

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
February 17, 2011

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SENATOR GLOOR PRESIDING

SENATOR GLOOR: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the thirty-first day of the One Hundred Second Legislature, First Session. Our chaplain for today is Pastor Jim McGaffin of the Liberty Christian Center in Omaha, Nebraska, Senator Mello's district. Please rise.

PASTOR McGAFFIN: (Prayer offered.)

SENATOR GLOOR: Thank you, Pastor McGaffin. I call to order the thirty-first day of the One Hundred Second Legislature, First Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

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

SENATOR GLOOR: Thank you, Mr. Clerk. Are there any corrections for the Journal?

CLERK: I have no corrections.

SENATOR GLOOR: Thank you. Are there any messages, reports, or announcements?

CLERK: Mr. President, your Committee on Enrollment and Review reports LB181 as correctly engrossed. Education Committee, chaired by Senator Adams, reports LB130, LB440, LB657 as indefinitely postponed. Health Committee, chaired by Senator Campbell, reports LB465 to General File. Banking Committee, chaired by Senator Pahls, reports LB424, LB453, LB454, LB455 to General File, and LB90 to General File with amendments, LB684 to General File with amendments, that signed by Senator Pahls. Hearing notices from General Affairs and the lobby report for this week as well as the acknowledgement of a receipt of a report from the Department of Energy. That's all that I have, Mr. President. (Legislative Journal pages 587-591.) [LB181 LB130 LB440 LB657 LB465 LB424 LB453 LB454 LB455 LB90 LB684]

SENATOR GLOOR: Thank you, Mr. Clerk. (Doctor of the day introduced.) We will now proceed to the first agenda item. Mr. Clerk.

CLERK: Senator Larson, LB264. I have Enrollment and Review amendments, Senator. (ER17, Legislative Journal page 479.) [LB264]

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SENATOR GLOOR: Senator Larson. [LB264]

SENATOR LARSON: Mr. President, I move that E&R amendments to LB264 be adopted. [LB264]

SENATOR GLOOR: The question is the adoption of the E&R amendments to LB264. All those in favor say aye. All those opposed say nay. The amendments are adopted. [LB264]

CLERK: I have nothing further on that bill, Senator. [LB264]

SENATOR GLOOR: Senator Larson. [LB264]

SENATOR LARSON: Mr. President, I move that LB264 be advanced to E&R for engrossing. [LB264]

SENATOR GLOOR: You have heard the motion. All in favor say aye. All those opposed say nay. LB264 is advanced. [LB264]

CLERK: LB326, Senator. I have Enrollment and Review amendments pending. (ER18, Legislative Journal page 479.) [LB326]

SENATOR GLOOR: Senator Larson. [LB326]

SENATOR LARSON: Mr. President, I move the E&R amendments to LB326 be adopted. [LB326]

SENATOR GLOOR: The question is the adoption of the E&R amendments to LB326. All those in favor say aye. All those opposed say nay. The amendments are adopted. [LB326]

CLERK: I have nothing further on that bill, Senator. [LB326]

SENATOR GLOOR: Senator Larson. [LB326]

SENATOR LARSON: Mr. President, I move that LB326 be advanced to E&R for engrossing. [LB326]

SENATOR GLOOR: You have heard the motion. All those in favor say aye. All those opposed say nay. LB326 is advanced. [LB326]

CLERK: LB12, Senator. I have no amendments to the bill. [LB12]

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SENATOR GLOOR: Senator Larson. [LB12]

SENATOR LARSON: Mr. President, I move that LB12 be advanced to E&R for engrossing. [LB12]

SENATOR GLOOR: You have heard the motion. All those in favor say aye. All those opposed say nay. LB12 is advanced. [LB12]

CLERK: LB146, Mr. President. Senator Larson, I have no amendments to the bill. [LB146]

SENATOR GLOOR: Senator Larson. [LB146]

SENATOR LARSON: Mr. President, I move that LB146 be advanced to E&R for engrossing. [LB146]

SENATOR GLOOR: You have heard the motion. All those in favor say aye. All those opposed say nay. LB146 is advanced. [LB146]

CLERK: LB331. Senator, I have no amendments to the bill. [LB331]

SENATOR GLOOR: Senator Larson. [LB331]

SENATOR LARSON: Mr. President, I move that LB331 be advanced to E&R for engrossing. [LB331]

SENATOR GLOOR: Members, you have heard the motion. All those in favor say aye. All those opposed, nay. LB331 is advanced. [LB331]

CLERK: LB332, Mr. President. Senator Larson, I have no amendments to the bill. [LB332]

SENATOR GLOOR: Senator Larson. [LB332]

SENATOR LARSON: Mr. President, I move that LB332 be advanced to E&R for engrossing. [LB332]

SENATOR GLOOR: You have heard the motion. All those in favor say aye. All those opposed say nay. LB332 is advanced. [LB332]

CLERK: LB334, Senator. I have Enrollment and Review amendments. (ER19, Legislative Journal page 508.) [LB334]

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SENATOR GLOOR: Senator Larson. [LB334]

SENATOR LARSON: Mr. President, I move the E&R amendments to LB334 be adopted. [LB334]

SENATOR GLOOR: The question is the adoption of the E&R amendments to LB334. All those in favor say aye. All those opposed say nay. The amendments are adopted. [LB334]

CLERK: I have nothing further on that bill, Senator. [LB334]

SENATOR GLOOR: Senator Larson. [LB334]

SENATOR LARSON: Mr. President, I move that LB334 be advanced to E&R for engrossing. [LB334]

SENATOR GLOOR: You have heard the motion. All those in favor say aye. All those opposed say nay. LB334 is advanced. [LB334]

CLERK: LB300...or excuse me, LB25. LB25. Senator, there are E&R amendments. (ER20, Legislative Journal page 508.) [LB25]

SENATOR GLOOR: Senator Larson. [LB25]

SENATOR LARSON: Mr. President, I move the E&R amendments to LB25 be adopted. [LB25]

SENATOR GLOOR: The question is the adoption of the E&R amendments to LB25. All those in favor say aye. All those opposed say nay. The amendments are adopted. [LB25]

CLERK: I have nothing further on that bill, Senator. [LB25]

SENATOR GLOOR: Senator Larson. [LB25]

SENATOR LARSON: Mr. President, I move that LB25 be advanced to E&R for engrossing. [LB25]

SENATOR GLOOR: You have heard the motion. All those in favor say aye. All those opposed say nay. LB25 is advanced. [LB25]

CLERK: LB26, Senator. I have no amendments to the bill. [LB26]

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SENATOR GLOOR: Senator Larson. [LB26]

SENATOR LARSON: Mr. President, I move that LB26 be advanced to E&R for engrossing. [LB26]

SENATOR GLOOR: You have heard the motion. All those in favor say aye. All those opposed say nay. LB26 is advanced. [LB26]

CLERK: LB78. I do have Enrollment and Review amendments. (ER22, Legislative Journal page 509.) [LB78]

SENATOR GLOOR: Senator Larson. [LB78]

SENATOR LARSON: Mr. President, I move that the E&R amendments to LB78 be adopted. [LB78]

SENATOR GLOOR: The question is the adoption of the E&R amendments to LB78. All those in favor say aye. All those opposed say nay. The amendments are adopted. [LB78]

CLERK: I have nothing further on LB78. [LB78]

SENATOR GLOOR: Senator Larson. [LB78]

SENATOR LARSON: Mr. President, I move that LB78 be advanced to E&R for engrossing. [LB78]

SENATOR GLOOR: You have heard the motion. All those in favor say aye. All those opposed say nay. LB78 is advanced. [LB78]

CLERK: LB77. Senator, I have E&R amendments, first of all. (ER21, Legislative Journal page 509.) [LB77]

SENATOR GLOOR: Senator Larson. [LB77]

SENATOR LARSON: Mr. President, I move that the E&R amendments to LB77 be adopted. [LB77]

SENATOR GLOOR: The question is the adoption of the E&R amendments to LB78... [LB77]

CLERK: LB77. [LB77]

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SENATOR GLOOR: ...LB77. All those in favor say aye. All those opposed say nay. The amendments are adopted. [LB77]

CLERK: I have nothing further on LB77, Senator. [LB77]

SENATOR GLOOR: Senator Larson. [LB77]

SENATOR LARSON: Mr. President, I move that LB77 be advanced to E&R for engrossing. [LB77]

SENATOR GLOOR: You have heard the motion. All those in favor say aye. All those opposed say nay. LB77 is advanced. [LB77]

CLERK: LB303. I have no amendments to the bill, Senator. [LB303]

SENATOR GLOOR: Senator Larson. [LB303]

SENATOR LARSON: Mr. President, I move that LB303 be advanced to E&R for engrossing. [LB303]

SENATOR GLOOR: You have heard the motion. All those in favor say aye. All those opposed say nay. LB303 is advanced. [LB303]

CLERK: LB474, Senator. I have Enrollment and Review amendments. (ER23, Legislative Journal page 513.) [LB474]

SENATOR GLOOR: Senator Larson. [LB474]

SENATOR LARSON: Mr. President, I move that the E&R amendments to LB474 be adopted. [LB474]

SENATOR GLOOR: The question is the adoption of the E&R amendments to LB474. All those in favor say aye. All those opposed say nay. The amendments are adopted. [LB474]

CLERK: I have nothing on LB474, Senator. [LB474]

SENATOR GLOOR: Senator Larson. [LB474]

SENATOR LARSON: Mr. President, I move that LB474 be advanced to E&R for engrossing. [LB474]

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SENATOR GLOOR: You have heard the motion. All those in favor say aye. All those opposed say nay. LB474 is advanced. [LB474]

CLERK: Mr. President, with respect to LB94, no Enrollment and Review. Senator Christensen would move to amend with AM358. (Legislative Journal page 592.) [LB94]

SENATOR GLOOR: Senator Christensen, you are recognized to open on your amendment to LB94. [LB94]

SENATOR CHRISTENSEN: This amendment...very simple one. It's just to make sure...I believe it was written correct the way it was, but what it does is put "federal" in front of "rules" and "federal" in front of "regulation" to make sure that the information that we're trying to get here to foster parents can't be held up by a state rule or regulation. And because the way that language reads is you cannot withhold information that is supposed to be disclosed to foster parents unless it conflicts with state statute and federal statute, and then it said rules and regulations. And I wanted to make sure this was very clear that it's federal rules and federal regulations. I had talked to the introducer and I had worked with Senator Ashford on this to make sure that I wasn't overstepping any bounds on this and just to make sure that we're getting the information out to the foster parents so they understand the kids that they're adopting and what they have went through. So this is a very simple clarification to make sure it's very clear that it's state statute, federal statute, and what I changed was putting "federal" in front of "rule" and "federal" in front of "regulation." Thank you. [LB94]

SENATOR GLOOR: Are there senators wishing to be recognized? Seeing none, Senator Christensen, you are recognized to close on your amendment. Senator Christensen waives. The question is, shall the amendment to LB94 be adopted? Those in favor vote aye; those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB94]

CLERK: 37 ayes, 0 nays, Mr. President, on the adoption of Senator Christensen's amendment. [LB94]

SENATOR GLOOR: The amendment is adopted. [LB94]

CLERK: Senator Larson, I have nothing further pending on LB94. [LB94]

SENATOR GLOOR: Senator Larson. [LB94]

SENATOR LARSON: Mr. President, I move that LB94 be advanced to E&R for engrossing. [LB94]

SENATOR GLOOR: You have heard the motion. All in favor say aye. All opposed say

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nay. LB94 is advanced. [LB94]

CLERK: Senator Larson, LB24. I have no amendments to the bill. [LB24]

SENATOR GLOOR: Senator Larson. [LB24]

SENATOR LARSON: Mr. President, I move that LB24 be advanced to E&R for engrossing. [LB24]

SENATOR GLOOR: You have heard the motion. All those in favor say aye. All those opposed say nay. LB24 is advanced. [LB24]

CLERK: LB396. I have no amendments, Senator. [LB396]

SENATOR GLOOR: Senator Larson. [LB396]

SENATOR LARSON: Mr. President, I move that LB396 be advanced to E&R for engrossing. [LB396]

SENATOR GLOOR: Members, you have heard the motion. All those in favor say aye. All those opposed say nay. LB396 is advanced. [LB396]

CLERK: LB311, Senator. I have no amendments to the bill. [LB311]

SENATOR GLOOR: Senator Larson. [LB311]

SENATOR LARSON: Mr. President, I move that LB311 be advanced to E&R for engrossing. [LB311]

SENATOR GLOOR: You have heard the motion. All those in favor say aye. All those opposed say nay. LB311 is advanced. [LB311]

CLERK: LB347, Senator. I have no amendments to the bill. [LB347]

SENATOR GLOOR: Senator Larson. [LB347]

SENATOR LARSON: Mr. President, I move that LB347 be advanced to E&R for engrossing. [LB347]

SENATOR GLOOR: Members, you have heard the motion. All those in favor say aye. All those opposed say nay. LB347 is advanced. [LB347]

CLERK: LB462, Senator. Once again I have no amendments to the bill. [LB462]

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SENATOR GLOOR: Senator Larson. [LB462]

SENATOR LARSON: Thank you. Mr. President, I move that LB462 be advanced to E&R for engrossing. [LB462]

SENATOR GLOOR: Members, you have heard the motion. All those in favor say aye. All those opposed say nay. LB462 is advanced. [LB462]

CLERK: LB98, Senator. I have no amendments to the bill. [LB98]

SENATOR GLOOR: Senator Larson. [LB98]

SENATOR LARSON: Mr. President, I move that LB98 be advanced to E&R for engrossing. [LB98]

SENATOR GLOOR: Members, you have heard the motion. All those in favor say aye. All those opposed say nay. LB98 is advanced. [LB98]

CLERK: Mr. President, on LB178. First of all, Senator, I have Enrollment and Review amendments. (ER28, Legislative Journal page 549.) [LB178]

SENATOR GLOOR: Senator Larson. [LB178]

SENATOR LARSON: Mr. President, I move the E&R amendments to LB178 be adopted. [LB178]

SENATOR GLOOR: The question is the adoption of the E&R amendments to LB178. All those in favor say aye. All those opposed say nay. The amendments are adopted. [LB178]

CLERK: Senator Fischer would move to amend the bill, AM374. (Legislative Journal page 580.) [LB178]

