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Floor Debate
January 12, 2010

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SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the fifth day of the One Hundred First Legislature, Second Session. Our chaplain for today is Pastor Todd Burpo of Crossroads Wesleyan Church, Imperial, Nebraska, Senator Christensen's district. Please rise.

PASTOR BURPO: (Prayer offered.)

SPEAKER FLOOD: Thank you, Pastor. I call to order the fifth day of the One Hundred First Legislature, Second Session. Senators, please record your presence. Mr. Clerk, please record.

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

SPEAKER FLOOD: Thank you. Are there any corrections for the Journal?

CLERK: I have no corrections, Mr. President.

SPEAKER FLOOD: Are there any messages, reports, or announcements?

CLERK: Committee hearing notice from the Transportation Committee signed by Senator Fischer, and an amendment to be printed by Senator Lathrop to LB571. That's all that I have at this time, Mr. President. (Legislative Journal pages 183-184.) [LB571]

SPEAKER FLOOD: Thank you, Mr. Clerk. We will now proceed to the first item on the agenda, General File, LB254. Mr. Clerk. [LB254]

CLERK: LB254, a bill by Senator Dubas. (Read title.) Introduced on January 14 of last year, at that time referred to the Agriculture Committee for public hearing. The bill was advanced to General File, Mr. President. [LB254]

SPEAKER FLOOD: Thank you, Mr. Clerk. Senator Dubas, as introducer of LB254, you are recognized. [LB254]

SENATOR DUBAS: Thank you, Mr. Speaker. Members of the body, good morning. In the fall of 2008, the Nebraska Aviation Trades Association came forward with a request to help in the monitoring and tracking of out-of-state pilots who do aerial pesticide

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application. Summer of 2008 was a particularly wet one and a challenging one for farmers to get all of their field work done. They got behind on their spraying which put an additional burden on those commercial applicators in our state, and so out-of-state applicators were needed in order to help meet all the demands. But at the time and currently there is no tracking or registration process in place for anyone who comes into the state to do this work. Pesticide dealers were lining up work and contracting with out-of-state pilots and there became very clearly a communication breakdown between the applicator and the farmer who they were applying for. Without a proper registration process in place, it's very difficult to determine who is actually doing the application. At that time, there was a marked increase in complaints about drift, crop damage, human exposure, etcetera, and with the majority of those complaints ultimately related to out-of-state applicators. The Nebraska Aviation Trades Association takes a great deal of pride in their profession and how they do their work for the farmers in Nebraska. They were getting a black eye from these application errors and wanted more accountability put into place. Again, I emphasize this bill was their idea and I worked closely with the pilots and the Department of Ag on the drafting of this bill. In some of the testimony that was presented to the Ag Committee from a member of the Nebraska Aviation Trades Association, he kind of relates a story that maybe will help explain the need for this bill. Currently, the aerial application industry is one of the most heavily regulated agriculturally-based industries in the United States. However, none of those regulatory agencies have an enforcement arm that interfaces with the aerial application business like the Department of Ag does. This interface that the department has is the reason why it is important to provide them broader authority to require reporting of items listed in LB254 and allow them the ability to enforce those prerequisites. Other states such as Kansas, Iowa, and Illinois have already adopted similar legislation. From the Department of Ag statistics based on the past ten years, the number of complaints generated in 2008 alone increased by 60 percent. That is not acceptable to members of the Nebraska Aviation Trades Association. The problems ranged in severity from an aerial applicator's illicit use of municipal airports to off-target applications, all the way to human exposure. Since the vast majority of aerial application operations originate from public municipal airports, accountability is crucial. Tim Creger with the Department of Ag told the Nebraska Aviation Trades Association this story that this testifier calls "The House That Jack Built" about a pilot from Florida flying an airplane leased from a northern Missouri company by a Nebraska-based company, but the airplane came from northern Illinois and was working in the Plattsmouth area for yet another company. The customer had no idea about who was flying their fields or what was being applied. Then when a problem would manifest itself, the retailer would say it was the applicator's responsibility and the applicator would say the retailer was responsible. All of these problems have a negative impact on the aerial application industry and, as always seems the case, do not reflect the majority of those who do this work. This bill requires all aerial applicators to have a Nebraska aerial pesticide business license with a principal departure date...let's try that again, with a principal departure location named. And that location can be within the state or out of state. The commercial applicator must

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be under direct supervision of a person holding a Nebraska aerial pesticide business license. That license holder is jointly responsible for damages caused by the applicator. A committee amendment will address the fees contained in the bill. The applicant must provide their full name, address, Social Security number; their principal departure location identified by either GPS or a legal description or an address or an airport identifier; copy of the ag aircraft operations certificate or evidence of a certificate issued by FAA; the aircraft registration number; the Nebraska commercial applicator certificate number and current FAA certificate number. Now, out-of-state applicants shall file a written designation of a resident agent. Before commencing with the aerial applications operation, a Nebraska aerial pesticide business license will report all aircraft, pilots, and departure locations used if different from their original application. And then for temporary seasonal operations, the license holder will notify the director of the dates of when they start and when they terminate. That business license holder is responsible for acts of the aerial applicator and that shall be mentioned in the record. So, again I want to state, you know, it's not very often that associations come to us and say, hey, we need more regulation. But there are obvious problems in the way we bring out-of-state applicators in to do the business. We're just looking for more accountability, a way to track these pilots should there be a problem. It's good for the farmers who are using their business. It's good for our in-state businesses. It's also good for the Aviation Association in upholding their high standards and their willingness for accountability. So I would appreciate the body's support of LB254. [LB254]

SPEAKER FLOOD: Thank you, Senator Dubas. Members, you've heard the opening on LB254. Mr. Clerk. [LB254]

CLERK: Mr. President, Senator Carlson, you had provided an amendment to me last year, Senator, but I have a note that you want to withdraw AM420. [LB254]

SPEAKER FLOOD: Senator Carlson, you're recognized to open on your amendment. [LB254]

CLERK: Well, Mr. President, the amendment, Senator Carlson, I then have is AM1536. (Legislative Journal page 124.) [LB254]

SPEAKER FLOOD: You're recognized to open on AM1536. [LB254]

SENATOR CARLSON: Mr. President and members of the Legislature, I do introduce AM1536 to LB254. The amendment makes four what I believe are prudent changes to the bill as advanced from the committee. The bill itself now has an in-state aerial applicator fee, license fee, of \$50. It has an out-of-state aerial applicator fee, license fee, of \$100. And it also includes an additional \$50 for each additional departure location for out-of-state aerial applicators. The amendment, AM1536, would change that to an in-state aerial applicator fee of \$100 and an out-of-state applicator fee of \$100,

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and it eliminates the additional \$50 fee for departure locations. So it makes the licensing the same for in-state aerial applicators as out-of-state aerial applicators. It also allows the department to increase the license fee as needed to no more than \$150. The amendment indicates that all fees collected shall be remitted to the Pesticide Administrative Cash Fund not the General Fund, and the amendment, AM1536, changes the date on the bill to 2010 from 2009. Those are the changes requested in AM1536. I would ask for your support as well as the underlying bill, LB254. Thank you. [LB254]

SPEAKER FLOOD Thank you, Senator Carlson. Members, you've heard the opening to AM1536. Senator Loudon, you are recognized. [LB254]

SENATOR LOUDON: Thank you, Mr. President and members. Would Senator Dubas yield for questions please? [LB254]

SPEAKER FLOOD: Senator Dubas, will you yield to a question from Senator Loudon? [LB254]

SENATOR DUBAS: Certainly. [LB254]

SENATOR LOUDON: Yeah. What is the reason for this bill that you brought forwards? Now, is this...are there problems out there with aerial applicators that are doing this and aren't licensed? Because they have to have a pesticide applicator's permit now in order to do this. And is this...I mean, is this an idea for another tax or is there some problem out there that there need to be some type of overseeing on these people or legislation or something that has to be done by some local authority? [LB254]

SENATOR DUBAS: Thank you, Senator Loudon, for that question. Actually, the problem arose when we ran into the need of hiring out-of-state aerial applicators. And, of course, they have their licenses from their state but we had no way of tracking them when they did a job in the state of Nebraska. You know, they might have been working for a particular company. There was...the company was saying: Well, that's the pilot's problem, they sprayed the wrong field. And the pilot is saying: Well, no, that company hired me, they're responsible. So without some kind of registration and paper trail for these out-of-state pilots, we had no way of knowing who to go after or how to have just some more direct supervision. So, again, the Trade Association, the Aviation Trades Association came forward with this. They were concerned about the increase in the number of complaints. Those complaints increased as I said, 60 percent, most of which were attributed directly to those out-of-state pilots. And so... [LB254]

SENATOR LOUDON: Now, we've always...I remember here a year or so ago we had problems with getting people to spray the river channels and stuff in western Nebraska because they could spray, then it was hard to get pilots from different, you know,

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airplane sprayers into there to do that. Most of that was done with helicopters. I'm wondering, will this put some kind of a...too much of an encumbrance? How hard is it for them to get these applications, these licenses, and what's the length of time that from the time they apply for that license that they will receive that license so they can go to work? [LB254]

SENATOR DUBAS: I don't have an exact turnaround time for you. I mean, once the department gets all of the processes in place, my understanding is they'd be able to do the vast majority of it on-line. And so, again, it's just creating that paper trail. It shouldn't be overly burdensome. [LB254]

SENATOR LOUDEN: Now, when these fees are paid, is that fee good for the whole year or is that fee good for just that particular contract they have, or how is that adjusted in there? I've looked the bill over and I haven't noticed how long the fee is good for, if it's a license for the whole year or a two-year period or what. [LB254]

SENATOR DUBAS: My understanding it's for a year but I'll make sure that I get a clarification on that, but my understanding is a year. [LB254]

SENATOR LOUDEN: It would be a year at a time. [LB254]

SENATOR DUBAS: That's correct. [LB254]

SENATOR LOUDEN: That was mostly my concern because out in some of these areas, especially if we have grasshoppers and stuff, it's hard to get people to come out there and spray even with fixed-wing aircraft. And usually we can find some local people at the time because they have to know the country. And I'm wondering if...what kind of an encumbrance they had because at the present time I haven't received any information from any of the spraying people out there on a situation that they may be facing. So this is my concern from it and I'm...I probably will look this over and see what we can come up with, but I do have a concern that... [LB254]

SPEAKER FLOOD: One minute. [LB254]

SENATOR LOUDEN: ...we have to be very careful that we don't put too much encumbrance on an industry that you have trouble getting, hiring anyway. In other words, we wouldn't want to put something out here that these people would say, well, no, I'm not going to bother to come to Nebraska to spray. And this is my concern. I'll let you answer that, Senator Dubas, with the rest of my time. [LB254]

SENATOR DUBAS: Thank you, Senator Louden. There are several of our neighboring states already have such regulations in place. Again, the Aviation's Association came forward. They're not going to put any extra burdens on themselves as far as being able

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to do their business. I worked very closely with them. Again, it's just that need for accountability and the paper trail so that the work that's being done is carried out in a responsible fashion. [LB254]

SENATOR LOUDEN: Thank you, Mr. President. [LB254]

SPEAKER FLOOD: Thank you, Senator Louden. Senator Stuthman, you're recognized. [LB254]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I am in support of this bill, but with this bill coming forth I have another concern also and it deals with the pesticide. A year ago, I had numerous people in my district that contacted me and they were concerned about pesticide applications, and it was the applications for the bean leaf beetles. And the issue was the fact that people that had beehives...one individual, for sure, lost their total beehive because of the application. And I would like to engage in a little conversation with Senator Dubas, please. [LB254]

SPEAKER FLOOD: Senator Dubas, will you yield to a question from Senator Stuthman? [LB254]

SENATOR DUBAS: Certainly. [LB254]

SENATOR STUTHMAN: Senator Dubas, we had discussed this earlier this morning a little while ago and the fact that...would you be willing to look at the situation of the notification of the individual applying these pesticides--probably the landowner, possibly the co-ops--of where these beehives are located and they should notify the beehive owners that there could be spraying taking place close to that, that they could maybe cover their beehives? Would you be willing to look at something between Select and General as to some type of a better notification so we don't lose, you know, an individual's total business of beehives? [LB254]

SENATOR DUBAS: I certainly would be willing to look at that. And as you and I discussed, I am planning on introducing a resolution for the next interim working with the honey producers in our state. They've raised other issues as well as that particular one. And I believe there may already be a notification process in place, but we certainly should look at that notification process to see if it's being carried out and if we need to do something to make it better. [LB254]

SENATOR STUTHMAN: Yes, I would agree with that. And I want to thank you, Senator Dubas, for agreeing to that part of it. Because I think, you know, in my situation we had some young individuals that were in high school that started a small business with beehives and they got totally wiped out the first year that they got in business. And I think we need to be very serious about, you know, what the effects are of these

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pesticide applications and make sure that the wind is right, the distance is right, and have a location of where these beehives are at so that the co-ops and stuff know, you know, where they're at. And maybe there should be a registration of where these beehives are. Maybe it's a responsibility of the bee owners to notify, you know, the co-ops, the applicators in the area, as to where their beehives are. But I want to thank you, Senator Dubas, for agreeing to try to adopt something that we can help these young producers of the bee industry. Thank you, Mr. President. [LB254]

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PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Krist, you're recognized. [LB254]

SENATOR KRIST: Thank you, Mr. President. Senator Dubas, thanks for engaging in a conversation yesterday and explaining to me the real intent of the bill. Colleagues, I rise in support of AM1536 and LB254, but yet for another reason. As you know, ag sprayers affect our homeland security issues in a huge way. The accountability of an airframe carrying the kind of potential threat to our folks inside the state is as big a threat as potentially overspraying and doing harm where it's not intended. I think it's a wonderful thing that there will be yet another accountability, particularly for an airframe that comes from outside the state in terms of accountability. But I'd like you to define for us...if Senator Dubas would yield to a question, please? [LB254]

PRESIDENT SHEEHY: Senator Dubas, would you yield to Senator Krist? [LB254]

SENATOR DUBAS: Yes, I will. [LB254]

SENATOR KRIST: Define for us, if you will, page 2, lines 15 and 16, you say, "under the direct supervision." In my world that means you might be standing there watching the actual operation or sitting in the backseat of the airplane watching him perform. Could you tell me what that really means? [LB254]

SENATOR DUBAS: In visiting with the Department of Ag, this "direct supervision" does not mean in the line of sight. The direct supervision means if I as a co-op or a company am contracting with a pilot to do spraying, I'm willing to accept liability along with that sprayer for any damages that are done. [LB254]

SENATOR KRIST: So in line with Senator Stuthman's question, if there was damage done there would be yet another opportunity for a citizen of Nebraska to walk back and say: We need to come to some conclusion on damage that might be done. Again, I am in support and thanks for all your hard work. [LB254]

SENATOR DUBAS: Thank you. [LB254]

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PRESIDENT SHEEHY: Thank you, Senator Krist. Senator Louden, you're recognized. [LB254]

SENATOR LOUDEN: Thank you, Mr. President and members. Would Senator Dubas yield for questions, please? [LB254]

PRESIDENT SHEEHY: Senator Dubas, would you yield to Senator Louden? [LB254]

SENATOR DUBAS: Yes, I will. [LB254]

SENATOR LOUDEN: Yes, Senator Dubas, as I look this over it mentions pesticides all through here, and I'm wondering is there something here that herbicides wouldn't be included in this bill? [LB254]

SENATOR DUBAS: Well, this is dealing with pesticides. That wasn't ever anything that we discussed, and I don't know if we need to expand that language to include herbicides also. [LB254]

SENATOR LOUDEN: Pardon? What did you say, the last part? [LB254]

SENATOR DUBAS: I don't know if we need to make sure that we're including all of the types...I mean, this is under the Pesticide Act and so, you know, that's a good question and I will talk to the department (inaudible). [LB254]

SENATOR LOUDEN: Yeah, as I notice in the bill they're talking about it and I think counsel for the Ag Committee mentioned that that's all in that same act, whether...and it's called Pesticide Act or something. But I wonder why there isn't a better description? Because if you're talking about pesticides all through the bill, there's never a mention of spraying any herbicides and I'm wondering where the problem is. Is it with spraying pesticides or spraying herbicides, and should that somewhere along the line have a better description of what we're trying to do? [LB254]

SENATOR DUBAS: Well, we certainly will get clarification. I know, as I said, this comes under the Pesticide Act and that might already be defined in the definitions, but I certainly will get your... [LB254]

SENATOR LOUDEN: Okay. Thank you, Senator Dubas, and thank you, Mr. President. [LB254]

PRESIDENT SHEEHY: Thank you, Senator Louden. Senator Coash, you're recognized. [LB254]

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SENATOR COASH: Thank you, Mr. President, members of the body. I rise in support of LB254 and I wanted to give the body a little bit of clarification on Senator Louden's question. Senator Louden, pesticides are an overall term that does include herbicides and fertilizers and things of that nature, so if that clarifies that for the body, it is included. Thank you, Mr. President. [LB254]

PRESIDENT SHEEHY: Thank you, Senator Coash. Seeing no additional requests to speak, Senator Carlson, you're recognized to close on AM1536 to LB254. [LB254]

SENATOR CARLSON: Mr. President and members of the Legislature, thank you for the discussion concerning this amendment and this bill, and I would ask for your support on AM1536. Thank you. [LB254]

PRESIDENT SHEEHY: Thank you, Senator Carlson. You have heard the closing. The question before the body is on the adoption of AM1536 to LB254. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB254]

CLERK: 39 ayes, 0 nays, Mr. President, on the adoption of Senator Carlson's amendment. [LB254]

PRESIDENT SHEEHY: AM1536 is adopted. [LB254]

CLERK: I have nothing further on the bill, Mr. President. [LB254]

PRESIDENT SHEEHY: We will now return to floor discussion on LB254. Seeing no requests to speak, Senator Dubas, you're recognized to close. [LB254]

SENATOR DUBAS: I thank the members of the body for the discussion this morning and I think the questions were answered. I will visit with Senator Stuthman on his concerns and appreciate your support on LB254. [LB254]

PRESIDENT SHEEHY: Thank you, Senator Dubas. You have heard the closing. The question before the body is on the advancement of LB254 to E&R Initial. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB254]

CLERK: 42 ayes, 0 nays, Mr. President, on the advancement of LB254. [LB254]

PRESIDENT SHEEHY: LB254 advances. We will now proceed to LB512. [LB254 LB512]

CLERK: LB512 is a bill by Senator Lautenbaugh. (Read title.) The bill was introduced on January 21 of last year, at that time referred to the Government, Military and Veterans Affairs Committee, advanced to General File. [LB512]

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PRESIDENT SHEEHY: Senator Lautenbaugh, you're recognized to open on LB512. [LB512]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. LB512 amends the law regarding airport zoning. The current law provides for airport zoning to prevent hazards that endanger lives and property of the users of the airport and the occupants of the land in the vicinity of the airport. The Department of Aeronautics issues guidelines for airport zoning. Without airport zoning, an airport is not eligible for federal or state funding. Currently, Section 3-303 provides that a political subdivision that has an airport hazard area within its zoning jurisdiction may adopt zoning regulations for the area. In most situations where an airport zoned by a political subdivision, and any part of the hazard area is outside of the zoning jurisdiction of the political subdivision, a joint airport board is established as provided by current law, 3-304. A joint airport zoning board is allowed where an airport is owned by a political subdivision and any part of the hazard area is outside of the zoning jurisdiction of the political subdivision. The joint zoning board is formed by the political subdivision owning the airport and the political subdivision where the airport is located. The creation of a joint zoning airport board is a cumbersome process that adds a level of bureaucracy. LB512 eliminates the need for a joint board in most cases by requiring that the political subdivision where the airport is located do the zoning for the airport in conjunction with FAA and aeronautics board's regulations and minimum standards. I believe this is a good bill and an important bill because it does eliminate a level of bureaucracy. What we have now, if you live near an airport that is outside of a city but within a county, a lot of times you don't really know who to go to if you need some sort of zoning approval. You can talk to your county board, and that might be part of the answer. You can talk to the city council if you're from the city. That might be part of the answer. But these mysterious joint boards are out there. This makes it clear that if your airport is within the county and they have zoning authority and a zoning plan in place, they will do the zoning for the airport as well. This bill has enjoyed what I would call unusually statewide support for one of my bills. I have correspondence here from the city of Gordon; city of Blair; city of Arapahoe; the Hartington Airport Authority; again, with the Hartington Airport Authority; North Platte; Pender Airport, and on and on, is probably the best way to put it. I think this is a needed change. I don't think it's a radical change by any measure, but at least it provides some clarity for the citizens as to where to go when they have zoning issues and it does provide safety for the airport hazard area. And I would urge your approval. [LB512]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. You have heard the opening to LB512. Mr. Clerk, do you have an amendment filed on your desk? [LB512]

CLERK: Mr. President, Senator Lautenbaugh would move to amend his bill with AM1549. (Legislative Journal page 179.) [LB512]

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PRESIDENT SHEEHY: Senator Lautenbaugh, you're recognized to open on AM1549. [LB512]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. And I'd be remiss if I didn't point out how much I'm enjoying having this much mike time this week while my injuries heal from last week, and HDTV just makes it that much better. This amendment is very simple. We had the bill originally drafted referencing certain sections that made it appear to not include Lincoln and Omaha's existing airport authorities. By this amendment, we're removing the specific statutory sections to address the concerns of the city of Omaha and the city of Lincoln that somehow this bill would change how they're currently doing business. So that's the reason for the amendment. It just is to clarify that we weren't trying to change what already exists for reality in Lincoln; we were just trying to bring the level of clarity to some of the smaller airports throughout the state. And I'd urge your approval as well. [LB512]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. You have heard the opening of AM1549 to LB512. Members requesting to speak, Senator Avery, you're recognized. [LB512]

SENATOR AVERY: Thank you, Mr. President, colleagues. This bill, LB512, came before the Government Committee and it was passed without any opposition. If you don't mind, I will not specifically address the amendment but the bill itself. It's pretty simple. It makes a change to current statutes. Currently, for each airport, if the airport hazard zones extend outside a city or a county's zoning jurisdiction, the city and county may create a joint airport height zoning board to govern necessary restrictions to protect the airport hazard zones from intrusions. There is very little guidance, however, on what should be included in the regulations. The guidance today generally restrict the zoning to 3 miles and 150 feet. It doesn't necessarily allow for protection when the hazard areas extend beyond county lines, which often occurs. Currently, in many communities if someone wants to build something that is controlled by the height, the joint height zoning regulations, they may apply to the county planning department for a building permit, wait for that approval, and then apply to the city that administers the airport height zoning regulations. That seems to be an unnecessary duplication and leads to delays in approval. It could be easily handled in one review and that's what we try to achieve with LB512. It also requires the Department of Aeronautics to adopt minimum regulations for each class of airport. This will help provide for uniform regulations, regulations that will help each airport maintain safety standards that are prescribed by the FAA currently. The Department of Aeronautics could determine, based on the airport classification, the necessary distances that need to be protected. By adopting these minimum standards it will help ensure that the airspace needed now and in the future for each airport is maintained to provide for safer aviation. This is particularly needed today with more and more cell towers being erected, more and more plans for

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wind energy construction. So I think this is good bill and I believe that the amendment also should be approved. Thank you, Mr. President. [LB512]

