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Floor Debate
April 03, 2012

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SENATOR GLOOR PRESIDING

SENATOR GLOOR: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the fifty-fifth day of the One Hundred Second Legislature, Second Session. Our chaplain for today is Reverend Kevin Burkhardt of the Osmond and Pierce United Methodist Churches in Osmond, Nebraska, Senator Sullivan's district. Please rise.

REVEREND BURKHARDT: (Prayer offered.)

SENATOR GLOOR: Thank you, Reverend Burkhardt. I call to order the fifty-fifth day of the One Hundred Second Legislature, Second Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

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

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

CLERK: I have no corrections, Mr. President.

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

CLERK: Your Committee on Enrollment and Review reports...

SENATOR GLOOR: (Gavel)

CLERK: ...LB817, LB817A, LB793, LB793A, and LB979, all to Select File, some having Enrollment and Review amendments. And that's all that I have at this time, Mr. President. (Legislative Journal page 1335.) [LB817 LB817A LB793 LB793A LB979]

SENATOR GLOOR: Thank you, Mr. Clerk. We will now proceed to the first item on the agenda, Mr. Clerk.

CLERK: Mr. President, LB1053A. No E&R amendments. Senator Loudon would move to amend with AM2621. (Legislative Journal page 1310.) [LB1053A]

SENATOR GLOOR: Senator Loudon, you are recognized to open on your amendment.

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[LB1053A]

SENATOR LOUDEN: Thank you, Mr. President and members of the Unicameral.
AM2621... [LB1053A]

SENATOR GLOOR: (Gavel) [LB1053A]

SENATOR LOUDEN: ...is technical in nature and is necessary to bring LB1053A into conformance with LB968, the 2012 budget bill. It would strike some of the existing sections and become the bill. Section 1 would amend the section of LB968 that dealt with the tourism division of DED and it would eliminate the 2012-13 appropriations and reappropriate the 2011 and '12 year ending balances to the Nebraska Tourism Commission. Section 2 would amend a section of LB968 that dealt with agency cash funds and remove the State Visitors Promotion Cash Fund from DED and place it under the Nebraska Tourism Commission. And Section 3 would appropriate funds to the Nebraska Tourism Commission in fiscal year 2012-13. And there is no net fiscal impact to the state as a result of this appropriation because the funds were removed from DED in Section 1. The A bill has a July 1, 2012, effective date and carries an emergency clause. Again, the bill has no fiscal impact to the state. It is simply moving money out of DED and placing it in the tourism commission. With that, I would ask for a positive vote on this. Thank you, Mr. President. [LB1053A LB968]

SENATOR GLOOR: Thank you, Senator Louden. Members, you've heard the opening on AM2621 to LB1053A. We now move to floor debate. Senator Pahls, you are recognized. [LB1053A]

SENATOR PAHLS: Good morning, Mr. President and members of the body. I want to thank Senator Louden for this bill dealing with tourism because right now I am a tourist travelling the state of Nebraska. I happen to stop at a bakery and I order a cinnamon roll. And if you look on your desk, you can see a cinnamon roll. I pay sales taxes. I drive a little further and I'm hungry again. I stop at a grocery store. I said, I still think I need a cinnamon roll. So what do I do? I walk in and this cinnamon roll has not been prepared in that grocery store. I said, well I'd like to have that cinnamon roll but I want some frosting on it. Now if I buy that cinnamon roll without frosting on it, I don't pay sales taxes. But if I request that grocery store to put that frosting on that cinnamon roll, I pay taxes because I...they had to do some work to prepare that food. So some of you in this room have cinnamon rolls that have been already frosted and some of you, if you take a look at the cinnamon rolls, you have the frosting on top and you have a knife. That means no sales tax on that one because they didn't have to put the frosting on. See how you're saving me money. You have to be smart when you're going to spend your money on sales tax, and that's why I have this particular love for sales tax exemption. Now I'm that tourist leaving the state of Nebraska because I'm happy because I did get one cinnamon roll with taxes and one without taxes. Thank you. [LB1053A]

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SENATOR GLOOR: Thank you, Senator Pahls. Are there other senators wishing to be recognized? Seeing none, Senator Loudon, you're recognized to close on your amendment to LB1053A. Senator Loudon waives. Members, the question is, shall the amendment to LB1053A be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB1053A]

CLERK: 37 ayes, 0 nays, Mr. President, on adoption of Senator Loudon's amendment. [LB1053A]

SENATOR GLOOR: The amendment is adopted. [LB1053A]

CLERK: I have nothing further on the bill, Mr. President. [LB1053A]

SENATOR GLOOR: Senator Larson. [LB1053A]

SENATOR LARSON: Mr. President, I move that LB1053A be advanced to E&R for engrossing. [LB1053A]

SENATOR GLOOR: Members, you've heard the motion. Those in favor say aye. Those opposed say nay. LB1053A is advanced. Mr. Clerk. [LB1053A]

CLERK: Mr. President, Senator Larson, LB1020A. I have no amendments to the bill, Senator. [LB1020A]

SENATOR GLOOR: Senator Larson. [LB1020A]

SENATOR LARSON: Mr. President, I move LB1020A be advanced to E&R for engrossing. [LB1020A]

SENATOR GLOOR: Members, you've heard the motion. Those in favor say aye. Those opposed say nay. LB1020A is advanced. Mr. Clerk, continuing with the agenda. [LB1020A]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Members, please find your seats in preparation for Final Reading. Mr. Clerk, the first bill today is LB949E. [LB949]

CLERK: (Read LB949 on Final Reading.) [LB949]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB949 pass with the emergency clause attached? All those in

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favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB949]

CLERK: (Record vote read, Legislative Journal page 1336.) 48 ayes, 0 nays, 1 excused and not voting. [LB949]

SPEAKER FLOOD: LB949 passes with the emergency clause attached. Mr. Clerk, LB949A. [LB949 LB949A]

CLERK: (Read LB949A on Final Reading.) [LB949A]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB949A pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB949A]

CLERK: (Record vote read, Legislative Journal page 1337.) 48 ayes, 0 nays, 1 excused and not voting, Mr. President. [LB949A]

SPEAKER FLOOD: LB949A passes with the emergency clause attached. Mr. Clerk, LB961. [LB949A LB961]

CLERK: (Read LB961 on Final Reading.) [LB961]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB961 pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB961]

CLERK: (Record vote read, Legislative Journal pages 1337-1338.) 48 ayes, 0 nays, 1 excused and not voting. [LB961]

SPEAKER FLOOD: LB961 passes with the emergency clause attached. Mr. Clerk, LB996. [LB961 LB996]

CLERK: (Read LB996 on Final Reading.) [LB996]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB996 pass? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB996]

CLERK: (Record vote read, Legislative Journal pages 1338-1339.) 28 ayes, 20 nays, 1 excused and not voting, Mr. President. [LB996]

SPEAKER FLOOD: LB996 passes. Mr. Clerk, the next bill is LB1104, and the first vote is to dispense with the at-large reading. All those in favor vote aye; all those opposed

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vote nay. Mr. Clerk, please record. [LB996 LB1104]

CLERK: 42 ayes, 0 nays, Mr. President, to dispense with the at-large reading. [LB1104]

SPEAKER FLOOD: The at-large reading is dispensed with. Please read the title. [LB1104]

CLERK: (Read title of LB1104.) [LB1104]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB1104 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB1104]

CLERK: (Record vote read, Legislative Journal pages 1339-1340.) 44 ayes, 0 nays 4 present and not voting, 1 excused and not voting, Mr. President. [LB1104]

SPEAKER FLOOD: LB1104 passes. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign the following legislative bills: LB949, LB949A, LB961, LB996, and LB1104. Mr. Clerk, we now proceed to Select File, 2012 Speaker priority bills, Krist division, LB1155. [LB1104 LB949 LB949A LB961 LB996 LB1155]

CLERK: Mr. President, LB1155. No Enrollment and Review. Senator Brasch would move to amend with AM2699. (Legislative Journal page 1274.) [LB1155]

SPEAKER FLOOD: Senator Brasch, you're recognized to open on AM2699. [LB1155]

SENATOR BRASCH: Thank you, Mr. Speaker, and good morning, colleagues. AM2699 very narrowly allows for golf cart vehicles, commonly referred to as golf carts, to be driven on city streets only when such streets are adjacent and contiguous to a golf course. I would like to thank the Transportation and Telecommunications Committee for advancing this amendment. This very limited use of a golf cart vehicle under AM2699 is only permissible when the governing body adopts an ordinance or passes a resolution to allow residents to use their golf cart vehicle on streets adjacent to or contiguous to the golf course. An operator must have a Class O driver's license and the owner of the golf cart vehicle must have liability insurance coverage. AM2699 in its original form was LB930, a bill I introduced to allow the use of golf cart vehicles on streets per the request of constituents in my legislative district. This amendment, however, is a much narrower amendment, allowing only for golf cart vehicles to be driven on streets adjacent and contiguous to a golf course rather than throughout an entire town. There are many golf courses in my district and throughout the entire state where this is a particular concern as the streets are immediately alongside or intersecting a golf course. As in the case of Tekamah, where some only desire to store their golf cart vehicles at their homes

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because storage availability may be limited and, therefore, there is more room for others at the golf courses. These people simply want to legally drive their golf cart vehicles on streets in the course of a golf game. Adoption of AM2699 does not immediately allow for a golf cart vehicle to be driven on streets around a golf course, rather as I stated, the local governing body must determine if this is relevant and safe for their golf course and streets in question. And they must go through the public process of passing an ordinance to allow for golf cart vehicles to be driven only on those particular streets. Again, AM2699 was advanced by the Transportation and Telecommunications Committee and in very limited circumstances will allow a golf cart vehicle on streets adjacent and contiguous to the golf course. The Nebraska League of Municipalities has reviewed this amendment and signed off. I respectfully ask for your adoption of AM2699 to LB1155. Thank you, colleagues. [LB1155 LB930]

SPEAKER FLOOD: Thank you, Senator Brasch. Senator Fischer, followed by Senators Carlson, Lathrop, Schumacher, and Lautenbaugh. You're recognized, Senator Fischer. [LB1155]

SENATOR FISCHER: Thank you, Mr. President and members of the body. If you look at the committee statement on Senator Brasch's bill, LB930, which is this amendment, you will see that it was advanced from committee on a 7-0-1 vote. I was the one person who was present and not voting. Senator Brasch's bill as she first introduced it to the committee was rather broad and the committee did not support that bill. We did amend it, as Senator Brasch explained, that would narrow the scope most definitely. It allows, as Senator Brasch said, for golf carts to be driven on roads that are contiguous to a golf cart (sic). The driver must have a Class O operator's license and they must also have liability insurance. The reason I'm speaking on this bill and the reason that I did not vote for it out of committee is that I want you to be aware that this is a big policy change. As Senator Brasch first introduced her bill and as I believe you will be seeing in the future more bills introduced similar to that, it was to allow any city to decide if golf carts or other motor vehicles that we typically don't allow on the roads could be allowed in the future. That's a major policy shift to have a city decide if those vehicles can be driven on streets and roads because there are many highways also, state highways, that go through cities. That's the reason I just want you to be aware of. I do support Senator Brasch's amendment to Senator Lathrop's bill because it is very narrow in scope, and these are areas where currently people are driving their golf carts across roads because of the configuration of golf courses, and that needs to be addressed. But I would ask you to be very aware in the future and be very cautious in the future if you're going to be making policy changes with regards to golf carts or other such vehicles. With that, Mr. President, I thank you. [LB1155 LB930]

SPEAKER FLOOD: Thank you, Senator Fischer. Senator Carlson, you are recognized. [LB1155]

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SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I would like to address a question to Senator Lathrop if he would yield. [LB1155]

SPEAKER FLOOD: Senator Lathrop, will you yield to a question from Senator Carlson? [LB1155]

SENATOR LATHROP: Yes, sir. [LB1155]

SENATOR CARLSON: Thank you, Senator Lathrop. Senator Brasch read several times in introducing this amendment that adjacent to and contiguous to. What's the difference? [LB1155]

SENATOR LATHROP: I'm not sure there is a difference. I would read those as synonymous terms. But essentially I think what we're trying to do is to take care of the circumstance where you have a golf cart, and some people live on the golf course, and they get done with the 18th hole and they need to get their cart back to their own garage, which is not uncommon in more rural areas. And then in Omaha we have people crossing Woolworth Street. And so this just opens the door for the communities to regulate that. [LB1155]

SENATOR CARLSON: Well, I would agree with you, but you also have circumstances where you have the golf course, you have houses, you have a street, and then you have an intersecting street, and somebody lives a half a block down the intersecting street. And they're just...they're 50 yards further from the golf course than the person that's on that adjacent street. Does this apply to them? [LB1155]

SENATOR LATHROP: I don't think so. I would read it to be those that are right up or about the golf course. But what I will say is that the local community can still say you don't get to drive your cart out on the street at all. So we still, I think in this amendment, leave it up to the local community. [LB1155]

SENATOR CARLSON: Well, I agree with that. The local community can say you can't even be on the street. Can the local community also say that you can drive the golf cart if you live within three blocks of the course? [LB1155]

SENATOR LATHROP: That wouldn't be my reading. But adjacent and contiguous, I would say that that's something that's right up...my interpretation of that would be someone who is on the golf course, so it would be the streets that are immediately next to the golf course and no further away. [LB1155]

SENATOR CARLSON: Okay. Thank you, Senator Lathrop. Would Senator Schumacher yield? [LB1155]

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SENATOR GLOOR: Senator Schumacher, would you yield? [LB1155]

SENATOR SCHUMACHER: Yes, I will. [LB1155]

SENATOR CARLSON: Senator Schumacher, you're on the list to speak, aren't you. [LB1155]

SENATOR SCHUMACHER: Yes. [LB1155]

SENATOR CARLSON: Did you here what I just asked Senator Lathrop? How would you interpret adjacent to and contiguous to? [LB1155]

SENATOR SCHUMACHER: I would interpret adjacent to that it's got to be right next to. It couldn't go off at a perpendicular thing. And contiguous, generally that means right in a row or touching. [LB1155]

SENATOR CARLSON: So the house that has the backyard out right to the edge of the rough would be contiguous? [LB1155]

SENATOR SCHUMACHER: I would say that's contiguous if it's touching. [LB1155]

SENATOR CARLSON: And the one that's across the street would be adjacent to. [LB1155]

SENATOR SCHUMACHER: It's adjacent to the street, but I don't know if it's adjacent to the golf course. [LB1155]

SENATOR CARLSON: Okay. All right. Thank you, Senator Schumacher. I'm in support of this amendment, but I think it's not as clear as it perhaps should be. And people have various reasons for buying houses in different positions. And if they're within a block or two of the golf course, they want to be able to get there with their cart. So I don't know that this answers that, but I'd be open to listening to what others have to say. Thank you. [LB1155]

SENATOR GLOOR: Thank you, Senator Carlson. (Doctor of the day introduced.) Continuing with discussion, Senator Schumacher, you are recognized. [LB1155]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. I wasn't intending on getting involved in golf cart discussions unless they had built in telephones, but I have several towns in my district where they're driving golf carts all over the place under the all-terrain vehicle exception. Now our statutes, it's 60-6,355, say that a golf

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course (sic) is not a utility-type vehicle, but it seems to fit the definition of all-terrain vehicle. And the towns are allowed to authorize the operation of all-terrain vehicles which are defined as: anything 50 inches or less in width; has a dry weight of 900 pounds or less; travels on three or more low-pressure tires; is designed by the operator for use with no passengers or is specifically designed by the manufacturer and operator for one passenger; and has a seat or saddle. And they've been working around golf courses...carts to fit within that definition because people drive the golf carts to the little town's golf course. And if you fiddle with the seat, it fits that definition. So I'm concerned that what this bill might do--and we need to make clear that it's not intended to be more restrictive than the present law--is that it may make it clear that we don't want golf carts driven on the streets of these small towns like they've been doing for some time. And that could get a lot of people awful mad in the towns that are doing this. So I know that they're using this exception in order to do what this bill purports to try to do. And in these towns that have invested a lot of money in their golf courses on the presumption that they can drive the golf carts from their house anywhere in the little town to the golf course, they're going to be real unhappy if suddenly somebody tells them they can't be doing this anymore like they built a golf course to do. So I have some concerns, almost a reverse reaction here that by talking about golf carts, we may be closing an exception which has been working in a lot of communities. And this may be one of those cases where all...one size does not fit all, where it's perfectly okay to do this in a community which is off on a spur someplace and not so okay to do it in a town that's bigger or has a state highway running through it. But that's my concern with this, and I'm not sure where I'm at on it. Senator Brasch, would you yield to a question? [LB1155]

SENATOR GLOOR: Senator Brasch, would you yield? [LB1155]

SENATOR BRASCH: Yes. [LB1155]

SENATOR SCHUMACHER: Senator Brasch, is it your intention to be more restrictive than existing law? [LB1155]

SENATOR BRASCH: The community, the local governing body, could be more restrictive if they would choose to. [LB1155]

SENATOR SCHUMACHER: But if they don't want to be, if they want to be more liberal than your law, does your...is your intention with this particular amendment to be more restrictive than what they're getting by with now or at least think they're getting by with now? [LB1155]

SENATOR BRASCH: And I was in conversation when you had brought up your question, but I believe there is...the particular community you are speaking about, Senator Fischer is familiar with it, and they are violating a law. They are breaking law in that particular community. They are merely not choosing to enforce it. [LB1155]

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SENATOR GLOOR: One minute. [LB1155]

SENATOR BRASCH: And Fischer would be able to give the specific details to you. What this law says, adjacent and contiguous, adjacent and contiguous, and it specifies golf cart vehicles. [LB1155]

SENATOR SCHUMACHER: Senator Fischer, would you yield to a question? [LB1155]

SENATOR GLOOR: Senator Fischer, would you yield? [LB1155]

SENATOR FISCHER: Yes. [LB1155]

SENATOR SCHUMACHER: Senator Fischer, how does this not fit into the all-terrain vehicle exception if they...it fits right into the definition of an all-terrain vehicle? [LB1155]

SENATOR FISCHER: I believe with the all-terrain vehicles, Senator Schumacher, the definition had that you had to straddle the seat to where a golf... [LB1155]

SENATOR GLOOR: Time, Senators. [LB1155]

SENATOR FISCHER: ...golf cart you would not. [LB1155]

SENATOR GLOOR: Thank you, Senator Schumacher and Senator Fischer. Senator Wallman, you are recognized. [LB1155]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. Would Senator Fischer yield to a question as well? [LB1155]

SENATOR GLOOR: Senator Fischer, would you yield? [LB1155]

SENATOR FISCHER: Certainly. [LB1155]

SENATOR WALLMAN: Thank you, Senator. I, too, think, you know, we have constituents that like to drive their golf carts around. You don't have to have a driver's license to drive a golf cart, do you? [LB1155]

SENATOR FISCHER: Not on a golf course I don't believe. But the golf carts, of course, aren't allowed on city streets now. [LB1155]

SENATOR WALLMAN: Okay. Then I would like to ask Senator Brasch a question. [LB1155]

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SENATOR GLOOR: Senator Brasch, would you yield? [LB1155]

SENATOR BRASCH: Yes, I yield. [LB1155]

SENATOR WALLMAN: Was your intent in this amendment to make it so you could drive golf carts on city streets? [LB1155]

SENATOR BRASCH: To drive your golf cart vehicle on a street that is adjacent and contiguous to a golf course, you must have a Class O driver's license and you must have insurance liability coverage. Those are two stipulations. You must have a license and you must have...but you also must have the local community ordinance allowing this to happen. [LB1155]

SENATOR WALLMAN: Thank you, Senator. With disabilities and everything nowadays in some of these small communities, I wish it could be expanded because people use their golf carts, they use their so-called, what do you call them, moving wheelchairs. They go down the streets and I don't know if they have driver's licenses or not. But I see them, you know, in these small towns. So I will support this amendment but I wish it would be expanded more. Thank you, Senator. Thank you, Mr. President. [LB1155]

SENATOR GLOOR: Thank you, Senator Wallman. The Chair recognizes Senator Council. [LB1155]

SENATOR COUNCIL: Yes, thank you very much, Mr. President. And I was interested in some of the comments that Senator Fischer made with regard to the policy issues. And I'm trying to get my hands and my head around what the issue is. And if I understand it correctly, it's to provide for some legalization of operation of a golf cart by a golfer to get to and from the golf course or to cross a golf course...I mean cross a city street. I mean, I'm thinking of Field Club in Omaha where one-half of the golf course is on one side of Woolworth Avenue and the other half of the course is on the other so the golf cart has to go across the city street. But when I look at the amendment and the driver's license requirement, I guess that's where I'm having some trouble policywise. I mean, if what we're trying to address is enabling golfers to lawfully operate their golf carts to get to and through and across golf courses, I don't know whether the appropriate place to address that is to amend this section of the statute. Because when I start thinking about a requirement to have a driver's license to operate the golf cart if your primary objective is playing golf, and I have difficulty with that. And I, quite frankly, don't know how you get liability insurance on an unregistered vehicle because there's nothing in the bill that requires that the golf cart be licensed or registered. And then when I think of other similar kinds of vehicles, ATVs, we require seat belts and all kind of safety things. And then, finally, I was just reminded, I was driving back from lunch yesterday and a lot of larger cities' street maintenance departments use these little golf carts to operate between facilities. And I saw one, you know, crossing 18th Street yesterday. I

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appreciate that, you know, Senator Brasch is trying to address, you know, the fact that golfers may be operating their golf carts outside of what currently is allowed in terms of operation of motor vehicles on streets and roads, but the policy implications of this measure I find to be a bit troubling. Again, we're going to require a driver's license but we don't require it to be...the vehicle to be registered. We're going to require liability insurance and we don't require the vehicle to be registered. And if it's clearly the intent to be in relationship to golfers and their golf carts, I guess I just have a problem with amending this section of the statute to try to come up with some workable solution to this problem. Thank you. [LB1155]

SENATOR GLOOR: Thank you, Senator Council. Senators in the queue: Hadley, Christensen, Brasch, Lathrop, Schumacher, and Louden. Senator Hadley. [LB1155]

SENATOR HADLEY: Mr. President, members of the body,... [LB1155]

SENATOR GLOOR: (Gavel) [LB1155]

SENATOR HADLEY: ...first of all, I wanted to specify what the difference between adjacent and contiguous. Adjacent parcel may be a contiguous parcel but not vice versa. Adjacent or abutting parcels share common boundaries or property lines. That would mean that adjacent would be a piece of property that is adjacent or shares a boundary line with the golf course. While a contiguous parcel may not share common boundaries, i.e., with a golf course, but is deemed part of a larger area where the boundaries of the individual parcels that comprise the larger area abut each other. So what you're saying is, is that it doesn't have to butt up against the golf course but if it butts up against another property that does, that it's considered in this bill. Secondly, right now I believe the statutes say you cannot drive a golf cart on the street. We have the ATVs, which we did allow, but golf carts are not legally allowed to. I think this is a commonsense bill because you do have many golf courses where they have streets that basically run through the golf course. And unless we pass this amendment, people are technically illegal from driving from one hole to the other if they have to cross a public street. So I think this is a good amendment and I would encourage your voting for this amendment and the underlying bill. Thank you, Mr. President. [LB1155]

SENATOR GLOOR: Thank you, Senator Hadley. (Visitor introduced.) Continuing with discussion. Senator Christensen, you are recognized. [LB1155]

SENATOR CHRISTENSEN: Thank you, Mr. President. I'm not sure what this bill is accomplishing. Currently you have a number of communities that allow people to drive their golf carts in small communities, especially all the way home because it's easier for them to shed it there, saves them money, it's, in my eyes, much safer. Because I'm not saying I approve of this, but I say a lot of people drink when they golf and it's much safer if they drive that ATV home than it is a car home. I think this is going to be a bill now

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that's going to limit communities that have given the grace for people to drive that home. I have a gentleman that is very handicapped in my community that uses a golf cart to get to the grocery store. Everybody allows it. I think it's a great thing. It's harder for him to get in and out of that car than it is that golf cart. He can get it right at his door. Now we're going to have statutes saying it prohibits it. I know everybody says it's not legal now, but it's not stated it's illegal. And so I'm almost scared about the direction we're going with this. I think it's a step in the right direction but I think the communities ought to be deciding where they can go in the whole community. If the state wants to make sure they're off highways, that makes sense. I understand that. But we're almost limiting what some of our communities are doing now and it's concerning because it's going affect certain individual's rights and freedom to get around. And, again, I understand it's not stated that it's legal to do, but at the same time not allowing communities to make this decision on a broader basis than just continuous (sic), and I'm not sure I agree with everybody's definition of what we're meaning. Adjacent I understand. That's the houses that bump up against it. Continuous (sic) to me means they could go out four or five blocks. That would be continuous (sic). That would be a continuous (sic) area. That would be setting up an area that they could do that. That makes sense. But if you're saying that continuous (sic) has to be right next to the first street by the golf course or something that way, I'm not sure that's very well defined here. And I'm wondering if it doesn't need better language. So really I'd really like to see more discussion on this and maybe even a little better language clarification because why can't the community set up a continuous (sic) block area? Would Senator Schumacher yield to a question?
[LB1155]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Senator Schumacher, would you yield to Senator Christensen?
[LB1155]

SENATOR SCHUMACHER: Yes. [LB1155]

SENATOR CHRISTENSEN: Senator Schumacher, did I understand you right when you were defining continuous (sic) that it had to be just the first area of the house? [LB1155]

SENATOR SCHUMACHER: When I listen to the definition that I think Senator Hadley pulled up, contiguous, that I think was a pretty good definition. But everything in a small town is contiguous to everything else. So I'm not so sure that this doesn't just say in a small town we could do it because if contiguous is everything within a set of boundaries surrounding the golf course or near the golf course, that's kind of what a small town is.
[LB1155]

SENATOR CHRISTENSEN: Well, that's why I agree. If that's what it means literally that community could set it up for the whole town being continuous (sic), then I'd support this

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in a heartbeat. [LB1155]

PRESIDENT SHEEHY: One minute. [LB1155]

SENATOR CHRISTENSEN: Thank you. But...so is that your interpretation now is they could set up the community? [LB1155]

SENATOR SCHUMACHER: Well, I think we need to build a legislative record that that's our intent that in a small community where everything is very small and very defined, small-town boundaries, that we mean for these things to be able to...particularly where there's no state highway involved, that everything is contiguous and they can drive them all over town. [LB1155]

SENATOR CHRISTENSEN: Thank you. Thank you, Mr. President. [LB1155]

PRESIDENT SHEEHY: Thank you, Senator Christensen. Members requesting to speak on AM2699 to LB1155, we have: Senator Brasch, followed by Senator Schumacher, Senator Louden, Senator Price, and Senator Christensen. Senator Brasch. [LB1155]

SENATOR BRASCH: I want to thank all my good colleagues here for this discussion ongoing and some excellent points are made. And for Senator Christensen, it's a wonderful community, like yours, that is simply looking the other way when laws are broken. Not all communities look the other way. In Tekamah, for example, these streets and intersections are right within embodied in the golf course. They do not want to be breaking the law. They would like to put it on record. Senator Hadley called this common sense. Again, AM2699 is only permissible when the governing body adopts an ordinance or passes a resolution to allow the residents to use their golf cart vehicles on streets that are adjacent or contiguous to the golf course. Others have mentioned the expansion of this. At this time, this is not what we are attempting to do. We simply want to address a real concern and a real problem that is happening in many, not just Tekamah but many neighborhoods, communities. Contiguous means right next to. Thank you, and I do ask for your support moving forward. I am happy to answer questions. But this is a very narrow amendment. Thank you, colleagues. [LB1155]

PRESIDENT SHEEHY: Thank you, Senator Brasch. Senator Schumacher. [LB1155]

SENATOR SCHUMACHER: Right now...thank you, Mr. President, members of the body, right now an all-terrain vehicle, which is what these communities are using the exception under in order to be able to facilitate the needs of their people, means that it's 50 inches or less in width--I believe that's what the golf carts measure--has a dry weight of 900 pounds or less, travels on three or more low-pressure tires, is designed for operator use with no passengers or is specifically designed by the original manufacturer/operator in one passenger. They make it fit that definition. They can

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modify the seat so it fits the next one, has a saddle or seat designed to be straddled by the operator, and has a handlebar or other steering assembly. So they've been licensing these things in quite a few small towns by the town board saying that it's okay to drive them on the city streets to and from the golf course. And I'm afraid that this is going to make this look a lot more restrictive than what many people are doing right now. And this is not trying to get around it. This is them applying the law that exists now. So it's not like these little towns have gone out of the way to build golf courses and gone to great expense and are currently enjoying them are trying to pull a fast one. They're just reading the law and doing what it says. Now I can go along with this amendment perfectly well if contiguous means everything in a small town because everything is touching everything and there's a defined boundary around a small town. But to do something that all of a sudden make these people house their golf carts on the...and creating the expense of a building in a small town because they can't drive them home anymore or in danger of getting picked up driving home is I don't think what we want to do. Now some city attorneys may interpret things differently than other city attorneys, and some people may not want to modify a golf cart to straddle a seat, but, you know, we're messing with something that's going to get a lot of folks in small towns really, really upset if the definition is not contiguous means everything in that small town because everything touches everything else and it has a...surrounded by a defined boundary. These are major investments, major economic development investments, that these towns have made, and... [LB1155]

PRESIDENT SHEEHY: (Gavel) [LB1155]

SENATOR SCHUMACHER: ...right now it is very...they've worked out a way where it's very convenient for them to meet a need of a small town. So I am really concerned unless we make it very clear that contiguous means everything in that small town that we're going backwards here and we're going to have a repercussion. Thank you, Mr. President. [LB1155]

PRESIDENT SHEEHY: Thank you, Senator Schumacher. Senator Louden. [LB1155]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. As we've had this discussion on what you can drive on the highways and what you can drive on the streets and all that, and I think maybe perhaps Senator Schumacher has kind of went down that road I guess, so to speak, you want to remember that street and highways are public thoroughfares. You're supposed to be able to go up and down those highways or streets or whatever with whatever you have to in order to move it from one place to the other. In other words, if you wanted to move your golf cart from your house to someplace else, you certainly can't go across people's private property to do that. You do down a public thoroughfare. And that's what we're overlooking here is that that is a public thoroughfare. Your highways are all public thoroughfares. You can move houses. You can move trucks. You can move cars. You can move a herd of

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cattle. Any of that can go down a public thoroughfare. When you talk about some of the other regulations, those are regulations on the highways that are put up by the Department of Roads and most of it has to do with flagging system for safety sake and also for speed. In other words, you can...I can drive my farm tractor down a highway providing I don't go over 25 mile an hour and of course the Department of Roads with their regulations, you have to have a slow-moving vehicle sign on the back. So that's part of it. As far as these golf carts, I think perhaps do we even need legislation. I've thought that they can be driven on those streets or highways anyway. There shouldn't be any law against whether it's a golf cart, whether it's a bicycle, or whether it's a tricycle, or whatever you're going down that street with. So I think this legislation, I know Senator Brasch is trying to clarify it because there's some different towns around in places that have brought this forward as an issue I think where they have their housing developments on a golf course. But I think really we're probably talking about something that really didn't need any legislation because you got to remember, those are public thoroughfares. If you had a herd of cattle on the west side of Lincoln and you wanted to move them over to the east side of Lincoln, O Street is a state highway down through town, theoretically you ought to be able to move them right down O Street. And I don't know as there's anything against the law that says you can't because that's a public thoroughfare. We've seen it happen over the years of trailing cattle around. I was in on a trail when we moved cattle down the highway to go down into Chadron and over to their fairgrounds. And, good lord, the Department of Roads had a real fit over it until we pointed out that some of that stuff, that that was public thoroughfare and they still had to, if they wanted to have someone out there for safety purposes, then they could certainly do that. With that, I will support the amendment that Senator Brasch is trying to bring forwards. But I, again, I question whether this was even a necessary conversation to start with. Thank you, Mr. President. [LB1155]

PRESIDENT SHEEHY: Thank you, Senator Louden. Senator Christensen. [LB1155]

SENATOR CHRISTENSEN: Thank you, Mr. President. Again, I appreciate Senator Schumacher's stance on what he believes this contiguous means. I agree with him that...and I just want that on the record that that's how I'm going to vote, that this being contiguous does mean property after property. So the city is going to set up basically like a zone where they can drive these, because I believe that's the way it should be. I will still state that since we've not had a law saying that you can or can't do this, we have had people on both sides of this. But by putting this in the statute, we're now going to have that law. And you take small communities that allow anybody to use a golf cart to go to the post office and back, grocery store and back, and sometimes that's the easiest, best mode of transportation for some elderly, it is going to prohibit that now because they don't have a golf course, unless they develop a one-hole course on the side of town or something. Unfortunately, there's unintended consequences to everything that we do. And right now, you know, we're setting up the situation of some communities without golf courses now are going to be tied under here, they can't allow

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them golf carts. Yes, it's not been stated we could. I was even out in the lobby and there was former senators arguing over what this meant. They're having the same discussion we are. I thought it was ironic how some thought we're better off without this and how some think we're better with this bill. But to me, the key part is this contiguous statement in here and what that means, and that's why I got up again to state I believe that means a city can set up the whole community; they could set up eight adjoining streets; they could set it up in the direction that they want to. I think that is good because I have communities, my home community does not allow them no more. They used to. Now everybody sneaks in the back way. And unfortunately we haven't stopped them, we just changed the route. We put this in place, they might allow it again. Again, there's safety reasons for it, as I mentioned earlier. And I think that we need to make sure we understand what we're talking about here to vote on this intelligently that contiguously means the city going to set up could be block after block. I understand why we want to prohibit down the highways. That's common sense. But at the same time, the community ought to be able to allow them to cross that highway if that's their choice. Thank you, Mr. President. [LB1155]

PRESIDENT SHEEHY: Thank you, Senator Christensen. Senator Bloomfield. [LB1155]

SENATOR BLOOMFIELD: Thank you, Mr. President. Good morning, colleagues. Several of the communities in my district aren't within five miles of a golf course. Several of these communities allow golf carts to be driven around town, particularly by people that have trouble getting in and out of their cars or having a regular way of transportation. These carts serve as a handicapped vehicle for them. I think what we're doing with this bill, and I know it is not Senator Brasch's intent, is I think we're attacking the very character of our small towns. The small towns have allowed this to go on without any major issue, and now we're putting into statute a bill that would take away their ability to do this. And I can't support this. Again, I know it was not Senator Brasch's intent to cause harm to any of these small towns, but I think if we pass this we will. I like the idea of not letting the things on the highway other than to cross them. I think maybe this needs to be revisited next year in a different bill. And, again, I cannot and will not support this. Thank you. [LB1155]

PRESIDENT SHEEHY: Thank you, Senator Bloomfield. Seeing no additional requests to speak, Senator Brasch, you're recognized to close on AM2699 to LB11... [LB1155]

SENATOR BRASCH: Again, thank you for all the... [LB1155]

PRESIDENT SHEEHY: Senator Brasch, just a moment please. Mr. Clerk, you have an amendment to the amendment. [LB1155]

CLERK: Okay. Senator...I assume we're amending Senator Brasch's amendment, is that right? Okay. So we're amending AM2699. We'll get it in the system soon, but let me

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read it if I may. Amend AM2699 at the end of page 13, line 6--is that line 6--add, "as defined by the governing body in the authorizing city ordinance." Okay. (FA69, Legislative Journal page 1340.) [LB1155]

PRESIDENT SHEEHY: Senator Schumacher, you're recognized to open on your floor amendment to AM2699. [LB1155]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. This kind of got me excited this morning because I have...I know several communities in my district and I would almost bet that most of you in rural areas have similar communities that these golf carts are being used to drive between a person's home and the golf course. So this is a very simple amendment that puts into the AM2699 what Senator Christensen and I have been talking about as being a good thing. And it simply says...resolves the issue of what adjacent and contiguous means by adding language, "as defined by the governing body," or board rather, "in the authorizing ordinance." So the city or village would authorize golf courses (sic) and then in that ordinance say where they could be driven within their town board. So the thing would read, a county board, and I guess I'm going to have to, if I can, add another thing, I can catch another paragraph to add the same language--will I need another FA to do this--at the end of line 6 so that the county or city board would define what adjacent and contiguous means. This one, the amendment I just filed, referred only to the paragraph with...referred to a county board. If this passes, we can do it again for the city. Basically, just move the language because we don't need this in the case of a county. But in the case of a city, we would...it would then read and would be at the end of line 6, page 13, a city or village may adopt an ordinance authorizing the operation of golf cart vehicles within the corporate limits of the city or village if the operation is on streets adjacent and contiguous to a golf course as defined by the governing board in the authorizing ordinance. So it would give that leeway to a city as to how far one of those particular golf carts could go. And I think that's appropriate. It makes this fit. I doubt very much if Omaha is going to authorize golf carts on the street, but I sure know a number of small cities of the second class and villages that will do it in a minute because they've been trying to work with existing law to facilitate it. So basically I would encourage your vote for this clarifying amendment and give these towns that have invested in golf carts...courses an opportunity to continue to do what they've been doing and enjoy the good life in the small community. Thank you. [LB1155]

PRESIDENT SHEEHY: Thank you, Senator Schumacher. You have heard the opening of the Schumacher floor amendment to AM2699. Seeing no requests to speak, Senator Schumacher, you're recognized to close. Senator Schumacher waives closing. The question before the body is on the Schumacher floor amendment to AM2699. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB1155]

CLERK: 13 ayes, 21 nays, Mr. President, on the amendment to the amendment.

