

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

Floor Debate
March 16, 2011

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PRESIDENT SHEEHY PRESIDING

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

SENATOR WALLMAN: (Prayer offered.)

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

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

PRESIDENT SHEEHY: Are there corrections for the Journal?

CLERK: I have no corrections.

PRESIDENT SHEEHY: Messages, reports, or announcements?

CLERK: Enrollment and Review reports LB544, LB100, and LB230 to Select File, some of which have Enrollment and Review amendments. Senator Cook offers LR124; Senator Flood, LR125; both will be laid over. That's all that I had, Mr. President. (Legislative Journal pages 883-884.) [LB544 LB100 LB230 LR124 LR125]

PRESIDENT SHEEHY: While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR105, LR106, LR107, LR108, LR109, LR110, LR111, LR112, LR113, LR114, LR115, and LR116. (Visitors introduced.) Mr. Clerk, we'll proceed to the first item under General File, 2011 senator priority bills, Hadley division. [LR105 LR106 LR107 LR108 LR109 LR110 LR111 LR112 LR113 LR114 LR115 LR116]

CLERK: LB387, a bill by Senator Hadley at the request of the Governor. (Read title.) Mr. President, Senator Hadley presented his bill yesterday to the Legislature. At that time he also offered AM636 as an amendment to the bill. When the Legislature left the issue, Senator Harr had moved to amend Senator Hadley's amendment with AM804. So I have pending Senator Harr's amendment to Senator Hadley's amendment, Mr. President. (AM804, Legislative Journal page 873.) [LB387]

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PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Hadley, would you like to take 2 minutes and summarize LB387 and AM636? [LB387]

SENATOR HADLEY: Thank you, Mr. President. Members of the body, good morning. Just a quick summary: This has been a work in process. We started out by having a consulting group come in and look at what we were doing in economic development in the state. They gave us many ideas of how we could improve. We had a task force this summer that looked at the ideas that the Battelle study came up with, made recommendations, a lot of hard work by that group. From that, the Governor has put together a package of four bills that I think addresses the problems, the weaknesses we have in our economic development area. This bill is one of them and this bill basically creates a new fund using both new and existing resources to support research, innovation, and development. It's a bill that has a long-term impact on the state. It's time we do this. It's time we move Nebraska forward in the high-tech transfer arena so that we can compete with other states in the nation. I urge your support of LB387. [LB387]

PRESIDENT SHEEHY: Thank you, Senator Hadley. Senator Harr, would you take a minute and summarize your amendment, AM804? [LB387]

SENATOR HARR: Thank you, Mr. Lieutenant Governor. What I did is I prioritized LB387. This is...and I appreciate Senator Hadley and Senator Conrad, Senator Heidemann for all their hard work on this bill and for letting me prioritize it. This is a work in progress and as it progressed there was a change made. Originally, there was one definition of a distressed area given at the public hearing. Amendment AM636, which is being introduced now, amended that area of distressed area and what it did was it specifically picked on large areas of over 100,000. And I had a problem with that. If it's a distressed area it's a distressed area, let's treat all distressed areas the same. What my bill does is treat them all the same. It's basically what is good for the goose is good for the gander. This idiom means that sexes should be treated the same and not be same and not be subjected to different standards. That's what I'm doing except you can replace the word "sexes" with counties. And that's my bill. Thank you. [LB387]

PRESIDENT SHEEHY: Thank you, Senator Harr. (Visitors introduced.) Continuing with floor discussion of AM804 to AM636, members requesting to speak: Senator Burke Harr, followed by Senator Hadley. Senator Harr. [LB387]

SENATOR HARR: Thank you, Mr. Lieutenant Governor. To go into this a little earlier, again, thank you for all those who have done all their work on this. What this is, is we're changing the definition of a distressed area. A distressed area, as originally defined in this bill, was an area that had unemployment higher than the state average, average salary lower than the state average, or had, oh boy, a loss of population in the last three years. Well, and that was a good definition, it was a broad definition and it set...what we

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did is we set a definition and we let see where it fell. Then there's this amendment, AM636, which changes the definition to say...well, the original definition said if any part of that county fits within this criteria, the whole county fits within that criteria, and that was good. And then it said if any part...if you don't have any one of these criteria, if there's a section of your county that falls within that, we'll go ahead and go with that census tract area, which was a good definition. Then we changed and we said, well, you know, that's a little...we're supporting too many areas so let's go ahead and change it up a little and make it counties over 100,000, so we're now on definition two. We said if you're under 100,000 we'll keep the same definition; if you're over 100,000 we're going to go by census tract area only. That's fine. It affected one county and one county only--Douglas County. And to this I have yet to hear a reason for why we changed that. There hasn't been a real logical reason. So what I propose in my amendment is to say, you know, if it's overly broad, the first definition, let's go by census tract area everywhere. If there's poverty, if there's a distressed area, let's help that. Gosh darn it, that's what I want to do so let's focus like a laser on that area that's distressed. And to that, that's what my amendment does. Now things got a little bit off track yesterday and this became an urban versus rural situation. That was not my intent and I am sure, I hope, that was not Senator Hadley's intent to make this an urban versus rural situation. That is to nobody's advantage to do that. But last night...so last night I spent a little time looking over Senator Hadley's definition of a distressed area. Under that definition, 323,873 people still fall within the distressed area that live in urban areas or, to put it in other terms, 21.5 percent. Now yesterday there was a lot of arguing about how this is being preserved for the rural areas, 40 percent, and the rest of the state, everyone is eligible for the other 60 percent. Well, that would mean 68.6 percent of this could still go completely to urban areas and the rural areas would still be left with only a little over 41 percent. Now if that's assisting rural areas, I got an overpass in Kearney I'm willing...I'm sure myself or Senator Hadley is willing to sell to you, because that's not assisting the rural areas. Actually, I want to apologize, it's 31 percent. Less than one-third of that money could possibly end up in rural areas. So it's not a rural-urban issue. People say to me, why do you hate rural areas? I don't hate rural areas. I love rural Nebraska, greater, I'll even go so far as to call it greater Nebraska. [LB387]

PRESIDENT SHEEHY: One minute. [LB387]

SENATOR HARR: But that's not the issue here. It's setting a dangerous precedent. This is poor language that picks on one area and one area only. What I am trying to do is to treat, as I said earlier, what's good for the goose is good for the gander. If we passed an amendment tomorrow or later today that said under 100,000 we will treat you one way, you guys have to go by census tract, over 100,000 we'll go with the original definition, that would never pass this body and it should never pass this body because that would be bad legislation. It's poor wording. What we need to do is work on language that is neutral. Now its application may be different, but when we in our very language itself lay out that we are discriminating against certain areas, that is bad public policy and

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eventually it will end up picking on the minorities in our state, and that's not who we want to be. I want to represent the best interest of this entire state. Thank you, Mr. Lieutenant Governor. [LB387]

PRESIDENT SHEEHY: Thank you, Senator Harr. Senator Hadley. [LB387]

SENATOR HADLEY: Mr. President, members of the body, I rise in opposition to AM804. I think Senator Harr is bringing an argument that he truly believes in. But I am opposed to it because I think any time we start getting somewhat parochial in what we do in here it's a slippery slope. And I tried to give definitions or areas that I felt that this was a possibility that we're going to be looking at as time goes on. You can look at areas in the state and, for example, the TEEOSA school funding, if we start looking at who is paying in, who's equalized, who is not equalized, and we start making our decisions based on that, that's not going to be very good for the TEEOSA funding. We talk about roads funding. There's been arguments all the time that one part of the state might be favored over another, but we all are state senators. We try to look at what's best for the entire state. And, folks, the distressed areas we're talking about in my amendment, AM636, are distressed. They are the ones that are losing population. They are the ones that we're trying to get jobs to. They are the ones that we're trying to save--outstate Nebraska. Let's not forget under this bill 60 percent of the funds are still available to any area of the state, and one only has to look at LB775 to see where the majority of funds have gone. I have no problem with that. I have no problem with that, but let's give the distressed areas a chance at these funds so that these smaller towns and the distressed areas, let's throw them that lifeline. Let's see if it works. Let's see what happens. Let's be forward thinking in this body. Let's help the economy of Nebraska, all of the economy of Nebraska. With that, I am opposed to AM804 and support AM636 and the underlying bill, LB387. Thank you, Mr. President. [LB387]

PRESIDENT SHEEHY: Thank you, Senator Hadley. Members requesting to speak on AM804 to AM636, we have Senator Price, followed by Senator Burke Harr. Senator Price. [LB387]

SENATOR PRICE: Good morning, Mr. President, members of the body. I rise right now just trying to figure out what we're trying to do here when we are crafting the language of this bill. What we're doing is vitally important, however, how we go about doing it is the question. So would Senator Hadley yield to a question, please? [LB387]

PRESIDENT SHEEHY: Senator Hadley, would you yield to Senator Price? [LB387]

SENATOR HADLEY: Yes, I would. [LB387]

SENATOR PRICE: Good morning, sir. How are you today? [LB387]

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SENATOR HADLEY: Thank you. Good. Well. [LB387]

SENATOR PRICE: A question for you on this: How much of the monies are going to be tied to companies that have won SBIRs? [LB387]

SENATOR HADLEY: You know, Senator, the money is flexible because each of the areas is capped and basically that means I can't give you a definitive answer because there's about \$9 million total that's going to be potentially available, but we're only allocating \$7 million. So it will be up to DED to make that decision in a yearly plan of where they're going to focus during that year. [LB387]

SENATOR PRICE: Okay. Great. So now to make sure I understand, I don't think I articulated my question well, is the first entry point to these monies predicated on a company having been awarded an SBIR? [LB387]

SENATOR HADLEY: The first...there are about six or seven areas. One part of the bill is predicated on SBIR, the phases zero, one, and two. That is correct, Senator. [LB387]

SENATOR PRICE: Okay, so not all the money is tied to SBIR awards, just a portion of it. [LB387]

SENATOR HADLEY: Absolutely. We could have companies that are partnering with the University of Nebraska, Creighton University, Bellevue University that are not part of the SBIR process that could avail themselves of the industrywide university applied research grants. [LB387]

SENATOR PRICE: So that's like a technology solution, that partnering with one of the universities. It has nothing to do at all with SBIR. [LB387]

SENATOR HADLEY: That's correct, sir. [LB387]

SENATOR PRICE: Okay. Great. Now the other question I had for you, Senator Hadley, is you know yesterday we had a chart and I have it in my hands now and I'll share it with you a little bit later, but it was showing how the different states, how many they received in these phase one proposals. [LB387]

SENATOR HADLEY: Uh-huh. [LB387]

SENATOR PRICE: And we see that in Nebraska we had roughly 59 were submitted and we got about 9 of them awarded in one of these phase one proposals. Do you know where those phase one proposals that were awarded, were those in a rural area or an urban area, what the split is? [LB387]

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SENATOR HADLEY: I'm sorry. The only thing I know about those nine, that six of them were Department of Defense and, of the nine, three went to the same company. That's all I know, Senator. [LB387]

SENATOR PRICE: All right. Thank you very much, Senator Hadley. I'll use the remainder of my time just to talk about this concept we're working on. In the SBIR Program that runs off of a lot of different things, it's problematic when you start mixing your manner of measuring. In some ways I'll use census tracts; in some ways I don't use it. The reason I say that, this is the year of redistricting, correct? So what was in a census tract last year may not be in a census tract this year. Or what more likely in greater Nebraska is going to be the case is something that wasn't in a census tract may end up in it. And we're talking about multiyear monies, so I have a cautionary tale there when we start mixing up how we measure things there and when we're using the SBIR Program. And I'm glad to hear that the SBIR Program is not the only way to have access to these dollars. [LB387]

PRESIDENT SHEEHY: One minute. [LB387]

SENATOR PRICE: Thank you, Mr. President. [LB387]

PRESIDENT SHEEHY: Thank you, Senator Price. Senator Burke Harr. [LB387]

SENATOR HARR: Thank you, Mr. President. You know, going off of Senator Price's argument, if census tracts are bad--I'll go back to it, what's good for the goose is good for the gander--why are we doing it census tract at all then? I have yet to hear a policy reason for treating Douglas County differently than we do any other county in the state. And this isn't about Douglas County. This is about treating a county differently than any other county in the state. We hear that census tract isn't the best way. Fine. Let's get rid of census tract altogether then. Let's just give it to the whole state. Yesterday Senator Wightman stood in opposition to this amendment and he talked about Johnson Lake. Well, I've been to Johnson Lake. It's a beautiful area. The fact of the matter is, I could never afford a place there because it's not distressed. (Laugh) It's doing very, very well. He talked about retirement, people retiring to live there and, yes, they should because it is a gorgeous part of the state, but it's expensive. Imagine...and he talked about starting businesses there and how great that is, and I don't disagree with him. But if Johnson Lake were in Douglas County, guess what? They wouldn't get the money to start their business. They wouldn't have all this grant money available to them. Ladies and gentlemen, what's good for the goose is good for the gander--equality. LB775 has been brought up and I thought that was very interesting yesterday so I did a little research on that and what I found was even more interesting, is there's this perception that the money all goes to Omaha. Well, I challenge anyone to go to the DED and look. The fact of the matter is that money is being spent proportionately to the state's population, not exactly but a lot closer than what this language would do, and that language was