PRESIDENT SHEEHY: Thank you, Senator Avery. Seeing no additional requests to speak, Senator Lautenbaugh, you're recognized to close on AM1549. Senator Lautenbaugh waives closing. The question before the body is on the adoption of AM1549 to LB512. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB512]

CLERK: 39 ayes, 0 nays, Mr. President, on the adoption of Senator Lautenbaugh's amendment. [LB512]

PRESIDENT SHEEHY: AM1549 is adopted. [LB512]

CLERK: I have nothing further, Mr. President. [LB512]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We will now return to floor discussion on LB512. Seeing no requests to speak, Senator Lautenbaugh, you're recognized to close. Senator Lautenbaugh waives closing. The question before the body is on the advancement of LB512. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB512]

CLERK: 40 ayes, 0 nays, Mr. President, on the advancement of LB512. [LB512]

PRESIDENT SHEEHY: LB512 advances to E&R Initial. We'll now proceed to LB544. [LB512 LB544]

CLERK: LB544 is a bill by Senator Giese. (Read title.) The bill was introduced on January 21 of last year, at that time referred to the Government, Military and Veterans Affairs Committee. The bill was advanced to General File. [LB544]

PRESIDENT SHEEHY: Senator Giese, you're recognized to open on LB544. [LB544]

SENATOR GIESE: Thank you, Mr. President and members of the body. I rise today in support of LB544 which would require the Secretary of State's Office to publish a uniform statewide election guide for election workers at the precinct level. The concept of the uniform guide is a simple one. County election officials have a difficult job, and keeping track of changes in Nebraska election laws can be time-consuming. The Secretary of State's Office is already required by law to provide training for election officials. LB544 would simply require a comprehensive guide as a part of that training. The bill was advanced by the Government Committee on a unanimous vote. New election officials are unfamiliar with Nebraska election law and, without a comprehensive guide from the Secretary of State, these new officials must rely on

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whatever resources they have left by their predecessors. In some cases, these materials may be seriously outdated or inadequate for the needs of the particular election official. While larger counties like Douglas and Lancaster may have the time to develop guidelines for poll workers, smaller counties in which elections are just a fraction of the county clerk's duties simply do not have the time or resources to develop their own guidelines. At and following the public hearing on LB544, a few county clerks brought up some potential concerns about the bill and I would like to address those concerns on the record at this time. First, LB544 would not mandate that every county follow the guidelines provided by the Secretary of State. The original draft that was brought to my office would have mandated certain aspects of the guide, but this provision was removed to allow clerks in different counties the flexibility to adapt to their unique demographics. With the creation of a statewide guide by the Secretary of State, these officials would have a good base from which to develop their own practices and policies. Second, LB544 would not force similar counties to depart from election practices which work well for them and adopt practices of larger counties. What works well in conducting an election in Omaha or Lincoln may not work well in Wayne or Chadron and vice versa. The language of the bill was specifically drafted to account for variations between counties of different sizes and counties that are not discouraged from deviating from statewide guidelines. The election guide is designed to be a resource, not a rule book. Many of our surrounding states with similar demographics, including Iowa, Kansas, South Dakota, and Minnesota, already have election guides in place which take into account the differences between rural and urban counties. Third, LB544 should not expose counties that deviate from the guidelines to litigation so long as these counties are not violating Nebraska election law in some manner. Based upon litigation in other states, the opposite is in fact true. States that lack some form of uniform election guides have the potential to be exposed to litigation when different counties apply different rules. For example, the state of Ohio has been involved in an ongoing lawsuit since 2004 which stems primarily from their lack of uniform election standards. Requiring the Secretary of State's Office to publish a uniform guide will help protect against such litigation here in Nebraska. Finally, LB544 is not asking the Secretary of State's Office to reinvent the wheel. The Secretary of State already provides a number of resources to local election officials, and several counties are already producing their own uniform guides. The statewide guide could easily be a compilation of these existing materials. I believe that the idea of a uniform statewide election guide is fairly commonsense and I would urge the body to advance LB544 to Select File. [LB544]

PRESIDENT SHEEHY: Thank you, Senator Giese. You have heard the opening of LB544. Members requesting to speak are Senator Stuthman, followed by Senator Karpisek and Senator Avery. Senator Stuthman, you're recognized. [LB544]

SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. I would like to engage in a little conversation with Senator Giese. [LB544]

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PRESIDENT SHEEHY: Senator Giese, would you yield to Senator Stuthman? [LB544]

SENATOR GIESE: Yes. [LB544]

SENATOR STUTHMAN: Senator Giese, the system that you're proposing, the election guide, are counties mandated to follow this election guide? [LB544]

SENATOR GIESE: Under this bill, they would not be mandated to follow it. It is exactly used, as I stated, as a guide for them. As I stated, there are different...counties of different sizes have different things that work well for them. This is just a one-stop shop, if you will, for them and they can use it as just that: a guide. [LB544]

SENATOR STUTHMAN: Senator Giese, what we have currently, is it working or isn't it working or why do we have to go to the trouble of having the Secretary of State, you know, establish a guideline or a manual for counties to use? Why are we doing this or isn't it working in the counties? [LB544]

SENATOR GIESE: I think, Senator, it is working, what they're doing now in the counties, and this is not bringing out any specific problems that they have, but we also don't know that they are having problems. This, I think, will help them if they have a problem as they're doing an election: Where do I go to look up this information? Right now, the counties have to rely on what their predecessors leave them for information. So if they don't have all the information that they need and their clerks are not doing their jobs, they've got trouble. [LB544]

SENATOR STUTHMAN: Well, Senator Giese, I really think that if counties, you know, have a problem, if the election commissioner has a problem, we have, you know, the county officials group where they can go to, they can get information. And bordering counties usually visit amongst themselves as far as the areas that they have problems. That's why I see no need for any of this. I feel that these election commissioners, I think they're doing a wonderful job, and they know their area, they know their voting places, they know the regulations. And I just see no need, in my opinion, that we have to develop some type of a manual or a policy guide or anything like that. I'm sure that these newly elected election commissioners, you know, will seek out the information and the majority of the time these individuals are people that have worked in that office prior to them being elected. So I...in my opinion, I see no need for this and I just think that we're adding something where someone has to do some more work. And I just feel that the election commissioners in our counties, you know, when they need information, they will find the information. Because if they do something wrong, I think, you know, they're going to get into a lot of trouble. So with that, I want to thank Senator Giese, you know, for his information, but at the present time I can't support this bill. Thank you, Mr. Lieutenant Governor. [LB544]

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PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Karpisek, you're recognized. [LB544]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I would like to rise in support of this bill. I know that a lot of election officers do get training and they do a good job. It's a big job. When I ran for this office, a person that worked for me at the time went to go vote and the people at the polling place didn't know about a provisional ballot. I think that's exactly the reason why we need a brochure when things come up that they can look at quickly. I think it makes sure that when people go vote that it's done correctly, that their vote does count. This doesn't mandate anything. The A bill is not very much or if there is an A bill, excuse me, less than \$10,000. I think with right now trying to get people to be election officials, it's hard. It's a long day. It's a stressful day. Maybe some of the bigger counties have people right there to help a little quicker. I think some of our smaller counties it's hard to get people to come in, it's hard that they don't know the manual by heart. I certainly don't. I think this is just a quick, easy guide they can have in front of them. If a question comes up, they can look at it, make sure that it's right. They don't need anymore stress than they already get. We want people to get their vote counted correctly. I will support this idea. I think it's a good idea to make sure that things go smoothly and the votes are counted the correct way and people's votes are turned in. Thank you, Mr. President. [LB544]

PRESIDENT SHEEHY: Thank you, Senator Karpisek. Additional members requesting to speak on LB544, we have Senator Avery, followed by Senator Nelson and Senator Lautenbaugh. Senator Avery, you're recognized. [LB544]

SENATOR AVERY: Thank you, Mr. President, colleagues. I would just point out that this bill was heard before the Government, Military and Veterans Affairs Committee and it was reported out without dissent. I would also note that the Help America Vote Act requires that election workers must be trained prior to each federal election, and this guide that we are now talking about in LB544 would help election officials provide that information. I think though, more importantly, it promotes uniformity and continuity of procedures. The election laws can be complicated. A lot of times, the workers in many of these jurisdictions may not have a lot of experience, but this can help provide them with necessary information. I note that the Fiscal Office has said this will cost about \$9,500. Eight thousand of that is a temporary worker in the Secretary of State's Office; the \$1,500 additional, I believe, would go toward actual preparation of the guide. The guide would be a one-time preparation until laws are changed again, but it seems to me that this is not an unwise expenditure of public money and I urge your support. Thank you. [LB544]

PRESIDENT SHEEHY: Thank you, Senator Avery. Senator Nelson, you're recognized. [LB544]

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SENATOR NELSON: Thank you, Mr. Speaker (sic), members of the Legislature. I would like to ask Senator Giese a few questions about this if he will yield. [LB544]

PRESIDENT SHEEHY: Senator Giese, would you yield to Senator Nelson? [LB544]

SENATOR GIESE: Yes. [LB544]

SENATOR NELSON: Senator, thank you for bringing this for purposes of discussion and perhaps need. I thought I heard you say that the Secretary of State is already promulgating some sort of instructions to election workers and the county clerks. Did I misunderstand? [LB544]

SENATOR GIESE: That's correct. They send out information to the offices now. [LB544]

SENATOR NELSON: Can you elaborate a little bit on what kind of information is sent out? [LB544]

SENATOR GIESE: If there would ever be any change in election guides or things like that, any new things, they would send out and update those, and they do a good job of that now. [LB544]

SENATOR NELSON: Um-hum. [LB544]

SENATOR GIESE: That's not the question that... [LB544]

SENATOR NELSON: Okay. [LB544]

SENATOR GIESE: ...I guess in my mind that... [LB544]

SENATOR NELSON: It's my recollection that the elected county officials meet annually for a symposium or a day or two, and it's my recollection usually that the Secretary of State or his chief deputy will speak to the county clerks and answer any questions they have and kind of run over any changes in the election laws and also the general provisions of the election laws. Are you aware of that? [LB544]

SENATOR GIESE: I'm not, but I'll take you for your word that... [LB544]

SENATOR NELSON: Okay. [LB544]

SENATOR GIESE: ...that's how often they meet. [LB544]

SENATOR NELSON: And I know that the committee passed this by...unanimously, but I

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see that Neal Erickson who is the Chief Deputy of the Secretary of State for election matters spoke in opposition to this bill. Do you recall what his reasons were or why he opposed the bill? [LB544]

SENATOR GIESE: Senator, it was mostly costs and not knowing what the costs were. We have an estimate now of \$9,500... [LB544]

SENATOR NELSON: Um-hum. [LB544]

SENATOR GIESE: ...as a note on this. But I think a lot of what we're asking is information...or all of what we're asking is information that the Secretary of State already has. So as I said before, we're not asking them to reinvent the wheel here. We're just asking them to have...to do this on-line and have it available on-line. [LB544]

SENATOR NELSON: All right. Thank you for that. And then I also noticed that Dave Phipps, who is the Chief Election Commissioner in Douglas County, also spoke in opposition to the bill. Do you remember what his objections were? [LB544]

SENATOR GIESE: I don't recall specifically, but I would imagine that they would have been somewhere along those same lines. [LB544]

SENATOR NELSON: Well, this \$9,500 cost would not affect Douglas County, for instance. I mean, it would come out of General Funds, so it would seem to me that maybe there were other factors that Mr. Phipps mentioned in opposition to the bill, and I'm just interested in what the counterarguments are here as to the necessity. I think in general I would say that it's probably a good thing, but I'm just wondering if maybe we might be having some duplication here of things that the Secretary of State is already doing and it's going to provide...or they're going to encounter additional costs. Do you have any comment on that question, Senator? [LB544]

SENATOR GIESE: The only comment I would have, Senator Nelson, on that is, if we look at the additional costs it's going to be a one-time cost, and then all this information is going to be available, so. The question that I and the body I think that we should be asking ourselves today is not why are we going to do this,... [LB544]

PRESIDENT SHEEHY: One minute. [LB544]

SENATOR GIESE: ...but why haven't we done it already? [LB544]

SENATOR NELSON: All right. Thank you, Senator. One final comment on my part. We have this initial cost of \$9,500. But I have a bill coming up now that involves changes in election laws; we have federal changes. It's an ongoing sort of thing and it's going to require an update either on-line or in publications so there are going to be continuing

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costs with this. So I will listen with interest to the rest of the discussion and I thank you for bringing the bill, Senator. [LB544]

PRESIDENT SHEEHY: Thank you, Senator Nelson. (Doctor of the day and visitors introduced.) Continuing floor discussion on LB544, members requesting to speak are Senator Lautenbaugh, followed by Senator Stuthman and Senator Campbell. Senator Lautenbaugh, you're recognized. [LB544]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I'm of two minds on this bill. This sounds like a rerun of yesterday in some ways and in some ways it is. I'm a former election commissioner from Douglas County, and I recall that the issues we faced on election day were dramatically different than the issues that might be faced in some of the other counties throughout Nebraska. I think a quarter of the voters vote in Douglas County for the whole state and it was just a different deal. That said, there are some common precepts and principles that I suppose the Secretary of State could be putting out and I think they could and I assume they do. And so I'm in the position, I'm listening and I'm questioning the need as we go forward, but what really bothers me is if I'm not convinced of the need and I stood up yesterday and spoke about \$40,000 or \$45,000, whatever it is, being a significant amount of money, I'm not willing to say that \$9,500 isn't a significant amount of money either, especially if I'm not sure that what we're doing is something we need to do in the first place with this. So I'm probably not going to vote for the A bill which I don't know that I've done before. I don't know if you can filibuster an A bill. I'll check with the Rules Chairman and see, but I'm troubled by this. We do have...you know, there are election-related funds that are sitting around in the CFLA account: \$75,000 to \$100,000. If this is worth doing and worth paying for, in my mind the Secretary of State could come up with rules and regs that they probably already do, or procedures that they probably already do, and just e-mail it out to the county. And I'm not sure what that would cost, and they may be already doing it for all I know. If we want to take the money from the CFLA, well, I would feel better about this, but that's a discussion for another time. The other thing I was going to do with this bill was attach an amendment to repeal LB39 from 2007, now that we're being sued over it. You may recall LB39 was the bill that said we couldn't have outstate petition circulators anymore, that we weren't supposed to pay them by the signature, and various other antidemocratic things that were anathema to the petition process and a right to put things on the ballot, in my opinion. And we overrode a gubernatorial veto of that bill in our wisdom, and now we're being sued, I believe, by Kent Bernbeck with the ACLU and Dave Domina. And I think they're right. They should be suing us because it was the wrong thing to do. But that repeal is for another time and not really germane to this bill since I'm not introducing it today. But I'll continue to listen to the debate on this bill, but I'm not sold yet. Thank you. [LB544]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Senator Stuthman, you're recognized. [LB544]

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SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. One other thing that does concern me about this bill in creating, you know, another guideline, another recommendation of how to do things, you know, I think already we have the guide to poll workers. And in my opinion, you know, our state varies a lot from county to county, from one end to the other end, and I think the way things work in one area, you know, are adopted and they develop their own method of how to address the duties of the poll workers. That is why I don't see a need for this. I think there are already guidelines that they do follow and I don't think there's a need to change that part of it, because some of the election commissioners, you know, have been there for a long time, and if you change something it may disrupt totally what the poll workers are supposed to be doing and what they're supposed to accomplish, so. And in my opinion, you know, there's \$9,500. Yes, it doesn't sound like a lot of money, but I don't think there's a need for that at this present time. I respect the election commissioners, that they're doing the right thing. They get the right people. The ones that get the most votes are the ones that are elected. Everything is done in a proper manner. So I think that we should be very cautious as to what we are doing as far as creating another guidelines, another handbook. And if there is a need for that, why isn't it just done? Why can't they just do that? Why can't they get together and adopt something that works for everybody if something is wrong? But I don't think something is wrong, right at the present time. So with that, I'll continue to listen to the debate, but at the present time I do not support this. Thank you, Mr. Lieutenant Governor. [LB544]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Campbell, you're recognized. [LB544]

SENATOR CAMPBELL: Thank you, Mr. President, and good morning, colleagues. I do want to say that I, too, rise with concerns about LB544. I called and checked with the Lancaster Election Commissioner because I feel that what Senator Stuthman alluded to, that a lot of this information may be there or present, and found out that the Secretary of State, monthly, puts out a newsletter to all election commissioners, and that two or three times a year the election commissioners meet to discuss questions and what's new, and that the Secretary of State does go around the state talking to election commissioners to answer questions. I felt that that was more than sufficient to cover the information that any election commissioner might have across the state, whether large county or small. And would also like to say that during my years with NACO as a county official, the election commissioners across the state met not only at the state conventions, but they met at the district level and oftentimes with someone from the Secretary of State's Office. While I certainly appreciate and respect the intent of it, I do feel the Secretary of State is making every effort to cover this information. [LB544]

PRESIDENT SHEEHY: Thank you, Senator Campbell. Seeing no additional requests to speak, Senator Giese, you're recognized to close. [LB544]

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SENATOR GIESE: Thank you, Mr. President. I appreciate the dialogue and the questions this morning. Senator Stuthman, I'd just like to address a couple of issues that you brought up and just say that this bill does not change any way that the clerks or the Secretary of State, any guidelines now. It does not change any of that. What it is, is a guide. Okay? And the system that we have, I believe, that we rely on now in your scenario is let's say you're the county clerk in your county. Have you ever been sick a day in your life? Well, you're the only one that I know of that hasn't. But if you're sick a day and you get an update on an election that day and it doesn't go into the books, you don't know of that change. So that's what I feel that this guide does. It helps out the counties and the clerks that it may be a clerk and it may be another part-time person and they're it for staff and that's all they have, and they're busy anyway so they don't have time to do this. This would allow them to do that with this guide. The \$9,500, let me just say that it comes from the Election Administration cash fund. This is no General Fund dollars that we're spending here, so I wanted to say that. And with that, I would urge your adoption of LB544. [LB544]

PRESIDENT SHEEHY: Thank you, Senator Giese. You have heard the closing. The question before the body is on the advancement of LB544. All those in favor vote yea; opposed, nay. Senator Giese, you're recognized. [LB544]

SENATOR GIESE: I would request a call of the house. [LB544]

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. [LB544]

CLERK: 34 ayes, 0 nays, Mr. President, to place the house under call. [LB544]

PRESIDENT SHEEHY: The house is 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 Pirsch, would you please check in. Senator Giese, all members are present or accounted for. How would you like to proceed? [LB544]

SENATOR GIESE: Roll call vote, please. [LB544]

PRESIDENT SHEEHY: There has been a request for a roll call vote. Mr. Clerk. [LB544]

CLERK: (Roll call vote taken, Legislative Journal page 185.) 17 ayes, 27 nays, Mr. President, on the advancement. [LB544]

PRESIDENT SHEEHY: LB544 does not advance. The call is raised. Mr. Clerk, do you

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have new bills for introduction and items for the record? [LB544]

CLERK: New bills, Mr. President. (Read LB893-905 by title for the first time.) That's all that I have at this time, Mr. President. (Legislative Journal pages 185-187.) [LB893 LB894 LB895 LB896 LB897 LB898 LB899 LB900 LB901 LB902 LB903 LB904 LB905]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We will now proceed to LB325. [LB325]

CLERK: LB325 is a bill by Senator Nelson. (Read title.) It was introduced on January 15 of last year, at that time referred to the Government, Military and Veterans Affairs Committee. There are committee amendments pending, Mr. President. (AM474, Legislative Journal page 534, First Session, 2009.) [LB325]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Nelson, you're recognized to open on LB325. [LB325]

SENATOR NELSON: Thank you, Mr. President, members of the body. I rise today to introduce LB325. This bill, LB325, contains largely technical changes to the Election Act, and I hasten to add that even though this is another election bill, there is no cost involved with this, there's no fiscal note. These are simply technical changes, which I should add have the support of the Secretary of State and election commissioner and county clerks who testified. First, LB325 permits county election commissioners and clerks to instruct voters to cast a provisional ballot in the event of an error on the precinct list of registered voters on election day. Secondly, LB325 rewords Section 32-329 so that in the event that the election commissioners or clerks receive information that a voter may have moved, the commissioners or clerks shall indicate on the register that the voter may have moved. Third, candidate filings for city or village offices would be required to be submitted to the county election commissioner or clerk rather than a village clerk. Finally, LB325 rewords the oath on voter registration forms pertaining to a voter's age. Senator Avery will introduce a subcommittee amendment which improves the bill, and I urge you to vote for the committee amendment and to advance LB325 to Select File. Thank you, Mr. President. [LB325]

PRESIDENT SHEEHY: Thank you, Senator Nelson. You have heard the opening to LB325. As noted, there is a Government, Military and Veterans Affairs amendment. Senator Avery, you're recognized to open on AM474. [LB325]

SENATOR AVERY: Thank you, Mr. President, colleagues. AM474 strikes all of the original sections of LB325 and, thus, the committee amendment becomes the bill. The new provisions include the following. If the name of a registered voter does not appear on the precinct list due to error, the election commissioner or county clerk will designate whether the voter is entitled to a regular ballot or a provisional ballot. Currently, the current practice is that the poll worker makes the correction in the precinct list and

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allows the voter to receive a regular ballot. Second, if a registered voter moves to a new residence within the same county and precinct but the voter registration information does not reflect that move, the election commissioner or county clerk will designate whether the voter is entitled to a regular ballot or a provisional ballot. Currently, the voter is allowed to complete a new voter registration application to update his or her address and is then allowed to receive a regular ballot. Third, when an election commissioner or county clerk receives information that a registered voter has moved, the election commissioner or county clerk will update the voter registration register to indicate the voter may have moved. Currently, the law requires the election official to immediately update the voter registration record. Fourth, for candidates running for city or village offices, the candidate filing form will be filed with the election commissioner or county clerk. Currently, these offices file with the city or the village clerk. And, finally, the amendment changes the language on the form when a person is challenged on eligibility to vote based on age to make it consistent with the voter registration form. I would point out that this passed the committee 7 to 1. It is technical in nature. It does not appreciably alter the procedures. It does, however, take a little bit of authority away from poll workers and posit that authority with the election commissioner or the county clerk. With that, I would urge you to approve the adoption of this amendment. Thank you. [LB325]

PRESIDENT SHEEHY: Thank you, Senator Avery. You've heard the opening of AM474 to LB325. Members requesting to speak are Senator Lathrop and Senator Lautenbaugh. Senator Lathrop, you're recognized. [LB325]

SENATOR LATHROP: Thank you, Mr. President. I'd like to direct some questions to Senator Avery, if he'll yield. [LB325]

PRESIDENT SHEEHY: Senator Avery, would you yield to Senator Lathrop? [LB325]

SENATOR AVERY: I will. [LB325]

SENATOR LATHROP: Thank you, Senator Avery. This committee amendment replaces the bill. And the subject of the committee amendment, as well as the bill, is essentially when we're going to use provisional ballots and when we're not going to use provisional ballots and simply let someone proceed with a regular ballot. Is that true? [LB325]

SENATOR AVERY: Well, it's not exactly that. It's the way in which provisional ballots will be used. It's partly...your question is partly true. But instead of allowing the poll worker to make immediate adjustments and immediate decisions, it allows the county commissioner and the county clerk. And so you're right in that previously you would go straight to a regular ballot and now you will go to a provisional ballot. So in that sense you're correct, but it also changes the location of the decision. [LB325]