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[LB1155]

PRESIDENT SHEEHY: The Schumacher floor amendment is not adopted. Senator Brasch, you're now recognized to close on AM2699 to LB1155. [LB1155]

SENATOR BRASCH: Thank you, Mr. Speaker, and thank you, colleagues. Again, this is a very narrow amendment focussing on a particular situation where it is contiguous and adjacent to. There's not an "or" in there. And this does affect more than Tekamah. There are other statewide communities. And in respect to the committee that did vote this out, I did not vote for the amendment. I believe that that's down the road for another day perhaps. And in light of time, I do ask for your support to address this commonsense, practical solution for owners, licensed and insured, who live adjacent to and contiguous to a golf course. I ask for your support in this vote. Thank you. [LB1155]

PRESIDENT SHEEHY: Thank you, Senator Brasch. You have heard the closing. The question before the body is on the adoption on AM2699 to LB1155. All those in favor vote yea; opposed, nay. Senator Brasch. [LB1155]

SENATOR BRASCH: I would like to request a call of the house, please. [LB1155]

PRESIDENT SHEEHY: There has been a request for the call of the house. The question before the body is, shall the house be placed under call? All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB1155]

CLERK: 35 ayes, 0 nays, Mr. President, to place the house under call. [LB1155]

PRESIDENT SHEEHY: The house is placed under call. All unexcused senators please report to the Legislative Chamber. All unauthorized personnel please step from the floor. The house is under call. Senators, please record your presence. Senator Council, the house is under call. Senator Brasch has indicated that we may proceed. Members, you're voting on the adoption of AM2699 to LB1155. Mr. Clerk, there's been a request for a roll call. [LB1155]

CLERK: (Roll call vote taken, Legislative Journal pages 1340-1341.) 31 ayes, 10 nays, Mr. President, on the amendment. [LB1155]

PRESIDENT SHEEHY: AM2699 is adopted. The call is raised. [LB1155]

CLERK: I have nothing further on the bill, Mr. President. [LB1155]

PRESIDENT SHEEHY: Senator Larson, you're recognized for a motion. [LB1155]

SENATOR LARSON: Mr. President, I move LB1155 be advanced to E&R for

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engrossing. [LB1155]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB1155 advances. We will now proceed to LB1091. [LB1155 LB1091]

CLERK: LB1091. I have Enrollment and Review amendments, Senator. (ER270, Legislative Journal page 1282.) [LB1091]

PRESIDENT SHEEHY: Senator Larson. [LB1091]

SENATOR LARSON: Mr. President, I move the E&R amendments to LB1091 be adopted. [LB1091]

PRESIDENT SHEEHY: You have heard the motion on the adoption of the amendments. All those in favor say aye. Opposed, nay. They are adopted. [LB1091]

CLERK: I have nothing further on LB1091, Senator. [LB1091]

PRESIDENT SHEEHY: Senator Larson. [LB1091]

SENATOR LARSON: Mr. President, I move LB1091 be advanced to E&R for engrossing. [LB1091]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB1091 advances. We will now proceed to LB1091A. [LB1091 LB1091A]

CLERK: LB1091A. Senator, I have no amendments to the bill. [LB1091A]

PRESIDENT SHEEHY: Senator Larson. [LB1091A]

SENATOR LARSON: Mr. President, I move LB1091A be advanced to E&R for engrossing. [LB1091A]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB1091A advances. We will now proceed to LB1158. [LB1091A LB1158]

CLERK: LB1158. Senator, there are Enrollment and Review amendments. (ER271, Legislative Journal page 1283.) [LB1158]

PRESIDENT SHEEHY: Senator Larson. [LB1158]

SENATOR LARSON: Mr. President, I move the E&R amendments to LB1158 be adopted. [LB1158]

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PRESIDENT SHEEHY: You have heard the motion on the adoption of the amendments. All those in favor say aye. Opposed, nay. They are adopted. [LB1158]

CLERK: I have nothing further on LB1158. [LB1158]

PRESIDENT SHEEHY: Senator Larson. [LB1158]

SENATOR LARSON: Mr. President, I move that LB1158 be advanced to E&R for engrossing. [LB1158]

PRESIDENT SHEEHY: You have all heard the motion. All those in favor say aye. Opposed, nay. LB1158 advances. We will now continue on the agenda under Select File, Hadley division, LB804. [LB1158 LB804]

CLERK: LB804. Senator, I have E&R amendment pending. (ER262, Legislative Journal page 1275.) [LB804]

PRESIDENT SHEEHY: Senator Larson. [LB804]

SENATOR LARSON: Mr. President, I move the E&R amendments to LB804 be adopted. [LB804]

PRESIDENT SHEEHY: You have heard the motion on the adoption of the amendments. All those in favor say aye. Opposed, nay. They are adopted. [LB804]

CLERK: I have nothing further on LB804, Senator. [LB804]

PRESIDENT SHEEHY: Senator Larson. [LB804]

SENATOR LARSON: Mr. President, I move LB804 be advanced to E&R for engrossing. [LB804]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB804 advances. We'll now proceed to LB825. [LB804 LB825]

CLERK: LB825, Senator, first of all I have Enrollment and Review amendments. (ER272, Legislative Journal page 1312.) [LB825]

PRESIDENT SHEEHY: Senator Larson. [LB825]

SENATOR LARSON: Mr. President, I move the E&R amendments to LB825 be adopted. [LB825]

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PRESIDENT SHEEHY: You've heard the motion on the adoption of the amendments. All those in favor say aye. Opposed, nay. They are adopted. [LB825]

CLERK: Senator Dubas would move to amend with AM2722. (AM2722, Legislative Journal page 1341.) [LB825]

PRESIDENT SHEEHY: Senator Dubas, you're recognized to open on AM2722 to LB825. [LB825]

SENATOR DUBAS: Thank you very much, Mr. Lieutenant Governor. Good morning, colleagues. There have been questions that have come to my attention since LB825 was advanced to Select File surrounding the amendment that Senator Cook introduced. And as much as I believe, and I do firmly believe that this is a good...her amendment was a good amendment and a good addition to the bill and really would allow for some...us to capture some efficiencies and ultimately save money, I just feel LB825 is far too important at this time to jeopardize with any uncertainties or questions about the impact of that amendment on what we want to do with improving ACCESSNebraska. So with that, I have introduced an amendment. I have visited with Senator Cook about this, and while I know she is not happy, she's been working on this issue for a long while also, I think she agrees with me that LB825 and improvements to ACCESSNebraska are critical at this point in time. And has agreed with some degree of reluctance, but has agreed to the introduction of this amendment and striking that language. You know, I think our fiscal note...the fiscal note that our analysts have come forward with is a very good one. It allows the department a lot of latitude to determine the appropriate staffing needs in the appropriate locations. It is requiring the department to hire eight community outreach workers. Well, according to testimony that Director Adams introduced on LB825 in January, they already have those workers in place. So we're not requiring them to hire eight additional community support workers. We're just saying this is the number we feel you need to have in order to act as that liaison between the department and the community-based organization. So that could possibly even reduce our current fiscal note by a little over \$200,000 of General Fund money. You know, my bill, we...as we put the fiscal note together thought 36 social workers would serve the purpose in helping individuals navigate this system. The department already has caseworkers employed. I can't give you the specific number, but we're not looking at hiring 36 additional caseworkers. It's just, we feel that 36 caseworkers again allowing the department that latitude to determine where they are best placed, I think will serve the purpose of what we're trying to do to improve ACCESSNebraska. And again, I feel that we've given the department a great deal of flexibility in assessing the needs, assessing the case loads of the existing offices. We aren't looking at opening any new offices. We're looking at using what we have in place right now. They can determine those staffing needs, they can determine the hours that those offices are open. It allows them to enter into contracts... [LB825]

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PRESIDENT SHEEHY: (Gavel) [LB825]

SENATOR DUBAS: ...with community-based organizations. And I think again, I stated this on General File and I do feel that this is probably one of the better components of the bill. It's allowing the department to enter into contracts with those local agencies who know the people, who know the services that are available, and with a little support from the department in some training in how to be effective in helping their customers and their clients navigate the system, I think this is a win-win for everybody. It creates that cooperative partnership between the department and those organizations at the local level. We are already seeing that other states who implemented programs similar to what we have in place, what we have in ACCESSNebraska, have retreated from that type of a service delivery system. They haven't thrown the entire system out but they have gone back to create this more hybrid type of an application process because there are simply some things that a computer can't replace. And some of those things are actual live, warm bodies who can...some of the...again, I'm not looking to throw ACCESSNebraska completely out and many people can use ACCESSNebraska in a very effective manner. Their cases aren't maybe as involved, they don't need the dedicated caseworker. They don't need that face-to-face interaction, but some of these cases are very complex. And especially at the beginning when you're reapplying or applying for new benefits and figuring out how you navigate the system, having those community-based specialists in place, having those caseworkers in place, who can determine, you know, what you're eligible for, again can create a lot of efficiencies that we just don't have in place right now. So the bill, as amended, puts that human factor back in place. It provides for those dedicated caseworkers as well as the training and resources for our community-based organizations. And again, I've introduced the amendment to strike Senator Cook's amendment from General File, not because I don't think it's a good idea, but I just...there were questions we weren't able to give substantive answers to. And I think it's important if we're asking you to support something that we can give you, relevant and timely information, and at this point in time we don't have the ability to provide those specific answers. So I would ask for your support on AM2722 and your continued support for LB825 because it is...this program and the changes we're seeking to change with this program are very critical. Thank you, Mr. Lieutenant Governor. [LB825]

PRESIDENT SHEEHY: Thank you, Senator Dubas. You've heard the opening of AM2722 to LB825. Member requesting to speak: Senator Cook. [LB825]

SENATOR COOK: Thank you, Mr. President and good morning, colleagues. I would like to start off by thanking Senator Dubas for her willingness to include certain provisions from my LB1041 in her bill related to ACCESSNebraska. In short, I am in disagreement with some of the points cited for the fiscal note related to the portions that I...that were added due to my amendment. One is that it kind of struck me as odd is the example of a

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false attesting to a pregnancy which one was not currently involved in. So, first of all, the idea that someone would come in there to do that in Nebraska, and then realizing that there are consequences, criminal, civil consequences to that, are absurd, in my opinion. I plan to come forward with some more work in this area, but in the meantime I rise in support of Senator Dubas' amendment this morning. Thank you. [LB825 LB1041]

PRESIDENT SHEEHY: Thank you, Senator Cook. Seeing no additional requests to speak, Senator Dubas, you're recognized to close on AM2722 to LB825. [LB825]

SENATOR DUBAS: Thank you. I thank Senator Cook for her cooperation on this. I know this was difficult. But again, this bill is very, very important and I would appreciate your support on the amendment and the underlying bill. Thank you. [LB825]

PRESIDENT SHEEHY: Thank you, Senator Dubas. You've heard the closing of AM2722 to LB825. The question for the body is on the adoption of AM2722. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB825]

CLERK: 33 ayes, 0 nays, Mr. President, on the adoption of Senator Dubas' amendment. [LB825]

PRESIDENT SHEEHY: AM2722 is adopted. [LB825]

CLERK: I have nothing further on the bill, Mr. President. [LB825]

PRESIDENT SHEEHY: Senator Larson. [LB825]

SENATOR LARSON: Mr. President, I move LB825 be advanced to E&R for engrossing. [LB825]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB825 advances. We'll now proceed to LB825A. [LB825 LB825A]

CLERK: LB825A, Senator, I have no amendments to the bill. [LB825A]

PRESIDENT SHEEHY: Senator Larson. [LB825A]

SENATOR LARSON: Mr. President, I move LB825A be advanced to E&R for engrossing. [LB825A]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB825A advances. We'll now proceed to LB872. [LB825A LB872]

CLERK: LB872, there are Enrollment and Review amendments. (ER273, Legislative

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Journal page 1317.) [LB872]

PRESIDENT SHEEHY: Senator Larson. [LB872]

SENATOR LARSON: Mr. President, I move the E&R amendments to LB872 be adopted. [LB872]

PRESIDENT SHEEHY: You have heard the motion on the adoption of the amendments. All those in favor say aye. Opposed, nay. They are adopted. [LB872]

CLERK: I have nothing further on LB872, Senator. [LB872]

PRESIDENT SHEEHY: Senator Larson. [LB872]

SENATOR LARSON: Mr. President, I move that LB872 be advanced to E&R for engrossing. [LB872]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB872 advances. We'll now move to agenda items under Select File, 2012 senator priority bills, LB1063. [LB872 LB1063]

CLERK: LB1063, Senator, first of all, I have Enrollment and Review amendments. (ER220, Legislative Journal page 1037.) [LB1063]

PRESIDENT SHEEHY: Senator Larson. [LB1063]

SENATOR LARSON: Mr. President, I move the E&R amendments to LB1063 be adopted. [LB1063]

PRESIDENT SHEEHY: You have heard the motion on the adoption of the amendments. All those in favor say aye. Opposed, nay. They are adopted. [LB1063]

CLERK: Senator Cook would move to amend with AM2706. (AM2706, Legislative Journal page 1318.) [LB1063]

PRESIDENT SHEEHY: Senator Cook, you're recognized to open on AM2706 to LB1063. [LB1063]

SENATOR COOK: Good morning. Thank you, Mr. President and good morning again, colleagues. I stand before the body as the introducer of LB1063, the Children's Health and Treatment Act. LB1063 is my personal priority bill during this legislative session. I would like to thank the body for advancing LB1063 to this stage of debate so that the amended version of the legislation could be reviewed by the legislative Fiscal Office.

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Unfortunately, after that process and after meeting one-on-one with members of the agency, there is little clarity that has been gained by the adoption of the previously agreed-to amendments on General File. As you can see, there is an A bill and an updated fiscal note. I will be in my next few times at the mike when we get to the part where we're talking about LB1063A, I will have a motion to IPP it. So any of you who have gotten notice to talk about that, you don't need to worry about that at this time. Okay, going back to LB1063, I am introducing a new amendment. At this moment it is not AM2706. It is one yet to have a number, but this new amendment addresses continued issues from the agency. At this point, I would highlight the portions of AM2706 that will be reflected in the brand new amendment to...that replaces AM2706. This amendment primarily strikes all restatements of existing federal law and reduces the role of LB1063 to requiring the Department of Health and Human Services to report to the Legislature's Health and Human Services Committee the number and types of denials of behavioral health services for Medicaid-eligible children. Again the provisions of LB1063 that are leading to the uncertain fiscal impact, they're going to be removed by the amendment. We're also going to retain the part of the proposal that sheds sunlight on an important government function, that is to provide basic preventive healthcare to our state's children. The reporting requirements contained in the legislation, as amended, will give the Legislature and a very concerned public an excellent gauge about how this critical care and the public policy supporting it is carried out. I want to again thank the committee for giving this due consideration of this legislation and for unanimously advancing LB1063 from committee. I would like to thank, in particular, Chairperson Campbell, along with committee counsel, Michelle Chaffee, for recognizing the critical importance of this legislation as major components of child welfare reform in a preventative capacity. And with that, Mr. President, colleagues, and Mr. Clerk, I would like to replace AM2706 with AM2718. Thank you. [LB1063]

PRESIDENT SHEEHY: Mr. Clerk, you have an amendment on your desk. [LB1063]

CLERK: Senator Cook, so I'm in sync with you, Senator, you want to withdraw AM2706? [LB1063]

SENATOR COOK: Yes, sir. [LB1063]

CLERK: Thank you. [LB1063]

PRESIDENT SHEEHY: AM2706 is withdrawn. [LB1063]

CLERK: And Senator Cook would move to amend, Mr. President, with AM2718. (Legislative Journal pages 1342-1343.) [LB1063]

PRESIDENT SHEEHY: Senator Cook, you're recognized to open on AM2718 to LB1063. [LB1063]

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SENATOR COOK: Okay. I'm certain none of my colleagues...thank you, Mr. President...will have a problem with me merely continuing my remarks and really using them to...continuing my original opening remarks with AM2718. As I've mentioned to you earlier, AM2718 to LB1063 removes the references to the specific federal act which is called Medicaid in the popular parlance of the language. It also highlights the reporting...collection and reporting on the authorization and denial for behavioral health services for children under the age of 19. It reinforces, as the other amendment did, the one that you took up on General, that the department shall report to Health and Human Services. It changes, however, the reporting date. I'm sorry, it does not change the reporting date. They still have a first report due on October 1, 2012, so we can have it in case we want to draft legislation in relation to that, and thereafter on the 1st of January, the 1st of April and the 1st of July. In Section 5 of AM2718, the department shall promulgate...adopt and promulgate rules and regs to carry out this act on or before April 1. The previous draft had them doing it by the first and through input from the agency, we moved it to April. And with that, I would yield the balance of my time to the Chair and respectively ask that we have a call of the house, and that the body advance AM2718 as well as LB1063. Thank you. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Cook. There has...there has been a request for the call of the house. The question is, shall the house be placed under call? All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB1063]

CLERK: 25 ayes, 2 nays, to place the house under call, Mr. President. [LB1063]

PRESIDENT SHEEHY: The house has been placed under call. All unexcused senators please report to the Legislative Chamber. All unauthorized personnel please step from the floor. The house is under call. Senators, please record your presence. Senator Cook, there are no requests to speak. Would you like to start your closing? [LB1063]

SENATOR COOK: Thank you, Mr. President and thank you, colleagues. I've had a couple of questions. I apologize for the rambling nature. We're waiting for AM2718 to come back from the Bill Drafters Office. It is back, it is on your laptop computers. What I would like to...I guess, I'll just go through it section by section. We've been meeting and communicating with the agency since General File as promised. This amendment addresses the issues that were raised relative to the fiscal note. In essence, it removes the fiscal burden of the bill. So Section 1 names the bill the Children's Health and Treatment Act. Section 2 states the purpose. Section 3 offers definitions. Section 4, those reporting requirements they were in the last version which you did adopt to report to the Health and Human Services Committee on utilization controls, including, but not limited to, the rates of initial service authorizations, reauthorizations subsequent to initial service authorizations, denials for behavioral health services for children under 19 years of age. Gives deadlines for those reports October 1, that's so we can have it in hand to

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potentially make some policy decisions on that information, January 1, 1 April, and 1 July. Section 5, the department shall adopt and promulgate rules and regulations to carry out this act on or before the 1st of April, 2013. We are still here in session at that time, so again that offers us an opportunity to get some good information. And that is what the amendment proposes to do. I would ask that you adopt AM2718 to LB1063 and advance the bill proposal to Final Reading. Thank you, Mr. President. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Cook. Members, you've heard the closing of AM2718 to LB1063. Senator Cook, you prefer a machine vote? Members, the question before the body is on the adoption of AM2718 to LB1063. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB1063]

CLERK: 34 ayes, 4 nays, Mr. President, on adoption of the amendment. [LB1063]

PRESIDENT SHEEHY: AM2718 is adopted. The call is raised. [LB1063]

CLERK: I have nothing further on the bill, Mr. President. [LB1063]

PRESIDENT SHEEHY: Senator Larson. [LB1063]

SENATOR LARSON: Mr. President, I move LB1063 be advanced to E&R for engrossing. [LB1063]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say... [LB1063]

SENATOR LANGEMEIER: Board vote. [LB1063]

PRESIDENT SHEEHY: There has been a request for a board vote on the advancement of LB1063. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB1063]

CLERK: 26 ayes, 6 nays on the advancement of LB1063. [LB1063]

PRESIDENT SHEEHY: LB1063 advances. We will now proceed to LB1063A. [LB1063 LB1063A]

CLERK: LB1063A, Mr. President, no E&Rs. Senator Cook would move to indefinitely postpone LB1063A. [LB1063A]

PRESIDENT SHEEHY: Senator Cook, you're recognized to open on your motion to indefinitely postpone LB1063A. [LB1063A]

SENATOR COOK: Thank you, Mr. President and thank you again, colleagues, for advancing the bill. With those changes there is no need for an A bill and I would like to

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move at this time to IPP LB1063A. Thank you, Mr. President. [LB1063A]

PRESIDENT SHEEHY: Thank you, Senator Cook. You've heard the opening on the motion to indefinitely postpone LB1063A. Seeing no request to speak, Senator Cook, you're recognized to close. Senator Cook waives closing. The question before the body is on the adoption of the motion to indefinitely postpone LB1063A. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB1063A]

CLERK: 44 ayes, 0 nays, Mr. President, on the motion to indefinitely postpone LB1063A. [LB1063A]

PRESIDENT SHEEHY: LB1063A is indefinitely postponed. Mr. Clerk, we will now move to items under Final Reading. Members should return to their seats in preparation for Final Reading. Mr. Clerk, we will now proceed to LB209. [LB1063A LB209]

CLERK: Mr. President, LB209, Senator Cornett would move to return the bill for a specific amendment, AM2713. [LB209]

PRESIDENT SHEEHY: Senator Cornett, you're recognized to open on your motion to return to Select File. [LB209]

SENATOR CORNETT: Thank you, Lieutenant Governor and members of the body. To refresh you on LB209, it is the bill that gives our smallest cities a one-year notification in regards to sales tax refunds for Advantage and Super Advantage credits when companies have attained that so they have a chance to budget for those refunds. Yesterday, we were tasked with finding \$10 million in the budget to trim down, so to speak. This is a bill that is important and I did not want to see it on the list as one of them that could be chopped, so to speak. So with cooperation from a number of senators, we have determined that we will do a...postpone the enactment of this until 2014, thereby reducing \$3.1 million from this year's budget. I have the support of the person that is...Senator Schilz, who has prioritized the bill, and I would appreciate your support in the amendment and returning it to Select File. Thank you. [LB209]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You have heard the opening on the motion to return LB209 to Select File for a specific amendment. Member requesting to speak, Senator Heidemann. [LB209]

SENATOR HEIDEMANN: Thank you, Mr. President and fellow members of the body. I support the return to Select File for AM2713. This is an issue in LB209 which we have worked on for several years. We've found a solution. This will just push it back one year. We normally don't like to do that but this is actually...and I support this because it's a one-time hit of money. It was going to be a hit of money whether it's in '12-13 or '13-14. It's just one time where they're coming in, getting some money from the General Fund

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to help with cash flow issues in these communities. So I support the return to Select File, I support AM2713, and I support LB209. [LB209]

PRESIDENT SHEEHY: Thank you, Senator Heidemann. Seeing no additional requests to speak, Senator Cornett, you're recognized to close. Senator Cornett waives closing. The question before the body is on the motion to return LB209 to Select File for a specific amendment. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB209]

CLERK: 44 ayes, 0 nays, Mr. President, on the motion to return the bill. [LB209]

PRESIDENT SHEEHY: The motion to return is adopted. [LB209]

CLERK: Mr. President, Senator Cornett would offer AM2713. (Legislative Journal page 1344.) [LB209]

PRESIDENT SHEEHY: Senator Cornett, you're recognized to open on AM2713 to LB209. [LB209]

SENATOR CORNETT: Thank you, Lieutenant Governor and members of the body. Again, this amendment simply delays implementation of the underlying bill, LB209, until 2014. Thank you. [LB209]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You've heard the opening of AM2713. Seeing no requests to speak, Senator Cornett, you're recognized to close. Senator Cornett waives closing. The question for the body is on the adoption of AM2713 to LB209. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB209]

CLERK: 44 ayes, 0 nays, Mr. President, on the adoption of the Select File amendment. [LB209]

PRESIDENT SHEEHY: AM2713 is adopted. Senator Larson. [LB209]

SENATOR LARSON: Mr. President, I move that LB209 be advanced to E&R for engrossing. [LB209]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB209 advances. We will now proceed to LB209A. [LB209 LB209A]

CLERK: Mr. President, Senator Cornett would move to return the bill for a specific amendment. [LB209A]

PRESIDENT SHEEHY: Senator Cornett, you're recognized to open on your motion to

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return to Select File for a specific amendment. [LB209A]

SENATOR CORNETT: Thank you, Lieutenant Governor and members of the body. This is simply the A bill for the bill that we just passed on to Select File. Thank you. [LB209A]

PRESIDENT SHEEHY: Thank you, Senator Cornett. (Gavel) You have heard the opening on the motion to return LB209A back to Select File for a specific amendment. Seeing no requests to speak, Senator Cornett, you're recognized to close. Senator Cornett waives closing. The question before the body is on the adoption to return to Select File. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB209A]

CLERK: 46 ayes, 0 nays, Mr. President, on the motion to return. (AM2721, Legislative Journal page 1344.) [LB209A]

PRESIDENT SHEEHY: The motion to return is adopted. Senator Cornett. Senator Cornett, you're recognized to open on AM2721 to LB209A. [LB209A]

SENATOR CORNETT: Thank you, Mr. President, or pardon me, Lieutenant Governor and members of the body. This is the amendment that follows the...is the amendment to the A bill for the bill we just passed. [LB209A]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You've heard the opening to AM2721. Seeing no requests to speak, Senator Cornett, you're recognized to close. Senator Cornett waives closing. The question before the body is on the adoption of AM2721 to LB209A. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB209A]

ASSISTANT CLERK: 43 ayes, 0 nays on the adoption of the amendment, Mr. President. [LB209A]

PRESIDENT SHEEHY: AM2721 is adopted. Senator Larson. [LB209A]

SENATOR LARSON: Mr. President, I move LB209A be advanced to E&R for engrossing. [LB209A]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB209A advances. We will now proceed to LB950. [LB209A LB950]

ASSISTANT CLERK: Mr. President, with respect to LB950, Senator Christensen would move to return the bill to Select File for a specific amendment. [LB950]

PRESIDENT SHEEHY: Senator Christensen, you're recognized to open on your motion to return LB950 to Select File. [LB950]

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SENATOR CHRISTENSEN: Thank you, Mr. President, colleagues. Very simply, the amendment reduces appropriations request by \$1 million to help us balance our budget, reduces it from \$2.4 million to \$1.4 million to go to the Cash Resources Water Fund. Thank you. [LB950]

PRESIDENT SHEEHY: Thank you, Senator Christensen. You've heard the opening on the motion to return LB950 to Select File. Seeing no requests to speak, Senator Christensen, you're recognized to close. Senator Christensen waives closing. The question for the body is on the adoption of the motion to return to Select File. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB950]

ASSISTANT CLERK: 43 ayes, 0 nays on the motion to return the bill to Select File, Mr. President. [LB950]

PRESIDENT SHEEHY: The motion to return to Select File is adopted. Senator Christensen, you're recognized to open on AM2714 to LB950. (Legislative Journal page 1344.) [LB950]

SENATOR CHRISTENSEN: Thank you, Mr. President. Simply, this is just A bill to the status of the bill currently, so I ask for your green vote on this. Thank you. [LB950]

PRESIDENT SHEEHY: Thank you, Senator Christensen. You've heard the opening of AM2714 to LB950. Member requesting to speak, Senator Nordquist. [LB950]

SENATOR NORDQUIST: Thank you, Mr. President. I just wanted to take a quick second and thank Senator Christensen for his willingness to give on this and also Senator Langemeier for willingness to work on it to help pull together ultimately what we think will be a package that will allow us to move forward, and his willingness to give will allow all of us to move forward with our share of priorities. Thank you. [LB950]

PRESIDENT SHEEHY: Thank you, Senator Nordquist. Seeing no additional requests to speak, Senator Christensen, you're recognized to close. Senator Christensen waives closing. The question before the body is on the adoption of AM2714 to LB950. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB950]

ASSISTANT CLERK: 45 ayes, 0 nays on the adoption of Senator Christensen's amendment. [LB950]

PRESIDENT SHEEHY: AM2714 is adopted. Senator Larson. [LB950]

SENATOR LARSON: Mr. President, I move LB950 be advanced to E&R for engrossing. [LB950]

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PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB950 advances. Mr. Clerk, do you have items for the record? [LB950]

CLERK: I do have a few, Mr. President. Your Committee on Enrollment and Review reports LB357, LB806, LB806A, LB998A, LB1020, LB1113, all of those reported correctly engrossed. Bills read on Final Reading this morning were presented to the Governor at 9:34. (Re: LB949, LB949A, LB961, LB996 and LB1104.) And new resolutions, LR621 and LR622, Senator Hadley. Those will be laid over. And Enrollment and Review reports LB1082 to Select File. That's all that I have at this time, Mr. President. (Legislative Journal page 1345-1348.) [LB357 LB806 LB806A LB998A LB1020 LB1113 LB949 LB949A LB961 LB996 LB1104 LR621 LR622 LB1082]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Mr. Clerk, we will now proceed to LB950A. [LB950A]

CLERK: LB950A, Mr. President, Senator Christensen would move to return the bill for a specific amendment, AM2715. [LB950A]

PRESIDENT SHEEHY: Senator Christensen, you're recognized to open on your motion to return LB950A. [LB950A]

SENATOR CHRISTENSEN: To open? I thought we did this, no? Okay. [LB950A]

PRESIDENT SHEEHY: To open to return. [LB950A]

SENATOR CHRISTENSEN: This just simply bringing the A bill, amending the A bill back to the \$1.4 million that we've agreed to do on this to balance our budget. Thank you. [LB950A]

PRESIDENT SHEEHY: Thank you, Senator Christensen. You've heard the opening on the motion to return LB950A to Select File for a specific amendment. Seeing no requests to speak, Senator Christensen, you're recognized to close. Senator Christensen waives closing. The question before the body is on the motion, the adoption of the return to Select File. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB950A]

CLERK: 42 ayes, 0 nays, Mr. President, on the motion to return. [LB950A]

PRESIDENT SHEEHY: The motion to return is adopted. Senator Christensen, you're recognized to open on AM2715 to LB950A. (Legislative Journal page 1348.) [LB950A]

SENATOR CHRISTENSEN: Thank you, Mr. President. Again, just balances the A bill to

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the bill. Thank you. [LB950A]

PRESIDENT SHEEHY: Thank you, Senator Christensen. You've heard the opening of AM2715. Seeing no requests to speak, Senator Christensen, you're recognized to close. Senator Christensen waives closing. The question before the body is on the adoption of AM2715 to LB950A. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB950A]

CLERK: 45 ayes, 0 nays, Mr. President, on the adoption of the Select File amendment. [LB950A]

PRESIDENT SHEEHY: AM2715 is adopted. Senator Larson. [LB950A]

SENATOR LARSON: Mr. President, I move LB950A be advanced to E&R for engrossing. [LB950A]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB950A advances. We'll now proceed to LB993...LB993A. [LB950A LB993A]

CLERK: Mr. President, Senator Ashford would move to return LB993A to Select File for consideration of AM2716. [LB993A]

PRESIDENT SHEEHY Senator Ashford, you're recognized to open on your motion to return to Select. [LB993A]

SENATOR ASHFORD: Thank you. This will...this amendment, AM2716, is an amendment to a Judiciary Committee bill, LB993, relating to Child Advocacy Centers in an effort to reach an appropriate budget number on these A bills. We are requesting that the initial appropriation...or the initial A bill of \$871,051 be reduced to \$500,000. And that would conclude my comments. [LB993A LB993]

PRESIDENT SHEEHY: Thank you, Senator Ashford. You've heard the opening on the motion to return LB993A to Select File for a specific amendment. Seeing no requests to speak, Senator Ashford, you're recognized to close. Senator Ashford waives closing. The question for the body is on the motion to return LB993A to Select File. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB993A]

CLERK: 45 ayes, 0 nays, Mr. President, on the motion to return the bill. [LB993A]

PRESIDENT SHEEHY: The motion is adopted. Senator Ashford, you're recognized to open on AM2716. (Legislative Journal page 1348.) [LB993A]

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SENATOR ASHFORD: Yes, AM2716 just affects the change in the amount of the A bill from \$871,051 to \$500,000. [LB993A]

PRESIDENT SHEEHY: Thank you, Senator Ashford. You've heard the opening of AM2716 to LB993A. Seeing no requests to speak, Senator Ashford, you're recognized to close. Senator Ashford waives closing. The question before the body is on the adoption of AM2716. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB993A]

CLERK: 47 ayes, 0 nays, Mr. President, on adoption of the Select File amendment. [LB993A]

PRESIDENT SHEEHY: AM2716 is adopted. Senator Larson. [LB993A]

SENATOR LARSON: Mr. President, I move LB993A be advanced to E&R for engrossing. [LB993A]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB993A advances. Speaker Flood, you're recognized for an announcement. [LB993A]

SPEAKER FLOOD: Thank you very much, Mr. President and members. We're not going to add any other bills to this division here that we just went through. And I appreciate the Legislature, and the members specifically, indulgence on what we just did from LB209 down. As you may know, LB727 has a public hearing over the noonhour today. For that reason, I'm going to move LB727 behind LB745. If we are to resolve LB745 before lunch, it's my intention to go ahead and recess. Obviously, at 1:30 we will take up the veto override and then proceed with the balance of our agenda. So again, we're going to move LB727 behind LB745. We might be recessing a little bit early today. We'll come back with a veto override. A reminder that we're still going to continue our practice on absences tonight to ensure that we have a full complement of the Legislature to deal with the issues before us, and it could be a late evening. Thank you.

PRESIDENT SHEEHY: Thank you, Speaker Flood. Mr. Clerk, we will now proceed to LB817. [LB817]

CLERK: LB817, Mr. President, I have Enrollment and Review amendments. (ER274, Legislative Journal page 1335.) [LB817]

PRESIDENT SHEEHY: Senator Larson. [LB817]

SENATOR LARSON: Mr. President, I move the E&R amendments to LB817 be adopted. [LB817]

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PRESIDENT SHEEHY: You have heard the motion on the adoption of the amendments. All those in favor say aye. Opposed, nay. They are adopted. [LB817]

CLERK: I have nothing further on LB817. [LB817]

PRESIDENT SHEEHY: Senator Larson. [LB817]

SENATOR LARSON: Mr. President, I move that LB817 be advanced to E&R for engrossing. [LB817]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB817 advances. We'll now proceed to LB817A. [LB817 LB817A]

CLERK: I have nothing pending on that bill, Senator. [LB817A]

PRESIDENT SHEEHY: Senator Larson. [LB817A]

SENATOR LARSON: Mr. President, I move LB817A be advanced to E&R for engrossing. [LB817A]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB817A advances. We will now proceed to LB745. [LB817A LB745]

CLERK: LB745, I have Enrollment and Review amendments, Senator. (ER264, Legislative Journal page 1276.) [LB745]

PRESIDENT SHEEHY: Senator Larson. [LB745]

SENATOR LARSON: Mr. President, I move that the E&R amendments to LB745 be adopted. [LB745]

PRESIDENT SHEEHY: You have heard the motion on the adoption of the amendments. All those in favor say aye. Opposed, nay. They are adopted. [LB745]

CLERK: I have nothing further on LB745. [LB745]

PRESIDENT SHEEHY: Senator Larson. [LB745]

SENATOR LARSON: Mr. President, I move that LB745 be advanced to E&R for engrossing. [LB745]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye.

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Opposed, nay. LB745 advances. Mr. Clerk, you have items for the record. [LB745]

CLERK: No items. I do have a priority motion. Senator Flood would move to recess the body until 1:30 p.m.

PRESIDENT SHEEHY: You have heard the motion to recess until 1:30 p.m. All those in favor say aye. Opposed, nay. We stand at recess.

RECESS

SENATOR LANGEMEIER PRESIDING

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

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

SENATOR LANGEMEIER: Thank you. Mr. Clerk, do you have any items for the record?

CLERK: I have nothing at this time, Mr. President.

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We will proceed to our first item on this afternoon's agenda. As the agenda states, it is 1:30. We'll go to the motion to override gubernatorial veto, LB1072. Mr. Clerk. [LB1072]

CLERK: Mr. President, Senator Lathrop would move that the line item vetoes as contained in Section 1 of LB1072 become law notwithstanding the objections of the Governor. [LB1072]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Lathrop, you're recognized to open on your motion to override. [LB1072]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Good afternoon. We are going to take up consideration of a veto on LB1072. And before I talk about the veto message and the rationale set forth therein, I want to remind you this bill passed this Legislature with 42 affirmative votes. And so I think today the question for our consideration is whether the Governor has laid out a reason not to vote for this bill again. The veto message that we received from the Governor was not about policy. It was an argument against payment based upon the constitution. The rationale provided by the Governor relies on two cases decided by our Supreme Court. Both cases involve attempts by this Legislature to pay depositors of the failed Commonwealth Savings and Loan. Because the Commonwealth cases are distinguishable I believe, the Governor's

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reliance on these decisions are misplaced. To understand the distinction, let me first explain the Commonwealth cases for those of you that are not familiar with them. Commonwealth was a savings and loan here in Lincoln and it went under. When it went under, the Nebraska Depository Institution Guaranty Corporation did not have sufficient assets to pay the depositors. The NDIGC was a private corporation. It was not part of government. It was not part of state government. It was a private corporation without sufficient assets to pay the depositors. Even though or because the Legislature felt bad for these depositors, they made two attempts to pass legislation in this body to pay the depositors. Those two attempts led to two separate Supreme Court challenges of the constitutionality of the attempts by the Legislature to pay the depositors. It's important to know about the Commonwealth case that the state had no legal obligation to pay, and in Commonwealth the state had no statutory duty or obligation to pay, and the state had no moral obligation to pay those depositors. They simply paid them as an act of charity. And I will tell you it's not just my opinion there was no duty to pay these depositors. Even the depositors conceded that when they were in front of the Supreme Court. And the conclusion of the Supreme Court in the Commonwealth cases, which are the cases relied upon by the Governor in his veto message, the conclusion of the court was that the state cannot expend state dollars for what is essentially a charitable purpose. Because the state owed no duty to the depositors in Commonwealth, we cannot make payment to them. And I think the distinction that's important for us today as we consider the constitutionality of LB1072 is this simple. In Commonwealth there was no duty to pay. Here we are paying providers pursuant to a statutory duty that we have. Unlike Commonwealth where there was no statutory, no legal, or moral duty to pay, here we have a statutory duty. And that makes reliance on the Commonwealth cases misplaced. In other words, they don't stand for the proposition that they are put into the veto message for. In contrast to the charitable payments made to the depositors in Commonwealth, here we have a statutory duty to pay, and that statutory duty is expressed in three different provisions of our law. Section 43-285 creates a duty; Section 43-290 creates a duty; and Section 68-1202 creates a duty. And I want to read you that duty we have to pay, at least in two of those provisions. In Section 43-290, our statutes provide that if a juvenile has been committed to the care and custody of the Department of Health and Human Services, the department shall pay for the cost of support, study, and treatment of the juvenile. There was no similar obligation in Commonwealth. Section 68-1202 states that once services are provided payment must be made directly to the vendors. Services include foster care, drug and alcohol treatment, protective services for children, visitation, and parenting. These statutory duties create a duty on the part of the state to make payment that was not present in Commonwealth. I believe that duty found in those statutory provisions I just read is a nondelegable duty. You can't hand it off to a contractor. But even if you could hand it off to a contractor, we didn't effectively delegate that duty because these contracts were so fundamentally flawed. And I went through this on General File, but I'm going to go through it again for you because I believe it's very important. And consider these several things: (1) HHS did not comply with the competitive bidding statutes, which was the

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subject of criticism by our Auditor; (2) HHS did not take advantage of the Department of Administrative Services to make sure these contracts were well done; (3) and this is very important, HHS did no vetting when choosing Boys and Girls Home as the lead contractor. The Public Auditor...the Public Auditor's report states the following concerning the Boys and Girls Home: It had no line of credit; it's liquid assets were less than a third of the state service area child welfare budget; it had cash on hand of \$171,000 to administer a contract worth tens of millions of dollars; and, more importantly, Boys and Girls Home lacked the experience in providing coordinated community-based services. Next, HHS provided no oversight over these contracts. And as noted by the LR37 Committee report, privatization was only going to work, these providers were only going to be paid if the responsible government entity provided oversight and managed the process well. Next, and also important, the contracts were underfunded. We spent the year before privatization \$107 million on child welfare, yet we contracted for \$105 million. It was never enough money to get these people paid. And when you look at the fact that we amended these contracts over and over and over to provide additional dollars, it's clear, it's clear that they were underfunded. The next consideration I think is important when we examine the effect of these contracts and whether they discharged the state's duty is they were not only underfunded based upon current expenses, but the move to privatization, colleagues, had the undesired effect of increasing child welfare costs. So contractors know that the costs were substantially higher than anticipated based on information provided prior to signing the contracts, including the number of youth in foster care. When you look at the reasoning offered by the Governor in his veto message, which is this is an unconstitutional exercise of our authority, and the Governor's reliance upon the Commonwealth cases, you can see that we are on solid constitutional grounds. [LB1072 LR37]

SENATOR LANGEMEIER: One minute. [LB1072]

SENATOR LATHROP: Commonwealth involved no duty--moral, legal, or statutory. And in the case of these contractors that have not been paid, we have a statutory duty to pay them. It is a nondelegable duty to pay them. And the fact that we entered into contracts that were so fundamentally flawed did not discharge that duty. That is the rationale provided by the Governor in the veto message. I believe the basis and the reliance on the Commonwealth cases is misplaced, and we are on firm constitutional grounds in approving these claims. And I would encourage your vote to override. Thank you. [LB1072]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. (Visitors introduced.) Members, you have heard the opening on the motion to override the Governor's veto. The floor is now open for discussion. Those wishing to speak: We have Senator Krist, Dubas, Howard, Burke Harr, Gloor, Flood, and others. Senator Krist, you're recognized. [LB1072]

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SENATOR KRIST: Thank you, Mr. President. Good afternoon, Nebraska and colleagues. There will be no winners or losers between the legislative and the executive branch here this afternoon. There will only be losers if we don't overturn this veto and make whole those providers and attempt to rebuild the services that we have destroyed, sorry, that the Department of Health and Human Services has destroyed through their actions, privatization throughout the state. The losers in translation will be the kids. In my mind, Senator Lathrop has laid out the legal questions, the constitutional issue I think very well. But in my mind, if we don't overturn the veto, what will happen is that there will either be a common class action suit or there will be several individual suits trying to claim and become whole. So I ask you, do we want to open up that? Do we want the individuals to have to come back? Do we want those providers to have to come back to us as a state and try to become whole? Because many of them have the resolve to do so. If we do overturn the veto, then someone is going to have to say that we acted incorrectly, and I think Senator Lathrop makes a great point that we are not acting incorrectly or unlawfully to restore those services. So I ask you again, who will bring that suit? Will the executive branch sue the legislative branch? Will someone say that we have unlawfully acted to make them whole? Let me remind you of part of my testimony when we went through this and other bills earlier. In the Boys and Girls Home case, there was never a turnover of case management to the private contractor. So it was indeed us, the state of Nebraska, our caseworkers that were ordering those services to be performed. And it was the contractor who said, I don't have enough money to perform these services. And it was these individual providers who suffered. I bring up one more issue and I've said this on the mike before, but I think you need to consider this carefully in making your decision. If this goes to court in any fashion, I fancy that Mr. Todd Reckling will be subpoenaed and that he will have to testify under oath. And I'd be glad to do the same. Mr. Reckling told me on a number of occasions he wants the providers to hang in there. We're going to get this solved. We got a handle on it. We're getting better. That's a message from a person in a position of power in the executive branch in the Department of Health and Human Services who is ensuring providers and senators this is going to get better. We've got a handle on it. We're going to make this work. Put yourself on that jury or put yourself in that judge's position. No, it's not a contract. It's a verbal handshake, but see, that's sometimes how we do things here in Nebraska. That's our way. We want people to believe in our word. At the end of the day, the only person left in this chain of command has sent us this veto back. I ask you to consider that this is the right thing to do. I ask you to consider that we don't want this to go to court in any fashion. [LB1072]

SENATOR LANGEMEIER: One minute. [LB1072]

SENATOR KRIST: I would ask you to consider today that we need to do the right thing, the lawful thing. And let me reemphasize one more time: This was not the contractor telling the subcontractors what to do. It was the case management function and that function belonged to the state of Nebraska right to the end, right to the point where the

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contract was terminated. And my last point: Some of those providers, some of those people we're trying to make whole, they weren't told that that contract was terminated until four months after. They continued to do their job for four months after for our kids. Thank you for your consideration. [LB1072]

SENATOR LANGEMEIER: Thank you, Senator Krist. Senator Dubas, you're recognized. [LB1072]

SENATOR DUBAS: Thank you very much, Mr. President. Good afternoon, colleagues. Someone has to take ownership for the mess that our child welfare system is in, and it's the Legislature that's doing it even though we didn't create it. Before we even began implementing the move towards privatization and the changes in child welfare, the state was warned. This isn't going to work. These are problems. Here's the land mines. These are the issues. And we walked into every one of them. These service providers, these people, these facilities are in our communities. These are our neighbors. These are people that we know who know the children that they're serving. And if we are able to make them whole, if we don't live up to what I believe is the state's obligation to make them whole, we will lose them--the very people we need to continue to move forward to make what we're trying to do to improve the child welfare delivery system work. These are the frontline, in-the-trench workers that without them it doesn't matter what's going on above. These are...this is the hub that holds the wheel together, these providers. Many of them are taking out loans because they aren't able...they've paid, they've paid their bills. Now they're trying to hang on and keep their doors open. They're taking out loans. They're taking care of state wards again. These children are the state's responsibility and obligation. And even when the contracts were terminated, these people continued to provide services because what do you say? Sorry, I'm not going to take care of these children anymore. Then what happens? Where do these kids go? Where do these families go? The providers pulled together and did what they needed to do with the hopes that the state would act responsibly. So if it's not the state's responsibility, whose is it? We paid KVC well above and beyond what their original contract was. Isn't that going outside of the contract language? Is that something we should have done? Well, we did it probably to try to keep them going. But were we obligated to do that? Where was the due diligence that the state should have conducted before entering into these lead agency contracts? Shouldn't those subcontractors be able to have a degree of confidence in who they're going to be doing business with because essentially they're representing the state, these lead agencies? They're contracted by us. I received an e-mail with a list of three...three-page list of programs that have closed over the years. And while those programs that are closed are not directly related to what we're talking about here, it's an indication of the problems that we're having. And by not overriding this veto and providing...paying these subcontractors and making them whole again, that list, that three-page list is going to become longer and longer. And again, what do we do then? Point after point was highlighted in the Performance Audit report and our own State Auditor's report as to how

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poorly planned and executed this reform proposal was. This was a major shift in the way we've been doing business and it should have...it demanded a very involved and thought out implementation process. Bottom line--these are state wards. These children are our responsibility. [LB1072]

SENATOR LANGEMEIER: One minute. [LB1072]

SENATOR DUBAS: Thank you, Mr. President. As Senator Krist pointed out, I began talking with Director Reckling in the department early on when problems were brought to my attention about what was going on with Boys and Girls. We were continually reassured, this is just some computer problems. this is some software problems. This is some accounting problems. We're going to get it, we're going to get it handled. So what are the subcontractors supposed to think when they're constantly being reassured that we're going to get a handle on this and everything is going to be all right? We deserve them not only honesty about the direction of where things are going but we deserve to support them in their efforts for the work that they do on our behalf. And I will be supporting this veto override. Thank you. [LB1072]

SENATOR LANGEMEIER: Thank you, Senator Dubas. Senator Howard, you're recognized. [LB1072]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I rise to support this override effort, and I'm going to tell you why. And I'm going to reflect on the years that I spent in Health and Human Services as a case manager. When children were placed in the custody of Health and Human Services, it was done by the court system. The Department of Health and Human Services was placed in the position of acting as the parent of the child for the care and custody. This is very inclusive. This just didn't say you can put that child in placement and then the bio parents are still responsible for any bills incurred by the child. No, no, no, no. The court ordered the child into the care and custody of the Department of Health and Human Services. Now it's important to remember that when these children were placed with the private agency, in this case Boys and Girls, that Magellan remained in place. Magellan remained the gatekeeper for any decisions made regarding behavioral health costs or needs. It wasn't arbitrarily done by the provider. The argument that the provider was responsible for all the bills incurred by these children is simply ludicrous. That's like saying the case manager was responsible for the bills incurred by the child because they were providing case management duties. They were ultimately responsible. No, no, no. The child was not placed in the care and custody of the case management...of the case manager. The child was placed in the care and custody of the Department of Health and Human Services. Neither case managers nor foster parents acted as the payee for these children. If something would happen to a child, say they fell on the playground and were injured, broke an arm, case manager couldn't give or the foster parent couldn't give the okay for treatment. The hospital or the doctor or the attending

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medical person had to call the department, talk to the case manager or whoever the cover person was for the case manager or the supervisor. Someone from the department had to give permission for that treatment. The Department of Health and Human Services remained and continues to remain the payee and the responsible in acting in lieu of the parent for children who are wards of the Department of Health and Human Services placed in their custody. There's no simpler explanation than that. Now the department can contract out certain responsibilities. It can contract out placement duties, say, or care facilities. But they can't, they can't ignore their responsibility for the cost and maintenance of a child who is in the custody of the Department of Health and Human Services. Now Senator Dubas is very correct. There were alarms set up early on about this whole scheme to privatize child welfare. I went to the Governor and talked to him. I went to Lavon Heidemann, I talked to him. I said I don't know how you would interpret this other than to say children who are in the care and custody of the Department of Health and Human Services remain, remain the responsibility of the Department of Health and Human Services. And I remember the conversation I had with Senator Heidemann and he said, no, no, no. If the agencies sign a contract, then they're responsible. It doesn't work that way. You can't sign away the rights that the court has delegated to you or the responsibilities that the court has delegated to you. [LB1072]

