. And I want to thank you for responding to my question on the Department of Aeronautics. The information was provided that explained that that was increasing their spending authority limit to address some issues associated with retirements, and I appreciate that. But I guess one of the main points I want to address is that I know that the Appropriations Committee was asked to consider a transfer of \$300,000 from the Petroleum Release Trust Fund to be used as a grant to the city of Omaha to allow them to access \$2 million in federal money for lead hazard abatement. This particular fund in that particular amount had been previously transferred, I believe, back in 2005. The request was made to the Appropriations Committee and it's my understanding that the Appropriations Committee said that it wasn't appropriate to consider that transfer under the Appropriations Committee, that it needed to be considered under a separate bill to amend the statute. And before I go further, and I must state on the record that I'm, quite frankly, appalled that there are Omaha area senators who profess no knowledge of the tremendous health hazard presented by lead poisoning in the city of Omaha. [LB935]

SENATOR ROBERT: One minute. [LB935]

SENATOR COUNCIL: The city of Omaha has been designated a Superfund site because of the number of children who have been poisoned by lead. Those numbers average, for Douglas County alone, in excess of 200 new children a day. So for an Omaha area senator not to be aware of the fact that lead poisoning is a tremendous environmental hazard in the city of Omaha is troubling to me. But my point is I'm looking at page 63 and there appears to me to be a new appropriation of \$650,000 for the Game and Parks Commission. I have no recollection of a bill being introduced to provide \$665,000 for the salary costs of food service staff at Mahoney State Park, and my question to Senator Heidemann, if he would yield, is... [LB935]

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SENATOR ROBERT: Time, Senator. Thank you, Senator Council. Senator Nelson, you're recognized. [LB935]

SENATOR NELSON: Thank you, Mr. President, members of the body. I'll be brief. I'm not going to add to all the complimentary remarks for Senator Heidemann except to say that from my experience in the Navy, when we encountered rough waters, rough seas, it took a steady hand on the helm and we always had confidence in our captain, and I compare that with the Appropriations Committee and the steady hand that Senator Heidemann has had in guiding us through some stormy times at this time. The only thing I would want to mention is on page 15. I want to respond a little bit to Senator Fischer there with her concerns about the Cultural Preservation Endowment Fund. I think it was three years ago that we made a commitment with another \$5 million to the Cultural Endowment Fund and we have since, because of our downturn in revenue, we have adjusted that a couple times. And most recently, just during this very session, in LB1063 we made another adjustment to stretch that out, that commitment out, over a period of some additional years. We passed that on Final Reading, I think we were at Final Reading, but it will get to the Governor and hopefully will receive his approval. What we're doing there is stretching it out to an additional three or four years so it actually comes to \$500,000 a year, which is a very, very small part of our overall budget, and reflects a continuing concern that we have, and I think Senator Fischer would agree, that we have to provide a measure of support to our cultural activities, to the additional education in those areas that it provides in our schools across the state, and it's a very small amount and I think when we are faced with big cuts, as we all anticipate here in the next couple of years, that we should certainly look in other areas that have much larger appropriations for making any other further cuts. I just would strongly advocate against doing anything more than we already have here in appropriations as far as the Cultural Endowment Fund. Thank you, Mr. President, and thank you, members of the body. [LB935 LB1063]

SENATOR ROBERT: Thank you, Senator Nelson. Senator Fischer, you're recognized. [LB935]

SENATOR FISCHER: Thank you, Mr. President and members, and thank you, Senator Nelson. I realize that \$1.5 million is a small amount, but my question is, is that a responsibility of government, especially in the economic situation we find ourselves in? I would challenge that. We make commitments to a lot of different organizations, to a lot of different people, and we've made cuts to I think almost all of them. We're going to be looking at severe cuts to education, K-12 and also higher ed, next year because of where we're going to be. You guys all know that I am always looking for highway funding. I'll be looking for that next year. And while that \$1.5 million for cultural endowment is important and has a constituency out there, I would argue that our roads system and street repairs and potholes, in my opinion, are a higher responsibility of government and should be funded. Be that as it may, I still have questions. I haven't

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heard from anyone on Appropriations Committee so I would ask if Senator Heidemann would yield, please, Mr. President. [LB935]

SENATOR ROBERT: Senator Heidemann, will you yield to a question from Senator Fischer? [LB935]

SENATOR HEIDEMANN: Yes. [LB935]

SENATOR FISCHER: Thank you, Senator Heidemann. With regards to the agency efficiency review plans, can you tell me where this came from? I find...this is my...what is it, my sixth year that we've been here, Senator Heidemann? This is the first time I can remember language like that in a budget bill. I find it unusual and I am wondering why it is even there. Could you tell us, please? [LB935]

SENATOR HEIDEMANN: I think it was a concern or a thought of some people on the Appropriations Committee, and then it became a priority of the committee as a whole because of the situation that we're in and what we're facing in the out-years, that if we could get these agencies to come to us with some kind of an efficiency plan, because there will be cuts made in the out-years, and hopefully this would...I think the committee was thinking that if we got this from these agencies we could then go forward and make these cuts in a better fashion. [LB935]

SENATOR FISCHER: In your budgeting process that you currently use, aren't you doing that already? [LB935]

SENATOR HEIDEMANN: You could argue that, yes. We currently use, as I call it, at least, I call it a 95-5 process where they come in with their budget and they have a 5 percent modification where they identify where they could...where we could possibly look at 5 percent of their budget and make those cuts there. They are already prioritizing 95 percent of their budget not to, hopefully, do those cuts. [LB935]

SENATOR FISCHER: I mean I can tell you, with special session you and I discussed some of the agencies that Transportation and Telecommunications Committee deal with and, yes, those agencies did identify where they could find efficiencies when the need arose instead of being required to go through a planning process. Would you agree with that? [LB935]

SENATOR HEIDEMANN: In the 95-5, yes, I mean they're already going through that process to a point. And as we see the times before us and the challenges before us, we're actually thinking about expanding that, maybe 90-10, 85-15, maybe even 80-20, so that they have to come in with...identify a little bit more of their budget that is a little bit more vulnerable to our cuts, and also then the other 80 percent would be what they would consider their priorities. They are identifying that. [LB935]

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SENATOR FISCHER: So they're already doing that or you have plans that they will do this next year in our budget process? [LB935]

SENATOR HEIDEMANN: We have had those talks already. [LB935]

SENATOR ROBERT: One minute. [LB935]

SENATOR HEIDEMANN: That is not in place. That will be something that the Fiscal Office, I believe in how this process works, the DAS Budgeting Office will talk about how they want to go forward with the next year's budgeting process. [LB935]

SENATOR FISCHER: And, Senator Heidemann, last year we formed here in the Legislature a Planning Committee, a strategic Planning Committee. Would you think that some of this could happen within that process already? I mean I question why we are requiring more plans, more planning committees. We've established one now that's looking ahead at various, various options for the Legislature and the state in the future. I understand their subcommittee formed already in that committee, so wouldn't...couldn't this take place within that context instead of the Appropriations Committee requiring it? [LB935]

SENATOR ROBERT: Time, Senators. [LB935]

SENATOR FISCHER: Thank you. [LB935]

SENATOR ROBERT: Thank you, Senator Fischer and Senator Heidemann. Senator Council, you're recognized. This is your third time. [LB935]

SENATOR COUNCIL: Yes, thank you, Mr. President. I'm going to get back to the question I was posing, looking at page 63 of AM2117. It's the Game and Parks Commission and it specifically provides for a \$665,000 increase in the salary limit of Program item 549, it states for a salary cost of food service staff at Mahoney State Park. Senator Heidemann, if he would yield to a question and provide an explanation as to the basis for this increase, if it's a salary...just an increase in their salary limit, where is...where were those funds coming from and, if not, why isn't this item the subject of a separate bill? [LB935]

SENATOR ROBERT: Senator Heidemann, you yield? [LB935]

SENATOR HEIDEMANN: There are certain things that we can do in our budget bills and increasing and decreasing PSL is one of them. This issue right here is actually something that we had taken away from them. They came in to us, and I believe this would have been a year ago in January or February at their public hearing. They talked

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to us about how they could do things better, about how they could do things more efficient. One of them was to go to privatization of their food services and they thought they could do it in a cheaper fashion. We thought to probably encourage this a little bit, because this sounded good to us, we actually took all their PSL away from them for the food service part of it so that they would actually look at this a little bit harder. They came back to us this year. They are still looking at this but just in case it doesn't happen in time or they decide it is not the best fashion to go forward, we give them their PSL back but they are only going to be able to use it or they will only use it if they don't privatize and they continue on as they are right now. So this is no new PSL by any means. This is something that we had taken back from them to encourage them to do some a little bit, and now we're just giving it back because we don't know probably if they're going to get it done in time. [LB935]

SENATOR COUNCIL: And what is the source of those funds? Is that...are those General Fund dollars? [LB935]

SENATOR HEIDEMANN: I believe the Game and Parks Commission operates both under cash fund and General Funds. [LB935]

SENATOR COUNCIL: Okay, but we don't know whether this is specifically from the portion of their General Fund appropriation or their cash fund appropriation. [LB935]

SENATOR HEIDEMANN: It's a mix. It would be both. [LB935]

SENATOR COUNCIL: Would it be possible to get those numbers? [LB935]

SENATOR HEIDEMANN: We would try to answer any number of questions that you might desire. [LB935]

SENATOR COUNCIL: Right. And my final question relates to the Department of Administrative Services Program 605, beginning on page 76 of AM2117. And I'm not clear on what revolving fund it is that is involved in the Personnel Division and why there's a \$2 million increase in that revolving fund. Senator Heidemann, could you enlighten me? [LB935]

SENATOR HEIDEMANN: You know, I believe, and this is a little bit from memory, is they came in to us and asking for an increase of this amount for their temporary employment services. They've identified that need. There wasn't enough of an appropriation to accomplish that. The Appropriations Committee looked at that issue and we agreed with them and give them that \$2.4 million. [LB935]

SENATOR COUNCIL: Okay. But how does this relate to the across-the-board budget cuts in the other departments and... [LB935]

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SENATOR ROBERT: One minute. [LB935]

SENATOR COUNCIL: ...their having to reduce their personnel costs, yet DAS is being granted and allocated \$2.5 million more? [LB935]

SENATOR HEIDEMANN: The way a revolving fund works, there are other agencies that are buying this service, Senator, and to pay for this service, those agencies have to, through a revolving fund, have to pay DAS Budgeting to accomplish this. [LB935]

SENATOR COUNCIL: Okay. So these dollars are being used by other departments to cover part-time personnel? [LB935]

SENATOR HEIDEMANN: Other departments are asking for temporary employment services. In order to accomplish this through DAS, we have to give them this budget authority to hire these people. Then they go out and work for these other agencies and then are paid through revolving funds. [LB935]

SENATOR ROBERT: Time, Senators. [LB935]