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SENATOR LATHROP: Okay. Here's the concern I have and I'm going to ask you some questions and see if you can clarify this for me. But my own experience with provisional ballots is that people that are given provisional ballots have to jump through certain hoops. They have to reregister to vote. If they don't do that correctly, their provisional ballot won't be counted. They have to do...they have to attest to something on the outside of the envelope, as I'm recalling the law and the process. If they don't do that correctly, they never get to the stack that gets counted. Is that, in general, true? [LB325]

SENATOR AVERY: I think you're right. [LB325]

SENATOR LATHROP: Okay. And if we do not change the law, if we do not accept your amendment or LB325, these people will vote by a regular ballot instead of a provisional ballot, is that right? [LB325]

SENATOR AVERY: Correct. [LB325]

SENATOR LATHROP: And with LB325, we will increase the number of provisional ballots in an election versus regular ballots, is that true? [LB325]

SENATOR AVERY: Right. [LB325]

SENATOR LATHROP: And if I'm right that people have to jump through hoops to get a provisional ballot, we are now taking people who would get a regular ballot and moving them to those who are now going to vote provisionally, and some of those provisional ballots will now be folks who will not clear all the hurdles and then their vote will not be counted. [LB325]

SENATOR AVERY: That's possible. What you're doing here is tightening up the rules on who makes the decision... [LB325]

SENATOR LATHROP: Okay. [LB325]

SENATOR AVERY: ...to go from a regular ballot to a provisional. [LB325]

SENATOR LATHROP: And here's my question in response to that, Senator Avery, and that is, what examples do we have that there has been a problem that we're trying to fix with this bill? Can you tell me what the mischief is we're trying to correct? [LB325]

SENATOR AVERY: That's a good question. This occurred in Douglas County, I believe. The election commissioner, Dave Phipps, came to us and asked that we take a look at this particular issue. And I'm not sure that he had examples of widespread problems. I think what he was trying to do was to introduce some more best practices in the use of provisional ballots. [LB325]

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SENATOR LATHROP: So this isn't...this LB325 came to you from Douglas County and the election commissioner there. It is more of a let's bring a little more certainty to the situation, but the consequence is going to be more people who would otherwise vote with a regular ballot are going to vote provisionally, and some of those people won't clear all of the procedural hurdles and, therefore, their vote won't count. I have to...thank you for your answers to the questions, Chairman Avery. I have to tell you that I have grave concerns about anything that has... [LB325]

PRESIDENT SHEEHY: One minute. [LB325]

SENATOR LATHROP: ...the ultimate effect of reducing the number of ballots that are ultimately counted. People take the time out to go to the polls. It is their right. It's what makes our country unique. And for us to set up a situation in our election laws that increases the probability that one person or two people won't have an opportunity to have their ballots counted because we've tried to tidy things up in response to no perceived or explained problem, I think is problematic and I would have to stand in opposition to LB325 notwithstanding the fact that I'm sure the Government Committee gave this thoughtful consideration. Thank you. [LB325]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Lautenbaugh, you're recognized. [LB325]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I do rise in support of the amendment and in support of the underlying bill, and I wonder if Senator Avery would yield to a question? [LB325]

PRESIDENT SHEEHY: Senator Avery, would you yield to Senator Lautenbaugh? [LB325]

SENATOR AVERY: I will. [LB325]

SENATOR LAUTENBAUGH: Senator Avery, as I understand this, doesn't it move the determination of who has a provisional ballot and who doesn't to the election commissioner, not to the local poll worker? [LB325]

SENATOR AVERY: That is true. [LB325]

SENATOR LAUTENBAUGH: So I don't think we can say with certainty that there will be more provisional ballots, can we? [LB325]

SENATOR AVERY: You can't say with certainty but who makes the decision certainly would be different. And I might, if you don't mind if I add a bit to that? [LB325]

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SENATOR LAUTENBAUGH: No, Senator Avery, I'd like to ask you what's on your mind right now. [LB325]

SENATOR AVERY: Okay. (Laugh) Thank you. It has come to my attention that one of the motivations for this bill in Douglas County is that the election commissioner was having to field a lot of questions from poll workers because they didn't know what to do with a lot of these ballots. And so this would relieve them of that burden. [LB325]

SENATOR LAUTENBAUGH: Thank you, Senator Avery. Again--I sound like a broken record here--I was an election commissioner. And here's the importance of having the provisional ballot. That is a bell you can "unring" if it is determined later that the person for whatever reason--failure to reregister, ineligibility--was not entitled to vote. And I can tell you with...based upon experience in Douglas County, there were circumstances where people were just allowed to vote when they should have been forced to do the provisional ballot, update their registration, etcetera. And I don't believe this is a circumstance created by election commissioner error. This was overwhelmingly a circumstance created by people moving and failing to do what they were supposed to do before the election, which is reregister. They do the provisional ballot, they fill out the new registration or information for their new address, and we move on. But if you just let them go ahead and vote and you put the ballot in the ballot box and you find out it was wrong, we have the phenomenon of people voting whether or not they're entitled to vote and voting for races in which they're not entitled to vote because there's districts within districts, as we know, in Douglas County and everywhere else. That's the purpose for the provisional ballot. So I disagree with some of my colleagues to say better we should let unentitled voters vote than require them to jump through paper...through some hoops and do some paperwork. I'm sorry. The occasion where this comes up is caused by the voter 99 percent of the time, not by the poll workers and not by the election commissioner. And if you need to take steps to update your registration, well, you should have done that with the form in the phone book or when you license your car or by calling the election office and asking them to send you a registration form, whatever the case may be. There's a lot of ways to take care of this before election day. And I believe this is important and I think that was Commissioner Phipps's point with the Government Committee and why this came out with overwhelming support from the Government Committee and why this amendment is a good idea because once you let the person vote and that ballot gets in with all the other ballots and you don't require them to be provisional...and just to recall, provisional ballots are put in a separate envelope. After election day, a determination is made as to whether or not they're voting in the right place and entitled to vote. Then and only then are they counted. We used to call it "fail safe." It was better than just turning people away. It gave them a mechanism to vote if they hadn't updated their registration. And I am 100 percent more comfortable letting the election commissioner make that determination. And the result may very well be more people have to vote provisional--it's not guaranteed but it's possible--and that's

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the proper procedure because that's the proper outcome. It's important that we don't let people vote where they don't live anymore... [LB325]

PRESIDENT SHEEHY: One minute. [LB325]

SENATOR LAUTENBAUGH: ...because you're voting in districts where you're not...your voice is not entitled to be heard. You don't get to vote for your former state senator if you don't live there anymore. And if you're at the wrong polling place and we let you vote for the wrong state senator or NRD member or school board member or public service commissioner or regent or whatever, we can't undo that. If your ballot is just dumped in the ballot box, it's over and we have in a little way disenfranchised the voters who are entitled to vote in that race. Understand, this was the theme throughout my tenure and the theme throughout election history in Nebraska. We have the most complex elections in the state. We have to elect more offices than every other state does. We require rotation among the precincts. We have various precincts. The districts don't all align, they don't even come close to aligning. So it's difficult to make the right call. We've set up a system where poll workers who do this once or twice a year can fail. This is designed to make the election commissioner, who's the professional... [LB325]

PRESIDENT SHEEHY: Time, Senator. [LB325]

SENATOR LAUTENBAUGH: Thank you, Mr. President. [LB325]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Members requesting to speak on AM474 to LB325 are Senator White, followed by Senator Nelson, Senator Lathrop, and Senator Council. Senator White, you're recognized. [LB325]

SENATOR WHITE: Thank you, Mr. President. Would Senator Avery be kind enough to yield to a couple of questions? [LB325]

PRESIDENT SHEEHY: Senator Avery, would you yield to Senator White? [LB325]

SENATOR AVERY: I will. [LB325]

SENATOR WHITE: Senator Avery, I can't dispute Senator Lautenbaugh's concern that we have people voting in the right elections, that votes count properly where they are. But one of the concerns I have are excessive delays in the voting lines. During President Obama's election, in Douglas County we had waits of far more than an hour, sometimes two, three hours for people to vote. Now, if we have this system and a person comes up and a worker has some question, whatever it may be, and now instead of getting an answer right there, okay, you take a provisional ballot or you can vote in a regular ballot, they have to wait until the county commissioner himself--because I don't think there's discretion for this to be delegated--answers that

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question, aren't you effectively disenfranchising every person whose ballot is challenged on any reason because they're going to wait for hours in a election like that to get any kind of judgment? [LB325]

SENATOR AVERY: I would think, Senator White, that what would happen would be that that person would get out of the line while the determination is made by the county commissioner. [LB325]

SENATOR WHITE: How long are they going to wait in that line, Senator? [LB325]

SENATOR AVERY: I have no idea. We didn't have that problem here in Lancaster. [LB325]

SENATOR WHITE: We did, with an incredible turnout with an incredible number of voters. So now you've got somebody who actually comes down there who is entitled to vote. You have someone who doesn't have...Senator Giese does not have a manual to properly educate them, perhaps. And they are just going to be challenged and we're going to not even give them a provisional, we're not going to give them a regular, we're going to make them just sit. And how long do you expect them to sit there, and vote? In fact, isn't this a mechanism for somebody who wants to disenfranchise a bunch of people? Just challenge them all, just challenge them and say, well, we'll have to wait until the county commissioner or the election commissioner decides. Doesn't that just give the keys for massive voter fraud, mischief, and disenfranchisement? [LB325]

SENATOR AVERY: If...is that a question to me? [LB325]

SENATOR WHITE: Yes. [LB325]

SENATOR AVERY: If that were the case, Senator, I would never have supported this in committee. I didn't see it that way. [LB325]

SENATOR WHITE: Well, but doesn't it allow for it? If...I mean, I can understand if you have Arthur County that has 355 people in it, that's one thing. But when you have Douglas County and we already have unacceptably long lines to vote, doesn't this just absolutely allow anyone--I mean it could be any election worker who decides he's in a precinct...if it's a Democrat, he's in a heavily Republican precinct; if he's a Republican, he's in a heavily Democratic precinct--all he has to do is start challenging a lot of people and saying, gee, you're going to have to wait until the election commissioner...and right now that wait is nine hours; stand in line, and if you leave you'll have to start over again. Haven't we just given them an incredible tool to unfairly manipulate the election? [LB325]

SENATOR AVERY: I think, Senator, that you could look at it this way, that if you take

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these irregularities, if you take those out of the line, it speeds up the line for those who are behind. I don't know if you'd have a nine-hour wait. I would find that extremely unusual and unacceptable. And by the way, I have a long record of supporting measures that make voting easier. [LB325]

SENATOR WHITE: And I have too. [LB325]

SENATOR AVERY: And I wouldn't construe this measure or this bill that way. And if it turned out that way, I'd be the first one to come back and try to correct it. [LB325]

SENATOR WHITE: How many elections go by before we correct it? The point on the law, shouldn't it be, Senator, is we write the law in a way that has a basic bias towards getting them a ballot. [LB325]

PRESIDENT SHEEHY: One minute. [LB325]

SENATOR WHITE: And my concern is not that the wrong...that we give a regular ballot to someone who should only get a provisional. I'm fine if they get a provisional. I have a problem that we're going to set up a line that's just going to effectively kill the desire to vote at all. And all it takes is some guy saying, well, I don't know, you're just going to have to ask the election commissioner. And then he's overwhelmed. I mean, it is so rife and so easy to abuse this law as drafted that I wonder if you're not setting the state up for a massive federal lawsuit that could be devastating. [LB325]

SENATOR AVERY: Well, it's my hope that you are wrong, because I would be the last person to try to set up any system that would discourage people from voting or to make it more difficult or to increase the time of the wait. I mean, I just can't...I would never do that. [LB325]

SENATOR WHITE: Well, how about we have a rule that says no one shall wait more than five minutes for a decision in that line? I mean, it... [LB325]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator White. Senator Nelson, you're recognized. [LB325]

SENATOR NELSON: Thank you, Mr. President, members of the body. Senator White, wrong, wrong, wrong. (Laugh) The...all right, response. And I do want to respond to this. The very impetus of this bill is to avoid exactly what you're talking about. This bill will speed things up because the way things work now all they're going to do is if there's a question, if there's a clerical or a technical error of some sort, then the poll worker will want to contact the election commissioner, the county clerk. And that's where the wait is if they have to do that. This provides for a standing rule and this is the way that it's construed, that the election commissioner would say if you have technical errors like

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this don't call me; give them a provisional ballot at this time, let them go ahead and vote on a provisional ballot. And the beauty of the provisional ballot is that they vote, that it cuts down the time, any waiting time, it cuts it to nothing. They go ahead and vote. They vote the ballot. It's sealed and then the provisional ballot is set aside and it's looked at later. And yes, it is necessary to reregister and to clean things up. But it's important that we do that, that we get that done at this time. And that might be somewhat of an inconvenience to the voter to go ahead and do that but, nevertheless, he's going to be able to vote and we're going to be a lot more certain that he's entitled to vote down the road. Probably, I'm just guessing, 90 percent of the time there's no problem. It's just an incorrect address or something or the name is spelled wrong or something like that. So when that's looked at later, when there's time to do it and it's decided that there's no problem with this ballot, they go ahead and put the ballot in. They open the ballot up and they count it, and it's counted. And this will really expedite things. And this is one of the main reasons I think that this was put forward by the election commissioner in Douglas County, to expedite things and make it easier and make it less of a problem for the poll workers, the workers there because they can simply, if there's a question they can go through the provisional ballot. They don't need to give them a ballot that they would vote directly and then, as was said by Senator Lautenbaugh, find out that it was a mistake and someone was voted illegally. In my mind, it's worth doing this to provide for a provisional ballot and have it done under the direction of the election commissioner than to put that burden on the poll worker and decide, well, let's go ahead and let them vote. I think we're much more likely to have election fraud under those circumstances than if we do what is being attempted to do in this bill in the committee amendment. Thank you, Mr. Speaker. [LB325]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Senator Lathrop, you're recognized. [LB325]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I think it's important to separate general statements about this amendment from the specifics. And let me share with you the targeted group of voters that we're talking about. It is in the amendment, it's found in Sections 4 and 5. It is those people who have moved from within the same precinct. Okay? We're not talking about people that show up who moved here from Cleveland. We're talking about somebody who moved within the same precinct. Now think about those people that live in your districts. Within a precinct is a very small area. I think there's 27 or so in my legislative district. If someone moves within that precinct and shows up at the polls, currently they can say, I'm Steve Lathrop, I moved from this address to this address, same precinct, and currently they'll be given a ballot and they'll be permitted to vote. The change is directed not at a bunch of fraudulent voters, not at people trying to throw an election, the change is directed at those people that move within a precinct. Now what happens today? Today they vote with a regular ballot and their ballot is counted. And isn't that what we want? If we require, as this would, and frankly it doesn't even mandate it. All right? So this can't be

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that compelling if we're not going to mandate it in all circumstances. But we can say, depending on the election commissioner, that this can turn into a provisional ballot. What happens with the provisional ballots? They have to reregister. If they don't do that correctly, their vote doesn't count. And then they have to fill out an affidavit on the face of the envelope. If they don't do that correctly, if it isn't done just according to state law that's a ballot that doesn't get counted. And for what purpose? Is this a lot of discretion? Is there an opportunity for fraud that we're correcting? It's not. Look at the bill. Look at the amendment. It is a group of voters that move within a precinct who currently are permitted to vote. If you move down the street from where you live and you don't reregister because you think I live in this precinct, nothing has changed but my address, you get to vote. We are going to disenfranchise people who don't clear the legal hurdles for a provisional ballot. Why is that important? It's important because these races, many of them, can come down to just a handful of votes. They can come down to the provisional ballots. And they can come down to, in my race it came down to the provisional ballots. We had I think--Senator Nordquist may remember this better than me since he helped me--a couple hundred provisional ballots in my legislative race. And by the time people cleared the hurdles it was down to 69. So we took 150 people or so and eliminated their right to have their vote counted. That should give us reason for pause in this body. I want to make two things very clear. When my provisional ballots were being counted, during that entire process Dave Phipps, the Douglas County Election Commissioner, was nothing but perfectly professional. My concerns with this bill have nothing to do with Douglas County's Election Commissioner. And believe me, I appreciate that Senator Avery has made it his life's work to ensure that voting is easier and better, and more votes get counted. But I have a disagreement with him. I think if you move within your precinct, the law currently lets you vote a regular ballot. And we ought to leave that alone and not turn it into a provisional ballot that increases the likelihood... [LB325]

PRESIDENT SHEEHY: One minute. [LB325]

SENATOR LATHROP: ...that the vote will not be counted. Thank you, Mr. President. [LB325]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Council, you're recognized. [LB325]

SENATOR COUNCIL: Yes, thank you, Mr. President. And I echo Senator Lathrop's comments, because as I was going through the amendment that is a point that jumped out at me. And when I was listening to the debate I understood Senator Avery to be saying that one of the reasons for this piece of legislation is to take the guesswork out of the hands of the poll workers and place the decision making into the hands of the election commissioner or the county clerk, and that would eliminate the constant communications between poll workers who don't understand what should be done in a

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particular situation and the county election commissioner. Well, based upon the discussion that I've heard to date and the reading of the language of the amendment, this would increase the county election commissioner's involvement in the election day decision making. It would increase the volume of attempts to contact the Douglas County Election Commissioner or the Lancaster County Election Commissioner because the bill says that in those instances the county election commissioner or the county clerk will make the decision as to whether an individual receives a regular ballot or a provisional ballot. So the suggestion that by enactment of this piece of legislation we would be reducing the burden that may be placed upon a county election commissioner, it appears to me that we'd be increasing it. Rather than poll workers knowing to go to the course of least resistance, every one of these cases will have to be presented to the county commissioner, excuse me, county election commissioner or the county clerk according to the language of the amendment; that it's that decision, and that decision is made according to the language of the bill on election day. So to me the bill actually creates more problems than I heard of any problems existing with regard to this issue. And I think that Senator Lathrop made a very, very valid point. When you look at the bill in terms of the provisional ballot issue, it all relates to individuals who move within the same county within the same precinct. So the issue about voting outside of a district and voting for someone who you might not have had the authority or ability to vote for is not an issue that's being addressed by this legislation. Instead, what's being addressed is the situation where someone moves within the same precinct. And I know of many individuals, unfortunately, who are under the impression that if they move within the same precinct that they don't have to go through the reregistration because they're not altering any situation. They're still voting in the same precinct that they voted in when they lived at the prior residence. And by looking at the amendment, that's the only addition. And that change, in my opinion, does not justify the creation of the possibility of disenfranchising individuals. Again, I think that the argument that the current system places an unnecessary and undue burden on the county election commissioners or county clerks to answer questions of poll workers... [LB325]

PRESIDENT SHEEHY: One minute. [LB325]

SENATOR COUNCIL: ...is absolutely countered and contradicted by the language of the amendment itself which requires that contact between the poll worker and the county election commissioner to render that decision. So in light of those contradictions, I will not be supporting AM474 or LB325. [LB325]

PRESIDENT SHEEHY: Thank you, Senator Council. Members requesting to speak on AM474 to LB325, Senator Lautenbaugh, followed by Senator Haar and Senator White. Senator Lautenbaugh, you're recognized. [LB325]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I think it's important that we do understand clearly what we're talking about. My

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experience again is with Douglas County, so that's the county I'll refer to. A precinct is about...supposed to be less than...fewer than 1,000 voters. My precinct is the size of my neighborhood. Ask yourselves in your experience how many times you've moved within your same neighborhood. The number of provisional ballots...okay Senator Council has once. The number of provisional ballots that are generated by people moving within their precinct is infinitesimally small, it doesn't happen that way. The precincts are very small areas, in an urbanized area especially. The problem here is that we're relying on the poll workers to determine you're still within the precinct. And they aren't qualified to do that. That's why this is needed. They have a map of the precinct certainly, but addresses are added, construction goes on. You have to determine which side of the street that person lives on and if that person is in the same precinct. That is a dangerous thing to be having the poll workers do. That I see as a reason for this. They don't have computer databases at each polling place. If you have to contact the election commissioner every time someone moves purportedly within the precinct, I can tell you that's going to come up almost never. And I recall Senator Lathrop's race as well. And yes, it was common that a lot of the provisional ballots were thrown out. But I would bet that the vast majority of them weren't thrown out because of errors on the form. They were thrown out because they weren't entitled to vote in that area, because they'd moved into the area and failed to reregister. I could move to the bottom of my hill and be in a different precinct. And I don't want to rely on my poll workers to know that and make that determination. That's why this change is important. And it's important to remind us, I guess, since we've heard that this could lead to litigation and disenfranchisement by some nefarious poll worker, there isn't just some guy sitting at the poll that says yea or nay. There's a team of people of mixed parties there. And if you're worried about this being the method by which some poll worker could start turning away people he or she didn't like, well, first of all, his other poll workers would rat him out. Second of all, there's already plenty of ways in the law you could do that. You could just say, I can't find you in the book, and you don't get to vote. So the concerns that this would lead to the poll workers trying to exclude people, while I understand that's being given as reason to vote against this amendment, I don't see that as a serious concern. And incidentally, I recall the presidential election in Omaha as well. The long waits in Omaha were for the people who showed up early and lined up around the election commissioner to vote before election day. And they waited forever. And since we were willing to mail them ballots I don't understand why they did that, but they did that, so fine. They probably won't do it again. But at the polling places I inquired of the election commissioner. He recalls some polling places had a 15-minute wait, a couple of them had a half-hour wait a couple of times because of volume, probably the after-dinner crowd. We did not experience delays on election day at the polling place that amounted to some sort of a disenfranchisement. And that election was in some areas the turnout was remarkable and historic and probably not likely to be repeated. But to say that there were significant, hour-long, two-hour-long, nine-hour-long delays, that's never happened. And again, this provision that people are objecting to is talking about people moving within their own precincts, which also very rarely happens. So if we take that volume of

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people, add it to the volume of people having to call the election commission, we're at least getting the right determination. Even if it increases the volume of calls at the election commission, the election commission wants this because they want to do the job right. I again support this amendment and I urge your support. [LB325]

PRESIDENT SHEEHY: One minute. [LB325]

SENATOR LAUTENBAUGH: And I would yield the rest of my time to Senator Avery. [LB325]

PRESIDENT SHEEHY: Senator Avery, you're yielded 50 seconds. [LB325]

SENATOR AVERY: Yes, thank you, Senator Lautenbaugh. I would just like to point out that the most likely outcome here would be an instance where the election commissioner would say to poll workers, in cases where--just an example--in cases where someone shows up to vote and they have moved to a different location in their precinct, give them a regular ballot. That way you don't have the poll worker, every time that case comes before them, calling the election commissioner's office trying to get a clarification. That, in my opinion, would speed up the process and not slow it down. The concern that you would have people stacked up for many, many hours waiting to get approval from the election commissioner, I don't think that would happen because what the election commissioner can do is set the rules on how these situations would be handled in advance. And that comes... [LB325]

PRESIDENT SHEEHY: Time, Senator. [LB325]

SENATOR AVERY: Thank you, Mr. President. [LB325]

PRESIDENT SHEEHY: Thank you, Senator Avery. Senator Haar, you're recognized. [LB325]

SENATOR HAAR: Mr. President, members of the body, I have a few questions for Senator Avery. [LB325]

PRESIDENT SHEEHY: Senator Avery, would you yield to Senator Haar? [LB325]

