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Floor Debate
January 25, 2012

[LB60 LB304 LB459 LB473 LB633 LB800 LB854 LB879 LB886 LB890 LB895 LB911
LB946 LB996 LB998 LB1039 LB1156 LB1165 LR19CA LR374]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the fourteenth day of the One Hundred Second Legislature, Second Session. Our chaplain for today is Senator Nelson. Please rise.

SENATOR NELSON: (Prayer offered.)

SPEAKER FLOOD: Thank you, Senator Nelson. I call to order the fourteenth day of the One Hundred Second Legislature, Second Session. Senators, please record your presence. Mr. Clerk, please record.

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

SPEAKER FLOOD: (Gavel) Thank you, Mr. Clerk. Are there any corrections for the Journal?

CLERK: I have no corrections, Mr. President.

SPEAKER FLOOD: Thank you. Are there any messages, reports, or announcements?

CLERK: Mr. President, Enrollment and Review reports LB60 to Select File. Your Committee on Banking, chaired by Senator Pahls, reports LB879 and LB886 to General File, and LB890 to General File, and LB854 to General File with amendments; those signed by Senator Pahls. Business and Labor, chaired by Senator Lathrop, reports LB911 to General File. I have a Reference report rereferring certain legislation and referring LB1100 and LR381. Series of hearing notices from the Business and Labor Committee, the Government Committee, the Executive Board, the Health and Human Services Committee, and Judiciary Committee, all signed by their respective Chairs. I have a revised conflict of interest statement to be acknowledged, Mr. President, as offered by Senator Mello. And that's all that I have at this time. (Legislative Journal pages 337-341.) [LB60 LB879 LB886 LB890 LB854 LB911]

SPEAKER FLOOD: Thank you, Mr. Clerk. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR374. (Doctor of the day introduced.) We now turn to the first item on the agenda, it's exactly where we left yesterday, LB304. Before we proceed further, Senator McGill, would you like to take two minutes to update the Legislature on the status of your bill? [LR374 LB304]

SENATOR MCGILL: I would be happy to, Mr. President. Thank you, members of the

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Legislature. Here we are back on LB304. This is a bill for expedited partner therapy that would allow a doctor to give a prescription, not only to the patient he is seeing who has a sexually transmitted disease but also to that person's partner or, in some cases, partners. I'd like to clarify that the name of those partners is necessary in order for EPT to be used. And I was also able to learn overnight that in terms of insurance, I know that was a question Senator McCoy had yesterday, that the name...the insurance for the person whose name is on the prescription is the one that is used. So if Jane Doe goes in and gets a prescription for John Doe as well, John Doe's insurance will have to cover his prescription. Again, most of these people are Medicaid patients anyway and I've been able to find a number of studies that show that in terms of public health and public costs, expedited partner therapy does save taxpayer dollars and is more affordable for public health purposes. With that, Mr. President, I'll move on to my amendment. [LB304]

SPEAKER FLOOD: Thank you, Senator McGill. Mr. Clerk. [LB304]

CLERK: Mr. President, Senator McGill would move to amend her bill with AM1753. (Legislative Journal page 341.) [LB304]

SPEAKER FLOOD: Senator McGill, you're recognized to open on AM1753. [LB304]

SENATOR MCGILL: Thank you, Mr. President and pages. Members of the body, I brought this amendment after debate yesterday and, you know, discussing the different types of STDs that perhaps should not be used...EPTs should not be used with and getting a little closer to that Iowa statute that limits the use of EPT to gonorrhea and chlamydia, which are the two largest problems in Nebraska. I did pass around maps this morning so you can see where...this is the most recent map, 2009, that was on HHS's Web site, so you can see where these cases are occurring. And, you know, actually in...this isn't just a Douglas County problem. In Lancaster County the number from 2008 actually went up about 150 cases over a one-year time period from '08 to '09. And I'm afraid the Web site didn't have the newest numbers on there. But you can see where many of these problems are. They're not just in Omaha and Lancaster County, although Douglas County is where the epidemic levels are located. But I hope that is useful to some folks here to see the magnitude of the problem and where it's taking place. I'd like to take this chance, as well, to talk about a little bit of the opposition from yesterday and provide some further information. I know one of the arguments against this bill is the overall opposition to prescribing medication to those they don't see. But I do want to remind the body that doctors do this on a regular basis for families. They often write a whole prescription for a family when one member has pink eye, when someone has the flu, pinworms, strep throat, and lice. Those are just a few examples of where a doctor just doesn't prescribe to the patient that has...is showing signs of a problem, but they provide a prescription for the entire family so that everyone else doesn't get it or that it is not a long, drawn out recovery time period. So this is not a radical new idea. And, of course, doctors don't have to do this. This is just one more tool, one more opportunity

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they have to make a treatment to additional folks with STDs or who may not be showing signs of STDs. Of course, chlamydia, 75 percent of the population lies dormant, and so the person may not even think that they have a problem, therefore don't need to come in, but that antibiotic is still necessary so that they don't go reinfected their partner or someone else. The other big question was on the reaction to drugs. And I would just like to reiterate that no major issues have been reported nationally with the practice of EPT. This is with 30 states now participating. Yesterday I was saying 27, but even just in the last year since I introduced this bill 3 more states have allowed EPT to be permissible. And so there is still no major issues or health concerns that have been reported, even with 30 states now making this permissible. I spent a lot of time on the Internet last night trying to find a case where there was a problem with someone's health or a reaction that was severe, and actually couldn't find any evidence of any particular issues. And so while I appreciate, you know, the gut reaction people have in terms of being concerned about prescribing to somebody that a doctor or physician is not seeing, there simply isn't the evidence to show that it's a major concern anywhere in the country. I appreciate that folks have done so well on doing their homework on this piece of legislation. Senator Hadley has done a lot of work, Senator McCoy in asking good questions, and even leading to this particular amendment. We see the CDC, I was back on their Web site last night looking at the reports that we've talked about here on the floor, and they even...I saw that in March they have a scheduled webinar on how to get this legislation passed in states and how to get it enacted. And so they're continuing to push and move towards encouraging states, and trying to work through some of the barriers, like the legality in states, so that this can be a practice in all 50 states. In the last year I also learned that one state that had prohibited this does now allow it, so the trend really is moving that way. The CDC thinks it's the route to take. The American Medical Association thinks it's the route to take. The American Bar Association thinks it's the route to take. And they all do acknowledge there are some risks. But like Senator Schumacher said yesterday, it's a balancing of risks, and they see that the benefits far outweigh the risks. In fact, I found study after study in a simple Google search that pulls up...just Googling expedited partner therapy comes...pops up a whole list of scholarly articles and research projects that have been done by major journals and universities explaining or showing evidence of how effective EPT is in preventing folks from either...from these diseases from either spreading or from someone getting reinfected with them. So I ask that you look at the evidence and look at how effective it has been in other states. In fact, many of the studies have gone beyond just...does this work, does it not, but they look at what populations it works best on, because they already assume that it works well. So they're digging deeper and looking at other types of it and other issues surrounding it and not just the basic research question of is this effective or not. That has already been proven. So with that, I look forward to the rest of debate today. I assume this amendment will be happily accepted by the body to limit this legislation to chlamydia and gonorrhea. And thank you, Mr. President. [LB304]

SPEAKER FLOOD: Thank you, Senator McGill. Members, you've heard the opening to

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AM1753. We now turn to floor discussion on the same. Senator Nordquist, you are recognized. [LB304]

SENATOR NORDQUIST: Thank you, Mr. President and members. And I want to thank Senator McGill for starting the morning out with some evidence to support the importance of this legislation. And I think it's important that we continue to listen to the experts around the country and the experts that we have locally that say that this is a good public policy. Somebody, I think yesterday on the floor, said this is a bad public policy, but I think the evidence is to the contrary. Certainly the issue of the prescription and the potential risks involved in that were addressed at the committee hearing. The director of the largest public health department in the state, Dr. Adi Pour, said point blank that this is widely used, specifically Z-Pak, and widely used and very few incidents reported of adverse consequences. Yesterday I handed out a letter from the CDC which came out in 2005 under the Bush Administration and they concluded that it is a useful option to facilitate partner management, particularly for treatment of male partners of women with chlamydial infection and gonorrhea. There was a question yesterday on the floor about the concern of pregnancy; I found on the Oregon Public Health Department Web site that said treatment of chlamydia and gonorrhea in pregnant women is believed to be particularly important to prevent premature birth and neonatal infections. And that was in context of the EPT and the importance of getting treatment for pregnant women. That's why it's absolutely critical that we move forward with this. And on the issue of the challenges or any concerns that we have regarding this policy, I think it's important to note that just four or five months ago here, in August of 2011, the American College of Obstetricians and Gynecologists issued a very declarative statement saying this is good public policy, saying this is an option that doctors should have. Specifically, and this is, again, this is five or six years after the CDC came out with their recommendations. I don't think if this is a public health concern, if there were that many people being at risk, that the experts at the American College of Gynecology and...of Obstetricians and Gynecologists would issue such a declarative statement. They wouldn't do that. And I think it's important we listen to the experts that say evidence indicates that EPT can decrease reinfection rates compared to standard partner referrals for examination and treatment. Of course it's preferable that a physician examine a patient in person before prescribing medication, but the benefits of EPT among individuals whose partners are otherwise unlikely to seek care in preventing chlamydia and gonorrhea reinfection outweigh the risks to the partner. These are the experts, folks. I don't pretend to be a medical doctor, certainly not on the floor of the Legislature, but I will listen to the experts that are and that won't take the risk to put their patients at risk. I think also it's important, there was discussion about the costs of this. I think...I found a document from the Council of State Governments that specifically says if untreated nearly 40 percent of these cases will develop into more serious infections at an average cost of \$1,200 a patient. So we can talk about the costs, but we also got to talk about prevention and the dollars we save by investing in this prevention. That's what this is, and the document by the Council of State Governments tells us that we can save money by investing in the

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prevention. But also the evidence, statistically verified evidence which shows that this works and evidence from King County, this is also in the same document by CSG, says significantly more...that individual patients who receive EPT are significantly more likely to report that all of their sexual partners were treated, less likely to report having sex with an unprotected partner, and less likely to be diagnosed with another infection at a follow-up visit. That prevention saves us money, saves the state money for our programs, it saves the state money... [LB304]

SPEAKER FLOOD: One minute. [LB304]

SENATOR NORDQUIST: ...it saves the state money when uninsured individuals show up...or don't show up at our emergency room because we invested in prevention. And it saves our insurance industry money. But for me, I think it's important; we heard a lot of discussion yesterday about the importance of this issue. Unfortunately, I feel, as long as I've been in this body, that that's just lip service. We've heard it on the floor about the importance, about the epidemic we're seeing in north Omaha, in south Omaha, in Douglas County and a few other counties in the state, as Senator McGill's map shows, but where is the action, folks? We can talk about it all day long, but until we're going to take action, it's just lip service. I thank Senator McGill for bringing this bill which actually takes action. I know Senator Council has brought initiatives before, but yet we sit on our hands. It's time to take action to address the serious epidemic affecting Nebraskans. [LB304]

SPEAKER FLOOD: Time, Senator. Thank you, Senator Nordquist. Senator McCoy, you are recognized. [LB304]

SENATOR McCOY: Thank you, Mr. President and members. Would Senator McGill yield to a question, please? [LB304]

SPEAKER FLOOD: Senator McGill, will you yield to a question from Senator McCoy? [LB304]

SENATOR MCGILL: Yes. [LB304]

SENATOR McCOY: Thank you, Senator. Can you describe to me where in the bill it talks about what the practice would be in prescribing such prescription for a partner if that partner might be a minor? [LB304]

SENATOR MCGILL: It does not. [LB304]

SENATOR McCOY: Well, I find that to be a potential issue here. We'll take a hypothetical situation: someone goes in to their physician or medical practitioner, gets such a prescription. Can a physician or a medical practitioner then write a prescription

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to a partner if that partner is a minor without parental consent? [LB304]

SENATOR MCGILL: Is that a question? [LB304]

SENATOR McCOY: Yes, I'm asking you that as a question. [LB304]

SENATOR MCGILL: I don't think the bill prohibits that right now. I'd have to look at what other statutes there are regulating prescriptions to a minor. But my bill doesn't address that. [LB304]

SENATOR McCOY: Well, I think that is of concern because I...I find that to be something that my suspicion would be a lot of parents would have an issue with, would they not? [LB304]

SENATOR MCGILL: Perhaps, and again I need to look back at the statutes about how minors...if they have to be with an adult. I need to have a chance to refresh my memory on what the standard laws are with minors getting medical care. [LB304]

SENATOR McCOY: And you had mentioned, when you opened this morning and in your comments yesterday, Senator, that a number of medical practitioners are already doing this; then if that is truly the case, then why do we really need this bill? Because if practitioners are already doing this, I think Senator Lathrop brought up some great comments over concerns over liability on this yesterday, why do we need this legislation? [LB304]

SENATOR MCGILL: It is the liability issue, because not all doctors are willing to do it, because they are concerned about prescribing to somebody that they're not seeing. [LB304]

SENATOR McCOY: Well, if that is the case, Senator, and you mentioned there have been no serious cases of drug reactions with EPT perhaps ever across the country, then why isn't Z-Pak prescribed over the counter? If there's no concerns about it, why isn't it an over-the-counter medication? [LB304]

SENATOR MCGILL: I don't...well, first of all, there are no...you can't say there aren't concerns. Of course there are always some concerns or an allergy. I'm not an expert on antibiotics and I can try to get more specifics for you. I would love it if it was, but right now it is not and doctors are simply...some doctors are just unwilling to take any chance and they want that extra comfort level. I mean we see that in all of the research as well, that even states that pass this without a liability clause, many doctors still don't end up using it, which is why I feel that clause is important. [LB304]