SENATOR LANGEMEIER: One minute. [LB1072]

SENATOR HOWARD: Thank you. Now I, too, heard all the platitudes. I heard you've got to give it time to work. I'm going to look here and see which of these are my favorites. Oh, you can't turn back. We can't go back now. We can't go back now and we can't continue the old ways. We can't return to those. Those weren't working, irregardless of how flawed this new method or this new system was. You know, there was never, there was never a time-out. There was never a break taken. There was never an opportunity to examine how things were working, even after a year, even after two years, three years, and the costs kept mounting. To me there's no question. To me the state remains the party of responsibility for children who are in the care and custody of the Department of Health and Human Services. Thank you. [LB1072]

SENATOR LANGEMEIER: Thank you, Senator Howard. (Visitors introduced.) Returning to discussion, those wishing to speak: We have Senator Gloor, Flood, Coash, Burke Harr, Christensen, Nelson, and others. Senator Gloor, you're recognized. [LB1072]

SENATOR GLOOR: Thank you, Mr. President. Good afternoon, members. I've read the Governor's letter. I've talked to representatives of the executive office on their read on this. I've listened to Senator Lathrop. I've read the reports in the newspaper. And I'm trying to sort out the yeses and nos that may be out there from a legal standpoint. But for me it's difficult not to come down to two issues when I make my decision. The first decision is that, as has been pointed out, there is a moral obligation here. And for

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almost two years, as Senator Dubas related, some of us as senators dealt with issues of trying to get these subcontractors paid. And to its credit, the department continued to work with Boys and Girls to find ways around contracts and lack of contracts with subcontractors to get payment to those subcontractors, based upon knowledge I think from my conversations that they knew how important some of these subcontractors were to get dollars to stay viable, again looking at the list of those entities that already have gone out of business and already had gone out of business. And I appreciated then and I appreciate now the department's recognition of that. And that recognition tells me there was a recognition that that payment needed to get to those subcontractors for a variety of good business-sense reasons, quality-of-care reasons, and I believe moral and ethical reasons. And that weighs heavily with me. And the second issue is the fact that one of the largest, largest claims that's out there is with the Mid-Plains Center in Grand Island. I used to be president of the board of that organization, and we set aside monies when we did our budgeting for a rainy day. And most, if not all, of those reserves ended up being spent in order to cover those expenses not covered under these contracts. I can't ethically deal with spending a rainy-day fund for something that the state forced upon itself and something that we could rectify, something that as I, who played a role in helping build a rainy-day fund, now I'm going to wave good-bye to when I feel there's a strong ethical reason? I'll let others make the argument for the legality of it. But what I'm listening to this afternoon I carry with a strong feeling of the ethical and moral obligations that we have and that I bring as a legacy to this debate. Right now I can't vote anything but yes on the override, although I'll continue to listen to see if I can be talked out of it. But that's where I settle on the issue. Thank you, members. [LB1072]

SENATOR LANGEMEIER: Thank you, Senator Gloor. Senator Flood, you're recognized. [LB1072]

SPEAKER FLOOD: Thank you, Mr. President, members. I think my position on this bill has been consistent from the beginning as it relates to these claims. I understand Senator Lathrop distinguished the Commonwealth case from the present set of facts. And I think to an extent, you know, he's made some good points as it relates to the differences. But where I've started and where I've ended has been I don't feel we should set this precedent. It's awfully hard to talk to folks back home and say, I'm not going to vote for this. At the same time, I feel like there's an obligation to look at the set of facts and remove the emotion. The set of facts here is we have a general contractor hired by the state who goes ahead and hires subs. The state fully performs on its obligations to the general contractor. The general contractor fails to pay the subs. It's a miserable situation. And what's so miserable about it is the folks that were waiting and are waiting for payment from Boys and Girls Home represent the very infrastructure of our system. And I don't deny them their anger in any respect because they have been harmed. But at the end of the day, I think my position has been you have to look to the precedent. And you have to look to I guess the Henry case. The Legislature is not empowered to

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make appropriations for purely charitable purposes. The use of the word "charitable" or "charity" or any form thereof I can see where that would be offensive to a subcontractor. I think what the court here is saying, no matter how moral or right this feels, Article III of the Nebraska Constitution puts a barrier between what we want to do and what we can legally do. Senator Lathrop is going to, I'm sure, have comments to distinguish the Henry case from the present set of circumstances. He bases his opinion on the idea that the state has...it's not an idea, on the premise that the statutes provide that the state is ultimately responsible for a state ward. The state provided for the state wards by and through its contract with Boys and Girls Home. Boys and Girls Home hired subcontractors. The state fully performed. The state did not act in bad faith in terms of intentionally trying not to pay subcontractors. The state fully performed under its obligation to the prime contractor. What I can't make better is the harm that was done in our communities to the behavioral health and child welfare infrastructure. And as much as I'd like to remedy that problem, I don't...I can't reconcile that with is this the right way to do it. And that's where I'm at. Thank you, Mr. President. [LB1072]

SENATOR LANGEMEIER: Thank you, Senator Flood. (Visitors introduced.) Continuing with discussion on the motion to override, we have Senator Coash, Burke Harr, Christensen, Nelson, Lathrop, Harms, Pahls, Carlson, and others. Senator Coash, you're recognized. [LB1072]

SENATOR COASH: Thank you, Mr. President. Good afternoon, colleagues. I'm struggling with this, as many of us are. We've got in front of us a situation where we know what in our hearts must be done, and then we have legal arguments on one side and the other about what's in our purview legally. So I'm going to continue to listen, but I do have some initial questions. And I was wondering if Senator Lathrop would yield. [LB1072]

SENATOR LANGEMEIER: Senator Lathrop, would you yield to a question? [LB1072]

SENATOR COASH: I don't see Senator Lathrop. I'll continue with my comments and if he comes I will ask him this. [LB1072]

SENATOR LANGEMEIER: Senator Lathrop, would you yield? [LB1072]

SENATOR COASH: Thank you, Senator Lathrop. Senator Lathrop, you may have covered this on General File and you may have covered it today, but I want to ask you a little bit...a few questions just about the process again of how we got to the point of LB1072 with respect to these particular contractors. When they came before you in the Business and Labor Committee, these subcontractors had already gone through the State Claims Board. Is that correct? [LB1072]

SENATOR LATHROP: That's true. [LB1072]

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SENATOR COASH: How many members are on the State Claims Board? [LB1072]

SENATOR LATHROP: I want to say there's three. We don't go over there and watch them, Senator Coash. And I filed tort claims in my time before I got here and I've never seen them have a hearing so...but I think there are three and I think we set out who they are by statute. [LB1072]

SENATOR COASH: Okay and it ended up in front of your committee because the State Claims Board ultimately denied these claims. Is that correct? [LB1072]

SENATOR LATHROP: That's true. [LB1072]

SENATOR COASH: Did they...there were lots of subcontractors. Were there any subcontractors who the State Claims Board said we'll pay you but the remaining we're not going to and you'll have to go see the Business and Labor Committee? [LB1072]

SENATOR LATHROP: No. They did not choose I'm going to pay you but I'm not going to pay this other guy. They took all 50 of them and said we're not paying you. [LB1072]

SENATOR COASH: Did they indicate why? [LB1072]

SENATOR LATHROP: I don't...I didn't...I don't remember seeing any document that was the State Claims Board sent something over to the Business and Labor Committee that became the starting point. The starting point for us was a bill, denial bill that we took up and along with an approved bill. We essentially have two bills. One is the denied claims and one is the approved claims. And what we did was amended the denied claims into the approved claims and brought it to the floor. [LB1072]

SENATOR COASH: Okay. Thank you, Senator Lathrop. And the reason I asked those questions is because now we're kind of at the third step, colleagues, where the State Claims Board has said, no. The Legislature initially said yes. Now the Governor has come back with a letter saying no again. So we're kind of at the third step and I'm trying to get my head wrapped around how we got here. Would Senator Flood yield to a question? [LB1072]

SENATOR LANGEMEIER: Senator Flood, would you yield? [LB1072]

SPEAKER FLOOD: Yes. Yes. [LB1072]

SENATOR COASH: Thank you, Speaker Flood. Speaker, I've been reading and rereading the Governor's letter. And he seems to lay out a case about the unconstitutionality of LB1072, and I understand there's two sides to this. But I wanted to

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ask you in a practical sense in order for this to become unconstitutional, it has to be found that way in court. And in order for that to happen, somebody has to bring a claim that says, hold on a second. State paid this twice and I don't think that's right. In a practical sense, who might make that claim? I mean all we know is that somebody, I would assume... [LB1072]

SENATOR LANGEMEIER: One minute. [LB1072]

SENATOR COASH: ...either Haman or Henry or Rockey made that claim. And so I'll yield you the rest of my time trying to figure out who might make that claim and how that might play out. [LB1072]

SPEAKER FLOOD: Well, in my opinion, because this is a state appropriation, any taxpayer could file that claim. And in the Henry v. Rockey case, Daniel Henry, a Nebraska resident taxpayer, challenges the constitutionality of LB657 from 1993. So the question is, who has standing? And I think in the Henry case it was a Nebraska taxpayer. Thank you. [LB1072]

SENATOR COASH: Thank you, Speaker Flood. Thank you, Mr. President. [LB1072]

SENATOR LANGEMEIER: Thank you, Senator Coash. Senator Burke Harr, you're recognized. [LB1072]

SENATOR HARR: Thank you, Mr. President and members of the body. I'm going to take exception to some of what Speaker Flood said. I don't think this is a contract case. This isn't an issue of whether we signed a contract and lived up to that contract. The issue is what does the statute allot for and what does it allow us to do and what does it require us to do? Now earlier there was made reference to 43-290, which deals with the cost and care of juvenile treatment. And I'm going to read you the statute but you're free to look it up. Again, it's 43-290: If the juvenile has been committed to the care and custody of the Department of Health and Human Services, DHHS, the department shall pay the costs of the support, study, or treatment of the juvenile which are not otherwise paid for by the juvenile's parents. There is no dot, dot, dot unless the state contracts it away. It says the state is responsible for the care, support, study, or treatment of the juvenile. So we have a statutory duty. Now earlier it was said we got to be careful about setting precedence. Well, there is something called the Supreme Court of Nebraska and there is something called precedence that came out of that. And it's Keith County v. Department of Social Services and it's 540 N.W.2d 109; 248 Neb. 865. It's a 1995 ruling with Justice Gerrard, who is now, as many of you know, a federal judge or will be shortly. The county attorney was Deb Gilg, who is the U.S. Attorney, and the Attorney General was Don Stenberg. So with any hope within a year they'll all be in Washington or on the federal level. Deb Fischer didn't hear that. But in that case, it was...the purpose was to determine the statutory interpretation of 43-290, which is exactly what

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we're doing. And that precedence stated, and I'll quote directly: The plain statutory language of 43-290 compels the conclusion that when a juvenile is committed to DSS' care and custody, DSSS is required to pay the costs for the support, study, or treatment that is in the best interests of the child--as determined by the juvenile court--which are not otherwise paid by the juvenile's parent. That's exactly what we have here. We are not setting precedence. We are following precedence. Precedence says we are compelled and required. The clear language compels us and requires us to pay this money. So while there is no concern about setting a precedence, I would agree, although...and if there wasn't a precedence out there, I'd be a little less comfortable with this. However, the Supreme Court has already ruled, looked at the language, says, yes, there is a duty to pay. And I don't have that court case in front of me, but that says the state has the right to take a child. But when they take that child, this is where this case comes in, they are compelled, required to pay for that cost if the parent cannot. And that's what happened in every one of these cases. So while I understand the fear of not wanting to expand this because by contract if you look at it from the purview of a contract, it is a little scary because we set a contract up with a third party and we fulfilled our end of the contract and they didn't. And I get that. But this isn't a contract issue. This is what are we required by law to do? And when you look at the law, when you look at what the Supreme Court says, we are required to pay for those juveniles who are in the care and custody of the state. So I would ask you again to override the Governor's veto, line item veto, and vote for LB1072. Thank you. [LB1072]

SENATOR LANGEMEIER: Thank you, Senator Harr. Senator Christensen, you are recognized. Senator Christensen. Senator Nelson, you're recognized. [LB1072]

SENATOR NELSON: Thank you, Mr. President, members of the body. I stand here in opposition to the motion to override. I think the Governor is right on point in his letter and that the veto should definitely be sustained. And I commend Senator Flood, Speaker Flood for setting out the basic principles of law in a clear fashion that we need to pay attention to here. I disagree with my colleague, Senator Harr. This is a contract issue. A contract is there and I won't get into that right now, but let me harken back to the Supreme Court cases. I think there are salient points that we simply cannot ignore. It was Haman v. Marsh in 1991 and Henry v. Rockey in 1994, and both dealt with the Commonwealth issue where a lot of our citizens lost upwards of \$116 million, which is a great deal more than we're talking about here, \$2.5 million, all important nevertheless. But you just have to realize that our dealings with our citizens, there are times when there are losses that the state cannot come in and pick up, either legally or morally. In Haman, the defendants argued that though the state had no legal obligation to reimburse the Commonwealth creditors, and I say that's the same thing here, we have no legal obligation, it had a moral obligation to do so. But in that case said a moral obligation attached where there is a law which is passed notifying and warning the taxpayer and the citizen generally that the state will undertake the burden of such damages. Clearly we don't have that here. We did not make any agreement or enter

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any contract that said that we would indemnify or stand behind any losses. We entered into a contract with a lead agency which by agreement and which was the other party to the contract that they were going to take that authority that they were given and they were going to supervise and they were going to deal with subcontractors. That was the way it works. And when we try to maintain that we have a duty to pay, and I don't seem to have that in front of me right here, and I agree with what Senator Harr said and what Senator Lathrop is maintaining--that we have a statutory duty to pay for the health and welfare of wards of the state. But, colleagues, we have paid. We paid under the terms of the contract with the Boys and Girls Homes. We paid more than we agreed to under the contract. Maybe the contract was flawed. That doesn't make any difference. There were two parties to the contract and we abided by our end of the deal and did even more. So let's go on to see...say what the court said here. In Haman the court concluded that the state had no moral obligation and so it's not necessary for them to reach any further question there. The Legislature is not vested with unlimited power to make appropriations. The purpose of an appropriation bill is to make provision for lawfully taking money out of the state treasury. The Legislature is empowered to make appropriations to meet the legal obligations of the state. And that's from Weaver v. Koehn and that was a 1930 case. The Legislature... [LB1072]

SENATOR LANGEMEIER: One minute. [LB1072]

SENATOR NELSON: ...is not empowered to make appropriations for charitable purposes. Thus, even if a moral obligation would provide a reasonable and substantial support for the classification in question, we can only conclude that the Legislature's enactment of then-LB657 constitutes an act of charity on the part of the state toward the Commonwealth creditors, substitute the subcontractors here. It's going to be looked at as an act of charity on the part of the Legislature. Clearly, it has not yet come to pass the state in its supervision of banking business, substitutes Health and Human Services, has become an eleemosynary institution, a charitable institution. The purse strings of this state are not open for the purpose of simply giving money away... [LB1072]

SENATOR LANGEMEIER: Time. [LB1072]

SENATOR NELSON: ...even though it might be a worthy cause. Thank you. [LB1072]

SENATOR LANGEMEIER: Thank you, Senator Nelson. Senator Lathrop, you're recognized. [LB1072]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I appreciate the opportunity to follow Senator Flood and Senator Nelson. I have a lot of respect for both of them. Like me, they are lawyers and I'm going to tell you, lawyers disagree all the time. And sometimes we get a tough case and we try to find a reason to argue for whatever position we're committed to, and I think a little bit of that is going on this

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afternoon. Let me be very clear. Let me be very clear. The rationale provided by the Governor for the veto is that it offends the constitution and where he gets that is Commonwealth. And the Commonwealth decision said, just as Senator Nelson indicated or represented to you, that the central holding or the central principle in the Commonwealth cases, there's two of them because we tried it twice in the '90s to give these people money, they said you cannot use the Legislature and the state's money for a charitable purpose. And charity in that circumstance isn't like we're giving it to the March of Dimes. Charity in that context means this: that if the state has no legal, moral, or statutory obligation to the person you're paying, it is charity as that word is used in this opinion, or in these opinions. Okay? So Senator Nelson is precisely right. Senator Flood is exactly right. We may not use state revenue for a charitable purpose, giving it to somebody we don't have a duty to. That is completely different from what we're dealing with. These people...the state of Nebraska has a statutory duty to provide these services and to pay for them. Commonwealth, they were strangers. They felt bad about the savings and loans going under and they said let's try to make it right. We got a lot of money or we can tax people until we do and let's give these poor people who went under who had a life savings at Commonwealth, let's give them a little relief. That's not what we're doing here. We had a duty to provide this care. We had a duty to pay for this care. And we tried to do it through somebody who never had the means to do it, and that is entirely different than Commonwealth. So if the rationale for changing your vote is, well, the Governor told me it's unconstitutional, I'm telling you, I'm telling you that this is not a charitable contribution. We're not using revenue for a charitable purpose. We're paying our bills. That's it. We're paying our bills. And they're probably the people who provide a service in your district. But there's nothing about this that's comparable to the charitable use of money that went on in Commonwealth. These people deserve to be paid. I'm going to give you a quick example. If I take my daughter into the hospital and I give them my insurance card and they take her appendix out and the bill comes, and at the same time the bill comes, the insurance company calls me up and says I'm bankrupt. I don't have the means to pay it. I'm a parent. I still owe the bill. And when we take in a ward, we really are statutorily and practically in the position of a parent to that child. And when we direct services, as Senator Krist said we were doing that. We were the ones that said this is the service that shall be provided, if the guy that's supposed to pay doesn't, it doesn't relieve me of liability any more than a parent would be relieved of liability for the hospital bill. It's still my obligation. I'm not asking you. I'm not trying to trick you into a payment that's unconstitutional, inappropriate, or not pursuant to a statutory duty. [LB1072]

SENATOR LANGEMEIER: One minute. [LB1072]

SENATOR LATHROP: We need to pay our bills. It's that simple. We have a duty to pay, we have a duty to provide the care, and this comes along with it--paying the bills. And the whole effort to provide or turn Boys and Girls Home, who had no experience in this and didn't have enough money into an excuse not to pay shouldn't work. We never gave

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them enough money to pay everybody. And that's why we're standing here with bills to pay. This isn't about whether the Governor should win or lose. It's not. I will take no delight if we override the veto other than I think we will have done the right thing. And that's the only issue for us to decide today. What's the right thing to do? Well, we're not constrained by the constitution I can tell you that. I can tell you we have a statutory duty and we need to pay our bills. [LB1072]

SENATOR LANGEMEIER: Time. [LB1072]

SENATOR LATHROP: Thank you. [LB1072]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. (Visitors introduced.) Returning to discussion on the motion to override, those wishing to speak: We have Senator Harms, Pahls, Carlson, Dubas, Conrad, Wightman, Hadley, and others. Senator Harms, you're recognized. [LB1072]

SENATOR HARMS: Thank you, Mr. President and colleagues. I've listened to discussion and debate and I'm no attorney. And to be honest with you, the attorneys can battle out what they think is right and what's wrong or the courts can make that decision. But from a layman's point of view, it looks like to me it's just wrong. I've got people who live in western Nebraska who quite honestly in rural Nebraska are going to be the losers. The children and the families who want providers are not going to have providers. We've lost them already and we're going to continue to lose them because of the simple fact is the state has not made that payment. And some of these providers are small and cannot take that financial impact. So they will be unable to serve the children and the families that already have fallen through the cracks here. We have one provider that is owed \$400,000. That's a lot of money. That person needs those dollars. Others that have need of \$23,000 and \$17,000, that list just goes on throughout all of rural Nebraska. Those are the families and the people that will be the losers because they won't have the providers to provide the services in the future. And I guess that's what tugs at my heart is understanding of that this just doesn't seem right. When you look at how this was set up and when you get into the details of the organization and the privatization, colleagues, we have spent millions and millions and millions of dollars that was wasted, that didn't work, that wasn't spent appropriately. And here you've got people that are in rural Nebraska asking for a little bit of help so that they can continue to provide services and yet we're going to try to find every way we can to walk away from this and not provide those services. That seems to be wrong to me. Again, I'm not an attorney, but it just doesn't seem to fit my heart. And I will tell you, colleagues, we owe it to the families, we owe it to the children to be able to provide...to have providers in the future. Why would you want in any reason in the world, why would you want to even work with the state again? Why would you like to make a commitment to provide services to children and families and through Health and Human Services ever again? I wouldn't want to do it because I don't know if I'm going to get paid. I don't know if I'm

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going to get the money for my services. And when you look at an organization that was so poorly organized, there was absolutely no management in this, when you get right down to it, it was so terrible that it's a complete embarrassment to this great state. We cannot walk away from this. We cannot walk away from the families and the children that need it. And yet if we vote against...if we vote in...if we support the Governor, then we've just destroyed many parts of rural Nebraska in providing services. And I don't know how you feel about this, but I can't do this. I can't do this. It's wrong. No matter what argument you have, no matter if you look at all the legal issues, I don't know what those are and I don't even care, the point is I want to see rural Nebraska survive this. I want to be able to say honestly that we can provide you the services. So based on that alone, colleagues, knowing how terrible this thing was organized and knowing how it was set up with no management, no follow-up, no communication, contracts that you couldn't even figure out, hiring... [LB1072]

SENATOR LANGEMEIER: One minute. [LB1072]

SENATOR HARMS: Thank you, Mr. President...providing providers that don't even have the basis financially to cover their own back door, and yet now we turn around to these poor people who are just asking for some assistance to be able to provide the kind of services that I think we need, I would ask you to vote for this override. Thank you, Mr. President. [LB1072]

SENATOR LANGEMEIER: Thank you, Senator Harms. Senator Pahls, you're recognized. [LB1072]

SENATOR PAHLS: Thank you, Mr. President, members of the body. To be honest with you, my mind is what I call in the state of a tabula rasa because I've been listening to right now at least four different attorneys. I'm hearing one attorney say it sets a precedent; another one that says it doesn't. Where are the rest of you attorneys? There are eight more of you out here to give some more input. I hear that we have a duty to pay. I hear, well, this cannot be interpreted as charity. This morning when I came to my office, my staff members--and I'll mention their names, Bill Marienau and Ron Schroeder--had a big black book full of all of the material about the Commonwealth issue that happened a number of years ago. That's one nice thing about having a staff who have been around here a long time. I am trying to remove the emotion of whether we should or should not pay. I'm trying to take a look at it, okay, what are we obligated, and I'm going to use by law? And I respect the, to be honest with you, I respect the Governor and I respect Senator Lathrop. I see there's a difference of opinion, and I'm trying to...well, let me ask Senator Lathrop if he would yield. [LB1072]

SENATOR LANGEMEIER: Senator Lathrop, would you yield? [LB1072]

SENATOR LATHROP: Yes, I'd be happy to. [LB1072]

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SENATOR PAHLS: Thank you, Senator. Without a lot of legalese and really to the point, give me three reasons, what I call very simple reasons up-front, that we should do what you want us to do. [LB1072]

SENATOR LATHROP: First reason is I think we can do it constitutionally. The second reason is we have a statutory duty to do it. And the third reason is these people that provided the services are in a very real sense victims of the contracting debacle that went on at HHS. And that is to say the argument that we paid the contractor and so we don't owe anything more, the problem is we never gave them enough money to pay everybody. If you look, the cost of this was like \$62 million more, \$62 million more than what we contracted for. And we spent that much more paying these people for what they did. And when Boys and Girls Home stopped, they didn't have any money in the bank, which was part of the problem. And we had people that didn't get paid and they were never going to be paid, Senator Pahls, because we never gave them enough money to pay for all the care we were ordering to have done. [LB1072]

SENATOR PAHLS: Okay. And I understand because when we're dealing with children it is...it does touch a heart. Well, let me ask you this question now because this has been tossed at me and I thought I might as well. Okay, if you're setting precedent, which I cannot say yea or nay on that, but let's say we're dealing with roads. A subcontractor, is there any...would that set us on an ill path? [LB1072]

SENATOR LATHROP: No. We're in an entirely different circumstance. And I did talk about that on General File, the difference between hiring a Hawkins who hires a grader and he hires a cement guy and he hires somebody that fixes the ditches and builds the bridges. Those people, first of all, they get vetted. It's not a similar statutory provision. But we do the things to make that a good contract. We make sure that Hawkins has good line of credit. We get a performance bond. We make sure they have the means to do it, the skill, and we did none of that here, none of it. [LB1072]

SENATOR PAHLS: Okay. So then, and I saw that...you did ring a bell once you repeated some of that. So since we did not do those things, that is one reason why you believe that we are obligated. [LB1072]

SENATOR LATHROP: Yes, that and the statute says we're obligated. [LB1072]

SENATOR PAHLS: Okay. Thank you, Senator. Well, for those of you who are scholars in the statutes, the attorneys, if you can address that, that would make my life easier. I would be able to make a decision hopefully bound not just on emotion, but on fact. Thank you. [LB1072]

SENATOR LANGEMEIER: Thank you, Senator Pahls. Senator Carlson, you're

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recognized. [LB1072]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I intend to speak one time on this proposition. I am a member of the Business and Labor Committee, and I voted to advance LB1072. But I've got to have a compelling reason to change my mind. I want to go back to the Commonwealth situation. The state of Nebraska did not enter into a contract with Commonwealth to solicit funds from or provide services to the citizens of Nebraska. There was a safety fund created by financial institutions, not by the state of Nebraska, to help depositors in the event of insolvency. Therefore, there was no responsibility on the state of Nebraska to pay these depositors. Unlike Commonwealth, the state of Nebraska did enter into a contract with Boys and Girls Home to provide services and solicit services from other providers in Nebraska to take care of a number of our Nebraska children. These providers signed contracts and they assumed that these contracts had the blessing and approval of the state of Nebraska. They assumed the state of Nebraska would honor and stand behind these contracts so they could focus on the children, not on the contract. None of you would argue that the providers, the subcontractors shouldn't be paid. We all know they should be paid. They deserve to be paid. Now who is responsible for the oversight of the contractors by HHS? The state of Nebraska, nobody else. You could say Boys and Girls Home, but what do they have to offer at this point? Nothing. Zero. Bankrupt. And why should the subcontractors be forced to spend money in a useless attempt to get blood out of a turnip? They shouldn't have to spend their money with no hope of return. I spoke briefly with the Governor's policy research office. They said the subcontractors have the courts to turn to for the payment of their claims. I asked them point blank, do the subcontractors deserve to be paid? Yes. How can they get paid? It won't be through the courts. What other way is there? The state should act on their behalf. The minute that we get an answer on how these subcontractors get paid in full and when this would take place, I'll back off the override. With no definite plan other than LB1072 to pay these subcontractors, I will support the override. I believe we must make it right with these subcontractors. It's the right thing to do and it's never wrong to do the right thing. Thank you, Mr. President. [LB1072]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Dubas, you're recognized. Senator Dubas waives her opportunity. Senator Conrad, you're recognized. [LB1072]

SENATOR CONRAD: Thank you, Mr. President. Good afternoon, colleagues. I rise in support of the motion to override and again in support of LB1072. At the outset, I would like to offer my belief and concur with my good friend, Senator Lathrop, as to why the facts and the law in the present case are indeed distinguishable from both Haman and from Henry. There are a few issues that in reading the Governor's veto message to us that I thought might be helpful to break down point by point that might be helpful for Senator Pahls's consideration or others. It's been noted that this sets a bad precedent in

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terms of contract law or for contract claims. And, colleagues, I really don't see this as a contract claim. I really see this much more analogous to almost like a negligence case where you've got four important components: duty, breach, causation, and damages. And the duty couldn't be more clearly established than it is presently in Nebraska Revised Statute 43-290, 43-285, and 68-1202. Check the Revised Statute books. Read those sections for yourself. And I'm going to quote just briefly that the outset of 43-290, "It is the purpose of this section to promote parental responsibility and to provide for the most equitable use and availability of public money" when it comes to infants and juveniles. And if you look at the annotations of the cases that have explained and evaluated this public policy, it says very clearly: The Nebraska Department of Health and Human Services is responsible for the costs of placing and caring for juveniles within its custody, regardless of which subsection or section the juvenile is adjudicated under. And that's from In re Interest of Jeremy T., 1999. And in addition to the very clearly established statutory duties and obligations that we have to vulnerable children as a state, there's a common-law concept that's at play here as well, and it's much deeper than a moral responsibility. It's, in fact, based not only...courts look at two things, a legal basis and an equitable basis, to cover some of the areas where the law should act and maybe statute isn't clear. Number one, I think statute is clear. Let's say it's not. There's still an equitable power that a court has available to us and it's broader and more deep and more clear than just a moral obligation that is difficult to define and that was at issue in the Commonwealth case law because it's something called in *parens patriae*. And that is a well-established common-law concept wherein the government is the ultimate guardian of all people under disability, especially children. And when vulnerable children are placed in our care through the Health and Human Services system, we have a duty to care for them and we have a duty to provide for their care. And I think it would set a poor precedent if we allowed the Governor by contract to circumvent the public policy that we have established in 43-290 and 43-285 and 68-1202 and the list...those are three clear examples. We do have a clear legal duty based on our statutes to care for these children and to pay the bills that are incurred in caring for these children. We also have a very clear equitable duty to care for these children based on the well-established concept of *in parens patriae*. It's been noted by some senators that this sets a bad precedent if we do indeed pay our bills and pay the claims of these critical community service partners that have already... [LB1072]

SENATOR LANGEMEIER: One minute. [LB1072]

SENATOR CONRAD: ...rendered the important services. And I think that this should set a warning to state government. When you jump feet forward into a massive privatization effort of a core government function with little to no oversight, be prepared to pay the consequences because you cannot simply, negligently or otherwise, contract away your core government obligations and duties. And we must do the right thing from a legal perspective and that is support LB1072. Thank you, Mr. President. [LB1072]

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SENATOR LANGEMEIER: Thank you, Senator Conrad. Senator Wightman, you're recognized. [LB1072]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the Unicameral. I do rise in support of the override of the veto of LB1072. I know there's been a lot of talk about privity of contract and certainly there is no privity of contract. I guess I would agree with that. I do think there have been valuable services performed for the state of Nebraska that Nebraska has...the state has some obligation to pay. And for that reason, I feel that this is a bill that needs to be paid by the state of Nebraska. Let's talk just a minute about where did the state fail its duties, and I probably can't enumerate those better than Senator Lathrop has already enumerated them. But the state failed in many capacities. Number one, it didn't take bids. Number two, it didn't require a performance bond. Number three, it did almost no vetting, I would assume, or it would have been determined that the financial reliability of the parties with which they were entering into a contract would be insufficient for them ever to pay the subcontractors. I've not heard that there was any notification of the subcontractors of the financial situation with Boys and Girls Home. And certainly the state had much better information of that than possibly could have been had by the subcontractors. So we're led to believe that this is special legislation, and I find that difficult. Number one, it seems to me what we're doing is agreeing to pay someone who performed valuable services for the state of Nebraska and the Department of Health and Human Services. I look at Article III of the constitution and it says one of the things that the Legislature shall not do is pass special legislation, and this part I suppose is the salient part, "Granting to any corporation, association, or individual any special or exclusive privileges, immunity, or franchise whatever;" and then it goes on to talk about the authority in classifying loans. But it just seems to me that this is no more than fulfilling an obligation to pay the subcontractors for work, valuable services performed for the state of Nebraska. And whether there's a privity of contract or not, that obligation still pertains. And so for that reason I do intend to support the override. With that, I would yield any remaining time to Senator Burke Harr if he wishes it. [LB1072]

SENATOR LANGEMEIER: Senator Burke Harr, would you yield? [LB1072]

SENATOR HARR: Yes. How much time do I have left? [LB1072]

SENATOR LANGEMEIER: A minute 40. [LB1072]

SENATOR HARR: Thank you. Thank you, Senator Wightman. Thank you for those eloquent words. I fear trying to follow up with those. It was very good and succinct. But what I...we seem to be getting in the weeds a little bit. I want to do a quick constitution. Legislative body--we make the laws. Executive body--what they do is they enforce the law. Judiciary interprets the law. So what we have here is we have laws, and I'm going to talk specifically about 43-290 that says the state has the duty to pay for the cost of

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that child. That's the law. That's what we agreed to. Now it's been interpreted by the courts to say just that. Now what you have is you have the executive branch comes in and makes a contract, a private law which directly contradicts our public law. You can't do that. What we'd be doing is abdicating our power to the executive branch, and we didn't give them that power. We never said we abdicate our power, our duty to pay the costs for the support, study, and treatment of the juvenile, which the juvenile parent cannot otherwise pay. You can't contract that away. If there's a conflict between a public law and a private law, the public law rules, especially when you're dealing with the government. We cannot and should not abdicate our power to the Governor. It's just that simple. We have a law that we as a body agreed to, that we will pay that. It's in plain, written language. We will pay this cost. The Governor turns around and says I'm going to make a contract and that's fine, but that contract doesn't overrule the obligation... [LB1072]

SENATOR LANGEMEIER: Time. [LB1072]

SENATOR HARR: Thank you. [LB1072]

SENATOR LANGEMEIER: Thank you, Senator Harr and Senator Wightman. Senator Hadley, you're recognized. [LB1072]

SENATOR HADLEY: Mr. President and members of the body, I think almost everything has been said on this issue so I'm going to be brief. I guess there are times I'm kind of glad I'm not an attorney trying to figure it out. What's the old story? One attorney in a town starves to death; two make a good living. That's why we have courts. I think there are good issues on both sides and that's why I'm going to vote for the override because I think we need to send this. If someone takes it to a court, let's find out because the stakes are high for a lot of these agencies. Let me give you some numbers. To me some of these numbers were just staggering--\$402,000 for BMS, Inc., in Ogallala, \$402,000 owed. North Platte, Family Skill Building, \$257,795, huge amount of money. Kearney, South Central Behavioral Services, \$183,000. I mentioned this on General File. They spend about \$1.3 million in their specialized children's services. This is 15 percent of their budget for a year in their specialized children's services. So, I don't know whether it's constitutional or not. Isn't that what the courts decide? We've had a lot of laws in here that we...the courts have decided are either constitutional or not constitutional. I think this is important enough that if somebody wants to take it to a court of law and determine that, that is fine. But I have trouble going back and looking these people in the eye and say I didn't at least give you a try to help you out, to get you paid. I think there are good arguments on both sides. But those are arguments that we can take to a court of law. The last one is Mosaic in Axtell, which is close to my heart, it's out of my district now, they lost \$16,000. They've got a lot of people there that earn minimum wage. That's one person less in Axtell in Mosaic. One person less working there for a year. May not sound like a lot of money, but I'll guarantee it for Mosaic in

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Axtell, \$16,000 is a lot of money. And to go back and say I didn't at least give you a chance to go through, get paid and if a court of law overturns it, so be it. But I'll tell you what, if we want to go through a question of constitutionality, we can spend all year here on about every bill that we come up with. Thank you, Mr. President. [LB1072]

SENATOR LANGEMEIER: Thank you, Senator Hadley. Those still wishing to speak, we have Senator Council, Howard, Bloomfield, Nelson, Schumacher, and Hansen. Senator Council, you're recognized. [LB1072]

SENATOR COUNCIL: Thank you very much, Mr. President. I have listened to debate, the pros and cons, and I stand before you in support of the motion to override the veto. And I begin by saying I don't believe that this is a strict contract issue or a strict common-law, contractual issue. I believe, as Senator Harr and Senator Lathrop have stated, that this is an issue of our statutory obligation to provide services to youngsters in the care and custody of the Department of Health and Human Services. But even if this were a strictly contractual issue, and I also want to acknowledge that Senator Conrad was absolutely right, there are common-law legal principles and there are equitable legal principles. And equity comes in to supplement and provide remedies where the inflexibility of the common law would not allow for justice to be served. So first and foremost, I don't believe it's a contract issue, but even if it were, if you look at this contract between the Department of Health and Human Services and Boys and Girls Home, first of all, as a lawyer, I'm appalled by some of the contract language, because some of the language doesn't make any sense. But there is a provision in the contract between DHHS and Boys and Girls Home that is entitled "hold harmless," and I asked to see this contract because Senator Nelson was raising questions of indemnity. And, Senator Nelson, there is an indemnity provision in the contract between DHHS and the Boys and Girls Home and I submit to you that by virtue of the fact that they did provide for this hold harmless provision that the state of Nebraska entered into this contract with its eyes wide open to the fact that third parties, particularly subcontractors, would and could assert claims against the state for, and I quote from the contract, "for cost and expenses, settlement costs and attorney fees, paren, the claims, sustained or asserted against the state of Nebraska arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the contractor." So, the state, through the Department of Health and Human Services, knew when they entered into this contract there would be the potential of claims being filed against the state because of conduct on the part of Boys and Girls Home, specifically, acts of omission. And the act of omission here is the failure to pay these subcontractors for the services that they rendered on behalf of children that the state of Nebraska is responsible for. Now, under a hold harmless provision, if those claims are asserted, which they were asserted in this case, ordinarily the party of the first part here would be Department of Health and Human Services would go after the Boys and Girls Home. They would satisfy the claims that were made against them by the third party because of the act of omission and then part of the first part, DHHS, would go after Boys and Girls Home. But you know what

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happened here? When the settlement between the Boys and Girls Home and the state came about, they decided to mutually relieve each other of the obligation to indemnify. So the state of Nebraska gave up its right to indemnification from Boys and Girls Home, thereby opening themselves up... [LB1072]

SENATOR LANGEMEIER: One minute. [LB1072]

SENATOR COUNCIL: ...to the very claims that are the subject of LB1072. On the equity side, again, equity steps in where the common law provides no remedy. And in this instance, the state of Nebraska received the benefit of the services provided by these subcontractors to the children that we're obligated to serve. And equity would require this injustice to be corrected by the state of Nebraska coming forward and paying these claims that have been submitted. And finally, I want to follow up on something that Senator Hadley said, I can't tell you how many times during this session I have heard, particularly from my colleagues in rural communities about the lack of service providers in their communities. [LB1072]

SENATOR LANGEMEIER: Time. [LB1072]

SENATOR COUNCIL: Well, you want to talk about a damaging precedence... [LB1072]

SENATOR LANGEMEIER: Time. [LB1072]

SENATOR COUNCIL: ...being set. [LB1072]

SENATOR LANGEMEIER: Time. [LB1072]

SENATOR COUNCIL: Thank you. [LB1072]

SENATOR LANGEMEIER: Thank you, Senator Council. Senator Howard, you're recognized. [LB1072]

SENATOR HOWARD: Thank you, Mr. President, members of the body. Thank you, Burke Harr. He has made the exact point that I tried to make for you earlier in that state wards are state wards. When a child is put in the custody of the Department of Health and Human Services, the Department of Health and Human Services becomes, if you will, the acting parent and is responsible for the child's bills. Oftentimes a child is put in the custody of the Department of Health and Human Services simply for the reason that the parent can't meet their needs. They have extraordinary needs, whether it's physical, emotional, behavioral, and the state takes that responsibility. Now if Senator Nelson would yield to a question. [LB1072]

SENATOR LANGEMEIER: Senator Council? [LB1072]

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SENATOR HOWARD: Nelson. [LB1072]

SENATOR COUNCIL: Oh, I thought you said Council. Go ahead. [LB1072]

SENATOR LANGEMEIER: Senator Nelson, would you yield? [LB1072]

SENATOR NELSON: Yes, I think I will, thank you. [LB1072]

SENATOR HOWARD: Thank you, Senator Nelson. I listened to what you had to say earlier this afternoon, and do you remember when we dealt, it was just a few days ago, we dealt with the issue of \$6 million for the KVC facility? [LB1072]

SENATOR NELSON: I'm sorry, I didn't get your question, Senator. [LB1072]

SENATOR HOWARD: Do you recall, a few days ago, we dealt with the payment, an additional payment, in the amount of \$6 million for the KVC facility? [LB1072]

SENATOR NELSON: Yes, I do, I do recall that. [LB1072]

SENATOR HOWARD: You do? [LB1072]

SENATOR NELSON: Yes. [LB1072]

SENATOR HOWARD: And I had put in a floor amendment to not pay that amount. But you didn't support the floor amendment. Tell me what the reason was that you felt we should pay the KVC facility? [LB1072]

SENATOR NELSON: Why did I feel that we should? Because that was part of the settlement agreement after the fact. And the state of Nebraska and KVC entered into that for the mutual benefit of each of the parties. And we didn't get sued by KVC. We paid that amount to avoid that sort of thing. Whereas, we're about to get sued here on the basis of what we're doing today. [LB1072]

SENATOR HOWARD: You talk about a settlement agreement. Did you see a contract that was a settlement agreement? [LB1072]

SENATOR NELSON: No, I never looked at it. I mean, I didn't see it. [LB1072]

SENATOR HOWARD: So you're assuming there was an agreement... [LB1072]

SENATOR NELSON: I didn't see any document, no. [LB1072]

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SENATOR HOWARD: ...reached with the Department of Health and Human Services and KVC, that particular agency? [LB1072]

SENATOR NELSON: But I believe there was a document. [LB1072]

SENATOR HOWARD: I'm sorry, what did you say? [LB1072]

SENATOR NELSON: I think I believe there was a document. I don't know that I ever read it or that it was presented to me. My understanding was that there was a written agreement drawn up with attorneys involved in the settlement of those issues. [LB1072]

SENATOR HOWARD: I think you may be referring to the tenth amendment that was signed off in February by both Kerry Winterer and B. Wayne Sims. [LB1072]

SENATOR NELSON: Possibly, I don't know. [LB1072]

SENATOR HOWARD: That amendment called for KVC to have their bills to contractors paid in full by the time they left the state, which was the end of February. [LB1072]

SENATOR NELSON: Are you saying then that there was a subsequent agreement of some sort... [LB1072]

SENATOR HOWARD: I'm not aware of one. [LB1072]

SENATOR NELSON: ...involving another \$6 million? [LB1072]

SENATOR HOWARD: I'm not aware of one. This is what I'm asking you. [LB1072]

SENATOR NELSON: Okay. [LB1072]

SENATOR HOWARD: I mean, you have objected to paying the contractors, the bill that we have right now, that they've come forward... [LB1072]

SENATOR NELSON: The agreement was that \$6 million would be paid and that KVC would turn around and take care of the subcontractors and so that the state had no obligation whatsoever. [LB1072]

SENATOR HOWARD: Is that...am...it fair to say that is what you understand it to be? That's what you believe? [LB1072]

SENATOR NELSON: Was there what? [LB1072]

SENATOR HOWARD: Is it fair to say that that is how you understand it to work?