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revenue neutral. It was application...it was available to anyone. It didn't specifically exclude Buffalo County. It didn't specifically exclude Greeley County, didn't specifically exclude any county. It says, hey, this is available to anybody, just fit the criteria. That's not what this bill does. This bill does the exact opposite. Similar to TEEOSA, what we say is you fit these criteria, you get this money; you don't fit this criteria, you don't get this money. We don't sit there and say, Cherry County, you don't get this money because, gosh darn it, you have a bunch of ranchers out there and, for what ever reason, we think ranchers are doing great. It doesn't do that. It doesn't sit there and say we're going to give money to roads to everywhere in the state except for Madison County. It doesn't do that. But that's what this bill does, is we sit there and say we are going to give money to everywhere in the state, except for this area we're going to create a separate definition. What's good for the goose is good for the gander. Ladies and gentlemen, it's time we treat the state as equals. We treat each other like equals. We are a nonpartisan body. Part of that is we have to keep an open mind and we can't just look at things along party lines, and I don't think this is a party line issue, but we're going down a dangerous track when we start excluding certain parts of the state, creating different definitions for different parts of the state. So for that reason, and I'll say it one last time because it's a tool in my toolbox and I like to use these, what's good for the goose is good for the gander, one last time. Thank you very much. I'll yield the rest of my time. [LB387]

PRESIDENT SHEEHY: Thank you, Senator Harr. Members requesting to speak on AM804 to AM636, we have Senator Ken Haar, followed by Senator Pahls and Senator Hansen. Senator Haar. [LB387]

SENATOR HAAR: Mr. President, members of the body, I rise in favor of AM804 and LB387. I think LB387 is a good bill. The comment was, well, we need to put this proportionality into there to see if it works. I think if this bill works around the state, that we're going to increase the funding for this in the future because it's going to create jobs and it's going to make Nebraska a better place for doing business. So I think that we're going to have plenty of time to see if it works. And my understanding is that this is out there to help people, not so much a part of the state or the other part of the state, and I'm a little afraid this is starting to get to a rural versus urban and I don't like that very much. I also have a concern that--and maybe this is a lesson for me--that if I take someone else's bill as my priority, it can be hijacked to a certain extent and changed. That's also a concern of mine. And again, with that, I believe that there's going to be time to see if this works. We can increase the funding if it works because I think if it works we will see this as a very valuable program. The money is not just going to run out all of a sudden and all go to Omaha. I don't think that's going to happen. So again, I rise in support of AM804. I think this makes sense for all of Nebraska and it makes sense for those places that need the jobs. Thank you very much. [LB387]

PRESIDENT SHEEHY: Thank you, Senator Harr. Senator Pahls. [LB387]

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SENATOR PAHLS: Thank you, Mr. President, members of the body. Could I have a little bit of a dialogue with Senator Harr, Burke? [LB387]

PRESIDENT SHEEHY: Senator Burke Harr, would you yield to Senator Pahls? [LB387]

SENATOR HARR: Yes, gladly. [LB387]

SENATOR PAHLS: Thank you. I have a question or two. I thought I understood it, but then all of a sudden you started throwing different percentages around a little bit earlier and I just for my own...and I think maybe even for the body, would you just sort of review, because you ended up with like 31 percent? [LB387]

SENATOR HARR: Yeah. [LB387]

SENATOR PAHLS: Just review those facts for me. [LB387]

SENATOR HARR: Thank you, and I apologize for being a little confused...confusing. [LB387]

SENATOR PAHLS: I am the one who's confused, not you. [LB387]

SENATOR HARR: Well, what this...what the amendment on AM636 does, it allows in the four largest counties, which are Douglas, Sarpy, Lancaster, and Washington County, it says we go by census tract as far as those three definitions for distressed. So those areas, there are areas within those counties that still receive funding so they aren't completely excluded. And so that still includes a population of 323,873 people. That then also fits into the larger area of the state, because the rest of the state would also be distressed, so that would be 21.5 percent of the total distressed area would be urban area. So that's part of it. Forty percent is set aside specifically for distressed areas. So 21.5 percent of 40 is approximately 8.6 percent. Sixty percent of this money is still set aside for any part of the state. Everyone at large can go for the other 60 percent. So under this bill, 68.6 percent could still go exclusively to urban areas, excluding the whole rural areas, if that makes sense to you. [LB387]

SENATOR PAHLS: Yes. [LB387]

SENATOR HARR: Because what I'm arguing is that the distressed areas within the urban areas would get the whole...would get their 21.5 percent and then Omaha, Lincoln, Sarpy County, Gretna, Blair up in Washington County would get the remainder of that 60 percent. If that happened, which I'm not saying is likely but it's possible, 68.6 percent would go to urban areas. [LB387]

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SENATOR PAHLS: Okay. Okay. That does make it a little bit clearer. Well, then let me ask you, would you prefer having a bill that did not designate any particular amount going to any particular area, because you seem to be in favor of the concept of LB775? [LB387]

SENATOR HARR: I guess what I'm most in favor of is equality before the law, treating every citizen the same so that we don't create different criteria if you're an investor in a county that's over 100,000 than if you're an investor in a county of under 100,000. I am late to the game, I'll be honest. While they were working on this, I was walking doors. And they've done...a lot of work has been done before me and I want to commend everyone who's done the work before I have. There are those who argue that's too broad and the money needs to be "lasered" in, focused like a laser, and so if that's true I would...that's why I introduced AM804. I am open to either one but what I'm most concerned about is equality, treating each citizen the same, each investor in the state the same. [LB387]

SENATOR PAHLS: Okay. Thank you. And I agree, an awful lot of work was put into this legislation, but we also need to recognize that it was not necessarily by the senators. This bill was basically given to us and we have been trying to work it right now. This is not that a whole bunch of us have been sitting around... [LB387]

PRESIDENT SHEEHY: One minute. [LB387]

SENATOR PAHLS: ...and pounding out all these issues. Some of these issues have come to the game late. [LB387]

SENATOR HARR: Yes. [LB387]

SENATOR PAHLS: I mean these were not in like, say, the way life was. All of a sudden there have been some changes made that have not been made by those of us who first saw this, just to be frank with you on that issue. [LB387]

SENATOR HARR: And that is correct. It came out of committee and it didn't have these amendments when you had your public hearing. That is correct. [LB387]

SENATOR PAHLS: Right. Okay. Thank you. [LB387]

SENATOR HARR: Thank you. [LB387]

PRESIDENT SHEEHY: Thank you, Senator Pahls. Senator Hansen. [LB387]

SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. I come to this at a little different perspective, I guess. It is a senator priority bill. Senator Harr did

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prioritize this and now the committee or whoever it was is changing it, and he's trying to change it back and I don't blame him for that at all. This is a Governor initiative bill and, according to the A bill, a total of \$7.1 million is supposed to be used the next two years, in '11-12 and then again in '12-13. There's some reappropriated funds in there, too, but still the total is about \$7.1 million. We don't want to make this a rural versus urban fight, we really don't, and I think we're going down a wrong road if we do. This body gave counties the ability several years ago to become livestock friendly and I'll tell you what that did in my county. In my county that allowed people, with the blessing of the county commissioners, to increase feedlot capacity in my little county of 65,000 head. It's not a Cuming County, it's not a Dawson County and it never will be, but we still have 65,000 head more feedlot capacity because of something this body did. It didn't give any money to those feedlots that increased their feedlot capacity, but it gave them the ability and the blessing of the county commissioners to do that, and that's what we need to talk about in here. We need to talk about the freedom to make money, the freedom to make choices. This is an ag state and always will be an ag state. To spend \$7.1 million in two years to increase business initiative I think is wrong from the git-go. We've talked about this in Appropriations. I'm sure I voted for it because it was a majority of the people talk, you know, we need to increase business, we need to increase jobs. If we do that in this state, we're not going to do it in western Nebraska. We're going to do it in Lincoln and Omaha. We're going to add those jobs and those jobs are going to be in Lincoln and Omaha. The best we can hope for is that ag jobs, ag-related jobs, food processing jobs, similar to that, are increased in Lincoln and Omaha. I think that we're walking down a dangerous path, similar to what Senator Harr said. If we are making this a rural versus urban debate. This ought to be state policy for the whole state. Senator Fischer reminds us almost on a daily basis back here that you shouldn't try to make a bad bill better and I think that's what Senator Hadley is trying to do (laugh), but he doesn't think it's a bad bill to start with. I oppose the bill in general. I think that in a time like this, the bottom line is in two years we're going to have a \$62 million Cash Reserve and I don't think that's the place we want to be. Every time you come up with an idea like this and when you take sales and income tax to help one segment of the state, and we're trying to help businesses, we're taking money away from schools, we're taking money away from providers that we've talked to the last two days in the Appropriations Committee. We're talking about, that when you talk about provider rates, you're talking about small businesses in the state of Nebraska. We're taking money away in the form of sales and income tax and putting it toward business innovation--great goal but I don't think we ought to pit one group of businesses against another. If we're going to vote on these amendments, which I think is about to happen, I will vote for Senator Harr's amendment. [LB387]

PRESIDENT SHEEHY: One minute. [LB387]

SENATOR PAHLS: But I would still like to vote against the bill. I'm not sure I will yet. But I don't want to see this be a rural-urban split. As Senator Harr has brought up over and

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over and over, the goose and the gander is a great way to put that. So I will, as a rural senator representing a rural district, I will vote for state policy rather than to limit it like it is now. Thank you, Mr. President. [LB387]

PRESIDENT SHEEHY: Thank you, Senator Hansen. Seeing no additional requests to speak, Senator Harr, you're recognized to close on AM804. [LB387]

SENATOR HARR: Thank you, Mr. President. Again, I stand in support of this bill. I prioritized the bill. But we can always make legislation better. Senator Fischer is right in that regard and that's what I'm trying to do, is take a good piece of legislation and make it great. I appreciate everyone's openness to listen to me on this. What I'm looking for here is equality. What I'm looking for is that we treat everyone in the state the same. If we have one definition, it needs to be the same for the whole state. We can't pick on one part of the state to the disadvantage or the advantage of another part of the state. I've listened to every...all the arguments and the arguments are complete and I have yet to hear a policy reason for treating one part of the state differently than another part of the state. I've heard a lot of trying to get around the issue but no one directly saying this is the policy reason for why we have amended this definition from the time of the public hearing to the time of this amendment. I have yet to hear it. So with that, I would ask you to please vote for AM804. Thank you. [LB387]

PRESIDENT SHEEHY: Thank you, Senator Harr. You have heard the closing. The question before the body is on the adoption of AM804 to AM636. All those in favor vote yea; opposed, nay. [LB387]

SENATOR HARR: I would move for a call of the house. [LB387]

PRESIDENT SHEEHY: There has been a request for the call of the house. The question before the body is, shall the house be placed under call? All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB387]

CLERK: 35 ayes, 0 nays to place the house under call. [LB387]

PRESIDENT SHEEHY: The house is placed under call. All unexcused senators please report to the Legislative Chamber. All unauthorized personnel please step from the floor. The house is under call. Senators, please record your presence. Senator Langemeier, the house is under call. Senator Harr, all members are present or accounted for. How would you like to proceed? [LB387]

SENATOR HARR: I'd request a roll call, please, Mr. President. [LB387]

PRESIDENT SHEEHY: Mr. Clerk, there's been a request for a roll call. Please proceed. [LB387]

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CLERK: (Roll call vote taken, Legislative Journal page 885.) 11 ayes, 29 nays, Mr. President, on the amendment. [LB387]

PRESIDENT SHEEHY: AM804 is not adopted. The call is raised. Mr. Clerk, next amendment. [LB387]

CLERK: Mr. President, we're back to, I believe, Senator Hadley's amendment. I stand corrected. Senator Utter would move to amend Senator Hadley's amendment with AM805. (Legislative Journal page 880.) [LB387]

PRESIDENT SHEEHY: Senator Utter, you're recognized to open on AM805 to AM636. [LB387]

SENATOR UTTER: Thank you, Mr. President and colleagues. I introduced AM805 to put a sunset on this bill that would sunset it in five years. I appreciate the fact that in the bill there are provisions for annual reports, annual progress reports that will come to the Legislature and come to the Governor's Office that indicates what is happening on this bill. I think sometimes these reports, as important as they are, get lost in the shuffle and I think this is the type of legislation where we're, if you will, plowing new ground that we need to make sure that we take a look at in this body five years from the date of enactment and see that it is, in fact, really doing the job. I must admit that I become concerned that we have got an awful lot of economic incentive legislation on the books that goes to...hopefully to create jobs and to do the right things to help the state of Nebraska grow, but I am concerned that we need to be evaluating exactly what kind of a job these particular pieces of legislation that are all dealing with the same overall topic and that's the growth of the state of Nebraska, which is extremely important. I've become really concerned that we really look and evaluate what we're doing here and it is for that reason I introduced AM805 and I urge your support. [LB387]

PRESIDENT SHEEHY: Thank you, Senator Utter. You've heard the opening of AM805 to AM636 to LB387. Members requesting to speak: Senator Hadley, followed by Senator Lautenbaugh and Senator Louden. Senator Hadley. [LB387]

SENATOR HADLEY: Mr. President, members of the body, I rise in support of AM805. I think it is good that we put a sunset clause on here. There's an old song that says let the sun shine in. I think that's what we need to do. I'm not going to belabor the point. But I think in five years we will have indicators of whether this is being successful or not. I do think that this is a long-term plan, but I think we can take test measurements as we go along. We are doing that on a yearly basis. But at the end of five years, we can take a look at the entire five years and see whether we're making the strides that we should. I think this puts the onus on the Department of Economic Development to get out and sell these programs and to have successes. With that again, I stand in support of

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AM805. Thank you, Mr. President. [LB387]

PRESIDENT SHEEHY: Thank you, Senator Hadley. (Visitors introduced.) Senator Lautenbaugh. [LB387]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I do rise in support of this amendment and I think the sunset is a good idea. I think this bill and others like it are very well-intentioned and well-meaning, and we're trying to give economic hope to some people and I think that's always worth doing, even if we may not support a particular measure advanced. [LB387]

PRESIDENT SHEEHY: (Gavel) [LB387]

SENATOR LAUTENBAUGH: But I also think it's important that we don't say and do things to give hope where there may not be hope or there may be no room for us to act at all. And with a little bit of a digression, I'm looking at a quote from the case of Board of Regents v. Exon where it says: Although the Legislature may add or subtract from the powers and duties of the Regents, the general government of the university must remain vested in the Board of Regents and the powers and duties should remain in the Regents and cannot be delegated to other offices and agencies. Why do I bring this up today? I actually went on the radio last night to talk to some people in Omaha that have been calling into the Tom Becka Show, and explained the following: A lot of us may not like change, especially in the Athletic Department at UNO, but I don't think we have a role there. And I think when we say we want to have a role or we say we're going to have a role, we're saying we're going to do something that isn't realistic and probably isn't even constitutional. We may not like the way some things are handled and there's certainly hurt feelings and raw emotions, but that does not lead lockstep to legislative action. That does not give us a role. It's regrettable but it's not our place I don't believe. And I was asked yesterday, are you saying people should quit writing their state senators? And I said, no, we're getting plenty of e-mails on this topic; UNO will continue to get them. But it would be wrong to leave the impression that we are going to help the people who want to save these programs at UNO because I don't believe that's our role. I don't believe constitutionally we can do it and I don't believe we will do it. There's a Board of Regents that's elected to govern the university system. There's a chancellor whose job it is to run the university. There's an athletic director who runs the Athletic Department. And even if we don't agree with their decisions, at some point every call is not ours to make. So I would urge us to be sympathetic to the people we talk to, listen, but be very clear that there isn't much we as a Legislature can do for them. There's a Board of Regents meeting coming. People will have a chance to be heard and the chips will fall where they may. But I would urge us to not give false hope and to suggest that we're going to do things that we aren't actually going to do as a Legislature. And if I'm wrong on this, well, I'm wrong, but I believe that's how this is going to come out. And so bringing it all home, I would urge you to support this floor amendment. Thank you.