SENATOR COUNCIL: All right. [LB935]

SENATOR ROBERT: Thank you, Senator Council. Senator Fischer, you're recognized. This is your third opportunity. [LB935]

SENATOR FISCHER: Thank you, Mr. President and members. I'm kind of stuck on Section 7 here on the amendment with the agency efficiency review plans. As I said, this is my sixth year going through a budget. I don't remember seeing this in the past. Obviously, the Appropriations Committee felt it was needed and would be a good deal to have in the bill. I disagree with that. Senator Heidemann, would he yield for questions, please? [LB935]

SENATOR ROBERT: Senator Heidemann, would you yield to a question? [LB935]

SENATOR HEIDEMANN: Yes. [LB935]

SENATOR FISCHER: Senator Heidemann, as I look in here, I see that after the agencies are required to do this...well, let me...let me go back. One of the items here, as you see on page 3, if anyone in the body is interested in following along, on line 2, part (4) there's a review of all mandates and requirements imposed on the agency. That review of all mandates, is that state and federal mandates? [LB935]

SENATOR HEIDEMANN: I would have to say that they would be all, yes. [LB935]

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SENATOR FISCHER: How long...how long do you think it would take an agency to come up with that? As a former school board member, I can tell you, especially with a small district, it would take our superintendent a number of hours just to come up with the mandates that are required from a local school district. Do you know about how long that would take for an agency to figure out how many mandates they're dealing with? [LB935]

SENATOR HEIDEMANN: It could be quite extensive and I think the question back to you: Do you expect them to do it right or not? [LB935]

SENATOR FISCHER: (Laugh) I sat in on some of the budget hearings we had in special session when the Appropriations Committee, you guys were doing your work and, I might add, doing it well. I remember the question was asked by a couple of your members of the agency heads about, I believe, it was the...was it the Administrative Services study, the number of job openings? Was that it? [LB935]

SENATOR HEIDEMANN: The vacancy savings maybe? [LB935]

SENATOR FISCHER: Yes, and... [LB935]

SENATOR HEIDEMANN: Maybe you was talking about DAS... [LB935]

SENATOR FISCHER: Yes, the DAS deal on how many vacancies there were, how many openings. And when I sat through I don't know how many hours listening to your committee, I don't believe that report was ever correct, was it? [LB935]

SENATOR HEIDEMANN: Depending on who you would ask, I would say. It was correct according to DAS at that time, as they was given the information from those agencies, but probably looking at it there would be questioning...there were people that would question whether it was actually correct, but as we know it, yes. [LB935]

SENATOR FISCHER: It depends on the information that you're given at the time with a report, which I would say this would apply to any planning process also. As I said, I think...I think that you folks already do that in the budgeting process. I think you look at it. I know that I look through the materials that you provide to all of us as members of this body and I can look through each agency's and I can see where the cuts are and what the programs are, and I can look up just what those programs are, to see. To me, that...I'm taking on the responsibility of doing my job as a senator in here to understand the budget and look through...look through those programs and see what I think is important to cut. That's one reason why I'm questioning this planning process. [LB935]

SENATOR ROBERT: One minute. [LB935]

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SENATOR FISCHER: Thank you, Mr. President. As we look...as we continue to look on this, on the structural and operational changes that are needed for an agency to move from a five-day to a four-day week, has this body decided to do that? I don't remember deciding to do that but, yet, we're going to require state agencies to come up with a plan just in case we may decide to do that. I really have a lot of questions about that part of this budget amendment, and I think we seriously need to consider if this plan is needed. Once again, I thank you, Senator Heidemann and all committee members, for your work. Please don't take my questioning on this or my disagreement with you as a reflection that I don't appreciate your work, because I certainly do. Thank you, Mr. President. [LB935]

SENATOR ROBERT: Thank you, Senator Fischer. Seeing no other lights on, Senator Heidemann, you're recognized to close on AM2185. [LB935]

SENATOR HEIDEMANN: Thank you, Mr. President, fellow members of the body. As I had stated an hour or so ago that AM2185 actually will fully fund TEEOSA. I think it's, because everybody from the Appropriations Committee signed on the bill, it's definitely a priority of the Appropriations Committee. I think it's the right thing to do and I urge the body to support AM2185 to AM2117 to LB935. [LB935]

SENATOR ROBERT: Thank you, Senator Heidemann. Members, you've heard the closing to AM2185, the amendment to the committee amendments. The question before the body is, shall it be adopted? All those in favor vote yea; opposed, vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB935]

CLERK: 39 ayes, 0 nays, Mr. President, on the adoption of the amendment to the committee amendments. [LB935]

SENATOR ROBERT: AM2185 is adopted. Items, Mr. Clerk? [LB935]

CLERK: I do, Mr. President. Thank you. I have a Reference report referring certain gubernatorial appointees to standing committee for confirmation hearing. As a result of that, a notice of hearing from Health and Human Services. New A bill. (Read LB1094A by title for the first time.) Senator Sullivan would like to print an amendment to LB965, and the Judiciary Committee reports LB1102 to General File with committee amendments attached. (Legislative Journal pages 920-926.) [LB1094A LB965 LB1102]

Mr. President, the second amendment to the committee amendments, Senator Heidemann, AM2169. (Legislative Journal page 852.) [LB935]

SENATOR ROBERT: Senator Heidemann, you're recognized to open on the amendment, AM2169. [LB935]

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SENATOR HEIDEMANN: Thank you, Mr. President and fellow members of the body. This was an issue that came to us a little bit too late to put it in our main amendment to LB935. I bring it to you right now. I believe it's something that not only is a priority of mine and probably the Appropriations Committee but hopefully the whole body. The Power Review Board came to me and we had a meeting with various people on the Review Board and they brought the issue to us that they're are now a member of the Southwest Power Pool and the person that is in charge of going down to these meetings, because there are a lot of technical things that come up, he's beginning to think that maybe we are, as a state, not properly going down there and not properly, adequately representing what we need. And they came to us and asked for a \$250,000 appropriation in the out-year--this would be a...it's not General Fund money, it's a cash-funded agency--to allow them to get outside help so that when they go down to the Southwest Power Pool meetings they would be a little bit more better represented. When you look at the scope of things, what they're thinking about doing, they start throwing out the number of a \$10 billion infrastructure upgrade that the Southwest Power Pool is thinking about and the majority of that is to allow for better transportation, from what I understand it, of the renewable energy that hopefully will get up and running across this area. I think this would be a good use of money, even though it's not General Funds. We look upon even all the cash-funded agencies, how they're spending their money. I believe this is something that is very needed and hopefully, we can have some discussion on this, but hopefully the body will approve this \$250,000 appropriation in the out-year for the Power Review Board. This is something that I wasn't very familiar with before they came to me and started talking to me about it. Because of that, we went and talked to Senator Langemeier and he has agreed to take the rest of my time and probably explain it just a little bit better than what I could. [LB935]

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SENATOR CARLSON: Thank you, Senator Heidemann. Senator Langemeier, you have 7 minutes. [LB935]

SENATOR LANGEMEIER: Mr. President, members of the body, thank you, Senator Heidemann. What we have here is Nebraska Public Power, LES, and OPPD joined the Southwest Power Pool last April and, as they joined the Southwest Power Pool, one of the biggest things that Southwest Power Pool is talking about is transmission. We've heard all these issues about transmission. And so as they're having this discussion over transmission, they're talking about \$10 billion worth of invested transmission across the Southwest Power Pool, which roughly covers Nebraska, Kansas, Oklahoma, northern Texas, and a west portion of New Mexico. And so they're trying to decide how to divvy up who pays their fair share for this \$10 billion worth of transmission. And this has nothing to do with my wind bill that's coming up here in a few days. It's just standard transmission that they're talking about. And so they're having very technical committee

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meetings talking about it should be paid for by those that benefit in rational proportions. If you benefit more, you should pay more. And so the Power Review Board finds themselves short of a real technical engineer on their staff to go into those committees and make sure we're not getting charged more than what we're gaining benefit from. So the members that pay the \$250,000 in, which are Nebraska Public Power, LES, and OPPD, that membership pays the money in to the Power Review Board so the Power Review Board then asks for us to spend it. Those three individuals are the ones pushing the Power Review Board to add this type of staff. We don't know if it will be a contracted engineer...engineering firm that they'll use to sit in on their behalf or they'll actually hire an employee. And so what they're asking for is to allow them to have a fee structure out to those three members and a total of \$250,000, or less if they can find somebody that will do it for less, but we give them the authority to levy that fee against those three members, use that money to represent those members within the Southwest Power Pool to make sure that those members aren't...are getting exactly an even proportion of expense versus the benefit of transmission. So I would ask for your support. The individuals that have to pay it feel that it's very important to have somebody with these skills in there negotiating to make sure we get our right proportional share of this bill to do this transmission. So with that, we'd ask for your adoption of AM2169. And if there are questions that I can further explain, I'm more than happy to do that. And I'd thank Senator Heidemann, for the time. [LB935]

SENATOR CARLSON: Thank you, Senator Langemeier. Members, you've heard the opening on AM2169. The floor is now open for discussion. Seeing no lights, Senator Heidemann, you're recognized to close. [LB935]

SENATOR HEIDEMANN: Thank you, Mr. President, fellow members of the body. I appreciate Senator Langemeier's assist on this. He's got a little bit more expertise in this one than I do. I do think this is a good use of this agency's cash fund authority; \$250,000, they'd actually fund this themselves. I think it's a good use of their money. And I urge adoption of AM2169. Thank you. [LB935]

SENATOR CARLSON: Thank you, Senator Heidemann. Members, you've heard the closing on the amendment. The question is, shall the amendment to the committee amendment to LB935 be adopted? All those in favor vote aye; all opposed vote nay. Record, Mr. Clerk. [LB935]

CLERK: 42 ayes, 0 nays, Mr. President, on the adoption of the amendment to the committee amendments. [LB935]

SENATOR CARLSON: Thank you. The amendment is adopted. Next item, Mr. Clerk. [LB935]

CLERK: Mr. President, Senator Heidemann would move to amend the committee

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amendments with AM2195. (Legislative Journal pages 926-927.) [LB935]

SENATOR CARLSON: Senator Heidemann, you're recognized to open on AM2195. [LB935]