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[LB1072]

SENATOR NELSON: That was my understanding. [LB1072]

SENATOR HOWARD: You understand there was an agreement, whether it's in writing or...to pay those contractors? [LB1072]

SENATOR NELSON: My understanding it was in writing. I would think it would be in writing. [LB1072]

SENATOR HOWARD: But you didn't see any bills from contractors, you didn't see any items from KVC that would prove up on the need for that money or why that amount of money? [LB1072]

SENATOR NELSON: No, I guess not. [LB1072]

SENATOR HOWARD: But you were agreeable to paying that. Thank you, thank you, Senator Nelson. [LB1072]

SENATOR NELSON: Yep. [LB1072]

SENATOR HOWARD: I say to you, if we feel that we should be paying a bill for \$6 million without bills, without any sort of obligation on our part, an agreement that was reached prior to our paying out that amount of money, I am astonished as to why there is even a consideration that this amount of money wouldn't be paid for these contractors when we know what the bills are, we know these were obligated for state wards, and we know that the state is responsible, bottom line, responsible for payments for the needs of children that have, through no fault of the children, become wards of the state of Nebraska. Thank you. [LB1072]

SENATOR LANGEMEIER: Thank you, Senator Howard. Senator Nelson, you're recognized. [LB1072]

SENATOR NELSON: Thank you, Mr. President. Colleagues, colleagues, I...I think it's time to point out some things that are being overlooked. Time and again here, we hear that we have a duty to pay the cost of the support, study, and treatment of juveniles which are not otherwise paid. I haven't heard anyone here say that the children were not cared for. They were. They were...that was done by the subcontractors, whether voluntarily or involuntarily. We had a duty to pay the contractor, Boys and Girls Homes, and I maintain that we did. That was our duty. We don't have a duty to pay twice or to pay indefinitely because someone lost some money. Let me address the three answers that my colleague, Senator Lathrop, gave, and as he said, we as lawyers can differ. But the reasons he said that we should override are that we have, constitutionally, we have

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a good basis for doing that. Colleagues, we have two important cases that have gone down before here, that we know where the court is and what the requirements are, as far as special legislation is concerned, as far as putting out money for charitable purposes, I have yet to hear of any case that tells us how we are on good constitutional grounds in paying out money on these claims unless it be that we have a duty to pay. And we have paid. People are coming to us, subcontractors, yes, they've lost money. Look at Commonwealth. I know of individuals who lost in excess of \$200,000 back in the '80s. That was probably worth twice as much now. Did they get paid on their claims? No, because our court said that constitutionally we could not do that. And now, even though the children were cared for, and we have fulfilled our duty, our contractual duty with Boys and Girls Home, they failed. Yes, they failed. I don't care if a contractor is flawed. I don't...at the time, Senator Council was showing me a hold harmless agreement that we were going to indemnify, I just read that quickly, this is about the contractor indemnifying the state of Nebraska on any misdeeds that they did. And then there's a final sentence there that it's attenuated, as she doesn't understand that, I don't understand that. I don't see that there is anything in the agreement between Health and Human Services and the lead agency that said we had to go ahead and pay for any mistakes that they made or things that they weren't able to pay to the subcontractors. So constitutionally, I don't think we have a good foundation here in attempting to do this in overriding what the Governor has done, because I think he has solid basis on the cases, especially the second case, the Henry v. Rocky. Do we have a statutory duty? Yes, we have a statutory duty, but we fulfilled that, we have paid. We paid in accordance with our agreement. The children received what they were supposed to receive. I don't think anything was turned out. They all had a roof under their head. We took care of that. That's all the farther that we have to go. And I know that hurts us, because we don't think it's equitable. [LB1072]

SENATOR LANGEMEIER: One minute. [LB1072]

SENATOR NELSON: Equity has no place in this discussion. The court does not discuss equity in the Commonwealth cases. They talk about charity and whether there is a special classification and a closed class. Finally, people are hurting. So we're down to charity. Yes, people are hurting. Subcontractors are hurting. They have lost money. We as a legislature have provided for them. We cut them a long ways in the last two years and now we've gone back by 1.5 percent. We have helped them out. I think that they will survive. These larger losses are by larger outfits in the counseling services and things of that sort, they will survive. It would be nice if they could get paid, but I'm telling you, if we go ahead and override, this is going to go to court, we're going to lose on the same basis that we did in the Commonwealth cases, at a lot of cost, we're going to get enjoined from paying this money out to the cases as heard, and we will lose. So why are we doing this? Just to make ourself look good? Yes, we want to help people out, but let's pay attention to what the court has said... [LB1072]

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SENATOR LANGEMEIER: Time. [LB1072]

SENATOR NELSON: ...what the precedence have said. [LB1072]

SENATOR LANGEMEIER: Thank you, Senator Nelson. Senator Schumacher, you're recognized. [LB1072]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. Senator Pahls guilt trip me into talking and putting my 2 cents' worth in as a lawyer. For me, this particular thing resolves into a very simple issue. We, as a legislature, made a decision. It was a rather overwhelming decision that this was good policy and we sent that on to the Governor. And the Governor responded that it was unconstitutional. And that was basically the sum and substance of the veto message. Not that it was bad policy. Not that we had made a mistake. Not that it would be harder to govern in the future or things would be more expensive in the future, but one very simple thing, it was unconstitutional. And we're here now attempting to override that particular veto. Something that is unconstitutional is for the courts to decide. That's why they wear black robes. That's why they have a higher pay grade. We can speculate as lawyers and as legislators whether or not it is unconstitutional. And as lawyers we can take positions on both sides of an issue. And if there is enough of us, not only will it make a good living, we could probably get rich at it. But we don't know and we can't say. If we override this veto, undoubtedly somebody is going to ask the Supreme Court to make a decision. And eventually they will tell us whether we were right or wrong. Personally looking at the issues, I think, probably, the better argument lies with those encouraging an override as far as the legal issues. We probably have an obligation to take care of those kids. We probably can't get out of it by contractual mechanisms and probably the Supreme Court will side with care of the children. But that is just "probablys", we don't know, and won't find out until the Supreme Court tells us. If we override, then there will be, probably, several different attempts by these providers, particularly the ones that are owed money, to come back and there will be protracted litigation. The litigation, if we override, will probably be very simple, very straightforward and the court on a stipulated set of facts, and the court will make a decision. Do we have an obligation to these kids or can we get out of it by inserting a middleman between us and the children? So I think this is a very simple way to use our constitutional form of government and ask the Supreme Court, eventually somebody will, to do their job and that will probably be done by a taxpayer bringing an action to enjoin payment of this money and a few years from now we'll know the answer to the question. Thank you. [LB1072]

SENATOR LANGEMEIER: Thank you, Senator Schumacher. Senator Hansen, you're recognized. [LB1072]

SENATOR HANSEN: Thank you, Mr. President. I know no law but that of common sense. My common sense tells me that we owe this bill. We continue to talk for several

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hours now and last week. And I think that the people that provided the services, even though they didn't have a contract, they are due this money. I don't think we can get away from that. We have people out there that are owed hundreds of thousands of dollars, some in my district. They were trying to do the right thing. I think we need to do the right thing for them. Thank you. [LB1072]

SENATOR LANGEMEIER: Thank you, Senator Hansen. Senator Council, you're recognized. [LB1072]

SENATOR COUNCIL: Yes, thank you again, Mr. President. And I maintain that there is a significant factual difference between this situation and the situation that the court was presented with in the Commonwealth case. And that difference is that in the Commonwealth case, at least I'm not aware of any statutory obligation that the state of Nebraska had with regard to any of those depositors. But there is no question that the state of Nebraska has a statutory obligation to pay the cost of providing services to children that are wards of the state. I don't think there's any dispute about that. And yet there was no such comparable statutory obligation imposed on the state relative to protecting or preserving those depositors. So I think that that's a critical distinction. And when you look at the hold harmless provision in the agreement between DHHS and Boys and Girls Home again, and this is standard language in the contract, because it speaks to any and all claims or liens. What ordinarily happens when a contractor doesn't pay a subcontractor? They file a lien. And the owner has to do something to get that lien off his or her property. And ordinarily they go against the person they contracted with. And in this instance what Boys and Girls Home agreed with the state of Nebraska was that if anybody, any third party, any subcontractor, maybe one of Boys and Girls Home's employees brought a claim against the state of Nebraska that the state of Nebraska had to respond to and in many instances when under those circumstances the person against whom the claim is brought will pay the claim and then go against the party that indemnified them to recover, to be made whole. In this instance, the state of Nebraska, as I understand it, cannot go against Boys and Girls Home on these claims because there was an execution of cross releases. Senator Lathrop, would you yield to a question? [LB1072]

SENATOR LANGEMEIER: Senator Lathrop, would you yield? [LB1072]

SENATOR LATHROP: Yes. [LB1072]

SENATOR COUNCIL: Am I correct in my understanding that subsequent...or at the time the Boys and Girls Home was terminated, there was execution of documents that resulted in cross-releases of what...and what I mean by that is that the state released Boys and Girls Home from the duty to indemnify them and Boys and Girls Home released the state from any duty to indemnify them? [LB1072]

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SENATOR LATHROP: I'm not sure I followed that. What I do know about the releases is when these people...when Boys and Girls Home ran out of money, we still owed them \$1.7 million. So what we did is, and it took a great deal of time and effort on the part of the health folks, but they called each one of them up and they said we're going to give you a pro rata share of that \$1.7 million, so they received 33 cents on the dollar. And each of them received a release or executed a release that released Boys and Girls Home. And it preserved for themselves, by agreement, not unintentionally, but intentionally preserved the right to make a miscellaneous claim. [LB1072]

SENATOR COUNCIL: And see...and that's...and that's, I think, what is being overlooked in this discussion, colleagues, is that while we say... [LB1072]

SENATOR LANGEMEIER: One minute. [LB1072]

SENATOR COUNCIL: ...we may not be privy to that, that arrangement was facilitated by DHHS agreement to pay Boys and Girls Club...excuse, Boys and Girls Home, not Boys and Girls Club, Boys and Girls Home \$1.7 million understanding that it's going to be used to partially pay these subcontractors, and the subcontractors all they were doing was releasing any claim they had against Boys and Girls Home, not releasing any claim they had against the state. And I think that's another acknowledgement on the state's part that if the state didn't believe that these subcontractors had some legitimate right to make a claim against them for the full value of services rendered, believe you me, DHHS would have directed Boys and Girls Home to enter into a different kind of settlement. [LB1072]

SENATOR LANGEMEIER: Time. [LB1072]

SENATOR COUNCIL: Thank you. [LB1072]

SENATOR LANGEMEIER: Thank you, Senator Council. Senator Smith, you're recognized. [LB1072]

SENATOR SMITH: Thank you, Mr. President, and good afternoon, colleagues. Just want to stand up and speak on this, and as Senator Carlson had mentioned earlier, as he is a member of the Business and Labor Committee, so am I, and I supported LB1072 coming out of committee and I've supported it on the floor thus far. And let me just give you a little bit of background. You know, as a contractor myself, I have to write off a lot of bad debts all the time because of folks not choosing to pay and it's difficult to do. But no one takes care of that for me. But with that said, what turned me to support this in committee and on the floor, a couple of concerns I had, one was with the development of the contracts by HHS. And I think Senator Lathrop has noted that already and I think he has communicated that very well, most of the committee members' feelings about that, about the management of those contracts and the execution of those contracts, I

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think, you know, that we can all agree that it was probably very poor. There is also concerns that I had with retaining the services of subcontractors in rural areas. If they go bankrupt, who is going to be there to take care of these needs in the future? And I still stand by those reasons for supporting this out of committee and for supporting it on the floor in the past. And those are very emotional issues and I've had my light on a half dozen times, you know, trying to figure out exactly what I wanted to say on the floor about this. However, I will have to say I have been persuaded to view this now through the opinion of the courts on what we heard about the Commonwealth Savings Company case, and also by the comments of my colleagues, Speaker Flood and Senator Nelson. I'm finding it necessary at this time to compartmentalize the appropriateness of LB1072 from the emotions I had about this case leading up to this point. And based on my recent education on special legislation, I do not see how we can deny that LB1072 creates a permanently...does not create a permanently closed class. And I do believe that this is special legislation if we agree that Nebraska is not legally obligated. So if the opinion out there is that Nebraska is legally obligated, then I don't think you can make this argument that it's a closed class or special legislation. But if you believe that we are not legally obligated, that this is just the ethical or right thing to do, then I believe that this could be...would be special legislation. And I'm going to ask Senator Nelson to just remark on, maybe take the remainder of my time and comment on what I've said here. And I, with all sincerity, I do want to be told if I'm wrong in the way I'm seeing this. Thank you, Mr. President. I'm going to give the remainder of my time to Senator Nelson, if he would like it. [LB1072]

SENATOR LANGEMEIER: A minute, 34. [LB1072]

SENATOR NELSON: Thank you, Senator Smith, Mr. President, and members of the body. We really haven't talked about the issue of special legislation, but from what I understood Senator Smith to say, I agree with him. And I can only quote from the Henry and Rocky case and also Haman and let me repeat; a legislative act violates Article III, Section 18 of our constitution as special legislation in one of two ways, by creating a totally arbitrary and unreasonable method of classification... [LB1072]

SENATOR LANGEMEIER: One minute. [LB1072]

SENATOR NELSON: Thank you...or by creating a permanently closed class. I don't know that you could argue one way or the other about a unreasonable method of classification, but I would say we are in the area of creating a permanently closed class, if we vote to override and then go ahead and pay these claims. A closed class means that there is no opportunity for anyone else to come in, other than those that are already before us. And if we're going to pay claims to the extent that have come before the claims board, and then also the business and labor community, then we, in my estimation, have created a closed class that is not open to anybody else to share in this. We really...we've talked about a lot... [LB1072]

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SENATOR LANGEMEIER: Time. [LB1072]

SENATOR NELSON: ...of other things... [LB1072]

SENATOR LANGEMEIER: Time. [LB1072]

SENATOR NELSON: ...and I don't know that this is the... [LB1072]

SENATOR LANGEMEIER: Time. [LB1072]

SENATOR NELSON: Thank you. [LB1072]

SENATOR LANGEMEIER: Thank you, Senator Nelson and Senator Smith. Senator Coash, you're recognized. [LB1072]

SENATOR COASH: Thank you, Mr. President. Colleagues, I do...I've paid close attention. It's nice to have so many attorneys in the body and I guess if every attorney saw things the same way we wouldn't need any of them. Maybe that's a good thing too (laugh). One of the things I'm struggling with is, as I'm sure many of us are, is we've got to go back to our districts and we have to look our constituents in the eye and we have to explain how we go on this vote. And if you want to look your providers in the eye and you say to them, you know, I just couldn't make you whole, that's a tough one. Then when you go to talk to the other constituents who represent the taxpayers, you got to look them in the eye and say, we messed up, state messed up and we now are paying twice for the same thing. And that's a tough one to look that taxpayer in the eye and say, because of our mistake we now have to ask for double your money because we paid the bill and now we're going to pay some of it again. One of the terms that I've heard frequently in this debate is obligation. And I've tried to separate out obligation between--well here is your obligation to do what you feel is right, and separate that from an obligation to do what you feel is legal. Frequently, I've heard many of you say we have an obligation to take care of the kids. And I want to take this opportunity to let you know that I've seen the kids who were provided for by these subcontractors and I will tell you the state...those providers met that obligation. They took care of the kids that they were asked to take care of. Every one of those subcontractors who had a state ward in their care did their job and they did it under some very trying circumstances. So we met that obligation. And then we had the obligation to pay. And many of us have talked about did we meet that obligation? Well, the state did write a check. They wrote a check, the service was delivered, and that has been a struggle for me. In the initial debate, we all wondered about what would happen about the precedence. Senator Flood, in particular, spoke many times on the precedence that this might set. But it didn't have...that debate did not have the benefit of case law, precedence that would say, well, is this really a dangerous road? And now the Governor has said, yes it is. Senator

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Council and Senator Lathrop and Senator Conrad, all competent attorneys, have said, well yeah that is a precedence, but it doesn't apply here. So I continue to struggle. But I'll go back to my initial comment, no matter how this goes, we're going to make some people unhappy because we're going to have to either look the providers in the eye and say, sorry, we can't see a way for it to make you whole; and we're going to have to look the taxpayers... [LB1072]

SENATOR LANGEMEIER: One minute. [LB1072]

SENATOR COASH: ...in the eye and say, we got to hit you twice. It's unfortunate, this truly is one of the most difficult votes that I can remember. Thank you, Mr. President. [LB1072]

SENATOR LANGEMEIER: Thank you, Senator Coash. Senator Campbell, you're recognized. [LB1072]

SENATOR CAMPBELL: Thank you, Mr. President, and good afternoon, colleagues. This has been a very difficult issue for me to sit and listen to because I have been quite vocal on, obviously, all the child welfare package of bills. As I indicated all along the path, I have a conflict of interest. I've filed that conflict of interest and I feel that I must keep that commitment because the agency I work for has a claim in the list. But as several of my colleagues have said to me this afternoon, that doesn't prohibit you from making some comments. And so I want to make some observations based on the LR37 Report. That at every hearing, all five, we heard about this issue. We heard about agencies that had gone bankrupt; mom and pops across the state that couldn't hold on. Every one of those providers in their testimony said that they stood in place of the state to care for children. I believe the state never is relieved of its responsibility to care for their children. It seems to me that one of the issues I hope you consider is how can the confidence of our frontline caretakers from border to border have confidence in their partnership with the state. To me this issue is far more than just discussing a point of law. But is about our word to the people who cared for the children. Thank you. [LB1072 LR37]

SENATOR LANGEMEIER: Thank you, Senator Campbell. Senator Christensen, you're recognized. [LB1072]

SENATOR CHRISTENSEN: Thank you, Mr. President. I wish I could stand up here and tell you which way I was even going to vote. You know, I'm so frustrated with the HHS system, just like to throw up my hands, because it has horrible leadership. And we have done a lot of changes, but this body has not went far enough and we've got a long ways to go. And I can look at this and say, you know, I think there's a process in place that subcontractors need to sue the contractors, contractors need to sue the state. I can turn around and say, you know what, we have not paid our people well. We have not paid all

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the bills, and it's very easy for me to vote either way. I actually did not vote on this amendment. I voted for the bill after it was on there. That's how difficult this has been. I don't know which way I'm going. I do know this is long ways from over. And I don't think we have the problem solved yet. I think the system stinks. And it's not going to get corrected until we do more here or the leadership changes and leadership cares. But I don't want to see the people unpaid. Unfortunately, I voted for Senator Howard's amendment that would have solved this issue, would have ripped KVC out of the budget, stuck them into this, we wouldn't be having this debate, it wouldn't have been vetoed. But there's only three of us agreed with doing it with that approach. That would have solved this. So here we sit. I still don't know how I'm going to vote or what to do because I can make a case either way. I could see it going to court either way. And, honestly, I don't see it changing anything, because the system they're already talking about cuts to providers or issuing less to them for the ones that are still taking care of kids. How are we going to solve this problem? This Legislature hasn't done enough is what I'm saying. And the leadership is not leading to accomplish it. Unfortunately, we need to go into special session as this ends to deal with the issue that isn't done. I know everybody is ready to get out of here. I am too, I got farming to do. Unfortunately, the kids lay at risk. And, unfortunately, if I vote for this override, I don't think it solves anything, just puts a band-aid on some of the past providers and current providers, but they're going to sit here and struggle yet anyway or until they wise up and quit, and every kid is dumped on the front steps out here so we're willing to do something. I'm ashamed of what we've got done, because we are not leading, we're not taking care of them, we're not addressing the issue. I don't care if it's state run or if it's back to the private hands, neither one is going to work the way it is structured. That has nothing to do with this vote. This vote, we got to determine yet what to do. Many of you know what you're doing. I'm glad you do. I wish I did. But very difficult issue for me, because I do believe there is a process that needs to be followed. I don't want to set a dangerous precedence. I agree with people that if it's unconstitutional, it's unconstitutional. I've had a water bill sued twice, won once, loss once, didn't change the fact that I had to come back and address it and work on it. And we're going to have to come back, people, you better be ready... [LB1072]

SENATOR LANGEMEIER: One minute. [LB1072]

SENATOR CHRISTENSEN: ...to come back and work on this. Thank you. We've got a lot of things to do yet. And I wished I had the magic answer, because I don't. But I do know there's been a lot of families harmed in this system, a lot of providers harmed, and we're still not taking care of the foster parents or the kids and so we still got a big issue in front of us. And we have band-aided the approach for too long. I know we've made some major steps forward, I commend the body for it, but we still don't have the leadership in place to handle it. So, unfortunately, we'll be back at this and, again, I'll continue to listen and I hope somebody gives me a direct reason to vote one way or the other. Thank you. [LB1072]

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SENATOR LANGEMEIER: Thank you, Senator Christensen. Senator McGill, you're recognized. [LB1072]

SENATOR MCGILL: Question. [LB1072]

SENATOR LANGEMEIER: Seeing no other lights on, that would not be necessary. Senator Lathrop, you are recognized to close on your motion to override the Governor's veto. [LB1072]

SENATOR LATHROP: Thank you, Mr. President, and colleagues. I appreciate the discussion. I want to tell you I appreciate for those of you who struggle with what to do, I appreciate that too. We are in a peculiar place, legislatively, and perhaps I can begin my close by talking about what this isn't. This isn't about the Governor; it's not about the Governor versus the Legislature. We're not here to vote for or against it because he's urged us to be in favor or opposed to the override. It's about what the right thing to do is. That's the only question for us. That's why our constituents send us down here to exercise our best judgment about what to do. And so the issue today has been can we do this? Is it constitutional? The veto message suggested it wasn't. I can tell you, I'm confident that overriding this veto and paying this claim is constitutional. Now Senator Nelson and Senator Smith had a dialogue about a closed class or special legislation. Folks, we're not closing any class. We're not creating a class. We're not stopping somebody else from coming along later. This is not a closed-class issue. The only way the constitution is implicated is whether or not this is an obligation of the state or is it charity. And we went through and talked about that at some length. This is our duty. The statute provides this is an obligation of the state. One of those statutory provisions says we're supposed to pay the vendors directly, which we did not do. The reasons to pay these people are countless. You could go into the equities and what's fair, but the simple matter is that there is no constitutional reason we can't. And everything about what you've heard in committees, if you've heard this in committee, or on the floor suggests to all of us that this is one of our bills that need to be paying. We cannot turn our back on an obligation and on a bill that we need to pay by simply saying, well, somebody else who is incompetent should have taken care of that. That doesn't relieve us of our obligation. Are there going to be winners and losers? Will the taxpayers appreciate this? I don't know. But I do know this, that the state of Nebraska ought to pay its bills. And I think we should. We didn't have any problem paying KVC subs. Now it's time to do the right thing for the subs of Boys and Girls Home. Senator Flood talked about precedence. What we do here today does not bind us in any way. Courts are bound by precedence. This body is not, on miscellaneous claims, bound by some precedence. If we pay these claims today, somebody brings us one next year, we're not obliged to pay it. The circumstances may be different, they may be the same, but we're not obliged like a court is to follow precedence. We're not setting a precedence. But if we were looking for one, it is in the appropriation we made to KVC. We made sure one

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of these contractors got all their subs paid. That was the right thing to do. I'm not critical of the people on Appropriations Committee that did that, because we should be paying our bills. And this is a simple matter of paying our bills. I would encourage your vote for an override. Mr. Speaker, I would ask for a call of the house and a roll call vote in reverse order. [LB1072]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Members, 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. Mr. Clerk, please record. [LB1072]

CLERK: 42 ayes, 0 nays, Mr. President, to place the house under call. [LB1072]

SPEAKER FLOOD: Members, 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 Council, Burke Harr, Senator Cornett, please check in. The house is under call. All members are present or otherwise accounted for. Members, a reminder, this motion requires 30 votes. The question is, shall LB1072 become law notwithstanding the objections of the Governor? Mr. Clerk, please read the roll in reverse order. [LB1072]

CLERK: (Roll call vote taken, Legislative Journal pages 1349-1350.) 31 ayes, 12 nays, Mr. President, on the motion that the line item veto as contained in LB1072 become law notwithstanding the objections of the Governor. [LB1072]

SPEAKER FLOOD: The motion is adopted. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign the certificate that reads: LB1072 having been returned by the Governor with his objections thereto and after reconsideration having passed the Legislature by the constitutional majority has become law this third day of April, 2012. I raise the call. Mr. Clerk, any items? [LB1072]

CLERK: Yes, sir, I do have some. Mr. President, pursuant to that action, I have a certificate signed by the presiding officer, as well as a communication from the Clerk to the Secretary of State regarding the transmittal of LB1072. In addition, Mr. President, LB804 and LB1020A, LB1053A, LB1091, LB1091A, LB1155, LB1158 are all reported correctly engrossed. Senator Lambert offers LR623 and LR624; both resolutions will be laid over at this time, Mr. President. And that's all that I have. (Legislative Journal pages 1350-1353.) [LB1072 LB804 LB1020A LB1053A LB1091 LB1091A LB1155 LB1158 LR623 LR624]

SPEAKER FLOOD: Thank you, Mr. Clerk. Members, as was mentioned prior to our

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noon recess, we will now return to LB727 on Select File. After LB727, we will proceed immediately to LB720 and proceed down our agenda. Mr. Clerk, LB727. [LB727]

CLERK: Mr. President, LB727, Senator Larson, I have Enrollment and Review amendments, first of all. (ER200, Legislative Journal page 808.) [LB727]

SPEAKER FLOOD: Senator Larson, you're recognized for a motion. [LB727]

SENATOR LARSON: Mr. President, I move that the E&R amendments for LB727 be adopted. [LB727]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. The amendments are adopted. [LB727]

CLERK: Mr. President, Senator Mello, I have AM2600 with a note you wish to withdraw that, Senator. [LB727]

SENATOR MELLO: Yes. [LB727]

SPEAKER FLOOD: AM2600 is withdrawn. [LB727]

CLERK: Senator, you want to withdraw AM2629 and substitute therefore AM2600...I'm sorry, withdraw AM2600 and offers as a substitute, AM2629, is that right, Senator? (Legislative Journal page 1122.) [LB727]

SENATOR MELLO: Yes. [LB727]

SPEAKER FLOOD: As to the substitution, no objections? So ordered. Senator Mello, you're recognized to open on AM2629. [LB727]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. Bellevue's Offutt Air Force Base, home to the headquarters of the U.S. Strategic Command, better know as STRATCOM, is one of the major economic development engines in the state of Nebraska. As a state senator who formerly represented parts of Bellevue, I've been fortunate enough to work with members of the Offutt community on a number of issues. The estimated impact of Offutt to our state is more than \$1.7 billion and the upcoming construction of a new headquarters for STRATCOM is projected to be at \$1 billion project. Under existing state law, construction materials used for federal building projects, like the new STRATCOM headquarters, are exempt from sales taxes. This exemption applies in cases where the federal government purchases materials directly from a supplier or if the government has issued a purchasing agent appointment under Statute 77-2704.15 which can be accomplished by completing a Form 17 from the Nebraska Department of Revenue. AM2629 came about because contractor bids for the

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STRATCOM project were coming in higher than expected due to the inclusion of state sales tax on construction materials. Apparently the U.S. Army Corps of Engineers, which is overseeing the STRATCOM project, has historically refused to fill out Form 17 to designate a purchasing agent due to concerns about being held legally responsible for the private contractor's actions. AM2629 would have provided the materials purchased by private contractors for the use and construction of federal buildings owned or used by the U.S. Department of Defense or U.S. Department of Veterans Affairs in a county with a city of the metropolitan class or at least three first class cities are exempt from sales and use tax regardless of whether or not they've filed out Form 17. As no doubt some of the Revenue Committee members, remember from this afternoon's hearing, the adoption, or some kind of adoption of an amendment or solution that Senator Cornett will also explain, would not just help remedy an issue involving STRATCOM's new headquarters, but also the new Omaha veterans hospital which ultimately will be delayed and cost taxpayers millions of dollars if we do not find a solution to this tax-exemption issue, because both of these major projects are relying on specific federal appropriations. I'd argue that the policy of taxing these materials simply because the Army Corps of Engineers refuses to fill out the existing Form 17 has endangered both projects, as well as future federal projects in the state of Nebraska. Colleagues, we had a hearing this afternoon during the lunch hour, and I want to first start off and thank my former fellow Bellevue colleague, Senator Cornett, for working diligently this last month on this very critical issue. The issue was brought forward to us by our federal delegation in which then we proceeded to meet with our U.S. Army Corps of Engineers, as well as our Department of Revenue. Ultimately, today we had STRATCOM come and testify; we had Senator Ben Nelson, the Army Corps of Engineers, as well as the U.S. Military Support Coalition based out of Omaha to provide feedback in regards to this issue and how important, essentially, it is for state tax policy to essentially ensure that we are consistent as it relates to local government entities, as well as the federal government. Ultimately, I am going to be withdrawing AM2629 after I allow Senator Cornett to walk everyone through, ultimately, what we have come up with is a compromise. Because what we have discovered in conversations and research in working with the Corps of Engineers, as well as the Department of Revenue, is that the federal government is allowed the same authority that other governmental entities are in regards to applying for a tax exemption. The challenge is...deals with designating an agent on behalf of the federal government which brings, ultimately, legal liability that the federal government has never wanted to partake or assume on behalf of private contractors. Ultimately, we've discussed and found a way that within the next day and a half or so, we believe there is an administrative process that can be worked out and I want to allow Senator Cornett to be able to explain that a little bit more. But more importantly, I think this is a solution, ultimately, that was found by interested parties coming together trying to find a solution to ensure that this critical project moves forward in our state, that it's not delayed any further, and, ultimately, continues to have this significant economic and national security impact that we know comes with a new STRATCOM headquarters. So, with that I want to yield the remainder of my time to

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Senator Cornett. [LB727]

SPEAKER FLOOD: Senator Cornett, 5 minutes 8 seconds. [LB727]

SENATOR CORNETT: Thank you, Speaker Flood and Senator Mello. First, I would like to thank Senator Mello, the Department of Revenue and the Corps of Engineers for all of their assistance on this bill. What the underlying issue is, our federal projects are tax exempt. When they contract with someone to do this, the Department of Revenue, per our laws, required for them to sign a form listing a registered agent for the military so they receive the tax exemption for purchases of items. There is something in the federal law, under what's called FAR, that does not allow them to sign that if they are delegating liability or accepting liability with that. We have worked out a compromise between the Department of Revenue and the Army Corps of Engineers where they will be working on a form designating an agent but specifying language that the designated agent is only for the purpose of sales tax and does not affect liability issues. We do have an amendment drafted that would define agent, if we need to do so, we will know that by tomorrow. Either way the amendment removes the fiscal note and simply defines what an agent is for federal purchasing. We believe that we will have the answer to that tomorrow. If we need that, we will bring it back from Final Reading to Select File to define agent. But at this time both the Army Corps of Engineers and the Department of Revenue believe that they have a solution that they can do it administratively. And I want to thank everyone involved with this because it is such a critical issue both for the state of Nebraska and for this country because it does affect national security because it directly affects the missions that STRATCOM would be able to support. With that, I thank Senator Mello for the amendment and withdrawing that amendment. [LB727]

SENATOR COASH PRESIDING

SENATOR COASH: Thank you, Senator Cornett. Senator Mello, you're recognized. [LB727]

SENATOR MELLO: Mr. President, I'd like to withdraw AM2629. [LB727]

SENATOR COASH: Without objections, so withdrawn. [LB727]

CLERK: Mr. President, Senator Ashford would move to amend AM2612. (Legislative Journal page 1081.) [LB727]

SENATOR COASH: Senator Ashford, you're recognized to open on AM2612. [LB727]

SENATOR ASHFORD: Thanks, Mr. President and members. In 1987, the first year I served here in the Legislature, we passed LB775. Section 77-2715.08 and .09 are the statutory references to the Employment and Investment Growth Act of 1987. Those of

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you, and most of you, recall LB775, except for maybe Senator Larson, Senator Nordquist, and a few others, but it was a critical, if not the most critical piece of legislation that our state has passed in the last 50 years. It had provided a number of incentives for businesses that were on the verge of leaving the state to remain here. And one of the provisions of LB775 and the debate on these provisions, which I remember very well, involved the retirement of executives of LB775 companies. It was clearly stated in the LB775 that employees of LB775 companies who leave employment are able to sell their stock, were able to, and are able to sell their stock back to their companies without paying capital gain. It was a critical part of LB775. It was a promise that we have made, we did make, and on a continuous basis do make to LB775 companies. This bill is, quite frankly, a clarification of a Revenue Department issue regarding employees of LB775 companies that created ESOTs, employee stock ownership trusts. After the passage of LB775 and into the '90s and early 2000s and up till today, employee stock ownership trusts are relatively commonplace as a mechanism for employees to buy companies from their...to buy their companies back from the owners or existing owners or other corporations that had purchased companies that were LB775 companies. The Revenue Department has suggested language that will clarify that stockholders of an LB775 company that are in an employee stock ownership trust qualify for...would qualify, specifically, for this tax treatment under LB775. Essentially, the rule under LB775 is that a company must have at least five stockholders in order to qualify. Many companies qualified initially under LB775, created these trusts, so technically the stock was owned by the trust as opposed to the individual stockholders, even though the...each individual stockholders within the employee stock ownership mechanism had the...all of the indicia of stockholders. They owned the...they had voting rights and other stock ownership rights. So this amendment simply clarifies for the Revenue Department that LB775 stockholders who are employee stock ownership trust are able to claim the benefits of LB775 despite the fact or even though they...the stock is technically held by an employee stock ownership trust. With that, I would urge the adoption of AM2612. [LB727]

SENATOR COASH: Thank you, Senator Ashford. You've heard the opening to AM2612. Members wishing to speak, Senators Price, Cornett, Loudon and Burke Harr. Senator Price, you are recognized. [LB727]

SENATOR PRICE: Thank you, Mr. President, members. I rise and I hit my light early on in the offering of LB727. And I wanted to join others in commending those individuals, Senator Mello, Senator Cornett, Revenue Department and others, who have worked hard on LB727 to bring a resolution to this challenge that we had before us. Again, throughout much of this session we have heard a lot about contracting, whether it's been appropriately approached or not. But here we were presented with something that did become quite ticklish and that...and difficult. And again, as others have said, the importance of the construction at Offutt cannot be understated, let alone for the impact on the economy today for the building, but the continued impacts having a new facility

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for U.S. STRATCOM. And again, these efforts and all those who participated, my thanks to the committee who surrendered their lunch to have the opportunity for the public debate and for people to come down is greatly appreciated and I am indebted for their support. And with that, Mr. President, I would like to yield the balance of my time to Senator Cornett. [LB727]

SENATOR COASH: Senator Cornett, 3 minutes 30 seconds. [LB727]

SENATOR CORNETT: Thank you very much. The amendment that Senator Ashford has filed has to do with a capital gain. And let me clarify a couple of things first. This was a bill that was introduced in the Revenue Committee that the Revenue Committee did not pass out this year because of budgeting concerns. We knew we had a limited amount of money to work with this year and we prioritized the bills based on their impact to the state. This bill had a hearing in committee. We have not Execed on it. We did not vote it out of committee. And let me just explain what passing this amendment on to the bill will do. As all of us were at the meeting this morning with Senator Flood, we have a very limited amount of money. Yesterday, a number of us sat down and made sacrifices on other bills to reduce the fiscal note, to have them passed over, to delay implementation, to reach that bottom line that we needed to be at. This bill, the first year, has a \$333,000 fiscal note. Each one of you in here needs to decide which bill is going to die to pass this amendment which the Revenue Committee did not send out of committee if you want to adopt it. Somebody else's bill whose committee sent it out has to die to pass this. We have balanced where we needed to be at. I am not opposed to the bill per se, but it is a matter of fiscal concern this year. With that, I urge the body to not support AM2612 to the Department of Revenue's bill. Thank you. [LB727]

SENATOR COASH: Thank you, Senator Cornett. You are next in the queue. Senator Cornett waives. Senator Louden, you are recognized. [LB727]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. Would Senator Ashford yield for a question? [LB727]

SENATOR COASH: Senator Ashford, will you yield? [LB727]

SENATOR ASHFORD: Yes. [LB727]

SENATOR LOUDEN: Senator Ashford, as I look at your amendment, and of course the whole grist of it is the one paragraph: for purposes of subdivision a participant is a stock ownership trust of Section 401(a). What's a section 401(a)? Now I know what a section 401(k) is, but...is a 401(a), what is that? [LB727]

SENATOR ASHFORD: It's a employee stock ownership...it's a type of employee stock ownership trust. [LB727]

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SENATOR LOUDEN: Okay. Now can...when its...the employee stock ownership trust, does that mean like the president of a corporation he could get paid in stock then instead of a certain amount of wages or bonuses in stock? [LB727]

SENATOR ASHFORD: No. What it is set...well, technically, I suppose, they could get paid in stock. What the intent of the trust is, it's used...the whole reason...the sole reason or one of the major reasons for doing these is to...in the case of many LB775 companies, for example, is they created the trust in order for employees to buy the companies from the owners...or the original founders of the companies. That's how...why they were set up. It was the mechanism, an IRS-related mechanism that allows favorable tax treatment to the owner...the founders of companies and allows the employees to buy the stock from them. But the capital gains treatment applies to all...it's...many hundreds of employees are affected by this throughout the state, so it's not just the owners. [LB727]

SENATOR LOUDEN: Well, that's what I'm wondering is if it was a way that the leadership of a corporation could pay their president or somebody in stock for bonuses and then that stock thus could be sold and probably get by on a capital gains rather than paying taxes on a wage scale. I guess, could this be substituted for wages? [LB727]

SENATOR ASHFORD: No, it is not a substitute for wages. The stock itself, that is, that is distributed to employees is purchased from the owner, that's how it works. And the...but the owner, the founder in many cases, gets favorable tax treatment when the company is purchased, that's the purpose for this. [LB727]

SENATOR LOUDEN: Yeah, it's purchased, but it's purchased from a corporation. [LB727]

SENATOR ASHFORD: Correct. [LB727]

SENATOR LOUDEN: Now can they purchase that stock instead of buying a 401(k), they can buy stock in that company? [LB727]

SENATOR ASHFORD: I believe that they can buy stock in the company. I'm not...I don't think that's necessarily related to this, but, yes, they can buy stock in the company. [LB727]

SENATOR LOUDEN: Okay, then if a company was...with their employees, was participating in a 401(k) where they were taking a certain amount of money each month that they could set aside out of their wages for some type of a 401(k) plan, could this be substituted so they could get this kind of a...use this stock instead of setting that money

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up into a fund of some sort? [LB727]

SENATOR ASHFORD: I think it could be...theoretically, it could be akin to or like a 401(k) plan with company stock. [LB727]

SENATOR LOUDEN: And I guess when I get to my last question, what I'm thinking about is like when Enron went belly up on that, did some of these employees had a 401(k) in that Enron and their stock was their 401(k) because that was how Enron was paying them off on their 401(k) was with stock. Where does this thing come in to fit on something like that? Would these people then be shareholders in that company,... [LB727]

SENATOR ASHFORD: Yes. [LB727]

SENATOR LOUDEN: ...they would...they...it would be in a higher, what would you say... [LB727]

SENATOR COASH: One minute. [LB727]

SENATOR LOUDEN: ...load to receive money under the...when the outfit went broke, I guess, under the bankruptcy act or does it make a difference where they are in their...? [LB727]

SENATOR ASHFORD: Well, if the company goes broke like Enron, in the case of Enron there was fraud on the stockholders, and the claims were based on fraud in the bankruptcy court and that was a way they...that was why some of those claims were approved. I don't know if any of these LB775 companies have gone through that situation. In the case of Enron, they left the state, Northern Natural Gas left the state, went to Texas, so they did the reverse. They didn't benefit from LB775. Many companies like ConAgra and Kiewit, HDR, I don't know, DLR, there are many companies that benefitted from this. [LB727]

SENATOR LOUDEN: Thank you, Senator Ashford. [LB727]

SENATOR COASH: Time, Senators. [LB727]

SENATOR LOUDEN: Thank you, Mr. President. [LB727]

SENATOR COASH: Thank you, Senator Louden and Senator Ashford. Senator Ashford, you're next in the queue. [LB727]

SENATOR ASHFORD: Well, I...just to respond to Senator Cornett. We've had many, many conversations about this issue. It is certainly not...I didn't bring this amendment to

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break any kind of a...any kind of a pledge or discussion about money being set aside or not set aside in the...in order to avoid vetoes or to fulfill our budget obligations. These people have not been taxed. You know, these people have not been taxed. The issue...this is simply a clarification of the Revenue Department, these companies who had gone to the Revenue Department; Revenue Department said we're unclear as to whether or not there has been a...we're unclear or it's confusing and so we're going to...we would suggest that you take this to the Legislature and clarify the language. We made a promise to LB775 company people in 19...you know, I know, I was there, we spent the whole session debating LB775. Much of the discussion was about executives who were leaving...could potentially leave the company, yes, but this LB775 does not apply just to executives, it applies to many other employees of companies. Many hundreds, or thousands really, in the state would be subject to capital gains who...when they...the intent was they never would be subject to capital gains. It's a simple fairness and equity issue in clarification of the language. The state is not receiving sales...or capital gains tax, as far as I know, at least I've not been...no company I've seen that has been identified as having paid any tax or any amount of tax. So, I think it's really a clarification of the language. I don't know why it would have any kind of budget impact. But I would...so certainly it is not my intent to do that. I did indicate this amendment has been on file for some time. I've talked to committee members. I think what...at least what I understand what happened is we got into a number of high profile bills. This bill did not have an Exec Session, I understand that. But I've had discussions with the Chair and with members, every member, of the committee about this. So, hopefully, I'm not pulling the wool over somebody's eyes here. And I did...I did, I think, have discussions with Senator Pirsch about it as well, about having an Exec, but there just wasn't time to do it. I think it's an innocent...hopefully it's an innocent attempt to try to clarify language in LB775. But if I'm wrong, somebody correct me, I guess. [LB727]

SENATOR COASH: Thank you, Senator Ashford. Senator Cornett, you are recognized. [LB727]

SENATOR CORNETT: Thank you, Mr. President and members of the body. Just to be clear, I have checked, again, with the Department of Revenue. There are people that have been assessed this tax. And that is where the fiscal note is generated from. Not only does it exempt them, it broadens what we currently do under exemptions. The...you...facts you need to remember is they are already exempt 100 percent from federal taxes for these. But, back to the fiscal note issue. It has been determined that people have been assessed. That is where the fiscal note is generated from on this. So it is a fiscal...will have a fiscal impact for our bottom line this year. With that, again, at this time I urge the body not to support the amendment. Thank you. [LB727]

SENATOR COASH: Thank you, Senator Cornett. Seeing no other members wishing to speak, Senator Ashford, you are recognized to close on your amendment. [LB727]

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SENATOR ASHFORD: I don't have anything more to say. I...I...if there had been a couple of individuals that have been assessed a tax, I stand corrected, but it's a very small number. This is, again, a clarification of language that the Department of Revenue gave to a few companies that they should...they needed to have in the law. That's where we are. I think it's a pretty straightforward, simple correction and I would urge its adoption. Thank you. [LB727]