SENATOR McCOY: Well, and I bring up another concern and I'm sure we'll have some

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future time this morning to discuss this more fully. You mentioned a few minutes ago that doctors already prescribe in a lot of cases prescriptions to patients they don't see. Well, as the father of four kids under eight, and many of you have children and grandchildren and you understand how this works in practice as well, if one of our children gets sick, a lot of times our family physician may prescribe a medication, antibiotic if it's some sort of a bronchial issue or whatnot, to other members of our family who may contract the same illness, but they know those family members' health history, members. They've seen our children. You're talking about medical practitioners that have potentially never seen these individuals. [LB304]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: One minute. [LB304]

SENATOR McCOY: All they know is a name. Thank you, Mr. President. So to compare the two and say the medical practitioners already do this in practice, yes, they may, but it is not comparing apples to apples. They have seen our children since they got home from the hospital after they were born, in the case of our family physician, and I would dare say many of you members have had similar experiences. So they aren't the same. I think we're creating a very dangerous situation here in regards to liability with physicians. We've had epidemics in the past in our country's history and I don't know of any case where we have excused physicians and medical practitioners from liability for any other epidemic in our nation's history, why should it be done now? Thank you, Mr. President. [LB304]

SENATOR GLOOR: Thank you, Senator McCoy. Other senators in the queue: Council, Ken Haar, Bloomfield, Cook, Schumacher, and Price. Senator Council, you are recognized. [LB304]

SENATOR COUNCIL: Yes, thank you, Mr. President. I'm reminded that desperate times require desperate measures. And in many instances we are quick to resort to the desperate measures if we are convinced that the times are desperate enough. I submit to you that with regard to the STD epidemic in the state of Nebraska, we are indeed dealing with desperate times. I rise in support of the amendment, particularly since it does limit the practice to chlamydia and gonorrhea which are the largest STDs affecting citizens in the state of Nebraska. I, too, undertook some research last night, and I'm still awaiting some information, but I guess in response to Senator McCoy's last statement, I have occasion to have a conversation with a healthcare provider early this morning about the practice. And I appreciate the point that Senator McCoy makes about physicians who prescribe for families who have seen children, but I think some of us would be surprised to know the number of cases where a female goes to her practitioner and is diagnosed with a sexually transmitted disease and the practitioner may have never seen the spouse; the spouse may be the patient of another healthcare

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provider, but that physician, I was told, would routinely send that female patient home with a prescription for her spouse without ever having seen the spouse. So when Senator McGill makes a statement that this practice is occurring now, it's my understanding that that's the situation where you're most often to see that practice in the absence of legislation like that reflected in LB304. There was also a question posed about who bears the cost of the prescription. And I'm still awaiting the final bit of information on this, but the information that I was provided was that health departments, and I can speak specifically to Douglas County Health Department, receives from the state of Nebraska these oral antibiotics. And it is my understanding that the oral antibiotics that the Douglas County Health Department receives comes through the state from the federal government, in recognition of the fact that the CDC has identified STDs as a national health concern, and that these oral antibiotics are made available to county health departments for their distribution, particularly to clinics, for their prescribing at no cost to the patient. So in terms of cost, the cost associated with this would be a cost a patient would ordinarily bear in terms of an office visit. But with regard to the cost of the prescription, particularly if that patient is being seen at a health clinic, the cost of those antibiotics ordinarily are at no cost to the patient or to the partner. And I'm trying to get information to confirm that the state receives those antibiotics at no cost from the federal government, just as the state receives certain childhood immunization medication at no cost from the federal government. So in terms the cost associated with the drugs, it appears that there is little or no cost to the patient or to the state in regards to providing EPT. [LB304]

SENATOR GLOOR: One minute. [LB304]

SENATOR COUNCIL: During my conversation with this healthcare provider this morning, they were very emphatic about the potential for greatly reducing this epidemic if the state of Nebraska authorizes EPT. And the healthcare provider that I was speaking to regularly and routinely does treat individuals with STDs. Now Senator McCoy also asked the question regarding minors, and I'm trying to go back to the site, but there are regulations related to STD treatment of minors and I'm trying to find the citation again, but if the youngster is 13 years of age or older, then there is authority to provide treatment to that individual... [LB304]

SENATOR GLOOR: Time, Senator. [LB304]

SENATOR COUNCIL: Thank you...without consent. [LB304]

SENATOR GLOOR: Thank you, Senator Council. (Visitors introduced.) Continuing with floor debate, Senator Ken Haar, you're recognized. [LB304]

SENATOR HAAR: Mr. President, members of the body, I rise in support of AM1753 and LB304. We all agree there's a problem. We all agree that there is some risk involved in

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this solution. And we all agree it's not a perfect solution. But the common ground, I think, is that we agree there is a problem. And if not this solution, then what is the solution that really works? And I think that's what we have to address. Bringing a little more common ground to the problem of STDs among the population, it's fairly easy to dismiss the problem if we're just thinking about, well, this is just young kids, this is just north Omaha, we heard maybe Scottsbluff has a high rate, these are kids, ought to know better, if they just said no it wouldn't happen. Well, here is an interesting article from a science...it's called Phys.Org and the headline is, "Senior's sex lives are up--and so are STD cases." And I'm going to read a little bit of this because I think we need to look at this as a broad problem that needs a solution. It is a crisis and we can't just sit here and talk academically about it. In five years, from 2005 to 2009, the number of reported cases of syphilis and chlamydia among those 55 and older increased 43 percent. This is according to the Orlando Sentinel. In Arizona, in Maricopa and Pima County, which is basically Phoenix, a lot of retirement villages, reported cases of STDs were up 87 percent among those 55 and older from 2005 to 2009. In central Florida, again there are a lot of retirement and older people, the reported cases of syphilis and chlamydia increased 71 percent among those 55 and older. In southern Florida it was 60 percent. In Riverside County, California, home to retirement mecca Palm Springs, reported cases were up 50 percent over that same five-year period, and this is among adults 55 and older. In fact, the reported cases of syphilis and chlamydia among older adults outpaced the nation's average according to the analysis. Among all age groups reported cases of syphilis increased 60 percent between 2005 and 2009, while in the 55 to 64 age group it increased 70 percent. Meanwhile the incidence of chlamydia rose 27 percent among all ages and double that among those age 55 to 64. And in fact, it is such a trend that Medicare...and the date on this article is May 17, 2011, so Medicare is considering providing coverage for STD screenings for seniors. And people are talking about why...why is this happening? Well, there are a lot of older people who have lost their partners... [LB304]

SENATOR GLOOR: One minute. [LB304]

SENATOR HAAR: ...and Julia Gill, director of the Division of Disease Control for the Florida Department of Health, says the heavy marketing for sex-enhancing pharmaceuticals aimed at seniors is also pushing the trend. Besides Viagra, which we all see on television all the time, other medications, such as hormone replacements, are helping seniors remain sexually active longer. Progesterone and estrogen creme help make sex more comfortable for women, while testosterone-replacement drugs boost libido in men and women. And here's a really important part because this applies to not only seniors but also to young people. STDs often have no symptoms. They frequently go untreated and make seniors more prone to other infections. [LB304]

SENATOR GLOOR: Time, Senator. [LB304]

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SENATOR HAAR: These infections will make other conditions, such as diabetes...
[LB304]

SENATOR GLOOR: Time, Senator Haar. [LB304]

SENATOR HAAR: Thank you. [LB304]

SENATOR GLOOR: Thank you, Senator Haar. Senator Bloomfield, you're recognized.
[LB304]

SENATOR BLOOMFIELD: Thank you, Mr. President and members. I will support the amendment, AM1753, because it makes a bad bill a little bit better. I opposed this bill out of committee because I do not believe that doctors should be prescribing medicine to people they have not seen or may not know. I Googled Z-Pak and one of the things that...virtually the first thing that came up I'm going to read to you. I'm going to skip most the big words because I can't pronounce them and I will use Z-Pak as a lay term for it. You should not use this medication if you've ever had jaundice or liver problems caused by taking...one of the words I can't pronounce; you should not use it if you are allergic to it or similar drugs. And they list off a bunch of them that I can't pronounce. There are many other medicines that can interact with it. Tell your doctor about medications you use. This include prescriptions, over-the-counter vitamin and herbal products. Do not start a new medication without telling your doctor. Keep a list of all your medicines and show it to any healthcare provider who treats you. Take this medicine for the full prescribed length of time. Your symptoms may improve before the infection is completely cured. It simply, to me, reads that we should not be taking this medication without full consultation with our family doctor. And where the doctor may prescribe something to the family that he knows, we are talking here the possibility of prescribing medicine to people the doctor has never heard the name of before he writes down the name on the prescription sheet. I cannot in any way support this bill and I will not. Thank you. [LB304]

SENATOR GLOOR: Thank you, Senator Bloomfield. Senators in the queue: Cook, Schumacher, Price, McGill, Sullivan, and Ken Haar. The Chair recognizes Senator Cook. [LB304]

SENATOR COOK: Thank you, Mr. President, and good morning, colleagues. I rise in support of AM1753 and the underlying bill. Like Senator Council, I have been privy to years and years of input on the issue of STIs, or STDs as they're referred to more popularly, particularly in certain zip codes close to our districts and within our districts, but also within districts across Omaha and across the state. They originally came to my attention in the context of a public health conversation where we're not only talking about the immediate health of the person who is diagnosed but certainly the health of her or his partner, typically her partner, and her future fertility, and in some cases, in the

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case of the HPV virus, potentially her life. When we talk about this I'm very encouraged as I talk with my colleagues that we are focusing primarily on the policy case for or against the bill and not where we each might agree are the moral issues that may have led us to this point in history, not a unique point in history, certainly, in postmodern or ancient history, but here we are. Another thing that I would continually think of as I would go among the meetings in planning for the addressing of the issue locally, this has been years and years in the works, it's been identified as an epidemic, we recognize that this proposal is not the only way to address it, but on balance it is one good way to address the issue. And with that, I'd like to share something that I read a few years ago. I refer to this book fairly often because it's one of my favorite kind of...it's not really a wonky book, but it's one of my favorite nonfiction writers, Malcolm Gladwell. This is his book The Tipping Point, and he has a thesis about change, whether it's positive change or negative change, in the case of a spread of an epidemic, and this illustrates one of the points. I'm starting in the beginning of the book. It describes a situation in Colorado Springs, Colorado, looking at a group of everyone who came into the public health clinic. We see this in our city often. They're coming in for the treatment of the disease of gonorrhea or chlamydia over the space of six months. And this physician, an epidemiologist, found that about half of all the cases came essentially from four neighborhoods representing about 6 percent of the geographic area of the city. Half of those in that 6 percent, in turn, were socializing in the same six bars. The scientists interviewed 768 people in the tiny subgroup and found that 600 of them either didn't give gonorrhea to anyone else or gave it only to one other person. These people he called nontransmitters. The ones causing the epidemic to grow, and this is the point I hope to make this morning about why it's important to get that Z-Pak to...I'm going to call him patient zero, these people, the ones causing the epidemic to grow, the ones who are infecting two and three and four and five others with the disease were the remaining 168. In other words, in all the city of Colorado Springs, a town of...excess of 100,000 people,... [LB304]

SENATOR GLOOR: One minute. [LB304]

SENATOR COOK: ...the epidemic of gonorrhea tipped because of the activities of 168 people living in four small neighborhoods and basically frequenting the same six bars. To draw the analogy to the situation that we're facing, certainly for many of you, you're going to factor in the, well, the personal choice of the behavior, absolutely. But in order to stop a public health threat, we've got to address it at the transmitter level and this is one of the best ways, one of the only ways that it can be achieved to any level of success. Thank you very much, Mr. President. [LB304]

SENATOR GLOOR: Thank you, Senator Cook. Chair recognizes Senator Schumacher. [LB304]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. In

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listening to the discussion, I think some things become pretty clear and that is, from the medical community's perspective, the people who supposedly know what their talking about, this plan is a good plan. It is good to send these antibiotics home to the partner so that this epidemic can be brought under control. There have been some suggestion, why don't we just have these antibiotics over the counter? Well, if they're over the counter, we know they contain...well, they are antibiotics, and antibiotics, if they're overused or misused make stronger germs that someday, maybe because of evolution, we won't be able to control. So it's not a good idea to put powerful antibiotics just over the counter because people who don't need them may take them, may overtake them. But this is not the particular case here. We know there is a problem. The person on the other end of the distribution chain needs the antibiotic and for some reason, whatever it may be, is not going to see the doctor to get it and the problem gets worse and worse and we have a epidemic situation. Now somehow it has been dealt with, as we like to deal with so many things, kind of under the table. The doctor prescribes twice as much pills than is needed knowing kind of where they might end up. But that's not a way an intelligent society deals with its particular problems. We heard about warnings on these things, that these things could be very bad and could hurt people. I want to read you a warning, and I, like Senator Bloomfield, have a hard time with some of the big fancy words so I'll just say X. Liver warning: This product contains X. Severe liver damage may occur if you take more than 400 milligrams of X in 24 hours with other drugs containing X; three or more alcoholic drinks every day while using this product; do not use with any other product containing X, prescription or nonprescription; if you are not sure whether drug contains X, ask a doctor or pharmacist; with any other products containing another X, even ones used on skin; do not use in children under 12; if you've ever had an allergic reaction. Ask a doctor before you use it if you've had liver disease, a breathing problem such as emphysema or chronic bronchitis, trouble urinating due to an enlarged prostate, glaucoma. Ask a doctor or pharmacist before you use if you are taking a blood thinning drugs, taking sedatives or tranquilizers. That's on the Tylenol box. So, folks, this is a thing that's recommended by the medical community. It is no small problem. This can be effective and the reason why doctors need a little bit of protection here, I think, is because since as a society this seems as a smart thing to do, they should not individually have to bear the burden of the small risk that it does entail. It's a larger social benefit and the risk, to the extent it exists, needs to be borne by the person who is afraid to go to the doctor to begin with and the whole cause of the problem. Thank you, Mr. President. [LB304]

