

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

Floor Debate
May 04, 2011

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SENATOR CARLSON PRESIDING

(RECORDER MALFUNCTION--SOME RECORDING LOST)

PASTOR BROWN: (Prayer offered.)

SENATOR CARLSON: Thank you, Pastor Brown. I call to order the seventy-fourth day of the One Hundred Second Legislature, First Session. Senators, please record your presence. Mr. Clerk, please record.

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

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

CLERK: I have no corrections, Mr. President.

SENATOR CARLSON: Are there any messages, reports, or announcements?

CLERK: One item. A communication from the Governor to the Clerk. (Read re LB54, LB177, LB382, LB382A, LB464, LB637, LB637A, and LB648.) That's the only item I have, Mr. President. (Legislative Journal page 1425.) [LB54 LB177 LB382 LB382A LB464 LB637 LB637A LB648]

SENATOR CARLSON: Thank you, Mr. Clerk. We'll now proceed to the first item on the agenda.

CLERK: Mr. President, I have a Business and Labor confirmation report involving three appointments to the Boiler Safety Code Advisory Board. (Legislative Journal page 1349.)

SENATOR CARLSON: Senator Lathrop, as Chair of the Business and Labor Committee, you're recognized to open on your confirmation report.

SENATOR LATHROP: Thank you, Mr. President. And, colleagues, good morning. Business and Labor Committee considered three appointments to the Boiler Safety Code Advisory Board.

SENATOR CARLSON: (Gavel)

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SENATOR LATHROP: The board advises the Commissioner of Labor on rules and regulations for methods of testing equipment and construction and installation of new boilers required to be inspected by the Boiler Inspection Act. All three testified in person. Robert Kirkpatrick is a reappointment. Mr. Kirkpatrick resides in Lincoln, he's worked for Nebraska Boiler since 1985 as a compliance manager. He received a boilermaking associate's degree in 1971. He also sits on the board at Southeast Community College in Milford. Mr. Kirkpatrick has constructed, repaired and maintained boilers. Steven Bley has been an engineer with OPPD since 2002. In this position, Mr. Bley is responsible for boiler maintenance. Mr. Bley received a mechanical engineering degree from Iowa State University. He is a registered professional engineer and testified that he is familiar with the Boiler Inspection Act. And Thomas Phipps, our third candidate, is a chief mechanical inspector for the city of Omaha. In this capacity, Mr. Phipps inspects boilers and supervises other inspectors. He has held this position since 1993. Mr. Phipps received his certifications as a stationary engineer and steamfitter. He additionally attended the National Board School for Boiler Inspection. Mr. Phipps is a member of other boards, including the stationary engineers' board of examiners, hoisting and portable engineers' board of examiners, and the oil burner board. All three are very qualified in the opinion of the Business and Labor Committee to serve on the Boiler Safety Code Advisory Board. And I ask you to approve the appointments. Thank you, colleagues.

SENATOR CARLSON: Thank you, Senator Lathrop. Members, you've heard the opening on the confirmation report of the Business and Labor Committee. Are there any senators wishing to speak? Seeing none, Senator Lathrop, recognized to close. He waives closing. The question is, shall the confirmation report be adopted? All those in favor vote yea; all opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal page 1426.) 28 ayes, 0 nays, Mr. President, on the adoption of the confirmation report.

SENATOR CARLSON: The confirmation report is adopted. Mr. Clerk, next item.

CLERK: Mr. President, the second confirmation report this morning is from the Health and Human Services Committee. Senator Campbell's committee would report on Jill Reel as an appointment to the Foster Care Review Board. (Legislative Journal page 1351.)

SENATOR CARLSON: Senator Campbell, you're recognized to open on your confirmation report.

SENATOR CAMPBELL: Thank you, Mr. President. Good morning, colleagues. The

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Health and Human Services Committee reports favorably on the appointment of Dr. Jill Reel to the State Foster Care Review Board. We interviewed Dr. Reel via the telephone due to her pediatric practice. She is a new appointment to the State Foster Care Review Board. And as a pediatrician will fulfill the requirements that one of the 11 members of the board be a, quote, practitioner of pediatric medicine. Dr. Reel is a graduate of Millard High School, UNL, and UNMC. She completed her pediatric residency in Omaha. Her initial practice was a solo practitioner in Fremont. For the last six years she has worked at Boys Town Research Hospital practicing in general pediatrics. Her practice includes children who are in the foster care system, which has facilitated her interest in serving on the Foster Care Review Board. And the committee highly recommends your approval of the appointment of Dr. Reel. Thank you, Mr. President.

SENATOR CARLSON: Thank you, Senator Campbell. Members, you've heard the opening on the confirmation report for the Foster Care Review Board. Are there senators wishing to speak? Seeing none, Senator Campbell, you're recognized to close. Senator Campbell waives closing. The question is, shall the confirmation report be adopted? All those in favor vote yea; opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal pages 1426-1427.) 33 ayes, 0 nays, Mr. President, on adoption of the confirmation report.

SENATOR CARLSON: The confirmation report is adopted. Next item.

CLERK: Mr. President, the second report from Health and Human Services Committee involves two appointments to the Commission for the Deaf and Hard of Hearing. (Legislative Journal page 1351.)

SENATOR CARLSON: Senator Campbell, you're recognized to open.

SENATOR CAMPBELL: Thank you, Mr. President. The Health and Human Services Committee reports favorably on the appointments of Mr. Dillard Delts and Ms. Amy Kasch to the Commission for the Deaf and Hard of Hearing. Mr. Delts is a reappointment to the commission. He has a longstanding commitment to assist deaf individuals, having served on the Student Senate while a student at Iowa Western College, providing a voice for other deaf students attending college. He graduated from the University of Nebraska in computer sciences. Mr. Delts works at the airport terminal services in Omaha. He believes a current challenge the commission may encounter includes assisting veterans who have experienced hearing loss through service-related injuries to obtain the assistance they need. Ms. Kasch is a new appointment to the commission. She has been hard of hearing since childhood, has a commitment to use her life experience for the benefit of others who are deaf or hard of hearing, especially children. In addition, her employment at the Waterford at Miracle Hills in Omaha has

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provided exposure to the challenge of individuals who lose hearing later in life. And we would encourage your favorable approval of these two appointments. Thank you, Mr. President.

SENATOR CARLSON: Thank you, Senator Campbell. Members, you've heard the opening on the confirmation report. Are there senators wishing to speak? Seeing none, Senator Campbell waives closing. The question is, shall the confirmation report be adopted? All those in favor vote yea; opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal pages 1427-1428.) 32 ayes, 0 nays, Mr. President, on adoption of the confirmation report.

SENATOR CARLSON: The confirmation report is adopted. Next item, Mr. Clerk.

CLERK: Mr. President, a third report from the Health and Human Services Committee involves the appointment of Janet Coleman to the State Board of Health. (Legislative Journal page 1352.)

SENATOR CARLSON: Senator Campbell, you're recognized to open.

SENATOR CAMPBELL: Thank you, Mr. President. Ms. Janet Coleman is a reappointment to the State Board of Health. She appeared in person and answered questions by the committee. Ms. Coleman is, as I said, a reappointment to the board which is made up of 17 members. She is a public member of the board, meeting the requirement that public members at all times are public-spirited citizens of Nebraska, interested in the health of the people of the state of Nebraska and not less than 21 years of age. Ms. Coleman received her bachelor's degree in education from Wichita State University, her master's in human relations from Ohio University, and is retired from the Lincoln Public Schools. Her community involvement has included being a member of the Community Health Endowment, the Lincoln General Hospital Board, and the People's Health Center Board. Ms. Coleman, during her service to the Board of Health, has included experience in all aspects of the 407 process, including chairing the Technical Review Committee, the Credentials Reform Committee, and the chair of the 407 Committee. I have known Ms. Coleman for a very long time. She is an outstanding volunteer in the Lincoln community. And the committee joins me in recommending her appointment. Thank you, Mr. President.

SENATOR CARLSON: Thank you, Senator Campbell. Members, you've heard the opening for confirmation report on appointment to the State Board of Health. Are there senators wishing to speak? Seeing none, Senator Campbell, you're recognized to close. Senator Campbell waives closing. The question is, shall the confirmation report be accepted? All those in favor vote yea; opposed vote nay. Have all voted who wish to

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vote? Record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal page 1428.) 33 ayes, 0 nays, Mr. President, on adoption of the confirmation report.

SENATOR CARLSON: The confirmation report is adopted. Mr. Clerk, next item.

CLERK: Mr. President, the final report this morning is from the Natural Resources Committee. Senator Langemeier would report on five appointments to the Environmental Quality Council. (Legislative Journal page 1399.)

SENATOR CARLSON: Senator Langemeier, as Chair of the Natural Resources Committee, you're recognized to open.

SENATOR LANGEMEIER: Mr. President, members of the body, the Natural Resources Committee held a hearing on May 2 for five reappointments to the Nebraska Environmental Quality Council. Again, all five members are reappointments for another four-year term on the council. The first one is Mr. Douglas Anderson who is the vice president of operations of Biofuels Energy Corporation and his hometown is Aurora, Nebraska. He has a bachelor's degree from the University of Nebraska. The second one was Mr. John Baker. His hometown is Scottsbluff, Nebraska. He is a civil engineer with Baker and Associates and he has a B.S. degree in civil engineering from Virginia Military Institute. The third is Mr. John Kinter whose hometown is Norfolk, Nebraska. He is an environmental engineer for Nucor Steel. He has a bachelor's degree in water science and environmental studies from the University of Nebraska and an M.B.A. from Wayne State College. The fourth one is Mr. John Turnbull from York, Nebraska. He is a general manager for the Upper Big Blue Natural Resources District and has a bachelor's degree in agronomy from the University of Nebraska-Lincoln and started his NRD career in Senator Carlson's district in Holdrege, Nebraska. The fifth and final one was Mr. Donald Williams whose hometown is Orchard, Nebraska. And he has a degree in agribusiness from Northeast Junior College at Sterling, Colorado. All appointees were present. Two came to us via phone conference, teleconference, and they stood the questions of the committee and were advanced out of committee unanimously. And I would ask for your positive vote in the confirmation of these five individuals to the Environmental Quality Council. Thank you.

SENATOR CARLSON: Thank you, Senator Langemeier. Members, you've heard the opening on the report from the Natural Resources Committee on appointment to the Nebraska Environmental Quality Council. Are there senators wishing to speak? Seeing none, Senator Langemeier waives closing. The question is, shall the adoption report from the Natural Resources Committee be adopted? All those in favor vote yea; opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk.

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CLERK: (Record vote, Legislative Journal pages 1428-1429.) 33 ayes, 0 nays, Mr. President, on adoption of the confirmation report.

SENATOR CARLSON: The confirmation report is adopted. Mr. Clerk, next item.

CLERK: Mr. President, Senator Gloor would offer LB590A. (Read title.) [LB590A]

SENATOR CARLSON: Senator Gloor, you're recognized to open on LB590A. [LB590A]

SENATOR GLOOR: Thank you, Mr. President. We return to a complicated bill that you may recall was discussed and advanced from General File last week, LB590. This is LB590A, which, of course, relates to how we're going to pay for this administration enforcement. As a reminder, LB590 is the administration and enforcement of the Master Settlement Agreement, otherwise known as the tobacco settlement agreement. This A bill is about how to pay for the expenses of administration and enforcement provisions of that agreement contained within LB590. The original fiscal note listed those expenses as coming out of the General Fund. It was discovered, however, and this is good news, that the expense could be appropriately designated to the Health Care Cash Fund. Since the money from the settlement goes into the Health Care Cash Fund it seemed more than appropriate for the expenses to come from the Health Care Cash Fund. A review of the estimated expenses by the Department of Revenue also resulted in further good news and that has to do with the amount of appropriation that's being reduced. Originally, we were talking around \$600 million over the next biennium. That number has now dropped to just over \$400,000--\$600,000 to \$400,000. This will minimize, obviously, the effect on the Health Care Cash Fund. LB590A is the mechanism that we need to make, and for this authorization I would ask for a green light. Thank you. [LB590A LB590]

SENATOR CARLSON: Thank you, Senator Gloor. Members, you've heard the opening on LB590A. The floor is now open for debate. Senator Wallman, you're recognized. [LB590A]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. Would Senator Gloor be open to a question? [LB590A]

SENATOR CARLSON: Senator Gloor, would you yield? [LB590A]

SENATOR GLOOR: Gladly. [LB590A]

SENATOR WALLMAN: Thank you, Senator. We love cash funds, don't we? And why does it cost so much to implement this program? Can you give me some kind of reasons why or... [LB590A]

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SENATOR GLOOR: Yes, the bill, LB590 itself, a very complicated bill, has to do with the enforcement provisions of their Master Settlement Agreement. The heart of LB590, which is on Select File and we'll be talking about in a couple of minutes hopefully, has to do with recordkeeping, has to do with enforcement, all of which will require an additional amount of time and effort by the Department of Revenue. There has been expense in the past, but that expense was absorbed by the department. Excuse me, Senator. [LB590A LB590]

SENATOR WALLMAN: Thank you, Senator. Thank you, Mr. President. [LB590A]

SENATOR CARLSON: Thank you, Senator Wallman and Senator Gloor. Are there other senators wishing to speak? Seeing none, Senator Gloor, you're recognized to close. Senator Gloor waives closing. The question is, shall LB590A be adopted, be advanced? All those in favor vote yea; opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB590A]

CLERK: 31 ayes, 0 nays, Mr. President, on the advancement of LB590A. [LB590A]

SENATOR CARLSON: The bill is advanced. Mr. Clerk, next item. [LB590A]

CLERK: Mr. President, Select File. Senator Larson, LB404. [LB404]

SENATOR CARLSON: Members, we are on Select File. Senator Larson for a motion. [LB404]

SENATOR LARSON: Mr. President, I move that LB404 be advanced to E&R for engrossing. [LB404]

SENATOR CARLSON: Members, you've heard the motion. All those in favor say aye. Opposed, nay. The bill advances. Mr. Clerk, next item. [LB404]

CLERK: Mr. President, LB590. Senator Larson, first of all, I have Enrollment and Review amendments. (ER111, Legislative Journal page 1387.) [LB590]

SENATOR CARLSON: Senator Larson for a motion. [LB590]

SENATOR LARSON: Mr. President, I move that the Enrollment and Review amendments to LB590 be adopted. [LB590]

SENATOR CARLSON: Members, you've heard the motion. All those in favor say aye. Members, all those in favor say aye. Opposed, nay. Motion carried. [LB590]

CLERK: Mr. President, Senator Gloor would move to amend. Senator, AM1364.

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(Legislative Journal page 1415.) [LB590]

SENATOR CARLSON: Senator Gloor, you're recognized. [LB590]

SENATOR GLOOR: Thank you, Mr. President. Members, we're back on LB590. This is a complicated piece of legislation, as I've said and will continue to say, but it is an incredibly important piece of legislation because of the millions and millions of dollars at risk if we don't move forward with some changes in recordkeeping and administration of sales of cigarettes. This goes back to the issue, some of you will remember the chart, the flow chart that I laid out that talked about participating manufacturers and nonparticipating manufacturers. Since General File we have continued to work with some of the parties involved in this to try and tighten things up even further, make additional clarifications. This is an amendment that relates to some of those changes, much of it also relating to the tribes. The amendments to LB590 found in AM1364 include the following substantive revisions. It provides clarification that the administration and enforcement of the Master Settlement Agreement shall be paid out of the Health Care Cash Fund. That was LB590A that we just passed. It requires that all nonparticipating manufacturers shall post a bond or the cash equivalent in order to lawfully sell cigarettes in the state of Nebraska. The amount of the bond required shall be \$25,000 for nonparticipating manufacturers that have been listed in the state's directory for the last three years, \$50,000 for nonparticipating manufacturers that have not been listed on any state's directory in the past three years, the greater of \$50,000 or the highest amount of annual escrow owed in Nebraska in the last five years. Those are the three levels of bonds. It exempts stamping agents from liability for a nonparticipating manufacturer's escrow obligation. That is an important point of wholesalers, also for the tribes. It provided that the manufacturer was listed on the state's directory and the Tax Commissioner denoted on the Web site that the manufacturer posted the appropriate bond. Authorizes the Tax Commissioner to share with a nonparticipating manufacturer information reported to the Tax Commissioner about that manufacturer's cigarettes. And finally, allows a nonparticipating manufacturer to cure any unknowing or unintentional violations in another state prior to removal from this state's directory. Those are the amendments to LB590. Again, a complicated bill. We continue to work it. And I believe this settles a lot of concerns out there by people who came up to us after the General File reading. I would ask for a green light on AM1364 please. [LB590 LB590A]

SENATOR CARLSON: Thank you, Senator Gloor. Mr. Clerk, for an amendment. [LB590]

CLERK: Mr. President, Senator Gloor, I now have FA21 as an amendment to AM1364. (Legislative Journal page 1429.) [LB590]

SENATOR CARLSON: Senator Gloor, you're recognized to open on your floor amendment. [LB590]

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SENATOR GLOOR: Thank you, Mr. President. This is a drafting error on page 4, line 26. After "shall" we're deleting the word "not." As you might suspect, putting "not" in changes the term or the intent of the legislation pretty dramatically. And it was a drafting error. We're removing the word "not." I would ask for approval of this simple drafting error. Thank you. [LB590]

SENATOR CARLSON: Thank you, Senator Gloor. Members, you've heard the opening on AM1364 and FA21. The floor is now open for debate. Senator Council, you are recognized. [LB590]

SENATOR COUNCIL: Yes, thank you, Mr. President. And Senator Gloor and I have been engaged in conversations off the mike on this bill and the amendments. And I raised some questions on General File. And I would just like to ask Senator Gloor if he could just summarize. One of the concerns I raised on General File was the impact of this legislation on the tribal operations in the state of Nebraska and if there any specific aspects of the amendment that address those concerns. [LB590]

SENATOR CARLSON: Senator Gloor, would you yield? [LB590]

SENATOR GLOOR: I would yield. Thank you, Senator Council. Actually, there is one more amendment that has been specifically drafted to address the concerns of the tribes. It relates to escrow accounts being set up. The wording could have been interpreted or at least it was the feeling of the tribes it could be interpreted that they were responsible for paying into escrow accounts. The escrow accounts are the way that nonparticipating manufacturers get a leveled playing field for the participating manufacturers. And the verbiage and the change in this legislation will specifically make it clear that the tribes are not responsible for the contributions to the escrow accounts; the nonparticipating manufacturers are. [LB590]

SENATOR COUNCIL: Okay. And I guess that's the distinction because technically the tribes would be considered as nonparticipating manufacturers? [LB590]

SENATOR GLOOR: Correct. [LB590]

SENATOR COUNCIL: And with regard to the bonding requirements of the underlying bill, their status is appropriately addressed there, too, as I understand. [LB590]

SENATOR GLOOR: Yes, in AM1364 in conversations with the tribes, working with the AG's Office, Department of Revenue, my office, what the tribes are set up for bonding is the lowest bonding level available that's felt to be appropriate to address the concerns of the Master Settlement Agreement, \$25,000. It's the lowest bonding amount that's available and that will be available to the tribes. [LB590]

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SENATOR COUNCIL: Okay. And again, it's my understanding that tribal representatives have expressed their agreement or lack of objection to that provision relative to bonding. [LB590]

SENATOR GLOOR: Correct. As recently as last night. [LB590]

SENATOR COUNCIL: Okay. And I...and again Senator Gloor and I have had this conversation. I just wanted to make the record in terms of addressing the issues that have been raised by the tribe, and balancing and recognizing the issue of sovereignty and how it plays into any of these bills that we move forward. So with that, I thank Senator Gloor. I thank him for the work that he's done to address the concern that the tribes have raised with regard to this legislation. Thank you. [LB590]

SENATOR CARLSON: Thank you, Senator Council and Senator Gloor. Are there other senators wishing to speak? Seeing none, Senator Gloor, you're recognized to close on FA21. Senator Gloor waives closing. The question is, shall FA21 be adopted? All those in favor vote yea; opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB590]

CLERK: 34 ayes, 0 nays, Mr. President, on adoption of Senator Gloor's amendment to his amendment. [LB590]

SENATOR CARLSON: The amendment is adopted. We return to discussion on AM1364 and the underlying bill, LB590. Are there senators wishing to speak? Seeing none, Senator Gloor, you're recognized to close on AM1364. Senator Gloor waives closing. The question is, shall the amendment be adopted? All those in favor vote yea; opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB590]

CLERK: 33 ayes, 0 nays, Mr. President, on adoption of Senator Gloor's AM1364. [LB590]

SENATOR CARLSON: The amendment is adopted. Mr. Clerk. [LB590]

CLERK: Mr. President, Senator Gloor would move to amend the bill with AM1387. (Legislative Journal page 1430.) [LB590]

SENATOR CARLSON: Senator Gloor, you're recognized to open on AM1387. [LB590]

SENATOR GLOOR: Thank you, Mr. President. And at least for those amendments I'm responsible for, this is the last amendment that I have before the body. And Senator Council did a great job as a segue into the specific amendment. As I said, it addresses concerns brought to us as recently as late yesterday by tribal representatives. We've

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worked with the AG's Office and tribal members to make the necessary wording changes that take care of the tribes' concerns, clarifies the intent of the AG's Office and the compact provisions, all of which are an important part of this equation. The clarification is needed to clearly state that the tribe is not required to make escrow deposits on behalf of manufacturers, only account for such escrow deposits by nonparticipating manufacturers or the required posting of bond by the nonparticipating manufacturers. This accounting is a matter of documentation and documentation only. It's to be provided by the manufacturer as proof of payment of the bond or escrow. And I would ask for a green light on this. Thank you, Mr. President. [LB590]

SENATOR CARLSON: Thank you, Senator Gloor. Members, you've heard the opening on AM1387. Are there senators wishing to speak? Seeing none, Senator Gloor, you're recognized to close. Senator Gloor waives closing. The question is, shall AM1387 be adopted? All those in favor vote yea; opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB590]

CLERK: 31 ayes, 0 nays, Mr. President, on adoption of Senator Gloor's amendment. [LB590]

SENATOR CARLSON: AM1387 is adopted. Mr. Clerk. [LB590]

CLERK: Mr. President, I have nothing further on the bill. [LB590]

SENATOR CARLSON: Senator Larson for a motion. [LB590]

SENATOR LARSON: Mr. President, I move that LB590 be advanced to E&R for engrossing. [LB590]

SENATOR CARLSON: Members, you've heard the motion. All those in favor say aye. Opposed, nay. The bill does advance. Mr. Clerk, next item. [LB590]

CLERK: Mr. President, LB106. Senator Larson, I have Enrollment and Review amendments, Senator. (ER100, Legislative Journal page 1321.) [LB106]

SENATOR CARLSON: Senator Larson for a motion. [LB106]

SENATOR LARSON: Mr. President, I move that the E&R amendments to LB106 be adopted. [LB106]

SENATOR CARLSON: Members, you've heard the motion. All in favor say aye. Opposed, nay. Motion carried. [LB106]

CLERK: I have nothing further on that bill, Senator. [LB106]

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SENATOR CARLSON: Senator Larson for a motion. [LB106]

SENATOR LARSON: Mr. President, I move that LB106 be advanced to E&R for engrossing. [LB106]

SENATOR CARLSON: Members, you've heard the motion. All in favor say aye. Opposed, nay. Motion carried. Mr. Clerk. [LB106]

CLERK: Mr. President, LB549. Senator, I have no amendments to the bill. [LB549]

SENATOR CARLSON: Senator Larson for a motion. [LB549]

SENATOR LARSON: Mr. President, I move that LB549 be advanced to E&R for engrossing. [LB549]

SENATOR CARLSON: Members, you've heard the motion. All in favor say aye. Opposed, nay. Motion carried. Mr. Clerk. [LB549]

CLERK: LB549A, Mr. President. Senator Larson, I have no amendments to the bill. [LB549A]

SENATOR CARLSON: Senator Larson for a motion. [LB549A]

SENATOR LARSON: Mr. President, I move that LB549A be advanced to E&R for engrossing. [LB549A]

SENATOR CARLSON: Members, you've heard the motion. All in favor say aye. All in favor say aye. Opposed, nay. Motion carried. Mr. Clerk. [LB549A]

CLERK: Mr. President, LB345. Senator Larson, I have Enrollment and Review amendments. (ER102, Legislative Journal page 1321.) [LB345]

SENATOR CARLSON: Senator Larson for a motion. [LB345]

SENATOR LARSON: Mr. President, I move that the E&R amendments to LB345 be adopted. [LB345]

SENATOR CARLSON: Members, you've heard the motion. All in favor say aye. Opposed, nay. Motion carried. [LB345]

CLERK: I have nothing further on that bill, Senator. [LB345]

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SENATOR CARLSON: Senator Larson for a motion. [LB345]

SENATOR LARSON: Mr. President, I move that LB345 be advanced to E&R for engrossing. [LB345]

SENATOR CARLSON: Members, you've heard the motion. All in favor say aye. Opposed, nay. Motion carried. Mr. Clerk. [LB345]

CLERK: LB345A, Senator, I have no amendments to the bill. [LB345A]

SENATOR CARLSON: Senator Larson for a motion. [LB345A]

SENATOR LARSON: Mr. President, I move that LB345A be advanced to E&R for engrossing. [LB345A]

SENATOR CARLSON: Members, you've heard the motion. All in favor say aye. Opposed, nay. Motion carried. Mr. Clerk. [LB345A]

CLERK: Mr. President, returning to General File, next bill is LB673 a bill introduced by Senator Flood. (Read title.) The bill was introduced on January 19, referred to the Judiciary Committee. The bill was advanced to General File. I have Judiciary Committee amendments pending, Mr. President. (AM1254, Legislative Journal page 1357.) [LB673]

SENATOR CARLSON: Senator Flood, we'd like to recognize you to open on LB673. Speaker Flood, you're recognized. [LB673]

SPEAKER FLOOD: Good morning, Mr. President, members. This is one of those bills I think we're going to be proud of at the end of the session for two reasons. It follows up on a bill that I offered during discussion of the Parenting Act. The current bill, LB673, is much more narrow in scope and attempts to fine-tune two areas of concern. One, the release or subordination of support liens; and two, the Parenting Act procedures as they relate to military parents. I think LB673 and the pending Judiciary Committee amendment, AM1254, provide a workable solution. As amended by the committee amendment, this bill allows the court the discretion to award attorneys fees to the party who has gone to court to obtain a release when the judgment creditor has no good faith reason to oppose the release. Now that's fancy for this: If you and your wife are divorced and the wife has the kids and you owe your wife child support, 1,000 bucks a month, you have two kids, the court automatically attaches a child support lien to any real estate you own. So let's say I'm divorced, I'm paying 1,000 bucks a month to my ex-wife, we've got two beautiful children. I own a house in Norfolk. The court grants my wife, essentially in the state of Nebraska, a lien on my house. So before I can refinance my house or before I can sell my house I have to be in good standing with my wife as it relates to child support. And what happens is in most cases where two ex-spouses can

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still communicate as they should and raise children, the ex-spouse says, I'll sign this release of a lien verifying that you are current on your child support. But as it often happens, and this should be no surprise, two people got divorced for a reason--they can't get along. And sometimes the custodial parent, the one that has the children, says, I'm not signing any release. And the noncustodial parent says, but I'm current on my child support, why wouldn't you sign the lease or the release? Well, this and this and this happened or this and that, you know, they don't get along. And what happens is the noncustodial parent is sitting there thinking, wait a second, why do I have to take my ex-spouse to court to get this released when I'm current on my child support? And my original bill a few years ago said if you're current, that's evidence enough, the lien goes away. But there are circumstances where maybe dad has paid child support but he hasn't paid for the 50 percent of unreimbursed medical expenses. Okay? I get it. So this basically says if you are the custodial parent and you refuse to sign that lien release and you have no good faith reason not to sign it, then you can pay for his attorneys fees or the noncustodial parent's attorneys fees if you go to court. I think it's an element of fairness in the system. It makes the custodial parent say, let me think about this for a second, do I have a good faith reason, and if I don't, am I ready to pay for the noncustodial parent's, my ex-spouse's attorneys fees? I think that's fair. What's happening right now is interest rates go low on homes. The noncustodial parent and his or her new spouse say, oh my gosh, I want to lock in the 4.5 percent 30-year fixed mortgage rate, you know, I lock it in, I'm doing the paperwork, oh, there's a lien that needs to be released. Hey, by the way, ex-spouse, will you release my lien? She says, heck no or he says, heck no. This isn't male versus female, this is just what happens. And you can take it a thousands ways from Sunday, but you go down and sit in district court and you'll see how this plays out. This basically says if I'm current and I'm doing what I'm supposed to do and you don't have a good faith reason not to sign it, you can pay for my attorneys fees if I have to take you to court. There has to be somebody held accountable for not working with the other party. The second part of this bill I worked with our Military Department over the interim to address situations of our men and women in uniform as they relate to the Parenting Act. There are thousands of our service members, including National Guard and Reserves, deployed around the world today. Other legislatures have worked on providing specific provisions for service members and especially their children. These provisions in this bill fill an important need. Here's the story that I think will catch your attention on this matter specifically. A lady in my district has a daughter, she is a member of the Nebraska National Guard. She hasn't seen the father of her daughter for six years. She gets a call to duty and she has to deploy in four days. The day after she gets that call the dad, who hasn't been in this child's life for several years, calls up and says, well, I guess she'll be living with me now. Okay, it's enough to think about going overseas to serve your country and being away for 18 months. Suddenly, somebody who hasn't been in this child's life, hasn't exercised visitation and doesn't pay child support as ordered by the court is going to be parent of the year and take this child, and she's packing up with an M-16 to go overseas and fight for our country. If you want people to serve in the military you've got to respect

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the fact that the basic raw emotion and need to make sure their children are protected is important. And this bill, as I worked with the Judiciary Committee, does the right thing and puts us in line with a number of other states. It protects the service member from not being penalized because they get deployed or have to serve their country, whether it be a weekend, whether it be 18 months. She's got enough on her mind without worrying about the custody of her child. And as citizens, not only is it the right thing to do but I want her to have the clearest, most peaceful thoughts about her family back home while she or he, for that matter, is serving our country in a war zone. Those are the two reasons, those are the two components of the bill. I would ask for your support. And I'd like to move this bill today. Thank you, Mr. President. [LB673]

SENATOR CARLSON: Thank you, Speaker Flood. As the Clerk stated, there are committee amendments. Senator Ashford, as Chair of the Judiciary Committee, you're recognized to open on AM1254. [LB673]

SENATOR ASHFORD: Thank you, Mr. President. And the committee amendments, AM1254, are amendments that were brought to us for the most part by the bar association. They do not change the intent of the bill as Senator Flood has so ably described to you. And I would suggest that we adopt them and then move LB673 as Senator Flood has requested. AM1254 would authorize rather than require the court to order a judgment creditor to pay a judgment debtor's court costs and attorney fees when the judgment creditor has refused, without a good faith reason, to execute a release of the judgment for child support or spousal support or subordination of the lien. The change would be accomplished by striking the word "shall" and inserting the word "may" on page 4, line 3. It's a very straightforward amendment. The amendment would also strike "prima facie" from page 4, line 7, in order to provide that support payments being current would be evidence but not prima facie evidence, meaning that other evidence could be presented that the judgment creditor refused to release or subrogate without a good faith reason. Again, addressing some of the concerns of those who work on these issues in the courts. The amendment would also remove a limitation in the definition of military parent in order to include all members of the National Guard. The committee advanced this bill and supports it, and we would urge the adoption of AM1254 and the advancement of LB673. [LB673]

SENATOR CARLSON: Thank you, Senator Ashford. Members, you've heard the opening on LB673 and AM1254. The floor is now open for debate. Senators wishing to speak include Fischer, Price, Council, and Nelson. Senator Fischer, you're recognized. [LB673]

SENATOR FISCHER: Thank you, Mr. President and members. I rise in support of LB673 and would like to thank Senator Flood for introducing the bill. I have a real world example on why we need to pass this bill. I had a constituent contact me who was looking to refinance his home, just simply refinance his home. And due to the existing

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statute he was unable to do that because of this child support lien on that property, even though he was in good standing with his child support payments. So I believe this bill will help to remedy that situation. And I do thank Senator Flood. Thank you. [LB673]

SENATOR CARLSON: Thank you, Senator Fischer. Senator Price, you're recognized. [LB673]

SENATOR PRICE: Thank you, Mr. President. Members of the body, good morning. You know, yesterday we were up here talking about a bill that helped military members and their families. And I rise in very strong support of LB673 and the amendment. And let me explain a little something that perhaps isn't known by you. All military members who have dependents, whether dependent parents or dependent children, and if they're single or married to another military member they are required to have a family care plan in place. We don't have people willy-nilly going about doing things and leaving things, loose ends back home. So in the case that Senator Flood is speaking of or Senator Fischer or whomever, there was a plan to take care of those children, it was presented most likely to the JAG officer who's responsible to that military lawyer, or responsible for overseeing that unit to ensure that those dependents are taken care of, that you have that backup plan, and not only is there a primary backup plan but there's a secondary backup plan. There's a plan included that takes care of the first short period of time, and forgive me, it has been a number of years since I've had to have one because my wife was in the military. But what we had to do is we had a short-term. You're on a short string, you're gone 16 hours later. And that happened to me one time, I deployed with 16 hours of notice. You have a short plan and then you have a long plan. So this is very important, very critical, so we don't have someone coming in at the last hour mucking up something that had a lot of due diligence. It has a tremendous impact on these family members. And with that, I would yield the balance of my time and ask everybody's support on LB673. Thank you. [LB673]

SENATOR CARLSON: Thank you, Senator Price. Senator Council, you're recognized. [LB673]

SENATOR COUNCIL: Thank you, Mr. President. I rise in strong support of LB673 and particularly AM1254 and what it does. And as with Senator Fischer in terms of real world examples, without the amendment of AM1254 an individual who has been historically and continuously delinquent in the payment of their child support, when and if it works to their advantage to become current, they would become current and ignore the years that they have deprived their children of their support in order to gain these releases. With AM1254 if the court may authorize the judgment creditor, which in the case would be the custodial parent, to sign the release or subordination and the fact that the person may be current as of that particular day would not be prima facie evidence of their obligations being taken care of under the child support order. So AM1254 really works to protect both parties in these situations where the child support

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lien may act to prevent the finances that are supposed to be used for the benefit of the child not being used for the benefit of the child. And I think that AM1254 accomplishes everyone's intended result. Thank you. [LB673]

SENATOR CARLSON: Thank you, Senator Council. Senator Nelson, you're recognized. [LB673]

SENATOR NELSON: Thank you, Mr. President, members of the body. I rise in support of LB673 and the amendment as well. It has been a number of years since I've handled any family law or domestic relations. But I remember that this used to be a continuing problem. And the husband, and generally it was the husband that was the victim of this because, as Senator Flood said, there was animosity between the parties and the question of child support was always paramount whether it was enough. And the spouse may not have felt that she was getting enough. And therefore when there was a request to remove this lien on the property she declined. And she said, well, you can just take me to court about it, you haven't been very good about making child support payments, and even though you've brought it up now and you're current, I'm not going to sign. So this solves that problem. And I think we also solve with the amendment the fact that a husband may have been continually delinquent and then when he needed something like this then he brought it up-to-date and you can understand why the wife with the children wasn't persuaded that he was going to continue to maintain his child support current. So I think this does take care of a problem. It's reasonable, it's fair to both sides and it particularly removes the threat over the husband that you're going to have to pay my attorneys fees as well as your own to get a court order to make me do this for you. And so I thank Senator Flood for bringing this. I think it's a good bill. And I think the amendment also helps. Thank you, Mr. President. [LB673]

SENATOR CARLSON: Thank you, Senator Nelson. Senator Krist, you're recognized. [LB673]

SENATOR KRIST: Thank you, Mr. President and colleagues. Thank you, Senator Flood, for understanding the unique aspects and challenges in the military family. It is, as Senator Price said, disconcerting in some ways when you are signed up to defend your country and you have to choose over your country or family in some respects. So I rise in strong support of AM1254 and the underlying LB673. Thank you. [LB673]

SENATOR CARLSON: Thank you, Senator Krist. Are there other senators wishing to speak? Seeing none, Senator Ashford, you're recognized to close on your amendment. [LB673]

SENATOR ASHFORD: Thank you, Mr. President. And again this amendment does authorize the assessment of fees by the court in these circumstances that have been described by Senator Nelson, and makes a few other changes regarding the evidence

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to be produced at a hearing regarding these liens. It reflects the concerns raised by the bar practicing in this area. And I would urge the adoption of AM1254. Thank you.
[LB673]

SENATOR CARLSON: Thank you, Senator Ashford. Members, you've heard the closing on AM1254. The question is, shall the committee amendments to LB673 be adopted? All those in favor vote aye; all opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB673]

CLERK: 39 ayes, 0 nays, Mr. President, on the committee amendments. [LB673]

SENATOR CARLSON: The amendment is adopted. We return to discussion on LB673. Any senators wishing to speak? Seeing none, Speaker Flood, you're recognized to close. Speaker Flood waives closing. The question is, shall LB673 be advanced? All those in favor vote yea; opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB673]

CLERK: 39 ayes, 0 nays, Mr. President, on the advancement of LB673. [LB673]

SENATOR CARLSON: LB673 is advanced. Next item, Mr. Clerk. [LB673]

CLERK: LB226, Mr. President, is a bill by Senator Gloor. (Read title.) Introduced on January 10, referred to the Judiciary Committee. The bill was advanced to General File. I do have committee amendments, Mr. President. (AM1068, Legislative Journal page 1356.) [LB226]

SENATOR CARLSON: Thank you, Mr. Clerk. Senator Gloor, you're recognized to open on LB226. [LB226]

SENATOR GLOOR: Thank you, Mr. President. And good morning again, members. If you'd have told me before I started my term in office that I would, within my first three years here, be introducing legislation that would amend the criminal code, I would have been fascinated to find out what would grab my interest that I would want to do that. And sadly, I found such a bill. LB226 will create the crime of assault with bodily fluids against a public safety officer. Members, the persons who engage in this disgusting behavior are usually inmates in the corrections system or sex offenders committed to a mental facility. What we're dealing with here are inmates who, among other things, save up their urine to throw on correctional officers. This has become common enough so that the inmates actually have a term for it. They call it gassing. I wish I could just say it was urine, but feces have also been included in some of these instances as well. Under LB226, this action would become a crime only when the officer is engaged in the performance of their official duties and the perpetrator's actions are intentional. We've also defined public safety officers in the legislation as peace officers and correctional

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officers of the state, county, city or village, state probation officers, and employees of Health and Human Services who interact with incarcerated or committed individuals. Currently, and this surprised me, there are no criminal penalties that exist for this behavior. LB226 would change that and create a two-tiered penalty system. LB226 will make this an offense Class I misdemeanor with penalties from 0 to 1 year imprisonment or 0 to \$1,000 fine. However, and this is an important component of the bill, if the offense is committed by a person who knows they are infected with HIV, hepatitis B, hepatitis C, and the act again is intentional, the penalty increases to a Class IIIA felony with a penalty of up to 5 years imprisonment and a \$10,000 fine. Why these three specific diseases? Because they're considered the most serious public health threats to our public safety officers. Here's an interesting statistic that emphasizes this point. The U.S. Department of Justice estimates that 30 percent of the inmates in correctional facilities in this country are infected with at least one of these three viruses, 30 percent, almost one out of every three. In the last four years...in Nebraska, in the last four years, there have been 223 such cases of gassing, of throwing body fluids, registered or notated by the Department of Corrections. That's almost once a week. And since this has been increasing, that average isn't even fair to a number of giving you what's been going on. That number has been increasing. We've also had, unfortunately, the case brought to me by public safety officers, law enforcement in central Nebraska, of one officer in central Nebraska who resigned after having been gassed. LB226 proposes that upon a showing of probable cause by affidavit to a judge, that judge shall grant an order or issue a search warrant authorizing the release of medical records and collection of testing of evidence that may be necessary to determine the evidence of the aforementioned communicable virus or their resulting diseases at the time of commission of the crime. The committee amendment, which will be introduced, actually replaces the green copy. I want to thank the Judiciary Committee for their patience, their counsel on this bill and their education of me when it comes to the criminal codes. My thanks to the committee, to Senator Ashford for his advice on it and other members of the committee. I also want to thank the Speaker for making it a priority. What the committee bill does, in effect, is tighten up and clarifies the bill. It also, after some discussion, we narrowed the focus and the definition of public safety officers. And, members, you may or may not have been contacted but I know some have, I certainly was, by individuals well-intentioned who said include us, include us, include us in this definition. Examples would be firefighters, examples would be healthcare workers. Firefighters for their emergency response component, certainly healthcare workers in emergency rooms. I know from personal experience that I had staff in our emergency room and elsewhere spat upon by individuals and in some cases ones who were incarcerated but receiving care under our roof. I also have an experience of a sister-in-law who is a principal who has been spat upon. It's not her request that we move in this direction, but our decision on this was we have a problem, it's specific to correctional facilities we know. Let's not be overly broad, let's be very specific and try and address this problem head-on to slow its spread down and hopefully put a stop to it. The amendment also will take the juvenile component of the YRTC and HHS workers,

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that's taken out. Clarifies "intentional" the bodily fluid striking the mouth and skin, and removes the consecutive sentencing provision so that it will be the judge's call. I would close with that so that Senator Ashford can talk about the committee amendment. Again, there's a lot of work that's gone into this. My reputation for introducing complicated bills, like LB590 that we just discussed, is obviously out there. This isn't a complicated bill to me. This is making sure that our corrections officers are treated respectfully, are not put in situations where they can be intimidated and in many cases worry for their health and the health of their families. Thank you, Mr. President. [LB226 LB590]

SENATOR CARLSON: Thank you, Senator Gloor. As the Clerk stated, there are committee amendments. Senator Ashford, you're recognized to open on Judiciary Committee amendments. [LB226]

SENATOR ASHFORD: Thank you, Mr. President. I do appreciate Senator Gloor's comments. He has worked very hard on this bill. It's a very meaningful initiative by him and his efforts in representing the employees who are affected has been a meaningful exercise. And the committee felt as much as well and we had numbers of discussions. It is a classic case of trying to define the right way to go when you're dealing with criminal sanctions and addressing...attempting to address as best we can the issue, the most important of the priority issues that are raised in a particular initiative. Senator Gloor has worked tirelessly on this effort. And we appreciate, the committee appreciates his efforts. AM1068 would make the following changes to LB226. First of all, in Section 2 it clarifies that...I wish these words were typed larger. (Laugh) Excuse me, Senator Gloor, but I'm going to have to hold it up to my face here. In Section 2 it clarifies that in order for a violation to occur under the act, the body fluid, and Senator Gloor has ably described what the intent of the bill is, must have struck a public safety officer and that the mere throwing of a bodily fluid in the direction of a public safety officer would not suffice for a conviction under this act. And again, we discussed in the committee at some length the situation where there is someone spits at a police officer or something like that in anger and that is reflected in Section 2. The committee amendments amend Section 2(3) and (5) to use more medically accurate terminology by striking "acquired immunodeficiency syndrome virus," and also by striking the word "virus" when it follows hepatitis B or hepatitis C. These are technical changes. Senator Gloor knows a lot more about those terms than I do. Section 2(3) is also amended to provide that an order for the felony provision contained in this subsection to be violated the offender must strike with a bodily fluid the eyes, mouth or skin of a public safety officer and have known that the source of the bodily fluid was infected with these various diseases. As this section provides for felony level punishment, the committee felt that the violation of this section should be in a manner that could potentially provide for transmission of the viruses identified under the act. And that is the reason for the change. The committee amendment strikes in its entirety Section 2(4), which required consecutive sentencing for violations arising from this act. This change is to take into account that under current

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law a judge has the authority to order that sentences be served consecutively and that they are in a better position on the bench to decide whether a consecutive sentence should be administered as part of the sentence rather than have it be mandated by statute. Again, this is somewhat consistent with this body's work on these kinds of sentencing issues. It's reflective of our committee's desire to give the judges discretion where appropriate in deciding whether or not a consecutive sentence, meaning that the sentence is served one after the other as opposed to at the same time for separate offenses. The committee amendment strikes from the definition of public safety officer, a state, county or local employee of a Youth Rehabilitation and Treatment Center or an employee of the Office of Juvenile Services. Senator Gloor has also alluded to the discussions we have had with him regarding juveniles. And the committee made the decision to exclude juvenile offenders from this act. That is not to say that we cannot review this matter in the future if the problem persists or becomes more acute. We can address it in coming sessions. With that, Mr. President, I would urge the adoption of AM1068 and again thank Senator Gloor for his work on this bill. [LB226]

SENATOR CARLSON: Thank you, Senator Ashford. Mr. Clerk, for an amendment. [LB226]

CLERK: Mr. President, Senator Hadley would move to amend the committee amendments, AM1381. (Legislative Journal page 1421.) [LB226]

SENATOR CARLSON: Senator Hadley, you're recognized to open on your amendment. [LB226]

SENATOR HADLEY: Mr. President, members of the body, mine is a really short amendment but I believe it has some far-reaching consequences. Basically, my amendment puts the employees of the Youth Rehabilitation and Treatment Centers at Kearney and Geneva back into the bill as they were in the original bill. YRTCs were started many years ago. Kearney goes back to 1879, Geneva goes back to 1891. Up until 1997, they were under the Department of Corrections which meant they had all the benefits and privileges and rights that corrections officers had. They were put under DHHS in 1997. So consequently, they lost that protection. Just a change in who they reported to lost the protection. So now they're not treated the same. They are treated differently than other correctional officers. To give you an example of the magnitude of problems from 2008 to January 31 of this year, youth offenders assaulted 81--81 YRTC Kearney employees, while 118 YRTC Geneva employees were assaulted in the same time. These assaults resulted in broken bones, knee injuries, contusions, stabbings, bites, and other physical injuries that required medical attention, yet they are excluded from this bill. They do not have the protection that this bill affords correctional officers. I believe it should have the same protection for these employees. These are hardworking employees. I had numerous meetings with the employees at YRTC-Kearney regarding the problems they face in dealing with certain of the people that have been committed to

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those facilities. I think this is an important bill because we need to send a message to these hardworking employees at both centers that they are important. We understand what they face on a day-to-day basis and we want the same protections for them as a correctional officer in the reformatory or a correctional officer in the prison. And I know the arguments are going to be that these are juveniles. Let me ask you this: a bag of excrement thrown in your face, does it make a difference whether the person is 16 years old or 23 years old when they throw that bag? Does it make a difference whether they're at YRTC or they're in the reformatory? If you're the employee do you feel better because you're at YRTC and you know the juvenile cannot be charged under this statute? I realize there are people that want to make sure that we don't ever charge a juvenile, wherever possible, with a felony. But there are certain acts that need to be charged as felonies. And I truly believe these...it's the kind of act that we need to protect the employees at YRTC-Kearney and YRTC-Geneva. Thank you, Mr. President. [LB226]

SENATOR CARLSON: Thank you, Senator Hadley. (Visitors introduced.) Members, you've heard the opening on LB226, AM1068 and AM1381. The floor is now open for debate. Senators wishing to speak: Schumacher, Conrad, Council, Coash, and Hadley. Senator Schumacher, you're recognized. [LB226]

