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Floor Debate  
February 14, 2011

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PRESIDENT SHEEHY PRESIDING

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

SENATOR UTTER: (Prayer offered.)

PRESIDENT SHEEHY: Thank you, Senator Utter. I now call to order the twenty-eighth day of the One Hundred Second Legislature, First 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.

PRESIDENT SHEEHY: Any messages, reports, or announcements?

CLERK: Your Committee on Enrollment and Review reports LB19, LB28, LB29, LB30, LB46, LB59, LB68, LB72, LB111, LB122, LB134, LB135, LB154, LB157, LB157A, LB170, LB208, LB211 correctly engrossed. (Legislative Journal pages 525-526.) [LB19 LB28 LB29 LB30 LB46 LB59 LB68 LB72 LB111 LB122 LB134 LB135 LB154 LB157 LB157A LB170 LB208 LB211]

PRESIDENT SHEEHY: (Gavel)

CLERK: I also have hearing notices from the Business and Labor Committee and the Natural Resources Committee, signed by the respective Chairs. That's all that I have, Mr. President. (Legislative Journal pages 526-527.)

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 LR66 and LR67. Mr. Clerk, we'll move to the first item under General File, LB114. [LR66 LR67 LB114]

CLERK: LB114 by Senator Dubas, relates to agriculture. (Read title.) Introduced on

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January 6, discussed on the floor on Friday, February 11, Mr. President. The bill was presented by Senator Dubas. Senator Carlson also presented the Agriculture Committee amendments at that time. Those amendments are pending. (AM199, Legislative Journal page 436.) [LB114]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Dubas, would you like to give us a summary of LB114? [LB114]

SENATOR DUBAS: I certainly will, Mr. Lieutenant Governor. Good morning, colleagues. Happy Valentine's Day. I am told love is in the air. We will see. LB114 simply directs the Department of Ag to develop a definition for pure honey and then standards that support that definition. It directs those standards to be consistent with the Codex Standard that was established by the Codex Alimentarius Commission. The reason for this bill came from the Nebraska Beekeepers Association because of the inaction on the part of the FDA to adopt a national honey standard. The state and national associations feel they have no opportunity to protect the integrity of their profession and the product purity without a standard in place. Since the FDA has not taken action, there is a movement to have states adopt their own standards with the hope that it will incent the FDA to move forward with a national standard. Through the adoption of these standards, honey producers will gain standing in court to take civil action. This is absolutely not a labeling law. It requires no enforcement or testing by the Department of Agriculture. By having the department use the Codex Standard, they will not have to invest time, resources, or money to pursue a costly scientific analysis as this scientific analysis has all ready been done. This is demonstrated by the fact that there is no fiscal impact with this bill, and the language that this bill reflects is not uncommon to directives that we give other agencies to establish rules and regulations. The Codex is a standard for purity. All honeys, as they're listed in the Codex, will fall within those range of numbers if it is pure. If anything is added to the honey, those number will be skewed which will support the fact that it is not pure honey. So it's not dependent on the type of pollen that is used to make the honey. There are different colors, there's different tastes, there's different aromas, there's different viscosities of honey based on the pollen or the plant that was used to create the honey. But if it's pure honey, no matter where it came from, it will meet those standards of purity set out in the Codex. These standards were established by a very scientific, scientific analysis which was done by people who are experts in their field. It was done by food scientists. Currently, the only standards that are in place are what are in place through the Codex Standard adopted by the Codex Commission. They are recognized worldwide. I am, as I told you Friday, working on an amendment, it is currently in Bill Drafters. I don't know if we'll have that amendment ready to present to you this morning, but as I said, I would continue to work on it and be able to introduce it on Select File. But, basically, what the amendment does is take the language for using the Codex Standard from the Codex Alimentarius Commission of the Food and Agricultural Organization and the World Health Organization of the United States (sic), it will strike all that language and replace it with, United States version of the Codex with

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deviation. So I have the version that was presented to the Food and Drug Administration by five national honey trade associations. It's what they wanted out of the Codex. So it strikes large portions of the original Codex and makes it something that our national honey producer associations would like. So it still leaves that standard for testing purity in place but it strikes large portions of it. And, as I said, I don't know if I'll have the amendment ready to present to you this morning but that's the direction I am currently going. I'd be happy to entertain any questions. Thank you. [LB114]

PRESIDENT SHEEHY: Thank you, Senator Dubas. Senator Carlson, would you like to give us a summary on the Agriculture Committee AM199? [LB114]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. And it's good to see you back in the chair today. The amendments do two things: First of all, clarify completely it is the intent of the Legislature to provide for an identity standard for packaged food products labeled as honey in order to aid consumer information and protect the integrity of the honey industry in Nebraska. And the second thing that the amendments do is to change it from a situation where it looks like there could be several lawsuits filed to making it a part...clearly, "A violation of subsection (3) of this section shall constitute a deceptive trade practice under the Uniform Deceptive Trade Practices Act and shall be subject to any remedies or penalties for a violation under the act." This opens it up for the honey industry to take some legal action if they choose, and I think it discourages these multiple lawsuits. I think that we could all agree that the honey industry in Nebraska has a legitimate concern. And anything that's sold as honey but is adulterated is not pure honey. And they have a concern about that and hopefully we can address that that would help them in some way. And so this is a special day that we're concerned about our honeys in addition to the honey and we don't want to bumble this piece of legislation. So hopefully we'll have good discussion. Thank you. [LB114]

PRESIDENT SHEEHY: Thank you, Senator Carlson. (Doctor of the day introduced.) We will now proceed to floor discussion on the Agriculture Committee amendment, AM199. Members requesting to speak are Senator Fulton, followed by Senator Christensen, Senator Loudon, and Senator Hansen. Senator Fulton, you're recognized. [LB114]

SENATOR FULTON: Thank you, Mr. President. I'll be brief. We had this near the end of session on Friday. What Senator Dubas is trying to accomplish here I actually do support, and what Senator Carlson was talking about is reasonable, I think would be good policy. I just want to be very careful that when we're talking about producers that we aren't forgetting about individual producers, families, people who might have a concern, myself included, about incorporating something...incorporating the entirety of this Codex into our statute. I don't know that it's appropriate to codify in statute those decisions that are being made by the United Nations. So I have worked with Senator Dubas on this or I should say it's probably more accurate to say she's worked with me on this as well as others. And even this morning she said she's indicated there is an

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amendment that would clearly define honey, and that would be fine with me. If we could put a definition in the statute or even in the regulations which would give a course of action for individuals under the deceptive trade practice or deceptive trade act, however that is, then that would be adequate. But I just...I want to strike a note of caution when moving forward with this. I will support this bill to go to Select File in the interests of attaching such a clarifying amendment. So I just want to make that known before we get to a point of voting. Thank you, Mr. President. [LB114]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Senator Christensen, you're recognized. [LB114]

SENATOR CHRISTENSEN: Thank you, Mr. President, and welcome back. I've shared with Senator Dubas and Senator Carlson my concerns. I have to just say I totally agree with what Senator Fulton has said. They've worked with us well. I got the same concerns of some of the language of the World Health Organization, United Nations, but I got a couple of additional concerns that I'd like to speak about. And if Senator Dubas would yield, I'd like to ask her a couple of questions. [LB114]

PRESIDENT SHEEHY: Senator Dubas, would you yield to Senator Christensen? [LB114]

SENATOR DUBAS: I certainly will. [LB114]

SENATOR CHRISTENSEN: Senator, when we look at...I think I shared with you this morning earlier that when you look at this amendment as it stands, we've got part two is not defined. And my concern would be the people that are more likely to have nonpure honey would be your blenders, the bulk packaging people and according to what we have right here, there's no rules for that. Are you going to address that also in your amendment? [LB114]

SENATOR DUBAS: I'm not quite sure I'm tracking with your question, but basically what the amendment will do will take what the national associations presented to the FDA for adoption of the standards. So I'm not following you on what is part two. [LB114]

SENATOR CHRISTENSEN: Okay. Let me back up. On the Codex Standard for honey under the "scope," it lists 1.1, 1.2 which says: part two, this standard also covers honey which is packaged in sale of bulk containers, which may be repackaged for retail packets. When you flip back to part two on the back page, page 8 of that handout, the very back page, it says, "This part is subject to further consideration." To me that's saying we have no rules for that section. [LB114]

SENATOR DUBAS: That part is deleted from the standard that was presented to the FDA, so that would not be considered by using the standard that was presented to the

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FDA. [LB114]

SENATOR CHRISTENSEN: So then the bulk packaging people would be under the same rules as the small people. [LB114]

SENATOR DUBAS: That's correct. [LB114]

SENATOR CHRISTENSEN: That is my main concern right there. Got one additional question for you. Right now I realize we're setting up this bill so if somebody's got unpure honey we have a way to challenge them in court. Is there...if we didn't pass this bill or if you left it as is now, could you not...if I was making bad honey, nonpure honey and could you not buy some of mine, test it, and challenge me now? What is different with this bill that couldn't be done now? [LB114]

SENATOR DUBAS: Thank you for that question. There has been court challenges all ready in place and the challenges were thrown out because there is no adopted definition or standard for what pure honey is. So how do I know...you know, I can say I have a bottle of pure honey here but if I have nothing to measure the purity against I can't make that determination. So court challenges to date have not gone anywhere because we don't have any adopted standard. [LB114]

SENATOR CHRISTENSEN: Okay. Thank you very much. I appreciate that. And I, too, will look forward to sending this bill forward if we don't get the committee amendment quicker than that, and thank you for your time. [LB114]

PRESIDENT SHEEHY: Thank you, Senator Christensen. Senator Louden, you're recognized. [LB114]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. Would Senator Dubas yield for a question? [LB114]

PRESIDENT SHEEHY: Senator Dubas, would you yield to Senator Louden? [LB114]