SENATOR GLOOR: Thank you, Senator Schumacher. Senators remaining in the queue: Price, Sullivan, Ken Haar, and Council. Senator Price, you're recognized. [LB304]

SENATOR PRICE: Thank you, Mr. President, members of the body, good morning. I return once again after doing some research on MEDLINE, which is, obviously, a medical database, and I put in the search parameters of the amended topic of either

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gonorrhea and our other horrible disease of chlamydia, and I put in the word "contraindications" and I was treated to 28 publications available to read. I have four that I will give brief excerpts on. From RN, the date 1992, the title, "Is erythromycin indicated in pregnancy?" Just the title alone leads you to wonder should that antibiotic in pregnancy be considered? Second record, 2005, from the Infectious Disease Clinics of North America, title, again we have the medical terminology, I will attempt to butcher it, but "Fluoroquinolone-resistant *Neisseria gonorrhoeae*: the evitable epidemic." The worldwide incident of this resistant gonorrhea has increased dramatically in the last few years. Single doses of medication can no longer be used to treat this infectious gonorrhea that is acquired in the Far East, parts of the Middle East, the Pacific Islands, and parts of Western Europe, and the United States. Although California and Hawaii account for most of the current United States cases, the increased incidence of FQR, that is their acronym, in some high-risk groups, independent of geography, heralds an imminent spread of drug-resistant strains throughout the rest of the population. There's more; I'll have it here if you want it. Next record, this record from the report on medical guidelines and outcome research and the title of this is, "Increase in cases of drug-resistant gonorrhea prompt new CDC treatment recommendation for gay and bisexual men." I'm looking right now to make sure I have a date on this, yes, May 14, 2004. Next record, "Chlamydia infection, don't forget contraception," May 2010, published in England. I think when we look at that, and there are other ones that talk about IUDs and different things, the question and the thing is, obviously, it's a laudatory effort that we're trying to wrestle with here. We heard from Senator McGill that doctors can already treat families, and they are, in fact, treating families for ringworm, for various things, for other infectious diseases; they already do it. So if they want to treat, they could. But there is that, albeit, perhaps, small risk, the risk is still there; therefore, they need the protection. We did hear the tremendous debate last year, and I am mindful of it, that on one side of the coin we fight for it and the other one we hope for it when we talk about liability. I am mindful of that conversation. But I tell you, colleagues, there is evidence that suggests there are medical understandings that you cannot give this medication willy-nilly. [LB304]

SENATOR GLOOR: One minute. [LB304]

SENATOR PRICE: Or strike that, not willy-nilly...thank you, Mr. President...but you cannot give that. And there was another article in there, I didn't pull it out, but it talked about people who had transplants. We are noted worldwide as a community where we have transplants. And we know that these terrible diseases, as Senator Haar said, is not isolated to a single group or subgroup of people. So you would need to know that medical history. You would need to know if your partner is pregnant. You would need to know if there was even one on lactation and antibiotics. I won't bore you with it, but it is out there to be found. Thank you, Mr. President. [LB304]

SENATOR GLOOR: Thank you, Senator Price. Senator Sullivan, you are recognized.

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[LB304]

SENATOR SULLIVAN: Thank you, Mr. President. Good morning, colleagues. In our task here in the Unicameral, we are charged with looking at proposed legislation and trying to see if that is something that will do the good for the public and help solve a problem. And that's what I'm trying to work through as I listen to debate on this subject. And to that end I wonder if Senator McGill would yield for a couple of questions. [LB304]

SENATOR GLOOR: Senator McGill, will you yield? [LB304]

SENATOR MCGILL: Absolutely. [LB304]

SENATOR SULLIVAN: Thank you, Senator McGill. And you may have mentioned this in your testimony thus far, and I apologize if it's redundant, but in the states that have adopted this kind of legislation, has there been any data to support the fact that the number of cases of STDs has gone down? [LB304]

SENATOR MCGILL: Yes. Or the number of reinfections has certainly gone down and the spread has been limited. [LB304]

SENATOR SULLIVAN: I know that the Nebraska Medical Association testified in support of this legislation, but have you received reaction from, particularly, healthcare professionals and physicians in Lincoln and Omaha? [LB304]

SENATOR MCGILL: I have not. We just had county health officials come in and testify as well. But since then, I haven't heard any backlash at all, if that's what you're asking. [LB304]

SENATOR SULLIVAN: One of the things that I'm trying to balance is the role of public policy here, and then also, certainly, the role of education. What are your opinions on, particularly, the role of education, and have we fallen short, or are we doing a good enough job in that respect? [LB304]

SENATOR MCGILL: Oh, I absolutely think that we need to do a better job in educating our kids in terms of sex, sex in general but STDs as well and the infection rate. And I think we also need to do more to encourage parents to talk to their kids about sex. The studies I've seen show that even though a parent may think their kid is going to blow them off, that parent has the strongest ability to deter a child; I mean that children do, honestly, listen to their parents when it comes to that educational factor about sex. [LB304]

SENATOR SULLIVAN: This next question is perhaps hard to get at because we have the private doctor-patient relationship, but do we have any evidence in, again, the states

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that have adopted this legislation to know if and when the antibiotic is prescribed, for not only the patient but also the partner, is it used? [LB304]

SENATOR MCGILL: Oh, does the partner use it? [LB304]

SENATOR SULLIVAN: Yes. [LB304]

SENATOR MCGILL: Well, yes, and I know here...up in Douglas County they actually do follow-ups when at all possible with that partner. So in the health center up there, they will call and can track down about two-thirds of them and actually check up on them and see how they're doing. And I think the fact that reinfection rates have gone down in the states that use this is evidence that that partner is taking that antibiotic. [LB304]

SENATOR SULLIVAN: Thank you, Senator McGill, I appreciate those comments. Still, I appreciate the debate, too, that we've been having and the discussion. For me it's sort of a three-part thing. We look at whether or not this is good public policy. I look at the need for communication between a doctor and the patient, and also then, of course, the patient and the partner, and then certainly the overarching thing of the crying need for education in this. So I'm still listening and learning. Thank you. [LB304]

SENATOR GLOOR: Thank you, Senator Sullivan and Senator McGill. Senator Ken Haar, you're recognized. [LB304]

SENATOR HAAR: Mr. President, members of the body, a follow-up just for a moment on the questions that Senator Sullivan was asking about education. Education is absolutely, absolutely important when it comes to sexual activity. And from the article I was reading to you from, it's not only parents need to talk to their children, but children probably need to talk to their older parents. And I want to get back to a point that's made in this article: STDs often have no symptoms. And again, this is referring to seniors, but they frequently go untreated and make seniors more prone to other infections. These infections will make other conditions, such as diabetes or heart disease, worse. That's for the old. For the young the same is true. Often the symptoms just aren't there. But here's what it will do to younger people, the health consequences. STDs or STIs, infections as they're often referred to now, in a woman can cause cancer, infertility, pelvic inflammatory disease, pregnancy problems, widespread infection to other parts of the body, organ damage, and even death. And an infant born to a mother with an STD is at risk of multiple health problems, including, but not limited to, low birthweight, brain damage, blindness, deafness, chronic liver disease, and stillbirth. STDs are insidious. And obviously the best solution, if it would work, would be that people just...if they're going to be sexually active, in the old or the young, that they would take proper measures and be careful of who their partners are and so on and so forth. But we know that that doesn't happen. So we have a crisis on our hands. And if there's a better solution that works, that works, then I would like to hear it. Education is part of that

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solution, but right now we've got a crisis. And it's being supported...the EPT is supported by the Nebraska Pharmacy Association, the Public Health Association of Nebraska, the American Bar Association, and the American College of Obstetricians and Gynecologists. And I'm sure they also realize there's risks, but the problem is a crisis. And if that group of people that I just read, the Pharmacy Association of Nebraska, Public Health Association, the American Bar Association, the American College of Obstetricians and Gynecologists, and the Nebraska Medical Association, and the Center for Disease Control of the federal government, and 30 other states have recognized the crisis and they're saying this is not the perfect solution, the perfect solution is treatment by a doctor and more responsibility, but it's a crisis. And these are the experts, folks. Now you may have moral objections to it on moral grounds, I can't argue with that. But when it comes to things like drug reactions and so on, this group of people are experts. They recognize and they work with risks every day and that's what this bill is all about. Thank you very much. [LB304]

SENATOR GLOOR: Thank you, Senator Haar. Senator Council, you are recognized. [LB304]

SENATOR COUNCIL: Thank you again, Mr. President. Colleagues, perhaps I can encourage you to look at the purpose and intent of LB304 from another perspective, and that perspective is to view this as actually what it is, is enabling legislation. It enables a private physician when in his or her medical judgment it is important to address the spread of an infectious disease by prescribing to his or her patient medication to be used by their partner. And if you look at the language of the bill, particularly the immunity, the immunity runs two ways. It runs to the physician in whose medical judgment it is necessary to the health of that physician's patient, as well as to others, that the antibiotic be prescribed for the use by someone else; and it also provides protection when in that physician's medical judgment it's not going to be in the best interest to prescribe that medication to someone else. The immunity runs both ways. It protects a physician who didn't provide the antibiotic to his or her patient for use by someone that they haven't seen, and it also protects them when they exercise their medical judgment and say it's important that this third party receive this medication. So it's...and I hate to be "clicheish," because we use it a little too much, but the intent of this legislation is to provide our medical community with another tool to address this epidemic. This legislation doesn't mandate the prescription of oral antibiotics for use by a third party who hasn't been seen by the physician. All it does is enable that physician who, in the exercise of their medical judgment, believes it is important and necessary that this oral antibiotic be prescribed. I just want to point out a bit of information in response to a very valid point that Senator McCoy made, but I also need you to put that in perspective. Just based on Douglas County data, and I didn't have an opportunity to look at Hall and Lincoln Counties where there are also high incident rates of chlamydia, but in Douglas County over a third of the reported cases of chlamydia were in the age group 15 to 19. And in that 15 to 19, unfortunately, a significant percentage were

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15-year-olds. So I'm glad to hear my colleagues talking about education. I remind them there's a bill sitting in the Education Committee about education and improving that education and increasing that education and we'll have an opportunity to debate that. But, colleagues, look at this bill for what it is. It's not mandating the use of expedited partner therapy; it's just allowing physicians that additional tool for addressing what we all know and understand to be an epidemic. It is indeed that, and we address them in different ways. And to suggest that our physicians won't do more than our local pharmacies do with regard to influenza, for those of you who don't have the benefit of going to a private physician for your influenza shot and end up going to a pharmacy, I won't name them, but they'll ask you if you're sick today, if you have an allergic reaction to eggs,... [LB304]

SENATOR GLOOR: One minute. [LB304]

SENATOR COUNCIL: ...and one other question. And depending on those answers, you get a flu shot. Now to suggest that our private physicians, our medical community, will not go to that level in determining what the partner's medical condition is, and not to send home the medical information, I've been advised by the director of our health department that these brochures with regard to the use of the oral antibiotics, as well as concerns about allergic reaction, are all provided to their patient to give to the partner. So it's no different than the situation if someone, some third party were to ask you that for purposes of a flu shot. And we do what we do for influenza because we know of its damaging effects if it's left untreated. [LB304]

SENATOR GLOOR: Time, Senator. [LB304]

SENATOR COUNCIL: Thank you. [LB304]

SENATOR GLOOR: Thank you, Senator Council. Seeing no further senators wishing to be recognized, Senator McGill, you're recognized to close on your amendment. [LB304]

SENATOR MCGILL: Thank you, Mr. President, members of the body. I won't take too long closing on the amendment because I think this is a good amendment. I think everyone will agree with it. It limits the legislation to gonorrhea and chlamydia, the two biggest problems and biggest STD situations in our state. We have record levels of them. Of course, as we've already heard, it's at epidemic levels in Douglas County. And so I simply ask for your support of this amendment. Thank you. [LB304]

SENATOR GLOOR: Thank you, Senator McGill. Members, the question is, shall the amendment to LB304 be adopted? All those in favor vote aye; all those opposed vote nay. Senator McGill, for what reason do you rise? [LB304]

SENATOR MCGILL: (Inaudible.) [LB304]

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SENATOR GLOOR: There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB304]

CLERK: 32 ayes, 0 nays, Mr. President, to place the house under call. [LB304]

SENATOR GLOOR: 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 Wightman, Heidemann, Krist, Ashford, and Fulton, please return to the Chamber. Senator McGill, all members are present and accounted for. How would you like to proceed? Senator McGill, we have taken a machine vote. You can authorize... [LB304]

SENATOR MCGILL: Oh, call-in votes is fine. [LB304]

SENATOR GLOOR: ...call-in votes. Mr. Clerk. [LB304]

CLERK: Senator Ashford voting yes. Senator Coash voting yes. [LB304]

SENATOR GLOOR: Mr. Clerk, please record. [LB304]

CLERK: 25 ayes, 0 nays on adoption of Senator McGill's amendment. [LB304]

SENATOR GLOOR: The amendment is adopted. Returning to discussion on LB304. Call is raised. Senator Nelson, you are recognized. [LB304]

SENATOR NELSON: Thank you, Mr. President, members of the body. I'd like to address some questions to Senator McGill, if she would yield. [LB304]

SENATOR GLOOR: Senator McGill, would you yield? [LB304]

SENATOR MCGILL: Yes. [LB304]

SENATOR NELSON: Thank you, Senator. This has been very interesting. It's not possible to read all the material and everything that's available on this, but I do have some basic questions just for my edification. [LB304]

SENATOR MCGILL: Okay. [LB304]

SENATOR NELSON: Let's start with the female patient that comes in and is discovered to have either gonorrhoea or...I guess... [LB304]