SENATOR GLOOR: Senator Fischer, you are recognized to open on your amendment. [LB178]

SENATOR FISCHER: Thank you, Mr. President and members. The amendment is basically a catch by Bill Drafters where they found a section of law that was inadvertently omitted for the changes on this bill. It provides harmonizing language in Section 60-4,171 and makes it consistent with the rest of the bill. Thank you, Mr. President. [LB178]

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SENATOR GLOOR: Are there members wishing to be recognized? Seeing none, you have heard the motion. Senator Fischer waives. Shall the amendment to LB178 be adopted? Those in favor vote aye; those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB178]

CLERK: 40 ayes, 0 nays, Mr. President, on the adoption of Senator Fischer's amendment. [LB178]

SENATOR GLOOR: The amendment is adopted. [LB178]

CLERK: I have nothing further on the bill, Senator Larson. [LB178]

SENATOR GLOOR: Senator Larson. [LB178]

SENATOR LARSON: Mr. President, I move that LB178 be advanced to E&R for engrossing. [LB178]

SENATOR GLOOR: Members, you have heard the motion. All in favor say aye. All opposed say nay. LB178 is advanced. [LB178]

CLERK: LB178A, Senator. I have no amendments to the bill. [LB178A]

SENATOR GLOOR: Senator Larson. [LB178A]

SENATOR LARSON: Mr. President, I move that LB178A be advanced to E&R for engrossing. [LB178A]

SENATOR GLOOR: You have heard the motion. All in favor say aye. All opposed say nay. LB178A is advanced. [LB178A]

CLERK: LB215, Senator. I do have Enrollment and Review amendments. (ER31, Legislative Journal page 549.) [LB215]

SENATOR GLOOR: Senator Larson. [LB215]

SENATOR LARSON: Mr. President, I move that E&R amendments to LB215 be adopted. [LB215]

SENATOR GLOOR: The question, members, is the adoption of the E&R amendments to LB215. All those in favor say aye. All those opposed say nay. The amendments are adopted. [LB215]

CLERK: I have nothing further on that bill, Senator. [LB215]

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SENATOR GLOOR: Senator Larson. [LB215]

SENATOR LARSON: Mr. President, I move that LB215 be advanced to E&R for engrossing. [LB215]

SENATOR GLOOR: You have heard the motion, members. All those in favor say aye. All those opposed say nay. LB215 is advanced. [LB215]

CLERK: LB43. Senator, I have no amendments to the bill. [LB43]

SENATOR GLOOR: Senator Larson. [LB43]

SENATOR LARSON: Mr. President, I move that LB43 be advanced to E&R for engrossing. [LB43]

SENATOR GLOOR: You have heard the motion. All those in favor say aye. All those opposed say nay. LB43 is advanced. [LB43]

CLERK: LB410. Senator, I have Enrollment and Review amendments, first of all. (ER27, Legislative Journal page 550.) [LB410]

SENATOR GLOOR: Senator Larson. [LB410]

SENATOR LARSON: Mr. President, I move that LB410 be advanced to E&R for engrossing. [LB410]

CLERK: No. E&R amendments, Senator. Did I misspeak? [LB410]

SENATOR LARSON: Oh. [LB410]

CLERK: I'm sorry. E&R amendments, first of all. [LB410]

SENATOR LARSON: Mr. President, I move that E&R amendments to LB410 be adopted. [LB410]

SENATOR GLOOR: The question is the adoption of the E&R amendments to LB410. All those in favor say aye. All those opposed say nay. The amendments are adopted. [LB410]

CLERK: Senator Utter would move to amend the bill with AM360, Mr. President. (Legislative Journal page 580.) [LB410]

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SENATOR GLOOR: Senator Utter, you are recognized to open on your amendment. [LB410]

SENATOR UTTER: Thank you very much, Mr. President. Good morning, colleagues. This is a simple amendment that clarifies that all 10 percent, or more, owners of an appraisal management fee must undergo a vetting process that includes fingerprinting and a criminal records check through the national Federal Bureau of Investigation. And it...and this amendment also clarifies that the fees for this criminal records background check will be taken out of the application fees that the appraisal management company is paying. I urge your adoption of this amendment. [LB410]

SENATOR GLOOR: We move to the debate. Seeing no senators wishing to be recognized, Senator Utter, you are recognized to close. Senator Utter waives. The question is the adoption of the amendments to LB410. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB410]

CLERK: 35 ayes, 0 nays, Mr. President on the adoption of Senator Utter's amendment. [LB410]

SENATOR GLOOR: The amendment is adopted. [LB410]

CLERK: I have nothing further on LB410, Senator. [LB410]

SENATOR GLOOR: Senator Larson. [LB410]

SENATOR LARSON: Mr. President, I move that LB410 be advanced to E&R for engrossing. [LB410]

SENATOR GLOOR: You have heard the motion. All those in favor say aye. All those opposed say nay. LB410 is adopted. [LB410]

CLERK: LB410A, Senator. I have no amendments to the bill. [LB410A]

SENATOR GLOOR: Senator Larson. [LB410A]

SENATOR LARSON: Mr. President, I move that LB410A be advanced to E&R for engrossing. [LB410A]

SENATOR GLOOR: You have heard the motion. All those in favor say aye. All those opposed say nay. LB410A is advanced. [LB410A]

CLERK: LB108, Senator. I do have Enrollment and Review amendments. (ER24, Legislative Journal page 550.) [LB108]

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SENATOR GLOOR: Senator Larson. [LB108]

SENATOR LARSON: Mr. President, I move that E&R amendments to LB108 be adopted. [LB108]

SENATOR GLOOR: The question is the adoption of the E&R amendments to LB108. All those in favor say aye. All those opposed say nay. The amendments are adopted. [LB108]

CLERK: I have nothing further on LB108, Senator. [LB108]

SENATOR GLOOR: Senator Larson. [LB108]

SENATOR LARSON: Mr. President, I move that LB108 be advanced to E&R for engrossing. [LB108]

SENATOR GLOOR: You have heard the motion, members. All those in favor say aye. All those opposed say nay. LB108 is advanced. Cookies being circulated today are in recognition of Senator Utter's birthday, Monday, and Senator Harms's birthday today. Both have turned 39. (Visitors introduced.) Items for the record, Mr. Clerk. [LB108]

CLERK: Mr. President, thank you. Your Committee on Enrollment and Review reports LB333 and LB228 to Select File. That's all that I have, Mr. President. (Legislative Journal page 594.) [LB333 LB228]

SENATOR GLOOR: Thank you, Mr. Clerk. We will proceed to General File, LB278. [LB278]

CLERK: LB278 is bill by Senator Coash. (Read title.) Introduced on January 11 of this year, referred to the Government, Military and Veterans Affairs Committee for public hearing. Advanced to General File. I have no amendments to the bill at this time, Mr. President. [LB278]

SENATOR GLOOR: Senator Coash, you are recognized to open on LB278. [LB278]

SENATOR COASH: Thank you, Mr. President. Good morning, members. LB278 is a very simple bill. It authorizes counties to pay wages via electronic direct deposit. This will save counties money. I want to repeat that: This bill will save counties money. LB278 extends the same statutory authority that was given to the state three years ago with LB167. This resulted in a savings to the state and this bill seeks to extend the same savings to counties. Counties can save money and time by mandating direct deposit for county employees. Savings are now particularly important, colleagues, because we

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have eliminated aid to the counties. To give you an idea of how much this might save, right now it costs Lancaster County approximately \$2.50 to issue a paper check, while direct deposit costs less than 5 cents. More importantly, payment by electronic funds transfer results in a savings of indirect costs by reducing the amount of time and travel needed to distribute paper checks. Lancaster County estimates that this will save them about \$6,000 per year. And \$6,000 a year may not seem like a lot, but I think it does mean a lot given how we have instituted our policies here. To be clear, this bill gives authority to counties but it does not mandate that they use direct deposit. This bill was supported by NACO and I would note that there was no opposition given in the hearing and it was voted out unanimously. I would also point out the fiscal note which states there should be a cost-savings to counties as a result. With that, I will ask the body to vote yes on LB278 and look forward to answering any questions. Thank you, Mr. President. [LB278]

SENATOR GLOOR: Thank you, Senator Coash. We now move to floor discussion. Senator Pirsch, you are recognized. [LB278]

SENATOR PIRSCH: Thank you, Mr. President and members of the body. And Senator Coash, I appreciate your bill concept, and so prior to this point in time counties have not had the ability, legal ability to pay their employees electronically? Is that what you're...the underlying premise? [LB278]

SENATOR GLOOR: Senator Coash, do you yield? [LB278]

SENATOR COASH: Yes, I will yield. Senator Pirsch, many counties are currently paying their employees by direct deposit but they do not necessarily have the specific statutory authority. As I worked with our county there were some questions whether or not this was statutorily acceptable even though we've been doing it. So this is really clarifying language to put into statute what is in practice in many counties across the state. [LB278]

SENATOR PIRSCH: Well, thank you for that and that's wonderful if there's some ambiguity as to the existing practice of paying. I think that's great that we clear this up. Clearly, you know, and in the past I have sponsored bills such as these that help make government more electronic, more efficient, infusing businesslike practices into our policies here in government so that we can...we're better stewards of the taxpayers' dollars. And so I certainly do appreciate that. And, Senator, if you'd yield to...you mentioned the differential in doing it the traditional paper method as opposed to electronically. What was the difference? [LB278]

SENATOR COASH: Financially, the difference that was given to me by Lancaster County was the difference between \$2.50 per check, which you have to take times how many checks is given a year--this isn't just \$2.50 a year--to less than 5 cents per check

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if you don't have to mess with the paper and the labor. So it's a significant cost-savings to counties, which I think is important. [LB278]

SENATOR PIRSCH: Yeah. Well, thank you very much for bringing forward this concept and I certainly support this bill. [LB278]

SENATOR GLOOR: Thank you, Senator Pirsch. Senator Avery, you are recognized. [LB278]

SENATOR AVERY: Thank you, Mr. President. Some of you may recall that in 2009 I brought a bill to this body to allow the Department of Administrative Services to pay wages and reimbursable expenses by way of electronic funds transfer. We passed that into law. It works well at the state level, and as Senator Coash mentioned, there are substantial savings that can be captured by adopting this technology. There is no reason why we shouldn't be doing it at the counties. Some counties already do it but they do need the statutory authority, and I think that this is a sensible thing for us to do and I urge you to support it. Thank you. [LB278]

SENATOR GLOOR: Thank you, Senator Avery. There are no additional senators wishing to be recognized. Senator Coash, you are recognized to close on the advancement of LB278. [LB278]

SENATOR COASH: Thank you, Mr. President. Thank you, colleagues. I appreciate the support. This is important. This is important for our counties. They have asked this body to assist them in saving money. This is money they can save in their payroll system that they can turn around and put back into higher priorities, such as roads and infrastructure, corrections, you name it. You ask your counties what they'll do with an extra \$6,000: They have projects lined up. So with that I will urge the body's adoption of LB278 to...thank you. [LB278]

SENATOR GLOOR: Thank you, Senator Coash. The question is the advancement of LB278 to E&R Initial. All those members in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB278]

CLERK: 36 ayes, 0 nays, Mr. President, on the advancement of LB278. [LB278]

SENATOR GLOOR: LB278 advances. [LB278]

CLERK: Mr. President, the next bill, LB368. It was a bill introduced by Senator Brasch. (Read title.) Introduced on January 13 of this year, at that time referred to the Government, Military and Veterans Affairs Committee for public hearing, advanced to General File. I have no amendments pending at this time, Mr. President. [LB368]

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SENATOR GLOOR: Senator Brasch, you are recognized to open on LB268...LB368. [LB368]

SENATOR BRASCH: Thank you, Mr. President. Good morning, colleagues. LB368 is about a political party's unlimited ability to bypass the primary election process and nominate candidates from its convention. LB368 clarifies that the ability of established political party conventions to nominate candidates is limited to situations where a vacancy on the ballot has occurred or in the case of a special election. This legislation is considered necessary so political parties do not have unlimited authority to bypass the primary election process and nominate candidates at the post-primary convention when no party candidate was even listed on the ballot for the primaries. The exception is for new political parties. To summarize the sections of the bill for you, Section 1 harmonizes Section 32-616 with Section 2 of the bill by allowing a candidate to be placed on the ballot when nominated by a party convention. Section 2 allows state conventions to nominate candidates in case of a vacancy or special election. And Section 3 repeals the original section. Parties will still be able to nominate candidates at their conventions in the cases of a special election or a vacancy on the ballot. I believe that the primaries are vital to our political process and LB368 will offer protection and regard for this process. So the primaries serve as the fundamental part of the people's choice for a candidate, and ultimately, for their elected official. There was no testimony in opposition of LB368 at the public hearing and the Government Committee unanimously voted the bill out to General File. I also encourage and will appreciate your support for LB368 as well. Thank you. [LB368]

SENATOR GLOOR: Thank you, Senator Brasch. We now move to floor discussion. Senator Pahls, you are recognized. [LB368]

SENATOR PAHLS: Thank you, Mr. President, members of the body. Would the senator yield to a question or two? [LB368]

SENATOR GLOOR: Senator Brasch, will you yield? [LB368]

SENATOR BRASCH: I will yield. [LB368]

SENATOR PAHLS: In your estimation, will this make...by putting this in statute, will this make life easier for the Secretary of State because he--or she in the future--would not have to get involved in this process? Is that one of the intent of this legislation? [LB368]

SENATOR BRASCH: That is not the intent of this legislation. [LB368]

SENATOR PAHLS: Okay. Well, then let me ask you this question then: Are you trying to make political parties more accountable? [LB368]

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SENATOR BRASCH: What I am trying to do is prevent the primary process from being bypassed where a candidate has already met with the communities, did diligence, met everyone, spent hours and hours of time. Where at a convention, that political party, regardless of time spent by a candidate, is bypassed and basically a name is put on the ballot for strategic purposes or for popularity purposes. I do believe it is truly vital for the people of a district to know their candidate. And this is to prevent that from happening. [LB368]

SENATOR PAHLS: Okay. Okay. Thank you. Thank you. [LB368]

SENATOR GLOOR: Thank you, Senator Pahls. The Chair recognizes Senator Avery. [LB368]

SENATOR AVERY: Thank you, Mr. President. As Senator Brasch mentioned, this bill did come through the Government Committee. It was advanced to General File without opposition. Let me elaborate a little bit on the history behind this. This bill addresses what can be called the Kate Witek situation. As you may remember, Kate Witek was nominated by the Democratic Party as the party's candidate for the office of Auditor on the general election ballot. In the primary prior to that general election, the Democrats ran no person for the office of Auditor. So there was no vacancy. There was a court case that ensued. The court ruled that the procedure for nominating a candidate for the general election at the convention was constitutional and even though there was no vacancy on the ballot. And they ruled that this was consistent with their reading of the Election Act. What this bill would do would be to clarify the law so that parties cannot nominate at their conventions without a vacancy on the ballot. This is really a question of best practices in our election law. It is nothing more than that. Thank you, Mr. President. [LB368]

SENATOR GLOOR: Thank you, Senator Avery. Seeing no one waiting to be recognized, Senator Brasch, you are recognized to close on the advancement of LB368. [LB368]

SENATOR BRASCH: I wanted to close with a letter I received at the farm this weekend, and it is handwritten by constituents. And I've been carrying it around with me this week to lift me and encourage me through stressful days like today standing up for the first time. And the primary process is so important and this letter tells me that, because handwritten...this person said: I'm not very good at being a writer but I keep trying. A couple paragraphs here, this writer is confident I'll be a great senator, however I know there's a long and winding road ahead of us all. I want to earn, you know, their respect, the respect of this body, and work very hard. But this sentence, especially, from the primary process because you've been on the bottom and can have a heart for your people, I know you'll be a good senator. Basically, I know we all have a heart for our people. I'd encourage you to preserve and protect our primary process with this bill.