SENATOR DUBAS: Yes, I will. [LB114]

SENATOR LOUDEN: Senator Dubas, as we discussed this here last Friday some I think and we kind of picked up where we left off. In your green copy on lines 4 through 6 there, what are you taking out of the green copy on your amendment that you're going to propose on Select File? [LB114]

SENATOR DUBAS: We'll basically take all of that language out. We'll say that...and replace it with the revised Codex Standard as presented to the FDA for their consideration with...the revised Codex Standard with deviations as presented to the

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FDA. [LB114]

SENATOR LOUDEN: Okay. Now where can we find those revised standards at?  
[LB114]

SENATOR DUBAS: I can certainly get you a copy of them. [LB114]

SENATOR LOUDEN: Okay. I was wondering because they're not in this other...when you go into the...on the machines in the Web or wherever you go out there in the world and ask for Codex Standard 12-1981. They're not in those regulations, are they?  
[LB114]

SENATOR DUBAS: I don't know if this is on the docket on the Food and Drug Administration's Web site but I do have a copy of it, and so I can get you the copy of what that proposal looks like. [LB114]

SENATOR LOUDEN: Okay. And then how will this bill relate to, oh, what's already the Nebraska Department of Agriculture and their Pure Food Act subsection, and that's I think in 81-2,287 and along in there? How will this bill work with that? Will it go into that section because I see there's no place on the bill what section it was going to be put into? You know, where will this thing fit into the scheme of things? [LB114]

SENATOR DUBAS: It will create a new section. It doesn't currently...and I believe that's what the committee...I'm looking for my committee amendment, the committee amendment, excuse me, deals with the Uniform Deceptive Trade Practices, but this bill would create a new section under the Pure Food Act. [LB114]

SENATOR LOUDEN: Okay. [LB114]

SENATOR DUBAS: Excuse me. Misleading information. (Laugh) It simply, it would create a new section under the Department of Ag's section, so... [LB114]

SENATOR LOUDEN: Okay. Then will that go in the pure foods or will it go into...  
[LB114]

SENATOR DUBAS: No. [LB114]

SENATOR LOUDEN: ...free trade or where will it fit? [LB114]

SENATOR DUBAS: This just deals with economic adulteration for an ag product.  
[LB114]

SENATOR LOUDEN: Oh, I guess, my concern was...is we have a lot of producers in

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the state of Nebraska that, you know, they sell it a jar at a time or sell it at farmers' markets and places like that. Now will they have to test their honey in order to sell at those places or can they sell in the state without testing it or what? [LB114]

SENATOR DUBAS: They can sell anywhere they want. The onus of the testing would be on the person making the charge. So if I thought that you were selling honey that was adulterated or wasn't pure, it would be my burden to have the testing done and to prove that your product was not pure. So it's totally...the producers that are doing business the way they're doing it right now will continue doing business the way they're doing it right now. It puts no requirements on them whatsoever. [LB114]

SENATOR LOUDEN: Okay. Then this bill wouldn't go into effect unless there was a court case or court filing or something like that. [LB114]

SENATOR DUBAS: Correct. What this bill does is give anyone the ability to use civil recourse in the court system to defend or protect their particular product. [LB114]

SENATOR LOUDEN: Okay. Thank you, Senator Dubas. That's an interesting way of doing it I guess. If nobody complains, then I guess it doesn't have to be tested. So with that, I'll probably support the bill... [LB114]

PRESIDENT SHEEHY: One minute. [LB114]

SENATOR LOUDEN: ...to see how we come out with...on Select File and see what the amendment is and that sort of thing. Thank you, Lieutenant Governor. [LB114]

PRESIDENT SHEEHY: Thank you, Senator Louden. Senator Hansen, you're recognized. [LB114]

SENATOR HANSEN: Thank you, Mr. President. And I'll add, too, it's great to see you back in the chair. When we take a product like honey, you would assume that it's honey is honey is honey but I know it's not. I attended the legislative hearing out in Grand Island the day that the State Fair opened, and there were quite a few honey producers there. Brought up some things that I certainly was not aware of, and the labeling laws that we have on honey and honey products was very interesting to me. I know when we buy beef sticks, when you buy sausage, when we buy hot dogs, and if they call them all-beef wieners or all-beef beef sticks, there's a lot of other things in there too and we know that they're flavor-enhancing. I would ask Senator Dubas if she would yield for a question. [LB114]

PRESIDENT SHEEHY: Senator Dubas, would you yield to Senator Hansen? [LB114]

SENATOR DUBAS: Yes, I will. [LB114]

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SENATOR HANSEN: Thank you. Senator Dubas, I have a product down in my office and it's a Nestle Company product and it's called "honey vanilla creme" and it's a coffee additive, it's a Coffee-mate, one of their products. It has a honey pot on it on the label, it even has a honey bee, and it's made by the Nestle Company. I looked at the list of ingredients and it has zero...doesn't even say the word honey, so I assume it's zero. So Nestle Company has put together a group of chemicals through their lab that make this coffee creamer taste like honey. Does this bill address any of those violations where Honey Graham Cereal and honey oats and all these things may or may not have a honey product in them? [LB114]

SENATOR DUBAS: The amendment will...and, again, I don't think it would be a direct connection to that product, but it establishes...again, going back to what is pure honey and the fact that we have no definition for pure honey and we have no way to establish what supports a definition of pure honey. And that's the argument that the honey producers are making, that there is a lot of misleading advertisements, misleading use of the term "honey," and they have absolutely no recourse to recapture their industry and prove what is and what isn't. So maybe not in a direct fashion would this bill impact that particular product but indirectly it certainly would. [LB114]

SENATOR HANSEN: Okay. Thank you for that answer. I would certainly agree that the labeling laws, especially in honey, may need some tightening up especially on the producer level where once that honey is...anything is added to it and they sell it to another company as honey and it's definitely not honey it's just not right. A rose is a rose is a rose but honey is not necessarily. Thank you. Thank you, Mr. President. [LB114]

PRESIDENT SHEEHY: Thank you, Senator Hansen. Senator Wightman, you're recognized. [LB114]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. If Senator Dubas would yield to a question or two, I would like to engage her in... [LB114]

PRESIDENT SHEEHY: Senator Dubas, would you yield to Senator Wightman? [LB114]

SENATOR DUBAS: Yes, I will. [LB114]

SENATOR WIGHTMAN: And I was talking to someone during Senator Hansen's questions that he proposed to you so you may have answered these during that period of time. But obviously everything isn't sold as pure honey. Some of that is honey products I assume and as long as it was properly labeled, would they still be able to sell a retailer all kinds of honey products? [LB114]

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SENATOR DUBAS: Yes, they would as long as those labels... [LB114]

SENATOR WIGHTMAN: Okay. [LB114]

SENATOR DUBAS: ...state what's in there. [LB114]

SENATOR WIGHTMAN: So mostly you're talking about accurate labeling as much as anything and if they're selling it as pure honey, then it's got to meet these standards. If they're selling it as a honey product, the honey portion of it probably has to meet these standards, is that correct? [LB114]

SENATOR DUBAS: Correct. Again, it's just creating that definition for what pure honey is and the standards to support that purity. [LB114]

SENATOR WIGHTMAN: And I agree with the change that the Ag Committee is proposing with regard to the penalties being for deceptive trade rather than trying to prove damages because I think a lot of times it would be almost impossible to prove the damages and not to run into more expense than they would hope to get. Now I'm assuming that the common law still applies and that if somebody is hurt financially, one honey producer by another one that is entering into these deceptive trade practices, that there still would be a common law remedy. Is that correct, that they could...? [LB114]

SENATOR DUBAS: But without the definition and the standards to support that definition, they would not be able to use that. [LB114]

SENATOR WIGHTMAN: Right, but they still even though you took the penalty section out and referred to the deceptive trade, they would be entitled if somebody that was wronged to bring an action for a financial loss. [LB114]

SENATOR DUBAS: Yes, they would. [LB114]

SENATOR WIGHTMAN: And the problem is that some of the time their damages may be so low that they really can't afford to go that route probably. [LB114]

SENATOR DUBAS: Exactly. [LB114]

SENATOR WIGHTMAN: Thank you. I do intend to support the bill and the amendment. I'll have to see the new amendment that you agreed to work upon. With that, thank you, Mr. President. [LB114]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Senator Schumacher, you're recognized. [LB114]

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SENATOR SCHUMACHER: Thank you, Mr. President. Would Senator Dubas yield to some more questions? [LB114]

PRESIDENT SHEEHY: Senator Dubas, would you yield to Senator Schumacher? [LB114]

SENATOR DUBAS: Yes, I will. [LB114]

SENATOR SCHUMACHER: Okay. Senator Dubas, is this intended to cover situations like honey-brew beer around Christmas, honey-oat cereal, honey-swirl ice cream or are we just talking something that is in a bottle called honey? [LB114]

SENATOR DUBAS: That kind of relates to the question that Senator Hansen asked. In an indirect fashion it may, but basically what we are talking about is honey in its original form, crafting a definition that says what pure honey is, and then the standard to support that definition. [LB114]

SENATOR SCHUMACHER: Okay. Then would it be okay under this bill for a... [LB114]

PRESIDENT SHEEHY: (Gavel) [LB114]

SENATOR SCHUMACHER: ...producer instate to blend or mix or adulterate the honey, label it as honey, but for sale out of state? [LB114]

SENATOR DUBAS: Currently we have no standards, and so if they wanted to do that and they wanted to label it as pure honey, do whatever they want to, because we have no standards in place there would be no successful challenge to that. [LB114]

SENATOR SCHUMACHER: But if this is passed, could a producer or a blender create such a product instate for...and label it as honey for shipment and use out of state? [LB114]