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SENATOR MCGILL: Chlamydia. [LB304]

SENATOR NELSON: ...what's the other one we're... [LB304]

SENATOR MCGILL: Chlamydia. [LB304]

SENATOR NELSON: Chlamydia, yes. If she is administered antibiotics at that time, is she going to be cured? Do we know? [LB304]

SENATOR MCGILL: After taking the antibiotics for the period of time,... [LB304]

SENATOR NELSON: Yes. [LB304]

SENATOR MCGILL: ...yeah, it gets cleared up. [LB304]

SENATOR NELSON: Okay. If she's been engaging with a partner for a number of occasions, isn't it probable that partner already is infected? [LB304]

SENATOR MCGILL: Yes. [LB304]

SENATOR NELSON: Okay, and so... [LB304]

SENATOR MCGILL: The antibiotic clears it up though. [LB304]

SENATOR NELSON: But so, the object is to get that antibiotic then to the partner so that he can be cleared up or cured. [LB304]

SENATOR MCGILL: Yes. [LB304]

SENATOR NELSON: And then we're talking about reinfection here. Can you discuss that a little bit? [LB304]

SENATOR MCGILL: Yeah. What happens right now is that that woman goes in, Jane Doe goes in and gets a prescription for herself. And so hers gets cleared up. But her partner still has it if his doesn't get cleared up. So while she gets healed and then she goes back and has sexual relations with him, she gets it again because his still exists. And so that's what happens right now is that a woman will keep getting reinfected by that partner who hasn't been treated. So if we give that prescription to both her and to the partner, then they both get treated and she won't get reinfected. [LB304]

SENATOR NELSON: All right. So, Senator Cook gave the instance there out in Colorado Springs, which I listened to with interest, where a woman apparently had five,

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six, seven partners. [LB304]

SENATOR MCGILL: Yeah. [LB304]

SENATOR NELSON: So there we are; we're going to have to go out to all of those and cure them so that she doesn't get reinfected again. [LB304]

SENATOR MCGILL: Well, it depends on if the doctor feels that that is appropriate. [LB304]

SENATOR NELSON: Right. [LB304]

SENATOR MCGILL: And so, I mean, we can't treat everyone this way and we can't control their behaviors, and so the doctor would have to make the call on if he or she wants to make that sort of prescription or... [LB304]

SENATOR NELSON: Okay. [LB304]

SENATOR MCGILL: Yeah, go ahead. [LB304]

SENATOR NELSON: So that would be the ultimate way, I guess, to stop the spread of infection. I mean, you can deal with one or two partners, but if you don't carry it beyond that, then those other partners who have been infected, if they are engaging with other persons, there the spread continues on. [LB304]

SENATOR MCGILL: Yeah. [LB304]

SENATOR NELSON: So my understanding is, this is an option or an alternative that could be used or available, but then we still have the problem here that Senator Lathrop addresses as to whether people should be liable if there are any mistakes on their part. [LB304]

SENATOR MCGILL: Um-hum. [LB304]

SENATOR NELSON: So, all right, thank you for clearing that up for me. I appreciate that. [LB304]

SENATOR GLOOR: Thank you, Senator Nelson and Senator McGill. Senator Council, you are recognized. [LB304]

SENATOR COUNCIL: Yes, thank you, again, Mr. President. And I appreciate the question posed by Senator Nelson, because it does put into context the issue here. Again, it would be up to the medical judgment of the physician involved whether or

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not...in the case where his or her patient says I've had multiple partners, it would be up to that physician to determine whether the best way of addressing that would be to provide prescription for her to give to the multiple partners. I would submit to you that I would...that there would be very few physicians who would undertake trying to spread that many prescriptions around, which is one of the reasons why the bill provides immunity to a physician who elects not to provide the oral antibiotic to someone to distribute. Because in that instance, I would expect that that healthcare provider would suggest to his or her patient to get to those partners and urge them to go to a public health clinic or to their own physician. But all this bill does is allow a physician where the circumstances warrant, allow that physician to prescribe an oral antibiotic to be given to his or her patient for purposes of giving to a partner. But I would submit to you that it would be highly unlikely in that multiple, multiple, multiple partner situation that a physician would be willing to distribute that number of prescriptions of oral antibiotics. Again, the intent and purpose of the bill is to enable physicians to do it if they believe it's warranted and that it would have an impact on reducing infection and reinfection rates amongst the community and the population being served. And again, it's a tool and the medical community has said, allow us to utilize this tool. Thirty other states have provided their physicians with the ability to utilize this as a tool for fighting the spread of these diseases. And that's all that this bill does is allow our medical community, our private physicians, and that's principally who this bill is directed at. It's not really directed at our public health clinics or our federally qualified public health clinics, because they're...you know, those are the places where the partners are more than likely to go anyway, because our health departments provide this treatment at no cost. It's the private physician who has a patient who comes in with a sexually transmitted disease and they're wanting to address the health needs of their patient, while at the same time reducing the incidence rate of these sexually transmitted diseases. So again, I defer to the Nebraska Medical Association, who in supporting this bill recognizes that their members will exercise the appropriate medical judgment in issuing or choosing not to issue a prescription for oral antibiotics to someone that they haven't seen. And if they do choose, I'm sure they will undertake to determine as much medical history about the individual they're prescribing the medication to as possible. And if they feel uncomfortable about doing that, then this bill provides them with immunity if they choose not to dispense the oral antibiotic... [LB304]

SENATOR GLOOR: One minute. [LB304]

SENATOR COUNCIL: ...for use by someone that they haven't seen. So again, please, colleagues, focus on what the intent of the bill is. The intent of the bill is to provide yet another means in addition to education, in addition to...and we need more education, and we need more funding for education, we haven't provided the level of funding required for education, and we're not addressing it to the extent that we could in our schools, but here is an opportunity to enable the medical community to better address this epidemic. So I would urge a favorable vote on LB304 to provide our medical

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community with the tools to assist us in our obligation to address this public health threat. Thank you. [LB304]

SENATOR GLOOR: Thank you, Senator Council. There are no senators remaining in the queue. Senator McGill, you're recognized to close on the advancement of LB304. [LB304]

SENATOR MCGILL: Thank you, Mr. President, members of the body. I thank everyone for this very healthy debate on this issue that we haven't addressed during most of our time here, certainly most all of my time here. I brought this bill here today to try to deal with an epidemic that is facing our state, something that we're not proud of in a community, in particular, that I don't think we do enough to serve, and to try to promote a healthy lifestyle. This bill is grounded in reality and evidence, reality that there is an epidemic, there is a problem, and reality that there are behaviors that not everyone in here may support in terms of sexual behavior. But nevertheless, we have a reality of a growing problem in Douglas County, and now in Lancaster County as well, and across the state. We have current laws that address minors and the treatment of STDs and it is a confidential...according to current statute, it is confidential for that doctor and patient, for that young woman or man to get treated, and there is immunity for those physicians. And that is a target age group for this legislation, it is one of them. We live in a reality where we have good doctors out there who want to make a difference and that we need to trust to be able to make the call about whether they feel a case is appropriate for EPT or if it's not. Beyond that reality, there's also hard evidence over the last few years on how effective expedited partner therapy is. Evidence even shows that it's much more effective than the standard partner referral of, say, a young woman going in and then asking her significant other or others to come in and get treated. This is more effective. It's more cost-effective as well. And we've seen the entire medical community come together and support this, whether it's the CDC who is still monthly doing webinars trying to train people on how to work through the barriers, the same barriers we're here discussing today, but continuing to engage lawmakers and citizens and health officials on how to make this happen in every state because they believe so strongly in it. The American Medical Association, the Nebraska Medical Association believes so strongly in this practice that they came in support. The American Bar Association feels this is good legislation to stop this problem. These are the experts. These are the people who have done research and study research, they're all behind this practice. I haven't even gotten any e-mails from somebody saying that, you know, I'm a doctor and I think this is poor practice. So I encourage you to look at the reality. Even if you may not approve of certain sexual behaviors or you may not be 100 percent comfortable with the thought of a doctor giving a prescription to someone they haven't met, there's a reality out there and there's evidence to show that this works. This isn't a brand new concept. We can't say that no epidemic in history has been treated in this way, because this one currently is being treated in this way by 30 states. Let's join in this fight against sexually transmitted diseases and stopping the spread. Thank you, Mr. President. I would like to

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call of the house and a roll call vote. [LB304]

SENATOR GLOOR: Members, there has been a request to place the house under call. The question is, shall the house go under call? All in favor signify by voting aye; those opposed vote nay. Record, Mr. Clerk. [LB304]

CLERK: 33 ayes, 0 nays, Mr. President, to place the house under call. [LB304]

SENATOR GLOOR: The house is under call. Senators, please record your presence. Those unexcused senators please return to the Chamber and record your presence. All unauthorized personnel leave the floor. The house is under call. Senators Burke Harr, Cornett, Lathrop, Christensen, please return to the Chamber and record your presence. Senator Cornett, please return to the Chamber and record your presence. Members, the question is the advancement of LB304 to E&R Initial. Mr. Clerk, roll call vote. [LB304]

CLERK: (Roll call vote taken, Legislative Journal page 342.) 21 ayes, 24 nays, Mr. President, on the advancement. [LB304]

SENATOR GLOOR: The bill fails to advance. Call is raised. Items for the record, Mr. Clerk? [LB304]

CLERK: Mr. President, Education Committee, chaired by Senator Adams, reports LB800 and LB946 to General File, and LB895 indefinitely postponed. Education Committee has selected LB946 as a committee priority bill for this session. That's all that I have. (Legislative Journal page 342.) [LB800 LB946 LB895]

SENATOR GLOOR: Thank you, Mr. Clerk. We continue with General File, LB459. [LB459]

CLERK: LB459, a bill by Senator Schilz. (Read title.) Introduced on January 14 of last year, at that time referred to the Agriculture Committee. The bill was advanced to General File at this time. And there are Agriculture Committee amendments, Mr. President. (AM720, Legislative Journal page 820, First Session, 2011.) [LB459]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Schilz, you're recognized to open on LB459. [LB459]

SENATOR SCHILZ: Thank you, Mr. President. Members of the body, good morning. I'm here to introduce this morning LB459. Recently, a number of organizations have begun campaigning to change the legal status of animals by replacing the term "owner" with the term "guardian." The term "owner" places responsibility on people to care for their animals, while the term "guardian" changes this relationship and could potentially shift decision-making rights and responsibilities to courts and other third parties who might

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be able to claim an interest on the animal's behalf. Cities in Colorado, Missouri, Indiana, New Jersey, Wisconsin, Massachusetts, Arkansas, and California have all adopted ordinances or codes that have allowed for animal guardianship rather than ownership. And also in many of these communities they have rescinded these ordinances because of these very issues. Guardianship statutes or ordinances may permit challenging in a court of law the course of treatment on an animal's owner and a veterinarian to decide on or permit animal owners and veterinarians to be sued for providing what another individual may regard as inadequate care. The Nebraska Legislature and other interested parties have worked hard to ensure proper safeguards are in place for the proper treatment of animals and the rights of owners of these animals. This legislation is in no way intended to affect at-large or dangerous animal ordinances that are in place. Nebraska's cities', villages', and other political subdivisions' attempt to implement changes in the relationship between humans and animals should not be allowed. During the hearing there was no opposition on the bill. And LB459 was voted unanimously out of committee. Thank you. And I respectfully ask for your support. [LB459]

SENATOR GLOOR: Thank you, Senator Schilz. As the Clerk stated, there are amendments from the Agriculture Committee. Senator Carlson, as Chair of the committee, you are recognized to open on the committee amendment. [LB459]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. AM720 becomes the bill. We believe it doesn't change but clarifies the intent of Senator Schilz in LB459. I'll simply read the four-line amendment. "No political subdivision may by rule, regulation, ordinance, resolution, or proclamation define or assign a legal status to an animal or animals that is in any manner inconsistent with the status of animals as personal property." LB459 would become part of Nebraska State Statutes. It doesn't deny other political subdivisions from enacting law. It would simply prohibit a statute from classifying animals as anything other than personal property. We believe this may be important as animal rights groups become more active in Nebraska. Twenty-eight states, including Nebraska, have court decisions denying owners the ability to pursue emotional distress damage for injured or dead animals. We believe LB459 further strengthens Nebraska's position. We have a concern for the gradual acceptance of reference to owners as guardians. Guardianship is entirely different from ownership. "Owner" to "guardian" could have serious legal consequences and lead to an attempt for emotional distress damages from injury or death to a pet. We believe we avoid owner/guardian consequences by specifically classifying animals as personal property in Nebraska law. I ask for your support of AM720 and the underlying bill, LB459. Thank you. [LB459]

SENATOR GLOOR: Thank you, Senator Schilz and Senator Carlson. Are there members who wish to be heard on the amendment to LB459? Seeing none, Senator Carlson, you're recognized to close on your amendment. Senator Carlson waives. The question before the body is, shall the committee amendments to LB459 be adopted? All

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those in favor vote aye; all those opposed vote nay. Have all voted who care to?
Record, Mr. Clerk. [LB459]

CLERK: 34 ayes, 0 nays, Mr. President, on the adoption of committee amendments.
[LB459]

SENATOR GLOOR: The amendment is adopted. Discussion continues on the advancement of LB459 to E&R Initial. There are no senators wishing to be recognized. Senator Schilz, you're recognized to close on the advancement of LB459. Senator Schilz waives. The question is the advancement of LB459 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB459]

CLERK: 33 ayes, 0 nays, Mr. President, on the advancement of the bill. [LB459]

SENATOR GLOOR: The bill advances. Continuing with General File, LB473. [LB459 LB473]