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Thank you. [LB368]

SENATOR GLOOR: Members, the question is, is the advancement of LB368 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB368]

CLERK: 37 ayes, 0 nays, Mr. President, on the advancement of LB368. [LB368]

SENATOR GLOOR: The bill advances. [LB368]

CLERK: Mr. President, LB399, a bill by Senator Avery. (Read title.) Introduced on January 13 of this year, referred to the Government, Military and Veterans Affairs Committee. The bill was advanced to General File. At this time I have no amendments to the bill, Mr. President. [LB399]

SENATOR GLOOR: Senator Avery, you are recognized to open on LB399. [LB399]

SENATOR AVERY: Thank you, Mr. President. LB399 changes the signature requirements for nomination by petition of certain offices for the general election. Under current law, there is a distribution requirement of obtaining a certain number of signatures from each county when a candidate for a nonpartisan office wants to place his or her name on the general election ballot. And that current law is 25 signatures. The bill would eliminate the distribution requirement. With the elimination, the standard becomes at least 10 percent of the registered voters voting for Governor or President in the last election not to exceed 2,000 signatures. The distribution requirement for the Board of Regents is also eliminated under this bill. Similarly, for statewide partisan candidates who want to place their name on the general election ballot, there is a current distribution requirement that signatures be obtained from one-third of the counties in the state. With this bill, the standard for partisan statewide offices is at least 4,000 signatures and at least 750 signatures to be obtained in each congressional district. Now you might be aware that the state of Nebraska is currently involved in a lawsuit challenging the distribution requirement for partisan statewide offices. We are being sued and challenged on the basis of the current law violating the equal protection clause of the U.S. Constitution. That's the Fourteenth Amendment that states that no state shall deny to any person within its jurisdiction the equal protection of the laws. This bill will go a long way toward eliminating the weakest part of the state's case in this trial. Just last week, the date of the trial was set for April, and it is the opinion of the Secretary of State that we are likely to lose that case if this provision remains in law--that is the distribution provision; if we lose the case, there is every possibility that it will cost the state a substantial amount of money in fees that we would have to pay for the lawyers who are bringing the case. So we believe that by changing the law now, we can strengthen the state's position in this case and probably save the state a substantial amount of money. The bill was advanced by the Government Committee on an 8 to 0

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vote. There was no opposition at the hearing. The Secretary of State testified in favor of the bill. And I would point out that there is an emergency clause on this, and I urge your adoption. Thank you, Mr. President. [LB399]

SENATOR GLOOR: Thank you, Senator Avery. We now move to discussion by members. Senator Louden, you are recognized. [LB399]

SENATOR LOUDEN: Thank you, Mr. President and members of the Chamber. Would Senator Avery yield for questions? [LB399]

SENATOR GLOOR: Senator Avery, will you yield? [LB399]

SENATOR AVERY: Yes, I will. [LB399]

SENATOR LOUDEN: Well, as I look at this bill where you had for nonpartisan offices, and that would be the offices to the Legislature. That would be correct, wouldn't it be? [LB399]

SENATOR AVERY: Yes, we are nonpartisan. [LB399]

SENATOR LOUDEN: And on page 2, there on about line 6, and then I see you struck some of that language. And at the present time when you circulate a petition, you have to have signatures from every county. And as we're looking at redistricting and some of these districts are going to have multi counties in there, I think we have to be very careful to look at that, because you could actually go to the largest town in that whole district and get your signatures when you have to have at least 2,000 signatures or whatever the number is, and then you wouldn't...the other counties that are in there wouldn't have any play into the nominating or petition process. And because I circulated a petition to get on at one time, and we had to get signatures from every county that was in the district. You don't have to get that many because I think it says at least 25 in the other counties, but nonetheless, are we getting into something there as we make these legislative districts longer and bigger and more counties, that it's going to make it where some populated area could control the whole district? [LB399]

SENATOR AVERY: The problem here, Senator, is that counties are different sizes. And requiring 25 signatures from each of the counties...or from a portion of the counties, does not meet constitutional muster, probably, because if you had equal sizes in the counties, equal population size, there would not be an equal protection problem. But because counties do vary in size and population, requiring the same number of signatures from county to county runs afoul of the Equal Protection Clause of the constitution. [LB399]

SENATOR LOUDEN: Now you're telling me, then, there's federal legislation here that is

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where the lawsuit is coming in, that...? [LB399]

SENATOR AVERY: No, it's the U.S. Constitution. [LB399]

SENATOR LOUDEN: How come this is put into law then so many years ago, and it has passed muster all this time and they just now found out that it's unconstitutional or whatever, and I guess I'm wondering why all of the sudden it's come forwards now, because I think by having this in here like that, when someone wants to circulate a petition and get on a ballot, they at least have to go to all the areas. Now if you are paying circulators, you could go into one of the bigger towns in one of those areas and get your 2,000 signatures, and other people in different parts of that district that are in different counties probably wouldn't know anything about it. [LB399]

SENATOR AVERY: Well, the problem is that we've had several court cases filed on the basis of equal protection, and it is the opinion of the Secretary of State that this is the weakest part of our case. And if we can change this, we probably will not lose the case. It has other elements to it. [LB399]

SENATOR LOUDEN: Well, if the cases are filed, that really doesn't mean that it's wrong, is it, just because they filed the case? This is...until they win that case, why, the language stands as it is. Wouldn't that be correct? [LB399]

SENATOR AVERY: Well, that's true. But the problem is, if you lose the case then you incur the penalties. And the penalties would be a substantial amount of money to the state of Nebraska. We're trying to avoid that. We're trying to preempt it. [LB399]

SENATOR LOUDEN: Is there a monetary penalty, or do they just have to go in here and correct the language? [LB399]

SENATOR AVERY: Well,... [LB399]

SENATOR GLOOR: One minute. [LB399]

SENATOR AVERY: ...the courts could rule that we would have to pay the legal fees of the plaintiffs. [LB399]

SENATOR LOUDEN: Okay. Thank you, Senator Avery. As with this, I think this is a bill here, we have to be careful what we're doing here, because this is part of your election process. And petition circulation and putting people on a ballot by petition is a big part of Nebraska's politics, and the Unicameral. So with that I would...I'd hesitate to support this bill. But thank you, Mr. President. [LB399]

SENATOR GLOOR: Thank you, Senator Louden. (Visitors introduced.) Senators

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wishing to be recognized are Hansen, Schilz, Fischer, Nelson, Mello, and Council. Senator Hansen. [LB399]

SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. I have been reading this, too, and it came to mind and it came to my recollection that during our Board of Regents contest last year, during the primary, one of the candidates was beaten by 5,000 votes, and this is a 36-county district. The Board of Regents is 36 districts. So if we read the old language--and this is taken away...well, I think I did my math wrong, but in 36 counties and they required 25 signatures out of every county, that candidate has a chance to go to those counties, which they will do whether this law is passed or not. But they get to meet those people in all the other districts. The requirement for that person--in this case, the Board of Regents--I think is very important. I would like to ask Senator Avery a question if I could. [LB399]

SENATOR GLOOR: Senator Avery, will you yield? [LB399]

SENATOR AVERY: Yes, I will. [LB399]

SENATOR HANSEN: I promise there will be no duet. Senator Avery, if...I don't understand why, even at the national level, why a Regent that represents 36 counties in western Nebraska would not be...I mean he should go out there. They...he or she should go out there and meet those people and get on the ballot by those 25 signatures per county. I don't see anything wrong with it. Would you go over it one more time, why the constitutional lawyers think that this is needed? [LB399]

SENATOR AVERY: Yes, I will. And thank you for that question because it allows me to clarify the point. Several states have had court challenges on similar legislation. Those court challenges have all succeeded. And we think that based upon what has happened in other courts around the country, where the states had statutes requiring a certain number of signatures by counties, we are afraid that we will lose our court case because we have the same kind of requirement here. And if we do that, it's going to cost the state money and we're trying to avoid it. [LB399]

SENATOR HANSEN: Thank you. One final question would be for NRDs. Is there a mention of that in the bill? And if they are, NRDs do require so many votes to get on the ballot and those are usually multiple-county positions. [LB399]

SENATOR AVERY: They would be covered under the nonpartisan provisions. They would still have to have 10 percent of the registered voters voting for Governor or President in the last election, not to exceed 2,000 signatures. [LB399]

SENATOR HANSEN: Thank you, Mr. President. [LB399]

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SENATOR GLOOR: Thank you, Senator Hansen. Senator Schilz, you are recognized. [LB399]

SENATOR SCHILZ: Thank you, Mr. President and members of the body. Good morning. I have some reservations about this bill. As I think of it and I look at it, I see pitfalls both ways, if you require...as Senator Avery says, if you require signatures from only within the district or wherever that subdivision is but yet you don't disperse them geographically, don't you run into the same problem or you could have the same issue at times than if you have it spread out? Would Senator Avery yield to a question? [LB399]

SENATOR GLOOR: Senator Avery, will you yield? [LB399]

SENATOR AVERY: I will. [LB399]

SENATOR SCHILZ: So if you can collect the signatures, let's say in one community, and you're representing, say, 15, and somebody actually goes out and does that and just collects those signatures in one small geographic area, would some of those other folks out in the outlying areas be able to say that they were disenfranchised because they didn't have the opportunity to sign or any of that? I mean does that figure in at all? [LB399]

SENATOR AVERY: There's nothing that would prevent a candidate from going to all the counties and getting signatures if they want to. We're just removing the requirement. And, of course, the people who felt left out if the candidate didn't do that would certainly have a chance to express their view when the election occurs. [LB399]

SENATOR SCHILZ: Okay. Thank you. I tend to think of my area of the state as being, you know, sparsely populated, and I just think it's a good idea for those candidates that have to travel over those miles to get out there in front of the people that they're going to represent. I think it's important. And so I think it's about representation. I think it's about access as much as anything. So I'm somewhat skeptical on this bill but I'm...I haven't figured out exactly which way I'm going yet. So, thank you, Senator Avery. Thank you, Mr. President. [LB399]

SENATOR GLOOR: Thank you, Senator Schilz. Senator Fischer, you are recognized. [LB399]

SENATOR FISCHER: Thank you, Mr. President and members. I too have reservations about this bill. I'm concerned that a candidate would only need to go to the three population centers in each of our congressional districts in order to get signatures. Another concern I have: Even though the court cases may have been successful in other states, it hasn't come to completion in this state, and sometimes I don't know if it's

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wise that we legislate in anticipation with what a court may rule. Would Senator Avery yield to questions, please? [LB399]

SENATOR GLOOR: Senator Avery, will you yield? [LB399]

SENATOR AVERY: I will. [LB399]

SENATOR FISCHER: Senator, which states have had successful court cases, and were there laws like our current law is right now here in Nebraska? [LB399]

SENATOR AVERY: I don't have a complete list of those states but I can get it for you. But we do know that a number of cases have occurred in other states and the courts have ruled that any distribution requirement where the distribution is not based upon equal population, that you run afoul with the constitution. [LB399]

SENATOR FISCHER: Is there some other way to go about this, though? Could you look at populations by counties by percentages? I mean is there some other way that we could do this in order to truly have a statewide candidate be required to travel statewide in order to get the signatures? [LB399]

SENATOR AVERY: Well, actually in the bill, if you are a statewide partisan candidate, you have to have at least 750 signatures from each congressional district. Now that's constitutional because congressional districts are equal in population...or roughly equal in population. And you wouldn't have to go beyond 4,000 signatures statewide. [LB399]

SENATOR FISCHER: Right. But, you know, you...as a statewide candidate, I could go to Omaha and get 750 signatures. I could go to Lincoln and get 750 signatures. And I think with the help of Senator Flood, if he liked me, maybe I could go to Norfolk and get 750 signatures, and I would meet the requirements and I've only been to three cities. I'm asking, isn't there some way, maybe even not at the county level, but at a legislative district level? Our legislative districts are equal in population. Couldn't we have a requirement that would take that into account so that a candidate would have to travel, I mean at least through part of the state? We are a state of great distances. We have a lot of diversity in this state, and I always think it would be beneficial for candidates, especially for statewide offices, to get out and travel the state in order to learn about it and see those differences and diversities. [LB399]

SENATOR AVERY: I think you're right that it's a good thing for candidates to do that, and smart candidates do. But you're also right that you could technically, and theoretically, you could visit those three cities and probably get your 750. [LB399]

SENATOR FISCHER: But couldn't we look then...I just...I don't like your bill, Senator. So couldn't we look at maybe having something with legislative districts being part of the

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requirement? [LB399]

SENATOR AVERY: If you promise to vote for this on General File, I'll work with you between now and Select File to see what we can do about that. [LB399]

SENATOR FISCHER: Oh, I don't know if I can do that. Is this bill necessary to pass this year? [LB399]