SENATOR DUBAS: They certainly could because there is no national standard. The push is for the states to adopt their own standards. So if you went into a state that didn't have an adopted standard, they would be able to do that. [LB114]

SENATOR SCHUMACHER: Then conversely if a manufacturer out of state did the labeling out of state and someone imported it into this state, would that be prohibited under this bill? [LB114]

SENATOR DUBAS: If an in-state honey producer wanted to take the burden of having that product tested and challenge it in court, they would be able to do that. [LB114]

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SENATOR SCHUMACHER: So that's what we're trying to address, basically the selling of the product instate rather than the labeling of the product instate. [LB114]

SENATOR DUBAS: Basically, we're just trying to establish that definition and the standard to support that definition so any producer in this state that felt there was something out there that was competing with them that wasn't what it's saying it was, if they wanted to take on the burden of testing and challenging it in court, they could do that. [LB114]

SENATOR SCHUMACHER: Thank you, Senator Dubas. [LB114]

PRESIDENT SHEEHY: Thank you, Senator Schumacher. Seeing no additional requests to speak, Senator Carlson, you're recognized to close on the Agriculture Committee amendment AM199. [LB114]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. This has been good discussion this morning in a cooperative sense and appreciate the willingness to wait for Senator Dubas' amendment, even if it comes on Select File. But it is clear that the current AM199 is important to the bill because it provides for an identity standard through the Department of Agriculture on honey and the correct path, I believe, for action to be taken by honey growers if they feel there's been a violation in how something is...honey is sold. So I would ask for your cooperation, your vote, on AM199. Thank you. [LB114]

PRESIDENT SHEEHY: Thank you, Senator Carlson. You have heard the closing. The question before the body is on the adoption of AM199 to LB114. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB114]

CLERK: 38 ayes, 0 nays on adoption of committee amendments. [LB114]

PRESIDENT SHEEHY: AM199 is adopted. We will now return to floor discussion on LB114. Seeing no requests to speak, Senator Dubas, you're recognized to close on LB114. [LB114]

SENATOR DUBAS: Thank you very much, Mr. President. I'll be very brief. I appreciate the discussion we had this morning. We have the amendment in work right now. As soon as we have that, I will be distributing that to the people who have shown specific interest in this bill. I'll also get that revised Codex out to people. Appreciate your support and your willingness to let me continue to work on this bill. Thank you. [LB114]

PRESIDENT SHEEHY: Thank you, Senator Dubas. You have heard the closing. The question before the body is on the advancement of LB114. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB114]

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CLERK: 36 ayes, 0 nays, Mr. President, on the advancement of LB114. [LB114]

PRESIDENT SHEEHY: LB114 advances. We will now proceed to LB243. [LB114 LB243]

CLERK: LB243, a bill by Senator Carlson. (Read title.) Introduced on January 11 of this year, referred to the Natural Resources Committee, the bill was advanced to General File. At this time, I have no amendments to the bill, Mr. President. [LB243]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Carlson, you're recognized to open on LB243. [LB243]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. LB243 adds one ex officio nonvoting member from the Legislature to the Republican River Basin Water Sustainability Task Force. The task force was formed by this body last year as LB1057, and at that time the intent was to include any senator who had a portion of his district in the Republican Basin. Senator Hansen has participated in meetings to date based on that premise. However, it was brought to my attention that a portion of District 37, represented by Senator Hadley, would also qualify to be a nonvoting member. This bill would expand that membership from four to five members to include Senator Hadley. I think that's the appropriate thing to do. The task force has met four times. It has a two-year sunset provision, so half of the meetings have already taken place and it's important that we act upon this with the emergency clause so that Senator Hadley can officially be a part of the remainder of our meetings. We've made good progress thus far. I think the task force is fulfilling its purpose, and we want to continue the work and include Senator Hadley. I would appreciate your support of LB243. Thank you, Mr. President. [LB243]

PRESIDENT SHEEHY: Thank you, Senator Carlson. You've heard the opening to LB243. Are there members requesting to speak? Seeing none, Senator Carlson, you're recognized to close. Senator Carlson waives closing. The question before the body is on the advancement of LB243. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB243]

CLERK: 36 ayes, 0 nays, Mr. President, on the advancement of LB243. [LB243]

PRESIDENT SHEEHY: LB243 advances. We will now proceed to LB62. [LB243 LB62]

CLERK: LB62 is a bill originally introduced by Senator Heidemann. (Read title.) Introduced on January 6, referred to the Government, Military and Veterans Affairs Committee, advanced to General File. There are Government Committee amendments pending, Mr. President. (AM245, Legislative Journal page 456.) [LB62]

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PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Heidemann, you are recognized to open on LB62. [LB62]

SENATOR HEIDEMANN: Thank you, Mr. President, fellow members of the body. Under LB62, a county board could not eliminate an office or unduly hinder a county officer through budget revisions. However, LB62 places the responsibility on an office or department that is negatively affected by a budget revision to prove that the revision is arbitrary, unreasonable, or capricious. The county board would consider all budget revisions when determining the priorities of county government. As I understand in the past, the burden was on the official of the department to show that a budget cut was unreasonable. The Wetovick v. County of Nance case changed this placing the burden instead on the county board of commissioners to show that the salary set by an official is unreasonable. LB62 would revert to the way it has been in the past prior to the 2010 court case. The statutes state that the county boards are to set the budgets. Section 23-1114 states that the county board shall set the salaries of all elected officers and all deputies in the offices of elected officers. This can be appealed to the district court. The statutes haven't changed, and I want to stress that, the statutes haven't changed--just the case law has. And I do believe that we want to avoid having district judges setting the county budgets across the state. I put myself in a county commissioner's place. As Chair of Appropriations Committee, if our committee had to rationalize why it made every budget cut, it would place a severe burden on the process. If agencies could dictate their budgets and the Legislature had limited control, it would make the process very difficult. The counties are experiencing the same difficulties that we are facing in that they have to make budget cuts. We have just given initial approval of LB383 which cuts state aid to counties. Not only must a county board look at each individual office or department, they must also look at the overall budget and make sure it balances with the revenue available. This bill would allow county boards to have control that they need and have previously held over the budget process. Therefore, under LB62 the burden is placed on the person making the charge, which is how it used to be prior to the recent court case. LB62 was advanced from the Government, Military and Veterans Affairs Committee on an 8 to 0 vote. I urge your adoption of the committee amendments and the advancement of this bill. If there are questions, I would try to help you understand more and try to answer those questions. [LB62 LB383]

PRESIDENT SHEEHY: Thank you, Senator Heidemann. You have heard the opening to LB62. As was stated, there is a Government, Military and Veterans Affairs Committee amendment. Senator Avery, you're recognized to open on AM245. [LB62]

SENATOR AVERY: Thank you, Mr. President. AM245 is an amendment that provides that the county board will consider all budget revisions of every county office or department. This change was made to ensure all county offices and departments are given consideration by the county board during the budget process. The amendment

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also removes language stating that the board's decisions would not be overturned unless there was evidence that the action of the board was not in the best interest of the county. The committee felt this language was not necessary and perhaps was in conflict with other provisions of the bill so it was eliminated. With the committee amendment, the bill provides clear language that the burden of proving that a county board's budget decision is unreasonable is on the office or the department being impacted. The burden is not on the county board. With that, I would urge adoption of AM245. [LB62]

PRESIDENT SHEEHY: Thank you, Senator Avery. You've heard the opening to AM245 from the Government, Military and Veterans Affairs Committee. Are there members requesting to speak? Senator Lathrop, you're recognized. [LB62]

SENATOR LATHROP: Thank you, Mr. President, and good morning, colleagues. I'm standing up on this. I, like some of you, you probably get to the floor, you're reading bills, and then you go, oh boy, there's something in this one that doesn't look right to me, which is kind of what happened to me this morning on LB62. And I've had some conversations with Senator Heidemann, I'm not trying to jump in front of this one unnecessarily. I do have a concern, though, if we have district court judges taking appeals from political decisions of the county board. And traditionally, well, not traditionally, the courts don't have any place making judgments about appropriations made by the county boards in my judgment. Even if we set a standard of arbitrary and capricious, that's the county board's prerogative to make those decisions. So here's the question I have. And I'm standing maybe so you understand that I have a concern, and then I'm going to look at the case Senator Heidemann referred to. But if you have a county board in Platte County, for example, and they've raised the salary of the county attorney and dropped the salary of the assessor, just for whatever reason. Maybe the people are in the wrong political parties, whatever it is. What's the standard going to be for the district court if they're reviewing that decision? And does the district court, a different branch of government, have any business trying to review the decisions that are purely political? And I mean that in a policy sense, not in an R and a D sense, and I believe the answer to that is no. That the district court doesn't have any business unless there is a dispute between the parties or somebody is challenging the constitutionality of the action of a governing body, it's not the role of the courts to jump in and review political decisions and try to decide what's the right decision. Should the county attorney gotten no raise and the assessor should have gotten the raise? That's not something the courts are equipped to do without an actual controversy. And just making them sort of an advisory or a...and frankly, here's the problem and why it's difficult. Other than being completely, in my judgment, inappropriate, here's the question: We don't elect the judges, right? They're appointed by the Governor and they stand for retention every four years. So now they're going to make a decision? Let's say the county board in Platte County has a real tough decision to make. It's very politically unpopular and they decide it the wrong way. Now we're going to, in the budgeting process, now we're going to turn it over to the courts to try to clean up the mess the county board didn't have the political

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will to do? I think the county board is accountable to the voters and their decision, absent a controversy between two parties, putting it in front of the district court to review to determine whether it was arbitrary without a standard--there's no standard in this for the district court to be guided by--is not appropriate. I will, as I promised Senator Heidemann, I will look at this. I'm not trying to derail it. If you folks want to move this on to Select File, I'll do a little bit of research, may even ask the Attorney General to take a look at this to see if this is the province of the district court to be deciding whether or not the county board acted arbitrarily in the budgeting process. Thank you. [LB62]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Campbell, you're recognized. [LB62]