SENATOR HEIDEMANN: Thank you, Mr. President and fellow members of the body. This amendment just has 11 different technical pieces that we need to put in to make things right with the main amendment, AM2117. They're small amendments. They don't affect the bottom line. I will just list them off very briefly. Nothing major in this one. (1) purpose is to add the homestead deficit omitted in AM2117. It doesn't affect the bottom line but we just didn't give them the \$3.6 million authority to go spend that. (2) remove a section that is not amended, which is Section 126. (3) is to correct a reference to the proper section. (4) includes capital construction as part of the language, so you see it; just after "education" you would insert "capital construction." (5) correct appropriation that was in the wrong year; (6) correct an error that was in the program total salary limit lines; (7) increase salary limit in the first year to allow for the 27th pay period; (8) purpose to correct an unintended reduction to the current year appropriation; (9) to correct an earmark; (10) change the dollar amount in the state earmark to reflect the reduced appropriation amount; and the last one was to correct appropriation numbers that were transposed and correct the associated earmark. I appreciate your patience with this. We went down to the wire, there was no doubt about this, when we did AM2117. There was a lot of work done, very carefully I might add, but there are things that do happen. This was read and reread and read again. After we got it up and running, we realized that there need to be some changes and that's what AM2195 will do. And I urge your adoption of this amendment to AM2117. [LB935]

SENATOR CARLSON: Thank you, Senator Heidemann. You've heard the opening on AM2195. The floor is now open for debate. Seeing no one wishing to speak, Senator Heidemann is recognized to close and he waives closing. The question is, shall AM2195 to LB935 be adopted? All those in favor vote aye; opposed, nay. Mr. Clerk, please record. [LB935]

CLERK: 41 ayes, 0 nays, Mr. President, on adoption of Senator Heidemann's amendment. [LB935]

SENATOR CARLSON: Thank you. The amendment is adopted. We return now to the floor for discussion on AM2117. Seeing no lights, Senator Heidemann, you're recognized to close on AM2117. [LB935]

SENATOR HEIDEMANN: Thank you, Mr. President and fellow members of the body. I think it's been a good discussion. AM2117 actually becomes the bill so we're pretty much voting on LB935 right now. I do appreciate discussion. I think it's important that we realize what we're doing and what we're voting on. I think it's been a good

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discussion. I think there are concerns. I've heard from Senator Stuthman and Senator Dierks about we might be pushing some actions this year and in the out-years off to property tax. That is a concern of mine also. I believe that all agencies and all parts of government in the state of Nebraska have to stand up and be part of that solution and hopefully we don't push that off to property tax. That would be my hope. There are a lot of things in AM2117. We've talked about the majority of them. Some of them weren't the easiest thing to come up to, but overall I believe that we are acting responsibly by passing this deficit bill, LB935. And I ask your support. Thank you. [LB935]

SENATOR CARLSON: Thank you, Senator Heidemann. Members, you've heard the closing on AM2117. Question is, shall the amendment be adopted? All those in favor vote aye; those opposed vote nay. Are there other members who wish to vote? Record, Mr. Clerk. [LB935]

CLERK: 44 ayes, 0 nays, Mr. President, on adoption of the committee amendments. [LB935]

SENATOR CARLSON: The amendment is adopted. [LB935]

CLERK: I have nothing further on the bill, Mr. President. [LB935]

SENATOR CARLSON: Thank you, Mr. Clerk. Are there any other senators wishing to speak on LB935? Seeing none, Senator Heidemann, you're recognized to close. [LB935]

SENATOR HEIDEMANN: Thank you, Mr. President, fellow members of the body. Thank you for support of AM2117. AM2117 was actually...now becomes the bill. I appreciate your support on that and your continuation support on LB935. [LB935]

SENATOR CARLSON: Thank you, Senator Heidemann. You've heard the closing on LB935. The question is, shall LB935 be advanced? All those in favor vote aye; those opposed vote nay. Are there other senators who wish to vote? Record, Mr. Clerk. [LB935]

CLERK: 45 ayes, 0 nays, Mr. President, on the advancement of LB935. [LB935]

SENATOR CARLSON: Thank you, Mr. Clerk. LB935 does advance. Mr. Clerk, items for the record? [LB935]

CLERK: I have nothing at this time, Mr. President. [LB935]

SENATOR CARLSON: Next item.

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CLERK: LB317, introduced by the Speaker at the request of the Governor. (Read title.) Bill was introduced on January 15 of last year, at that time referred to the Appropriations Committee, bill was advanced to General File. There are Appropriations Committee amendments pending. (AM2101, Legislative Journal page 828.) [LB317]

SENATOR CARLSON: Thank you, Mr. Clerk. Speaker Flood, you're recognized. Okay, I'm sorry. Senator Heidemann, you're recognized to open on LB317. [LB317]

SENATOR HEIDEMANN: Thank you, Mr. President. The committee amendment does become the bill so I will open on the committee amendment, if I could. [LB317]

SENATOR CARLSON: You may open on the committee amendment. [LB317]

SENATOR HEIDEMANN: Thank you, Mr. President, fellow members of the body. If you went to the briefing this morning and some of the discussion that we had on the floor, we talked about what we had to make up after the Forecasting Board lowered our revenues by right at \$31 million and then when TEEOSA came in approximately \$15 million and then another \$3 million on top of that of \$18 million. And we did go to work in a short period of time and we was all...we was able to make it almost all the way there but we wasn't able to quite make it all the way there. This is something that...probably that I would have liked to avoided, to go to the Cash Reserve, looking at the challenges that we have in the out-year, to leave as much money as possible, but we wasn't able to make it quite all the way and this will be a \$3 million Cash Reserve. When you look at the scope of thing there's...when we...before we started this process with this amendment, it actually shows right at \$325 million, I believe. We're going to access about 1 percent of the...a little less than 1 percent of the Cash Reserve, something that we probably would have preferred not to do but, in the scope of things, it's not a huge amount. With that, I will take any questions that you might have, but I urge your adoption of AM2101 to LB317. [LB317]

SENATOR CARLSON: Thank you, Senator Heidemann. Members, you've heard the opening on the amendment. Floor is now open for discussion. Seeing no one wishing to speak, Senator Heidemann, you're recognized to close. Senator Heidemann waives closing and the question is, shall AM2101 be adopted? All those in favor vote aye; those opposed vote nay. Are there other senators who wish to vote? Record, Mr. Clerk. [LB317]

CLERK: 40 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB317]

SENATOR CARLSON: Thank you. AM2101 is adopted. We return to discussion of LB317. Seeing no one wishing to speak, Senator Heidemann, you're recognized to close on LB317. Senator Heidemann waives closing. Question is, shall LB317 be

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advanced? All those in favor vote aye; those opposed vote nay. Has everyone voted who wishes to vote? Record, Mr. Clerk. [LB317]

CLERK: 40 ayes, 0 nays, Mr. President, on the advancement of LB317. [LB317]

SENATOR CARLSON: LB317 does advance. Mr. Clerk, next item. [LB317]

CLERK: Mr. President, the next bill, LB1106 offered by Senator Nordquist. (Read title.) Bill was introduced on January 21 of this year, at that time referred to the Health and Human Services Committee. The bill was advanced to General File. There are Health and Human Services Committee amendments pending. (AM1948, Legislative Journal page 634.) [LB1106]

SENATOR CARLSON: Thank you, Mr. Clerk. Senator Nordquist, you're recognized to open on LB1106. [LB1106]

SENATOR NORDQUIST: Thank you, Mr. President and members. This afternoon I introduce LB1106 as part of the budget package. LB1106 seeks to remove administrative obstacles to developing school-based health centers across Nebraska, and I believe LB1106 represents a major step forward for children's healthcare in our state. Under LB1106, school-based health centers will be established as partnerships between school districts and sponsoring healthcare facilities to provide on-site primary care services for children, adolescents, and to promote health and educational success of school-age children and adolescents. LB1106 will ensure that Medicaid-eligible students will be able to receive services at these clinics and that those services will be appropriately reimbursed to the provider. School-based health centers help bring important healthcare to students who need it. Evidence from scholarly journals show that school-based health centers help enrollees avoid trips to the ER and provide easy access and efficient management for chronic illnesses, such as asthma and diabetes. For many working families, we know it's difficult to get their children to the doctor, especially with primary care physicians sometimes having multiple days or even up to a week of wait. Unfortunately, delay in treatment can often cause significant complications and, with them, more expense. And these are...we are talking mainly about Medicaid-eligible children here so that's expense to the state. According to a study published in the Journal of School Health, students attending schools with school-based health centers had higher academic expectations, were more engaged in their learning environment, and the school-based health centers also decreased the number of students who are absent due to illness. Another study from the AMA, the American Medical Association, showed that the use of emergent or urgent care dropped by nearly half when adolescents had access to a school-based health center. On a specific local level, studies have shown strong positive benefits. In Cincinnati, the cost of hospitalization dropped 85 percent for children with school-based health centers at their school facility. Emergency room visits for asthma were decreased by more than half in a

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New York City study for students with access to a school-based health center. Under current law, there is nothing restricting school districts from establishing school-based health centers. However, depending on their location, those healthcare providers at those facilities may or may not have their services reimbursed by Medicaid. The distinction lies in whether the health center is located in a fee-for-service or a managed care coverage area. Right now, Grand Island is the home to the only school-based health center, at least that I know of, in the state. The center is able to provide care to Medicaid-eligible students under law because Grand Island is in 1 of the 83 counties in Nebraska's fee-for-service coverage area. The services that healthcare professionals provide at the Grand Island High School and middle school, they get paid for each service that they provide, much like a standalone clinic would. However, things aren't quite so simple in the ten counties in Nebraska's managed care coverage area. In Cass, Dodge, Douglas, Gage, Lancaster, Otoe, Sarpy, Saunders, Seward, and Washington Counties, Medicaid patients must start all care by going to their primary care physician first. LB1106 provides that students can receive care at school-based health centers without first visiting their primary care physician. By making this change, the bill opens up the door for more school-based health centers, especially in these ten counties. In addition to removing this administrative hurdle, I want to explain the cost-savings provisions in LB1106 that relates to the way our state covers low-income, legally residing, noncitizen, permanent residents. Prior to passage of the CHIP Reauthorization Act by the federal government in 2009, last year, states could not receive federal dollars to cover legal, permanent resident children and pregnant women until they had been in the country for five years. Even so, Nebraska had made a policy decision to cover all legal, permanent residents regardless of their date of entry and did so without federal matching funds for those residents. It has been a policy since 1996 that our state has done that with 100 percent state General Funds. Well, now, since the federal law has changed and the federal funds are available, the second provision of LB1106 would require the Department of Health and Human Services to submit a state plan amendment or waiver to CMS to receive the federal matching dollars. The cost-saving provisions of the bill more than pays for any expenses incurred by the school-based health center and the positive fiscal impact it will have on our state is augmented by the committee amendment. Along with some clarifying language, the amendment increases community participation in health centers and expands the cost-saving provisions of the bill. In all, LB1106 with the committee amendment reduces General Fund obligations over the next...each year by over a million dollars in the next two fiscal years and beyond. Again, with the passage of this bill, I believe it's a step forward for children's healthcare to get them access at a convenient location in our schools and will have a significant positive impact on our state's General Fund. I'd like to thank Senator Gloor for his guidance and help in putting this bill together. Senator Gloor, 12 years ago, led the effort in Grand Island to establish the schools first...or the state's school-based health center in Grand Island, the first one, when he was the administrator at the hospital out there. I did hand out a sheet, one that says "Student Wellness Center." That kind of is a one-page description of what goes on in Grand Island at the high school and

