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Floor Debate  
January 20, 2010

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PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the ninth day of the One Hundred First Legislature, Second Session. Our pastor for today is...our chaplain for today is Pastor Luke Schnake from Christ Lutheran Church here in Lincoln, Nebraska, Senator Avery's district. Would you all please rise.

PASTOR SCHNAKE: (Prayer offered.)

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

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

PRESIDENT SHEEHY: Are there corrections for the Journal?

CLERK: I have no corrections, Mr. President.

PRESIDENT SHEEHY: Messages, reports, or announcements?

CLERK: Mr. President, a Reference report referring LB936 through LB962, signed by Senator Wightman as Chair of Reference. Hearing notices from the Government, Military and Veterans Affairs Committee, Senator Avery as Chair. A Governor appointment to the Nebraska Foster Care Review Board. That will be referred to Reference for referral to standing committee for a confirmation hearing. That's all that I have, Mr. President. (Legislative Journal pages 259-261.)

PRESIDENT SHEEHY: Mr. Clerk, do you have new bills for introduction?

CLERK: I do, Mr. President. Thank you. (Read LB988-993 by title for first time.) That's all that I have at this time, Mr. President. (Legislative Journal pages 261-262.) [LB988 LB989 LB990 LB991 LB992 LB993]

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PRESIDENT SHEEHY: Thank you, Mr. Clerk. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR270, LR272, LR274, LR275, LR280, LR281, LR282, LR283, LR285, LR287, and LR288. Mr. Clerk, we'll move to the first item under General File, LB306. [LR270 LR272 LR274 LR275 LR280 LR281 LR282 LR283 LR285 LR287 LR288 LB306]

CLERK: LB306 is a bill by Senator Council. (Read title.) The bill was introduced on January 15 of last year, Mr. President. At that time was referred to the Judiciary Committee for public hearing. The bill was advanced to General File. At this time, I have no amendments to the bill, Mr. President. [LB306]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Council, you're recognized to open on LB306. [LB306]

SENATOR COUNCIL: Thank you, Mr. President. I rise today to offer LB306 for this body's consideration. LB306 provides for the repeal of the death penalty with life imprisonment without possibility of parole as the sentence to be imposed for a conviction of first-degree murder, subject--hopefully--to the exception for juvenile offenders. [LB306]

PRESIDENT SHEEHY: (Gavel) [LB306]

SENATOR COUNCIL: LB306 further holds the offenders accountable by requiring restitution to the families of the victim. LB306 was introduced during the last session. It was advanced to General File by a 6 to 1 vote of the Judiciary Committee. The Judiciary Committee voted to advance LB306 because of the belief that the efficacy of the death penalty warranted full and comprehensive debate. Now many have asked why continue to debate the death penalty after the passage of legislation last session which provides what some consider to be a constitutional means of carrying out executions in this state. Well, first and foremost, in the words of Marquis de Lafayette: I shall ask for the abolition of the death penalty until I have the infallibility of human judgment demonstrated to me. What does that mean? Simply put, as long as the risk of executing innocent people is real, I will seek to abolish the death penalty and, rest assured, the risk of executing innocent people is real. More than 130 people nationally have walked off death row after evidence revealed that they were sentenced to die for crimes they did not commit. And while admittedly none of these cases occurred in Nebraska, we do know that Nebraska has sentenced innocent people to life in prison with the threat of the death penalty being held over their heads. While that fact alone justifies our consideration of repealing the death penalty, in these times of painful budget cutbacks there is no reason that the death penalty should be immune from reconsideration. We are all asking state departments to cut back, potentially affecting services to our citizens. We're asking employees of the state to consider furloughs or layoffs to address

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budget deficits. In that type of climate, we must, we have an obligation to consider the effectiveness of any and all state programs, including the death penalty. It must be considered along with any other program that may be considered to be wasteful and expensive or that no longer makes any sense. And the death penalty is an enormously expensive and wasteful program with no clear benefits. Let's consider these costs, and then let's consider what the residents of the state of Nebraska receive in return for these costs. In most cases in Nebraska where the death penalty is imposed...where the death penalty is sought, it is never imposed. Well, what does that mean? Well, in states that have looked at the cost of the death penalty, it has been determined that the prosecution of a death penalty case costs ten times more than the cost of prosecuting a case where the sentence to be imposed is life without possibility of parole. What does that mean for taxpayers in the state of Nebraska? Well, what it means is that from 1973 to 1999, 93 percent of all death penalty cases in Nebraska ended in life without the possibility of parole being the sentence after reversals and resentencing, but taxpayers paid for at least 89 death penalty trials. So taxpayers paid for 89 death penalty trials where, after expending more than ten times the cost of a prosecution where the sentence would have been life without possibility of parole, expending those costs and the sentence of death not being imposed. No other program in state government would we allow to continue to operate at those levels of expense and waste. Now I know the opponents of repealing the death penalty will say: Senator Council, it's safety and what kind of costs can you put on safety? And the citizens require safety. Well, I submit to you that we can provide for the safety of the residents of the state of Nebraska in a much more efficient and effective way than continuing this wasteful and nonbeneficial program of the death penalty. Again, all we have to do is look at the data. I know that during debates on this measure in the past, there have been those who argue that the death penalty acts as a deterrent to murder. Well, the fact of the matter is that leading criminologists and, in fact, chief state law enforcement officials from throughout the nation agree that the death penalty does not act as a deterrent to crime, it does not act as a deterrent to murder. There was a recent study of 500 chief law enforcement officers from across the country, and they were asked to rank how would they want to see their state tax dollars expended in an efficient and effective way to reduce or eliminate crime? And the nation's police chiefs ranked the death penalty last in their priorities for effective crime reduction--dead last. Less than 1 percent of police chiefs surveyed identified the death penalty as an effective means of reducing crime. These officers do not believe the death penalty acts as a deterrent to murder and they rate it as the most inefficient uses of taxpayer dollars in fighting crime. And these law officers, their opinions have been acted upon by other state legislatures. Last year, there were 15 state legislatures across the country that took under consideration repealing the death penalty. And in most of those cases, in most of those states, the reason for considering repeal of the death penalty was the question of whether citizens in those states were receiving any real benefit--safety or otherwise--by continuing the practice of executing individuals in their states. And we look at our neighbors. Colorado, the state of Colorado, offered legislation that failed by one vote of passage. It failed by one vote

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of passage. And what the Colorado legislators looked at was a cost-benefit analysis. Now one of the interesting things when we talk about this issue in Nebraska is quite frankly we are unable to actually make such a cost-benefit analysis. Last year when this bill was introduced, a request was made to the Attorney General's Office to quantify the cost of their handling of death penalty cases,... [LB306]

PRESIDENT SHEEHY: One minute. [LB306]

SENATOR COUNCIL: ...to handle the cost of defending death penalty cases. And those are the costs that people forget because most defendants in the state of Nebraska who face a sentence of death generally have court-appointed counsel. And so what does that tell you? What that tells you is the people who are most likely to face a sentence of death are those who are least able, financially, to retain their own legal counsel, so that cost falls on all of the citizens of the state of Nebraska. And, again, I ask you to look back at what the data shows: 93 percent of the cases where the death penalty was sought, it was not imposed; 89 of those cases were paid for by the residents of the state of Nebraska, and I submit to you that you cannot draw a correlation between that and public safety being increased. [LB306]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Council. (Doctor of the day introduced.) You have heard the opening to LB306. Members requesting to speak are Senator Flood, followed by Senator Ashford, Senator Harms, Senator Dierks, Senator Conrad, and Senator Council. Senator Flood, you're recognized. [LB306]

SPEAKER FLOOD: Thank you, Mr. President. Good morning, members. The Legislature has thoughtfully considered this issue three times in the last three years. More than anything this morning, I'm interested in another thoughtful debate and I have every reason to believe it will be one. I disagree with Senator Council on this issue, and I disagree and am opposed very strongly to LB306. Each time the Legislature has debated the repeal of the death penalty, a majority of our colleagues have chosen to keep it on the books in the state of Nebraska. The state has a right and the state has a duty to impose a sentence commensurate with the gravity of a criminal offense. It stands to reason that some crimes are so heinous, some crimes are so grave that the only proportional punishment is execution. I realize this is a difficult issue. No one wakes up this morning and looks forward to discussing the death penalty. The subject is concerning and something that none of us enjoy talking about. But while a lot is made of the defendant, the convicted killer, too often the focus is not on the victims, the victims who were left behind following vicious, needless human behavior. I continue to talk about it as I represent Madison County, but in 2002 I watched it. I saw the gun smoke coming out of that bank on that day. I talked to a customer who was shot in the back as she ran to her car. Three men walked into a bank, five people were killed, less than two minutes. The way they died is too difficult to talk about. Certainly the families don't need to be reminded of those facts. The ringleader of what happened on that day in Norfolk

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has been convicted of murdering seven people. Seven people have died at the hands of this callous, convicted murderer. Seven convictions. He smiled for the cameras and waved gang signs during his trial. On his own admission, he tried to kill others on death row. Guards on death row found the shanks he made to kill again. Think about it. He killed seven people from Madison County. Is he an appropriate candidate for death row? I think he is. He, like the ten others on death row, have been sentenced to death and deserve the state's most criminal...most severe criminal sanction. During this debate, I plan to make the case that the death penalty is appropriate for certain crimes. Certain crimes warrant spending and that will, no doubt, be an issue. And most of all, the individuals on death row belong there. One of the arguments that has been made already in this debate is that innocent people in the nation--not Nebraska--have been sentenced to die and have been released from death row. And I'm sure in some cases you're going to hear where an innocent person was put to death. We represent Nebraska. We serve Nebraskans. We have Nebraskans on death row. It's important to note that we have a super due process system in Nebraska that was enhanced following the U.S. Supreme Court decision, in Ring v. Arizona 2002, where the Supreme Court decides that juries need to make findings regarding aggravators in capital cases. [LB306]

PRESIDENT SHEEHY: One minute. [LB306]

SPEAKER FLOOD: Those defendants from the Norfolk bank robbery, some of them, five aggravators, I will talk more about that. The final point I want to talk about goes to deterrence. A 2006 Stanford Law Review article titled "Is Capital Punishment Morally Required? Acts, Omissions, and Life-Life Tradeoffs" states: A leading national study suggests that each execution prevents some 18 murders, on average. If the current evidence is even roughly correct, then a refusal to impose capital punishment will effectively condemn numerous innocent people to death. States that choose life imprisonment, when they might choose capital punishment, are ensuring the deaths of a large number of innocent people. On moral grounds, a choice that effectively condemns large numbers of people to death seems objectionable to say the least. That's a 2006 Stanford Law Review article subject to debate. I completely concede that there are Law Review articles on the other side, but deterrence is an essential element. [LB306]

PRESIDENT SHEEHY: Time, Senator. [LB306]

SPEAKER FLOOD: Thank you, Mr. President. [LB306]

PRESIDENT SHEEHY: Thank you, Senator Flood. Senator Ashford, you're recognized. [LB306]

SENATOR ASHFORD: Thank you, Mr. Lieutenant Governor. I just want to just go back a bit and go over some of the committee's actions on this particular bill and to reiterate

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some of what has been said by both Senator Council and by Speaker Flood. Obviously, this is an issue that has had much debate here, will continue to have debate into the future. That's our job to do that. I would, though, want to suggest that the body did the right thing last year in supporting Speaker Flood's bill on lethal injection. Had we not done that, had we not supported that bill, and had we had a penalty without any punishment whatsoever, it would have been endless appeals on all of the cases on death row, there's no question about that. So I think that we, as a body, made the right choice and I think that the committee, in putting out the lethal injection bill along with the repeal bill, gave to this body the appropriate set of initiatives that it could consider. So having said that, I certainly do agree with Speaker Flood that the body made the right decision last year. Having said that, though, the underlying public policy issue which Senator Council talks about, the issue of the repeal of the death penalty itself, is an ongoing matter. And that is why we in the committee felt that this body should have an opportunity to review and to look at the public policy issues involved in the repeal issue, again, lethal injection being the punishment. The underlying public policy is whether or not we have a death penalty at all. And it's my understanding that Senator Council has an amendment concerning cost that she plans to introduce. Let me just say that the committee, though the committee did not consider the amendment that...and I have not seen it but in talking to Senator Council, she informs me that it will deal with the issue of cost, that the issue of cost of appeals and not only appeals but in prosecuting a first-degree murder case as a capital case has been in front of the Judiciary Committee on numerous occasions. It certainly has been before this body, and much of the debate since I've been here and the debates we had several times when I was in the body before. So it is no...I don't think any surprise to anybody that the issue of cost has to be balanced against the, as Senator Flood suggests, the deterrence of such a penalty. And all of us in this body are aware of those issues. You have made your decisions in the past and will make your decisions again on whether or not the underlying policy of the death penalty is appropriate or not. I would say that the...again, we'll see the amendment when it comes up, but if...assuming the amendment deals with auditing some of the costs involved in the death penalty, I think that's absolutely appropriate and not a very extreme proposal. This death penalty has been used 11 times since 1903 when the means of execution went from, I guess, hanging to the electric chair. [LB306]