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[LB387]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Senator Louden. [LB387]

SENATOR LOUDEN: Yes, thank you, Lieutenant Governor and members of the body. I, myself, rise to speak on Senator Utter's amendment, AM805, in which I do support a sunset on different amendments. As far as Senator Lautenbaugh's issue, why, to me that's a school board issue and that's where I think it needs to lay. So anyway, getting back to Senator Utter's issue, I think sunsets are all right to have on bills like this. I question whether sometimes that five years is perhaps too short a time. First of all, the buzzword here was, when we had stimulus funding, was "shovel ready," and I notice some of these projects like this and time you put five years on it and sunset in I think it's 2016, I don't know how many of those different projects will be up and ready to go by then in that short a period of time. It's nice to have them going with that. I'm sure a sunset clause in there is fine. I question whether or not, just for the record, that perhaps five years is too soon. I would like to see a Legislature after four years relook at this situation and if it was working to change the sunset clause on that number, which is something that should be done. Now when we do put these sunset clauses on there, they don't always mean that much because a future Legislature can change them whenever they do, whenever they wish. The difference is, is we did put notice out there that this thing wasn't going to run on forever. Now my other concern would be is if there is a sunset clause on there and there's funding in that left over in those funds, money in there, what becomes of that money? Does it automatically go back into the General Fund or should there be something in the bill or in the amendment to direct, if there's any funds left over, what they should be directed with? With that, I will support the sunset clause but there are some questions that I think when we do this that need to be looked at a little bit more thoroughly than just putting the number of years out there. Thank you, Mr. President. [LB387]

PRESIDENT SHEEHY: Thank you, Senator Louden. Senator Harms. [LB387]

SENATOR HARMS: Thank you, Mr. President, colleagues. I rise in support of AM805. I appreciate Senator Utter bringing this forward. I think that so many bills, we never go back and, when they become laws, to review whether they're being successful or not, whether we need to change these or not. This is a good opportunity for us. This is a good opportunity for us to come back and take a look at is this good or is it not good; what do we have to do to correct it to make it better; is it accomplishing what we've asked it to accomplish. So I rise in support of this. I also would like to comment on Senator Lautenbaugh's views. I do agree with you, Senator Lautenbaugh, in regard to the issue in Omaha. I don't think it's our responsibility to get into administration or boards' responsibilities. It's really up to them. It would be like us saying we're going to go in and tell you to cut out your English program, your math program, science or engineering program. We don't have any business doing that. It's their responsibility.

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That's what we've given them the opportunity to govern and that's not our responsibility. So I do support that position, even though it's not on this bill. I agree with Senator Lautenbaugh. We don't belong there. We don't want to go there. If you do that, you open up the door for about everything in the world to come at us. So thank you, Mr. President and colleagues. Thank you. [LB387]

PRESIDENT SHEEHY: Thank you, Senator Harms. Seeing no additional requests to speak, Senator Utter, you're recognized to close. [LB387]

SENATOR UTTER: Thank you, Mr. President. I don't know that this particularly needs a long closing except to say I think this becomes an important part of this bill and does deserve a yes vote. Thank you. [LB387]

PRESIDENT SHEEHY: Thank you, Senator Utter. You have heard the closing. The question before the body is on the adoption of AM805 to AM636. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB387]

CLERK: 38 ayes, 0 nays, Mr. President, on adoption of Senator Utter's amendment. [LB387]

PRESIDENT SHEEHY: AM805 is adopted. We will now return to floor discussion on the Hadley amendment, AM636. Seeing no requests to speak, Senator Hadley, you're recognized to close. [LB387]

SENATOR HADLEY: Thank you, Mr. President, members of the body. Just to reemphasize what AM636 does, it adds the innovation in value-added agricultural program which is capped at \$1 million per year. It creates funding for \$500,000 to the microdevelopment program while maintaining the \$1 million cap. The reason it has the floor in there is that that's consistent with the program that we have at the present time. It changes the loan technical assistance ratio from 80-20 to 70-30, adds explicit language for microenterprise technical assistance providers, defines microenterprises as businesses with ten or fewer employees, allows for microenterprise funds to be used for loan loss reserve funds in order to leverage federal loans, reconciles the definition of a distressed area with the language in LB386, strikes the cash fund language and creates a simple General Fund appropriation to DED. I ask for your green vote on AM636. Thank you, Mr. President. [LB387 LB386]

PRESIDENT SHEEHY: Thank you, Senator Hadley. You have heard the closing. The question before the body is on the adoption of AM636 to LB387. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB387]

CLERK: 35 ayes, 1 nay, Mr. President, on adoption of Senator Hadley's amendment. [LB387]

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PRESIDENT SHEEHY: AM636 is adopted. [LB387]

CLERK: Mr. President, before we proceed, if I could, Revenue Committee will meet at 10:00 in Room 2022. I have nothing further pending to LB387, Mr. President. [LB387]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We'll return to floor discussion of LB387. Senator Pahls. [LB387]

SENATOR PAHLS: Thank you, Mr. President, members of the body. I had a couple questions when this was in front of the committee and they were never answered. And after the bill was out of the committee I asked some of the same questions and they were never answered. And they may not be important, I don't know, but the thing that concerns me a little bit is we are cutting. I want you to take a look at some of the staff members in your office. Chances are they may be gone. But we are adding additional people for this bill. In other bills in this Department of Economic Development we are going to be adding personnel also. So we need to take a look at the total picture. The idea is great but at some cost. We are reorganizing some of the current programs which I can agree with, but when I asked the question, do we need two additional people, perhaps we do but if you can recall, when I had the discussion with Senator Cornett, I asked about additional people there and then you're going to see some other legislation that will come forth out of this department and they're going to be asking for additional people. And we all know, when you do additional programs, you do need additional people. But in the meantime, when we are reorganizing some of these other programs, some of those responsibilities I am assuming, unless they are just simply a conduit, the Department of Economic Development, they are supposedly losing some from these other programs. Are they just the conduit and these other programs have their own personnel to run them? That may be the case. But I think it's a question that we ought to be taking a look at, not saying that the legislation is bad. But I also would like to have you take a look at page 11 of the green copy. If you look at page 11 of the green copy on lines 11 through 13, up to 5 percent of the fund may be used by the department or by a nonprofit entity with which the department contracts for administrative expenses. Now, see, that's another additional 5 percent. Five percent of \$7 million runs up. So I'm curious, two additional people, possibility of 5 percent additional to be spent, makes me think a little bit. Then I go down to line 21 through 23 on that same page, which I think is interesting: The department may enter into a contract with a Nebraska-based nonprofit entity for the purpose of carrying out any or all of the provisions of the Business Innovation Act. So now the department says we may be a conduit again because we're going to have this other agency do the work. Just some questions that I have. And typically we probably may not question some of these decisions if we were not cutting in other areas. I've heard some people stand up and said they have concerns about that. I'm just saying this is, to me, something that we ought to take a look at, if not now it may come back to haunt us in the future, because when we are cutting other people, as I'm

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saying, in our own body, it seems rather unique that we will be adding additional personnel... [LB387]

PRESIDENT SHEEHY: One minute. [LB387]

SENATOR PAHLS: ...in this department. I have been told in the past they have cut their department down, I don't know how many but a significant amount, so I understand where they're coming from. But again, is this a conduit? They just sort of collect the ideas, assign the work to somebody else. But again, 5 percent sounds minimal but you take 5 percent of \$7 million, and this is not a surprise. I've asked these questions. This is not, oh, gee, how did he come up at this late date? This is just something that we ought to be thinking about. Thank you. [LB387]

PRESIDENT SHEEHY: Thank you, Senator Pahls. Senator Wallman. [LB387]

SENATOR WALLMAN: Thank you, Mr. President. Would Senator Hadley yield to a question, please? [LB387]

PRESIDENT SHEEHY: Senator Hadley, would you yield to Senator Wallman? [LB387]

SENATOR HADLEY: I certainly would. [LB387]

SENATOR WALLMAN: Thank you, Senator. And I looked at this sheet numerous...I read this bill over. It's pretty complicated. It's pretty complex. But I noticed you had some opponents here, like Nebraska Enterprise. What did they have...what were their concerns? Do you remember? [LB387]

SENATOR HADLEY: I believe it had to do with the...I'm not sure, Senator Wallman, but I believe it had to do with the microenterprise part of the section and I think one of the concerns that was on the 80-20 split between loans and technical and administrative costs and the 70...and we did compromise and brought that down to a 70-30 split. [LB387]

SENATOR WALLMAN: Thank you. And then there was community development. You know, that probably was small communities. Were they hooked in under this or do you know? [LB387]

SENATOR HADLEY: Yes, because part of the bill, what it does is to reorganize some of the efforts within the Department of Economic Development. Some of the ones that they felt we were not getting quite as big a bang for the buck as we could and so we're reallocating. And again, it goes along with the idea of reorganizing government and where our priorities are, Senator Wallman. [LB387]

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SENATOR WALLMAN: Thank you, Senator Hadley. And I definitely hooked into Senator Pahls's concerns. Everybody wants smaller government and then we're...are we...could we do this within our existing committees we have now, economic development or whatever. And I think we should be careful what we do here. And thank you, Mr. President. [LB387]

PRESIDENT SHEEHY: Thank you, Senator Wallman. Senator Schumacher. [LB387]

SENATOR SCHUMACHER: Thank you, Mr. Lieutenant Governor, members of the body. I almost hesitate to rise on this but I think we need to back up a little bit and look at what we're about here. I mean I was told that the basic function of our government was transportation, education, and public safety. Now we're into business investments. This particular act takes \$4, figuring it at an \$8 million cost because it's going to cost us that--if we didn't...if we blew away the other ones that we're blowing away and added the money we're spending, I think it comes around to \$8 million--divide that by \$1.8 million Nebraskans, will cost everybody about \$4.40, every man, woman and child in the state. And we are saying to them, you must invest in these businesses that meet these criteria. Now they will never see a nickel's worth of return on that investment in their pocket, maybe there will be some economic growth, maybe there will be taxes from the jobs created, maybe, maybe, maybe. And I'm not smart enough to figure out today whether or not that "maybe" is going to be significant or insignificant. I supported the sunset on this thing. I've got great counter feelings when it comes to making people invest in other people's businesses for no possibility of direct return. I've got great problems that this is outside of the scope of government. And more than this, in the term "economic development," to the extent that term has any meaning whatsoever, is do we really think that the mass migration out of our rural areas to basically three eastern counties in the state is going to be stemmed by \$8 million a year in small business grants; that the population in those 70-some counties is suddenly going to be reversed or the tide stemmed by this kind of expenditure? I find it hard to believe that it will, willing to take a gamble on it, but we need to say to ourselves what is our function and we need to engage in some wise governance, which I think the best definition I've heard of is governance is the bringing into being of a future defined by the collective will. What is our collective will? What do we see as a viable function for this 75,000 square miles in an age of global interaction, vast dependency on international monetary situations, and a human situation here in Nebraska? And I hope that over the course of the rest of this session we're able to focus on some of this, but this decision today means we're taking about \$8 million and putting it into one program and we're going to have to find that money somewhere else, some point in this session, and unless the economy does a miraculous turnaround really find it somewhere else when we're short the rainy day fund in two years. Thank you, Mr. Lieutenant Governor. [LB387]

PRESIDENT SHEEHY: Thank you, Senator Schumacher. (Visitors introduced.) Seeing no additional requests to speak, Senator Hadley, you're recognized to close on LB387.