SENATOR AVERY: It is, because the trial date has been set for April, and we are fairly certain that we will probably lose that case... [LB399]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: One minute. [LB399]

SENATOR AVERY: ...if this remains in law. [LB399]

SENATOR FISCHER: But then, Senator, couldn't we come back next year and address the problem after a court ruling instead of passing legislation in anticipation of what we think the court is going to rule? [LB399]

SENATOR AVERY: Well, the...it's...we're not just imagining what happened. We have plenty of evidence of what has happened in other states with similar laws, and we're trying to avoid having to pay the legal fees for the plaintiffs. And that's what we would have to do if we lose, in all probability. [LB399]

SENATOR FISCHER: I don't think you've convinced me, Senator Avery, but I appreciate your comments. Thank you. Thank you, Mr. President. [LB399]

SENATOR LANGEMEIER: Thank you, Senator Fischer. Senator Nelson, you are recognized. [LB399]

SENATOR NELSON: Thank you, Mr. President and members of the body. I'd like to pursue something that Senator Fischer suggested, and in order to do that I would have some questions of Senator Avery if he would yield. [LB399]

SENATOR LANGEMEIER: Senator Avery, would you yield? [LB399]

SENATOR AVERY: I will. [LB399]

SENATOR NELSON: Senator Avery, if distribution is a problem here and we still need to feel the need to go into the various counties to collect signatures, why couldn't we handle the counties on a percentage basis? In other words, if you've got a county with

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10,000 people and you provide for 1 percent or whatever, that would be 100 signatures; if it were five times that much in another county, then you'd have to get 500 signatures. I mean that could be adjusted. But wouldn't that solve the distribution problem...I mean the equality problem, here, if we went about it that way rather than do away with this going from county to county altogether? [LB399]

SENATOR AVERY: Well, not all districts follow county lines, Senator, as you know. Also, the way it is now is you get 25 signatures in all counties with 100 registered voters or more, and some of those counties might have 10,000 voters and some may only have 5,000, so there's your problem with equal protection. [LB399]

SENATOR NELSON: All right. I guess that would answer my question, because of the fact the boundaries aren't uniform and it would be difficult then to figure out the exact population that's going to be voting for you, I suppose... [LB399]

SENATOR AVERY: Would you repeat that please? [LB399]

SENATOR NELSON: ...and go by a percentage basis. All right. I think that answers my question and I think other questions I had have been answered by previous...by the questions of other senators. So thank you very much, Senator. Thank you, Mr. President. [LB399]

SENATOR LANGEMEIER: Thank you, Senator Nelson. Senator Council, you're recognized. [LB399]

SENATOR COUNCIL: Thank you, Mr. President. I rise in support of LB399 and urge my colleagues to vote to advance this measure. I had the opportunity in connection with the two recall bills that I introduced this year to review case law on signature requirements. And one of the cases that I read had to deal with signature requirements relative to having your name placed on the ballot for a general election, and I suspect that that's one of the cases that the Secretary of State has some concern with. And the federal court in New York has already ruled that to have a distribution formula similar to the one that currently exists in statute is unconstitutional and violates the Fourteenth Amendment. And the problem is, is that we're talking about statewide office. And the reason that there is a distribution requirement is the sense that a candidate for a statewide office has to show some statewide support. Well, the problem there, when you have a specific per-county signature requirement, is that those individual candidates could go to counties with very low populations and obtain the necessary signatures and be deemed to have demonstrated statewide support, but it would be to the detriment of individuals in some of the larger counties. I believe that the proposal that is set forth in LB399 is fair and equitable and will get the state in a position where it could defend any challenges. Senator Loudon asked the question regarding why the change now and the law being the way it has been for as long as it has been. And it's

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due to the fact that we have an increase in independent parties and third-party candidates who do not go through the normal partisan party nominating process. And what the Fourteenth Amendment challenges have been is that individual voters have a right to have an opportunity to vote for the candidate of their choice, whether that candidate is a member of a recognized party or not. And to impose per-county signature requirements that would place some candidates at an advantage by going to smaller population counties to receive their signatures is what is being addressed here. I believe that we should be ahead of the lawsuit. The fact that there is a lawsuit pending is significant, but I think that we should, notwithstanding the lawsuit, carefully look at whether or not our current signature requirements for placement of a candidate on a ballot for a partisan--and that's the key point here--partisan statewide election, because this deals with individuals who are not candidates are nominated by recognized political parties. And that's why we're seeing an upturn in the number of, quote, third-party candidates, and that's where these equal protection challenges are coming from. And with having this advance knowledge of how the courts are ruling, and as Senator Avery stated, there are a number of decisions out there. I just cited the federal court decision, and my recollection of... [LB399]

SENATOR LANGEMEIER: One minute. [LB399]

SENATOR COUNCIL: ...and my recollection of reviewing that case is that the decision that was rendered by that federal court was affirmed by a court of appeals. So it's clear that the law in this subject is to eliminate impediments to third-party candidates being placed on general election ballots. And by going to this congressional district basis, you are in a position where you can show that a candidate does, in fact, have some statewide support if they can get the same number of signatures out of each of the three congressional districts. So I would urge the body's advancement of LB399. Thank you. [LB399]

SENATOR LANGEMEIER: Thank you, Senator Council. Senator Schumacher, you are recognized. [LB399]

SENATOR SCHUMACHER: Thank you, Mr. President. The bar association might want to throw me out for arguing against the state making a donation to attorney fees, but that's what I'm going to do. This is really a pretty simple proposition. The language that is being struck--and I'm not getting paid by Apple to stand here with this--but the language that is being struck says if the district in which the petitions are circulated comprises two or more counties, then at least 25 signatures shall be obtained from each county. Where that runs into problems is, if you have a county of 500 people and a county of 5,000 people, 25 signatures in one, in the small county, carry...those people carry more weight than the people in the big county. And that's not fair according to the federal rules we deal with. That being the case, there's been a lawsuit that's been brought. We're looking at the barrel of a gun and it says we've got to fix it; if we fix it

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here and now, then we can argue...or apparently the state can argue that it's moot; it's water under the bridge; don't hook us for as much attorney fees or maybe any attorney fees. Now Senator Fischer raises a good point. Whether or not the 750 per congressional district is enough in the big scheme of things to require people to get out and campaign and get signatures across the state may very well not be enough. And we might be able to look to our constitution in the initiative process where there's a distribution required of 5 percent of the voters in, I think, 30-some counties has to sign an initiative petition. So we do have some guidance there if we want to fiddle with that. And we might have time to do some of that if that's the will of the body as we come up on Select File, or we may just defer and prefer to dodge a bullet right now and then tweak it later. But I think that it's necessary for us to do something here unless we feel a little flush with cash and have some sympathy for the attorneys on the other side. Thank you, Mr. President. [LB399]

SENATOR LANGEMEIER: Thank you, Senator Schumacher. Senator Avery, you are recognized. [LB399]

SENATOR AVERY: Thank you, Mr. President. I have some information that can address some of the questions that Senator Fischer raised on the mike a few minutes ago. The anticipated cost, if we lose this case, would be about \$100,000. That's money that would come, I presume, from the General Fund. And we don't have it. On the question of whether we are doing this too quickly and maybe we ought to wait to see what the outcome of the case is, I can just tell you that no court--no court--has upheld laws of this type. In every case where they've been challenged, they have been struck down. Montana is an example. Idaho is an example. Washington State is an example, and many, many others. So I'm sympathetic to the issues raised about the desirability of candidates going to all the counties in order to get signatures, and they can still do that, but requiring them to do so certainly puts us in jeopardy of violating the Fourteenth Amendment. Thank you, Mr. President. [LB399]

SENATOR LANGEMEIER: Thank you, Senator Avery. Senator Fulton, you're recognized. Senator Fulton waives his time. Senator Carlson, you are recognized. [LB399]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. Listening to the debate on this bill, I think that Senator Fischer brought forth a good point. I think Senator Schumacher brought forth a good point. But I understand where if there are 25 signatures required out of each county, that that may not be fair and that may not be constitutional. On the other hand, I'd like to address a question to Senator Avery if he would yield. [LB399]

SENATOR LANGEMEIER: Senator Avery, would you yield? [LB399]

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SENATOR AVERY: I will. [LB399]

SENATOR CARLSON: Senator Avery, as I read that--now tell me if I'm correct on this--this would allow, with a requirement of 750 signatures from each of the three congressional districts, that someone could be on the ballot with 2,500 signatures out of Omaha, 750 signatures out of Lincoln, and 750 signatures out of Norfolk. [LB399]

SENATOR AVERY: That is correct. [LB399]

SENATOR CARLSON: Okay. I don't think that's fair either. I am inclined to vote for this on General File and then hope that this could be further remedied by Select File. Thank you, Mr. President. [LB399]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Ken Haar, you are recognized. [LB399]

SENATOR HAAR: Mr. President, members of the body, listening to the discussion, collecting signatures sounds a lot like campaigning and getting votes in a campaign. And there's just no way we're ever going to say that you have to get so many votes from this place or that place in an election. You look at who gets 50 percent plus that one vote. And so I would just suggest that this is like campaigning; this is like voting in an election. And if you...you know, if you collect all your signatures in one place and that's the only place you campaign, you're probably going to lose the race. And so I would say where you collect your signatures is not that important. We don't force people who campaign to go to every county. It's a good idea, if you're running for a state office, to go to every county, but we don't force people to do that. And I think in collecting signatures it's very much the same. It's like voting to get a person on the ballot, and the smart person will go to as many counties as possible, not only to collect signatures to put them on the ballot, but also to elect them. And I think those are two very parallel concepts. So I support LB399. On that point, primarily, also I think we should avoid the train wreck of going through this whole legal process when we can see that that train wreck is going to happen if we keep going. Thanks. [LB399]

SENATOR LANGEMEIER: Thank you, Senator Haar. Senator Carlson, you're recognized. [LB399]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I sat down and I thought I was a little harsh with Senator Avery and I didn't mean to be because I just said that what he has proposed isn't fair. And certainly he's put thought into that, so I didn't want to come across as harsh. Senator Haar, I don't agree with his position either. This bill that we're trying to craft and we're discussing and we're going to vote on, we've got to keep in mind who's it good for. Is it good for the candidate? We're talking about a statewide election. Is it good for the state? And I think those things that

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cause candidates to spread out and see what's in another part of the state is beneficial to them and it's beneficial to the people. So I think some combination of what we have here would serve the people best in the long run. Thank you, Mr. President. [LB399]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Louden, you are recognized. [LB399]

SENATOR LOUDEN: Thank you, Mr. President and members. As I look at this bill here and the way it was drafted with the number of people that had to sign petitions in different counties, and then as you look at the rest of it, you have the one part there, the section (a), and that's for nonpartisan offices. Now Nebraska is the only state that has a legislative chamber that's nonpartisan. So I think we're talking about two different issues. When you're talking about the congressional districts, those are partisan offices. The Governor is a partisan office. All those are partisan offices. But I think the part here where it's nonpartisan and we're voting in...or people are petitioning to be elected to the Legislature, I don't see where that language is that much out of...unconstitutional, I guess you would say. I don't see...I think there's a certain amount of fairness in there, because with a nonpartisan Legislature like we have and a one-house Unicameral, you have to have people that circulate around the counties. And as I said it again, some of these districts are going to get huge and they're going to have many counties in there, and there's going to be most of those counties will have one large or two large metropolitan areas. And when they do that, a candidate can go in there, hire his circulators, and probably get the petitions to get on the ballot. Then the next thing is Senator Haar said, well, you've got to campaign anyway, which is the best way to do it. But on the other hand, they can have paid circulators and then they can go ahead and spend their money on all kinds of media and everything like that to bring it forward. So I don't...I think there's something that needs to be done with the section (a) part and I would prefer to see it done before we go on to Select File, because if we pass this on to Select File and then they say, oh no, we can't do it because it might jeopardize our position in this lawsuit, then the thing has went down the river with it. So with that, I still can't support this bill the way it was written; if you can take the nonpartisan out of there, if Senator Avery wants to mention that he can work that nonpartisan over or something, then I'll support the bill. Thank you, Mr. President. [LB399]

SENATOR LANGEMEIER: Thank you, Senator Louden. Seeing no other lights on, Senator Avery, you're recognized to close on LB399. [LB399]

SENATOR AVERY: Thank you, Mr. President. I will just close by pointing out that in Nebraska we have a lot of political subdivisions that boundaries do not follow county lines. It makes it difficult in the best of circumstances to implement current law. The most difficult problem for me and for the committee is that we are likely to lose this court case. The plaintiffs include the American Civil Liberties Union of Nebraska. They are acting on behalf of Citizens in Charge Foundation, Inc., and on behalf also of Michael

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Groene of North Platte and Donald Sluti of Kearney, all of whom believe that the law makes it impossible for independent candidates to get on the ballot. We, in the committee, felt that this was an important constitutional issue and that if we were likely to be held accountable or held guilty of violating the Fourteenth Amendment, guarantee of equal protection, and if the loss of this case was to cost the state about \$100,000, that we ought to change the law before that court can rule. And that is what we are trying to do and I would urge you to vote yes on LB399. Thank you. [LB399]

SENATOR LANGEMEIER: Thank you, Senator Avery. You have heard the closing on LB399. The question before the body is, shall LB399 advance? All those in favor vote aye; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB399]

CLERK: 31 ayes, 2 nays, Mr. President, on the advancement of LB399. [LB399]

SENATOR LANGEMEIER: LB399 does advance. Mr. Clerk, items. [LB399]

CLERK: Thank you, Mr. President. Your Committee on Judiciary, chaired by Senator Ashford, reports LB167 and LB284 to General File. Urban Affairs, chaired by Senator McGill, reports LB546 to General File with amendments. Hearing notice from Banking Committee. And a new resolution, LR77; it's offered by Senator Gloor. That will be laid over, Mr. President. (Legislative Journal pages 594-596.) [LB167 LB284 LB546 LR77]

SENATOR LANGEMEIER: Thank you. Continuing on today's agenda, the next bill is LB556. Mr. Clerk. [LB556]

CLERK: LB556 is a bill by Senator Dubas. (Read title.) Introduced on January 19 of this year, referred to the Government, Military and Veterans Affairs Committee. The bill was advanced to General File. I have no amendments at this time, Mr. President. [LB556]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Dubas, you are recognized to open on LB556. [LB556]