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middle school. And then also a one-page document about school-based health centers in general, with the fiscal information on the back. I'd also like to thank Senator Gay and members of the Health Committee for unanimously advancing LB1106 to General File, and Senator Heidemann and fellow members of the Appropriations Committee for unanimously including LB1106 in the budget package. Thank you. [LB1106]

SENATOR CARLSON: Thank you, Senator Nordquist. As the Clerk stated, there are amendments from the Health and Human Services Committee. Senator Gay, as Chair of the committee, you're recognized to open on AM1948. [LB1106]

SENATOR GAY: Thank you, Mr. President. The committee amendment adds the School Health Center Advisory Council to the bill. The advisory council is made up of representatives of school administration, the sponsoring facility, a parent of a child in the school district, and may include a student representative. It adds that a school-based health center not only will not perform abortion services or refer for counseling for abortion services, as specified in the bill, but the committee amendment states that school-based health centers will not dispense, prescribe, or counsel for contraceptive drugs or devices. It removes "learning community" from the bill; adds that school-based health centers will not serve as a child's dental home; and adds for treatment for pregnant women who are lawfully residing in the United States and who are otherwise eligible for Medicaid pursuant to the federal CHIP program. Also under this bill, the amendment also allows the state to obtain a federal match, as Senator Nordquist talked about, that we are going to help offset the cost of this under the services provided, that now under the managed care program we now can put this program under there and that's where some of this cost savings comes in. It was passed unanimously by the committee and sent to the floor. Thank you, Mr. President. [LB1106]

SENATOR CARLSON: Thank you, Senator Gay. Members, you've heard the opening on LB1106 and the committee amendment, AM1948. The floor is now open for debate. Senators wishing to speak include Senator Gloor, Nordquist, Dierks, Howard, Adams, and others. Senator Gloor, you're recognized. [LB1106]

SENATOR GLOOR: Thank you, Mr. President. Good afternoon, members. I am clearly very much in support of AM1948 and LB1106, and I appreciate Senator Nordquist introducing this legislation, which I think is an important step towards providing care, I believe quality care, to adolescents in this state. We all talk about concerns about providing care, behavioral, physical healthcare to our children. This is an opportunity to do that. Imagine, if you would, and I want to put this in perspective because I'm sure...and I have heard some comments already as I sit in my seat of people who are wondering, now, why are we talking about this? Imagine, if you would, that in your community, large or small, you hear that somebody is hanging up their shingle to provide medical services to the population of your community and you'd say great, and

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then you heard, and oh, by the way, they're just going to provide care to children--and this could be in Ogallala, it could be in Valentine, it could be in Alliance, it could be an area of Lincoln--and you'd say, even better, you mean they're just going to provide services for children? Yes. And in fact, they will take insurance if they have it; they'll take Medicaid if they have it; they'll figure out a way to provide that care at no cost for children who need it. And you would say, this is a wonderful service; why would somebody not want to go ahead and do that? Well, in almost every county in this state that can be done except in the ten counties that Senator Nordquist mentioned because the state has, not faulting them but from a process standpoint, the state has a contract for managed care within those ten counties, and in order to start this clinic and provide Medicaid coverage to these children, it requires us as a Legislature to take this specific action. That's the reason we're talking about it. In any other county, this initiative could start in any of your schools and would require no action by the Legislature because we exist and work under current Medicaid arrangements. Anyone can make application to Medicaid, be certified to provide services to Medicaid, but we have an exception in these ten counties. And so Senator Nordquist has to take a very good idea, with a lot of support within Omaha and within certain specific schools, and come to us to make this exception. I want to make sure that's clear because there may be a lot of questions about how these programs operate. I can assure you that with 12 years of experience in Grand Island, this has been a wonderful, wonderful service that provides not only medical services but also we found ourselves quickly being asked by the medical providers to expand into a small behavior health piece. There are, as I know, at least two cases under the behavioral health medicine component where, because of this clinic, staff were able to stop two suicides that were in process with school children, so these clinics make a difference in far more substantive ways than treating sore throats. In our clinic in the Grand Island public schools that serves primary senior high and one of the middle schools, only about 25 percent of the children are Medicaid children. You'll have children from all walks of life, but obviously the placement of these clinics and the type of school they're placed in will determine the percentage of no pay, the percentage of Medicaid, the percentage of insurance. They do not pay their own way. They do require a degree of subsidization, but that's up to the clinics to decide. Our responsibility is to make sure that we are comfortable that the state's Medicaid dollars would be appropriately used in this case. And I can tell you I appreciate Senator Nordquist coming to me very early on. The sorts of things that they will do are the appropriate things that I think we'd all be comfortable with. The things they will not do are refer for abortions, get involved in sterilizations, things that perhaps... [LB1106]

SENATOR CARLSON: One minute. [LB1106]

SENATOR GLOOR: ...would render a degree of concern in a broader population to the extent that these programs would not be able to start. We've been very successful. There have been no substantive complaints against the program in Grand Island for 12 years. It's done what it purported to do and will continue to do it, hopefully, for years to

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come. This can make an important difference in health to a number of school children in your community. And I would say again the reason we're discussing this is because it is exception...an exception to the state's managed care Medicaid contract. It's a good program. Let's let a shingle be hung out in the schools in Omaha to provide healthcare for our children. Thank you, Mr. President. [LB1106]

SENATOR CARLSON: Thank you, Senator Gloor. Senator Nordquist, you're recognized. [LB1106]

SENATOR NORDQUIST: Thank you, Mr. President. Again, I just want to stand and state my support for the committee amendment. I worked closely with Senator Gay and his staff, Senator Gloor in putting this together. Really does a few key things. First, it increases community participation in the school health center--and that was an idea from Senator Gloor, I think it's a great idea--to ensure that parents, administrators, and the healthcare provider in the school, and potentially students, depending on their age and everything, that they could serve on an advisory council so that the voice of the community is really heard in what's being done there. The language is...this tightens language on prohibition on abortion and contraceptive services, which I fully support, and then it ensures that we fully get full federal reimbursement for the legal, permanent resident provisions in the bill, which will increase the General Fund savings of this bill by about \$1.2 million over the next couple years and into the future. Really, you know, after reading all the literature about school-based health centers, I was pretty convinced, but one of the reasons in Nebraska, I think, we have good quality healthcare in Nebraska. We have a lot of great institutions. A couple numbers from the Commonwealth Fund, which does national surveys of access and quality, say we're number six in the country in terms of quality. We have good quality, top-notch providers. But in terms of access, especially for low-income people, we're certainly out of the midrange. We're down into the high 30s actually in our rankings. So that's what the purpose of this is, is to get those high quality providers in a place where they can get...where patients can get better access, and in this case it's students. Thank you. [LB1106]

SENATOR CARLSON: Thank you, Senator Nordquist. Senator Dierks, you're recognized. [LB1106]

SENATOR DIERKS: Thank you, Mr. President, members of the Legislature. I think that Senator Gloor is a go-to man here. Could I have a conversation with him? [LB1106]

SENATOR CARLSON: Senator Gloor, would you yield? [LB1106]

SENATOR GLOOR: I certainly would. [LB1106]

SENATOR DIERKS: Senator Gloor, a number of years ago we had some funding that came down from federal government that set up what we called abstinence-only

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programs for the high schools. I think Grand Island had some...got some of the money, there were about five schools we funded to begin with and I know that Norfolk was one of them, and the people that I have talked with since that were very pleased with what that did. When I see something like the term school-based health things, it throws up an alarm to me. And I think that as I read through here I don't need to be alarmed, because it looks to me like you have excluded like not...services not provided is abortions. But in the services provided and we talk about adolescent care and we talk about patient education. How far does that go? What does that entail? Is there anything that gets into...well, not abortion but at least sexual counseling? [LB1106]

SENATOR GLOOR: That's an excellent question, Senator Dierks, and it gets to the heart of why you need to have a governing council, why you need to include parents and parents' authorizations before services can be provided to these children. In its basic form, the responsibility of this clinic is to provide health services, and the health education component that's usually referenced in there would be if they're taking care of a child and that child has a fever, that health education may be you need to stay home, take aspirin, drink fluid, as opposed to getting into a whole variety of programs that roll through the schools that may touch on things that have to do with reproduction, may have to do with nutrition. It's not the responsibility of the student wellness center to be the health education center for the school. It's a service that you get from a traditional clinic. It may be that other components of that school do that, school nurse may be involved in doing that, but don't confuse this clinic with the school nurse. They are, at least in our case, two separate entities. One is an actual treatment clinic. The school nurse then gets involved in a host of other things that are usually covered under statute. [LB1106]

SENATOR DIERKS: I need to ask you some philosophy before we quit here. Where have we been all these years without this? How does it get paid for now? Can you talk about that a little bit? [LB1106]

SENATOR GLOOR: Well, I can talk about it in our instance. We were approached in Grand Island by the schools itself and they gave us a couple of examples of challenges they had with students who had a hard time getting in, registered for school, because they couldn't get their immunizations up to date. They had a hard time getting an appointment at the doctor's office unless it was maybe three or four weeks out. What would then happen is those students were sent away until they came back with updated immunization records. And in some cases, those students didn't come back and then we had truancy problems. Under the scenario of the clinic, they can be sent down the hallway to the student wellness center, get those immunizations, and start school that very day. There were other cases of kids who had what were considered to be some chronic challenging problems, diabetes, otherwise--diabetes is an example of that--who would have absences related to having to leave the school, try and get appointments and get in to see physicians. In this case... [LB1106]

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SENATOR CARLSON: One minute. [LB1106]

SENATOR GLOOR: ...thank you, Mr. President,...they could get some treatments at the school and stay in school during that particular school day. [LB1106]

SENATOR DIERKS: Okay, how about the funding? I mean is this...is this available to every school in the country or...? [LB1106]

SENATOR GLOOR: Well, it would be available to any and every school in the country that can find probably a mentor organization of some kind. The hospital subsidized this to get started. [LB1106]

SENATOR DIERKS: I see. [LB1106]

SENATOR GLOOR: The hospital still provides, I believe, a degree of subsidization. It would be rare that you would start a clinic like this in a community that had the wherewithal to pay for all the services, so you bill where you can and you provide it where you can as a service. [LB1106]

SENATOR DIERKS: So this doesn't cost the taxpayers any...this is not a bill against the taxpayers. This comes from the hospital. [LB1106]

SENATOR GLOOR: It comes from the hospital. It comes from Blue Cross where you can bill for Blue Cross. It comes from Medicaid... [LB1106]

SENATOR DIERKS: Okay. [LB1106]

SENATOR GLOOR: ...where you can bill for Medicaid. It is like any other clinic, just not a good business. It is a service. [LB1106]

SENATOR CARLSON: Time. [LB1106]