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[LB387]

SENATOR HADLEY: Mr. President, members of the body, I appreciate everybody weighing in, paying attention. I think this is a very important bill. I appreciate the comments made by people pro and con. I think we need to move forward and I think this is a bill that can help us in Nebraska. Just to reiterate again, it creates a new fund using both new and existing resources to support research, innovation, and development. The type of planned activities that it will involve are SBIR grants for phases zero, one, and two. That will be totally capped at \$1 million per year. We are woefully behind our other states in this area. Prototyping fund, which is capped at \$50,000 per project with a total cap of \$1 million a year, to come up with a prototype within the industries; commercialization and support capped at \$500,000 per project, total cap of \$2 million per year; industry university applied research grants, that's both private and public universities and colleges in the state, \$100,000 to \$400,000 per grant, total cap of \$3 million per year; the microenterprise developmental organizational support to be used for technical assistance and financial support has a floor of \$500,000 and a total cap of \$1 million per year; 40 percent is targeted to distressed areas; annual action plan required of the Governor. We put a sunset on it. The amendment added the innovation in value-added agricultural program, total capped at \$1 million per year. I'd like to also take a second. I appreciate Senator Schumacher and I picked up on one comment he made. He says take a gamble. That's kind of what we're doing but that's what we kind of have to do. If we sit back and just take business as usual, we're going to fall farther behind. One of the things we learned this summer in the interim study committee that we were on were the number of students leaving the state of Nebraska because there were not job opportunities in the state, leaving. They wanted to stay here but there weren't job opportunities. We want to try and stem that flow, so one of the things we want to do is to try and take a gamble on this particular economic development bill. To answer Senator Pahls, yes, we are adding funding at the same time we're cutting. It reminds me of the story about the arguments against businesses in a recession that are laying off people at the same time that they're hiring people. Happens all the time. I used the analogy of a baseball team. You've got a great baseball team. You got a pitcher, you got a catcher, you got a first baseman, and you've got three outfielders, and you got four second basemen. It just doesn't work. You don't have the right people in the right place. And I think what we're trying to do here is to put the right people in the right place. We will have yearly reports to the Legislature and the Governor. The Governor approves the plan on a yearly basis and we have a five-year sunset. Let's give this a chance. Let's have a state of Nebraska that our young children, as they go through the education system, that they can have the opportunity to stay in Nebraska at good-paying jobs involving tech industries. With that, I ask for your vote of LB387 and to move it forward to Select File. Thank you, Mr. President. [LB387]

PRESIDENT SHEEHY: Thank you, Senator Hadley. You have heard the closing. The question before the body is on the advancement of LB387. All those in favor vote yea;

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opposed, nay. Record, Mr. Clerk. [LB387]

CLERK: 39 ayes, 0 nays, Mr. President, on the advancement of LB387. [LB387]

PRESIDENT SHEEHY: LB387 advances. Next item under General File. [LB387]

CLERK: LB387A by Senator Hadley. (Read title.) [LB387A]

PRESIDENT SHEEHY: Senator Hadley, you're recognized to open on LB387A. [LB387A]

SENATOR HADLEY: Thank you, Mr. President, members of the body. As with most things in life, there's no such thing as a free lunch. We voted the bill forward, now we've got to come up with the funding to make it happen. Basically, what we're going to do is to use about \$1.5 million of redirected funds within economic development programs and about \$5.5 million of new General Funds, \$5.5 million. Of course, this is difficult in a recession but again I'm going to argue that if we want to get more money for provider rates, we want to get more money for TEEOSA, we want to get more money for Health and Human Services, we've got to grow the economy of Nebraska. We've got to get more money into the system. I think this bill is one that long-term will do that. So this is an investment and this is an investment that our rolling the dice that we want to have future higher revenues for the state of Nebraska to help in Health and Human Services, to help in TEEOSA, to help in highway funding. We've got to figure out ways to do that and we're going to make the investment today with the payoff being tomorrow. Thank you, Mr. President. [LB387A]

PRESIDENT SHEEHY: Thank you, Senator Hadley. You've heard the opening to LB387A. Seeing no requests to speak, Senator Hadley, you're recognized to close. Senator Hadley waives closing. The question before the body is on the advancement of LB387A. All those in favor vote yea, opposed, nay. Record, Mr. Clerk. [LB387A]

CLERK: 33 ayes, 0 nays, Mr. President, on the advancement of LB387A. [LB387A]

PRESIDENT SHEEHY: LB387A advances. Mr. Clerk, items for the record. [LB387A]

CLERK: Thank you, Mr. President. Health and Human Services Committee, chaired by Senator Campbell, reports LB177 to General File with amendment. New resolutions: LR126 and LR127, Senator Larson; and LR128, Senator Larson; Senator Janssen, LR129. Those will be laid over. Senator Fischer, an amendment to LB84, Senator Cornett to LB389. That's all that I had, Mr. President. (Legislative Journal pages 886-889.) [LB177 LR126 LR127 LR128 LR129 LB84 LB389]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We'll now move to the first item under

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General File, 2011 Speaker priority bills, Campbell division. [LB541]

CLERK: LB541, a bill by the Health and Human Services Committee and signed by its members. (Read title.) Introduced on January 18 of this year, referred to the Health Committee, advanced to General File. I have no amendments at this time, Mr. President. [LB541]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Campbell, you're recognized to open on LB541. [LB541]

SENATOR CAMPBELL: Thank you, Mr. President, and good morning, colleagues. This begins the discussion of what I would say are the three Medicaid bills that you're going to talk about. It is important to note as we start out, that this summer the Health and Human Services Committee looked at various ways to deal with the Medicaid costs. And LB541 that the committee brings to you as a part of its budget package is to provide for the third-party contracts to promote Medicaid integrity and cost containment. Nebraska Medicaid would benefit from increased efforts to prevent improper payments by enforcing the eligibility criteria for recipients, enrollment criteria for providers, determining third-party liability for benefits, review of claims prior to payment, and identification of the extent and cause of improper payment. Medicaid would also benefit from efforts made to identify and recoup improper payments and collecting postpayment reimbursement. The bill requires the department to contract with one or more recovery audit contractors to promote the integrity of Medicaid and assist with cost containment. The contracts will include services for cost avoidance, cost recovery, and casualty recovery of payments through identification of third-party liability. Contractors will review claims submitted by providers of services, or other individuals furnishing items and services for which payment has been made, to determine whether the provider has been underpaid or overpaid and take action to recover any overpayments identified. Also the department shall contract to support a health insurance premium assistance payment program. And finally, LB541 allows the department to enter into any other contracts deemed to increase the efforts to promote the integrity of the Medicaid assistance program. The contracts entered into under the authority of this section may be on a contingent fee basis. Contingent fee payments are based upon amounts recovered, not amount identified. Initial contracts will be entered into on or before July 1 of this year. And LB541 requires the department to report to the Legislature the status of the contracts by December 1. I want to give you a little background of how we came to LB541. As I said, this summer when we looked at the LR542 assignment given to us, this idea surfaced. A discussion ensued within the Health Committee that we needed to have a bill that said very clearly we are in favor of the integrity programs that are out there to oversee and look at Medicaid. We were aided by a great amount of research by the committee counsel, Michelle Chaffee, who did hours of work to provide education to the committee. And I want to hasten to add that of all the bills that we are bringing forward, this is the sole bill that came from the committee, not the Governor. I don't

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envision that Nebraska is a hotbed of fraud and waste, and don't want to imply that. We have great providers all across the state of Nebraska who do their very best. However, it is important to locate third-party payments. It is important to ensure we have a good handle on under- and overpayments. And it's to continue work on insurance premiums and when to use Medicaid. And I want to explain that, and I'll use the perennial and my favorite, Andy Campbell. And if Andy Campbell was eligible for Medicaid, in some cases we make the decision should we pay for Andy Campbell's care through Medicaid or should we pay for a health insurance premium for Andy? And it's very important that we have the ability to take a look at how that program is working and whether there are additional ways that we might use it. Forty states use specialized contractors to assess the integrity of their Medicaid program. And I want to emphasize that that was a key factor for the committee in taking a look at this, the potential return on dollars. At this point Nebraska does have some of the steps in place, and I want to hasten to add that I congratulate the department and certainly the Attorney General's Office for the work that they do in this. But the committee feels strongly that we need to make a statement of how important it is to contain Medicaid costs, and number two, how important it is to be fair and ensuring those dollars are well spent. According to the CMS state program integrity assessment for Nebraska, the total dollars recovered from Nebraska Medicaid was \$5.3 million. And I want to add that that report went on to say that they thought we should be recovering in the basis of around \$10 million. And so at this point their projection is that for every dollar that we may invest, we will have a five-time return on that, and that's extremely important as we looked at the fiscal note. We took the very lowest amount of \$3.4 million to advise the Appropriations Committee. LB541 would expand the types of detection tools to contractors to include advanced technologies such as neural networking and other predictive analytics to analyze billing patterns and identify areas at risk of fraud. LB541 will expand contracting with vendors with specialized experience in mining Medicaid claims data and developing algorithms that detect abnormalities not easily identified by more traditional techniques. We feel that this is an important bill to add to what the department and the Attorney General is already doing and an important statement for Nebraska in terms of ensuring the integrity of our Medicaid program. Thank you, Mr. President. [LB541]

PRESIDENT SHEEHY: Thank you, Senator Campbell. You have heard the opening to LB541. (Visitors introduced.) Resuming floor discussion on LB541, members requesting to speak: Senator Conrad, followed by Senator Campbell and Senator Gloor. Senator Conrad. [LB541]

SENATOR CONRAD: Thank you, Mr. President. Good morning, colleagues. I rise in support of the concepts that are contained in LB541, and I want to thank Senator Campbell and her staff, and others who have worked on this issue, for bringing the bill forward. But I know that this can be kind of a new concept for a lot of people. And anytime we talk about cost containment and our public benefits programs, particularly the Medicaid programs, that's usually achieved by somehow limiting benefits that are

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medically necessary to some of our most vulnerable populations. And I want to make sure that the record is clear and that there's no confusion on this topic. And in looking at the legislation, I'm wondering if maybe we have an opportunity to look at some additional language in between General and Select File on a few topics. In examining the fiscal note, it appears to me that since this is really a state-level model based off of what happens in the Medicare program to be implemented and applied to the Medicaid program, the Medicare model does have a cap of 12.5 percent in the contingency fee recovery. And I was wondering if maybe Senator Campbell would yield to a question to see if the Health and Human Services Committee researched or discussed putting a similar cap in, in this legislation. [LB541]

PRESIDENT SHEEHY: Senator Campbell, would you yield to Senator Conrad? [LB541]

SENATOR CAMPBELL: Absolutely. [LB541]

SENATOR CONRAD: Thank you, Senator Campbell. And since you obviously have a lot of expertise on this topic, and again this is just to ensure that we have a clear record on this, I was looking at the fiscal note and I understand that in the federal Medicare program that utilizes a similar process there is a recovery cap at 12.5 percent. And I don't see that in the legislation here. I'm wondering if that came up at all in the committee level and if you could just provide some more information about whether or not that would be a good idea as we move this legislation forward. [LB541]

SENATOR CAMPBELL: Senator Conrad, I really appreciate your question and your thorough review of this. We discussed a little bit with regard to caps, and then chose not to put all kinds of specifics in the bill with regard to the contract. Because our expectation is that the department, who already has done some work in this area, will lay out those specifics. But if you feel that that's important to it, we will return to take a look at it and would certainly entertain cooperative work with you between now and Select. [LB541]

SENATOR CONRAD: Thank you so much, Senator. And, you know, I think that it may prompt some additional review in between General and Select File, and of course that can be accomplished in a cooperative posture. Because I think the intent and the overall ideas contained in the legislation are very important to ensuring that we have a strong program and ensuring that we can find fiscal efficiencies whenever possible. So that's one issue that just came to mind in review and will be happy to discuss further as this legislation moves forward. The other thing that came to my mind, and I don't know if folks will remember or not, but years ago there was a legislative effort in cooperation with the Attorney General's Office to set up a Medicaid fraud unit that has been very active in the Attorney General's Office in terms of, again, ensuring and protecting the integrity of our Medicaid program and recovering costs for the state when appropriate. And I'm just wondering if...it seems to me that this legislation has a... [LB541]

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PRESIDENT SHEEHY: One minute. [LB541]

SENATOR CONRAD: ...different focus than the work done by the Attorney General's Office and the fraud unit. But if there are any potential areas for duplication, is that something that maybe came up at the committee level? Or if you have any more information on that topic, that would be helpful. Thank you, Senator Campbell. [LB541]

SENATOR CAMPBELL: In response to that, we certainly concur with you. Great work has been done by the Attorney General's Office and we want to compliment them, as well as the department has started looking into this area. It's not that they have not done any work; they have done some. We feel that the intent of this bill clearly sets in place to build on those programs, not be a duplication of them, and prepare us for the future. One of the comments... [LB541]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Conrad. [LB541]

SENATOR CONRAD: Thank you. [LB541]

PRESIDENT SHEEHY: Senator Campbell. [LB541]

SENATOR CAMPBELL: I can continue. One of the points that I wanted to make is that in the national healthcare legislation it is required of states that they will have a RAC or recovery method that...one of the components of this bill. The state of Nebraska entered in and asked for a state plan amendment, and it was okayed by CMS to begin work on this. The federal government then pulled back on that requirement and said, we want to add some additional language and finish up the final rule. The point being here is that this legislation, in response to Senator Conrad's comments, would help establish our programs and build on what we have and prepare us for the future. That, I think, is one of the most important intentions of LB541. Thank you, Mr. President. [LB541]

PRESIDENT SHEEHY: Thank you, Senator Campbell. Senator Gloor. [LB541]

SENATOR GLOOR: Thank you, Mr. President, and good morning, members. I appreciate Senator Conrad's and Campbell's comments in discussion about Medicaid reform, specifically the issue of Medicaid fraud, and a clarification that this is not an effort to move in that particular direction. I almost turned my light off because I wanted to make it clear. This isn't about fraud. I have survived several of these recovery initiatives by various insurers, third-party payors, and have to tell you and feel a need to point out to you that what this is about is, in most cases, an issue of documentation, an issue of how particular care is coded within doctors' offices, healthcare providers' offices, hospitals. And companies like this come in and, through an engine, a search engine that they have, take a look at all these bills looking for opportunities to pull back