SENATOR SCHUMACHER: Thank you, Mr. President. Members of the body, I seem to recall in my previous life as county attorney similar situations in which the people doing this stuff got put away for time in the penitentiary. There are numerous other laws that already cover this, not that I have any opposition to resaying it and making it triple illegal. But I do have some questions as to how this particular bill would interact with what is called criminal attempt. And the criminal attempt statute appears at 28-201. And would Senator Ashford yield to some questions so we can make a record of this? [LB226]

SENATOR CARLSON: Senator Ashford, would you yield? [LB226]

SENATOR ASHFORD: Yes, Senator Schumacher. [LB226]

SENATOR SCHUMACHER: Senator Ashford, 28-201, criminal attempt, makes it a one grade less criminal offense if you start down the course of planning and intentionally engaging in conduct which would constitute the crime if things were as you believed or engages in conduct which is a substantial step in the crime or when causing a particular result is an element of the crime if acting with the proper state of mind he or she intentionally engages in conduct which is a substantial step intended to commit the crime. Now how do you see this interacting, this attempt statute interacting with this statute, particularly in the case and I'm thinking of a political demonstration where there's a lot of stuff going on that is normally part of a political demonstration, maybe even a little distasteful part of a political demonstration. Has the committee thought and

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if we can make a little record here... [LB226]

SENATOR ASHFORD: Thank you for the question. And the answer is I think it is potentially a conflict. And I think that in my perusal of the section with, just now, I think we will need to address your question as we move over to Select File. It could potentially, yes, I think that you have raised a good issue. [LB226]

SENATOR SCHUMACHER: Thank you, Senator Ashford. I have nothing further, Mr. President. [LB226]

SENATOR CARLSON: Thank you, Senator Schumacher and Senator Ashford. Senator Conrad, you're recognized. [LB226]

SENATOR CONRAD: Thank you, Mr. President. Good morning, colleagues. I, too, have just a few questions in terms of application and implementation. And have had an opportunity to visit with Senator Gloor off the mike about this issue previously. And, I guess, just a little bit of overview in context before jumping into the specifics. I think it's, like most things presented in this piece of legislation, it's about seeking the appropriate balance. And on the one hand that's the protection of public servants who are most at risk in these instances. And I think there can be no disagreement that we must do our all to protect them and the work that they do in service to our state and our safety under very harrowing circumstances. So I really applaud Senator Gloor for bringing this issue forward and the objectives that he seeks to attain in that regard. On the other hand, of course, particularly in a criminal context we always must ensure accuracy and clarity. And the other issues that I'm looking at in relation to this would then be...and looking at the committee statement I haven't had a chance to read the committee transcript, so I'm hoping maybe one of the committee members will talk about it. I saw the Nebraska AIDS Project, for example, came in to testify against this. And it would seem to me that there are some issues related to this bill that would implicate some of the stigma involved in living with HIV or AIDS. And we want to ensure as society continues to make progress in a better and more complete understanding of how this disease can affect those living with it, but also can be transmitted, that we don't perpetuate any sort of misinformation that may be out there. And so some of the technical issues related to transmission I imagine may be subject to some further clarity as we move forward. A couple questions that do come to mind, and I don't know if maybe Senator Council might be available to answer some questions. I know she was not voting at the committee level. Would Senator Council yield? [LB226]

SENATOR CARLSON: Senator Council, would you yield? [LB226]

SENATOR COUNCIL: Yes, Mr. President. [LB226]

SENATOR CONRAD: Thank you, Senator Council. I know you were deep in

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conversation with committee staff so just in general, I'm wondering about the...of course it's good to have a specific rather than a general statute in place when it comes to criminal acts in particular to ensure specificity and appropriate application. But just as a gut reaction I'm wondering why, you know, criminal attempt or certain aspects of sexual assault or straight up assault statutes wouldn't encompass some of this behavior and requisite penalties. Do you have any thoughts on that? [LB226]

SENATOR COUNCIL: I certainly do, Senator Conrad. And if you look at the committee statement, I did not vote to advance the bill. I did not vote against it because I appreciate Senator Gloor's concern about public safety officials. But I had genuine and continuing concerns about, number one, if you look at the original draft of the bill, it said if you propelled it in the direction of, and didn't even require any contact. And Senator Schumacher raised the question about our current attempt statutes. And in my mind that was, you know, already covered. So the amendment requires the actual striking. Again, I don't...that's an assault to me. And I don't know why we have to have a specific... [LB226]

SENATOR CARLSON: One minute. [LB226]

SENATOR COUNCIL: ...statute covering bodily fluids when to make that kind of contact without someone's consent is an assault. [LB226]

SENATOR CONRAD: Right. Yeah, I was having some of those same questions. And the other thing that came to mind in that very regard would be, say, for example there's a struggle within an institutional setting. And then, you know, the alleged defendant, of course, is infected with one of these three communicable diseases. And then there is contact but it's not done in this gassing context that Senator Gloor was originally seeking. Is that going to allow for a really open-ended prosecution in those kinds of instances? I'm just kind of trying to think through the different possibilities. [LB226]

SENATOR COUNCIL: In my opinion it does. And that's a concern I had again when the committee was considering this legislation. And the issue with HIV and the stigma associated with it was of paramount concern to me having served on the Nebraska AIDS Project Board for a number of years. [LB226]

SENATOR CARLSON: Time. [LB226]

SENATOR COUNCIL: Thank you. [LB226]

SENATOR CONRAD: Thank you, Mr. President. Thank you, Senator Council. [LB226]

SENATOR CARLSON: Thank you, Senators Conrad and Council. (Visitors introduced.) We continue with discussion. Senator Council, you're recognized. [LB226]

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SENATOR COUNCIL: Yes, thank you, Mr. President. First, I hit my light to rise in opposition to AM1381, Senator Hadley's amendment that would restore the inclusion of officers at the YRTC's into this legislation. This was an issue that was discussed at length by the Judiciary Committee. And I think I speak for a majority of the committee who viewed the addition of YRTC staffers to in fact be different under these circumstances. If you look at the committee amendment, we speak to those youth who are being referred to the secure youth detention facility. And the youth who are assigned there are youth who are more comparable in many respects to those who are incarcerated under the supervision of the Department of Corrections. Here at the YRTC's one of the problems that the committee recognized and is reflected in the fact that those two locations aren't included in the coverage of this bill is that oftentimes the youth who are assigned to a YRTC are not there for criminal offenses, they're there for treatment and rehabilitation. To charge them now with criminal offenses, they may have been, for example, referred to YRTC from Lancaster County. So they're under the jurisdiction of Lancaster County Court, Lancaster County public defenders and prosecutors. And then under this bill they would be subject to prosecution in the counties where Geneva and Kearney are located. And then you would create these conflicts between these two judicial jurisdictions with the possibility of adding additional costs to both of the counties involved if the youth did not happen to have been sentenced or sent to or referred to the YRTC from the counties where those facilities are located. And for those reasons, and again the differences in the YRTC and the secure juvenile youth detention facility and the objectives sought to be achieved at those are the reasons for my opposition to AM1381. And as to the base bill, again, I applaud Senator Gloor for his efforts here to provide additional protection to specifically our correctional officials. Currently, at the Nebraska Department of Corrections there are internal rules and regulations and penalties associated with this kind of conduct. As Senator Conrad stated, there are other existing statutes that would address this. And finally, my primary concern is that LB226, even with the amendment, serves to perpetuate certain myths about the transmission of HIV. And the committee, to its credit, attempted to minimize that impact through AM1068 by including that the bodily fluid had to enter the mouth or the eyes or the skin. But even with the skin that is a suggestion that you can transmit the HIV just by contact of bodily fluid on skin without any recognition that... [LB226]

SENATOR CARLSON: One minute. [LB226]

SENATOR COUNCIL: ...there has to be some combination of bodily fluids involved. So with those concerns I must not only oppose AM1381, but I...and I think Senator Schumacher, and I don't want to speak for him, but I think his statements have identified the concern I had. I don't see the necessity of this legislation. I think current criminal code sections will provide as much if not more protection to our correctional officers and our public safety officers. Thank you. [LB226]

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SENATOR CARLSON: Thank you, Senator Council. Those wishing to speak include Coash, Hadley, Hansen, McGill, and others. Senator Coash, you're recognized. [LB226]

SENATOR COASH: Thank you, Mr. President. Good morning, colleagues. I'm going to stand in opposition of AM1381 for several reasons that I'm going to outline here. First of all, colleagues, this is not about putting workers at the YRTC against the kids. Do the workers deserve all of the protections that corrections workers deserve? Yes, they do. But I want to point out a couple of things here. Colleagues, look at your committee statement. On LB226, this is a bill about throwing feces and urine at corrections workers. You will see in the committee statement not one worker of the YRTC came to the hearing and said, this is a problem where we work too. They didn't come because they don't have this problem. They do have problems of assaults, but not the type of assaults that LB226 addresses. If the kind of assaults that LB226 addresses were a problem, they would have come. They didn't show up. Senator Gloor's bill is a corrections bill. Look at the language. It addresses corrections workers. AM1381 puts in treatment workers. Colleagues, there is a difference between treating somebody and administering justice through the Department of Corrections. Treatment and corrections are two separate entities. They're treated differently under the law, and that is the reason that the Judiciary Committee pulled it out. AM1381 turns a corrections bill into a treatment bill. And if it's a treatment bill, I would say it needs to go to HHS. They, as a committee, regulate how best to provide treatment to youth. If it's a corrections bill it ought to come to the Judiciary. We looked at it, we made a decision. The kind of problem that Senator Gloor is trying to address in this bill, he is addressing. But there is a lack of data that says that the problem that he's addressing is a problem in juvenile detention centers at the Youth Rehabilitation and Treatment Center. Look at the words of the amendment, colleagues. We're adding rehabilitation and treatment to a corrections bill. They are different. The kind of problem that Senator Gloor is trying to address, exists. It exists in corrections. We need to protect peace officers and corrections officers by sending a message. That's what LB226 does. But let me tell you what's going to happen if AM1381 is adopted and ultimately passed. Nobody is going to go out to the YRTC and tell these kids, hey, now if you spit on us, you're going to become a felon. They're going to find out the hard way. And I haven't heard any data that says that that's a problem anyway. Again, colleagues, if that was a problem, I would assume that the people from the YRTC would have showed up at the hearing on LB226. We did have a bill in Judiciary about assaults on treatment workers, but they weren't the same kind of assaults that were addressed in LB226. Different issue. Colleagues, if you work with children in treatment centers, I have to tell you, you don't make the children's... [LB226]

SENATOR CARLSON: One minute. [LB226]

SENATOR COASH: ...issues better by turning them into felons. All of a sudden you take

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a child who is getting treatment and rehabilitation in the treatment setting, and you put them over into the correctional setting because that's what AM1381 will do. If taken to its conclusion, children who would do these kinds of things that are in LB226 become felons. Then they're no longer getting treatment, they're getting corrections. And I think that's an important distinction for us to make, and I would urge you not to vote for AM1381. Thank you, Mr. President. [LB226]

SENATOR CARLSON: Thank you, Senator Coash. Senator Hadley, you're recognized. [LB226]

SENATOR HADLEY: Mr. President and members of the body, I have a number of questions and comments. Yes, I brought an earlier bill that's still sitting in Judiciary, that if gotten out and voted on in the body, would have made this, my amendment, not necessary because it would have given protection to the YRTC employees at Geneva and Kearney. Assaults. Senator Coash says, well, there's no problem. Eighty-one assaults in the last three years at YRTC-Kearney. One hundred and eighteen assaults at YRTC-Geneva. Folks, we're not dealing with nice little young kids who just need to come out and spend a month or two in Kearney, you know, to get them straightened out. How about the two kids that put the billiard ball in the sock and beat up one of the counselors? Oh, is that an assault? Or the ones that broke the pool cue and used it over the head of another person there. Is that an assault? I stand firmly in support of Senator Gloor's bill and the Judiciary Committee amendment. I think we need it. I am just trying to give protection to people who are involved. Would Senator Gloor yield to a question. [LB226]

SENATOR CARLSON: Senator Gloor, would you yield? [LB226]

SENATOR GLOOR: Certainly. [LB226]

SENATOR HADLEY: Senator Gloor, you mentioned viruses. Would you quickly tell me again what the role of viruses is in your bill? [LB226]

SENATOR GLOOR: Well, it's specifically defined as HIV, hepatitis B and hepatitis C. Originally, we talked about language that related to any deadly illness or disease, and finally decided the real problem that we have, and you may recall during my opening comments, is that within our jails in this country 30 percent of the inmates are infected with those three diseases. And so it was a matter of being, again, narrow in focus, and providing some greater degree of accuracy and clarity. [LB226]

SENATOR HADLEY: Senator Gloor, can juveniles have these diseases? [LB226]

SENATOR GLOOR: I'm sorry, I could not hear. [LB226]

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SENATOR HADLEY: Can juveniles have these diseases? [LB226]

SENATOR GLOOR: Yes, juveniles can have these diseases. Infants can have these diseases. [LB226]

SENATOR HADLEY: If a juvenile throws a bodily fluid at a person from YRTC, does that mean they would not get the disease because they're an employee of YRTC? [LB226]

SENATOR GLOOR: It has no impact on whether they would or wouldn't get the disease. [LB226]

SENATOR HADLEY: Okay. Thank you. Senator Coash talked about it would be terrible to charge a criminal offense. If you want to follow that argument, we should never charge a juvenile with a criminal offense because it's the first one, right? I think that's what he said. If you charge the first time, it's terrible. I'm saying this rises to the level of a felony. If it's a felony for someone who is 18 years old and is in the penitentiary, why wouldn't it be a felony for someone who is 18 years old and been committed to YRTC? Sure, they're there for treatment but does that excuse them for their actions? Does that mean that they can do basically what they want to do because they're a juvenile, and we don't want to charge them with a felony? I don't think that makes sense. Senator Coash started by saying that the...I believe I'm correct, that these employees deserve all the protection that correction workers deserve. Sorry, this bill says they don't. This bill says they don't. Also said no one came in to testify. [LB226]

SENATOR CARLSON: One minute. [LB226]

SENATOR HADLEY: A lot of them came in to testify on the bill that would have made them protected as correctional officers for all assaults. They came in and testified there. The nurse from York talked about being so badly beaten by a 280 pound young lady, she fractured her jaw, fractured her cheek, fractured her eye socket, and went back to work. So all I'm arguing is, if it's a felony, it's a felony. And if you want to say you don't want to charge juveniles with a felony, then we should take that concept further and make sure we never charge juveniles with a felony because if it's going to be their first one, that sounds like it's not good. Thank you, Mr. President. [LB226]

SENATOR CARLSON: Thank you, Senator Hadley. (Visitors introduced.) Proceeding with debate, Senator Hansen, you're recognized. [LB226]

SENATOR HANSEN: Thank you, Mr. President and members of the Legislature. I rise in support of Senator Hadley's amendment. I think that there needs to be some consequences for juvenile actions too. As a member of the Health and Human Services Committee, the first two years I was down here we took a statewide tour and

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YRTC-Kearney and YRTC-Geneva were two of the stops on the HHS tour. You drive up to YRTC-Kearney and there's a parking lot, there's several buildings. One thing I noticed, there was no fence. This is a treatment center, for sure, such as Senator Coash was speaking of, and it is. They have high school there, they have counselors to get these young men back on track, and the same thing with Geneva and the young women that are down there. One thing that is not very clear to me is that if these young men at Kearney, especially, and this is Senator Hadley's hometown, he's very familiar with it, but I'm not clear what happens on a walk-off. Is Senator Ashford here? Senator Ashford would you yield. [LB226]

SENATOR CARLSON: Senator Ashford, would you yield? [LB226]

SENATOR ASHFORD: Yes. [LB226]

SENATOR HANSEN: Thank you. Senator Ashford, do you know, are you familiar with YRTC-Kearney as to what happens if one of the young men, say is out playing basketball and they see an opportunity to walk off or leave the campus of YRTC, what happens to that youth? [LB226]

SENATOR ASHFORD: It's an escape and they are prosecuted as such. [LB226]

SENATOR HANSEN: Now, can you expand on that? [LB226]

SENATOR ASHFORD: Okay, those cases, those cases, and we....that's a good question. We discussed those in the committee. In an escape case there is a...they've escaped. It's a prosecution by the county attorney in Buffalo County. [LB226]

SENATOR HANSEN: Are they brought back to YRTC? [LB226]

SENATOR ASHFORD: Possibly, but possibly not. [LB226]

SENATOR HANSEN: Would they go to the Juvenile Detention Center? [LB226]

SENATOR ASHFORD: They could go to the juvenile detention center if there's a pattern of...it's possible they would go to the youth detention center. [LB226]

SENATOR HANSEN: So there is a consequence for that type of action. [LB226]

SENATOR ASHFORD: Yes, there is. [LB226]

SENATOR HANSEN: And that would be...they would be dealt still as a juvenile, but with a criminal history. [LB226]

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SENATOR ASHFORD: Correct. [LB226]

SENATOR HANSEN: What is the difference between that and throwing feces or urine at a someone that works at YRTC? [LB226]

SENATOR ASHFORD: The effect is not that dissimilar, Senator Hansen, in the sense that the victim is a victim of having feces thrown on them or urine or whatever it is, it's a bad act, no question. The concern in the committee was...I think Senator Coash has described it, the committee's thinking, and Senator McGill, I believe, had some comments on it, it was again this discussion that we have all the time in the committee about how do you treat juveniles? Do you treat juveniles differently in these kinds of cases from adults? And that really was the discussion. [LB226]

SENATOR HANSEN: But the escape is dealt with similar to a... [LB226]

SENATOR ASHFORD: No question, and the escape is dealt as if it were any other escape by anybody who is incarcerated. [LB226]

SENATOR HANSEN: If this juvenile knows or does not know that he is infected with HIV, I see this as...this is a serious matter. It's going to affect that employee for the rest of their life. I can't see the difference. Juveniles, if they've made it to YRTC in either Kearney or Geneva, they have done something, they have found that there's consequences to their actions. While being at YRTC, if they commit an action such as this, I think there has to be harsh... [LB226]

SENATOR CARLSON: One minute. [LB226]

SENATOR HANSEN: ...I think that there has to be harsh consequences to it. I agree with Senator Hadley. If I lived in Kearney, and Senator Hadley lives only three blocks from the YRTC, every time they have a walk-off they almost shut the town down. This is a serious, serious place. And I would encourage anyone here in this room, Judiciary Committee, HHS Committee again, to go out and visit YRTC in Kearney and YRTC in Geneva. Thank you, Mr. President. [LB226]

SENATOR CARLSON: Thank you, Senator Hansen and Senator Ashford. Senator McGill, you're recognized. [LB226]

SENATOR MCGILL: Thank you, Mr. President and members of the body. I rise opposed to Senator Hadley's amendment and in favor of the full bill. Senator Coash and Senator Council addressed many of the same issues that I want to. I do know that violent things happen at YRTC. I don't deny that. I don't deny that there should be greater consequences for bad actions. I just don't feel that these are the correct consequences. These young people are there for behavioral health and substance abuse problems,

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very severe problems that they've had trouble finding real treatment for at other levels of government, or in their communities, I mean. These are the kids that were essentially safe-havened a couple of years ago for their behavior, most of which was started because they were abused when they were children. They then have a disease, a behavioral health or substance abuse disease. That's why they're there, members. Yes, their behavior can be appalling. But does charging them with a crime make the matter better for them or better for anyone else? They're already not understanding the consequences of their actions. They need treatment, not further criminalization. We need different changes at YRTC to provide different consequences. From what we understand in the committee, if a youth is sent there, they're there for a set amount of time for a set amount of treatment, and then they're dismissed. So even if their treatment hasn't been seen as a success, they're often dismissed when really we should be holding them there longer, or if they do an action like this, hold them there longer until their treatment has really been successful. But, no, we're not investing in that end. It's, here's their length of time in YRTC, and that's it. Then we'll send them back to their families and their communities where, of course, they will get into a cycle of crime or end up right back there again. They're very difficult to treat when this behavior and disease is so far ingrained into them. And, yeah, I have a problem with them saying, oh, if they spit on someone, then all of a sudden they're a criminal. They're youth who have issues, no doubt. And I think that the people who work in these facilities should have better benefits so if something terrible does happen, that they can make sure they get the care that they need. But they know taking these jobs that there's risk associated. They know that and we should help provide them with the benefits necessary to continue to have people willing to do those jobs. And we do need to make sure there are consequences, like keeping the youth longer. I mean, right now, they know, oh, I'm getting out in so many days anyway. We need to see if we can make them there longer and do other things besides criminalizing them. So that's my two cents. It's why I was opposed to putting juveniles in there, particularly the ones at YRTC. Our committee spent a lot of time looking over this and there's been several bills over the years that I've been on the committee dealing with the people that work there and I...it's a job I doubt I would want to do and I can appreciate the fear that must go through a lot of the workers' minds. But again, I think there are other ways that we should be addressing this issue since these are kids that have, in my mind, a disease. Thank you, Mr. President. [LB226]

SENATOR CARLSON: Thank you, Senator McGill. Senators wishing to speak include Howard, Conrad, Gloor, Council, Hadley, Schumacher, and others. Senator Howard, you're recognized. [LB226]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I stand in support of the amendment, the current amendment, as well as the original bill, and that would also include the Judiciary amendments. I went back and talked to Senator Hadley and told him why I was in support of this bill. And I'm going to share a story with you

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since it seems to be a morning of sharing stories. When I was doing direct service, one of the kids I had in my caseload was a...I believe it was 16 at that time and he was a really smart youth but he had a lot of chemical dependency issues. And he was on probation for some kind of minor incidents, shoplifting, skipping school, that kind of thing. And I sat down with him with his probation officer and we both told him he needed to be in a treatment program, and we had found an opening for him over at NOVA. He wasn't interested in this at all. He liked his lifestyle. He liked using, frankly. And he got pretty aggravated at me and threw out some pointed threats. And I knew that this was a kid that had the ability to carry out on those threats, if he chose to. And I went to the county attorney and explained the situation to him and I said, it's...you can't allow someone to threaten a social worker any more than you can allow someone to threaten a teacher or anyone else. These things have to be taken seriously. And the county attorney did file charges on this youth. We went into juvenile court. A public defender defended him and said if we file on everybody, every threat that's made toward a social worker, we won't get anything done. They will always be threatened, it's inconsequential. And the judge ruled in my favor and the youth was going to have some penalties, and he turned to the public defender and cursed her out, to beat the band. She looked at me like I was...like I would be there to defend her, which I wasn't that interested in doing. But the part of the story I want to tell you about is, it wasn't that much later that this youth knifed another kid to death over a coat. And what I'm trying to convey to you is that these things have to be taken seriously. When these youth make a threat, they, in many cases, mean that threat, and their intention is to carry that out. Now, sure, maybe it's the underdeveloped brain, maybe it's the social exposure, maybe it's poor nutrition. I don't know the cause of all of this. I only know that if you disregard these threats, in many cases they escalate. And Senator Hadley brings us a very important amendment and I think we all have a responsibility to say to those people that we put out there to do the job we want them to do, deserve our protection. I hope that you vote green on this amendment, and I certainly hope you vote green on the bill as well. Thank you. [LB226]

SENATOR SULLIVAN PRESIDING

SENATOR SULLIVAN: Thank you, Senator Howard. The Chair now recognizes Senator Conrad. [LB226]

SENATOR CONRAD: Thank you, Madam President. I was hoping that Senator Gloor might yield to a question. [LB226]

SENATOR SULLIVAN: Senator Gloor, would you yield for a question? [LB226]

SENATOR GLOOR: Certainly. [LB226]

SENATOR CONRAD: Thank you, Senator Gloor. And again I really appreciate you

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taking up this difficult yet very, very important issue and for in this instance and, of course, in many others, you're always gracious and willing to work through difficult issues. And so I think that most of these concerns, hopefully, will be able to be addressed in between General and Select File. But one more issue to add to the pot, I guess, in reading through the committee amendment, I just had a question about application in terms of the intent component that's contained in the legislation. So in my reading, the potential defendant would only be subject to the felony charge if they had prior knowledge that they had contracted HIV or hepatitis B or C at the time the offense was committed, is that right? [LB226]

SENATOR GLOOR: That is correct. [LB226]

SENATOR CONRAD: And then there is a more general offense for this kind of behavior without the knowledge and the diagnosis there that's subject to a misdemeanor penalty, is that right? [LB226]

SENATOR GLOOR: Correct also. [LB226]

SENATOR CONRAD: Okay. And then the last question I had was in Section 4 about the integrity and competing issues surrounding access to medical records to then later establish that intent or knowledge. And I was just wondering if your research indicated any sort of competing interest that might exist in that regard, or if any questions in that regard may have arose. I'm wondering, it just may be difficult to prove intent in some instances about whether...when and how that individual would have had knowledge of the diagnosis in some instances. So just any comments or background in regards to that section is...is, I think, would be helpful for the record. [LB226]

SENATOR GLOOR: No, and thank you, Senator Conrad. And as usual, that's a well-thought-out excellent question. You know, how do we know? How does the individual incarcerated supposedly know that they have this particular diagnosis? I can only tell you that my comfort level goes back to working with patients and healthcare providers outside of the correctional facilities. But in that case, the minute somebody has a diagnosis of that, there will be lab tests that are confirmed, there will be repeat tests that provide for additional confirming. With almost all of these diseases there will be then regular tests to find out how the disease is progressing. All of this will be a part of a medical record. All of this will have been shared by the healthcare provider with the individual who has come down with the specific disease, and I think HIPAA laws notwithstanding, there, I believe are...I believe, I know, within the statute as proposed there will be the opportunity to access that information, maintaining appropriate security and secrecy of those records, again as is appropriate, but at the same time giving the courts the information necessary to get that evidence. [LB226]

SENATOR CONRAD: Thank you, Senator Gloor. That's very helpful and I really

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appreciate the clarification and have enjoyed hearing the different points of view in the context of this debate on a very important bill. Thank you. [LB226]

SENATOR SULLIVAN: Thank you, Senator Conrad and Senator Gloor. Those senators in the queue are Gloor, Council, Hadley, Schumacher, Coash, Bloomfield, and Wallman. Senator Gloor, you're recognized. [LB226]

SENATOR GLOOR: Thank you, Madam President, members. My friend and colleague Senator Hadley and I began this session sort of in lockstep on issues that had to do with assault on correctional officers and so had back and forth dialogue about his bill and my bill. But we've headed down different paths on this specific issue, and I'm not supporting AM1381 and here's why. I respect Senator Hadley's concern. He has been brought information about, as he's pointed out, a number of assaults on individuals who would not be covered under this specific legislation. The numbers that he gave, by the way, may or may not include assault with bodily fluid. I think a vast majority, from what little information I've been able to gather on the specifics of where these instances have taken place, are not these kinds of assaults. I want to make sure that people don't think of the 224 cases documented in the past four years, 81 came in youth facilities. Here's the reason that I have a difference of opinion and am comfortable with the exemption of the facilities that were laid out. Senator Council pointed out, appropriately, I think several others already have, that the secure youth detention facilities, for want of a better term, for the hard core youth, are still covered under this. So the kids that are criminals, and I use that in a generic sense, are, in fact, still covered under this. But the rest of them are not. And in the dialogue, and I talked earlier about the education and counsel I got as I moved into the criminal codes with the committee, the committee has put an incredible amount of time and effort in recent years, you will recall, in changing some of the criminal codes with adults and more recently with juveniles. In fact, our truancy discussion is a spin-off of some of those issues. There has been effort made to try and focus on youth and some of that focus is rehabbing youth. Those youth who go into the facilities that are exempted, I believe, are still in a position to be rehabbed. That's what I now believe and the reason that I changed my mind and was comfortable with this being taken out. As has been pointed out, all of a sudden, slap them with a felony seems to work counter to what we are been trying to do with those youth in the facilities that they're placed. Plain and simple, I believe still that the youth in these facilities are in a position where we're trying to rehab them. And an impetuous action by youth, an impetuous action by youth that all of a sudden takes them from a problem youth to a criminal youth because of that impetuous action was a problem for me and a reason that I was in agreement that we should take those facilities out. And again, secure youth detention facilities are in. They're still in. There's one other factor I have to point out and that is, the likelihood of youth having these diseases is also not great. Candidly, they don't have the same scope of life experiences that would expose them to these diseases as the adult criminals would be, the adult incarcerated folks would be. I don't think this is a situation that's likely to come up very often. On the other hand,

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leaving the secure youth detention facilities in, I do think is an appropriate thing to do. Again I am not in support of AM1381. Thank you. [LB226]

SENATOR SULLIVAN: Thank you, Senator Gloor. (Visitors introduced.) The Chair now recognizes Senator Council. [LB226]

SENATOR COUNCIL: Thank you, Mr....Madam President. I apologize, Senator Dubas (sic), Madam President. I think it's important for the entire body to know how seriously the Judiciary Committee has considered these issues with regard to assault on correctional officers, or for that matter, assaults on Youth Treatment and Rehabilitation Center authorities. Senator Hadley did provide data with regard to physical assaults. To my knowledge in the figures that he provided, and I think Senator Gloor just alluded to it, these were not instances of the throwing of bodily fluids. That's what this bill is about. This bill is about the issue of bodily fluids. And if you look at the original green version of the bill, these young people were going to be, if the YRTC was included, these young people would have been subject to a misdemeanor or a felony prosecution for simply spitting in the direction or throwing in the direction, not an assault. And let's talk about assault. And let's talk about where the real concern ought to be directed at this point with regard to the 81 assaults at Kearney, if I'm recalling correctly, and the 113 at Geneva. What Senator Hadley was talking about were actual physical assaults. Actual physical assaults. And as Senator Schumacher has alluded to, we currently have criminal statutes governing physical assaults. And those statutes don't make a distinction between an ordinary citizen or a public safety officer. Assault is assault. The question that Senator Hadley should be asking, and the angst that he is displaying, should be directed at the county attorney in the counties where Kearney and Geneva are located. If these assaults are being committed against these persons, correctional officers or otherwise, the question that Senator Hadley should be asking of their county attorney, which is the same question that was asked by the Judiciary Committee, why aren't you prosecuting these offenses? And I think my colleagues on the Judiciary Committee will confirm--I think Senator Coash is up next--we're still waiting for that answer. They couldn't tell us why they weren't prosecuting these individuals who were actually committing physical assaults. So the question again, Senator Hadley should be posing, it should be to his county attorney: Why aren't you prosecuting these individuals? I'll speculate as to what the answer is going to be, and the speculation is, these offenses at the YRTCs are being committed by juveniles. And while the county attorney can charge a juvenile as an adult, that juvenile defense attorney can move to have that case transferred to juvenile court. And what happens, ladies and gentlemen, we're right back in the same place. That youth could either be sentenced to the...could be referred to the YRTC, or could be sent to the secure youth detention center. But again, there is nothing that I'm aware of in the current law that prevents any of those 81 assaults at York, Kearney, or any of those 113 at Geneva from having being prosecuted under existing law. And with respect to... [LB226]

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SENATOR SULLIVAN: One minute. [LB226]

SENATOR COUNCIL: ...LB226, again the original draft of the bill was actually an attempt statute, Senator Schumacher. If I just threw it in your direction, it was a misdemeanor, and if I threw it in your direction and I had hepatitis B or C, it was a felony. It was only after those issues were raised that the amendment from the committee that says you actually have to strike someone, and even then, I submit, if you strike someone with feces, it's an assault. We don't have to say it's a bodily fluid assault, it's an assault. And if prosecutors, county attorneys, want to have the kind of impact that I believe Senator Hadley is seeking through his amendment, there is nothing that prevents them from doing that now. Nothing that prevents them from doing that now. And even Senator Hansen's question... [LB226]

SENATOR SULLIVAN: Time, Senator. [LB226]

SENATOR COUNCIL: Thank you. [LB226]

SENATOR SULLIVAN: The Chair now recognizes Senator Hadley. [LB226]

SENATOR HADLEY: Mr. President and members of the body. Is Senator Ashford...would Senator Ashford yield for a question. Senator Ashford is gone. Is the Vice Chair of the Judiciary Committee? Senator Coash, would you yield. [LB226]

SENATOR SULLIVAN: Senator Coash, would you yield? [LB226]

SENATOR COASH: Yes. [LB226]

SENATOR HADLEY: Senator Coash, I've been informed that escape, walking away from YRTC is an automatic felony charge. Why is that different than throwing bodily fluids being a felony charge? [LB226]

SENATOR COASH: The phenomenon where a child might run and escape would be considered a violation of their treatment. Whereas, the assault under your amendment, Senator, would not. [LB226]

SENATOR HADLEY: It would not be a violation of their treatment. Boy, that would sound good to that person who has had the bag of excrement thrown in their face. We need to treat them a little more. Wipe it off your face and let's treat them. I think what we have here is that we have a discussion about the difference, and I think it's a legitimate discussion, of sending a message either to the employees or the persons that have been committed. I think that's what this boils down to. An escape is a felony, yet throwing bodily fluids on a person, and potentially, potentially, exposing them to an HIV virus, is not. Okay. So be it. There was a question about mental health and substance

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abuse. We shouldn't...if they throw a sack of bodily fluids at a teacher, we shouldn't hit them with a felony because they're there for substance abuse or mental health. Well, does that mean that if a 16-year-old gets drunk and runs down a family of five and kills them all in the car, because they're drunk, we should say, oh, by golly that's substance abuse. I mean, that's the kind of arguments we're hearing here. I think this boils down to whether or not you want to protect the employees at YRTC-Kearney and YRTC-Geneva. Senator Council says, oh, the county attorney. But there's a statute that I was bringing earlier in my bill that specifically talks about assault of a correctional officer, I believe, being a Class III felony where we have it in statute. According to her argument, we wouldn't need that because the county attorney could charge them. So maybe next year we need to come back and relook at that statute. I'll guarantee you, the correctional officers will come off the wall. But if you use that argument, the county attorney can charge them, so we don't need a statute. We're talking about a very serious act by somebody. We're talking about something that can be life-changing. Can you imagine this scenario? The person gets a sack of bodily fluids thrown in their face, and they find out the young man or young lady is HIV positive. Do you want to live through your life with that... [LB226]

SENATOR SULLIVAN: One minute. [LB226]

SENATOR HADLEY: ...knowing that the Legislature said, oh, that isn't a felony. It is if they were at the secured correctional facility, but it's not if you work at YRTC-Kearney and Geneva. So I hope that you will vote for this amendment. I think it's a good amendment. I think it strengthens the bill. I'm in favor of the bill. I'm in favor of the amendment. Thank you, Mr. President. [LB226]

SENATOR SULLIVAN: Thank you, Senator Hadley, and that was your third time. The Chair now recognizes Senator Schumacher. [LB226]

SENATOR SCHUMACHER: Thank you, Madam Chairwoman. I think maybe what we need to do is take a little bit of time and step back and look at how the juvenile system works. And it's not a complicated system. The premise behind it is that kids certainly under 16, and between 16 and 18, may be able to be brought back on the right track if they're not treated as out-and-out criminals. And so what happens is the cops, or I should say the police, find a kid who has done something that's criminal, and they write up a report. It goes to the prosecutor, usually the county attorney, sometimes the city attorney. And the prosecutor looks at it and if it looks like the kid committed a crime, looks at the age, and if the age is under 16, it goes to juvenile court. If the age is between 16 and 18, the prosecutor can put it in juvenile court or put it in adult court. If he puts it in adult court, the defense attorney can ask the judge to reconsider and put it back in juvenile court. At any rate, one, if the judge finds the kid has been a bad kid and is really frustrated with the kid because this doesn't happen on the routine case because everyone knows that putting him in a YDC is probably not the greatest thing in the world

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for anybody. But if they're very frustrated and there's no alternative or they want to a study done on him, they put him there. Once that judge finds that the kid has done a no-no and puts him away in a YDC, that judge is that kid's godfather or godmother, almost supreme authority over that kid. And as a result, can keep him, can penalize him as long as the county attorney calls it to the judge's attention that the kid is misbehaving. So let's take, in that context, a situation of a 16-year-old girl who is in YDC, hormonally challenged, and throwing a terrific tizzy fit. And in the course of the tizzy fit she snots and spits and everything else and hits an officer. Usually the report is written, goes to the prosecuting attorney, and the judge tries to determine what's the next best thing to do with the situation. It may even be charged as a felony because our laws provide that anyone who intentionally causes pain or impairment to another with a material or substance capable of resulting in loss of impairment of the body, is guilty of a Class III...that's zero to 20, I think; or a Class IV if it's just an attempt, that's zero to five. Now in that context, would Senator Hadley yield to a question? [LB226]

SENATOR SULLIVAN: I'm sorry, Senator Schumacher, you were asking to... [LB226]

SENATOR SCHUMACHER: Senator Hadley, if he... [LB226]

SENATOR SULLIVAN: Senator Hadley, would you yield, please? [LB226]

SENATOR HADLEY: Yes, I would. [LB226]

SENATOR SULLIVAN: Thank you. [LB226]

SENATOR SCHUMACHER: In the case of the girl that I just described, is it the intention of your legislation that the county attorney and the judge must prosecute her as a felony and must send her to the penitentiary? [LB226]

SENATOR HADLEY: I don't believe so. That is not my intention of my bill. I would assume that prosecutorial discretion can be used in any of these types of things. I think that's what Senator Council was talking about. [LB226]

SENATOR SCHUMACHER: Then how...what does your legislation make more illegal than what already is illegal? [LB226]

SENATOR HADLEY: It...my legislation does nothing to the actual bill except to add two classes of institutions to the bill as correction officers, to the definition of correction officers. It does not change the bill in any way, shape, or form. [LB226]

SENATOR SCHUMACHER: The normal assault statute protects any person, correctional institutions, even legislators. And so what is being added here? [LB226]

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SENATOR SULLIVAN: One minute. [LB226]

SENATOR HADLEY: I think you need to ask Senator Gloor because my amendment just adds two institutions to the bill. It does not change the bill itself. [LB226]

SENATOR SCHUMACHER: Thank you, Senator Hadley. Thank you, Madam Chairwoman. [LB226]

SENATOR SULLIVAN: Thank you, Senators. The Chair now recognizes Senator Coash. [LB226]

SENATOR COASH: Thank you, Madam President. Would Senator Hadley yield to a question. [LB226]

SENATOR SULLIVAN: Senator Hadley, would you yield? [LB226]

SENATOR HADLEY: Yes. [LB226]

SENATOR COASH: Thank you, Senator Hadley. Senator Hadley, I've been to the YRTC several times. I have talked to the workers, and then when you brought your bill earlier this year, I talked to some of those workers again. But I certainly will leave you to be the expert of...you've got the ear of those workers, they're in your district, they're in your backyard so you talk to them all the time. I was convinced from your earlier bill that there's a problem with assaults on those workers. That was the case you made in your earlier bill. But back to my earlier point that none of those workers came and testified LB226, are you getting specific feedback that the kind of assaults that are addressed in Senator Gloor's bill are things that occur with a great amount of frequency at the YRTC? [LB226]

SENATOR HADLEY: No, Senator Coash, I have no information on that. I'm forward looking. I do not have any information to add from previous instances. [LB226]

SENATOR COASH: Okay, thank you, Senator Hadley. And I ask that question only because I understand...I understood very clearly what you were trying to do in the bill that you brought to the Judiciary Committee, but this amendment that Senator Hadley has brought is addressing an issue that we're not sure exists in the facilities that he's amending in, because they haven't told Senator Hadley and they didn't come to the committee hearing and they didn't say...they did come to the bill, I want to be clear with my colleagues here. They came on a different bill that Senator Hadley said and said assaults are a problem where we're working, and we feel that if we enhance penalties, we can reduce assaults. Okay. So they came and they told us that, but they didn't come, they didn't tell the Judiciary Committee on LB226 that the kind of assaults that Senator Gloor is addressing is also a problem. And Senator Hadley also just told us

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they haven't told him specifically that either. So I am concerned that AM1381 is trying to address a problem that may not exist. Senator Gloor has talked a couple of times now about how we're not sure how these assaults break down between adults and children, or between corrections and treatment. We don't know. We may have a solution in search of a problem with this amendment and I would ask my colleagues to consider that. I would like to talk for a moment about...just so that we're clear about the kind of people who are at the YRTC. Well, first of all, the Y stands for youth. These are kids. I don't want to try to categorize what all these kids are, but I'm going to give you some characteristics that are common among many of those children. First of all, all of those children have a mental health need. Their brains are doing something different, causing a mental health diagnosis that may cause them to behave in ways that we wouldn't like. Some of those children in the past have committed crimes, and been held accountable for those crimes. But I will tell you that not every child who is sitting at the YRTC today has a criminal record. Many of those children have no record because they are not there for committing a crime, they're there to get treatment for their mental health need. There are adults in our system that are in places across our state that are also there to get treatment for their mental health need. My point, colleagues, is that the children who are at the YRTC are not there because they committed crimes. [LB226]

SENATOR SULLIVAN: One minute. [LB226]

SENATOR COASH: Can they commit a crime while they're there? Yes, they can. Can they be prosecuted for committing that crime while they're there? Yes, they can. However, under AM1381, that crime gets elevated to the point where all of a sudden they go from juvenile to adult court and it's a whole different game. And we have to make a policy decision, colleagues, about how we want to address treatment needs versus correctional needs. My position is AM1381 goes too far. I would ask that the body respect the committee's decision for the reasons that we've outlined, and keep the Judiciary Committee as it was advanced from that committee with the children's facilities amended out. Thank you, Madam President. [LB226]

SENATOR SULLIVAN: Thank you, Senator Coash. The Chair now recognizes Senator Bloomfield. [LB226]

SENATOR BLOOMFIELD: Thank you, Madam President, members of the body. I support LB226 and AM1068. I still have questions on AM1381, and to that end I would yield my time to Senator Hadley, if he would need it. [LB226]

SENATOR SULLIVAN: Senator Hadley, you have 4 minutes and 38 seconds. [LB226]

SENATOR HADLEY: Thank you, Madam President. Thank you, Senator Bloomfield. I just want to make one quick point. From what I've heard from a couple members of the body is that charging someone at YRTC with a felony is really a bad deal. Yet we do it if

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they walk away. They haven't hurt anybody when they walked away, have they? Have they injured anybody when they walk away? But we charge them with a felony. It's in the statute. So if we're going to be consistent, it seems to me when they throw a bag of bodily fluids at somebody, and that's a felony for other areas, why wouldn't it be there? If we're going to be consistent, let's...next year let's change the law and say that walking away from YRTC is no longer a felony. That's going to scare the heck out of me because I live within three blocks of it. The other day, Marilyn came in and said, we must have had a walker because the police were going up and down the street. That's scary. My neighbor had a call one night. They said, where are your cars? Three o'clock in the morning. He says, in the garage. Go out and look. They weren't there. The argument you're using of saying this shouldn't be a felony because they're at YRTC are the same arguments you might want to use against any youth then, any 16- or 17-year-old. Why should anything they do then be considered a felony because it's their first one? As Senator Council talks a lot about being consistent in this body, why wouldn't it be consistent with what they do on the outside? Thank you, Madam President. [LB226]

SENATOR SULLIVAN: Thank you, Senator Hadley. The Chair recognizes Senator Wallman. [LB226]

SENATOR WALLMAN: Question. [LB226]

SENATOR SULLIVAN: The question has been called. Do I see five hands? I do see five hands. The question for the body is, shall debate cease? All those in favor vote aye; all those opposed vote nay. Have all those voted who wish to? Record, Mr. Clerk. [LB226]

CLERK: 28 ayes, 1 nay, Madam President to cease debate. [LB226]

SENATOR SULLIVAN: Debate does cease. Senator Hadley, you're recognized to close on your amendment to the committee amendment. [LB226]

SENATOR HADLEY: Madam President and members of the body, I didn't bring this to derail Senator Gloor's bill. I did not bring this to derail the Judiciary Committee amendment. I think those are both good. I plan to vote for them whether my amendment goes up or down, but I think my amendment is a good amendment. We are trying to level the playing field. I think you have to ask yourself...to put yourself in the shoes of the employee at YRTC. What has been done to help you do your job? Of course, they're juveniles. That's the argument we've heard. And, of course, we shouldn't be putting a felony on a juvenile. That's the argument, folks. They're there for treatment. Yet if they walk away we nail them...you know, don't pass go and go to jail if they walk away. That's a felony, isn't it? Of course it is. I'm not trying to hurt juveniles, but I also believe there are repercussions for your actions. And if you use the argument that I have mental health problems and substance abuse problems, then we ought to expand that to all of

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our actions. Anybody who has a criminal charge against him, if they can prove that they have a substance abuse problem or mental health problem, don't charge them. I think this is an important statement, and I think what we do here today is going to send a message to people who are working hard to help these children, the youth. They are not adversarial, they're trying to help them, but we need to help those employees. And folks, they're just not counselors; they're teachers, they're supply people, these are the people that are working with this youth. But the actions of the youth should have consequences, and I truly believe this is an action that deserves the consequences that are prescribed in the bill. So I would ask you to vote green on this amendment. And with that, Madam President, I would like a call of the house and a roll call vote in regular order. [LB226]

SENATOR SULLIVAN: There's been a request for a call of the house. All those in favor of the house going under call, vote aye; those opposed vote nay. Record, Mr. Clerk. [LB226]

CLERK: 36 ayes, 0 nays, Madam President, to place the house under call. [LB226]

SENATOR SULLIVAN: The house is under call. Members, please return to your seats and check in. All unauthorized personnel please leave the floor. Senator Cornett to check in. Senator Burke Harr, please check in. Senator Pirsch. Senator Conrad. I believe all members are present or accounted for. Senator Hadley, how would you like to proceed? [LB226]

SENATOR HADLEY: Roll call in regular order. [LB226]

SENATOR SULLIVAN: Oh, we're waiting for Senator Burke Harr. Senator Hadley, would you like to proceed? He has requested a roll call vote in regular order. Mr. Clerk. [LB226]

CLERK: (Roll call vote taken, Legislative Journal page 1431.) 27 ayes, 13 nays on the amendment, Madam President. [LB226]

SENATOR SULLIVAN: The amendment is adopted. We'll now continue...we'll raise the...the call is raised. We'll now continue with discussion and debate on AM1068, the Judiciary Committee's amendment. Senator Council, you're recognized. [LB226]

SENATOR COUNCIL: Thank you, Madam President. As I've previously indicated, I oppose AM1068, and even more reason to oppose it is the enactment of the last amendment. And I hope that the body is clear as to what was just done by that amendment if LB226 as amended is advanced. And that is, you have said that in the case of bodily fluids...and I don't think this is Senator Hadley's intent, in the case of bodily fluids, if you're at a YRTC, you're going to be able to see the juvenile charged

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with a misdemeanor if the bodily fluid didn't...if they didn't know it had HIV or hep B or hep C, and a felony if they knew. But the very issue that Senator Hadley raised at the beginning of his introduction, but at that same facility if you get beat over the head with a pool stick or you get punched with a...or had a chair slammed over you or you're punched in the face, you've done nothing by the passage of that amendment to address that issue. You've done nothing to change that circumstance. And Senator Schumacher tried to get an answer to that question elicited. What do you add by enacting LB226, period? What do you add to the criminal code that doesn't exist now? Now Senator Hadley certainly made a point that there is a statute that provides for additional and enhanced penalty for an assault on a corrections officer. Well, ladies and gentlemen, corrections officers are different from employees who work at a treatment and rehabilitation facility. Whether you want to accept it or not, they're different. Corrections officers carry guns. YRTC people can't carry guns. They moved them out of the corrections because children, youth, whatever you want to describe them as at the YRTC, are not in the correctional system. They're in a rehabilitation and treatment setting. It would be no different than telling the people at Beatrice that if they threw spittle, they'd be subject to a felony. There's rehabilitation and treatment, and there's a correction...there's corrections, and there's a distinction and it's a deliberate distinction. Yeah, there may have been a lot of reasons why the YRTC was moved out from under corrections and under the Department of Health and Human Services, but the fact remains that that move is in recognition of a difference between corrections and rehabilitation and treatment. But that aside, let's talk about what's left, AM1068. Currently, if someone throws feces on anyone and strikes them, that person can be charged with an assault. I remain troubled and remain opposed to making a felony based upon the perpetuation of myths with regard to HIV. And that's what AM1068 and the underlying bill does. It perpetuates myths regarding the transmission of HIV, and casts it in the light of a felony. So what we have done by virtue of the passage of the last amendment, and what we're doing now... [LB226]