SENATOR CAMPBELL: Thank you, Mr. President, and good morning, colleagues. I took a particular interest as I was looking at this bill, having thought there were many times I wished we would have had this language. I do have a question for Senator Avery. [LB62]

PRESIDENT SHEEHY: Senator Avery, would you yield to Senator Campbell? [LB62]

SENATOR AVERY: I will. [LB62]

SENATOR CAMPBELL: Senator Avery, my recollection fades as it goes through the years, but my recollection was that any separate elected official in the county who disagreed with a decision of the county board in the funding of their office, their remedy was the district court. Is that correct? [LB62]

SENATOR AVERY: I think you're right. There is case law that suggests you are. [LB62]

SENATOR CAMPBELL: And I have to tell you why I asked that question, Senator Avery. I remember serving on the board that the board decided to eliminate by a budget decision one of the chief deputies in the assessor's office. And that action was taken to district court, which I believe was the only remedy open to the assessor at that point to call into question the board's action. I will do some research along with Senator Lathrop, but I think that has been the only remedy. I would also like to say to my colleagues that one of the most important things that the county board looks at is the budget. And on a separate elected official, let's say when the county assessor comes in for that budget, the county board sets that budget. And once that budget is set, then the county assessor can determine within that budget how they're going to spend the money. Now if they don't spend the money the way they had promised the board, I can assure you the next year the county board will begin to ask some questions. But this clarifies, in my view, what should be in place for the county boards as they look at those other budgets, particularly in very difficult times. To show that the board's decision on a particular budget of a separate elected official in the county, that county official should have to

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step forward and have the burden of proof to show that that decision was not correct. And it should not be placed on the county board. I'll take a look at what the statutes say on the district court, but...along with Senator Lathrop. Thank you, Mr. President. [LB62]

PRESIDENT SHEEHY: Thank you, Senator Campbell. Senator Conrad, you're recognized. [LB62]

SENATOR CONRAD: Thank you, Mr. President. Good morning, colleagues. I was wondering if Senator Avery would yield to a few questions. [LB62]

PRESIDENT SHEEHY: Senator Avery, would you yield to Senator Conrad? [LB62]

SENATOR AVERY: Yes, I will. [LB62]

SENATOR CONRAD: Good morning, Senator Avery. Thank you. In having a brief opportunity to review the legislation and the pending committee amendment, I had a question related to the standard of proof utilized. It seems to me that it requires a clear and convincing standard which is, as you know, a bit higher than the traditional preponderance standard utilized in civil proceedings. Can you maybe illuminate for the body the thinking from the committee about why that's the appropriate standard of review? [LB62]

SENATOR AVERY: I believe that standard is already there. What we're doing is instead of having the burden of proof rest with the county board it would be with the agency or department impacted. I don't think we're changing the standard. [LB62]

SENATOR CONRAD: Okay. So it was chosen because it's reflective of current provisions. [LB62]

SENATOR AVERY: Right. [LB62]

SENATOR CONRAD: Okay. Thank you, Senator Avery. Senator Avery, can you also tell me if your committee had a discussion about some of the issues Senator Lathrop briefly mentioned in regards to separation of powers, political questions, and other jurisdictional and standing issues that are contemplated in this legislation? [LB62]

SENATOR AVERY: Well, we...in Exec Session we talked about this somewhat, but the established practice is that you go to the courts. And there apparently are even some ongoing cases now...NACO informed us just a few minutes ago that this is standard practice. What we are trying to do here is instead of having the board responsible for proving the case, the impacted agency has to prove or at least have clear and convincing evidence that what the county board is doing is wrong. [LB62]

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SENATOR CONRAD: Okay. Thank you, Senator Avery. Colleagues, just for the record and as we continue to look at this legislation before it moves forward, I do want to just clarify a couple of things that I think we should keep in mind as we move forward. If you look in a standard law dictionary, I'm looking at Black's right now, what exactly is a political question? And Senator Lathrop mentioned this earlier, and it's not about partisan politics or politics in the traditional sense of the word. But when it comes to a legal context and judicial review, a political question is defined as a question that a court will not consider because it involves the exercise of discretionary power by an executive or legislative branch of government. Thus, it is termed a nonjusticiable question. So these are some of the concepts at play underlying this legislation that I think that we need to think about. In addition, there are, I believe, some potential issues or concerns related to the separation of powers, which is critical to our democratic system, whether it be at the federal, state, or local level. And we have to tread very lightly to ensure that appropriate checks and balances and appropriate separation of powers are indeed protected and afforded the opportunity to move forward as intended. I'm going to take a moment to view this legislation a little bit more clearly and carefully, but look forward to continued dialogue so that we can seek some resolution on this issue. Thank you. [LB62]

PRESIDENT SHEEHY: Thank you, Senator Conrad. Senator Wightman, you're recognized. [LB62]

SENATOR WIGHTMAN: Thank you, Mr. President, colleagues. I know here we're talking about both burden of proof and standard of proof. And to those who aren't attorneys, these terms may be almost identical, but to attorneys they're not. The burden of proof is which of the two parties has to go forward with the proof and prove by whatever the standard is the fact that's to be proven. The standard of proof determines how much that proof...exactly what standard the burden of proof must fit. And the standard of proof as we're talking about here in the language that seems to be changed the most with the arbitrary, unreasonable, or capricious. With that in mind, I guess I would like to ask a few questions of Senator Lathrop if he would yield. [LB62]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to Senator Wightman? [LB62]

SENATOR LATHROP: Yes, I will. [LB62]

SENATOR WIGHTMAN: Senator Lathrop, as I read the bill, I'm not exactly sure who had the burden of proof before, but I don't know that the standard was even identified under the previous law. Is that correct? [LB62]

SENATOR LATHROP: I think that's probably true. I have been, since I read this, which was only a few moments ago, been trying to find the statutory language that allows for a review of a county board budgeting matter by a district court. We may be dealing with a

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burden of proof issue in this one. It looks like it's part of a bigger statutory scheme, and I'm looking for the law that even allows the district court to involve itself in review of a political decision or a policy decision by the county board. [LB62]

SENATOR WIGHTMAN: And, Senator Lathrop, I'm certainly not aware of what statutory authority there is at the present time. I only know that in looking at the explanation of the amendment it says the amendment removes language stating that the board's decisions would not be overturned unless there was evidence that the action of the board was not in the best interest of the county. I don't know if that quite registers in my meter of standard of proof or...probably defines the burden of proof but probably doesn't define the standard. Is that correct? [LB62]

SENATOR LATHROP: Well, that's part of my concern, too, and that is assuming this is a lawful process, and I'm not ready to concede that right now, but if it's a lawful process, what standard is the district court supposed to use? And if the standard is not in the best interest of the county, that becomes pretty subjective and we make the district court a super county board. [LB62]

SENATOR WIGHTMAN: Okay. Probably a little more of a standard when you include the words "arbitrary, unreasonable, and capricious" than we had before, what's the best interest of the county. Would you agree with that? [LB62]

SENATOR LATHROP: I would agree with that. And I think trying to come down on a standard illustrates the difficulty with having the judiciary review a policy decision by an elected board. [LB62]

SENATOR WIGHTMAN: Okay. I would probably agree with that, although at the same time it seems to me the district court might like to have the standard set out more clearly in what they can consider. [LB62]

SENATOR LATHROP: I haven't talked to any district court judges, but I bet they'd like to not have this job. Think about all the decisions that...I just...just as a matter of things that you and I studied in law school and read in cases, courts are reluctant to second-guess policy decisions. Their job is to decide constitutionality of statutes, and that happens when there's an actual controversy between two parties, and not sit in an advisory capacity. So that's... [LB62]

PRESIDENT SHEEHY: One minute. [LB62]

SENATOR LATHROP: ...there's a number of problems with this approach, I believe. [LB62]

SENATOR WIGHTMAN: Thank you, Senator Lathrop. I guess you're saying that the

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district judges would probably prefer, assuming it is the district judges, and I assume it is, not have that job. I assume in saying that you mean the job at all, but that doesn't necessarily mean they wouldn't have preference for some standards that were set forth in some statutory language. [LB62]

SENATOR LATHROP: If we are going to give them the job and we can do that lawfully, then they need clear standards so that they can make a judgment, and we're not just replacing one judge's judgment for the collective judgment of an elected board. [LB62]

SENATOR WIGHTMAN: And I would agree with that. Thank you, Senator Lathrop. Thank you, Mr. President. [LB62]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Members requesting to speak on AM245: we have Senator Campbell, followed by Senator Conrad. Senator Campbell, you're recognized. [LB62]

SENATOR CAMPBELL: Thank you, Mr. President. At the request of Senator Heidemann, I'm going to make my position very clear here because he wasn't sure I was very clear and that is I do support AM245 and I do support the underlying bill. And I do agree with Senator Lathrop that we might need to step back between General File and Select and make sure that this is...the language here is in tune with what...the other language in the statutes. But I want to try to give an illustration that right now, for instance, if the sheriff, who is a separate elected official, walks into the county board and says, this is my budget, this is what I need to do to carry out the duties I have been assigned in the statute, and the county board says, we're having difficulty with our budget and we would like to make some cuts, the sheriff may persist and say, but in the line of duty these are the items and the monetary value that I need to carry out the duties assigned to me. Now I believe that somewhere in statute that has been the line of the duties outlined. What this is trying to do is to clarify that the county board does have reason to cut that budget and to set for the best of the county what should be the overall budget. And so, therefore, I support the amendment and I support LB62. Thank you, colleagues. [LB62]

PRESIDENT SHEEHY: Thank you, Senator Campbell. Senator Conrad, you're recognized. [LB62]