PRESIDENT SHEEHY: One minute. [LB306]

SENATOR ASHFORD: And 11 times is not a lot. The death penalty protections that Senator...Speaker Flood talks about are real. We do have a number of protections in our law that we debated in the committee and that you have discussed out here. But cost is a very real factor. Do we really want to expend the dollars we expend in this kind of a process or do we want to use that money to go after more bad guys? And I think that's a very real issue and one that...especially when we have alternatives of life imprisonment without parole. So I hope the body can take this debate about cost that we're going to have hopefully that Senator Council is going to bring to us as a separate

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issue, separate from the death penalty itself but a very important one and integral to it. And also... [LB306]

PRESIDENT SHEEHY: Time, Senator. [LB306]

SENATOR ASHFORD: Thank you. [LB306]

PRESIDENT SHEEHY: Thank you, Senator Ashford. Senator Harms, you're recognized. [LB306]

SENATOR HARMS: Thank you, Mr. President, colleagues. I rise in opposition to LB306. There are some crimes that are so heinous they deserve death. And every time I say that, it tugs at my heart, it bothers me, but that's how I feel. Two of the most heinous crimes occurred where I live, where my children have grown up, where my grandchildren are growing up. Jeffrey Hessler kidnapped and killed 15-year-old Heather Guerrero. Heather Guerrero was a beautiful child, a beautiful teenager. Heather Guerrero was athletic. She was popular in her school. She was involved in antidrug skits with her friends. Jeffrey Hessler abducted her a block from her home after she had got through delivering her papers. He took her to an abandoned building in the farm country. He raped her and he shot her gang style, and then he went home, he went home and he listened on the scanner and he fell asleep. Raymond Mata, Raymond Mata kidnapped and murdered Adam Gomez, probably the most heinous crime that's ever occurred in this great state. Adam was three years old. He allowed the dog to chew on the kid's skull. He cooked parts of the body of the child. He fed it to the dog. He peeled skin off of the...the flesh off of the skull. He placed duct tape over the eyes, placed the skull above his bed in the attic. Now you tell me what's wrong with this picture? You tell me that going home and looking in the eyes of the parents and the families of these children and we tell them we took care of your child's killer, we gave him life imprisonment, what's wrong with this picture, folks? When I see the parents, I see the sadness, I see the fear, I see the anger in them, I think they deserve to be treated better than this. You see, Heather Guerrero didn't get to go to her senior prom. She did not get to go through the graduation exercise. She didn't get a chance to go to college and graduate. She didn't get a chance to get married and have children and be a competitive member in society. Adam didn't even get the opportunity to go to school. So you tell me whether life imprisonment is adequate or not or death has a right to be done. I object to LB306. I will continue to object to it. This is the third time in four years I've stood up and told this same story. And I'm here to tell you, if I have to, I will filibuster this bill because I feel that strong about it. It's wrong, it's not appropriate, and I think parents deserve to make sure that justice is taken care of and only justice can be done in this manner. Thank you, Mr. President. [LB306]

PRESIDENT SHEEHY: Thank you, Senator Harms. Senator Dierks, you're recognized. [LB306]

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SENATOR DIERKS: Thank you, Mr. President, members of the Legislature. I stand in full support of Senator Council's legislation. It's very simple with me. We can talk about all the bad things that have happened, but the simple thing for me is that I think when we take people's lives, whether it's an infant still in the mother's womb or whether it's through the death penalty, we are playing God and that is not our position. Thank you. [LB306]

PRESIDENT SHEEHY: Thank you, Senator Dierks. Senator Conrad, you're recognized. [LB306]

SENATOR CONRAD: Good morning, colleagues. And I rise today in support of LB306 and Senator Council's efforts in regards to this issue. Unfortunately, I believe very sincerely that these issues will come before us time and time and time again until we can find real resolution and real closure. That being said, I'm also a realist and I believe Senator Council is as well and the others who are supportive of this bill and this position. I think the record is clear from our short time together in this body about how people feel and think about these serious issues, barring any unforeseen miracles in terms of the change in hearts and minds in the membership of this body which there always can be--I'm hopeful about that. Instead of reiterating some of the arguments regarding the in favor of or against the underlying legislation, I continue to believe that the death penalty is morally wrong; has problems in terms of its utility whether it be general or specific deterrence; has issues surrounding its application in basic fairness; has real and serious racial bias as well in terms of its application; and potentially is a system which could execute an innocent person which I think we all agree is one of our greatest fears or should be. Finally, one thing that I did want to talk about today that we haven't had a chance to have a broader dialogue about that is related to these issues is in regards to a handout that I passed around this morning. We get to hear about these issues frequently on the Appropriations Committee, and I wasn't sure if each of you had maybe the same information before you. I think everyone in this body cares deeply about public safety and is something that we must prioritize in the public policy of this state. And I believe the death penalty and related issues detract from targeting our precious state resources into proven strategies to improve our public safety and keep our citizenry safe. The handout that I passed around this morning details for you, colleagues, where we are in terms of funding for the Nebraska State Patrol, one of the key components of public safety and law enforcement that we have jurisdiction over on the state level. I hope that you join me in being dismayed, upset, and concerned that because of budgetary reasons the State Patrol has continued to see its force eviscerated. We are now at the lowest point in terms of officers on the street that we have been since 1985 and 1986. You can see by the chart the precipitous decline in the number of people that we have protecting our citizenry, and we have to do something about it. I know resources are scarce, but I am committed to finding a way during the interim working with you, working with the Judiciary Committee to identify solutions to

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remedy these serious, serious cracks in our public safety system, as evidenced by the ever-diminishing number of state patrolmen that we have in Nebraska. Another issue related to funding and public safety that I want to bring to your attention is something that I had the opportunity to visit with... [LB306]

PRESIDENT SHEEHY: One minute. [LB306]

SENATOR CONRAD: ...not only my colleagues on Appropriations but also local law enforcement. And I'll hit my light again because I don't want to rush through this too quickly, but it's in relation to serious, serious funding issues we have with the Nebraska State Crime Lab. Again, because of budgetary constraints, we're down to one crime lab in this state. That has significant delays in helping local law enforcement process, investigate, and find closure for serious public safety risks. This is another issue that we need to look at deeply and find a way to prioritize and infuse with resources so that we can protect the integrity of our criminal justice system. I have specific numbers from the Fiscal Office in relation to where we are in terms of spending on these important public safety issues and sadly, colleagues, it's not where we need to be. I would hope that... [LB306]

PRESIDENT SHEEHY: Time, Senator. [LB306]

SENATOR CONRAD: Thank you. Thank you, Mr. President. [LB306]

PRESIDENT SHEEHY: Thank you, Senator Conrad. Members requesting to speak on LB306, we have Senator Council, followed by Senator Flood, Senator Coash, Senator Price, Senator Harms, and others. Senator Council, you're recognized. [LB306]

SENATOR COUNCIL: Thank you, Mr. President. I certainly appreciate the opportunity for this debate of this issue. And as I stated in my opening, I know that there are many who think that this is an unnecessary debate because of previous votes of this body. Well, I need to remind this body that at one time this body voted to repeal the death penalty, and that bill was vetoed. So opinions change, circumstances change, and when we're in the climate that we're in right now as Senator Conrad has referred to with regard to allocating precious resources in this state, this issue deserves thoughtful and full consideration. I respect and I appreciate the passionate opinions held by my colleagues, Senator Flood and Senator Harms. I understand that desire, but that's one of the problems that I have with the death penalty. What Senator Harms described as what the families of these victims are desirous of, in my opinion, shows that what they're desirous of is not justice but revenge. And it is my firmly held belief that this state should not be in the business of sanctioning revenge. Reasonable minds can differ on what is or what is not a more heinous crime than another. I think anyone who is the family member of a victim of a homicide will tell you that they believe that what happened to their family member is the most heinous thing that can happen. Certainly mutilation

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assaults our sensibilities, but so does the senseless shooting of an individual who merely stepped out on their porch, but we don't see the death penalty being sought in those cases. I can recite the case of Brittany Williams, Senator Harms. Young, African-American, student at UNO, aspiring to a profession, achieving at high academic levels who was merely driving through a drive-through restaurant to pick up something to eat when an individual, who admitted that he became angry while watching a professional football game where he thought the officials were leaning in favor of the African-American athletes, this man donned military clothing, picked up a high-powered rifle, drove and parked across from a drive through, and the first innocent African-American he saw he shot and ended her life. Now I submit to you that that is an equally heinous crime to those that you recited, yet the individual who perpetrated that offense is sitting in the general population of the Nebraska Department of Corrections and it illustrates the problem with the death penalty. It is arbitrary and capricious in terms of when the death penalty is sought and when the death penalty is imposed. Senator Flood talked about the deterrent effect... [LB306]

PRESIDENT SHEEHY: One minute. [LB306]

SENATOR COUNCIL: ...of the death penalty; 2008, there were 44 reported homicides in the city of Omaha; 2009, there were 29 homicides in Omaha. And when asked what accounted for this reduction, it wasn't the death penalty, Senators. It was expending resources where resources are needed to effectively and efficiently combat violent crime. If, in fact, the death penalty would...elimination of the death penalty would result in 18 additional homicides each year, then Iowa's homicide figures should be dramatically higher than Nebraska's because Iowa doesn't have a death penalty. So just looking across the border, across the river... [LB306]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Council. Senator Flood, you're recognized. [LB306]

SPEAKER FLOOD: Thank you, Mr. President. Good morning, members. Want to take this opportunity to quote you a paragraph out of the Baze v. Rees Supreme Court case from 2008 where he quoted, Justice Scalia quoted Gregg v. Georgia 428 U.S. 184, joint opinion of Justices Stewart, Powell, and Stevens, where Justice Scalia wanted to make the point in Baze, "The decision that capital punishment may be the appropriate sanction in extreme cases is an expression of the community's belief that certain crimes are themselves so grievous and an affront to humanity that the only adequate response may be the penalty of death." The death penalty at the end of the day is the community's expression of revulsion toward inexplicable and horrific human behavior. It is the line drawn in the sand in the social contract that a state has with its citizens, a government with its people. The people give the government the right to control them with certain laws, to control and modify behaviors, one of which is to make sure that we don't have murders. The death penalty in Nebraska is appropriate and you're going to

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hear and already have heard that we could be putting somebody who is innocent to death. The process for due...the due process system in Nebraska--I call it super due process--works. First of all, the county attorney must determine the appropriate charge to file against the defendant. If the appropriate charge is first-degree murder, then the county attorney must also determine if aggravating circumstances exist and are present. And those aggravating circumstances could be anything from extremely heinous where a defendant tortures their victim, where a murderer commits murder while serving a life sentence, a police officer is killed, commits multiple murders, murders innocent children. They're all outlined in the statute. Only if the evidence supports a charge of first-degree murder and the evidence supports the existence of one or more aggravating circumstances will the case be charged as a potential death penalty case. Now it's important to note the county attorney does retain discretion not to seek a death sentence, regardless of the facts. The trial has two phases, a guilt phase and a penalty phase, and the jury is involved heavily in both. In the guilt phase of the trial, the question is whether the defendant is guilty of the crime of first-degree murder or some lesser degree of homicide on the state's highest burden of proof--beyond a reasonable doubt. If the defendant is found guilty of first-degree murder, then the court and only then the court moves to the penalty phase of the trial. If the defendant is not found guilty of first-degree murder, the issue of death penalty never arises. In the penalty phase, a jury of the defendant's peers hears the county attorney's evidence that one or more aggravating circumstances are present. If the county attorney proves the existence of one or more aggravating circumstances by the highest standard, beyond a reasonable doubt, then the possibility of a death penalty remains. If the county attorney cannot prove the existence of any aggravating circumstances beyond a reasonable doubt, the possibility of the death penalty is eliminated and the defendant is automatically sentenced to life imprisonment, from which the defendant can be paroled, I might add. If one or more of the aggravating circumstances are proven, then the defendant is allowed to offer to a panel of three judges any evidence, any evidence the defendant desires that the defendant believes might mitigate against the imposition of a death sentence. After all the evidence is presented, the panel of judges must weigh all of the aggravating evidence found to exist,... [LB306]

PRESIDENT SHEEHY: One minute. [LB306]

SPEAKER FLOOD: ...all the mitigating evidence offered by the defendant. And this is not mathematical but accomplished by a panel of judges assigning a subjective weight to all of the evidence presented by both sides. If the mitigating evidence is found to outweigh the aggravating evidence, the sentence of life must be imposed. If the aggravating evidence outweighs the mitigation sentence but not by very much, the sentence must be life imprisonment. Only when the panel of judges unanimously, might I add, conclude the aggravating evidence simply outweighs the defendant's mitigation evidence is a sentence of death appropriate. This, my colleagues, is super due process. This is appropriate for the most heinous of crimes and these steps are reasonable,