SENATOR AVERY: I will. [LB325]

SENATOR HAAR: Senator Avery, right now if people move within their precinct, because this is getting a little muddled in my mind now, they can simply give people a ballot based on the word of that person. Is that correct? [LB325]

SENATOR AVERY: But right now that determination is made by a poll worker. And

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most of the time the poll worker calls the election commissioner and asks for instructions. [LB325]

SENATOR HAAR: Okay. And so do they have to fill out any kind of form at that point then to, you know, affirm that they've moved to a new address, or it's just a decision? [LB325]

SENATOR AVERY: If they are going to be casting a provisional ballot, yes. [LB325]

SENATOR HAAR: Okay. And then when...so would a rule be...would this be up to the election commissioner that immediately people could be given a provisional ballot or do they have to wait until they hear back from the election commissioner? [LB325]

SENATOR AVERY: Well, what this does, it allows the election commissioner to set the parameters and the rules of engagement, if you will. When someone shows up at the polls and they have an irregularity in their registration, the poll worker is previously instructed as to how to deal with that. This person...let's say, for example, if they're moving, if they have moved within their precinct, the likely outcome would be that the election commissioner would say that person gets a regular ballot. Then you don't have the poll workers calling the election commissioner for instructions in all of these cases. If it involves moving to another precinct, my guess is that you would have instructions would be this person gets a provisional ballot. Then there are additional forms the person has to fill out in order to cast a provisional ballot. My guess is they would be asked to step aside to a different line or a different station in order to do that. [LB325]

SENATOR HAAR: So why don't we just say in this bill then that if a person has simply moved to...for example, my list of ways to take care of this would be, first of all, the poll workers have to be well trained. They have to be given good maps, and again, a team could look at those maps. And then if they've moved within the same precinct, they could simply sign a change of address form which they have to sign, you know, swear that they've actually moved, and then vote a regular ballot. So then you wouldn't have that extra call in there. [LB325]

SENATOR AVERY: Well, I guess, what you're doing is making an argument for that voter guide. [LB325]

SENATOR HAAR: (Laugh) [LB325]

SENATOR AVERY: And I noticed you voted for it. (Laugh) [LB325]

SENATOR HAAR: Okay. Well, I am very interested in this because I sat on pins and needles for three weeks waiting for provisional ballots, and I'd hate to, frankly, see more if we don't need them. So I'd like to give the rest of my time to Senator White. [LB325]

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PRESIDENT SHEEHY: Senator White, you're yielded 1 minute 50 seconds and then you're next in the queue. [LB325]

SENATOR WHITE: Thank you. I would ask the members to take a look at the language. As I read it as drafted in the amendment, it requires a case-by-case, voter-by-voter determination of whether or not--by the county commissioner or the election commissioner--of whether that voter is entitled to a provisional ballot or a regular ballot. Now it doesn't say that (inaudible) advance, the election shall designate whether such voters shall receive provisional ballots or regular ballots. One of the reasons I have grave concerns about this is an enormous number of my constituents live... [LB325]

PRESIDENT SHEEHY: One minute. [LB325]

SENATOR WHITE: ...in public housing or live in dormitories. They move more frequently than the more settled areas. And this will functionally disenfranchise a lot of people who are citizens with the right to vote. It will have that effect. And Senator Lautenbaugh says, well, there weren't these long lines on election day. That is probably true. But to vote in advance...in fact, the wait was hours and hours and hours, and this election commissioner that brought this bill did not open up additional areas or space or staff appropriately to handle that record turnout. I am very concerned that the net effect of this bill, though well-intentioned, will be used to suppress the turnout of those whose circumstances, either due to their age because of education or economic situation, requires them to move more often. And I suspect... [LB325]

PRESIDENT SHEEHY: Senator White, you're now on your time. [LB325]

SENATOR WHITE: Thank you, Mr. President. I suspect that the net effect will be, at least it can be read that no poll worker at this point can make that decision but on an individual basis the election commissioner must make that. And that in Douglas County will be absolutely unworkable, and anybody that has a fly speck on their registration will be effectively disenfranchised. Now if Senator Avery, if Senator Lautenbaugh, if Senator Nelson want to change the bill to say anybody with any fly speck automatically gets a provisional ballot, let's have that debate. Let's have that debate straight up and we'll talk about that. But right now it leaves...it appears to leave the absolute discretion with the election commissioner to decide county to county. And you're going to have people in Lancaster County who are going to be able to vote regular ballot and be counted and you're going to have people in Douglas County who might not, and I don't think that's reasonable at all. This needs to be a uniform standard on who's entitled to vote across the state, not a decision of an arbitrary nature of whether you go for provisional and have to stand in another line for a longer time, or you get a regular ballot determined by county commissioner and election commissioner from county to county. So what I would suggest is we look at this bill and say let's have one uniform standard for across the

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state and the county commissioners must do it. And by the way, it would be real helpful if we had a manual that would set that out so that these election workers have a uniform statewide standard about who is entitled to vote. Thank you, Mr. President. [LB325]

PRESIDENT SHEEHY: Thank you, Senator White. Members requesting to speak on AM474 to LB325, we have Senator Mello, followed by Senator Lathrop, Senator Avery, Senator Haar, and Senator Lautenbaugh. Senator Mello, you're recognized. [LB325]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. Would Senator Lautenbaugh yield to a couple questions? [LB325]

PRESIDENT SHEEHY: Senator Lautenbaugh, would you yield to Senator Mello? [LB325]

SENATOR LAUTENBAUGH: Yes, I will. [LB325]

SENATOR MELLO: Senator Lautenbaugh, you discussed briefly regards to people, not a lot of people move within their neighborhood. I mean, your precinct is probably similar to mine of maybe about 700, 800 people. My question would be, on college campuses where there are numerous dorms, if a student moved from one dorm to another in the middle of an election cycle, would that be probably within the precinct, wouldn't it? [LB325]

SENATOR LAUTENBAUGH: It's possible, certainly. [LB325]

SENATOR MELLO: Let's say in Omaha where I know there is public housing complexes in my district as well as a few others. If you moved from one apartment building in a public housing complex to another next door, that would probably be moving within a precinct as well, right? [LB325]

SENATOR LAUTENBAUGH: Probably, yes. [LB325]

SENATOR MELLO: Thank you, Senator Lautenbaugh. Members of the Legislature, I appreciate and understand what Senator Lautenbaugh was getting at in regards to taking or at least moving some of the responsibility away from poll workers and putting that power into the hands of the election commissioner. But I have some grave concerns as the bill is written now which reiterates the two points of the questions I just asked Senator Lautenbaugh, which I think unfairly targets people who live in public housing as well as potential students who live on college campuses. Right now, as the bill is written, a student who lives in Smith Hall at the University of Nebraska-Lincoln moves across their courtyard to Schramm Hall on the University of Nebraska-Lincoln campus would be required to vote provisionally, even though it's literally across the street. Everyone knows it's within the same precinct. And that causes me some concern

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for college students and students who live on campus who do move on a very frequent basis, sometimes every two to three weeks. The other component that I'm concerned about are individuals who live in public housing. Southside Terrace in Legislative District 5 is one of the oldest public housing buildings and complexes in Omaha. People move within that complex on a regular basis depending upon their personal situations. They would then have to vote provisionally based if this bill passes. I'm all for trying to modernize and provide more uniformity in regards to our election laws but I have concerns when while we try to do this we might provide some unintended consequences that unfairly targets those who live in public housing and those young voters who live on college campuses. With that, I'd like to yield the rest of my time to Senator Lathrop. [LB325]

PRESIDENT SHEEHY: Thank you, Senator Mello. Senator Lathrop, you're yielded 2 minutes 15 seconds and you're next in the queue. [LB325]

SENATOR LATHROP: Thank you very much. And I appreciate that, Senator Mello. I stood up here initially and told you that this addressed one class and that's people that move within a precinct. I looked at the bill closer, it addresses a second class and this is even worse. It addresses the class of people where the commissioner makes a mistake. And even though under current law if you can establish that the commissioner made a mistake by credible evidence and the poll workers, again Republican and Democrat, are satisfied with your explanation and that a mistake has been made by the commissioner, you get a ballot. This amendment, this bill would make that person now vote provisionally. So we have two classes of people. The first class Senator Lautenbaugh referred to as infinitely small is the class of people that moved within a precinct. I would suggest to you that if it's an infinitely small class of people, it is an infinitely small problem. We have a Republican and a Democrat there that can sort it out. Who do we disenfranchise by making them jump through the provisional ballot hoops? What about the person that lives in an apartment that gets flooded out and they go from 401 to 503, same apartment complex, same address except for their unit changed. They are now provisional voters. [LB325]

PRESIDENT SHEEHY: One minute. [LB325]

SENATOR LATHROP: People, as Senator Mello pointed out, people in public housing that move in a tower...there are towers. I've visited them to see clients, public housing towers. Someone might have a flood or a noisy neighbor and they move from one floor to the next. Currently, they would be permitted to have a regular ballot. And that's logical, it makes sense. Now we're going to turn them into provisional voters who have to jump through the hoops, who may or may not make it through and have their vote counted. I think Senator Lautenbaugh makes a couple of good points, perhaps unintentionally. The first one is that the problem with people moving in the precinct is infinitely small. [LB325]

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PRESIDENT SHEEHY: Senator Lathrop, you're on your third time. [LB325]

SENATOR LATHROP: Thank you. It is a very small problem and we are now changing election law to address what is admittedly a very small problem. We also can recognize that if we make people become provisional voters rather than regular voters we are disenfranchising people. And if this were such an important issue, if it were such a significant policy consideration we would make it uniform and not discretionary. But the way the amendment is written it will go from county to county. So perhaps in Hall County the election commissioner or the county clerk will decide that those people can vote a regular ballot, but in Douglas County or maybe Sarpy County or Washington, there's not even uniformity in this bill and in this amendment. And I can tell you that if the commissioner him or herself makes a mistake and you can credibly establish the mistake, you get a regular ballot right now. And we're turning those people because of the commissioner's mistake into provisional voters. It doesn't make sense. And believe me, I appreciate what Mr. Phipps did when my provisional ballots were being counted. He is a fine guy. He is eminently fair. I don't have a problem with him, with the way he conducts elections in Nebraska or in Douglas County. And I appreciate Senator Avery's work in government, but this is a bill looking for a problem and we don't have one. We don't have anybody that's says, you know what, somebody voted when they changed apartment numbers and it threw an election in Lincoln. We don't. We want somebody who's asked us to pass a bill to create some uniformity, and the bill doesn't even create uniformity. It turns into a county-by-county thing. I will just tell you this isn't a Republican thing, it isn't a Democrat thing. It's not an advantage to Democrats or Republicans. It's about the voter having their ballot counted. And as soon as we turn regular voters into provisional ballots we increase the probability probably by three that that isn't going to be counted. And that's not fair to those people, nor is it fair to the people who have run a race that turns out to turn on the provisional ballots and gets down to a handful of votes. It is important. We are the guardians of the system. We are the people charged with making sure that it is fair. This bill and the amendment does nothing to advance that purpose. And indeed, I think we disenfranchise people. I'm not making allegations about the bill's sponsor. John Nelson is a friend of mine and a thoughtful man. But this is not a proper approach to turn what is now a regular ballot into a provisional ballot on a county-by-county basis at the discretion of a commissioner. And I would urge you to oppose both AM474 and LB325. Thank you. [LB325]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Avery, you're recognized. [LB325]

SENATOR AVERY: Thank you, Mr. President. I'm going to suggest a compromise here. I think that we can move this off General File to Select File and, in the meantime, work with Senator Nelson and Senator Lathrop, Senator White, Senator Lautenbaugh, and other interested parties to amend two parts of the bill. Let me suggest that here's what

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we would do. We would say that the election commissioner or county clerk shall establish a policy or standard prior to the election on how you deal with these voters. And that, I think, should answer most of the questions that have been raised. I think Senator Lathrop raised an interesting point. I have no interest at all in making voting more difficult. I have no interest at all in disenfranchising a single voter. In fact, I want to do the opposite. So if we can agree on that then we can move to other business and fix this in collaboration with the other parties before Select File. With that, I would urge you to agree with this, and I will yield the rest of my time to Senator Lautenbaugh. [LB325]

PRESIDENT SHEEHY: Senator Lautenbaugh, you're yielded 3 minutes 30 seconds. [LB325]

SENATOR LAUTENBAUGH: Thank you, Mr. President, and thank you, Senator Avery. And I'm happy to work to address legitimate concerns to the extent there are with this bill. But I would point out again your address changing is not a fly speck on your record. It's kind of important where you live for democracy when we have just by district elections. This provides a mechanism so that the poll worker doesn't determine you're still within the same precinct. And the precincts matter. Now it is not correct to say that we are disenfranchising people by asking them to vote conditional or provisional ballots. We used to call them conditional ballots. Here's the reason why. The vast majority of the provisional ballots that are excluded are excluded for one very simple reason. Either they weren't registered previously at all or their registration has lapsed or they had a conviction of a felony or they moved within the precinct and failed to reregister and aren't entitled to vote in some races. That's how provisional ballots get thrown out. Trust me, I've been there. If an election commissioner gets in a provisional ballot where they found the person moved within the same apartment building there is virtually no risk...I'll go farther, there is no risk that that ballot is going to be thrown out because that's not even a change that would require some of the other housekeeping we're doing here. But the point remains, the address does need to be updated some way. In the current system we're relying on poll workers to either take the person's word that they've merely moved within the precinct and nothing more or make the determination that they've merely moved within the precinct and nothing more and proceed as they elect. This provides a mechanism by which we can "unring" that bell. And it is not correct to say that this disenfranchises people by requiring them to fill out an additional form. It's just an additional form. And yes, it is true that election commissioners make mistakes. I will warrant to you that I did. I am positive of it. That said, those mistakes are not the kind that account for the vast majority of what we're talking about here: people moving within precincts. But that's not an election commissioner mistake really, that's not what we're talking about. And again, you do have an obligation to update your address when you move. You should update your address. That's just part of the requirement. We need to know where you live to make sure you're voting in the right place. [LB325]

PRESIDENT SHEEHY: One minute. [LB325]

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SENATOR LAUTENBAUGH: To require people to do this on election day or otherwise is not disenfranchisement. And we need to understand it's important that people vote in the right place. I mean, we're looking at two different extremes. Do we want to make sure that we bend over backwards for the people who have moved, or do we want to bend over backwards to make sure elections are as right as we can make them? And races come down to a few votes. We had a, what, 12, 14 vote race here in Lancaster County. It matters that we do it right. We owe it, just as surely as we owe it to protect the people who move, preserve their right to vote if they can, and this does. We owe it to make sure we're doing it right, we owe it to the citizens to make sure we're doing it right. And there's been an ongoing debate here regarding where the burden lies. If you move, where does the burden lie? If you just neglected to register to vote before election day--different topic, I realize--where does the burden lie? Should we let you vote on election day, should we not? [LB325]

PRESIDENT SHEEHY: Time, Senator. Time, Senator. Thank you, Senator Lautenbaugh. Members requesting to speak on AM474 to LB325: Senator Haar, followed by Senator Lautenbaugh, Senator White, and Senator Dubas. Senator Haar, you're recognized. [LB325]

SENATOR HAAR: Mr. President, members of the body, first of all, I think it's really important that we talk this out because there's absolutely nothing more important than voting. I can never understand why people don't vote and there's nothing more important than voting. I'd like to ask Senator Avery some questions, if I could. [LB325]

PRESIDENT SHEEHY: Senator Avery, would you yield to Senator Haar? [LB325]

SENATOR AVERY: Yes, I will. [LB325]

SENATOR HAAR: As I listen to this debate more and more, it sounds like right now we have a more uniform standard; in other words, that if people move within the precinct they can vote in that precinct if they simply move. And now we're going to it's up to the election commissioner to decide whether they can vote a regular ballot. So are we going from a more standard to a more county-by-county kind of system? [LB325]

SENATOR AVERY: I would characterize it as right now a little bit loose, because if it were a very firm standard then the poll workers would not be calling the election commissioners constantly trying to get a ruling and an opinion and instructions on what to do with a particular voter. I think that the intent of the introducer of this bill and the committee's discussion of it was that we would be providing for more clarity and more uniformity. And I believe that if you recall what I said about passing this onto Select File, then adding some language that would require the election commissioners to establish in advance how you deal with these cases, then a lot of these concerns would be

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cleared up. [LB325]

SENATOR HAAR: But then it would still be up to each election commissioner to develop the rules, right? [LB325]

SENATOR AVERY: It would be up to each election commissioner or county clerk to determine how you would handle specific situations. But that would...it would still be clarified. [LB325]

SENATOR HAAR: Okay. Because I think within a state, voting standards have to be very uniform. And that's what I'm trying to figure out is, does this bill take us to more or less uniform standards? For example, and a simple case here is moving within the precinct where the simple solution would be just have a person fill out a new registration form, they'd verify they've changed addresses, and then vote. And I watched this process very carefully in my election. I won by 20 votes finally. And I was really impressed with the effort put into going over provisional ballots, but I also know that increased the cost and the time involved. And then we're looking in this session to, you know, not increase the cost. So it seems that by adding more provisional ballots that we're really increasing costs to the counties. And if it's an infinitesimally small problem, then why are we doing this? And I'd like to give the rest of my time to Senator White. [LB325]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Senator White, 1:30. [LB325]

SENATOR WHITE: Thank you, Mr. President. I would like to raise a couple examples of why I'm concerned. If you have a military man in Afghanistan and he is promoted from lieutenant to captain, he now qualifies for better housing one block down. He and his family, if the election commissioner says you will now, because you have a change of address, you now don't have a regular vote, which by the way gets counted right away. [LB325]

SENATOR LANGEMEIER: One minute. [LB325]

SENATOR WHITE: Provisional votes don't get counted until later. There are a number of rules on recounts and when they're counted. A provisional vote is not the same, folks, as a regular ballot vote. That person, because he got a promotion, because his family moved one block down, even if the precinct worker knows to an absolute certainty that that move happened within the precinct, a county commissioner can or election commissioner can now say, but you and your family, you go now to a conditional ballot in the old days, and you go to that conditional ballot as a rule. But across the street in Douglas County that may not be the rule. Douglas County may say, here's the rule, if

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the election worker says I can assure, by my own knowledge I can assure that this move was inside of the precinct,... [LB325]

SENATOR LANGEMEIER: Senator White, you're now on your time. [LB325]

SENATOR WHITE: Thank you. That it was inside of the precinct, my move, then you have a regular ballot that will be promptly counted, that will move you through the system more quickly. Now I don't think that standards varying from county to county comport with equal protection. I don't think we can fairly say that the soldier in Afghanistan and his family go to a provisional ballot but the person in Douglas County, literally across the street, they stay on regular ballot. It seems to me, and I accept Senator Avery's generous suggestion that we work this out. I have two concerns. My first concern is what Senator Haar articulated, that it needs to be the same rule across the state, not county to county. And that should be, I suggest, and I hope to work with Senator Avery, Senator Lautenbaugh, Senator Nelson. I hope that we can come to a rule that says, look, if the election worker can verify through their own knowledge at that site that this move was inside of the precinct, then they shall give them a regular ballot. And that should be the bias. But if they do not know that or cannot know it, then statewide the statewide rule is you will get a provisional ballot whether you live in Sarpy County or whether you live in Hall County. And that's going to be the rule for all Nebraskans. And that's what I would suggest that as part of that rule then every precinct be required to have a map and every precinct worker ask the voter, okay, where on this map did you live before when you registered and where do you live now. Let's get them to vote. Let's not make it harder to vote. That should be in a democracy our basic rule: an honest election, an accurate election to be sure, but an election that maximizes participation and doesn't disenfranchise those who often have no ability to control what's going to happen and not have a quilt of different rules for different counties. Thank you, Mr. President. [LB325]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Thank you, Senator White. Senator Dubas, you're recognized. [LB325]

SENATOR DUBAS: Thank you, Mr. President. And I would yield my time to Senator Lathrop. [LB325]

PRESIDENT SHEEHY: Senator Lathrop, you're yielded 5 minutes. [LB325]

SENATOR LATHROP: Thank you, Senator Dubas. I appreciate the discussion that's gone on this morning. Again, I've said this before, I'm going to reiterate it. I appreciate Senator Avery's work in the area of election law. He's had very progressive ideas worked through and come out of his committee. I know what his ultimate goal is. I just

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have a disagreement about whether we're accomplishing that with this bill. He has offered to work with those of us that have a concern between General and Select File. I think we've made our point this morning. I think we have expressed our reservations about the bill. And I would like to encourage members to move the bill onto Select File with my assurance that I'll work with Senator Avery, along with Senator Nelson, Lautenbaugh and any others, Senator White, and any others that are interested in the subject matter to come up with a bill and an amendment to LB325 that we're all comfortable with and we all recognize will result in more people having their ballots counted rather than more people jumping through hurdles. So thank you, Senator Avery, for the offer and I accept. Thank you. [LB325]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Additional members requesting to speak on AM474 to LB325: Senator Giese, followed by Senator Haar. Senator Giese, you're recognizes. [LB325]

SENATOR GIESE: Thank you, Mr. President and members. I think that in life it's all about timing, and in the Legislature it's certainly about timing. And these are very difficult issues that we've talked about today. And the timing part, I think if we would have had my previous bill scheduled after this bill it would have worked out a little bit better because I think that we've created a lot of doubt with how we do things. We don't...we have a guide but we don't have a guide. So I would urge the body to keep that in mind when I bring this particular issue back. I would ask Senator Lautenbaugh to yield, if he would please. [LB325]

PRESIDENT SHEEHY: Senator Lautenbaugh, would you yield to Senator Giese? [LB325]

SENATOR LAUTENBAUGH: Yes, I will. [LB325]

SENATOR GIESE: Senator Lautenbaugh, in your vast knowledge on election issues, you mentioned that some...could you just share with us some of the mistakes that you made as far as election issues? [LB325]

SENATOR LAUTENBAUGH: How much time do you have left, Senator? [LB325]

SENATOR GIESE: Probably about 4 minutes. [LB325]

SENATOR LAUTENBAUGH: Okay. Then I'll just have to do the greatest hits. Honestly, I'm sure I can come up with examples. I hadn't anticipated anyone asking. I'm metaphysically certain that I made mistakes and continue to, to this day, but... [LB325]

SENATOR GIESE: Well, I'm not going to pursue what mistakes you made. [LB325]

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SENATOR LAUTENBAUGH: I'm sorry, I can't come up with the specific, but... [LB325]

SENATOR GIESE: But the point I want to make again is that if I think if LB544 was heard after this bill, it would have had a lot more traction in the Legislature. So thank you, Mr. President. [LB325 LB544]

PRESIDENT SHEEHY: Thank you, Senator Giese. Senator Haar, you're recognized. [LB325]

SENATOR HAAR: Mr. President, members of the body, the thought that just occurred to me is when I go to vote I can count on my ballot that my ballot will be counted. And when a ballot is put in a provisional envelope I think the message to that voter is, we're not quite sure your vote is going to be counted. And I...it's just a thought that I had. But I think one of the...that we have to work very hard to make sure that every voter that goes to the poll can make sure that their vote will be counted. And I have some concerns with these amendments. And I would like to give the rest of my time to Senator Lathrop, perhaps responding a bit to what I've just said. [LB325]