SENATOR DIERKS: Thank you. Thank you, Mr. President. [LB1106]

SENATOR CARLSON: Thank you, Senator Dierks and Senator Gloor. Senator Howard, you're recognized. [LB1106]

SENATOR HOWARD: Thank you, Mr. President and members of the body. My younger daughter is staff attorney for the Illinois Child and Maternal Health Coalition in Illinois and Sara likes to tell me about the school-based health clinics that they run in Chicago. She's very enthusiastic about this and, as a matter of fact, hosted a delegation from...was a host for a delegation from Bright Futures, who went to visit and see the

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Chicago school health-based facilities a few weeks ago. And it's always interesting to me to hear her account of this and her enthusiasm and her vigor for these programs, and I think it would be helpful to all of us in the body if we kind of had a picture of how these work, and if Senator Nordquist would yield to a few questions I think we could do that together. [LB1106]

SENATOR CARLSON: Senator Nordquist, would you yield? [LB1106]

SENATOR NORDQUIST: I'd be happy to. [LB1106]

SENATOR HOWARD: Thank you, Senator Nordquist. As I understand it, what is envisioned at this time, what Bright Futures is looking at... [LB1106]

SENATOR NORDQUIST: Yeah. [LB1106]

SENATOR HOWARD: ...is a number of locations based in Omaha. Can you tell us how many locations? And I know this is a work in progress... [LB1106]

SENATOR NORDQUIST: Sure. [LB1106]

SENATOR HOWARD: ...but where do we...where do we anticipate that these will be? [LB1106]

SENATOR NORDQUIST: Um-hum. Well, in Omaha there is a great coalition of healthcare providers, including Children's Hospital, Creighton, UNMC, community...federally qualified community health centers, and the philanthropic community that want to go forward and establish clinics in Omaha and they're looking with the legislation here and looking at the financial picture that they could potentially get six clinics up by...at the start of the next school year. And they would be located in elementary schools in north and south Omaha, largely underserved population, schools where many of the students don't have an identified medical home, aren't getting the care they need, and this would be an easy, convenient way for them to get preventative services, immunizations. And I know Senator Adams is going to ask me on the mike, the school's role, you know, I visited Grand Island over the summer and looked at theirs and, you know, Senator Gloor can correct me if I'm wrong, but essentially it's like just a clinic located in a school. School provides the space and that's about it. They get a sponsoring provider to come in, whether it's a hospital, some other clinic, federally qualified health center to come in and sponsor. The employees, there are all employees of the provider and then they bill private pay, Medicaid, or if it's free care or low-cost care they look for subsidization or they do it pro bono. So that's kind of how they make a go of it and there usually has to be some subsidization, either from private donors or the provider themselves will have to absorb that cost. [LB1106]

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SENATOR HOWARD: Well, and when you speak of the clinics that will be going to the school facilities, I understand right now it's...or maybe you can update me with this if it's changed from the meeting that I had with Bright Futures, is it would be OneWorld and it would be Charles Drew that would be... [LB1106]

SENATOR NORDQUIST: Yeah. [LB1106]

SENATOR HOWARD: ...located in these... [LB1106]

SENATOR NORDQUIST: Yes. [LB1106]

SENATOR HOWARD: ...six school locations. [LB1106]

SENATOR NORDQUIST: Yeah, I think the initial model that they're going to try, very similar to Grand Island, whereas a nurse practitioner...Grand Island's is all day, every day. Because of the funding, they're going to try to split it between three schools, three in north, three in south. South Omaha, there would be a nurse practitioner hired by OneWorld Community Health Center to be in those three schools throughout different times and the same in north Omaha for Charles Drew. [LB1106]

SENATOR HOWARD: Well, I keep pitching for at least one location in District 9 because we could certainly use it. As a cosponsor of this bill... [LB1106]

SENATOR CARLSON: One minute. [LB1106]

SENATOR HOWARD: ...thank you...and certainly a supporter, I can see many ways where this bill will help not only the student and the family but also us as taxpayers. Individuals who work, say, two jobs to keep their families going find themselves in a position where if their child is sick they use the emergency room. And if this health clinic facility is available, that could certainly address that problem and give these parents another option. I support this. I think this is a wonderful idea and its time has certainly come. Thank you. [LB1106]

SENATOR CARLSON: Thank you, Senator Howard and Senator Nordquist. Those still wishing to speak: Adams, Stuthman, Campbell, Gloor, and Council. Senator Adams, you're recognized. [LB1106]

SENATOR ADAMS: Thank you, Mr. President. Would Senator Nordquist yield to a question, please? [LB1106]

SENATOR CARLSON: Senator Nordquist, would you yield? [LB1106]

SENATOR NORDQUIST: I'd be happy to. [LB1106]

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SENATOR ADAMS: Senator, quite frankly, in your dialogue with Senator Howard you've answered a couple of my questions, but I just want to reconfirm and add a couple of things. So... [LB1106]

SENATOR NORDQUIST: Um-hum. [LB1106]

SENATOR ADAMS: ...a school is not obligated to provide space, correct? [LB1106]

SENATOR NORDQUIST: That is correct. [LB1106]

SENATOR ADAMS: And if a school chose to provide space for this purpose, school employees outside of potentially the school nurse are not part of the operation. Is that correct? [LB1106]

SENATOR NORDQUIST: That is correct and the school nurse wouldn't...is not...would still be a school employee as well. There would be a lot of collaboration. And in Grand Island, the model that they had set up...and it's kind of nice how they have space set up in this way. I'm sure Senator Gloor was the architect of this. But they have the guidance counselor, then the school nurse who kind of did triage, and then she would say, okay, you need to go into the clinic. So the school nurse still is a school employee but she would then say, okay, the next...go to the next door and that's the school health clinic and, yeah, you need to get checked out. [LB1106]

SENATOR ADAMS: Okay. So...and I'm going to sound redundant here... [LB1106]

SENATOR NORDQUIST: Okay. [LB1106]

SENATOR ADAMS: ...but we're not...we're not demanding that schools provide space for this... [LB1106]

SENATOR NORDQUIST: Um-hum. That's right. [LB1106]

SENATOR ADAMS: ...from one end of the state to the other. It would be on a voluntary basis. We are not pushing the GFOE of a school, are we? [LB1106]

SENATOR NORDQUIST: No. The only, again, the only costs I guess would be that space and I know in the Omaha model, where they're working through the details, private funding is going to cover any additional construction costs of moving doors or entrances. There's no major construction, just, you know, rearranging some doors and any...that's all going to be privately funded. Any tables, benches, all supplies for the clinic are all covered by the provider or by private funding. So the school...the only thing the school would come forward with would be the space, essentially. [LB1106]

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SENATOR ADAMS: All right. So... [LB1106]

SENATOR NORDQUIST: Yeah. [LB1106]

SENATOR ADAMS: ...bottom line then, if they provide the space, I'm assuming they're providing custodial maintenance, which they otherwise would to the space anyway, lighting, heating. [LB1106]

SENATOR NORDQUIST: Yeah. [LB1106]

SENATOR ADAMS: So we're really not looking at any additional obligation on GFOE that could push TEEOSA here for this particular school. [LB1106]

SENATOR NORDQUIST: That's correct. [LB1106]

SENATOR ADAMS: Okay. In addition to that then could...in light of what we talked about yesterday, could potentially one of these be housed within an elementary learning center in the metro area? [LB1106]

SENATOR NORDQUIST: The...well, initially there was language in the bill that said organized through a school, school district, learning community, community or provider relationships. I think, because we didn't want to tangle too many committees here and I don't know that the learning community would have specific authority to do anything like this, the Health Committee decided to strike the words "learning community" out of the bill. So essentially it would just be we can only do this now with agreement between a school district and a provider. If we wanted to look jointly down the road and the learning community was very interested in this, that might be something that could be talked about. [LB1106]

SENATOR ADAMS: You know and I think that's a good answer. I appreciate that and I think it's a reasonable way to approach this right now. The learning community is in such the infant stage, I think if it's something down the road that might work that's great,... [LB1106]

SENATOR NORDQUIST: Um-hum. [LB1106]

SENATOR ADAMS: ...but to create any particular partnership or obligation right now would maybe encumber things a bit too much... [LB1106]

SENATOR NORDQUIST: I agree. [LB1106]

SENATOR ADAMS: ...for what you're trying to do as well as what the learning

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community council is trying to do. [LB1106]

SENATOR NORDQUIST: Yeah, I agree. Thank you. [LB1106]

SENATOR ADAMS: I thank you, Senator Nordquist. [LB1106]

SENATOR CARLSON: Thank you, Senator Adams and Senator Nordquist. Senator Stuthman, you're recognized. [LB1106]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I am truly supportive of this bill and I think it's needed and I think it's going to save some money. But I do have some questions with the bill and with, you know, what will take place after we develop these school-based health centers. In the fiscal note part of it, it states: This bill would allow school-based health centers to be Medicaid providers. School-based health services may include medical health, behavioral and mental health, preventative health and oral health. A service provider (sic) through a school-based center would not require prior consultation or referral by a patient's primary care person (sic) to be covered under Medicaid. I think the fact that, you know, to develop these, you know, is a very good idea. But I want to give you some of the issues that I have a real concern with, is the fact of what we presently have. We've got these federally qualified health departments. There are, I believe, six of them in the state: two in Omaha, one in Lincoln, one in Columbus, one in Norfolk, one in Scottsbluff. Because of issues that we have right now at the present time where the federal government is not going to give those health departments a reimbursement on cost-based reimbursement, they're not going to be giving them the total amount, and they're going to be having to find money elsewhere. But where do you find money in a health department? In my local area what is happening, because of services provided in that area and the demand for services because of the economy and because of the fact that there are so many without insurance, what is happening in my community, and which there's going to be a real need of with these school-based health centers is, is they're going to have to cut in my community the psychiatric time from three days down to two days. And I don't know if you're all aware of the fact, is it is almost impossible to get a psychiatrist in the rural areas, almost impossible. We went many years without a psychiatrist to provide psychiatric care. We finally were benefited by an individual that did come to provide services. But now, since we're going to have to cut a day off of his time to provide services, you know, maybe he won't want to come just to our community for the two days instead of the three days. And according to this bill, you know, there's going to be mental health services provided, and I think that's very good. But how are they going to be able to provide that mental health service? You know, is someone in a local hospital going to be able to help with that? I think we have to make sure also the fact that we reimburse these federally qualified health departments on a cost-based reimbursement schedule from the federal government. I think that's very, very important. I think, in my opinion, these student or school health centers will really help in solving some of the

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problems. But we've got to make sure that we do save the community health centers,...
[LB1106]

SENATOR CARLSON: One minute. [LB1106]