SENATOR COASH: Thank you, Senator Ashford. Members, you've heard the closing to AM2612. The question before the body is, shall AM2612 be adopted? All those in favor vote aye; all those opposed, vote nay. Have all voted who wish? Mr. Clerk, please record. [LB727]

CLERK: 6 ayes, 17 nays, Mr. President, on the amendment. [LB727]

SENATOR COASH: AM2612 is not adopted. [LB727]

CLERK: I have nothing further on the bill, Mr. President. [LB727]

SENATOR COASH: Thank you, Mr. Clerk. We return to discussion of LB727. Seeing no other members wishing to speak, Senator Larson for a motion. [LB727]

SENATOR LARSON: Mr. President, I move LB727 to E&R for engrossing. [LB727]

SENATOR COASH: Members, you've heard the motion. All those in favor say aye. All those opposed say nay. LB727 does advance. Next bill, Mr. Clerk. [LB727]

CLERK: Mr. President, LB720 is a bill by Senator Lautenbaugh relating to school boards. (Read title.) Bill was introduced on January 4; referred to Government, Military and Veterans Affairs Committee for public hearing and advanced to General File. There are committee amendments pending, Mr. President. [LB720]

SENATOR COASH: Thank you, Mr. Clerk. Senator Lautenbaugh, you're recognized to open on LB720. [LB720]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I wasn't sure we would actually ever get to this bill. It's been percolating since...I think it was first mentioned by me back in September of last year. And this is not a new idea for me really. I've long been curious as to why OPS has, by far and away, one of the largest districts, one of the largest boards in the state with 12 members. And I think this comes at a timely time, so to speak, for several reasons and I'll go through those as well. But this has been an odd process for me. And I talked about this during the special session when I first floated the fact that I was going to bring a bill that would change the board from 12 members to 7 or 5 members. And what I was doing was immediately

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denounced as racist and sexist. That was the opening positions of one of the few opponents to this thing. And when pressed he explained, well, I mean the language of the bill is racist and sexist, which is remarkable because there was no bill at that time. So, I'm not sure that was an honest clarification. And, frankly, I kind of know what that kind of talk is meant to do when it's leveled at you. This has happened before. And I thought I made very clear that I was not going to be dissuaded from bringing this bill despite that kind of nonsense. And I was not. I don't know that anyone disputes the notion that change is needed at OPS. Some say it's already here. I maintain that OPS is in desperate need of new ideas and new blood. And I have to be honest from a public feedback standpoint, this is one of the most popular bills I've ever carried. Some of you may be saying, well, that's not a high hurdle for your bills, Senator Lautenbaugh, but this one is, actually, has been very well received based upon my e-mail and the comments I get and the feedback I get from others in the community, because there's a problem here. And the number is the issue. And we will have that discussion, it appears, but the size of the board leads to certain problems. Twelve-member board, years ago I used to try to recruit candidates to run for these offices. And I frequently was told, I don't want to go there and be 1 of 12; I don't want to go there and have that little chance of making a real difference as 1 out of 12. And it is different than being in the Legislature. This is a board that is running a school district. The opposition to this, though, has not been what I would call widespread, to say the least. Most of the current board doesn't want to change. I understand that. And one of them came and spoke in favor of a seven-member board at the committee hearing. The gentleman who said this was racist and sexist is a husband of one of the members of the board. And some of the people that he works with on a committee spoke out against this. But I believe the community wants this. I believe...well I know for a fact the Omaha Chamber has been speaking in favor of this to a lot of you. I'll note that the Omaha teachers union has been neutral on this. Which I think in its own way speaks volumes. There is a question that comes up a lot of times in discussing this bill over these last few months and it is, why should you care? If you're from the third district caucus or the first district caucus, why should you care about this purely intramural issue, it would appear? One thing you have to understand is this is not a change that OPS can make on its own. It cannot change the size of the board. The voters in OPS cannot currently change the size of the board. This falls to us because it is set forth in statute as 12 and no one can change it but us. So it isn't as if we're meddling in a local issue. We're the only ones who can decide this. No one else. I can't put it any plainer than that. Why should you care? Well, if you've been here in the body for a few years, you've had occasion year in/year out to get familiar with the school district in which I live, and the school district in which, you know, my sons go to school. I don't mean this in a negative way, but this is a fair assessment. Compared to the school districts most of you are familiar with, OPS is a monster size-wise. It has a budget of \$832 million. Try to wrap your heads around that thinking of the local communities that you represent and the local district that you represent, \$832 million, the budget. The city of Omaha is only a paltry \$735 million. This is a big, big expense, a large well-funded entity that consumes an awful lot of state aid. And there is

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always an issue as to how are they doing it, and are they doing it wisely, and are they doing it efficiently? And you can question whether or not they are. And they will tell you, we're doing great. And we have about 500 administrators and quasi-administrators who will come and tell you different if you ask. Try to get your head around that number, 400 to 500 administrators alone. Some of you have school districts where that...the total of the student populace is under 500. We're talking about just the administrators and quasi-administrators in OPS. So why does this matter and why should we be looking at this? Again, I've tried to recruit people to have a seat on a 12-member board in years gone by and this goes on to this day. It's not just my experience, others are trying to do the same thing. And no one, or very few people, want to try to be 1 out of 12. And we'll have a chance to talk tonight about the experiences with this board of someone who did successfully take on an incumbent and become that 1 out of 12. What has his experience been? Well, again, I'm not going to get into that in the opening. But I recall a day or two ago, when we were debating a confirmation, and Senator Harr was scandalized that after 30 days he hadn't gotten an organizational chart from some entity. Well, Senator Harr, have I got a story for you. And you're going to hear it tonight, I venture. Here's the problem we have with a 12-member board. I'm talking about what it leads to, but I'm not connecting the dots for you yet so I will. In a 12-member board to say that it doesn't function efficiently is an overstatement...understatement I should say. We have a circumstance where an unusual amount of control has been seeded over to the superintendent and those who were around at the time for the last go-around with the outgoing superintendent's contract know that a lot of that control was given over because this gentleman said I don't want to be micromanaged by 12 different masters. Staff time, because there is 12 of them, they've adopted a policy that says if you want to know something and it takes more than an hours worth of time, it essentially has be approved by the proper subcommittee, an hours worth of staff research time, which is why the organizational chart that was requested, maybe a year or two ago, still doesn't exist, request denied. This isn't necessarily about the...this is not about the personalities there. This is about the number being the problem. Because the number leads to a very stable board; and in a lot of ways that is a criticism when you have a district with the problems OPS has. [LB720]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: One minute. [LB720]

SENATOR LAUTENBAUGH: Thank you, Mr. President. We heard a lot about this in the media, at least in Omaha we did, about how, oh, you can't do this now, this will derail the superintendent search. Well, the superintendent search is over as of yesterday. What we do know is that if we're talking about upheaval, four of the six that are up for election this year did not file so they will be gone. Two of the six that will be up in two years have said they are not going to run. So they will be gone. So if there is a better time to put this board in line with Lincoln Public Schools, the Omaha City Council, the

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county board, etcetera, etcetera, etcetera, and change it to seven, it will never be better than now. This is a change that is warranted. We will have another chance, I guess, to discuss why. I'd urge you to support the committee amendment and I'll discuss that process as well the next time I'm at the mike. Thank you, Mr. President. [LB720]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. You have heard the opening to LB720. As was stated, there is a Government, Military and Veterans Affairs amendment, AM1843. Senator Avery, you're recognized to open. (Legislative Journal page 601.) [LB720]

SENATOR AVERY: Thank you, Mr. President, colleagues. The committee amendment strikes the original sections of the bill and replaces them with the following provisions. One, the Board of Education of a Class V school district will consist of seven members. That's a change from the five in the green copy. The term of office of each member currently serving on the board expires on the first Monday of January 2013. Any eligible voter may file a candidate filing form on or before August 1, 2012, for placement of his or her name on the general election ballot in November 2012 in the district in which he or she resides. At the statewide general election in November 2012, members representing odd-numbered districts will be elected for four-year terms, and members representing even-numbered districts will be elected for two-year terms. The 12 numbered districts in existence on the effective date of this act will remain unchanged until January 7, 2013. The provisions in the original bill regarding term limits and regarding salary for the Class V board members are eliminated by this amendment. And the amendment also includes an emergency clause. This was thoroughly discussed in committee and passed with a vote of five to three. Thank you, Mr. President. [LB720]

PRESIDENT SHEEHY: Thank you, Senator Avery. You've heard the opening of AM1843 to LB720. Members requesting to speak: Senator Wallman, followed by Senator Burke Harr, Senator Nordquist, Senator Avery, Senator Coash, Senator Council. Senator Wallman. [LB720]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. Here we are. Senator Lautenbaugh made a good point. Messing with why should we care. It was set up this way for a reason. And if the school board members aren't doing their job, then citizens ought to be involved, professionals, bankers, lawyers, farmers, whatever is around Omaha. Does Omaha have trouble in some of their schools? Sure. But there are some very, very good schools in Omaha as well. So is this going to solve the problem? Is this going to solve the problem, folks? Blame it on the school board. Just blame it on them. The school board is elected by the people and if they're not doing the job, let the people talk to the people, go to various school events, football, basketball games, and you will see people come up to you and have their concerns, even in a larger school district because people have concerns about teachers, about athletic directors, about coaches, about paras. There's a lot of caring parents out there. And so is this the right

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way to go about this? I'm sorry, Senator, I just can't support this. Thank you, Mr. President. [LB720]

PRESIDENT SHEEHY: Thank you, Senator Wallman. Senator Burke Harr. [LB720]

SENATOR HARR: Thank you, Mr. Lieutenant Governor and members of the body. Good late afternoon. This is an interesting bill and I'm going to address the bill and not the amendment at this point. There is no doubt all the evidence indicates an effective school board affects student outcomes, and also no doubt that OPS could be doing better. I'm going to spend my first time rebutting just a little bit of what Senator Lautenbaugh said. I find it interesting that on this, the most holy week of the year, we talk about 12 not being a good number. I believe 12 apostles, that's why we have 12 members in a jury. Twelve has been chosen many a times as the number used to decide. Now the purpose of a school board is to act as a bridge or a filter, if you will. It is a way for the community to communicate with a school when they can't directly communicate with the administration. It is a way to hold schools accountable to the citizenry. It goes back a long time to New England and it's a good way. School boards set policy. Superintendents enforce that policy very similar to Legislature sets policy, Governor enforces that policy. And I'm going to talk more about that in a little bit. But Senator Lautenbaugh brought up a couple of issues that I couldn't help but respond to, and one was recruiting people. He talked about how difficult it was for him to recruit people to run for the school board. All I'd say to Senator Lautenbaugh is, try recruiting a Democrat to run for Governor or Senate. It's not easy. I understand it's not easy to recruit, but that doesn't mean we're going to change the size of the US Senate. As for the organizational chart, the fact that he says we need an organizational, he never got the organizational chart. That is the very crux of my problem is, it's not the size of the board that matters. It's not the structure of the board that matters. It's the practice of the board. And that was the point I was trying to make yesterday, is you need an effective body to make decisions for you. And I've gone through and I went on my good friend Google and I found...so I Googled "effective school boards" and I found numerous, numerous articles from the Wallace Foundation and Gates Foundation, Center for Public Education, Edutopia. Amazon had a book called, Effective School Boards: Strategies for Improving Board Performance. The National School Board Association had one on effective school boards; Pennsylvania School Board; seven habits of effective board members by Alabama. Here's one from Pennsylvania; another one from Education.com; infoday.com has one; Illinois School Board has one. You can go through, and I encourage you to read each and every one of these articles about effective school boards. I actually have a couple of books here that I got. The Future of School Board Governance by Thomas Alsbury and the Essential School Board Book by Nancy Walser; and then the Three Laws of Performance. Every one of these articles is the same. They talk about what it takes to be an effective school board. The Nebraska School Board Association even came up with eight traits of effective school boards. It's...they asked what makes a board effective? High expectations and clear goals; (1)...

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[LB720]

PRESIDENT SHEEHY: One minute. [LB720]

SENATOR HARR: Thank you...(2) belief that all children can learn; (3) focused on achievement; (4) collaboration and communication; (5) data savvy; (6) goals and resources align; (7) team leadership; and (8), team training. You notice anything missing? There was nothing in there that talks about the size of a board. It's the practice. It's the people on the board not the structure. Now go back and read any of those other articles I referenced earlier. Not one references size mattering. It's about the practice. It's about the people. I understand where Senator Lautenbaugh, getting back to the holy week, there was one bad apostle. I get that, and there can always be one bad board member. I'm not saying that necessarily happened on Omaha Public Schools. I think they're all trying to do what they think is best. But... [LB720]

PRESIDENT SHEEHY: Time, Senator. [LB720]

SENATOR HARR: Thank you. [LB720]

PRESIDENT SHEEHY: Thank you, Senator Harr. Senator Nordquist. [LB720]

SENATOR NORDQUIST: Thank you, Mr. President and members. You know, Senator Lautenbaugh mentioned, you know, that the 12 just seems to be too many, and that's one of the reasons for this. And I think if we look just in the Omaha area in the private sector, there's great evidence of boards that are 12 or bigger. The Omaha Chamber of Commerce executive board has 18 members. Tenaska has a board of 12 members. First National has a board of 12. Union Pacific has a board of 12. Peter Kiewit and Sons has a board of 12. Bank of the West has a board of 12. And Blue Cross and Blue Shield can set theirs anywhere according to their bylaws between 5 and 21, and they've chosen a board of 13. I think that Senator Lautenbaugh in reading through the transcript...Senator Avery basically asked, you know, what is the problem that you're trying to fix. Senator Lautenbaugh said, trying to create a board that functions better, a board that actually does...I think the voting problems on this board have kind of demonstrated what it is I'm talking about here. There is, let's say, maybe a lack of vigor brought to issues and a group approach that doesn't really lend itself to what I would say advancement or change when change is needed. I want to drill down on that idea of the group approach. There's, through other comments that I picked up that there's this concern that the OPS board, because there's 12 of them, they approach it with what's known in organizational psychology as a group-think approach, that there isn't someone who...there isn't the vigor, as Senator Lautenbaugh says, to really demand change. Well, I don't think that's going to be fixed by going from 12 to any smaller number. We look around the state, according to the minutes that are available at other schools boards, for instance Fremont, out of the 437 votes that Fremont has taken during the

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'08-09, '09-10, '10-11, and '11-12 school years, 437 out of 437 were unanimous votes. Grand Island: 348 out of 350 or 99.4 percent were unanimous votes. Lincoln: 179 out of 180, 99.4 percent were unanimous votes. North Platte: 259 out of 259, 100 percent were unanimous votes. Westside: 337 out of 339, 99.4 percent, were unanimous votes. But even more so than addressing the concerns there, for me a school board--I think Senator Harr really alluded to it--should be close to the people. Senator Wallman talked about walking up to someone at the...at a sports event and talking to them about your concerns of your school district. Well, right now Omaha has the second...real close to Lincoln, they're both about 29,000 residents of the district per board member. Under the bill originally, that...it would have went up to 70,000 residents per board member. Under the amendment, we're looking now at 50,000 residents per board member, significantly bigger than a legislative district. We're going to have school board districts that are bigger than legislative districts, and these should be the districts that are closest to the people, where parents can go directly to the school board member and ask and express their concerns to address issues. And looking at the list of boards around the state, I don't know why we're singling out just Omaha at 12. Bruning Davenport Unified School Districts... [LB720]

PRESIDENT SHEEHY: One minute. [LB720]

SENATOR NORDQUIST: ...has 12 members and a district population of 1,300 or 114 residents per school board member. That's what's concerning to me. I want a representative that's as close to the people as possible, that's as responsive to the people as possible. There's no science behind a smaller board doing better. There's many a great corporate board in Omaha that are operating and function very well on large boards. And I think the problem of groupthink isn't just an OPS. If it's a problem, it's certainly a problem according to these numbers in...maybe not every district but certainly the ones I read off, and there are many more that have very high percentages of unanimous votes. So I think if we're serious about addressing the concerns that are facing OPS, then let's address the concerns that are facing OPS. And, quite frankly, the number one problem... [LB720]

PRESIDENT SHEEHY: Time, Senator. [LB720]

SENATOR NORDQUIST: All right. [LB720]

PRESIDENT SHEEHY: Thank you, Senator Nordquist. Senator Avery. [LB720]

SENATOR AVERY: Thank you, Mr. President. If you look at the committee statement, you'll see that I am one of the five people that voted to advance this bill to the floor. I think this is an issue that we need to debate. And I know that one of the most important questions that we're going to have to answer is the whole issue about size and whether or not size of a school board has any relationship at all to the performance of students,

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particularly to the performance of the school board. I spent a fair amount of time looking into that issue. And I found that there is virtually no empirical literature that looks at the impact of a board, a school board size, on performance, whether it be performance of students or whether it be performance of the board itself. But there is abundant literature that does look at corporate boards and the relationship of corporate board size to performance. And the vast majority of that literature concludes that the larger a board's size, the more likely you are to have lower performance. And the reason for that is that it takes so many compromises for a larger board to reach a consensus. And, consequently, decisions are not bold decisions, they lead to a kind of least-common-denominator conclusion as to what is the proposal that's more likely to get enough support on this large board before we can move forward. The literature also shows that the larger the board, the poorer there is likely to be in communication, that communication suffers when your board gets to be too large. Decision making is undermined with large boards, and the effectiveness of decisions also is affected. There is also the argument to be made that accountability might be improved with a smaller board. It's more difficult to spread responsibility on a smaller board. If you only have seven members responsible for policy, it's easier to assign the responsibility to those seven members than it is when you have a large board. A large board can say, well, I really wasn't responsible for that; it was somebody else on this board. I think it is pretty clear that the larger the board, the more difficulty you run into in achieving consensus. And I would point you to some history with the Omaha Public Schools. There was a development in May of 2000 when the current or the former...I presume he's still the current superintendent, Dr. Mackiel, was looking to leave OPS and go to another school district in Minnesota. And a news story was published in the Omaha World-Herald quoting members of the board and members who had been...or people who had once been members of the board. And one of the things that was pointed out as to why the superintendent might want to leave was his difficulty in dealing with such a large, unwieldy board. That is, those having to answer to 12 different people. [LB720]

PRESIDENT SHEEHY: One minute. [LB720]

SENATOR AVERY: Twelve people, one of the largest school boards in the country, folks. One of the largest school boards in the country. Trying to building consensus on such a large board, consensus that could make the kind of changes needed in such a large and diverse school district. And I will quote Kathleen McCallister who is quoted in the article in May of 2000. She is a former member of the board and now I believe a member of the county commission. She said that part of the problem is the size of Omaha's school board. She says, I would if I could, I would divide the board in half to six members. It's way too big, she said. It takes too much time to service, that is for Mackiel to take care of their demands. He tried to satisfy all 12; that's very hard to do. When they... [LB720]

PRESIDENT SHEEHY: Time, Senator. [LB720]

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SENATOR AVERY: Thank you, Mr. President. [LB720]

PRESIDENT SHEEHY: Thank you, Senator Avery. Senator Coash. [LB720]

SENATOR COASH: Thank you, Mr. President. Kind of interesting following another Lincoln senator talking about a bill dealing with Omaha. But what this bill has done for me is cause me to reflect on my own community's school district and its board, and I've done that. And as with many things, Lincoln seems to be doing pretty well. We've got a good board. We've got good relationships. The administration has good relationships with the board. The board has good relationships with the citizens. The administration has good relationship with the citizens, and the teachers are highly engaged with all of them. So it's caused me to think of why we might be in a better place and ask the question, is the good fortune we have in Lincoln with our school district and our school board a function of our school board's size? Because what we have is a very straightforward approach. We have a very accountable approach, a very transparent approach. And it seems to me when we hear discussions about how our school district operates, it's about the students. If you diffuse enough responsibility, pretty soon nobody has any. If you diffuse enough responsibility, pretty soon no one takes any. And maybe what we're seeing in Omaha is a diffusion of too much responsibility, and the result is the responsibility has landed on the administration. And I have to ask myself, is that what the citizens want? Do they want the responsibility to diffuse so much that it lands on the administration or do they want to keep it with the folks that they elected to be there? Many of us have run on reducing the size of government. Well, I guess here's your chance. School boards are part of government. But my biggest question on this is, as I've listened to the debate and it was with Senator Nordquist right before he got cut off, he was going to tell us what he thought was the number one problem with OPS and then the mike went off. So I'm going to yield the rest of my time to Senator Nordquist provided he tell us what the number one problem with OPS is. Thank you, Mr. President. [LB720]

PRESIDENT SHEEHY: Thank you, Senator Coash. Senator Nordquist, you're yielded 2 minutes 15 seconds. [LB720]

SENATOR NORDQUIST: Thank you, Senator Coash and members. And I hope you weren't thinking that I was going to come in, give some silver-bullet answer to how we can fix OPS. And I'm not trying to use this as some excuse for the districts not moving forward and making progress. But, folks, we cannot take our eye off the fact that within Omaha, you have the highest percentage of African-American children living in poverty in this country. You have, in Nebraska according to I believe it was NAEP test, national NAEP test a couple of years ago, has the highest achievement gap between Caucasians and African-Americans. That's not a coincidence. Now we do need to do a better job of moving those kids out of poverty and moving those families out of poverty

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and doing a better job of educating children in poverty. But to say...to point fingers and say "you're failing" doesn't solve that problem. It's a deep problem to address. It's a generational problem that needs to be addressed, and the only way we're going to address it is if we work together, we work from the state level to the local level to address it. And with that, I would yield the rest of my time back to Senator Coash. [LB720]

PRESIDENT SHEEHY: One minute, Senator Coash. Senator Coash waives the rest of his time. Members requesting to speak on AM1843 to LB720, we have: Senator Council, followed by Senator Lautenbaugh, Senator McCoy, Senator Schilz, Senator Adams, and others. Senator Council. [LB720]

SENATOR COUNCIL: Thank you very much, Mr. President. I rise in opposition to LB720 as amended by AM1843. And I trust, colleagues, that you're listening to this debate. I am particularly interested in the proponent's arguments in support of LB720 and the amendment and I trust that you're listening. I trust that you listened when Senator Lautenbaugh said the reason he introduced this bill is there is a problem, and the problem is the size. That's why he introduced this bill. The problem is the size. Look at AM...LB720, colleagues. That's not what he said when he introduced the bill. He said the problem is the size and it should be five. He said the problem is it's not high profile. You need to pay people to serve on this board to make it high profile. He said you also have these people who serve too long so you need to limit their terms. We have all manner of problems being cited, and all manner of reasons being given. But peel back the onion, colleagues, and you don't find any basis for this bill. Senator Lautenbaugh said in his opening by reducing the size of the board, you enable more new ideas and new blood. Ask him how. How does a lower number of people with differing ideas, thoughts, and background, provide you greater opportunity for new ideas? Somebody help me understand that. And how does reducing the size of the board provide you with an opportunity for new blood? Senator Lautenbaugh said one of the problems was you can't recruit candidates because you're only 1 out of 12. But he was quick to tell you guys it's not the same in the Legislature where you're 1 out of 49. He was quick to say there's some difference. What's the difference? We set public policy. A school board sets school district policy. I suggest to you that there are as many uncontested races for this Legislature as there is for OPS. There are six seats up this time. There are 13 candidates filed. Apparently they're not concerned about being 1 of 12. And in case some of you don't know or remember, I was 1 of 12. And I would suggest to you that one of the reasons you have difficulty recruiting candidates for the school board is the same reason we have difficulty recruiting candidates for this, and our answer was raise the pay. Senator Avery wants to compare to corporate boards. I find that interesting. A corporate board is not an elected body. It doesn't engage in representative democracy. And...but he said that the problem with these large corporate boards is that they can't build consensus, they can't get anything done. Senator Nordquist, well, then the Omaha Chamber of Commerce must be failing and failing miserably. They must not get

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anything done. They've got an 18-member executive board. And I'm going to take this opportunity because when Senator Lautenbaugh said he believes this bill is supported by the people of the district of OPS, he cited one person who he incorrectly said testified as a proponent for this bill. He testified in a neutral capacity, which I tell you... [LB720]

PRESIDENT SHEEHY: One minute. [LB720]

SENATOR COUNCIL: ...suggests the level of his conviction. But for the Omaha Chamber of Commerce to be cited as basis for this bill when apparently they didn't feel strongly enough about it to come and testify at the hearing, they didn't offer any testimony to support this outlandish suggestion that it's all because of the size. Instead, they preferred to engage in these stealth-like tactics of going around and talking to you individually. And I say stealth-like tactics because I resent the fact that Omaha Chamber of Commerce representatives felt no compulsion to come speak to me about this bill, someone who was a member of a 12-member board, someone who could give them some insight onto what school boards are supposed to do. And this group-think mentality... [LB720]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Council. Senator Lautenbaugh. [LB720]

SENATOR LAUTENBAUGH: Thank you, Mr. President, and that timing was good to say the least. I never represented that size was the only problem with OPS. And originally my bill said five members, high profile, with salary and term limits. Well, folks, this is not my first rodeo. I started with five. I knew where I wanted to get to. We've heard there's no basis that the size makes a difference. I guess we're just going to discount Senator Avery's comments entirely, which I thought were very well-founded and very reasonable and explained why as the number goes up, the board becomes less effective. And the question was, well, how can lowering the number increase participation. As I explained, no one wants to be 1 of 12. You'll have more contested races. Admittedly, this year is an anomaly because for some reason four incumbents have decided not to run. I won't speculate as to why they did that. But to be clear, one of the school board members came, and I quote myself, and testified in favor of the seven-member board. Senator Council is correct that he was neutral on my bill because it was a five-member board. But his testimony was clear: seven is the way we should go. And to suggest that somehow suggest he doesn't have a good enough commitment, well, let's talk about that board member a bit and his experience because he is the quintessential 1 of 12. And I talked about an organization chart. And we've heard comments from Senator Nordquist and Senator Harr about this organizational chart issue and about why does it matter and how does this affect day in and day out and doesn't everybody get along. Well, this guy wanted to know who does what at OPS because he was a new board member. And because the 12-member board had had to seed so much control over to the superintendent to get him to stick around, he was told: no, request denied on the

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org. chart. He was told allowing him to have a detailed organizational chart could encroach on the superintendent's authority. Folks, I want you to listen to what I just said. A board member was told to be given an organizational chart of OPS would encroach on the superintendent's authority. Imagine serving on a board and being told that. This is what I'm talking about. The board is not what I would call vigorous. And I don't even know what's in control, who's in control at this point of OPS. And we've talked about who talked to who about what in favor and opposed to this bill. I do know that the board has been lobbying against this bill since the start of the session. I do know that whoever is in control of OPS currently has said this is their number one priority is stopping this bill. Yes, preserving the existing board size is their number one legislative priority. So we heard what Senator Nordquist identified eventually as their number one problem. Well, I'm not sure how preserving the board size does that. But that's what whoever is in charge of OPS has decided is their number one priority--defeating this bill. And can you imagine why that could be the case? Is the change from 12 to 7 in some way going to be detrimental to education? Lincoln has seven. The Omaha City Council has seven. The Omaha Douglas County Board has seven. I believe Lancaster is the same. You have to look hard to find a board that exceeds nine anywhere. Why is that? The two outsider candidates of the three finalists and the superintendent search came from--wait for it--seven-member boards. The number comes up again and again and again. And you're being asked, well, gee, why does that number make any difference. [LB720]

PRESIDENT SHEEHY: One minute. [LB720]

SENATOR LAUTENBAUGH: The one example we had cited of a larger board in Nebraska is one where two districts combined. And that's how it happened--two very small districts voted to combine or decided to combine in some way and the larger board was preserved. But I don't see how going to seven could in any way arguable be detrimental to education because it seems to work almost everywhere else in the six-to-nine range in public schools throughout Nebraska, with nine being on the very high side. I'll have more from this article as we go on because I think it's important that you understand exactly what we're talking about. And we can talk about the one city, one school district argument, and we can talk about the lawsuit threatened, and we can talk about prior TEEOSA filibusters, and we can talk about all of the things that go into making OPS the institution that is thought of as it is. But it all leads to one point--leadership, leadership, leadership. [LB720]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Lautenbaugh. Senator McCoy. [LB720]

SENATOR McCOY: Thank you, Mr. President, members. Would Senator Lautenbaugh yield, please? [LB720]

PRESIDENT SHEEHY: Senator Lautenbaugh, would you yield to Senator McCoy?

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[LB720]

SENATOR LAUTENBAUGH: Yes, I will. [LB720]

SENATOR McCOY: Thank you, Senator. I'm very intrigued by the dialogue and by your points just a moment ago. And I was curious if you could...and I apologize if this has already been mentioned earlier and I missed it, but can you...and I know in your exhaustive research on this issue over the last number of months, can you share with me how it is that Omaha Public Schools ended up with the board size that it is currently today versus what it is in the rest of the state and elsewhere as you just mentioned in potentially even other states? [LB720]

SENATOR LAUTENBAUGH: You know, I have to be honest, Senator McCoy, while we looked at what occurs in other states and studies that have talked about the most successful boards and the largest successful boards, and while the studies don't say, well, hey, the number is the key, they all seem to have seven to nine members, sometimes fewer. Very few 12s. I can't even say for sure where we've located another 12-member board outside of the one that Senator Nordquist mentioned. But as far as why originally 12 was chosen, I cannot answer that question. [LB720]

SENATOR McCOY: Well, thank you. That's...I find that intriguing. So in your research as you discover there may not even be another 12-member board that you're aware of. So even with some school districts that would be consistent...or I should say comparable in size to Omaha Public Schools, those same school districts, many of them, have boards that are smaller than 12. Is that what you were just saying from your research? [LB720]

SENATOR LAUTENBAUGH: Overwhelmingly so, yes. [LB720]

SENATOR McCOY: And in your discussion about efficiencies and kind of commonsense principles, did you find any research that 12 seemed to be an unwieldy number in decision making? When you talk about leadership--and I would agree with you, I think that's an important component--if you would expound a little bit on how you think maybe a 12-member board versus a smaller board would...I don't want to put words in your mouth, but would you find that unwieldy? Do you find...I should say, do you find that unwieldy, and how would that affect detrimentally decision making from a leadership standpoint? [LB720]

SENATOR LAUTENBAUGH: Well, I'll represent to you that there are very few studies that deal with the specifics of a 12-member school board for the simple reason that there are remarkably few 12-member school boards. So I can't really say that there's anything specific to that. I think the points that Senator Avery made in his additional research are kind of responsive to that in that the larger the board is, the more pressure

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there is to compromise and the less likely you are to be bold or innovative and instead trying to come up with things that are acceptable to a huge number of people. [LB720]

SENATOR McCOY: Well, thank you, and I'm sure we'll get a chance to probably talk about that more, and I may direct some questions to Senator Avery in future times on the mike. I find this a fascinating discussion in many ways. Because it's the largest school district in the state, we clearly talk about Omaha Public Schools a great deal on a whole host of issues here in the Legislature. And I find this a very interesting discussion on a multitude of levels, a few of which I just described to Senator Lautenbaugh. And I'm sure...I'm intrigued by this discussion because being involved in small business outside of what I do here in the Legislature, you do have different leadership dynamics in different organizations, and that tends to affect greatly how decisions are made. And, obviously, we have present amongst our midst one who, as Senator Council talked earlier, who has been a member of this particular school board. [LB720]

PRESIDENT SHEEHY: One minute. [LB720]

SENATOR McCOY: Thank you, Mr. President. And so I think it's a unique situation we find ourselves in that we're having this discussion, we're talking about leadership, when clearly just very recently there has been a change of leadership at the top of Omaha Public Schools. And this topic and this bill, LB720, definitely feeds into that overarching discussion about efficiencies and what can we do better, if that's possible, to better educate the children that are in this school district, and are there ways to be more efficient. I'm also intrigued--and perhaps Senator Adams as Chair of Education will talk with us later--to see how this may affect his view on how this affects TEEOSA and state aid. So I'll look forward to those thoughts later. Thank you, Mr. President. [LB720]

PRESIDENT SHEEHY: Time, Senator. Senator Schilz. [LB720]

SENATOR SCHILZ: Thank you, Mr. President, members of the body. I have never served on a school board, but I have served on other boards. I've served on both boards that are larger in nature and smaller, and they each have their own dynamic. Depending upon what you're doing, there's reasons that you would want more or less on a board. As I looked at this and as I examined it, I don't know as if it matters if it's in Omaha or if it's in Lincoln or Ogallala or Kearney. I know this, that when you have fewer people to go to to talk about the issues, it's easier to understand where to go, who you need to talk to, and how many people you have to have to get on board to make things happen. I don't necessarily think that's a bad thing. I think it helps the voters to understand who's out there, who they need to go to, and what...and provides them with the ability not to have to do maybe quite as much work to sway the board to do things. I mean, I think that's important. I think it makes sense to take a look at situations where we ask the question, what size board should there be. Maybe 5 is right, maybe 7 is

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right, maybe 15 is right. But I don't think it's wrong to ask the question. I don't believe it's wrong to listen to the full debate, hear both sides, because there's advantages and disadvantages to both. In my world, simpler is usually better; smaller usually easier to deal with, fewer people most of the time have just as much capability of handling the issues as more people do. And so at this point, I'm leaning in support of this bill. And if Senator Lautenbaugh would like some time, I'd go ahead and yield him the rest of my time. Thank you. [LB720]

PRESIDENT SHEEHY: Senator Lautenbaugh, you're yielded 2 minutes 35 seconds. [LB720]

SENATOR LAUTENBAUGH: Thank you, Mr. President, and thank you, Senator Schilz. I should point out, and I did sort of glide over this earlier, a seven-member OPS board would result in about 48,000 people per district. That sounds like a lot to some of you I'm sure. But our seven-member city council districts in Omaha have 61,125 people in them. Our seven-member Douglas County Board has 73,879 people in it. And I would defy you to find anyone who says I don't have any relationship with my city councilman when I need it or I can't contact my county board member when I need something. I'm hoping that people are actually paying attention to this discussion because it is meaningful and this is something that I am very serious about or I wouldn't be standing here doing it at 5:00 at night for however long we're going to be doing it. But there are issues here that need to be addressed with OPS. And, again, I'll end up back in this article that I was quoting from a bit ago from the World-Herald last fall as to what happens when 1 member out of 12 wants to get an organizational chart and he is told because...in essence, because we've seeded so much authority to the superintendent, to find out what everyone does would be encroaching upon his province. The seven-member LPS board... [LB720]

PRESIDENT SHEEHY: One minute. [LB720]

SENATOR LAUTENBAUGH: ...doesn't have that problem, doesn't have that provision. I believe they mentioned Millard in there as not having that provision. The number makes a difference. I'm not standing here telling you the size of the board if we lower it to seven, change is going to come tomorrow. But I'm telling you I believe in my heart, I believe from Senator Avery's research, I believe when I introduced this bill that there's a reason that we have 7-member boards and in some cases 9-member boards, and we're struggling to find another 12-member board, and the only place we can find one is where two districts merged in Nebraska. There's a point at which you have to ask yourself why that is. Why do we constantly end up with seven-member boards, seven-member boards? Is it an accident and 12 is really the way to go? Can that be true? [LB720]

PRESIDENT SHEEHY: Time, Senator. [LB720]

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SENATOR LAUTENBAUGH: Thank you, Mr. President. [LB720]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Thank you, Senator Schilz. Members requesting to speak on AM1843 to LB720, we have: Senator Adams, followed by Senator Avery, Senator Burke Harr, Senator Council, Senator Nordquist, and others. Senator Adams. [LB720]

SENATOR ADAMS: Thank you, Mr. President, members. It's been several months ago that Senator Lautenbaugh called me at home in the summer to say I have an idea and I've been thinking about it and thinking about it. What do you think? And quite honestly at that point I was intrigued by the idea and relatively receptive to it. And here's why. Because as Education Committee Chair, I probably get to deal with OPS as much if not more than anybody in here. And I could make a whole list of things that bug me, from achievement gaps, to law firms, to...the list goes on, the list goes on. But I put all of that stuff aside and I thought about this. And, frankly, it wasn't until just before Christmas that I made up my mind. And I shared it, my idea, with Senator Lautenbaugh and I've shared it with Senator Council. I'm not going to support this bill. And here's why. Right before Christmas, I concluded negotiations with six community colleges with 11 members each that went on for three years. And you might say to me, Adams, why did it take you three years to come up with that revelation, that the reality is to me, it is not the number of people on the board, it is the dynamics and the leadership within the board. Every one of those community colleges got 11 members, and some of them work together way better than others. I can recall several years ago sitting down with a village board with three people on it, consulting with them about some TIF concepts. Didn't take me long before I got up and left. Three people didn't like one another, big egos, couldn't agree on anything, from sidewalks, to railroad crossings, to water fees, TIF. It didn't matter. It was all about the dynamics of the people on that board. Do I want to see different things happen in OPS? Yes, and I bet Senator Council does and I know that Senator Lautenbaugh does. And out of 249 school districts, if you want to come down to the office, I could probably line up a few more that I'd like to see some things happen in. Is it because of the board? Maybe. Because of board policies? Now there's something that I'm equally as concerned about with OPS is how many is on the board. But I'm not convinced it's the numbers. I may be proven wrong and I would concede to that if that happens. But at this point, I'm not convinced it's the numbers. Thank you, Mr. President. [LB720]

PRESIDENT SHEEHY: Thank you, Senator Adams. Senator Avery. [LB720]

SENATOR AVERY: Thank you, Mr. President. When I was on the mike last, I was talking about what happened in 2000, May of 2000, when Dr. Mackiel was considering leaving OPS to take a job in Minnesota. The board at that time was named in the newspaper as one of the reasons, that the board was too large, that they were

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nitpicking, and that Dr. Mackiel simply couldn't deal with it anymore. So the board negotiated a new contract with the superintendent. And in that contract, they gave him a written promise that he could have unprecedented, independent authority. In fact, I think it's not going too far to suggest that the board advocated its own responsibility by giving the superintendent--a contract employee--unprecedented authority to act independently of the board. They promised to leave him alone and to let him run the district free of board meddling. What's the board for? Why is the board elected if not to set policy? And to say to a contract employee, we're going to let you run the district the way you want and we're going to stand back and say nothing about it, seems to me to be just something I cannot understand. The contract was given for five years. There was a technicality, however. The technicality is the state law says you can only have three-year contracts. So in order to comply with state law against longer contracts, the board wrote the contract for three years with two option years. But those option years would be...he would get full pay no matter what happened. He would still get paid for those two years even if he left and no matter what. That was the case. On March 8, 2011, the Omaha World-Herald wrote an editorial commenting on the board's actions. And in this time, they were commenting on another unprecedented action by the board. This time it was an action the board took to not allow board members to speak to the press about school issues, only allowing board president and the vice president to do so. Amazing! Absolutely amazing! In that editorial they stated in the World-Herald that such a policy clearly would ill-serve the public. On the contrary, the proper way to address complex policy issues is through open debate and a vigorous exchange of ideas. Institutions harm themselves needlessly when they insist on conformity and group-think among their leaders. Group-think has been used before in discussion of OPS. So I don't believe that the board is currently operating under that policy, but at one point it saw fit to do so. The editorial goes on to say that OPS can help itself in terms of policy debate as well as the district's reputation by junking this policy rather than sending the signal that the district insists on centralizing control, OPS should empower all its members, who by the way are elected by the voters, to carry out... [LB720]

PRESIDENT SHEEHY: One minute. [LB720]

SENATOR AVERY: ...a full and open discussion. That, folks, is not the way a board ought to operate. They should not be delegating so much authority to a contract employee, and they should not be trying to muzzle their members. We have also been told that this is none of the Legislature's business. I've been told that a number of times. But I would point out to you that in 1891, the Legislature by statute set the number of members of the OPS board at 15; then in 1915, came back and changed it to 12 where it is today. And I would remind you that in 2007, we made it our business what was happening in the OPS district by passing the Learning Community legislation. If those developments don't mean that we have some business being concerned about what happens in OPS, then I don't know what does. [LB720]

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PRESIDENT SHEEHY: Time, Senator. [LB720]

SENATOR AVERY: Thank you, Mr. President. [LB720]

PRESIDENT SHEEHY: Thank you, Senator Avery. Senator Burke Harr. [LB720]

SENATOR HARR: Thank you, Mr. Lieutenant Governor, members of the body. I want to clear up a couple of issues before I move on to my point. Number one, with the issue of the org. chart, if you go to ops.org, click "finance and budget," click "2012 OPS historical budget," the org. chart is right there on page, I think it's 6. So the org. chart is available, I understand. So if those who want to see it, it's there. As far as what Senator Avery talked about, a report that says the bigger the board is, the worse it is, well, I have...that was for publicly-traded or business boards. I have one from BoardSource, "Building Effective Nonprofit Boards". It says it's a study, does size really matter. And the answer it comes up with is what you'd expect--maybe. Sometimes a big board is better; sometimes a small board is better. It's right here. If anybody wants to see it, you're more than welcome to look at it. Senator Avery talked about the issue of the board advocating power. Ladies and gentlemen, 6 members, 2 members, 3 members, 12 members, 15 members, there's nothing you can do if a board decides to abdicate its power. Some say 49 advocates too much power. I don't know. So let's get on to there are no studies out there that show for a state what is the right size. None that say 5, none that say 6, none that say 12. Now this six is an arbitrary number. I don't think anyone would disagree with that. So I'm going to make an argument for the number 12 and why 12 is the perfect number. Besides the apostles that I mentioned earlier, 12 is also the multiple...has to do with the rule of law. The sun rules for 12 hours a day. The moon and stars rule for 12 hours at night. There are 12 signs in the zodiac. Twelve is the product of three, the perfectly divine and heavenly number, and four, the earthly, the number of what is material and organic. So there's my argument for 12. So it doesn't really make a difference, does it? But what I'm trying to tell you is that it's the practice and the rule of that board, how they go about doing what they do. Right now, OPS is going through a change. There's another study that I read about, it's called the "Dissatisfaction Theory of American Democracy" by Frank W. Lutz and Laurence--I'm going to massacre the name--l-a-n-n-a-c-c-o-n-e. And what they talk about is democracy within schools and school districts. And what they found is, is when people do not like what's going on in their schools, there's, first, public pressure. I think we've all seen that in OPS. Next, there's elections, and those elections affect change. The board members are changed. We had two new members last election: four are not seeking reelection, another two have said they will not seek reelection in two years. That's a large amount of change. And then what happens when you have a large number of members change? You have a change in superintendent. Well, that's exactly what happened. I want to thank Senator Lautenbaugh for drawing attention that OPS can do and should do better. I applaud him and I agree with him 100 percent. But I don't think going from 12 to 6 is the magic bullet. And I fear that we make it a magic bullet. It's much more difficult than that. It's about

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boards doing what's right and what's wrong. It's acting on behalf of all citizens, including future generations impacted by board action. This acts as a board in setting vision, values, and objections. It's fulfilling their duties. It's establishing a board plan on how it plans to use its authority. It states what its role...it expects of the superintendent and what the superintendent expects of them. It establishes a code of conduct and processes and consequences for holding members accountable. That's how we affect change... [LB720]

PRESIDENT SHEEHY: One minute. [LB720]

SENATOR HARR: Thank you...not going from 12 to 6. And we are making change in OPS. There's...we need to give this new board that's coming on and this new superintendent some room, some air to breathe so that they can make these changes, they can affect our future generations. It goes back to what Senator Adams talked about. It doesn't matter if the board is 11 or 3. It's the policy and practice of that board, not the structure. So I would ask that you think about that as you consider how you want Omaha Public Schools to be ruled. Thank you very much. [LB720]

PRESIDENT SHEEHY: Thank you, Senator Harr. Senator Council. [LB720]

SENATOR COUNCIL: Thank you very much, Mr. President. Again, colleagues, I trust that you're really listening to this discussion because reasons given for reducing the board are countered in this same statement oftentimes. Twelve is unwieldy, can't build consensus, but they're accused of group-think. Well, that appears to...groupthink and consensus are one and the same, aren't they? Senator Avery spoke about a school board policy on who should speak to the press, and suggested that that policy is an example of why a 12-member board is too unwieldy or why a 12-member board is ineffective. The school board policy is--for those who are interested in reading it, you can pull it up--says that the school board president shall be the primary spokesperson for the board of education. That's what their policy says. And I would suggest to you that that policy was adopted on a 12-0 vote, which has also been used to criticize the board and say it should be smaller because of the unanimity of voting. In fact, Senator Lautenbaugh said and was quoted as saying that the board rubber stamps the superintendent and is evidenced by all of these unanimous votes. Well, Senator Nordquist talked about all the other boards of education who...across the state who consistently vote unanimously 90-plus percent of the time, including the Lincoln Public Schools, which I think was like 99 percent of the time. So if unanimity of voting is an indication of ineffectiveness in the size of the board, I guess we ought to reduce the Lincoln board because seven of them think alike too much. Well, the Nebraska Association of School Boards publishes information for school boards. That's what they are--the Nebraska Association of School Boards. Leading the board to success, guidance for the board president. And I quote, a well-led board acts on behalf of the school district, fairly representing jurisdiction over school matters within the territory of

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the school district. Special emphasis, a well-led board is most effective when acting as a group. So boards of education are encouraged to engage in the very "group-think" that's being criticized here. Senator Avery says the board of education seeded too much authority to the superintendent. Would Senator Avery yield to a question? [LB720]

PRESIDENT SHEEHY: Senator Avery, would you yield to Senator Council? [LB720]

SENATOR AVERY: Yes, of course. [LB720]

SENATOR COUNCIL: Senator Avery, specifically what authority did the Omaha Board of Education seed to the superintendent? [LB720]

SENATOR AVERY: It was a fairly...as I understand it, I don't know the details, it was a fairly large mandate that they would stay out of the day-to-day business of operating the district, that he would have a pretty free hand in just about everything he wanted to do. That was one of the big complaints that he had when he was...when he accepted that position in Minnesota. [LB720]

SENATOR COUNCIL: Okay. So it's your understanding...have you ever read Dr. Mackiel's contract? [LB720]

SENATOR AVERY: No. [LB720]

SENATOR COUNCIL: Okay. So you don't know what states... [LB720]

SENATOR AVERY: I've never seen it. [LB720]

SENATOR COUNCIL: Okay. So would it surprise you that it states... [LB720]

PRESIDENT SHEEHY: One minute. [LB720]

SENATOR COUNCIL: ...what is consistently found in superintendent contracts across the state of Nebraska with regard to the authority and responsibility of the superintendent? [LB720]

SENATOR AVERY: I would expect that it would have a lot of common language with other contracts, but I would tell you that the issue was significant enough that it became the subject of a news story in the World-Herald. [LB720]

SENATOR COUNCIL: Does that mean that what was in the contract is what the World-Herald story was? [LB720]

SENATOR AVERY: World-Herald story was about the amount of authority that was

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given to Dr. Mackiel and the fact that this was...the board concluded that they had to do this in order to keep him in Omaha. [LB720]

SENATOR COUNCIL Okay. And that was a World-Herald opinion, correct? [LB720]

SENATOR AVERY: No, it was a news story. It was not on the editorial page. [LB720]

SENATOR COUNCIL: But was the... [LB720]

PRESIDENT SHEEHY: Time, Senator. [LB720]

SENATOR COUNCIL: Thank you. [LB720]

PRESIDENT SHEEHY: Thank you, Senator Council. Members requesting to speak on AM1843 to LB720, we have: Senator Nordquist, followed by Senator Janssen, Senator Carlson, Senator Lautenbaugh, Senator Avery, Senator Fulton, and Senator Council. Senator Nordquist. [LB720]

SENATOR NORDQUIST: Thank you, Mr. President and members. I think, you know, after listening to some of the Q and A between Senator McCoy and Senator Lautenbaugh, I find it...one of his comments interesting. Senator Lautenbaugh said that these larger boards have to find things that are agreeable to a large number of people, and that apparently doesn't lead us to good policy. Well, I don't know how it's any different in the OPS board than it would be in one of these corporate boards. I mean, does that mean that First National or Tenaska or Union Pacific or Peter Kiewit is not making good policy, not making good decisions for their business because they have to find things that are agreeable to 12 people? I think that obviously doesn't hold. It sounded like, there's a discussion and I saw it in the testimony, too, that there wasn't enough innovation. OPS board wasn't being bold enough. Well, I want to know what innovative education policies they're not trying. We can certainly sit down and talk about those if Senator Lautenbaugh has innovative education policies that are allowed by state law that OPS can actually do to improve achievement, I would be willing to listen to that. You know, there was discussion that city councilmen are responsive at 60,000. Certainly they try to be, but it's only logical that the more people you get, the less responsive you can be to those individuals. There's only so many hours in the day. Some people would probably say our congressmen in this state are very responsive when you get ahold of them. Sure, they try to be, but are they as responsive as some people...most people would like them to be? Probably not because they have several hundred thousand constituents. And the larger we make these, the further we taken the representative away from the people. Now would Senator Lautenbaugh yield to a question? [LB720]

PRESIDENT SHEEHY: Senator Lautenbaugh, would you yield to Senator Nordquist?