PRESIDENT SHEEHY: Senator Lathrop, you're yielded 2 minutes 10 seconds. [LB325]

SENATOR LATHROP: Thank you. I was working on the mouse on my computer...(laugh)...so I was a little distracted, but I appreciate your concerns and ultimately I did hear you say that your concern is that we need to make sure that things are simpler for the voter. We need certainty, that's true. But ultimately we need to make sure that we have legitimate votes counted and that the provisional ballot process be used only where necessary and to eliminate people that shouldn't be voting in the first place. So those folks who end up provisional ballots because of a mistake by the commissioner, and when you read the statute and it says, folks, where the commissioner has made a mistake and they've given credible evidence to the satisfaction of the poll workers that a mistake has been made, I think those people ought to be voting a regular ballot, which is the law right now. And if somebody moves from one apartment to the next floor and the unit number changes on their address, I think we can all appreciate that... [LB325]

PRESIDENT SHEEHY: One minute. [LB325]

SENATOR LATHROP: ...a lot of people wouldn't even think to go reregister. And the current system, no one has demonstrated in this discussion that it's broken. And if it were broken we would be offering a uniform approach, and we're not. We're suggesting that it be done in the future on a county-by-county basis so those counties that wish to maintain the current system can and those who wish to enforce provisional ballots in these two circumstances can do that. And I have significant concerns as you do and I look forward to working those out with Senator Avery and the others that have an

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interest in the subject matter. Thank you. And thank you for the time, Senator. [LB325]

PRESIDENT SHEEHY: Thank you, Senator Haar. Thank you, Senator Lathrop. Senator Lautenbaugh, followed by Senator Council. Senator Lautenbaugh, you're recognized. This is your third time. [LB325]

SENATOR LAUTENBAUGH: Thank you, Mr. President. And this will be my last time in any event. And, Senator Giese, I did think of a mistake I made once. A school district gave up some land to a different school district, and then that recipient school district had a special election and we hadn't recoded the property as being in a new school district. So I had to drive around and take special ballots to the dozen people that would have been entitled to vote in that new district and had voted early and been denied that. So that was a mistake. And I had this elaborate hypothetical. I heard Senator White's story about the military man in Afghanistan who etcetera, etcetera, etcetera. And I hadn't considered the military application of this. And I was going to respond with some sort of a story about a man who runs a farm for puppies and he also happens to be an astronaut, and I mean, you know, this is what we do in our other life. We can spin the hypotheticals and go on forever. I agree, I'm troubled by the lack of uniformity as well. I think we all could agree on that and we all have agreed to work on it. So I will work on it. And I'll yield the rest of my time to Senator Avery. [LB325]

PRESIDENT SHEEHY: Senator Avery, you're yielded 3 minutes 45 seconds. [LB325]

SENATOR AVERY: Thank you, Senator Lautenbaugh. I would like to say this is what I was going to include in my closing, so I will probably waive that. I have talked with Senator White, I have talked with Senator Lathrop, and I've talked with Senator Nelson and Senator Lautenbaugh, and I believe that we have an agreement that we can come together and reason in the interim between General File and Select File that we will reach a compromise that will be acceptable to a majority of the body on Select File. I am convinced that we can improve this. I like and I appreciate the comments that have been made particularly relating to what we are doing and making sure that we don't suppress the vote and making sure we don't put unreasonable obstacles in the way of voters. So I will be working with these people between now and Select File, and would urge you to advance this to Select File so that we can do that. Thank you. [LB325]

PRESIDENT SHEEHY: Thank you, Senator Avery. Senator Council, you're recognized. [LB325]

SENATOR COUNCIL: Yes, thank you, Mr. President. And I'm sure Mr. President can affirm the fact that I was on to speak and then took myself off to speak, and then an issue was raised that caused me to request again to be heard. And then the discussion that has occurred since then alters, in some respects, what I'm going to say. First and foremost, this bill has to be changed. And I appreciate the fact that Senators Avery and

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Lathrop and White, I offered to participate as well, will do that because I was listening to Senator Giese's point about his bill and the need to have some certainty, some guidelines. And quite frankly, Senator Giese, that's the problem I have with this bill. If you look at Section 32-914.02, as that bill currently reads, the existing law is if someone who is registered to vote moves to a new residence within the same county and precinct and has continuously resided in such county and precinct since registering, that person is entitled to a regular ballot. There's no mention of provisional ballot. That person is entitled to a regular ballot. What this bill does then is creates the potential for a new class of provisional voters. Because under those same circumstances, under the language of the bill as before us with the amendment from the committee, in that same circumstance now it's up to the election commissioner or the county clerk to decide whether you get a regular ballot or a provisional ballot. So where we didn't have the prospect of provisional voters under that scenario--not a hypothetical, under that statutory scenario if this bill is passed we potentially create a new unnecessary class of provisional voters. So to those who are agreeing to work on clarifying this bill, I would urge you to first direct your attention to 32-914.02 which unnecessarily creates the potential for a new class of provisional voters, a class of provisional voters that never existed prior to this proposal. So with that, I urge those who are willing to get together to address it. I can state unequivocally if changes like that are not eliminated from this bill when it comes back on Select File, I won't be voting for it. And because of the concern I have with it right now I won't be voting either for or against it to enable my colleagues to look critically at all of the issues that have been raised but particularly this issue where we didn't have an issue of giving a person a regular ballot. And now all of a sudden without, in my opinion, any justification we now create a concern about giving a person a regular ballot in that instance and then leave it up to the discretion of the various county election commissioners or county clerks to decide whether they get a provisional or a regular ballot. So with that, I do urge my colleagues to look seriously and critically at addressing this issue. I don't think anyone who has spoken on this issue this morning wants to create more provisional voters. We want to provide the greatest opportunity possible to allow individuals who are properly...who are registered voters, I mean, that's the, you know, that's the issue. I don't think anybody... [LB325]

PRESIDENT SHEEHY: One minute. [LB325]

SENATOR COUNCIL: ...is saying that someone who never registered should be entitled to a regular ballot under any circumstances. But if you look at the stated scenarios that exist in the statute, it refers to individuals who have registered to vote. And the issue with the correction before this bill, if there was an agreement that there was an error, the person received a regular ballot. Now even with the agreement that there was an error, there's a decision to be made whether you get a regular or a provisional. So again, I urge some negotiation to eliminate those concerns; otherwise, when this bill comes back from Select File, I would urge my colleagues to vote against it. [LB325]

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PRESIDENT SHEEHY: Thank you, Senator Council. Senator Haar, I see you're next in the queue, but you have used your three times. You've used your three times. Are there additional members requesting to speak? Seeing none, Senator Avery...Senator Pahls, you're recognized. [LB325]

SENATOR PAHLS: Thank you, Mr. President, members of the body. You know, I've heard some of the dialogue today and I'm going to relate something, how difficult it is when it comes to voting for those people who are actually helping at the polling places. And I'm also going to show you how Senator Lautenbaugh did influence me at one point in my life. I had the opportunity at one time to open a brand new school, which I did. And, of course, you know you can set a lot of the parameters of whatever is going to be going on. And lo and behold, they wanted to use this building as a polling place. So this is a brand new building. So I said, yes, this would be a good place to poll, this would be a good place for people to go vote. Well, after the first time I said, man, Pahls, that was not the smartest thing to do. You should move this to another place. So the next election the poll workers came and I said, may I have you move from this area to this area over here? And they had this look on their face and they wanted to...they were really questioning me. They said, we can't do that. I said, well, why not? And they said, well, because this is where we are designated to go and you want us to move to another place. And I said, well, who can I speak to? And they said, the election commissioner. So I called up, and guess who was the election commissioner? Senator Lautenbaugh, at that time. And he said, well, you know, I don't know what he called me at that time. But he said, you know, you just can't do that. And I said, well, I surely would love to do it because, I said, I'm the one who established the place initially. He says, well, then you have to call the Secretary of State to ask for that permission because there's a...which was at such a late time to be making these decisions. Needless to say, I did not call the Secretary of State. But I just wanted to let you know Senator Lautenbaugh has been involved in some of our lives for quite a period of time. And I don't think he made a mistake at that time. He was just trying to make me follow the rules. Thank you. [LB325]

PRESIDENT SHEEHY: Thank you, Senator Pahls. Seeing no additional requests to speak, Senator Avery, you're recognized to close on AM474 to LB325. [LB325]

SENATOR AVERY: Thank you, Mr. President. I know I said I would probably waive closing. But I just want to reiterate that Senator Nelson and I assure you that we'll bring the interested parties together between now and Select File and see if we can't work out a compromise. I am confident that we can. So I urge you to advance or to approve AM474 as an amendment to LB325. Thank you. [LB325]

PRESIDENT SHEEHY: Thank you, Senator Avery. You have heard the closing of AM474 to LB325. The question before the body is on the adoption of AM474. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB325]

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ASSISTANT CLERK: 31 ayes, 0 nays on the adoption of committee amendments, Mr. President. [LB325]

PRESIDENT SHEEHY: AM474 is adopted. We'll now return to floor discussion on...Mr. Clerk. [LB325]

ASSISTANT CLERK: Mr. President, I do have an amendment from Senator Nelson, AM169 from last year. Senator, I have a note to withdraw this. [LB325]

SENATOR NELSON: Yes, I do withdraw that amendment. [LB325]

PRESIDENT SHEEHY: AM169 is withdrawn. Anything further, Mr. Clerk? We'll now resume floor discussion on LB325. Seeing no requests to speak, Senator Nelson, you're recognized to close. [LB325]

SENATOR NELSON: Thank you, Mr. President and members of the body. I want to thank you for approving the amendment and I would like to say that this has been a great discussion this morning. We've had a lot of different points of view, disagreement, but I agree with Senator Avery that our mission now is to get together and see if we can reconcile all of these and come back on Select with an LB325 that will meet everybody's approval. I would like to say that my original bill did provide uniformity in that we changed it from doing a direct ballot to a provisional ballot in these particular circumstances. And then at the request of the Secretary of State it was inserted there that we could do a direct ballot. And so there...that led to all the discussion pretty much that we've had today. But I feel confident that we can get this worked out, and I therefore ask that you advance LB325 at this time. Thank you, Mr. President. [LB325]

PRESIDENT SHEEHY: Thank you, Senator Nelson. You have heard the closing. The question before the body is on the advancement of LB325. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB325]

ASSISTANT CLERK: 32 ayes, 0 nays on the advancement of the bill, Mr. President. [LB325]

PRESIDENT SHEEHY: LB325 advances to E&R Initial. Speaker Flood, you're recognized for an announcement. [LB325]

SPEAKER FLOOD: Thank you, Mr. President and members. I believe we're going to recess at this time until 1:30. This will give Referencing a chance to meet in our regular room in advance of noon, and then take up LB341 from Senator Cook at 1:30. Thank you, Mr. President.

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PRESIDENT SHEEHY: Thank you, Speaker Flood. Mr. Clerk, do you have new bills for introduction and items for the record?

ASSISTANT CLERK: Mr. President, I do. (Read LB906-911 by title for the first time.) New resolution, LR285 by Senator Schilz would congratulate the Arthur County Wolves on six-man football. I have a notice of committee hearing from the Banking Committee. Name adds: Senator Nordquist to LB800; Senator Howard to LB867 and to LB870. (Legislative Journal pages 188-190.) [LB906 LB907 LB908 LB909 LB910 LB911 LR285 LB800 LB867 LB870]

Priority motion, Mr. President. Speaker Flood would move to recess until 1:30.

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

RECESS

SENATOR CARLSON PRESIDING

SENATOR CARLSON: Good afternoon, ladies and gentlemen. Welcome to 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 CARLSON: Thank you. Mr. Clerk, do you have any items for the record?

CLERK: I have two new bills, Mr. President. (Read LB912-913 by title for the first time, Legislative Journal page 190.) [LB912 LB913]

SENATOR CARLSON: Thank you, Mr. Clerk. We will proceed to the first item on the afternoon agenda.

CLERK: And, Mr. President, with your permission, right before that, a Reference report referring LB847 through LB892. (Legislative Journal pages 191-192.)

Mr. President, LB341, the first bill scheduled for debate this afternoon, introduced by Senator Cook. (Read title.) Bill was introduced on January 15 last year, at that time referred to the Health and Human Services Committee. Bill was advanced to General File. I do have committee amendments, Mr. President. (AM119, Legislative Journal page 554, First Session, 2009.) [LB341]

SENATOR CARLSON: Thank you, Mr. Clerk. And, Senator Cook, you are recognized to

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open on LB341. [LB341]

SENATOR COOK: Thank you, Mr. President and honorable colleagues. I stand before you as the introducer of LB341. As the Clerk mentioned, there will be some amendments to the bill, but I want to describe to you what the bill proposes to do. LB341 amends the Nurse Practice Act and the Uniform Credentialing Act. The amendment allows nurse practitioners to dispense, without any charge to the patient, incident to practice, tuberculosis preventative medications provided through public health agencies. A bill to prevent communicable disease, LB341 improves the Nebraska tuberculosis program and, therefore, public health by giving dispensing authority to nurse practitioners of tuberculosis medications. In 2005, the tuberculosis program operated by the Department of Health and Human Services joined a multistate contract to purchase certain drugs for the treatment of tuberculosis. The medications are purchased for pennies on the dollar. Currently, HHS is distributing these preventative treatment meds to public health clinics where the meds are dispensed by both physicians and physician assistants. LB341 will allow nurse practitioners to dispense these vital medications. I introduced the bill on behalf of the Department of Health and Human Services. The bill was unanimously advanced to General File by the HHS Committee. Thank you to each of the members of the committee and the honorable Chair, Senator Gay. Importantly, this policy proposal will enhance tuberculosis detection and prevention in our state while having no fiscal impact. LB341 improves an important program under its existing budget. The reemergence of TB in traditional and new multidrug-resistant forms requires public health agencies at all levels to develop and apply new tools to address the threat. This legislation does just that. There have been dozens of confirmed, active TB cases in the last few years, including cases at the University of Nebraska at Kearney and recently at Hastings College. If we want public policy that prevents the spread or mutation of TB, these active cases must be addressed aggressively. By removing or preventing barriers to obtaining treatment for potentially communicable disease aggressively and effectively, we address this threat. Failure of individuals to receive treatment or finish treatment completely creates a serious public health risk, not only to the patient and their family but to the public at large. This is how TB is stopped, stopped before it becomes a severe public health disaster. The goal of this legislation is to protect the patient from worsening condition, prevent the spread of this dangerous disease to our valuable front-line healthcare providers and of course the protection of the general public, including us and our constituents, from this very real threat. Nurse practitioners are valuable front-line providers of essential medical care across the state. Nurse practitioners currently diagnose TB, give treatment advice, and write prescriptions for the preventative treatment. Nurse practitioners have master's degrees. Many have obtained doctoral level degrees. All nurse practitioners have advanced training in drug interaction and counseling. Under current statute, nurse practitioners can dispense medication incident to practice if the medications are samples. LB341 does not expand the scope of the practice of nurse practitioners. Dr. Joann Schaefer, Chief Medical Officer of the state of

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Nebraska, testified during the committee hearing last year that the changes being sought in LB341 do not amount to a scope of practice change. Nurse practitioners are, by statute, currently authorized to dispense medications incident to practice and may dispense sample medications. Merely changing the source of the medications, in this case from a multistate compact as compared to a drug manufacturer, does not amount to a scope increase. There have been many supporters of this bill. I mentioned that this bill was advanced unanimously from HHS Committee last year. The agency, Department of Health and Human Services, is in support of this bill. The Nebraska Medical Association testified in support of this bill last year. There are letters received and e-mails from the Douglas County Health Department, from the Friends of Public Health in Nebraska, the Public Health Association of Nebraska, the Nebraska Nurses Association, and from the public member of the Nebraska Board of Pharmacy. Again, LB341 improves a program in a way that effectively addresses a serious public health threat--the reemergence of traditional TB and new multidrug-resistant strains of TB. There's no fiscal impact to the state. Allowing nurse practitioners to dispense these medications is the right public policy for our state. With that, I ask that you vote for the committee amendment, AM1542, and for the advancement of this bill to Select File. Thank you, Mr. President. [LB341]

SENATOR CARLSON: Thank you, Senator Cook. Mr. Clerk for an amendment. [LB341]

CLERK: Mr. President, Health and Human Services would move to amend the bill with AM119. [LB341]

SENATOR CARLSON: Senator Gay, as Chair of the HHS Committee, you're recognized to open on the amendment. [LB341]

SENATOR GAY: Thank you, Mr. President, members of the Legislature. The committee amendment makes the technical changes that Senator Cook talked about to narrow the scope of this bill. As she had mentioned, the current law allows for nurse practitioners to dispense free samples of drugs from manufacturers. LB341, as introduced, would permit nurse practitioners to dispense, incidental to their practice, drugs that are provided through public health agencies and dispensed at no charge to the patient. The committee amendment specifies and limits the expanded dispensing of these drugs provided by the department and drugs for the treatment and prevention of tuberculosis. LB341, as introduced, would exempt from the practice of pharmacy certified nurse midwives, certified nurse registered anesthetists, and nurse practitioners who dispense drugs that are provided through public health agencies and dispensed at no charge to the patient. The committee amendment narrows the scope of this expanded dispensing to exempt from the practice of pharmacy the nurse practitioners for the treatment and prevention of tuberculosis and provided through the department at no charge--and that's the important part, I think, of this--at no charge to the patient. So we're out trying to reach patients who may be not...as you would maybe go receive your treatment, they'd

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get theirs a little bit differently than most of us in this room. The committee amendment recognizes the challenges faced in stopping the spread of tuberculosis in Nebraska. This fight has been more difficult with the emergence of this multidrug-resistant tuberculosis. One of the challenges in treating tuberculosis is the failure by individuals to receive treatment or to finish the treatment. This is especially true for individuals who may be isolated from medical care because of language, economics, or geographic barriers. The committee believes the addition of access to no-cost medication for treatment and prevention of tuberculosis through nurse practitioners will cause more individuals to seek and complete the treatment and enhance the department's oversight and responsiveness to this difficult and dangerous public health issue. I'd ask for your adoption of the committee amendment. Thank you, Mr. President. [LB341]

SENATOR CARLSON: Thank you, Senator Gay. Mr. Clerk, are there are other amendments? The floor is open for debate on committee amendment AM119. Senator Howard, you're recognized. [LB341]

SENATOR HOWARD: Thank you, Mr. President and members of the body. One of the interesting things about our process down here is that we are always learning more information, sometimes on a daily basis. I am on the Health Committee and supported this bill and voted to pass this bill out to the floor. Since that time, I've had some issues come up that deserve a little further consideration and I'm going to share this with you so that you, too, can put it along with the things that you ponder and look at. I've introduced a bill. It's LB866 and it's regarding this issue. Really, the heart of the bill is Section 7 and I'm going to just read it. It would be much clearer if I do that: The department may issue a dispensing practitioner permit to a practitioner who may compound and dispense prescription drugs or devices to his or her own patients within the scope of his or her practice. A practitioner with a dispensing practitioner permit--and that's the key: permit--shall comply with all prospective drug utilization review, patient counseling, labeling, storage, recordkeeping, and physical plant standards as set forth in the rules and regulations of the department. The facility in which the compound and dispensing of prescription drugs or devices by the dispensing practitioner occurs shall be subject to inspection by a pharmacy inspector. The department may set fees for dispensing practitioner permits. A dispensing practitioner shall not employ pharmacist interns or pharmacy technicians for the provision of services pursuant to a dispensing practitioner permit. A dispensing practitioner--in this case, nurse practitioners--shall not delegate compounding and dispensing of prescription drugs or devices to any other person. What this does is take Senator Council's (sic) bill one step further and put parameters on those individuals, parameters and responsibilities, I would say, on those individuals who engage in the dispensing of medications. I have really come to realize that limited amount of knowledge is a very harmful thing and that we have a responsibility, I certainly feel I do, to be the best informed I can be when I make decisions regarding this or anything else that comes before us. It's a major responsibility to give people medication, drugs. This bill that I'd introduced does require people to be

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certified before they're allowed to dispense medications, so I just ask that you think about this as we look at Senator Cook's bill and factor it in. Having said that, I would like to ask Senator Cook a question or two, if she would allow that. [LB341 LB866]

SENATOR CARLSON: Senator Cook, would you yield? [LB341]

SENATOR COOK: Yes. [LB341]

SENATOR HOWARD: Thank you. I think your bill is very meritorious. I thank you for bringing this. I think if we do have a serious issue in this state, we certainly need to address it. But in inquiring about this, I'm kind of stumped about how critical our problem is. Can you give me a little more information? I know you made a reference to two occurrences on college campuses. What are we looking at in terms of are there populations that are more at risk, are there areas of the state that have a more severe problem? Can you just share that information with me? [LB341]

SENATOR COOK: Thank you, Senator, for your question. If you are asking about raw numbers of TB cases, that I cannot offer you a number at this time of what's been cited in the last year. What the bill proposes to do is to establish a protocol... [LB341]

SENATOR CARLSON: One minute. [LB341]

SENATOR COOK: ...to address tuberculosis treatment in the state of Nebraska. So in light of our recent experience in this state, country, and world with communicable diseases, I think the time is right to put these plans in place so that nurse practitioners can dispense drugs to people. It's a six- to nine-month protocol. It's very difficult to follow through for some of the residents who are mobile across the state. Many of them are residents...are part of the immigrant population. But certainly immigrant families have children that go to schools and school teachers that go home to families and to the grocery store and to church, so I think it's just very important for us to look at this issue today. Certainly we have not had a hearing on your bill and maybe other information will emerge at... [LB341]

SENATOR CARLSON: Time. [LB341]

SENATOR COOK: ...the time of that. Thank you. [LB341]

SENATOR HOWARD: Thank you. [LB341]

SENATOR CARLSON: Thank you, Senator Howard and Senator Cook. Senator Lathrop, you're recognized. [LB341]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I maybe should start

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out by assuring you that I do not intend to talk on every single bill that comes up--polite laughter--but I would like to ask Senator Gay a few questions, if I might. [LB341]

SENATOR CARLSON: Senator Gay, would you yield? [LB341]

SENATOR GAY: Yes. [LB341]

SENATOR LATHROP: Senator Gay, I have a constituent who is a pharmacist and has concerns about this bill, and I thought I might ask you a couple of questions. First of all, the bill itself seems to be a departure from the normal practice, which is doctors are permitted to prescribe this medication. Doctors and nurse practitioners, I think, can give free samples away, but this isn't a free sample. So my question is, first of all, what's the necessity? Why are we departing from the normal practice? Why is it necessary that nurse practitioners be allowed to dispense medication that are not free samples, and what makes the tuberculosis different than any other condition that a nurse practitioner might be able to prescribe medications? [LB341]

SENATOR GAY: Well, I'll try to answer that, Senator Lathrop, the best I can from what I remember along the ways of the bill. The difference is the...this is one of those diseases we thought, well, we had cured and we don't. Now we're starting to see a recurrence on young people, and Senator Cook handed out a few situations of that. Public health agencies many times...and I think she handed out one that shows where we have no pharmacist even in the counties, so the department's view on this was, listen, we need to get out. And this is a drug, it's a regimen thing, you got to take a lot for I think up to six months or something. And maybe Senator Cook can clarify more of these. But many of these counties don't have that. In order to find and isolate the situation, there are groups, as she just mentioned, and maybe it's new people in the United States or...I don't want to specifically name, but, you know, they have different ways of receiving treatment. It may be through public health agencies, like a federally qualified health agency or something. So that is the reason that not always are they going to a doctor traditionally like you would think. So this allowed nurse practitioners, which we have more of, to go out and be able to dispense. It is different but not that much different. If I could give you a free sample, this is a free from the...it's a governmental thing. It's free, the way I understand it, that we're getting from the federal government, the treatment, and that's what they're dispensing. So if you're paying for it, you would go the regular route. [LB341]