SENATOR CONRAD: Thank you, Mr. President. Colleagues, I was trying to get this information off mike, but my light came up quickly so I hope maybe Senator Campbell wouldn't mind if I asked her a question and could draw upon her experience and expertise from her service on the county board. [LB62]

PRESIDENT SHEEHY: Senator Campbell, would you yield to Senator Conrad? [LB62]

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SENATOR CAMPBELL: Yes, I would. [LB62]

SENATOR CONRAD: Thank you, Senator Campbell. And to be very clear here, this is an area where I don't have a lot of expertise, never having served in local government before coming here. And so I apologize if these questions are very naive and rudimentary. But say, for example, in Lancaster County where you served, the county board sets the budget for the clerk of the district court. Is that right? [LB62]

SENATOR CAMPBELL: That's correct. [LB62]

SENATOR CONRAD: And also for the county attorney, is that right? [LB62]

SENATOR CAMPBELL: Yes. [LB62]

SENATOR CONRAD: Does it set the budget for any other aspects of the judicial system that you can think of? Of course, law enforcement, the county sheriff, is that right? [LB62]

SENATOR CAMPBELL: Well, the district judges and the county judges would come before the county board with their budgets. [LB62]

SENATOR CONRAD: Okay. That's one thing that I was trying to figure out before my light came up is do you think it would cause a potential conflict if the county or district judges or the clerk of the district court disagreed with the county commissioners' decision and then had to challenge it to the court? I'm thinking it sets up a potential very difficult strange situation. I don't know if that's ever happened yet or not, but just trying to anticipate any potential conflicts that may arise. [LB62]

SENATOR CAMPBELL: Senator Conrad, I was just in the process of telling Senator Lathrop an example, but I don't want to take your whole time. [LB62]

SENATOR CONRAD: No, please do. I think it's informative and it gets to the heart of the very questions that I'm trying to get a better understanding of. [LB62]

SENATOR CAMPBELL: When I was on the county board, and I'm going to reiterate the example because I think some people may have missed it, we were reviewing the budget of the county assessor. We cut one of the chief deputies in that budget. The county assessor took the board to district court. And the question was the fact that the assessor claimed that he had put forward his budget to carry out the duties as required by statute. And that the county board failed to give him the money, i.e., for the salary of that chief deputy to carry out the duties of the office. And I know that there are other court cases out there that involve a separate elected official taking the county board to court because they have not allocated the money. But, Senator Conrad, I don't have

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those statute numbers, and that's where I said I'd work with Senator Lathrop to try to determine what our parameters are. [LB62]

SENATOR CONRAD: Thank you. Thank you, Senator Campbell. I think that's tremendously helpful, and I appreciate you sharing your experience and expertise with us on this and so many other issues. I guess, colleagues, then the last few points I want to make quickly...can you tell me how much time I have left, Mr. President. [LB62]

PRESIDENT SHEEHY: One minute, fifteen seconds. [LB62]

SENATOR CONRAD: One minute, fifteen seconds, I'll try and get them both in quickly. From an appropriations perspective, I'm thinking about how awkward this would be if a similar system existed on the state level in terms of when we set a budget and... [LB62]

PRESIDENT SHEEHY: One minute. [LB62]

SENATOR CONRAD: ...ask various state agencies to then meet their statutory obligations within those parameters and how odd it would be if they then could, I guess, sue the Legislature for what they would consider a lack of appropriate funding to do so. So obviously we have some different issues with our local areas of government that we can think about. But the other parallel that draws to mind when considering this question is in relation to school finance litigation that we've had in Nebraska in recent years and historically where the court has consistently said what the Legislature sets and determines as an appropriate level of state aid is what is defined to meet our constitutional obligation of providing a quality education. And they don't delve into the funding question because it is indeed a political question. So I'm just trying to grapple with... [LB62]

PRESIDENT SHEEHY: Time, Senator. [LB62]

SENATOR CONRAD: ...some of those questions. Thank you, Mr. President. [LB62]

PRESIDENT SHEEHY: Thank you, Senator Conrad. Members requesting to speak on AM245: Senator Lathrop, followed by Senator Schumacher. Senator Lathrop. [LB62]

SENATOR LATHROP: Thank you, Mr. President, colleagues. I'm learning a little bit more about this, and I'm reading the bill. And even with the amendment, it essentially provides that there is a review of the county board decision and that upon review the person who's complaining, which would be like the assessor or the county attorney or maybe the public defender. Let's say they try to defund the public defender's office. They have the burden to prove by clear and convincing evidence. The fact that the statute says that you have the burden of proof and that you have a review implies that the review is happening in the district court, and apparently that's been the process. My

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position would be that the courts are not equipped to substitute their judgment for the judgment of a political body, like a county board. It would be the equivalent...it would be the equivalent of giving an agency or someone who otherwise got money from the state of Nebraska...let's say the city of Omaha. It would be the equivalent of giving the city of Omaha authority to go to the district court to review the decision we made last week to stop the funding of the aid to the cities. Well, that's a decision we made...I may not agree with it, but that's a decision we make in a political process. And the courts are not set up, and contrary to maybe some of the rhetoric you hear, the courts are not set up to act like a review tribunal of the reasonableness of political decisions. That's not what they do. They decide controversies between two people. And so the standard, I think, as we look at this and kind of in response to what Senator Wightman said, if we're looking for a standard, that standard should be constitutionality. That should be the only control the judicial branch of government has over the legislative branch is to determine whether or not what we do here is constitutional or what they do in the county board is constitutional. Beyond that, they're not equipped to make judgments about the reasonableness of decisions made by an elected body like a county board. And I hope I'm clear about that. Now so my view is I would give no appeal process to someone if the only thing they have to argue about is the reasonableness of a decision made by a different branch of government. It's not good policy. It's not a good process in my opinion. Now here we are. I jumped on this thing about 20 minutes ago. And there is probably a case here I should read and I think we're running out of lights so we've got a decision to make. If you choose to move this on to Select File, I'm not going to stand up here and try to filibuster this because I need to learn more about it. But I will sit down with Senator Heidemann and maybe sit down with some of the county officials and the Attorney General's Office because this seems pretty plain to me, and think about it as protecting our branch of government. We're the legislative branch, and if we're going to legislate and set a budget and make that decision, we do not want the district court interpreting or making judgments about our judgment. They have every right to make a decision about the constitutionality of what a legislative branch of government does, but not to question the reasonableness of their decision. So if you want to move this, I don't have a quarrel with that, only because I'll work with Senator Heidemann and get my questions answered, although I think they have been, and then we'll be back on it on Select. Thanks. [LB62]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Members requesting to speak on AM245: Senator Schumacher, followed by Senator Pirsch and Senator Wallman. Senator Schumacher. [LB62]

SENATOR SCHUMACHER: Thank you, Mr. President. What apparently caused this issue to come up was a case where the Nance County Attorney sued the county board because the county board told him no on the hiring of a person for his office. It went to the Supreme Court. Everyone thought, as I would have thought, that the county board's word is what was controlling and because the county board controls the county budget

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so the court had no business in the middle of it. And that's what the district court apparently thought too. But the Supreme Court made a decision that created this issue. It said: We conclude that disputes over a county officer's employment decisions are controlled by 23-1111, not a county board's general budgeting authority under 23-908. In disputes under 23-1111, a county board cannot disapprove an officer's employment determination unless it proves...if the county board proves by a preponderance of the evidence that the officer's decision was arbitrary, capricious, or unreasonable. We conclude that the court properly found that the county attorney reasonably needed a full-time secretary. Because the board failed to prove his decision was unreasonable, it lacked the authority to disapprove the request for the secretary. And because the court had authority to order relief within the scope of its declaratory judgment, it could approve the...order the board to approve the county attorney's budget. So what the court really did is turn this thing on its head and put the burden on the county board to tell the district judge, who has authority to arbitrate those disputes apparently, that it was a county board's burden. This is an effort to switch that back to the way everybody thought it was and make the county official who is complaining about the situation carry the ball in the court. The court is in the middle of this regardless. The Supreme Court put the courts there. There's no way around that. It's just who's got to carry the ball when it gets to court. And this sizes everyone, or I shouldn't say everyone, but most people thought it was that the county board has got the upper hand. The complainer has got to prove that they're out of line. Thank you, Mr. President. [LB62]

PRESIDENT SHEEHY: Thank you, Senator Schumacher. Senator Pirsch, you're recognized. [LB62]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I wonder if...I'm looking here for members of the committee...I wonder if Senator Heidemann, who is the proponent of the bill, would answer a question or two. [LB62]

PRESIDENT SHEEHY: Senator Heidemann, would you yield to Senator Pirsch? [LB62]

SENATOR HEIDEMANN: Yes. [LB62]

SENATOR PIRSCH: Thank you, Senator Heidemann. I guess my line of inquiry deals with what we have is county boards which are making budgetary decisions, and then there are the elected officials within a county, county attorney, etcetera. And they have their duties which are spelled out as well. And the question deals with, what's an appropriate amount of budget or funding for each of these elected county officials? And so to that end, if I'm not mistaken, the way the law...could you just briefly explain the way the law functions right now with determining how much is reasonable? [LB62]

SENATOR HEIDEMANN: I would have to think...I'm not a lawyer nor a judge, but I mean if this was taken to a court of law, I think that the court would be able to tell if,

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number one, if it was being cut for political reasons, if you actually are going to get less money than you was the year before. The other side of this if they want to actually hire somebody, I would have to think the court would then look at the workload and the burden on that county official to see if the county board was not willing to fund that. And then you'd have to think on the other side, does the county board have the revenue sources to actually fund it if there is a need there? Sometimes we look at wants and needs as we do in the Legislature. [LB62]