SENATOR DUBAS: Thank you very much, Mr. President. Good morning, colleagues. I'm sure that every one of you read this bill page by page, number by number, so there probably won't be any questions. I brought a similar bill for the Polk-Merrick County boundary a couple of years ago. Now this bill addresses the Merrick-Hamilton County boundary. Merrick County is obviously...has rivers for its boundaries, and that's the reason behind this bill. Current state statutes reference the use of a channel, so under the statute that deals with Merrick County, we're talking about the south channel of the Platte River. Well, any of us that have been around a river or a stream or any flowing water like that know that that is constantly changing. And so while the channel may be in one place in one year, it's not going to be in the same place the next year. And so to

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be able to accurately establish that boundary just by using the river is not always so easy. So there's a lot of accretion ground that's along that river that neither county really fully knows who it belongs to. With the advent of GPS, we can now pinpoint exactly those moving boundaries and make them a fixed point through these GPS coordinates. Both of the assessors from these counties have worked hard on this bill, along with their county surveyors to determine setting this up, putting these coordinates in place. This will better allow the assessors to make those determinations about exactly where that land falls and who actually has authority or the ability to deal with those pieces of property. I'm also of the understanding that in Legislative Research, the people who do our mapping and those types of projects, think that this is a good bill. The fact that we can be this specific with what we're dealing with is a good thing and makes everybody's job just a little bit easier. Probably the only job that wasn't easy is for those who had to proofread this bill to make sure that every comma and degree was in the correct place. So with that, I would appreciate your support in advancing this bill to Select File. Thank you. [LB556]

SENATOR LANGEMEIER: Thank you, Senator Dubas. You have heard the opening on LB556. The floor is now open for discussion. Senator Wallman, you are recognized. [LB556]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. Would Senator Dubas yield to a question? [LB556]

SENATOR LANGEMEIER: Senator Dubas, will you yield? [LB556]

SENATOR DUBAS: Yes, I will. [LB556]

SENATOR WALLMAN: Thank you. I know that it's a complicated issue when you deal with rivers and stuff like the Platte River, the Missouri River. Do you think if I was a surveyor, should I be scared that this is going to take over surveying everything? [LB556]

SENATOR DUBAS: This is a tool that surveyors use, so. [LB556]

SENATOR WALLMAN: They use this...it's legal. [LB556]

SENATOR DUBAS: Yes. [LB556]

SENATOR WALLMAN: That's what I'm getting at. [LB556]

SENATOR DUBAS: Yes. [LB556]

SENATOR WALLMAN: Okay. Thank you. [LB556]

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SENATOR DUBAS: Yes, this is...this just makes their job easier, I would assume. [LB556]

SENATOR WALLMAN: Thank you, Senator Dubas. Thank you, Mr. President. [LB556]

SENATOR LANGEMEIER: Thank you, Senator Wallman. Senator Carlson, you're recognized. [LB556]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I'd like to address a question to Senator Dubas, if she would yield. [LB556]

SENATOR LANGEMEIER: Senator Dubas, will you yield? [LB556]

SENATOR DUBAS: Yes, I will. [LB556]

SENATOR CARLSON: Senator Dubas, I see that there were no opponents at the hearing and you had both Merrick and Hamilton Counties there in support. I'm just interested, when you deal with a river and its positioning and so forth, evidently there weren't any property owners under this change, recommended change, that ended up without river on their property; if they have river now, I would think they'd want to keep river. That has a lot of value. So there must not have been any kind of a problem or opposition in that regard. [LB556]

SENATOR DUBAS: No, there wasn't. And again, this is just fixating that boundary so that wherever that property is you know if it belongs in Merrick County or you know if it belongs in Hamilton County. It's still your property; it's just defining who has the authority to do the assessments and those types of things. [LB556]

SENATOR CARLSON: And it won't change as the main path of the stream changes. [LB556]

SENATOR DUBAS: You know, the stream will change but these are fixed coordinates and they'll be...my understanding is they're going to put some type of metal stakes or something that they'll be able to use to make sure that this...they have a measuring stick to keep this boundary in place. But it doesn't change anything else. [LB556]

SENATOR CARLSON: Okay. And since both counties have agreed to this and requested it, there would be no reason for me to be in opposition to it. I simply wanted to ask that question and I do support the bill. Thank you. [LB556]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Lautenbaugh, you're recognized. [LB556]

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SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. Senator Dubas, I wonder if you'd yield to a question. [LB556]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: Senator Dubas, will you yield? [LB556]

SENATOR DUBAS: Yes, I will. [LB556]

SENATOR LAUTENBAUGH: Senator, did you explore just eliminating this county boundary altogether? [LB556]

SENATOR DUBAS: No, I did not. [LB556]

SENATOR LAUTENBAUGH: Because I was looking at this and there's, give or take, 90 of those things and that seems like a lot so... [LB556]

SENATOR DUBAS: Well, you and I would probably disagree on this point. [LB556]

SENATOR LAUTENBAUGH: I was just throwing it out there. Would you be amenable to an amendment that would do that? [LB556]

SENATOR DUBAS: Not likely. [LB556]

SENATOR LAUTENBAUGH: Well, thank you. [LB556]

SENATOR GLOOR: Senator Christensen, you are recognized. [LB556]

SENATOR CHRISTENSEN: Thank you, Mr. President. Would Senator Dubas yield for a question, please? [LB556]

SENATOR GLOOR: Senator Dubas. [LB556]

SENATOR DUBAS: Yes, I will. [LB556]

SENATOR CHRISTENSEN: Senator Dubas, I'm referring back to your conversation with Senator Carlson and yourself; if I understand this right, we're fixating the county boundaries but not the farmers' boundaries. So if the river changes, the farmer's boundary still change under the common rules that we have now but the county line doesn't. Is that correct? [LB556]

SENATOR DUBAS: That's correct. [LB556]

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SENATOR CHRISTENSEN: Okay, because that was a discussion we're having here, whether or not could possibly have the river move and a farmer would lose his access and... [LB556]

SENATOR DUBAS: No. This is just putting into statute where that boundary, just like if it was a fixed...like boundaries that aren't a part of a river. It's just fixating that boundary. Where we use ranges and townships in the rest of the boundaries, this puts that into place for the rivers. [LB556]

SENATOR CHRISTENSEN: That's the way I read it and understood it. I appreciate it. Thank you. [LB556]

SENATOR GLOOR: Thank you, Senator Christensen. Senator Fulton, the Chair recognizes you. [LB556]

SENATOR FULTON: Thank you, Mr. President. Would Senator Dubas yield to a question? [LB556]

SENATOR GLOOR: Senator Dubas. [LB556]

SENATOR DUBAS: Yes, I will. [LB556]

SENATOR FULTON: Senator, we did this for another, right, and you talked about that already. Are we going to be...let me ask it this way. Wouldn't this be something that we ought to do for all of the counties in Nebraska? [LB556]

SENATOR DUBAS: Every county has that potential to do that should they wish. It would have to come from the counties though. I wouldn't see us doing it from the state level. It would come from the counties because they're doing all the work. [LB556]

SENATOR FULTON: Yeah, okay. Is this...do you know if there is any precedent for these types of descriptions between states? [LB556]

SENATOR DUBAS: I do not know that. That would be an interesting question to find the answer to. [LB556]

SENATOR FULTON: Okay. I'm thinking this is something that will probably occur when, you know, certainly when I'm gone from here and probably when most of us are gone from here. But I mean there are a lot of...we're bounded on a river on the east and, anyway, this...so when you went to put this bill together, much of the work had already been done at the county level. This is something that was brought to you then by these counties? [LB556]

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SENATOR DUBAS: Exactly. The surveyors had done every bit of this work. The assessors had done all the work and then it was just brought to me because we do have to make the change in the statute. [LB556]

SENATOR FULTON: Okay. All right. Thank you, Senator Dubas. Thank you, Mr. President. [LB556]

SENATOR GLOOR: Senators wishing to be heard are Hadley and Price. Senator Hadley. [LB556]

SENATOR HADLEY: Mr. President, members of the body, maybe I could answer Senator Fulton's question; if you drive up to Yankton, South Dakota, and you go across the bridge into South Dakota and you reached land on the South Dakota side, you'll find yourself still in the state of Nebraska. And, in fact, you have to have a Nebraska fishing license to fish on the north side of the Missouri River up there and the reason for that, at one time the river had been over there and they had used the midpoint of the river as the boundary. They have since changed that so I think this is exactly what your bill is doing. So there is a precedent, at least between Nebraska and South Dakota in this very instance. I would yield my time to Senator Dubas, the remaining time, if she would like to use it. [LB556]

SENATOR GLOOR: Senator Dubas, 4 minutes 10 seconds. [LB556]

SENATOR DUBAS: I don't really need the time but I certainly do appreciate that bit of information and the questions that are being asked this morning. [LB556]

SENATOR GLOOR: Thank you, Senators Hadley and Dubas. Senator Price. [LB556]

SENATOR PRICE: Thank you, Mr. President, members of the body. Sitting in the committee, we did have the fun of reading every single grid point and we've done that a couple of times now. And the only reason I rise to talk is I do have a constituent who has actually looked at the various subject matter that Senator Fulton has proposed and he has been working for years and years to try to get the state of Iowa and Nebraska together, along with the federal government, to do just the exact same thing that Senator Fulton had asked. But it's kind of like trying to herd cats, trying to get all the people together and to agree on things on state boundaries. It seems it's a little easier to do it within the state but there is a move afoot to do that; it's just trying to get all the people together. And by our enacting legislation like this, we're proving the point, we're proving the capability and that way we'll give a little more credence and credibility to the process should we be able to get all the players in place. And with that, I will yield the remaining time to the President. Thank you. [LB556]

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SENATOR GLOOR: Thank you, Senator Price. Seeing no one wishing to be recognized, Senator Dubas, you are recognized to close on the advancement of LB556. [LB556]

SENATOR DUBAS: I thank my colleagues for the discussion and would appreciate your advancement to Select File. Thank you. [LB556]

SENATOR GLOOR: The question is the advancement of LB556 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB556]

CLERK: 35 ayes, 0 nays, Mr. President, on the advancement of LB556. [LB556]

SENATOR GLOOR: The bill advances. Mr. Clerk. [LB556]

CLERK: Mr. President, LB161, a bill by Senator Karpisek. (Read title.) The bill was introduced on January 7 of this year, at that time referred to the Government Committee, advanced to General File. There are Government, Military and Veterans Affairs Committee amendments pending, Mr. President. (AM264, Legislative Journal page 481.) [LB161]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Karpisek, you are recognized to open. [LB161]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. LB161 is a bill that I have brought for the five years that I've been here. Senator Combs brought it while she was here. It deals with manual recounts of ballots. LB161 would change provisions relating to recounts of elections by allowing a candidate who fails to be nominated or elected to request a manual recount of such election at his or her own expense. The problem that I have seen is that people don't always trust the machine vote. The problem that I see with it is that if there is a recount, it's run through the same machines again, so obviously if something is wrong with the machine, it would do the same count. I think in this day and age of voter apathy, this doesn't help people going to vote. Now there are conspiracy theories out there, people who think that these machines are rigged. That is not my belief, although I do believe that it could happen somehow, that's not how I'm going about this. Right now the only way that the ballots, the paper ballots can be reobtained is through a court order if there is not a recount. My thought is how do you get a court order if you can't get at the ballots to prove that there's a reason that they should be looked at? I know it's a controversial bill. I know that we will have some discussion on it. I'm very glad to get it on the floor to talk about it because I think it is an issue for a lot of people. Whether it's real or perceived, I cannot say. But I think that any time that we can do something to help people feel that their vote counts is a good move. With that, Mr. President, I will move on and let the

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amendments come up. Thank you, Mr. President. [LB161]

SENATOR GLOOR: Thank you, Senator Karpisek. As the Clerk stated, there are amendments from the Government, Military and Veterans Affairs Committee. Senator Karpisek, as Chairman of the committee, you're recognized to open on the amendment. My apologies, Senator Avery, as Chair, you're recognized to open. [LB161]

SENATOR AVERY: Thank you, Mr. President. Didn't realize I had lost my election that fast. Thank you. The committee had a lengthy discussion about this bill and how we might amend it. There were concerns raised in committee about allowing any candidate to request a manual recount, even candidates who lost the election by large margins. The committee decided to narrow which candidates are allowed to request a manual recount. With AM264, only candidates who fail to be nominated or elected by no more than the margin triggering the automatic recount outlined in Sections 34-1119 may request a manual recount. The margins for triggering an automatic recount are 1 percent or less of the vote received by the candidate who received the highest number of votes if no more than 500 total votes were cast for the office; if there were less than 500 votes cast, an automatic recount is triggered at 2 percent or less of the votes received by the candidate who received the highest number of votes for the office. This bill was advanced six to one with one member present and not voting. With this amendment, AM264, I recommend that you vote to amend LB161 with this amendment. Thank you. [LB161]

SENATOR GLOOR: Thank you, Senator Avery. We move to discussion on the committee amendments. Senators wishing to be recognized are Lautenbaugh, Harms, and Hadley. Senator Lautenbaugh, you are recognized. [LB161]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I'm taking a page from Senator Fischer's book and I'll just say: Senator Karpisek, I don't like your bill. This doesn't come up very often and I don't talk about it very much, but in a past life I used to be an election commissioner. And I think Senator Janssen was an altar man from Fremont, and Senator Hadley was the mayor of Thedford, and back then Senator Larson was at Georgetown Prep Elementary School or something like that. (Laughter) But I used to deal with this kind of stuff. And then in a more recent past life, I was on the Government Committee and I dealt with a bill like this back then. And I remember the testimony in committee, and I think that one said we were going to count all elections by hand. And I was asking one of the testifiers who was there as a proponent, and he explained to me that the concern was among some of his membership that these machines could be tampered with or inaccurate in some way. And I said, well, do you have any evidence that they've ever been tampered with? And the response was no. Do you know of any occasion where they've been found to have been tampered with; the response was no. Do you know that study after study shows that machine counts are more accurate than hand counts? And the answer was yes.