SENATOR STUTHMAN: ...that we save them. And I think what is happening is we're going to be...the federal government is going to be cutting some funding from the health centers, starving them out, so they're going to be cutting services. And when we're in that mode of cutting services with these health departments, you know, are we trying to expand into another program, which I think is very beneficial, but I think we've got to look at the other issue so that we can, you know, continue these federally qualified health departments. And I do have a bill that will help with that and I hope to get that moved on here shortly, but I think the fact is, is let's concentrate on trying to make sure that everyone can get services. Thank you, Mr. President. [LB1106]

SENATOR CARLSON: Thank you, Senator Stuthman. Senator Campbell, you're recognized. [LB1106]

SENATOR CAMPBELL: Thank you, Mr. President and colleagues. The school programs that are proposed in LB1106 can provide a very important step for us in children's health and, hopefully, as a model for other communities. I know that Senator Gloor has talked about what has happened in Grand Island, and I would hope that we would see that same success in Omaha. In our own schools here in Lincoln, we have allowed space to be used by some of our private volunteer clinics, and that has been a great asset to our community. I can't even imagine how much better a step it would be if we could put LB1106 into practice. I would also hope to see perhaps some other programs that we might be able to do through these clinics. Senator Nordquist and I have talked about a vaccine program that we might be able to have for influenza that would greatly help, and again, give us a model that we can look at and pilot a program. We see this as a way of helping busy parents, sometimes parents who do not have the transportation resources or even the ability to take off from work, to ensure that their children have good healthcare and that their child can be seen before they get too ill and too serious. This is an important step as a part of what I see as Omaha's efforts to address children and youth and their problems, and I would please ask that you lend your support to LB1106. And with that, Mr. President, I would yield the rest of my time to Senator Nordquist. [LB1106]

SENATOR CARLSON: Thank you, Senator Campbell. Senator Nordquist, 3 minutes.
[LB1106]

SENATOR NORDQUIST: Thank you, Mr. President. And I'll just say on Senator Stuthman's comments, I agree completely. I know our federally qualified health centers have a lot of need and they serve a lot of people and are often overrun, and we need to

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continue to look to make sure that there is a strong safety net for people. And this bill just would create that option that if a community health center or some other provider wanted to go into the school, and it's optional that they provide mental health services. That's not...that wouldn't be mandatory but that would be up to them if they think they can, with their funding streams, make a go of it. So thank you, Mr. President. [LB1106]

SENATOR CARLSON: Thank you, Senator Nordquist. Senator Gloor, you're recognized. [LB1106]

SENATOR GLOOR: Thank you, Mr. President. Senator Adams reminds us that he was a great educator when he still chose to do that, and his line of questions were a great educational opportunity for the body. And I would reiterate some of the key points that he made in asking his questions. If the schools want nothing to do with this, the schools have nothing to do with this. This is a collaborative effort. The schools see a need. If they can find some organization that is willing to partner--it's certainly better if it's a provider, healthcare provider organization, but need not be, it could be a church, it could be some other community service organization--they could start this. And whatever services the school chooses to provide are up to the school. At least in the case of Grand Island, the provision of space is more than enough for then the school-based center to come in and provide services. It is no different if this clinic were to start in York than if somebody decided to start a clinic in downtown York and were given space to be able to do this in downtown York. What is different about Senator Nordquist's bill, I reiterate one more time, is that because it's in one of the ten counties that are under managed care contracts, we must make an exception and we must do that by passing this particular piece of legislation. It's the only way this really differs in any way, shape, or form. I also appreciate some of the issues Senator Stuthman brought up. Also gives me an opportunity to point out, unlike federally based clinics, these clinics are simply local initiatives. There is no federal money. There is no state money above and beyond Medicaid. And the money that does come in is the same type of money that would come in if you were to run a clinic in your downtown of some kind. It requires licensure just as any medical clinic would require licensure by the state. And it allows that particular provider or requires that particular provider, whether it's Medicaid or Blue Cross, to say, yes, we see you as a viable clinic and you can start taking care of patients and we will reimburse you. More importantly, it takes a group of dedicated citizens who are willing to help come together to raise money to make this sort of thing happen because this is a community service initiative and, for it to be successful, it has to appeal to a broad, broad base of people within a community. That's the reason it steers clear of some of the type of programs that Senator Dierks brought out. It's one of the reasons it stays clear of issues that have to do with reproductive health or referrals for abortions. It takes care of kids who have headaches, who have some chronic illnesses, who need their immunizations up to date. If that clinic should so decide, it may add somebody to provide a small behavioral or substance abuse component, but that's a budget decision for that particular clinic to make a decision about. This is pretty simple at its basic level

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and I want to make sure that people don't get confused, see it as part of a large statewide initiative that's going to be forced upon schools. Frankly, in almost all the schools in the state outside of those ten counties, and in fact in all of those schools outside of the clinic, it's up to the community to decide. The school and whatever sponsor may come in whether they choose to do this, and if they do, there's at least one model that can be used. And my hope would be that, pending the passage of this legislation, that in another year or two there are other schools that can be used as models that they could follow if they in their community decide they want to do this. Thank you, Mr. President. [LB1106]

SENATOR CARLSON: Thank you, Senator Gloor. Those still wishing to speak include Senator Council, Senator Cook, and Senator Stuthman. Senator Council, you're recognized. [LB1106]

SENATOR COUNCIL: Thank you, Mr. President. I rise as a cosponsor of LB1106 and urge this body's passage of this extremely important piece of legislation. I just want to follow up on what Senator Gloor was just saying as he was at the mike. What LB1106 does is just simply allow the school districts in the ten counties that are managed care districts to provide for school-based health clinics if those school districts decide to make space available for such clinics, to provide them and be able to have those clinics be eligible for Medicaid without having to comply with the requirements of the managed care. That's why there's the statement in the bill with regard to no referral, no consultation. And I'll ask Senator Nordquist to yield to a couple of questions, if he would. [LB1106]

SENATOR CARLSON: Senator Nordquist, will you yield? [LB1106]

SENATOR NORDQUIST: I'd be happy to. [LB1106]

SENATOR COUNCIL: And that's the restriction that we're trying to remove through this legislation, am I correct, Senator Nordquist? [LB1106]

SENATOR NORDQUIST: On the restriction of...yeah. On there right now, the only way you can get care is by first going--unless it's an emergency--first going to your primary care physician. This would just say that you can go to your school-based health center to get their services. Other care you still have to go to your primary care physician and go on, but for convenient care, for quick treatment, sometimes I almost think of it as kind of you have your primary care physician and then I know the school health center does a little more, but it would be like a clinic in the supermarkets that are popping up now where you can get that kind of quick care on the side but you still have your primary care physician that you go to for major stuff. [LB1106]

SENATOR COUNCIL: And that provider in the schools is then eligible for

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reimbursement from Medicaid. [LB1106]

SENATOR NORDQUIST: That's correct. That's a large part of what this is. They'll bill private pay. And now with this, they'll be able to bill Medicaid for those children that are Medicaid-eligible. [LB1106]

SENATOR COUNCIL: Okay. Now, I guess, the question about private pay. [LB1106]

SENATOR NORDQUIST: Um-hum. [LB1106]

SENATOR COUNCIL: Assuming...I mean, for an example, many of the federal public health centers have a sliding fee scale. [LB1106]

SENATOR NORDQUIST: Yeah. [LB1106]

SENATOR COUNCIL: Will that be applicable in the school-based clinics as well? [LB1106]

SENATOR NORDQUIST: That would, I guess, depend on the provider at that time and the agreement that they have when they set it up. They'll bill private insurance. They'll bill Medicaid. They could do a sliding scale. I'm not sure in Grand Island if they do collect from who they can, and if there's...and if they can't collect or the family income is so low that they would charge nothing for some people probably. [LB1106]

SENATOR COUNCIL: Okay. And in that regard, you mentioned with regard to the Omaha area, the involvement of Building Bright Futures. Am I correct in my understanding that in that regard there is some expectation of some philanthropic contribution towards covering the cost of these providers? [LB1106]

SENATOR NORDQUIST: Yeah. Yeah. I don't know that a final agreement has been made, but essentially with the LB1106, getting the Medicaid reimbursement for those services and billing those kids that have private health insurance, that there would be a significant amount of private money to make up the difference for the providers. [LB1106]

SENATOR COUNCIL: Okay. And I tell you, having served on a school board, and particularly the Omaha Board of Education, beginning back in 1983, I advocated for years for the creation of school-based health clinics. The data has been out there for decades in terms of the impact, the positive impact that school-based health clinics have on ensuring that children are ready to learn, that they're not suffering from... [LB1106]

SENATOR CARLSON: One minute. [LB1106]

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SENATOR COUNCIL: ...medical conditions that impair their ability to learn. But I do have one question with regard to the amendment, and that has to do...and I appreciate it. I like the concept of the Health Center Advisory Council. But it appears that for the Omaha example that they would only have to have one advisory health council, although you may have six different school-based health clinics, because it says each school or school district. So if all six of those school-based clinics are in OPS, would they not be required to have a council at each of those schools? [LB1106]

SENATOR NORDQUIST: You know, that would be...I guess that's right, looking at the committee amendment here, and that could be something we could talk...I mean, I wouldn't be opposed to having one in each school, because, I mean, you talk...there are diverse...and just in Omaha there are diverse differences between the schools and the parents that would want to be involved. And I'd like to see, you know, parents involved at each school site to make sure that everyone is on the same page and there's good communication between the provider, the school, and the community. So that...we could strike...I mean, we could say each school hosting, and just go with that. [LB1106]

SENATOR CARLSON: Time. [LB1106]

SENATOR COUNCIL: Yeah. And I kind of think that that needs to be done. [LB1106]

SENATOR NORDQUIST: Thank you. [LB1106]

SENATOR CARLSON: Thank you, Senator Council and Senator Nordquist. Senator Cook, you're recognized. [LB1106]

SENATOR COOK: Thank you, Mr. President and members of the body. A lot of what I was going to add has already been said, but I did want to highlight a couple of things about the bill. First of all, I rise in strong support of LB1106. I am also a cosponsor of the bill and have had some direct experience working in the Omaha Public School District and also in the public health community in the last few years, and have had direct experience not only working with students and what they are facing on a day-to-day basis and their families and their health situations, but have seen the statistics in terms of the health disparities among many, many members of my district. So I rise in support. I think it's an important step toward addressing public health disparities and better health, in general, for students. I also think it helps families balance, as many of them are working several jobs and just don't have the kind of flexibility that is really required to get children to appointments. Thank you, Mr. President. [LB1106]

SENATOR CARLSON: Thank you, Senator Cook. Senator Stuthman, you're recognized. [LB1106]

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SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I would like to ask Senator Nordquist a question. [LB1106]

SENATOR CARLSON: Senator Nordquist, will you yield? [LB1106]

SENATOR NORDQUIST: Yeah. [LB1106]

SENATOR STUTHMAN: Senator Nordquist, would you say that these school health centers and a health department or a federal qualified health department could complement each other? [LB1106]