SENATOR SULLIVAN: One minute. [LB226]

SENATOR COUNCIL: ...is not adding anything to the debate, or any protection to correctional officers, YRTC employees, or otherwise, except in the situation where someone knows that they have HIV. Again we're perpetuating a myth, and we're criminalizing conditions that I don't think that this body really should be pursuing. If you did not pass LB226, and anyone, corrections officer, YRTC employee, anyone was struck with someone's feces, someone's urine, someone's spittle, last time I checked, graduating from law school, is an assault. And we have existing assault statutes that would address any of these issues. [LB226]

SENATOR SULLIVAN: Time, Senator. The Chair now recognizes Senator Gloor. [LB226]

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SENATOR GLOOR: Thank you, Madam President, and I'll be brief. If it was clear-cut that we had statutes that covered this under the current definition of assault, we wouldn't have introduced the bill in the first place. Plain and simple. Number two is, we are not perpetuating myths around HIV. The reality is that, and this was brought up during the testimony, during the public hearing, and I can vouch for it based upon my own experience in dealing with communicable diseases in my institution, that you can transmit these diseases by spit. Not the spittle itself, but by the fact that you have blood in spit, blood in urine. We're talking about people who are incarcerated. We're talking about people who may, in fact, good chance, be drug abusers. And we know meth deteriorates teeth, bleeding gums. Spit: you have blood. This was brought out in the testimony during the public hearing. Drug users, people who have treated themselves poorly, physically, can have bad kidneys, bad bladders, blood gets in urine. Blood is the transmission vector in all this. None of this was put together to perpetuate myths. It was to deal with the realities. We are not trying to victimize people who already may suffer from these maladies, we are trying to protect those who protect us, plain and simple. This law is not about perpetuating myths. This law is about protecting corrections officers, public safety officers. Thank you, Madam President. [LB226]

SENATOR SULLIVAN: Thank you, Senator Gloor. The Chair now recognizes Senator Council. [LB226]

SENATOR COUNCIL: Thank you, Madam President. And thank you, Senator Gloor. And let me make it clear, my comments in no way were intended to suggest that the intent of your legislation was to perpetuate myths. The intent of my comment is that the effect of the legislation perpetuates myth. And if Senator Gloor would yield to a question or two. [LB226]

SENATOR SULLIVAN: Senator Gloor, would you yield for a question? [LB226]

SENATOR GLOOR: Of course. [LB226]

SENATOR COUNCIL: Okay. Using your example of an individual who has been infected with HIV, who happens to be also a meth user whose teeth are deteriorated and bleed, and so blood is in their gums. Can HIV be transmitted if that spittle simply touches my skin? [LB226]

SENATOR GLOOR: There needs to be a break in the skin. How you define a break in the skin would be a matter of looking under your skin with a microscope, I would say. [LB226]

SENATOR COUNCIL: Okay. And looking at AM1068, does it say a break in the skin? [LB226]

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SENATOR GLOOR: It does not. [LB226]

SENATOR COUNCIL: It says, skin. So if it has to be a break in the skin, and the bill says if it just hits your skin, isn't that perpetuating the myth that HIV can be transmitted just by having saliva touch your skin? [LB226]

SENATOR GLOOR: No, it is not in my opinion, Senator, because in order for us to know whether there's a break in the skin, we might have to subject every corrections officer to some sort of electron scanning of their skin surface to find out if that's the case. It isn't as if we're talking about slashes across somebody's arm or face that spittle comes in contact with. Hangnails, things much smaller than hangnails can, in fact, be breaks in the skin. [LB226]

SENATOR COUNCIL: But just the statement of skin, without qualification, implies that if saliva that carries the HIV touches someone's skin, it's transmitted. [LB226]

SENATOR GLOOR: That's because there is always a risk since we're never quite sure whether there is a break in the skin. Skin is an organ and subject to the imperfections of any organ in the body. It's not a leather covering. [LB226]

SENATOR COUNCIL: Okay, but the more accurate is...and more accurate in terms of how HIV could be transmitted in that situation, it's just not...the saliva has to have blood in it. The urine has to have blood in it, and it has to hit the skin where it can be transmitted into the blood of the person who is the victim of the spitting or the throwing, correct? [LB226]

SENATOR GLOOR: Correct. [LB226]

SENATOR COUNCIL: Okay. So again, we just say saliva. We don't say saliva with blood, we say saliva. We don't say skin with a break, we just say skin. So they...you know, and we can respectfully disagree, but by saying spitting and having your saliva contact someone's skin, and have HIV, is perpetuating a myth that you can transmit HIV by saliva touching skin, and that's the concern because that's not a fact. And you, in your medical knowledge, you know, you have accurately set out how that transmission could occur. There has to be blood in the saliva and there has to be break in the skin. None of those things... [LB226]

SENATOR SULLIVAN: One minute. [LB226]

SENATOR COUNCIL: ...are stated in this legislation, which leads people to continue to believe that HIV can be transmitted through saliva touching someone. And that's my concern. Whether anyone else in this body shares that concern is not important to me. That's a concern, it's a real concern, and we need to be careful about, you know, the

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signals...we want to talk about every other signal we send. But this is a signal we're sending too that ought to be as disturbing to us as the signal that may have been sent if the last amendment hadn't been advanced. If we're concerned about the signals we're sending, then we ought to be concerned about the signal we're sending through AM1068. Thank you. [LB226]

SENATOR SULLIVAN: Thank you, Senator Council. Seeing no other senators wishing to speak, Senator Ashford, you're recognized to close on the committee amendments. [LB226]

SENATOR ASHFORD: Thank you, Mr. President. I don't think much more needs to be said. The committee amendments now includes the provisions of Senator Hadley's initiative regarding juveniles at YRTC, and with that, it's up to the body to make its decision and then address LB226. Thanks. [LB226]

SENATOR SULLIVAN: Thank you, Senator Ashford. The question is, shall the committee amendment to LB226 be adopted? All those in favor vote aye; all those opposed vote nay. Have all those voted who wish to? Record, Mr. Clerk. [LB226]

CLERK: 37 ayes, 3 nays on the adoption of committee amendments. [LB226]

SENATOR SULLIVAN: The amendments are adopted. Seeing no other senators wishing to speak on discussion on LB226, Senator Gloor, you're recognized to close. [LB226]

SENATOR GLOOR: Thank you, Madam President and members. We've had a good discussion about this bill. A lot of information passed back and forth, all of which I think is healthy. I may not have been supportive of Senator Hadley's amendment, but I appreciate the thought and passion he put into it and the fact that it generated some additional information sharing. The amendment from the committee is the bill. I think there are some things that we can look at between now and Select File, but I would ask for you to support the bill itself the way you supported the committee amendment. Thank you. [LB226]

SENATOR SULLIVAN: Thank you, Senator Gloor. The question is, the advancement of LB226 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have all those voted who wish to? Record, Mr. Clerk. [LB226]

CLERK: 35 ayes, 5 nays, Madam President, on the advancement of LB226. [LB226]

SENATOR SULLIVAN: The bill advances. Mr. Clerk, items for the record. [LB226]

CLERK: I do, Madam President. Thank you. Your Committee on Enrollment and Review

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reports they have examined and reviewed LB151 and recommended it be placed on Select File, and LB590A, Select File. Business and Labor will have an Executive Session at 1:15 in Room 2022; Business and Labor, 1:15, Room 2022. [LB151 LB590A]

And a priority motion, Madam President. Senator Flood would move to recess the body until 1:30 p.m.

SENATOR SULLIVAN: You've heard the motion to recess until 1:30 this afternoon. All in favor say aye. Opposed. We are recessed.

RECESS

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. Senators, please record your presence. Mr. Clerk, please record.

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

SPEAKER FLOOD: Thank you, Mr. Clerk. Do you have any items for the record?

CLERK: I have no items at this time, Mr. President.

SPEAKER FLOOD: While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR170, LR171, and LR172. Mr. Clerk, we proceed to the first item on the afternoon agenda listed as, "1:30, General File: 2011 Speaker's Major Proposal," that bill being LB397. Before we proceed to LB397...before we begin debate on LB397, Senator Lathrop, it's my understanding...Mr. Clerk, please read the title on LB397. [LR170 LR171 LR172 LB397]

CLERK: Mr. President, LB397 is a bill originally introduced by Senator Lathrop. (Read title.) The bill was introduced on January 13 of this year, at that time referred to the Business and Labor Committee for public hearing. The bill was advanced to General File. I do have committee amendments as well as other amendments to the committee amendments, Mr. President. (AM1116, Legislative Journal page 1095.) [LB397]

SPEAKER FLOOD: Thank you, Mr. Clerk. Senator Lathrop, you're recognized to open on LB397. [LB397]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Good afternoon. It is my distinct pleasure to introduce LB397 and I do that merely representing three of us from this body who have worked diligently on this bill for some time. Senator Ashford

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and Senator Utter have been intimately involved with me in the process of bringing LB397 to the floor today. It is of course day 74 and this will be the first opportunity for LB397 to be introduced which is as it should be. But the history of LB397 goes back a lot further than the beginning of the session even. The history of LB397, and I would like an opportunity to share that with you, the history of LB397 goes back clear into last summer when I was approached by the League of Municipalities and the mayor of our second largest city and asked to look at the CIR process. The request was for reform for changes. When I was approached to look at the CIR, it was not a national issue. Wisconsin had not happened. No one was talking about public employees but the League of Municipalities. And I agreed to sit down with the League of Municipalities and their representatives to talk about their concerns. And I want to share those concerns with you but I'd like to share, before I begin, a little bit of background on the process that we used to bring LB397 before the body today. When I received the list of concerns from the League of Municipalities and their plea for reform, I thought I would go back to a method that we used way back when we worked on embryonic stem cell research, recreational liability, and other things that I've been involved with in my five years here. And I contacted Senator Ashford who is a former member of the CIR and who had an interest in the subject matter, and Senator Utter, and the three of us decided on a process. And that process was going to be three members of the Legislature mediating the concerns of the League of Municipalities with those people who represent collective bargaining. And we brought into the process the League of Municipalities and an attorney who typically represents cities in labor disputes, Bill Harding. He's also chair of the state chamber's labor relations committee. We brought in three lawyers that typically represent employees and we listened to their concerns. The first thing we did was listen to the concerns of the cities. And we deliberately listened to the League of Municipalities because it was not going to be an Omaha bill and it was not going to be a Lincoln bill and it wasn't going to be a Fremont or a Grand Island bill. It was going to be a bill that worked for all the cities across the state, and that requires some synthesizing by the League of Municipalities and they did that during this process. And we began the process with people who understood the issue, people who had an interest in the issue, and people who showed up when we began the process long before it was on the national scene. And we began by listening to their concerns. We didn't go in there with preconceived notions about what the solution should look like but we listened. We listened to the League of Municipalities when they were the only one on the subject. Before schools were there, before counties were there, before the state of Nebraska was there, the League of Municipalities was there and we listened. And I'd like to tell you what their concerns were, and before I do, let me give you just an overview of the CIR, because there are a lot of myths and a lot of misunderstandings. The CIR is a very, very simple process. It is an institution established by the state of Nebraska to determine what average pay is or what the market is for pay for people that work for the cities and counties and the school districts. And we determine the average or arrive at the average by finding comparable employees doing the same kind of work with the same kind of skills in the same kind of situation and we see what the average pay is for

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them. And when the cities or the political subdivisions cannot reach an agreement they turn to the CIR which determines what the market is or what the average pay is for a particular job and they enter an order, and it resolves an impasse and the parties move forward. The concerns the city had with this process and what they wanted to see reformed are these three, primarily. One was predictability. If you look in the statute, you will see--it's in the bill, 48-818--the original language of the CIR bill or the CIR was essentially that you find average pay for the average work in like circumstances and you enter an order, and that isn't a lot of direction from the Legislature. And as a consequence, most of the direction for the CIR has come from the Supreme Court and the Court of Appeals in decided opinions. And it was the considered concern of the cities that the opinions of the Supreme Court were not followed consistently. In other words, in order for them to know what's going to happen at the CIR to negotiate wage cases with their employees, it was necessary that we put more predictability into the process and we would do that by putting into statute the criteria to be used by the CIR. This is not a knock on the CIR, it's the problem with the Legislature not giving them enough direction, and LB397 does that. It provides for the selection of arrays, how we go about finding those comparators that we will compare the wastewater treatment employee to, to determine what the average pay is for that particular job. The cities had a second concern and it was if the CIR process is to take us to what average pay is for a job, their position is and has been that there are distortions in how we get to average. They're not intentional distortions but they're distortions in the judgment of a city as we get to what an average pay is for a job. The distortions come primarily from getting data or comparators outside of the state of Nebraska. So if we compare a firefighter in Lincoln to a firefighter in Minneapolis, is the average pay from that comparator in Minneapolis reflecting what the average pay is for the job or is some of it reflecting a cost of living difference? And that meant we needed to tighten the criteria on what cities and in what metropolitan statistical areas we would compare Nebraska employers to, and LB397 does that. But it goes further than that. If you get a comparison from outside the state of Nebraska, we will going forward under LB397, Nebraska "ties the numbers" is the term I've brought to this process. And that means that we will take the average pay information from a place like Cleveland or Minneapolis if we find ourselves being compared to one of those cities and make sure we've backed out what amounts to the difference in pay that you would attribute to a difference in cost of living. So the target here is, again, to come up with an average pay for a particular job that's free of distortions that come primarily from out-of-state comparators. The cities had a third concern. It is the pension and health insurance benefits. While 48-818, which is the primary directive to the CIR, requires comparisons that include health insurance and include pensions, the practice has been to essentially ignore them and look only at wages. [LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR LATHROP: And the problem for the cities has been that if they make an

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adjustment to the pensions, they don't get credit for it in the process of comparing compensation. So the bill includes a calculation of the hourly rate value of benefits so that we are calculating or comparing our collective bargaining unit, the wastewater treatment guys in Omaha, for example, to the full...the pension, health, and wages to the pension, health, and wages of people who do that type of work in similar situations. That is a significant piece to this bill. To account for and after LB397 is law, there will be public sector employees who are doing better than their array. If we compared them today they might be right on the array, even under it, but after we make these adjustments, the changes to the CIR will... [LB397]

SPEAKER FLOOD: Time, Senator. [LB397]

SENATOR LATHROP: Thank you. [LB397]

SPEAKER FLOOD: Thank you, Senator Lathrop. The first amendment that will be ordered today pursuant to my rule as a Speaker's major proposal is AM1116 which was previously filed as the committee amendment. Mr. Clerk. Senator Lathrop, you're recognized to open on AM1116. [LB397]

SENATOR LATHROP: Thank you, Mr. Speaker. If I can continue with my explanation of how we go to where we're at and what is in the bill. The amendment becomes the bill, and so as my remarks address the contents of LB397, it's in effect AM1116, the amendment that we're on right now. To account for or to address the concerns of public sector employees who essentially found themselves having their...a new set of rules that would lower their pay, we provided for a freeze process. We call it the soft landing. And essentially under the new process, if you find yourself after a comparison under the new rules, and many of the public sector employees across the state will because of the substantial reforms in this bill, to allow them to not take a cut in pay immediately, they will be frozen in their wages for twice as long as it takes for the array or the comparators to catch up with them. Now they can stay frozen in their wages or they can negotiate with the public sector employer for some other change. If they're \$2 an hour higher in their hourly rate value than their counterparts in the array, they can negotiate their health insurance plan, they can negotiate their pension, or they can negotiate their wages, or they can stay frozen. The incentive is there for them to negotiate their pension which is a first. Right now, pensions are a contractual obligation of the political subdivisions and cannot be altered by this body. But we can provide a process and an incentive for the collective bargaining units to come before the cities and the counties across the state and make adjustments to their pensions. As this process drew on, and it went on for seven or eight months, we had other public sector employers that began to express an interest in reforms as well. That included the schools in the state and I'd like to talk about them very briefly. The schools...to address the schools, I met with the School Board Association and the Administrators Association to talk about what they want out of this process. They had a bill in that Senator Larson put in; they recognized

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that it probably wasn't going to move, but they wanted a place at the table and they wanted an opportunity to talk about what they wanted by way of reform. We have tried to accomplish most of what they've wanted. Are they satisfied? Probably not. Are there people that believe that some other changes need to be made relative to the school piece? I expect so. I hear folks who talk about that. Now there's two ways to look at that. We've changed the time line. We've provided for a defense based on inability to pay comparability award coming from the CIR, and we've made other adjustments that the schools could agree upon. There is perhaps more work to do but you might also look at the schools as the situation where the problem is not as acute. They're 43rd in the country, teachers are in the state of Nebraska in pay. And there is...the door is still open. I'm still talking to the schools and the teachers about changes to that piece. Understand, like all the rest of the bill and the amendment, it's not set in stone. And I will...I've said this before and I'll continue to say it that my door is open. Although we're at day 74, the window is starting to close, but I still remain willing to talk to anyone with thoughtful suggestions, and certainly the school administrators and the school board and the teachers have been in my office and we continue to talk and I expect some changes on Select File. The state of Nebraska was a third piece of the puzzle, if you will. Senator Harms put in LB555. That was at the request of the Governor. Essentially they had a list of things that they wanted and they were incorporated into the bill. Let me say that again. LB555, which was put in by Senator Harms at the request of the Governor, was essentially put into LB397 or our amendment. After we completed this process with the cities, the schools, the state of Nebraska, we had to graft in some of our other public sector employees, the counties, the utilities. We've done that as best we can and I think we've done it successfully. This bill enjoys not only the support of the League of Municipalities, it enjoys the support of the counties as well, the Nebraska Association of County Officials, and it includes and incorporated LB555 which was the...essentially the list of the Governor's suggestions. That is the bill. That is the amendment in a big picture sort of way. I'd be happy as the debate proceeds to a drill down into some of the details and answer questions as you may ask them. And I think I'll yield the balance of my time on the opening of AM1116 to Senator Ashford. [LB397 LB555]

SPEAKER FLOOD: Senator Ashford, you are yielded 4 minutes and 31 seconds. [LB397]

SENATOR ASHFORD: Thank you, Mr. Speaker. Several months ago, I believe it was April of last year, Senator Lathrop asked me if I'd be interested in spending my summer and fall working on the CIR issue and I accepted for some reason. But we (laugh)...and it's been a great experience and Senator Lathrop is correct. We have spent a lot of time with Senator Utter and staff and numbers of people thinking about this problem. I have never spent so much time on an issue as I have on this one. It is an extremely complex issue. But let me tell you this, that...a couple of things. When we went before the Omaha Chamber of Commerce a year ago, Steve and I, we went there and told them

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that we intended to address two issues that needed to be addressed. One was the really horrific shortfall in the pensions in the city of Omaha, and we would also address the CIR issues. And the process proceeded from there with the idea that we would solve those problems, that we would bring predictability, as Senator Lathrop has described it, into the CIR process or more predictability into the CIR process so that when public employers sit down and negotiate with public employees that there be a better understanding of where they might in fact come out in the end if the negotiations break down. The key to this part of the challenge is what I call front-loading of the negotiation process. We want the parties to negotiate successfully. We do not want them to go to the CIR or anywhere else. We want the city of Omaha, city of Fremont, state of Nebraska, school districts or whatever to sit down and bargain in good faith and we want them to come to a conclusion that's in the best interest of the taxpayers and the employees of their various jurisdictions. And I believe we've come a long ways towards solving that issue, giving the parties a much clearer picture. And I did serve on the commission and I tried many cases before the Commission of Industrial Relations when it was in fact called a court, and I can tell you that there is so much more predictability today with this bill than there ever was before, that it really is incalculable. This is a massive change in coming up with a predictable result. And in my view, in most cases you're going to get a negotiated settlement. And so that saves money, saves time, and increases local control because in fact the local governing bodies are engaged in the process and that's the way it should be. Secondarily, the crisis in Omaha, and it applies a little bit across the state but clearly in Omaha was the...and I've talked about it before, is the deficit in the pensions that are of long duration that we felt we needed to solve that problem. And I think I've drove Steve--I'm sure I did--Senator Lathrop crazy continuously saying how are we going to solve this problem with the pensions. And one day he said, well, I've got it and it's the hourly rate value. And that's really how it happened. He came in with the solution. [LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR ASHFORD: And he said we're going to take pensions and we're going to take insurance and we're going to calculate wages by determining what the hourly rate value of all the fringe benefits and the wages are. Folks, that has never happened in the 50 years of the CIR. Never. This is a dramatic and massive change in how we go about determining wages of public employees. It will make a significant difference both in the negotiations process and it will make a significant difference if cases do go to the CIR in bringing moderation to this process. This is a good thing. Just because Nebraska is the only place with a CIR does not make it bad. We're the only place with a Unicameral Legislature as well. We have a system that works and it's going to work a lot better and with a lot more certainty and quicker and more efficiently if we can pass LB397. Thank you, Mr. Speaker. [LB397]

SPEAKER FLOOD: Thank you, Senator Ashford, Senator Lathrop. (Visitors introduced.)

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Mr. Clerk, I understand there's an amendment indicating...a senator indicates he wants to withdraw it. [LB397]

CLERK: I do. Senator Lathrop, I believe. I have a note, Senator, you want to withdraw AM1125 which was an amendment to the committee amendments. [LB397]

SENATOR LATHROP: That's true. [LB397]

SPEAKER FLOOD: AM1125 is withdrawn. I hereby order AM1383 as the next amendment. It is an amendment to the committee amendment. Mr. Clerk. [LB397]

CLERK: I do, Mr. President. Senator Lathrop would move to amend the committee amendments with AM1383. (Legislative Journal page 1421.) [LB397]

SPEAKER FLOOD: Senator Lathrop, you're recognized to open on AM1383 to AM1116. [LB397]

SENATOR LATHROP: Thank you, Mr. President and colleagues. This would be one of the cleanup amendments, if you will. We had, after we moved LB397 from committee and the committee amendment, we held a second public hearing, a bit unusual. I would like for it to have been longer. I would like to have had an opportunity to hear from every single person in the room. We couldn't. But we heard from a lot of people and we heard a lot of concerns, and I have, as has my legal counsel, listened to a lot of concerns from different political subdivisions. And AM1383 to AM1116 is what I would call an amendment with accommodations and cleanup. Let me go through what AM1383 does. There was a concern expressed by businesses that they were going to have their records subpoenaed and that the materials, the information regarding what they pay people and how they compensate folks in their business, would be in the public domain. We have made an amendment to provide that subpoenaed materials will go to the commission and the commission will share that with the parties with a protection order. In other words, the commission will send it out and say: You can not share this with anybody, it cannot be used for any other purpose, and if it is to be used as evidence in a trial before the CIR, the identity and the information contained in there will be protected so that we are not sharing the information of any particular employer in the public domain. We also had a change that goes in the area of drafting fixes on the description of the actuaries that are involved in this process of evaluating pension benefits. They will be actuaries holding a current membership in the American Academy of Actuaries. The counties had a concern regarding status quo orders. If you are litigating before the CIR, under what circumstances can you the county, or you the city, make a change in your personnel without offending a provision of the statute that says, once you go to the CIR, you can't cause problems for your employees? So we've made an accommodation to the counties and that's a significant change in the bill as well. We also had a significant concern and I want to address this one regarding staffing issues. The CIR

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issued an order just a few months ago regarding staffing. And while we were negotiating, the parties agreed to try to reduce that staffing language to a statute so that we don't have the uncertainty that's attendant with getting our law from the appellate courts. That's what we attempted to do. That language has changed a couple of times. We now have it applicable to the municipalities, municipally owned utilities, and counties. I remain open to accommodation to those who want it in or out for a variety of reasons. We have language that allows the parties to stipulate to the size of the array or having anybody in the array. Omaha may not be compared to Lincoln but Lincoln and their public employees may agree to include Omaha, so that's an accommodation as well. You may now, with this amendment, use more than one employer in the subject employers metropolitan statistical area. That was a concern and an accommodation. For out-of-state utilities, the appropriate measure is the number of meters served. That was an accommodation to I think primarily the city of Lincoln electric or some of the outstate electric people. And then finally the freeze that I talked about earlier, the soft landing only applies to wages and that seems to be something that's universally agreed upon. Let me suggest something to you about AM1383 in a bigger picture sense. It represents my promise to those who came before the committee, to those who have an interest in this subject matter, that my door remains open. These are accommodations made. They do not have to be the last accommodations made. We remain willing to speak to the thoughtful who come to the committee with suggestions and concerns, and that's my promise until this bill passes on Final Reading. Those are the amendments, an explanation of the amendments. I appreciate your support and I will...because Senator Utter has been intimately involved in our process, I'm going to share the balance of my time with Senator Utter. [LB397]

SPEAKER FLOOD: Senator Utter, you have 5 minutes 2 seconds. [LB397]

SENATOR UTTER: Thank you very much, Mr. President. Good afternoon, colleagues. First of all, I want to give a great deal of credit to Senator Lathrop and Senator Ashford for all of the time and effort that they put in, in bringing this to its present state. It's been a tiring process and I know that Senator Lathrop has worked almost full time on it in his office not only dealing with the League portion but also dealing with the other portions of the bill, and he has my sincere thanks for that. I want to start out by saying that initially I supported abolishing the CIR. When people came to me with complaints about the CIR and how it wasn't working, I said, well, if it isn't working, let's do away with it. However after further research and consideration I discovered that there would be no process for impasse resolution between public employers and public employees in Nebraska. Although political subdivisions are currently exempt from the National Labor Relations Board, we certainly do not ever want our political subdivisions to be subject to the NLRB if Congress decided to remove that exemption for those states that have no impasse resolution process like the CIR. They don't do anything better in Washington, D.C., than we do here in Nebraska. As someone who supports efficient and fiscally responsible government, I think we need to resolve these issues here at home. I believe that

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Nebraska public employees should not be the lowest paid in our state with inadequate benefits nor should they be the highest paid with the best benefits. Wages and benefits combined into a total compensation package should be fair and reasonable. This CIR reform legislation is not a condemnation of collective bargaining for public employees nor is it an endorsement of collective bargaining. This CIR reform legislation will create clear definitions and rules that the CIR must follow which will result in consistent decisions and predictable outcomes. These proposed changes are significant, meaningful, and comprehensive, in my opinion. LB397 makes the following significant improvements to the CIR and Senator Lathrop has talked about those. But it clearly defines the rules that the CIR operates under. It requires Nebraska job matches and Nebraska comparisons. It provides for public-private job comparisons. It reduces salary, health insurance, and pensions to an hourly rate value for comparison purposes, comparing the total salary package. It provides for an economic variable adjustment if an out-of-state comparison is necessary to adjust for cost-of-living factors. These key improvements will increase the predictability of decisions, they will reduce the necessity to take disputes to the CIR, therefore reducing costs to governmental units and taxpayers. This will level the playing field between public employees and public employers. Since its inception a half century ago, the CIR has seen minor changes and has continued to be costly,... [LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR UTTER: ...inconsistent, and an unpredictable system for the state and public entities in Nebraska. I attribute this problem to the lack of rules that the CIR was required to follow. While it is important to retain an institution to settle labor disputes, it is obvious this antiquated system needs reform. I believe LB397 with its amendments, significantly, meaningfully, and comprehensively reforms the CIR, and I ask that you vote for the bill and AM1116. Thank you, Mr. President. [LB397]

SPEAKER FLOOD: Thank you, Senator Utter. Members, you've heard the opening to AM1383 to AM1116. We now turn to discussion. Senators Fulton, McCoy, Nelson, Bloomfield, Brasch, Larson, Schilz, Hansen, Price, Christensen, and others. Senator Fulton, you are recognized. [LB397]

SENATOR FULTON: Thank you, Mr. President, members of the body. First, I would, if I can, like to set a tone for our debate this afternoon. Thus far we have heard from proponents of the bill. There are opponents to this bill as well, I being one of them. But I hope we're able to engage in this debate reasonably and rationally. Nebraska is watching, of this I am convinced. The CIR has risen from a not...from an unknown acronym to an acronym by which everyone automatically I think identifies turmoil. That doesn't have to be the case. So I want to communicate to the body that this should be an informed and reasonable debate because all 49 senators in here, all 49 senators in this body will need to come to some understanding of that which we will vote for

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because I can guarantee you the people of Nebraska are watching. That being said, I express my respect for Senator Lathrop and his working group. I have been involved with this for some time also and I can understand that there are...this is hard work. And so I do not want to let my opposition be construed as showing a lack of appreciation for his hard work. Senator Lathrop opened and in part of his opening he indicated that those who were at the table included those people who had an interest in the CIR. And while that is true logically it is not true in its most certain form because there were individuals who have an interest in the CIR who were not party to this working group. I was one; there are others. And so we'll see differing opinions brought up today. But it's important to recognize that this has been something contemplated by many groups. Indeed, it was about this time two years ago when I became convinced that the CIR was in need of reform, two years ago. I brought forward last year three bills which to varying degrees brought reform to the CIR. This was, as Senator Lathrop mentioned, well before this issue became one of national import. Those bills did not make it out here to the floor. Indeed, I was disappointed because those bills did not receive a vote. And that is one of the reasons why I continued to pursue this over the course of last summer. No one could have envisioned what would come to pass in states like Wisconsin and Ohio and now indeed all across our country. But for some time there has been interest in the CIR, for on day one when I came to this body I received contacts from elected officials, from taxpayer groups, from citizens calling for reform of the CIR. Now a little bit of history: 1947--1947--is when the CIR came to exist statutorily in this great state. It was in 1969 that the CIR took under its purview all--all--public sector employees. [LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR FULTON: It's instructive how that came to pass. It was on a Select File amendment, it was on a Select File amendment that this occurred. I suspect that could be one of the reasons why the CIR is not so well understood by Nebraskans because the process, which is afforded to the second house, was not entirely followed. I think within the rules it was followed, but you have been here now for some time, all of us. Select File amendments tend to move very quickly and this was no exception. When I have more time, I will address this. There are very good things in AM1116. But ultimately I am opposed to both amendments because in my view I believe it makes the situation worse, worse for taxpayers and I think worse as a means of public policy. And I believe I'm running out of time here. I will touch on these reasons as we engage in this debate. [LB397]

SPEAKER FLOOD: Time, Senator. [LB397]

SENATOR FULTON: Thank you, Mr. President. [LB397]

SPEAKER FLOOD: Thank you, Senator Fulton. Senator McCoy, you are recognized. [LB397]

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SENATOR McCOY: Thank you, Mr. President and members. I have a great number of questions on AM1383 and AM1116 that I hope to receive some answers to this afternoon. But before I get to that I would like to yield a portion of my time to Senator Janssen if I could please. [LB397]

SPEAKER FLOOD: Senator Janssen, 4 minutes 30 seconds. [LB397]

SENATOR JANSSEN: Thank you, Senator McCoy, members. I, too, rise in opposition to the amendment, AM1116, and the underlying amendments for much the same reasons that will be laid out in front of you by Senator Fulton and Senator McCoy. Senator McCoy has just distributed a letter that I had received in my office and forwarded to him. I think most of you should have it now, and I wanted to read that. As I drove home last night, I got a call from the mayor of Fremont, Mayor Getzschman, sounding very urgent that he wanted to speak to me before we went into session tomorrow and in relation to the CIR and LB397. We made that arrangement. It was 9:00 last evening and spent a couple of hours together going over this and had also talked to previously the city attorney and administrator of Fremont who I'd never met before but immediately before we talked about anything just directly went into the opposition that he and they had for LB397. And when I brought up that, you know, they were being negotiated, this has been negotiated, they spent a lot of time working on this, have you read it, yes, he's read it, he said that him and other cities were very opposed to this and they wanted to go on record with this. And he asked me...and just got this to me at 1:30 this afternoon, so I'm going to read the letter that they sent to me: Senator Janssen, the quad cities of Grand Island, Hastings, Kearney, and North Platte and the cities of Fremont, Holdrege, and Lexington have formed a coalition to ask your leadership to truly reform the Commission of Industrial Relations and the laws of comparability. The 64-page legislation that resulted from the League of Municipalities' negotiations and collective bargaining interests does not reflect our involvement. While we appreciate the efforts of those who work to propose legislation, it falls short. It is even more complex to understand, more difficult to implement at the local level, and does not control the majority of the costs facing our cities today. As Fremont Mayor Scott Getzschman stated in a letter to Governor Heineman, quote, LB397 in its current form does not allow local governments to control the cost of government and, thus, I do not support it in its current form. It is our view if approved it will actually strengthen collective bargaining for public employees in our state and make it even more difficult to affordably manage and budget and serve taxpayers. Enclosed you will find what we all agree are essential amendments to our knowledge. They are not in the proposed language before you. Yet each will strengthen local control and slow work force related cost increases that otherwise cities cannot afford. We respectfully ask on behalf of the unified effort from seven Nebraska cities voicing its objections to legislation before you that you amend the legislation and develop sound, common-sense public policy that can be better implemented locally, the front line of taxpayer service. Without these amendments, we

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ask that you stand with us and do not advance or support legislation that does not serve our cities well or best serve the entire state of Nebraska. Respectfully signed by...
[LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR JANSSEN: Thank you, Mr. President...respectfully signed by Mayor Jay Vavricek, Grand Island; Mayor Marc Kaschke, North Platte; Mayor Vern Powers, Hastings; Mayor Scott Getzschman, Fremont; Mayor Stanley Clouse, Kearney; Mayor Rick Jeffrey, Holdrege; Mayor John Fagot, city of Lexington. For those reasons I also would oppose LB397 and looking forward to the debate and working towards some meaningful solutions. I did talk to the mayor this morning and the city administrator. They were looking over some amendments coming down the pipe, AM1379 being one of them which I think they're more supportive of. I have not got their unified support on that yet, but I think they'd be much more supportive of that. And I look forward to debate and, again, thank Senator McCoy for his time so I could get that message out. [LB397]

SPEAKER FLOOD: Time. Senator Nelson, you are recognized. [LB397]

SENATOR NELSON: Thank you, Mr. President and members of the body. First of all, I want to commend Senator Lathrop and his committee on the great amount of time that they have put in on this, and working on Appropriations, I can appreciate that. Senator Lathrop has said he would never become a members of Appropriations, but he had his work cut out for him on this. I want to thank Senator Janssen for bringing that letter which I just read for the first time as he was reading it. Senator Utter said that the bill as it stands now--and let me say that I stand in opposition to AM1383 and to AM1116--will actually strengthen collective bargaining for public employees in our state and even make it more difficult to affordably manage a budget and serve taxpayers. Senator Utter in his remarks said that this was not an endorsement of collective bargaining, but it would appear to me from what has been said that we are actually furthering collective bargaining here when it's already pretty strong in the state of Nebraska. As has been said, there were a number of bills that were introduced, only one of them made it out of committee. But two of my bills, LB664 in particular, would have done away with collective bargaining. We're not here to talk about that today. We're not here to talk about the possibility that maybe in an amendment or a resolution form to our constitution that that issue may be decided. We're here today to talk about LB397 and the amendments. Senator Lathrop said that it's really very simple; the CIR is really very simple. It may be simple in concept but the devil is in the details. And it's the details of the CIR and the way they work and how they have functioned in the past and how they would continue to function under this bill, that's where the problem is. It's really much more complex than it being a simple matter. And it appears to me in reading the amendments here that have been proposed that it doesn't simplify anything. There is an attempt to it and, yes, there are some things that I would have to agree probably do

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make it a little more understandable. But by and large it seems to me that the CIR is going to continue to operate under the same rules that it has in the past whether they were written or just a matter of policy on the part of the CIR. And we can tell from the concern of the cities, initially perhaps with the League of Municipalities but now as we see another part of the cities and municipalities in the state of Nebraska, that there's still a great deal of concern. Apparently we have a long ways to go here in trying to arrive at a satisfactory solution that will give the cities and municipalities and other governmental entities that have public employees of course a better way to manage their budget. If I could ask Senator Lathrop a question with regard to AM1383? [LB397 LB664]

SPEAKER FLOOD: Senator Lathrop, will you yield to a question from Senator Nelson? [LB397]

SENATOR LATHROP: Yes, I will. [LB397]

SENATOR NELSON: Thank you, Senator Lathrop. I'm looking at the first page of AM1383, and down there on line 15 we're talking about subpoena powers, and it refers to (2)... [LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR NELSON: ...of Section 48-818. Well, when I looked for that in AM1116, that (2) has been stricken, and so it leaves me in a quandary as to what we're referring to there. And maybe in the brief time we have you can explain the reference there and what we ought to look to as the authority here for the subpoena power. And... [LB397]

SENATOR LATHROP: You're asking me... [LB397]

SENATOR NELSON: ...I think you will see on page 2 of the amendment...18, on page 17 strike lines 20 through 27. Well, that strikes (2) unless the renumbering...this has been caused by some renumbering. And if you don't have the answer now... [LB397]

SENATOR LATHROP: I'm on page 2 of the amendment. What line are you on, Senator Nelson? [LB397]

SENATOR NELSON: On page 1... [LB397]

SENATOR LATHROP: Page 1... [LB397]

SENATOR NELSON: ...line 16 where it refers to (2), Section 48-818. So perhaps you might... [LB397]

SPEAKER FLOOD: Time. [LB397]

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SENATOR NELSON: ...want to take a look at that... [LB397]

SPEAKER FLOOD: Time. [LB397]

SENATOR NELSON: ...at a later time. We could get that figured out. [LB397]

SPEAKER FLOOD: Thank you, Senators. Senator Bloomfield, you are recognized. [LB397]

SENATOR BLOOMFIELD: Thank you, Mr. President. This is one of those issues where I've got a lot of learning to do. People tell me I sit here and listen more than I do anything else and I'm going to be doing that again. There is an area that I do have a question in and I'm hoping Senator Lathrop will be able to answer that. [LB397]

SENATOR LATHROP: I'd be happy... [LB397]

SPEAKER FLOOD: Senator Lathrop, will you yield to a question from Senator Bloomfield? [LB397]

SENATOR LATHROP: I'd be happy to. [LB397]

SENATOR BLOOMFIELD: Thank you, Senator Lathrop. Going a little bit different direction than we're headed here right now it looks like, I had a question with the arrays on schools. [LB397]

SENATOR LATHROP: Yes, sir. [LB397]

SENATOR BLOOMFIELD: Our little schools up there, towns that a lot of you people have never heard of, Allen, Wakefield, Winside, as I understand this array, as they go out they end up eventually being tied in with schools like Omaha because there aren't enough small schools within the range to cover that. Is that addressed anywhere in here or am I mistaken in my thinking? [LB397]

SENATOR LATHROP: Yeah. It's not...when it comes to school I believe that the arrays are...the idea...and we addressed that for the cities, for the school districts it was already well managed I believe. You should not have Winside, which I've been through and some of the towns that you've just mentioned I've actually been up there and met clients, so I know the towns that you speak of. I will say that it's based on enrollment so you're not going to end up having Winside compared to OPS, sir, because they don't have the same enrollment or the same type of enrollment. Now typically what you will have when you develop an array for a school district is you will find school districts with like-sized enrollments so that the conditions of employment, the job match

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piece...there's two pieces to this, a job match, you've got to be doing the same work, and the conditions of employment, you're teaching in the similar type of environment. So the school districts are typically compared or clustered for comparison purposes based on enrollment. [LB397]

SENATOR BLOOMFIELD: I understand that but my school boards tell me that given the size of those schools as they go out they are compared to a little bit bigger school which is compared to a little bit bigger school and it's a stepladder approach and they end up... [LB397]

SENATOR LATHROP: I've heard a lot of concerns, fair concerns about how the schools operate, having sort of a this one is here and eventually there's some influence from an Omaha. I've not heard that one before. And I suspect that if we looked at what the array is for your school district, it's also in the array for the...your school district is in the array for the same people. So I'm not sure that they get the influence from a larger city like as has been expressed, but I'm willing to listen certainly. [LB397]

SENATOR BLOOMFIELD: Okay. Thank you, Senator Lathrop. I'd yield the rest of my time to Senator Fulton. [LB397]

SENATOR SULLIVAN PRESIDING

SENATOR SULLIVAN: Thank you, Senator Bloomfield. Senator Fulton, you have 3 minutes and 5 seconds. [LB397]

SENATOR FULTON: Okay. Thank you, Madam President. Thank you, Senator Bloomfield. I'm going to close this up and then if I have some more time I'll continue. It was LB15 back in 1969, it was introduced and there were some interesting comments made. But if you go back and look into the record, on Select File LB15 was amended and I'm going to put some of this back into the record because we're talking 1969. I wasn't even here. Many of us were not even existent at this time. This is a generational issue we're dealing with. Very briefly...this is a Senator Pedersen on LB15 on Select File: Very briefly it places under the Court of Industrial Relations governmental employees, those employees engaged in governmental service. It is not limited just to those engaged in proprietary services. He goes on and concludes that finally the court has been able to if a matter would come to it would be able to establish rates of pay if there is a dispute. The way it has been in the past, the language has been so strict and very much confused by the court that it has not been able to correctly apply that provision of the law. This will give them the opportunity to set a rate if there's a matter of dispute that cannot be resolved. After Senator Pedersen ended on Select File in 1969, the president asked: Is there objection to the adoption of the Pedersen amendment to LB15? Seeing none, so ordered. And the amendment is adopted. That is how we have the CIR today. I'm pleased that we're having this debate but do not believe that the CIR

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came with great reflection when it came to this state. It did not. I'm reading right out of the record. Okay. I mentioned that I believe this makes things worse. Would Senator Lathrop yield to a question? [LB397]

SENATOR SULLIVAN: Senator Lathrop, would you yield? [LB397]

SENATOR LATHROP: Yes. [LB397]

SENATOR SULLIVAN: And you have 1 minute. [LB397]

SENATOR FULTON: Thank you, Madam President. Senator, on AM1116 what I'm going to do is there are issues that I have with the bill and I'm going to bring them forward and just ask you questions. We're on AM1116, page 24. [LB397]

SENATOR LATHROP: I'm on page 24. [LB397]

SENATOR FULTON: Okay. Beginning in line 9, "The commission, with the consent of the parties to the dispute, and in the presence of the parties to the dispute, may contact an individual employed by an employer under consideration as an array member by telephone to inquire as to the nature or value of a working condition, wage, or benefit provided by that particular employer." This is public or private sector employers. Is that correct? [LB397]

SENATOR LATHROP: I don't...I imagine yeah, if they're a comparator, sure. [LB397]

SENATOR FULTON: Okay. I believe that's the case. So my question is, what... [LB397]

SENATOR SULLIVAN: Time, Senators. [LB397]

SENATOR FULTON: Thank you, Madam President. [LB397]

SENATOR SULLIVAN: Mr. Clerk, items for the record. [LB397]

CLERK: I do, Madam President, thank you. A hearing notice from the Judiciary regarding a confirmation hearing. Committee reports: Business and Labor reports LB564 as indefinitely postponed, that signed by Senator Lathrop; and Judiciary reports LB521 to General File with amendments, that signed by Senator Ashford. (Legislative Journal pages 1433-1434.) That's all that I have, Madam President. [LB564 LB521]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Thank you, Mr. Clerk. Continuing with discussion. Senator Brasch, you are recognized. [LB397]

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SENATOR BRASCH: Thank you, Speaker. Thank you, body. I would like to yield my time to Senator Fulton. [LB397]

SPEAKER FLOOD: Senator Fulton, 4 minutes 52 seconds. [LB397]

SENATOR FULTON: Thank you, Mr. President. Thank you, Senator Brasch. Would Senator Lathrop yield again? [LB397]

SPEAKER FLOOD: Senator Lathrop, will you yield to a question from Senator Fulton? [LB397]

SENATOR LATHROP: Yes, I would. [LB397]

SENATOR FULTON: Okay. Perhaps you've been able to get a response. This section, page 24, lines 9 through... [LB397]

SENATOR LATHROP: Oh, I'd be happy to give you a response on why that language is there if that's the question. [LB397]

SENATOR FULTON: Well, I guess first of all, does it include public and private employers? [LB397]

SENATOR LATHROP: The bill now includes public and private employers and there's no reason that it would not include... [LB397]

SENATOR FULTON: Okay. [LB397]

SENATOR LATHROP: ...public and private employers. [LB397]

SENATOR FULTON: Okay. So I guess my question is and I...the question is... [LB397]

SENATOR LATHROP: It really...I will say this that the idea behind this provisions, Senator Fulton, was that the cost of the CIR was difficult for the cities and for the people that use it. And if you have a fire department in Cleveland, right now the rules require that you send your expert witness to Cleveland to watch what they do around the fire station, and now we can call them on the phone and say: hey, listen, do you guys do CPR? And we've just saved the cost of the proceeding... [LB397]

SENATOR FULTON: Understood. [LB397]

SENATOR LATHROP: ...a good deal of money. [LB397]

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SENATOR FULTON: Yeah. I understand that that's the intention that's put forward and I understand why this exists. One of many concerns I have within the bill is our best-laid intentions have consequences which we may not have envisioned. And so the question that I'll ask here is what if a private employer, say in Lincoln it's Ameritas or in Omaha it's Union Pacific, an employee...no, actually it's a person employed by that employer, what if that person employed does not want to be receiving calls from the CIR? Does he or she have a means of recourse? [LB397]

SENATOR LATHROP: I have to tell you that this is going to be at a point where they're in the array. Okay. They're already in the process. And... [LB397]

SENATOR FULTON: Well, Senator, it's under...actually the language is I believe under consideration for the array, I could be in error but...yeah. This is line 11: "contact an individual employed by an employer under consideration as an array member." And an array member comes under consideration by the volition of one of the parties, and so I don't believe that's correct what you state. This would be an employer under consideration. And so the question is, if a person employed by that employer does not wish to be receiving telephone calls about his or her job by the CIR, what means of recourse exists? [LB397]

SENATOR LATHROP: I suppose they can tell the Commission of Industrial Relations they don't want to talk about it because they're not going to be held in contempt for not taking a phone call from the commissioner. And, remember, it's happening by the commissioner in the presence of the parties. [LB397]

SENATOR FULTON: Okay. Okay. Thank you, Senator Lathrop. This is an area which...and I'll just share with you the story. When this amendment came out, AM1116, there was a news conference and it was announced, and I was able to apprehend that there is an amendment which we could lay eyes on. And I did get a copy of the amendment. I believe I actually got it from Senator Lathrop's office. And that weekend--it was a nice weekend too--I was at my library reading through this and this was one that jumped out at me. You see, we are going to have to present that which we pass into law to our constituents. We are not deciding this in a vacuum. We 49 represent nearly 1.8 million Nebraskans and we're going to have to sell to the second house of our... [LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR FULTON: ...Legislature. [LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR FULTON: Thank you. Mr. President...that which we pass is good for them.