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And I said, so you're wanting us to introduce inaccuracy into the electoral process to address a misperception by your members. And the answer was yes. And I really had nowhere to go after that. And so we killed the bill in committee I believe that year, and I wish they would have done the same thing this year for this one. The election process is one of our most basic, important, fundamental processes in a democracy. And when we tamper with it...and I don't want to say tamper like it's a bad thing, although, again, don't support the bill, when we do things like this, elections, we take away finality because now there's going to be questions. Okay, so the machine count came out one way, the machine count came out the same way again. Well, then we did a hand count on some limited basis, and it was different. So what do we do? Where does it end? The way the procedure works back when I was there and it's even gotten better since then, you run a test deck before the election that you've marked and you know who you voted for and you run it through each scanner to make sure the scanner works. After the election, you run your test deck through to make sure the scanner is still functioning the same way. So you know if the machine is inaccurate because you test them. Now the Secretary of State does spot audits where they come out and check the machines in selected precincts somehow to make sure they're counting right as well. Time and time again we've learned that the machines are the most accurate way to count. And when you go to a hand count...and understand, I believe if there was a specific question about a machine in a specific county, a judge could order, I believe, some other recount, some other method, perhaps even a hand recount. But if we make this method available, I feel like we're suggesting that there's a problem with a system in which there is no problem. I believe we have the best possible election system available in the state of Nebraska. We have the paper ballots we can go look at, they're initialled by the judges on the bottom, and we count them with scanners that are demonstrated to be much more accurate than any hand count ever could be. This introduces something into the process to address a perception that just isn't accurate. And I would urge you to vote against this, and I'll probably file some sort of motion to give you a chance to vote against it sooner rather than later, and I hopefully urge you to kill this bill. Thank you. [LB161]

SENATOR GLOOR: Thank you, Senator Lautenbaugh. Senator Harms, you are recognized. [LB161]

SENATOR HARMS: Thank you, Mr. President and colleagues. Senator Karpisek, would you yield for a couple of questions, please? [LB161]

SENATOR GLOOR: Senator Karpisek, would you yield? [LB161]

SENATOR KARPISEK: Yes, I will. [LB161]

SENATOR HARMS: Senator Karpisek, I noticed on the committee statement that you had some opponents that weren't in favor of this bill. Could you kind of enlighten us

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about what their concerns were? [LB161]

SENATOR KARPISEK: Their concerns are that, number one, what would be the official count then, the manual or the machine? And I have the next amendment up that I think will clarify that for us a little better. But I'll just tell you about it right now. The bill says that you could pick out ten precincts to recount. You wouldn't have...and pay for them at your own expense. I think that's a very important piece of this. After...that was ten, if you saw that everything was fine, you would probably just stop, if not, you would go on. There would be no way that the election would be changed unless you had all the votes recounted by hand. Then it would be the hand recount with the amendment I'm bringing. [LB161]

SENATOR HARMS: Okay. Thank you. [LB161]

SENATOR KARPISEK: And there are other reasons they don't like it that we can get into later. [LB161]

SENATOR HARMS: Thank you, Senator. I have a couple of other questions. In your counties in your district that you represent, how many of those use the electronic optical scanner for ballot tabulation? [LB161]

SENATOR KARPISEK: All of them. [LB161]

SENATOR HARMS: Okay. And what kind of success ratio have they had? Have they had any challenges? [LB161]

SENATOR KARPISEK: I don't know that, Senator, that there has been. I'm trying to think. This last time I think there was going to be a school board but then it was outside the 1 percent. [LB161]

SENATOR HARMS: So were we more accurate with the scanner than with hand counting? [LB161]

SENATOR KARPISEK: How do you know that? [LB161]

SENATOR HARMS: Well, because you can run both at the same time and you can figure it out. Did they? [LB161]

SENATOR KARPISEK: No. [LB161]

SENATOR HARMS: Okay. Thank you, Senator. What I'm really after here, colleagues, is the fact that these optical scanners were designed to replace a less reliable method of hand counting. Hand counting is not reliable. All over the nation they have found

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areas and problem with actual hand counting, and the best thing is through technology. And why would we want to move to...why would we want to step back? This is a technological world; we're moving forward. And why would you want to go back to the old principle of hand counting? Hand counting is inaccurate, colleagues. And I would urge you not so support this bill. I think it's the wrong thing to do. I think it's not appropriate for us and I don't think it's going to gain anything for us in regard to having people go ahead and do hand counting. I think that day should be over with in this great nation. And if people are concerned about technology, then they ought to be concerned about the world because that's where we're going. Nanotechnology is just changing the world. So does that mean then when we go to the doctor and we have technology we're using, we're going to challenge that? No, you're probably not. It's the same thing here. I would urge you not to support this amendment or the underlying bill. Thank you, Mr. President. [LB161]

SENATOR GLOOR: Thank you, Senator Harms. Mr. Clerk. [LB161]

CLERK: Mr. President, I have a priority motion: Senator Lautenbaugh would move to bracket the bill until June 8, 2011. [LB161]

SENATOR GLOOR: Senator Lautenbaugh, you are recognized to open on your motion to bracket. [LB161]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. It's a beautiful springlike day outside, so I'm trying to be positive instead of negative. So instead of urging you to vote against the bill, I'm going to urge you to vote for the bracket motion. So I'd ask you to join me in that for the reasons that I've previously stated. [LB161]

SENATOR GLOOR: Thank you, Senator Lautenbaugh. Senator Hadley, you are recognized. [LB161]

SENATOR HADLEY: I would stand in support of the bracket motion. I just looked at one race that happened to be the Senate race of 2008. There were 792,511 ballots cast in the state of Nebraska. It would seem to me that this, trying to do a hand count if there had been a challenge at that point in time of 792,511 could be an awesome task. I think the technology has reached the point that it is more accurate to use the machine counting, so I stand in favor of the bracket motion. I would yield any remaining time to Senator Lautenbaugh if he would like to have it. [LB161]

SENATOR GLOOR: Senator Lautenbaugh, 4 minutes 18 seconds. [LB161]

SENATOR LAUTENBAUGH: Thank you, Senator Hadley. To expand upon my prior comments, I guess, and to elaborate, I guess, on what Senator Harms said as well, I do

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take great comfort in the fact that we do still have a paper ballot system in Nebraska. Years ago, all the rage was to go towards an all-electronic system where we vote at little ATMs in the election commission lobby, and we had them in the polling places or were going to have them in the polling place, and I had a level of discomfort with that. While I'm kind of a "technophile," I'm not an unabashed one. I did like the fact that the paper ballot still existed and you could physically look at them if you had to. But I've always been of the mind that with the accuracy of the scanners being the way they are, that need to go look at the paper ballot would only come up in a circumstance of fraud or something like that and with a court order because, again, trying to observe them on a mass scale and count them on a mass scale by hand has just...I don't know how else to put it, has been demonstrated time and time again to be less accurate than the machine scanners. It's just a mind-numbing process to sit there and try to accurately tabulate results from those little filled-in ovals. Human nature being what it is and human faculties being what they are, it doesn't hold one's attention and you make mistakes. The machines, while they aren't perfect, nothing is, they have a longer attention span than we do I guess. They're willing to stick it out to the end on election night; they don't get weary. And we are money-ahead for having this system. And, again, I can't stress enough, introducing a hand count into this process, however limited and regardless of whose nickel it's on, introduces uncertainty into a process where we do not want uncertainty. We want finality and we want clarity and we want fairness. This bill will bring none of those things to the table. It won't advance any of those interests and I would urge you to vote for the bracket motion. [LB161]

SENATOR GLOOR: Thank you, Senator Lautenbaugh. (Visitors introduced.) Continuing with discussion, Senators wishing to be recognized are Dubas, Janssen, Karpisek, Wallman, Avery, and others. Senator Dubas. [LB161]

SENATOR DUBAS: Thank you very much, Mr. President. I would never not support--if that's the way you want to say something--something that would protect the integrity of our voting process. It's one of the most important foundations of our country and the way we do things. But I do definitely have concerns with this bill and will more than likely be supporting the bracket motion. As I've talked with my county clerks, they've really explained this process to me very well and the checks and the balances that are in place, but I would like to follow up with Senator Lautenbaugh on some points that he made. Would he yield to a question? [LB161]

SENATOR GLOOR: Senator, will you yield? [LB161]

SENATOR LAUTENBAUGH: Yes, I will. [LB161]

SENATOR DUBAS: Senator Lautenbaugh, you made reference to the paper ballots. So we still have the paper ballots, is that correct? [LB161]

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SENATOR LAUTENBAUGH: Yes. [LB161]

SENATOR DUBAS: So after the election, those paper ballots are...if for some reason it became apparent that there was something wrong with that particular scanner, we had to go back and do an actual recount, we would have those paper ballots available, is that correct? [LB161]

SENATOR LAUTENBAUGH: That is correct. We do keep them for a number of years. I don't remember how many years, and then I believe they become attic insulation. [LB161]

SENATOR DUBAS: Okay. I wanted to be sure of that. I kind of agree with your point about while I love technology, I'm still not quite there, and so I still want a piece of paper in my hand or something that I can grab onto. So I think that's an assurance for us that if there is some problem, we do still have that actual piece of paper that we can go to. I'd like to bring up another point that I don't believe has been brought up yet. And while this bill would require the person requesting the recount to pay for the recount, we're still going to use the resources of that local county office, that local county clerk and his or her office to do this work. And so while it might not be a direct cost to our counties, there will be an indirect cost because we just moved to advance a bill that removes all state aid to counties and local governments. So we are asking our counties to do more with less; we are asking them to spread their resources across more services. And so while, again, I know this would have to be paid for by the person requesting the recount, we're taking them away from additional duties that they're having to take on without any state support. So I think this is kind of one of those keeping the scorecard kind of things, if we're going to take money away from counties, we have to make sure that we're not asking them to do anything else that will cause them additional burdens or undue stress on what they're already being required to do. I know no system is infallible no matter what you do, whether it's an actual recount by people or whether it's the scanner or whether it's, you know, the computerized voting; nothing is infallible. We'll never be able to get to there from here. But I think this scanner process and the fact that the paper ballots are still available should there really be a concern about the machine that was used gives us the reassurances that we need to make sure that we protect the integrity of the voting process. So I will be supporting this bracket motion. [LB161]

SENATOR GLOOR: Thank you, Senator Dubas. Senator Janssen, you're recognized. [LB161]

SENATOR JANSSEN: Thank you, Mr. President, members. I felt compelled to at least speak on this since I was the lone member voting against it in the Government Committee. And I have several...several of my issues with the bill are similar to Senator Lautenbaugh's, but I didn't want the people of his district to think Senator Lautenbaugh was, once again, blindly following my lead on this since I voted no in committee on this

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and that's why he opposed it. So I wanted to offer my insight as to what I saw. And I believe two years ago we had this bill, as Senator Fischer reminded me how much of a salty veteran I am down here now, but when we killed this bill in committee, I believe it was six to two. And I'm not certain what changed significantly in that bill that flipped the vote the other way on this. And the amendment really didn't do much, actually did less for the bill and made it even less relevant to have this type of a recount. And we hear a lot of bills in Government dealing with elections, and a lot of times we're hearing about how secure things are and how secure the Internet is and we should do on-line voting, and we do voting by mail now. And so we're kind of sending a message one way and then we're coming back and saying, oh, but by the way, we need to count it. So we do lose that finality of it all. I now, wanting to be positive, will support the bracket motion to be positive today, and if the bracket fails, I urge you not to support LB161. I just don't think it does much and it causes confusion to the election process, among the other reasons I think that were pointed out today which was also pointed out during the committee hearing. With that, I will yield my time to Senator Heidemann. [LB161]

SENATOR GLOOR: Three minutes ten seconds, Senator Heidemann. [LB161]

SENATOR HEIDEMANN: Thank you, Senator Janssen, fellow members. This isn't on LB161. I thought I would just comment. You just got the Appropriations Committee preliminary report. It'll be good reading over the weekend. Thought you was going to get some time off, but give you something to do here. Pretty much everything you wanted to know, what we've done up to this point is in this book; if you have questions, you can sure ask myself, anybody else on the Appropriations Committee, or anybody down in the Fiscal Office and they would try to help you. There's a lot of work that was put into this over the last...since we started 30 days ago. A lot of this goes back to the work that was done over the summer also, if you would...you turn to page 32, bills that the Appropriations Committee have already taken into account. So this is showing you all that your hard work has actually been part of our budgetary process, so we appreciate that. There's been a lot of hard decisions. There's going to be some questions on some of the things that we do not only in the preliminary budget but when we reach the floor with our final budget. Any time that I can try to help you out to put you more at ease or let you know why we did what we did, just get ahold of me and we'll see what we can do. Thank you, Senator Janssen. Thank you. [LB161]

SENATOR GLOOR: Thank you, Senator Heidemann. Senator Karpisek, the Chair recognizes you. [LB161]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I thought Senator Utter was before me. He's been telling me what he's going to tell me. I would like to thank Senator Lautenbaugh for his positive vote on this motion. Senator Lautenbaugh and I have talked a lot about this and obviously we disagree about where this goes, and that's okay. That's why we're here is to talk about some things. This bill

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has been, as I said, here probably eight years, six to eight years. Would Senator Lautenbaugh yield for a question, please? [LB161]

SENATOR GLOOR: Senator Lautenbaugh, will you yield? [LB161]

SENATOR LAUTENBAUGH: Yes, I will. [LB161]

SENATOR KARPISEK: Thank you, Senator Lautenbaugh. And I was glad to find out that you were an election commissioner. I didn't realize, so I'll ask you these questions. We do have these manual ballots? How can we get at them if we want to look at them? I know it's not the hanging chad, but that sort of idea. [LB161]

SENATOR LAUTENBAUGH: If memory serves...and, for the record, Senator Nelson was a deputy election commissioner, too, so I mean you can use him, too, at the mike later if you want as well, but if memory serves, without a court order you don't get at them. [LB161]

SENATOR KARPISEK: And how do you get a court order? [LB161]

SENATOR LAUTENBAUGH: You'd have to petition the court. [LB161]

SENATOR KARPISEK: And what would be your evidence to show that there is a reason why you should be able to get them? [LB161]

SENATOR LAUTENBAUGH: Well, it's not meant to be an easy process because of those finality concerns we talked about earlier. I think you'd have to allege some sort of misconduct by the machine counter, machine operator. You'd probably have to have an affidavit of someone in the election office alleging some specific kind of fraud or malfunction or something to put the integrity of the count at issue. I'll be honest, I've never litigated one of those cases so I don't know the answer to that for sure. [LB161]