SENATOR NORDQUIST: Yeah, with the model that they're looking at in Omaha is...that the federally qualified health center will be the provider for the initial sets. Some of the other community providers around the Omaha community--Children's Hospital and Creighton and the Med Center--are going to come on board later and sponsor, hopefully. But for now, yeah, they're going to be a partner because in some of the schools we're looking at they already are the primary care physician or the main provider of care. So it's a great partnership. [LB1106]

SENATOR STUTHMAN: So in other words, we should put a lot of emphasis on trying to maintain and keep the federally qualified health departments, and I think that's very important, because, you know, so many things can be accessed through those federally qualified health departments and the health departments. In my local area, according to the hospitals and the doctors, they've made comments to me, they said the best thing that's ever happened to our area right there is the fact that we created the health department and then we established the federally qualified health department, because that keeps the people out of the emergency rooms and that's the most important thing. You know, they establish, you know, health issues. They take care of a lot of people. And I think that's very important and I think that's what I'm trying to emphasize, is the fact that we need to make sure that we keep these health departments, and especially the federally qualified health departments, you know, being able to function as health departments, because if we start to erode, you know, the funding of these health departments, they're going to be cutting services. And they have to because they cannot pay the bills. So I think we've got to emphasize the fact that we need to make sure that we keep these health departments going. I know there's been some statements made, you know, the federally qualified health departments did get some stimulus money, and that is very true and I'll give you an issue with my health department. We got stimulus money, you know, which has to be designated for a certain area. One part of it was for capital improvements and it can't be used in the operation, but there was another one that dealt with the fact that we did hire a pediatrician and support staff with this funding and increased our medical doctors' hours to meet the need of patients we have. And in that, our health department in Columbus there added 469 patients without any insurance coverage of any kind. So that has really

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benefited a lot of people. But the issue is this money will go away in another year. What's going to happen after that money goes away? Are we...is the health department going to be able to continue to hire that pediatrician and support staff? Maybe not. That is one of the concerns that I have with the fact of this stimulus money. It gets the programs started and then what's going to happen after that? So let's keep in mind, you know, there is definitely a need, you know, to support these federally qualified health departments and health departments, and I think this school-based health department, I think that's a very good approach. Thank you, Mr. President. [LB1106]

SENATOR CARLSON: Thank you, Senator Stuthman and Nordquist. There are no other senators wishing to speak. Senator Gay, you're recognized to close on AM1948. [LB1106]

SENATOR GAY: Thank you, Mr. President. I think the committee amendment does a good job to clarify a few things that needed to be taken care of. Senator Gloor had...or Senator Nordquist. Thank you, Senator Gloor. But on the committee he had some good points to put in here through practical applications of what happened in Grand Island. And I think the committee amendment goes a long way to make the bill a much better bill and more palatable to a lot of different people. And not that it's bad, but I just think it clarified a lot of things. I've heard a lot of good comments on this bill and I'd encourage you to support the committee amendment. Thank you, Mr. President. [LB1106]

SENATOR CARLSON: Thank you, Senator Gay. Members, you've heard the closing on AM1948. The question is, shall the amendment be adopted? All those in favor vote aye; those opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB1106]

CLERK: 34 ayes, 0 nays on adoption of committee amendments. [LB1106]

SENATOR CARLSON: The amendment is adopted. We return to discussion of LB1106. And seeing no lights, Senator Nordquist, you're recognized to close. [LB1106]

SENATOR NORDQUIST: Thank you, Mr. President and members. And I appreciate the discussion, especially Senator Gloor's insights. And appreciate the support on the legislation. Just to boil it down real quick into a few points, the need really comes from the ten counties in our state that are under managed care. They cannot do this. Some of them, I know Omaha, there's an effort, but hopefully other communities will look at doing community health centers. This removes the obstacles so that every county in the state now can go forward with these agreements and get reimbursement for those children that are on Medicaid if...get reimbursement for those services. Secondly, there is a significant cost-savings provision in the bill that we've been providing care under Medicaid for, fully state funded, for legal permanent residents. Many of them are political refugees. And we've been doing that 100 percent out of state funds since the mid-'90s. Now we can get federal funds, thanks to federal legislation last year. We

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will...this bill will grab those additional funds. So the bottom line of the bill, now with the committee amendment, we'll save \$1.2 million roughly a year, into the future. I'd appreciate your support of LB1106. Thank you, Mr. President. [LB1106]

SENATOR CARLSON: Thank you, Senator Nordquist. Members, you've heard the closing on the advancement of LB1106 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB1106]

CLERK: 39 ayes, 0 nays, Mr. President, on the advancement of LB1106. [LB1106]

SENATOR CARLSON: LB1106 does advance. Mr. Clerk, items for the record? The next item on the agenda is LB1106A. Senator Nordquist, you're recognized to open. [LB1106 LB1106A]

SENATOR NORDQUIST: Thank you, Mr. President and members. LB1106A simply transfers the funds to implement the bill. Under the A bill, it would increase General Funds for the department to carry out their computer changes that are necessary and for the 1 percent projected increase in Medicaid utilization, but these increases are more than offset by the additional federal funds for individuals who are legally residing in this country but are noncitizens. The committee amendment we just adopted finds even more savings for the legally residing, noncitizen pregnant women. It takes it from 100 percent General Funds to the federal match. And there will be a...I'm sorry, there will be a need for an amendment to this on Select File to adopt, for the committee amendment we adopted, and that will be coming on Select File. There is an amendment pending, as well, that I'll explain. Thank you. [LB1106A]

SENATOR CARLSON: Thank you, Senator Nordquist. Mr. Clerk. [LB1106A]

CLERK: Senator, I have AM2158 with a note you want to withdraw. And Senator Nordquist would move to amend with AM2204. (Legislative Journal page 903.) [LB1106A]

SENATOR CARLSON: Thank you, Mr. Clerk. Senator Nordquist, you're recognized to open on AM2204. [LB1106A]

SENATOR NORDQUIST: Thank you, Mr. President. This is an amendment that the Fiscal Office gave me to correct a couple changes to ensure we have the correct dollar amounts for the implementation of the bill. I'd like to thank Liz Hruska in the Fiscal Office for her work with the department on getting this down to the right numbers here, and Michelle Chaffee with the Health and Human Services Committee for her work on the legislation. Thank you. [LB1106A]

SENATOR CARLSON: Thank you, Senator Nordquist. The floor is now open for

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discussion on AM2204. Seeing no lights, Senator Nordquist, you're recognized to close. Senator Nordquist waives closing. The question is, shall AM2204 be adopted? All those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB1106A]

CLERK: 34 ayes, 0 nays, Mr. President, on the adoption of Senator Nordquist's amendment. [LB1106A]

SENATOR CARLSON: The amendment is adopted. [LB1106A]

CLERK: I have nothing further on the bill. [LB1106A]

SENATOR CARLSON: We return to discussion on LB1106A. Seeing no lights, Senator Nordquist, you're recognized to close. Senator Nordquist waives closing. The question is, shall LB1106A be advanced? All those in favor vote aye; those opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB1106A]

CLERK: 35 ayes, 0 nays, Mr. President, on the advancement of LB1106A. [LB1106A]

SENATOR CARLSON: LB1106A does advance. Next item. [LB1106A]

CLERK: Mr. President, LB1091 was a bill originally introduced by the Business and Labor Committee. (Read title.) Introduced in January, referred to Business and Labor, advanced to General File. I have no amendments pending at this time. [LB1091]

SENATOR CARLSON: Thank you, Mr. Clerk. Senator Lathrop, you're recognized to open on LB1091. [LB1091]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Good afternoon. I know the hour is getting late. We have LB1091 which is the denied claims bills, followed by the approved claims bills. And I apologize but there's no way to get through this except for me to read what these are about. So with that said, I'll begin with LB1091, my introduction. These are the annual claims bills filed against the state that were denied by the State Claims Board. Two claims have appealed the board's decision to the Legislature. These claims have been submitted by the state Risk Manager for disapproval. The first two claims, 2000-03278 and 2000-03279, were both contract claims filed by Chad Brouse against the University of Nebraska Medical Center in the amount of about \$200,000 each...in the amount of \$200,000 each. He alleges that he attended the med school at UNMC and was treated differently than other students. He's alleged he was disabled due to mental health issues and that led to discrimination and eventually his failing classes and the termination from med school. The claimant failed to provide evidence of staff mistreatment or evidence that he was discriminated against or treated differently by anyone at UNMC or that his termination from the med school was the fault of anyone other than himself. He failed to provide proof of his alleged

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financial losses. The Contract Claims Act requires the claimant to provide a copy of the contract which was allegedly breached. Mr. Brouse provided no valid contract, although he did provide copies of some UNMC policies and procedures. Based on the lack of evidence of a contract breach or damages, the board denied both claims. The third and final claim is Claim Number 2000-03294 filed by Alston and Bird law firm on behalf of Grubb and Ellis Healthcare REIT, Inc., against the Department of Banking and Finance. Alston and Bird originally submitted \$10,000 for Grubb and Ellis to sell \$10 million worth of securities during the period September 20, 2007, through September 19, 2008. Grubb Ellis sold \$17,117,660, with approximately seven weeks left in their licensing period. Alston and Bird then submitted a check to cover the over-sale, and a check for \$50,000 to license an additional 50 million shares. Grubb Ellis only sold a portion of the 50 million and sought a refund of \$45,464.23, which represents the registration fee for unsold shares. The Nebraska Securities Act does not provide for carry-overs from one licensing period to another, nor does it provide for a refund of licensing fees if there were unsold balance at the end of the period. It appeared an error was made by either Grubb Ellis or its law firm Alston and Bird, and that they calculated the number of additional shares to be licensed for the remainder of the licensing period. This was a miscellaneous claim and therefore there was no allegation of state negligence leading to the over-registration. Rather, the law firm states, quote, they believe the equities in this matter weigh in favor of refunding the amount, end quote. Because there's no provision in law for such a refund, there was no finding of negligence; the board denied the claim. And I ask you to support LB1091, the claims to be denied by this body. Thank you. [LB1091]

SENATOR CARLSON: Thank you, Senator Lathrop. You've heard the opening on LB1091. Are there any senators wishing to speak? Seeing none, Senator Lathrop, you're recognized to close. He waives closing. The question is, shall LB1091 be advanced? All those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB1091]

CLERK: 28 ayes, 0 nays, Mr. President, on the advancement of LB1091. [LB1091]

SENATOR CARLSON: LB1091 does advance. Next item. [LB1091]

CLERK: LB1090, a bill by the Business and Labor Committee. (Read title.) Introduced in January, referred to Business and Labor, advanced to General File. There are committee amendments. (AM2186, Legislative Journal page 877.) [LB1090]

SENATOR CARLSON: Thank you, Mr. Clerk. Senator Lathrop, you're recognized to open on LB1090. [LB1090]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Again I apologize for the lengthy nature of this bill but there's no other way to treat these claims. LB1090 is