SENATOR PIRSCH: Thank you for that. I have a second question. Is there a way that you can distinguish between political and nonpolitical reasons? Is it...are these type of expenditures ever capable of being put into two different categories? I guess I'd pose that as a question. [LB62]

SENATOR HEIDEMANN: I would hope that the court would be able to distinguish that. I mean I would think that if you have county commissioners, the county board that weren't getting along with the county official and the court would be able to determine and decide that, yes, they were actually after that county official because they didn't like them for political reasons or for other reasons. [LB62]

SENATOR PIRSCH: I see. And I believe you're right. There is, I guess, a balance to the extent that you don't want some sort of a vendetta which, I mean the hope is that a county board would not take after an elected official via the budgetary powers shackling the official. But at the end of the day, is there any scientific way that you can reach a balance scientifically where you know that there...that it is, you know, not done in goodfaith? Isn't that always going to be arguable and gray? [LB62]

SENATOR HEIDEMANN: I don't believe that you can budget scientifically. That's just as Chairman of the Appropriations Committee. I mean you come in and everybody makes their case and everybody pleads that they need this or they need that. But in the end it's a policy decision. [LB62]

SENATOR PIRSCH: And you take a hypothetical, wouldn't the...I mean you would hope that the more personnel that are added the better overall effect that that elected official's office could do... [LB62]

PRESIDENT SHEEHY: One minute. [LB62]

SENATOR PIRSCH: ...for individuals. But I'm just not convinced that there is some sort of line that you can draw and say it is this balance that we all agree on of you only need one chief deputy or no chief deputy or two deputies to effectively serve the public. And so I worry about meddling into local decision making and so on that basis I still have these concerns. Thank you for answering my questions, Senator Heidemann. Thank you. [LB62]

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PRESIDENT SHEEHY: Thank you, Senator Pirsch. Seeing no additional requests to speak, Senator Avery, you're recognized to close on AM245. [LB62]

SENATOR AVERY: Thank you, Mr. President. AM245 does essentially two things. It establishes a standard of proof and it also assigns the burden of proof on not the county board, which is current practice, but on the department or agency being affected by a decision of the board. I think Senator Schumacher did a good job of explaining the Supreme Court case involving Wetovick v. Nance County. That, for the committee at least, established that the courts have a...have been the place where these cases have been decided. And that that was not something that we were trying to change in this amendment nor in the bill. Senator Campbell, with direct experience on the Lancaster County Board, understands this probably better than most of us, but this amendment does that, does clarify who is responsible for providing the proof and what the standard is. And I urge that you adopt AM245. Thank you. [LB62]

PRESIDENT SHEEHY: Thank you, Senator Avery. You have heard the closing. The question before the body is on the adoption of AM245 to LB62. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB62]

CLERK: 30 ayes, 3 nays, Mr. President, on adoption of committee amendments. [LB62]

PRESIDENT SHEEHY: AM245 is adopted. We will now return to floor discussion on LB62. Seeing no requests to speak, Senator Heidemann, you're recognized to close. [LB62]

SENATOR HEIDEMANN: Thank you, Mr. President and fellow members of the body. I think we've had a good discussion on LB62. I appreciate everybody's concern or Senator Lathrop's concerns especially, and I'm willing to sit down with Senator Lathrop, Senator Conrad, and others who have those concerns and see if we can get everybody at ease. Sometimes as I listen to Senator Lathrop make his point, sometimes I believe we're actually on the same page. We just need to understand that. So hopefully I would like to see everybody vote green on LB62 at the present time. If there are concerns after they look into this and have time to understand what we're trying to do with LB62 and get some different opinions here, we can come back on Select File and do some more work on it. But at this time, I do appreciate the conversation, especially Senator Campbell and Senator Schumacher for clarifying some things. And I urge your vote to advance LB62. [LB62]

PRESIDENT SHEEHY: Thank you, Senator Heidemann. You have heard the closing. The question before the body is the advancement of LB62. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB62]

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CLERK: 32 ayes, 0 nays, Mr. President, on the advancement of LB62. [LB62]

PRESIDENT SHEEHY: LB62 advances. Mr. Clerk, you have items for the record. [LB62]

CLERK: I do, Mr. President. Revenue Committee, chaired by Senator Cornett, reports LB165 to General File with amendments. Hearing notices from Judiciary, those signed by Senator Ashford. Senator Larson offers LR74, LR75; both those will be laid over. That's all that I had, Mr. President. (Legislative Journal pages 528-531.) [LB165 LR74 LR75]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We will now proceed to LB36. [LB36]

CLERK: LB36, a bill by Senator Harms. (Read title.) Introduced on January 6, referred to Health and Human Services. The bill was advanced to General File. I have no amendments at this time, Mr. President. [LB36]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Harms, you're recognized to open on LB36. [LB36]

SENATOR HARMS: Thank you, Mr. President and colleagues. This bill would extend the rights we gave communities three years ago as to whether or not to fluoridate their water. Currently in the statute 71-3305 provides that any city or village with a population of 1,000 or more must add fluoride to their water unless there is enough naturally occurring fluoride to meet the regulations set by the Department of Health and Human Services. These cities and villages were given by law two years in which to vote on whether to adopt an ordinance which would prohibit the addition of fluoride to the water supply of that city or village. This voting period expired June of 2010. My concern here is for the right of the citizens who live in cities or villages which will reach the population of 1,000 after June 1, 2010. These citizens should have and deserve to have the same privilege or opportunity to decide whether to add fluoride to their water supply. So what LB36 simply allows any city which reaches a population of 1,000 to put this issue on the ballot and be voted upon at the next statewide general election after the population of the city or village reaches 1,000 or more. I would ask you to support LB36. I'd be happy to answer any questions and thank you, Mr. President. [LB36]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: Thank you, Senator Harms. We now move to debate. Other senators wishing to be heard on this bill? Seeing none, Senator Harms, you are recognized to close. [LB36]

SENATOR HARMS: Thank you, Mr. President. I'll waive. [LB36]

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SENATOR GLOOR: Senator Harms waives. The question is, shall LB36 move...advance to E&R Initial? All in favor signify by voting yea; all opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB36]

CLERK: 33 ayes, 3 nays on the advancement of LB36. [LB36]

SENATOR GLOOR: LB36 advances. Mr. Clerk. [LB36]

CLERK: LB225 is a bill by Senator Campbell. (Read title.) Introduced on January 10 of this year, referred to Health and Human Services. The bill was advanced to General File. I have no amendments at this time, Mr. President. [LB225]

SENATOR GLOOR: Senator Campbell, you are recognized to open on LB225. [LB225]

SENATOR CAMPBELL: Thank you, Mr. President and members of the body. Speaker Flood brought this issue to our attention last interim after he heard from a constituent about how the statute as currently written had affected an international student's pursuit of a nursing degree. She is from Russia. While here on a work visa, she had received a Nebraska credential a few years earlier. Subsequently, she decided to pursue an advanced nursing degree. She was legally present in the United States. However, her status had changed and she was now here on a student visa. Part of her educational program required her to renew her credential. To her dismay, she couldn't do that because she was told the statutes do not allow the Department of Health and Human Services to issue credentials to persons holding student visas. Because she couldn't be credentialed in Nebraska, she couldn't complete her studies in Nebraska. She moved to Iowa and finished her education and became credentialed there. LB225 would allow the department to issue credentials under the Uniform Credentialing Act to persons who hold student visas by providing that a person "lawfully present in the United States who is eligible for credential under the Uniform Credentialing Act may be issued that credential." What we are trying to do in LB225 is to correct a mistake when the Credentialing Act was put together. Initially, we all thought that you could be credentialed if you were here on a work visa, which is exactly what happened to this young woman. Unfortunately, when the act was put together and the statutes in place, it did not allow for someone on a student visa to be credentialed. Colleagues, we want international students to come to the United States and to study and to be a part of our educational system. You will see a number, if you look at the committee statement, a number of our higher institutions of learning that certainly support clarifying this omission in the original act. And with that, I would ask your support of LB225. [LB225]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Thank you, Senator Campbell. You have heard the opening to

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LB225. Members requesting to speak are Senator Flood, followed by Senator Gloor. Senator Flood, you're recognized. (Gavel) [LB225]

SPEAKER FLOOD: Thank you, Mr. President. Good morning. I want to thank Senator Campbell and Senator Gloor in their area of expertise. I was contacted by a gentleman from Madison, Nebraska, who shared this story and Senator Campbell is right, our educational system benefits from the diversity of students from other parts of the world. This is unfortunate that it occurred in this situation. I also want to compliment the folks at Regulation and Licensure over at Health and Human Services. If they could have done this they would have, but the statute prevented it, and I think this is an unforeseen consequence of the statute as it was earlier adopted. And I just appreciate these two senators taking an interest and putting together the bill and advancing it to the floor. It is very appreciated. And on behalf of a very grateful gentleman in Madison who this will no longer affect the person that he contacted me about, I can tell you he very much appreciates the follow-through. And so thank you to these two senators. Thank you, Mr. President. [LB225]

PRESIDENT SHEEHY: Thank you, Senator Flood. Senator Gloor, you're recognized. [LB225]

SENATOR GLOOR: Thank you, Mr. President. Good morning, members. I also rise in support of LB225. I don't know that this bill is going to have any bumps or hiccups, but I did have a concern when first approached about this bill actually that we might be, as a result of it, making it more difficult for Nebraska nurses to get into some advanced-practice programs as a result of slots now filling up with people who probably have no interest in practicing in this state, and, in fact, spent some time and was in fact appropriately given quite a bit of information that has me very comfortable that, if anything, the ability to bring more nurses in from outside of the state or those who are in the state studying, now wish to move forward in advanced-practice nursing, helps cover some of the direct cost associated with the program. And so this actually has a benefit to Nebraska nurses who are continuing their education by making sure that we never have low numbers of students in some of the classes and I think is an important bill to have for the long-term benefit of advanced-practice nursing in this state. Thank you, Mr. President. [LB225]