SENATOR LATHROP: Because this is a departure from the way we have always done it, which is doctor or nurse practitioner writes the scrip and then the person goes to the pharmacy, why don't we...why doesn't the bill not...or the amendment not simply authorize the nurse practitioner to provide a free sample and a scrip and they go to the pharmacy, which is the typical way of doing this? [LB341]

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SENATOR GAY: Well, this is...maybe Senator Cook can listen in and clarify more, but the way I understand it, they change all the time and it's multi...it's getting worse. The strains are different so we don't know exactly which sample we will give out. Many times I don't think samples are just available. We'd rather go take care of this immediately. And it's the severity of what this is--an outbreak. And I'm no expert on tuberculosis. Again, maybe I shouldn't be answering that. But the severity of the disease, the communicable disease, is I think why we need an exception to this case. And I am judging my basis, and I think...and I don't want to speak for all members because things do change, as Senator Howard said, but the way the department described it, Dr. Schaefer, our Chief Medical Director, is telling me this is a good thing. I trust her opinion. I'm trying to do what I think is the best. [LB341]

SENATOR CARLSON: One minute. [LB341]

SENATOR GAY: I do have, by the way too, some of my neighbors are pharmacists as well and I did not get a chance to talk to them about this. I don't know if it's the worry that we're getting into one case is going to lead to many more. I don't think that would be the case. [LB341]

SENATOR LATHROP: So if we pass this today, you don't see it as the beginning of a trend? [LB341]

SENATOR GAY: No. I mean it's...we all know it's a challenge to do anything in this body. I think it's a serious issue or Senator Cook wouldn't be bringing it and the Health Committee wouldn't have advanced it. [LB341]

SENATOR LATHROP: Thank you. I do have some questions for Senator Cook, if I could, if she'll yield. [LB341]

SENATOR CARLSON: Senator Cook, would you yield? [LB341]

SENATOR COOK: Absolutely. [LB341]

SENATOR LATHROP: Senator Cook, it sounds like part of the justification for this bill and the amendment is that there are different strains of tuberculosis, some of them resistant to various medications. Isn't that... [LB341]

SENATOR CARLSON: Time. Thank you, Senator Lathrop, Senator Gay, and Senator Cook. Those still wishing to speak: Senator Stuthman, Senator Howard, Rogert, Council. Senator Stuthman, you're recognized. [LB341]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I truly support this bill and I think one of the main reasons that I support this bill is the fact that...and

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my understanding is that these are free samples that are given by the Health and Human Services and they are giving to the nurse practitioners. I've always had a concern that, you know, I don't think every medication should be given by nurse practitioners, but I do think that these free samples, that's in the scope of their practice and I think it is allowable to do this, and I truly support that because these are the free samples. I did have correspondence with a pharmacy and the pharmacy stated that they should maybe have the free samples and then be able to give them out to the nurse practitioners, but I think that's just another step. I think in these situations I really think with the amount of cases that we have, you know, which is not a lot, but you don't know where they're going to be throughout the state. And I really think by the amount of medication and the samples that are given, I think it is very wise that we allow these nurse practitioners to give these samples out. I've always been very supportive of, you know, letting the nurse practitioners do a few things and this is one of the things that is in their scope of practice, that they can prescribe these free samples and give those free samples out. So I truly support that and I think...I think we have to make the decision as far as, you know, what are we really talking about. I think we're really talking about the free samples that are directed and given from the Health and Human Services Department and these can be prescribed by the nurse practitioners. So I truly support this part of it, but I'm also very cautious in saying that I don't think nurse practitioners should be allowed to prescribe every type of medication. But here we have medication that is in their scope of practice and it should be allowed. Thank you, Mr. President. [LB341]

SENATOR CARLSON: Thank you, Senator Stuthman. Senator Howard, you're recognized. [LB341]

SENATOR HOWARD: Thank you, Mr. President and members of the body. If Senator Cook would allow a few more questions? [LB341]

SENATOR CARLSON: Senator Cook, would you yield? [LB341]

SENATOR COOK: Yes. [LB341]

SENATOR HOWARD: Thank you, Senator Cook. And please don't get the impression that I'm trying to in any way be... [LB341]

SENATOR COOK: Okay. Thank you for calling me Senator Cook. [LB341]

SENATOR HOWARD: ...cast negative aspersions, but sometimes when we have conversations more questions come up. As I understand it, tuberculosis is a serious disease that, when it occurs, when a doctor does find that he's treating a patient who has this diagnosis, that they refer this information to the CDC, the Centers for Disease Control. Can you give me any information, do you have any information convenient that

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you can tell me about the numbers or give me some idea of what we're looking at in this state if we're facing a situation where we've got a critical problem like, say, H1N1 flu? [LB341]

SENATOR COOK: Well, Dr. Schaefer, our Chief Medical Officer, is available in the lobby and we consulted with her briefly. Certainly members of the body are welcome to consult with her directly. We understand that there are approximately 25 cases per year but what I want to emphasize at this time is that each of these 25 cases must follow a six- to nine-month protocol and comply with that, and that as people have been diagnosed with tuberculosis, they're going home to families and to school and to work and out into the public where the disease might spread. [LB341]

SENATOR HOWARD: So when you refer to a six- to nine-month period, is that a period of contagious...is that a contagious state where they would be restricted? [LB341]

SENATOR COOK: I'm not a medical expert. That would be something that you could clarify with the doctor. But the...addressing the illness requires that the drugs be taken for six to nine months, according to what we understand from the people who run the tuberculosis program at the Health and Human Services agency. [LB341]

SENATOR HOWARD: Well, I appreciate that information but that brings me then to another question. And hearing Senator Stuthman refer to samples, samples wouldn't be available on a six- to nine-month basis, would they? If an individual is given a sample, that's usually for a very limited period of time to see how the medication...see if that's effective, see what the side effects are, all those things that are involved with medication usage. [LB341]

SENATOR COOK: Are you asking me a question about how long samples are distributed typically in... [LB341]

SENATOR HOWARD: I'm...the question... [LB341]

SENATOR COOK: ...in a general sense for any and all diseases? [LB341]

SENATOR HOWARD: No. [LB341]

SENATOR COOK: I guess I need some clarification.... [LB341]

SENATOR HOWARD: No, I'm asking you a question... [LB341]

SENATOR COOK: ..on what is it...your... [LB341]

SENATOR HOWARD: I'm asking you regarding the samples, if this would be an

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ongoing distribution of simply samples to individuals, or is this in fact prescription medication? [LB341]

SENATOR COOK: What my bill is proposing is that the tuberculosis drugs that are purchased by the state, through a multistate compact for very inexpensively, be permitted to be distributed by nurse practitioners in the same way that they are distributed by physicians and by physician assistants. At this moment, the nurse practitioners are permitted to distribute samples. What this very narrowly constructed proposal would permit is for nurse practitioners to distribute the TB drugs that are purchased for pennies by the agency and distributed among public health serving agencies. [LB341]

SENATOR HOWARD: So my impression then would be this would be a distribution of medication not unlike what you would have at a pharmacy if you went back for your next appointment, were given the medication. [LB341]

SENATOR COOK: This bill is very, very narrowly...is very, very narrowly designed to only refer to drugs for tuberculosis treatment. [LB341]

SENATOR CARLSON: One minute. [LB341]

SENATOR HOWARD: I understand that, but the medication itself, you have this diagnosis, you are given this medication. Then you are expected to return over a period of...I think you mentioned six or nine months for continuing doses of this medication. Am I correct in thinking that's how it would work? [LB341]

SENATOR COOK: I'm not certain how the...sometimes nurse practitioners, in their practice, go to patients and follow up with them in their homes or in public health clinics or the likely person that would be receiving this treatment may go to a federally qualified health center. So I guess I will ask you for some clarification on what you mean by "usually" in terms of what this patient would do. What we're trying to design... [LB341]

SENATOR CARLSON: Time. [LB341]

SENATOR HOWARD: Thank you. [LB341]

SENATOR CARLSON: Thank you, Senator Howard and Senator Cook. Senator Rogert, you're recognized. [LB341]

SENATOR ROGERT: Thank you, Mr. President. I wondered if Senator Gay would yield to a couple questions, please. [LB341]

SENATOR CARLSON: Senator Gay, will you yield? [LB341]

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SENATOR GAY: Yes. [LB341]

SENATOR ROBERT: Thank you. Senator Gay, I just have a couple questions. We seem to be in the exact same spot with this bill as we were a year ago when we caught off of General File. What is the big...the gripping rough point that we've come to here, in your opinion? [LB341]

SENATOR GAY: In my opinion is...I'm going to proceed and vote for this bill because I think we've narrowed this down enough with the committee amendment. I don't...and I'm not passing the buck here. This has been worked on, been tried to worked on by both parties and I just am not so sure they can come to an agreement at this point. You know, you can look at this, if you're a pharmacy, that it's kind of getting the camel's nose under the tent and they don't want anything to do with that. [LB341]

SENATOR ROBERT: Sure. [LB341]

SENATOR GAY: And I think that's kind of what this case is. The way I understand it is, right now, if I could get a free sample I can give it to you right now. [LB341]

SENATOR ROBERT: Right. [LB341]

SENATOR GAY: But when the state then goes and buys these drugs through this exchange that Senator Cook is talking about, pennies on the dollar, I can't do that. [LB341]

SENATOR ROBERT: Okay. [LB341]

SENATOR GAY: So why is that? I don't know. So this clarifies that law better. And it's a concern to the pharmacy group. [LB341]

SENATOR ROBERT: Sure. What's the process by which...currently, can these drugs be distributed for free through a doctor or a PA? [LB341]

SENATOR GAY: I'm not sure, Senator. I think you should ask Senator Cook that one. I think they can but I would ask Senator Cook that one or... [LB341]

SENATOR ROBERT: All right. I will do that. Mr. President, will Senator Cook yield to a couple of questions? Thanks, Mr. Gay. [LB341]

SENATOR CARLSON: Senator Cook, would you yield? [LB341]

SENATOR ROBERT: Thank you, Senator Gay. [LB341]

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SENATOR COOK: Yes, I will. [LB341]

SENATOR ROBERT: Can you...did you hear that question, Senator Cook? [LB341]

SENATOR COOK: Would you repeat the question, please? [LB341]

SENATOR ROBERT: Yeah. How does the process work for distribution of these pharmaceuticals through a doctor or a physician's assistant? [LB341]

SENATOR COOK: Right now, a physician or a physician's assistant can distribute the drugs that are purchased by the state through the multistate compact and the nurse practitioners can distribute only the free samples. So in my mind it's the same drug that she or he has in her hand or her or his hand for free versus the one that she or he might have for pennies. [LB341]

SENATOR ROBERT: Well, I... [LB341]

SENATOR COOK: And that is what we're trying to address with this really narrowly drafted legislation. [LB341]

SENATOR ROBERT: Well, I kind of agree with you. I think you're probably right. I will say that it's...a nurse practitioner does not have the same amount of training as a physician's assistant or, obviously, a medical doctor, so there's probably issues that people are looking at with drug interactions, knowledge of the distribution and the requirements for reporting and follow-up. I'm not saying that they can't do that job. Are these...with this bill, will they be able to do so? Because under...a physician's assistant, nurse practitioner all have to do stuff under the...underneath a doctor's care. Would they be able to do so in a clinic that's remote where the doctor would not be present? [LB341]

SENATOR COOK: Are you asking me the question? [LB341]

SENATOR ROBERT: Yes. Yes. Would... [LB341]

SENATOR COOK: Could you repeat the question? [LB341]

SENATOR ROBERT: Under...if this bill was to pass, would a nurse practitioner in a remote clinic, where the doctor is not there, be able to distribute these materials? [LB341]

SENATOR COOK: Once this law is passed, yes. Right now, if she or he has a free sample, she or he is free to distribute that exact same drug to the patient. [LB341]

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SENATOR CARLSON: One minute. [LB341]

SENATOR COOK: With the change in this narrowly drafted law, the drug purchased by the state and distributed for pennies would also be...could also be distributed by the nurse practitioner in that context. [LB341]

SENATOR ROBERT: Okay. Thank you, Senator Cook. Obviously, I don't think anybody here is opposed to trying to get our grips on TB and its recurrence in the state. I do want to remind everybody, there are different training requirements for nurse practitioners and physician assistants. They do have different schooling and different understanding of pharmaceuticals most likely. If we move this, we will be putting drugs in the hands of folks that may not have that training, although they may, but they may not, especially if they're in a remote clinic where the doctor is not present that, you know, there seems to be, you know, some sort of... [LB341]

SENATOR CARLSON: Time. [LB341]

SENATOR ROBERT: Thank you. [LB341]

SENATOR CARLSON: Thank you, Senators Robert, Gay, and Cook. Senators still wishing to speak: Senators Council, Price, Campbell, Lathrop, and others. Senator Council, you're recognized. [LB341]

SENATOR COUNCIL: Yes, thank you, Mr. President. Perhaps I am missing the point of this but I did read LB341 and I did read the current state of the law on the scope of practice of nurse practitioners. And as I understand the intent of LB341, as amended by AM119, the issue, as I understand it, and I will ask Senators Cook and Gay at the appropriate time to respond, but as I understand it, as the law currently stands, if the Department of Health and Human Services received the tuberculosis medication directly from AstraZeneca or some other drug manufacturer at no charge, nurse practitioners could dispense that medication; that that's the current state of the law. So in terms of the concern, legitimate as it is, raised by my colleague Senator Robert, the current law would allow that nurse practitioner to dispense that medication if that medication came directly to the office from the manufacturer at no cost. The distinction that has developed with regard to tuberculosis is that the medication is coming through a multistate compact that the state of Nebraska has to pay some nominal amount for the medication. And it's the mere fact that Nebraska pays for the medication that would place a nurse practitioner outside of his or her scope of practice if he or she administered it. It is that simple fact alone, that the state has to pay for it. If it was, let me compare it, the H1N1 vaccinations, that vaccination was distributed at no cost to public health clinics and it was administered at no cost to individuals throughout this state by, in most cases, nurse practitioners. So the distinguishing factor here is whether

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we pay for the medication or not. I think we are ignoring the other more critical parts of this bill which place in context the critical nature of our taking action on it. What other health risk do you know of that would allow the public health officials in this state to order you to comply with directed measures for treatment and prevention of the disease and to the point that, if you refuse, could commit you? That's what this bill authorizes because of the tremendous risk and the communicable nature of tuberculosis. This bill goes far to restrict private rights, private movement because of the inherent risk in the communicable nature of tuberculosis. And I'm surprised no one has discussed that. No one discussed the fact that individual rights are affected by this bill. But I don't have a problem with affecting those individual rights because it's to protect me, to protect you, and to protect anyone else in this state who could conceivably be exposed to tuberculosis to the point that public health officials can mandate/order treatment. And... [LB341]

SENATOR CARLSON: One minute. [LB341]

SENATOR COUNCIL: ...all that's being done through this bill, as I understand it, relative to nurse practitioners. Because again, if you review the bill, if you review the committee statement, this bill amends much more than just the nurse practitioner law. It amends our basic Tuberculosis Prevention Act law and we need to be careful about putting any constraints on our ability to treat the types of diseases that could rise to epidemic levels in this state. And since this issue boils down to the mere fact that we pay for it as opposed to the manufacturer giving it to us freely, I support AM119 and LB341 because it doesn't significantly change the current state of the law. [LB341]

SENATOR CARLSON: Thank you, Senator Council. Senator Price, you're recognized. [LB341]

SENATOR PRICE: Thank you, Mr. President, members of the body. After that discourse, I feel like I probably should turn my light off and just sit down. However, I will add to this. I'm conflicted with the subject matter before us. I like to break things down into small, manageable packets. One of these small packages would be scope...a change of practice, right? You know, the whole words, whichever combination you want to put those in, we're changing things. The other one is if they declared a state of emergency, a medical emergency, you could probably get the medication from a Cub Scout. All right? I go a little bit over there for my example but...so and if what they're talking about there is medication and, as was so eloquently pointed out by Senator Council, this medication is the only medication, they can give it for free, so the whole focus on the medication is almost ludicrous. Maybe you could talk about interaction with other medications. That would hold water because that's a very important thing and part of the council and one of the three things they have to do. You could talk about labeling. That's within scope of this conversation. But what we really see here is a horrible disease that can be treated, and someone will say, well, we decided since you live...I

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wish they hadn't blacked out these counties, but if you live in one of these counties you're going to have to drive your tuberculosis-ridden carcass somewhere else to get treatment. That's what you're going to have to do because we don't believe the 22 cents or the 19 cents is worth it. So again, you tell the Nebraskans out there, you drive out of these counties, you go somewhere else to get this communicable disease. And if you go to Drudge right now, they have it in red letters, somebody was on a do not fly list for being sick with tuberculosis, flew from Philly to "San Fran." Maybe your family was in that plane. Go ahead, you risk it. We are talking about a medication that is clearly identified. We're talking about something that if one small factor were changed, that very same person could dispense that medication. The doctor of the day and I had a discussion in the back about the ravages of this and the importance of taking care of it. What you don't want is someone who lives in one of these counties, drives out and gets four months of treatment and doesn't finish up the other months, and now you may have got a mutated strain of tuberculosis that is now not responsive. I mean there's a lot of disaster scenarios. But let's just call this what it is. We're going to change something to help Nebraskans. Can we live with it? Can you live with changing something, to adapt to something? That's how I see it right now. So again, I'm conflicted because we're going to go against something that's kind of written, but we have to be able to move forward and Senator Cook has offered something that will help us fix something in a very limited scope. And I would hope that members would continue to focus on, you know, the counseling, the labeling, those types of things versus bringing in outside things that... [LB341]

SENATOR CARLSON: One minute. [LB341]

SENATOR PRICE: ...really aren't germane. So with that, Mr. President, I appreciate the time. [LB341]

SENATOR CARLSON: Thank you, Senator Price. Senator Campbell, you're recognized. [LB341]

SENATOR CAMPBELL: Thank you, Mr. President. Good afternoon, colleagues. I have to say that there was a part of me that almost didn't stand to visit about an issue on scope of practice, but in this situation I felt it was important to lend a point of support for LB341 and AM119 discussed by the committee. I think an important point that is being lost here but was illustrated by Senator Council is that the department, in its testimony to the committee, made it very clear that in 2005 the TB program operated by the department joined a multistate contract to purchase certain drugs for the treatment of tuberculosis. The contract allows the department to purchase these drugs at a much lower price than retail, and it is the purchase of this price that makes the nurse practitioner then out of sync with what they can currently do today. If it came directly from the manufacturer, they could dispense it. But because we are paying a price and we are asking that nurse practitioner to go out and administer, we need this change. We

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need this amendment. The nurse practitioner, at this point in the state of Nebraska, must be associated with a physician and under their direction. So if we worry whether they would have the training or they would have the questions, I would have to say that I think the nurse practitioners in this case do. I do not think that in this very limited case this is a departure from scope of practice because it is so narrow and it truly is the overall goal of the department to deal with this very pervasive and what can be an extremely serious disease for Nebraskans. So I would urge you to think about the very small difference that what this amendment is trying to do. And I'd yield the rest of my time to Senator Cook. [LB341]

SENATOR CARLSON: Thank you, Senator Campbell. Senator Cook, 2 minutes and 20 seconds. [LB341]

SENATOR COOK: Thank you, Mr. President. Thank you, Senator Council and Senator Campbell and Senator Price, for reinforcing the key idea behind this piece of legislation. What the agency hopes to do is to authorize nurse practitioners to distribute the selfsame drug that the nurse practitioners are distributing if it is a free sample. It's very important for people being treated with this disease to complete the drug protocol as close to home as possible. And the, as Senator Price illustrated and as you can see from the maps that were distributed this morning, there are, I believe, 19 counties of our 93 counties across the state which do not have pharmacies or pharmacists available. That factored in with a likely tuberculosis patient make it extremely important that we adopt this legislation at this time so that the agency can authorize nurse practitioners to distribute the TB treatment drugs that are already distributed samples,... [LB341]

SENATOR CARLSON: One minute. [LB341]

SENATOR COOK: ...to distribute the ones that they pay pennies for. Thank you very much, Mr. President. [LB341]

SENATOR CARLSON: Thank you, Senator Cook. Those still wishing to speak: Senators Lathrop, Dubas, Hansen, and Sullivan. Senator Lathrop, you're recognized. [LB341]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I appreciate the debate that's going on this afternoon, and as I listen to it we seem to be confusing the fact that a nurse practitioner can hand out medication for free with a free sample. A free sample is something typically you go in to see your doctor, maybe you got a sore back, the doctor hands you something to get you through until you can take your scrip over to the pharmacy. So a free sample is typically a short-term, here, take these, get your scrip filled, and this is what you need to be taking. In our system of delivering healthcare, we have the physicians and perhaps the nurse practitioners that prescribe the medication and occasionally will give you a free sample to get you over...hold you over until you get

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to the pharmacy. But the pharmacist is being overlooked in this process and we overlook him by showing us a map of some counties where there are no pharmacists, and I appreciate that and I'll talk about that in just a second. But the reality is that the pharmacist performs an important role in the administration of health in this country. That's the person...you can go to Mexico, and I've seen it, you can go to Mexico and tell somebody who has no training whatsoever what your problem is, they look something up in a book and they'll give you medication over the counter. That's not what we do in this country. We put the pharmacist between you and that prescription so that somebody is looking at it and saying this won't work for you, there's a reason this won't work for you, this is the wrong medication, there will be a drug interaction, something is going to happen that will make this the wrong medication for you. Now it might not get you in the free sample, but if you're going to take it for six months you need to know about A, B, C, and D, and how it's going to affect the other medications you're on. My problem with this approach is we've taken the pharmacist out of there and that's a key component in dispensing medications, and the inducement is, well, this is free and it's a terrible thing. Apparently 25 people a year get this. The answer to my concern is this map that you all have and it shows that some people...there are some counties where there are no pharmacies and no pharmacists. But the people that live there are getting their cholesterol medication somewhere, right? They're getting their prescriptions someplace. They're driving. These are in areas of the state where people are accustomed to driving to a neighboring community to get their prescriptions because they're doing it right now. It seems to me that the approach that we ought to take with tuberculosis should not be any different than any other medical condition. We should perhaps provide free samples. This is important, take this medication, here's the prescription. Take the prescription over to the pharmacy; you'll be able to pick this stuff up for free. And then when you're there, the pharmacist can tell you how it's going to interact with your various medications that you're on, whether you need to take it at night, in the morning, with food, without food, all those things that a pharmacist does. These people are trained in the chemical compounds and their interaction with the body and with the other medications that you may be taking, and we're short-circuiting that process, taking an important safeguard out of the process because we've properly recognized, as Senator Price said, this is an awful condition. I agree with that. But I don't think an awful condition gets us past giving a free sample and a prescription and telling the people get yourself over to the pharmacy to have this filled out and chat with your pharmacist about whether it's safe for you to take it, effective, and how to best manage the medication. So while I appreciate the intent... [LB341]