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they're measured, and they're just. Thank you, Mr. President. [LB306]

PRESIDENT SHEEHY: Thank you, Senator Flood. Senator Coash, you're recognized. [LB306]

SENATOR COASH: Thank you, Mr. President, members of the body. Speaker Flood is right. In his first bill at the mike he said, we've debated this issue, we've talked about it; people of Nebraska, through us, have spoken and they've said we want justice, we want the death penalty, so here we are, we have it. We think we can go back to our constituents, Nebraskans, and tell them: We got it. Justice is going to be served. People on death row are going to be put to death. I would submit to you, colleagues, that it won't. While death is appropriate for these individuals, they're not going to get it. Not one person is probably going to be put to death. Lawyers are going to get rich. Families are going to struggle to obtain cloture. And I just want to ask my colleagues, is this justice? Is this prudent with the state's money? Because it's not going to happen. So we can say today, sorry, families, we got the death penalty but we're not going to use it. Sorry, taxpayers, we're going to spend your money on defending this. And we're going to say you're welcome, attorneys, we're going to continue to pay you to fight this out. I have no doubt in my mind that appeals and arguments on procedure will continue and this issue will continue to rise its head in this body. Meanwhile, people sitting on death row will continue to sit there. Senator Council has given us another option, an option that eliminates all of those problems. So for that reason, I do support LB306. Thank you, Mr. President. [LB306]

PRESIDENT SHEEHY: Thank you, Senator Coash. Senator Price, you're recognized. [LB306]

SENATOR PRICE: Thank you, Mr. President. Members of the body, I stand in opposition to LB306. And I'll be brief. Two points I have to say about this is, the conversation seems to be centered around or partially centered around the costs. And in that cost we see the argument made about appeals. Members, would not a person who has a sentence of life imprisonment without parole also be allowed appeals? Is there a limit in this bill that says, oh, if you get this you're not allowed to appeal? I don't think so, so that's a wash right there. So the appeals are still just appeals. Secondly, It would be interesting to look at the funding lines. Are we mixing funding lines? We say all this money. Well, can you actually move the money that we're talking about or is it going to be just kept in the Department of Corrections? Good question there. I also would like to know about, let's map it out. I'll give you that there are probably admittedly more people involved in a death...in the administration of the housing of death row inmates, but they have a cell, they have food, they have guards, and they have appeals. And if they're not on death row, they have a cell, they have guards, and they have appeals. So let's be sure that what that number is. And I'll be listening. I'll be interested to see and hear the actual number difference that's proposed. And secondly, it seems like only two

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weeks ago in legislative days we dealt with this. And my question is...and it's fine that we're dealing with it again, but let's not say that there has been a lot of change since the last time. We did get one new person, Senator Krist. So I guess, Senator Krist, this is to help spin you up. But we're almost pretty much everybody is still the same right here. Thank you, Mr. President. [LB306]

PRESIDENT SHEEHY: Thank you, Senator Price. Members requesting to speak to LB306, we have Senator Harms, followed by Senator Gloor, Senator Conrad, Senator Council, Senator Cook, and others. Senator Harms, you're recognized. [LB306]

SENATOR HARMS: Thank you, Mr. President and colleagues. I'm going to talk a little minute this morning about deterrence. There are recent studies that show that the death penalty does have a deterrent effect. A 2003 American Law and Economic Review study--Does Capital Punishment Have a Different (sic) Effect?--and I quote, "Our results suggest that capital punishment has a strong deterrent effect; each execution results, on average, in 18 fewer murders." A 2006 Stanford Law Review article--"Is Capital Punishment Morally Required?"--and I quote, "A leading national study suggests that each execution prevents some 18 murders, on average." So it's very clear to me that it does deter people from killing other individuals. Now the argument about the fact that life imprisonment or life without parole will stop endless appeals, we're kidding ourselves, folks. That's not going to happen. There is no reason to believe that these sentences to life imprisonment without parole will file any fewer appeals. You show me where that has happened across this great nation. Or reduce litigation costs, it's not going to. It's not going to reduce litigation costs than those on the death row because the convicts are always looking for and will continue to look for the lower rung of the ladder to freedom. So don't kid yourself. You think we're going to save money over this issue. We will not save money over this issue. They will continue to make their appeals, they will continue to look for freedom. Thank you, Mr. President. [LB306]

PRESIDENT SHEEHY: Thank you, Senator Harms. Senator Gloor, you're recognized. [LB306]

SENATOR GLOOR: Thank you, Mr. Speaker, members of the body. I want to thank Senator Council for bringing this bill forward. I know Senator Council cares very much about Nebraskans and their safety, but we have a disagreement on this bill and I cannot support LB306. The issue of innocent life sentence prisoners certainly is out there in this state. The issue of cost may be out there. But as the Speaker has pointed out in his comments and my learning from our discussion on lethal injection last year is the rigorous vetting that goes through. The rights that someone convicted of the death penalty has at trial that protect them, and is the reason I believe we have what I consider to be no one who is innocent. In fact, the people on death row, the ten, do not protest their innocence (sic). They are guilty. So we have ten guilty people on death row in this state. The cost associated with making sure that those people are guilty on death

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row is one of the reasons that we have a higher expense. We know that is the case. And that is an appropriate expense, I think, in the interest of justice. I'd say again, we have ten guilty people on death row. And as I have thought through this process, had a discussion with constituents about the death penalty. It's one of the reasons I appreciate the opportunity to discuss about this. It allows me the opportunity to get into a far deeper debate (laugh) about issues before this body than most that come before us. But the discussion I have with those constituents is one that relates to my belief that there is deterrence. And there is...you can throw statistics at me, you can throw studies at me all you want. I revert back to a commonsense approach towards this issue, which is over the 20-plus years that we have built ten guilty people on death row, I know that there have been thousands and thousands and thousands of instances where people have had murderous thoughts in the commission of some crime or almost the commission of some crime. They have to have. And at some point during those thousands and thousands of murderous thoughts, common sense tells me that someone took their finger off the trigger, sheathed the knife, took their hands from around somebody's throat, and did not commit that murder because they knew the death penalty was out there. How many times has this happened? Has it happened thousands of times? Maybe. Has it happened hundreds of times? Strong possibility. Dozens of times? To me, probably. Once? Has their been one time over the past 20 years that somebody did not commit an act of murder on an innocent Nebraskan because they knew the death penalty loomed over them? And I believe absolutely. And I believe, my personal conviction is, saving one innocent life of a Nebraskan, one innocent life of an innocent Nebraskan because we have a death penalty is worth the conviction and the death of ten guilty people. Thank you, Mr. President. [LB306]

PRESIDENT SHEEHY: Thank you, Senator Gloor. Senator Conrad, you're recognized. [LB306]

SENATOR CONRAD: Thank you, Mr. President. Thank you, colleagues. I wanted to continue on the line of thought and dialogue that I had a chance to start with this morning in my earlier comments and that's, particularly in times of economic uncertainty and difficult budgetary situations and complications, now more than ever we need to come together to attach a closer eye and a finer point on how we utilize each and every precious state dollar resource, taxpayer dollar that we have available, and we have to put them to the best and highest use possible. And this isn't unique to Nebraska. Other states in very recent times that have debated these very issues have had a change of heart or at least a new interest related to these issues because of their budget difficulties as well. We've seen states just in the past few years get a better, identifiable handle on the costs associated with this public policy and then have the ability to have a responsible dialogue on it and figure out whether or not, as with any decision before us, the cost benefits strike the right balance. I would contend they do not, but unfortunately we do not have this hard and fast data available to us at this time. And there's no question, and I know my friend Senator Council is going to talk about this in greater

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detail, that there are costs associated with the litany of appeals that stem from any death penalty case, but there are significant costs at the pretrial and trial level as well. And talk to the Commission on Public Advocacy who handles the defense in many of these instances about the fees they incur with expert witnesses, in trial preparation, etcetera, etcetera. In the most recent budget-cutting special session there was an attempt to try and eviscerate critical portions of their budget. This is the agency that is charged with, by our charge, to defend the system, to make sure it works right, to uphold the due process protections that Senator Flood has spoken about. I disagree about whether there is such thing as super due process or not, but that's another matter. The point being, colleagues, there are costs associated with this policy and every policy before us, and if we are going to make the policy choice to pursue this policy, we have to back it up with dollars. There is no ifs, ands and buts about it because otherwise the system doesn't work and it could crack and it keeps us less safe. Other states that have looked at this, Colorado recently brought a similar idea almost to the finish line and said, instead of wasting these dollars on a program and a system that does not work, does not provide justice, does not provide closure, let's devote those precious taxpayer dollars to solving and investigating cold cases, finding ways to actually keep our citizenry safe, which is what we should all be focused on, which I believe we are all focused on. I talked about where we are in terms of the number of state patrolmen on the street and, to be clear, colleagues, the Patrol is resilient... [LB306]

PRESIDENT SHEEHY: One minute. [LB306]

SENATOR CONRAD: ...and has done a wonderful job with limited resources to continue to meet their many and varied obligations. When it comes to the crime lab, though, I didn't have a chance to detail these costs significantly for you. Because of budgetary constraints, we are now at one statewide crime lab that receives about \$2.2 million in General Funds each year and about \$500,000 in federal funds. As you know, in the context of an almost \$7 billion state budget, this is a fraction of the resources we have available in terms of public safety or state resources as a whole. We see real and serious problems with the recruitment and retention of qualified personnel to carry out this important investigation function. We see a six-month wait at times for the crime lab to turn around results on first-degree sexual assault cases. So you can imagine... [LB306]

PRESIDENT SHEEHY: Time, Senator. [LB306]

SENATOR CONRAD: Thank you, Mr. President. [LB306]

PRESIDENT SHEEHY: Thank you, Senator Conrad. Continuing with floor discussion on LB306, members requesting to speak, Senator Council, followed by Senator Cook, Senator Coash, Senator Hadley, Senator Flood, Senator Campbell, and Senator

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Conrad. Senator Council, you're recognized. This is your third time. [LB306]

SENATOR COUNCIL: Yes, thank you, Mr. President. I first want to respond to points made by Senator Flood while outlining what the procedure is in Nebraska in terms of death penalty cases. And nobody disputes and I don't stand before this body disputing that the state of Nebraska has not gone to great lengths to provide due process. But that process that is provided for is not designed to eliminate mistakes and that needs to be pointed out. That's not the reason that we have that process. And I get back to the basic point that I made at the beginning of this debate, is that when you can demonstrate to me the infallibility of human judgment, then we might be able to get on a level playing field in terms of this debate. The issue is that humans make mistakes. There are cases where the evidence that was the basis for a conviction was an eyewitness identification and that eyewitness identification was deemed to be proof beyond a reasonable doubt that that individual perpetrator committed that crime. Now one of the things that hasn't been raised during this discussion that I was surprised about when talking about the risk of executing innocent people was the use of DNA, and I was prepared to address that because if you look at the exoneration cases nationally, only a small percentage of those cases that the exoneration was the result of DNA evidence. Instead, it was the result of recantation, in many instances, of eyewitness identification. And why? Because humans make mistakes. And Senator Flood is right, a three-judge panel has to unanimously agree, but inherent in that process and inherent in Senator Flood's statement and his position is that judges are infallible, and they are not. They, too, are human beings. Judges, too, are subject to influence that may not be based upon the evidence. Now let's get to the costs. You know, oftentimes we sit in this body and members of the body get up, make their arguments, and we listen but we don't hear. We listen but we don't hear. When I talked about the costs associated with death penalty cases, I emphasized the cost of prosecuting death penalty cases. I didn't speak to the costs of appeals, although that is a cost to be considered. I talked about the cost of prosecuting a death penalty case and, believe me, those costs are dramatically greater than the costs of prosecuting a nondeath penalty case. And there were those who spoke who said, but let's talk about something that's relevant to Nebraska. Okay, let's talk about something that's relevant to Nebraska. In a recent Nebraska death penalty case, it cost \$750,000 for the sentencing phase alone, that second level of the process... [LB306]

PRESIDENT SHEEHY: One minute. [LB306]

SENATOR COUNCIL: ...that Senator Flood referred to, \$750,000 just on the sentencing phase. And, folks, in that case there wasn't even a trial because the individual pled guilty. And conservative estimates are that the cost of prosecuting a death penalty case are ten times greater than a nondeath penalty case. Our neighbor in Kansas determined that the trial cost for death cases were about 16 times greater than for nondeath penalty cases. It was \$508,000 for death cases, \$32,000 for nondeath cases. Then you add

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upon that the appeal costs, which are 21 times greater. So, yes, people who are sentenced to life without parole have appeal rights just as people sentenced to the death penalty... [LB306]