PRESIDENT SHEEHY: Thank you, Senator Gloor. Seeing no additional requests to speak, Senator Campbell, you're recognized to close on LB225. Senator Campbell waives closing. The question before the body is on the advancement of LB225. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB225]

CLERK: 38 ayes, 0 nays, Mr. President, on the advancement of LB225. [LB225]

PRESIDENT SHEEHY: LB225 advances. We'll now proceed to LB274. [LB225 LB274]

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CLERK: LB274 is a bill by Senator Gloor. (Read title.) Introduced on January 11 of this year, referred to the Health and Human Services Committee, advanced to General File. I have no amendments to the bill at this time, Mr. President. [LB274]

PRESIDENT SHEEHY: Senator Gloor, you're recognized to open on LB274. [LB274]

SENATOR GLOOR: Thank you, Mr. President. I'm going to ask everyone here who has an interest in this bill to think about those medicine cabinets you know of scattered in grandma and grandpa's house or perhaps your own that are chock-full of medications and you're trying to decide what to do with them. This has become a very popular issue across the United States and there are no laws or regulations that relate to this, either at our state or our national level, but it has become sort of the common best practice to take those drugs and, instead of throwing them in the trash where they end up in landfills, flush them down the toilet. The problem with this is that's also been determined to no longer be appropriate because they find their way into the environment, they find their way into our water system. And some of these medications, I'm telling you, don't ever go away. They are the equivalent of inert metals. They stay in the environment and find their way into the biosystem and can be problematic. Yet we continue to do this because we have no better way of disposing of these medications. The Pharmacy Practice Act, Section 71-2421, currently states that drugs may be returned to the dispensing pharmacy for immediate disposal by a pharmacist, so we have that option. The problem, though, is that the language of this bill has always been interpreted to mean that medications then must be flushed by the pharmacist and they must be taken back to the pharmacy that they were purchased at. This is a problem, especially because people move and especially because in this society people are sometimes just not interested or move around enough so that getting back to that originating pharmacy is problematic. By removing the words "dispensing pharmacy" and the word "immediate," LB274 will allow pharmacies in Nebraska to participate in a nationwide drug takeaway program. The drug takeaway program was established to provide a safe, environmentally friendly method of drug disposal. Through this program, pharmacies are able to purchase tamper-proof containers for disposal of unused and unwanted medications. Once the container is full, it's shipped to a medical incinerator, which is considered to be the appropriate method of disposal of these. I can speak to the efficiency and efficacy of medical incinerators. My organization used to have one. The EPA standards were so tight and strict, we decided to give it up, so that I know these medical incinerators do an excellent job of being a more appropriate way of getting rid of these medications. LB274 also clarifies under what circumstances an individual may take drugs to a pharmacy for disposal or, in the case of long-term care facilities, for credit or disposal. LB274 authorizes pharmacies to charge a fee, if they want, for drug disposal. In addition, the reference to calculated expiration date was changed from six months to one year to be consistent with other references within the Pharmacy Practice Act, just a small tweak there. I ask for your consideration. Would be glad to answer

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questions. [LB274]

PRESIDENT SHEEHY: Thank you, Senator Gloor. You've heard the opening to LB274. Member requesting to speak, Senator Nelson, you're recognized. [LB274]

SENATOR NELSON: Thank you, Mr. President, members of the body. I have a question for Senator Gloor, if he will yield. [LB274]

PRESIDENT SHEEHY: Senator Gloor, would you yield to Senator Nelson? [LB274]

SENATOR GLOOR: Certainly. [LB274]

SENATOR NELSON: Thank you, Senator. I'm looking at the committee statement, second paragraph there, which...and this is a matter of interest to me. I think in the second line there, "except when returned from a long-term care facility to the pharmacy from which they were dispensed for credit or for relabeling and redispensing." I've served as a guardian for people from time to time and on occasions pharmacies would send out drugs to a long-term facility, and they were packaged and they went out and the patient or the person there refused to take them. And they were expensive and they were not open, and so we had no recourse at that time but just to destroy them or get rid of them. And so I want to be sure I understand this, that things like that in that container could be returned and then redispensed. Is that what you're saying here? [LB274]

SENATOR GLOOR: That is correct, Senator Nelson. And as you pointed out, most pharmacies now work under a unit dose or a prepackaged system where the individual containers go out. And unlike the medications we're talking about in the drug cabinets all over this state where people could then take them themselves and turn them in to pharmacies, in a nursing home those drugs are actually not under the control of the residents or the patrons of those long-term care facilities. They're under the control of the pharmacy and the nursing staff for dispensing. And so we've just provided a little clarification here that this is a little different than what we're talking about under other provisions of the bill and they can be returned for credit and redispensing if they so choose. [LB274]

SENATOR NELSON: So long as the original package was not opened or anything that.... [LB274]

SENATOR GLOOR: Correct. Yeah. Yep. [LB274]

SENATOR NELSON: All right. All right. Well, I approve of that. I think it's a good thing and I will support LB274, Senator. Thank you, Senator. Thank you, Mr. President. [LB274]

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PRESIDENT SHEEHY: Thank you, Senator Nelson. Seeing no additional requests to speak, Senator Gloor, you're recognized to close. Senator Gloor waives closing. The question before the body is on the advancement of LB274. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB274]

CLERK: 38 ayes, 0 nays, Mr. President, on the advancement of LB274. [LB274]

PRESIDENT SHEEHY: LB274 advances. We'll now proceed to LB401. [LB274 LB401]

CLERK: LB401 is a bill by Senator Howard. (Read title.) Introduced on January 13 of this year, referred to the Health and Human Services Committee, advanced to General File. I do have an amendment to the bill from Senator Howard, Mr. President. [LB401]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Howard, you're recognized to open on LB401. [LB401]

SENATOR HOWARD: Thank you, Mr. President, and Happy Valentine's Day to you and to all of our members. I introduced LB401 because of how important the issues of aging are and how urgent they will become in the future. LB401 is a compromise. It seeks to ensure that individuals who enter assisted-living facilities are aware of what these facilities can and will do in a way that does not force facilities to be regulated like nursing homes. This bill is about expectations. Many Nebraskans enter assisted-living facilities expecting that they will be able to live there for years to come. Sometimes they are not aware that certain medical problems may force them to move to a facility that offers a higher level of care. Just like we discussed in LB94, that was my adoption bill, when individuals and their families make decisions and agreements, they must be equipped with as much information as possible. This is especially critical for making decisions for care later in life. Citizens must know the kind of services an assisted-living facility can provide. They must be told whether or not the facility will accept residents who are eligible for medical assistance and whether there will be a space available in the event an individual transitions to this assistance. Most critically, they must be informed of when they will be asked to leave a facility and when and how their resident service agreement can be changed. Additionally, when Nebraskans and their families make decisions about care for dementia, they deserve to have a complete and accurate picture of the services provided to persons with dementia. This is the information contained in LB401. Thank you. [LB401 LB94]

PRESIDENT SHEEHY: Thank you, Senator Howard. You've heard the opening to LB401. Mr. Clerk, you have an amendment on your desk. [LB401]

CLERK: Mr. President, Senator Howard would move to amend with AM341. (Legislative Journal pages 532-533.) [LB401]

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PRESIDENT SHEEHY: Senator Howard, you're recognized to open on AM341. [LB401]

SENATOR HOWARD: Thank you, Mr. President. This amendment addresses some concerns that were brought to me by the assisted-living facilities and they were agreed-upon. This amendment was agreed-upon by the representatives of the assisted-living facilities and the AARP. What this does is it replaces the number of staff with a description of the services provided by the assisted-living facility and the staff available to provide the services, so really it's a matter of clarification. The number of staff didn't get to the heart of the information the consumers need, which is the kind of care available, how often it's available, and who's going to provide the tasks. It also changes the language about medical assistance beds to reflect the reality of assisted-living. The amendment requires information on whether or not the facility accepts residents eligible for medical assistance programs and any policies or limitations on access for residents who seek care paid by medical assistance programs. [LB401]

PRESIDENT SHEEHY: Thank you, Senator Howard. You've heard the opening of AM341 to LB401. Member requesting to speak, Senator Harms, followed by Senator Fulton and Senator Langemeier. Senator Harms, you're recognized. [LB401]

SENATOR HARMS: Thank you, Mr. President, colleagues. I rise in support of AM341 and the underlying bill, LB401. Senator Howard, I wonder if you could yield just for a couple of questions? [LB401]

PRESIDENT SHEEHY: Senator Howard, would you yield to Senator Harms? [LB401]

SENATOR HOWARD: I'd be happy to. [LB401]

SENATOR HARMS: Senator Howard, I noticed on your committee statement that we had...that you had the Leading Age of Nebraska and the Hillcrest Health System as opponents. Could you tell me what their concerns were? [LB401]

SENATOR HOWARD: Their concerns were regarding the original language in this bill, and that's why we got together on Friday and tried to tweak that language so that everyone would be in agreement. [LB401]

SENATOR HARMS: Oh, thank you. I know that I've had experience with a nursing home. I had an aunt and I was the only one close enough to be able to take care of her and make sure I got her into a nursing home. And the items that are in this bill are very important. One of the issues that I had or concerns I always had, I was never sure...for sure what the services were available in the facility. I also wanted to know about the staff. I wanted to know about what kind of educational backgrounds and degrees these

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people had, what kind of special training they might have had. Also, had some concerns at times about the charges of the services. It wasn't really clear to me, as an individual who had the responsibility to take care of a loved one. And so the items that are in this bill are excellent. If you ever have a loved one in a nursing home, I think they get excellent care in most nursing homes but I think it's very important to make sure that you fully understand exactly what is occurring in that home before you put the loved one in. The other thing I would like to ask again, Senator Howard, if you'd yield for one more question I forgot to ask. [LB401]