SENATOR KARPISEK: Okay. Thank you, Senator Lautenbaugh. I guess that's my point, members, is that it's very hard to get at those ballots. Without seeing the ballots, how can you say and make a good case to say that there was something done wrong? I will not stand here and say that I think that manual recounting is more accurate. I can't say that. I think the machine is more accurate. My point is that if there is something that has been tampered with, something that went wrong, how can anyone know that that has happened? And we've brought up on the...it's been brought up that: no, machines aren't always accurate; they do break down. How do we know that...if they have broken down? You car may still run, you might have a cylinder out, it may still run, so maybe you think there's nothing wrong. I could bring up all sorts of reasons why machines still run. I would just like some sort of a double check to show people that there is nothing going on here, some way to do ten precincts, and with the Government Committee

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amendment...the amendment only lets still the 1 percent, which is an automatic recount right now, could be paid for by the candidate for a manual recount, maybe. There's going to be a recount within the 1 percent; the candidate can say, I'd like to look at ten of those precincts to be hand recounted and see to make sure that everything is okay there. Now, again, I said before, I realize this is controversial. I know some people think it's ludicrous. I don't. [LB161]

SENATOR GLOOR: One minute. [LB161]

SENATOR KARPISEK: Thank you, Mr. President. I am worried about voters not feeling that their vote counts. I think this would be at least a step for people that I hear all the time say, my vote doesn't count anyway. Well, here's one thing to say, look, it does, at least this part of it does. And we all know in this body that their votes do count. I'm not bringing this to be coy, be funny. I think there is a problem. People have voiced the problem with me. I know the clerks don't like it. I understand that; if somebody told me that we had to do another two weeks in here, I wouldn't like it either. There is a reason behind this and it is just for transparency. Thank you, Mr. President. [LB161]

SENATOR GLOOR: And thank you, Senator Karpisek. Senator Wallman, you are recognized. [LB161]

SENATOR WALLMAN: Thank you, Mr. President. And I thank my friend Senator Karpisek for bringing this bill. We're worried about voter apathy. WikiLeaks, federal government has good security supposedly. What came out of there? I mean, if we can do just a little bit to increase voter comfort to vote, to vote, I think it's the least we can do. So why do we have people testify against this? Why did we have people testify for it? I know...Senator Karpisek and myself, we know two people who are very adamant about this. And I probably don't have the same concern they do. But if two constituents have that much of a concern and they keep hammering on us to watch out what we're doing, on other issues also, so voter apathy is tremendous in this country and maybe this is one of the reasons why. But I myself, I don't think there's any bad things going on. But if somebody perceives there is, why not let them have a chance to pay for it themselves? I don't understand it. I'm against this bracket motion. Thank you, Mr. President. [LB161]

SENATOR GLOOR: Thank you, Senator Wallman. Senator Avery, you are recognized. [LB161]

SENATOR AVERY: Thank you, Mr. President. I supported this bill in committee, and I did so not because I subscribed to any conspiracy theories, not because I believe that we have a broken system, but I believe that we need to take steps to create confidence-building measures. Confidence in what? Confidence in the fairness of our election system, because it is clear that there are people in our state that are not

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completely confident that we have a foolproof system for counting the ballots. Voters and candidates both must have every confidence that they have either won or lost in a fair election, and LB161 helps ensure voters that the votes that they cast were fairly and accurately counted. There are potential problems with electronic voting machines and those problems are grave. Let's start with the fact that software that runs the machines is considered proprietary information by the manufacturers. What does this mean? It means that companies make machines and create the software to run them and they won't tell anyone how it works and how we can be certain that it's clean and reliable. Making the software bug-free and hacker-proof might not be possible. So my question is, why not permit manual inspections of the ballots? The New York Times has reported that slot machines in Las Vegas casinos are held to a higher standard of transparency and inspection than are our voting machines. Does that make you feel uncomfortable? It makes me a bit uncomfortable. The simplest way to make sure the machines are not miscounting is to allow manual, visual inspection of paper ballots. This bill does not put an unreasonable burden on election commissioners. Computer specialists have demonstrated over and over again that it is easy to tamper with electronic voting machines in ways that are all but impossible to detect, and there are probably people in this body who know enough about computers to verify that. In the summer of 2008, The New York Times reported that the election supervisor in Palm Beach County, Florida, apologized to the voters after the voting machines failed to count 14 percent of the votes cast in a city election for commissioner. So if the potential for error exists, why not provide a means for verifying the votes count and the votes cast by visual inspection? Yes, manual recounts have a margin of error. But if you can take a sample of ten precincts, as is specified in LB161, and you can do a visual, hand count, then you'll be able to find out whether or not the electronic count is way off. It should be easy to verify the accuracy of electronically counted votes by allowing for this sample inspection of paper ballots. So I don't understand why anybody would be opposed to a modest inspection or an inspection of a modest number of these ballots. It seems to me that if we need to answer the fears that some people have and the questions that others have about the accuracy of our electronic count,... [LB161]

SENATOR GLOOR: One minute. [LB161]

SENATOR AVERY: ...then this is the way to do it. Thank you, Mr. President. [LB161]

SENATOR GLOOR: Thank you, Senator Avery. The Chair recognizes Senator Nelson. [LB161]

SENATOR NELSON: Thank you, Mr. President, members of the body. Senator Lautenbaugh already alluded to the fact that I was a deputy election commissioner in Douglas County, and that was quite a few years before he was election commissioner. But I can't really add much to what Senator Lautenbaugh has said but I can say this. I was there in Douglas County when the optical scanners were first introduced in

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Nebraska. Douglas County was the forerunner of this. The machines were new at that time and they did have some problems, like jamming and things like. But over the years, they have reached the point where they're 99.99 percent accurate. Why do we want to mess with that when we know that recounting by hand is not as accurate? What is that going to prove? If you talk about...I think Senator Avery said, it's not really any problem to have the election commissioner or the county clerks doing the recounting. Well, it is a problem. It's a real burden for them when it really shouldn't be necessary. I can only speak for Douglas County, but on election night when we were running the machines, they were in a confined space, it was like getting into Fort Knox to get in and out of there. Only certain persons were there that were trained operators. You were very careful to make sure as the ballots were transferred that they were transferred under supervision, that the counting by the machine was done with supervision; if there's anything wrong with a ballot, it was ejected and then it's looked at by hand. And to...just because there's a suspicion that maybe something might have gone wrong, that is no reason whatsoever as far as I'm concerned to give someone the ability to call for a recount even if they do want to pay for it themselves. It's just...is inappropriate and should not be permitted in any form. I think it's important that the Secretary of State testified in opposition the bill. And there were probably more reasons that would have been discussed, but he's the one that provided or put out the rule that these will be used in all the counties. I'm sure that probably to a person, all of the county clerks across the state would object to having to do a manual recount at times. I think if there's anything that could go wrong, it would be in the polling place itself, some lost ballots or ballots lost during transfer. And that has nothing to do with the counting by an optical scanner. So I endorse what Senator Lautenbaugh has said and I think rather, you know, than get into prolonged discussion on this, it would be better to vote in support of the bracket motion and terminate this for, hopefully, the last time. Thank you, Mr. President. [LB161]

SENATOR GLOOR: Thank you, Senator Nelson. Senators wishing to be heard are Schumacher, Pahls, Langemeier, Karpisek, and Ken Haar. Senator Schumacher. [LB161]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. When this bill came up on the agenda in the Government Committee, I almost felt like rolling my eyes back and saying: Senator Karpisek, get into the twenty-first century. These machines can't be beat. They're perfect. They're more accurate than manual counting. And then we got to the testimony. And that's why I voted this bill to move to the general floor. The question was asked very simply: How do you know the program in this machine is okay? The answer was: Well, we run 2,000 or 2,500 or something samples through it and, yep, if the samples come up okay, then the machine is okay. And then at the end of the day, we run the same 2,500 things through it and if they come up with the same number, it's okay. All right. How does the program get into the machine? Well, don't worry, it's not over the Internet because Internet, nasty things can happen; it's not over wireless networks because somebody could bug a wireless network; it's with a

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disk. Okay. How do you know that disk carries the program that does what it's supposed to do? Back in the circular argument, because we run the 200 (sic) cards through it. Well, do you have a check sum on that disk so you know that program matches what's supposed to be there and somewhere along the line somebody didn't fiddle with that disk through the mail or however...the way it got there? No, at least the testimony was there is not check sum. And I think to myself: My gosh! No check sum to check that that program made it into that machine with integrity. Why when we program a keno machine in Nebraska we have to have check sums to make sure. Certainly there would be that level. So this is when I think Senator Karpisek's bill began to take on some merit in my mind and not just be never-never land stuff because if the threat is there of a manual recount, the probability of anybody attempting a fiddle is less. Here's how you beat the 2,000 sample test: You have the program to say, count the first 2,000 ballots okay, then start fiddling with the numbers. And so this system probably needs to be looked at a little bit. Maybe there is some testimony out there that we didn't hear that...how they correct for that or this, but this is not the kind of thing that we just summarily dismiss without at least a discussion to call attention, maybe put some heat on this programming of this particular thing and make sure there is some check summing, and we are in a conspiracy-driven little world where we like to dream about who shot JFK and things. And usually those things take on credibility when you're told you can't do something. So the very fact that we might be able to do something may cut down on any of the criticism. Will there be very many of these recounts? No, nobody is going to foot the bill for these recounts, but it may bring that, the criticism down and it may also force at least a discussion and maybe some action to make sure that there's some integrity checking on these programs above and beyond the 2,000 sample tests that they run. So this is not the kind of thing that should probably just be shrugged off. There is some legitimate issues and it's just not that Senator Karpisek is thinking that there's something wrong with computers. Computers are fine, the programs are what you got to watch. Thank you, Mr. President. [LB161]

SENATOR GLOOR: Thank you, Senator Schumacher. Senator Pahls, you are recognized. [LB161]

SENATOR PAHLS: Mr. President, members of the body, a few moments ago, Senator Heidemann stood up and said that there's a report that we had for additional reading over the weekend. I have a companion piece to go with that report. It's an addendum that I developed basically describing some of the issues that I had, if you can recall, on the Rules Committee when I wanted...when we were discussing rules when I wanted to insert that into this report. It did meet with resistance from the good senator in the fiscal department and I do respect that part. So it was not...of course, I withdrew that amendment. But I'm asking you to take a serious look at this addendum that I have prepared. It is basically a white sheet of paper with a...you look across it, you can see some yellow markings. Thank you. [LB161]

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SENATOR GLOOR: Thank you, Senator Pahls. Senator Langemeier, you are recognized. [LB161]

SENATOR LANGEMEIER: Question. [LB161]

SENATOR GLOOR: The question has been called. Do I see five hands? I do. The question is, shall debate cease? All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB161]

CLERK: 26 ayes, 12 nays to cease debate, Mr. President. [LB161]

SENATOR GLOOR: The motion passes. Senator Lautenbaugh, you are recognized to close on your motion to bracket. [LB161]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. And I'd be truly remiss if I didn't thank Senators Heidemann and Pahls for their contributions to this debate. They've shed a lot of light on the ballot counting issue that we're talking about and we're richer for having heard them on this topic. Obviously this is not a personal dispute between me and Senator Karpisek. We're good friends and we always will be, before and after this. That's not what this is about. It's just a disagreement over whether or not we should go down this road of allowing manual recounts. And I won't labor the point further, it's probably too late for that, but I will say time and time again we've learned that the machines have been demonstrated to be more accurate than a manual recount. And we have a mechanism for recounting. There's no guarantee those ballots are run on the same scanner in counties that have more than one, so there's that element of checking as well. And the way election commission offices routinely function should give comfort as well. It is not some black box into which we send the ballots and out come results with no transparency or accountability. Both parties are generally represented, machine operators are trained, there's oversight on them as well. It's not a process that's shrouded in mystery, but it is a good process and it is an accurate process. And this bill would do nothing to create greater accuracy or to create greater transparency or to create greater confidence in our process. What this would do instead I believe is hamper the process, delay finality, and introduce questions that really have no merit when all is said and done. And I would urge you to vote for the bracket motion and bracket this bill until June 8, 2011. Thank you. [LB161]

SENATOR GLOOR: Thank you, Senator Lautenbaugh. The question is, shall LB161 be bracketed? All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB161]

CLERK: 26 ayes, 11 nays to bracket the bill, Mr. President. [LB161]

SENATOR GLOOR: LB161 is bracketed until June 8, 2011. Mr. Clerk. [LB161]

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CLERK: Next bill, Mr. President, is LB281. It's a bill by Senator Karpisek. (Read title.) Introduced on January 11, referred to the General Affairs Committee, advanced to General File. I have no amendments to the bill, Mr. President. [LB281]

SENATOR GLOOR: Senator Karpisek, you are recognized to open. [LB281]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. While you're voting green for my bills, I have a couple more in a row here so I'll appreciate that. LB281 would allow limousines or chartered buses to be able to have open containers. Just read it real quick for you, a "limousine means a luxury vehicle used to provide prearranged passenger transportation on a dedicated basis at a premium fare that has a seating capacity of at least 5 and no more than 14 persons behind the driver with a physical partition separating the driver's seat from the passenger compartment. Limousine does not include taxicabs, hotel or airport buses or shuttles, or buses." The part about the buses also means a chartered bus. This does not mean a souped-up school bus coming to a Husker game, does not take that out of the open container. The reason I brought this bill is I think that people are trying to be smart about going on trips, if you want to say, to a football game, a wedding, those sort of things, and having a designated driver. They rent a limousine. They take a cooler with them in the back of the limousine, have some champagne. Right now they're breaking the law. I don't think that that makes a whole lot of sense. This bill does not allow the limo company or the bus company to provide the alcohol. It would have to be bring your own. Otherwise, the company would have to have a liquor license and I don't think that we want to get into that either. Those are the reasons for bringing the bill. Again, I think people are trying to do the right thing, not driving, a wedding party, those sort of things, and we're making them...they're breaking the law, they don't even know they're breaking the law. And I would appreciate your support on LB281. Thank you, Mr. President. [LB281]

SENATOR GLOOR: Thank you, Senator Karpisek. We now move to discussion. Senator Hadley, you are recognized. [LB281]

SENATOR HADLEY: Mr. President, members of the body, would Senator Karpisek yield to a question? [LB281]