CLERK: LB473 is a bill by Senator Louden. (Read title.) Introduced on January 14 of last year, referred to the Agriculture Committee for public hearing. The bill was advanced to General File. There are committee amendments, Mr. President. (AM782, Legislative Journal page 874, First Session, 2011.) [LB473]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Louden, you're recognized to open on LB473. [LB473]

SENATOR LOUDEN: Thank you, Mr. President. Good morning, members. Today I bring before you LB473, which would be known as the Black-Tailed Prairie Dog Management Act. And that's what it is, is a management act. Constituents and county officials have pointed to the need for control of the species in some areas of Nebraska. And that's the reason the bill is drafted so that it has to be implemented by a county board, because there's probably 10 or 12 counties that need this protection and the 80 or 90 or so or 79 or 80 or whatever probably will never have any problem and never will enact this bill. LB473 doesn't require eradication of the rodents. It requires that a landowner, upon his or her or its property, to prevent the expansion of black-tailed prairie dog colonies to adjacent property if the owner of the adjacent property objects to such an expansion. [LB473]

SENATOR GLOOR: (Gavel) [LB473]

SENATOR LOUDEN: There are instances of these species migrating to nearby property and the owner of the property that received the migration doesn't have any recourse to a control of the migration. Thus, it can cost a landowner large sums of money to control

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the animals on their property, only to have reinfestation from a nearby colony that isn't managed. A county may adopt by resolution and carry out a coordinated program for the management of black-tailed prairie dogs on property within the county, consistent with the Black-Tailed Prairie Dog Management Act. When a county adopts such a resolution, the county shall assume the authority and duties provided in the act and the act shall be applicable to persons owning or controlling property within the county. A county may by resolution discontinue a coordinated program for the management of black-tailed prairie dogs. In other words, they may discontinue that management issue in the future if they so desire or different county board members are on the board. LB473 outlines the procedure needed to notify a landowner that isn't managing the animals on their property. The reason LB473 is called a management act is because some research has shown that black-tailed prairie dogs can be confined to an area by planting tall grass or brush-type vegetation as a barrier. Recent introduction of black-tailed prairie dogs to the Hunt Niobrara Ranch Wildlife Sanctuary drew concern from neighboring landowners. The issues were resolved by a court ruling that the rodents had to be contained on the refuge property. LB473 is consistent with such a common sense ruling. Also, the Agriculture Committee has adopted an amendment to the bill and I support that amendment. With that, I would ask you to approve the committee amendment and advance LB473. Thank you, Mr. President. [LB473]

SENATOR GLOOR: Thank you, Senator Loudon. As the Clerk and Senator Loudon stated, there are amendments from the Agriculture Committee. Senator Carlson, as Chairman of that committee, you're recognized to open on the amendment. [LB473]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. The committee amendment inserts some qualifying criteria for a county to adopt a prairie dog management plan, specifically the amendments would require the county to first make a finding of necessity to exercise the authorities that may be assumed by counties under the act; and secondly, a listing of methods for management of prairie dog colonies. The committee amendments seek to tie the bill to public welfare objectives. The requirements for the county to make a finding of necessity as a prerequisite to assuming the duties and authorities of the act is an exercise to establish a public welfare finding. Additionally, the bill follows the procedures of the Noxious Weed Control Act, something that we follow today, something that I believe answers any questions about constitutionality. And under that act, the Department of Ag provides the lead role in coordinating and guiding counties on noxious weed control. Under the act, the Department of Ag promulgates rules regarding noxious weed control methods; thus, there is an authority that counties may utilize in imposing weed control methods. The committee amendment replicates that process provided for the consultation with wildlife management entities for the development of prairie dog colony control measures. Additionally, the committee amendments specify that any county management activity may not conflict with any rules or regulations promulgated under the Nongame and Endangered Species Act or any state or federal recovery plan for endangered or

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threatened species. The committee amendment also relocates an authority of counties to cooperate and coordinate with pertinent state and federal authorities in the preparation of a county management plan. This authority was found in Section 5 of the bill as introduced and is relocated into Section 3. The adjacent positioning of the authority to coordinate with state and federal wildlife management entities is intended to provide for such consultation in the management plan development phase that this coordination will have occurred prior to the county assuming the authorities of the bill. There are currently no endangered species regulations regarding prairie dogs. In fact, the U.S. Fish and Wildlife Service completed a status review of the black-tailed prairie dog in 2009 and determined that the species does not warrant protection as a threatened or endangered species. While there are not currently any restrictions on the management of prairie dogs on private property, the committee amendment simply avoids the possibility that the requirements of the act could create conflict for landowners should any regulatory activity occur in the future under state and federal wildlife management programs. Finally, the committee amendments delete the federal government from the listing of entities included as persons under the act. The bill would impose certain duties upon persons having prairie dog populations on their land. The federal government is free to carry out prairie dog management in conformity with local regulation to the extent that it is consistent with any agreements with the state and where compliance does not conflict with the National Forest Management Act, specific management objectives for individual units, and other laws, such as the Endangered Species Act. The committee amendments avoids the possibility of counties attempting to carry out authorities under the act that conflict with federal and management laws. You may hear or have heard from a group or groups opposed to LB473. The fact is prairie dogs are a problem in some areas of Nebraska and proper management is appropriate and necessary. I ask for your support of AM782 and the underlying bill, LB473. Thank you. [LB473]

SENATOR GLOOR: Thank you, Senator Carlson. We now move to discussion. Senator Sullivan, you are recognized. [LB473]

SENATOR SULLIVAN: Thank you very much, Mr. President. Wondered if Senator Carlson would yield for some questions. [LB473]

SENATOR GLOOR: Senator Carlson, will you yield? [LB473]

SENATOR CARLSON: Yes, I will. [LB473]

SENATOR SULLIVAN: Thank you, Senator. I'm just sort of picking through all the details of this bill, and there are several issues that come to mind. And maybe they're answered. I just haven't had a chance to really delve into them. But what's the difference between management and eradication? [LB473]

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SENATOR CARLSON: Well, management doesn't mean get rid of or eliminate everything. It simply means manage to a point that is satisfactory. And in this case it would probably be a neighbor that is complaining about prairie dogs moving over onto their property and want the neighbor to control what the neighbor has. So extinction or total elimination is one thing, but management is another. [LB473]

SENATOR SULLIVAN: Well, and I guess even in terms of management there's probably a continuum. And so who determines what the level of necessity is and the tipping point, if you will, when control is necessary? [LB473]

SENATOR CARLSON: That's where the county is involved in making a finding of necessity to exercise the authority. So the county would need to be involved before action is taken. And we believe that that puts the proper recommendations and plans into place that would be necessary but not too imposing. [LB473]

SENATOR SULLIVAN: So in other words, a county has to develop its own management plan. [LB473]

SENATOR CARLSON: That's true. [LB473]

SENATOR SULLIVAN: And how do you anticipate that would be done? How would a county go about doing that? [LB473]

SENATOR CARLSON: I think there are different ways the county could approach it. But certainly one way would be in parallel with the Department of Ag would have a plan. The county could follow that plan and then tailor it to whatever their needs might be, just like they do in the noxious weed control. [LB473]

SENATOR SULLIVAN: So then in that process, if you parallel it to the county weed superintendent, in this particular case who would assume that responsibility for the county? [LB473]

SENATOR CARLSON: That's a good question. I don't know the answer to that, Senator Sullivan. There needs to be an answer. We'll look into that. [LB473]

SENATOR SULLIVAN: Okay. And along with that, would you anticipate there would be some additional costs to a county in developing that? [LB473]

SENATOR CARLSON: There could be. And the county is going to make a decision whether they want to have a plan or not. [LB473]

SENATOR SULLIVAN: So first...but they would be compelled to develop a plan if, what, that they are getting reaction from landowners or what would compel them to do that?

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[LB473]

SENATOR CARLSON: I think, and I would need to check this, but I think each county makes its own decision whether they feel like a management plan is appropriate. And it's going to be brought about by somebody having complaints. It's not going to be instantaneous. And this isn't like some kind of a disease breakout that's got to be handled immediately. But there would be some...somebody has got a complaint. They would ask for some help on this and the county would make a decision whether to create and adopt a plan. It simply can't be opposed to federal or state plans that may be in place. [LB473]

SENATOR SULLIVAN: Thank you, I appreciate that. I think it just gives me pause to say, first of all, we have to be careful in our approach of this in terms of the commitment and the task that... [LB473]

SENATOR GLOOR: One minute. [LB473]

SENATOR SULLIVAN: ...we're putting on already cash-strapped counties and who's going to do it and how they will go about doing it. But then also on the flip side, what will...what sort of responsibility and commitment does this place on private landowners, both in terms of management and those that consider it a problem? So I just think this deserves a little more thoughtful discussion and consideration as we move forward...through it. Thank you. [LB473]

SENATOR GLOOR: Thank you, Senator Sullivan. Senator Lautenbaugh, you're recognized. [LB473]

SENATOR LAUTENBAUGH: Thank you, Mr. President. Members of the body, I do rise in support of this bill and the amendment thereto. This is one of those things where, you know, I live in Omaha essentially and we may be kind of scratching our head from the Douglas County delegation and saying, why is this important? But in other parts of the state this is important. I think this is a thoughtful bill. I understand Senator Sullivan's concerns and I think those can be addressed. I do believe this maintains local control and addresses something that is a real problem in parts of the state. I would urge your support. And I'd yield the rest of my time to Senator Loudon, if he would have it. [LB473]

SENATOR GLOOR: Senator Loudon, 4 minutes 20 seconds. [LB473]

SENATOR LOUDON: Thank you, Senator Lautenbaugh, and thank you, Mr. President. As you stated, as has been stated here, in order to implement this the county has to implement this by resolution. And usually for that to happen there has to be a problem arise before the county will adopt such a resolution. Once they've adopted such a resolution, then it is up to the landowner to keep those animals on their property. And

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that's all there is to it. If they migrate to a neighboring property then there has to be a problem and it has to be solved. And this is what it's all about in parts of western Nebraska where the colonies get too large for the area they have and they migrate to neighboring landowners. And neighboring landowners have a problem with it and they wish to have some type of method that they can control them. So then you get into the part of how do you stop them from migrating, and that's when the management comes in. People can either go in there and plant tall grasses or some places they have some type of fencing, they have brush, some type of eradication in some instances if it's a large, overpopulated colony, so this is where the plan comes in. And various measures can be used. If you will notice, they had a problem or it wasn't a problem but they restocked prairie dogs up in north of...at the Ft. Niobrara National Wildlife Refuge in...near Ponca, Nebraska. And the problem the neighboring people had up there was that they wanted to have a concern about those prairie dogs migrating onto their property. So they went to court over it. And the court had decided that they can be restocked there, but those people had to keep them on their own property, they had to stay on the property and stay behind the fence or whatever method they have to control them on their own property. And this is what this bill is all about. It's about if you wish to have the animals then you may keep them, you can keep them on your own property, you don't let them migrate someplace else. You manage them in such a way so they don't migrate. And that's what mostly the whole bill is about. There isn't anything about eradication, all of them. That can be an issue I suppose if they got completely overpopulated, we have seen that in areas, because you want to remember, when they get overpopulated they do have a tendency to have bubonic plague in them. And that's usually what controls a prairie dog colony is the bubonic plague. Bubonic plague is contagious to people. And at times we have seen where, when that was happening, somebody would find one, take it home for a pet and find out that that's what they had. In fact, I think there's laws passed in some states now that you can't have prairie dogs for pets because of the idea that they carry bubonic plague. So this is something where they need to be managed when they are overpopulated. It isn't...the reason it's set up for the counties to do this is because not all counties have that problem. As we talked to people from Purdue out here that has that... [LB473]

SENATOR GLOOR: One minute. [LB473]

SENATOR LOUDEN: ...area around Fairmont that has a prairie area that has prairie dogs, they claim that's the eastern most colony in Nebraska, and it probably is. So there probably wouldn't be very many counties from somewhere around Kearney east that would probably ever implement this plan. So it's mostly done on a countywide issue. And we would hope that...it's just a common-sense solution for a problem out there. Thank you, Mr. President. And thank you, Senator Lautenbaugh. [LB473]

SENATOR GLOOR: Thank you, Senator Louden. Senator Burke Harr, you're recognized. [LB473]

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SENATOR HARR: Thank you, Mr. President. Similar to what Senator Lautenbaugh said, you might wonder why a senator from Omaha would get up and speak on this. And I'll be honest, I don't have a dog in this fight. But what I will say is I did vote against this and I think I need to explain why I did vote against it. And the reason is prairie dogs are indigenous to this part of the country and to Nebraska. And now what we've done is we've taken a bill or a law that's framed largely after the noxious weed bill. And we're basically saying that something as indigenous, that has a purpose, that helps with the soil, is now noxious and bad. And they aren't. And so I think we have to be careful about what we do here. Do we want to chase off all our natural resources? Do we want to chase off all our animals that are indigenous to this area? It's a question that I think needs to be discussed. Doesn't mean I'm necessarily against this bill, but I think it's something that needs to be addressed. How do we want to handle, what is our long-term policy? What is the public policy for handling indigenous animals that then conflict with domesticated animals that we bring on the land is probably a question we'd have. And number two, is do we want more regulation and burdens put on landowners? Again, sometimes I feel like I'm the only conservative in this body in that I don't like new, additional laws and regulations added, especially when it comes to property rights. And we are imposing new burdens on owners of property, saying you have a burden to eliminate animals on your property if they leave your property. Well, they're wild animals, you know. Making somebody responsible for a wild animal, that's a new area of law that I don't think we really do right now. We don't make landowners responsible if there are coyotes on their land and it goes onto someone else's land. So it's something to think about. I think we should have a debate on it and decide what we want to be as a body. And so that's why I voted against it. I don't think it's necessarily, the amendment or the underlying bill, are necessarily evil. But I do think we need to pause and really determine what is the best public policy. So thank you very much. [LB473]