SENATOR HOWARD: Yes. [LB401]

SENATOR HARMS: Senator Howard, when this is spelled out in a document, will the individuals have to sign so that we would have proof that this information did actually take place and this information was given? [LB401]

SENATOR HOWARD: The expectation in this bill is that these individuals will receive this information ahead of time so that they have it available, can review over it, and they won't be in a position where they feel pressured at the last minute to agree to something they don't completely understand. [LB401]

SENATOR HARMS: I guess my question that I'm still after is, would they sign or would their representative sign that said, yes, we got this information, so that as we go through this process, if there was ever any question or any doubt about what was happening, you at least have that documentation that said, yes, they...this information was given? Is that anyplace here at all? [LB401]

SENATOR HOWARD: Well, they do sign a contract. Let me just make a little check of this. [LB401]

SENATOR HARMS: Okay. Well, thank you, Senator Howard. [LB401]

SENATOR HOWARD: They do sign a resident service agreement. They don't sign the contract prior to reviewing this information. [LB401]

SENATOR HARMS: Well, thank you, Senator Howard. I do support this. I think it's a good bill and, as I said, if you ever have a loved one that has to go in, you will appreciate this being spelled out for you because sometimes you don't really understand it, which I didn't understand it. I have a much better understanding now since I've had the opportunity to experience it. So I'd urge you to support AM341 and the underlying bill, LB401. Thank you, Mr. President. [LB401]

PRESIDENT SHEEHY: Thank you, Senator Harms. Senator Fulton, you're recognized. [LB401]

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SENATOR FULTON: Thank you, Mr. President, members of the body. Would Senator Howard yield to a question? [LB401]

PRESIDENT SHEEHY: Senator Howard, would you yield to Senator Fulton? [LB401]

SENATOR HOWARD: Yes. [LB401]

SENATOR FULTON: Thank you, Senator. The amendment that you brought forward, can you repeat how it has addressed the concerns of NALA, the Assisted Living Association? [LB401]

SENATOR HOWARD: Well, the amendment really becomes the bill, and what it does, there's a section that was...let's find it in the original bill, it's regarding the number of staff, which really isn't the heart of the matter. The heart of the matter is a description of the services provided by the facility and the staff available to provide the services. And this was a matter of negotiating between the representatives from the assisted-living facility and the AARP to be sure that everyone was on the same page with that. [LB401]

SENATOR FULTON: Okay. Thank you, Senator. The intent of the bill and the bill itself I think is...I'm going to support them. I'll put forward what a concern could be and what a concern that...a concern that I had and I expect that you've probably addressed in this amendment. The assisted-living facilities, I think we operate with this idea that they are...they've been around for a long time but, indeed, this is relatively new phenomenon when it comes to long-term care particularly for elderly adults. So the assisted-living facilities, you know, they're small businesses virtually unanimously across Nebraska. They're small businesses and they operate on pretty small budgets. So when we put forward things in the statute that require them to do things, there's going to be a cost associated with it and that cost is going to get passed along to individuals who are using the service. It's just basic economics. Now the question that we have to decide here is, is the amount of cost that's going to be incurred by the assisted-living facilities as a matter of policy, is that justified with respect to the good that's being served? Now as it relates to assisted-living facilities, usually when people are researching to put their loved one into a facility they're not doing it with a great deal of time. Usually it's...there's a sense of urgency because a decision has to be made quickly. Long-term care is not something that people plan for. I wish that were different but that's just reality. It's the way it is. It's usually in response to an episode or an event. And so having data and information about what services are provided, how those services are provided, whether indeed this is a facility that's geared toward dementia care, those are all very important, and I think it is important to have this encapsulated in a consistent and concise manner because that's what's required of loved ones who are making a decision on behalf of an elderly adult. So this is a judgment call. On the one hand, are we putting forward too much regulation, too much requirement by government for these assisted-living facilities

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who do a good work? On the other side of it, there are those who are making the decisions to use those facilities. And I expect that that was a concern that was raised by the opponents and probably those in the neutral capacity. And I'll take a closer look at the amendment, but after having read the amendment, it seems that it strikes an appropriate balance. Assisted-living facilities are not giving away any secret as in terms of, you know, giving away how many employees are accomplishing their task to a competitor down the street, which certainly would be a concern too. But I put that out there for broader consumption because this is, again, we have two competing principles and, as is the case often, we have to make a judgment call. So I will support AM341 and LB401. Thank you, Mr. President. [LB401]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Senator Langemeier, you're recognized. [LB401]

SENATOR LANGEMEIER: Mr. President, members of the body, thank you. And I rise in support of the fundamental idea behind LB401, but as I read through it and I look through it, I'm a little fearful we have no more than a feel-good piece of legislation here. I would like to see if Senator Howard would yield to a question. [LB401]

PRESIDENT SHEEHY: Senator Howard, would you yield to Senator Langemeier? [LB401]

SENATOR HOWARD: I will. [LB401]

SENATOR LANGEMEIER: Senator Howard, again, like I said before, I'm very supportive of the idea. I think as I've had family in this position, knowing this information is good. But as I look back to your committee (sic) amendment as well as the bill, some things didn't change. It says in here that we should lay out a description of services provided. What does that mean? If I put out that I'm going to keep this loved one in a temperature-controlled environment, we're going to provide them a bed and we're going to provide them food, is that enough? That's a description. [LB401]

SENATOR HOWARD: The intent behind the description of services provided really goes to the heart of the matter of whether nursing care will be provided,... [LB401]

SENATOR LANGEMEIER: Okay. [LB401]

SENATOR HOWARD: ...whether there will be a nurse available to meet ongoing, more intensive needs. [LB401]

SENATOR LANGEMEIER: Okay, but the... [LB401]

SENATOR HOWARD: I think it's pretty much accepted that they will provide food.

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[LB401]

SENATOR LANGEMEIER: But the bill does not say that and that's why I'm fearful of that. It also talks about providing what might be available for the dismissal of an individual. Does that get down to they can't feed themselves, they can't regulate their medicine, they throw temper tantrums, we just can't control them? How detailed does that have to be and how do they adjust for a change in their behavior? [LB401]

SENATOR HOWARD: Senator Langemeier, keep in mind that many of what's described, many of the circumstances or factors described in this bill are currently in regulations. We're taking it a step further. This isn't new information. [LB401]

SENATOR LANGEMEIER: Okay. [LB401]

SENATOR HOWARD: The factors that would require them to have to move from that facility to, say, a more-intensive facility or a...are also...those factors are also in regulations and would be spelled out by the individual facilities. That goes to the very heart of this matter, why this bill was brought in. An individual had a circumstance where she had an understanding with the facility and it turned out to be such that her husband was...did have to move after a very short time. [LB401]

SENATOR LANGEMEIER: Okay. Again, I'm not sure that my comfort level has changed on this, but I'm very supportive of the idea. I understand the idea. I think we still have a vagueness. And if it's true it's already in the law, then we don't need it at all. So I still have reservations for AM341 and LB401. Thank you. [LB401]

PRESIDENT SHEEHY: Thank you, Senator Langemeier. Senator Sullivan, you're recognized. [LB401]

SENATOR SULLIVAN: Thank you, Mr. President. Good morning, colleagues. I rise in support of AM341 and LB401. And I listened to Senator Langemeier's concern and I also listened to Senator Howard's response, which I think, you know, we've got some things in rules and regulations that cover these facilities, but many times they are not written in perhaps laymen's terms, if you will, so that it's clear to the residents and the family what are the parameters that the facility operated under. And that's where I think this legislation will be valuable. And in answer to Senator Fulton's concern, you know, I really don't think that this would add to the cost at a facility because it's really something, whether it's because of rules and regulations or standards that they set for their own facility, it's something that they have thought through and it's just a matter of putting these down again in laymen's terms to hand to the resident and their family. You know, these can be very stressful times. I remember very vividly a few years ago where my own mother went through this and it wasn't an immediate decision. In fact, I had to talk with her quite a long time before she agreed to come to the facility that she

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ultimately called home. But we also went through the stages, and I remember at the time sitting with the administrator of the facility and her going through all of the things that would outline the care that my mother would receive and the levels of care and then ultimately the point where some decisions would be...have to be made where Mom would no longer be able to stay there. Well, all of those things going through my mind, but it was helpful then ultimately to have some of those things in writing, and I think that's an important thing also to say, that I think some of the facilities are already doing this. But this just puts it in statute that this is something that needs to be in place and I think it ends up being a win-win situation for all involved and makes those movements through life changes from home to an assisted-living to perhaps then ultimately a nursing home a lot less stressful. So I think this is good legislation. Thank you. [LB401]

PRESIDENT SHEEHY: Thank you, Senator Sullivan. Mr. Clerk, do you have items for the record? [LB401]

CLERK: I do, Mr. President. Your Committee on Enrollment and Review reports they've examined and engrossed LB23, LB47, LB74, LB75, LB76, LB163, LB163A, LB212, and LB241, all correctly engrossed. Enrollment and Review also reports LB396, LB256, LB311, LB347, LB462, and LB98 to Select File, some having Enrollment and Review amendments attached. Senator Pirsch would like to add his name to LB524. (Legislative Journal pages 533-534.) [LB23 LB47 LB74 LB75 LB76 LB163 LB163A LB212 LB241 LB396 LB256 LB311 LB347 LB462 LB98 LB524]

And Speaker Flood would move to adjourn the body until Tuesday morning, February 15, at 9:00 a.m.

PRESIDENT SHEEHY: You have heard the motion to adjourn until Tuesday, February 15, at 9:00 a.m. All those in favor say aye. Opposed, nay. We are adjourned.