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And as I'm reading this, I'm not a lawyer. I'm I think common and average, probably like most of us here. As I read this, it seems to me that we are extending powers to the CIR which may be well-intentioned and they are well-intentioned I think. It is expensive to get on a plane, go to Cleveland, and ask around about, you know, what's going on in one person's job. But as we've seen over and over and over, the best-laid plans of mice and men so oft go awry. Good intention does not make good policy. I hear the words "big brother" when I hear this and we are going to have to sell this to the people. This is one of those issues I ask you to contemplate, to think about. There are more. Thank you, Mr. President. [LB397]

SPEAKER FLOOD: Thank you, Senator Fulton. Senator Larson, you are recognized. [LB397]

SENATOR LARSON: Thank you, Mr. President and members of the body. I'd also like to thank Senator Lathrop and the Business and Labor Committee for the hard work and diligence they've shown to the issue. And I did bring a bill this year relating to the CIR and focusing mainly on school districts and the problem that school districts have with it, especially in rural Nebraska where I represent. So a lot of my discussion on this topic will focus around school districts. And with that, I'd have a question for Senator Lathrop if he'd yield. [LB397]

SPEAKER FLOOD: Senator Lathrop, will you yield to a question from Senator Larson? [LB397]

SENATOR LATHROP: I'd be happy to. [LB397]

SENATOR LARSON: Thank you, Senator Lathrop. AM1116 requires that negotiations begin on or before November 1 and that the parties meet at least four times to negotiate. And AM1116 also requires that if an agreement is not reached on or before the following February 8, the party shall submit a mandatory mediation or fact finding as ordered by the commission. Can you explain the justification for settling on the specific dates and the time line? Why February 8? [LB397]

SENATOR LATHROP: I'd be happy to. And I appreciate the question, a point of clarification for everyone else that's listening. What you're asking is a time line that's been put in the bill that deals with teachers, and there is a specific time line and there's a good reason for it. If you are the public school system in Scottsbluff, you want to know what your labor costs are going to look like going into the next year. And to this point in time, and it's certainly a fair criticism by the school administrators, Senator Larson, is that they can literally find themselves in the CIR getting a decision in April for what they should have paid the teachers during the course of the year that's already gone by. And now they're writing a check to people they owed money to going back to the first of the year and it's now the end of the year and it's difficult to raise the revenue, make the

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cuts. So the school boards and the school administrators wanted this piece in there. And it provides them with labor cost data before they make their budget for the year. So what we're going to do is resolve...before the academic year, we are going to resolve what the teachers are going to get paid. And then our friends on the school boards across the state and the school administrators can make a proper budget, decide what they have to do, and make informed decisions with their budgets in advance of a year and not half way through it. [LB397]

SENATOR LARSON: Okay. And the requiring of four negotiating meetings, why four? [LB397]

SENATOR LATHROP: I think that was just the expectation that that's what it would take in most instances but you certainly don't have to...if you can get it done on your first time, you don't need to show up three more times. [LB397]

SENATOR LARSON: Okay. Thank you, and I guess I'll continue on a line of questioning. You know, I guess my next question is, is it the goal of this reform to bring things such as cost savings to the public sector or your goal to bring cost savings to the public sector while at the same time offering employees a reasonable way to collectively bargain? Is that kind of the...? [LB397]

SENATOR LATHROP: My goal honestly, the goal of the Ashford and Lathrop and Utter was to listen to the concerns of the public sector employers, listen to what they wanted by way of reform and make every attempt to accommodate them, and I think we've done that. [LB397]

SENATOR LARSON: All right. And I'm again going to stay on schools through most of the debate. In your estimation, what are the expected benefits...or what expected benefits are going to arise from offering tenure to teachers after only one year of teaching? And are there cost savings associated with this compared to our current system? Because to me I don't really see the cost savings in that when we're looking at the educational system by allowing tenure at an earlier time. [LB397]

SENATOR LATHROP: Not everything...there's a lot of cost savings in here, Senator. [LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR LATHROP: Did you say one minute, Chair? Okay. There's a lot of cost savings in here, Senator. Not every piece is a cost-saving piece. You talk about tenure and you talk about incentive pay for teachers to get them into small communities like some you represent when they're difficult topics or difficult subject matters to get the teachers there. Some of that isn't cost savings, but it's good policy and it belongs in a

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bill. And we direct that you're going to talk about this stuff so that when those small communities you represent want to get a physics teacher out there and they can't find one, they'll now have the tools in the tool bag, if we can borrow that phrase again or wear it out, to bring somebody or induce somebody to come to one of your small towns and teach physics and teach some of those hard-to-fill subject matter out in greater Nebraska primarily. [LB397]

SPEAKER FLOOD: Time, Senators. Thank you. Senator Schilz, you are recognized. [LB397]

SENATOR SCHILZ: Thank you, Mr. President, members of the body. Here we are. LB397. Of course having served on the Business and Labor Committee in years past but not this year I understand a little bit of the issues that we're talking about. I understand the difficulty that it takes to bring all the parties together. I really would like to commend Senator Lathrop and Senator Ashford and Senator Utter and everyone that worked on this to try to bring us to some conclusion and a solution that will work. And as I've looked at this and as I look at what I can support going forward, I've just jotted down a few things here and this is more to keep my mind in order as anything else but I thought it might be helpful to just try to simplify as much as possible. Obviously when we talk about the public employees, we're talking about dealing with taxpayer dollars and the fine line that we have to run in making sure that those folks that are elected have the ability to control, the responsibility to control, and the accountability to do what they need to do. It's important that we keep that in mind, but it's also important that we look at reform, real reform, that it does a few things. First of all, I think that real reform in this instance simplifies and makes the process more transparent. I think that's important. I think that as things become more complex, they become harder to deal with and they become more of an issue as you try to come to real solutions. Does it provide consistency across the board or does every interest that's out there have a little different way of doing it or maybe in some cases a much different way of doing things? Does it help to retain costs to these political subdivisions? I think that as you look at what's gone on around the country, I believe that this is a major issue and one that needs to be handled in order for everyone to support what goes forward. It does us no good to have collective bargaining agreements that neither the political subdivisions can afford nor over time can the union maintain...or can the unions maintain that increases in salaries, increases in benefits continue to work to make everything whole basically. And as I look at that with all the myriad issues that are involved in LB397, those are the points that I'm looking at and those are the points that I hope through our debate and through our questions and through our dialogue that we can answer going forward today. As I think we've seen already, there's many questions into what's been introduced here today and what has been brought to the floor. So I'm hoping that everyone will listen intently. I'm hoping that people who have questions will stand up and ask them. And then I'm hoping that we can find common ground to make sure that we can actually move a bill forward that does what we all know needs to happen, and that's reform the CIR. And with that, I

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would...if Senator Fulton would like, I would give him the rest of my time. Thank you.
[LB397]

SPEAKER FLOOD: Senator Fulton, 57 seconds. [LB397]

SENATOR FULTON: Thank you, Mr. President. Thank you, Senator Schilz. Along the lines of unintended consequence, there is a provision within existing statute which I think many people may not be aware of and that is that the CIR has the power of subpoena. That exists today. It's not something new contemplated in Senator Lathrop's amendments nor the Business and Labor Committee amendments nor in the amendment that I have coming. Subpoena power. Now we have for a long time, and one of the things I introduced in my bills last year was that we should be able to compare public and private employers. That stands to reason. When you recognize that subpoena power exists for the public employers and if we're going to now include private employers, that power of subpoena exists such that it can be utilized on private employers. Now I'm running out of time here. [LB397]

SPEAKER FLOOD: Time, Senator. [LB397]

SENATOR FULTON: Thank you, Mr. President. [LB397]

SPEAKER FLOOD: Thank you, Senator Fulton. Senator Hansen, you are recognized.
[LB397]

SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. Senator Nelson was in a conversation with a list of questions. I was interested in hearing some of that, so I would yield the rest of my time to Senator Nelson. [LB397]

SPEAKER FLOOD: Senator Nelson, you have 4 minutes 44 seconds. [LB397]

SENATOR NELSON: Thank you, Mr. President. Thank you, Senator Hansen. If Senator Lathrop will yield to some... [LB397]

SPEAKER FLOOD: Senator Lathrop, will you yield to a question from Senator Nelson?
[LB397]

SENATOR LATHROP: Yes, I will. [LB397]

SENATOR NELSON: Thank you, Senator Lathrop. Let me mention you were good enough to come over and explain my dilemma here. Later on in AM1383 you changed the numbers of sections from 3 to 2 and that takes me to 48-818(2) which runs on for pages and pages and pages and I still haven't found the authority. But I'm going to assume that the authority is there because on the basis of Senator Fulton's questions

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the commission obviously does have subpoena power. Now you're making some changes here via the amendment. But let me ask you on the subpoena powers, under the...and they do have subpoena powers now, right? [LB397]

SENATOR LATHROP: That's my understanding. Yes, sir. [LB397]

SENATOR NELSON: Are they exercised very often? [LB397]

SENATOR LATHROP: I believe they are. [LB397]

SENATOR NELSON: Okay. Well then under that power, what information could a private business be compelled to hand over and would that information be made public? [LB397]

SENATOR LATHROP: Well, that's what AM1383 does, Senator Nelson, and that is if...let me walk you through a scenario... [LB397]

SENATOR NELSON: Sure. [LB397]

SENATOR LATHROP: ...and maybe that will afford you some answers. Let's say that you are in Lincoln and you're trying to find out what an administrative assistant...what the average pay is. Remember, we're looking for the average pay for employees in the public sector--no more, no less. To find out what the average pay is in the private sector we'd have to send out a subpoena. And what they're looking for with that subpoena, and let's say there's some insurance company that meets the bill, and I don't know that that's who it would be but that's a logical place, a lot of administrative assistants there probably, it goes to the insurance company. The first thing we want to know is the job match. Are they doing the same kind of work? Okay. So the first thing we'd be asking them is, what do your administrative assistants do and will you send us that information? That then comes to the court or the commission. The commission then sends it out to the city of Lincoln and to the collective bargaining unit, the administrative assistants' collective bargaining unit if there is such a thing. It also goes to them with an order that says you...this is a directive for the CIR, here is subpoenaed material, you may not disclose this or use it for any other purpose, and if you're going to use it as evidence, we're going to have a further protection order to make sure that we're not laying into the public domain information derived from one of the private employers. [LB397]

SENATOR NELSON: So you feel that this protective order is necessary in light of what's happened in the past. Has there been any confidential information that's gotten out through the cities? [LB397]

SENATOR LATHROP: No, no. I'm doing it in response to concerns expressed by the

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Omaha Chamber of Commerce. They were in my committee on a hearing and said we have great concerns about the subpoena and having this information show up in orders of the court. And that's why it's there. And I'll tell you what. I'm not married to the language either. If somebody has an idea about making that better, I want the business community comfortable, Senator Nelson. They're the ones that wanted the public-private comparison in the first place, and now I want to make an accommodation regarding the information. [LB397]

SENATOR NELSON: But if that information, that subpoenaed information, appears in the order of the court, I mean it's out in the public, right? I mean, what good is a protective order going to do? [LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR LATHROP: I think the protective order ought to shield their identity in any order of the court. Okay? [LB397]

SENATOR NELSON: So it would shield the identity of the business. [LB397]

SENATOR LATHROP: We can call them employer "562." [LB397]

SENATOR NELSON: All right. [LB397]

SENATOR LATHROP: We can say the third point in the array is a public or a private business in the city of Lincoln employing 1,200 administrative assistants. [LB397]

SENATOR NELSON: You provide I believe that now the ability--and I applaud this--of cutting down on the costs. I mean as far as...I think you'd mentioned Cleveland, going out to Cleveland. You want to talk to an employee of a company there, perhaps at the fire station or something like that if I'm... [LB397]

SENATOR LATHROP: You'll appreciate as a lawyer the rules of evidence and the foundation necessary under the rules, strict rules of evidence to get an opinion in of an expert requires that they have firsthand knowledge. [LB397]

SENATOR NELSON: You'd have to do that. [LB397]

SENATOR LATHROP: What we're doing is short-cutting that process so that it's still reliable information but it doesn't require somebody to get on a plane and go to Cleveland. [LB397]

SPEAKER FLOOD: Time, Senators. Thank you. [LB397]

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SENATOR NELSON: Thank you, Senator Lathrop. [LB397]

SPEAKER FLOOD: Senator Price, you're recognized. [LB397]

SENATOR PRICE: Thank you, Mr. Speaker, members of the body. Well, here we are at the fated appointment to deal with a very weighty subject that Senator Lathrop has spent a great deal of time on and others with the committees, some people outside the committee. There's a lot of state employers and chambers and individuals who have worked tireless hours on, and I would equate it probably close to what Senator Adams has to do for the aid for schools and funding. I mean, this is a pretty weighty and hefty subject. And to that point, it's very difficult when you're reading through this. It's very technical language. So I applaud what Senator Lathrop and everybody has done. Obviously we're here to discuss this and try to understand some more. Perhaps for Senator Lathrop and the other attorneys in the body some of this comes a little easier and quicker because they've dealt with it on a regular basis. But as we heard earlier, when we go and have to explain this to our constituents, I don't know about you but right now my mailbox is kind of loading up on e-mails as people start to comment and query, and things have come in from all sides trying to have a good understanding. So in that light, some questions will be asked. But I want to reflect back to an old king, King Pyrrhus. You know, way back around 280 B.C. he became famously known for making a comment about Pyrrhic battles where people were...had lost so much in trying to gain something that they were unable to go forward. And I'm very cautious about that and I'm very glad to hear the tenor and the way things are moving that we're going to keep this in such a manner as not to end up harming our relationships and our ability to do our job. With that said, I was wondering would Senator Lathrop yield to a question? [LB397]

SPEAKER FLOOD: Senator Lathrop, will you yield to a question from Senator Price? [LB397]

SENATOR LATHROP: Yes, I will. [LB397]

SENATOR PRICE: Thank you, Senator Lathrop. The question I have is, in your opening remarks I think we've heard, we've talked about one of the purposes is to simplify. I'm hard-pressed on "simplify" because (laugh) it's so complex. But would you take a moment to explain how...what is simpler? [LB397]

SENATOR LATHROP: I think what I said is it would be more predictable. And Senator Utter has a line that he's used in speaking about this where people say I think somebody once referred to this bill as "the CIR on steroids" and Senator Utter correctly commented that it is the CIR in a straitjacket. We are putting in criteria and while I appreciate the idea of MSAs and job conditions and job matches, it's a foreign language to most people and it certainly has been to me up to this point in time. Those mean something to the guy that runs the...that's in charge of HR at the city of Omaha or in the

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city of Plattsmouth. Those things mean something to them and they understand that when we put the criteria in there and spell out in certain terms who we're going to compare, it gets simpler in the sense that we're not wandering around in the gray areas. We've made it more black and white for the cities. That gives them predictability. It also tells them before they ever get to the CIR who the likely people are they're going to be compared to, and when you know that you don't need to go to the CIR; you just call them up and you say, what are you getting for a wastewater treatment guy there? And they tell you and then you can just work that average pay for the wastewater treatment guy into your negotiations. [LB397]

SENATOR PRICE: All right. Well, thank you very much, Senator Lathrop. And the part that gets complicated for me is when we talk about bringing all the other aspects of hourly...hourly wage is one thing but we talk about compensation, and when you start talking about that... [LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR PRICE: Thank you. When you start talking about those things, it becomes very complex. Defined benefit versus a defined contribution. How we measure thing across a broad spectrum as we go around looking at these things and building arrays, because as we know not everybody rewards or pays and gives benefits in the same way and manner, so it's very complex in that way. And I appreciate the effort again. I'm going to be listening. There are more questions of course but I'll be listening as time is short. Thank you very much, Mr. Speaker. [LB397]

SPEAKER FLOOD: Thank you, Senator Price. Senator Christensen, you are recognized. [LB397]

SENATOR CHRISTENSEN: Thank you, Mr. President. First of all, I want to thank the committee because I even publicly said I never believed the bill would come out, and I appreciate that people have worked hard to come together and bring out a solution for discussion here on the floor. The other thing I want to share with is I didn't hear the original committee hearings, but I would like to maybe reprimand the senators as they think about the second hearing because I didn't feel like the public got to speak enough. I felt like there was almost a senator filibuster instead of a true public hearing. You know, I'm excited to sit here and listen to the debate because I haven't made my decision. I've been lobbied. I've been talked to by a number of people which side that I'm going to take. And to be honest with you, I've got people asking me in my district to go both ways. I haven't made that decision and I appreciate the debate. I appreciate Senator Fulton bringing up the side that I really haven't heard yet and hadn't had time to discuss and hear about. At this time I'll yield my time to Senator Fulton so I can continue to listen. Thank you. [LB397]

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SPEAKER FLOOD: Senator Fulton, you have 3 minutes 45 seconds. [LB397]

SENATOR FULTON: Thank you, Mr. President. Thank you, Senator Christensen. There are a list of things that I believe are problematic within the amendments and I'm trying to articulate them and maybe even try to articulate them from both sides. So we heard why the CIR should be able to pick up the phone and contact an employee and good reason. I just don't...I don't think that that's what the citizens want. The power of subpoena, do we want to give the CIR expanded powers to have the authority to subpoena private companies? That's an important question. We've heard from the business community, they are very concerned about this, rightfully so. I imagine there are a number of businesses who will not want to make public some proprietary data. That's one of the things that the amendment does. Now not just to pick apart the problems that I see in the bill, there have to be solutions also. And if you can look on your gadget, there will be an amendment to follow which I'll propose which contains some of these solutions. But is it necessary to have the subpoena power when, indeed, private employers utilize publicly available, aggregated data to find what wages are paid to a certain position. When I was...when I first got out of college, I remember subscribing to one of these. It was a newsletter of some sort and there was data from the Department of Labor, I believe, that indicated what a mechanical engineer could expect to get hired for in the city of Lincoln or in the Midwest, and then there was something even more detailed about the city of Lincoln. That exists. There's no need to subpoena. There's no need to pick up the phone and call someone, an unsuspecting someone who may not appreciate a phone call from government. Okay. So that's on the subpoena issue and I ask you to consider that because that is a power, a new power we're giving to the CIR. It existed before but it will extend now to the private sector. Okay, would Senator Lathrop yield to a question? [LB397]

SPEAKER FLOOD: By the way, Senator, you have 1 minute. Senator Lathrop, will you yield to a question from Senator Fulton? [LB397]

SENATOR LATHROP: Yes. [LB397]

SENATOR FULTON: Thank you, Senator Lathrop. Thank you, Mr. President. The CIR on steroids, I'll have to take credit for that. It's a shorthanded way of saying that we're giving more power to the CIR. And the response, and this might be something we can all wrap our brains around just because it's a quick rhetorical, understand there's more detail involved, but CIR in a straitjacket, I guess this is where I don't understand and so I'll ask if you can explain. Why would we want to put the CIR in a straitjacket? [LB397]

SENATOR LATHROP: They need criteria and, frankly, the idea that they're on steroids misses what's been done in LB397. The CIR does not have more authority; they have less. They are constrained. They have less discretion. They have more criteria and a more rigid process at arriving at an array, which is 95 percent of what happens there.

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You fix the array and the rest of it establishes itself. [LB397]

SPEAKER FLOOD: Time, Senators. [LB397]

SENATOR FULTON: Thank you. [LB397]

SPEAKER FLOOD: Senator Janssen, you are recognized, followed by Senators Ashford, Harms, Conrad, Campbell, Mello, Nordquist, Lathrop, Coash, Dubas, and others. Senator Janssen, you are recognized. [LB397]

SENATOR JANSSEN: Thank you, Mr. President and members. And again, I'd like to thank Senator McCoy for yielding me his time early on so I could echo the opposition to this bill from Grand Island, North Platte, Hastings, Fremont, Lexington, Holdrege, and Kearney, those mayors respectively. In return, I'd like to yield my time to Senator McCoy. [LB397]

SPEAKER FLOOD: Senator McCoy, you're yielded 4 minutes 35 seconds. [LB397]

SENATOR McCOY: Thank you, Mr. President. Thank you, members. I, as I mentioned earlier, I'm opposed to AM1383 and have a great many questions about this amendment. Would Senator Lathrop yield, please? [LB397]

SPEAKER FLOOD: Senator Lathrop, will you yield to questions from Senator McCoy? [LB397]

SENATOR LATHROP: Yes. [LB397]

SENATOR McCOY: Thank you, Senator Lathrop. I'd like to kind of go through a little bit about, as you know and as many of us do, many small business owners and larger business owners in my district, and my wife and I are one of them, and you know just in your line of questioning with Senator Fulton a moment ago, when we talk about CIR in a straitjacket and we talk about giving the CIR more criteria but maybe more restrictions, I guess I'd beg to differ. Because when we're talking about the subpoena and whether I think specifically, as I see it, in AM1383 on page 1, it talks about, on line 19, "protecting the identity of the employer in any proceeding or order," but obviously it doesn't talk about protecting the actual information that's requested under that subpoena. And my question would be, why was this not gone into with the thought of we operate, it's my understanding, the way the federal government operates where we use data, labor statistics going into this, rather what you proposed through AM1116 and AM1383? Why did we not operate under the standard that the federal government operates under, it's my understanding, and that is using those aggregated statistics? Are those not good enough? [LB397]

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SENATOR LATHROP: Here's the problem with it. It doesn't tell us what their job conditions are. It doesn't tell us if there's a job match. You can take the Bureau of Labor Statistics and it doesn't tell us whether that guy is doing the same thing as the guy down at the Omaha wastewater treatment plant, and you can look at the average pay for a firefighter or a police officer, but it doesn't tell you what the average pay for a police officer is who can fly a helicopter or a police officer who has training in accident reconstruction. And so the statistics in some cases are going to overstate because they're not sensitive to what somebody does within a particular job class. They're going to overstate some people's pay and understate others, and what we try to do is to drill down. Now the job match in the bill is a 70 percent job match, which is an easier thing to establish. Once you get there, then you do the comparison. But to say we are going to call a fireman is a fireman is a fireman or a police officer is a police officer when in reality, and Senator Cornett will be able to tell you about this, they can be specially trained to fly a helicopter, to handle dogs. They can be a narcotics unit. They can be working narcotics and homicide and be busting down doors, and that guy ought to get a little bit more money, and they generally would, than the guy who's sitting behind the desk handing out copies of the police report to citizens. So the idea is that statistics will overstate...simple statistics from the Bureau of Labor Statistics will overstate some people's pay and it will understate others, and it is a fairer system to say what does a guy with this level of training and this skill set get in the market, and that's why. [LB397]

SENATOR McCOY: Well,... [LB397]

SENATOR LATHROP: And one more thing I might add just parenthetically and that is I've talked to labor. They'd be happy to take the public-private comparison out. [LB397]

SPEAKER FLOOD: Fifty seconds. [LB397]

SENATOR McCOY: Well, I don't think that's necessary, Senator Lathrop, because I think that this ought to operate the way the private sector does. I'm part of the business community. You mentioned earlier...I think it's a very... [LB397]

SENATOR LATHROP: As am I. [LB397]

SENATOR McCOY: ...as I know you are...that you want the business community to be comfortable. Well, I don't know why we can't have a public-private comparison and do what's done in the federal government. I don't understand why that's not good enough. It's good enough in the private sector. It's what the private sector uses. We use those labor statistics. We seem to make it work. It functions across Nebraska. Why wasn't that more a part of it? I think a public-private partnership, the public-private comparison needs to be part of this but not under the auspices of this, not under subpoena power to get employee information. I've heard from a great number of my constituents that have grave reservations about this. [LB397]

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SPEAKER FLOOD: Time, Senators. Thank you, gentlemen. It's time now for Senator Ashford. [LB397]

SENATOR ASHFORD: Thank you, Mr. Speaker, and I really appreciated Senator Schilz's comments because I think he put this debate into proper context and he asked the three basic questions: Does this bill simplify the process? Does it contain costs? And is it consistent across the board? I think those are important questions. Let me just say this about...and I'll say this once, about the subpoena issue. The private sector came to us a year ago and wanted us to make...to devise a way so that we could confidentially assess a private employer's pay information. They wanted private employers included. Let me tell you that in all the years that I've been associated with the CIR, back as far as the '80s, both as a litigant and as a judge, and not one occasion, never ever, I don't think anybody can point to any occasion where there was any abuse of the subpoena power. We have the subpoena power in the Legislature. We subpoena records. Regulatory bodies in state government have subpoena power. It is a normal way of doing business. I think Senator Lathrop has said, and I agree, that we want to make...have job matches. You obviously have to have a job match. You've got to compare a job to another job that's similar. The general information Senator McCoy talks about may have some value. But if the essence of this process is to be as exact as possible, the way to do that is to compare jobs...now...and to have matches. So if there's another way to do this, we reacted to the private sector's very, very aggressive request of us to include private employers, and that means private employers by job classification and by job function. Talk to anybody in HR and they'll tell you that unless you know what somebody is doing, you can't make true comparisons. That just is an issue that is a legitimate issue, Senator McCoy, and I don't...I don't suggest that it isn't, but there's got to be some evidence that...other than the concern, which I think is a legitimate concern to be voiced, but there are so many ways that we can address it. Simplifying the process, Senator Schilz is absolutely right to raise that issue. This is a significant...this is a significant simplification of the process that is currently in place in the Commission of Industrial Relations. The evidence alone, the evidence piece alone where an expert can call up an employer and get information verbally over the phone and present that information is a 5-minute or 10-minute or 15-minute phone call versus a trip to another city. That is a massive and significant change in how we address the evidence issue. The cost...and there are other issues involved in the simplification. Senator Lathrop has talked about them. Containing costs, the city of Omaha has a pension shortfall of \$642 million. Technically, the city of Omaha is bankrupt if we're talking about...if they were forced to pay up tomorrow. Containing costs has to be a critical element in any reform of these kinds of issues. By taking the pensions that are paid, reducing them to a value that is understood by every expert we've talked to in the field to be the correct way to do it and to give it an hourly rate value, whether it's a defined benefit plan or a defined contribution plan, will reduce costs... [LB397]

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SPEAKER FLOOD: One minute. [LB397]

SENATOR ASHFORD: ...in the city of Omaha significantly. If we leave this alone, if we get rid of the CIR, if we do all these things that are being suggested, those pension costs are going to be very difficult to affect because, as Senator Lathrop absolutely and correctly says, we cannot unilaterally as a government change someone's pension benefits. So it is a massive change and shift on the issue of containing costs. The hourly rate value, I'd love to hear some suggestions on where that has gone astray; why the hourly rate value calculation is not a valid calculation and that it doesn't contain costs. Consistency is another issue and we can talk about consistency throughout the system, but we need to hear from the opposition some reason why the hourly rate value will not contain costs. It will. [LB397]

SPEAKER FLOOD: Time, Senator. [LB397]

SENATOR ASHFORD: Thank you, Mr. Speaker. [LB397]

SPEAKER FLOOD: Thank you, Senator Ashford. (Visitors introduced.) Continuing with discussion, Senator Harms, followed by Senators Conrad, Campbell, Mello, Nordquist, Lathrop, Coash, Dubas, Loudon, Fulton, and others. Senator Harms, you are recognized. [LB397]

SENATOR HARMS: Mr. President, colleagues, sometime ago, earlier this session, I introduced LB555 to provide a much needed reform of the state employees' collective bargaining system. This covers the state employees, covers the Nebraska State Colleges, this covers the university. LB555 has been incorporated into AM1116 with a few adjustments that have been made, and I would like to refer you to Section 20 if you want to have some discussion later. If you actually want to go to page 56 in this amendment, it puts it right at the heart of the thing, the items that I'm...we're recommending to you and the changes that we're recommending to you. I'd like to take just the high points of this legislation and then later I'll come back, if you like, and will go into some detail if it's your choice as colleagues. One thing this does, it eliminates for the employees of the state, it eliminates the special master and the Court of Appeals to make this a quicker process and a less expensive process. One of the things we have to understand is that the quicker you can go through this process, the better off you are in your organization. When you have an impasse and you have to go to a special master and then from there you go to the CIR and from there you go the Court of Appeals and from there you go to the Supreme Court, I'm here to tell you, colleagues, this leaves that system that's challenging this in unrest. The employees are unsettled and the management is unsettled. This process, by making this elimination, streamlines it, makes it quicker, brings it right to the point. And one thing it does, it does start to contain the cost of battling these sorts of concerns that we have with collective bargaining. The second thing that this portion of the bill does is it makes it predictable

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and more equitable outcomes. The CIR process procedures for handling appeals by the special master have not done well in the past. They've not been consistent. They have informal guidelines, and that's the problem. When you are trying to address the CIR and they're looking at...or the special master, when you're looking at that, of the issues, we have nothing that's formal. They had way too much flexibility. And if you're on the management side or if you're on the employee's side, you have no idea where you're going to end up here because the simple fact is they change their mind, they change their direction. So this brings you into a more reasonable approach that's more consistent with cost containment, it's more specific for the future because we have some idea now, by law, if you look, at starting on page 56, the kinds of items that we're going to compare, the kind of items that we think are important for that comparison. There's some collateral benefits to this, colleagues, and those collateral benefits are that I think once they have a chance to see what's in the law, what's going to be considered for their array or for their salaries, you'll find a more reasonable expectation from people. You will find that they may reach more voluntary agreements because it's very simple to add up to your division and you're there. Today that's impossible to do. Today that does not function well at all. We also, in this portion of the legislation, we revised the time lines which are needed badly. The time lines were really too long. They weren't appropriate and... [LB397 LB555]

SPEAKER FLOOD: One minute. [LB397]

SENATOR HARMS: Thank you, Mr. President. What we found in those time lines is that the Supreme Court made a decision about a time line and on the other side the CIR made a decision about the time line, and they weren't jurisdictional, so management and the union had no idea whether these times are jurisdictional or not, what's the best way to go. It kept confusion and that didn't settle out very well as far as the bargaining process is concerned. The other thing that's important is that this will now, with the way the time lines have been shortened, they're designed to go into the two-year cycle coinciding with our budget process. One of the problems I've seen in the Appropriations Committee is sometimes with our collective bargaining process we have no idea when they're not settled how much to settle for. We bring our budget before you. It may not be settled. This will resolve that issue. It will be settled, it will be there, and we can make the appropriate decisions as senators. I think that's important to us. Now that's just a scratch of just some of the items that we've dealt with. I believe... [LB397]

SPEAKER FLOOD: Time, Senator. [LB397]

SENATOR HARMS: Thank you, Mr. President. [LB397]

SPEAKER FLOOD: Thank you, Senator Harms. Senator Conrad, you are recognized. [LB397]

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SENATOR CONRAD: Thank you, Mr. President or Mr. Speaker. I'd like to yield my time to Senator Lathrop, please. [LB397]

SPEAKER FLOOD: Senator Lathrop, you are yielded 4 minutes 45 seconds. [LB397]

SENATOR LATHROP: Thank you, Mr. President, and thank you, Senator Conrad. I appreciate that. I think we have got down into the, what I would call, into the legislative weeds on this one and we're now talking about subpoenas, and I try to accommodate the people that have concerns about subpoenas and, frankly, if I haven't done that, Senator McCoy, I'll let you help me write the amendment, okay? So now I want to talk about something that may be of more consequence. Today we are going to decide the future of collective bargaining in the state of Nebraska. How is the public employer going to deal with the public employee? And the CIR is a system that's set up to provide them with average pay. Now this came up long before you were involved in politics, I'm sure. It's the policy of the state, and if you look at the Industrial Relations Act, it sets out the policy reasons by people that made this decision before it became a national news item. There is good policy reason for having an institution that decides labor disputes. Now in the private sector you might get a union that tries to...say an auto worker and they decide to go on strike because they want more than what the other auto workers get. In Nebraska, in Nebraska the CIR is designed to provide them with average pay. Wait a minute, not above-average pay, not a lot of money, not a great situation, just average pay for the kind of work they do, and we have a system set up to do that. Now the question is, are we okay paying the labor in this state that work for our cities and our schools average pay or are we not? Because if you think paying people average pay and having a system set up to figure out what that is and award it is a good idea, then you'll like LB397, and let me tell you why you should, because it's important. There's a policy reason. We can be shortsighted and we can answer the call of what's happening across the country and really hammer public employees, and you know what's going to happen? They're going to leave. Okay? And you may say, good, we'll find somebody else to work at the wastewater treatment plant in Omaha. But let me tell you what it costs when we have a firefighter that leaves and says, I've had enough; I have no way to get a fair pay, no one will pay me average pay for what I do; I'm going to take a walk and go lay carpet. Well, there's \$100,000 worth of training walking out the door. People who sat down and were thoughtful balancing the policy that brought us to an institution that provides average pay for people that work for government saw the policy trade-off. They don't get to strike and they have to accept average pay. And the cities have to pay average pay and they get to keep their investment working there. Think about what we pay to train a firefighter, what we pay to train a police officer, just a standard, ordinary--Senator Cornett I think will talk about it in a little bit--a standard, ordinary, if there's such a thing, police officer. If we're not paying average, if average pay is the enemy here today, I'm going to tell you if you succeed in a process that successfully pays less than average we're going to lose these people, and they cost a lot of money to train. They cost a lot of money to train. So we can talk about subpoenas and the

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protection order language,... [LB397]

SPEAKER FLOOD: Forty seconds. [LB397]

SENATOR LATHROP: ...but we're missing the bigger picture and that is if we have an institution that figures out what average pay is and we've cleared it of distortions that might affect the number in an unintended way, isn't that a good system? Isn't that why we're here? Doesn't that serve the public interest? We're here to set policy and part of that is if we're not paying what's average, what's fair, people are going to leave and they're going to take a lot of expensive training with them. And you know what? You won't be here, the Governor won't be here, the city councils and the mayors won't be here to take the grief and to deal with the mess. [LB397]

SPEAKER FLOOD: Time, Senator. [LB397]

SENATOR LATHROP: Thank you. [LB397]

SPEAKER FLOOD: Thank you, Senator Lathrop. Senator Campbell, you are recognized. [LB397]

SENATOR CAMPBELL: Thank you, Mr. President, and good afternoon, colleagues. You know, I would guess that every one of us has been at a local chamber dinner and many of us go to the state chamber dinner every year, and those organizations recognize business people and their businesses who have excelled. And to a person, think about it, every year the recipients get up and say, you know, if it weren't for my employees or I have the best employees or employees make my company. Just as it is in the private sector, we today have to sit in this body and we have to begin saying how do we deal with the employees, not only of the state but the political subdivisions, and, colleagues, that is a very weighty responsibility. Because just as I feel at my business that we have the best employees at Campbell's Nursery, and I look at ways in which how does that happen, we have to pay attention to that today and the systems. I want to say that I do very much appreciate the hourly wage rate. I agree with Senator Ashford. When Senator Utter came to me early in the session and said, guess what we've come up with, that's a great point because so often many of us in this room who sat on city councils or school boards or county boards, whatever, we just cringed because we did not take in to factor when the CIR looked at. They didn't look at pension and they didn't look at health. The other point Senator Ashford brought up that I want to drive home and we need more people to speak on this is what are the consequences of our action long term when we put this into place, and what does all this really mean to the long-term cost containment. I think it's the same question that we need to ask when we come to Senator Fulton's amendment. There are consequences to the action we take, and I'm not sure that at least even I understand or even I understand the total consequences. I would like to ask Senator Lathrop several questions, if he wouldn't mind. [LB397]

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SPEAKER FLOOD: Senator Lathrop, will you yield to a question from Senator Campbell? [LB397]

SENATOR LATHROP: I'd be happy to. [LB397]

SENATOR CAMPBELL: Senator Lathrop, I'm going to start with AM1383. I have a number of questions on AM1116, but I want to try to get this one in. In the amendment, AM1383, you strike the section on page 17 of AM1116, "For purposes of," and so forth, and I have to tell you I'd hope you put that back in because I think it lays out a purpose to the structure we're putting into place and sends a very clear message to cities, counties, everybody who will be involved in this. So I'd really like to know why you might have taken it out. [LB397]

SENATOR LATHROP: Actually, there's a long story behind that. [LB397]

SENATOR CAMPBELL: Oh. [LB397]

SENATOR LATHROP: We were...it's one of those things that was my...that was...we were sort of dragging along in our different versions of the bill as we were constructing it and it was actually intent language, and you can see it's not really intent language. It's more instructional. And we're coming down here to introduce the amendment and to put it in. We moved the amendment and found out the Bill Drafters had moved that from intent language to substantive and the reason it was... [LB397]

SPEAKER FLOOD: Fifty seconds. [LB397]

SENATOR LATHROP: ...the reason it was important, Senator, is because we deal with those two subjects in a different place in the bill and they were the subject of specific agreement. [LB397]

SENATOR CAMPBELL: And I hope that we might be able to come back to that. And at some point, Senator, I want to come back and talk about the budgetary savings that you might achieve in line 11, but I'll wait because I'm sure that's sort of a weighty matter. Thank you, Mr. President. [LB397]

SPEAKER FLOOD: Thank you, Senator Campbell. Mr. Clerk. [LB397]

CLERK: Some items very quickly, Mr. President. Business and Labor reports LB555, LB623, LB664, LR29CA, LB482, LB619, and LB624, all reported indefinitely postponed. Senator Gloor has an amendment to LB591 to be printed, and I have an appointment letter by the Secretary of State to the Accountability and Disclosure Commission. That will be referred to Reference for a referral to a standing committee. That's all that I had,

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Mr. President. (Legislative Journal pages 1434-1435.) [LB555 LB623 LB664 LR29CA LB482 LB619 LB624 LB591]

SPEAKER FLOOD: Thank you, Mr. Clerk. Continuing with discussion, Senator Mello, you are recognized. [LB397]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. I'd yield my time to Senator Utter, if he chooses to use it. [LB397]

SPEAKER FLOOD: Senator Utter, 4 minutes 54 seconds. [LB397]

SENATOR UTTER: Senator Mello, I thought you were going to say something profound and then you was going to yield me your time. Just a few passing comments on why I've been sitting here listening to the discussion this afternoon, and I think it's important, I think it's important from the standpoint that it reminds me of some of the discussions that I participated on early on when we were trying to put this bill together and we were listening to the ideas of different people. We were listening to ideas from different segments of the League of Municipalities and the state of Nebraska and the school districts and from both the labor side and the employer side, and I think that was the whole process of putting this bill together. And as we listened to those suggestions and we would have a meeting and listen to suggestions from various people and then Senator Lathrop's legal counsel would reduce those to writing, and I give her a great deal of credit for all of the work that she's done in this process, then we would have another meeting and, lo and behold, we'd have to change some of those again. And there was meeting after meeting after meeting. And actually some of the same things that we're discussing here this afternoon were things that we previously discussed in those meetings, and I think they're all a valuable part of putting this whole process together. Is this bill perfect? I think only God makes perfect things and I never recognized him sitting at the table of any of our meetings, to be quite honest with you, so, no, it's probably not perfect. But I will tell you it's the best effort of a lot of people that had input into this system, and that doesn't mean that there isn't other valuable suggestions out there. Well, I've heard the words "significant," "meaningful," "comprehensive" so many times and I thought I knew what they meant, but I decided that they have an awful lot of meanings. The Governor has talked about comprehensive, significant, and meaningful, and other people have talked about that and I think they mean different things to different people. Because I will tell you that I think that we brought forth in this legislation something that was comprehensive, significant, and meaningful, but that doesn't mean that it can't be further improved. The discussions that we've had this afternoon with regard to the power of subpoena and I was...I guess I was surprised to learn that that's been a part of the process of the CIR for a long, long time, probably very rarely used, because frankly there were very few cases, it's my understanding, that the CIR used private sector comparisons. I understand that back in 1978 I think there was a Lincoln case that used private sector

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comparisons and those...it was of necessity that they include information that was gained from the private sector. One of the things that I heard from... [LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR UTTER: ...from my area in central Nebraska was that we need to compare governmental wages and salaries and benefits to the private sector. And I guess if a business community knew that those figures were going to remain private and not put out in the public, not be on the front page of the newspaper, that they'd willingly provide those figures, because they were the people that were talking to me at least about including the private sector comparisons. They felt that was important, particularly important I think in the rural Nebraska area that the government employees don't become better paid, with better benefits, with better salary, with better job security, with more vacation than the private sectors got. [LB397]

SPEAKER FLOOD: Time, Senator. [LB397]

SENATOR UTTER: Thank you, Mr. President. [LB397]

SPEAKER FLOOD: Thank you, Senator Utter. Senator Nordquist, you are recognized. [LB397]

SENATOR NORDQUIST: Mr. President, I'll yield my time to Senator Ashford. [LB397]

SPEAKER FLOOD: Senator Ashford, 4 minutes 55 seconds. [LB397]

SENATOR ASHFORD: Thank you, and I would like to follow on a little bit with what Senator Utter has mentioned, because it is critical, I think, as we discuss this. When I was involved in the CIR as a judge in the '80s, there were many efforts made to include private employers in the computation, Senator Utter is absolutely right, and there was a 1970s case. It really wasn't until the 1970s that the CIR got going as covering all employees, and there were some early cases in the '70s where efforts were made to include private employers. In the time I was in the Legislature in the '80s and '90s, there were bills introduced to address some of the issues we're talking about today: the array, what is the proper array, who should be included with whom. And those bills never had any real support. I can't recall ever any bill coming to the floor. It really, in all honesty, it really wasn't until last year or this year, certainly with the experiences in Wisconsin and Ohio, and it became sort of the issue of how do we get to an average wage was sort of taken to the moon and we were talking about whether or not we ought to even have the right of collective bargaining, which is over a century old in this state, so...at least in the private sector. So I think that what we have...we have to put this a bit into context, say what are we trying to solve, what are we trying to make better. We're trying to make better, it seems to me, what Senator Lathrop has said over and over again, what we on

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the CIR used to try to achieve which was an average wage, which was an average wage. And if we were just...and the process of...and Senator Council, who has also served on the CIR for a time, it a tedious process that we undertook as judges--at that time we were called judges, not commissioners--to actually ferret through the evidence and try to come up with an average wage. What has the result of that been over time? Over time, the wages have moderated, have been moderated across the state in all sectors of public employment, but clearly in the area of teachers where we rank somewhere between 38th or 43rd or whatever it is, depending upon what goes into the rating and what year it is. So the general public policy of moderating wages over a long period of time has happened. It has happened. What got messed up? What got messed up was this whole concept of defined benefit plans, and there are articles upon articles being written by every economist there is about the cost of defined benefit plans. Well, for many years in the '70s and '80s, defined benefit plans weren't expensive and the CIR actually did take a general look at them. We looked at a defined benefit plan or...we really didn't have many defined contribution plans in those days, and we took a look, generally are these plans sort of in sync with the other plans being offered to employees, and generally they were. There were never adjustments...very rarely, if ever, adjustments made and I don't recall, I think there may have been one case where there was an attempt to adjust wages based on fringe benefits. But when we started this process a year ago, the problem that was presented to us, Steve, Brad, Dennis, here's what we want you to do; we want you to...and the employers came to us, not the employees, the employers. This is what's so odd about this thing is that it's the employers who are asking for help and we gave them what they wanted, basically. We tightened up, in almost every aspect of the CIR,... [LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR ASHFORD: ...we tightened up the criteria right across the board. I know that because I heard many cases and there was always questions raised about what criteria should be used. We have adopted specific criteria to address the needs of the employers. The cities--they are the employers. The counties--they are the employers. These aren't the labor groups asking for these things. These are the employers. So in conclusion, the hourly rate...I defy anyone in this body, and with all due respect, to tell me that the hourly rate value is not the way to calculate average wage, because we are now including pensions, we are now including insurance benefits. If there's another way to do it I'd love to hear it, because I don't believe there is. And with that hourly rate value we are going to even have a better opportunity to get to average wage. And as Senator Campbell so rightly said, for heaven's sake, we at least want to pay average wages to our employees. [LB397]

SPEAKER FLOOD: Time, Senator. [LB397]

SENATOR ASHFORD: Thank you, Mr. Speaker. [LB397]

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SPEAKER FLOOD: Thank you, Senator Ashford. Senator Lathrop, you are recognized.
[LB397]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I think that was a great segue into what I'd like to talk about. I think it's time for me to talk about my bill and not be...talk about some of what I would regard as side issues. But Senator Ashford talked about the hourly rate value and I want to visit a little bit about that subject matter with you and why it's important. Currently, by practice, 48-818, you'll recall that's the statutory section that tells the CIR what to do in one of these cases and it tells them, compare total compensation, but the practice has been for the CIR not really to do that. They've said, well, those pensions look close enough to me and so do the health plans, and so we're just going to look at somebody's hourly pay. And we've been moving people up and down to make them equal the average for pay. But sometimes political subdivisions, cities, will say to their employees, and we'll take firefighters for example, they may say, you know what, guys, we're in a tight spot right now so what we're going to do is, instead of giving you a raise, you're going to go two years with no raise but we're going to sweeten your pension a little bit. And that's...so they have no pay increase but their pension got better, and every time they do that it gets a little bit better than their counterparts in the array, right? And when they go back to the bargaining table the CIR says, well, we're not going to look at the pension, we're just going to look at the wages, and the cities never get credit for the pension. So what we did is we said we're going to effectively force, put in a straitjacket, force the CIR to look at total compensation and we set out a process to make them do it: You will look at the wages, you will look at the hourly rate value of...we're reducing everything to a common denominator--the hourly rate value--so what's the hourly rate for the job, the pay; what does it cost on an hourly basis for the employer's contribution into the health plan; and what's the hourly cost of that pension benefit. And then we're going to compare that stack of money, let's say it comes to \$32 an hour, we're going to compare it with the average in the array to find out what's the average getting for all of the hourly rate value of all of their wages and benefits, and that hasn't been done. And I will wager a bet...well, I can't do that. I will tell you that everybody who has looked at this issue, thoughtful people that have looked at this issue have said what will happen when this process is employed is we will have public employees in this state, because we've changed the rules and we've tightened up the rules and we're looking at pensions and we're looking at health insurance, we will have employees now doing better than the average. In other words, there's cost savings. There is a lot of cost savings, a bunch of cost savings. When we start comparing the total value of compensation, which we've not done to this point in time, and we now give the cities credit for their pensions and their health plans, we're going to have a lot of employees doing better than the average and they're going to be stuck there for a while, and that is a very important feature of this bill. For those of you that have stood up and said, well, I don't see the cost savings, I will tell you it's found in the hourly rate value and the fact that we will have total

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compensation compared when we compare our public employees to their contemporaries, so much so that we had to develop a system to account for what do we do now that we've changed the rules and we got a bunch of guys that are better than the array or better than the average. So for those of you who want to understand an important feature of the bill, for those of you who are looking for where is the... [LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR LATHROP: ...cost savings, that's where it's at. It will over time be a leveler too. There was a question, I think it may have come from Senator Campbell or...a question that was about over time what's the effect of this going to be. Over time we will see our public employees at an average. I don't know how I can be clearer about this, colleagues. These people just want average pay. We have a system that provides them with average pay and a process that goes out and figures out what the average is. That's all this is. And if you don't like that process then you're not okay with average pay. And if we don't provide average pay, people are going to walk. They're going to leave and we're going to lose well-trained firefighters and police officers and wastewater treatment guys and guys that drive the big orange trucks. [LB397]

SPEAKER FLOOD: Time, Senator. [LB397]

SENATOR LATHROP: Thank you. [LB397]

SPEAKER FLOOD: Thank you, Senator Lathrop. Senator Coash, followed by Senators Dubas, Loudon, Fulton, Wallman, McCoy, Adams, Burke Harr, Cornett, McGill. Senator Coash, you are recognized. [LB397]