PRESIDENT SHEEHY: Time, Senator. [LB306]

SENATOR COUNCIL: ...but the cost of prosecution is far greater. [LB306]

PRESIDENT SHEEHY: Thank you, Senator Council. Senator Cook, you're recognized. [LB306]

SENATOR COOK: Thank you, Mr. President and members of the body. I rise in strong support of LB306. As I stated last year, I do not believe that it is the purview of human beings to take lives of someone else. So with that, I will relinquish the rest of my time to Senator Council, if she would like it. [LB306]

PRESIDENT SHEEHY: Senator Council, you're yielded 4 minutes 30 seconds. [LB306]

SENATOR COUNCIL: Yes. Thank you, Mr. President. Thank you, Senator Cook. And one of the things that we need to be mindful of is what is occurring in other states because if you study the law and you study decisions by the Supreme Court, in determining what is cruel and unusual punishment one of the factors that the court looks at is what is the general consensus among the states. As I stated at the beginning, state after state after state that has the death penalty is considering repealing the death penalty. It's interesting that the 15 states who currently do not have the death penalty, there has not been a death penalty reinstatement bill implemented because those states acknowledge the fact that they can address public safety in a far more efficient and effective way by sentencing individuals to life without possibility of parole. And in that regard, we have talked about research studies. I'm not going to quote the actual study itself and cite you what year and who was the author, but I will tell you and law enforcement officials generally across the board agree, criminologists agree that the primary deterrent in criminal behavior is the certainty of punishment, not the severity. It's the certainty of punishment that will have any effect on deterring individuals from committing crimes. And, you know, the fact that there is a study that states that for every death penalty case, and as I understood and I listened carefully to both Senator Harms and Senator Flood who quoted this data, that for every death penalty case, and I assume they meant execution, that that result would result in 18 less murders on average. Now again, I say compare what we know and what we see on a daily basis. Nebraska has a death penalty. Nebraska has executed individuals in the past. Iowa does not have a death penalty. And I submit to you, if you look to the homicide rates in the state of Iowa and compare them to the homicide rates in the state of Nebraska for the comparable period of time where Nebraska had a death penalty and Iowa didn't, you will not find any data to support the conclusion that the death penalty, the existence of

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the death penalty, results in 18 fewer murders on average. Now again, I submit to you that what would account for reductions in homicide rates is what this discussion should be focused on, and that is what is needed to actually have an impact... [LB306]

PRESIDENT SHEEHY: One minute. [LB306]

SENATOR COUNCIL: ...on reducing crime. And let's listen to the experts--law enforcement officials--and they will tell you what interferes most with effective law enforcement is not the insufficient use of the death penalty; it's, rather, lack of law enforcement resources. And the data that Senator Conrad has distributed shows that we're moving in the wrong direction. We are placing more emphasis on the death penalty that has the least amount of impact on reducing crime, and we are reducing the budgets of law enforcement, which law enforcement tells us has the greatest impact on reducing crime. So I would urge the senators to look carefully at the data. This is an emotional issue, it's a serious issue, and by no means is my introduction of this bill,... [LB306]

PRESIDENT SHEEHY: Time, Senator. [LB306]

SENATOR COUNCIL: ...any ignoring of victims. [LB306]

PRESIDENT SHEEHY: Thank you, Senator Council. Senator Coash, you're recognized. [LB306]

SENATOR COASH: Thank you, Mr. President, members of the body. Mr. President, I yield the balance of my time to Senator Council. [LB306]

PRESIDENT SHEEHY: Senator Council, you're yielded just under 5 minutes. [LB306]

SENATOR COUNCIL: Yes, thank you, Senator Coash. I was beginning to talk about crime victims and the families of crime victims, because the fact that this bill is being introduced, you often hear the counter argument that by proposing the repeal of the death penalty you are ignoring the victims' families and their concerns, and what the victims' families are looking to and that the victims' families are looking to closure. I submit to you again, closure is more likely to be the result of the certainty of an imposition of a punishment rather than the severity. We know that in Nebraska it takes an average of almost 16 years from the time of an original death sentence to an execution. Several families have agonized through 20 years of appeals and retrials. Now in the case of life without possibility of parole, I submit to you that those appeals would have ended sooner and those individuals would be sitting in prison without any possibility of seeing the light of day ever again. That is certainty. That is what the victims of crime...the victims of these violent crimes are searching for. Yes, there are families of victims who look for revenge, they're looking for the proverbial eye for an eye, but that's

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not what this Legislature should be sanctioning. We should be seeking justice for the families of these victims, justice in the form of a penalty, a punishment that is commiserate with the crime. During the Judiciary hearing last year, we had an individual, admittedly from outside the state of Nebraska, who was sentenced to death for a crime that was ultimately determined to have been committed by someone else. Well, during the process of his long series of appeals, this individual's sentence of death was commuted to life without possibility of parole, and that individual testified firsthand that serving a life sentence without possibility of parole was more damaging to him than facing the prospect of death and that it's the certainty of having to serve the remainder of your life in prison that is the level of punishment that is commiserate with the crime. And I would like again to focus on what LB306 provides for. LB306 provides for the victims something that is not provided during all of our death penalty processes. There's nothing in our death penalty statutes that provide for any restitution to the families of the victims because it's assumed that what those families want is revenge. We hear, and there are bills being introduced right now that, oh, we don't have enough money in the Crime Victim Reparations Fund to address the needs of families. I submit to you that that's a wiser use of taxpayer dollars than spending \$750,000 on the sentencing phase of a death penalty case, that that's a wiser use of taxpayer dollars than spending more than ten times the cost of prosecuting a death penalty case to trial, that that's a wiser use of... [LB306]

PRESIDENT SHEEHY: One minute. [LB306]

SENATOR COUNCIL: ...taxpayer dollars, that is a better way for us to provide for the safety and security in the long run for citizens of the state of Nebraska. Because if we continue to go down this road of painful budget cuts, we're going to see additional cuts in programs that everyone can see result in the reduction in crime. Again referring to the article about the homicide rate in Omaha, that reduction in crime was attributed to resources in the community being provided to the community to address violent crime, and the city of Omaha saw a reduction from 44 homicides to 29 homicides, with not one of those homicide perpetrators being tried with the death sentence as a possible punishment for that crime. I urge you to consider... [LB306]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Council. Senator Hadley, you're recognized. [LB306]

SENATOR HADLEY: Mr. President, members of the body, I have not spoken on this issue, I did not speak on the lethal injection last year, but I'm rising now in opposition to LB306, and I'm rising because I think we talk about deterrent and that the punishment should be a deterrent for people's actions. And I was thinking of, for example, in a DUI case we set the punishment to hopefully make people think twice about driving and drinking. We wanted to save lives so we set the punishment to deter people. We're using the term "primary deterrent," what is the primary deterrent when it comes to the

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murder. Well, I'm concerned with the term "primary." How many people do we save by having the death penalty? If it's one, is that enough? If there's one person walking in Nebraska, breathing, living in Nebraska right now because we have the deterrent of the death penalty, is that enough? Is that enough to have the death penalty? So I think whether it's 18 less murders, 1 less murder, 10 less murders, if there are any less murders because we have this as a deterrent, we have saved a life. With that, I would yield the rest of the balance of my time to Senator Harms, if he wishes it. [LB306]

PRESIDENT SHEEHY: Senator Harms, you're yielded 3 minutes 20 seconds. [LB306]

SENATOR HARMS: Thank you, Mr. President, colleagues. I just wanted to point out that I think that one of the things we need to pay attention to is how the public views this. We don't want this to turn into how people view the health bill nationally. And a study that was done in 2008 indicated that 78 percent supported the death penalty for heinous crimes. That survey went on to indicate that 60 percent said they disagreed, now listen to this, disagreed with the state Supreme Court ruling that Nebraska's use of the electric chair constitutes cruel and unusual punishment, and 57 percent said they would support lethal injection. So when you look at that and you hear what the public is saying to us, I think as colleagues we need to pay attention to that. We need to understand that what we are talking on this floor and this argument about supporting LB306 is not what the public wants. We have to pay attention to the people that we represent and I'm here to tell you we're not doing that. If we approve LB306, we're going to be voting against just exactly what 76 percent of our public says. They want the death penalty for heinous crimes. Thank you, Mr. President. [LB306]

PRESIDENT SHEEHY: Thank you, Senator Harms. Mr. Clerk, do you have an amendment filed on your desk? [LB306]

CLERK: I do, Mr. President. With your permission, may I read some items, please? [LB306]

PRESIDENT SHEEHY: Yes. [LB306]

CLERK: Mr. President, Enrollment and Review reports LB297 to Select File; LB235 to Select File; LB210, Select File; LB139, LB475, LB279, all to Select File, some having Enrollment and Review amendments attached. In addition, Banking, Commerce and Insurance Committee, chaired by Senator Pahls, reports LB690, LB691, LB736, LB751 to General File. Senator Langemeier would like to print an amendment to LB210. I have hearing notices from the Revenue Committee and the Natural Resources Committee and the Judiciary Committee. New bills, Mr. President. (Read LB994-1016 by title for the first time, Legislative Journal pages 262-273.) [LB297 LB235 LB210 LB139 LB475 LB279 LB690 LB691 LB736 LB751 LB994 LB995 LB996 LB997 LB998 LB999 LB1000 LB1001 LB1002 LB1003 LB1004 LB1005 LB1006 LB1007 LB1008 LB1009 LB1010

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LB1011 LB1012 LB1013 LB1014 LB1015 LB1016]

Mr. President, back to LB306, Senator Council would move to amend the bill with AM1579. (Legislative Journal pages 273-274.) [LB306]

PRESIDENT SHEEHY: Senator Council, you're recognized to open on your amendment, AM1579. [LB306]

SENATOR COUNCIL: Yes, thank you, Mr. President. Again as I stated at the opening on LB306, that it was and is my firm belief that the death penalty should not be immune from consideration along with all other programs administered by the state of Nebraska, and that in order for us to make a decision as to whether or not the program is wasteful and beneficial or whether it's just wasteful we need data. And during the discussion in the Judiciary Committee last year about the cost of lethal injection over execution, the cost of maintaining the death penalty versus repeal, it became very clear and obvious that Nebraska has not retained the data to make that determination as to whether or not the death penalty is an efficient and effective program in terms of benefiting the taxpayers of the state of Nebraska. The amendment, AM1579, strikes the original sections of LB306 and asks this body to adopt, in lieu thereof, a new section that requires the Auditor of Public Accounts to conduct an audit of the cost of administering the death penalty in Nebraska. The audit would have to be completed by December 1 of this year and presented to this Legislature in the form of a report. That audit would be required to consider the cost to the Attorney General's Office for expenditures for staff salaries, benefits, and operating expenses related to death penalty issues; the cost to the Department of Correctional Services in terms of salaries, benefits, and operating expenses in housing inmates on death row and carrying out the death penalty--and in that regard it was interesting, I would urge my colleagues to go back and look at the lethal injection bill and look at the fiscal note or lack thereof associated with that; the cost to counties and county attorney staff time and other expenses related to the prosecution of death penalty cases; the cost to county public defender's offices and the Public Advocacy Commission in providing a defense against the imposition of the death penalty; the cost to counties for court-appointed attorneys hired to defend capital cases; the cost to the Supreme Court, Court of Appeals, and district courts, and an estimate of the costs to federal courts in staff salaries, benefits, and operating expenses relating to the disposition of capital cases. This audit shall examine all of these costs so that in our evaluation of whether or not we are wisely expending the taxpayer dollars of the residents of the state of Nebraska in our effort to provide for their safety and security, whether or not we are expending those dollars in the most effective and efficient manner possible. Without the emotionalism associated with the debate that we are having and we indeed should have, whether if viewed from a moral or philosophical viewpoint on the efficacy of the death penalty, I believe that we, as members of the Nebraska State Legislature, should be in the same position as our colleagues throughout the nation who are examining this issue, who have data to consider, and

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who are basing their decisions on what's in the best interests of the residents of their states based upon the benefits to be derived from continuing with the death penalty. I submit to you that during this legislative session, several of the states that I mentioned earlier will be reexamining this issue just as we're doing now. I submit to you, while some have grown tiresome of debating this issue, that there will be a need to debate this issue until such time as there is no question remaining that the death penalty is not an efficient and effective use of taxpayer dollars. I would urge my colleagues to give favorable consideration to passing AM1579 to allow us to be in a position to actually and definitively look at the cost benefit associated with maintaining the death penalty. [LB306]

PRESIDENT SHEEHY: Thank you, Senator Council. (Visitors introduced.) You have heard the opening of AM1579 to LB306. Members requesting to speak are Senator Flood, followed by Senator Campbell, Senator Conrad, Senator Gloor, Senator Lathrop, and Senator Fischer. Senator Flood, you're recognized. [LB306]