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[LB720]

SENATOR LAUTENBAUGH: Yes, I will. [LB720]

SENATOR NORDQUIST: Okay. Two of the...reading through your testimony, two of the things that popped out as priorities or reasons for this, I should say, are to address group-think and to address, you know, our ultimate goal of the academic achievement is what was said in your testimony. If we change this to seven or whatever the number is now and in a year or two we see unanimous votes again or once it goes into effect, I don't know if it would go into effect after the election, we give it a year or two and we continue to see unanimous votes and we continue to see struggling academic achievement, do you intend to come back if you have time or would you come back to advocate for a change again in the board's size? [LB720]

SENATOR LAUTENBAUGH: Well, I think we're confusing two things here. The unanimity of the votes isn't necessarily indicative of a bad policy. But as Senator Avery pointed out, when you get a larger and larger group, you have to give up more and more of innovation and forward-thinking to get to the unanimity. So the unanimity is sort of a shorthand, but that's not definitely a clear indicator of the problem. The problem is I guess the outcome,... [LB720]

SENATOR NORDQUIST: Okay. Sure, sure. [LB720]

SENATOR LAUTENBAUGH: ...which I don't want to take your time so I'll talk more about it in a bit. [LB720]

SENATOR NORDQUIST: Well, I appreciate that, appreciate your response, Senator Lautenbaugh. But I think when we get back to the point that there are...I mean, we can't just...the blanket statement of a board of 12 just doesn't work. It works in a lot of settings and there's no reason it can't work here. It's not about the number of people on the board, it's about the people who are on the board and who are making these decisions. It's about electing people who are responsive. It's about putting emphasis on those elections as a populous to say, we need to elect bold, innovative people that are willing to push those ideas to achieve academic achievement. So, you know,... [LB720]

PRESIDENT SHEEHY: One minute. [LB720]

SENATOR NORDQUIST: ...we change it to seven and things don't happen here in a few years on whatever measure we want to use, you know, an arbitrary, bold, innovative measurement or if we want to use a quantitative measurement like unanimous votes, whatever our measurement is, if it doesn't work, are we going to be back here again and try 5 or 3 or 20? At some point I think we're just grasping into thin air trying to solve a problem, which is ultimately address a problem, which is ultimately

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improving academic achievement that can't be solved by just changing the number on the board. Thank you, Mr. President. [LB720]

PRESIDENT SHEEHY: Thank you, Senator Nordquist. Senator Janssen. [LB720]

SENATOR JANSSEN: Thank you, Mr. President and members. When this bill was originally introduced, like many of you I read it in the newspaper and at the time I thought, well, that sounds kind of interesting. What's my good friend Senator Lautenbaugh up to in Omaha right now? Is he ruffling some feathers there, which is not uncommon? So I read into it a little bit and I said, oh, it'll be interesting when I see it come through the Education Committee. Maybe I'll get a chance to vote on that on the floor. And then it came to Government Committee, so I got a chance to get thrown right into that. And I wasn't really sure what I was going to do on the bill as far as voting it out of committee. And we had a great public hearing on it. And what intrigued me was partly the discussion on the board members, the number of board members, even the unanimity of the votes, and how it moved forward. And in my particular district, like many of your districts dealing with school consolidation, I wonder if that had any effect on the number of people on the board. So I...and I even started to wonder how it works on public boards or private boards, excuse me, even in my own business, privately held company. We have a board; it has four members. At one point in time, we talked about increasing it. In fact, we did increase it once from three to four and when we added a CFO to the board. So it just added for great conversation, enjoyed the conversation, and it made me want to ask more questions. And if...actually Senator Wallman I see you down there, I know you were a board member in a previous life, if he would yield to some questions or just a question, I'd like to engage him. [LB720]

PRESIDENT SHEEHY: Senator Wallman, would you yield to Senator Janssen? [LB720]

SENATOR WALLMAN: Certainly. [LB720]

SENATOR JANSSEN: Senator Wallman, I believe you were on a school board at one point in time, is that correct? [LB720]

SENATOR WALLMAN: About 16 years. [LB720]

SENATOR JANSSEN: Good. I thought I heard that or an election commissioner. I couldn't remember which one you were. But on that time, speak to the number of people you had on the board, and was there any particular time where you had a real contentious issue there, and I guess speak to how people felt on it, and do you think you needed more people on the board could have added something to that or not or less or fewer? I'm just really looking for your experience. I have no other motivation other than wondering from your experiences. [LB720]

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SENATOR WALLMAN: Well, thank you, Senator. We went through very contentious issues when this body here decided to close some schools, rural schools. And instead of voluntarily, they did it with legislation. And so I was the only "no" vote on that because...yeah, it was contentious, but we always debated things before the school board meeting and sometimes after the school board meeting. And so we tried to get somewhat of a consensus before we went in, legally or not. (Laughter) [LB720]

SENATOR JANSSEN: Thanks for that confession there. You didn't need to go that far,... [LB720]

SENATOR WALLMAN: Okay. [LB720]

SENATOR JANSSEN: ...but how many people were on that particular school board? [LB720]

SENATOR WALLMAN: 7. [LB720]

SENATOR JANSSEN: 7. And did you ever deal with the issues of merging or consolidation of your high school districts or all school districts or is that what you were speaking to? [LB720]

SENATOR WALLMAN: Yeah, that was a district outside of Lincoln here, Cheney, and some of them wanted to go to Lincoln, some wanted to come to Norris. So it became quite an issue. [LB720]

SENATOR JANSSEN: Thank you, Senator Wallman. And I just wonder about that. I've got Dodge-Howells School District consolidated. It's created some...I guess some angst would be a nice word to say in my particular district. Scribner-Snyder School District, which consolidated while I was in high school, subsequently looked to consolidate with West Point. And there's been recalls, and I know that has just separated the community so much. That's why this drew some interest for me in wanting to discuss this with other school boards members. Senator Sullivan sits on the committee with me and she shared some of her experiences. So I wanted to get some of your experiences. Would Senator Council yield to one quick question? [LB720]

PRESIDENT SHEEHY: Senator Council, would you yield to Senator Janssen? One minute. [LB720]

SENATOR COUNCIL: Certainly. [LB720]

SENATOR JANSSEN: Thank you, Senator Council. One of the things that was brought up and I think you touched on it, and I just wanted to find out...I saw that the OPS selection came out for the superintendent, and that was an issue in voting for whether

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or not that was going to hinder it. And I apologize if you spoke to this earlier, but if you'd like tell me how that went and how that hindered or didn't play into the process. I'd just like to know for my personal knowledge. And I'll yield you the balance of my time to do that. [LB720]

SENATOR COUNCIL: Okay. And I...unfortunately I don't think I can answer that question in the time I have remaining, Senator Janssen. But I can tell you that the cert. firm had forwarded six semifinalists to the board, two of whom dropped out before they got to the final three. And it was my understanding that at least one of the two who dropped out dropped out because of their concern about the Legislature's concern and involvement in the structure of the governing board of that body. [LB720]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Janssen. Senator Carlson. [LB720]

SENATOR CARLSON: Thank you, Mr. President, members of the Legislature. As we have LB720 to deal with, in a lot of ways I wish I didn't even have to think about it, and in some ways I'm wondering why should I. But like a lot of other things that come in front of the Legislature, this so happens that it is our responsibility and we need to deal with it. And so I'm trying to listen and come to some conclusions about LB720. I would like to address Senator Lautenbaugh with some questions if he would yield. [LB720]

PRESIDENT SHEEHY: Senator Lautenbaugh, would you yield to Senator Carlson? [LB720]

SENATOR LAUTENBAUGH: Yes, I will. [LB720]

SENATOR CARLSON: Senator Lautenbaugh, with the amendment now, the size of the school board is seven and there's no salary involved. Is that true? [LB720]

SENATOR LAUTENBAUGH: That's correct. [LB720]

SENATOR CARLSON: And there's no fringe benefits involved. [LB720]

SENATOR LAUTENBAUGH: Not to my knowledge. Not in the bill certainly, no. [LB720]

SENATOR CARLSON: Now that's not the case with city council in Omaha and it's not the case with the county commissioners in Douglas County. Do you have an idea what their salaries are? [LB720]

SENATOR LAUTENBAUGH: They both are in the low to mid thirties. I think city council is around \$33,000 a year and county commissioners are \$35,000 a year. [LB720]

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SENATOR CARLSON: All right. And I think that they have an opportunity to buy insurance through the city plan if they choose to do that. But in your package here...there are none of those benefits would be available to the OPS school board, true? [LB720]

SENATOR LAUTENBAUGH: Well, not under this bill certainly. [LB720]

SENATOR CARLSON: Now another thing that I'd be interested in is, in cities that are similar in size to Omaha, what are the numbers on their school boards? And I've thought about Denver and Des Moines and Madison and Minneapolis and St. Paul and Kansas City and Oklahoma City. Do you have any information on those cities in terms of what their school board sizes are? [LB720]

SENATOR LAUTENBAUGH: Actually I do. Kansas City has nine; Des Moines has seven, which is where apparently the new superintendent is coming from; Milwaukee, nine; Oklahoma City, eight; Minneapolis, eight; Denver, seven; St. Paul, seven; Madison, Wisconsin, seven; and it goes on from there, I guess, with the recurrence of the number seven all the way from Senator Wallman's district through much, much more of the national information regarding the normal or average district size. [LB720]

SENATOR CARLSON: All right. So those figures, other than the nine, are very similar to your proposal with seven. Now this is a more indepth question. What do you see as the major problems with OPS, not the school board but what are the major problems with OPS? [LB720]

SENATOR LAUTENBAUGH: The major problems with OPS in a nutshell? [LB720]

SENATOR CARLSON: Yes. [LB720]

SENATOR LAUTENBAUGH: I would have to say low student achievement. [LB720]

SENATOR CARLSON: So overall in OPS, you would label that as the most important issue to be concerned about is low student achievement. [LB720]

SENATOR LAUTENBAUGH: Yes. [LB720]

SENATOR CARLSON: And how does LB720 address that concern? [LB720]

SENATOR LAUTENBAUGH: Well, as I indicated...and I apologize if I'm going to chew up the rest of your time... [LB720]

SENATOR CARLSON: That's okay. [LB720]

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SENATOR LAUTENBAUGH: Thank you, Senator Carlson. As I indicated, there is no one magic bullet. But because of the size of this board and because of the compromises they had to make with the last superintendent to get him to stay with a 12-member board, and the amount of authority that the individual members have had to seed away to a superintendent, I believe there is sort of a bias against what I would call innovation, change, and doing things to hopefully increase student performance. [LB720]

SENATOR CARLSON: Now it'd be interesting and I hope that some others speak to this whether there's agreement with low student... [LB720]

PRESIDENT SHEEHY: One minute. [LB720]

SENATOR CARLSON: ...achievement and whether there is agreement with that or there may be some other issues that people would have and how the present-size school board is the best approach to dealing with whatever the most difficult problem is versus a school board with the number of seven. So thank you, Senator Lautenbaugh. I'll continue to listen to the debate and hopefully I can decide upon a appropriate vote. Thank you. [LB720]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Members requesting to speak on AM1843 to LB720, we have: Senator Lautenbaugh, followed by Senator Fulton, Senator Council, Senator Sullivan, and Senator Price. Senator Lautenbaugh. [LB720]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. A couple of quick observations and then I'll move on to what I was actually wanting to talk about. The Legislature is different in that we're not tasked with one specific responsibility. We do have committees that are tasked with specific responsibility. I guess I could ask for a show of hands of how many of you serve on a 12-member committee here in the Legislature, but I know the answer to that and I don't think we're supposed to do that. But you could ask yourself why it is that way once we get down to specific issues. And as I was responding to Senator Carlson about why this matters with student achievement, there's a great story here I'll quote from again that gets us to this in a nutshell. So a new board member comes on, wants to know what he can do to make things better. He asks for a detailed organizational chart. Now Senator Harr says there's one on the Web site. He has the one on the Web site. It does not show what was asked. It did not contain sufficient detail. And one of the things we've struggled with here is how to make sure our resources go to the actual teachers, the people who are in the classroom teaching. Senator Pahls flirted with a bill in years gone by, I remember, that said X amount of the budget has to go towards teachers. So you can see why requesting an organizational chart to find out who does what in these individual schools would lead you to know how many people we have actually doing the teaching and how many we have administering or doing heaven knows what. So here's what happened.

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Quoting from the World-Herald, "Four days after his first board meeting on January 7, Wayne sent an e-mail request for a detailed organizational chart of the district, asking for the number of staff members at the central office and charts for each school building." Deviating from the story a bit, you may recall that we have had discussions about the number of staff members at the TAC building where OPS converted a whole former high school into administrative suites. That's worth knowing who they are and what they do, I would ask, especially if you want to make change and make sure the dollars are going to where the kids are, to the teachers. The board staff director responded that fulfilling Wayne's request, "would take extensive staff time." She cited a board policy restricting a member from making requests that take more than one hour of staff time. Requiring lengthy requests come from appropriate committees. Another board member on the human resources committee, the chair of that committee, said that his request to understand the details of OPS staffing is appreciated. But she said that board policy gives the superintendent responsibility for staffing decisions, including complete freedom over administrative and supervisory staff. She wrote that, "Wayne's request could supersede the recommendations and authority of Mackiel and the resources to complete the research may not be warranted." I hope the few of you that are here and the ones that are over at dinner are listening to this. You have a board member asking for a detailed organizational chart, and he's told the very fact that he might get that knowledge might be superseding the superintendent's authority. Is that really how it functions in your seven- and nine-member school districts that you're familiar with? And, again, let me connect the dots. They gave over the authority to the superintendent because he didn't want to deal with 12 members. Senator Avery explained that. That is why the number matters. You've got a board member being told: no, it would take too much time and if you had the knowledge, you might be treading on the superintendent's authority. So a follow-up meeting was set up. And on that day the school board president and another board member sent a letter asking Accountability and Disclosure to investigate Mr. Wayne over conflict of interest allegations. Jensen, who was the president of the school board at the time, said in an e-mail that she and Elizabeth... [LB720]

PRESIDENT SHEEHY: One minute. [LB720]

SENATOR LAUTENBAUGH: ...presumed by the district attorney can handle the Accountability and Disclosure Commission. "In a line that the school district attempted to redact from the e-mail given to the newspaper, Jensen wrote, it is called big-girl pants and steel-toe boots." I'm sure that's how your seven-member school boards conduct themselves when they're dealing the only male member of the board. Put on the steel-toed boots because this guy wants to know what's on an organizational chart that's actually informative. So miraculously he's turned into Accountability and Disclosure for something that was found to be without merit, but he's still told, no, no organizational chart. The detailed organizational chart still doesn't exist to this day, ladies and gentlemen, at least it hasn't been provided. And don't you want to know what

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OPS does with the money we send them? It's never enough. We've been threatened with lawsuits when our percentage increase to them... [LB720]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Lautenbaugh. Senator Fulton. [LB720]

SENATOR FULTON: Thank you, Mr. President. Members of the body, good evening. I want to address a question here that I was asked earlier, and I've had a discussion off the microphone with some colleagues: Why do...why would a Lincoln senator care? And Senator Avery has spoken, I think Senator Coash and maybe some others. I mean, there's the obvious answer and this is that we have some responsibility here in that school districts, political subdivisions, etcetera, are the creation of the state. We've talked about that before. Secondly, of course, these are children for whom public education is constitutionally given, guaranteed. But also this pragmatic reality of financing, income and sales taxes are collected in the state and through the formulaic expression, TEEOSA, statutorily defined, they find they way into Omaha. So there's skin in the game for everyone here and I think I've covered the gamut philosophically there, but there should be some concern on the part of all of us. Now there was something that I had heard, and I don't actually know if this argument...to be clear, I am in favor of AM1843 and LB720. But there's something that Senator Nordquist had touched on which I think is deserving of a response. He was talking about the problem of groupthink, and others were talking about it too. Groupthink isn't the issue here. I mean we're not going to come up with some magic number of board members such that we address groupthink or echo chamber syndrome or whatever it is that you want to call it. The fact of the matter is if we were looking at unanimous votes to make a determination as to whether groupthink is problematic, I'd direct you to Final Reading here on any given day in the Legislature. We have a lot of unanimous votes. We do that with 49 of us, sometimes a few less. And I don't think it's appropriate nor necessary nor warranted to change the number of members in the Legislature. Okay? So that in and of itself is not an argument. I don't know if that militates or is in favor of this bill but it is what it is. You can't simply say that we change the number such that groupthink is not a problem. The problem is performance. I've heard it said the proof is in the pudding. That's not actually the way that saying, by the way, was put forward. The proof of the pudding is in the tasting. And it seems to me that we can break this down by way of logic into three things, three responses to the problem with OPS: (1), we could have less board members than what is extant now; (2), we could have more board members than what is extant now; and (3), we could leave it alone. Would Senator Lautenbaugh yield to a question? [LB720]

PRESIDENT SHEEHY: Senator Lautenbaugh, would you yield to Senator Fulton? [LB720]

SENATOR LAUTENBAUGH: Yes, I will. [LB720]

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SENATOR FULTON: Senator, it pleases me to be on the same side of an issue with you. [LB720]

SENATOR LAUTENBAUGH: (Laugh) It's not that uncommon but maybe lately. [LB720]

SENATOR FULTON: Indeed. Indeed. Can you share a little bit of the history here? Have there been other proposals that you put forward? Because we've settled on numerically an expression here of seven, correct? [LB720]

SENATOR LAUTENBAUGH: Yes. [LB720]

SENATOR FULTON: What other proposals have you put forward or have you? [LB720]

SENATOR LAUTENBAUGH: Well, my initial one was five members, paid and term limited. Then with the committee amendment we kind of agreed that seven would be the proper number and one of the school board members, Justin Wayne, came and spoke in favor of the number seven as the size of a potential school board. I've explored, well, I mean in some cities the mayor just appoints a superintendent and we're done with it. There's a possibility that's a route to go here, too, because I'm not really convinced how much impact the board can and does have and has had under the recent superintendent on day-to-day or even larger policy issues, as I've been quoting here from this article. [LB720]

PRESIDENT SHEEHY: One minute. [LB720]

SENATOR LAUTENBAUGH: I've talked about possibly putting it to a vote of the people in the fall and letting the actual citizens of OPS decide if they want a 7-member board or a 12-member board. I've flirted with a nine-member board if I thought it would get us off dead center here but effective this year. See, I'm not saying my way or the highway certainly. I just think that we do need to make a change and I've been willing to have those conversations. [LB720]

SENATOR FULTON: Thank you, Senator. I had expected that there was probably some give and take to arrive at seven, but earlier I gave you three logical possibilities. Well, you can break that down even further to two logical possibilities: Either we change the number or we don't. It sounds to me like Senator Lautenbaugh is putting forward ideas that are different than what is the status quo, and I stand in favor of that absent any other ideas that are proposed. I think this is worthy of our support. Thank you, Mr. President. [LB720]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Senator Council, this is your third time. [LB720]

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SENATOR COUNCIL: Thank you, Mr. President. Senator Fulton, you just actually made my point: Size doesn't matter. And there's no correlation between the size of this board. Performance, practice, personality, size doesn't matter. Five, seven, nine, twelve, fifteen, eighteen, what's the number? I submit to you it ought to be the number it is. And if you've listened, colleagues, you've listened. I hope you've listened. What it boils down to is we've got 1 member of a 12-member board that doesn't think things are going the way he thinks they ought to go. Listen to everything that Senator Lautenbaugh has said. The one member says no innovation, yet he's not given one example of some innovative proposal that was kiboshed by this board. He speaks to the organizational chart issue, and I wanted to stay out of this but Senator Lautenbaugh brought it up, as if to suggest that there's no reason for the other members of the board to look kind of skeptical on requests from this particular board member. I'm sorry, I don't as cavalierly dismiss someone, who is within two weeks of being elected to a board of education, making a request to the board to be provided with a list of all vendors with whom the board has done \$25,000 or more in business with and then send a letter to them soliciting campaign contributions. I don't cavalierly dismiss that. And I don't think the members, his colleagues on the board, cavalierly dismiss that. So I didn't want to engage in that discussion because that's not what supposedly this is all about. This is supposedly all about numbers matter and numbers make a more efficient and effective board. But if you cut to the chase, what matters is apparently one board member doesn't believe he's getting his way. Does seven change that? I asked initially. Senator Lautenbaugh says with seven board members you get new ideas, new blood. How? On the basis of a statement made by Senator Avery, the assumption is if you have seven board members you never get a policy that no one disagrees with. Really? According to Senator Avery, everything that's stated in the newspaper that doesn't have a quote around it is attributed to the school district and it's true. According to the newspaper, what was the problem? I'm going to tell you. I was a member of this board and there was a superintendent when I was there and there were 12 members when I was there, and there were certain board members who believed that it was their responsibility as a member of the board to actually manage the operations of the district. That is not the role and responsibility of a board member and I'm sure Senator Wallman, as a former board member, would agree and others who have been on boards. That's not their job. And what I understand, because none of us were on the board at the time and we're all operating on what the newspaper reported, what I understand was that.. [LB720]

PRESIDENT SHEEHY: One minute. [LB720]

SENATOR COUNCIL: ...what was in board policy with regard to what the superintendent's responsibilities and authority was needed to be stated in his contract, including the superintendent, the superintendent shall be responsible for the assignment, alteration of assignment, transfer, suspension, and recommendation for promotion or dismissal of any employee of the board of education, with the exception of

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the superintendent. That's the authority that was ceded to the superintendent by the Omaha Board of Education, that same authority that every other superintendent has. That's what you hired them to go. So when you talk about without interference, no, you've hired the superintendent to assign, transfer, promote... [LB720]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Council. Senator Sullivan. [LB720]

SENATOR SULLIVAN: Thank you, Mr. President. Admittedly, it's been said tonight that the Legislature has a role in setting the size of a school board. Just because we can doesn't mean we should. I was on the Government Committee. I didn't vote this bill out. And aside from the fact that I didn't think that we should go down this path, I fail to see how the size of a board has anything to do with student achievement, and I still don't. Also, there's been just recent discussion about the demands that a board member was making and not getting the information that they want and their motives and this and that. One thing I will say about that in terms of balancing what we do know and what we've read in the newspaper, I'm quite sure that the devil is in the details and I'm not going down the path of trying to determine what those details are. But it gave me pause to reflect about when I was a new school board member and served on the school board in Cedar Rapids for 12 years, and ultimately, after a few attempts for, I'll be honest, going around what is considered to be the chain of command, I recognized ultimately the value in that and how a board of a school district is bound by certain legal parameters. And I gained respect for that chain of command and the value of it in getting productive, good, constructive work done in a school board. And quite frankly, again, I don't see that size has anything to do with that because at the end of the day it truly, in my mind, is about leadership. That's what it should be. And again, I don't think that size has anything to do with it. We're looking at, for one thing if you talk about size, the largest school district in this state. They have a lot of issues on their table. And I think that they have structured their board with subcommittees that help them address the myriad of topics that they do need to address as board. And it's been apparently a concern of the business community, the size of this board and what they have or haven't gotten done. I'm wondering all along, the business community is very, very powerful in Omaha, why have they not gone to the school board members. Why haven't they respected the chain of command and tried to work at that level to try to get some substantive changes done in that school board and that school district? It is about leadership and I fail to say whether the board was 3, 5, 6, 8, 10, 14, whatever size, is going to have any impact on leadership. It's about the people that come to the table. And the other thing that we should not lose sight of is what this is all about--what's good for kids. It's not the egos of the people involved. It's not doing what's right or wrong for the people being served and the school board membership. It's really what's being done right for kids. And I don't think, again, this bill serves the kids well. Thank you. [LB720]

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SENATOR COASH: Thank you, Senator Sullivan. Senator Price, you're recognized. [LB720]

SENATOR PRICE: Thank you, Mr. President. I rise to let the body know, if you didn't already know, I did vote this bill out of committee. I believe that the entire body should be able to weigh in on this debate. As many have said, the size of the organization and the amount of state resources that go there to support it are sizeable indeed and obviously the largest that we deal with, obviously not in the aggregate but as an individual. So this is very important subject matter that really we need to have the inputs that we are getting here on the floor. And with that, I would yield the balance of my time to Senator Avery. [LB720]

SENATOR COASH: Senator Avery, 4 minutes and 20 seconds. [LB720]

SENATOR AVERY: Thank you, Mr. President. Thank you, Senator Price. I said earlier when I was speaking on this issue that one of the reasons why I voted this bill out of committee was that I thought that we needed to have this debate. Am I convinced that the number seven is going to be the magical number that solves the problems that we've identified in OPS? No, I'm not convinced of that. But I do believe that this discussion is important and that it might lead us in the direction of finding some solutions. I was interested in something I came across in some of my research about OPS to learn that last year OPS charged the taxpayers \$2.1 million for over 10,000 hours of legal work. Now that's enough to hire 42 teachers at \$50,000 a year. It's enough to fund an entire year's worth of new textbooks for OPS. No doubt there is a need for school districts to hire legal assistants from time to time, I'm not denying that, but this amount is far greater than any other large district in the state. Over the past five years OPS has spent more than \$13 million on legal fees and they've paid for more than 83,500 hours of legal work. Now how does that relate to size? It's possible that the larger the school board the less likely the school board is able to build that consensus that we were talking about. And maybe that creates the quick temptation to call the law office, call in for legal help here when what you really need is to call your school board members together and have a good solid policy discussion. I want to address one other issue and that is we've talked a lot about...or some about groupthink. Groupthink is often a problem that develops in decision-making groups of various sizes. But when you have a group of people who are similar in backgrounds and similar in viewpoints, and that's often the case with school boards, decisions often become the product of the least common denominator; that is, the ideas that are often the weakest and the least innovative and the noncontroversial ideas are the ones around which people can develop some agreement, and that's kind of a least-common-denominator approach. There is a certain amount of self-censorship in these groups... [LB720]

SENATOR COASH: One minute. [LB720]

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SENATOR AVERY: ...where sometimes the best ideas never really get brought forward because of self-censorship, fear that you were going to be met with disapproval by your colleagues on the board. What is the problem with groupthink? It is a sterilizer of ideas. Groupthink is a sterilizer of ideas. To the extent that groupthink exists on this board or any other board, it is a sterilizer of ideas. It does not promote good policy and certainly does not help solve the problems that are plaguing the OPS system, that is, as identified by Senator Lautenbaugh, achievement. The achievement scores are the lowest in the state and we need to be concerned about that. If this in any way can help us meet that problem, then I think you ought to give serious consideration to supporting this. Thank you. [LB720]

SENATOR COASH: Thank you, Senator Avery. Senator Lautenbaugh, you are recognized. This is your third time. [LB720]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I do think it's important to be clear and one thing I do want to say here is that this has now become, you know, well, this one guy is just unhappy, this one guy is a malcontent. I would say quite the opposite, folks, when I float this in front of God and everybody and in the press repeatedly, out on TV, all fall it seemed like on this topic, because I had an advantage. I had someone on the Omaha City Council who kept saying patently foolish things that gave me a chance to respond. And he was one of the most obliging individuals I've ever met, so it went on and on and on. And it is not one guy who is disgusted with the stuff that goes on at OPS. It is the vast majority of the people who pay any attention, who know what I'm saying is the honest truth here. The opposition to this has come from a very small cadre of people, including 11 of the current board members, but don't be deceived. And when we stand here and say, well, they did what they did to this one member because he requested a vendors list and then sent contributions, that has the virtue of being false. He requested the vendors list because he was looking into some Title I issues. The contributions he solicited were from people he knew, and if they overlapped with the vendors list the contributions were never received. But that doesn't matter. We're just going to smear this guy, I guess, because he dared again to ask for an organizational chart that seems to have started us down this road. And if we're asking how this relates to student performance, well, let me underline again we're trying to put the dollars in the teachers, supposedly. I thought that's what we were about. And you need an organizational chart to know who's doing what in these schools and in the TAC building and where the money goes. And don't be mistaken. This isn't just about setting policy. This is about spending the dollars we send wisely, because a lot of you have been here long enough to hear that OPS is constantly saying that it's getting shortchanged despite the reality. We had a filibuster one year on a TEEOSA bill because, I'll do round percentages, OPS thought it was going to get a 9 percent increase and they got 5. And so they filibustered it, a lot of us did here, not me, and one of our former members said, well, this could be subject to a lawsuit because it's

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only a 5 percent increase, not a 9 percent increase. That's the OPS we know and love, folks, and that's what happens when the board surrenders its responsibility to one individual who really doesn't feel beholden to anyone else at that point and certainly doesn't have to answer. God knows he shouldn't have to produce an organizational chart to show what the people are actually doing in the schools. But it goes beyond that. How many of you are in the Learning Community, you represent parts of the Learning Community? What do your superintendents tell you about OPS's relationship with the rest of the Learning Community? You may remember, it started with them filing a lawsuit, one city, one school district, to the surprise of the surrounding school districts. That was the olive branch I guess. And we heard Senator Avery talk about the attorneys and the spending and the spending and the spending. I mean as I understand it one of the attorneys had to accompany the school board members to lunch with the superintendent candidates. What could that possibly be for? Is there anything the law firm isn't involved in? And who is actually running this district at this point? Don't you want to know when you hear how high the legal fees are? What could they possibly be involved in day in, day out? What is the board actually doing? And what is happening to this guy who tried to find out, as a new board member, what is everyone in this district doing, what are their jobs, who are they? Going back to the story again,... [LB720]

SENATOR COASH: One minute. [LB720]

SENATOR LAUTENBAUGH: ...Wayne has also been criticized for talking with the news media. After a World-Herald article quoted Wayne about his vote against a northwest Omaha middle school construction project, board member Bambi Bartek e-mailed the board president that Wayne broke the rules and that someone should talk to him. Board president Jensen went to the superintendent to get advice before she puts on her steel-toe boots, again with the steel-toe boots, to deal with this one male member of the board. What in God's name is going on here? Isn't it time to ask at long last what is going on with this board? And, yes, I honestly do believe that we've gotten into a circumstance with such a large board that we've ceded so much authority to the superintendent that this is what you have. You cannot question the superintendent. You can't even ask him what the employees are doing, apparently, through an organizational chart or your intervening on his authority, trampling on his turf? [LB720]

SENATOR COASH: Time, Senator. [LB720]

SENATOR LAUTENBAUGH: Thank you, Mr. President. [LB720]

SENATOR COASH: Senator Fulton, you're recognized. [LB720]

SENATOR FULTON: Thank you, Mr. President, members of the body. Got to respond to my colleague and seatmate, Senator Council. She is an adroit and competent and effective and formidable opponent and she employed an intellectual jujitsu move on me,

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ladies and gentlemen. After I was straining to break this issue into base components of logic, and made my case as to why we should act in lieu of not act, I sat down in my seat. I was satisfied. I'd made my case. And then Senator Council kind of slapped me upside the head and said, aha, Senator Fulton has made my point for me--size doesn't matter. So kudos. That was very good. I'd flip that around and do my own jujitsu move here and say that if indeed size doesn't matter then 7 would be just as good as 12. And so great risk here, because I'm opening myself up a little bit. She's better at jujitsu than I am. I'm going to go ahead and yield the remainder of my time to Senator Council with the pleading that she be gentle in her response. [LB720]

SENATOR COASH: Senator Council, 3 minutes 50 seconds. [LB720]

SENATOR COUNCIL: Thank you very much, Mr. President. Thank you very much, Senator Fulton. And in response to your 7, 15? Size doesn't matter. Let's go to 15. Let's be representational, make it closer to the people. You know, this is not and my comments were not intended to smear anyone, but my comments were intended to correct the record. My comments were intended to focus in on what the issues are here and they have nothing to do with the size of the board. I trust, again, colleagues, I trust you just listen to Senator Lautenbaugh. I get it, Senator Lautenbaugh, you don't like OPS. I get it, you don't think they're doing their job. I get it. But you have yet to correlate anything you said to the size of the board. And while you were quick to criticize and chastise the individual on the council who suggested that the proposed legislation was sexist and potentially racist, the sexist, I mean you are constantly referring to the fact you got this one male board member, picking on this one male board member. Someone talked about achievement. Senator Avery made...I think he was trying to make a correlation between size of the board and achievement, but he made a statement, and if I'm incorrectly attributing it to Senator Avery, I'm attributing it to whoever said that OPS has the poorest achievement scores in the state. Wrong. They do not. And no disrespect to my colleague, Senator Wightman, but the Lexington Public Schools have a six-member board and they underperform OPS in every single student category. They have six members. Should they be reduced? I haven't heard that. Twelve is unwieldy. No one has proposed reducing the Bruning-Davenport board, oh, because maybe we don't have issues with the Bruning-Davenport board. Folks, this isn't about the size of the board. This is about our disagreement with policy and practice. And, yes, Senator Lautenbaugh, board member Bartek may have said, don't you do something, because the school board... [LB720]

SENATOR COASH: One minute. [LB720]

SENATOR COUNCIL: ...policy states whether you agree with it or not, the policy states that the board president shall be the official spokesperson for the board. That's the policy. Might not like it but that's the policy. You also might not like the fact that the board of education...everybody is talking about this contract. Let me tell you what the

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contract language addition was to Senator (sic) Mackiel's contract, because the contract addition dealt with a desire for the board not to engage in micromanagement because that's not what boards of education are supposed to do. Boards of education are to set policy and hire a superintendent to carry out that policy. They are not to micromanage the board, I mean the district. [LB720]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Council. Senator Wallman. [LB720]

SENATOR WALLMAN: Thank you, Mr. President. I appreciate Senator Council's comments on policy. Our school board had a policy book thicker than this. We dealt everything about student behavior, student dress, and that's what school boards do and that's what you give to administrators to carry out. And some of it is state regulations and rules, which they give to each school board member. You put it in your policy book. And so every year we went over the policy changes with a lawyer or legal assistant to see if we were doing things right because...and they talk about legal fees in OPS, every large school district is going to have legal fees. You know why? You get sued by students or parents. That's why you have legal fees, not just maybe for lobbying or something like that, because schools do make mistakes. Whether they get hurt in workshops or whether they get hurt on the track, on the football field, you will have lawsuits. And those cannot be printed publicly because they're secret and only school board members know and the people who get the money. So would Senator Council...I'd yield the rest of my time to Senator Council. [LB720]

PRESIDENT SHEEHY: Senator Council, you're yielded 3 minutes 40 seconds. [LB720]

SENATOR COUNCIL: Yes, thank you, Mr. President. Thank you, Senator Wallman. I requested and received this abdication language from the superintendent's contract, and that's the current superintendent, Superintendent Mackiel. In addition to what is routinely set forth in the superintendent's contract, which comes straight out of the policy, the language added was, and I quote, the board individually and collectively shall refer promptly all criticisms, complaints, and suggestions called to his attention to the superintendent for study and recommendation. Members of the board shall exercise only those responsibilities set forth as board responsibilities in the policies and regulations of the district. The intent of that language was to make sure that there was a clear understanding of the division of responsibility between the board of education and the superintendent. The board hires the superintendent to carry out the policies it enacts. The board is not their responsibility and they are violating their role as board members when they believe that they are to engage in the day-to-day operations of the school district. That's not a board of education role and anybody who has served on a board of education knows that. That's why you hire a CEO, the superintendent, if we

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want to compare school boards to businesses. That's why you hire a superintendent. And again, I mean I listen to these contradictory statements. We criticize the size of the board because we say it reduces the possibility of achieving consensus, and then we criticize the board because they always reach consensus. I'm not able to follow that. I'm also not able to follow the logic that says if you have 7 or 9 or 5 rather than 12 you magically somehow are more likely not to achieve consensus? Is that the objective, to not to achieve consensus? [LB720]

PRESIDENT SHEEHY: One minute. [LB720]

SENATOR COUNCIL: And so by reducing the board size you accomplish that objective? And I still have yet to hear how seven or nine or five guarantees innovation and vigor, and vigor. I hope someone yields Senator Lautenbaugh time so he can give us an example of how a 7-member board as opposed to a 12-member board results in, using his language, quote, more vigorous discussion or more vigorous programs or more vigorous something. But that's the terminology that's been used so let's get an example of it. I urge you again, listen to this debate. This is not about the size of the board. We shouldn't be interfering at this time. [LB720]

PRESIDENT SHEEHY: Time, Senator. [LB720]

SENATOR COUNCIL: Thank you. [LB720]

PRESIDENT SHEEHY: Thank you, Senator Council. Thank you, Senator Wallman. Senator Burke Harr. [LB720]

SENATOR HARR: Thank you, Mr. Lieutenant Governor, members of the body. Size, size, size, size, size. Seems like it's a challenge word, that everyone has to use the word "size" once in their speech. Well, I think we're putting the emphasis on the wrong...in the wrong place when we talk about size. What we need to worry about and what we as a body should be addressing is how can we help school boards close the achievement gap. How can we help kids perform better so that they are college and career ready? That's the key. That's what the P-12 initiative is about. That's what No Child Left Behind is about. That is what Race to the Top is about, is closing the achievement gap and making sure that every kid is able to achieve to their potential. And whether we have a school board of 12, 6, 2, 3, 15, the size doesn't matter. What matters is what can we do as a body to help that board better perform. We have school boards that are kind of in limbo from what they used to be in that they have federal money coming in, they have state money coming in, and that money goes directly to the schools. They have no say over it to a large degree and those employees are less accountable to the superintendent and to the board. And so you have to figure out how you can motivate those...how to motivate those administrators and teachers. You have to figure out what can we do to close that achievement gap. And it's not by making