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on some of the costs that have been incurred and some of the payments that have been out there. But this is still care that has been provided. In almost all these cases this is still care that has been provided by somebody to a Medicaid recipient. And perhaps the coding was not accurate or as tight as it should be. Perhaps the documentation didn't exist. A medication given but not documented by the person responsible for giving the medication. If it's not documented, it's not actually given in the eyes of the payors, and therefore, those dollars are asked back. There are some good components of this bill. I voted for it and voted it out of committee. I still think it's worth moving forward on. But I think it's important for the body to understand that this is, as it relates to providers in this state, at a period of time when we're talking about reducing payment to providers in this state by 4 or 5 percent, this is another case where we will be going into the Medicaid system and pulling dollars back, above and beyond that for providers of Medicaid services. And not services that were inappropriately provided. Just services that weren't adequately documented. It's an important point to make as we discuss budget cuts to providers in this state. Thank you, Mr. President. [LB541]

PRESIDENT SHEEHY: Thank you, Senator Gloor. (Visitors introduced.) Resuming floor discussion on LB541, members requesting to speak: Senator Conrad, followed by Senator Carlson. Senator Conrad. [LB541]

SENATOR CONRAD: Thank you, Mr. President. And I want to thank Senator Campbell so much for her informative responses to some of the questions that we had a chance to dialogue upon earlier, and I think that we'll definitely have plenty of opportunity to work from General to Select to address any of those issues if they do need some more specific attention. And I think it would be a good public policy for us to put some sort of cap in place on the contingency fee nature contained in these types of contracts, because that does follow the federal model for the Medicare program, and it ensures I think that we can just have a little more clearer understanding of how these contracts will work. The other part, and Senator Gloor touched upon this just briefly, that I think may pose some initial questions as we look at this legislation, and probably it's very fresh in my mind because yesterday in the Appropriations Committee we had a hearing on provider rates related to Medicaid and a variety of other human service programs. So we got to hear a lot about the Medicaid program and how it impacts consumers and providers in Nebraska on a whole host of levels, and of course, we'll deal with those issues in Appropriations. But I'm wondering about how and if this legislation would pose any additional bureaucratic burdens on the providers that are our partners and the provision of critical care for so many Nebraskans. And, of course, we want to ensure the integrity of the process and that everybody is following the rules, but I also know that in visiting with many of the providers in my district, and we heard it again yesterday at the committee level, there's just an onslaught of regulations that they're asked to deal with on a daily basis. And I'm wondering if anybody on the Health Committee could talk about if those issues were addressed at the committee level or if there was any testimony offered on that topic. And then just finally, in terms of contracting away some

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of this, what could fairly be considered a state responsibility in ensuring the integrity of our program. I think just...again, I think the intent of the legislation as a whole is good, but it's also healthy to ask questions about how we move, evolve, and change this program as we move forward. So I'm looking forward to additional information that will be brought forward in the debate by those with far more expertise than I in the area, and I'm confident we'll be able to ensure this legislation is as strong as it can be as it moves forward through the next few rounds of debate. Thank you. [LB541]

PRESIDENT SHEEHY: Thank you, Senator Conrad. Senator Carlson. [LB541]

SENATOR CARLSON: Mr. President and members of the Legislature, I'm actually in support of LB541. I would like to address Senator Campbell with a question or two if she would yield. [LB541]

PRESIDENT SHEEHY: Senator Campbell, would you yield to Senator Carlson? [LB541]

SENATOR CAMPBELL: Certainly. [LB541]

SENATOR CARLSON: Senator Campbell, I was kind of in and out, even as a part of your introduction. This is really a part of the LR542 process, isn't it? [LB541]

SENATOR CAMPBELL: Yes, it is, Senator. [LB541]

SENATOR CARLSON: Okay. Now, I'm going to ask something here, and really for the record, to try and make a point. In the bill it says, "The Legislature finds that the medical assistance program would benefit from increased efforts to prevent improper payments...identify and recoup improper payments." And in order to do this it's necessary to, "contract with one or more recovery audit contractors." Section (2) of that portion of the bill says that, "The department shall contract with one or more persons to support a health insurance premium assistance payment program." And I'm really supportive of that kind of effort. And then in order to recover these dollars, as they're recovered it's going to be paid for by giving a portion of what is recovered to those that are under contract. Now, Senator Campbell, what I'm asking is no criticism whatever of the HHS Committee and the work that you've done. How many employees approximately are there in HHS? A lot. [LB541]

SENATOR CAMPBELL: Well, I know there's well over 5,000. I'm not sure I know the exact figure, Senator Carlson. We've got some people outside who we probably can find for you. [LB541]

SENATOR CARLSON: Well, it's thousands, and whether it's 5,000 or 6,000, it's something in that area. And again, this is not the fault of the committee in pursuing this. It's almost embarrassing to me that we have to have a bill that recovers improper

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payments and identifies and recoup improper payments. Why isn't the department doing that? Why didn't they do that? And let me finish here, because by the fiscal note it says that there's a possibility of maximum recovery of \$4 million, and the...and if you discount a portion of that, maybe about \$3.4 million. But that's a lot of money. It's unfortunate that we have to have legislation to recoup improper payments. [LB541]

SENATOR CAMPBELL: Thank you, Senator Carlson, for your question. I think one of the most important aspects to look at here is to remember that the department is already doing some work internally on this. However, the contractors that service over 40 states, as I indicated, are very specialized and they can take that data and analyze it and probably at a more high-powered computer end software program than what we have available. So it's not to say that the staff isn't doing anything. They are. But what the committee feels is that the specialized contractor can be brought in to mine and look at our data even more thoroughly. And you say, well, why do you need a bill for this? Part of this process out of the summer's analysis is that the committee said to itself, are there any bills that we could bring forward... [LB541]

PRESIDENT SHEEHY: One minute. [LB541]

SENATOR CAMPBELL: Oh, I'm sorry. I'm speaking on your turn, Senator. [LB541]

SENATOR CARLSON: Well, that's okay. But now this is shedding a little bit of different light on it, because are you saying that the department has come forward and said, we've made efforts to recoup and identify these improper payments. We can only do so much; we need some additional help; this is what we need. That's different than if the HHS Committee has identified that we do have improper payments and we better do something about it. You're saying the department has asked for this help. Is that correct? [LB541]

SENATOR CAMPBELL: I would say that the department has started in on that effort and understands what we're trying to accomplish here in LB541. [LB541]

SENATOR CARLSON: Okay. And I'm about to run out of time, but if...it's different to me if the department recognizes they've got a weakness, recognizes there's a problem, has asked for help because they simply can't, with their existing... [LB541]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Carlson. Senator Campbell. [LB541]

SENATOR CAMPBELL: I'm going to yield some of my time to Senator Carlson so he can complete his remarks. [LB541]

PRESIDENT SHEEHY: Senator Carlson, you're yield 4 minutes 50 second. [LB541]

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SENATOR CARLSON: Thank you. And I won't take it all. But it does make a difference to me and perhaps some other people on the floor here if the department recognizes there's...I'm just going to, for simplicity, call it a collection problem. There's an improper payment problem, and then there's a collection problem of improper payments. They've made an effort...I'm understanding by what you've said, they've made an effort to do some of this but they feel like they can't do it all. And your bill, after some study, is saying if we get into this and we pass this bill, we have the possibility of recouping \$3.4 million to \$4 million annually of these possible improper payments. [LB541]

SENATOR CAMPBELL: Senator Carlson, keep in mind that the improper payments is only one aspect of this. There are more components--the components with regard to third-party payments and also the premium and the decision on whether to cover Andy Campbell--we'll use Andy again--or whether...under Medicaid, or whether to use an insurance program. I fully anticipate that the state has been working on this issue and I know that they have looked at similar programs and RFPs. I have every confidence that they're willing to move into this area. However, the committee felt strongly that we needed to be on record that we support those efforts and we want them to go forward because this whole area of Medicaid integrity is very important. [LB541]

SENATOR CARLSON: It is. It is very important and I think it's also important that all divisions of government, as they're in a position as HHS is to pay out funds, obviously they do it in a responsible manner. Part of that process is making sure it's responsible, making sure it goes to the right people, and when it doesn't they recover it. And any area of government ought to have that responsibility. And so I guess I need...I'm asking for a little comfort in that they're trying to do their job but they're needing some additional help. And if this help results in what the fiscal note says, certainly I'm in favor of it. I realize there's some other aspects to this. This is simply one, but it's a pretty important one. [LB541]

SENATOR CAMPBELL: Absolutely, Senator Carlson. And I feel that the department is moving in the right direction in this area. By no means do we mean to imply that they aren't. I think they are moving in that direction. And keep in mind that whatever happens to national healthcare--and I realize that's an open debate for everybody in this Chamber--I do believe that the federal government will still persevere on the route of saying to every state, you need to have a program in place to do this work. They were all ready to require it. They pulled back that final rule. But the message that we got from CMS in some documents was that they expect that rule to be finalized by the end of the year and it will require every state to do it. [LB541]

SENATOR CARLSON: Okay. And it's going to be important going forward... [LB541]

PRESIDENT SHEEHY: One minute. [LB541]

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SENATOR CARLSON: ...because it's easy to lose track of this, that we hope this works. We hope it does the right thing. And then the Legislature needs to be abreast of what the results are so that if we pass a bill like this that we can have a good feeling that we, in fact, did the right thing. Thank you, Senator Campbell. [LB541]

PRESIDENT SHEEHY: Senator Campbell, you still have about 40 seconds. [LB541]

SENATOR CAMPBELL: That's fine. I'll finish out. [LB541]

PRESIDENT SHEEHY: Thank you, Senator Campbell. Members requesting to speak on LB541: Senator Howard, followed by Senator Nelson and Senator Ken Haar. Senator Howard. [LB541]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I've been listening to this discussion and I want to say that I voted for this bill to come out of committee and certainly support the concept. Senator Carlson is very right in his concerns about how the, oh, shall we say, the retrieval of overpayment of funds has been addressed in the past by the department. There are really two factors here that enter into this. First off, it's really difficult in some cases to get money back once you pay it out. I think we all recognize that. And with computers--and this goes to my second point--with computers as prevalent as they are now, that should really be minimized. The department should be able to be much more vigilant and much more diligent on payments. And we're talking mass amounts of money. We're talking payments to hospitals, we're talking on a smaller scale of payments to day-care providers, payments to foster parents. A major portion of this is that the information has to be programmed in the computer correctly from the beginning so that the payment that's made is accurate and falls into the time frame that's designated for the service. I think this is an issue that we all share a concern about. These are state dollars and we have to be vigilant not only with how they're spent but also in the case of an overpayment. I thank Senator Carlson for bringing up his concerns. I think he's very, very accurate in this. I appreciate his background because I think he's got a lot of experience in knowing what is an accurate payment what we should be paying for. This is a good proposal. Again, a caution. I think we're going to have to be careful to contract with companies that have a track record of doing a good, credible job and not just going on hunts to retrieve money to make dollars for themselves. We don't want our providers to be put in a position where they're justifying every payment they made. This calls for credibility on all fronts. I'm going to offer the remainder of my time to Senator Carlson if he would want to use it and share more of his wisdom with us. [LB541]

PRESIDENT SHEEHY: Senator Carlson, you're yielded 2 minutes 30 seconds. [LB541]

SENATOR CARLSON: Thank you, Mr. President, and thank you, Senator Howard. I

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think this is a good discussion and, if nothing else, it makes us all a little bit more aware of the fact that as we discuss and then as we pass bills that...the first thing that we hope is that they work and they get the results that we want. And so this happens to be one that I think it's pretty important that the Legislature receives feedback on what the results are from the passage of this bill, and certainly I do support LB541. Thank you. [LB541]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Nelson. [LB541]

SENATOR NELSON: Thank you, Mr. President and members of the body. I'm going to jump in here a little bit and ask some questions. This is an area that I'm not particularly familiar with. But I wonder if Senator Campbell would entertain some questions? [LB541]

PRESIDENT SHEEHY: Senator Campbell, would you yield to Senator Nelson? [LB541]

SENATOR CAMPBELL: Certainly. [LB541]

SENATOR NELSON: Thank you, Senator Campbell. I'm a little bit husky this morning, I guess, but I'm...let's begin here with looking at the committee statement. "The contracts will include services for cost avoidance, cost recovery, and casualty recovery of payments through identification of third-party liability." Let me ask you, you say 40 other states have programs like this. Have you checked into the efficiency of those, or any given state is, what their experiences have been with what the cost has been and what the recovery has been? [LB541]

SENATOR CAMPBELL: Sure. Senator, that's an excellent question. In the opening statement that I talked about, I mentioned that CMS has a report that they go out and they analyze what's happening in states. I know that Texas and Utah have used this. And in some cases, the returns have been 1-3; 1-5; 1-10; 1-15. So CMS, the report that we looked at, is clearly saying there are returns on the dollars, and states are seeing that. I think that Senator Howard has interjected a very important point here, and that is when the department goes out to look at these contracts, that they look at the track record and the integrity of the companies themselves. [LB541]

SENATOR NELSON: Um-hum. All right. I can speak in terms of some experience with a Douglas County program where they contracted with people, I think based in Denver, to go after deadbeat fathers who weren't paying their child support. And my impression was that, by and large, the cost of the program was more than they ever recovered. Now I take some comfort here in the fact that we're talking about contingency fees, apparently, which are limited to 12.5 percent. And so I think that's helpful. I am interested in what Senator Gloor said. Here we have providers such as hospitals and doctors and everything. The amount of paperwork is overwhelming, and now are we