SPEAKER FLOOD: Thank you, Mr. President. I just had an opportunity to read AM1579. It was just filed. This is my first chance to look at it. I didn't see it in the Journal last night. And I want to be right up-front with everybody. I'm not going to get into an argument that a death penalty-eligible case or a case that a defendant is found guilty of the death penalty (sic) doesn't take more staff time and more appeals. It probably does cost more. But you know what? It should, because the state is taking someone's life. Now Senator Council and Senator Conrad and I disagree as to whether or not that's an appropriate state sanction, but we never want to shortchange the justice system with the steps necessary to ensure that the person, the defendant, the convicted killer receives due process and justice throughout the process based on the evidence, based on the facts, based on the killing. Now on AM1579, I just read it, I don't think I can support it. First of all, I want to talk about that Kansas performance audit that I think was quoted in the paper and has been referenced somewhat this morning, dated back to a 2003 Performance Audit Report, "Cost Incurred for Death Penalty Cases: A K-GOAL Audit of Department of Corrections." Second page following the executive summary there, question one, "How does the cost of death penalty cases in Kansas compare with the cost of cases involving nondeath sentences?" And I quote from the Kansas report that says: Actual cost figures for death penalty and nondeath penalty cases in Kansas do not exist. Either you get first-degree murder, life imprisonment, or you get the death penalty. Line 14, page 1, AM1579 says: The costs to the Department of Correctional Services for staff salaries, benefits, operating expenses in housing inmates on death row and carrying out the death penalty, including any contracting for assistance. Well, guess what. You're in jail if you're a lifetime murderer and you're in jail if you're a death row murderer. If you're in administrative segregation, you are just like a death row inmate. Do they have a separate set of statutes? Yes, they do. I've been on death row. I've walked down those doors. I went there with Senator Dwite Pedersen of Elkhorn. I saw it for myself and it looks much the same as any other administrative segregation

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ward or pod at the Tecumseh State Prison. So how do you parcel out what it costs to house an inmate on death row or in administrative segregation? Are we going to split those numbers? What about the cost to counties and county attorney staff time and other expenses relating to the prosecution of death penalty cases? So now are we going to go into court and say, yes, the county had to hire an expert on this case, involving a first-degree murder case, death eligible. But guess what. They also had to hire an expert on a forensic sexual assault case. Justice demands that you pay the cost to prove your case on both sides. Are we going to start critiquing whether or not an expert was hired by the prosecution or the defense? We're talking about taking someone's life and it does have costs. I will not dispute that. But these are necessary steps in a civilized society that is making a very serious decision. Page 2, line 6, sub (6), "The costs to the Supreme Court, Court of Appeals, and district courts and an estimate of the costs to the federal courts in staff salaries, benefits, and operating expenses relating to the disposition of capital cases." Okay, so we look at the Madison County District Court. In 2007, they spent four weeks on Jose Sandoval's case. [LB306]

PRESIDENT SHEEHY: One minute. [LB306]

SPEAKER FLOOD: They also spent six months during that year on domestic protection orders or divorces or a trial on an auto accident where someone lost the ability to walk or use their arms. These aren't apples to apples. Each case is different. It's on the evidence, it's on the evidence, it's on the evidence, and you can't short-circuit the system. I think you should be able to find out what it costs, but these provisions don't make any sense to me. It's on a case-by-case basis. I'm not here to argue with you that a death penalty case doesn't cost more. Obviously it does and it should. Kansas did a performance audit. This suggests a financial audit. We have a Performance Audit Division in the Legislature. [LB306]

PRESIDENT SHEEHY: Time, Senator. [LB306]

SPEAKER FLOOD: Thank you, Mr. President. [LB306]

PRESIDENT SHEEHY: Thank you, Senator Flood. Senator Campbell, you're recognized. [LB306]

SENATOR CAMPBELL: Thank you, Mr. President. And good morning, colleagues. I had put on my light earlier to talk about LB306. I want to make a couple of comments about the amendment. I listened very carefully as Senator Council went through that and I'm still not sure that the amendment would get at all the costs that would be separated between a death penalty and someone sentenced for life, so I need to look at the amendment more. But I do rise in opposition to LB306 and it has been a difficult decision for me over the last couple of years, but I do believe that the consequences for the action of killing another person so horrifically, as has been described on the floor,

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requires the justice of the death penalty. I have listened with great interest to Senator Flood's description of the situation in Norfolk. For some of you who know me, I grew up in Norfolk and the whole episode in the murders there certainly caught my attention more than many of the other people who live in Lincoln. And one of the few things about that whole situation that has not been discussed on the floor is that when these killers left the bank they proceeded down the street, entered a house, and took captive two elderly people and their daughter. Those three people were only spared, their lives were only spared by the urgent calls of one of the killers saying, we must leave, we must leave, and they stole the daughter's car and left. This story was told to me by a classmate of mine from high school and it was his parents. I think what we need to take into mind is that horrific murders not only affect the victims' families but they also affect a community and many related people. Should we give pause when someone receives the death penalty? Absolutely. Taking someone's life is a very serious matter. But even more important to remember is the cost to the families and the communities in which these events occur, and for that reason I cannot support LB306. Thank you, Mr. President. [LB306]

PRESIDENT SHEEHY: Thank you, Senator Campbell. Senator Conrad, you're recognized. [LB306]

SENATOR CONRAD: Thank you, Mr. President. Good morning, colleagues, and thank you to each of you who have risen this morning to add your thoughts to this important dialogue. To be clear, colleagues, no one relishes this debate, I don't think, on either side of this issue. There is a level of fatigue that exists amongst us in the body and amongst the general public in terms of dealing with these issues. Make no mistake, this by no means is my favorite part of legislative service, but it is an important part. And Senator Council had to move forward in a dialogue about this issue this morning. This isn't a carryover bill that affects some tiny tweak to an existing program or policy. This is the death penalty and the jurisprudence in this area could not be clearer. Death is different. Thus, I want to compliment her on moving forward in this capacity and by putting forward AM1579, which is a responsible and responsive move strategically in line with what we have heard from you each this morning and what is a continued part of the dialogue from last year's lethal injection debate. The Speaker, of course, is very straightforward, appropriate and right by putting forward the proposition that death penalty cases do have real and significant cost issues associated with them, as does every case within the criminal justice system. No one is making the argument that, just because the costs may be more or less than other criminal prosecutions, that that alone should be the factor that you look at, but we should at least be able to know what the numbers are. We don't know what the numbers are. We don't have any sense of what these costs may be. We have some anecdotal evidence. We have some models from other states that can point us in the right direction and help us to extrapolate potential figures in terms of costs, real or potential, here in Nebraska. And I think at the very least understand Senator Council has made a dramatic and responsive move this morning.

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This amendment replaces the repeal bill. If adopted, that language, the repeal dialogue in this debate, goes away. And I agree with Senator Flood. I, too, have just had a chance to review this initially and there may be legitimate questions in regards to who conducts the study, what the parameters thereof are. But there is common ground that exists here and those issues can be worked out from General File to Select together, and the common ground that exists is we should be able to at least attempt to identify what the costs are, which we are unable to do without...within the current statutory scheme and structure. There's nothing to hide from in terms of this debate. This is the one area that we can agree on. This is a very dramatic realization on behalf of Senator Council and others who stand in support of the abolition movement to say we understand there's fatigue on this issue. We don't want to be tone deaf to what happened in this body last session and prior thereto, but we still can't get basic answers to simple questions. And once that information is provided, it may not change your mind. It may not change the mind of those within the general public. [LB306]

PRESIDENT SHEEHY: One minute. [LB306]

SENATOR CONRAD: We have a right to know basic information related to dollars and cents that we can achieve through the current statutory framework. I believe Senator Council, myself and others are wide open to working with Senator Flood and others to figure out who should appropriately conduct this type of study and what the parameters of that should be. Those are all issues open for negotiation. I'm confident that we can come to common ground and find solutions in relation thereto. And make no mistake, colleagues. Just because some of these costs may be borne through existing resources, that's staff time, that's dollars, that's taxpayer resources that then are diverted from other important obligations, whether it's in the Attorney General's Office, the court system, the Commission on Public Advocacy or other aspects of the criminal justice system. And that's still a policy decision that you will have to make,... [LB306]

PRESIDENT SHEEHY: Time, Senator. [LB306]

SENATOR CONRAD: ...that we will have to make, but it deserves at least a bit of attention and light. Thank you. [LB306]

PRESIDENT SHEEHY: Thank you, Senator Conrad. Senator Gloor, you're recognized. [LB306]

SENATOR GLOOR: Thank you, Mr. President, members of the body. I rise in opposition to AM1579. The death penalty has never been about dollars to me. I won't reiterate it but to briefly review quickly, my support has to do with my belief that the death penalty is a deterrence and that I believe, I firmly believe, I absolutely believe that it has saved at least one life during the period of time we've put ten people on death row and that the life of one innocent Nebraskan is worth the death of ten guilty individuals.

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But having said that and since the amendment relates to cost, I have to speak and say, although in theory a discussion on the merits of cost seems to be worth having to some people, the weakness in any of the information I've seen in the past is that it seems to determine that the convict, the prisoner population, dies in its sleep; that these individuals and the cost associated with caring for them is a roll-up of the costs during their lifetime. But we know that 80 percent of the cost for healthcare of an individual in this country anyway are incurred during the last six months of their life. There will be significant costs associated with keeping these...and healthcare cost is something I think I know quite a bit about. There will be considerable healthcare cost for these individuals as they live out their life in our prisons. And I've never seen any numbers that break out these increased healthcare costs that I believe during the lifetime of these individuals, especially as they become older and more infirm, will be in the hundreds and hundreds and hundreds of thousands of dollars, because we're not talking about a general patient population here. We're talking about people who have to be, because of the nature of their being incarcerated, have to have extra guards, probably have to have one-on-one patient care by trained professionals. This will be incredibly expensive. And there's the issue of long-term care. Look at your neighbor. The odds are one of the two of you will be in a long-term care facility at some period of time during your life. We don't have long-term care facilities for people who are in prison without potential for parole and so, once again, there will be increased cost associated with the infirmities that go with these individuals and it could be for years and years and years. No one ever folds those costs into any of the information I've seen about keeping somebody in for a life sentence. It's usually a comfortable cost per year for somebody who is incarcerated is X tens of thousands of dollars, but it won't be that number. My caution to those of you who are supportive of AM1579, should it pass, and again I am not in support of AM1579, but should it pass is hold people's feet to the fire, I certainly will, on looking at, as best we can determine, the true costs of caring for these people who will not be in a vacuum but, in fact, will suffer some of the same illnesses and infirmities as the rest of us. Thank you, Mr. President. [LB306]

PRESIDENT SHEEHY: Thank you, Senator Gloor. Senator Lathrop, you're recognized. [LB306]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Good morning. I stand in support of AM1579 and I have to tell you that when I saw LB306 was coming up and we were going to debate the repeal of the death penalty I probably felt, walking in here, like many of you did--we've seen this movie before and we know how it ends. But this morning I believe Senator Council has put up an amendment that deserves our thoughtful consideration and I believe our support. Understand, and I'll reiterate what Senator Conrad said just a moment ago, if we adopt AM1579, we take repeal off the table. We're not talking about a repeal of the death penalty anymore. We turn this bill into a bill that directs the Auditor, a former member of this body, a member of the majority party in this state, to conduct an audit of those people who are involved in

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carrying out the death penalty to determine what the costs are associated with the death penalty versus if they were tried and put in jail for life. Now the other day you'll remember Senator...my colleague Senator Cornett had a bill up here that said we're going to educate people on children with asthma. You remember that bill? The bill had a \$46,000 fiscal note and we said great idea, we should help because we're going to save some children's lives if everybody is better educated on what to do with an asthmatic child in a classroom. And we killed the bill over \$46 grand. The point of that is that we must strike a balance in this body. We look at policy, we look at good ideas, and then we look at the fiscal implication. The death penalty has been around so long in this state that there is no fiscal note. All we are asking in this amendment is to get the equivalent of a fiscal note. Now what bill would we pass without a fiscal note, and why would getting that information cause you any concern? What's wrong with this? The Auditor, I'm sure, is perfectly willing to do this, so why would someone stand up here in opposition to this unless...unless they're concerned that their support for this institution will erode when the costs associated with it are revealed in an audit. I don't think we should ever be afraid of information in this body. Senator Harms talked about a poll and that's a poll I'm familiar with. I think it was a telephone poll, asked people, do you think we should kill people who do heinous crimes? Well, of course they're going to say that. But if we tell these people what it costs them, what they spend in their tax dollars in pursuit of this policy, their position might change and, Senator Harms, we might be following 76 percent of the people who want to see it repealed because it's not doing what they thought they were paying for or they had no idea what it costs. But, colleagues, really, seriously, for us to turn our back on an amendment that would provide us with information approaches the silly. All we're going to do is have more information to judge this institution with, this policy of the state, and for those who say, well, these costs are all built into the Office of the Attorney General, then wait for the report. It will support your position. But I'll tell you, I'll tell you,... [LB306]