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personal attacks and it's not about talking about the politics of what's going on in the Omaha School Board. It's about focusing on what's important and constantly asking yourself this question, the school board member asking this question: How can I do better for the student? How can I raise that kid's achievement? And if you do that you may have groupthink, you may not. And it doesn't matter if you're 12 or 6. So the question is, what can we as a body do to help close that achievement gap, to help those on school boards to perform better? And the NCSL did a report on this called "Strong Leaders Strong Schools, 2010 School Leadership Laws," and I found it pretty interesting. And they talked about five states in 2010 passed legislation relating to education governance structure. Connecticut requires school boards with lowest achieving schools to establish school governance councils. The council is made up of parents, teachers, community leaders, students, and the principals, are employed to advise principal on developing budget details and better ways to improve the board--good idea, good start. Georgia requires the state board of education to adopt training program for members of the local school boards. Again, it's helping the school boards do better. New York requires all first-time...first-term board members elected or appointed to attend training sessions within one year of taking office to acquaint themselves with the power, functions, and duties of the board of education and other administrative authorities affecting public education. Rhode Island requires members of the school committees to undertake six hours in professional development in educational programs developed by Rhode Island College each year. Those are practical ways we can improve our school boards. That's not playing politics. That's not personal sniping. It's actual effective change. It's doing what school boards should do: How can we improve achievement? Six, twelve... [LB720]

PRESIDENT SHEEHY: One minute. [LB720]

SENATOR HARR: Thank you, Mr. Lieutenant Governor,...are arbitrary numbers. We've heard that all night. Let's really focus on what we as a Legislature can do to improve school boards and not really focus so much on size where there is absolutely data or no studies or no reports that say here we go, size matters. Thanks. [LB720]

PRESIDENT SHEEHY: Thank you, Senator Harr. Members requesting to speak on AM1843 to LB720, we have Senator Pahls, followed by Senator Nelson and Senator Smith. Senator Pahls. [LB720]

SENATOR PAHLS: Thank you, Mr. President, members of the body. I'm going to answer, just give some answer to what the previous senator said. You know, if OPS...and maybe they have, maybe if they would invite an outside agency to come in and evaluate the school system, maybe that could help them. I know this has helped other schools. I'm not saying a sister school or a sister school system nearby. I'm talking about a professional agency. I suggested that, doing that, when they wanted to take over all the schools in the metro area. See, I think if you would do something like that,

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that may cause a lot of people to say, whoa, we see a school board and an administration that's trying to get something done. Now if they have, I apologize. Now I don't know if size or the number of people on the school board is going to make a significant difference without them being trained, as was indicated by a senator that they do need training, not going to disagree with that at all. But there is something wrong, we know that. Students are not achieving at the level that they should, and we cannot always blame it on the demographics. Now I understand they do have...they have numerous committees working on achievement, etcetera, etcetera, but apparently there has been some growth but a lot of people don't think enough. When we were arguing this situation about eight years ago when I was...my first year here, Senator...let me see, Superintendent Mackiel made a comment in the paper that there was a suburban senator who was trying to take away some of their power by having a law in the 1890s, do away with, which would allow OPS to take other school districts, and he named me basically as that person. And I have to be honest with you, I was so new I was not smart enough to even think of that. But I took the bait and I got involved. But there are two individuals who I called up right away and that was Senator Lowen Kruse and Senator Ernie Chambers, because I was going to probably say some things that were not the most popular things to be said about the Omaha school system and I wanted to let them know that I was not doing this for various reasons, and they understand that, because some of the questions or some of the information I was giving out was not necessarily, as I said earlier, the type of information that the school district would want to be exposed. I even went to Senator Chambers and I said, Senator Chambers...because he did do this. He blamed people like me, the white man, he would say that we were part of the problem. And this is what my suggestion to him was: Let's break OPS down and you become one of the...of the three or four districts, you become one of the superintendents. And he laughed at me a little bit. He said, well, you know, politically that probably wouldn't be the thing to do. Then I went to Senator Raikes and I said, you know, we ought to break OPS up. And lo and behold, after a while that did come to pass up here on the floor. [LB720]

PRESIDENT SHEEHY: One minute. [LB720]

SENATOR PAHLS: Thank you. I know when somebody speaks something against the OPS school system, you think you're anti-OPS. I am not. I've spent too many years in education. I think we ought to take a look at the achievement levels. We ought to take a look, and I brought this up before, how much of the dollar is actually making it to the classroom. In OPS, they are significantly lower than the statewide average of the dollar getting into the classroom. Those are the questions we should be asking. I'm assuming school board members are asking those questions. I'm assuming they're taking surveys and they really are bringing this forth. I don't know but I am assuming that. If nothing else, we are causing people to have some questions about what's going on. We cannot continue to place money into a school district... [LB720]

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PRESIDENT SHEEHY: Time, Senator. [LB720]

SENATOR PAHLS: Thank you. [LB720]

PRESIDENT SHEEHY: Thank you, Senator Pahls. Senator Nelson. [LB720]

SENATOR NELSON: Thank you, Mr. President. Members of the body, I have a question or two of Senator Council, if she will yield. [LB720]

PRESIDENT SHEEHY: Senator Council, would you yield to Senator Nelson? [LB720]

SENATOR COUNCIL: Yes, Mr. President. [LB720]

SENATOR NELSON: Thank you, Senator Council. Just a point of personal information, you spent some time on the OPS School Board. Is that correct? [LB720]

SENATOR COUNCIL: Yes, sir. [LB720]

SENATOR NELSON: Were you a member of the board when they hired Superintendent Mackiel? [LB720]

SENATOR COUNCIL: No. [LB720]

SENATOR NELSON: Did you come along after or before that? [LB720]

SENATOR COUNCIL: I was before that. [LB720]

SENATOR NELSON: That was in...how many years ago was that? [LB720]

SENATOR COUNCIL: I was on the Omaha Board of Education from 1982 to 1993. [LB720]

SENATOR NELSON: To '93, so basically 20 years have gone by since you've served on the board. [LB720]

SENATOR COUNCIL: Hired two superintendents. [LB720]

SENATOR NELSON: Hired two superintendents. [LB720]

SENATOR COUNCIL: Yes. [LB720]

SENATOR NELSON: All right. Thank you, Senator, appreciate that information. Colleagues, size does make a difference and a senator who spoke previously said we

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don't have any data on whether a small-sized board makes any difference. Well, yes we do. What has Senator Avery been talking about at two different times? I've served on a number of boards. One board was 14 members, the other was 7. And Senator Adams says the dynamics of the board makes a big difference. I agree with that, but my experience is that the smaller the board the better the dynamics are and the more things that you get done. I am in OPS, in the district. They are part of my district. I know members of the school board and I know they do probably the best they can in many respects. But I'm here to tell you there is a huge amount of dissatisfaction in the people of Omaha in OPS with how things are run and what the policies are. There's dissatisfaction with the fact that good teachers who maybe try to exercise some discipline or do something of that sort wind up being dismissed. What kind of policy is that and where does the policy come from? Is it from the board or is it coming down from the superintendent, the administration, who says this is the policy we're going to take; we're not going to go to any legal expense or confront parents that are coming in with absolutely wild-eyed accusations and resulting in the movement of a teacher or the dismissal of a teacher. I just point that out as one of the things that we're concerned about. Where are the policies coming from and is it drifting down from the administration or is the school board actually doing much of anything but rubber-stamping what the administration has wanted to do? Our Senator Pahls has brought up some good points. I don't...I think at this time if Senator Lautenbaugh has something more to say in response to my questions here as far as the policy and how things are working now and the need for a smaller school board and perhaps a newer school board, I will yield the rest of my time to him. [LB720]

PRESIDENT SHEEHY: Senator Lautenbaugh, you're yielded 1 minute 35 seconds. [LB720]

SENATOR LAUTENBAUGH: Thank you, Mr. President. Thank you, Senator Nelson. Just briefly, and I'm repeating this because people keep saying they have yet to hear it so I'll do it again, as Senator Avery quoted from the press accounts, Senator (sic) Mackiel was given extraordinary authority, unique on some ways throughout the Learning Community when compared to Lincoln, I believe, to run things without interference from the board to the point where a new member came in and wanted to find out who does what, which seems like one of your most basic questions if you are going to effectuate change: What do we have and are we doing it right? [LB720]

PRESIDENT SHEEHY: One minute. [LB720]

SENATOR LAUTENBAUGH: And he was told he could not obtain that information as a board member because it might encroach on the superintendent's authority. So if you want to know what bold initiatives are being quashed, why don't we start at the threshold level. How on earth are you supposed to have a bold initiative if you can't get an organizational chart for the schools you're charged with running? And that's what the

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school board does. So again, I'm hoping that's a very clarifying example that was heavily reported on in the press last fall and was one of the things that kind of led us to here, where we are today. You cannot innovate if you don't know what you have. And to be told as a school board member, you're not entitled to even know the information because you might be intruding on the province of the superintendent, that is a system where the wheels have come fully off and the school board is in control of nothing. And if you want to know when change and innovation is being stifled, I would say that's a pretty good example of a pretty good... [LB720]

PRESIDENT SHEEHY: Time, Senator. [LB720]

SENATOR LAUTENBAUGH: Thank you, Mr. President. [LB720]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Thank you, Senator Nelson. Senator Smith. [LB720]

SENATOR SMITH: Thank you, Mr. President. And good evening, colleagues. I just want to take a moment to brag on a couple school districts that I have had the opportunity of working closely with. First is the one that I represent in my district and that's the Papillion-La Vista school district. They have six board members. My son is going to graduate as a senior this year and I'm very, very proud of that school district and the leadership of that board, but I do believe if that board was twice the size it would have the potential of being very ineffective and there would be potential inefficiencies there, I believe. My daughter a few years back was a graduate of the Ralston Public School system, Senator Lathrop's district, and that school district is half the size of the Papillion-La Vista school district. They have six board members. If I heard correctly from some of my colleagues that because OPS is twice the size of Papillion-La Vista maybe they ought to have the 12 board members, then I guess along that argument then Ralston perhaps should have 3, and I don't think that's the right number. I do believe larger boards can be inefficient, ineffective, unresponsive. But, you know, my colleagues in the Omaha school district area, Senator Lautenbaugh, for bringing this bill, he wants to be proud of that school district. They want that school district to work well and it does have problems. And we're very fortunate to have a new superintendent coming to the Omaha school district, Omaha Public School district, Nancy Sebring. She was highlighted in the newspaper, in the Omaha World-Herald and very, very excited, very happy to see her come. But would Senator Lautenbaugh yield to a question, please? [LB720]

PRESIDENT SHEEHY: Senator Lautenbaugh, would you yield to Senator Smith? [LB720]

SENATOR LAUTENBAUGH: Yes, I will. [LB720]

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SENATOR SMITH: Senator Lautenbaugh, Nancy Sebring, the new OPS superintendent, she is coming from the Des Moines Public School system. How many board members does Des Moines have? [LB720]

SENATOR LAUTENBAUGH: 7. [LB720]

SENATOR SMITH: She took that job in 2006. Prior to 2006, she was with the Douglas County School Board in Castle Rock, Colorado. Do you know many school board members that school district had? [LB720]

SENATOR LAUTENBAUGH: I have to confess you have me there, Senator Smith. [LB720]

SENATOR SMITH: 7. [LB720]

SENATOR LAUTENBAUGH: I'm not surprised, but I don't know that. [LB720]

SENATOR SMITH: All right. Well, you know, if we really want Ms. Sebring to be welcomed and to have things that she's accustomed to, and I don't think she's accustomed to working with 12 school board members, I think she's accustomed to working with a smaller board that may be a little bit more responsive to her direction. And so I would say weigh that, colleagues. And, Senator Lautenbaugh, if you wanted to, I'm going to yield of my time. If you want to build on that at all, I'll give my remainder of the time to you. Thank you, Mr. President. [LB720]

PRESIDENT SHEEHY: Senator Lautenbaugh, you're yielded 1 minute 50 seconds. [LB720]

SENATOR LAUTENBAUGH: Thank you, Mr. President. Thank you, Senator Smith, for that. To be clear, and this is maybe off topic but...at least as far as the question that was recently asked of me, I believe this is probably the perfect time to do this. And again, we can go on and on and on about how the overwhelming number of school boards, certainly the ones of comparable size, are seven-member, nine-member, sometimes five-member boards, usually seven to nine. I mean that's beyond dispute. That is everywhere but OPS. I think there might be, of comparable sized ones, there might be a couple, one 12 and one 14, throughout the rest of the nation, and that one combined on we've cited here in Nebraska. Seven is the overwhelmingly common number. We've got a new superintendent who was hired by a 12-member board and she knows 4 of them... [LB720]

PRESIDENT SHEEHY: One minute. [LB720]

SENATOR LAUTENBAUGH: ...are going to be leaving. Would she be more comfortable

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knowing they're going to be replaced or not replaced? She knows she is losing four of the people that hired her either way, because they're not running. So is it more disruptive to send in four new people or to take this opportunity to pare the board down so it's commensurate with the overwhelming vast majority of boards? The time for this is perfect, based upon events as they played out. Thank you, Mr. President. [LB720]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Thank you, Senator Smith. Mr. Clerk, items for the record? [LB720]

CLERK: Thank you, Mr. President. Enrollment and Review reports they've examined and engrossed LB209, LB209A, LB825, LB825A, LB872, LB950, LB950A, LB993A, LB1063, all those reported correctly engrossed, Mr. President. That's all that I have. Thank you. (Legislative Journal pages 1354-1355.) [LB209 LB209A LB825 LB825A LB872 LB950 LB950A LB993A LB1063]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Continuing floor discussion on AM1843 to LB720, members requesting to speak, Senator Cook, followed by Senator Pahls and Senator Sullivan. Senator Cook. [LB720]

SENATOR COOK: Thank you, Mr. President. And good evening, colleagues. I rise in opposition to AM1843 and to the underlying bill, and would yield my time to Senator Council, if she would like to have it. [LB720]

PRESIDENT SHEEHY: Senator Council, you're yielded 4 minutes 45 seconds. [LB720]

SENATOR COUNCIL: Thank you, Mr. President. Thank you very much, Senator Cook, because it's timely that you yielded following Senator Smith and his comments about the new superintendent, Ms. Sebring. Since I'm sure that Senator Smith has never been involved in a superintendent search and I have, I've been involved in two, and quite frankly, Senator Smith and others, Ms. Sebring would not have applied for this position if she had felt that a 12-member board was a problem. And in fact, we don't know, she may see this 12-member board as an opportunity. But what I can tell you is that while I don't know whether or not new Superintendent Sebring came to Omaha and applied for this position because they had 12 board members, I can tell you that at least one of the...what would have been the final six candidates for the superintendency withdrew because of his belief that the Legislature wasn't showing support for the 12-member board that he had submitted his application to be the superintendent of and to work with. Senator Lautenbaugh says this is the best time to do this. I say it's the exact worst time to do this. If he's genuine about wanting to see new ideas, new blood, you don't need this bill. Your new ideas are going to come because you've got a new superintendent. She's bringing new ideas. She's bringing new blood. You're going to have new ideas and new blood because you're going to have at least 4 new board members, you know, the people who don't run for this office because they'll be 1 of 12,

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those people that filed to serve on this board. You're going to have those new ideas. You're going to have that new blood. This bill passes, you've got a new superintendent who expected to be dealing in a new environment that she obviously viewed as being a very challenging environment, one where she could make the kind of difference in terms of academic achievement. She didn't see a 12-member board being a hindrance. And this outcry, this alleged outcry to change the size of this board. Remember, Senator Lautenbaugh floated this proposition last September. Where was all the outrage at the hearing? Where was all the outrage? There was only one proponent, Senator Lautenbaugh; two neutral; all the rest were opponents. And I...while he may have alluded to it, he didn't emphasize that one of the opponents was a member of this 12-member board. He's quick to tell you that someone who supported moving to seven was a member of the board, but let's stress the fact that the people who serve on this board came and testified that the board needed to maintain its current size. So all of this outcry, outrage,... [LB720]

PRESIDENT SHEEHY: One minute. [LB720]

SENATOR COUNCIL: Where were they? They had from September to January. And the other point that ought to be considered is if all this is tied to academic achievement, if all of this is tied to improving school performance, why didn't this bill come to the Education Committee? If it's truly an education issue and that's what the concern is, why didn't it come to the Education Committee? So we're talking about performance. We're talking about rubber stamps. Senator Smith, Papillion-La Vista School Board this school year 54 times has voted 54 times unanimously. They're rubber stamps, according to Senator Avery. They're rubber stamps of the superintendent because every vote they've cast this year has been unanimous. Shall we change the size of that board? [LB720]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Council. Thank you, Senator Cook. Senator Sullivan. [LB720]

SENATOR SULLIVAN: Thank you, Mr. President. All this talk about size and being like everyone else, hmm, we've got a Unicameral that's unlike everyone else. Seems to work for me. I yield the rest of my time to Senator Council. [LB720]

PRESIDENT SHEEHY: Senator Council, you're yielded 4 minutes 40 seconds. [LB720]

SENATOR COUNCIL: Thank you very much, Senator Sullivan, and that (laugh) is a very apropos point. There's a reason we're different and there's a reason OPS is different. And to change the size of the board without there being compelling reasons is not action that this body should be taking at this time. Again, if our objective is new ideas, new blood, where's the guarantee that you get new ideas and new blood by reducing the size of the board? I have yet to have that established by anybody's

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testimony that inherent in a reduction in the size of the board you're going to have new ideas and new blood. Yeah, you may very well get 7 of the current 12. Does that guarantee new ideas and new blood? According to everything that's wrong, what's wrong is the people who are there now. The electorate has some input on what to do about that. As indicated, there are going to be at least four if not more. This is not the time. You have a new board president and vice president just elected in January trying to bring about the kind of changes that everybody in here claims they want to see occur in OPS. They hire a new superintendent and it's stated in the paper, since that's our source of all things true and knowing, that she's focused on academic achievement and reducing the achievement gap between students of color and majority students, all of the objectives. And I was...and I had written myself a note. I mean in this debate we talked about the number of administrators and how the size of the board apparently had something to do with that. Clearly, and I've stated it before, there are members of this body who have problems with the operation and administration of the Omaha Public Schools, but it's not because of the size. Hey, 15 board members may say you only need 300 administrators; 18 board members may say we've got a great innovative way to address reducing the achievement gap. There is absolutely no correlation. And I beg to differ with my colleague, Senator Nelson, that what Senator Avery provided in terms of his research of corporate boards establishes that a reduction of a school board, reduction in the size of the school board would result in the kinds of changes in this district that people apparently want to see. Twelve is not unwieldy and if it is, you know, and Senator Lautenbaugh is quick to distinguish Bruning-Davenport in saying they were merged. [LB720]

PRESIDENT SHEEHY: One minute. [LB720]

SENATOR COUNCIL: How do you think OPS came together? There was Florence and there was Dundee and there were a number of other places that came together and you got 12. But if it's the size, if it's the size of the board, who cares whether it's the result of a merged school district, of a merger. If 12 is too big, 12 is too big. And we talk about the Learning Community Council. Well, we've got various sizes of boards of education in the Learning Community, but again look at the votes taken by the boards of education that comprise the Learning Community. And if unanimity is bad then we ought to be looking at...there's no optimal board size if that's the issue because most of them are seven. And then to draw the conclusion... [LB720]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Council. Thank you, Senator Sullivan. Senator Pahls. [LB720]

SENATOR PAHLS: Thank you, Mr. President, members of the body. After listening for the last several hours, I'm beginning to wonder what school has the highest...school system has the highest dropout rate, probably one of the higher truancy, probably the one that needs help in achievement and probably spends the most per student and

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does get an awful lot of federal dollars? They're all legit. Does that sound like a school system that cannot stay the way it is right now? There is something missing and I don't know what that missing part is. But when you have all of those layers of issues, something tells me drastic steps need to be made. I know the new superintendent, and I'm not laying the blame on the past administration but I'm saying with a new superintendent and, as indicated, new board members, maybe a new culture can be established. It appears that needs to be done. I also was speaking to some of the people who educate school board members and they tell me that OPS recently has taken an active interest in that and I think they give praise to the new president. So I do see some things happening there. But what district...this is the thing that amazes me because I'm going to go back a few years, when they were doing the issue between the schools. That attorney bill was around \$12 million. And I think earlier we heard that the bill is around \$2 million or something similar to that. I disagree with what Senator Wallman said earlier. All school districts have problems and they need attorneys. I agree with that part, but I think you can put a handle on it. I'll just give you some personal things. The school district that I was associated with, they looked at what was happening. The attorney bills were going up because a number of administrators would go call the attorney. And they said, no, no, we can stop that. Before I could call the attorney, I had to talk to somebody in charge of personnel so he would vet my idea. And he says, no, no, we can answer that another way. That's to me another indication that OPS is not doing something like that. There are some major issues in that school district. I think that this discussion is actually helping. The new superintendent is listening to some of these points of discussion and said, hey, I need to take a look at that. Again, let's start taking a look at student data. Let's take a look at how many dollars are making its way to the classroom. Let's take a look at parent-teacher conferences, how many times are we getting parents there. On lots of these things it becomes a culture issue. I can remember a number of years ago when I went to the OEA. I said, how can we improve your school district, give me some ideas. And what they did, they gave me two or three schools. I said, well, why do you...why are these two...these schools that you are sending me to? They said, well, because we think, the leadership within the building. So if it's the leadership within the building, it has to go all the way to the top. So leadership is a key thing,... [LB720]

PRESIDENT SHEEHY: One minute. [LB720]

SENATOR PAHLS: ...whether it be the superintendent or those people on the school board who are giving...helping to give direction. It's time for a change. Thank you. [LB720]

PRESIDENT SHEEHY: Thank you, Senator Pahls. Members requesting to speak on AM1843 to LB720, we have Senator Carlson, followed by Senator Loudon, Senator Schilz, Senator Ken Haar. Senator Carlson. [LB720]

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SENATOR CARLSON: Thank you, Mr. President. Members of the Legislature, I kind of enjoy listening to debate and then talking about the groups that we seem to have on this issue, and I would say that we've got three groups. And one group is saying change is bad, leave it at 12; another group is saying change is good, let's go to 7; and another group is saying I don't know. Now I think that we have the proposition in front of us that OPS is either going to stay at 12 or it's going to go to 7. That's been decided. But I would ask both populations that have opinions on this matter relate their testimony to this: How is OPS doing in regard to student achievement, in regard to fulfilling the mission of OPS, in regard to reaching the goals and objectives of OPS? How's the 12-member board contributing to these objectives? How would a seven-member board contribute to these objectives? And is a change necessary or is a change appropriate because of achievement or lack of achievement? And I hope that we can hear some testimony in that regard. Thank you, Mr. President. [LB720]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Mr. Clerk, do you have an amendment on your desk? [LB720]

ASSISTANT CLERK: Mr. President, I have a priority motion. Senator Council would move to bracket the bill until April 12, 2012. [LB720]

PRESIDENT SHEEHY: Senator Council, you're recognized to open on your motion to bracket LB720 till April 12. [LB720]

SENATOR COUNCIL: Thank you very much, Mr. President. Colleagues, certainly if the purpose of the introduction of LB720 was to have a discussion around the issues impacting the Omaha Public Schools, that has occurred. If the purpose of introducing LB720 and the debate thus far was to establish that there's a need at this time to alter the size of the board, I submit to you that that has not occurred. And in fact with current developments, this is absolutely the wrong time, in my opinion, to consider altering the size of the board of a school district, a board whose size has been at that level and the residents of that district have come to depend upon having that level of access to their representative; that this is not the time to change it. You have new board officers, you have a new superintendent. You have individuals who have filed for election in November. According to LB720 and AM1843 as it currently stands, those people could very easily run for election and in January of '13 be put out of office and forced to run again. So under the circumstances that exist with an individual who has expressed her excitement about joining this district under full knowledge that it's a 12-person board, that this is not the time for this body to alter the size of that board. And I want to make it clear I've never suggested that this body doesn't have the authority to do that. My question is, does this body have a reason to do that? And I submit to you that there's been no compelling reason given for altering the size of the Omaha Board of Education. I think you need to consider the representative nature of the body, the size of the number of people represented and the number of students represented per board

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member as compared to other school districts in this state of smaller size in terms of student population, and urge you to vote to bracket this bill until the end of the session. Give this district and its new superintendent an opportunity to address issues that apparently have been languishing for some years, from according to the testimony this afternoon. Give them an opportunity to move forward and address the key issues. The only issue, what should be the only issue of concern to us is the academic achievement of youngsters in the Omaha Public Schools. Thank you. [LB720]

PRESIDENT SHEEHY: Thank you, Senator Council. You've heard the opening to motion 98, the motion to bracket LB720 until April 12, 2012. Members requesting to speak, Senator Louden, followed by Senator Schilz, Senator Avery, Senator Ken Haar, and Senator Lautenbaugh. Senator Louden. [LB720]

SENATOR LOUDEN: Thank you, Lieutenant Governor and members of the body. I have an opinion on whether to bracket or not because, as it's an Omaha school district, I guess I could probably care less because when they took care of our rural districts out in the western end of the state, it seemed like they could care less anyway. But anyway, as I look this bill over in the green copy, I was wondering if Senator Lautenbaugh would yield for questions. [LB720]

PRESIDENT SHEEHY: Senator Lautenbaugh, would you yield to Senator Louden? [LB720]

SENATOR LAUTENBAUGH: Yes, I will. [LB720]

SENATOR LOUDEN: As I looked at the green copy and looked at the amendment that come out of the committee, they're pretty near a animal of a different sect. They pretty well took your bill all apart and shot it to pieces. Are you still satisfied with that amendment as it came out of there? Because you were going to have five members and pay them \$20,000 apiece and I think you had term limits in there and I don't see anything of that in the amendment, in the committee amendment, other than the fact they decided to have seven members. Are you still satisfied with the way that committee amendment came out? [LB720]

SENATOR LAUTENBAUGH: Yes. [LB720]

SENATOR LOUDEN: What were you trying to do with your bill then if you were trying to cut it down to five members and pay them a wage? I would suppose you were trying to get more professional school board members, whereas the bill that the committee come out with or the amendment is just a regular old school board, run-of-the-mill legislation deciding how many members. What were you trying to do with your green copy? [LB720]

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SENATOR LAUTENBAUGH: Well, I did want to, again, five was an opening position. I think I was quoted last fall as talking about seven but, you know, if you want to get to seven you don't necessarily start at seven. As far as the pay issue goes, I'm always struck by the fact that the OPS budget exceeds the city of Omaha's budget and we compensate the city councilmen in Omaha. I at least wanted to underline the point that I would like to be able to expect a lot from these people that do serve on the board, whether there are 7 of them or 12 of them, and at this point...well, I thought the pay would help, without saying anything too combative. I thought the pay would help. I thought there was another issue. Again, I support term limits for us, for ourselves, and I didn't see any reason to exempt OPS from that. [LB720]

SENATOR LOUDEN: Then thank you, Senator Lautenbaugh. But it looks like to me then what you were trying to come up with was some more of a professional type of folks that could be able to spend more full-time on a school board rather than using it as a part-time job now. The outcome of that would be if you had five people at \$20,000, that was \$100,000 that was going to go into their needs. So their state aid to education would increase, I'm sure, by that much because that would have to be accounted for. As getting back to the bill, a few years ago LB126 was enacted and most of it was enacted by people from the eastern part of Nebraska that didn't have any dog in the fight and could care less about what happened to our rural areas. Since then, why, we've mostly destroyed education in the rural areas and that's the reason I wonder, while we're doing something with education, why something along that line couldn't be done out there. Right now we're getting consolidated districts that are 100 miles across and they're getting too big and unwieldy, so we're going to have to come up with some kind of ideas to set it up so you have more local control in certain areas. Because how would you like to run Grand Island's school from here in Lincoln all the time and expect those people to be satisfied with what the school board in Lincoln was thinking about? So that's what we have going on in the state of Nebraska at the present time. We haven't seen the last of that consolidation back there in LB126 yet, but I think you're going to see where some of your school systems are going to deteriorate. Now as we're getting to Omaha, I agree with Senator Lautenbaugh that there probably needs to be something done that would be better management out of there, because my understanding is that they have some of the lower graduation rates around there and they do have some high costs. It isn't that it's high costs for people, per pupil, but it's a high cost of administration. I know since they've changed their superintendent, the last one was getting over \$400,000 and hopefully this one that's coming in now will get somewhat less. So that should make a difference because they do get the lion's share of the state aid to education. With the bracketing situation, if they... [LB720]

PRESIDENT SHEEHY: Time, Senator. [LB720]

SENATOR LOUDEN: Thank you, Mr. President. [LB720]

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PRESIDENT SHEEHY: Thank you, Senator Louden. Senator Ken Haar. [LB720]

SENATOR HAAR: Mr. President, members of the body, I'm actually listening to the debate and I just really am quite amazed. Out of necessity, the Legislature has had to begin to micromanage healthcare and I really appreciate the effort of Health and Human Services Committee, but it sounds like there's some effort now that the Education Committee is going to take over the running of schools and it just seems to be an overreach to me. I'm being facetious about this, you know, taking over the school districts around the state, but it almost sounds like that. I mean we keep talking about Omaha, about Omaha. I'll bet you that we could find teachers and school board members and buildings all around the state where people have gripes and population has gripes, etcetera, but I don't want to see the Education Committee take over the running of schools that somehow we deem are not being run effectively. I mean this just leads to nowhere. I think it's a vast overreach and I don't want us to see us get into this. I think school boards are a matter of the local government and I've argued this on a couple of other bills lately. I think that we're talking here about local control, which I believe belongs in Omaha, and I am certainly against LB720. Is Senator Council still around or...she must have stepped out for a minute. Senator Lautenbaugh, would you answer a question? [LB720]

PRESIDENT SHEEHY: Senator Lautenbaugh, would you yield to Senator Haar? [LB720]

SENATOR LAUTENBAUGH: Yes. [LB720]

SENATOR HAAR: Thank you. And this is for my information, but who sets the size of school boards in every district around the state? [LB720]

SENATOR LAUTENBAUGH: There is no one answer for that. I know for districts the size of Omaha, it is set in statute. I believe that is the same for districts the size of LPS. I think there becomes a certain amount of discretion for some of the other districts where they could vote to have a bigger district if they want. It is not uniform and there's no one answer. [LB720]

SENATOR HAAR: Okay. Thank you very much. Senator Adams, could I... [LB720]

PRESIDENT SHEEHY: Senator Adams, would you yield to Senator Haar? [LB720]

SENATOR ADAMS: Yes. [LB720]

SENATOR HAAR: Could I run that same question by you? How many of the school board sizes are set in state statute right now? [LB720]

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SENATOR ADAMS: Specifically, I don't believe the statute identifies any number per class. It establishes a floor and a ceiling,... [LB720]

SENATOR HAAR: Okay. [LB720]

SENATOR ADAMS: ...and the school boards themselves decide where they're going to land. [LB720]

SENATOR HAAR: So a school board itself could decide to make itself bigger or smaller? [LB720]

SENATOR ADAMS: I don't know that for sure, Senator. [LB720]

SENATOR HAAR: Yeah. [LB720]

SENATOR ADAMS: I just know that the statute sets a limit. [LB720]

SENATOR HAAR: Yeah. Okay. I know that's true like with the NRDs. They can have within a certain range of size and so on. Again, thank you very much. I just believe this is an overreach. It sounds like something that needs to be settled locally and not at the level of the State Legislature. If we start to micromanage every school district around the state, we're in big trouble. Thank you. [LB720]

PRESIDENT SHEEHY: Thank you, Senator Haar. Senator Lautenbaugh. Senator Lautenbaugh waives. Senator Council. And, Senator Council, you are the last one in the queue, I see no additional requests to speak; would you like to close? [LB720]

SENATOR COUNCIL: I'll close, Mr. President. Again, I don't disagree that perhaps this topic was a topic that was worthy of this body's time and attention, but I think this bracket motion is appropriate at this time. Because if we continue the debate on this bill at a time when I don't believe it's in the best interests of the Omaha Public Schools or the mission of Omaha Public Schools for us to be altering the size of the board, and I think we need to make a conscious decision as a body as to whether we want to continue to devote the kind of time that I believe will be necessary before you go to a vote on advancement, whether or not it's necessary at this point in time, at this juncture in OPS, where they have a new superintendent coming. They have new board officers. They will have new board members who, conceivably, will bring the new ideas and the new blood that is supposedly at the core of the introduction of this legislation. That will occur with all of the changes that have been made at this point in time. And I think that the bracket motion is appropriate. If after the new superintendent assumes the position, after the November elections and the newly constituted board begins to work collectively with that new superintendent to address legitimate concerns, I don't want to stand here before you and give you any impression that I'm completely satisfied with

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where OPS is. I am not. But nor do I believe changing the size of the board is the way to get to what has been asserted to be the concerns of this body. That is not the way to achieve that result. I would urge your favorable consideration of bracketing this bill and allowing this body to move forward in the remaining days to address the critical issues that we face. Again, a vote in favor of the bracket motion will enable us to do that. Thank you very much, Mr. President. I would request a call of the house. [LB720]

PRESIDENT SHEEHY: Thank you, Senator Council. There has been a request of the call of the house. The question before the body is, shall the house be placed under call? All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB720]

ASSISTANT CLERK: 29 ayes, 0 nays to go under call, Mr. President. [LB720]

PRESIDENT SHEEHY: The house is placed under call. All unexcused senators please report to the Legislative Chamber. All unauthorized personnel please step from the floor. The house is under call. Members, please record your presence. Senator Heidemann, Senator McGill, Senator Cornett, Senator Janssen, Senator Pirsch, the house is under call. Senator Council has indicated that we may proceed. Members, you have heard the closing on the motion of MO98 to bracket LB720 until April 12, 2012. Senator Council, how would you like to proceed? Machine vote? The question before the body is on the motion to bracket until April 12, 2012. All those in favor vote yea; opposed, nay. Have all voted who wish? Record, Mr. Clerk. [LB720]

ASSISTANT CLERK: 15 ayes, 23 nays on the motion to bracket the bill, Mr. President. [LB720]

PRESIDENT SHEEHY: The motion to bracket is not adopted. The call is raised. Returning to floor discussion on AM1843. Senator Nordquist. [LB720]

SENATOR NORDQUIST: Thank you, Mr. President and members. I've been listening to the discussion back in my office here. And, you know, I listened to Senator Avery talk passionately about the need to change the number and how that would fix all the problems that we see at Omaha Public Schools. But no one has really gone in to those details to actually say how that's going to work. How does moving to seven or to five or to whatever number, how is that going to solve the problems, how is that going to make the board more accountable, how is it going to make the board more transparent in its decision making? We have not heard that. And certainly, you know, Senator Lautenbaugh has all the right in the world to go forward with this bill and continue the discussion on it. But I think we are just spinning our wheels here and not making progress on the issues that impact kids. We're spinning our wheels and merely picking numbers out of thin air and shuffling the deck chairs but doing nothing to move the district, move the academic achievement numbers forward. We should be talking about bold, innovative ideas. We should be talking about those at the state level, and they

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should be talking about them at the school district level. But if it's 12, if it's 5, if it's 7, there's no guarantee that that happens at any number. Senator Avery talked a lot about...he gave us an explanation of groupthink, and certainly those of us that have studied it understand that it's certainly not a good thing. But there was no explanation, from either he or Senator Lautenbaugh, about how reducing the number will reduce groupthink. There hasn't been any of that. And we certainly at this point don't have any measurement of it. We have, you know, a few anecdotes, which Senator Council has certainly addressed, I think, fully, you know, of a contract situation here or a board policy there. But we have no other measurement, whether it's a strong, qualitative measurement or a quantitative measurement. The only one that we've discussed that could be a replacement for groupthink is the unanimous votes. And I know the opponents want to say, you know, that that's not what we should be looking at, but they haven't said what we should be looking at, besides the two anecdotes or three anecdotes they've thrown out there. So tell us how does this bill reduce groupthink, and tell us how does this bill actually improve academic achievement. We haven't heard that, and we're going to continue the discussion, obviously, until we do. And I think that's the only way this bill gets the support that it would need to be enacted. Thank you, Mr. President. [LB720]

PRESIDENT SHEEHY: Thank you, Senator Nordquist. Senator Nordquist, that was your third time. Mr. Clerk, you have an amendment to the committee amendment. Senator Pahls. [LB720]

SENATOR PAHLS: Thank you, Mr. President. Remember, we are working for the kids of OPS. I'd like to extend my time to Senator Lautenbaugh. [LB720]

PRESIDENT SHEEHY: Thank you, Senator Pahls. Senator Pahls, this is your third time. Senator Lautenbaugh, you're yielded 4 minutes 45 seconds. [LB720]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. This is a difficult time of year, obviously, as we're winding down the session. And I do appreciate the bracket vote, but there's a lot of ways you can mean "appreciate": you can be grateful, and you can also understand. This bill is the right thing to do, and it will be back. And I realize we're in a filibuster on this, and I don't know that I could ever get to cloture, at midnight or first thing tomorrow morning. But I do know what it would cost to try. And, you know, I can't stress enough, I...and we get heated sometimes, and Senator Council and I really are friends. We go smoke together sometimes--and sometimes people don't even like that--but, you know, it's a sign of friendship in discussion, and we do it. But we disagree on this. But understand, I mean, my children do go to OPS. Not by Senator Council but early on in the process, the people were attacking my motives: Don't trust him, he hates OPS. Well, then I probably want my children to fail, too, then, because they go to OPS. I went to OPS. It means the world to me to have it do better, regardless of what part of the city we're talking about. All of

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Omaha isn't OPS, as we all know from the one city, one school district thing. But I understand Senator Council's sincerity on this. I saw that the multiple amendments had been filed in classic filibuster fashion. And I don't see that we could get there. I do believe that this discussion has made a very definite difference in, maybe, what some people decided to do with their ongoing service on the board and some other changes that are coming. And I can't underline enough, and I chose to read some of the sections from the World-Herald today because, frankly, some of what we're hearing about what goes on in the board has been outrageous and contrary to moving forward and certainly contrary to improvement. And I will never stop watching, and I hope we never stop watching either. I honestly believe the right thing to do is to shrink the size of this board, but I don't think we're going to get it done tonight or certainly not at a cost that any of you are going to be happy about paying, with other legislation we have pending. So I think I started to file a motion to bracket. But I can't get that, because we just filed one, and it would have to be...I think I filed a motion to recommit to committee. I think that's what I filed; we'll see in a moment, I guess. I know I signed it. And I will ask you to vote for that motion, and we will move on. Thank you, Mr. President. [LB720]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Thank you, Senator Pahls. Mr. Clerk, you have a motion on your desk. [LB720]

CLERK: I have a priority motion, Mr. President. Senator Lautenbaugh would ask unanimous consent to refer the LB720 to committee. [LB720]

PRESIDENT SHEEHY: Without objection? So ordered. Mr. Clerk, we will now proceed to General File 2012, Senator priority bills, LB599. [LB720 LB599]

CLERK: Mr. President, LB599, a bill originally introduced by Senator Campbell. (Read title.) The bill was introduced on January 19 of last year, at that time referred to Health and Human Services Committee. The bill was advanced to General File. At this time I have no amendments to the bill, Mr. President. [LB599]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Campbell, you are recognized to open on LB599. [LB599]

SENATOR CAMPBELL: Thank you, Mr. President and members of the body. And I would like to begin this evening by thanking Senator McGill for her designation as a priority bill. When I started thinking about LB599, I was struck by the thought that when I was pregnant with our first child--and those were in the days when you couldn't find out whether you were having a boy or a girl--Dick and I got a lot of questions in terms of: Well, do you want a girl or do you want a boy? And I bet our response was like hundreds and thousands of parents' alike when we said: We just want a healthy baby. Colleagues, LB599 is about healthy babies. It would allow Nebraska to offer prenatal services to unborn children of low-income women. The bill directs the Department of

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Health and Human Services to establish a separate state program under the targeted low-income child health option of CHIP. Program services shall be prenatal care and pregnancy-related services connected to the health of the unborn child. The program is solely for the unborn child of mothers who are ineligible for coverage under Medicaid. Children's eligibility for services will be determined using an income budgetary methodology of no greater than 185 percent of the federal poverty guideline. Services not included are medical issues separate to the mother and unrelated to their pregnancy. The bill requires the department, within 30 days of L599's passage, to seek approval from the Centers for Medicaid and Medicare, CMS, for a state plan amendment. For well over 20 years, the practice in Nebraska has been to cover the cost of prenatal care of the unborn child of low-income women. It is important to note that two years ago CMS, in its letter to the state of Nebraska on November 30 of 2009, did not say this practice could not continue. What it did say was that Medicaid funding could not be used. What it said was that, in that letter, it pointed out an alternative source of funding utilizing federal dollars with a state match should the state choose to do so. This is clearly a policy issue, not an administrative one. And so it makes sense for the Legislature to consider this issue. I believe Nebraska's practice of funding prenatal care of the unborn child of low-income women should return, including the unborn child of an undocumented mother. The child will be a U.S. citizen at its birth. Would we not want that child to be healthy? Would we not want healthy babies? We certainly know the importance of prenatal care. Without it, significant problems can arise: premature birth, low birthweight, risk of health problems and disabilities throughout the life of that child, all of which expenses could potentially fall to the state to cover. It has been in the last two years our clinics, our hospitals, our physicians, our agencies, our faith groups that have stepped forward to help these babies. And advocates continue to monitor the stories emanating from our health providers and agencies. And during our discussion, I will provide more specifics of what we have learned over the past several years. But all of these people cannot continue to indefinitely assume this responsibility or this cost, nor should they. No matter how you look at the public policy, the most important underlying principle is the importance of healthy babies, whether you look at this as a moral duty or as a fiscal long-term impact. Two years ago I concluded my remarks when withdrawing this, and I'd like to repeat those. What many people across Nebraska saw as, quote, the right thing to do did not prevail that day. But I assure you that the watching and monitoring and gathering of information of what happens to these unborn children will not end. These advocates will persevere. And they have watched over these babies for the last several years. The voices of Nebraskans are growing stronger: 66 percent of Nebraskans favor restoration of prenatal care in a March 2012 survey among 500 registered voters. Prenatal care not only matters for the child when it is born, but it matters for a lifetime. Thank you, Mr. President. [LB599]

PRESIDENT SHEEHY: Thank you, Senator Campbell. You've heard the opening to LB599. Members requesting to speak: Senator Flood, followed by Senator Nordquist,

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Senator Krist, Senator Mello, and Senator Gloor. Senator Flood. [LB599]