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faced with a contractor coming in and placing an additional burden on these people for documentation and everything to see if perhaps there was an overpayment in light of the fact that they're even getting reduced payments. What's your reaction to that as far as placing an undue burden on the providers in relationship to what we're actually going to recover. Like point...less than .85 percent...1.85 percent. [LB541]

SENATOR CAMPBELL: And it depends on which of those components, Senator Nelson, you're picking in terms of what the return is. I certainly recognize...and I think Senator Gloor articulated it. Yes, this will require perhaps more of the providers. However, I'm not sure that I would use the word "overburden." That's number one. I think they are used to reports and going back and taking a look at them. Number two is, without a doubt, I firmly believe that this will be a requirement out of any national healthcare or national Medicaid review. [LB541]

SENATOR NELSON: Okay. They will...another portion here... [LB541]

PRESIDENT SHEEHY: One minute. [LB541]

SENATOR NELSON: Thank you very much. And I'm looking for this here. Oh, yes. The health insurance premium payment program. Could you explain that just a little bit there? It maintains the establishment of a contract, and that's not a contingency component so there would be an RFP on that. But could you just briefly explain what that involves? I'm looking at the fiscal note from the Health and Human Services. It mandates this...LB541 mandates the establishment of a contract to support the health insurance premium payment program. Are you familiar with that? [LB541]

SENATOR CAMPBELL: Senator, I think that is contained in this and that's why we chose the contingency. I think it's contained within the review here. Let me check on that for you because I'm not sure. [LB541]

SENATOR NELSON: All right. [LB541]

SENATOR CAMPBELL: I thought we folded that in. Senator Gloor is getting some paperwork for me. [LB541]

SENATOR NELSON: Well, okay. Maybe the fiscal note... [LB541]

PRESIDENT SHEEHY: Time, Senator. [LB541]

SENATOR NELSON: ...said it would be subject to the RFP. [LB541]

PRESIDENT SHEEHY: Time. [LB541]

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SENATOR NELSON: Thank you, Senator Campbell. [LB541]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Senator Ken Haar. [LB541]

SENATOR HAAR: Mr. President and members of the body, I have some questions for Senator Campbell. [LB541]

PRESIDENT SHEEHY: Senator Campbell, would you yield to Senator Haar? [LB541]

SENATOR CAMPBELL: Certainly. [LB541]

SENATOR HAAR: Just to follow up a little bit on what Senator Nelson asked because I, too, am not very familiar with this, and so I've been following the discussion very carefully. What is exactly the health insurance premium assistance payment program? [LB541]

SENATOR CAMPBELL: That's a good question, and Senator Gloor helped me out here. It's the Andy Campbell example. It's where you're going to choose as to whether you should cover Andy under Medicaid or whether you should choose to buy a healthcare premium for him. We do that now, but the point being is do we need to do this. It seems to be the analytics will give us a lot more information about how to approach this. But decisions are made by the department now. In some cases it is less expensive to cover, then, through the Medicaid. [LB541]

SENATOR HAAR: Okay. Also the things that always hit the newspaper are the fraud kinds of things. Is there much indication in Nebraska that there's Medicaid fraud going on, or is it mainly the sort of thing that Senator Gloor talked about where there are just mistakes being made in the reporting? [LB541]

SENATOR CAMPBELL: I definitely think that we are not seeing the kind of fraud that you read about in the national media in terms of Medicaid. And we need to remember that the Attorney General program has done a great job of dealing with any fraud that we have found here. What will be helped by this I think, again, is the analytical power of these special contractors to look at our database and see if we're missing anything. But our providers across the state don't mirror, by any stretch of the imagination, what you might read in the national press. [LB541]

SENATOR HAAR: Okay. One of the concerns I've had, for example, around food stamps, is our 28-page requirement that you fill out 28 pages to just apply for food stamps. And I see that as a disincentive for people to get help that really need the help. Is there any disincentive in this program for people who should be receiving Medicaid coverage, to get that coverage? [LB541]

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SENATOR CAMPBELL: No. This all has to do with the analyzation of the database and of the recipients and the providers and how is the best way to contain the costs as we look in the future for Medicaid. No, I wouldn't see that, Senator Haar. [LB541]

SENATOR HAAR: Okay. So the recipients of Medicaid themselves are not going to see this. This bill is not for them really. It's for the department and... [LB541]

SENATOR CAMPBELL: It doesn't deal with the eligibility of those recipients if you're worried about that. No. [LB541]

SENATOR HAAR: Okay. Yeah, because in all of these programs I think that we need to look at who's eligible and encourage eligible people to participate and not discourage them. So I'm happy to hear that. Thank you very much. [LB541]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Thank you, Senator Haar. Senator Campbell, your light is on. You've already spoken your three times. You have the opportunity to close. For that reason we're going to pass you and go to Senator Nelson. Senator Nelson, you are recognized. [LB541]

SENATOR NELSON: Thank you, Mr. President. I did not have quite the amount of time I needed to ask another question of Senator Campbell if she'll yield. [LB541]

SPEAKER FLOOD: Senator Campbell, will you yield to a question from Senator Nelson? [LB541]

SENATOR CAMPBELL: Certainly. [LB541]

SENATOR NELSON: I noticed that there were not many proponents. I mean there were no opponents, but that the Association of Financial Insurance Advisors also testified in support of the bill. Do you recall what their testimony was, Senator Campbell? [LB541]

SENATOR CAMPBELL: As I best remember it was former State Senator Mines... [LB541]

SENATOR NELSON: Yes. [LB541]

SENATOR CAMPBELL: ...and I think what his testimony had to deal with was the importance of attacking a problem like this and making sure you get the best information in terms of the financial records that you have. [LB541]

SENATOR NELSON: Thank you very much. The other thing I wanted to ask was

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identification of third-party liability. Was there any testimony as to...is that a major loss of funds for us, just not going after third parties that are liable and recouping money there? [LB541]

SENATOR CAMPBELL: Senator Nelson, that's an excellent question. And at the last, probably second to the last Medicaid Reform Council that I attended, the department talked about its efforts. I mean it has some efforts with regard to exactly the topic you're dealing with. But again, the specialized contractors and their ability to analyze our database in a more thorough method might surface more of those. [LB541]

SENATOR NELSON: Right. And I think this is an area where you're talking really about collection--going after these parties that should be paying. And that's going to be part of their contingent fee, if I would understand it. They're going to have to support...or recover those costs as part of their contingent fee. All right. [LB541]

SENATOR CAMPBELL: Exactly. [LB541]

SENATOR NELSON: All right. Thank you very much, Senator. Thank you, Mr. President. [LB541]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Thank you, Senator Nelson. (Visitors introduced.) Seeing no additional requests to speak, Senator Campbell, you're recognized to close on LB541. [LB541]

SENATOR CAMPBELL: Thank you, Mr. President. And I much appreciate the questions and the debate we have had today. This is not an easy issue to understand. Medicaid can be very, very complicated with many avenues to digest and think about. It is important to remember that the committee chose this bill to bring forward and why we chose the lowest amount on the fiscal bill rather than two other bills that were brought to us that we just felt we could not. So we are being very mindful of our budget and our promises and commitments to the Appropriations Committee. I also want to remind my colleagues that the report requires a report by the department to the Legislature. So hopefully, as Senator Carlson has said, we will know how we are doing. And with that, Mr. President, I would urge the body to vote green on LB541. [LB541]

PRESIDENT SHEEHY: Thank you, Senator Campbell. You have heard the closing. The question before the body is on the advancement of LB541. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB541]

CLERK: 30 ayes, 0 nays, Mr. President, on the motion to advance LB541. [LB541]

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PRESIDENT SHEEHY: LB541 advances. Mr. Clerk, we'll proceed to the next item under General File. [LB541]

CLERK: LB465, Mr. President, a bill by Senator Campbell at the request of the Governor. (Read title.) Introduced on January 14, referred to the Health and Human Services Committee. The bill was advanced to General File. I have no amendments at this time, Mr. President. [LB465]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Campbell, you're recognized to open on LB465. [LB465]

SENATOR CAMPBELL: Thank you, Mr. President. In the continuing education on Medicaid, we bring you LB465 and we did...I introduced this bill on behalf of the Governor as it was a part of the budget presentation brought by the Governor. LB465 is intended to eliminate state-only programs for non-United States citizens who are here legally but do not qualify for assistance under federal guidelines or with federal dollars. Currently, the Department of Health and Human Services says for certain benefits the legal permanent residents, or LPR as they're known federally, these benefits include the SNAP Program, which was formerly known as food stamps; cash payments for Temporary Assistance for Needy Families, which is TANF; Medicaid, Aid to the Aged, Blind, and Disabled. Federal law requires noncitizens to be in the United States for at least five years before receiving federal public benefits. Nebraska has been using General Funds, and I want to emphasize General Funds, no federal funds involved, to provide these public benefits during the five years before individuals become eligible for federal benefits. LB465 will eliminate this practice and bring us in line with the federal requirements. Approval of this bill will enable the department to save \$3.9 million annually. And I want to tell you a little bit about this population because I always get a lot of questions on this. An LPR, legal permanent residents, is a legal permanent resident and, in many cases, are people who have come here as immigrants but are...there is a waiting period before they can apply to be a citizen of the United States--that is a part of this time period--who has lawfully entered the United States. Federal law does not allow the LPRs to be Medicaid eligible for the first five years they are in this country. This is the group that we are currently covering by General Funds that will no longer be covered with repeal of the statute at issue. Federal law changed recently to allow...and here's where you need to listen carefully, colleagues, because there are a number of exceptions to this and the exceptions may I think to some extent help you understand why the federal government would have made those changes. This group it does cover, these people are covered: pregnant women within that group can be covered by Medicaid and children in this group can be covered by the national CHIP Program. And again, that's a legal permanent resident, pregnant woman and a child can be covered. Nebraska added these two groups effective July 1, 2010, as a result of LB1106. So we already addressed and brought those two groups in to mirror the federal government. Other categories of noncitizens who were eligible for Medicaid

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under federal law within this five years, these are the people seeking asylum, refugees, and there's a variety of other small groups that would be covered. Students were not previously covered and will not be covered if they are here only on a student visa. A Medicaid applicant, and even if you're an exception, must be a Nebraska resident. So it can't be that, you know, all these other people are coming to Nebraska to get these services because they weren't covered under the federal law. You still must be a Nebraska resident. And children under this program under the age of 18 are eligible for SNAP, or for food stamps. So at this point the committee discussed this bill. We certainly understand why years ago Nebraska might have included them. The federal government instituted this in 1996 and Nebraska chose in 1997 to include only under General Fund dollars. Among the many options, and we all know that the options we're facing in the budget, many of them are not good, but of all the options in front of us, we felt that this was one in which perhaps Nebraska law should mirror the federal government, and we concluded that we would put the bill out of committee and in front of the Legislature because we felt that this was one cost that we certainly could cut the budget and live with. And with that, Mr. President, I will conclude my remarks at this point. [LB465]

PRESIDENT SHEEHY: Thank you, Senator Campbell. You have heard the opening to LB465. Member requesting to speak, Senator Coash. [LB465]

SENATOR COASH: Thank you, Mr. President. Would Senator Campbell yield to a question? [LB465]

PRESIDENT SHEEHY: Senator Campbell, would you yield to Senator Coash? [LB465]

SENATOR CAMPBELL: Certainly. [LB465]

SENATOR COASH: Thank you, Senator Campbell. And I apologize if you did cover this in your opening but I wanted to ask you, for the record, how does LB465 affect a person who is currently getting this benefit but is in their...under their five years? So they're in their third year, they are getting it now. Does this person continue to see that through the five years or is this for people newly into the state, they have to wait five? How does it affect the folks who are already receiving this benefit? [LB465]

SENATOR CAMPBELL: As I understand, Senator Coash, this bill will affect current as well as people who will be coming into the United States. [LB465]

SENATOR COASH: Thank you, Senator Campbell. Do you know how many families are currently under this program that this bill may affect that are already receiving these services? [LB465]

SENATOR CAMPBELL: There are approximately 500 families a month. But remember

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that if those families have children, the children would continue their eligibility. So of that number, I couldn't tell you, I just know that number and individually there's 1,100 totally on that program. [LB465]

SENATOR COASH: So just to be clear, Senator Campbell, you said there's 500. That refers to the families. And the 1,100 refers to... [LB465]

SENATOR CAMPBELL: Individuals. [LB465]

SENATOR COASH: ...the individuals. So presumably the difference, you know, the 600 is mainly children? Is that... [LB465]

SENATOR CAMPBELL: Well, of the 500 families, we don't know how many of them have children, but you could probably mathematically extrapolate that because the child would still have the eligibility on the food stamps. And I think that's extremely important and I can understand why we added...why the federal government added that. [LB465]

SENATOR COASH: Okay. Thank you, Senator Campbell. Did the committee give any thought to...was there any discussion within the committee to allow the families who are currently receiving this service to see it through to their five years and making this apply only to the new families? My concern...and I...I'll let you answer that. [LB465]

SENATOR CAMPBELL: Senator, we did not. We did not. I think primarily one has to look at the fact that we tried very much to balance all of the bills that we had in front of us to deal with the budget deficit,... [LB465]

SENATOR COASH: Okay. [LB465]

SENATOR CAMPBELL: ...or projected, and we felt that this was one, because the families were not federally covered, we felt that perhaps it was time for us to mirror that. But, no, Senator, we did not. [LB465]

SENATOR COASH: Thank you, Senator Campbell. One final question: Will the families who this will...who are currently receiving this service and it will no longer be available should LB465 pass, what kind of notice will these families get based on the...based on the bill and act? Will they get any type of notice that this benefit will now cease or will it just stop and at the time that the bill passes? Can you talk to that point? [LB465]