SENATOR COASH: Thank you, Mr. President. I have been paying attention through the debate today and I'm learning just as much from the bill introducers and the Business and Labor Committee as I have from the questions that are being asked, and I continue to try to sort out how this bill and these amendments separate out the differences between how the CIR affects schools versus municipalities, and to that end I was listening intently to Senator Larson's earlier questions and I want to yield the rest of my time to him to continue to listen to the debate on the part having to do with the schools. Senator Larson. [LB397]

SPEAKER FLOOD: Senator Larson, you have 4 minutes 10 seconds. [LB397]

SENATOR LARSON: Thank you, Senator Coash, for yielding your time to me. And I am going to continue questioning the school side of this reform. And in my last questioning with Senator Lathrop we talked about the school contract time line and the time line in which they go in front of the CIR, and Senator Lathrop mentioned that he set out this time line so they're not, in the next school year, having to pay back. If he'd yield to

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another question, I'd appreciate it. [LB397]

SPEAKER FLOOD: Senator Lathrop, will you yield to a question from Senator Larson? [LB397]

SENATOR LATHROP: Yes, I will. [LB397]

SENATOR LARSON: Senator Lathrop, as you so rightly put it, that was your logic in putting this time line out, but the time line they have to file by February 8, and if there's no resolution by March 25 one of the parties has to file a petition with the commission. It doesn't say which one or how long it has to be. But in the end it doesn't say that the commission actually has to make a decision until September 15, and your logic is this bill will help them because the commission won't decide the next year, but, in essence, it still is deciding the next year. But how will the school district be able to decide its staffing levels for the coming year when it still doesn't know what its employee compensation levels will be for that next year? I mean you say you're trying to address that but, to me, it doesn't look like it's actually addressing that. [LB397]

SENATOR LATHROP: The language that you're asking about, it was provided to me by the people that got you to introduce your bill. So I am not going to profess to be an expert but this is what I understand that language to do. It will require that the parties get together about a full year before the academic year in question. They will negotiate for a period of time and I think it sets like a November date right in there, I don't have the page and line in front of me, where they...if they do not have a resolution then we're going to go to another step in the process. And will it always have a resolution by April? No, sometimes it might go to the CIR and take longer, but a very few, Senator Larson, maybe one a year do we have. Out of, what are there, 286 school districts, we might have one school... [LB397]

SENATOR LARSON: Two fifty-one, I think. [LB397]

SENATOR LATHROP: Pardon me? [LB397]

SENATOR LARSON: Two hundred and fifty-one, I think. [LB397]

SENATOR LATHROP: Two hundred and fifty-one? Okay. Two hundred and fifty-one school districts, we may have one school district in the CIR a year. So generally speaking, it will provide the school districts with the information regarding teacher pay before they begin and as they engage in the process of budgeting for a particular academic year. [LB397]

SENATOR LARSON: Thank you, Senator Lathrop. Again, I understand the logic. I just don't see that much of a... [LB397]

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SPEAKER FLOOD: One minute. [LB397]

SENATOR LARSON: ...significant difference between the current system and what AM1116 offers. It's still...the exact date is November 1 is when they have to start to meet and they have the four meetings between November 1 and February 8, and then the resolution officer has to make a decision by March 25, and if there is no resolution then one of the parties has to file to the commission and then they...and then the commission doesn't have to decide until September 15. I mean there's so many layers in here. And I understand Senator Lathrop's logic. I just...I don't think it is actually doing what is right in terms of the cost savings that the school districts are looking for because they want to stop it from going into the next year so they don't have to pay back, but that's exactly it. I think...I mean I like the fact that they're starting earlier, but they'd need... [LB397]

SPEAKER FLOOD: Time, Senator Larson. Thank you. [LB397]

SENATOR LARSON: Thank you. [LB397]

SPEAKER FLOOD: Senator Dubas, you are recognized. [LB397]

SENATOR DUBAS: Thank you, Mr. Speaker and colleagues. Would Senator Lathrop yield to a question, please? [LB397]

SPEAKER FLOOD: Senator Lathrop, will you yield to a question from Senator Dubas? [LB397]

SENATOR LATHROP: I'd be happy to. [LB397]

SENATOR DUBAS: Thank you, Senator Lathrop. As I've gone through my e-mails, people on both sides of this issue, one of the things that seems to be jumping out rather frequently is some will say that just the mere threat of CIR is a heavy hand that essentially takes budget decisions out of the hands of those who are elected to make those decisions, essentially erodes local control and puts decisions under the purview of those who don't know the locality or what's going on in that locality and are held accountable to that locality. So how does your bill address those specific concerns? And I would yield you the remainder of my time. [LB397]

SENATOR LATHROP: Thank you. That really is a fundamental question to be answered and that is, are we better off with an institution that provides for average pay? And we talked about this question and the fact that you were going to offer it to me, and that is about predictability. Your concern is that there are school districts or different like city councils and that sort of thing in your district that are saying, we're afraid of the CIR,

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we don't know what's going to happen when we get there, and it's the threat of going to the CIR. And that really gets back to, in my judgment, Senator Dubas, it gets back to the question about whether we have enough criteria to make it predictable. I've been a litigator for 30 years, my entire adult life, and if I know what's going to happen when I get to the courthouse, I don't need to go there. If anybody that tries cases knows what's going to happen, you never need to go try that case. You just settle it. And the difficulty that we've had to this point in time, and we heard it from members of the Lincoln City Council over the last couple years, they say, we don't know what's going to happen when we get to the CIR. So when somebody says, I want to go to the CIR, you give me this money or we're going to the CIR, the difficulty is that no one really knows what's going to happen when you get there. And by making more changes, putting more criteria in 48-818, the CIR, it will become more predictable and that was one of the primary considerations by the cities. They wanted to be able to say, you know, you don't have to be a Philadelphia lawyer to figure out who's going to be in the array, and then once you do that you know what average pay is going to look like. And so I think that the idea of going to the CIR isn't a threat because the uncertainty is now gone or will be gone. It becomes more predictable and it's not that you fear the CIR because you know what's going to happen. And if your employees happen to be asking for something more than what the CIR is going to provide as an average for that type of work, you'll tell them no, and you'll go there and you'll win. And so making it more predictable, having more criteria I think is certainly responsive to the people who have expressed that concern. And thank you for the question. I think it's right on the mark. [LB397]

SPEAKER FLOOD: Thank you. Senator Louden, you are recognized. [LB397]

SENATOR LOUDEN: Thank you, Mr. Speaker and members of the body. I've never been involved that much with the Court of Industrial Relations, but I have been around some of these on the schools, on negotiating and that sort of thing. I was wondering if Senator Lathrop would yield for a question. [LB397]

SPEAKER FLOOD: Senator Lathrop, will you yield to questions from Senator Louden? [LB397]

SENATOR LATHROP: Yes, I will. [LB397]

SENATOR LOUDEN: As I look through your amendment, AM1116 is what I've looked at now, on the ability to pay there is...I think it's on page, what, 31 or so, and it talks about the ability to pay or the lack of ability to pay. And is that enough clarification in there to set it up so if these school districts are at their maximum levy and things like that and the teachers or someone are negotiating for more money, that they can use that as their maximum levy is the reason that they can't increase wages? Or is that a little bit hazy on how that's written in there by using the...it says, "Such award shall not be adjusted in the absence of substantial evidence of the employer's inability to pay." Am I looking at

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something that you have to prove yourself innocent, I guess, you're guilty until they're proven innocent or how is that clarified in there? [LB397]

SENATOR LATHROP: All right. I'll be happy to take a swing at that. The part dealing with schools has "ability to pay," and originally, originally when the CIR started to percolate as a subject matter, we heard from...I think they were primarily business groups that said they wanted "ability to pay" in the statute. And the problem with just "ability to pay" is it can be used as a sword or a shield, and the teachers could use it as a sword and say, you have plenty more levy authority, we want more money than comparability. And what we did in the bill is say it's only going to be used by the school districts as a shield, and by that we mean that the school district, after the CIR determines comparability, and let's say they say that the teachers ought to get a dollar-an-hour raise, and that you just can't afford because you're at your levy limit. The Legislature has cut your state aid and you just can't do it. That is a motion that you can file as a school district. Only the school district can; teachers can't use it to increase their pay. The school district comes in and says, hey look, here's my circumstance, I'm at my levy limit, you just ordered me to pay more to my teachers, say somebody with a lot of property, a big manufacturing concern has left the school district, my property tax base has taken a hit and there's no way we can pay it. And this will allow you relief. Can you employ this because it's uncomfortable to pay the teachers what you've been ordered? No. But if you can't pay it, it is available to a school district and I think will be used more and more as we see the Legislature more stingy with state aid and with more and more school districts getting to their levy limit. [LB397]

SENATOR LOUDEN: Then you feel that's clarified enough in there that it should cover any problems that we've had in past years over negotiation with teachers' wages when some of these school districts are at their maximum levy? [LB397]

SENATOR LATHROP: Sir, it's brand new, so this wasn't available to the schools before LB397 and I hope that it's clear enough. But like I've said since this whole process started, my door is open and I'll talk to folks about just about anything as long as their concerns are thoughtful and they come with suggestions. [LB397]

SENATOR LOUDEN: Now on page 57, when they talk about the Regents of...employees of the Regents, which is the colleges and the state colleges, and they have to utilize... [LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR LOUDEN: ...peer institutions with similar enrollments, now do they go out of state to find institutions? [LB397]

SENATOR LATHROP: I believe they... [LB397]

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SENATOR LOUDEN: How do they figure that, because that was a big problem here a couple years ago at Chadron State College when they went out to find their peer groups and they were in areas that paid a lot more than what they were paying in western Nebraska. [LB397]

SENATOR LATHROP: Yes, and I think the answer is, yes, they do go outside to find, as necessary, to find institutions with similar enrollments and similar kind of academic things. [LB397]

SENATOR LOUDEN: Okay, thank you, Senator Lathrop. And thank you, Mr. Speaker. [LB397]

SPEAKER FLOOD: Thank you, gentlemen. Senator Fulton, followed by Senators Wallman, McCoy, Adams, Burke Harr, Cornett, McGill, Howard, Ken Haar, Nelson, and many others. Senator Fulton, you are recognized. [LB397]

SENATOR FULTON: Thank you, Mr. President, members of the body. I'm going to read from a newspaper article that appeared in our local paper here about...well, it wasn't too long ago. It was actually looks like May, so it would have been about two weeks ago. "It's a perfect storm. Many public employees continue to get raises through union contracts while the recession has hit the tax receipts to the cities and states that pay their wages. At the same time, many employees of private companies have lost jobs or seen wages frozen because of the deep recession. So there is considerable pressure this year to reform the state's public union system that affects the pay and benefits of about 43,500 Nebraskans, says Omaha Senator Steve Lathrop, who's working on that reform." Later on there was something in this article which I listened to and sat on and hoped it was an incorrect quote. Later on in this article, "The current debate is part of a national, political agenda"--and this is Senator Lathrop speaking--"the current debate is part of a national, political agenda spearheaded by some conservative groups, he says. They want to get rid of labor unions because they want everyone to work for minimum wage." That's what Senator Lathrop said in this article. Now that causes me trouble because I do not...I am one of those who wants to see reform of the CIR and I do not believe, I do not want our public employees to be making minimum wage. Indeed, if we were to take that to its logical conclusion, any who would seek significant and meaningful reform of the CIR could be painted as one who wants to see public employees making minimum wage. I don't think that's what my colleague means. I do not want that ascribed to me. And the reason I've decided to bring this up is because earlier in this debate I wrote this down: Senator Lathrop said if you're not okay with this process then you're not in favor of average pay. Now we just heard the Clerk read that, of the bills introduced having to do with CIR, all have been killed now. If you were paying attention, Business and Labor Committee has killed all of the bills having to do with reform of CIR excepting this one, and that's fine. That's the way the committee

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process works. But I do not want it ascribed to me; and I would expect most of the other senators, that we are against average pay. There are other ideas out there, varying levels of extreme, to achieve a fair and equitable wage. Would Senator Lathrop yield to a question, Mr. President? [LB397]

SPEAKER FLOOD: Senator Lathrop, will you yield to a question from Senator Fulton? [LB397]

SENATOR LATHROP: Yes. I will say that I did not suggest that Senator Fulton wanted everybody working for minimum wage. That would be a mischaracterization. And with that said, I will yield to a question. [LB397]

SENATOR FULTON: I thank you for that, Senator Lathrop, because as I read that article, I saved it and I haven't said anything about it because I don't think that's what you believe of those who want to see reform of the CIR, but there is a quote there. And then I heard you say that if you're not okay with this process then you're not in favor of average pay, setting up a logical disqualification for those who are against your bill, therefore, are against average pay. And so that's not accurate either. Now I'm going to ask this question. You also said the CIR is designed to provide average pay. [LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR FULTON: Would you say that the CIR has provided average pay in Omaha? [LB397]

SENATOR LATHROP: Senator Fulton, as I suggested, I believe that historically there have been distortions to the average that LB397 fixes,... [LB397]

SENATOR FULTON: Okay. [LB397]

SENATOR LATHROP: ...and we will end up with average pay for work by our public employees when LB397 passes. [LB397]

SENATOR FULTON: Okay. That's fair enough. I understand that. I disagree. I don't believe that this process is going to...it may well be possible to say that average pay is the intention here, but it was the intention when CIR was put forward. I also heard that the CIR was...thoughtful people gave us the CIR through a reflective process. Now earlier I read to you within the course of 2 minutes how we got the CIR. It was not a reflective process. I submit to you that good intentions do not therefore make good policy. [LB397]

SPEAKER FLOOD: Time, Senators. Thank you, gentlemen. [LB397]

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SENATOR FULTON: Thank you. [LB397]

SPEAKER FLOOD: Senator Wallman, you are recognized. [LB397]

SENATOR WALLMAN: Thank you, Mr. President. In regarding the amendment on Select File for the CIR, I think it was done... "Terrible Terry," I think, wasn't it, Senator Tony? And it was done on account of the employees at BSDC, working below survival rates. And so people around Beatrice hit the state senators for a pay increase, so the CIR was... its early beginnings. And so is this perfect? Is it needed? In the real world probably not, but in the real world management has control and management signed these contracts, management made the deals--management. Not very many management people took things to the CIR the way it was, so why not? It's your job, if you're a school board treasurer, president, county/city board to look these things up. It's your job. Folks, do your job. And I had dinner with a family that got a conservation of the year award and they said, I quote him: The Unicam is broke. He says, you guys broke it, funding for education, all these things, closed rural schools. He says, thanks to you in here, 49 senators. He says, I noticed you voted for us on one of them issues, and he remembered. So that's where we're at today and it bothers me that we're picking on teachers. We're way down the list on teacher pay. And people... well, they only work nine months a year I hear. Be married to a teacher. Walk in her shoes or his shoe steps... or shoes and you'll find out they work 10, 11 months a year and teach on the side for nothing. That's our public school teachers and I'm proud of them. And I'd yield the rest of my time to Senator Harms. [LB397]

SPEAKER FLOOD: Senator Harms, you have 2 minutes 40 seconds. [LB397]

SENATOR HARMS: Thank you, Senator Wallman. I appreciate it. I just wanted to kind of finish up where I started earlier, and it's been a long time in between so I'll do a quick review what LB555 does. It simply eliminates the special master, eliminates the Court of Appeals, speeds the process up, makes it more predictable, brings about I think more probably equitable outcomes of it. It narrows down the time lines, which I think we need so badly in the area of state employees and for the University of Nebraska as well as Nebraska State Colleges. I want you to understand, I remain committed to passing a bill this session that accomplishes significant change, a bill that provides cost containment, a bill that speeds up the process, a bill that's more predictable with more predictable outcomes and equitable wage rates, a bill that recognizes an appropriate balance, an appropriate balance between labor and management. And I believe this AM1116, at least in the segment I developed, does that. And I think the bill overall, the amendment overall does that. So I would be in hopes that as you think through this process that you understand that there are a lot of different ramifications of this legislation, but there are areas in it that we've got to correct, we have to fix. And I will tell you with the state employees and higher education, it's critical, and also in our budgeting process. By speeding up this whole... [LB397 LB555]

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SPEAKER FLOOD: One minute. [LB397]

SENATOR HARMS: Thank you, Mr. President...by speeding up this whole process will help us when we look at our budgets, when we develop our budgets of the future. I don't have enough time to walk you through. I wanted to walk you through just a little bit about what this bill actually accomplishes in state aid, I mean, excuse me, accomplishes for the state employees as well as Nebraska State Colleges and the University of Nebraska and what it actually does, because for the first time in actual law, in writing, we will have direction. We don't have that now. That's why the process does not function well at this level. But I'll stop here because I don't have enough time. Thank you, Mr. President. [LB397]

SPEAKER FLOOD: Thank you, Senator Harms. Senator McCoy, you are recognized. [LB397]

SENATOR McCOY: Thank you, Mr. President, members. I was about to ask Senator Lathrop to yield to a question, if I may. [LB397]

SPEAKER FLOOD: Senator Lathrop, will you yield to a question from Senator McCoy? [LB397]

SENATOR LATHROP: Yes. [LB397]

SENATOR McCOY: Thank you, Senator Lathrop. When we last had a chance to speak and then you followed up with a comment, you said we're in the legislative weeds now, and I was questioning about subpoena power. Well, the many, many, many constituents that I've heard from that are concerned about this issue that are business owners, not only in my district but across the state, would beg to differ. I had a chance to be in a meeting with some of the parties that wrote this legislation--one of the attorneys, as a matter of fact, that did--about two months ago and I asked some of these very same questions that I'm asking Senator Lathrop of that attorney. And the answer I got was that we have to have subpoena power in order to come up with the hourly rate value, to get the most detailed information we need. So I don't think we are in the legislative weeds when I bring up these questions. I think they're legitimate concerns. What's good for the federal government, with detailed labor statistics, with the wealth of data resources that are out there that private industry uses to compare job information and job comparisons that's used in the private sector, that's used by the federal government, why is it that we have to consider the CIR being able to call up employees across this state who may be considered to be part of an array, and have that information given away willy-nilly? [LB397]

SENATOR LATHROP: Is that a question for me? [LB397]

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SENATOR McCOY: It is. Why is that? [LB397]

SENATOR LATHROP: Okay. I'll answer it, if you let me go back and, first of all, talk about the "in the weeds." I don't mean to suggest that this is not an important topic, okay? I think it's a lot of fine detail and we've talked about it to the point where I've made an offer for you to help me write the protection for the subpoenaed material if you like. [LB397]

SENATOR McCOY: Senator Lathrop, if I may,... [LB397]

SENATOR LATHROP: Wait a minute. [LB397]

SENATOR McCOY: ...it's not fine detail because you have to have it in order to come up with the hourly rate value, do you not? [LB397]

SENATOR LATHROP: Senator McCoy, it is detail of the bill and the comment was made, as I was trying to take a broader view of the debate, it was not intended to be an admonition to you or anybody else that wants to talk about the subpoena. If you want to talk about it, I'll talk about it. If you want to help me write a fix for it, I'll...you're welcome to join me, okay? Now we had this conversation and I suggested to you, and in fact I think in an old bill that was offered by Senator Fulton, he proposed a public-private comparison and required an 85 percent job match. So this isn't something that we did that was a brand new concept. Senator Fulton had it in a bill just a year or two ago, so it isn't new. And we're willing to provide protections for the public employers...or private employers. I'm a private employer. I don't want my office manager spending all day answering surveys. I want her doing the things that we've hired her to do, and she's great at it. And I appreciate the concerns of the private industry, but I have to tell you, Senator McCoy, I can point you to articles in the chamber letters, newsletter, where they're the ones that asked for it. [LB397]

SENATOR McCOY: But that's not under dispute, Senator Lathrop. [LB397]

SENATOR LATHROP: Okay. So... [LB397]

SENATOR McCOY: I've said and I'll say again that I support a public-private comparison, but how we get there is the nature of my concern. You mentioned your office manager and I don't pretend to know or desire to know how your office situation works. It isn't just your office manager, as I understand this amendment. It is down to the individual.. [LB397]

SPEAKER FLOOD: One minute. [LB397]

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SENATOR McCOY: Thank you, Mr. President...down to the individual employee that can be questioned by the CIR. What information can be given? You know, your amendment, again on line 19 of page 1 of AM1383, says "protecting the identity of the employer." What other information out there would be asked for and desired to have by the CIR that wouldn't be protected, that wouldn't...that would be out there for the world to see? [LB397]

SENATOR LATHROP: I'll tell you what, why don't you tell me what you want in there, what protections you'd like to see, and I'd be happy to take it up with you. [LB397]

SENATOR McCOY: Well, I appreciate that offer, Senator Lathrop, and... [LB397]

SENATOR LATHROP: You're welcome. [LB397]

SENATOR McCOY: ...we may get to that point as we have an amendment behind AM1383 that we'll get to eventually that deals with some of these topics, so I appreciate that offer. But I continue to have reservations as to subpoena power and how it is used to come up with the hourly rate value that is the core tenet of LB397 and AM1116. [LB397]

SPEAKER FLOOD: Time, gentlemen. [LB397]

SENATOR McCOY: Thank you. [LB397]

SPEAKER FLOOD: Senator Adams, you are recognized. [LB397]

SENATOR ADAMS: Thank you, Mr. President, members. I'm picturing weeds and CIR. I'm going to come out of that and maybe go up to the 30,000-foot level of this. My comments in the time that I have are going to come from 31 years as a classroom teacher, 10 years as a mayor in a first-class city that negotiated with police unions and fire unions, and the time that I've spent as Chair of the Education Committee concerned about CIR and salaries as we have tried to adjust TEEOSA. So for whatever it may be worth to you, I begin to see all sides of this. I look at Senator Fulton's amendment and there's a couple of points in there that I think are worthy, but getting rid of the CIR isn't one of them. I look at the committee amendment and I think it's headed in the right direction, but I'm not, from my perspective, I'm not sure it's got everything it ought to have, and I think Senator Lathrop has openly admitted that it is a work in progress. In his opening, Senator Lathrop emphasized two things, that what cities were asking for was predictability and minimize the distortions of the average. That's it. I recall all of those times when the city administrator and I would spend with the police and fire union negotiating and we would spend hours. And you know what all the hours were spent on? Deciding the cities that were going to be in the array. Because once that was decided, it took the city administrator and a calculator and a personnel study about an

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hour to come up with the numbers, and it was over with. And I would also point out to you the CIR and its existence is a double-edged sword, and I'm speaking to you now as a former mayor. It was a double-edged sword. There were times when there were city employees that said, okay, we're going to go to the CIR, and we said, all right, let's do and let's watch what happens in terms of comparability, remember that. And I've said that to more than one school board member who has said to me, oh, the CIR is our problem. Remember, it is a double-edged sword if you choose to use it that way. Predictability, it was easy once we had come up with the array. Comparables, a little more difficult. If your police force has a lieutenant and the one down the road doesn't, it made it a little tougher, but we worked our way through it in about an hour or two. On the school side it's predictability, predictability, predictability, and distortion of the average. [LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR ADAMS: It's the same thing. We got a pretty good idea what we're going to have to pay; we just don't want any anomalies in there that's going to knock things clear out of whack. I think there are some things that can be done to AM1116 to help the school portion of it. I've shared that with Senator Lathrop. He has been open to some of those ideas, which are cost containment, which create some predictability, and which minimize the distortions to the average. Because, folks, whenever you have an average, somebody is always falling below it. So you got to minimize some of those distortions. Thank you, Mr. President. [LB397]

SPEAKER FLOOD: Thank you, Senator Adams. Members, we've had a technical difficulty with the speaking queue inasmuch that all the lights were erased electronically. (Laughter) But as good fortune would have it, we have a handwritten list so we're going to proceed using that handwritten list. Senator Harr. The list as we have it at this time includes the following senators, beginning with Senator Burke Harr, Senators Cornett, McGill, Howard, Ken Haar, Nelson, Brasch, Bloomfield, Smith, Larson, Pirsch, Hansen, Price, Gloor, Janssen, and others. If you would like to speak, you were not on the list prior, you can reengage your electronic device at your seat and you'll be placed back in the queue, as we have restored our ability to electronically monitor your desire to speak. At this time, we now move to Senator Burke Harr, where you are recognized. Senator Harr. [LB397]

SENATOR HARR: Thank you, Mr. President. I call the question, Mr. Speaker. [LB397]

SPEAKER FLOOD: I rule that out of order. Senator Cornett, you're next. [LB397]

SENATOR CORNETT: Thank you, Mr. Speaker and members of the body. I come from a little bit different background, as most of you know, having been a former police officer for ten years with Omaha. There are a few things that I've heard today that I find

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disturbing. While I agree that the CIR definitely needs an overhaul, while I agree that we need changes, some of the comments that I've heard made in here and some of the bills that were introduced in regards to eliminating the CIR need to be addressed. We talk about going back to the history of the CIR. The CIR was established as a means for certain groups of people to have a voice. When I say this, they gave up their right to strike, which other unions have, in exchange for the CIR. Everyone says, oh, the elimination of the CIR doesn't mean anything in this state because we're a right-to-work state. It's true, we are a right-to-work state, and it's true if these unions entered into a strike the people could be terminated. But what do we do if we eliminate the CIR? What do we do if a union or a police group or a fire group or a group of teachers decides to strike? Do we fire them? Let's look at teachers for an example. If we decided that we weren't going to continue employing them because they didn't settle for the contract negotiations and decided to not come to work, being a right-to-work state, where do we pull teachers from? Wyoming? No, Wyoming pays more than we do. Colorado? No. Iowa? Kansas? Missouri? Where exactly do we find teachers to replace the ones that we've let go? South Dakota is the only state that pays less than we do. Where do we find the police officers? Who in here wants to dial 911 and not have someone come? There is a thing called blue flu. It's not pretty. It's shut cities down before. The average cost of training a police officer, if you think they're so easy to dispose of through the right to work, or a firefighter or a teacher costs approximately \$50,000 just for them to get out what's called field training. When you talk about officers, not sergeants, not lieutenants, not captains but officers that have specialized training, some officers have \$200,000 and \$300,000 of training. Where is the cost savings by dismissing these people? When you talk about average salaries and how well that's worked for Omaha, I believe Senator Fulton brought that up, salaries are not the problem. You want to talk about average salaries? Cops don't make that much base pay. They don't make that much in seniority pay. A Lincoln firefighter starts out at \$42,000 a year and maxes, without specialty pay, at \$65,000. Pay is not the issue. Benefits and how the contracts are negotiated in regards to benefits over time, pensions, that is where we need to be looking. Base pay and pay, how many of you in here want to do some of the jobs that we do for \$40,000-some a year, depending on the agency, \$60,000 a year? Where's your line for going into some of the situations that a police officer or a firefighter goes into? When you talk about average pay for teachers, average salary for teachers, Nebraska ranks 43rd nationally, 43rd. We're not in the top 1 percent. Teachers aren't the problem here. The average salary for a teacher is \$44,000... [LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR CORNETT: ...a year. That lags the national average by more than \$9,000. A person graduating with a degree in education starts out at an average of \$15,000 less than other people graduating with a bachelor of arts degree. Pay? Is pay the issue? Are the benefits the issue? Is eliminating the CIR the right thing to do? It all depends on what you want and how much you want to pay in the end, because you're not going to

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have teachers. You're not going to be able to train police in time to get to your door if there's a problem, or firefighters. The CIR was established as part of the legal right to give up striking. No one wants to go back to where that could happen. These are essential services. [LB397]

SPEAKER FLOOD: Time, Senator Cornett. [LB397]

SENATOR CORNETT: Thank you. [LB397]

SPEAKER FLOOD: Thank you, Senator Cornett. Senator McGill, you are recognized. [LB397]

SENATOR MCGILL: I yield my time to Senator Council. [LB397]

SPEAKER FLOOD: Senator Council, you have 5 minutes. [LB397]

SENATOR COUNCIL: Thank you very much, Mr. President. Thank you very much, Senator McGill. I have sat and listened intently to the debate that has occurred thus far on LB397 and as I sat there I said I need to get on the mike, and I somehow got lost in the queue. It was probably when I pushed the button that the electronics broke down. But I sat here thinking perhaps I could add something to this discussion because I have an absolutely unique background and experience. No one else in this body has had the degree of labor relations involvement that I have had and particularly CIR. For those of you who may not know, I started my legal career as a field attorney with the National Labor Relations Board, Region 17, covered Nebraska. I served on the Omaha Board of Education for 11 years, 4 years as its president; served on the Omaha City Council, 4 years; and served as a commissioner on the Commission of Industrial Relations. So I've seen every aspect of the issue of collective bargaining, collective bargaining in the private sector, collective bargaining in the public sector. And I want to begin by commending the Chair and Cochair of the Business and Labor Committee for the work they've done on LB397; I want to commend Senator Utter for his involvement in that process. I appreciate the opportunity that was extended to me by Chairman Lathrop, having been a past member of the Business and Labor Committee. And Senator Lathrop, knowing my background and experience, invited me and I did have the opportunity to become engaged in some of the initial meetings between the relevant parties in terms of addressing the points of concern and contention about the Commission of Industrial Relations. And my colleague Senator Adams emphasized it, and coming from an education background and a city administrative background, he knows. I was talking to Senator Lathrop and I was trying to remember. I was on the commission for approximately four years and I must add this because last year when these issues were being discussed there was this whole concern that the Commission of Industrial Relations was, you know, this bastion of union sympathizers of a particular persuasion. So there's no doubt in your mind, I was appointed to the Commission of

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Industrial Relations by former Governor Mike Johanns and I was appointed by...
[LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR COUNCIL: ...Governor Johanns because of my labor experience. In the almost four years I was on the Commission of Industrial Relations, if we handled six cases in that four years I'd be surprised. I know I had two decisions to write during that six (sic) years. And the issue is predictability and that's what concerns municipalities and counties and school boards, and that's why a lot of people don't take their cases to the Commission of Industrial Relations. I heard somebody said they feared it or people threatened. The issue was predictability, not knowing who the comparable...the array was going to be, not knowing who the comparables were going to be, not knowing whether you were going to factor in a zero or not factor in a zero if the array participants didn't have a particular benefit. I believe LB397 goes a great distance toward completely addressing the concerns that have been expressed over the last couple of years about public employee collective bargaining, that this bill goes to the root of those, and one of them being that public-private employee, probably the employer comparisons. [LB397]

SPEAKER FLOOD: Time, Senator. [LB397]

SENATOR COUNCIL: That's what the private sector wanted--more private employers in the comparables. Thank you. [LB397]

SPEAKER FLOOD: Thank you, Senator Council. Continuing with discussion, Senator Howard, you are recognized. [LB397]

SENATOR HOWARD: Thank you, Mr. Speaker and members of the body. I have to say I especially appreciate Senator Wallman and Senator Cornett for their remarks earlier this afternoon. They're absolutely right. We didn't get the Court of Industrial Relations just by happenstance. There was a lot of sweat, blood, tears that went into that process and I was there, as was Senator Ashford who at that time was an attorney. And there were five of us that worked to bring the union into the Department of Social Services. And I'll tell you, when I started out working for the Department of Social Services I started for, if I was lucky, I remember \$20,000 a year. And for that I could do child protective service work, which meant I could go into the projects and tell people there was a report that their child had been beaten or abused or even sexually neglected, sexually abused. And as you can imagine, these people didn't take that information very kindly. It was a very high risk job and we had no rights. That was a time when you could be fired at will. You could be arbitrarily fired by your supervisor and you had absolutely no recourse. That was a hard, hard time to be a public employee. And let me tell you with this, too, the talk that I've heard on the floor is that these public employees are paid with a taxpayer dollar. True enough, but these public employees pay into the taxpayer

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dollar. They're not riding the gravy train here. These people are contributing every bit as much as anybody else toward the greater good through the taxpayer dollar. The CIR has been the court of last resort in many circumstances with public employees. Do we want to go to the Court of Industrial Relations? No, no. We don't really have the money to do that. The employees, the public employees union are not overly paid. We are lucky that we have reached a point where we can afford or maybe I should say when I was there could afford to raise a family and be able to take time off when your child got sick and be able to go on a vacation and take your family and spend some time together. That is really not too much to ask. I appreciate the work that Senator Ashford did for our union when we had no money and he was there. He was a young whipper-snapper attorney (laugh), and I'm going to offer him the remainder of my time. [LB397]

SPEAKER FLOOD: Senator Ashford, you have 2 minutes 11 seconds. [LB397]

SENATOR ASHFORD: Thank you. Thank you, Senator Howard, for that. I got up to change my focus and remember back to those halcyon days, I never could pronounce that word, but halcyon, I think, is the right pronunciation, in 1975, I think. And that's true. I mean, in those days the CIR had just been created, had their...each decision that was rendered was really a case of first impression. And it was a struggle for state employees at that time to be recognized and to gain a degree of comparability in their wages. And they were underpaid. And clearly, Senator Howard, your colleagues were underpaid. And that brings up an interesting point. And that is that there is a difference between public employment and private employment for lots of reasons. People go into public employment, in my experience, because they're dedicated. I thought Senator Cornett made a wonderful point. And Senator Howard made a very similar point. [LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR ASHFORD: I happen to have always owned businesses and been a private lawyer, though I did spend a little bit of time working in the Housing Authority. But I always envied, quite frankly, my friends who were in public employment because they were...most everyone I knew was so incredibly devoted to their work. Senator Howard's colleagues they worked in conditions that were, in those years, in the '70s, that were 30 and 40 years old. I mean, these old buildings were falling apart and they didn't have air conditioning and they had 300 cases or something. I mean, I've always respected and admired public employees, teachers, I don't care who they are. I think all of us can think back to our years in high school and college and the coaches that, at least in my case, that had faith in somebody that couldn't go left. [LB397]

SPEAKER FLOOD: Thank you, Senator Ashford. Time. [LB397]

SENATOR ASHFORD: Anyway,... [LB397]

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SPEAKER FLOOD: Thank you, Senator Ashford. Senator Howard, you are...no, Senator Ken Haar, you are recognized. [LB397]

SENATOR HAAR: Mr. President, members of the body, I, too, want to thank the members of the committee that worked so hard on the CIR bill. I was on the Lincoln City Council for eight years. And there were times we did not agree with the unions and we took some things to the CIR. But generally, it was a very useful process that's worked well, I believe. We've heard the criticism that it's a very complex bill and it's a long bill. And I would just quote...this quote that says, simple but not too simple. I want to talk for a minute then as well about how much I value our public employees. And again, I think there's somewhat of a mandate included in all of this saying that they should be paid at least average wages. Our school children perform, the last time I looked at it, was in the upper 20 percent of all school children across the nation. Certainly, that had something to do with our teachers. Yet our teachers rank number 43 when it comes to average annual salary. And when you include all of the benefits and everything, they rank maybe 38. So it's a little bit better when you consider insurance and retirement. But we are far from average, far below average for paying our Nebraska teachers. So I think the goal of paying average wages is a good one. I also get The Nebraska Trooper, as all of you do, the spring 2011. And there are the names of 11 state troopers that made the ultimate sacrifice and have given their lives in the line of the duty since the Nebraska State Patrol was organized in 1937. We appreciate these people that are State Patrol. We slow down when we see their cars, but we appreciate the fact that they are there and in some cases they made the ultimate sacrifice. When I was on the Lincoln City Council, I got to get a demonstration from the firefighters, I got to climb up a ladder to the top of one of their ladder trucks. And then they told me a firefighter has to not only do that, which was scary for me, but they have to be able to carry a 50-pound sack up that same ladder and down. And then we got to put on a mask, and this was a fake fire that we crawled into. But there was all the fog in the room and it was made to look like there was a fire, a very scary situation crawling into that situation. And these are the people, the firefighters in our communities and our volunteer firefighters, that do this all the time. And so I feel certainly willing to make the commitment that we're going to try and give at least average wages to our valued workers. I know very well a lot of state workers and I know at least one of them, my sister who takes her briefcase home every night and sometimes works until 2:00 in the morning and comes in on weekends, I appreciate that work. And to simply get rid of folks like that who carry...who are not only very good at what they do but they carry an enormous amount of history with them. And you know sometimes people say, well, why don't you just hire... [LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR HAAR: ...new teachers, why don't you just hire new teachers and hire new state employees, get rid of the old overpaid ones. Well, sure, you want new people in

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the system. But we lose tremendous training dollars, as we've heard, tremendous history by just going to brand new workers. That doesn't make sense at all to me. So I appreciate the work that this committee has done. And I want to thank state workers, and hopefully we can provide them with average salaries. Thank you very much.
[LB397]

SPEAKER FLOOD: Thank you, Senator Ken Haar. Senator Nelson, you are recognized. I should mention following Senator Nelson, we have Senators Brasch, Bloomfield, Smith, Larson, Pirsch, Hansen, Price, Gloor, Janssen, Schumacher, Schilz, Krist, Hadley, and many others. Senator Nelson, you are recognized. [LB397]

SENATOR NELSON: Thank you, Mr. President and members of the body. I'd like to...we were talking philosophically a little while ago, Senator Lathrop, Senator Cornett. I, too, am in favor of average wages, good wages for our public employees. But I think we need to dispel ourselves or disabuse ourselves of the notion that our public employees are going to leave if they don't command certain salaries. My background is in Omaha. When vacancies occur in the fire department or in the police department the line goes around the block as far as the applications. People wait for years to get into the fire division and the police division. Why? Maybe it's something like the Marines, maybe it's because of the dedication and the public spirit they have. But there's another thing. It's the security that they have as public employees. It has been suggested maybe years ago that people were fired at will. I don't see that happening anymore in our public sector. We have public employees that do not belong to the union, I don't see that happening at all. We're going to look after our public employees. The problem sometimes is they're not looking after us. In the case of Omaha, and I think Senator Cornett said wages are not the problem. Well, wages are the problem, because if you didn't raise wages or weren't able to or didn't want to then the benefits went on up, the health and the pension and the other benefits. And that's why we're in trouble. And I should ask, you know, Senator Ashford if there were some more stringent requirements put into the CIR several years ago. And I don't know how far back that was. Why is it now that we're in the position where public employers are very reluctant to go to the CIR? Things should have been fixed along the way. That didn't happen. And I'm not sure that we're fixing them now. Yes, perhaps we have a methodology that's going to help us on that. Senator Wallman made the statement, in the real world management has control. Well, the real world here is that that's private enterprise, they do have control. We don't have control in the public sector anymore and that's one of the things we have to fix. If sometime back and maybe continuing now they don't hear that many cases on the CIR it's because of the fact that the public employers, we're going to lose for the most part, both from the standpoint of probably having to pay higher wages or losing some other things or because of the costs that are going to be involved. So these are the things to consider. I don't think we have to worry about our public employees leaving. If teachers, you know, if we did away with the CIR altogether our public employees are still going to be looked after because we value them. They're dedicated

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public servants and we want them to have a fair wage. But if they were to leave, where are they going to go? Are our firemen going to leave? Are our policemen going to leave after all that training? No, they're public-spirited individuals. And if some way or another we can equalize things a little more and get to the point where things are pretty even-stein on both sides then I say let's try to do that. But if we can't get that done and it's necessary to do away with collective bargaining... [LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR NELSON: ...then I don't think we have to worry too much about that. It's working in other states. We've seen in Indiana that collective bargaining has been greatly modified. That's another way to approach this. So we're talking about these amendments. And Senator Lathrop has offered to work with us in making some amendments. I'm still concerned about the subpoena powers. Private enterprise wants to be involved. We want that data, but I think we can get it in other ways than doing it with subpoena powers or calling people. We can arrive at an average wage and we may have to modify that a little bit on the fact that someone may be a helicopter pilot or somebody has good training. But I think that can be done without using the subpoena process. I would hope, as Senator McCoy has offered, that we can do it through the data that we have available on a daily basis through the multitude of resources that we have. Thank you, Mr. President. [LB397]

SPEAKER FLOOD: Thank you, Senator John Nelson. Senator Brasch, you are recognized. [LB397]

SENATOR BRASCH: Thank you, Mr. President. Thank you, body. And thank you to the senators who have worked diligently on LB397 and these amendments. Our office has had many calls, many e-mails today. I was in the back on my cell phone speaking with a teacher in our district. People are concerned. The concern here does relate to wages and the economy. We wouldn't be here today wondering what can we afford. We're looking at our budget. You know, we are very challenged. I was asked to do a special project for a past employer of mine, just quick research on an ESU out in Oregon. And I was on a teachers' blog. And the teachers were brainstorming on how to save teaching jobs. They were talking about not hiring substitute teachers; instead, having adventure day where they'd combine classes. The economy is stressed across the nation, we do understand that. We have some of the best teachers and wonderful, hardworking law enforcement people, that's not a question. The question is, what can we afford? Nebraska, I believe, has been very diligent and ahead of the curve of being prepared, having the reserve, working with it, working hard on being frugal with our hard-earned money. That is the question here. With the remaining time, I would like to give it to Senator Fulton. Thank you. [LB397]

SPEAKER FLOOD: Senator Fulton, you have 3 minutes 19 seconds. [LB397]

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SENATOR FULTON: Thank you, Mr. President. Thank you, Senator Brasch. If Senator Lathrop would yield to a question, I don't know that I see Senator Lathrop. [LB397]

SPEAKER FLOOD: Senator Lathrop, will you yield to a question from Senator Fulton as he makes his way to the microphone. [LB397]

SENATOR LATHROP: Yes. [LB397]

SENATOR FULTON: Okay, thank you, Senator. I'm on AM1116. These times to speak are rare and few between, so I'm going to try to get at some meat and potatoes here. AM1116, page 17, and while you're getting there I'll explain that this is existing language, for anyone who is following along, this is right about line 11, "...having regard not only to wages for time actually worked but also to wages for time not worked, including vacations, holidays, and other excused time, and all benefits received, including insurance and pensions." As I read the statute now, the CIR has the authority to consider these things. Am I correct there? [LB397]

SENATOR LATHROP: That's the way I read it too. [LB397]

SENATOR FULTON: Okay. So why haven't they, I guess? [LB397]

SENATOR LATHROP: I don't know that they haven't. I mean, your question assumes that they are not considering those things. And I don't know that they don't. [LB397]

SENATOR FULTON: Okay. [LB397]

SENATOR LATHROP: I know the vacation and that sort of thing, we went into a very significant discussion in the working group about prevalency, determining prevalency, how we go about doing that as it relates to vacation time, holidays, those sorts of things, and excused time. So I think they do consider those things. They certainly will when we get done with this bill. [LB397]

SENATOR FULTON: Yeah. The request or somewhat of an admonition on the part of Senator Ashford, I want to respond to that because the idea of hourly rate value as contemplated in your amendment, I think is a good idea and the record should reflect that. I don't know what others think, but I do think it's a good idea. What I...where we have difference is things that we would like to be able to include in the hourly rate value... [LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR FULTON: ...we're not. And so I come back to here and I read that the CIR

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can take into account pensions and benefits, and for one reason or another they're not such that we have to put forward the hourly rate value idea, which again I think is a good idea. [LB397]

SENATOR LATHROP: I have an answer for you. [LB397]

SENATOR FULTON: Yeah, please. [LB397]

SENATOR LATHROP: And the answer lies in a different section on prevalency. And I don't know if I'm going to be able to put my hands on it. But we have, and we...I'm going to tell you, it was a long conversation about prevalency and it's found on page 23. Prevalency can relate to things like what's the prevalency for people that work in wastewater treatment for vacation? Okay? There's also prevalency for specialty pay and some of those things. [LB397]

SENATOR FULTON: Is this prevalency with respect to pensions, though, pensions and benefits? [LB397]

SENATOR LATHROP: No, no, no. But that's not what you're asking me. You're asking me about... [LB397]

SPEAKER FLOOD: Time, gentlemen. [LB397]

SENATOR LATHROP: ...vacation and things like that. [LB397]

SPEAKER FLOOD: Thank you, gentlemen. Senator Bloomfield, you're recognized. But before we go to Senator Bloomfield, Mr. Clerk, anything for the record? [LB397]

CLERK: I do, excuse me, Senator Bloomfield. Very quickly, amendments to LB374 and LB376, Senator Heidemann; and Senator Fischer to LB289. Reference report referring a gubernatorial appointee to a standing committee for confirmation hearing. And LR201, offered by Senator Bloomfield. That will be laid over. Thank you, Mr. President. (Legislative Journal page 1435-1441.) [LB374 LB376 LB289 LR201]

SPEAKER FLOOD: Thank you, Mr. Clerk. Senator Bloomfield, you may proceed. [LB397]

SENATOR BLOOMFIELD: Thank you, Mr. President. Some people may be of the opinion that I'm anti union. To dispel that I want to point out that I'm a proud member of the Teamsters Union for the last number of years. I am not anti union. The people in my district send me as much as they send everybody else. I've got a little e-mail here that pretty well seems to sum up their attitude. It says, it is amusing to read the comments about the Nebraska CIR and the people's concerns about bargaining rights. I worked for

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45 years and my bargaining rights were twofold: one, I needed a job to support my family; and two, I kept my job by something called job performance. I think maybe that's where we need to go. And with that, and the issues concerning schools, yet, that Senator Larson has been talking to, I will yield the rest of my time to Senator Larson. [LB397]

SPEAKER FLOOD: Senator Larson, 2 minutes. [LB397]

SENATOR LARSON: Thank you, Senator Bloomfield, for yielding me your time to talk more about schools. Listening to the debate, I heard Senator Loudon and Senator Lathrop bring up the issue of ability to pay for school districts. And Senator Lathrop during that conversation said that the ability to pay will act as a shield for the school districts. And if Senator Lathrop would yield, I'd appreciate it. [LB397]

SPEAKER FLOOD: Senator Lathrop, will you yield to a question from Senator Larson? [LB397]

SENATOR LATHROP: Yes, I will. [LB397]

SENATOR LARSON: Thank you, Senator Lathrop, for yielding. When you talk about the shield you're referencing the fact that if a school is at its levy limit and cannot pay what the commission orders, they would not have to, right? [LB397]

SENATOR LATHROP: The reference is to the fact that if the school district does not have the ability to pay, there's relief in this bill by way of a motion before the CIR. [LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR LARSON: What if a school, let's say, isn't at its levy limit. Could the commission force the local board to raise its levy limit? Can it determine that it does have the ability to pay or could it force a district to liquidate its reserves possibly? [LB397]

SENATOR LATHROP: Great question. It will not force anybody to do anything. That school district has many options. And it's not going to wade into what they should have done or could have done. What they will conclude is that they have the ability to pay. [LB397]

SENATOR LARSON: Okay. [LB397]

SENATOR LATHROP: And it will be up to the school district on just how they get to that place. [LB397]

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SENATOR LARSON: I see. Well, thank you, Senator Lathrop, for clearing that up. You know, I have some concerns about the whole ability to pay concept that the CIR could act as a sword not just a shield, even though the intentions... [LB397]

SPEAKER FLOOD: Time, gentlemen. [LB397]

SENATOR LARSON: Thank you. [LB397]

SPEAKER FLOOD: Senator Smith, you are recognized. [LB397]