SENATOR CARLSON: One minute. [LB341]

SENATOR LATHROP: ...of Senator Cook's bill, I truly do, and I truly appreciate the work of the Health and Human Services Committee on this subject and the importance and the gravity of the subject, I still think it's important that we put a pharmacist between the long-term use of a medication. If it's not important that we do this then let's take it off the

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drug list. Why don't we...why don't we just let them pick it up at the drug store like they do Sudafed or like they do cold medication? The reality is, is it's a medication that needs a pharmacist to ensure that it is properly administered and I don't believe we should short-circuit that process, notwithstanding the fact that tuberculosis is serious and it's contagious. Those are reasons to take expedient steps like not charging people for the medication, having public health officials go out every day to make sure the medication...the prescription was filled and the medications are being taken. But to take the pharmacist out of the middle of the process... [LB341]

SENATOR CARLSON: Time. [LB341]

SENATOR LATHROP: ...I think is unwise. [LB341]

SENATOR CARLSON: Thank you, Senator Lathrop. Senator Dubas, you're recognized. [LB341]

SENATOR DUBAS: Thank you, Mr. President, members of the body. There is no question that access to care is something that I feel very passionately about, but I also feel very passionately about the quality of care that our citizens receive. So with that being said, I would have a series of questions, if Senator Cook would entertain my questions. [LB341]

SENATOR CARLSON: Senator Cook, would you yield? [LB341]

SENATOR COOK: Yes. [LB341]

SENATOR DUBAS: Thank you very much, Senator Cook. Who would make the original diagnosis and then the subsequent treatment plan for this particular patient? [LB341]

SENATOR COOK: Well, Senator Dubas, from my understanding, the nurse practitioner may be the one making the initial diagnosis, it may be a physician, or it may be a physician's assistant. It would depend on who the patient saw. [LB341]

SENATOR DUBAS: Okay. So if it is a nurse practitioner, does that person have the ability to write the scrip for the treatment? [LB341]

SENATOR COOK: I would have to consult with Dr. Schaefer, but from my research the nurse practitioner would be able to write that. [LB341]

SENATOR DUBAS: All right. Thank you. What's the length of time for treatment for TB? [LB341]

SENATOR COOK: As I mentioned before, the length of the protocol is six to nine

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months. [LB341]

SENATOR DUBAS: Thank you. I thought that's what you said but I wanted to be clear on that. So would a clinic, in essence, receive enough free samples to fully treat someone who has TB? [LB341]

SENATOR COOK: That would be another question for the experts in the lobby. Quantities of drugs sent for tuberculosis or cholesterol or any of the other conditions that a patient might present with are something that I'm not familiar with right now. [LB341]

SENATOR DUBAS: All right. Thank you. Who typically staffs public health clinics? Are there usually doctors there or do we rely much more on PAs and... [LB341]

SENATOR COOK: The public health clinics with which I'm most familiar are staffed by physicians, physician assistants, nurses, nurse practitioners, the full range. [LB341]

SENATOR DUBAS: Okay. [LB341]

SENATOR COOK: Of course, that would vary from public health serving institution to public health serving institution. [LB341]

SENATOR DUBAS: Sure. What happens if we don't pass this bill? What happens to the access to appropriate treatment for these patients? [LB341]

SENATOR COOK: I brought the bill on behalf of the agency to eliminate a barrier, in my mind it's been mentioned a couple of times before, that is a legal barrier. That is a nurse practitioner can dispense the selfsame drug if it is free, a free sample, as she would be...to eliminate the barrier that she could distribute the selfsame drug if it is given to the agency, purchased through the multistate compact for pennies. [LB341]

SENATOR DUBAS: I think, as Senator Lathrop just mentioned, you know, these patients are getting other types of drugs through a pharmacy of some kind, whether it's mail, you know, prescriptions that are mailed to them or whatever. So can we distribute these same discounted meds through an actual pharmacy? Can pharmacies have access to... [LB341]

SENATOR COOK: Absolutely. I think what the agency wants to make certain is that the likely person, to improve the compliance or ensure the greatest level of compliance, that the patient has access to the drugs. You mentioned the access through pharmacies, and the persistent message that I seem to hear from both you and Senator Lathrop is that pharmacists are the only one...only ones... [LB341]

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SENATOR CARLSON: One minute. [LB341]

SENATOR COOK: ...that are able to provide the drug interaction counseling. Drug interaction counseling is also part of the training for nurse practitioners. And I'd like to offer at this point something that is a little bit from my personal experience as someone who collects medications for elderly parents and not having been asked anything about what drugs they were currently on, I suppose there may be a list, what their diet is like, if their weight has changed. I understand that you want to ensure quality care but if we're saying that the pharmacists are consistently doing that, I might beg to differ. And the idea that nurse practitioners have not had drug interaction training is also something that's simply not true. They do have that. [LB341]

SENATOR CARLSON: Time. [LB341]

SENATOR DUBAS: Thank you very much, Senator Cook. [LB341]

SENATOR CARLSON: Thank you, Senators Dubas and Cook. Senator Hansen, you're recognized. [LB341]

SENATOR HANSEN: Thank you, Mr. President and members of the Legislature. Senator Cook, if she would yield, I have a couple questions. [LB341]

SENATOR CARLSON: Senator Cook, will you yield? [LB341]

SENATOR COOK: Yes. [LB341]

SENATOR HANSEN: Thank you. Senator Cook, are any of these TB drugs...I know there's different strains. There's wildlife strains and there's animal strains and human strains of TB. Are any of these strains to the point where they need formulated drugs? Do they need to compound drugs in order to treat this TB? [LB341]

SENATOR COOK: Well, what I have, and I'm going to push my button so that the pages can help me distribute it, is a description of the tuberculosis medication that is typically offered here, so why don't I do that. [LB341]

SENATOR HANSEN: According to the... [LB341]

SENATOR COOK: Then we can all see that. [LB341]

SENATOR HANSEN: Okay. Thank you. According to your amendment or the Health Committee's amendment here and similar to your amendment, too, this is for treatment and prevention. Do the people in the family, say it's a...the patient, a spouse, and two, three, four kids, doesn't matter how many children that are in there, will they all be on

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TB drugs for six to nine months? [LB341]

SENATOR COOK: That is my understanding of how the drug is...I mean how the disease is stopped. Many of our typical patients with TB live in close quarters with large families. So if they have a positive test for TB, the entire family has to follow through on that protocol, another reason in my mind to ensure that nurse practitioners would be able to administer the drug, as well, beyond the free samples which they're already able to administer. [LB341]

SENATOR HANSEN: Over the years, I've gone to the doctor several times and he gives me free samples. He'll give me a box that is maybe two inches wide and four inches tall and I have four pills in it. He says, this will get you by till you get to your pharmacist. Is this the type of samples we're talking about? Would they be in a blister pack? Would they be loose in a bottle? Would they be family size? Would they... [LB341]

SENATOR COOK: (Laugh) [LB341]

SENATOR HANSEN: There's a lot of questions there, and the reason I ask you those questions, Senator Cook, because I see cutting the pharmacist out as a real problem here. I think the pharmacist is the one that needs to be in the circle, needs to be in that complete loop to take care of especially a family if you're talking about handing out samples at a doctor's office. When I go to the doctor's office, either the doctor or the physician's assistant usually hands out those samples. I guess my question is why would a nurse practitioner be any different than a doctor or a physician's assistant where they would hand out one set of samples and then say go to the pharmacy and get the rest of your prescriptions, especially if we're talking about a family of six going to that doctor's office over and over and getting samples? [LB341]

SENATOR COOK: I think I'm going to address your question. That's a question to me? [LB341]

SENATOR HANSEN: Yes, I'm...yes. [LB341]

SENATOR COOK: So what I hear you asking me is why should we include a nurse practitioner along with a physician, who is not a pharmacist, along with a physician's assistant, who is not a pharmacist, along with a nurse practitioner who is giving out the selfsame drug as a sample in the care over the long term for the TB patient and the people who are exposed? Is that...is that a fair representation of what your question is? [LB341]

SENATOR HANSEN: Yes, and why would we...yes, and why would we be cutting out the pharmacist? [LB341]

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SENATOR COOK: I guess you would...I think I would refer to the testimony that was offered last year when the bill was introduced and offer that... [LB341]

SENATOR CARLSON: One minute. [LB341]

SENATOR COOK: ...of the other classes, if you will, of people who are permitted to distribute the drug outside of a pharmacy context, the physicians and the physician assistants and the nurse practitioners who are giving it out as a sample, none of those people are operating necessarily within the context of a pharmacy. There is not a pharmacist standing there when physician X is offering this drug to the patient. [LB341]

SENATOR HANSEN: Thank you, Senator Cook. And thank you, Mr. President. [LB341]

SENATOR CARLSON: Thank you, Senators Hansen and Cook. Those still wishing to speak: Senator Sullivan and Council. Senator Sullivan, you're recognized. [LB341]

SENATOR SULLIVAN: Thank you, Mr. President. While I've appreciated the conversation and the information and the debate that's been going on, on this issue, I'm a little conflicted because...and at times like this I don't think we have a medical doctor or a nurse practitioner in the body. It would be nice if we did at this point. And I'm a little, I don't know if disgusted is the word, but what I'm seeing and feeling right now, that there is a lack of communication among some of these medical professionals and they can't get along and they can't deal with it so they ask the Legislature to take care of it. And I am most concerned that we have access to quality healthcare for the citizens of this good state of Nebraska and I think that is most served by having all the medical professionals talk to one another. So at the very least, I'm disappointed that that conversation and that communication has not taken place among all the individuals involved and I include in that the pharmacists, the nurse practitioners, the physicians, and anyone that has a vested interest in dealing with this issue. Secondly, I take issue a little bit with the fact that in my district, District 41, Wheeler County is identified as one that does not have a pharmacy. Well, I don't think that there's a nurse practitioner in Wheeler County either so I don't think that this particular legislation will make accessibility to this drug any better in Wheeler County. And thirdly, we keep bringing up the whole issue of free sample versus this drug that is being purchased through the Department of Health and Human Services in this multistate compact. Perhaps it's not a free sample because it's not meant to be a free sample. As I understand it, this drug is very powerful. We've already identified that it needs to be administered in a carefully administered regimen with education, communication involved with the patient, with the health provider, with the pharmacist. So at the end of the day I'm thinking that I have some real concerns with this legislation because I don't think that it's really addressing access of quality medical care and communication with the patient and all the health professionals that need to be involved in that conversation. Thank you, Mr. President. [LB341]

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SENATOR CARLSON: Thank you, Senator Sullivan. Senator Council, you're recognized. [LB341]

SENATOR COUNCIL: Thank you, Mr. President. First, as a prefatory remark, I am not a medical professional. I don't understand what the specific protocols are. But I have read that the medication that we are talking about is a pill and it is a pill that is to be taken over a six- to nine-month period. It is also my understanding that the medication that we're talking about and the reason for this legislation is that the Department of Health and Human Services, our state Department of Health and Human Services, considers an outbreak of tuberculosis to be such a medical threat to this state that the Department of Health and Human Services is prepared and does in fact provide the tuberculosis medication to clinics, both public and private, at no cost. There is no charge by the Department of Health and Human Services for the medication. So in response to comments from my learned colleague Senator Lathrop, and I don't know whether he's left the room, but the impression that I was left with by Senator Lathrop's comments is that the objection by the pharmacists is simply that they're not dispensing these pills. Now if any of us in this room believe that that is the issue with the pharmacists, I have swampland in Louisiana to sell you. The issue with the pharmacists is if the state of Nebraska paid for the medication and is going to distribute the medication, that there should be a cost associated with the distribution, the dispensing of the medication, and if that's going to occur, folks, it ought to come to pharmacists. I wish Senator Lathrop was in the room because I want to know that if the Department of Health and Human Services purchases these supplies...come, Senator Lathrop. I have a question, if you'd yield. [LB341]

SENATOR CARLSON: Senator Lathrop, will you yield? [LB341]

SENATOR LATHROP: Certainly. [LB341]

SENATOR COUNCIL: Thank you, Senator Lathrop. I want to know, hypothetically, because I don't know if they'd do it but I'm sure that they would, since the Department of Health and Human Services, as I understand, buys this medication in bulk from this compact, if they in turn distributed this medication to pharmacists across the state of Nebraska to be dispensed only to patients referred by the Department of Health and Human Services, are the pharmacists prepared to dispense that medication at no cost to either the state or the patient? [LB341]

SENATOR LATHROP: Well, I'd have no way of making that representation. [LB341]

SENATOR COUNCIL: Okay. [LB341]

SENATOR LATHROP: I mean I'm not here doing the bidding for the pharmacy industry

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and I can't answer that question. Perhaps they would. We'd have to ask the Pharmacy Association. [LB341]

SENATOR COUNCIL: The reason I asked the question, Senator Lathrop, was that during your statements you said that the pharmacists believe that they should be involved in this process, that they should be the ones dispensing the medication. Did I misunderstand that? [LB341]

SENATOR LATHROP: You did miss that because I think I said I believe that they should be involved in that process so that they have an opportunity to do all the things they do with every prescription that all of us pick up at the pharmacy. I think they ought to be doing the same thing with the TB meds. [LB341]

SENATOR CARLSON: One minute. [LB341]

SENATOR COUNCIL: So then I'll ask you, do you believe that if they get the drug for free from the Department of Health and Human Services with direction that the patient is not to pay for it, that they should do that, that pharmacists should do just that; that if the Department of Health and Human Services provides them with the medication at no cost to the pharmacists, that pharmacists should in turn dispense that to patients at no cost? [LB341]

SENATOR LATHROP: Okay, it's 25 people a year? [LB341]

SENATOR COUNCIL: I don't know. You know, if we don't... [LB341]

SENATOR LATHROP: I think that that...I suspect they'd be okay with that, but I can't speak for them. [LB341]

SENATOR COUNCIL: Yeah, but if we don't treat it, believe me, it will be far more than 25 people, but... [LB341]

SENATOR LATHROP: That much I've clearly gathered today. [LB341]

SENATOR COUNCIL: So I mean even the 25 people, at least to my knowledge, I mean I haven't had a pharmacist approach me and say, Senator Council, you know, we just want to be in the process, we want to, you know...we ought to be the one that dispenses this free medication and dispense it for free. [LB341]

SENATOR CARLSON: Time. Thank you, Senators Council and Lathrop. Senators still wishing to speak are Stuthman, Price, and Dubas. Senator Stuthman, you're recognized. [LB341]

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SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I truly support the idea and the concept, what Senator Council was talking about, and I really feel that, you know, Health and Human Services is very concerned about this. They have the free samples. They keep track of recording and recordkeeping. It has to be recorded, they have to be accountable for who those drugs went to. And the nurse practitioners can administer those drugs free. The thing that I have entered my mind is the same thing that Senator Council was concerned about--the pharmacists want to be involved. And I will grant you that if the pharmacists are involved it's not going to be totally free to the patient. They're going to want their little cut out of it. And I think that's the issue that we have. We want to make sure so there isn't a real TB outbreak. We want to address the situation, you know, on the surface, make sure that they get their medication throughout this six- or nine-month period at free cost. I think if the pharmacists, and I know the pharmacists are not going to appreciate what I'm going to say, but I think that they really want to be involved, and I've heard a lot of that discussion, but they're going to want something for being involved. There's going to be a charge on that. So I think we need to keep that in mind. The issue is we need to control tuberculosis. We need to control that so it gets stopped on the surface, and we need to do it with what Health and Human Services wants to do and are willing to do, is give these free samples to these individuals for their medication so we can control this outbreak. I think that's the issue. In my opinion, we don't have to go that next step. Yes, maybe they know how drugs interact and everything like that, but there's a cost to that. So with that, I truly support, you know, this bill and the fact that they can receive these free samples and we have a group of people that are doing what they can do, the licensed nurse practitioners. Thank you, Mr. President. [LB341]

SENATOR CARLSON: Thank you, Senator Stuthman. Senator Price, you're recognized. [LB341]

SENATOR PRICE: Thank you, Mr. President, members of the body. I have a question for Senator Cook, if she would yield. [LB341]

SENATOR CARLSON: Senator Cook, would you yield? [LB341]

SENATOR COOK: Absolutely. [LB341]

SENATOR PRICE: Thank you very much, Senator Cook. Do you know offhand whether or not, and the lobby will send a note in, I'm sure, this dispensed medication in a pill form, does it have a shelf life that you are aware of? [LB341]

SENATOR COOK: You're asking me whether or not the pill to treat the TB that's taken over a six- to nine-month protocol has a shelf life. [LB341]

SENATOR PRICE: Correct. Correct. [LB341]

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SENATOR COOK: I do not know the answer to that. If I had to hazard a guess I would say yes. Because if a can of Coca-Cola in my refrigerator has a shelf life... [LB341]

SENATOR PRICE: Okay. [LB341]

SENATOR COOK: ...it would go to follow, knowing what I know about substances and prescription drugs and even over-the-counter drugs, I would say pretty confidently, yes, that those TB drugs which are provided free of cost to the public health agencies do have a shelf life. [LB341]

SENATOR PRICE: Thank you. And we went around that mulberry bush real quick. Here's my point, ladies and gentlemen. What if...let's go down the "what if" line. What if the attending medical professional, we won't banter about whether they're a doctor or whatever, the attending medical professional makes a diagnosis of tuberculosis, writes a scrip, and then the scrip is fulfilled by a pharmacist but that they send out nine months worth of pills? I mean how many times have we seen on the television and seen advertised, get your meds by mail? I will tell you, I get a bag of pills, medication, for six months at a shot from the VA. I saw a doctor, they wrote me a scrip, the pharmacy sends me the medications, thank you very much, come back in six months and fill...actually, I can use my phone and refill that very same order each time I want to do it and I only actually have to see the physician either...I mean six to nine months for some things and up to a year for others. So my point is, as a solution set, again, hey, let's just mail the nine months of protocol and be done. If there's a shelf life that gets in the way of it, then we'll have to deal with it that way. But again, we see you can get your meds mailed to you. If you go and look on the Internet, you can get almost anything, right? But my point there being is if a person has been diagnosed with this disease or any disease and the attending physician says that this is the diagnosis, I've written a scrip, a pharmacist was in the loop, well, we'll get a state pharmacist to write the scrip for nine months and, bada boom, bada bing, we're done. Senator Cook, do you have any commentary on that? And I would yield the rest of my time to you. Thank you. [LB341]

SENATOR CARLSON: Senator Cook, you have 1 minute and 40 seconds. [LB341]

SENATOR COOK: Thank you, Mr. President, and thank you, Senator Price. I spoke a little bit earlier about the fact that nurse practitioners are trained in drug interaction counseling and we did puzzle a little bit over the pharmacists' insistence that they alone be the one to offer the drugs. I offered a little bit of personal testimony, as a daughter who often picks up prescriptions for her elderly parents, and they...kind of the question they come back at with me is debit or credit. I rarely get any questions about my patients and how they're...and whether their weight has changed, whether any of the other... [LB341]

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SENATOR CARLSON: One minute. [LB341]

SENATOR COOK: ...circumstances have changed. I also wanted to reinforce the idea, in addition to VA but also there's a recent television advertisement that Walmart would be potentially providing prescriptions to people via U.S. mail. But that's not the point. And I appreciate what Senator Sullivan has said and the other senators have offered. Absolutely, we all want to be focused on access to healthcare. But in our current environment I think that this bill is something that we can do to ensure access to the medication to ensure that TB is not spread. This is TB that is particularly virulent. It is a strain that is drug-resistant. It is occurring in a population that lives within a large family situation and there are sometimes pharmacists and there are sometimes not pharmacists. I'd like to add also that the agency... [LB341]

SENATOR CARLSON: Time. [LB341]

SENATOR COOK: ...surveyed and only one pharmacy in the state agreed to offer the drugs for free. [LB341]

SENATOR CARLSON: Thank you, Senator Cook and Senator Price. Senator Dubas, you're recognized. [LB341]

SENATOR DUBAS: Thank you, Mr. President. Would Senator Gloor entertain some questions, please? [LB341]

SENATOR CARLSON: Senator Gloor, would you yield? [LB341]

SENATOR GLOOR: Certainly. [LB341]

SENATOR DUBAS: Thank you very much, Senator Gloor. I'm going to recognize you probably as the Legislature's medical guru, so we'll see what kind of questions...or what kind of answers you give to my questions. I think we've heard some concern about follow-up, and especially with TB it's very, very important that these patients take their whole regimen of medication in order to get this disease under control. I guess my question would be, whether a nurse practitioner or anyone else dispensed this medicine or not, they would still be able to follow up on that treatment of care, would they not? [LB341]

SENATOR GLOOR: Well, I would believe so. Any nurse practitioner or physician assistant has a sponsoring physician, and ultimately a responsibility for follow-up on that patient lies with that sponsoring physician who will be pretty adamant, I believe, as they review charts and care plans that go along with taking care of that patient. We got a tuberculosis patient here and we need to continue to do follow-up on this patient wherever they may be, to the extent we can locate them. [LB341]

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SENATOR DUBAS: Why do you think it's so important that we recognize scope of practice parameters that are in place? [LB341]

SENATOR GLOOR: I think it's important that we recognize scope of practice issues so that we don't continue to debate it here time and time again. I've talked to Senator Cook about this and she knows my concern about this is a scope of practice issue, as I define it. Most folks don't understand the fact that physicians, as an example, just because they're an MD cannot automatically prescribe medications. They have to get a dispensing practitioner permit from the state to prescribe drugs. So even physicians have to be authorized by the state to dispense drugs. My concern about this bill, and I understand the public health components of that, but one of my concerns about this bill is we are expanding the scope of practice to nurse practitioners, saying they don't need this dispensing permit; unlike even physicians, they can go ahead and prescribe this medicine. Even though it's one medicine, I'm concerned about precedent and I'm concerned in the future another medicine or another medicine may be added to this list. [LB341]

SENATOR DUBAS: I think as I listen to this discussion, it becomes more apparent to me that we need a lot of people involved with the treatment of tuberculosis. What would be your opinion on why the pharmacists should be involved in treating a TB patient? [LB341]

SENATOR GLOOR: Well, this goes back to my previous life, running a hospital, and my experience--I've shared this with the Department of Health, I believe I've shared it with Senator Cook and some of the other senators--is that we do not, for whatever reason, defer to pharmacists enough. It was a problem for me dealing with physicians in my previous life. And obviously physicians are trained when it comes to certain medicines, but in addition to all the other things they have to remember of us they also have to then remember issues relating to medicines, all of that. Pharmacists focus on just the medicines we're given. And so in this particular bill, when the pharmacists have objections, I don't think they're being bad citizens here. I think they're sharing what they believe to be a serious quality of care issue, and I think they also recognize there's some public health issues and are balancing that against their concerns on their not being one of the spokes than rather the hub on this process. [LB341]

SENATOR DUBAS: Thank you very much, Senator Gloor. I would definitely agree with your last comments. I think this is... [LB341]

SENATOR CARLSON: One minute. [LB341]

SENATOR DUBAS: ...this is a disease that deserves all the areas of medical expertise's attention, whether it be the pharmacists, the nurse practitioner, the doctor, whatever it

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be, this is something that can have far-reaching and very, very serious consequences on all the citizens of our state. And as Senator Sullivan so aptly put it, these people all need to be at the table talking about this in a cooperative and a concerted fashion. And so I do appreciate your input, Senator Gloor. [LB341]