SENATOR GLOOR: Senator Karpisek, will you yield? [LB281]

SENATOR KARPISEK: Yes, I will. [LB281]

SENATOR HADLEY: Someplace in the back of my mind I thought the federal...the feds were very opposed to this type of thing. For example, in Missouri, they had...if Missouri hadn't changed their law to go away from to-go cups by passengers in cars, they were going to lose state highway funding. Is there any possibility that we're going to run afoul

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of federal regulations involved in highways since we allow drinking on the highways?
[LB281]

SENATOR KARPISEK: I can't tell you yes or no, Senator Hadley, but I will find that out very quickly. [LB281]

SENATOR HADLEY: Okay, if you would, because I just remember Missouri for years had the...anybody in a car could have a to-go cup and I just remember reading in the paper that the feds were going to take away their highway funds if they didn't change that law. So if you could find out, I'd appreciate it. Thank you, Senator Karpisek. [LB281]

SENATOR KARPISEK: I will. Thank you, Senator Hadley. [LB281]

SENATOR GLOOR: Thank you, Senator Hadley. Senator Coash. [LB281]

SENATOR COASH: Thank you, Mr. President. Thank you, members. Would Senator Karpisek yield to a question? [LB281]

SENATOR GLOOR: Senator Karpisek, will you yield to a question from Senator Coash?
[LB281]

SENATOR KARPISEK: Yes, I will. [LB281]

SENATOR COASH: Thank you, Senator Karpisek. I sat through the hearing on this bill as you did and especially as the introducer. One of the things I want to make sure we get on the record and wanted to clarify with you here on the mike was how does this...how does LB281 apply to the driver who drives the limo or the chartered bus?
[LB281]

SENATOR KARPISEK: The driver cannot have alcohol, obviously. In the limo, they have to be separated by a partition. In the bus, obviously, they can't be separated but they cannot be drinking. [LB281]

SENATOR COASH: So it's not your intent to allow the drivers to have an open container. [LB281]

SENATOR KARPISEK: Absolutely not. That's the whole reason behind the bill is to get people from drinking and driving. [LB281]

SENATOR COASH: Thank you, Senator Karpisek. Thank you, Mr. President. [LB281]

SENATOR GLOOR: Thank you, Senator Coash. Chair recognizes Senator Howard.
[LB281]

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SENATOR HOWARD: Thank you, Mr. President. Would Senator Karpisek yield for a question? [LB281]

SENATOR GLOOR: Senator Karpisek, will you yield? [LB281]

SENATOR KARPISEK: Yes, I will. [LB281]

SENATOR HOWARD: Thank you, Senator Karpisek. In looking at this bill, I just have a question. I think it's important to get it on the record. I know it's not your intent to in any way allow minors to drink. I don't even have to ask you about that. But you know that oftentimes high school seniors or prom goers or high school aged youth will rent a limo just for a special occasion. Do you see this in any way allowing any sort of consumption for those individuals that are under age? [LB281]

SENATOR KARPISEK: No, Senator, and I guess if that would be a problem, we could make the driver or the company check IDs before anyone could bring any alcohol on board. [LB281]

SENATOR HOWARD: I appreciate that comment because I think that would be a really good idea. Some people look older than they are and I just have a concern about that. We sure wouldn't want to be encouraging anything that no one intended to have come from this, so maybe you and I could talk about that and look at that. [LB281]

SENATOR KARPISEK: I would be more than happy to do that and you bring up a good point, Senator Howard. I definitely don't want to somehow make a little loophole here for underage drinking. [LB281]

SENATOR HOWARD: I really am glad to hear you say that because I would...the last thing you or I or I think anyone in this body would want to do was to raise that question mark and have it taken advantage of. So thank you so much, Senator Karpisek. [LB281]

SENATOR KARPISEK: Thank you. [LB281]

SENATOR GLOOR: Thank you, Senator Howard. Senator Louden, you are recognized. [LB281]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. Would Senator Karpisek yield for questions? [LB281]

SENATOR GLOOR: Senator Karpisek, will you yield? [LB281]

SENATOR KARPISEK: Yes, I will. [LB281]

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SENATOR LOUDEN: How does this bill affect people with these minihomes, you know, these vacation homes that are, oh, they're as big as buses and that sort of thing and they live in them? Can they have alcohol open on those while they're driving down the road or do they have to have everything all buttoned up or how does that affect (inaudible)? [LB281]

SENATOR KARPISEK: This would not affect them. They would not be able to have an open container on the road. This only goes for like a limo or a chartered bus. [LB281]

SENATOR LOUDEN: Okay. Then these people with their vacation homes that are on wheels, and I always called them minihomes, I don't know what else you call them, but at the present time they're not allowed to have any open containers while they're driving it down the highway. But when they park someplace they can go ahead and have their dinner or supper or whatever they're having and have open liquor containers? [LB281]

SENATOR KARPISEK: That's correct. Under my understanding that it is a home, defined as a home, but it cannot...anything on the road cannot have an open container right now except under this law that would be the chartered or paid-for services. [LB281]

SENATOR LOUDEN: And this is just for chartered limousine service and that sort of thing. [LB281]

SENATOR KARPISEK: Correct. [LB281]

SENATOR LOUDEN: Okay. Thank you, Senator Karpisek. Thank you, members. [LB281]

SENATOR GLOOR: Thank you, Senator Louden. Chair recognizes Senator Carlson. [LB281]

SENATOR CARLSON: Thank you, Mr. President, members of the Legislature. I would like to address a question or two to Senator Karpisek, if he would yield. [LB281]

SENATOR GLOOR: Senator Karpisek, will you yield? [LB281]

SENATOR KARPISEK: Yes, I will. [LB281]

SENATOR CARLSON: Senator Karpisek, if I personally owned three or four of these limos at the present time, under current law it is illegal to have the open container on the road. This is true? [LB281]

SENATOR KARPISEK: That is true. [LB281]

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SENATOR CARLSON: If this bill went through then that changes that and it becomes legal, and I understand the partition and everything. It's my fleet of limos. How much control do I have? [LB281]

SENATOR KARPISEK: I would say that it's your property and if you don't want people to bring the alcohol into your vehicle, they would have no right to do so. [LB281]

SENATOR CARLSON: Then that should be the same...same would be true with a bus company or bus owner. Would that be the case? [LB281]

SENATOR KARPISEK: That would be the case under my understanding right now. [LB281]

SENATOR CARLSON: I think that's pretty important to be completely clear on that. Now so I own three or four limos and I hire drivers to take groups to various events and I have a driver that we understand the law but the driver doesn't want people, that are in there while he's driving, to have open containers. How does...I'm not the owner now. This is the driver. How is that affected? [LB281]

SENATOR KARPISEK: I would think that would go back to you as the owner to make sure ahead of time if they're going to bring alcohol or not and adjust your schedule. [LB281]

SENATOR CARLSON: So it would be your interpretation that if this bill would go through that the driver of a limo or the driver of a bus has no control over a decision whether or not there can be open containers. [LB281]

SENATOR KARPISEK: I wouldn't think so, Senator. I would think that it would be the owner...the employee voicing their concern to the owner. [LB281]

SENATOR CARLSON: Okay. And you can see how this could bring up some really uncomfortable situations. So whatever clarification could be in order on that basis, I'd appreciate information. [LB281]

SENATOR KARPISEK: And I'd be more than happy to work on that, Senator. [LB281]

SENATOR CARLSON: Okay. Thank you, Senator Karpisek. [LB281]

SENATOR GLOOR: Senators wishing to be heard are Karpisek, Lautenbaugh, and Janssen. Senator Karpisek, you are recognized. [LB281]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I have been

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told that this would not affect our state highway funding. My counsel talked to the Transportation counsel; that would not be an issue. I guess the main thing behind the bill is that this is happening now. It's happening now. So I'm more than happy to get into the bill however we want to make sure that we're okay with it, but I think we need to fall back and say it's happening now so we're trying...we can correct some things that are happening now if we'd like to. I would say right now if a driver doesn't like alcohol while...to have it in the back while he's driving, he would tell his boss that now. I would say right now that the limo companies would be very careful not to have minors on board. I don't know that for a fact, but being a former business owner, I sure would have been very careful so you don't use your CDL or lose your license or have something happen to one of those people and it come back on you. That's the whole issue behind this bill is saying it's already happening. I'll be more than happy to try to spell it out more clear any concerns that are coming up, but I think that is the bottom line. Thank you, Mr. President. [LB281]

SENATOR GLOOR: Thank you, Senator Karpisek. Senator Lautenbaugh, you are recognized. [LB281]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. As careful observers of the Legislature know, Senator Karpisek and I are always on the same page and this bill is no exception. I do applaud him for bringing this bill. This just makes a nod to reality and we have adults doing this now and we can either maintain that it's some sort of criminal activity and play gotcha to unexpected adults or we can do what Senator Karpisek is suggesting and that is, again, simply make a nod to reality and allow this to go forward as a controlled, regulated, preferred alternative to drinking and driving. I applaud Senator Karpisek for bringing this bill because any time you step into this area, well, there's a predictable backlash generally, and I appreciate him being willing to weather that and lead us in this direction. And I urge you to vote for the bill. [LB281]

SENATOR GLOOR: Thank you, Senator Lautenbaugh. Senator Janssen, you are recognized. [LB281]

SENATOR JANSSEN: Thank you, Mr. President, members. Well, I hate to say it, I agree with Senator Lautenbaugh again, and I'm speaking right after him again. This is getting somewhat embarrassing. Senator Karpisek, would you yield to a question? [LB281]

SENATOR GLOOR: Senator Karpisek, will you yield? [LB281]

SENATOR KARPISEK: Yes, I will. [LB281]

SENATOR JANSSEN: Thank you, Senator. Again, this falls under one of those laws

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that I have a book for that says, jeez, I thought we could already do this, not that I ever have. So I do applaud you bringing this. A question I had, I was busy basking in the afterglow of passage of the last bracket motion and I kind of missed on your opening. Was there any limits on the numbers of passengers on these buses or limousines or was it just... [LB281]

SENATOR KARPISEK: The limousine is at least 5 and no more than 14 persons behind the driver and there has to be a physical partition separating the driver's seat. The bus, I'm sorry, I do not see any numbers real quick. I'm told that the bus definition is already in statute but not rewritten in this bill. [LB281]

SENATOR JANSSEN: Okay. That was my concern, if somebody were to get a private bus that had...which obviously or many times would seat more than 14 people that somehow we wouldn't be still pushing them off into some type of illegal activity that they're unaware of. So with that clarification, of course I support the bill. Thank you very much, Mr. President. [LB281]

SENATOR GLOOR: Thank you, Senator Janssen. Seeing no senators wishing to be recognized, Senator Karpisek, you are recognized to close. [LB281]

SENATOR KARPISEK: Thank you, Mr. President and members of the body. I could not agree more with Senator Janssen of one of those, wow, I thought I could already do that. And one of our committee members said that. I will say that I have done this and, yeah, I didn't know that you couldn't either. So I think it just clears things up. I hope that maybe it will help with our drunk driving problem. I realize that that is a very thin slice of it but maybe...I think these people are trying to do the right thing and still stepping outside the law. I cannot say that I know anyone who has been ticketed for this, but why even have the possibility if that's not going to happen? I would appreciate your continued green votes for my bills today. Thank you. [LB281]

SENATOR GLOOR: Thank you, Senator Karpisek. The question is the advancement of LB281 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB281]

CLERK: 35 ayes, 1 nay, Mr. President, on the advancement of LB281. [LB281]

SENATOR GLOOR: The bill advances. Mr. Clerk. [LB281]

CLERK: Next bill, Mr. President, LB314. It's a bill by Senator Karpisek. (Read title.) Introduced on January 12, referred to General Affairs, advanced to General File. I have no amendments, Mr. President. [LB314]

SENATOR GLOOR: Senator Karpisek, you are recognized to open on LB314. [LB314]

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SENATOR KARPISEK: Thank you, Mr. President, members of the body. I appreciate your green on the last bill and I hope I can get one more today. LB314 would allow a licensed retailer to issue wine-tasting cards. Under current law, wine-tasting cards may violate the Liquor Control Act as a form of "passbooking," which was the practice of a customer handing a retailer his or her paycheck, then drinking until the check was spent. This practice of "passbooking" could continue for days or even longer. I know of one wine retailer in Omaha that you go in, you put down your credit card, and they give you a different card. As you go around and taste, you swipe your card through a machine and you can sample the different wines that they have there. Then, when you go to checkout, they read your card and it gets billed to your credit card. This bill would make it so you could pay \$20 up-front, how much ever you wanted, put that amount on this card and walk around and still swipe the machines and it would deduct that amount from your card. The idea is that the people that manage the bar, number one, are having people maybe walk out without paying for their tasting experience, as they call it. The other thing is that this would give them a better way to watch how much people are drinking; if you get a wine card for \$20 and you're back for the third time to refill your card, you know that you've probably had quite a bit. The other way, you can't really tell until they come to checkout. Again, I think this is a better way to go about it, more responsible. With the wine market in the state increasing, the local vineyards and winemakers, I think that it is...I know that it is making an economical impact on the state and I think that this would help them promote their business in a safer, better way for them. Thank you, Mr. President. [LB314]

SENATOR GLOOR: We now move to discussion. Are there senators wishing to be recognized? Seeing none, Senator Karpisek, you are recognized to close. Senator Karpisek waives. The question is the advancement of LB281 (sic) to E&R Initial. All those in favor vote aye; all those opposed vote nay. LB314, excuse me. Have you all voted? Record, Mr. Clerk. [LB314]

CLERK: 39 ayes, 0 nays, Mr. President, on the advancement of LB314. [LB314]

SENATOR GLOOR: The bill advances. [LB314]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR71. Mr. Clerk, items for the record? [LR71]

CLERK: Mr. President, a hearing notice from Health and Human Services, signed by Senator Campbell. Revenue Committee reports LB84 to General File with committee amendments attached. Senator Cornett, amendment to LB66 to be printed. Name adds:

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Senator Bloomfield to LB52, LB221, and LB284. (Legislative Journal pages 597-599.)
[LB84 LB66 LB52 LB221 LB284]

And Senator Campbell would move to adjourn the body, Mr. President, until Tuesday, February 22, at 10:00 a.m.

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. We are adjourned. (Gavel)