SENATOR SMITH: Thank you, Mr. President. And good afternoon, colleagues. I am a member of the Business and Labor Committee and I was the lone no vote on LB397 as it was amended by AM1116. And while I still oppose LB397 as amended by AM1116, I will tell you that I do hold out hope that we can make some type of progress here. Call me perhaps naive, but that's...I do have faith that we can get there yet. Here's some of the reasons that I opposed the bill initially as it was amended. And I've distributed out to my colleagues a flow chart, a table of AM1116. And it is really very unbiased, it's middle of the road. It just shows how inconsistent the process is across the public sectors. And that flow chart, you know, the most important thing here this afternoon and as we go on in our discussions about this bill is to fully understand what is in the bill. I know it's very complicated, and that's why I hope that you'll take a look at that table and that it will help you to understand a little bit. It's a very high level summary. Another reason other than the inconsistency across the sectors is that the private sector protection was not there. And I've heard my colleague Senator Nelson talk about that, and I appreciate him taking the lead on the discussion about protecting the private sector on subpoena powers and such. Wage reduction, I think it puts the employer at risk of keeping the wages frozen instead of having some common reduction halfway or something like that. And then the final thing that I was opposed to the bill based on was a lack of any element of local control. And we've had a lot of discussion about local control. We talked about it on the sales tax option. I really appreciate Senator Ashford talking about local control and he's a big supporter of that. But yet we do not allow the local government entities to have any say in what the wages and benefits are and such. And just for a little information, in the 2010 Small Business Survival Index, the SBE Council indicated that Nebraska ranked number 23 out of 50 states on sales taxes. And you hear a lot of discussion about sales taxes, but government spending, it ranked number 42. Also Beacon Hill Institute, the metro area in the State Competitiveness Report ranked Nebraska 6 out of 50 states. That's tremendous. But as you look at the units, the various units that make up that overall ranking, "Government and Fiscal Policy" subindex ranked Nebraska 18, and the "Business" subindex ranked Nebraska 28. So...and those rankings, I believe, are a direct result of the out of control spending that we're having. And what we're looking for at a local level, local control, put it as close to the people as possible for them to have an impact on the spending. So in closing here, by raising these issues it

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seems to somehow suggest that you don't support public sector employees, that we want substandard wages. That's not the case at all. I suppose I, for one, believe in the free market, I believe in capitalism, I believe in the goodness of employers. [LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR SMITH: I believe that employers, if they make the wrong decisions in business, they will lose good employees to their competitors. I believe it works out. I believe a lot of things work well in the private sector. And they work well enough in the private sector, I think we should try to bring some of that into the way wages and benefits are developed in the public sector. If it works well in the private sector, I believe it can work well in the public sector. And I just hope that we can continue this discussion, this debate, and we can try to move this bill towards addressing some of these issues that I've raised. Thank you very much, Mr. President. [LB397]

SPEAKER FLOOD: Thank you, Senator Smith. (Visitors introduced.) Mr. Clerk. [LB397]

CLERK: Mr. President, some items. Enrollment and Review reports LB22, LB404, LB575, and LB575A as correctly engrossed. I also have a communication from the Governor. (Read re LB283.) That's all that I have, Mr. President. Thank you. (Legislative Journal pages 1441-1442.) [LB22 LB404 LB575 LB575A LB283]

SPEAKER FLOOD: Thank you, Mr. Clerk. Continuing with discussion on AM1383 to AM1116, Senator Pirsch, you are recognized. [LB397]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I, like Senator Smith, too, am hopeful that we can continue this discussion and make progress on these concerns and issues, one of which that has been brought up and that concerns the ability for the first time to subpoena this private business information. And going forward, and I know these oftentimes the language here are conceptual space holders, placeholders. But as we go forward, particularly on that piece, I think it is incumbent to remember that as we look at perhaps describing companies in numeric terms, like employer number 562, something of that sort, if you can I think pretty easily discern which type of a company...which company you're talking about. If, for instance, you're talking about company ABC, which is a 3,000 employee company out of Kimball, located near Kimball, then you are going to know pretty much what that company is going to be about. And so I think that it is...at this stage the concerns that need to be brought to light and then specific tactics and strategies to address those concerns that need to be brought out as well. But I, at this point in time, I know that there was a question that Senator Fulton had on his mind. To that end, I would...oh, I'm sorry, Senator Larson had on his mind. So I will yield the balance of my time to Senator Larson, if he would like to take that. [LB397]

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SPEAKER FLOOD: Senator Larson, 3 minutes. [LB397]

SENATOR LARSON: Will Senator Lathrop yield to a question, if he's in the Chamber? [LB397]

SPEAKER FLOOD: Senator Lathrop is in the Chamber. Are you wishing to ask him a question? [LB397]

SENATOR LARSON: Yes. [LB397]

SPEAKER FLOOD: Senator Lathrop, will you yield to a question from Senator Larson? [LB397]

SENATOR LATHROP: Yes. [LB397]

SENATOR LARSON: Thank you, Senator Lathrop. I'm still working my way through the school area of the CIR reform, but at the same time, expanding my view to look across the entire bill. It's my understanding that cities in front of the CIR get to do the hourly wage value and combine wages and benefits when looking at comparability. Is that correct? [LB397]

SENATOR LATHROP: The hourly rate value feature in this bill applies to the political subdivisions. And I don't know that it specifically applies to the school districts. That's true. [LB397]

SENATOR LARSON: Yes. And can I get a gavel, Mr. Speaker? Can I get a gavel? [LB397]

SPEAKER FLOOD: It's relatively quiet in here, Senator Larson. You may continue. [LB397]

SENATOR LARSON: You know, I hear also that the big point is that it's (inaudible) all across the board. But is it not the case that with school districts that isn't the case, that wages and benefits aren't looked at together? [LB397]

SENATOR LATHROP: I think they are. And here's the thing that's interesting about the school districts and I'm glad you brought it up, is that most of them are in the same insurance plan and most of them are in the same pension plan. So we have cities being compared to different political subdivisions who are in different health plans, have different deductibles, and they have different pension plans. And when we look at the schools, one of the things about the schools that we noticed when we drilled down into it, and I mean drilled down into it with the school administrators and the school board people there,... [LB397]

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SPEAKER FLOOD: One minute. [LB397]

SENATOR LATHROP: ...was much of what is going on in the school districts is uniform already. So the hourly rate value issue is already taking place effectively with schools. [LB397]

SENATOR LARSON: Thank you, Mr. Lathrop or Senator Lathrop--I'm sorry,... [LB397]

SENATOR LATHROP: That's all right. [LB397]

SENATOR LARSON: ...for your explanation. I guess my next question would stay along those lines. What would happen if a school district in western Nebraska or anywhere for that matter would choose to give their teachers a cash payout instead of buying their health insurance? How does that affect the CIR? How does that affect moving forward within the CIR if one school district goes but they're in arrays...I mean, I know that a lot of school districts...I have... [LB397]

SPEAKER FLOOD: Time, Senators. But, Senator Larson, you are in the queue. You may continue. [LB397]

SENATOR LARSON: Is that all right with you, Senator Lathrop? [LB397]

SENATOR LATHROP: Yep, yep, I'd be happy to. And that's a great question. I got an answer for you too. [LB397]

SENATOR LARSON: Because that's a definite concern for me that if...I mean, we're bumping up the wages there in lieu of the insurance. How does that compare? [LB397]

SENATOR LATHROP: I will...let me try to express, and the problem that has been presented to me by you in this question is similar to what we've heard from the school administrators and the school boards. And I'm working on a solution. Here's how it works. Here's the concern they have. In choosing an array we primarily are concerned with trying to find schools who have similar enrollments and who are close in distance to our subject school district. Okay? That's criteria one. The school administrators came in and they said, you know what, some school districts are buying health insurance and some are giving money to the teachers in lieu of the health insurance, and we'd like you to have the arrays...put those people in different arrays. Because what happens with the school district that's given the money instead of the health benefit is they're paying FICA on it. Okay? That's like the employer's share, I think, is 7.5 percent or 7.15 if I'm remembering right, something like that. And so their concern is that the district that's paying health premiums doesn't have the FICA responsibilities for essentially the same hourly rate value of compensation. I'm working on something that I'd like to present on

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Select File that addresses that, that may make for an adjustment. Here's the problem or the concern I have for the school districts is that if we make that a filter in the array, which is to say we're now going to choose to put school districts in arrays, not just based on enrollment, not just based on proximity to the subject school district, but now we're going to make it dependent upon how they handle their health insurance, that we're going to get further and further away from our home school district in order to find a sufficient number of school districts that handle it in the same way. So I'm working on something on Select File. It is a very fair question, glad you brought it up. And if you'd like to help me work on the solution, you can be there. [LB397]

SENATOR LARSON: I appreciate that, Senator Lathrop. You know, I appreciate Senator Lathrop answering my questions. And I do have some concerns about the fact that wages and benefits aren't taken into account with the CIR bill. I understand that Senator Lathrop says that since all the school districts are on a fairly uniform pension and benefit plan, that they don't need to because the hourly value rate, excuse me if I don't have my terms right, but is the same. And you know, I just don't see that. I think we have to look at ways to...a cost-savings for the rural school districts. And Senator Cornett brings up that teachers are 43rd in base pay across the country, teachers in Nebraska. And that's why we don't get teachers from other states. And I'll be honest, I have a father that's a teacher and a mother that sits on a school board. Many of you may say that conflicts with one another. But they also, teachers, yeah, their base pay isn't that great, but Nebraska teachers have some of the best benefits in the country when it comes to health insurance benefits and plans. So I think the teachers' union oftentimes makes a large deal over how far they are down on the wage scale but forget to mention oftentimes how they compare in terms of benefits compared to other states, and it's rather well. And... [LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR LARSON: ...I think moving forward with the CIR, why are we not treating cities and schools the same? Cities get to combine the wages and benefits, why not schools? If it's good for the goose, it's good for the gander. But apparently, in LB397 and AM1116, that's not the case. And it's a little disappointing that school districts would be singled out on this issue. I'd hope moving forward possibly to Select File that we could work on that as well. And I appreciate Senator Lathrop opening his door to me because now it gives me a little something to do and to work on LB397 if it does advance past General File. And I'll be there as well taking input from him and members in the district. I appreciate Senator Lathrop for answering my questions. I have a lot more. So I know I'm short on time. Thank you, Mr. Speaker. [LB397]

SPEAKER FLOOD: Thank you, Senator Larson. Senator Hansen, you are recognized. [LB397]

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SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. Since Senator Adams gave a perspective from the city of York and being mayor there and saying it's the arrays that are the problem, soon as you get the arrays done a calculator will make those adjustments pretty easily. I've been reviewing the arrays section of AM1116 and there were some corrections under the amendment. But it still seems like there's an awfully lot of wordage there, a lot of verbiage and a lot of things to go through. Another thing that I ran across in the committee bill or committee amendment was the defined benefit plan and they have (inaudible) figuring the hourly rate of such plan as compared to the defined contribution, either one or the other. I can't quite see how that is done, but I'm still looking at that. And then we just talked about, Senator Larson and Senator Lathrop were talking about schools and arrays and maybe working on a Select File amendment for the arrays for schools that have different health payment plans. That looks like...what we are doing is making an awfully small group of schools that handle that differently. It's still a benefit. It's still a benefit whether they get the wage or they get the insurance. It doesn't seem like that makes a lot of sense to separate those into a separate array. I did have an amendment prepared and kind of talked myself out of it after talking to some people about making a separate array for the nonequalized school districts in the state. They certainly have a lot in common. They don't get any state aid, that's a pretty big commonality there. But there's almost too much variance in those 95 schools that are nonequalized now. Senator Adams promises me that there will be less (laugh) nonequalized schools in the future instead of more. And I fear that may or may not be true. But Senator Fulton has asked me for a little bit of time so I would yield the rest of my time to Senator Fulton. Thank you, Mr. President. [LB397]

SPEAKER FLOOD: Senator Fulton, 2 minutes 25 seconds. [LB397]

SENATOR FULTON: Thank you, Mr. President. Thank you very much, Senator Hansen. One of the issues that I had brought up earlier as to why I believe AM1116 actually makes the process worse is because it will cost more money to the taxpayer. Now I understand that there is disagreement as to indeed whether...as to whether indeed this makes the process better or worse. Recognizing that, I'm going to explain why I believe it makes it worse. I'm in AM1116 and I'm on page 18, line 8, "Job matches shall be sufficient for comparison if evidence supports at least a 70 percent match based on a composite of the duties and time spent performing those duties." Later on in the bill, it is on page 24, line 3, "The rules of evidence shall not be followed." Now I have been contacted by a number of attorneys and I've talked with labor attorneys, and I'm informed that the rules of evidence is a jurisprudence term and attorneys in here are able to... [LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR FULTON: ...explain this better. But if rules of evidence do not apply, then

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any evidence that is submitted in order to advocate whether a 70 percent match has been achieved it seems to me that this is going to potentially cost of lot of money for the union or for the city. And so this has been advocated, and I'm hearing people say it's the opposite. But this is what I'm being told by labor attorneys. Another point, line 22, "Geographically proximate public employers and private employers and Nebraska public employers and private employers are preferable for comparison." We heard earlier that we would be making comparisons in Nebraska, yet we read they're preferable for comparison. Bear this in mind: Page 19, "If more than 13 employers with job matches are available the commission shall limit the array to 13 members based upon selecting array members with the highest number of job matches at the highest job match percentage." If more than 13 employers. Let's say that you get 20 employers, the only way that you could determine which are the ranking, which are the top ranking, is to rank all of them, which costs money, which we, going back to on page 18, in order to pick the 13 that would fit into the array. It seems to me that this is opening it up for more money to be paid for labor attorneys to make this determination. Another point, defined contribution and defined benefit shall... [LB397]

SPEAKER FLOOD: Time, Senator. [LB397]

SENATOR FULTON: Thank you, Mr. President. [LB397]

SPEAKER FLOOD: Thank you, Senator Fulton. Senator Price, you are recognized. [LB397]

SENATOR PRICE: Thank you, Mr. Speaker, members of the body. Hello again. It's been a couple of hours. I'm going to try to do something a little daring here. I'm going to just talk to AM1383, if I could be so bold. And my question is, and I'm not going to engage Senator Lathrop because he's getting worn out. I'm just going to ask the question so we can get more...I mean, there's been a lot going on. But just listen and we'll have off the mike...in Section 4, so we're on page 2, line 14. Section 4, it starts talking about striking "public employer" and insert "municipality," etcetera, ad nauseam, and then it goes on to line 16, and strike beginning with "representing" through "personnel." That would be AM1383, the one we are actually supposed to be discussing, I guess. My question is, as I look at the bill they're (inaudible) here, and I looked at it and I say I'm not understanding why we're removing that portion because it seems then, and again I don't put myself out to be a paragon of knowledge in labor issues. But it looks like we're putting minimum staffing on every political subdivision; that the Department of Roads could now say that there's a minimum staffing need. So I'm confused by it, I'm a bit confused by that. And then on the following part, Section 5, it seems that we're striking the "Nebraska first" thing that we were referring to as being a pretty important thing. So I'm going to listen to the debate to understand and make sure I don't understand it incorrectly; that we're now going to have a minimum staffing standard for every political subdivision, for every aspect of it. And that would be good to

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know. And with that, I'd yield the balance of my time to Senator Fulton. [LB397]

SPEAKER FLOOD: Senator Fulton, you have 3 minutes 4 seconds. [LB397]

SENATOR FULTON: Thank you, Mr. President. Senator Council is enlightening me on the rules of evidence. And so perhaps we can talk more about that. And that would be good because I do believe this is something that we need to talk about how much this is going to cost taxpayers. The hourly rate value, the hourly rate value is a good idea which comes up with a way to assign a number to a job or a benefit or a pension. It serves a value because it would give us an apples-to-apples comparison. That's good. Yet we're hearing that one of the big problems is the pension obligation that exists in Omaha. And I suggest that it could well be a big problem not just in Omaha, it could be a problem in other places if it's not attended to. Yet defined contribution and defined benefit plans shall not be compared...and I'm not finding exactly where it is. But that is a line in the...a section of the bill. Defined benefit and defined contribution shall not be compared. So if we're after an apples-to-apples comparison, we're disallowing the comparison that would allow a defined benefit to be compared to what is carried out in the remainder of the private sector, and that's defined contribution. So if indeed the pensions are a big problem, as we hear is the case in Omaha, then why is it that we can't, within the hourly rate value, make a comparison to the private sector when it comes to pensions? I'm not here suggesting that we get rid of defined benefit plans. I'm asking why they're not able to be compared. The way that we go forward with this is to recognize that just because something hasn't been brought to the CIR doesn't mean the CIR doesn't have its effect. Let me give you an example. If a union requests a 10 percent raise and the city says we're only going to give a 2 percent raise, and they come to loggerheads, there is impasse. Perhaps something that can be used is, well, we're going to take you to the CIR,... [LB397]

SPEAKER FLOOD: Thirty seconds. [LB397]

SENATOR FULTON: ...but we won't take you to the CIR if you'll meet us halfway. And if indeed they meet halfway then you see how the CIR can be used as a negotiating tool. And so I want you to bear that in mind also, Senators. That a particular public entity has not gone to the CIR doesn't mean that the CIR doesn't have its effect. And so we have to take great care in putting this legislation forward such... [LB397]

SPEAKER FLOOD: Time, Senator. [LB397]

SENATOR FULTON: Thank you, Mr. President. [LB397]

SPEAKER FLOOD: Senator Gloor, you are recognized. [LB397]

SENATOR GLOOR: Thank you, Mr. President, members. I wonder if Senator Lathrop

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would yield to a brief question, Mr. President. [LB397]

SPEAKER FLOOD: Senator Lathrop, will you yield to a question from Senator Gloor? [LB397]

SENATOR LATHROP: Yes, I would. [LB397]

SENATOR GLOOR: Thank you, Senator Lathrop. Senator Lathrop, in conversations you and I have had in recent days about the CIR and the amendments and interests of some of my constituents, you made a comment to me that I wonder if you would be comfortable repeating. Maybe I'll phrase in terms of a question. Have you ever dealt with anything that's been this hard in your career? [LB397]

SENATOR LATHROP: No. I think it's difficult to overstate the amount of time and the commitment put into people that have worked on this subject on the working group. And honestly, if I look back over this legislative session, from the time I got here this has been a full-time undertaking. I have been meeting with people in my office, listening to the concerns of political subdivisions that care to give me thoughtful feedback on the bill and positive solutions and ideas. And, Senator Gloor, I had no idea what I was getting into when we undertook this, I really didn't. But I can tell you it has been six months away from my law practice, most of the time that I've spent down here, working on a thoughtful approach to reform of the CIR. [LB397]

SENATOR GLOOR: Thank you, Senator Lathrop. And to those people who are paying attention to this discussion, I didn't lob him a soft underhand pitch here for any reason other than to point out that a considerable amount of effort has gone into where we're at right now, and not just by Senator Lathrop, and not just by Senator Ashford or other members of the committee, or Senator Utter, who I have had the opportunity to work with, who I know has rolled up his sleeves and worked on this. This is a serious issue. It's a difficult issue and especially to those people who are viewers watching, don't think the jobs that state senators take on, end at the end of the day when the television goes off, or end once the session adjourns sine die. These are serious issues dealt with by people in a very professional manner. I don't necessarily agree with Senator Lathrop on a lot of the components of LB397, and we've talked about that. Nonetheless, it needs to be pointed out that serious effort has gone into this by he and others to make sure that this issue is evaluated top to bottom. And that's part of the reason that we're still talking about this and will be, I'm sure, for a while longer. I do want to make a serious comment about the component of the legislation that has to do with hourly rate value. I know that is a key component of what's being proposed, I know it's a key component. But I would be remiss, I started my career in hospitals as the director of personnel and was involved in issues around benefits. One of the challenges was health benefits and the expense associated with health benefits that I want to explore just a bit, and I'll do so briefly because I'm sure I don't have a lot of time left, is the fact that I know proponents who

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want to bring this in are saying we've got people who have trimmed their health benefits to the bare bones, have high deductibles, lowered their cost. On the other hand, there are people out there who have premium programs. Those both need to be taken into consideration as part of this leveling process. The problem with this is, again from my experience, that all this can go out the window when you have a bad experience. All it takes is one cancer diagnosis with somebody who needs a bone marrow transplant and all of a sudden those healthcare plans that you carefully crafted, increased deductibles, had wellness programs having people walking and walking and walking, all those things go by the wayside because you've had a heart attack within your group,... [LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR GLOOR: Thank you, Mr. President...you've had a cancer diagnosis, you've had an infant who was born who was challenged, all that goes out the window, all of that goes out the window. And what you've been hanging your hat on now yo-yos back and forth. That's the problem with taking a look at health benefits the same way as taking a look at pensions because they can change so dramatically from year to year based upon experience within that specific group. That's one of the challenges I have with what's being proposed, an hourly rate value. Healthcare premiums and the expense associated with them are not, as I see them, a solid standard thing that you can average easily. Thank you, Mr. President. [LB397]

SPEAKER FLOOD: Thank you, Senator Gloor. Senator Janssen, you are recognized. [LB397]

SENATOR JANSSEN: Thank you, Mr. President and members. And I, too, can appreciate the work that has gone into this. And I think that needs to be noted, especially reading through this and just how complex it is. And it's so broad when it talks about public employees and then you consider the school employees and how it has the effect on them. So many moving parts on this. And the one thing that I always, as a private employer, and I wonder how this always translates down to city employees. When I was on the city council we had almost no turnover whatsoever. And every year when negotiations came up one of the city councilmen would notice, if this is such a bad job how come nobody ever quits? And they truly didn't. It was a good job. And there are good public employees and there are bad public ones, and there are good private employees and there are bad ones. And that's something that we will always have. I kind of harken back to some days when I was the owner, still am the owner, of a smaller company at the time and had an administrative person come up to me. And it was really an entry level-type position. And the person was getting ready to graduate college and had asked for more money. And I said, well, the position, we don't have another position, we're a small company and this is really somewhat of a capped position. We would like to keep you but I really can't justify giving you a raise for this type of position just because you've been here so long, it's just not your type of position. And this was

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not ideal for the person but in some situations there are just jobs that have a natural limit on them. And perhaps that's mowing lawns, perhaps that's trimming trees, but in the public sector we don't seem to have that cap. You always seem to go up and over the pay scale. And that's just speaking in generalities. I don't think I'm speaking specifically to the amendment. One thing Senator Larson brought up, I was watching in my office, he was talking about ability to pay. And could...I think his question was somewhere along the lines of, could the CIR say, hey, you have the ability to pay or you need to raise your levy because you have levy room. And the CIR can't say that, I believe, is what Senator Lathrop said, they can't do that. They can just say, you have the ability to pay. But that ability to pay would include the option of raising your levy. So I wanted to clarify that because I got a little bit confused when it was brought up on the mike and it make it sound like the CIR can't force you to raise your levy. But in a roundabout way they could be saying, well, you better raise your levy because according to this you're a nickel under it and you've got the ability to pay. Hourly rate value, I also like that, I like that in Senator Lathrop's amendment and also in Senator Fulton's amendment. And I got a quick question. I know Senator Lathrop's been asked a lot, but I wanted to clarify one thing for the record if he'd yield. [LB397]

SPEAKER FLOOD: Senator Lathrop, will you yield to a question? [LB397]

SENATOR LATHROP: Yes. [LB397]

SENATOR JANSSEN: This is something I've also asked some others about. When you talk hourly rate value, and I'm speaking maybe specifically now to educators, teachers, what would...when we say hourly rate, let's forget about including retirement or benefits and speak specific to your amendment. Would you be considering that hourly rate, would it be divided by 2080 hours? Is that a full-time equivalent or what, I guess, what is the...how do we quantify that? [LB397]

SENATOR LATHROP: I think we do it by the service hours and for, let's say, the wastewater treatment guy that would probably be 2080, because that's 8 hours a day times 52 weeks. [LB397]

SENATOR JANSSEN: Right, right. Is that...and teachers, now they work a contract year. And it has come to my attention high school teachers have a longer contract year than maybe elementary school teachers. [LB397]

SENATOR LATHROP: Right. [LB397]

SENATOR JANSSEN: How would that work then? [LB397]

SENATOR LATHROP: If you think of the hourly rate value as reducing compensation to the common denominator, that's what we're trying to do. So if you're comparing

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teachers to teachers, you get to it. And I believe you reduce it to the contract hours. [LB397]

SENATOR JANSSEN: Would that include in compensation then, say, and I truly don't know this from reading it, would it include if I coached wrestling or football and that's part of my income, would that be included in the hourly rate value? [LB397]

SENATOR LATHROP: We have something called, and we spent a lot of time talking about this, called specialty pay or add-on pay. So if you're a firefighter, you might have a base of pay and then there is some add-on for specialty pay. And I...that's just sort of a separate agreement because I don't think those guys that coach have to do it, so they offer them some money to do it. And that would not be included in the comparability because it's beyond the scope of your normal duties. [LB397]

SPEAKER FLOOD: Time, Senators. [LB397]

SENATOR JANSSEN: Thank you. [LB397]

SPEAKER FLOOD: Senator Schumacher, you are recognized. [LB397]

SENATOR SCHUMACHER: Question. [LB397]

SPEAKER FLOOD: The question has been called. Do I see five hands? I do see five hands. The question is, shall debate cease? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB397]

CLERK: 26 ayes, 6 nays to cease debate. [LB397]

SPEAKER FLOOD: Debate does cease. Senator Lathrop, you are recognized to close on AM1383 to AM1116. [LB397]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Thank you for your attention through the course of the debate to this point in time. I appreciate the thoughtful, many thoughtful questions. It is a complex subject matter. And you would necessarily have questions, and I am happy to answer them. I'm sure others that worked on the bill would be happy to answer them as well. The amendment that I'm closing on now, AM1383, is for lack of a better term or a more articulate term sort of a cleanup amendment. After we drafted AM1116, I had a number of people contact my office, as you would expect. Thoughtful people that contacted my office with concerns and suggestions; they included the counties. We also had some issues that related to...issues that related to drafting that were being resolved. First, the subpoena language. And I will tell you and I specifically want to assure Senator Pahls, others who have questions and concerns, when we move this to Select File, which I hope we do by

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the end of the day perhaps, that I'm happy to talk to you about your concerns and your ideas for a solution. My door is going to be open until this thing passes. So please feel free to contact me, and I mean that. And I think AM1383 reflects that commitment to be responsive to thoughtful concern. That's what it is. Subpoena language, I appreciate Senator McCoy's concern. Believe me, I heard the concerns of the business community when they came in. I'm happy to work on that language further. I want the business community comfortable with what happens with the material that they provide to help us make a public-private comparison. The actuary language is cleanup, no one really argues with that. The status quo language is an improvement to the bill at the request of the counties. This means that if the counties need to make a change, right now they can't, they could go to the CIR and explain their circumstance and if they meet their burden the CIR will provide them relief. And they can essentially change the contract terms. Staffing for safety, that's also in the bill. That issue is still open to some input from others. But what we're trying to do is to memorialize a decision by the CIR. That seemed to be...I'm surprised it has generated this much controversy because the CIR rules, we're just trying to put their precedents into statute so it's more predictable. We allow for stipulations. We allow for comparisons to more than one employer in an MSA. And we deal with utilities and have the freeze apply just to wages. Now those, folks, are improvements to AM1116. And here's my thought, okay. I'll ask you to, even if you are a proponent or someone who is otherwise a supporter of Senator Fulton's amendment, which we will take up next, I'll ask you to support me in AM1383, an amendment to LB1116, so that AM1116 is in proper order and not deficient. And then we will take up the philosophical debate between Senator Fulton's amendment and the direction AM1116 takes. So with your support, and I would ask for your support on AM1383 and move it and amend AM1116. Thank you. [LB397]

SPEAKER FLOOD: Thank you, Senator Lathrop. Members, you've heard the closing on AM1383 to AM1116. The question...Senator Lathrop, for what purpose do you rise? [LB397]

SENATOR LATHROP: I'd like a call of the house and a roll call in reverse order, please, Mr. President. [LB397]

SPEAKER FLOOD: Members, there has been a request to place the house under call. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB397]

CLERK: 42 ayes, 0 nays, Mr. President, to place the house under call. [LB397]

SPEAKER FLOOD: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senators Christensen, Ashford, Loudon, please return to the floor and record

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your presence. The house is under call. Senator Christensen, Senator Loudon, the house is under call. Please return to the Chamber and record your presence. Senator Christensen, please return to the floor and record your presence. Senator Lathrop, all senators are present or otherwise accounted for. Senator Lathrop has requested a roll call vote in reverse order. The question before the body is, shall AM1383 be adopted? Mr. Clerk, please read the roll in reverse order. [LB397]

CLERK: (Roll call vote taken, Legislative Journal page 1443.) 30 ayes, 9 nays, Mr. President, on adoption of Senator Lathrop's amendment. [LB397]

SPEAKER FLOOD: Senator Lathrop's amendment is adopted. Before I raise the call, I want to modify the agenda. In the event that we still find ourselves debating LB397 at 7:30 this evening, which appears likely at this time, it is my intention to continue debate of LB397. Therefore, I am removing the time certain change on the agenda for today. We will continue debate into the evening on LB397 as the bill remains under consideration. I do raise the call. Pursuant to the authority I have to order the amendments to LB397, I hereby order Senator Fulton's amendment, AM1379, at this time, Mr. Clerk. [LB397]

CLERK: Mr. President, Senator Fulton would offer AM1379. (Legislative Journal page 1422.) [LB397]

SPEAKER FLOOD: Senator Fulton, you're recognized to open on AM1379. [LB397]

SENATOR FULTON: Thank you, Mr. President, members of the body. It appears we will be going the distance on this and that is probably a good thing. I'd like to start, if you would indulge me, with something that I read from the record created in 1969. Now this was on LB15, it wasn't on the CIR specifically, but certainly the senators were talking about some of the concepts that were contemplated. It was, LB15 was the retired...it was a board similar to the NLRB at the national level but here at the state level. This was a Senator Batchelder from Omaha. Mr. President, and I'd like you to pay attention to this because we're now touching on the very principles which I believe separate Senator Lathrop's proposal and my proposal. Mr. President, members of the Legislature, there are several things about this bill that bother me, one I'd like to mention right now, and that is I feel this bill undermines the authority of such bodies as a city council. What this bill means is an organization under the command of the city council can go to the city council, ask for a raise, and the city council can tell them in all fairness and accuracy that they just don't have the funds. By this bill they can bypass them and go on to a duly appointed body, appointed by the Governor, to whom they can ask the same question. If such a body which could well end up like an NLRB being political appointees do not go along with them, and I can't imagine that if they are...encase the image of the NLRB, they are not doing so. But if by chance they say no, they could go onto the court. And I'm getting less confident in these courts every year. What we are

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actually getting into is a situation where nobody can say no to any organization asking for money, more money than is available. This was in 1969. This amendment that you see, AM1379, I've tried to find some middle ground with what Senator Lathrop has put forward and with what I would like to accomplish. I believe that those people, those elected officials that we elect to manage budgets need to be given the authority to indeed manage those budgets. If the buck stops with the CIR, then how do we hold elected officials accountable? For indeed, personnel comprises anywhere from 70 to 80 and sometimes 90 percent of a budget. So should the buck stop at this unelected five-member panel in Lincoln called the CIR or should the buck stop at an elected official? And we tried mightily to come up with a way to combine those concepts. Where should the control lie, with the elected official or the CIR? And this is a proposal I've put forward that I believe takes a little bit of both. You'll note that a lot of the language in here is similar to that which is in Senator Lathrop's AM1116. And there's good reason for that because there are elements within AM1116 that I believe are meritorious, and I've talked about that on the mike. There are also elements of AM1116 which I don't agree with, which again we've talked about on the mike, subpoena being one of them. So there is a lot of Senator Lathrop's amendment in this amendment. And we can get into those areas where we don't have a lot, where we don't have things from Senator Lathrop's amendment. But the difference here is that we would retain the CIR's power, the CIR's power would be retained. So I'm going to repeat this. We're not getting rid of collective bargaining. We're not repealing the CIR. We will retain the power of the CIR under my amendment. The difference between our approaches is that under this proposal that I'm giving you the CIR would have the power to enforce a process, not have the power to dictate wages. Okay? So the way that I can get you to understand this, I think, quickly, I've explained it as a type of franchising of the CIR. All of those areas of statute that we have contemplated to give as power to the CIR will remain. It's just that the cities and counties and local elected bodies would have to follow that which is within the statute. If the union, which is in the negotiation, does not approve of that decision by the city or the county or the local elected body, then it could be appealed to the CIR, much the same way that it could be under Senator Lathrop's amendment. The only difference is that the CIR would not order a pay raise. The CIR would order a change in the array if indeed a change is warranted. So we define collective bargaining, good faith collective bargaining in this proposal. And the CIR has the authority to enforce good faith bargaining under the collective bargaining process. That's the fundamental difference. We retain power for the CIR but we allow elected officials to have a say over the budgets we elect them to manage. So I ask you to think through this carefully. We are going to have to ultimately sell whatever we come up with to the citizens of Nebraska. And if we decide to leave the power of deciding 70 to 80 to 90 percent of a budget with the CIR, we're going to have to explain to them why, because I believe most citizens are under the impression that when we have elections, the elections are meant to put people in charge of a local budget. Indeed, that is not entirely the case today. And so I put forward AM1379 as a way I hope to bridge the gap between where Senator Lathrop is and where I was on LB564. And this is my best

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attempt to assuage all the concerns that have been raised by the business community, by I believe a number of cities. You have this letter in front of you from a number of mayors indicating that they do not support AM1116. We've heard our Governor indicate that there are certain things that he would like to see within our proposal. I believe AM1379 accomplishes that. And it's my hope that I can persuade you to that effect. With that, Mr. President, I will stop with my opening. Thank you, Mr. President. [LB397 LB564]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Thank you, Senator Fulton. You have heard the opening on AM1379 offered to AM1116. Those wishing to speak, we're still on our paper list here, those wishing to speak we have Senator Schilz, Krist, Hadley, Campbell, Conrad, Council, Nordquist, Coash, Dubas, Mello, Lathrop, Lautenbaugh, and many others. Senator Schilz, you're recognized. [LB397]

SENATOR SCHILZ: Thank you, Mr. President, members of the body. Would Senator Fulton answer some questions, please. [LB397]

SENATOR LANGEMEIER: Senator Fulton, would you yield? [LB397]

SENATOR FULTON: Yes. [LB397]

SENATOR SCHILZ: Thank you, Senator Fulton. I want to get back to the first time that I stood up and spoke on this. I guess, if we're going to start down the list I'd like to ask you the questions that I stated in my remarks before. And I would just start at the top here and, does your amendment, can you explain to me how it simplifies the process and makes the process more transparent, or does it? [LB397]

SENATOR FULTON: Yes, Senator, I believe that it does. First, I'll go to your question of simplification. We have taken a lot from AM1116 and put it in AM1379. So for those who believe that AM1116 was not a simplified process, I don't know that we can assuage their concern. The part that I think is simpler is the way that we apprehend data from the private sector. We've heard that the subpoena issue is not well liked. And so I have asked, well, what is done in the rest of...I mean, outside the public sector, what's done in the rest of the private sector? These aggregated publicly available, this data that comes from the Department of Labor exists. And so that is something that I believe simplifies AM1116. So that's one element. The element of transparency that you ask about has to do with the local elected officials. These are individuals who have to stand for a vote, and that which they decide is going to be available to the public. So we don't have a situation where an elected official says, you know, I would have liked to get better control of my budget but, gosh darn, that CIR. And we heard that. In fact, that's how I even got involved in this is I was contacted by elected officials saying you've got

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to change that CIR. Under this amendment, elected officials will have a measure of accountability because they'll be responsible for their actions. [LB397]

SENATOR SCHILZ: Thank you, Senator Fulton. Thank you. Okay, let's just run down the line. Let's talk about consistency. Can you explain how this would provide more consistency throughout the...across the board? [LB397]

SENATOR FULTON: Yes. This amendment applies to all public sector employees, whereas AM1116 has different areas carved out. It's different for cities than it is for school boards. And Senator Larson is touching on that. This would retain the power of the CIR to order a process for all, and then those bodies who are elected to care for a budget of a school board or a city or a county, none of that changes. We have these elections. These elections mean things. None of that changes. The CIR would apply its authority equally across all units of government. [LB397]

SENATOR SCHILZ: Thank you. And then the part about cost, how would this help to contain costs? [LB397]

SENATOR FULTON: Again, this is...there are those who would probably go further than me. AM1379 does take some...a lot of AM1116. And so those who may have an issue with cost in AM1116, cost control, may have issues with parts of AM1379. But again, this is left...the population of the arrays is left to the volition of the local elected officials. And so those officials have responsibility for management of their budget, and so cost control would be conducted within the process of collective bargaining and populating their arrays. Now if there still exists an opportunity for a union to appeal... [LB397]

SENATOR LANGEMEIER: One minute. [LB397]

SENATOR FULTON: ...to the CIR, that's true. But ultimately that decision is going to be made by the local elected body. And so in that regard, that is the definition of cost control. And so a local elected body would be held accountable for those decisions made. And I believe there is a level of accountability for cost control within that mechanism. [LB397]

SENATOR SCHILZ: Thank you, Senator Fulton. And when we do get to AM1116, I will ask Senator Lathrop the same questions. Thank you very much. [LB397]

SENATOR LANGEMEIER: Thank you, Senator Schilz. Senator Krist, you're recognized. [LB397]

SENATOR KRIST: Thank you, Mr. President and colleagues. I rise because I need to explain to you, the body, and to anyone who's watching, I did not not vote for the last amendment because I didn't know how to vote; I just quite frankly am amazed and

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confused and a little disappointed that we have come through three years and a lot of effort on the part of Senator Lathrop, Senator Ashford, and many, many others, and we are still so disjointed that we cannot find compromise ourselves. I think there is a time in the legislative body where the curtains need to be pulled and the people need to leave and we need to have the kind of discussion that we need to have to enact good legislation because the pulls and the pushes and the opinions will change your mind in a New York minute. And I mean no disgrace to the state of New York by saying it. It is tough to assimilate all this information, particularly when there are so many groups that have a different viewpoint. I, quite frankly, have asked the teachers, the firefighters, the police how they stand on LB397 and AM1116. And they seem to find it a reputable compromise, a good compromise. Yet when I talk to other organizations, they're not going to support that because, why? They didn't come to the table? They weren't heard at the table? They didn't want to be heard at the table? I am at a loss for that. I'm at a loss for putting it into perspective right now. But I think to articulate it to the rest of my colleagues here I'll go a long way in trying to restore and continue...or not restore, to continue the civility by which we are having this discussion. There's been an incredible amount of work and thought process put into reform. I am hearing from my constituents that the CIR is not perfect, it happened in the '40s, they worked on it again in the '60s, they did a little bit in the '70s. It's not perfect, it needs reform. And yet when this body sat down and the smartest minds in this body sat down with people and talked, we are still here pressing into our fifth, probably sixth, probably seventh or eighth hour today talking about impassable or lack of compromise that allows us to continue to talk about areas that, quite frankly, are amazing to me. And so we all come to a place in time from places that we were. So I'll bring in the perspective that I think you need to listen to. What Senator Ashford and Senator Lathrop have done in terms of the hourly wage and the comparability is nothing different, it is nothing different than a thing called the wage determiner on the federal level. The wage determiner establishes different grades in different occupations in professional and blue-collar positions. It establishes a separate entity called a health and welfare benefit, which in this area, this region of Nebraska is \$3.55 additional per hour, and all those things are worked out. So I support that wage, the hourly wage determination. And oh, by the way, that's 2,088 on comparison. Across the board, 2,088 are used as productive hours of work, and then divide it up on an hourly wage and benefits program. There will be a lot more discussion on this throughout this evening and probably, I hope, in the next day or so, because I don't think we're going to come to a resolution tonight. But I would invite civility. [LB397]

SENATOR LANGEMEIER: One minute. [LB397]

SENATOR KRIST: Did you say time? [LB397]

SENATOR LANGEMEIER: One minute. [LB397]

SENATOR KRIST: Thank you. I would invite the continuation of the civility in this

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dialogue. And I would also ask that we look at honestly solving the issue rather than winning or losing within this Chamber. I have one question for Senator Fulton, if he will yield? [LB397]

SENATOR LANGEMEIER: Senator Fulton, would you yield? [LB397]

SENATOR FULTON: Yes. [LB397]

SENATOR KRIST: In the thirty seconds or so that we have left, Senator, could you just tell me how is this amendment going to bind so that we don't get in a position of a strike or a position that we were in with controllers, air traffic controllers in the early '80s? [LB397]

SENATOR FULTON: Senator, this does not...this does not eliminate that statutory provision that disallows striking. This doesn't touch that. This is the same as Senator Lathrop's in that regard. [LB397]

SENATOR KRIST: Thank you. [LB397]

SENATOR LANGEMEIER: Thank you, Senator Krist. Senator Hadley, you're recognized. [LB397]

SENATOR HADLEY: Good evening, ladies and gentlemen. First time I've spoken on this topic. Seems like I've been in the queue a long time. I'd like to follow up on a few things that I heard. One that kind of made a real big impression on me was Senator Campbell talking about the people we're talking about are our citizens. They're our employees. They're our voters. They're not some distant body, distant group of people. They're citizens of Nebraska. In fact, it's about 16 percent of the work force of Nebraska are government employees. Our goal is to figure out to pay a fair total compensation package for work done. I think everybody is trying to do that. I think it's a thin sheet of paper that only has one side. I think we have some room for compromise between Senator Lathrop's and Senator Fulton's bill. People talk about the CIR, what a bad job they've been doing. I happened to meet with one of the commissioners, and he said: Galen, we follow statute, we follow case law, we follow case decisions; so don't blame the makeup of the CIR. This body sat here for years; if there's been a problem, this body hasn't been willing to take it on. Would Senator Fulton yield to a question? [LB397]

SENATOR LANGEMEIER: Senator Fulton, would you yield? [LB397]

SENATOR FULTON: Yes. [LB397]

SENATOR HADLEY: Senator Fulton, I want to follow up on what Senator Krist was talking about. In your proposal, the last best offer of the municipality, city, governmental

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body must be accepted, given the fact that they have followed correct due process, they have not (sic) bargained in good faith, they have not gone outside the parameters. Is that correct? [LB397]

SENATOR FULTON: That is accurate, yes. [LB397]

SENATOR HADLEY: We talk a lot, Senator Fulton, about the private sector and how we try to mimic the private sector in what we're doing. In the private sector, collective bargaining has something that we don't allow our employees to have. Is that correct? [LB397]

SENATOR FULTON: The... [LB397]

SENATOR HADLEY: The ability to strike? [LB397]

SENATOR FULTON: Right. I'd say there are a lot more differences than that. But that's... [LB397]

SENATOR HADLEY: Isn't that... [LB397]

SENATOR FULTON: ...I think, where you're going here. [LB397]

SENATOR HADLEY: I think, from a collective bargaining end, isn't that one of the major...the major items that causes management and labor to come together for an agreement is quite often both sides do not want a work stoppage. Would that be a fair statement? [LB397]

SENATOR FULTON: I...yeah, sure. [LB397]

SENATOR HADLEY: Okay. [LB397]

SENATOR FULTON: I think that it would be. [LB397]

SENATOR HADLEY: Well, I just wonder, if we get into a situation where it is the governmental entity that gets to give its last best offer and gets to institute that--I just wonder, from the employees' side, what kind of process do they have other than to quit? [LB397]

SENATOR FULTON: Right. [LB397]

SENATOR HADLEY: And I...is that...? Yes, I think that...and I want to talk for just a second about that, because Senator Nelson, my good friend Senator Nelson, says people will not leave. Well, you know, I believe in capitalism, I believe in the fair market.