SENATOR GLOOR: Thank you, Senator Harr. Senators in the queue: Harms, Hansen and Nelson. Senator Harms, you're recognized. [LB473]

SENATOR HARMS: Thank you, Mr. President and colleagues. I rise in support of this bill and the amendment. Where I live it is an issue. And if you've ever been on farmland or ranchland or pastureland where the prairie dogs have settled in, it literally destroys it. And on many occasions, as the cattle and the horses may walk across the pasture, it's easy for them to fall into those holes with their leg, break a leg, sprain it pretty badly. And it needs to be controlled, and if you talk to any farmer or any rancher who has them on their land, they'll tell you. And we need to have a program put together so that we can manage this. It's like anything else, whether it's mountain lions or what it might be we're addressing in rural America, it needs to be controlled. And so I rise in support of this. I think it's a good piece of legislation. And I thank Senator Loudon for bringing it forward. Senator Loudon, I'd be happy to give you the rest of my time. Give my time to you, if you need it. [LB473]

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SENATOR GLOOR: Senator Louden, 3 minutes 56 seconds. [LB473]

SENATOR LOUDEN: Thank you, Senator Harms and members of the Chamber. As we talked about, as Senator Harr mentioned, that a landowner's problem or infringing on landowners' rights, and they're wild animals; they can be controlled. It isn't any different than noxious weeds can be controlled. If you want them on your property then you're entitled to raise them if you so desire. The problem comes that they can be...they do migrate and when they do migrate there isn't any control over how you stop those seed stock from migrating to another area. You have to remember than when they do get overpopulated, nature itself has a way of underpopulating any kind of species like that, and with prairie dogs it's bubonic plague. The Conata Basin up there in South Dakota here a few years ago had this huge prairie dog colony that stretched for miles in those Badlands up there. They got bubonic plague in them when they didn't want to manage them and nearly wiped them all out. And, of course, when they did that, that nearly wiped out their black-footed ferrets that they were trying to introduce into that area. So it is something that they have to have some kind of management with them. Anytime that any of you drive down the interstate between Grand Island and Kearney, if you will look on the south side there is a prairie dog colony along the road there. If you will notice there isn't any grass that grows in that prairie dog colony, and that is a problem that comes out in the range country. They usually graze off the grass where they have the colony. So as long as people are willing to keep them on their property and do that, there's no problem with it. When they migrate to a neighboring property or neighbors that do not wish to have them on there then you have some way or another that those people have to manage them to keep them on their property. It's a simple bill. It can only be implemented by a county. If the county thinks there's a problem that they don't want to face up to and they've implement it, there's ways in the bill that they can back out of that by resolution the same way. It isn't like that once they adopt that by resolution that it's set in stone for them the rest of their lives. They can back out of it any time they so wish. So it's a local issue, can be done by local officials. If someone has to have that problem then they go to the local issues with their problem and then the local people have hearings on it, the local county officials have hearings to set up to decide what they're going to do and if they're going to implement the plan. It's a process that takes sort of an amount of time, so it isn't something that's a knee-jerk attitude to a problem that... [LB473]

SENATOR GLOOR: One minute, Senator. [LB473]

SENATOR LOUDEN: ...comes out there. Thank you, Mr. President. [LB473]

SENATOR GLOOR: Thank you, Senator Louden. Chair recognizes Senator Hansen. [LB473]

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SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. I, too, would rise in support of this bill and the amendment. We have prairie dogs on our ranch. We give a lot of tours to international guests. And we had one this summer from the Council of Ireland. And we were driving through and just over a little hill we came over and I told them that I wanted to show them a little biodiversity on our property and we had a prairie dog town. And they thought they were cute little buggers that were just so nice. But then you get to looking and I had to point out to the Irish that these prairie dogs eat everything in sight. And they will go as far as they can see to the point where they either hit a stand of grass or a hill or something where they can't see their neighbors, because that's how they use their defensive mechanism of standing up, barking and wagging their tails and saying, you know, we've got danger in the area. The biodiversity part is fine. If you have them on your own property, like Senator Loudon said, they're fine. And like Senator Harr said, they're a native animal, they really are. But they're very destructive and they migrate rapidly. I've seen one two miles away from one prairie dog town and they started another one. That's when they get to be a problem, when they get widespread. It's certainly not...we won't eliminate prairie dogs. I think that you could spend millions and millions and millions of dollars and you'll never get rid of prairie dogs. Just like coyotes, there will always be a coyote left when the last person dies. But I think these little critters are...they're certainly destructive to the grass, they're destructive to...they leave holes in the ground where it's hazardous to ride a horse across. The burrows are used by snakes, that's one of their...rattlesnakes, rattlesnakes are one of their common native predators. So if you have prairie dogs you're going to have rattlesnakes, and then that causes more problems too. The disease portion of it is certainly hazardous to anyone that is in the area if they are found to be with bubonic plague, certainly are. This is a bill that when it's allowed by the counties to control, to mandate control on a person's property if they've left that person's property and gone on to another, this a perfect example of why we have to have not in my backyard. Thank you, Mr. President. [LB473]

SENATOR GLOOR: Thank you, Senator Hansen. Senator Nelson, you are recognized. [LB473]

SENATOR NELSON: Thank you, Mr. President, members of the body. I'd like to address a question or two to Senator Carlson with regard to the amendment, if he will yield. [LB473]

SENATOR GLOOR: Senator Carlson, will you yield? [LB473]

SENATOR CARLSON: Yes, I will. [LB473]

SENATOR NELSON: Thank you, Senator Carlson. You may have covered this on your amendment. But it states here, "Such management plan shall not conflict with any state management plan." Is there a state management plan at the present time that you're

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aware of? [LB473]

SENATOR CARLSON: Specifically, I'm not aware of that. But we're careful in this to indicate that it shall not conflict with any state or federal, and this could include USDA, it could include the Department of Agriculture, it could include Game and Parks, U.S. Fish and Wildlife. So a plan that a county adopts should not conflict with those that are in effect. And the bill itself says a county "may," so it's optional. [LB473]

SENATOR NELSON: All right. If, like Senator Hansen, you do have colonies on your land, is there any prohibition if you want to get rid of that colony, keeping the landowner from doing that if they choose to do so? [LB473]

SENATOR CARLSON: No, they...that's their option and that wouldn't change. [LB473]

SENATOR NELSON: That would change? [LB473]

SENATOR CARLSON: That wouldn't change. [LB473]

SENATOR NELSON: Would not change. So I've seen some of these colonies. My impression is that they're not in cropland, they're on pastureland, rough pastureland for the most part, and they do have holes. But, I mean, as long as you can confine them, they're there if you want to keep them there and don't bother somebody else on their property. Do they just eat grass or anything else, the prairie dog? [LB473]

SENATOR CARLSON: I don't know what they eat. (Laugh) I think that the problem may exist, get magnified if you have an absentee landlord that's not there seeing what's happening. But they're prolific and they spread and they can become a problem to property owners around. And so I think it's prudent that that property owner be held responsible to take care of the problem. [LB473]

SENATOR NELSON: Thank you, Senator Carlson. I'd like to ask a question of Senator Hansen, if he will yield. [LB473]

SENATOR GLOOR: Senator Hansen, will you yield? [LB473]

SENATOR HANSEN: Yes, I would. Thank you. [LB473]

SENATOR NELSON: Sorry to run you across the Chamber there, Senator. You mentioned you have colonies on your ranchland? [LB473]

SENATOR HANSEN: Correct. [LB473]

SENATOR NELSON: More than one? [LB473]

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SENATOR HANSEN: Yes. [LB473]

SENATOR NELSON: I asked Senator Carlson, do they confine themselves to eating grass? And the other question is, how big do they...how many colonies do you have? And generally, about what size are they? [LB473]

SENATOR HANSEN: Well, we have three colonies. And we're continuously working on poisoning and controlling the size of the colonies. But still they get...I suppose the largest one is in excess of 20 acres and that's the one we work on most of the time. But the other two, one of them is extremely old. I mean, it's older than I am. It was there when I was a kid and we used to go over there and try to take care of them with no avail. And then people have moved in, neighbors have moved in and they work on our prairie dog town, their prairie dog town together, and it's probably well over ten acres so. But we do work at controlling them, but it's difficult and it's expensive too. [LB473]

SENATOR NELSON: So I'm just assuming where they eat the grass, it's down to the nub. I mean, it's no good for pasture or anything in that area? [LB473]

SENATOR HANSEN: It's no good for pasture and fortunately the cows don't go in those areas very often. If they do, you know, then we're looking at snakebite. Cows are curious, calves are curious and they go down and they look at these little things that are wound up and then end up with snakebites on their nose and briskets and it causes a lot of problem. We've lost cattle due to snakebites. Snakes probably would not be there unless they had... [LB473]

SENATOR GLOOR: One minute. [LB473]

SENATOR HANSEN: ...that habitat given to them. [LB473]

SENATOR NELSON: And if one colony was close to the boundary line of another ranch, what could the other rancher do or could you do to keep them from spreading? Just eradicate them and...he can't come on your land and do that. Can he put up a fence or... [LB473]

SENATOR HANSEN: They can...well, I think the Department of Roads uses that snow fence where supposedly the prairie dog comes up there and they stand up and they look, and if there's a barrier they won't go beyond that barrier. And that's what they try to do around that Overton area. But still they...we allow neighbors, I mean we're trying to be good neighbors. If they don't want the prairie dogs, (laugh) they're more than welcome to come in and buy the poison and try to control the prairie dogs on our ranch too. [LB473]

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SENATOR NELSON: All right. [LB473]

SENATOR HANSEN: But we do work at that all the time. [LB473]

SENATOR NELSON: Thank you. [LB473]

SENATOR HANSEN: And it's not...if we live in the Sandhills there's a limited amount of acres where they can actually build a prairie dog town because... [LB473]

SENATOR GLOOR: Time, Senators. [LB473]

SENATOR HANSEN: ...it has to be an overflow site where the ground is harder so they're... [LB473]

SENATOR GLOOR: Thank you, Senator Hansen and Senator Nelson. Seeing no additional senators in the queue, Senator Carlson, you're recognized to close on the committee amendment. [LB473]

SENATOR CARLSON: Thank you, Mr. President. And members of the Legislature, thank you for the discussion, the questions that have occurred. Recall that this bill makes it not mandatory but it makes it voluntary for a county to enter into and develop a plan. Once a county would develop a plan then the property owners shall comply with it. And the county shall be responsible for carrying out that plan. In no way is it to interfere with a state plan. Currently, there's not a state plan or any federal plan that's in existence. Prairie dogs can be a problem. A landowner that's affected by them needs some kind of an opportunity to see that they're controlled. And we believe that this bill does that. So I ask for your support of AM782 and the underlying bill, LB473. Thank you. [LB473]

SENATOR GLOOR: Thank you, Senator Carlson. The question before the body is, shall we adopt the amendments to LB473? All those in favor vote aye; all those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB473]

CLERK: 31 ayes, 0 nays on adoption of committee amendments. [LB473]

SENATOR GLOOR: The amendment is adopted. Discussion continues on the advancement of LB473 to E&R Initial. There are no senators wishing to be recognized. Senator Louden, you're recognized to close on LB473. [LB473]

SENATOR LOUDEN: Thank you, Mr. President. And thank you, members of the body, that voted to advance the amendment. With that, I think we've had a nice discussion over this. I thank those people that asked those questions and had the discussion so we have it on the record on how the bill works. And as Senator Hansen said, they work at it

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to control them on their property. In a case like that, if people are doing that then a county probably would never pass a resolution to take in this management plan. With that, I would ask that you would advance LB473. [LB473]

SENATOR GLOOR: Thank you, Senator Louden. The question before the body is the advancement of LB473 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB473]

CLERK: 30 ayes, 0 nays on the advancement of the bill, Mr. President. [LB473]

SENATOR GLOOR: The bill advances. Continuing with General File. [LB473]

CLERK: LB633, introduced by Senator Adams. (Read title.) Introduced on January 19 of last year, referred to the Education Committee. I do have committee amendments as well as amendments to the bill, Mr. President. (AM801, Legislative Journal page 898, First Session, 2011.) [LB633]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Adams, you're recognized to open on LB633. [LB633]

SENATOR ADAMS: Thank you, Mr. President and members. The bill that you have in front of you, the committee amendment that will follow, as well as one of the other amendments that will follow behind that, have been brought to me and to the committee by bond counsel and, of course, various school districts. Bond counsel wants to be very careful when they review bonds that school districts, when they issue them, are doing things right. The first issue that you find in LB633 is this. The bonds, by the way, that we are talking about in this bill as well as the amendments are what we call QCPUF bonds. [LB633]

SENATOR GLOOR: (Gavel) [LB633]

SENATOR ADAMS: They are the bonds that schools can currently issue for asbestos and mold abatement, for compliance with ADA, for Qualified Zone Academy, those kinds of things. There is a 5.2 cent authorized levy on those bonds, that's the maximum. The problem that was brought to the committee is that if a school district wants to call the bonds that they have issued, bond counsel is concerned that there is not clear language in statute that would allow them to reissue the bonds at a lower interest rate. What LB633 would do is to clarify in language that if a school has issued these kinds of bonds, interest rates are lower, they want to call them and reissue them, it would clarify that they have the authorization to do that, which satisfies bond counsel's concern and ultimately could mean a lower interest rate for the schools that issue these bonds. That's the essence of LB633. Thank you, Mr. President. [LB633]

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SENATOR GLOOR: Thank you, Senator Adams. As the Clerk stated, there are amendments from the Education Committee. Senator Adams, as Chairman of that committee, you're recognized to open on the committee amendment. [LB633]