PRESIDENT SHEEHY: One minute. [LB306]

SENATOR LATHROP: ...we should never ever be afraid of information in this body. We get a fiscal note on every single bill and when we have that fiscal note we go about balancing the policy against the fiscal implications of that policy, and that's what we ought to be prepared to do when it comes to the death penalty. And I applaud the amendment, Senator Council's amendment. I encourage you to support it. You are not becoming a supporter of repeal of the death penalty by giving this amendment a green light; you are simply saying I'm going to do the responsible thing for my district, I'm going to learn what the cost is and then I'll reevaluate this institution or policy of the state at a later time. Thank you. [LB306]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Members requesting to speak on AM1579 to LB306, we have Senator Fischer, followed by Senator Council, Senator Christensen, Senator Flood, Senator Lautenbaugh, and others. Senator Fischer, you're

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recognized. [LB306]

SENATOR FISCHER: Thank you, Mr. President. I would yield my time to the Speaker. [LB306]

PRESIDENT SHEEHY: Senator Flood, you're yielded just under 5 minutes. [LB306]

SPEAKER FLOOD: Thank you, Senator Fischer, members, Mr. President. We've talked a lot about costs and that's a fine discussion to have. Before I make my comments on the financial costs, I want to talk about the human costs. I want to talk about that inmate holding a prison guard hostage in a storage room or small room at a prison, an inmate that might be serving life or 20 years. What's to stop him from using the shank to cut the guard's throat, somebody that has already exhibited complete lack of respect for the law and in some cases humanity? I would argue to you the death penalty. That's the only thing between that inmate sometimes and killing that guard. And you're never going to be able to predict what the human cost is or isn't because each situation is different and we're not mind readers. How many policemen and police officers and policewomen have not been shot at because there's a death penalty? I don't know about Iowa. Senator Council has made some points on that. How many people have not hired someone to kill another person in this state? We don't know. You'll never know. It goes to deterrence, and the human cost is something you have to pay attention to. Again, I'm opposed to AM1579. I looked at the amendment again and I go back to the Kansas study that says other costs had to be projected because most death penalty cases in Kansas are in the early stages of the process. Are we going to start having discussions on burglary or when we up the sanctions for selling drugs from a ID to a IB felony? Are we going to start projecting out how much their appeals are going to cost us? I think it's reasonable to say how many more people are coming to prison. I think that's a reasonable discussion on cost. But are we going to sit here and try and project how many appeals a defendant will take? We know there's mandatory appeal in Nebraska and that shouldn't go away. I'll say it again. I know there's a higher cost. The fiscal note...and I think the higher cost for the most part is on the counties. And you know what? Those counties elect a county attorney that makes a decision on whether or not to charge somebody with first-degree murder, death eligible. The people have spoken. They've hired a county attorney. They've elected that person and that county attorney makes the decision. And he or she can be voted in or out of office. There is a fiscal note on LB306. The Legislature's Fiscal Office compiled it. It says, "Does not include any impact on political subdivisions. See narrative for political subdivision estimates." I don't know that we'll know that by county. It says: Department of Corrections states the fiscal impact is not determinable. In similar bills from '07 and '08, the Attorney General estimated no fiscal impact. If you're unhappy with this fiscal note, and it's been my position that we have to trust those that we hire in this branch of government to determine what the cost savings is or isn't or how much it's going to cost, then go down and see Mike Calvert in our branch of government and ask for a review. We don't have

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to go running to the executive branch to do a report. [LB306]

PRESIDENT SHEEHY: One minute. [LB306]

SPEAKER FLOOD: We have very capable, very smart, very articulate fiscal analysts that work for us in our branch of government. Walk downstairs, sit across from their desk and ask them to put together a report for you. We have control over that. As members of this institution, they work for us and I think they do a good job. Thank you, Mr. President. [LB306]

PRESIDENT SHEEHY: Thank you, Senator Flood. Senator Council, you're recognized. [LB306]

SENATOR COUNCIL: Thank you, Mr. President. I think I need to clearly and unequivocally state, so that there's no doubt or confusion, I absolutely support LB306, the repeal of the death penalty. But in view of the discussion that has occurred, the beliefs that are held, I offered AM1579 as a means of responsibly and objectively considering the issue of the death penalty. Let me make it clear, in my personal opinion, I don't care if it didn't cost a dime. Just as Senator Gloor has strongly held beliefs in support of the death penalty and Senator Harms has strongly held beliefs in support of the death penalty, I have a strongly held belief in opposition to the death penalty. But as a member of this Legislature, I also have a responsibility to the taxpayers of the state of Nebraska in terms of making sure that we are wisely and appropriately expending their taxpayer dollars. Now Senator Flood quoted from the Kansas survey that I earlier quoted from, and I don't dispute Kansas at the time was unable to determine the correctional cost differences. So I assumed that that was the premise for Senator Flood's question as to why I would ask for it in AM1579. Well, I sat through the hearing in the Judiciary Committee when we were discussing the death penalty and when we were discussing the option of having life without possibility of parole versus the death penalty, and I heard individuals come before that Judiciary Committee and suggest that there were increased and, in fact, higher costs associated with incarcerating someone for life without possibility of parole as opposed to execution. Senator Gloor alluded to it in his comments, his belief that it will cost more to incarcerate someone for the rest of their life than it will to execute. Well, there are studies that show that's not true. But in order for us to responsibly arrive at that conclusion, we ought to know what it costs in the state of Nebraska. Senator Flood also talked about the possibility that someone convicted of homicide and serving a life sentence without possibility of parole would be just the person who would be inclined to shank a guard. Well, folks, that reality exists now. We have a sentence of life without possibility of parole. And if you look at the data that I quoted earlier, 93 percent of the death penalty cases in Nebraska resulted in either a life sentence or a life sentence without possibility of parole after either appeal or reversal. So we do that now. And in fact, if you visit the Nebraska correctional center facilities, as Senator Flood has testified he has, you can walk through general

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population and you will see individuals who are serving life sentences for not their first homicide but their second homicide. So these issues about we place guards at greater risk by having life without possibility of parole as an option to the... [LB306]

PRESIDENT SHEEHY: One minute. [LB306]

SENATOR COUNCIL: ...death penalty I submit to you is disingenuous because we have that now. AM1579, again, is being offered as an amendment in lieu of LB306, as a means of responsibly and objectively looking at these costs. And what does the Auditor do if not audit? And I have no doubt that our Fiscal Analyst can conclude this, but if we're talking about objectivity, then what better place to house this than the Auditor? Now I'm open to considering any cleanup language, if it has to be clear that we're talking about comparing death penalty cases in homicide only. I'm not looking at rape cases. I'm looking at the difference between the death penalty and life without possibility of parole. [LB306]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Council. Senator Christensen, you're recognized. [LB306]

SENATOR CHRISTENSEN: Thank you, Mr. President. I guess what...maybe somebody can stand up following me and address this question, but I guess what I see is we have a cost for death penalty and we have appeals to the death penalty. If we have people that are put on with a sentence for life without parole, they're going to appeal that and try to get to a sentence that can have parole. So I think I don't know that we're going to save any appeals, if we're going to save any necessary cost. And so my concern comes in, the fact that I'm not sure we're going to save anything through the cost of appeals because they're going to appeal whatever sentence they get and try and get it reduced. Next thing, you know, I think if we're going to look at the costs of defending...to put someone on death row, then we ought to look at all the costs of the appeals for the other examples I just give, that it should be a very detailed, very objective thing. But I still stand on the principle that I believe it's the right thing to do to give closure to families, that the death penalty is needed, that I can't think of how many people have come up to me and said, I can't wait till this is finally done. Their court case has been done for a number of years but they're referring to when the execution occurs. They want some closure to the situation. They want to make sure that this guy doesn't escape and come attack the family again. There's lots of things we need to look at in this situation and it's concerning to me that we're looking at just the cost of this because, to me, it's more of a principle than what we're looking at here, just at the cost of it. But if we're going to look at costs, let's broaden it, understand the full thing from all the way down to different one's appeal on their sentences. So I stand against AM1579 as it is written and against LB306. Thank you, Mr. President. [LB306]

PRESIDENT SHEEHY: Thank you, Senator Christensen. Senator Flood, you're

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recognized. [LB306]

SPEAKER FLOOD: Thank you, Mr. President, members. You know, in the throes of this discussion, I have to say this. It's hard not to respect and admire folks that have such a strongly held opinion on the other side. I know how passionate Senator Council is. I know how passionate Senator Conrad is. And you know what? Reasonable people can differ on an issue. They know where I'm at. Everybody comes to the place that they vote at with a different perspective. So this isn't me versus Senator Council or me versus Senator Conrad. This is me and the idea that I have that the death penalty is a reasonable sanction for the most heinous behavior. Senator Conrad and Senator Council see it much differently and there's differences in how we see the state's role in criminal sanctioning when it comes to taking the life of a defendant. So I don't want to go through this debate without acknowledging that these two members, although they share a different opinion than me, are anything less than up-front and forward and honest and passionate about the issue. But at the end of the day for me it comes down to this: You've got to be willing to pay for the appeals and the process and there's going to be a cost. If we got rid of the death penalty, there will be a significant cost that will remain because then that will be the new standard to lay down in front of an appeal for the rest of an inmate's life. If you're 26, convicted of first-degree murder, life in prison without the possibility of parole, you've got a life expectancy of close to 80, you can spend another 54 years filing appeals. That cost is always going to be there. And as Kansas looked at this issue, they very specifically said that those numbers for death versus first-degree life in prison without parole numbers don't exist. And as much as I wish we could go somewhere and get the numbers and lay them out in front of us, I don't know how you do it. I don't know how you would compile that. County attorneys don't write their time down like I do as a private lawyer. Courts don't write their time down as lawyers do. Prisons imprison people. And what takes me from that place to the human cost is the fact that I do think the death penalty serves as a deterrent and, to be up-front and honest, retribution is one of the four elements of criminal sanctions. And I think the death penalty is measured, it's not irrational, it's not uncontrolled, it's not savage. It is the expression of the community that this conduct is unacceptable and this is the highest price that you pay, and it's done through a process that includes lots of due process. I would again encourage Senator Council to walk downstairs, talk to our Fiscal Office and see if over the summer they can't dig deeper into this, and use our own branch of government to determine what, if any, costs are there. Thank you, Mr. President. [LB306]

PRESIDENT SHEEHY: Thank you, Senator Flood. Members requesting to speak on AM1579 to LB306, Senator Lautenbaugh, followed by Senator Conrad, Senator Fulton, Senator Council, Senator Lathrop, and Senator Flood. Senator Lautenbaugh, you're recognized. [LB306]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. I do rise

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in opposition to this amendment and in opposition, again, to the underlying bill, and I'll be very clear. I rise in opposition to the amendment because it won't matter, it just plain won't matter if we have this additional information. And what's being presented, if you've listened to the debate this morning, that, well, maybe it will enlighten some of us as to the cost of this, understand it won't enlighten the people who are opposed to capital punishment because it's been made clear this will just come up every year regardless of the cost because it's not a cost issue to them. The cost is a tool that they hope they will have to beat up the people who support capital punishment. Now I believe that we'll find, if we spend this money, that there's a reason Kansas can't tell the difference between life without parole costs and death penalty case costs, because they'll be comparable. And as the Speaker just indicated, if we do away with capital punishment, well, then life without possibility of parole will be that last ultimate thing that will be the high-cost measure. The ultimate penalty, whatever it is, will always be the high-cost measure. And I don't support studying this because, once again, the results aren't going to change any minds. So on the one hand, it's probably not knowable, as the Speaker indicated, because these people are not hourly, and getting reliable figures across the state from people who don't track their time and costs on a case-by-case basis is not going to be doable. But when we have those figures, is it going to change anything? No. We've talked about how the penalty is so uncertain and so unlikely to come that it is a cruelty to the families of the victims to even have it. I would submit that it's not intentional, but it's probably a cruelty to have this debate every year when nothing has changed. There was no new information this morning from last year and we're here again. And I can promise you, just as surely as the sun comes up tomorrow, we'll be here next year having this debate and the year after and the study won't change that. We all believe what we believe. I don't support capital punishment because of the cost or the lack of cost or the excessive cost or the fact that the cost is the same as something else. I support it because it's warranted in certain cases. And we debated last year that the system is fair as it can be. We had discussions with various county attorneys and public defenders who said, look, improvements that were discussed last year weren't going to make this fairer, and that was translated on the floor to, well, the system is so broken that nothing you can do can improve it. That's not what was said. That's not what we found. That's not what the people who are charged with implementing with this penalty and prosecuting these cases told us. It's not even what the people that were defending it told us when we got right down to it. So this debate will go on, every year it appears, and I wish it wouldn't. And I don't support this amendment because it won't matter, and I don't support the underlying bill. And I yield the rest of my time to Speaker Flood, if he'd have it. [LB306]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Senator Flood, 1:20. [LB306]