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And, you know, if you underpay people, eventually they switch jobs. We've seen that in education. And so I think we have to be careful... [LB397]

SENATOR LANGEMEIER: One minute. [LB397]

SENATOR HADLEY: ...in believing that people will not leave if we don't set up what they perceive as a fair system of pay. And I have a decision to make, because I have, actually have an amendment sitting in front of me that I had drafted that it would allow strikes by public employees in the state of Nebraska. And the only reason I brought that up is, if we're going to have a process that says management gets to institute its last best offer or whatever offer they want, what do we give our employees? And I think that's the benefit of the CIR right now, is that it allows someone to look at it and come up with a dollar value without having to go to a strike or having to do that. So I will continue to listen... [LB397]

SENATOR LANGEMEIER: Time. [LB397]

SENATOR HADLEY: ...as we go along. Thank you, Mr. President. [LB397]

SENATOR LANGEMEIER: Thank you, Senator Hadley. Senator Campbell is recognized, with Senator Conrad to follow. [LB397]

SENATOR CAMPBELL: Thank you, Mr. President. Senator Fulton, would you entertain a conversation? [LB397]

SENATOR LANGEMEIER: Senator Fulton, would you yield? [LB397]

SENATOR FULTON: Yes. [LB397]

SENATOR CAMPBELL: Thank you so much. And I'm truly--I spent last evening reading the amendment, and so I'm trying to clarify some points here that are in it. And the way I understand--I want to...it sort of takes off from what Senator Hadley talked about. But in the amendment, you'd go to the CIR, and they would make an advisory opinion, and that advisory opinion would come back...no? [LB397]

SENATOR FULTON: No. That's--in this amendment, that wouldn't be accurate. That's something that I proposed under LB564. The CIR retains authority...and it's your time. Go ahead, Senator; sorry. [LB397]

SENATOR CAMPBELL: No, that's fine. I want to clarify that. Because you're saying they aren't advisory, but they can't set the wage, is that correct? [LB397]

SENATOR FULTON: That's right. [LB397]

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SENATOR CAMPBELL: Thank you. [LB397]

SENATOR FULTON: Page 24 of the bill, Section 16, and I'll just--I won't read it. [LB397]

SENATOR CAMPBELL: Right. And, okay... [LB397]

SENATOR FULTON: The process can be enforced or it would be enforced by the CIR. That's the main difference here... [LB397]

SENATOR CAMPBELL: Okay. [LB397]

SENATOR FULTON: ...the process. So was the array selected appropriately? Were employers, a 70 percent job match, did that exist? If it's a private sector comparison, has that been done appropriately? If the union believes that the city--or, if the union believes that the local unit of government has acted in bad faith, then the CIR has the authority to force a good faith... [LB397]

SENATOR CAMPBELL: Yes. [LB397]

SENATOR FULTON: ...and that's what appears on page 24. [LB397]

SENATOR CAMPBELL: Yes, I do understand that. I'm trying to go to the next point, though, when we go to the last best offer. And Senator Hadley raised this issue. So then what do the employees do if they do not agree with that? And I'm assuming in the bill we've also--or in the amendment we've also written in the same type of parameters for the court, so the employees probably could not go back to the district court. Would they then go to the federal court? [LB397]

SENATOR FULTON: That--in the bill it remains the...under the CIR now, a CIR decision can be appealed to the district court, as I...and that exists, and that...I'm not changing that here. [LB397]

SENATOR CAMPBELL: But in the... [LB397]

SENATOR FULTON: So... [LB397]

SENATOR CAMPBELL: In the amendment it does talk about the court, does it not? On page... [LB397]

SENATOR FULTON: Yeah, show me where you're... [LB397]

SENATOR CAMPBELL: ...I think on 25, the top of 25, "order the public employer." I

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guess, Senator Fulton, I'm concerned here because I think that we do have some clarity...and I talked about this earlier, in trying to work through Senator Lathrop's amendments. And that is, we need to know what the consequences are down the line. And it would seem to me that the public entity here will spend money and time, and the taxpayers certainly will put money and time. And then what happens at the end of that process? And what may happen again? That's one point. The second one I do want to get to is, in the amendment it does bring in the new standard, and you've talked a little bit about that. The federal guidelines or the array that could be used--not array--but, you know, these are the job titles and this is what they pay. But yet in the amendment it does revert back to the 70 percent array. Do you see a conflict there? I mean, there's almost two different standards in how you put that array together. [LB397]

SENATOR FULTON: I don't think so. As I...the 70 percent is something that, I believe, is in Senator Lathrop's proposal. [LB397]

SENATOR CAMPBELL: Yes, it is. That is correct. [LB397]

SENATOR FULTON: So by...so I don't see...you're asking, is there a... [LB397]

SENATOR LANGEMEIER: One minute. [LB397]

SENATOR FULTON: ...conflict with how we...? I mean, if we assign members to an array, and the job match has to meet a point of 70 percent, then the determiner of that 70 percent, under my proposal, is the local elected body. And if they have not arrived at that appropriately and under the Industrial Relations Act, then it can be appealed to the CIR. That's what I'm proposing. [LB397]

SENATOR CAMPBELL: I'm just saying that the other, the national that you bring into it, saying this could be used, is...and it goes back to Senator McCoy's question. That is a job title. What the 70 percent looks at is the actual... [LB397]

SENATOR LANGEMEIER: Time. [LB397]

SENATOR CAMPBELL: ...job description. [LB397]

SENATOR LANGEMEIER: Thank you, Senator Campbell. [LB397]

SENATOR CAMPBELL: Thank you, Mr. President. [LB397]

SENATOR LANGEMEIER: Senator Conrad, you're recognized, with Senator Council to follow. [LB397]

SENATOR CONRAD: Thank you, Mr. President. Good evening, colleagues. Just to

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start off, quickly, I support what Senator Lathrop, Senator Utter, Senator Harms, and others are trying to do with LB397; and I stand in opposition to the Fulton amendment. It'll be of no surprise to any of you in this Chamber that I have worked closely, over the entirety of my career, on behalf of working families and the issues that are important to them. And I want to acknowledge not only the sacrifice and service of our many hardworking public employees across this great state every single day on behalf of our public safety, on behalf of our public schools, on behalf of the myriad of responsibilities that they admirably fulfill in order to keep our great state humming and moving forward, but I also want to acknowledge the sacrifice and significance of the concessions that they have made in this process and which made LB397 possible. Because, make no mistake, there are significant changes to the status quo in this proposal, and they did not come easily. I'm sure that Senator Lathrop and others can speak very clearly to that. I want to make two quick points, and then I'm going to turn my time over to Senator Lathrop to address the similarities or disparities between his proposal and Senator Fulton's amendment; hopefully, we'll have time. But it's been said that the CIR is, you know, basically an unelected and unaccountable body and so that's one thing that Senator Fulton seeks to address. Colleagues, that's not true. There are indeed checks and balances in place. The selection of commissioners is done so according to a very clear process, through gubernatorial appointees who are confirmed by this legislative body. They go through a series of reappointments, and if at any time during their service in office there is misdeeds or problems with their service, they can be removed from office in the same manner ascribed to a district judge, according to Nebraska Revised Statute 48-804. It's also been said by Senator Fulton and others that this is necessary to prevent bad faith bargaining that is currently present in the CIR system. Colleagues, that's a phantom argument. If indeed there is any sort of bad faith negotiating or cases being brought forward, I think it's important that we have a clear example of where that exists. Because it's important to remember that individual citizens, whether or not they belong to these bargaining units, they don't bring their cases to the CIR; they do so through their attorneys. And we as attorneys are held to an ethical standard by the Supreme Court, most notably 3-503.1. If an attorney brings a case before a tribunal that's based in bad faith, they are subject to ethical sanctions. So do not make those charges unless they are clearly based in fact, because there is a remedy in place if indeed that is happening. Senator Lathrop, I'll yield you the balance of my time. I'm eager to hear your description of whether or not Senator Fulton's amendment indeed is similar or dissimilar to your proposal and the work that you and your group have conducted over many months. Thank you. [LB397]

SENATOR LANGEMEIER: Thank you. One minute and 24 seconds. [LB397]

SENATOR LATHROP: Thank you. And thank you, Senator Conrad. I don't know that I can explain Senator Fulton's amendment in a minute and twenty seconds. I appreciate the opportunity, but I think I'll wait until I have a five-minute block of time. I do want to respond to something Senator Krist said, though. And that was that we've been working

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on this for a long, long time, and we've been here... [LB397]

SENATOR LANGEMEIER: One minute. [LB397]

SENATOR LATHROP: ...since 1:30, and it's difficult to imagine that we can't find a middle ground. Senator Krist, I will assure you that we met for eight months with the people that work with this subject matter--the cities, I've talked to the counties, met with the state, the school boards--we've met with all of them. And we've pulled labor in, and they've given. They've given in this process, and they've given to the point where they were leaving. I remember distinctly in a meeting in my office, one of the last dealing with the city piece, where labor got up and left. And I said, sit back down; don't leave yet. And there has been a considerable amount of compromise. And I want to say this in a charitable way, but a lot of...there was a lot...what we were dealing with at the same time as--you're hearing from a lot of groups now. What we heard from them during the entire process was, it needs to be substantial, meaningful, and comprehensive. That was the yardstick. And it was pretty gray. [LB397]

SENATOR LANGEMEIER: Time. Thank you, Senator Lathrop and Senator Conrad. Senator Council, you're recognized. [LB397]

SENATOR COUNCIL: Thank you, Mr. President. And I've just had a brief opportunity to review AM1379, but in that brief opportunity I have identified a number of flaws in AM1379 and, in fact, flaws that run counter to the suggestion that AM1379 simply is AM1116 with a few tweaks. Rest assured, colleagues, AM1379 is vastly different from AM1116. One of the things that jumped out at me immediately was that, unlike AM1116, AM1379 retains the application of the rules of evidence. Now, I appreciate and understand that Senator Fulton believes that under his amendment, that there is a institutionalization of a process that would eliminate the final decision on wages and benefits being determined by the CIR and that all that the CIR's role would be was to ensure that the parties had played in accordance with the rules of the game. But what you need to do is read the rules of the game. All the rules of the game are stacked on one side of the playing field. Every determination that needs to be made in accordance with the criteria that is, in fact, set out in AM1116--every one of those determinations, in Senator Fulton's amendment, is left to the sole and exclusive determination of the public employer. So let's talk about an array. If the guideline is that seven comparables are the ideal number of cities or school districts to be in the array, as I read AM1379, as long as the seven cities that a municipality picks for their array meets those criteria, the city's array and the city's array only will determine what the wages will ultimately be. So it completely eliminates the opportunity for the labor side of the equation. If they have seven cities in the array, all of which also meet the criteria for inclusion in the array, under AM1379 they're discarded. It doesn't count. Only the city's array counts. As long as the city's array meets the criteria set forth in AM1116, that's the array. And there are a number of other places in AM1379 where this determination, if it's made by the

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city...and I'm using the city because I know this deals with cities and counties and school districts and other public employers, but I'm just going to use...I'll use the term "public employer." If the public employer does everything by the criteria, regardless of what the labor side of collective bargaining presents, and they may have come up with the same array, they may have come up with the same comparables... [LB397]

SENATOR LANGEMEIER: One minute. [LB397]

SENATOR COUNCIL: ...they are not considered at all, under AM1379. So what is the effect of AM1379? Colleagues, the effect of AM1379 is to destroy collective bargaining. This is not collective bargaining under AM1379. If everything that the employer determines, as long as it meets a certain formula, is what must occur, then labor, whether they do it or not, is ignored. That is not collective bargaining. And if it was true collective bargaining, and if the labor compliance was considered in the mix, then, despite what Senator Fulton may say, the CIR would still be setting the wage, because they would be making the determination, between the competing arrays, what would be the final array, and whatever the outcome of that would be, would be the wages. [LB397]

SENATOR LANGEMEIER: Time. [LB397]

SENATOR COUNCIL: So directly or indirectly, the CIR would be setting wages under AM1379. [LB397]

SENATOR LANGEMEIER: Thank you, Senator Council. Those still wishing to speak, we have Senator Nordquist, Dubas, Mello, Lathrop, Lautenbaugh, Fulton, and others. Senator Nordquist, you're recognized. [LB397]

SENATOR NORDQUIST: Mr. President, I'll yield my time to Senator Lathrop. [LB397]

SENATOR LANGEMEIER: Senator Lathrop, 4:54. [LB397]

SENATOR LATHROP: Thank you, Senator Nordquist. Mr. President and colleagues, good evening. I trust everybody has had something to eat and so now we're ready to go into the Fulton amendment. And I would like to talk about that at some length. I have read Senator Fulton's amendment, and I want to describe it to you, because when you characterize...when you begin the explanation of this amendment by saying: I favor collective bargaining; I want collective bargaining; my bill doesn't do away with collective bargaining--you might think it doesn't get rid of collective bargaining. But the practical effect of Senator Fulton's bill is that we abolish collective bargaining; we just create a process where they have to run around to find out that they don't have any rights of collective bargaining. And let me describe it this way. And I think it's a fair characterization, and if anybody thinks it isn't, they're welcome to stand up and tell me I

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mischaracterized the bill. But here's how it works. First of all, we have no CIR making a decision about what the array should be. What we do is we have...we turn that over to the employer. So we'll take the city council, for example. A particular town's city council decides what the array is going to be. They hand the array to the labor guys, and they say: Here's the array that I've come up with. And labor says: I don't like it; I think, you know, you put this other town that's on the other side of the state in this array, and that's dragging the numbers down, and it's not good, and we think it's unfair. And the city says: Well, look on page 21 of the bill; it says nothing in the Industrial Relations Act shall prevent the employer from identifying additional working conditions which we can incorporate into the array member process. So there's nothing...literally, the employer gets to change the rules in the middle of the process. And they get to say: This is the array. And you say: Well, I don't like that array; I want to go to the CIR. And they can say to the CIR: Well, we decided that this other thing that's happening in the other town we want to include actually is important to us. So now you don't get any relief at the CIR. But let's assume they didn't even take advantage of that. What would happen is the CIR would say: City, you shouldn't have included the town of whatever in the array. And so they don't tell you what the array will look like; they send you back down to the city council, where the city council picks up another city, which you may or may not agree with. And you go back and forth like this between the city council and the CIR until the CIR can no longer find an objection with your array. And that's it. You get no decision. You don't get a number. So you get a...you can do the math, similar to what Senator Adams said, and you can say: Well, it looks to me, with the CIR, that the cities just came up with and the CIR finally blessed after three trips up there that I should get a 2 percent raise. And then you go to the city council and say: I know we were at impasse before I went to the CIR process, but can I have that 2 percent raise? And the city council can say: No; in fact, I'm cutting your pay. There is no right to strike, and there is no one that resolves the impasse. It is a process that keeps the public collective bargaining unit going back and forth to the CIR with no resolution. The CIR does not establish an array. You just keep running up and down trying to satisfy the CIR. And then when you do, you can do the math, but it doesn't mean you get a raise, it doesn't mean anybody keeps you at average. Depending on the political will and the whims of the city council, you could be 10 percent, 20 percent, 30 percent below what the average pay is for a wastewater worker... [LB397]

SENATOR LANGEMEIER: One minute. [LB397]

SENATOR LATHROP: ...and that's when the police are going to leave and the teachers are going to leave and the firefighters are going to leave. And they're going to say: Enough is enough; I can't even be assured of average pay in the state of Nebraska; what I get is I can pay dues, we can all meet at the union hall or wherever we collectively bargain from, and we'll spend our money on this expensive process and have no resolution. It is the elimination of collective bargaining. It affords people who feel compelled to say, "I'm not opposed to collective bargaining"--it gives them

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someplace to hide, a process where they can say, "I still am in favor of collective bargaining." This isn't collective bargaining. You bargain for what? With whom? And what leverage do you have? None. AM1116 and LB397 will give us an opportunity... [LB397]

SENATOR LANGEMEIER: Time. [LB397]

SENATOR LATHROP: ...to keep at average. Thank you. [LB397]

SENATOR LANGEMEIER: Thank you, Senator Lathrop and Senator Nordquist. Senator Dubas, you're recognized. [LB397]

SENATOR DUBAS: Thank you, Mr. President. I would yield my time to Senator Ashford. [LB397]

SENATOR LANGEMEIER: Senator Ashford, 4:56. [LB397]

SENATOR ASHFORD: Thank you, Mr. President. I am not going to go back over the AM1379 in detail. Senator Council and Senator Lathrop have outlined it. It is an option that you can choose, but, quite frankly, if that is the only option, there really is no option. The only option you would have, really, is to eliminate the CIR. If the parties wanted to collectively bargain, they could do so; if there was an impasse, there's an impasse. The city council makes the decision. So there really is no--there is no process. But I do understand what Senator Fulton is trying to say. He's trying to say that you can still bargain, and then there is some process to check how that bargaining process goes along. And I understand that. I understand that. And so it's something more than nothing. The problem is it doesn't get us to where we need to be. And where we need to be is a system, in my view--and where we started out, from the beginning of this, a year ago, was to, number one, fix the pension problem, which LB397 does do. It is a critical problem nationwide; it's a critical problem in Nebraska, certainly in Omaha. It solves that problem. If you don't have a way to adjudicate a dispute, you never resolve it in any meaningful way. The negotiating process may be productive; it may not be productive. But if you have a way to resolve the dispute with an adjudication process, and if you set the criteria clearly and in a predictable way, the parties will negotiate to some sort of resolution. The more predictable you get in the process, the better your chances are of having a voluntary agreement. If you simply give this process to the city council or the mayor without that check, you're going to get, I'm afraid--and I'm certain--you're going to have political influence over the system that would be far beyond what it is today. Because instead of having that check out there--and I think the way we resolve the check in this bill, LB397, is a good way to do it. But if you don't have that check and ultimately it's the city council's--or the mayor or the school board or whatever, their decision only, the political influence isn't going to go away. As Senator Lathrop suggests, the union hall isn't going to go away. The contributions to political campaigns

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isn't going to go away. It's really going to be an unfortunate set of circumstances for Nebraskans. As long as we can solve the problem of the pensions, as long as the parties are obligated, as they are under this bill and under current law, to bargain in good faith, as long as the system is predictable, and as long as we have a fair and impartial, neutral arbiter to decide industrial disputes regarding wages and terms and conditions of employment, you are going to have resolution at the negotiating table. Because the labor unions and cities are not stupid, they're not silly, they see what's in front of them. They're going to reach resolution. The reason we haven't had resolution to the degree that--on the city side that we've had in the school side--has many, many roots. Many, many roots. Some of it's politics. [LB397]

SENATOR LANGEMEIER: One minute. [LB397]

SENATOR ASHFORD: Some of it's politics within the Omaha area. There has been--or the Lincoln area or wherever the town is--there's been tremendous political pressure and a failure to diagnose and to correct the pension underfunding. No question. No question. It's not, in that regard, the fault of the CIR. But we are here because we know we need to fix the CIR and to make the adjudication process better. And that's what we have done in LB397. To abandon that adjudicative process and throw it back to the elected officials without that check, quite frankly, is suicidal. We're just not going to get to resolution. I understand what Senator Fulton is trying to do; it's an honest effort. It just doesn't get there. And it sets us in a place, in a direction that we just don't want to be in. Thank you, Mr. President. [LB397]

SENATOR LANGEMEIER: Thank you, Senator Ashford and Senator Dubas. Senator Mello, you're recognized. [LB397]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. I'd yield my time to Senator Harms. [LB397]

SENATOR LANGEMEIER: Senator Harms, 4:56. [LB397]

SENATOR HARMS: Thank you, Mr. President. Thank you, Senator Mello. Senator Fulton, would you yield? [LB397]

SENATOR LANGEMEIER: Senator Fulton, would you yield? [LB397]

SENATOR FULTON: Yes. [LB397]

SENATOR HARMS: Senator Fulton, could you walk me through very quickly just exactly what the heart of this is? I mean, cut through the chase and get right down to what this actually does. And then I'll have some more--and then I'll have a little more discussion with you, please. [LB397]

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SENATOR FULTON: The amendment contemplates a lot of things. But fundamentally, the difference that Senator Lathrop and I have is that I believe that the elected official should have some authority to manage his budget. And if 70...it's different for different bodies, but if a majority of, a vast majority of his budget is personnel, then he doesn't have direct control over a vast majority of his budget. [LB397]

SENATOR HARMS: Well, they really do. You know, 80 percent. Probably, if you look at the school system, it could be anywhere from 75 percent to maybe 80 percent of that would be salaries. Okay, four folks. They do have the control of that; they can decide whether they want to, you know, address this issue, in regard to salaries, or not. And that's what the beauty of collective bargaining is about. It gives them that opportunity to go in and bargain knowing that if you have a dispute, that it can be resolved. And what I have found, Senator, in regard to collective bargaining, sometimes the local officials--and I'm not being derogatory here--really don't have the best interest, sometimes, in regard to their employees. And, quite honestly, you are so much better sometimes in going into a neutral environment and having somebody review that. And, you know, when you look at this collective bargaining, if we have this all spelled out for the first time, Senator, if we have this spelled out for the first time, the criteria that's clearer, it's so much easier for us to determine, then, when we're at the table and going to do collective bargaining, you don't have to be a rocket scientist to figure this out. If it's identified in a law, it's very easy for us to look at exactly the components they're going to consider. You're going to add this thing up, and you can do your mathematics, and if you're below the average, you're going to pay. That's as simple as that. And my thoughts are that I don't think that you get that same option with what you're trying to do. And I think that's a major difference. And quite honestly, I think if we would actually approve this amendment, I think we'll fail miserably in Nebraska. I think where we need to be is exactly with where we are with what Senator Lathrop is suggesting. I don't think you can get rid of the CIR. I'm on record when I testified on LB555. I support collective bargaining; I support the CIR. Because I believe you've got to have a neutral base to operate on. What you'll have, colleagues, if you don't have this sort of structure, you'll have chaos. And if you've ever gone through a process, which unfortunately, I've had that opportunity, where we had to go into the commission, in my previous world, the unrest that it creates you just never get over. You have it in management; you have it in your employees' side. So I've always believed, and I stated this earlier on the original amendment, that the quicker you get this process taken care of, the better you're off with your staff and your employees. And I don't see that happening with your process, Senator. So thank you, Mr. President and colleagues. [LB397 LB555]

SENATOR LANGEMEIER: Thank you, Senator Harms and Senator Mello. Those still wishing to speak: we have Senator Lathrop, Lautenbaugh, Fulton, McCoy, Lathrop, Howard, Mello, Larson, Burke Harr, Fulton, and others. Senator Lathrop, you're recognized. [LB397]

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SENATOR LATHROP: Thank you, Mr. President and colleagues. I want to talk about collective bargaining. And I want to do it in the context of a particular situation, and I hope...I will say at the outset that I have tried--we have tried, in the working group, diligently to work through the League of Municipalities so that the league could bring us consensus ideas. That said, I want to talk to you about how AM1116, the difference between having the ability to collective bargain and no collective bargaining in Omaha's particular situation. It goes like this. If LB397 becomes law with AM1116 as its substance, then we will have a new process for calculating the average...pardon me, the hourly rate value. And Omaha has a problem, I believe, with the pension for firefighters and law enforcement. They have an underfunded pension by I think the number is \$620 million. It's a lot of money. If you take away collective bargaining, okay? And I hope you hear this. If you take away collective bargaining from Omaha police officers and the firefighters...and I'm not making any threats here, I'm just telling you how it's going to work, because it can be in Scottsbluff, and it can be in any other community. People have a contractual right to those benefits, right? They have a contractual right to those benefits. And you want to stop collective bargaining? Okay. One of the consequences is they will insist on their contractual right to those pension benefits and any other contractual right they have in any benefit that's due them. That doesn't solve the \$620 million problem they have up in Omaha. But if you, as we will, in a new process, go through and determine the hourly rate value and find that police and firefighters, once we consider their pensions, are doing better than the array, we've just created with this bill some leverage to fix the problem. Let me tell you how that works. If the firefighters--and I'm going to make a hypothetical, I have no idea what the number is going to look like--but if the firefighters, for example, were \$5 an hour higher than their counterparts in the array, they have two choices. They can stay frozen for twice as long as it takes for the average to catch up to them. That could be years and years and years. And you know what they're going to do? They're going to say: We don't want to be frozen; let's talk. In fact, the bill provides a time for them to sit down with the city and say, how do you want to get yourself back to the array? How do you want to bring your hourly rate value down to where the array is so your wages are not frozen? And they're going to sit down with the city of Omaha and work on that pension hole. They're going to work on that deficit. They're going to work on their health plan; they'll have bigger deductibles. They'll do and make concessions necessary to bring their hourly rate value back down to the array. Okay? Now, you may not have this problem in your hometown. Omaha has a big one. And this is the only way...there's only two ways that they can diminish that hole--or three. One is to put more money into the problem. Two is if they went through bankruptcy--and no one is suggesting that. Otherwise, their contractual rights...and the only third way to do it is to get them to agree to a change. And if you get leverage on these collective bargaining units by changing the rules, finding themselves doing better than the array, they'll come to the table and sit down and say: What can we do, collectively, to help? Now, imagine that there's no collective bargaining--and this would effectively end collective bargaining. There's no collective bargaining. Who is the

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mayor of Omaha or your hometown going to talk to? [LB397]

SENATOR LANGEMEIER: One minute. [LB397]

SENATOR LATHROP: Who are they going to talk to? They may have succeeded in eliminating collective bargaining, but at some point they're going to want something--who do we talk to about giving a raise to the guys in the wastewater treatment plant? You see, collective bargaining has been vilified and has been characterized as a demon. And I think Senator Harms, who's been in that environment, will tell you it's not the case. It works for the businesses, which is why I will tell you and be very clear about this, in the eight months that I've worked on this subject, I've not had the League of Municipalities, I've not had NACO, I've not had the state of Nebraska, I've not had the school districts ask me to do what Senator Fulton is... [LB397]

SENATOR LANGEMEIER: Time. [LB397]

SENATOR LATHROP: ...asking you to accept. Thank you. [LB397]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. Senator Fulton, you're recognized. [LB397]

SENATOR FULTON: Thank you, Mr. President. Members of the body, LB664 was a proposal that very clearly ended collective bargaining. That was not what I proposed in LB564, nor is it what I am proposing in AM1379. And I hear that we have a fundamental disagreement, but I can only say that there has been a great deal of time and effort put in on my side of this also, such that we maintain collective bargaining. If I wanted to eliminate it, I would have proposed it. And I can make a defense as to why I wouldn't eliminate it. There is a difference that I'd like you to think about between what occurs in the public sector and what occurs in the private sector. In the private sector, the collective bargaining is really over a pot of money, the profits of a given company. So labor makes a case as to why they should get a certain amount of that pot of money. If they want to get raises, then they're making a case as to why we should get more of the profits of the company. And so there's a set amount of money that's being negotiated in the private sector, and it's the profits of the company. And that's a good thing, a fair thing, that happens in the private sector, this process of collective bargaining. When collective bargaining occurs in the public sector, it's not profits that is being negotiated; it is, rather, the dollars that are put into that unit of government by the taxpayers. There's a fundamental difference there. Now, why do I highlight that difference? Because these elected officials are elected by those very taxpayers. So as it regards collective bargaining, we elect people to be our representatives at the collective bargaining table. That's different than the private sector. There's no election of management in the private sector. Management in this scenario of collective bargaining is elected by the people. There is an assumption in the opponents of AM1379; I'm gleaning an assumption that

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elected officials will not pay a fair wage if we adopt AM1379. I don't think that is the case. There could be instances where one could argue that a wage was not arrived at fairly. And if that's the case, then the union can appeal to the CIR, under AM1379. That exists. But when we bear in mind that the negotiation is tax dollars, not profits of a company--rather, tax dollars--there is built into that program, built into that scenario, an incentive for elected leaders to behave. If they don't, they're going to get booted. If a city council or mayor are unable to negotiate in good faith or choose not to, the CIR can be a stick. There's another stick, under AM1379, that we forget. And that is the stick of the voters. And we understand that unions have a right to engage in the political process, and they do. And it seems to me, as I was thinking through this, it seems to me that that ought to be used. We ought to use that reality when we're putting together something that we can get across the finish line here in this body, something that we can take to the people of Nebraska, our second house... [LB397 LB664 LB564]

SENATOR LANGEMEIER: One minute. [LB397]

SENATOR FULTON: ...and persuade them, convince them. These elected officials not only would have appeal to the CIR, under AM1379, we also remember that under AM1379 it can be rightly said that they are now responsible for their local budgets through the process that's set forward here in AM1379, but also they can no longer say: Ah, but the CIR. Voters can hold them accountable. And that means union voters, nonunion voters, all Nebraskans who care about issues of public safety, good government, and what have you. And so I ask you to consider that. In the public sector the voters have skin in the game. The voters really are management, and we elect people. And that's something that is contemplated in AM1379. Thank you, Mr. President. [LB397]

SENATOR LANGEMEIER: Thank you, Senator Fulton. Just for reference to the body, that was the last speaker on our paper list prior to our queue going down. We will now proceed back to the queue system. And so you're going to see senators return a little more rapidly than normal now that we're on the queue system. Senator McCoy, followed by Senator Lathrop, Howard, Larson, Burke Harr, Fulton, Price, and Schilz. Senator McCoy, you're recognized. [LB397]

SENATOR McCOY: Thank you, Mr. President and members. One of the concerns that I had on the amendment that was adopted a little earlier this evening but I didn't have the opportunity to bring up and which I will now and then speak to the same concern and issue in AM1379 is the array of Nebraska employers. And if Senator Lathrop would yield for a question, please. [LB397]

SENATOR LANGEMEIER: Senator Lathrop, would you yield? [LB397]

SENATOR LATHROP: Yes. [LB397]

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SENATOR McCOY: Thank you, Senator Lathrop. I believe, in the amendment that we adopted earlier, specifically page 2, line 18, it struck all the language out of AM1116 that referred to the preference or the favorable nod towards Nebraska comparables. And, in fact, as the transcript will show, that was one of the things that you talked about just as recently as the second hearing, on April 13. Can you speak to why that's taken out? It is in AM1379, and for that I'm glad, and it's one of the reasons that I support this amendment. But can you tell me why that was stricken out of the underlying AM1116, through AM1383 earlier this evening? [LB397]

SENATOR LATHROP: Because it was addressed in a different part of the bill. If you look at, on AM1116, page 20, I'll direct you to line 18 through 21, where the matter of preference for Nebraska employers is clearly spelled out. That stricken language also deals with economic variables, and that is found, again, more specifically treated in a later part in the bill. And I'm trying to flip my way through there and find it for you, Senator McCoy. Anyway, the preference for Nebraska employers is found on page 20, line 18, of AM1116, and the economic variables--as you know, it's 64 pages, and I'm trying to put my hands on it, and I'm not going to get to it, but I can assure that "economic variables" remains in AM1116. It was agreed to, negotiated, and left there. [LB397]

SENATOR McCOY: Well, I... [LB397]

SENATOR LATHROP: So that's the answer to your question. [LB397]

SENATOR McCOY: Okay, I appreciate that. In going back to some exchange that we had earlier, on your amendment earlier, as it regards to aggregate labor statistics, that being another concern of mine, clearly we have it in--or I should say Senator Fulton has it in this amendment that I support--that we would use aggregate labor statistics rather than subpoena efforts. And you graciously, and I presume that it was true, offered to allow me to participate in changing around some of the issues that were in the previous amendment. Is that--do you see this as a problem, using these aggregate...? [LB397]

SENATOR LATHROP: First of all, I think what I offered to do was let you help me write the protection language for subpoenaed records, not--I didn't make a concession about using statistics, which is what your question is. And as I said before, the problem with using the average pay for a police officer, for example, or a secretary, whatever public employee you're talking about, it doesn't tell us whether they're doing the same work. And I suspect that if we averaged out what the...and I'm going to make up "the union of administrative assistants." If--some of them have particular skills, some of them don't, some of them have different types of jobs--if we average them out, we'd probably get to where your labor statistics are or pretty close maybe. But the problem with it is, is that it pays everybody the same or treats them all the same, regardless of whether they have

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particular responsibilities,... [LB397]

SENATOR LANGEMEIER: One minute. [LB397]

SENATOR LATHROP: ...like an accounting function, or they have a particular skill or bring anything different to the table than the least-capable person in the room. [LB397]

SENATOR McCOY: And I appreciate that, Senator Lathrop. But why would have we not pursued--we'll just use this for an example--the capabilities for private businesses to voluntarily offer information to the CIR in this manner and then have job surveys conducted, as is done in private industry quite often. I think if you talk to any, probably just about any private employer, they volunteer to do...job surveys may be conducted by an association, a trade organization, or whatnot. Why wouldn't have we gone some sort of that route? [LB397]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Time, gentlemen. Senator Lathrop, you are recognized. [LB397]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I think this is my second time talking, so I'd better make it good, huh? (Laugh) I do want to talk about a couple of issues. And Senator Fulton is exactly right that there is a difference between public and private employees in a collective bargaining situation. And I'd like to address that for a moment, if I could. In the private sector, employees are bargaining for, essentially, as much as they can get. That's their nature. Their bosses are trying to sell their products or their services for as much as they can get. And the employees are trying to, through the collective bargaining process, secure wages as high as they can get. And sometimes they'll use a threat of a strike to do it; they'll say: Well, if you don't pay us more money, we'll go on strike. And they might or they might not. If they do, they can be dismissed, I suppose. But the public employee is in a different situation. And it goes back to the policy trade-off. And, colleagues, we have many social contracts in our statutes. Certainly, work comp is a social contract, where employees agree that they can't sue their employer over a negligence claim, which is typically bigger than a work comp claim; but they can make a work comp claim a little easier than they could a third-party claim. And the collective bargaining process in public employment is not any different. There was a trade-off made some time ago, and the trade-off was: you folks are not going to be able to strike; we the cities and the government will have our services not interrupted by strikes. So that was a good thing for the cities, not a good thing for the employees, but they agreed to it. And in exchange, we set up an institution to provide for average pay. And if I sound like a broken record on this average pay thing, it's because it is that simple. We have an institution to establish average pay and an amendment that expresses dissatisfaction with that process. So what are we really after? Are we after something less than average pay? And I would submit, Senator

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Fulton, that if the process that you've established in AM1379 and the...if the process established in AM1379 is in place and the employers are benevolent, as Senator Smith believes, then we're probably arriving at the same place. Right? We think that the employers are going to do the right thing under your amendment and provide average pay. We certainly aren't pursuing AM1379 because it will result in more expense. And the reality is, we can talk about this being 70 percent of somebody's budget, but unless they intend to pay below-average wages for the work, we're at the same place. And that brings me to this conclusion, that AM1379 does do away with...effectively does away with collective bargaining. It is intended to provide a vehicle for changing the lay of the land and providing below-average pay to our workers. And that may sound good in today's political environment, but we are going to lose talented people. They are going to leave. And that was a policy decision recognized when we set up the Industrial Relations Act, when the employees and the public employers made this deal some time ago to provide for the CIR to ensure that if they don't get to strike, at least the system will provide them with average pay. I appreciate Senator Fulton's interest in this subject matter, his work on... [LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR LATHROP: ...AM1379. I really do. And I've had a number of conversations with him over the last several months about his interest in the subject matter. I think he is sincere. But I believe, in the end, that AM1379 effectively eliminates collective bargaining. The employees are completely, completely at the will of the city council. And that can only mean one thing in today's environment. And it is a breach of the social contract that was made when we said: In exchange for you not striking, we're going to provide you with average pay. And I would strongly discourage you from supporting AM1379. Thank you. [LB397]

SPEAKER FLOOD: Thank you, Senator Lathrop. Senator Howard, you are recognized. [LB397]

SENATOR HOWARD: Thank you, Mr. Speaker and members of the body. I stand in opposition to the current amendment that we have up. And I have to respond to a couple of statements that were made some time ago. I just have such an issue with senators or individuals who say: Well, we can trust the employers; they're going to be fair with the employees. When I started working--and I know I've said this before, the lead-in--when I started working for the Department of Health and Human Services, doing child protection service work, prior to our having a state union, they pulled in an old construction trailer that probably was rejected by a construction company and put it in the parking lot of the Douglas County--what was then known as the Douglas County welfare office, at 42nd and Pacific Street. And that's where the child welfare CPS unit operated out of. And when it was windy, all the phone lines would go down, because the trailer would shake. And when there was an angry client, they would direct them right

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back to the trailer, where we were sort of held captive, because it only had one entrance. And we finally had to tell them: Don't refer any more dangerous clients back to find us, when we're pretty much unsecured back there. But I think of the stories of how employees are treated in the meat packing companies. When I worked for Health and Human Services and we had those conditions, that was quite a long time ago. Meat packing--that's very recent. And if you think the employers are going to treat everybody just fairly because they're good guys and that's what you do, you don't have to look any further than the conditions at those plants. And I've gotten plenty of e-mails and plenty of information and attended meetings regarding how people are treated there. And without any sort of bargaining rights or any sort of rights that are regarded, their conditions are really, I would say, pretty inhumane. And I think it's too great of a risk for us to say: Oh, we'll just trust; we'll trust, trust, trust. But I know that's easy to think that things will be right and they'll just all work out. It won't be the case. It won't be the case. I can remember how it was prior to the Court of Industrial Relations, prior to the workers having any negotiating power. We had no rights. As I said earlier, you could be fired at will. If you didn't like working in the trailer, if you didn't like whatever was dished out, that was your problem, basically. I was lucky; I had a very good supervisor who had a lot of common sense and was a fair individual. But, as I say, I was lucky. I certainly wouldn't count on that to be the policy across the board. And I've seen many situations where that was absolutely not the policy. People deserve to be represented. People have every right to join collectively and bargain for better conditions and, yes, for benefits. That's what we espouse to here in the United States, is for people to work their way up, for people to have conditions that are safe to work in, and for a job that provides them the opportunity to spend time with their family and they're not working 10-12 hours a day just to put a roof over their own heads. So keep that in mind when you say: Oh, things will just be fair. That's just not true. And we have a responsibility to look beyond our own lives and to realize that other people have it far worse. Thank you, Mr. President.
[LB397]

SPEAKER FLOOD: Thank you, Senator Howard. Senator Larson, you are recognized.
[LB397]

SENATOR LARSON: Thank you, Mr. Speaker and members of the Legislature. Would Senator Fulton yield to a question? [LB397]

SPEAKER FLOOD: Senator Fulton, will you yield to a question from Senator Larson?
[LB397]

SENATOR FULTON: I will yield to a question from Senator Larson. [LB397]

SENATOR LARSON: Thank you, Senator Fulton. One of the questions I had for Senator Lathrop in the previous amendment was the fact that cities were able to compare wages and benefits in their comparability, but school districts were not. In

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AM1379, are school districts treated the same as cities in this type of comparability?
[LB397]

SENATOR FULTON: It would be, under this amendment. This is something that would apply--the CIR's authority would apply equally throughout the entirety of our public sector employment. That was one of the...we've heard this from different groups; we've also heard it from the Governor--a consistency of application. And so that's--that was contemplated when I put forward this amendment. [LB397]

SENATOR LARSON: Thank you, Senator Fulton. You know, I think that is one of the greatest advantages of Senator Fulton's amendment, is that all public employees follow the same procedure. Why do we want to set out a different procedure for the cities and counties yet carve out another procedure for the school districts and then possibly another procedure for those noncertified people working within the school districts? I mean, how many different rules do we have to have in the CIR? I mean, I think the consistency is a very important part of Senator Fulton's amendment and one that is lacking in AM1116. There is no difference between these entities, meaning school districts. And as I've discussed at length this afternoon, we have to continue to look for that consistency; we have to continue to make sure that we treat everybody equal. There is less variation in the array used in Senator Fulton's amendment, as well; I think that's very important--from 5 to 9, with 7 being the ideal number of array members. AM1116 allows up to 13 highest ranked, which, as Senator Fulton mentioned earlier, could result in more costs to rank all of these comparable entities. AM1379 also clearly states that Nebraska employers are to be used in the array first; and only if not available, may entities from other states be used. I mean, these are all very important things. And I think when AM1116 comes back up for consideration, I'll have some more questions for Senator Lathrop and maybe even before then. But I think we have to take a very hard look at Senator Fulton's amendment, on the simple fact that we are treating all entities across the state the same and not carving out special exemptions for one set of public employers and treating another set differently because their lobbyists may have been stronger or weaker or they didn't come to the table--I don't know. I think we have to deal with fairness, and I think Senator Fulton's amendment is that fair amendment, moving forward. I plan to vote for AM1379 to AM1116. And I think as we move forward and as the discussion moves forward, we should really consider the fact that it does treat everybody fair. And I'd like to thank Senator Fulton... [LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR LARSON: ...for his thoughtfulness in bringing this amendment. Thank you.
[LB397]

SPEAKER FLOOD: Senator Burke Harr, you are recognized. [LB397]

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SENATOR HARR: Thank you, Mr. Speaker. There are a lot of myths out there in regard to why we are where we are and with pensions. Would Senator Ashford yield to a question? [LB397]

SPEAKER FLOOD: Senator Ashford, will you yield to a question from Senator Burke Harr? [LB397]

SENATOR ASHFORD: Yes, I will, Mr. Speaker. [LB397]

SENATOR HARR: Sir, would you be willing to pontificate, if you will, on the history and myths around the pension problem and with the CIR? [LB397]

SENATOR ASHFORD: I've never been asked such an erudite question. Most certainly I will try. But I'm going to promise only that I will speak in complete sentences, for the Lincoln Journal's edification. Thank you. Mr. Speaker, I'm going to proceed, if that's okay. Thank you. The...your point is well...is this. And I...when we started this process with the Omaha Chamber in April of last year, the chamber of commerce had come out with a study that indicated that the city of Omaha's pension plan, defined benefit plan for police and fire, which had been created in 1961, was underfunded by \$642 million as a result of several factors, one being the loss in the asset value of the pension--underlying assets as a result of the recession, Great Recession, not at all caused by workers, who were firefighters or police officers, most certainly. But it was underfunded. And it started, you know, years ago, where Omaha, not unlike other cities across the country, did not fund...they--the cities do not address their pension plans they way we do on the state level; that's clear. We've talked about that in various contexts. But what was discussed at that initial chamber meeting when Steve and I were there is we pledged that we would try to address the pension issue. We pledged that--and at least to us, at the time that we met with the chamber in April of last year, that it was critical that the city of Omaha, when it negotiates its agreements with the unions, that the pension benefits be included in the process. I don't think we could say this enough, that the change in AM1116--Senator Council has mentioned it; Senator Lathrop has; I mean, I guess I have; and others have mentioned this--how significant this change is, how significant it is when the employers--in this case, the cities--came to us, including the city of Omaha and the city of Lincoln, and said: Please, please find a way to even the playing field, to balance this out, to make it more predictable, so that we can have the ability to bargain more effectively with our unions. It was a plea; it was a plea to us to try to figure out a way to address pensions. I've never been in a situation in this Legislature in my life where...and it's not about me, because, I want to tell you, Senator Lathrop and Senator Utter and the team from the League of Municipalities and then the other people who have been involved since that time, including Lauren Hill from the Governor's Office, just a multitude of people have addressed these issues as employers--as employers: Please find a way to address the number one priority issue, at least in the city of Omaha being pensions, the number one priority issue statewide being predictability. That's what we

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were charged to do. It's sort of like in basketball when I--as I was trying to say earlier, I couldn't go to my left, so I always used to shoot from 30 feet, which never worked that well--is that when you're told to get in there and don't shoot from 30 feet... [LB397]

SPEAKER FLOOD: Thirty seconds. [LB397]

SENATOR ASHFORD: ...and you're left with, you know, doing a lay-up from the left side. I mean, at some point you're kind of--you're trying to figure out where you're at. And that's what I can't understand. We have found a solution to the problem that was presented to us one year ago. We have a solution. Can we tweak it around? Sure. But we have a solution. And I would urge the body, in all due respect to my colleague Senator Fulton... [LB397]

SPEAKER FLOOD: Time, gentlemen. [LB397]

SENATOR ASHFORD: ...thank you. [LB397]

SPEAKER FLOOD: Thank you very much. Senator Fulton, you are recognized. [LB397]

SENATOR FULTON: Thank you, Mr. President, members of the body. Senator Ashford, there's an easy answer to this. Just go to your left. This has been a long day. Okay, we've been involved with this issue for a long time today. Senator Lathrop, Senator Ashford, myself, a number of others, Senator Utter have been involved with this for a long time. I mean, I can count the calendar back almost two years. At the end of the day, what we do is going to have to be acceptable to the people of Nebraska. Indeed, I suggest that we're going to have to do a little bit of a sell job to the people of Nebraska to get them to understand what it is that we have done, if indeed we come to some resolution on these differing proposals. And I keep coming back--and this is what informed my bill, LB564, and, really, what informs AM1379--we keep coming back to this realization that, in this case, management is the taxpayers. And we hold an election to put an elected official in charge of managing this budget. This is a mechanism that I think meets Senator Lathrop's part way. We don't repeal the CIR. I mean, you can look at the amendment and see. We don't repeal collective bargaining. Look at the amendment and see. I will say that it is true that the CIR has a different function in my amendment than in Senator Lathrop's amendment. Now, let's take a look at this by way of how AM1116 came to us. There are, I'm sure, provisions of AM1116 that those in organized labor do not like. I'm sure of that. When I brought the bills last year, I think the idea was that if these bills don't go anywhere, then we can keep the status quo. So if nothing were to happen, my guess is that the labor unions would be fine, because we'd keep the status quo. What has happened, though, is that there has been a recognition on the part of the unions and, really, all of the players in Nebraska that something has to be done on CIR. And so that's a big deal. If AM1116 were the only bill before us, I suspect that many of the unions, if not all of the unions, would say: No, we want to leave

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the status quo in place. But they've come to the table. And so we have taken not everything but a good deal of what Senator Lathrop is putting forward. This idea of being able to assign numerically a figure to get us an apples-to-apples comparison--that makes sense to me. And so you see that in this bill...or this amendment, I'm sorry. But somehow...and I ask all of the members here, if you can come up with a way to allow the elected body to manage the budget that he or she, they were elected to manage, then please come forward with that idea, and do it in such a way as to preserve the CIR. This was my charge. I don't believe we should get rid of the CIR. It serves a purpose. I don't believe we should get rid of collective bargaining; public safety is too important, which is why I think we should retain collective bargaining. But at the same time, we have to give the taxpayers the final say, in some way--not a proximate say. How do you do that? This does that, AM1379. [LB397 LB564]

SPEAKER FLOOD: One minute. [LB397]

SENATOR FULTON: And so we can allow elected officials to make a decision that they'll be held accountable for. I've heard so many times from elected officials that: "I would be better able to control this budget if it weren't for the CIR." From day one that I came into the Legislature, that's what I was hearing. "And so you got to reform that CIR." When we reform it, then, let us reform it in such a way as to allow those elected officials to be held accountable. No longer should an elected official--a city councilperson, a county board member--no longer should they be able to hide behind the CIR as to why they did not put forward a responsible budget. This takes the best of both worlds: we keep the CIR, we keep collective bargaining, and at the same time we are able to hold accountable those elected officials, who we elected. So I hope that you'll vote green on AM1379. [LB397]

SPEAKER FLOOD: Time, Senator. [LB397]

SENATOR FULTON: Thank you, Mr. President. [LB397]

SPEAKER FLOOD: Senator Price, you are recognized. [LB397]

SENATOR PRICE: Thank you, Mr. Speaker, members of the body. Looking at this amendment and the work we've done today, and we see this dichotomy, if you would, of approach here, this difference in approach. And what Senator Fulton was speaking about, the voters and how citizens feel--I'm sure everybody has citizens; I mean, employees and business owners beyond that are citizens. And the citizens comprise a much larger group of people, not just the parts in the public service of our state. So in looking at it and trying to answer to them and what they're struggling with when they see the dollars...and earlier we had a discourse that talked about the differences between a private business and what the state or what the political subdivisions provide and how there are profit dollars being fought for between business owners, management, and

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labor. And then when we get to the public sector, those aren't profits; those are tax dollars. And then there have been some assertions made that there will be an absolute ending that is catastrophic if there's a change, and if AM1379 were to be adopted and to move forward, that we could guarantee there would be a catastrophic change, and that, man, woman, and child, there would be a great exodus from the state of Nebraska, and there would be no one there to fill the jobs. And I would submit that if AM1379 were to come to ground, what you would see is that those elected officials would be held accountable for the lack of services, see? Because we're balancing that--services: what do you want, and what are you willing to pay? To me, that's what it comes down to and what is being asked of me, through e-mails and phone calls and when I'm stopped in the stores along the way in my district. People are saying--some people are saying: I can't bear the burden anymore--or at least that's the perception; we know what perception is; that's their reality. And others who say they need more. And so you try to get that balance between what will the public endure, and who will be held accountable for that? And therein lies a question or debate for myself. And in discussing this I'd like to see, would Senator Fulton yield to some questions? [LB397]

SPEAKER FLOOD: Senator Fulton, will you yield to a question from Senator Price? [LB397]

SENATOR FULTON: I will. [LB397]

SENATOR PRICE: Thank you, Senator Fulton. In the conversation we've heard so far, we've heard these dire predictions that should this amendment go forward, that there would be almost an absolute guarantee of catastrophic failure of our public subdivisions and that the CIR and collective bargaining is ended. And I would like you to respond to that directly. [LB397]

SENATOR FULTON: Well, thank you, Senator Price. I'd remind folks to look at what happens in other states, not that we have to emulate what happens in other states but we can be informed by what happens in other states. The CIR is unique to Nebraska; other states are able to function without a CIR. Now, I'm not seeking to repeal the CIR; I'm retaining it. And so if the prediction--if the prognostication is that, you know, dogs and cats are going to rain from the sky and we're going to have an issue with public safety, then I submit to you that we actually would still--under AM1379, we retain the CIR--we're actually still a step further than what occurs in other states. And so I just don't see that. CIR will remain intact under AM1379, purposefully and specifically. [LB397]

SENATOR PRICE: Well, I appreciate that, Senator Fulton. And that's what I'm trying to balance, because, see, I'm more inclined to support this bill, because I--not just that I understand it but I was aware of it in the last week, that it had a life. And the bill, the underlying bill, the LB397 and AM1116, that we've heard talked about, worked on for a

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year. You know, the PR on that wasn't so fantastic because it... [LB397]

SPEAKER FLOOD: Thirty seconds. [LB397]

SENATOR PRICE: Thank you...it was worked on, and we said it's worked on for a year. But we the body didn't see it. It didn't get reported out of the committee. We had no ability to digest it. And then they had the hearing, and it was reported out. And we had a week, not much more time than what we had with Fulton's. So the PR has been bad on this, and that's what stretches the credibility of it and makes me incredulous with some of the things going on. Thank you, Mr. Speaker. [LB397]

SPEAKER FLOOD: Thank you, Senator Price. Senator Schilz, you are recognized. Senator Pahls, you are recognized. [LB397]