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introduced by the Business and Labor Committee at the request of the Department of Administrative Services, Risk Management Division. This is the annual approved claims bills which contain claims against the state that were either approved by the State Claims Board or were litigated and have judgments against the state. Statute requires their approval by the Legislature. There are three classes of claims: tort claims, work comp claims, and agency write-offs. I begin with the tort claims. The first claim is for \$145,000 against the Department of Health and Human Services. The claims are made by parents on behalf of their children in a home where a foster child was placed by HHS. The allegation was that the state placed a foster child known to be at risk in the home, and that the foster child was sexually assaulted...pardon me, sexually assaulted the children living in the home. The Attorney General's Office has settled the lawsuit for \$145,000. The second claim is for \$32,973.56 against the Department of Roads. This claim was litigated and the district court found the state's negligence was the proximate cause of the claimant's injuries. Ms. Christman was injured when the vehicle she was riding in hit loose gravel that was on the road as a result of work done by the Department of Roads. The allegation in the case was that the department negligently placed the gravel and failed to use proper signage to warn of the loose gravel. The state paid the \$50,000 allowed under the Tort Claims Act upon receipt of the judgment from the district court, and the \$32,973.56 identified in LB1090 represents the remainder of the award and applicable interest. The third and final tort claim is for \$225,869.24 against the Nebraska Supreme Court. It was filed by the widow of a former employee of the Supreme Court. State employees receive \$20,000 in life insurance paid for by the state, and are allowed to purchase additional life insurance from the group plan at their expense. If an employee has not actively worked for 12 months, they can no longer participate in the group plan but they are to receive notice from the agency that they can convert their group insurance to an individual policy. In this case, the state employee was ill and away from work for 12 months. The agency failed to provide him the required notification that he could convert his group life insurance from a group plan to an individual policy. He passed away one day after the allowable period to convert the policy. The claim amount of \$225,869.24, which was awarded by the State Claims Board, is the amount of life insurance the former employee could have converted and to which his family would have been entitled but for the failure of the agency to notify them of the option to convert. Those are the tort claims. We have two work comp claims. The first claim was filed by Charyl Henne, a former food service worker at Western Nebraska Veterans' Home. Ms. Henne had arm, neck, and back injuries, and was unable to return to work and was unable to obtain employment as a result of approved vocational rehabilitation. The lump sum settlement includes a Medicare set-aside and is currently pending final approval for the amount Medicare will accept for its secondary payer claim. Depending on this final amount, the minimum the state will owe is \$114,499.31. The maximum it will owe is \$119,000. Upon notice from Medicare, we will be able to pay the first \$100,000, and the maximum remaining is the \$19,000 contained in the bill. The second claim was filed by Bradley Warner, a former employee of the Department of Roads who sustained injuries to the head, shoulder, neck, and arm, and

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is now on Social Security disability and does not wish to pursue vocational rehabilitation. The total court approved settlement was \$174,633.86 for the present value of Mr. Warner's entitlement to permanent total disability benefits and \$25,366 for the preapproved self-administered Medicare set-aside. The state paid the \$100,000 allowed by the law and the remaining \$100,000 is included in LB1090. Those are the work comp claims. The balance are agency write-off requests. These are typically bad debts that the agencies run into. I will read them for you. Request 2009-03468 was filed by the Department of Insurance to write off \$4,372.15. This amount represents outstanding invoices for a market conduct examination and agency appointments. The invoiced company, Benicorp, has been declared insolvent and ordered liquidated by a court in Indiana, and therefore, no recovery is available to the department. Therefore, the board approved this request. Request 2009-03469 was filed by the Department of Insurance to write off \$40. A former licensee of the department issued an insufficient funds check to the department. The department pursued recovery until it was informed by the licensee's legal guardian that she had been declared incompetent and indigent. Therefore, the board approved the request to write off the debt as uncollectible. Next is Request 2009-03470 filed by the Department of Insurance to write off \$6. The invoice was a cancellation fee for two agent appointment cancellations. The company is inactive and in Florida. Given the smaller dollar amount of the debt and the letter writing efforts to collect undertaken by the agency, the cost of taking any further collection action would outweigh the amount owed. Therefore, the board approved the request to write off the debt as uncollectible. Request 2009-03734 was filed by the Lottery Division of the Department of Revenue to write off \$19,459.22. The write-off involves seven debts from retailers for the years 2001 through 2003. The debtors are either bankrupt or unable to be located. The agency made extensive attempts to collect the debt through agency staff and through outside collection agencies, and the debts are now likely beyond the statute of limitations for collection even if they were able to find the debtors. Therefore, the board approved the request to write off the debt as uncollectible. Request 2009-03910 was filed by the Department of Health and Human Services Division of Public Health, Environmental Health Unit to write off \$60 which was the fee for an x-ray registrant. The agency pursued the debt until the debtor declared bankruptcy. Because of that, the board approved the request to write off the debt as uncollectible. Request 2010-04016 was filed by the Nebraska Accountability and Disclosure Commission to write off \$38,251.53. The amount represents late filing fees. The agency made reasonable efforts to collect the debts to the extent the law would allow them. The fees are due from defunct committees, deceased individuals, and individuals who cannot be located. In addition, many of the fees are now past the statute of limitations for collection. Therefore, the board approved the request to write off the debts as uncollectible. Request 2010-04102 was filed by the Clerk of the Legislature to write off \$2.89 stemming from the reproduction of legislative materials. The agency attempted collection. The dollar amount involved is very small and unlikely to be collected. The cost of pursuing collection will likely outweigh the amount collected, in any case. Therefore, the board approved this request. Request 2010-04118 was filed

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by the Department of Health and Human Services. The request is to write off \$413,878.22 of bad debt incurred by the department's facilities and benefits programs: \$306,683.11 of the request represents debt from Aged, Blind, and Disabled; ADC; Child Care; and Children and Family Service programs. The remaining \$107,195.11 represents bad debt incurred by the department's facilities and their programs, including Developmental Disabilities, BSDC, the Regional Center's Vital Records program, and the Health Lab; \$1,225.48 represents insufficient fund checks written to Vital Records--no individual check was over \$25; \$83,831.67 represents debt that was uncollectible due to the death of debtors; \$135,632.08 represents debt that was uncollectible due to the bankruptcy of the debtor; \$14,422.22 represents settlements approved by the AG's Office where they were pursuing the debtor; \$175,950.81 was uncollectible because the debtor continued to be on some sort of government assistance or had assets that were legally protected from collection, and the statute of limitations for collection of the debt ran while the debtor was still in that status. The board approved the write-off request in the amount of \$413,878.22, as I've described. Request 2010-04177 was filed by the Military Department to write off debt in the amount of \$1,082.47 owed by three individuals involved in the National Guard tuition assistance program. Each of the students withdrew from the program and was therefore responsible for the cost of the course. The department made reasonable efforts to obtain the repayment as authorized in statute. A review was conducted in the state accounting system, but it was determined offsetting, as required by statute, would not be available in these cases, so the Claims Board approved the request to write off the debt as uncollectible. That's the bill, Mr. President. [LB1090]

SENATOR CARLSON: Thank you, Senator Lathrop. As the Clerk has indicated, there are committee amendments and so, Senator Lathrop, you're recognized to open on AM2186. [LB1090]

SENATOR LATHROP: AM2186 makes technical changes and includes an additional tort claim against the Department of Roads for \$1,450,000. The Attorney General's Office settled this claim after the committee held its hearing on LB1090. The committee held a public hearing on this claim. The claimant, while driving, was struck in the head by a dislodged piece of steel that was used as a highway marker. The claimant suffered a severe brain injury and is disabled and unable to return to work. I ask that you support both AM2186 and LB1090. Thank you, Mr. President and colleagues, for your patience. [LB1090]

SENATOR CARLSON: Thank you, Senator Lathrop. You've heard the opening. Those wishing to speak: Senator Howard, you're recognized. [LB1090]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I'm not going to prolong this, but I feel compelled to speak. Senator Lathrop told us, I believe it was his first bill that he referred to regarding the foster child placed in a foster home and

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that youth sexually abused the biological children in that home. I can't tell you how many times I've heard of this occurring. I worked for Health and Human Services as a case manager for, as many of you know, for 34 years actually. And one of the federal requirements is that a youth in foster care be placed in the least restrictive placement. This does not mean that a child who has a history of behaviors that are problematic, in the nicest way to put it--that are problematic--be placed in a foster home with vulnerable younger children. And I think the buck stops with Health and Human Services. And whether it's a matter of training, whether it's a matter of judgment, whether it's a matter of poor administration, I don't know, but I don't think any of those things, those excuses, are acceptable. The damage can't be undone to those children. That's permanent. I imagine the cost that this family is trying to recoup is, in part, to cover therapy and services provided to those children. The Department of Health and Human Services has the responsibility not only to the youth within the foster care system but also to the families with which they place those youth, and that is a very serious responsibility. I would suggest that, at minimum, the department look at an agreement with foster families--and this has been discussed before; they have looked at this--so that there's an understanding of the information that is disclosed by the case manager. I think the department has work to do on this issue, and I hope to goodness that we don't hear another claim like this come forward to us. Thank you. [LB1090]

SENATOR CARLSON: Thank you, Senator Howard. Seeing no other lights, Senator Lathrop, you're recognized to close on AM2186. Senator Lathrop waives closing. The question is, shall AM2186 be adopted? All those in favor vote aye; opposed vote nay. Record, Mr. Clerk. [LB1090]

CLERK: 31 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB1090]

SENATOR CARLSON: The amendment is adopted. Mr. Clerk. [LB1090]

CLERK: Senator Lathrop, I understand you want to withdraw AM2050. [LB1090]

SENATOR LATHROP: That's the case. [LB1090]

CLERK: I have nothing further on the bill, Mr. President. [LB1090]

SENATOR CARLSON: Thank you, Mr. Clerk. Seeing no other lights, Senator Lathrop, you're recognized to close on LB1090. He waives closing. The question is, shall LB1090 be advanced? All those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB1090]

CLERK: 32 ayes, 0 nays, Mr. President, on the advancement of LB1090. [LB1090]

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SENATOR CARLSON: LB1090 is advanced. Mr. Clerk, items for the record? [LB1090]

CLERK: Thank you, Mr. President. Senator Nelson offers LR404. That will be laid over. Senator Cornett would like to print an amendment to LB1081. Senator Langemeier offers LB1048A. (Read by title for the first time.) And your Committee on Education, chaired by Senator Adams, reports LB1072 to General File with committee amendments attached. (Legislative Journal pages 929-935.) [LR404 LB1081 LB1048A LB1072]

Priority motion: Senator Dierks would move to adjourn the body until Wednesday morning, March 17, at 9:00 a.m.

SENATOR CARLSON: Members, you have heard the motion to adjourn. All in favor say aye. Opposed, nay. We are adjourned.