SENATOR CAMPBELL: I am making the assumption, Senator Coash, that the department will notify them of it. But keep in mind, again, the great number of exceptions to this and there are exceptions in each categorical component. So there's exceptions for TANF, there's exceptions for food stamps, there's exceptions for Medicaid. So each one of those probably has a little slightly different bent, so... [LB465]

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PRESIDENT SHEEHY: One minute. [LB465]

SENATOR CAMPBELL: ...I'm hoping that the case manager would notify them. [LB465]

SENATOR COASH: Okay. Thank you, Senator Campbell. And I bring these points up, colleagues, because we see this frequently with programs within HHS if we change the benefit, and that's within our policy to do and that's what LB465 seeks to do. And I can agree with the HHS Committee this may be an appropriate way, given all the choices, to reduce the General Fund expenditures, but I do have concerns that families who may be receiving this benefit may not know that it's ending and I would seek from the HHS Committee some kinds of assurances that the families who will lose this benefit will at least know about it. Thank you, Mr. President. [LB465]

PRESIDENT SHEEHY: Thank you, Senator Coash. Members requesting to speak on LB465, we have Senator Louden, followed by Senator Ken Haar. Senator Louden. [LB465]

SENATOR LOUDEN: Yeah, thank you, Mr. President. Would Senator Campbell yield for a question? [LB465]

PRESIDENT SHEEHY: Senator Campbell, would you yield to Senator Louden? [LB465]

SENATOR CAMPBELL: Absolutely. [LB465]

SENATOR LOUDEN: Yeah. Well, as I've...some of the information I've gathered while we've lived down here in Lincoln, but is Lincoln actually what they call an immigrant destination place? I mean, people are brought here from different countries to set up their immigration status and that sort of thing. Now do they...are they eligible for these benefits on the healthcare then when...soon as they're brought into the country then? [LB465]

SENATOR CAMPBELL: Senator Louden, they would only be eligible if they are granted that exception from the federal government. [LB465]

SENATOR LOUDEN: Okay. [LB465]

SENATOR CAMPBELL: So if you're a legal immigrant and you come into this country, I talked about the exemptions early on--pregnant, children, refugees--and to some extent, Senator Louden, some of the legal immigrants who have come into this country would classify...be classified under an asylum situation. I would guess most of the Sudanese would qualify there and those who are fleeing from a situation, a refugee status, and I don't have those definitions. But if they meet those definitions they would be exempt

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and they would retain the services. [LB465]

SENATOR LOUDEN: Well, that's what I'm wondering, because I know every month now there's quite a group of people getting their citizenship down here in the federal court building and those people come in from I don't know where. I suppose a lot of them come in from different parts of Africa and different places. But that was my understanding, that Lincoln is designated as a place where they bring these people in. So I'm wondering if that has anything to do with the amount of healthcare and if this would circumvent the state having to pick up some of their healthcare, because I think those people get their citizenship and their Social Security number and register them to vote all in one deal down there at one time. So I'm wondering how this interacts with that. [LB465]

SENATOR CAMPBELL: Senator, this deals with the legal resident who is coming in as an immigrant, during that period of time when they come into the country to when they can apply for citizenship. So they've been here that time limit. It's not like they come and immediately they are citizens. [LB465]

SENATOR LOUDEN: Okay. Yeah. Then when they become citizens, they're eligible for these benefits and I thought I saw someplace in here where they had to be here for five years, but that's if they haven't received their citizenship. Isn't that what that refers to? [LB465]

SENATOR CAMPBELL: Yes, Senator, the five years is that period when they are a legal immigrant in the country but they do not have citizenship left. But even when they become a United States citizen, they would have to qualify incomewise for Medicaid and the other programs. So you have to keep that in mind. A number of the immigrants, refugees that have come to this country have been some of the most eloquent American success stories. [LB465]

SENATOR LOUDEN: Well, yeah, I wouldn't question that part of it. I was mostly questioning, you know, what this covers and who it would exempt from this bill and that was more my question. I'm certainly not questioning... [LB465]

PRESIDENT SHEEHY: One minute. [LB465]

SENATOR LOUDEN: ...why those people are here or what their circumstance was. I was just, as I see there's about \$2 million or so was supposed to be the savings if this bill passed, and I was, you know, wondering what people would be affected by it, I guess. So with that, thank you, Senator Campbell, and thank you, Mr. President. [LB465]

PRESIDENT SHEEHY: Thank you, Senator Louden. Senator Ken Haar. [LB465]

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SENATOR HAAR: Mr. President, members of the body, I'd like to ask Senator Campbell some questions, if I could. [LB465]

PRESIDENT SHEEHY: Senator Campbell, would you yield to Senator Haar? [LB465]

SENATOR CAMPBELL: Certainly. [LB465]

SENATOR HAAR: Okay. I was on the Lincoln City Council for eight years and so I'm really aware of the situation that Senator Loudon is talking about, so I have a number of questions. When it says, for example, that we'd save \$1 million on the SNAP Program, that doesn't include...that is the actual savings. It wouldn't include the people that, for example, children of refugees or whatever. That's... [LB465]

SENATOR CAMPBELL: That's correct. [LB465]

SENATOR HAAR: Okay. Okay. Now if pregnant women, children, and refugees still are covered, who is not covered by this then? [LB465]

SENATOR CAMPBELL: You know, Senator Haar, I think this was much like when we used to deal with general assistance on the county level. I think you're dealing probably a lot with single men and women or a man and a woman without any children under that age. I want to say that, to Senator Loudon, all of the exceptions here that I'm talking about are granted under federal law. We will now mirror federal law. Just exactly as it is interpreted, that's what Nebraska will have. [LB465]

SENATOR HAAR: Okay. So generally though, the people, and I know for Lincoln it was Catholic Social Services and Lutheran Family Services brought in refugees from Vietnam and so on, but they would still be covered by these programs according to federal and state law? [LB465]

SENATOR CAMPBELL: If their classification is as seeking asylum in the United States or refugee, they would be covered. [LB465]

SENATOR HAAR: Okay. Now Americans and Nebraskans being compassionate people, are some of the folks who were covered and will no longer be covered by these services, will they become an additional burden on the cities and the counties? Did your committee look at that at all? [LB465]

SENATOR CAMPBELL: Again, Senator Haar, you have to remember they would have to meet the income eligibility of a general assistance plan and almost every one of those in the counties are different, so it depends on which county and what their income would be. I rather think to say that a lot of these people who are coming have planned...I mean

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they have applied to be an immigrant to this country and they...let's just take that segment that would be exempt. They have planned for that, some of them that waited years to get that status in coming to the United States. I would gather that a lot of them would understand that their self-sufficiency is one of the things that they plan on doing when they come to the United States but not all. You are correct. [LB465]

SENATOR HAAR: Okay. Well, I think...I'm not sure who would look into this, but it would be interesting to know if like Lancaster County and the city of Lincoln look at some additional burdens on their social services systems or whether this is going to have to be picked up and...I mean if people have been getting some of these benefits, we're not just going to let them, you know, starve. And so it'd be interesting to know if nonprofits will pick those up or the city or the county or who would pick up those people. Again, we're not going to let them starve. [LB465]

PRESIDENT SHEEHY: One minute. [LB465]

SENATOR HAAR: So, yeah, I'd give the rest of my time to Senator Campbell, if she wishes. [LB465]

PRESIDENT SHEEHY: Senator Campbell, you're yielded 50 seconds. [LB465]

SENATOR CAMPBELL: Just to add quickly, I would have to say I understand Senator Haar's question and without a doubt I would assume that some of the communities will have to step forward and faith-based groups, our food banks. That is true, Senator Haar. I'm not sure how many of them really would be eligible for general assistance as I remember it. [LB465]

PRESIDENT SHEEHY: Thank you, Senator Haar. Thank you, Senator Campbell. Senator Nelson. [LB465]

SENATOR NELSON: Thank you, Mr. President and members of the body. And, Senator Campbell, based on what I've heard so far, I stand in support of this bill. It seems to me like it makes sense to mirror what the federal government is doing here with the exceptions: people here for asylum, that are refugees, special circumstances. But seems to me that if we're going to save almost \$4 million here, it's because we are presently paying benefits to people who either come here or should have come here with the understanding that they have to be self-sufficient, either with sponsors or organizations that have brought them into the country, knowing that they didn't come here to be subsisted by our General Fund for that five-year period. As you said, they should have planned ahead. It looks to me like there's a safety net here for those people who do get in trouble or for the exceptions that if it's...the testimony is, the understanding is that we can do these savings by just not continuing to pay out these funds out of our General Funds, that we ought to take advantage of this, and I

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commend the committee for selecting this as the avenue in which they want to go here to save us some money under LB465. Thank you, Senator Campbell, and thank you, Mr. President. [LB465]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Members requesting to speak on LB465, we have Senator Campbell, followed by Senator Schumacher. Senator Campbell. [LB465]

SENATOR CAMPBELL: I think it might be important to follow up on Senator Nelson's comment and Ms. Chaffee went back and took a look at the federal law when it was instituted in 1996 and some of the language that probably was the intent at that point, and I'd like to read those because I think to some extent it may illustrate for you why the federal government looked at that and why we are again looking at this in Nebraska. Established that in this self-sufficiency has been a basic principle of the United States immigration law since this country's earliest immigration statutes, it continues to be the immigration policy of the United States that aliens within the nation's borders not depend on public resources to meet their needs but rather rely on their own capabilities or the resources of their families, their sponsors, and private organizations; the availability of public benefits not constitute an incentive for immigrants to the United States. And I would have to say that I think most people immigrate to the United States for the chance and the opportunity that is here and certainly to better themselves and their families, and they don't come just to get a handout. Thank you, Mr. President. [LB465]

PRESIDENT SHEEHY: Thank you, Senator Campbell. Senator Schumacher. [LB465]

SENATOR SCHUMACHER: Thank you, Mr. President. Members of the body, I don't think we have any options but to probably go ahead with this. It roughly offsets the amount of money that we have appropriated or, appears to be, going to appropriate to the angels who invest greater than \$25,000 in Nebraska businesses. But I do have a question for Senator Campbell regarding Section 68-1070. [LB465]

PRESIDENT SHEEHY: Senator Campbell, would you yield to Senator Schumacher? [LB465]

SENATOR CAMPBELL: Yes. [LB465]

SENATOR SCHUMACHER: This law that we're repealing says that you're eligible for these various aid programs if you're a non-U.S. citizen, lawfully admitted, someone who is a refugee or a World War I veteran, and I guess there's no more of those left, and...or you're here under asylum. And it also says that you're eligible, of course, if you are mandated to be eligible by federal law. But then one of the sections that we're repealing says that the income resources of any individual who assist a non-U.S. citizen to enter

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the United States by signing an affidavit to support...of support shall be deemed available in determining the non-U.S. citizen's eligibility for assistance until the non-U.S. citizen becomes a citizen. So it appears from this that if somebody who brought you here signed a paper saying, yeah, I'll take care of them, then we could consider that person's resources when we provided the coverage mandated by federal law. By striking this subsection (3), are we saying we leave those people off the hook? [LB465]

SENATOR CAMPBELL: I think that statement might have mirrored the federal but between General and Select, Senator Schumacher, I'll find an answer for you. I'm not sure. [LB465]

SENATOR SCHUMACHER: Thank you. And nothing further. [LB465]

PRESIDENT SHEEHY: Thank you, Senator Schumacher. Senator Conrad. [LB465]

SENATOR CONRAD: Thank you, Mr. President. Colleagues, I was hoping...and I haven't heard it during the course of the debate this morning and have been doing some research on how some of our sister states have handled these issues and, in particular, the elimination of benefits for legal immigrants, and it seems that there may be some legal issues involved in singling out as a suspect classification, based on alienage, potential for discrimination with this legislation. And I was just wondering if Senator Campbell or any other members from the Health Committee could provide some information about whether or not those legal issues were addressed and, if so, how they believe they have been appropriately addressed in this bill. So, Senator Campbell, if you would yield to a question? [LB465]

PRESIDENT SHEEHY: Senator Campbell, would you yield? [LB465]

SENATOR CONRAD: Senator Campbell, did you have a chance to talk at all about the potential discrimination or legal challenges that may exist with this legislation in how it targets legal permanent resident or legal immigrants? [LB465]

SENATOR CAMPBELL: Senator Conrad, just real briefly, and we will double-check all of our notes for you on this issue, but I believe that the legal counsel to Health and Human Services looked into this and felt it would not be an issue. [LB465]

SENATOR CONRAD: I appreciate that response, Senator Campbell, and I'm going to do some more research, too, because I'm just starting to digest through some of this. And I'm not sure I'll be able to support the legislation at this time because of that potential litigation which may ensue. But I do appreciate all of the comments that have been made this morning in terms of how difficult these decisions are and ensuring that we are narrowly tailoring this proposal to ensure that it doesn't hurt kids, pregnant women, and asylees and refugees, which have special considerations, of course. So I

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really appreciate the hard work of the committee. Thank you. [LB465]

PRESIDENT SHEEHY: Thank you, Senator Conrad. Seeing no additional requests to speak, Senator Campbell, you're recognized to close on LB465. [LB465]

SENATOR CAMPBELL: Colleagues, I much appreciate the time that you have given to this bill and I want to emphasize that very few choices that we will be making in the coming weeks are easy. This one was not. However, with the bill that you passed earlier and the two we're going to talk about, LB465 and the other bill, we chose to come forward with these bills and not two others because we felt that the two others were more onerous than these two. And I realize that's difficult to look at, but choices are being made in everyone's budgets and all of you who will stand up and talk about those budgets. I feel that we have tried to look at the federal safety net and realize that it should be there. We'll give every effort to answer the questions you've asked on the floor today but I would ask for your support on LB465. Thank you. [LB465]