SENATOR PAHLS: Thank you, Mr. President, members of the body. I heard a little bit about teachers' salaries, etcetera, etcetera. First of all, I don't believe the world will collapse, whatever happens today; I truly do not believe that. There will be some, probably, some mishaps, but I don't think we will collapse. I just wanted to make a little bit of a comment about--let's say that I'm a school board member, I tell the superintendent--not me as an individual but as a group--I'd say: Our budget is \$10 million; you have 100 teachers--and I'm just going to round those up--we're up against the lid; state aid is sort of dead now; what are we going to do? The teachers want their salaries to go up, or the administrators, whatever. Well, as the superintendent, I'd tell the school board: We can only afford 95 teachers. It's that simple. If you don't have the money, you have to reduce staff. Just to be honest with you, that's...you know, some people say this is a complicated budget--I'm making a very simplistic statement here, but that's what you do. You cut back. It happens. That's a possibility. So like I say, it's not an Einstein. No money? Teachers and administrators, you have fewer of them. And if it continues like that, then eventually the parents will say: Hey, class sizes are too high. Then you have to take a look at, oh, how can we get those class sizes down? Or we lost a couple of courses that we really need to send my son to Georgetown; you going to need a few more of these classes. Etcetera, etcetera. But that's just the way it works. Now, I've been listening all afternoon, and some of you are very well versed on this, on both sides of the issue, much more than I. And there are some of us on the floor are probably like I am: you've read the bill, or you understand parts of it, but you don't understand all of it. This is what I believe what life is like. I don't know if any of you have ever eaten at Razy's deli, between Blondo and Maple in Omaha, Nebraska. You go in there and you see on the sign--it says, "Summa"--do you want this "Summa sandwich"? Well, you get a summa sandwich, and that means you get some of this and some of that. So what I'm trying to, in my mind, what I'm trying to...and I'm going to ask Senator Lathrop if that's possible: Are we so far apart on some of the issues that Senator Fulton has brought forth to what you are proposing--are we so far apart that we cannot have "summa," a little bit more than some of the stuff? Is that possible? Because what I'd like

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to see, if we would move this on, that we'd have a commitment that...and I know you guys have been working hard. I mean, if that is coming across like, "I don't believe you guys have been working hard," that's not the issue. But if somehow, if I can get a commitment--and I shouldn't even say "commitment"--but if I could get you to respond that you would listen to some of the things we're saying--because I know Senator McCoy has a couple of issues--are you willing to bring that back to us on Select? I would like to ask that question to Senator Lathrop. [LB397]

SPEAKER FLOOD: Senator Lathrop, will you yield to a question from Senator Pahls? [LB397]

SENATOR LATHROP: I'd be happy to, and that question in particular. Senator Pahls, the answer is yes. I have tried at every stage of this process to offer and to encourage people to come through my door and talk to me about their concerns. I am committed to working with anyone between General and Select to make improvements and to try to accommodate the concerns of others. I have people who have participated in this process over eight months. And I'm not--I don't stand here representing labor or even the League of Municipalities; I stand here as the guy who, along with Senator Ashford and Senator Utter, mediated... [LB397]

SPEAKER FLOOD: Thirty seconds. [LB397]

SENATOR LATHROP: ...a solution between these two interests. And... [LB397]

SENATOR PAHLS: Okay, so I'm hearing you say--you're telling me on Select...because I'll go away on Select. [LB397]

SENATOR LATHROP: I understand that. I understand that. And I'll...I'm...Senator Pahls, I'm committed to working with people that come to me... [LB397]

SENATOR PAHLS: Okay. [LB397]

SENATOR LATHROP: ...or get together with people who have concerns, as I've offered with Senator McCoy on the subpoena issues. [LB397]

SENATOR PAHLS: Okay. [LB397]

SENATOR LATHROP: And I'm not just saying that to move the bill; I mean it. I'll sit down with you... [LB397]

SENATOR PAHLS: Okay. [LB397]

SENATOR LATHROP: ...or anyone else... [LB397]

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SENATOR PAHLS: Yeah. [LB397]

SENATOR LATHROP: ...and work on the differences between... [LB397]

SENATOR PAHLS: Okay, I'm just hoping that... [LB397]

SENATOR LATHROP: Right. [LB397]

SENATOR PAHLS: ...if we can find something--because usually we can. [LB397]

SENATOR LATHROP: And I have some ideas that... [LB397]

SPEAKER FLOOD: Time, gentlemen. [LB397]

SENATOR PAHLS: Okay. [LB397]

SPEAKER FLOOD: Thank you. [LB397]

SENATOR LATHROP: ...that may make Senator Fulton more comfortable. [LB397]

SENATOR PAHLS: Thank you. [LB397]

SPEAKER FLOOD: Senator...before we go on, Mr. Clerk. [LB397]

CLERK: Thank you, Mr. President. Very quickly, amendments: Senator Cook, to LB628; Senator Karpisek, LB490 and LB256. Thank you. (Legislative Journal pages 1443-1446.) [LB628 LB490 LB256]

SPEAKER FLOOD: Thank you, Mr. Clerk. Senator Dubas, you're recognized. [LB397]

SENATOR DUBAS: Thank you very much, Mr. Speaker. A couple of quick questions and then I will yield the remainder of my time to Senator Lathrop should he want it. One, I don't think the bill...this is what is already in place, but I would just like a clarification, and it refers...there's a mediation component, if I understand correctly. There's a mediation component involved with the CIR process... [LB397]

SPEAKER FLOOD: Senator Lathrop, will you answer a question from Senator Dubas? [LB397]

SENATOR DUBAS: Sorry. [LB397]

SENATOR LATHROP: Yes, I will. [LB397]

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SENATOR DUBAS: Thank you, Senator Lathrop. Is there a mediation component involved in the CIR process? [LB397]

SENATOR LATHROP: In the school piece. [LB397]

SENATOR DUBAS: Just in the school piece. [LB397]

SENATOR LATHROP: Yes. [LB397]

SENATOR DUBAS: So in the rest of them, there is no...it goes straight to CIR, is that how I...? [LB397]

SENATOR LATHROP: I think they can probably agree to a mediation process, but they're not required to. [LB397]

SENATOR DUBAS: Okay. [LB397]

SENATOR LATHROP: And, in fact, we're taking the special master out of the state piece. [LB397]

SENATOR DUBAS: Okay. All right. I wanted a clarification on that. And we've spent a lot of time today talking about the unions, the employers and the unions. But the CIR and this bill and what we're trying to do doesn't just involve unions, is that...? I mean... [LB397]

SENATOR LATHROP: No, it doesn't. And the League of Municipalities was very concerned that they probably deal with more collective bargaining units that are not unions than are unions. So when they looked at trying to...that's the advantage of working with the League of Municipalities as opposed to any particular city. And I appreciate there may be cities that would like something different, but the reality is we need a process in there where somebody can say, this works for all or most, right? And the League of Municipalities was able to bring that, as did NACO and, I thought, the state. [LB397]

SENATOR DUBAS: That's...I really felt like we needed to clarify that, because it's--you know, we've been, you know, hammering on the unions and referring to them as maybe being troublemakers and causing problems. But I think the handout that was given earlier today talks about 500--of Nebraska's 530 municipalities that do not have unions. So the CIR has served a real purpose for collective bargaining... [LB397]

SENATOR LATHROP: Absolutely. [LB397]

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SENATOR DUBAS: ...within and outside of... [LB397]

SENATOR LATHROP: And there's people that go there without lawyers. I mean, we have...the university...UNO has a group of professors that regularly, or from time to time, they negotiate their own contracts and, if necessary, they go to the CIR themselves. [LB397]

SENATOR DUBAS: Well, I would yield you the remainder of my time should you like it. [LB397]

SENATOR LATHROP: Thanks. And I will just comment on a couple of things. And that is, the thing that is being expressed with respect to the particular amendment AM1379 is the CIR will remain intact and so will collective bargaining. Understand that the CIR will not issue any order about what somebody's pay ought to be. It won't resolve a single dispute, except a dispute between a collective bargaining unit and a public employer over who belongs in the array. But it allows the public employer to construct the array. And if you don't like it, you go up and the CIR says--and they get to, essentially, choose what are important factors and what aren't; they can opt out of particular comparators if they want. It's virtually impossible for a collective bargaining unit to prevail in front of the CIR under this process. And then they don't resolve anything. And Senator Harms, who's worked in this area, said something that I think is really important. And one of the cornerstones of why this is important to the state of Nebraska is you will have unrest. If you're not paying your people what's average, you're going to have them leaving. But you're going to have unrest. If they're trying to bargain with the university or bargain with a school district and they can't get anywhere and they have no recourse and no place to resolve their dispute, they're going to be unsettled. And they're not going to be productive employees, they're not going to be happy, and those that... [LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR LATHROP: ...don't leave will be unhappy. And, you know, is the goal to make these people happy? No. But it is to be fair with them. And I go back to this only because it's so important, and that is, colleagues, the CIR needed reform. There were ways that we were distorting what average pay was, and AM1116 fixes that. It fixes it to the satisfaction of the cities, the satisfaction of the counties. Senator Harms' bill, put in by the Governor, was incorporated into this. And we've done what we can. And I'm happy to sit down with people that have another idea, but it is difficult for those of us who have invested eight months providing the cities the fix they asked for, the counties the fix they asked for--I'm working with the utilities, we put the state piece into the bill... [LB397]

SPEAKER FLOOD: Time, Senator. Thank you, Senator Lathrop. [LB397]

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SENATOR LATHROP: Thank you. [LB397]

SPEAKER FLOOD: Thank you, Senator Dubas. Senator Cornett, you are recognized. Moving on, Senator Nelson, you are recognized. [LB397]

SENATOR NELSON: Thank you, Mr. Speaker, Mr. President, members of the body. I have a question for Senator Hadley, if he will yield. [LB397]

SPEAKER FLOOD: Senator Hadley, will you yield to a question from Senator Nelson? [LB397]

SENATOR HADLEY: Yes, I would. [LB397]

SENATOR NELSON: Thank you, Senator Hadley. I thought we haven't heard from you for a while. I thought maybe I should give you an opportunity to speak, if only briefly. You made a statement earlier about meeting with one of the members of the CIR. Is that correct? [LB397]

SENATOR HADLEY: That's correct. [LB397]

SENATOR NELSON: And can you recall what you said? I didn't get it all down, but what did he say that they followed in making their decisions? [LB397]

SENATOR HADLEY: He said they tried to follow the statutes, they tried to follow case law and basically the courts, is what he told me, basically following what was laid out, what they felt was laid out as the procedures to follow in making their decisions. [LB397]

SENATOR NELSON: Well, thank you. My question is this. I'm puzzled. As a commission or a court or whatever, were they restricted in making up their own rules or guidelines or things that they were going to use, if you know? [LB397]

SENATOR HADLEY: That, I'm sorry, Senator Nelson, I do not know that. This was the comment and I think Senator Utter was there that same day that the CIR commissioner made that comment. [LB397]

SENATOR NELSON: Thank you, Senator Hadley. Would Senator Utter yield? [LB397]

SPEAKER FLOOD: Senator Utter, will you yield to a question from Senator Nelson? [LB397]

SENATOR UTTER: Yes, I will. [LB397]

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SENATOR NELSON: Senator Utter, you heard what Senator Hadley just said? [LB397]

SENATOR UTTER: Yes, I did. [LB397]

SENATOR NELSON: All right. Were you present at the time that that statement was made and is that your recollection of what was said? [LB397]

SENATOR UTTER: That's right. [LB397]

SENATOR NELSON: All right. So we're talking about case law and statutes. All right, thank you very much, Senators. That troubles me. I don't think that's a complete statement. In fact, I'm going to call it a cop-out on the part of that member of the commission, because I'm quite certain that we wouldn't be in the trouble that we are now and that is because I think they had the possibility of following regulations and rules and setting something down that we could depend on. And, instead, we never had any predictability. And I don't think that as a member of that body that you can say, well, we were very limited in what we could do. Obviously, they did a lot of things and I don't think in the limited amount of case law and statutes that they would have been restricted in formulating some rules and things that would bring about some predictability. So that's the only comment I will make on that. Would Senator Lathrop answer some questions? [LB397]

SPEAKER FLOOD: Senator Lathrop, will you yield to a question from Senator John Nelson? [LB397]

SENATOR LATHROP: Yes, Senator Flood, Michael. Yes. [LB397]

SENATOR NELSON: Thank you, Senator Lathrop. I don't want you to be confused. So far as I know, there's no other Nelson here but... [LB397]

SENATOR LATHROP: Okay. [LB397]

SENATOR NELSON: All right. Fine. [LB397]

SENATOR LATHROP: I appreciate the correction or the clarification. [LB397]

SENATOR NELSON: I'm just going to ask you some questions that relate to AM1116, which we will eventually perhaps come back to. You've worked a long time on this, eight months, and if I recall your statement, the League of Municipalities and Senator Utter. And then Bill Harding represented the League of Municipalities. Is that correct? [LB397]

SENATOR LATHROP: That's true. [LB397]

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SENATOR NELSON: And he has represented them a long time. You mentioned there were three other lawyers that you brought in. Were they there for the whole length of time that you worked on this? [LB397]

SENATOR LATHROP: Yeah, for the most part. We started out with Tom Dowd, who is sort of a dean in the legal community up in Omaha, as you know, and I don't think he was able to stay with it like we'd like him to have been able to so we had John Corrigan, Mike Dowd, and Dalton Tietjen, who's a fine lawyer here in Lincoln, that were involved in the process. [LB397]

SENATOR NELSON: Mike Dowd is Tom Dowd's son. [LB397]

SPEAKER FLOOD: Thirty seconds. [LB397]

SENATOR LATHROP: He's one of them. So is Tim. Yes. [LB397]

SENATOR NELSON: Oh, all right. Fine. So then apparently you didn't have three of them all at one time. I mean it started with Tom Dowd and you had one or two... [LB397]

SENATOR LATHROP: No, we did. We tried to have Mike...they weren't always there at the meeting but we generally had all three of them, but there would be occasions where one of those three would not be present. [LB397]

SENATOR NELSON: You described them as labor lawyers, so who were they representing in negotiations? [LB397]

SENATOR LATHROP: Generally, they represented labor, collective bargaining units, and Dalton I think did more work with the state and so he was there to give us insight on the state. [LB397]

SPEAKER FLOOD: Time, gentlemen. Thank you very much. Senator Brasch, you are recognized. [LB397]

SENATOR BRASCH: Thank you, Mr. President. I'd like to yield my time to Senator Fulton, please. [LB397]

SPEAKER FLOOD: Senator Fulton, you have 4 minutes 45 seconds. [LB397]

SENATOR FULTON: Thank you, Mr. President. Thank you, Senator Brasch. I probably won't take all of it. I think it would be instructive to understand how we came to this place of CIR reform. This time last year there was no possibility for reforming the CIR. The bills that were introduced did not go anywhere. We did not get to debate it. So why would I stay on this? Why would we as the Legislature stay on it when the will didn't

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exist a year ago? For me, from being on the Appropriations Committee, there's a certain importance that should be assigned to having some control over a budget. Why? When you hear "control over a budget" or "the ability to manage a budget," oftentimes our mind thinks, ah, wants to cut, wants to cut the budget. That's not always true. In fact, as I've learned through the appropriations process, it means that you want to be able to appropriately fund those things which we have a responsibility to fund. So let me give you here an example. Let's say that you are responsible for an agency. You're an elected official, which isn't too much of a stretch for all of us here. You have \$10 with which to operate that agency. You have eight employees, each of whom you pay \$1, so that means you have \$2 left to operate your agency. The CIR comes and orders that you have to provide, you know, a 10 percent raise. You might be able to do that within those \$10 if you become more efficient in your operation, but if it occurs year after year, eventually you're going to get to this point where you have two options: either you have to have more than \$10 to operate your agency--a tax increase, or you're going to have to lay somebody off. Now those are two pretty hard options to look at. You've gotten to a point in your budget where you're either going to have to raise taxes or fire somebody. And so what I was hearing from elected officials is that's really a false choice. Neither of those choices are good choices, and it comes about because of this structure that we have, because of the system that we have, which ends with the CIR. When I say we should give elected officials the ability to manage their budget, they should be able to manage their budget such that they can preserve jobs, if need be, to be able to work collaboratively with the union to be able to save jobs. Now how do we get there? There has to be--this is just philosophical logic--there has to be some ability for the local elected official to manage his budget. And so now we have this...ironically, a friend yesterday that I visited with in the lobby said that it seems you might have impasse, Senator Lathrop and yourself, so maybe we need the CIR to settle this in here. But this is a way that we apprehend both principles. [LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR FULTON: Management control of a budget does not automatically mean we're going to cut that budget. It means we are going to be able to manage their budget. That is what it means. I will stop there. Thank you, Mr. President. [LB397]

SPEAKER FLOOD: Thank you, Senator Fulton. Senator Bloomfield. [LB397]

SENATOR BLOOMFIELD: Thank you, Mr. President. I would yield my time to Senator Larson. [LB397]

SPEAKER FLOOD: Senator Larson, 4 minutes 50 seconds. [LB397]

SENATOR LARSON: Thank you, Senator Flood, and Senator Bloomfield, for yielding me your time. Last time on the mike I began to dive in a little bit to some of the

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differences in what I like about AM1379 and talked a little bit about the array and the fact that it treats all public sector employees equally and how important that is, and I'd like to continue on that a bit. Not only does AM1379 treat people...all public sector employees equally and has a lower array of 5 to 7 or 5 to 9, with 7 being preferable instead of the highest 13, as in possible with AM1116. AM1379 also clearly sets out that Nebraska employers are supposed to be used in their array, first, and if there aren't then we can use other entities from other states. AM1116 does not clarify that in its preference. AM1379 also more clearly identifies that all compensation, wages, and benefits be included in the discussion for public employees; AM1116, no. AM1379 also specifically states that public employees may determine other working conditions are applicable in finding an appropriate array, allowing for greater flexibility in their determinations. AM1379 is focused on streamlining the process, encouraging better negotiation, and actualizing cost savings. In AM1379, if there's an impasse during pendency of the action before the commission or during the related appeal from the decision of the commission, the public employer's last, best, and final offer shall remain in effect. I know with a lot of businesses, especially small business owners and private businesses across the state, when they make an offer it's usually the last best offer. And oftentimes, especially in work environments like the current one, people take it, as an employer has an incentive to adequately compensate their employees and provide a satisfactory working environment. You know, I think AM1379 has a lot of benefits and I think Senator Fulton is doing an excellent job of highlighting those out. And like I said, I think if it's good for the goose, it's good for the gander, and my main point is that AM1379 not only offers more options on how to deal with the CIR and for public employers but it treats everybody the same, and I think that's what people want in the end. They want to be treated the same. They don't want to single out one section of government employees and compare them to another section. And I'd like to thank Senator Bloomfield for his time again. Thank you. [LB397]

SPEAKER FLOOD: Thank you, Senator Larson. Senator Janssen, you are recognized. [LB397]

SENATOR JANSSEN: Thank you, Mr. President, members. I don't know if Senator Fulton is around. If he is, I'll have some questions for him as I continue on. I heard Senator Pahls talking about Subway sandwiches and compromise and I used to...there's a District 15 senator that served before me that used to say legislation is a lot like sausage: You don't like everything you throw into the hopper and you may not like the ingredients that are in it, but after you spice it up a little bit and it comes out the other end most people do like it. And in his case, I like all the sausages that he makes, but I think Senator Karpisek can also relate to that. But I think that's where we're at. And when Senator Lathrop mentioned working, and I don't know if Senator Lathrop is here either, I know he's had a busy night, but if he would just yield to a quick question. [LB397]

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SPEAKER FLOOD: Senator Lathrop, will you yield to a question? [LB397]

SENATOR LATHROP: Yes, I will. [LB397]

SENATOR JANSSEN: Thank you, Senator Lathrop. One of the...when you've mentioned you'd be willing to work under the Subway sandwich scenario, if you will, would that be up to and including when you talk about the hourly rate, which seems to be a consensus, at least that I'm feeling, on this floor? Would you be willing to work on including the retirement benefits included in that hourly rate? [LB397]

SENATOR LATHROP: Actually...actually, Senator Janssen, the bill does. It includes hourly rate value. And you're the second person to suggest to me that they heard that it doesn't, and maybe, if you'll allow me,... [LB397]

SENATOR JANSSEN: Yeah, please do. [LB397]

SENATOR LATHROP: ...I'll try to talk about that. The whole idea behind the hourly rate value, the reason we came up with a concept and incorporated it into AM1116 was this: that the CIR had not been taking into account pensions and health insurance and we're going to make them do that by saying you will figure out what the hourly wage rate is, you will figure out what the hourly value of the health plan is--the employer's contribution to it, and you will figure out what the pension is worth, and that becomes the hourly rate value of an employee's total compensation, and you then compare that employee in the collective bargaining unit to the array and determine whether they're high or low or right on the money. [LB397]

SENATOR JANSSEN: Thank you for answering that, and I appreciate it. That's something that I...which I thought was a main difference in AM1379, I think included it, and I guess it was my understanding that AM1116 did not. So maybe that's something that I can tie my...I guess wrap my head around as we advance this along. I also want to talk about something that hasn't been talked about here as...well, I think it has, but the Governor talked about he wanted to sign something, and certainly this is our bill, but wanted to sign something that had meaningful reform, and that's...I think we've been throwing that out all night: what is meaningful reform. It has been indicated that AM1116 is not that, so I think we do need somewhat of a compromise between even, if not AM1379, something else to AM1116 to maybe meet that threshold. Because I don't want to forget about the fact that it's been bantered about and I think it's a very real likelihood that a citizen's initiative...and there could be something on the ballot through the petition process if we don't meet that criteria. Certainly a group would form and ask for an outright repeal of the CIR and then that would put the employees that we're talking about right now in a much less desirable position. So that's something I just wanted to bring out as we work toward the conclusion, hopefully this evening, of this bill. And I do like AM1379. I think we could work with that. And that may not be the end-all to

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beat all. That could be something, if we do approve, and I hope we do, we do pass that, that we can work from that point and work on it between General and Select to work out some of the bumps. But I do appreciate the work of Senator Fulton and also Senator Lathrop and his committee. Thank you, Mr. President. [LB397]

SPEAKER FLOOD: Thank you, Senator. The Legislature will stand at ease for a moment. Continuing with discussion of LB397, specifically AM1379 to AM1116, Senator Ashford, you are recognized. [LB397]

SENATOR ASHFORD: Thank you, Mr. Speaker. You know, I really appreciate Senator Pahls, again. You know, I say this from time to time. I'm not trying to get his vote for anything necessarily (laugh), but I really will say that he has a way to really frame the discussion. I think so many issues we've dealt with here and over the years on General File, and they're difficult, but I think the suggestion that we come together and move this bill to Select is a great idea, and hopefully we can do that. There is obviously room for discussion and agreement and collaboration moving forward. I just want to take some time, because I think there are some people talking about some way of moving forward tonight, and I certainly recommend we do that and I so much appreciate Senator Pahls breaking the ice on that because someone has to make those kinds of suggestions, so thank you for that. I just want to...I'm not going to go back to the basketball metaphor thing, of course, but I will...I do want to talk a little bit about...how much time do I have, Mr. Speaker? [LB397]

SPEAKER FLOOD: Three minutes, twenty-two seconds. [LB397]

SENATOR ASHFORD: Thank you very much...to talk a little bit about how we did get here. I know, be candid, I know that there is frustration among some groups that felt that they weren't included in all of these discussions. I get all that. One of the interesting things about how we come up with a resolution to issues is how do we address those concerns of people that were not necessarily involved throughout the whole time. Let me just say this: A day didn't go by, and we spent...I don't want to belabor this but we... [LB397]

SPEAKER FLOOD: (Gavel)

SENATOR ASHFORD: Wow! That...we spent...it takes your breath away. We spent a lot of time, but we also spent and I spent, and I know Senator Lathrop did, talking to numbers of people. I've been fortunate to have been doing this for so long that I have lots of colleagues and friends who are in the business community. They are my friends. They're very good friends and trusted friends, and there wasn't a day that went by, there was not a day that went by that I did not talk to them, and I talked to them about all of these issues. And, you know, we in Omaha, having come off a recall election and a huge deficit in our pension accounts, we've been through a relatively difficult time in

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Omaha and I'm proud of the city because I believe we're on the mend, we're moving forward. And I know there are numbers of people in the business community who are skeptical, who are afraid, who are worried about the economy, and they should be. We all are. Thank goodness that this state has been able to weather some of it because of its vibrant ag economy. But it's been tough on a lot of my colleagues in the business community and small business people, medium-sized. It doesn't really matter. There's fear. Where are we going as a country, where are we going as a nation? Are we going to be able to sustain our economic miracle? And I think those are real concerns. What I don't want us to do as we go through this process is junk... [LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR ASHFORD: ...some of the things that make us great, and in my view the relationship between workers and management in this state...and not in all cases, and throughout our history there are situations that we aren't and should not be proud of and in our city certainly about the racism that existed through the '50s and '60s and '70s that kept people from getting jobs, but we're moving forward. We're moving forward. And I just feel that we are a great place because of our relationships between our workers and management and all of the citizens of the state coming together: farmers, workers, managers. That spirit, to me, is why I love Nebraska. And I'm just again, to end, I thank Senator Pahls for... [LB397]

SPEAKER FLOOD: Time, Senator. [LB397]

SENATOR ASHFORD: ...suggesting that we move forward in a collaborative way. [LB397]

SPEAKER FLOOD: Thank you, Senator Ashford. [LB397]

SENATOR ASHFORD: Thank you, Mr. Speaker. [LB397]

SPEAKER FLOOD: Senator Ken Haar, you are recognized. [LB397]

SENATOR HAAR: Mr. President, members of the body, a true personal story. I have three beautiful grandchildren, and when Jenny was, I don't know, three or...two or three, she used to like to hear the same book over and over and over again. You all know that if you have grandkids. And she really liked the farm books, and you point out the pigs and the chickens and all that sort of stuff, and of course there was the farmer who was connected to the farm. And so after we probably read that book a hundred times and when we came to the picture of the farmer, I said, Jenny, that's a picture of me, and she turned to me and she said, Grandpa, you're no farmer. And I said, but we raise carrots in our garden. (Laugh) And she knew I wasn't a farmer and I'll never forget that. Well, if the CIR is only advisory in the present context of AM1379, it's not collective bargaining.

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It just isn't. I've really listened. I've tried to be here every minute through all of this debate listening, but it's not collective bargaining and I feel it's a total change of the CIR. I want to relate another personal story. One of the neat experiences I had, at one point I took training and then I was a volunteer mediator in small claims court in Lancaster County and a lot of stories to tell about that. The three best friends from high school who went to college and rented an apartment and wound up chaining the refrigerator because one was eating more food and so on, but when they came into the room the first thing we were trained to say is, look, you have two choices. One is you can work together with me and you can come up to an agreement or you can go and talk to the judge and then you're going to have to take what the judge says. And it was such a central part of mediation that people had to have the incentive or the leverage or whatever you want to call it to come to an agreement, but they still had a choice. They could either work together, come to a common agreement, which they'd actually sign, or they can go talk to the judge and the judge would impose a settlement. So I really think it's such an important part of this whole process of collective bargaining that there be this kind of incentive or leverage that, look, you can work out an agreement on your own or you go to the judge--in this case, we don't call them judges anymore but the CIR in some form--and then perhaps on and on to eventually the Supreme Court. But there always has to be that incentive, that leverage that, look, you can either do it together or you're going to have to go to the next level. And I just don't see that in AM1379. I don't believe it's collective bargaining by any normal definition, by any normal definition. Now it was brought up earlier that, no, we're not going to fall off a cliff if we do this, you know, and every public employee, every teacher is not going to leave. But over the long term, over the long term, as young people, if they want to stay in Nebraska, they're going to look at the jobs available in Nebraska, and there will be a change over time and we're going to see less quality in our public workers and we're going to see less quality in our teachers. There's an interesting paper out, the Economic Policy Institute, and it shows that about 54 percent of state and local full-time employees hold a bachelor's degree... [LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR HAAR: Thank you...compared to 35 percent in the private sector--neither good nor bad. But those people who have bachelor's degrees, over the long term they're going to look to other careers. And so I truly believe that over the long term there would be consequences. Thank you very much. [LB397]

SPEAKER FLOOD: Thank you, Senator Ken Haar. Senator Council, you are recognized. [LB397]

SENATOR COUNCIL: Yes, thank you, Mr. President. And as I've been sitting and listening, it was brought to my attention the suggestion that AM1379 is more representative of collective bargaining in the private sector, and I'll tell you, in many

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respects it is. But the most glaring difference between what's reflected in AM1379 and what occurs in private sector collective bargaining is the absence of the right to strike. In AM1379, management has the leverage of implementing its last, best, and final offer. Well, I'll tell you, in the private sector, in collective bargaining, and we must remember collective bargaining because I've heard people make references to what private sector employers do with their private sector employees and oftentimes those comparisons are made to nonunionized employee bargaining units. But here the leverage that the employer, the public employer is given, the right to unilaterally implement their last, best, and final offer is countered in the private sector by the labor organization's ability to exercise a right to strike, which is absent from AM1379. So I mean Senator Hadley mentioned the possibility of an amendment. If there's any serious consideration given to AM1379, then you have to level the collective bargaining playing field by providing public sector employees with the right to strike. Otherwise, you don't have a level collective bargaining playing field. And as I indicated earlier, everything in AM1379 is dependent upon determinations by the public employer, and one of those determinations has to do with the selection of the array, and I kind of want to put it in context. What I mentioned to Senator Fulton earlier, AM1379, unlike AM1116, states that the rules of evidence will apply. So if you go through the whole scenario under AM1379 and the public employer's array is presented and the labor organization objects and the matter then is submitted to the CIR, under the process that's outlined in AM1379, if the CIR has to apply the rules of evidence, that public sector employer better be prepared to present expert testimony to establish the information that is supporting the cities or school districts that are found in the array, because the rules of evidence say that you cannot offer that kind of expert testimony without the proper foundation being laid, and it's not laid here. There are also other areas in this bill I think are worthy of note. On AM1379, on page 10, the phrase "hours, and other terms and conditions of employment" are deleted and the indication is that they're deleted as mandatory subjects of bargaining and, instead, become permissive subjects of bargaining. Well, the contradiction is the next page says: Public employers may recognize employee organizations for the purpose of negotiating collectively in the determination of terms and conditions of employment. And if you're saying that you can collectively bargain with... [LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR COUNCIL: ...respect to terms and conditions of employment, and then to say that terms and conditions of employment aren't mandatory subjects of bargaining is a contradiction. I also find it curious that on pages...(Recorder malfunction)...of the same bargaining unit. Those provisions are deleted in AM1379 so I can only assume that the suggestion is that police don't have a community of interest sufficient enough for them to be an independent bargaining unit, and the suggestion would be they could probably be put in a bargaining unit with park employees. [LB397]

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SPEAKER FLOOD: Time, Senator. [LB397]

SENATOR COUNCIL: Thank you. [LB397]

SPEAKER FLOOD: Thank you, Senator Council. Senator Wallman, you are recognized. [LB397]

SENATOR WALLMAN: Thank you, Mr. President. I find it ironic we're talking about bargaining amongst the lowest paid public employees. And part of the problem is escalating management pay. Superintendents, principals, look at their pay how they went up. I haven't heard anybody complain about that. I am. It's got way out of whack according to what the teacher pay is, what a person that fixes the street, the snow plows. I'm telling you, I'm proud of our state workers. They keep these roads open. They work Christmas Day in conditions where you can't hardly see in front of your face. So they're the front-line people, folks. BSDCs, all these institutions. I wish everyone of you would go into those places and work a day, or be a policeman for a day, a fireman for a day when there's a fireman lost in a fire. That's pretty tough. A very well-respected fireman died in my area. Burned. So I know right now it's taxes, taxes, taxes, but this is a terrible amendment. It's a terrible thing to do to our workers for the state and government employees. Why do you think the CIR came into being? Because the state wouldn't pay, counties wouldn't pay. And the county boards, do they give themselves a raise, perks, health insurance? Yes. Do we complain about that? No. Management, we don't complain about management. If they screw up, we blame the people at the bottom. It's the blame game. Who are we blaming here? I know who wrote this amendment probably. I'm probably a member of that institution, and are they for the farmers? Probably not, but I'm still a member because we do farmer business at the banquets and we try to get good PR between public farmers and business people. It's a thing we do as farmers. And Beatrice is a neat community and the person sitting up there, lives there. And why should we even mess with it at all? Because we listened as a committee. I'm proud of my committee and especially Senator Utter and Senator Lathrop and Senator Ashford, all the time they put in. And there was a lots of time, lots of these people could have came to the table. Did they? They wanted to do away with CIR, and the minute they thought, whoop, it might stay in place, then they change their minds. Why do they do this? Why? I don't know. The workers who built this company, they built the highways, the bricklayers built the buildings. Did we think they got paid too much? I don't want to work 50 foot in the air. Native Americans built New York City, the steelworkers. It's hard to put a price on those workers, so I think this is a terrible amendment. I just think it just...it's good for the rooster but bad for the hen. Thank you, Mr. President. [LB397]

SPEAKER FLOOD: Thank you, Senator Wallman. Senator Smith. We now skip Senator Smith and go to Senator Karpisek. I don't see Senator Karpisek. Oh, there he is. Senator Karpisek, you're recognized. [LB397]

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SENATOR KARPISEK: Thank you, Mr. President and members of the body. I apologize for not being here. I thought I had one person ahead of me. I've been quiet on this today for a change and couldn't take it anymore, I guess. I feel I have not been involved in any of these talks and I think that is just fine. I don't have, as they say, the proverbial dog in the fight. I don't have the expertise to be on either side. However, I feel like I can look at it with one foot in each camp. I've owned a business, had employees, also been a mayor of a small town that we didn't have to talk about CIR-type things, been involved with some school things, so I have seen both sides of it. And as I look at the committee that's been put together and look at the members on that committee, I think we have people from, again, both camps, some in the middle, some that have come along and helped out where they can. The number of months and people that have worked on this bill, I think are some of the best people that we could have had work on it and from as far on each side as I could probably pick. And when they can sit down and come out with a compromise that they can all support, I think that I would be well out of line to not think that this is the best way to go. It reminds me a lot of the budget. The Appropriations Committee goes in, works on the budget. I did have an amendment to the budget. I lost. I raised my point, and I do thank Senator Fulton and those that are thinking like him for bringing up the subject. We need a full and fair debate. But, however, to just not like what came out and not think that it wasn't good enough, to me I don't think that that is the right way to think. I think also talking to both sides, no one is happy on the bill. It's compromise and to look at it and say that this isn't meaningful, that this doesn't change enough, I have to disagree. If it doesn't go far enough, I'm sure it will come up again. I don't think it will be another 60 years before we look at this situation. And I do believe that something needed to be done with the CIR. I don't think that it could stay the way it was any more. But for the group that has come together to hammer something out, and they feel that it is meaningful, I think says a whole lot. I've seen one e-mail calling Senators Carlson and Utter "RINOs." Boy, if that isn't one of the most ridiculous things I have ever heard. Obviously, it's someone that isn't watching this body and isn't watching how those people vote and how they think. I respect both of them very much, although we don't always agree. And that's okay. But I think for those two and Senator Lathrop and Ashford and all of the others to come together and agree on a bill, I think that they must be pretty darn close--and it can be tweaked. But it is kind of interesting to me to watch... [LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR KARPISEK: ...some of the e-mails that we've gotten, listen to some of the people outside that either didn't come and get involved, or did but their ideas were so far out of whack that it just wouldn't work for each side. So my thought is, I'm going to stick with that group, try to give them the support that I can. I would have given some of them time, but they were out, so I thought I'd let you know what I think for a change. That isn't a change, but (laughter) it's getting late anyway. Thank you, Mr. President. [LB397]

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SPEAKER FLOOD: Thank you, Senator Karpisek. Continuing with discussion, Senator Louden, you are recognized. [LB397]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. As I look over this amendment of Senator Fulton's, this AM1379, I notice that there's a lot of issues in there that has been deleted out of what's in the statutes now. The biggest problem I have with...and I was wondering if Senator Fulton would answer questions. Evidently not, because he's sitting up there. But I would point out Section 15 in AM1379 and it says, "In the event that parties reach impasse over the terms and conditions of employment, the public employer may implement its last, best, and final offer. The last, best, and final offer shall remain in effect until a subsequent agreement is negotiated." And I was wondering if Senator Fulton would answer any questions to that. [LB397]

SPEAKER FLOOD: Senator Fulton, will you yield to a question from Senator Louden? [LB397]

SENATOR FULTON: I will yield. [LB397]

SENATOR LOUDEN: What's your answer to that then, Senator Fulton? [LB397]

SENATOR FULTON: Senator, I must apologize, I didn't hear your question. [LB397]

SENATOR LOUDEN: Yeah, I noticed that. Now Section 15 in your amendment, (laughter) and I'll read it again. "In the event the parties reach impasse over the terms and conditions of employment, the public employer may implement its last, best, and final offer. The last, best, and final offer shall remain in effect until a subsequent agreement is negotiated." If that goes into statutes, then there isn't much can ever be done as far as anybody negotiating, is that correct? What's your reason to have that in that amendment? [LB397]

SENATOR FULTON: Right. Senator, your assertion would be correct if Section 16 didn't follow. Section 16 is that place at which the union could make an appeal to the CIR to make a determination whether, indeed, the arrays...whether indeed good faith bargaining occurred. And so that's the trade-off that I've set up here. So Section 15 and Section 16 is how I'd respond to that. [LB397]

SENATOR LOUDEN: Okay. In other words, it's supposed to trade-off with Section 16, that's what you're telling me? [LB397]

SENATOR FULTON: Well, I don't know that I'd call it trade-off. What I'm saying is that the CIR would retain authority, but the authority wouldn't be directed to the ordering of a wage. It would be to the enforcement of the process. [LB397]

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SENATOR LOUDEN: Okay, but if that's in statute, then how could anyone ever have any negotiation if the last best offer was the one that they would have to work under until another agreement is reached. And who knows? I mean, we've seen that all the time. Some of these labor unions work for two years without an agreement. Is this what you're working towards? [LB397]

SENATOR FULTON: No, Senator. They still have to...the employer...so the local elected body still has to negotiate in good faith with respect to the Industrial Relations Act. And that is...the rest of this amendment spells out how those arrays should be arrived at, how that average pay should come about. [LB397]

SENATOR LOUDEN: Then is there anything in this amendment that says that subsequent agreement would have to be reached in 60 days or so many days or anything? I've not noticed anything in this amendment to address that, I guess. [LB397]

SENATOR FULTON: Well, again in Section 16, the...and actually it's page 25, line 2, these are the two things that the CIR would have the authority to change and one of them is to strike array members which were selected in bad faith. [LB397]

SPEAKER FLOOD: One minute. [LB397]

SENATOR FULTON: And so that falls...that really...that really talks to the remainder of the amendment. So there are still...there are many things that we would employ statutorily that would set forth how these offers would be arrived at, and that's not changing under the amendment. It's just that the CIR's authority changes from my amendment to Senator Lathrop's. We have different authorities. [LB397]

SENATOR LOUDEN: Okay. Then I guess I still don't understand then if you have Section 16 in there, why it was necessary for Section 15. But perhaps as we discuss this, we will find out. Thank you, Senator Fulton, and thank you, Mr. Speaker. [LB397]

SPEAKER FLOOD: Senator Krist, you're recognized. [LB397]

SENATOR KRIST: Thank you for your courtesy, Speaker, and I do want to just take a few seconds. I handed this out to you and I would like you to take a look at it and I'd like you to keep it in reference as we have future debates on this subject. We talk as though classification, and particularly something that Senator Larson has brought up time and time again, that a public employee is a public employee is a public employee. It can't be that way, and classification has already been done by the Department of Labor. You can go through this list and you can take an entry-level person all the way to a doctor, and you can figure out a wage determiner, you can figure out health and welfare benefits, it's all right here. It's already been done for us. It's classified for the region that

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we live. It's cost-of-living adjusted, and it's a wonderful product. We don't need to reinvent this wheel. With that, I would like to yield the rest of my time to Senator Fischer. [LB397]

SPEAKER FLOOD: Senator Fischer, go ahead. [LB397]

SENATOR FISCHER: Thank you, Mr. President and members, and thank you, Senator Krist. As many of you have observed, there's been a lot of discussions on and off the floor in the last 45 minutes. I would like to thank Senator Lathrop and his supporters, and Senator Fulton and his supporters in working with the constituencies that they are representing in this discussion that we're having this evening. I think both of these gentlemen would like to address the body on the mike and explain where we are at this point. Thank you. [LB397]

SPEAKER FLOOD: Senator Krist, is it your intention to give some time to Senator Lathrop? [LB397]

SENATOR KRIST: It is my intention to yield the balance of my time to the Chair to give to whoever he chooses. [LB397]

SPEAKER FLOOD: Well, technically the Chair can't do that, but with that kind gift... [LB397]

SENATOR KRIST: Then again, I will yield my time to Senator Lathrop. [LB397]

SPEAKER FLOOD: Senator Lathrop. [LB397]

SENATOR LATHROP: Thank you, Mr. President and colleagues. It is now 8:20 p.m., and I think we've reached some understanding among...you can see that we've divided this body, not equally in my judgment, but we've divided the body along philosophical lines. We have those who support AM1116 and those who support AM1379. And in the interest of working together, Senator Fulton and I, representing the groups that have an interest in our respective bills, Senator Fulton has some folks from the business community who have an interest in his amendment, and there are certainly a significant number of people who have an interest in AM1116. We have entered into an understanding that Senator Fulton will pull his amendment, AM1379, and AM1116 will be allowed to...will move LB397 to Select File. The consideration for this agreement is that I have agreed to sit down with Senator Fulton and those who he represents, or whose interests he's aligned with, and talk about changes to...or work on LB397. Senator Fulton and the business community have agreed that--and this is an important part of our understanding--that we will sit down and we will have a good faith discussion about improvements to LB397 or changes to LB397, but they will not include...and we are not going to go back to changing the fundamental role of the CIR, which is to say,

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the CIR will remain responsible for selecting an array when people get to impasse, they will determine comparability, and they will enter an order. And that is not something from which we are willing to or can negotiate and Senator Fulton understands that. And with that understanding, I'm appreciative for Senator Fulton's cooperation and Senator Fischer's willingness to try to mediate our General File discussion to a conclusion and move LB397 to Select File. Thank you. [LB397]

SPEAKER FLOOD Thank you, Senator Lathrop. Thank you, Senator Krist. Senator Fulton, you are now recognized. [LB397]

SENATOR FULTON: Thank you, Mr. President. I'm going to echo what Senator Lathrop said and get this in the record. After I conclude here, it is my intention to pull AM1379. There was an understanding between us that this does not necessarily mean that I support AM1116, and so my vote will reflect that. I still don't support AM1116. But I have agreed to turn off my light, and I would ask those who have been aligned against AM1116 to do likewise, and we allow this to go to a vote. Another way to say this is that we will move the vote threshold from 33 down to 25 such that Senator Lathrop can get a vote on this. So I want to be clear about that. I don't support AM1116. I'm not going to vote for it, but I'm also not going to engage in a filibuster. The reason why this is possible, and I hope this is impressed upon any who are watching, and especially my colleagues here in the Legislature, what Senator Lathrop and I share is a mutual desire to have some reform of the CIR. That being true, we're willing to sit down and give this a try. Now there are interests in the business community, and not just the business community who have the same philosophy that I have on this and a number of us have on this. And so from our side of it, I would be willing to...I guess I don't speak for other people; I speak for, you know, me and the people who elected me. I'm willing to give on this identification of the authority of the CIR to be able to make that final determination. But on the flip side, there's going to have to be a great deal done to AM1116, such that we are in a position that I believe we could go forward. In all of this, I'll say that I reserve the right to walk away, as does Senator Lathrop. So we're going to have to get together and put our minds to it and see if there isn't some way that we can find some common ground with the parameters that we've laid out here. So with that, Mr. President, I would like to withdraw AM1379. [LB397]

SPEAKER FLOOD: AM1379 is withdrawn. There are no other amendments pending. We now turn to discussion on AM1116. There are no lights on. Senator Lathrop, as Chair of the Business and Labor Committee, you're recognized to close on AM1116. [LB397]

SENATOR LATHROP: I feel like I need to, Mr. President, and I appreciate the time and the attention and everyone's patience. Tonight we started this at 1:30 and it's now nearly 8:30 in the evening and I know everyone is anxious to go home. AM1116 represents the work product of a working group that spent eight months on this bill. And

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I think it's important and I hope you will indulge me while I express my appreciation to the members of the League of Municipalities who worked with us on this in the working group; of course, Senator Ashford and Utter and the attorneys who gave of their time and their considerable skill. You know, I'm really genuinely, genuinely proud to be a Nebraska lawyer, and one of the reasons I am is that when we need the help of these kind of experts, guys like Bill Harding and the Dowds, Mike Dowd, and John Corrigan and Dalton Tietjen come forward. They give of their time, they give of their considerable experience and skill, and they helped us get to where we're at with AM1116, which is a significant improvement. It's significant reform and I want to express my appreciation to them, and to my friends in labor who stayed when they wanted to leave, and when I asked them to trust the process, they trusted it, and that brought us to AM1116. I would ask for your support tonight to move it, and you have my assurance that I will sit down with Senator Fulton in good faith and talk about the concerns of the business community as it relates to LB397. Thank you. [LB397]

SPEAKER FLOOD: Thank... [LB397]

SENATOR LATHROP: Oh, pardon me. One more thing. I knew I would do this. [LB397]

SPEAKER FLOOD: You may continue. [LB397]

SENATOR LATHROP: Yes, I knew I would do this, and I would be totally remiss if I didn't acknowledge my committee counsel. Molly Burton has been to every single one of the meetings that you hear us talk about. She has kept track of what we've agreed to. She's drafted amendments. And I sign her hour slips, and I'm probably committing a wage and hour violation by telling you this, but I know I put down eight hours a day for Molly Burton and she's probably here twelve. She is, like your committee counsel and much of your staff, a great asset and a fine public servant. So with that, I'd ask for your support. Thank you. [LB397]

SPEAKER FLOOD: Thank you, Senator Lathrop. Members, you've heard the closing to AM1116. The question for the body is, shall AM1116 be adopted? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB397]

CLERK: 29 ayes, 9 nays on adoption of committee amendments, Mr. President. [LB397]

SPEAKER FLOOD: Committee amendments are adopted. We turn to discussion now on LB397. There are no lights on. Senator Lathrop, you are recognized to close. Senator Lathrop waives closing. The question before the body is, shall LB397 advance to E&R Initial? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB397]

CLERK: 31 ayes, 0 nays, Mr. President, on the advancement of LB397. [LB397]

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SPEAKER FLOOD: LB397 advances to E&R Initial. Members, we are going to continue with this evening's agenda as it relates LB252. It is my intent to adjourn the Legislature at the conclusion of the resolution of this bill. Mr. Clerk, LB252. [LB397 LB252]

CLERK: LB252, Senator Larson, I have Enrollment and Review amendments. [LB252]

SPEAKER FLOOD: Senator Larson, you're recognized for a motion. [LB252]

SENATOR LARSON: Mr. President, I move that the E&R amendments to LB252 be adopted. [LB252]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. The E&R amendments are adopted. Mr. Clerk. [LB252]

CLERK: I have nothing further on that bill, Mr. President. [LB252]

SPEAKER FLOOD: Senator Larson for a motion. [LB252]

SENATOR LARSON: Mr. President, I move that LB252 be advanced to E&R for engrossing. [LB252]

SPEAKER FLOOD: Members, you've heard the motion. Any member wishing to speak? Seeing no members wishing to speak, members, you've heard the motion. All those in favor say aye. Those opposed say nay. LB252 advances to E&R for engrossing. Mr. Clerk, items for the record. [LB252]

CLERK: I have no items, Mr. President, other than a priority motion. Senator Cornett would move to adjourn the body until Thursday morning, May 5, at 9:00 A.M.

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