SENATOR ADAMS: Thank you. The Education Committee amendment takes another bill from last session that was before the committee that relates to LB633 and rolls it into LB633. It has again to do with the QCPUF. Bond counsel has suggested what if, what if, what if. Here's the what if. If a school issues these QCPUF bonds in, let's say, 2009 and at the time they issued those bonds they issued them based on their valuation at that time. And now here we are in 2012. If by some circumstance their valuation has dropped below that 2009 level, and the levy set won't cover the principal and interest payment, what the committee amendment would do, with your support, is allow the school district to raise that levy only the amount that's necessary to make up that difference and only if the valuation has dropped below the level where the bonds were issued at. And again, this is primarily to appease bond counsel to ensure the holders of these bonds that there is something of a safety net if valuation were to drop in that fashion. Thank you, Mr. President. [LB633]

SENATOR GLOOR: Thank you, Senator Adams. Members, you have heard the opening to LB633 and the committee amendment. Are there senators wishing to be recognized? Seeing none, Senator Adams, you're recognized to close on your committee amendments. [LB633]

SENATOR ADAMS: I'll waive, Mr. President. [LB633]

SENATOR GLOOR: Members, the question is, shall the committee amendments to LB633 be adopted? All those in favor signify by voting aye; those opposed, nay. Have all voted who care to? Record, Mr. Clerk. [LB633]

CLERK: 31 ayes, 0 nays on adoption of committee amendments. [LB633]

SENATOR GLOOR: The committee amendment is adopted. [LB633]

CLERK: Mr. President, I now have amendments to the bill. Senator Adams, first I have AM1690. (Legislative Journal page 227.) [LB633]

SENATOR GLOOR: Senator Adams, you're recognized to open on your amendment to the bill. [LB633]

SENATOR ADAMS: Thank you, Mr. President. Members, bond counsel came back again after reviewing all of this from a year ago and said, we need to insert a little more clarification language. What this language does in the amendment is in essence say that if a school district does reissue these bonds that the same authority they had to

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issue them in the first place applies to the reissue. That's the amendment, Mr. President. [LB633]

SENATOR GLOOR: Thank you, Senator Adams. Members, you have heard the opening on the amendment to LB633. Seeing no senators wishing to speak, Senator Adams waives closing. The question is, shall the amendment to LB633 be adopted? All those in favor vote aye; those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB633]

CLERK: 34 ayes, 0 nays, Mr. President, on adoption of Senator Adams' amendment. [LB633]

SENATOR GLOOR: The amendment is adopted. Mr. Clerk. [LB633]

CLERK: Senator Adams would move to amend with AM1745. (Legislative Journal pages 343-347.) [LB633]

SENATOR GLOOR: Senator Adams, you're recognized to open on your amendment to LB633. [LB633]

SENATOR ADAMS: Members, this amendment has nothing to do with QCPUF bonds, bond counsel or reissue. This is an amendment that brings to the body the same thing we deal with, it feels like, every year about this time. What amendment does is to ask that we move the certification date for state aid from March 1 to on or before May 1. And I think all of you understand why. I am concerned about bills that we have setting in committee on TEEOSA, forecasts, estimates on TEEOSA. There is a lot of things that have to happen. And I think it is prudent and appropriate to right now say to school districts, on or before May 1 don't expect March 1. That might be asking too much too quickly in light of all that we have to deal with yet this session. Thank you, Mr. President. [LB633]

SENATOR GLOOR: Thank you, Senator Adams. Members, you have heard the opening on the amendment to LB633. Senator Dubas, you are recognized. [LB633]

SENATOR DUBAS: Thank you, Mr. President, colleagues. Would Senator Adams yield to a question, please? [LB633]

SENATOR GLOOR: Senator Adams, would you yield? [LB633]

SENATOR ADAMS: Yes. [LB633]

SENATOR DUBAS: Senator Adams, I certainly understand why this amendment has been put forward to us and the issues that we have to deal with. But I would be remiss

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by not asking the questions that our districts are going to ask us. And as they're working on their budgets and as they're working on their negotiations and what they're required to do in negotiations, this puts them in a little bit of a box too. So I guess I'm just looking for what is our response to districts when they say, this really makes our budgeting process more difficult also. [LB633]

SENATOR ADAMS: And you're right, we're all going to hear from those districts. I did indicate at the state school boards the other day to the group that this would probably be happening. I'm going to speculate that they probably knew this was going to happen in light of the fact that we have three TEEOSA bills sitting in committee, we have a February forecast, we've got an Appropriations Committee working on a budget, and a lot of things to be looked at. The reality is I just don't believe that despite their issues we in this arena can be ready to give them a number. [LB633]

SENATOR DUBAS: And again, I agree with you. And the amendment states "on or before." [LB633]

SENATOR ADAMS: Yes. [LB633]

SENATOR DUBAS: Do you feel at all any degree of optimism that we can get this information to them? I mean, I guess it depends on what happens with the bills. But I would assume it would be your hope and objective that we get this information to them as soon as possible. And that's why the amendment is worded as such. [LB633]

SENATOR ADAMS: Yes. You're right. I'd love to be able to say to every school, we're going to have this done by March 1, we don't have to change the cert. date, you can build your budgets and get started. I don't think that's realistic. We're, because of a 60-day session, you know we're kind of expediting things the way it is. I just don't think we'd be able to hit that March 1 deadline. And I don't want the department to go through the expense of certification when we know full well we're probably not going to hit that mark. [LB633]

SENATOR DUBAS: I appreciate your answers. And I think just to get it on the record and so that all of our districts know the issues that we're dealing with, as well as what they're dealing with. And we will try to be as responsive as possible. But we're operating under a certain set of circumstances. So thank you, Senator Adams. [LB633]

SENATOR GLOOR: Thank you, Senator Dubas. Senator Wallman, you are recognized. [LB633]

SENATOR WALLMAN: Thank you, Mr. President. Senator Adams, Senator Adams, here we are on budget issues on TEEOSA formula. And I would sure like to see that moved up to April 15. Is that possible? [LB633]

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SENATOR GLOOR: Senator Adams, would you yield? [LB633]

SENATOR ADAMS: I would. The language is "on or before." And I understand I think the April 15 issue with personnel. And you're correct, Senator Wallman, in having that sensitivity to school districts. As you well know, we deal with that every year and particularly the last three years we have had to deal with that deadline. And it would be my hope that maybe we can have all of this ready to go before April 15. We put it on May 1 so that we give ourselves plenty of latitude. So I'm not back here again in a week or two with yet another amendment saying, hey, let's push it out a little bit further. [LB633]

SENATOR WALLMAN: Thank you, Senator Adams. I sure would like to see that April 15, but if it isn't possible it isn't possible. Thank you, Mr. President. [LB633]

SENATOR GLOOR: Thank you, Senator Wallman and Senator Adams. There are no additional senators wishing to be recognized. Senator Adams, you're recognized to close. Senator Adams waives closing. The question before the body is, shall the amendment to LB633 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB633]

CLERK: 29 ayes, 0 nays on adoption of Senator Adams' amendment. [LB633]

SENATOR GLOOR: The amendment is adopted. We return to discussion on the advancement of LB633 to E&R Initial. There are no senators in the queue. Senator Adams, you are recognized to close. [LB633]

SENATOR ADAMS: Thank you, Mr. President. And I'll make it very brief. What we have done in this host of amendments to the underlying bill, in effect we have said to schools, you can reissue these QCPUF bonds; secondly, that in that rare, unusual circumstance if at the date of issuance, beyond the date of issuance your valuation were to drop enough that you have problems making the principal and interest payments, then that levy could be adjusted accordingly. That satisfies bond counsel's issue with these things. We clarify further language that the authority that was granted under the initial issue to use the property tax levy is also authorized on the reissue and then we change the certification date to on or before, and we hope we can hit before, May 1. Thank you, Mr. President. [LB633]

SENATOR GLOOR: Thank you, Senator Adams. The question is the advancement of LB633 to E&R Initial. Those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB633]

CLERK: 36 ayes, 0 nays on the advancement of the bill, Mr. President. [LB633]

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SENATOR GLOOR: LB633 advances. Mr. Clerk. [LB633]

CLERK: Mr. President, LR19CA is a proposed constitutional amendment to Article IV, Section 5 of the Nebraska Constitution. The resolution was introduced by Senator Avery, referred to the Government, Military and Veterans Affairs Committee last January for purposes of a public hearing. The resolution was advanced to the floor. There are committee amendments pending, Mr. President. (AM866, Legislative Journal page 907, First Session, 2011.) [LR19CA]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Avery, you're recognized to open on LR19CA. [LR19CA]

SENATOR AVERY: Thank you, Mr. President, colleagues. LR19CA would put on the ballot an amendment to Article IV, Section 5 of the Nebraska Constitution. And it would expand when an officer will be liable for impeachment. Currently, this section of the constitution provides that civil offices may be impeached for any misdemeanor while in office. LR19CA adds any misdemeanor related to the election by which such officer was elected to office. So it would expand the period when a civil officer could be impeached from...to include activities committed while in pursuit of the office, not just confining it to misdemeanors while in office. This resolution has its origins in a situation involving former Regent Hergert, who was impeached in 2006 for misdemeanors committed while in office, including false reporting and obstructing government relations. There were also issues raised about potential misdemeanors while he was a candidate for the Board of Regents. In 2005, Mr. Hergert settled a complaint with the Accountability and Disclosure Commission that he broke state campaign finance laws while he was running for office. The complaint stemmed from allegations that Hergert intentionally manipulated and violated campaign finance laws in order to prevent his opponent from receiving fair fight campaign funds. As you may recall, the Legislature voted to impeach Hergert and the Supreme Court convicted him and he was removed from office. During the deliberations regarding Hergert's impeachment there were questions raised about whether Hergert committed the misdemeanors while in office, which was and remains the standard, or whether he committed the misdemeanors while running for office. The State Supreme Court said, in its judgment, that David Hergert intentionally manipulated and violated Nebraska's campaign finance laws in a ruling that convicts Hergert for impeachment charges. During the campaign, I'm quoting from the Supreme Court, during the campaign and significantly after he took office, Hergert intentionally filed false reports of campaign spending in an attempt to cover up his conduct, the Opinion stated. Also quoting from the court: Hergert's various explanations of his actions contradict one another and are not believable when the clear and convincing evidence before the court is considered. It's important to point out that ultimately this case rested on the fact that he signed his A&D filings after he took the oath of office, which meant he filed a false report while in office. LR19CA seeks to avoid possible future circumstances of this kind

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where a civil officer may escape full accountability for misconduct while seeking public office. So the resolution simply adds: any misdemeanor relating to the election by which such officer was elected to the office. Now some of you may be interested in knowing what we mean by "misdemeanor." Let me emphasize that this resolution does not alter the threshold of offenses that would warrant impeachment. It merely extends the context in which an offense can qualify for impeachment. Therefore, existing case law, including the Hergert case, would still be precedent and controlling in any future impeachment. Case law is well established and would merely add the need to be applied to the context of campaigning. I think it's important to point out that the threshold for impeachment in Nebraska already is set very high. Nebraska case law has established three standards for impeachment: an act that violates a statute, constitutional provision or oath and is related to the officer's duties; a simple neglect of duty committed for a corrupt purpose; and thirdly, a neglect or disregard of duty that is so gross or flagrant the officer's willful and corrupt intent may be inferred. So in applying the standard to campaigns, it seems reasonable to expect that the Nebraska Supreme Court would require either a statutory or constitutional violation in regard to the campaign. For example, embezzlement of campaign funds, right now that would not be impeachable under current constitutional language, or let's say refusal to comply with A&D filing requirements, accepting a bribe, things of that sort. Impeachment would require a corrupt purpose or a gross, flagrant act committed with a willful and corrupt intent. This is a very high standard. We're not talking about parking tickets here when we use the word "misdemeanor." We're talking about a very high threshold that's been established by precedent in our court systems. And it is one that is unlikely to be met by unintentional errors on a campaign statement or unintentional late filings of disclosure forms and things of that sort. These mistakes already occur on campaign statements numerous times by officials after taking office, yet they have never been considered anywhere close to reaching the impeachment threshold. After the public hearings on this bill, the Government Committee decided to amend the bill to make clear that the misdemeanor we're talking about must occur in pursuit of the office the candidate is seeking in order to make it an impeachable offense. I'll be happy to explain that committee amendment further when I am recognized again. Thank you, Mr. President. [LR19CA]

SENATOR GLOOR: Thank you, Senator Avery. As the Clerk and Senator Avery stated, there are amendments from the Government, Military and Veterans Affairs Committee. Senator Avery, as Chairman of that committee, you're recognized to open on the committee amendment. [LR19CA]

SENATOR AVERY: Thank you, Mr. President. With the committee amendment, the constitution will be amended to provide that a civil officer of this state will be liable to impeachment for any misdemeanor in office or for any misdemeanor in pursuit of such office. The committee amendment keeps the original intent of the bill to be able to impeach someone who commits a misdemeanor while pursuing the office they were

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elected to. There were some concerns raised in the committee that the original version may be too broad. And the committee wanted to ensure that it applied only to those offenses that occurred in pursuit of the office. And that is why this amendment is being put forward. Thank you, Mr. President. [LR19CA]

SENATOR GLOOR: Thank you, Senator Avery. We move to discussion. Senator Price, you're recognized. [LR19CA]

SENATOR PRICE: Thank you, Mr. President, members of the body. As a member of the committee, and you look at the committee statement you'll see that I was present and not voting, and I want to let you know why that was. As Senator Avery has said, there were concerns in the board language and I still have concerns. It says, a civil officer in pursuit. What if you're not a civil officer yet? What if you're just running for office; you're kind of maybe, hopefully going to be a civil officer? Isn't that really what we're talking about here, you're in the race? So that was a question. The other thing is, and Senator Avery has stated, any misdemeanor, any misdemeanor with no further clarification. Even though case law has said to be successful for that impeachment, to bring a (inaudible) the impeachment, it would have to be a very, very, very serious misdemeanor. And I think that the challenge there, we don't really spell out here which misdemeanor. So if you're pulled over, you're coming back from a campaign event and you're pulled over and you were texting while driving, it's a misdemeanor. You're coming back from a campaign event. I understand what Senator Avery has said, is that wouldn't rise up because of case law and such. But that's not what this says. And I think it would be very important. I don't want to say that we are above the law, that's not the case. The case is I would want it to be very clear when it's saying something like this. And for these reasons I did not vote to put this out to the body. Thank you, Mr. President. [LR19CA]