PRESIDENT SHEEHY: Thank you, Senator Campbell. You have heard the closing. The question before the body is on the advancement of LB465. All those in favor vote yea; opposed, nay. Record, Madam Clerk. [LB465]

ASSISTANT CLERK: 31 ayes, 2 nays on the advancement of LB465, Mr. President. [LB465]

PRESIDENT SHEEHY: LB465 advances. We'll proceed to next item under General File. [LB465]

ASSISTANT CLERK: Mr. President, LB385, introduced by Senator Utter at the request of the Governor. (Read title.) The bill was read for the first time on January 13, referred to the Revenue Committee. That committee reports the bill back to General File. I have no committee amendments but I do have other amendments, Mr. President. [LB385]

PRESIDENT SHEEHY: Thank you, Madam Clerk. Senator Utter, you're recognized to open on LB385. [LB385]

SENATOR UTTER: Thank you, Mr. President, and good morning again, colleagues. Today I'm here to introduce LB385 which would terminate the Energy Conservation Improvement Fund. I introduced this bill on behalf of the Governor. LB385 is a part of the Appropriations Committee preliminary budget and a Speaker's priority bill for the One Hundred Second Legislative Session. LB385 amends the Low-Income Home Energy Conservation Act, Nebraska Revised Statute 66-1015 and 66-1016. Section 66-1015 is amended to terminate the Energy Conservation Fund on June 30, 2012. Any money from the fund designated sales taxes on that date shall be deposited in the General Fund and any matching funds contributed by an eligible entity remaining in the

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fund would be refunded to that entity. The Energy Conservation Improvement Fund was created in 2009. It adopted the Low-Income Home Energy Conservation Act. This act allowed the earmarking of up to 5 percent of the total sales tax collected on sales of electricity by utilities. The utility entity would then match the earmarked amount and fund conservation improvements for low-income customers. An eligible entity included public power districts, rural public power districts, electric cooperatives, a nonprofit corporation organized for the purpose of furnishing electric service, a joint entity organized under the Interlocal Cooperation Act, or a municipality. Some of the conservation improvements include insulation and ventilation improvements, replacement of storm and thermal doors or windows, caulking, weather-stripping, or furnace efficiency modifications. However, the program has been underutilized by both utility providers and low-income Nebraska residents. During fiscal year 2009-2010, the Department of Revenue received reimbursement requests from eligible utility providers totaling \$159,875, which represents 59 grants made statewide to low-income homeowners for energy improvements to their residents. As of February 28 of this year, the department had received reimbursement requests from utility providers for an additional \$98,448 for energy improvements, representing another 48 grants again throughout the entire state. This left more than \$120,000 unused, and only three utility providers participated in the program. Part of the reason for the low rate is the federal government enacted similar legislation under the American Recovery and Reinvestment Act of 2009. In that legislation, though, there was no matching requirements. The federal program was used widely in Nebraska with approximately \$13,985,000 being spent through January of this year. Therefore, the utilization of the Low-Income Home Energy Conservation Act has been much lower than anticipated. In addition, there is the Low-Income Weatherization Assistance Program which duplicates many of the efforts of the Low-Income Home Energy Conservation Program. This program, which the State Energy Office presides over, received funding through three different sources in 2010. Those three sources include the U.S. Department of Energy's Low-Income Weatherization Assistance Program, the Low-Income Home Energy Assistance Program, the Nebraska Department of Health and Human Services, which transfers a portion of the funds received to pay utility bills to the Energy Office to weatherize homes. In 2009, the Energy Office utilized money from the American Recovery and Reinvestment Act and is on schedule to have 4,000 homes weatherized by the end of this program in 2012. In conclusion, this program duplicates what the Energy Office has already been doing and will continue to do with the Low-Income Weatherization Assistance Program. During these hard economic times, it is important to closely examine our budget and to locate programs that are duplicating one another. If passed, LB385 would result in budgetary savings of approximately \$4,652,000 per fiscal year. This bill contains the emergency clause. With that, I urge you to advance LB385 to Select File. Thank you, Mr. President. [LB385]

PRESIDENT SHEEHY: Thank you, Senator Utter. You've heard the opening to LB385. Madam Clerk, there's an amendment on your desk. [LB385]

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ASSISTANT CLERK: Mr. President, Senator Mello would move to amend with AM839. (Legislative Journal pages 889-890.) [LB385]

PRESIDENT SHEEHY: Senator Mello, you're recognized to open on AM839. [LB385]

SENATOR MELLO: Thank you, Mr. President. Members of the Legislature, I rise in strong opposition to LB385 for multiple reasons, so I will try to first address what AM839 is and what it goes over, as well as to provide some rationale to rebut some of the criteria or logic behind LB385 in the first place. AM839 does essentially what is in our preliminary budget. The Appropriations Committee decided as a committee in our budget to lower the amount of money that's allocated to the Low-Income Energy Conservation Act. We did that through the budget process. Right now in the preliminary budget, we have appropriated \$119,000 each year that can be spent out of that fund, taking it down from a little bit more than \$4 million per year. What AM839 does is codifies what the Appropriations Committee utilized as a process into the Low-Income Energy Conservation Act, which essentially states the Appropriations Committee will set the limitation or the appropriation for the Low-Income Energy Assistant Act instead of the ceiling that currently exists, which is about \$4 million. Thus, if the Legislature, through the appropriations process, deems that this is not a priority program for funding, we can simply lower the dollar amount with this amendment to what we currently are at with \$119,000 per year or, if the committee and/or Legislature deems that we need to freeze the program for two years, we can lower the amount further. The underlying premise behind this amendment is very simple. LB385 eliminates yet again another program that targets low-income, working Nebraskans and seniors. Some of the logic behind LB385 goes like this: We don't need this program because the federal government is doing it for us. Well, I think we can all agree that with the widely renowned success of the American Recovery and Reinvestment Act funding that went through the Nebraska Energy Office, that is the reason why this program has not been utilized for the last two years. When you get \$40-plus million in federal funds that come into the state to fund similar programs like the Low-Income Energy Conservation Act, it would only be necessary if you're a public power organization not to want to put more money out now when, as we've already seen through the Energy Office, they've had a difficult time spending the money they currently already have. So the point is, it's not a matter of this is an underutilized program. Everyone agrees the Low-Income Energy Assistance Act is an underutilized program. The reason it's underutilized is because we had an influx of federal dollars that we did not anticipate when passed this legislation. So that is not for debate and I wholeheartedly agree. I think anyone who has read the fiscal note or has learned more about this program would also agree. The question remains, what happens next March 2012 when the federal assistance goes away? What happens to those Nebraskans who live on the margins, below 150 percent of poverty, the seniors who are trying to keep in their homes and keep them off of public assistance because of high drug costs, high healthcare costs, high energy costs? What happens

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when that federal...when those federal dollars disappear? What happens when we adopt LB385 and there's no state assistance from public power in that public partnership to help ensure that the highest energy users, the lowest income high energy users in Nebraska are being provided this service to keep them in their homes? What happens is all of us in this body as well as the rest of Nebraskans, because of our public power system, pay more for energy costs because there's not the funding and not the programming to assist the most vulnerable high energy users in this state. Another fact that was not mentioned, some of the money that goes to the Department of Health and Human Services is through the Low-Income Energy Assistance Program from the federal level, the LIHEAP Program. As many have probably learned and read about what's going on in Washington with their budget problems, it's been proposed to eliminate more than 60 percent of the existing federal funds that we get on an annual basis for the Low-Income Energy Program from the federal level. So not only in a year from now we will see \$41 million disappear in federal assistance for low-income energy assistance to keep our seniors and our low-income families in their homes to try to reduce their high energy costs, but we also lose roughly \$21 million additional dollars that we currently get on an annual basis from the federal government to assist with this similar kind of work. Colleagues, I wouldn't stand in front of you today as an Appropriations Committee member, understanding the difficulties that we have had in crafting a budget, if I didn't believe that LB385 is shortsighted. I've expressed this to Senator Utter. And I appreciate what Senator Utter's point to me is, that if you believe in this program, even though it's been underutilized--in part it's been underutilized, and we all agree, because the federal government has provide funding that we did not anticipate--then you should be able to stand up and essentially reeducate this Legislature about the importance of why it passed LB1001 back in 2008. That is what I hope we will do not only with AM839 but with LB385, because this is an important program and it's an important program not because it only assists our most vulnerable, not only because it assists those seniors who live in older, dilapidated homes who are trying to lower their energy costs to keep them in their homes, but it has a longer term impact in regards to rising energy costs that all of us pay. Public power is a very unique aspect of the state of Nebraska. This proposal was developed by public power as a way for them, as a public entity, to help partner and help provide assistance to the most vulnerable to keep their energy costs lower so they don't have to raise rates as much on everyone else. If we need to utilize this program to help balance our budget for two years, that's difficult for me to swallow, but the fact is, because we have this federal assistance essentially through the remainder of our budget, I can accept that. But when that federal assistance disappears, who's left holding the bag? Not just low-income Nebraskans but anyone who utilizes public power, and that is the state of Nebraska. So in two years from now, we will be left holding the bag and the result of LB385 by paying more in energy costs because of energy wasted through the lack of resources that are dedicated to make older homes more energy efficient. This is an opportunity for us to stop the cutting our nose to spite our face arguments that we've heard on other pieces of legislation that have been before us. This is an investment not just in keeping seniors

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in their homes. This is not just an investment in regards to try and provide those low-income families, those people who live on the margins, an opportunity to stay in their home, not to have to travel a path of homelessness because of \$500- to \$600-a-month utility bills. This actually has a broader impact to all public power users and that is part of the component of what this act was when they passed it two years ago, is that it has the ability for us as a state to conserve energy from those who we know are wasting it because of their old, dilapidated structures, thus, we use the sound bite that we heard public power emphasize over and over and over again--a megawatt saved is a megawatt we don't have to produce--thus, saving long-term costs with public power, saving long-term costs for the need to build more public power stations or plants. And essentially what AM839 does is it gives the Legislature the ability to acknowledge this is an important program, not just for low-income Nebraskans for but all public power users. And if we need to utilize the money that has been designated in this tax refund for the next two years to balance our budget we will do that, but we will keep the program in statute and we will allow the Appropriations Committee, through the budget process,... [LB385]

PRESIDENT SHEEHY: One minute. [LB385]

SENATOR MELLO: ...and the Legislature, through hearing that budget bill, the ability to determine if whether or not we want to fund this in the future. I've heard arguments briefly of saying just reintroduce the bill in two years; let's pass this and you, if you care about it that much, reintroduce it in two years. Why do we want to have to reintroduce a program that we know is successful? It's just been underutilized. Why is it that we can't just say we want to take a step back as a Legislature, freeze it for two years, and in two years from now, if it's a funding priority of the Legislature, then it will receive funding? That is the argument that I will try to make on AM839. I urge you to consider this thoughtful proposal. It's already been done in the appropriations bill so we've already adopted this policy preliminary in the budget process. AM839 simply codifies that in state statute with the Low-Income Energy Conservation Act. Thank you, Mr. President. [LB385]

PRESIDENT SHEEHY: Thank you, Senator Mello. You've heard the opening of AM839 to LB385. (Visitors introduced.) Continuing with floor discussion on the Mello amendment, AM839, to LB385, members requesting to speak, Senator Utter, followed by Senator Ken Haar, Senator Heidemann, Senator Dubas, and Senator Mello. Senator Utter. [LB385]

SENATOR UTTER: Thank you, Mr. President. And good morning again, colleagues. Senator Mello, Senator Mello, Senator Mello, number one, he has violated one of the rules of the back row that I thought I had explained to him very clearly, that if you're going to oppose a fellow senator's bill who is also seated in the back row, you do it from the telephone booth. (Laughter) But I guess I didn't expect him to adopt that rule as his

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own anyway. Ladies and gentlemen, the facts of the matter are that this has been a bill that has largely been underused. This process, this program has been largely underused. It has been a program that there are other programs in state government and some with federal assistance have done the same thing, and part of the process I think that we are charged with, particularly in this time that we're going through now, is to identify programs that are duplicative, that are the same thing as being done by other programs, that are duplicating federal programs. And I think it's our responsibility as members of this body to closely look for those programs that, yes, we can put an end to. And I will say to you that there are other programs out there that are going to provide moderate weatherization-type programs for low-income residents in the state of Nebraska. It's not as if we are putting the final death note on all programs to assist the low-income and the poor of the state in terms of helping them with their utility bills. Senator Mello's argument, of course, is that we just defund this bill to not provide any money in the Appropriations Committee and that's good enough, and that we just lay the program in the weeds at the side of the road and the first chance we get to revive it, it will already be there waiting for us. My suggestion to you is that this is a piece of legislation, this is a program that needs to be rejustified on this floor before it is reenacted, and I think that in itself is an important part of what we're doing here. And so I would urge you to vote no on AM839. Thank you, Mr. President. [LB385]

PRESIDENT SHEEHY: Thank you, Senator Utter. Mr. Clerk, do you have items for the record? [LB385]

CLERK: I do, Mr. President. Your Committee on Banking, Commerce and Insurance, chaired by Senator Pahls, reports LB315 and LB345 to General File with committee amendments attached. Revenue Committee, chaired by Senator Cornett, reports LB357 to General File. New resolution, Senator Coash, LR130; that will be laid over. Some name adds: Senator Ashford would like to add his name to LR121; Senator Hadley to LB600; Senator Cornett to LB357. (Legislative Journal pages 890-894.) [LB315 LB345 LB357 LR130 LR121 LB600 LB357]

And I do have a priority motion, Mr. President. Senator Wightman would move to adjourn the body until Thursday morning, March 17, at 9:00 a.m.

PRESIDENT SHEEHY: You have heard the motion to adjourn until Thursday, March 17, at 9:00 a.m. All those in favor say aye. Opposed, nay. We are adjourned.