SENATOR CARLSON: Thank you, Senators Dubas and Gloor. Senator Wallman, you're recognized. [LB341]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. I'm a senior citizen. Lots of my friends are senior citizens. What's their number one concern? Cost of medication. I have friends go to my church. They get their medications south of the border. So here we have a state entity, state Department of Health, that's going to take care of some of our people that don't have a lot of money, and our state is running short on funds also. Medication, I have nothing against pharmacies, I do not go south of the border, but we've had those pills analyzed by a chemist in the family and they're exactly the same as they are here and about a tenth of the cost. Why is that? I don't know. Is it the pharmacies? Is it the pharmaceuticals? Same doggone thing down there as it is here. So I think this is a bill brought out by our Department of Health. I supported it in committee. And I know the pharmacists don't like this bill. It's a scope of practice issue to them probably, but I see this as a service that we do to some citizens of this great state of Nebraska. And if Senator Cook would want some more time, I'd gladly yield her some. [LB341]

SENATOR CARLSON: Senator Cook, you have 3 minutes and 30 seconds. [LB341]

SENATOR COOK: Thank you, Mr. President, and thank you, Senator Wallman. I would like to take a little while to address a point that Senator Gloor mentioned earlier. He indeed has a background in the medical industry as an administrator and probably has lots and lots of direct and anecdotal experience. But I want to read to the body the response that the agency offered to the claim that Senator Gloor alluded to, that physicians...that this would go beyond the scope of what a physician is able to do in terms of dispensing this one drug which is a treatment for tuberculosis. The statement that this bill increases the dispensing authority beyond that of a physician is incorrect. Without a pharmacy permit, physicians and physician assistants can dispense drugs to patients incident to the physicians' and physician assistants' practice unless they charge for the drugs and do the dispensing regularly. A drug can be dispensed without a pharmacy permit by individuals as permitted by Section 38-2850 when the individual has a medical order; and a medical order is a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner. Moving ahead, currently nurse practitioners can diagnose and prescribe medication to treat patients. Without a pharmacy permit, they can dispense sample medications from manufacturers at no charge to patients. The amendment proposed by the agency would allow nurse practitioners to dispense medications received from HHS at no charge to patients for

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the prevention and treatment of tuberculosis. This is similar to the dispensing of samples provided by the manufacturer. This change would still be less than what physicians and physician assistants are allowed to currently do under the statutes. Thank you, Mr. President. [LB341]

SENATOR CARLSON: Thank you, Senators Cook and Wallman. There are no other senators wishing to speak. Senator Gay, you're recognized to close on AM119. [LB341]

SENATOR GAY: Thank you, Mr. President. I would ask for the body's support on the amendment. Wherever you're at on the bill, we are voting right now on the amendment. I think the amendment for sure narrows the scope down here and that's what the amendment is for. Your other feelings on the bill, we are going to continue to debate that. I believe there's another amendment coming that we'll also be voting on but on this particular thing I'd ask for your support on this amendment. I had heard some of the talk of the scope of practice, of course, the pharmacists and all that. We deal with the scope of practice issue all the time in Health Committee and we take it very seriously. So I understand that's going through your head, but on this one as well, on the actual...on the pharmacist...this is nothing against pharmacists. And I heard back and forth about a pharmacist, this or that. They do an exceptional job in this state and this is nothing at all against the pharmacy industry or anything like that. This is a public health question that you've got to ask yourself: What am I doing to prevent a terrible disease from spreading at some point? I think this amendment helps clarify that and then we will continue discussion on the bill. Thank you, Mr. President. [LB341]

SENATOR CARLSON: Thank you, Senator Gay. You've heard the closing on the amendment. The question is, shall the amendment be adopted? All those in favor vote aye; all opposed vote nay. Have all voted who wish to vote? Senator Gay. [LB341]

SENATOR GAY: Mr. President, can I get a call of the house? [LB341]

SENATOR CARLSON: There's been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB341]

CLERK: 37 ayes, 0 nays, Mr. President, to place the house under call. [LB341]

SENATOR CARLSON: The house is under call. Senators, please record your presence. Those senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Rogert, the house is under call. Senator Krist. Senator Heidemann, the house is under call. Senator Gay, all senators are accounted for. How would you like to proceed? [LB341]

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SENATOR GAY: Thank you, Mr. President. Can I do a roll call vote in regular order? [LB341]

SENATOR CARLSON: We've had a request for a roll call vote, regular order. Please proceed. [LB341]

CLERK: (Roll call vote taken, Legislative Journal page 192.) 30 ayes, 16 nays, Mr. President, on the adoption of committee amendments. [LB341]

SENATOR CARLSON: Thank you, Mr. Clerk. AM119 is adopted. The call is raised. Items for the record. [LB341]

CLERK: Well, Mr. President, just an announcement. That's the Government Committee will meet underneath the south balcony. Still now, Senator Avery, Government Committee, south balcony? Okay, south balcony, Government Committee immediately.

Mr. President, Senator Cook would move to amend the bill with AM1542. (Legislative Journal page 126.) [LB341]

SENATOR CARLSON: Thank you, Mr. Clerk. Senator Cook, you are recognized to open on your amendment. [LB341]

SENATOR COOK: Thank you, Mr. President and members of the body. This amendment, as we talked about earlier, removes the sections of LB341 that you already passed last year as part of the agency's omnibus bill. Again, the purpose of this amendment is to put before the body a public health and safety policy proposal related to LB341. Again, because those sections of the introduced law were passed into law last year, they must be removed from the bill. I urge you to vote green on AM1542. Thank you. [LB341]

SENATOR CARLSON: Thank you, Senator Cook. The floor is now open for discussion on AM1542. Seeing no lights, Senator Cook, you're recognized to close. Senator Cook waives closing. The question is, shall AM1542 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB341]

CLERK: 27 ayes, 3 nays on adoption of Senator Cook's amendment. [LB341]

SENATOR CARLSON: The amendment is adopted. [LB341]

CLERK: I have nothing further on the bill, Mr. President. [LB341]

SENATOR CARLSON: We return to floor discussion on LB341. There are no lights on.

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Senator Cook, you're recognized to close. [LB341]

SENATOR COOK: Thank you, Mr. President and members of the body. I want to thank everybody who weighed in on the committee amendment and then my amendment on this bill. It's very encouraging to hear the concern for public health from members of the body and just all of you just wanting to make certain that our citizens and residents and guests are as healthy as possible. So thank you for taking time to do that. I want to remind everybody that this bill is very, very narrow in what it asks or permits. It permits nurse practitioners to dispense tuberculosis treatment drugs. I would offer one more time that these selfsame nurse practitioners are distributing the selfsame drug when it is labeled as a sample. This drug is provided free of charge to the clinics and offices. Thank you very much, and I urge your green vote on the advancement of LB341 to Select File. Thank you. [LB341]

SENATOR CARLSON: Thank you, Senator Cook. You've heard the closing on the advancement of LB341 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have all voted who wish to vote? Senator Cook. [LB341]

SENATOR COOK: I would like a roll call vote in...oh, a call of the house--thank you--and a roll call vote in regular order, please. [LB341]

SENATOR CARLSON: There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all opposed vote nay. Record, Mr. Clerk. [LB341]

CLERK: 43 ayes, 0 nays to place the house under call, Mr. President. [LB341]

SENATOR CARLSON: Thank you. The house is under call. Senators, please record your presence. Those senators outside the Chamber return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Nelson, please record your presence. All senators are accounted for. Mr. Clerk, please proceed, a roll call vote in regular order. [LB341]

CLERK: (Roll call vote taken, Legislative Journal page 193.) 18 ayes, 25 nays, Mr. President, on the motion to advance. [LB341]

SENATOR CARLSON: LB341 does not advance. Next item, Mr. Clerk. The call is raised. [LB341]

CLERK: LB183, a bill introduced by Senator Fischer. (Read title.) Introduced on January 12, referred to Transportation, advanced to General File. There are committee amendments, Mr. President. [LB183]

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SENATOR CARLSON: Thank you, Mr. Clerk. Senator Fischer, you are recognized to open on your bill. [LB183]

SENATOR FISCHER: Thank you, Mr. President and members of the body. LB183 requires the approval of the Public Service Commission for the sale of a telecommunications exchange. The purpose of the bill is to protect the interests of all consumers in Nebraska. The bill requires the telecommunications company that proposes to sell any exchange to submit an application to the commission for approval of the sale. The commission shall publish notice of the sale in the newspapers of the counties that are provided local exchange service by the company. In approving or rejecting the application, the commission will consider the public interest with several factors outlined in statute, including adequacy of service, reasonableness of rates, 911 service, and the adequate qualifications of the telecommunications company. The commission may include conditions in the approval that it feels are necessary to ensure protection of the public interest. The bill provides definitions of an exchange and a sale to narrow the scope of transactions that will fall under the commission's jurisdiction. I believe this is sound public policy, especially in the more rural exchanges of Nebraska. Significant amounts of public money are invested in exchanges throughout rural Nebraska through the Universal Service Fund. The fund has specifically been targeted to the more high-cost, usually rural exchanges. This bill simply outlines a form of process to protect ratepayers by ensuring that public money has been properly invested in plant and facilities in any exchange prior to the exchange being sold. Thank you, Mr. President. [LB183]

SENATOR CARLSON: Thank you, Senator Fischer. Mr. Clerk for amendments. [LB183]

CLERK: Mr. President, the Transportation Committee would offer committee amendments AM324. (Legislative Journal page 564, First Session, 2009.) [LB183]

SENATOR CARLSON: Senator Fischer, as Chair of the Transportation Committee, you are recognized to open on your amendment. [LB183]

SENATOR FISCHER: Thank you, Mr. President and members. AM324 is a simple amendment that strikes one word from the bill to limit one of the factors that the Public Service Commission may consider in approving or rejecting a sale to the ability of the telecommunications company to provide state-of-art service. The commitment of the company may not be considered. The word "commitment" would be difficult to define and it would be difficult I felt to make a determination of what that means. So this amendment does not diminish the effectiveness of the bill but it does strike that one word. Thank you, Mr. President. [LB183]

SENATOR CARLSON: Thank you, Senator Fischer. You've heard the opening on AM324. The floor is open for discussion. Seeing no lights, Senator Fischer, you are

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recognized to close. Senator Fischer waives closing. The question is, shall AM324 be adopted? All those in favor vote aye; all opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB183]

CLERK: 27 ayes, 0 nays, Mr. President, on the adoption of committee amendments. [LB183]

SENATOR CARLSON: AM324 is adopted. [LB183]

CLERK: I have nothing further on the bill, Mr. President. [LB183]

SENATOR CARLSON: There are no other amendments. We return to discussion on LB183. Senator Nelson, you're recognized. [LB183]

SENATOR NELSON: Thank you, Mr. Speaker and members of the Legislature. I'd like to ask a question or two of Senator Fischer. [LB183]

SENATOR CARLSON: Senator Fischer, would you yield? [LB183]

SENATOR FISCHER: Yes. [LB183]

SENATOR NELSON: So far as I can see, Senator Fischer, I don't have any objection to this, but I'm looking at, on the statement here, items 1, 2, 3, 4, and 5, the things that the commission would consider in approving or rejecting the sale. Could you just explain, are we looking at the company that's selling on all these items or the ability of the company that's buying that are under consideration, specifically the payment of taxes by the company? We don't know. I mean we haven't had any experience with the acquiring company as far as payment of taxes. [LB183]

SENATOR FISCHER: Right. Senator Nelson, this bill, as I said, is to protect consumers and it's to protect all Nebraskans that pay for phone service. This addresses the ability of a company to buy an exchange. We want to be sure that consumers in an area that is served by a telecommunications company that is looking to sell that company would still receive their service by the company that would buy that exchange. And those are the five areas that we felt needed to be met in order that consumers would continue to see reliable service by the new telecommunications exchange. [LB183]

SENATOR NELSON: With regard to item 2, the reasonableness of rates for local service, doesn't the commission control the rates or don't they have to approve those in any event? [LB183]

SENATOR FISCHER: Correct. They do. [LB183]

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SENATOR NELSON: So the new company, the acquiring company is going to...I mean, are they going to have any say in what rates they can charge? [LB183]

SENATOR FISCHER: They have to get approval by the commission for those rates to be set. [LB183]

SENATOR NELSON: And at the present time, without this bill, they still have to come and get approval, is that right? [LB183]

SENATOR FISCHER: Yes. [LB183]

SENATOR NELSON: All right. Thank you very much for that information. I have no further questions, Senator. [LB183]

SENATOR FISCHER: Thank you. [LB183]

SENATOR CARLSON: Thank you, Senators Nelson and Fischer. There are no other lights. Senator Fischer, you're recognized to close on LB183. [LB183]

SENATOR FISCHER: Thank you, Mr. President and members. I would urge you to advance LB183 to Select File. I think it is good public policy that we pass this in order that the consumers in the state of Nebraska are protected. Thank you. [LB183]

SENATOR CARLSON: Thank you, Senator Fischer. You've heard the closing on the advancement of LB183 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. [LB183]

CLERK: 42 ayes, 0 nays, Mr. President, on the advancement of the bill. [LB183]

SENATOR CARLSON: LB183 does advance. Next item, Mr. Clerk. [LB183]

CLERK: LB197, a bill by Senator Fulton. (Read title.) The bill was introduced on January 12 of last year, referred to the Education Committee, advanced to General File. There are committee amendments pending, Mr. President. [LB197]

SENATOR CARLSON: Thank you, Mr. Clerk. Senator Fulton, you're recognized to open on the bill. [LB197]

SENATOR FULTON: Thank you, Mr. President and members of the body. LB197, as amended by the committee amendment AM464, which Senator Adams will discuss, creates an additional cash fund called the College Savings Plan Expense Fund within the State Treasurer's Office. And, yes, the irony is not lost on me. At the time that I introduced this bill I was not a candidate for this office and indeed I recognize I am now,

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so I think that I can answer any questions that you have and I expect that we'll get some questions. This bill is to ensure optimum planning between government entities. The creation of this expense fund is necessary to eliminate the need for the Treasurer to make deficit requests of the Legislature to cover the fees assessed by the Nebraska Investment Council for its investment services. As with any agency, the Investment Council charges a fee to the Treasurer's Office based on a pro rata percentage of the Investment Council's overall investment package. The problem that exists is that the fee assessed by the Investment Council is very difficult for the Treasurer's Office both to predict and to pay, as the Investment Council's fees have increased significantly over time due to the success of our college savings plan program. This new cash fund would be funded by fees already assessed to the existing college savings plan program fund, thus it would have no fiscal impact and it would be used for the payments of the Investment Council's fees. LB197, as amended, allows for more efficient budgeting, both from the perspective of the Treasurer's Office and that of the Appropriations Committee and the Legislature. I therefore urge your support of AM464 to follow here, and the underlying bill. Thank you, Mr. President. [LB197]

SENATOR CARLSON: Thank you, Senator Fulton. Mr. Clerk for an amendment. [LB197]

CLERK: The Education Committee, Mr. President, would move to amend with AM464. (AM464, Legislative Journal page 601, First Session, 2009.) [LB197]

SENATOR CARLSON: Senator Adams, as Chair of the Education Committee, you're recognized to open on AM464. [LB197]

SENATOR ADAMS: Thank you, Mr. President. The amendment that we bring forward from the Education Committee was built after discussions with the Treasurer's Office. It took quite a bit of time to work through all the details of this. The essence of it is, and it's already been to a large degree explained by Senator Fulton, the program fund already exists. The endowment fund already exists. The administrative fund already exists. The problem is we have monies going to the administrative fund, both fees as well as an appropriation. And we need to clean this up and we felt that the best way to clean it up was to create an additional fund called the expense fund. Fees will go into it. The appropriation will go into it. And then from the expense fund the Treasurer can pay the Investment Council, and also the appropriation will be there for the Treasurer's Office for the implementation of the plan. So the essence of the amendment is to create the expense fund so that the monies can be moved, to pay the Investment Council and handle the appropriation for implementation of the plan by the Treasurer's Office. That's the amendment, Mr. President. [LB197]

SENATOR CARLSON: Thank you, Senator Adams. The floor is now open for discussion on AM464 and the underlying bill, LB197. Senator Nordquist, you're

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recognized to speak. [LB197]

SENATOR NORDQUIST: Thank you, Mr. President and members. I rise in support of Senator Fulton's bill for two reasons. First, the creation of the expense fund will allow us in Appropriations to have a better, more clear picture of where the funds are going when the distributor fees come in. The money will go out to the Investment Council. We won't be budgeting for that as a cash fund amount. It will allow us just to budget solely for internal expenses or administrative expenses. And the amount that's paid to the Investment Council is really a moving target. The last few years it's gone, in '06 it was \$76,000; it went to \$92,000; it went to \$167,000 in '08. For '09 the appropriation was \$210,000. They've come back in FY '10-11 for deficit requests. This is cash fund authority, just giving them the authority to spend. Another problem with that, we haven't been giving them the full authority. They come back for the deficit appropriation but the fees that have been charged have grown in that account because they're not spending it and they don't have the authority to spend it. So during special session the administration recommended taking...now there was \$2 million in the account. We took I believe \$1.25 million out back to our budget. This bill creates an alternative for that. Now I hope...you know, in a perfect world there wouldn't be excess fees. I talked to Senator Gay and I agree with him that when the fees are charged to the banks it ultimately gets back to a fee on the account holder. And through the contract process we hope the Treasurer keeps those fees to a minimum. But if there is excess funds, this bill now creates an alternative that those excess funds will go to the endowment fund which is then distributed back to Nebraska, kids that have a plan that are going to Nebraska colleges. So instead of us raiding this fund, it would allow for money to help Nebraska students offset their college costs. So that's why I support this bill for those reasons. Thank you, Mr. President. [LB197]

SENATOR CARLSON: Thank you, Senator Nordquist. Senator Gay, you're recognized. [LB197]

SENATOR GAY: Thank you, Mr. President. I rise in support of the bill and the amendment. However, during the conversations with Senator Fulton he handed out this handout, and you have it at your desk too, but it shows some of the excess amounts from this, what will be the expense fund, would go to an endowment fund. I checked on the Web site and there is no mention of an endowment fund. There's no...the way I understood it after conversations with Senator Fulton, there's no money in the endowment fund. My concern and I just wanted to get it on the record, I wanted to do a little checking into this, this is not the vehicle to do this. But an endowment fund, to me, parents trust the college savings plan. They invest in the college savings plan for their own child and it's a conduit. And as Senator Nordquist talked about, we want to make sure--and it is, it's one of the best in the nation. It's still is. It's a well-run fund. That those, as expenses are continually getting lower--and they are throughout the country. I read in many journals that the 529s in other states, because each state has a 529, and

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somebody would be the provider of that service, so a fund company. Well, they're pressing the fund companies to lower the fees, and I think we will, as Nebraska, I'm sure the Treasurer, the current Treasurer has been watching that, and whoever is the Treasurer at the time it's one of the duties they do to make sure that fees are lower and investment management advice is compensated but not overly so. And I know the Retirement Committee looks at these things. The issue I have a little bit on an endowment fund, and I say I don't know if now is the time and maybe not even this session, I do have a concern with that, that we put money into the 529 and then on the side we have an endowment fund. And I don't know who would distribute those funds or where they go. To me I think we're getting outside the focus on that. Now there are other ways we can do that through the Department of Education...or probably through other bills, I know, and Senator Adams may know of other vehicles to do that. But I'm just a little leery that our 529 program, to now all of a sudden to say, oh, we're an endowment fund as well. There are other vehicles I think to do that. I think we're getting a little off base by having the Treasurer's Office be in charge of an endowment fund for education. I don't know if that should be in their scope of duties. So in the future I do want to look into that a little bit. Right now, the way I understand it, there's no money in that fund and probably with the economy the way it is I don't know if there will be some coming. But it is something I think we should be aware of, pay attention to, and maybe in the future follow up to make sure that's just not a fund that's used to pick and choose who would receive those. So I just wanted to be on record and not surprise anybody if I look into that. Thank you, Mr. President. [LB197]

SENATOR CARLSON: Thank you, Senator Gay. There are no other lights on. Senator Adams, you're recognized to close on your amendment. [LB197]

SENATOR ADAMS: Very briefly, Mr. President, again what the amendment does is to create an expense fund through which fees and the appropriation will run so that we have really more appropriately put money where it belongs so that the Treasurer can access it. This should help the Appropriations Committee down the road as they're trying to guesstimate what our costs will be to the Investment Council. So I think this is a cleaner way of handling it. Thank you, Mr. President. [LB197]

SENATOR CARLSON: Thank you, Senator Adams. You've heard the closing on the committee amendments. The question is, shall the committee amendment to LB197 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB197]

CLERK: 38 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB197]

SENATOR CARLSON: The amendment is adopted. [LB197]

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CLERK: I have nothing further on the bill, Mr. President. [LB197]

SENATOR CARLSON: We return to the floor for discussion on LB197. There are no lights. Senator Fulton, you're recognized to close. [LB197]

SENATOR FULTON: Thank you, Mr. President and members of the body. Just briefly, thank you, Senator Nordquist, for elucidating a little bit more about this bill. The way that this...what we have learned or what I have learned through this process, and with some others who have worked on this in the process have learned, is that there are some cash funds that exist and that with some foresight we can make this a little bit more transparent for the Legislature, particularly the Appropriations Committee. And I think that's what Senator Nordquist was saying. For the record, I did talk with Senator Gay and I'm willing to look at that endowment fund. At present, there are no monies in that fund and so it would seem that it is a type of redundancy, so I'm willing to look at it. It's possible at some point down the road that someone would make a charitable contribution which could be utilized for the education of future students, but certainly that's something we could look at and I want the record to reflect that Senator Gay and I had talked about this. So with that I ask for your favorable vote on LB197. Thank you, Mr. President. [LB197]

SENATOR CARLSON: Thank you, Senator Fulton. You've heard the closing on the advancement of LB197 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. [LB197]

CLERK: 39 ayes, 0 nays, Mr. President, on the advancement of the bill. [LB197]

SENATOR CARLSON: Thank you. The bill does advance. Mr. Speaker for an announcement. [LB197]

SPEAKER FLOOD: Thank you, Mr. President and members. Good afternoon. We're going to go ahead and adjourn for the day and return tomorrow with LB550 from Senator Avery. We'll be adding some bills to the agenda. Thank you very much.

SENATOR CARLSON: Mr. Clerk, items for the record.

CLERK: Mr. President, on new bills. (Read LB914-918 by title for the first time.) New resolutions. LR286CA by Senator Fischer proposes an amendment to Section 14 of Article VIII of the Nebraska Constitution. And LR287 is by Senator Coash. That will be laid over. Amendments to be printed: Senator Dubas to LB297; Senator Avery to LB475. Hearing notices from Education Committee and Health and Human Services, signed by their Chairs. Senators Wallman and Gloor would like to add their name to LB701; Senator Christensen, LB860. (Legislative Journal pages 194-198.) [LB914 LB915 LB916 LB917 LB918 LR286CA LR287 LB297 LB475 LB701 LB860]

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And a priority motion. Senator Flood would move to adjourn until Wednesday morning, January 13, at 9:00 a.m.

SENATOR CARLSON: You have heard the motion to adjourn. All in favor say aye. Opposed, nay. We are adjourned until 9:00 a.m., tomorrow, Wednesday, January 13.