SENATOR GLOOR: Thank you, Senator Price. Chair recognizes Senator Hadley. [LR19CA]

SENATOR HADLEY: Mr. President, members of the body, would Senator Avery yield to a question or two? [LR19CA]

SENATOR GLOOR: Senator Avery, would you yield? [LR19CA]

SENATOR AVERY: I will. [LR19CA]

SENATOR HADLEY: Senator Avery, I believe, and I wish I had the paper in front of me, but I believe the McCook City Council had a problem with a couple of their city councilmen that were basically kicked out of office because of misdemeanors. And they had to have a special election and such as that. Does your bill in any way impact city councilmen and such as that across the state? [LR19CA]

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SENATOR AVERY: This actually refers to civil officers. I'd have to check with legal counsel to see if that would include city councils and... [LR19CA]

SENATOR HADLEY: Okay, because I just remembered reading about that in the last four or five months where they had two city councilmen that had been... [LR19CA]

SENATOR AVERY: If I might continue,... [LR19CA]

SENATOR HADLEY: Yeah. [LR19CA]

SENATOR AVERY: ...the Legislature does not have jurisdiction in those cases. That's a local government issue. So my initial reaction is, no, it would not apply to them. [LR19CA]

SENATOR HADLEY: Secondly, I'd just like to say that I was actually in the Board of Regents system when this whole thing with the regents race out in that district came about. And I, like a lot of people, were completely appalled by that, that someone can win an election and then be basically impeached later. And you just really feel sorry, in this case, for Don Blank, an outstanding Regent from McCook who was the victim of this. And I'd just like the record to show that Don Blank did an outstanding job and certainly did not deserve the treatment he got in this situation. Thank you, Mr. President. [LR19CA]

SENATOR GLOOR: Thank you, Senator Hadley. Senator Cornett, you are recognized. [LR19CA]

SENATOR CORNETT: Thank you very much, Mr. President. Would Senator Avery yield to some questions? [LR19CA]

SENATOR GLOOR: Senator Avery, would you yield? [LR19CA]

SENATOR AVERY: Yes, I will. [LR19CA]

SENATOR CORNETT: Senator Avery, just for clarification, do you mean any misdemeanor? If a person is convicted of any misdemeanor they could be impeached? [LR19CA]

SENATOR AVERY: I am using here language that's already in the constitution and I refer to court rulings and precedent. When they have defined any misdemeanor they do not mean trivial things, they are talking about gross violations, willful and corrupt intent, they're talking about corrupt purposes, they're talking about crimes committed in relation to an officer's duties. All I'm saying here is that we take the same definition of

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misdemeanor and apply it to crimes committed while in pursuit of the office. [LR19CA]

SENATOR CORNETT: Okay. So there is, what you're saying, a definition that is clarifying gross, is what you said I believe, violations? [LR19CA]

SENATOR AVERY: Yes. [LR19CA]

SENATOR CORNETT: Are they... [LR19CA]

SENATOR AVERY: Gross, flagrant, willful, and corrupt. [LR19CA]

SENATOR CORNETT: Are they broken down by type of misdemeanor? You have multiple grades of misdemeanors, I through III, IV. What are...how are you defining it other than gross? [LR19CA]

SENATOR AVERY: Well, the definition of misdemeanor in the context of impeachment would actually be defined by this body because we would have to approve any impeachment proceedings. We'd have to bring charges. The Supreme Court would be the trial venue and they would make the decision as to whether or not to convict based on the charges we bring. So what we decide in this body is a gross, corrupt, flagrant, willful misdemeanor would be controlling. [LR19CA]

SENATOR CORNETT: But you're saying that we would define that after the fact when the person was actually being impeached. Am I correct? [LR19CA]

SENATOR AVERY: Well, the impeachment proceedings would begin in this body, yes. [LR19CA]

SENATOR CORNETT: Well, I, personally, would be more comfortable defining what gross and flagrant misdemeanors you're talking about or what grade of misdemeanor and have that in this portion of the bill before we move forward with that. [LR19CA]

SENATOR AVERY: Well, you can't anticipate every possible circumstance that might rise to the level of an impeachable crime and put that in the constitution. It would be the judgment of this body whether or not an activity that occurred in pursuit of the office would rise to the level of an impeachable crime. The court would then decide. And they have made it very clear in case law, they have three standards: one, an act that violates a statute, constitutional provision or oath or is related to...and is related to the officer's duties; a simple neglect of duty committed for a corrupt purpose; a neglect or disregard of duty that is so gross or flagrant the officer's willful and corrupt intent may be inferred. Those are the three standards that the courts have decided in case law, case law is what defines the definition of misdemeanor. If we try to come up with every possible circumstance, I don't think we could do that effectively and it would clutter the

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constitution. [LR19CA]

SENATOR CORNETT: Okay. I will continue to listen to the debate. [LR19CA]

SENATOR GLOOR: Thank you, Senator Cornett. Senator Avery, you are next in the queue. [LR19CA]

SENATOR AVERY: I wanted to...thank you, Mr. President. I wanted to answer some of the issues raised by Senator Price. And I think that actually my exchange with Senator Cornett probably did answer some of that. The issue always in impeachment discussions is, what do you mean by misdemeanor? And I understand that if we are looking at criminal code misdemeanor is...can include a parking ticket, it can include all kinds of things that there's no way that this body or a court would consider an impeachable crime. So I think you have to say the word "misdemeanor," as it's used in the constitution already, has been very, very carefully and clearly defined by the courts and precedent has been established. And they have set a very high threshold for impeachment on the grounds of misdemeanors. It would require a corrupt purpose or a gross and flagrant act committed with a willful and corrupt intent. And I can tell you that that is a high standard and it ought to be a high standard, because when you are talking about impeachment, it is not a small matter at all and usually it is a painful business. But it is ultimately not a legal process, and I know that sounds odd to say. Ultimately, impeachment is a political process. But you do not seek to impeach people for trivial misdemeanors. You would only be able to...and this body would not try to do that. This body would only look at gross violations, gross misconduct and that would have to then rise to the level of impeachable behavior as judged by the Supreme Court. And I think that Senator Price's questions, as he raised in committee, have been fully answered. He may not accept it, but they were fully discussed in committee. The question of who is a civil officer, a civil officer would be a person that is in office. That's the way it reads now. What I'm trying to do here is to specify that misconduct committed while in pursuit of that office also can be covered in the impeachment period. And it's important I think for me to point out, because it might come up, that what we're talking about here does not apply to the Legislature. We have other procedures for disciplining ourselves. It is not a part of the impeachment process as outlined in the constitution; it's not a part of what I'm talking about here. I am in fact seeking to amend Article IV, Section 5 of the constitution. Article III is the part of the constitution that applies to the Legislature and provides for expulsion from office but not for impeachment. This is Article IV. Article IV refers to impeachment of other civil officers. I have committee staff looking in to see whether or not it covers county officials and city councils. I don't think it does because I believe they have procedures in place to handle their own circumstances. [LR19CA]

SENATOR GLOOR: One minute. [LR19CA]

SENATOR AVERY: With that, I would ask you to consider advancing this amendment

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and the underlying bill. Thank you, Mr. President. [LR19CA]

SENATOR GLOOR: Thank you, Senator Avery. Senator Nelson, you're recognized. [LR19CA]

SENATOR NELSON: Thank you, Mr. President, members of the body. I have some of the same questions that Senator Cornett does. I'd like to satisfy my curiosity a little better; therefore, I would like to inquire if Senator Avery would yield to some questions. [LR19CA]

SENATOR GLOOR: Senator Avery, would you yield? [LR19CA]

SENATOR AVERY: I will. [LR19CA]

SENATOR NELSON: Thank you, Senator Avery. I have to tell you at this point I think the amendment is perhaps still too broad. Can you tell me exactly who civil officers are under this language? Apparently, they're not members of the Legislature and we know that a member of the Board of Regents is a civil officer. What about the State Treasurer or Secretary of State? [LR19CA]

SENATOR AVERY: Yes, they are civil officers. [LR19CA]

SENATOR NELSON: Is this all on simply the state level then, so far as you know? [LR19CA]

SENATOR AVERY: That is my understanding now. And if it is broader than that, I'd be happy to correct that when I get the information. [LR19CA]

SENATOR NELSON: I don't remember...thank you. I don't remember too much about the Hergert case. But I do have some recollection of the division of issues here, what he did when he was running for office and then what he did after he had been elected to office. My recollection, and maybe you can confirm this, was that part of the problem with the election was that he claimed that he had lost some reports or misplaced them, they got covered up on his desk and therefore they didn't get filed on time. Is that essentially accurate? [LR19CA]

SENATOR AVERY: I do not know the details of that. I do know that the...whatever misconduct that occurred during the campaign would have completely escaped Accountability had it not been for the fact that he took the oath of office prior to signing his A&D filings. Because he signed his A&D filings after he took the oath of office then the false reporting became a crime committed while in office. And that's the only way that the Legislature was able to hold him accountable. [LR19CA]

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SENATOR NELSON: So had he signed those documents before he actually took the oath of office, he would have not been impeached? [LR19CA]

SENATOR AVERY: He would have gotten off scot-free. [LR19CA]

SENATOR NELSON: Okay. So here your bill is saying we're going to catch a person like Regent Hergert if he does something of this sort while he's a candidate for office and prior to election. Is that correct? [LR19CA]

SENATOR AVERY: It's closing a loophole I think, Senator Nelson. [LR19CA]

SENATOR NELSON: Well, then my question is this. Is there a neglect of duty there when he's running for office? [LR19CA]

SENATOR AVERY: Is there a neglect of duty? Yes. His duty is to tell the truth and not to sign false documents and false reporting. That is a duty. [LR19CA]

SENATOR NELSON: Well, all right. So I... [LR19CA]

SENATOR AVERY: It's not a duty of the office until he is already in office. What I'm trying to do is to expand the scope of impeachable offenses to include those misconducts that occur while in pursuit of the office. [LR19CA]

SENATOR NELSON: Well, then who's going to determine, if it's a neglect of duty, that's it gross, flagrant, corrupt and all these other things that you say? Who... [LR19CA]

SENATOR AVERY: This body. [LR19CA]

SENATOR NELSON: This body. [LR19CA]

SENATOR AVERY: This body. And whether it rises to the level of conviction and removal from office would be up to the Supreme Court. [LR19CA]

SENATOR NELSON: And if he...if the Legislature finds that he failed to file a report and it was at the disadvantage of his opponent, it would be up to us to say that that was a gross, flagrant, and corrupt exercise? [LR19CA]

SENATOR AVERY: Our judgment would be the controlling factor. But just an unintentional misfiling or missed date, a missed filing deadline, that has...we...that happens frequently. Nobody has ever suggested that that's impeachable. [LR19CA]

SENATOR NELSON: But my suggestion is that this fellow that's running for the Board of Regents... [LR19CA]

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SENATOR GLOOR: One minute, Senators. [LR19CA]

SENATOR NELSON: ...and we don't really ever want him to make it there, that we have a possibility of controlling that somewhat and making sure one way or another he never does achieve that office. Is that correct? [LR19CA]

SENATOR AVERY: I don't think that would happen. I have more confidence in my colleagues in this body. [LR19CA]

SENATOR NELSON: Well, I would hope not too. But I see political implications here if we're going to get into this matter of impeachment for misdemeanors and when we really don't know what misdemeanors are. [LR19CA]

SENATOR AVERY: But we do, sir. [LR19CA]

SENATOR NELSON: All right. But they're based on case law and what the Supreme Court has said that they are. Is that correct? [LR19CA]

SENATOR AVERY: Yes, absolutely. And it's clear and it's a very high threshold. [LR19CA]

SENATOR NELSON: Yeah, but from that point on, if we decide to impeach, then there's a hearing before the Supreme Court and they would decide how...the gravity of the offense. [LR19CA]

SENATOR AVERY: Yes. And if we are frivolous in our behavior, the Supreme Court would let us know in a heartbeat. [LR19CA]

SENATOR NELSON: Would let us what? [LR19CA]

SENATOR AVERY: Let us know in a heartbeat. [LR19CA]

SENATOR NELSON: All right. Well, thank you, Senator Avery. These are some of the questions I pose. [LR19CA]

SENATOR GLOOR: Time, Senators. [LR19CA]

SENATOR NELSON: And I continue to listen. [LR19CA]

SENATOR GLOOR: Thank you, Senator Nelson and Senator Avery. Mr. Clerk, items for the record? [LR19CA]

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CLERK: Mr. President, hearing notices from the Appropriations Committee and the Revenue Committee, signed by the respective Chairs. Senator Brasch has an amendment to LB1039 to be printed. A series of name adds: Senators Nordquist and Mello to LB996; Senators Sullivan, Schilz, Christensen, Larson to LB1156; Senator Karpisek to LB1165; Senators Bloomfield, Harms, Harr, and Schumacher to LB998. (Legislative Journal pages 348-349.) [LB1039 LB996 LB1156 LB1165 LB998]

Mr. President, a priority motion: Senator McGill would move to adjourn the body until Thursday morning, January 26, at 9:00 a.m.

SENATOR GLOOR: Members, you have heard the motion to adjourn until January 26 at 9:00 a.m. Those in favor say aye. Those opposed, nay. We stand adjourned.