SPEAKER FLOOD: I respectfully decline. Thank you. [LB306]

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SENATOR LANGEMEIER: Thank you, Senator Flood and Senator Lautenbaugh. Senator Conrad, you're recognized. [LB306]

SENATOR CONRAD: Thank you, Mr. President. And thank you, Speaker Flood, for his kind words. I believe that I could speak for Senator Council in regards to this issue. There is a definite sense of mutual respect as we move through this debate together. And he is our Speaker, he is my friend, and nothing that is said on this legislative floor will change either of those facts. I do want to talk about some technical issues that were raised in relation to AM1579. You may remember, during the course of the lethal injection debate last year Senator Nordquist and myself attempted to distill some of these very cost issues within the current statutory framework and according to the resources we have available to us as legislators. Unfortunately, they are not sufficient to conduct that kind of inquiry, for a variety of different reasons related to jurisdiction, related to experience, related to time, related to resources, related to (laugh) a variety of different factors. So it's not that those paths haven't been started down. It's that those paths have led to dead ends and we need to find a new framework to try and at least just have a basic accounting, which may or may not change minds, according to Senator Lautenbaugh, but that should be no different than any other public policy that we look at and should distill its costs. Let me tell you some other technical issues related to this amendment. The Legislative Fiscal Office has, according to the Legislator's Guide to State Agencies, you can see about 14 people budgeted for work in that office. This amendment says the Auditor of Public Accounts will make the inquiry and investigation. The Auditor of Public Accounts has a staff of 49 people. That is a dramatic difference in terms of staff, resources, and time available to delve into these issues. In addition to bodies and trained auditors in vast disparate numbers from the Auditor's side of the aisle to what we have available to us in Legislative Fiscal--and make no mistake, Legislative Fiscal does an amazing job but is, as you know, already stretched very, very thin--and no matter what the case in terms of numbers, they don't have the ability to look down to the county level or the jurisdiction to get those kinds of numbers which are critical to this study. Do you know who does in terms of Nebraska's statutory framework and constitutional framework? The Nebraska Auditor of Public Accounts. They're specifically charged with not only looking at state agencies, programs, and operations. They also have an expanded jurisdiction to carry out similar functions on the county level, which is a critical piece to understanding this investigation and distilling the actual numbers. I'll tell you, I'll be very clear, I don't always agree with the political philosophies espoused by the Auditor of Public Accounts, but I don't think anyone could bring forward disagreement with the fact that Mike Foley is tenacious, detail-oriented, and nonpartisan in how we perceives the duties of that office, and that's exactly what we need to get a handle on these costs. So I ask you, colleagues, what's there to fear or what don't you trust about the operations within the Auditor's Office? This is a sincere attempt at finding common ground. And even from the most ardent detractors, this morning we've heard a recognition that we should be able to distill the

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costs. Yes, it's open to debate whether or not they will make a difference in your public policy decisions or the minds and hearts of the public that we represent. [LB306]

SENATOR LANGEMEIER: One minute. [LB306]

SENATOR CONRAD: But there is a realization, even amongst opponents, those on every side of this issue, that we should be able to at least know what the costs are. There's nothing to fear from that, nothing to fear from that. And what better person to take up the charge than someone who has the existing staff resources, expertise, and training to carry out that kind of inquiry, that has jurisdiction that expands to the county level, and that operates in a tenacious, nonpartisan, and detail-oriented manner? I think this is a responsible, legitimate amendment that is open to negotiation in terms of how the parameters of it look, but let's focus on the small sliver of common ground that does exist here and that is a realization that we should be able to know what the costs are. What you do with them, what you do with any information is up to you and how you distill that... [LB306]

SENATOR LANGEMEIER: Time. [LB306]

SENATOR CONRAD: ...in your conversations with colleagues. Did you say time, Mr. President? [LB306]

SENATOR LANGEMEIER: Time. [LB306]

SENATOR CONRAD: Okay. Thank you. [LB306]

SENATOR LANGEMEIER: Thank you, Senator Conrad. Those still wishing to speak, we have Senator Fulton, Council, Lathrop, Flood, Mello, and others. Senator Fulton, you're recognized. [LB306]

SENATOR FULTON: Thank you, Mr. President, members of the body. I had planned on not speaking on LB306 just because I've spoken several, over the course of the past few years, several times. AM1579 is new, maybe not new subject matter, though I might argue that way. I am in favor of bringing some form to how much it costs the state of Nebraska for any given...and particularly with the death penalty but for anything in general. The concern is, how is it that we're actually going to arrive at that number and how much is it going to cost to arrive at that number, additionally? The Auditor of Public Accounts, as it was explained to me when I first got here, is different from the performance audit function within the Legislature. The Auditor of Public Accounts makes sure that the monies add up, whereas the performance audit function of the Legislature is to make sure that the monies are spent per the intention of the money giver, which is us, the Legislature. So they are different. When I envision what's being laid out here in AM1579, Section 2, subsections (1), (2), (3), (4), and (6) I think would require the

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Auditor or whoever performs this task to delineate overhead costs and personnel costs of employees and to delineate that time and expense between capital cases and noncapital cases. Now how is that going to be conducted with a salaried employee, for instance, in the state...in the Department of Corrections? That's going to take a great level of scrutiny, a great level of research. Basically, you're trying to pull out a particular activity and categorize it with respect to a capital case. Now that is quite a task. Is that something that the Auditor of Public Accounts has the resources to do? Perhaps. I don't know. I didn't get a chance to ask him as I didn't see this amendment till this morning. But I can tell you this. We've cut his budget and he has a statutory responsibility now and that responsibility seems not to fit within the request of AM1579. So I'll leave that open as to whether it's something that, number one, he should be doing and, number two, he could be doing; maybe yes, maybe no, I don't know. Another point which if we were to get into the meat and potatoes of this amendment it should cause some question, line 8 on page 1 of the bill (sic), and I'll read beginning in Section 2, "The audit conducted pursuant to section 1 of this act shall examine the direct and indirect costs of administering the death penalty in Nebraska." What would be a definition for "indirect costs"? How far would one have to study the activities of the different offices that are envisioned in each of these sections in order to meet the statutory requirement that we would be putting on the Auditor of Public Accounts or whomever we actually choose within this amendment? How would you define "indirect costs"? Perhaps I'll bring an amendment later on to better articulate that or to strike indirect costs. But generally, I am, I can't speak for other people, I can tell you that I have...I do have an interest in hearing how much this costs to administer the death penalty in Nebraska. I also have an interest in how much it costs to administer life without possibility of parole, because ultimately those are going to be tools that each side of this respective debate would utilize. And so it would seem to me that if this amendment...this amendment may not go far enough in that it ought to look at the other side, and that is what does it cost for administering life without possibility of parole. [LB306]

SENATOR LANGEMEIER: One minute. [LB306]

SENATOR FULTON: So we have a generality here that I will say I agree with Senator Council on. How we actually get there, the details of how we conduct such a study, it seems to me there are a lot of questions yet to answer. And so that's what we do during debate. This amendment is not something that any of us have had a chance to contemplate at any great length but we certainly have questions to answer, and I brought up just a few of them. I'm sure there are others out there. Thank you, Mr. President. [LB306]

SENATOR LANGEMEIER: Thank you, Senator Fulton. Senator Council, you are recognized. [LB306]

SENATOR COUNCIL: Yes, thank you. And thank you, Senator Fulton. I respect and

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appreciate the questions that you pose because those are certainly questions that need to be addressed. As I indicated, I offered AM1579 as a means of getting this body to a point where we could make a responsible and an objective decision about whether or not to maintain the death penalty. As with any piece of legislation that's introduced in this body, between the time a bill moves from General File to Select File, there are opportunities to meet and to make whatever alterations in the bill that the parties can come to agreement on, and we do that regularly in this body. And I would be absolutely open to working with anybody in this body in terms of tightening what is being requested to be performed by the Auditor. And in that regard, when you look at this, I harken back to last session and the beginning of this session, and the buzzwords of last session and this session have been "transparency" and "accountability," "transparency" and "accountability." Why shouldn't the residents of the state of Nebraska know the comparable cost between administering the death penalty and life without possibility of parole? Perhaps it would alter their opinions. And perhaps the poll that Senator Harms referenced would result in differing opinions if the facts were known and the questions were posed differently. But I must respond to the statement made by my colleague Senator Lautenbaugh. Here again, I respect Senator Lautenbaugh's position on this issue. He has been clear and unequivocal on his position on this issue, but I respectfully disagree with him when he makes the statement that nothing has changed since we debated lethal injection last year, because what we debated last year was whether we substitute lethal injection for electrocution as the means of execution in this state. And I need to remind Senator Lautenbaugh why we had to undertake that debate. We had to undertake that debate because of the decision of our Supreme Court that electrocution was cruel and unusual punishment. Now in looking at how the Supreme Court of these United States makes decisions as it relates to the death penalty, it has consistently looked at what it views as the public opinion, the evidence of the movement of the country, and one of the reasons lethal injection was upheld by the Supreme Court was because of the fact that so many states in the Union provided lethal injection as a means of carrying out executions under the death penalty. Well, what has changed since last year when we debated that issue as it relates to the death penalty? Well, what has changed is that in 2009, 11 state legislators... [LB306]

SENATOR LANGEMEIER: One minute. [LB306]

SENATOR COUNCIL: ...legislatures that currently have the death penalty debated whether to end the death penalty. And the high cost of continuing with the death penalty were significant parts of those debates. I submit to you that if all 15, all 11 of those states who considered repeal of the death penalty had repealed the death penalty last year, we would be looking at a situation where we would need to be questioning whether we would be ahead of the curve or behind the curve in terms of looking at repeal of the death penalty. Because if 11 states repealed the death penalty, that makes 26 of the states who think that the death penalty is cruel and unusual punishment, that's a majority, which would have an influence on the Supreme Court of these United States.

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[LB306]

SENATOR LANGEMEIER: Time. Thank you, Senator Council. Senator Lathrop, you're recognized. [LB306]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I have listened to the debate on AM1579. And we have those who are proponents for the amendment and they stand up and ask you to keep an open mind about getting information on the cost of this policy. And then there are those who feel strongly about the death penalty and in response to this debate stand up and talk about the deterrent effect of the death penalty or they tell us that it won't make any difference because this isn't about money. I understand that. But the debate is no longer about whether you are for or against the death penalty. It's about whether we want some information. I think that's what your people sent you down here to do, to get information so that decisions can be made. So the debate is no longer about whether we should or should not have a death penalty, as we talk about AM1579. It's only about whether or not we put the Auditor, the elected State Auditor, in charge of making a study. Now why do we need a study? I've been around for about four or five debates on the death penalty. One year we debated it twice. What I found that runs through each one of these debates is one side will stand up and say, I have this study from Kansas or I have this study from North Carolina that says this is costing us 16 times more than putting somebody in jail. And invariably, somebody on the other side stands up and says, well, that's not the situation in Nebraska because that study doesn't apply to Nebraska because it was done in North Carolina, and we do things different, and you're not taking into account this. And then we have people that say, well, the costs are already associated with the AG's Office, it's not costing them anything. Look, the debate on the expense related to the death penalty always gets sidetracked, always gets sidetracked in this debate with this argument: None of those studies apply to Nebraska; those studies don't...they didn't study Nebraska, they studied Kansas and something is different there; and that North Carolina study that shows it's eight times more expensive, that study doesn't apply because that's North Carolina and not Nebraska. So I think what we're talking about today is information. Now Senator Lautenbaugh expresses something probably a lot of you believe, which is you can get me the numbers, it isn't going to affect how I feel about it. That's fine, that's fine. You know, stay with the death penalty. You don't have to vote to repeal it. But that's not a reason to shy away from getting information and putting Mike Foley in charge of doing a study. Now is it going to be not that simple? You know, how do we decide in the Attorney General's Office how much of the Attorney General's staff time is devoted to the death penalty? Well, I suppose they'll use some of the same standard practices they use when they tell me they're going to need three more full-time equivalent employees to carry out a bill that I put in. We do that all the time in state government. But because there is some gray and because it is not simple is not a reason not to undertake something. And I'd suggest to you, those of you who oppose repeal of the death penalty, I'd suggest to you that maybe you want to get on board

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because it will prove exactly what you think, that it doesn't make any financial difference. And if it doesn't, jump on board because you're going to have a study you can wave around every time this subject comes up. But we're not talking about, and a vote for AM1579 isn't a vote to repeal. You're not a death penalty repeal sympathizer. [LB306]

SENATOR LANGEMEIER: One minute. [LB306]

SENATOR LATHROP: We're just talking about getting some information so that we can make some good decisions. I think it is also important and perhaps between this afternoon, if this goes through noon, and tomorrow morning we can sit down with those like Senator Fulton and others who have concerns that the study reflect both the cost and the savings associated with the imposition of the death penalty. So if we have more expert witnesses, if we have more appeals, if we have more attorney fees, more time tied up in the AG's Office, we look at it on one column. And on the other column, if we have more medical expenses associated with keeping these people around for their natural life, put that on the other side. Come to the table between now and tomorrow morning and tell us what you want to see in that study and let's put it in there. Because I think we're talking about an honest broker in the Auditor who can come back to this body with something that is Nebraska-specific. [LB306]

SENATOR LANGEMEIER: Time. [LB306]

SENATOR LATHROP: Thank you. [LB306]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. Senator Flood, you're recognized. [LB306]

SPEAKER FLOOD: Thank you, Mr. President. Nine o'clock this morning we were talking about repealing the death penalty. Looked at the Journal last night, I didn't see anything about a study. In the dark corners of the Capitol I heard there's an amendment coming that's going to look at the cost, but don't really know much more about it. Ten o'clock, 10:30 this morning it's not about repealing the death penalty anymore. It's about studying the costs and commissioning a study. It's not about repealing the death penalty, it's about let's find out how much it costs. Now Senator Council was very clear. She wants to repeal the death penalty. But the debate does change with AM1579. And now the request is between now and tomorrow, since we popped it on you at 10:30, let's figure out a compromise because we're in a position to compromise. And let's figure it out tomorrow morning. You can still introduce a bill. I'd vote to suspend the rules to let Bill Drafters put this very bill together in bill form and have it introduced tomorrow before the deadline and let's do it the right way. Let's have a hearing. Let's invite people to the table. You want me to vote on a compromise tomorrow when I haven't had a chance to talk to the warden, the District Judges' Association, the Supreme Court, the Court of

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Appeals, the State Patrol, the county attorneys of 93 counties. I can't ever say that compromise isn't worth my time. But if you want me to compromise then come to the table, put it together at a hearing, have the hearing, let all those people come in and say, what will we look at, let's find out how much it's going to cost. Because if we come to the table tomorrow and compromise I guarantee you there won't be a fiscal note because we really don't know what we're doing. I haven't had anybody come to me and say, well, we'll strike paragraph 6, we'll strike paragraph 2, we'll strike paragraph 3, but we have to have 1 and 4. It's take it or leave it. Oh and by the way, come to us in the corner and give us a gift because we want to compromise. I'll compromise when I have more than 15 minutes to think about what the idea is and more than 24 hours to call 15 state agencies and 93 county attorneys. You have a right to know how much it costs. And I'm sure it does cost more, I will not back away from that. But if you want to know how much it costs, let's suspend the rules today. Let Senator Council get this done by Bill Drafters upstairs, who may not even need to do it; get this introduced tomorrow. Let's have a hearing and let's spend the session working on it. And I would commit that I will participate. But I can't sign off on this. And I'm not going to be forced into a corner to compromise between General and Select on something that we really should sit down and use the committee process. And use the committee, by the way, in the Judiciary Committee that is very, very good at dealing with complex, difficult issues. They have seen their share. And I will work with them. That's my plea. I'm going to vote no on AM1579. If it goes until tomorrow, my position remains the same. But, Senator Council, put this in as a bill and let's get all those people around the table. And let's specifically identify what we're going to study. And let's set reasonable expectations, if that's the direction you want to go. And let's find out what the cost is before we do it. I'm not going to say that I'm there and I'm going to agree to it, but decide you have compromise in between tonight and tomorrow, no. Thank you, Mr. President. [LB306]

SENATOR LANGEMEIER: Thank you, Senator Flood. Senator Wightman, you're recognized. [LB306]

SENATOR WIGHTMAN: Thank you, Mr. President, colleagues. I rise in opposition to AM1579. I think Senator Lautenbaugh probably put his finger on why this really is not a very workable arrangement, and that is that it's not going to make any difference when we get all done. I don't think one mind is going to be changed by comparing the costs of administering the death penalty, the costs of...additional costs of trial as opposed to what it costs to keep a prisoner for life. I don't think it's going to change a bit. And furthermore, I think that...and every year that we've argued this, and I think I have entered in the debate every time that we've had it, and it seems like this is at least the fifth time in this my fourth year in the Legislature. I have argued and continue to argue that it is a deterrent. I think Senator Gloor is absolutely right. As far as how many lives it saves across the country or the state of Nebraska I don't think any of us can ever determine. I fully understand, and Senator Council states in debate that studies show that it is not a deterrent. I don't have the studies in front of me. But a year ago, both of

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the last...all of the last three years, I have had and have discussed those studies and there are numerous studies that show that it is a deterrent. Some of these have been undertaken by universities and by various groups around the country. And I think you could go out and commission a number of people to conduct such a study and it would depend upon who they were representing and conducting the study in determining what their conclusion would be. So if we're going to discuss the costs it seems to me we've got to discuss the cost in human cost. And if one life is saved, one innocent life as opposed to maybe ten people who are executed, that innocent life, I would agree with Senator Gloor, is worth as much as the ten lives that were lost, those people who were executed who were guilty of murder or another heinous crime, almost always murder I would suggest. My opinion is that probably hundreds of lives have been saved across the country, probably numerous lives in the state of Nebraska over the history of this state by having the death penalty on the books. And that one life, how much would we spend to save one human life? I think it's been discussed here on the floor and again by Senator Gloor on what we may spend to keep one person alive during the last few weeks of their lives, which may be in the hundreds of thousands of dollars. But here we're talking about younger people that may have a life expectancy of 50 or 60 years sometimes whose life may be spared by having this death penalty on the books. So I'm not going to belabor the point anymore. I have believed...I think there are numerous studies that show that it does serve as a deterrent. And those innocent lives that are saved, in my opinion, are worth the cost of administering the death penalty and those associated. So I will not support AM1579. I will be voting in opposition to that and also in opposition to LB306. Thank you, Mr. President. [LB306]

SENATOR LANGEMEIER: Thank you, Senator Wightman. Senator Campbell, you're recognized. [LB306]

SENATOR CAMPBELL: Thank you, Mr. President. I would urge my colleagues to listen very closely to what Speaker Flood is trying to tell us. AM1579 is a very complicated effort to arrive at what the cost is. A number of years ago, under the leadership of Attorney General Robert Spire, there was felt that there was uneven defense across the state, depending upon which county you were in. And the Office of Public Advocacy was instituted so that any county, the largest to the smallest, if it had a capital crime and it didn't feel that it had the resources to address it, could go to the commission and the commission would have an attorney to provide that defense. The reason I bring that up is that's one agency that should be...that we should discuss the potential costs and how you would go about doing a study. When I sat on the Lancaster County Board and I'd wake up in the morning and hear on the radio that we had a capital murder in this city, I would begin to cringe knowing the enormous costs on either side, whether it's a death penalty or life imprisonment. There were no two cases the same. I couldn't as a county commissioner ever say, well, the average cost is blank. I applaud Senators Council and Conrad for trying to get at what that cost is. But I do not believe that we should hurry into this and would heartily concur with the Speaker that perhaps the time is to pull this

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back, put it in a bill, and look at really how would you begin addressing this. Just from a county's perspective, there's multiple issues here that may not be focused in this amendment. Thank you, Mr. President. [LB306]

SENATOR LANGEMEIER: Thank you, Senator Campbell. Senator Lautenbaugh, you're recognized. [LB306]

SENATOR LAUTENBAUGH: Thank you, Mr. President. I'd call the question on the amendment. [LB306]

SENATOR LANGEMEIER: The question has been called. Do I see five hands? I do see five hands. The question before the body is, shall debate cease on AM1579? All those in favor vote yea. All those opposed vote nay. Senator Lautenbaugh, for what purpose do you rise? There has been a request to put the house under call. The question before the body is, shall the house go under call? All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk. [LB306]

CLERK: 40 ayes, 1 nay, Mr. President, to place the house under call. [LB306]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. The house is under call. Senators, please return to the Chamber and record your presence. The house is under call. All unauthorized personnel please leave the floor. The house is under call. Senator Lathrop, would you please check in. Senator Dierks, please return to the Chamber. All members are present and accounted for. Senator Lautenbaugh, how do you wish to proceed on your motion to cease debate? [LB306]

SENATOR LAUTENBAUGH: Roll call vote, please. [LB306]

SENATOR LANGEMEIER: Thank you. The question before the body is, shall AM...shall discussion cease on AM1579? One moment. [LB306]

CLERK: (Roll call vote taken, Legislative Journal page 274.) 27 ayes, 18 nays to cease debate, Mr. President. [LB306]

SENATOR LANGEMEIER: The motion to cease debate is adopted. Senator Council, you are recognized to close on AM1579. [LB306]

SENATOR COUNCIL: Thank you, Mr. President. In light of the discussion and the debate, I think, it's clear to my colleagues why AM1579 has been introduced. It has been introduced as a means for us to responsibly and objectively consider whether or not it makes sense for the state of Nebraska to continue to have a death penalty. Now there's been a lot of reference to what other states are doing and what is occurring in other states. I just want to be clear and make clear to you why I'm advancing AM1579 at

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this time. And I'm going to read from a quote in The Wichita Eagle, it's an editorial, Wichita, Kansas, Eagle: It's hard to imagine that any of the 89 Kansas lawmakers who voted in 1994 to revive the death penalty for the worst of the worst criminals anticipated it would still be unused come 2007. Each year sends more men to Kansas' death row, 9 in all currently--the number is 11 in Nebraska--but the legal challenges to their sentences continue at a glacial pace. Then there is the cost to taxpayers, averaging \$1.2 million each by one tally. At some point, given the legal problems and the lack of executions, the death penalty stops making sense for Kansas. I think in order for us to get to the point where we can make the statement one way or the other whether the death penalty continues to make sense in Nebraska at a minimum we need to see these comparative costs. As I indicated earlier, I respect the points that have been made by Senator Fulton and Senator Flood and have expressed my willingness to sit down and see if we can more clearly set out the parameters of the audit to be conducted under AM1579. I don't agree with Senator Flood's conclusion that this issue has not been discussed. Because if you go back and look at the legislative history, the transcript of the hearing before the Judiciary Committee on the issue of repealing the death penalty, there was considerable testimony with regard to whether or not the death penalty was cost-effective and whether or not we had enough data to make that determination. So in terms of prescribing the parameters, I think that we who are interested in this issue are absolutely capable of doing that, engaging in open and honest discussion as to the way to make this bill as tight as it can be in terms of achieving the stated objective. And for those reasons, I would urge your vote in support of AM1579. And, Mr. President, I would at this point in time advise that when we get to the point of the vote I would like a call of the house and a roll call vote in regular order. [LB306]

SENATOR LANGEMEIER: Thank you, Senator Council. I have held the body at...in a state of call of the house. So we are there already. You have heard the closing on AM1579. The question before the body is, shall AM1579 be adopted? All those in favor vote yea; all those opposed vote nay. Mr. Clerk, call the roll. [LB306]

CLERK: (Roll call vote taken, Legislative Journal page 275.) 15 ayes, 30 nays, Mr. President, on the amendment. [LB306]

SENATOR LANGEMEIER: AM1579 is not adopted. With that, I raise the call. Mr. Clerk, items for the record. [LB306]

CLERK: I do, Mr. President. Thank you. Your Committee on Transportation, chaired by Senator Fischer, to whom was referred LB650, instructs me to report the same back to the Legislature with the recommendation it be placed on General File with committee amendments; and LB416 and LB652 indefinitely postponed, those reports signed by Senator Fischer. Amendment, Senator Avery, an amendment to LB190. Hearing notice from the Appropriations Committee. And, Mr. President, new bills. (Read LB1017-1033

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by title for the first time.) And a new resolution, Mr. President. LR297CA is a proposal by Senator Karpisek amending Section...or Article XIII, Section 2 of the Nebraska Constitution. Series of name adds: a number of members to add their names to LB510; Senator Karpisek to LB755 and LB903; Senator Giese to LB967; Senator Coash, LB971; Senator Rogert to LB977; Senator Janssen, LB984; Senator Krist, LB1005. Reminder, Mr. President, that Reference will meet upon adjournment; Reference, upon adjournment. (Legislative Journal pages 275-280.) [LB650 LB416 LB652 LB190 LB1017 LB1018 LB1019 LB1020 LB1021 LB1022 LB1023 LB1024 LB1025 LB1026 LB1027 LB1028 LB1029 LB1030 LB1031 LB1032 LB1033 LR297CA LB510 LB755 LB903 LB967 LB971 LB977 LB984 LB1005]

And Senator Dierks would move to adjourn the body until 9:45 a.m. tomorrow, 9:45 a.m., Mr. President.

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Members, you have heard the motion to adjourn until Thursday, January 21, 2010, at 9:45 a.m. All those in favor say aye. All those opposed say nay. The ayes have it, we are adjourned.