SPEAKER FLOOD: Thank you, Mr. President. And, members, good evening. I think you know my position fairly well about protecting unborn children. In 2010 this Legislature passed a bill I introduced, LB1103, and the mission of LB1103, which received well over 35 votes in this Chamber, was to stop abortions at 20 weeks because babies feel pain. It was about the unborn child. It was about respecting life, and it was about acknowledging that is a human life. I will concede, this issue represents a tension between two points. It's a balancing test. On one side you have the rule of law, and on the other side you have the pro-life position. Let's take the first example, emergency care: we have an illegal immigrant, pregnant, ready to deliver. The rule of law would say that individual is not entitled to state benefits because of her immigration status. And then balance it with the pro-life position. Any kind of emergency involving labor, delivery, anything prior to delivery is covered in an emergency basis, in the emergency room, by the taxpayers. In that situation, with an illegal immigrant, we have already made a choice as a government that we are going to provide care for the human person and that that emergency care outweighs the immigration status and the rule of law. I believe that when life and health are in the balance, you err on the side of life. Let's use another example, the DREAM Act, providing in-state tuition to illegal immigrants. On one side, the rule of law: you have an illegal immigrant and their immigration status. On the side you have the interest of low-cost education. I voted not to allow illegal immigrants to have in-state tuition. But there wasn't a life or health issue in the balance. Reasonable people can weigh these two issues differently. Let's take prenatal care. The primary benefit of this law does not flow to the mother; it flows to the unborn child. Page 7, line 10: "Child means an individual under the age of 19 years, including any period of time from conception to birth up to age 19 years." From conception to birth. Line 16, LB599, page 7: "including an unborn child." For those of us that have been involved in the pro-life movement, we've been waiting to see this in the statute books for a long time. But you might be surprised to learn it's already there, Nebraska Revised Statute 28-325, passed in 1977, amended in 1997. It says: These sections "are in no way to be construed as legislatively encouraging abortions at any stage of unborn human development but rather are an expression of the will of the people of the state of Nebraska and the members of the Legislature to provide protection for the life of the unborn child whenever possible." [LB599]

PRESIDENT SHEEHY: One minute. [LB599]

SPEAKER FLOOD: That's what we're talking about here, are unborn children. Even under the federal law, under the regulations and rules of the CHIP program, they recognize that an unborn child has no immigration status. Bottom line is, the unborn child should not be penalized for the actions of his or her parents. This is a human life. We are pro-life. We are a pro-life state. And this is a pro-life issue. We have to balance the interests here. We have to look at the equities on both sides. We're going to pay for

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the delivery; we're going to pay for the birth; that child is going to be an American citizen. Let's provide the prenatal care for low-income women, and let's be pro-life. Thank you. [LB599]

PRESIDENT SHEEHY: Thank you, Senator Flood. Senator Nordquist. [LB599]

SENATOR NORDQUIST: Thank you, Mr. President and members. I appreciate Senator Flood's thoughtful words. This an absolute moral and long-term fiscal imperative for our state. I think it's the most significant piece of pro-life legislation that we've...certainly dealing with this year but, I think, in several years. And it restores a fundamental pro-life policy that our state has had since the 1970s up until 2010. For decades our state had this fundamental pro-life policy related to providing prenatal care. And, basically, that policy fundamentally recognized that the child, the baby, is a life, a life that should be considered for purposes of these benefits independent from the status of the mother. When they passed the unborn child option, under the Bush administration, that's what they were recognizing. That's the policy that we recognized when we put these services in place decades ago. And I'm going to read from a letter that we all received from three very strong pro-life groups: Nebraska Right to Life, Nebraskans United for Life, and the Bishops' Pastoral Plan for Pro-life Activities. It says: We believe this would be a terrible injustice that could do great harm to the lives of children who will no longer receive critical prenatal care. What's worse, not receiving such coverage for care could be a decisive factor in leading to some pregnant women to choose abortion over childbirth. Therefore we consider it an urgent pro-life matter for the Legislature and Governor to do what is ever necessary to ensure that unborn children continue to receive prenatal care under Nebraska's Medicaid and CHIP program. And Speaker Flood said it right also about how it is the baby that suffers, and that life. And it's...when prenatal care is denied, we know it's the baby that bears the full cost of that tragic decision. It's the baby that will suffer when the mom can't afford to see a doctor during those nine months. It's the baby that will suffer when the mom doesn't know what medications she can and can't take, what chemicals she can and can't put in her body, which ones lead to birth defects. It's the baby that will suffer when the mom doesn't know how to manage her diabetes, which affects fetal development. It's the baby that will suffer when the mom has a genetic disorder that can be easily treated with prenatal care but, without it, the baby can be delivered prematurely. And that's what we need to remember when we're debating this. Regardless of what the mother did, what her situation is, wherever she came from, it's the baby that suffers, and that baby, when that baby is born, will be a Nebraskan. But this also is fundamentally, as I said, a fiscal imperative for our state too. We've all heard the research that shows \$1 invested is worth \$2 to \$3 in the long run. We've all heard the high cost of what premature births can cost in the NICU: \$2,000 to \$400,000. That's one statistic we received in some documents that were floated around the Legislature a couple years ago, was up to \$4,000 (sic) per baby for a premature baby. Well, I received data over the last year from the Department of Health and Human Services. What we did, we asked them to look at the births paid for by emergency

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Medicaid. These...this is the population we're talking about; we're paying for their births under emergency Medicaid. They don't get prenatal care, but we do pay for their delivery. [LB599]

PRESIDENT SHEEHY: One minute. [LB599]

SENATOR NORDQUIST: And we followed them...that baby's medical costs for the next year to see what came out of it. And there were a couple months that jumped out. And I asked, you know, what happened in those situations. In one of those months, there was a child whose first 28 days the claims exceeded \$600,000 in our state, one of these children that would have had prenatal care. Their claims exceeded \$600,000. That's data provided by our Department of Health and Human Services. This is real. This is a fiscal imperative. But in the long run, the fiscal imperative is the downside, the impacts of these children and their health long term and their ability to be successful long term and the challenges it presents them early on. [LB599]

PRESIDENT SHEEHY: Time, Senator. [LB599]

SENATOR NORDQUIST: Thank you. [LB599]

PRESIDENT SHEEHY: Thank you, Senator Nordquist. Senator Krist. [LB599]

SENATOR KRIST: Thank you, Mr. President. Good evening, Nebraska and colleagues. I know that most of you know that there are people throughout Nebraska that are watching this debate. And I would hope that they would hear where we all stand. I've made my mind up that I will get up once tonight and tell all of you where I stand and Nebraska where I stand. I am pro-life. I believe, in my religious beliefs and in my personal beliefs, that life begins at conception. So for me, that means that that baby, not fetus, that baby at conception is a future member of this United States and a future Nebraska resident. Let me say that again. That baby in the womb, unless you deport that mother as soon as you find out she's pregnant, is a future citizen of this United States and a future Nebraskan. Now, imagine yourself kicking a baby to the curb, and essentially you're denying the service for a future citizen and a future Nebraskan; that's what I believe. But let me back up. Some of you were part of Senator Flood's historic piece of legislation. And whether you're pro-life or pro-choice, you have to believe, because it is the law, the law that we passed in Nebraska, that that baby, at 20 weeks and 1 day, is a baby, not a fetus, a baby. So at 20 weeks, that is a future citizen of the United States and a future Nebraskan, a fellow Nebraskan. If you deny the services for the baby and, in the case of being in the womb, the life support system for that baby, that mother, no matter what her status is, you are harming a future citizen of the United States and a future member...a future Nebraskan. That's what I believe. I'll support this prenatal the way I did two years ago. Two years ago I was up against an election. I accepted the endorsement of pro-life organizations around the state and around this

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country. And I hope Nebraska watches the vote tonight. Whether you're a Democrat or a Republican or an independent, if you want the endorsement of pro-life and if you want to live that life, the only way to vote on this is yes on LB599. Pretty absolute. But that's the way I feel. Those are my convictions; that's my resolve. I would ask you to take a serious look at my opinion and see if it matches your own. I will vote green on LB599. [LB599]

PRESIDENT SHEEHY: Thank you, Senator Krist. Senator Mello. [LB599]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. I rise also in support of LB599. And so far, I'd like to thank my colleagues Senator Flood, Senator Nordquist, Senator Krist, all fellow Catholics who share a very similar Catholic pro-life perspective. Two years ago when this issue was brought forward, we discussed this issue on the floor at the time, trying to find some way to move forward. And unfortunately, there was a story that came out in the midst of that debate. It was from the Omaha World-Herald, March 10 (sic), 2010, titled, "Abortion Tied to Prenatal Loss." And of what Senator Krist just discussed, there is obviously organizations...many of us in this body have sought their support or seek their advice on social issues that cut to what we believe is our moral core, as myself, as Senator Krist, Nordquist, and Flood all discussed. Being Catholic and being pro-life usually has a very long view in regard to looking at life and trying to protect...or emphasize a consistent ethical life, from conception to death. This particular issue...it was raised in the Omaha World-Herald March 18, 2010: Greg Schleppenbach of the Nebraska Catholic Conference said Jackson's report is one of the troubling ramifications that his organization had predicted would occur if the prenatal care program ended. Schleppenbach and Julie Schmit-Albin of Nebraska Right to Life said they had hoped to hear senators' opinions on the bill during the floor debate. Quote, pro-life voters have a right to know where senators stood on this bill, end quote, said Schmit-Albin. Colleagues, Senator Flood mentioned, in the bill, page 7, Section...line 8 through line 12, discusses the definitions of who the intended focus of LB599 benefits. It's the child, from conception to age 19. Ultimately, we know, whether it's the Governor or colleagues in this body who feel otherwise, feel that this issue is not about ensuring that unborn receive the necessary healthcare to ensure they're born healthy, Senator Nordquist's example of one child born with a birth defect costs the entire amount of the fiscal note attached to LB599. Now, ultimately, at the end of the day, those of us who support life regardless of the outcome is happy that that one child was still born and is trying to become healthy. But the cost to the state for one child equates to the entire fiscal note of this legislation. So those of you who are concerned about the fiscal costs, that is a glaring example, a glaring example of what we need to consider with LB599. Now, I've always looked at this legislation, both when it was in its form of LB1110 and now as LB599, that this is providing and restoring a 30-year-plus program that the state has had in effect from the late '70s. Providing universal healthcare to unborn children has been a long-term state policy priority through Medicaid. And ultimately the federal government came back and expanded it

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under the state health insurance program for children in 2002 under the Bush administration. So it was only codified further in federal law, which...I've heard some on the floor have raised concerns that this is...that we can't even do LB599 because of the concern that it breaks federal law. LB599 is a direct result of federal law made by President George W. Bush in 2002 that provides unborn children the ability to receive healthcare through the CHIP program, through SCHIP. [LB599]

PRESIDENT SHEEHY: One minute. [LB599]

SENATOR MELLO: Colleagues, we normally discuss our moral compass in this floor. Whether it's an abortion issue, whether it's the death penalty, whether it's euthanasia, whether it's workers' rights, economic justice, we have a tendency to share our views openly. And our hope is, at least my hope is, that we try to remain as consistent as possible to that moral compass. I've tried to remain and follow my moral compass on abortion, on the death penalty, on a variety of issues that involve life, a consistent ethical life. LB599 furthers that consistent ethical life, because unborn children in Nebraska need healthcare. [LB599]

PRESIDENT SHEEHY: Time, Senator. [LB599]

SENATOR MELLO: Thank you, Mr. President. [LB599]

PRESIDENT SHEEHY: Senator Gloor. [LB599]

SENATOR GLOOR: Thank you, Mr. President. Good evening, members. I have some experience in birthing centers and neonatal intensive care units and emergency rooms with parents rushing in with the mother under labor. And there is a law that most of you, I think, know about, a federal law that requires every hospital where a patient, an individual, presents to be evaluated and stabilized before they are sent away. It basically means--and this is interesting under the context of the discussion we're currently having about what the government can and can't tell us to do in healthcare--that we have had, and did have back in the '80s when this law went into effect, no arguments about this law that allows anybody, whether they are a citizen or not, to present to hospitals, to a hospital emergency room, and seek care. What most people don't understand is how that came about. And in some of the more publicized cases that came about, women were put in ambulances when they presented to hospitals and sent to other hospitals, public hospitals, and babies died. Interesting things happen when babies die. The public gets interested. They don't care about the mother; they don't care where the mother comes from. They care, certainly, that somebody has died, but they really care when babies die. And citizens of states raised hues and cries, and front-page stories made newspapers. And our congressional representatives rushed to make a law that we now call EMTALA, Emergency Medical Treatment and Active Labor Act. And now you know why when people present to

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emergency rooms, the federal government tells those hospitals, those practitioners, those physicians, you will stabilize these patients, and that means delivering these babies, to make sure that there is a healthy outcome. It's a no-brainer. And what we are talking about is a continuation of that, because those babies that are born in this state are born Nebraskans; those babies born in this state are born Americans; those babies are born with access to payment for services. And the public knows that and recognizes that even though you may hear some objections. But when babies die, you really hear objections. You heard it in the '80s. And many of you may well hear it from people--and I've heard it from people already--who are concerned about babies dying as well as, and appropriately so, the expenses associated with this. I probably don't have time to launch into a discussion on costs associated with adverse outcomes from babies. Certainly have enough experience with NICUs, neonatal intensive care units, where challenged babies go. And I'd be glad to answer questions about that but will get on the mike later to have those discussions. Please remember in this debate the Emergency Medical Treatment and Active Labor Act, which is something that all hospitals in this state are required to honor. I think all hospitals in this state would anyway. Thank you. [LB599]

PRESIDENT SHEEHY: Thank you, Senator Gloor. Members requesting to speak on LB599: we have Senator Carlson, followed by Senator Campbell, Senator Dubas, Senator Fulton, Senator Wallman, Senator Sullivan, and others. Senator Carlson. [LB599]

SENATOR CARLSON: Thank you, Mr. President, members of the Legislature. Very interesting what Senator Flood had to say in his statement concerning LB599. We have the rule of law, which deals with illegal immigration. We have the position of pro-life, which is to protect the unborn, the innocent, and the defenseless. Now, can we provide medical attention for the unborn child but not for the pregnant mother who's an illegal immigrant? Can we do that? If we could, this would be an easy vote for me. But we can't separate the two. So our choice is to help neither or help both. Now, here's a fact. If we do nothing, and the pregnant mother becomes seriously ill, we will give her treatment in the emergency room; we won't turn her away. That is fact, and we will pay for it. If she goes untreated until delivery, she and the baby will be taken care of; that is a fact. It will cost money, and we will pay for it. That's the way we treat people, legal or illegal. The cost of this bill is \$500,000. But with the bill we have more control on how it's used. Hopefully, for care for the illegal pregnant mother, if this money prevents one or two serious problems for the mother and baby, out of the some 800 or more treated, it pays for itself. The exciting thing to me about LB599 is that we are concluding the unborn baby is a human being, a life, a person who needs and deserves our protection. LB599 is pro-life. LB599 values human life. LB599 places human values above less important issues. I support LB599 not because I'm sympathetic to illegal immigration; I support LB599 because sanctity of life is much more important than other political issues. Thank you. [LB599]

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PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Campbell. [LB599]

SENATOR CAMPBELL: Thank you, Mr. President and members of the body. I am, of course, more interested in hearing your comments, so I will be brief. But I did want to clarify for you. And if you look on what we fondly call our "gadgets," you will note that there has been an updated fiscal note. We are now at \$654,000. You say to yourself, why is the change here? I am extremely proud of our budget and fiscal staff, because they have continued to work on this issue. And to the credit of Director Chaumont from the department, she has worked with the budget and fiscal people to ensure that we agree on the numbers. And I appreciate that, because that means that we as policymakers have the best information in front of us that these two people who have worked off and on today to get you. I have checked with the budget and fiscal people and also with the small group that has put together some budget considerations, and the new figure still falls within that budget. But I wanted you to know that. And it still illustrates that one case in a NICU unit can be that in total amount. And, in fact, a hospital study that we did--and I hope to talk about it a little later, because I want to give you a chance to talk--would illustrate that in one case a premature baby was there for 50-some weeks in the NICU unit, for a cost of \$819,000. I do think that another fact that was told to us the other day by a medical person, that a mother eight and a half months pregnant, if coming in to deliver that baby without prenatal care, or very scarce, that in the first ten minutes of that baby's life \$20,000 would have been expended. I appreciate your comments, all of them, and look forward to hearing them. Thank you, Mr. President. [LB599]

PRESIDENT SHEEHY: Thank you, Senator Campbell. Senator Dubas. [LB599]

SENATOR DUBAS: Thank you, Mr. Lieutenant Governor. Good evening, colleagues. We are talking about babies. It's not about the mother. It's not about her age or her color or her status in this country. It's about an unborn child who if not properly taken care of, as Senator Campbell just gave us some brief examples about, before birth could suffer untold consequences that will cost all of us, all of us, for years to come. Being pro-life doesn't mean we get to be selective about who does and does not deserve adequate healthcare. A baby is a baby is a baby. As a mom and as a grandmother, I could never turn my back on any child, born or unborn. My heart is on my sleeve in regards to this issue. And I could never look my beautiful grandchildren in the eye again if I did not speak in defense of these defenseless babies. We can be and probably have every right to be angry at the fact...the inaction at the federal level regarding our immigration policy. States are bearing the brunt of that inaction. But, please, let us not punish these unborn children because our leaders can't or won't make a decision. Whatever arguments that there are out there to oppose this bill, for me, as a pro-life woman, mother, and grandmother, it's quite simply this: it's a baby, it's a life. [LB599]

PRESIDENT SHEEHY: Thank you, Senator Dubas. Senator Fulton. [LB599]

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SENATOR FULTON: Thank you, Mr. President, members of the body. So I will probably be the first--I think I'm the first--to speak in opposition to this bill. And I want you to know that I am not firmly opposed to this bill, for many, if not all, of the good reasons that have been put forward by those who have spoken before me. To start with, let us call this what it is. It is not simply a pro-life issue. If it were, then this will pass with 41 or 42 votes or whatever it is the pro-life bills usually pass with. It is not simply an issue of illegal immigration. Same reason. It is both. It is not either/or. It is both. Anyone with eyes to see and ears to hear and a brain ought to be able to contemplate that it is both. And Speaker Flood has laid forward why this is such a difficult issue, because we have competing principles, which, ostensibly, on their own, would garner the support of all of us. On the one hand, we have this recognition that there is an unborn human being. And the fact that we have another opportunity to understand and recognize that human being and the fact that we are expending money toward his or her better health is a recognition of the inherent dignity of that human being. Indeed the language here is "unborn child," as I recall. That's one side. On the other side of this, you have this reality that we, by passing LB599, will be reaching into the pockets of law-abiding citizens to pay for the responsibilities of those who have broken our laws. Perhaps that sounds harsh, but that is what we would be doing. And so we have in competition two principles, two principles that are valid, and therefore this is a very difficult issue. Now, I want you to consider, during the course of this debate, these debates that are at a high level, when we talk about the higher things, we will tend to invest our entire selves, which involves our emotions. And that is a good thing. It is not that which we should focus our contemplation on, but it is part of us, for we are human beings. And so I would like to bring to light another face. If we are talking about unborn children, recognize that there are people in other parts of the world who have chosen, consciously and freely, not to come here to Nebraska, for a cost or for difficulty or time required to come from whatever part of the world they live in to here. A conscious decision is made every day to that effect. I know this. Why, then, would we not provide some money, some mechanism by which prenatal care could be afforded to someone in another country who has chosen not to come here? And the answer is obvious: well, because they're in another country, Senator Fulton. Precisely. And so what we are faced with here is a decision. So if one could say that by voting against LB599 one is punishing those children who are here... [LB599]

PRESIDENT SHEEHY: One minute. [LB599]

SENATOR FULTON: ...and I don't disagree with that--recognize that the upshot of logic yields us, if we are honest, to say that we are also punishing those children in other countries whose parents chose not to come here. Without going any further, this is a very personal issue for me. And so it is not punishment on one side, the punishment goes to the other side too. For I said in the beginning, as did Speaker Flood, we have two competing principles. And to focus on one at the exclusion of the other is illogical

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and it's wrong. And our emotions could tell us that. Is it right to go into the pocket of a law-abiding citizen to pay for the responsibilities of those who have broken our laws? If there were no other way for care to be brought forward, I would say, we have to do that. But we are forgetting that there are other segments of society which bear responsibility for providing this care. [LB599]

PRESIDENT SHEEHY: Time, Senator. [LB599]

SENATOR FULTON: Thank you, Mr. President. [LB599]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Senator Wallman. [LB599]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. And Senator Fulton did bring up some good points. I voted this out of committee the last time, a couple years ago, and I did a speech in a small community hall. And what did they hit me on? Immigration. And then the next week, as fate would have it, I had supper and lunch in the Catholic church, in the basement; they did a fund-raiser. And a young mother came up to me and said: My husband lost his job, and I lost my job, and I'm pregnant, and I can't get prenatal care. So it's not just about immigrants, folks. It's about all pregnant mothers. And you're going to get hit on this vote probably. But I think, you know, this is the Passion, this is Easter, and the good Lord died for us all, didn't set up boundaries for countries. The hardest commandment for me to obey is love your neighbor as yourself. And I got a beautiful...my niece, she adopted a baby from China, and I think everybody knows what China's policy is on young girls. It's abortion. One of the most meaningful things my family ever did, we put up crosses of all the babies that were aborted in one year in Nebraska. I can't remember the number, but it made you want to cry. These...so this is about babies; this is about life; this is about mothers. And if we're going to tackle immigration issues, we also have to have the other side of the equation responsible: the male. So where are we going with this here? I'm thankful to Senator Campbell for bringing this out. I supported it last time, and I'll support it again. Thank you, Mr. President. [LB599]

PRESIDENT SHEEHY: Thank you, Senator Wallman. Members requesting to speak on LB599: we have Senator Sullivan, followed by Senator Lathrop, Senator Brasch, Senator Harms, Senator Schumacher, Senator Nelson, and others. Senator Sullivan. [LB599]

SENATOR SULLIVAN: Thank you, Mr. President. Good evening, colleagues. It's probably good that we're having this discussion tonight, from my perspective. I'll be here tomorrow in body but probably not in heart and mind, because my youngest daughter, Mollie, will be going into the hospital tomorrow and sometime during the course of tomorrow will be giving birth. And I would very much like to be there, but chances are I'll be here. And I'm very grateful that she and her husband have the sorts of professions

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and jobs that provide a good benefit package and that she's had good prenatal care every step of the way and had a little scare midway with thinking that maybe this was going to be a low-birthweight baby, had to get some advice from a specialist. Everything seems to be looking good, just fine, and I hope by this time tomorrow there will be a new healthy Nebraskan. And I was also struck by Speaker Flood's comment that we already have, in statute, that we have a responsibility, from conception to 19 years, for these Nebraskans. And, truly, this is what it's all about. It's about the babies, these little Nebraskans that we're trying to give the very best start in life we possibly can. And I realize that, in spite of the fact that I've received lots of e-mails in support of this legislation, that there are also some constituents that will be saying this is not fair. And, of course, you've also heard me say on this floor what I remember telling my girls when they would say: Mom, it's not fair what you're doing to us. Well, I'm sorry, life is not fair. Life is not fair in a lot of situations. And you might also say life is not fair for this little unborn baby that potentially, without the help of this legislation, would not get the very best start in life. So that's what I'm thinking about as we have this discussion: a pro-life policy that's all about the baby, all about giving a Nebraskan, a little Nebraskan, the very best start in life they can have. Thank you. [LB599]

SENATOR COASH PRESIDING

SENATOR COASH: Thank you, Senator Sullivan. Senator Lathrop, you're recognized. [LB599]

SENATOR LATHROP: Thank you, Mr. President. And, colleagues, good evening. I've had my pad out since this debate started trying to figure out what I was going to say. Just before this came up, we got an e-mail, all of us did, a press release, from the Governor, who told us this isn't a pro-life issue, it's an illegal immigration issue. And I thought about that, and I've been listening to the comments people have had. And I suppose...as I sat here it occurred to me, maybe it's an illegal immigration issue for some and it's a pro-life issue for others. And I suppose that comes down to what's more important to you. Because if providing for the care of the unborn is important to you, this is a pro-life issue. If making sure that we have the most strict policy towards the undocumented worker is the most important thing to you, then this is an illegal immigration issue. And maybe all that depends on where you see the politics. You know, one of the things I started to write on my pad was this observation, that when we bring an abortion bill to this floor, people are tripping over each other to vote for it. They're tripping over each other. They are cosigning on it; they're getting on board; they want to be the guy that carries the bill; they want to be the person that puts their name on it and cosponsors it, because we don't want to terminate one of these lives. And so today, today, with LB599, the question is whether you're okay with hurting one of these kids. Because if we're not providing them care, if they're not getting care, what we have said with your vote tonight is, you're okay if they're born with a little low birthweight or maybe they'll spend some time in the ICU or the NICU. That's okay, as long as we don't

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kill one of them. I'm okay if they're sick when they're born or if they're born with birth defects that we could prevent, as long as they're born; then we're okay. Is that where we're at? Is that what that whole pro-life thing is about? Is that why you cosign on to the abortion bills? Really, tonight is a test of your sincerity, I believe. The Governor has tried to frame this, as he invariably will, as an immigration issue. It's where he lives; it's how he's made his hay. Today we are going to test your sincerity. Are you sincere in your care for that child that hasn't been born? Is the only thing you care about letting them not be killed? Or do you care about their health? Is this an immigration issue for you? Or is it a life issue? I have to tell you, I appreciate the difficulty of this vote. It's difficult only because there are those in our modern politics that would try to turn this into one of those wedge issues. Is it really a wedge issue? It shouldn't be. All of that stuff should go to the side... [LB599]

SENATOR COASH: One minute. [LB599]

SENATOR LATHROP: ...when we talk about a child that will be born, a child that will be born in this country and then be an American. So because they're being carried by an undocumented worker, we're going to say, it's okay if you're born with low birthweight and with a birth defect; that is your problem, because your mom came here illegally. Or is our commitment to not just the letting that child be born but to be born healthy? I support LB599. Thank you. [LB599]

SENATOR COASH: Thank you, Senator Lathrop. Senator Brasch, you're recognized. [LB599]

SENATOR BRASCH: Thank you, Mr. President. And good evening, colleagues. I am a pro-life senator, and I am proud to be a pro-life senator. I'm a mother; I'm a grandmother. I don't think it's a contest tonight on who loves babies the most. It sounds to me that there's a problem about who's going to pay the bill. Is there a law that prohibits us from billing a mother for prenatal care? We have several attorneys here. I guess I...that's a question: Is there a law? There are student loans. Students pay for their loans when they're able to pay. I contacted our district hospitals and...by text and by phone. And at our rural hospitals, they take care of everyone, regardless of the ability to pay. I believe what's in question is the federal med centers here. And I've said it before, I am a first-generation American. I was the first child born in America for my Ukrainian immigrant parents. My parents were extremely poor, and they were sponsored by a church to come to America. We believed it was truly by the grace of God and many good people who lifted us and helped us. When I was born, my parents, with two other little boys, my older brothers, were so poor, and they had so very little. And they were still mastering learning English and so eager to become American citizens. The doctor and the hospital gave them a bill following my birth, and they gratefully paid for that bill a little at a time, but they paid. And eventually their debt was paid in full. They were happy to pay, because they knew the consequences of socialism

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and the hardships that accompanied their past life. There was no hope and no promise of the good life; there was no freedom or bright future that our wonderful free country holds. And, in fact, my two older brothers were born in a German work camp, and my mother shared with me the story of the daughter that she carried that was, you know, they had a community...the commune hospital; she didn't make it. And she said many little children didn't make it, you know, in the life they left. It is extremely important that our charities, our churches, our good Samaritans and good people keep watch and care for our families, as they did for my parents, not the government. Mothers will be happy to pay for their babies, knowing they have the freedom to raise their children as they see fit, with no government strings attached. I am very sorry, but, truly, in good faith, it is difficult for me to support LB599. I am pro-life, I am a mother, I am a grandmother, I care for babies. But I also care for our country. And it boils down to money, who pays for it. Families need to pay, to feel that that's their child, not the government's child. Where are our families? Our children are being fed breakfast, lunch, and dinner at the schools, by the government. Our mothers want...I think we're going the wrong direction. Let's help those in need of help. Let's help our churches help those people. [LB599]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: One minute. [LB599]

SENATOR BRASCH: I have no more to say, except, you know, it's very sad to hear that this has become a banner against those who care for people but would like people to care for themselves as well. Thank you, colleagues. [LB599]

PRESIDENT SHEEHY: Thank you, Senator Brasch. Senator Harms. [LB599]

SENATOR HARMS: Thank you, Mr. President, colleagues. I rise in support of LB599. And I realize, by doing this, I'm going to come under a great deal of pressure from some of my constituents who don't believe in this, just as I did when I took a position on a previous bill and was singled out by the Republican Party saying: You were a naughty boy. But never did they ever ask why. I support this, to be very frank with you, because it's not a Republican issue, it's not a Democratic issue, it's an issue about children. It's an issue, for me, about pro-life. It's an issue, for me, about caring, regardless of whether or not you come from a low-income or whether you are illegally here. If that mother comes to the hospital and is about to have her baby, we're going to deliver that baby. When that baby is born, we're going to take care of that child. If that child has health issues because we did not have prenatal care, we're going to take care of that child. There is no question about it, that is our responsibility. And so because of that, colleagues, I feel very strongly that we cannot turn our backs anymore or any longer on children, whether they come from low income, we have a responsibility here. I've heard arguments and discussions saying, well, John, if you take this position and we pass this, they're going to flock in here to have their children delivered here. In fact, colleagues,

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it's just the opposite. In a recent study that was done, it made it very clear that immigrants do not settle in places because of generosity of state public-benefit programs. They settle because they have a job; they have an opportunity to work. And between 1995 and 2000, the number of immigrant families with children grew four times faster in states with the least-generous safety nets for immigrants, such as Arkansas and Texas, than did in states with more-generous safety nets, such as California and Massachusetts. So that argument really doesn't hold together when we begin to think that if we are going to help low-income families, pass LB599, that it's going to have a big impact and a great deal of pressure and people are going to flood here to have it. The research does not show that, does not prove that. And so as I look at this, I would tell you this, you need to let your heart be the guide here. I am letting my principles and my values guide me on this decision, regardless of the fallout. I think there are times, politically, you have to have the courage to stand up and be counted, to say what's on your mind and tell those who want to be critical that you happen to care. And for me, colleagues, this is all about caring... [LB599]

PRESIDENT SHEEHY: One minute. [LB599]

SENATOR HARMS: Thank you, Mr. President...this is all about caring of an unborn child. And the issue is, for us, we need to give those children prenatal care; we need to make sure that they're given every right and opportunity to be born healthy in this great nation. Thank you, Mr. President. [LB599]

PRESIDENT SHEEHY: Thank you, Senator Harms. Senator Schumacher. [LB599]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. I listened to Senator Fulton tell us about the children in other countries who aren't coming here and who we aren't caring for. I also realize that today we are sustaining the economy of Greece so that the babies in Greece can have healthcare, and we're sustaining it by massive transfers from our Federal Reserve to the European Central Bank to make loans to the Greece economy. We live in a world of global standards of decency. I have one of these federal healthcare things, one of about only a half a dozen in the state, in my district. And what they tell me is heart-wrenching. That is the only place that some women can get care for their unborn children. They travel two, three, four hours each way to try to take care of their babies. They even stay in Columbus in the later weeks of pregnancy in order so they can be near care, because it is a thing we call love. They never had a baby die prior to birth before we made this change in our laws. Since then, in the year 2010, for example, they had one die every three months. Every three months a baby did not get a chance to take its first breath. Now, maybe that was just coincidence, but maybe not. This Legislature has taken a profound position when it took the position that at 20 weeks a baby feels pain. If indeed it feels pain, then it is conscious. And if it is conscious, it is realizing that its spine is not developing properly because it doesn't have a few cents' worth of B12 or whatever vitamin it is. If it feels

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conscious, it knows, it hears the blood of its mother's aorta shooting past the womb. It knows love. And somehow it knows that we know and whether we care or not. Fundamentally, through history, it is how a society respects that which is in the womb that marks its greatness and casts its lot with those societies that are labeled as civilized or labeled as barbarian. And we here in this room tonight have a chance to make a statement... [LB599]

PRESIDENT SHEEHY: One minute. [LB599]

SENATOR SCHUMACHER: ...irrespective of nations, irrespective of boundaries, but totally respectful of the respect that civilizations give each other as they look back in time upon each other. We can say we stand for life, we stand for civilization, we stand for all those things that societies that are truly great stand for. We have that opportunity to make that statement in this very simple bill, LB599. And we will all have to push our buttons one way or the other and cast our lot with the sands of time. Thank you. [LB599]

PRESIDENT SHEEHY: Thank you, Senator Schumacher. Members requesting to speak on LB599: we have Senator Nelson, followed by Senator Smith, Senator Christensen, Senator Price, Senator Fulton, Senator Schilz, and others. Senator Nelson. [LB599]

SENATOR NELSON: Thank you, members of the body and colleagues. Senator Schumacher, that was one of the best arguments I've ever heard for doing away with abortion, our concern for life. We have a little different issue here. This is not a life and death necessary issue that we are talking about here in LB599. I'm going to stand here for all Nebraska to see and to hear me say that I am pro-life. I have been pro-life for probably 25 years. I support that. But we have another question here: Who is going to pay for the prenatal care? We represent the taxpayers, we represent our constituents. And you can talk about love for the children and it's the right thing to do and it should be in our hearts. But how we feel about it personally is not necessarily how the majority of people who have to foot the bill feel about it. We heard that there are huge amounts of money that are spent for women who gave birth but did not have prenatal care. We don't know if those birth defects would have happened anyway or if it was a result of no prenatal care. It's excellent to have prenatal care. I'm not denying that. But the question is, if these are illegal or undocumented people that have come into this country for the purpose of having their children born here and knowing that the delivery and the birth is going to be paid for when they go into emergency at the hospital, why is it that we also have to extend that to prenatal care? I sat in my office last night for two hours trying to do things and was constantly interrupted by phone call after phone call made at the behest of Voices for Children, saying support LB599. LB599. Where are the Voices of Children, with the funds that they raise, the money they engender, why are they asking our people, our taxpayers, to foot the bill, when it can be done by charitable organizations such as them and the churches? OneWorld, who we all know and who we

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support, has a statement: Provide culturally respectful, quality healthcare with--it's hard to read here--special attention to the underserved. We failed to pass this bill two years ago. What has happened? Those underserved people, the undocumented persons, have been served, one way or another, not by the taxpayer but by charitable organizations one way or another or through special attention by large service providers such as One World. We can continue to do that. We can fund it through charitable organizations. And I'm all for that. If we're going to insist that this is the thing that we have to do, then let's do it on a charitable basis and with funds from those sources. We have a fiscal note here that's been reduced, but it's still in the millions of dollars, and it's still taxpayer money. And whether it's \$800,000 or \$900,000 a year that the Nebraska taxpayer is coming up with, and double that from the federal, it's still taxpayer dollars. I don't believe that we have any mandate... [LB599]

PRESIDENT SHEEHY: One minute. [LB599]

SENATOR NELSON: ...to provide prenatal care through the auspices of the Nebraska taxpayer. I think this needs to be done in another manner, and I'm all for doing that. I think, with that, I will conclude my remarks and say that I was not in support of the bill two years ago; I am not going to vote in support of this LB599 for the reasons that I have just stated. Thank you, Mr. Speaker. [LB599]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Senator Smith. [LB599]

SENATOR SMITH: Thank you, Mr. President, colleagues. I stand in opposition to LB599. This bill incorporates two critical issues for me. First, the care and the sanctity of life. And I want to say up-front and with all the conviction I can marshal that I am pro-life. And I appreciate all the other colleagues that have stood before me tonight and have expressed that they are, too, pro-life. But, secondly, I choose to honor the laws of our land, and I see this bill as providing taxpayer funds to illegal behavior. I'm standing because I agree with Senator Krist. And he was one of the first to speak, and he said that Nebraskans deserve to know where we stand on this issue tonight, and why we take those positions. I differ with Senator Krist, however, and other of my colleagues in that I consider prenatal care less of a right-to-life issue and more of a healthcare-related issue. And I am no less caring of humanity and I am no less a pro-life advocate because of my views. Don't misunderstand this legislation, colleagues. At-risk unborn children are not denied emergency care by opposing this bill. There are alternatives. There are other avenues of care. Again, I am not violating my firm and my strong pro-life values by opposing this bill. Rather, I am choosing not to condone illegal behavior. We simply have limits to what we can accomplish with our limited state funds. We've been debating that. We started out this morning with a meeting to discuss that. I stand in support of the sanctity of life but in opposition to healthcare funding for illegal aliens. And there are many Nebraskans that share these same views and values with me and my other colleagues that have stood in opposition to LB599. Thank you, Mr. President. [LB599]

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PRESIDENT SHEEHY: Thank you, Senator Smith. Senator Christensen. [LB599]

SENATOR CHRISTENSEN: Thank you, Mr. President. I think many of us have got confused here. There is two vital issues here, that is true. You got a pro-life issue, which gets dealt with on both levels, federal and state, but more on the state level. Immigration issue is held where? State level? Do we try to fence our borders? Do we try to take care of this or do we look at it as a national issue? It's a national issue. So now, basically, you're looking at a state issue versus a national issue. What can we do with a national issue? We can encourage the feds to do what's right, but we can't control it. Constantly I hear nobody in Washington wants to deal with the illegal immigration issue. It's a simple issue to deal with. I have told many Congressmen, Senators that this could be handled federally very easily. I'm going to share it with you. First of all, you make all the "illegals" go to the border, fill out a work permit. Once they do a health test, they fill out the permit, then they'll have what they need to go apply for a job. You have a national computer system, very easy to do. You walk into an employer, he types in...gets the Web site, types in the name that they have, the ID, the work permit and inserts it into the computer. If it comes out a match, you can hire him. If it doesn't you can't. You print either one, stick it in a file, keeps the employer from any problems. You don't want to do this, a million dollar fine first time, gets worse each time. Is anybody going to break it? Absolutely not. Feds could take care of this issue. What we're discussing here is a state issue. We can't do anything about the illegal immigration, we can certainly do something about a life, about these babies getting the care. If the feds were taking care of their issue and if people here was putting as much effort into getting the feds to do what they need to do, we would get something done. But instead we let them off the hook. Again, we don't hold the feds accountable. That's...illegal immigration is a federal issue, the feds need to deal with it, and it's easy to deal with. There might be a better way than what I give you, but I haven't heard a better one from the feds. But it could be handled and you don't have to build a fence to do it. So if the feds was taking care of that issue, like they should be, then we would have prenatal care. And what would we have? Prenatal care of legals and we'd have prenatal care of those that have a worker permit, that are working to become citizens and the kids that they are having are becoming citizens. Does that change your perspective on this issue? To me, this is a very simple issue. You get the feds to do what's theirs, we take care of what we can do. Think about it. How we going to control the illegal immigration? We going to build a fence around Nebraska? [LB599]

PRESIDENT SHEEHY: One minute. [LB599]

SENATOR CHRISTENSEN: Put in highway check points? No, that's a federal issue. Needs to be done at the borders. And you can do it without a fence, by just having a simple work permit with an ID number, check their name off against it in a computer program. It's that simple. This is a pro-life issue. Vote your conscience. Thank you.

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[LB599]

PRESIDENT SHEEHY: Thank you, Senator Christensen. Senator Price. [LB599]

SENATOR PRICE: Thank you, Mr. President. Many members who are much more articulate than I have spoken on this. But I believe when Senator Fulton brought up that there are two separate issues here that was a very cogent beginning to his argument. As I listen questions begin to rise up from what I hear. And this isn't to disparage or to call to question any senator's motives or words. It is truly just reflecting and considering. Are all pregnancies that don't have full prenatal care ending with disastrous results? Do all pregnancies that have prenatal care end up with perfectly healthy babies? I think everybody would agree that the answer to those two absolutes is no. Have all the prenatal stories and challenges we've heard with cost been the result of a pregnancy that had no prenatal care? I don't know. On the issue of whether a...if we're talking about an illegal immigrant and whether they stay here for a services or not, some of the statements have asserted to the fact that they are not leaving. We have no knowledge that they're going to be compelled to stay in the United States and have that child here and therefore be an American citizen. On the issue of pro-life what I gather from many of the discussions and from when I came down here abortion terminates a life. We're not talking about that. We're talking about care. I think Senator Harms articulated that, we're talking about the care. But this is not a pro-life thing because we are not talking about, as I've heard, termination, demise and/or the absolute destruction of that baby. I'm mindful in this debate of the universal health care plan that is now in the hands of our own Supreme Court where we said we are going to provide for everybody out of the pockets of everybody. And if you can't pay, that's okay, we the people will pay for it. And that is probably a debatable subject. But in due diligence I went out and I secured and have right here the official Journal of the American Academy of Pediatrics and when I open it up and I begin to read the objective, the first four objectives: establishing a positive pediatrician-family relationship; information gathering from the family; anticipatory guidance and enhanced parenting skills, that's number three; four, identification and approaches to high-risk issues. And when they get down through here, about the bottom third, chronic parental physical or mental issues and paternal birth or birth defects in the infant may require additional medical visits and specialist involvement and can present physical, emotional, and financial burdens to the parents. And it goes on, types of prenatal visits. The full prenatal visit, the brief visit to get acquainted, the basic contact or telephone call; number four, no prenatal contact...if no prenatal contact... [LB599]

PRESIDENT SHEEHY: One minute. [LB599]

SENATOR PRICE: ...has been made the objectives and discussion of the prenatal visit can be presented to the parents in the newborn visit or first postnatal visit. And then it goes on to talk about reimbursement and then advice for pediatrician, policy on

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prenatal, charges on prenatal, share their established policies, pattern of visits. This is the pediatrics official Journal of the American Academy of Pediatrics, September 2009. And it talks about the ability to do the prenatal visit over the phone after the birth. Thank you, Mr. President. [LB599]

PRESIDENT SHEEHY: Thank you, Senator Price. Senator Fulton. [LB599]

SENATOR FULTON: Thank you, Mr. President, members of the body. I'd left off starting to talk about the responsibility to provide this care. And I will get to that. But I want to address something that Senator Lathrop said. And whether Senator Lathrop meant to do this or not, it was taken by me anyway, I was offended by what I heard. Senator Lathrop says that if you are opposed to this bill, you're okay hurting an unborn child, just not okay killing it. I know Senator Lathrop and I think that he was making a point and I understand that. But particularly on charged issues such as this, words have meaning, and sometimes the meaning is exorbitant when taken. And so I don't mean this in a personal way, but I do take offense at that. And, hopefully, when Senator Lathrop gets an opportunity to speak he'll be able to clarify this. If Senator Lathrop is saying that I want to hurt kids but not kill them, well that's a problem. And so I hope that he'll take some time to address that. Now I do understand why one would say that if indeed our knocking this bill down or making this bill not pass were the only way in which prenatal care can be provided. And I'm going to pose to you a question which actually apprehends a broader policy. It's something we ought to think about. I had a talk with Speaker Flood earlier about this issue. And my point here is that this is a responsibility of a fair-minded and just society. To provide this benefit, this prenatal care to these children and to their mothers is the government, and this really touches on Senator Brasch's point, is the government the only mechanism by which this care can be provided? Where are the churches in this? Does the church collectively, the churches, have any responsibility to provide this care? I'd say yes. Communities themselves, is there any responsibility? To some extent I think. What about the fathers? We're not talking about the fathers. Somewhere there is a man who is flat out getting away without achieving and recognizing his responsibility, because he participated in bringing another life into the world. We are not talking about the fathers. Certainly the mothers have responsibility. They're (laugh) going to be mother to this child, one of the hardest jobs there is. This is a societal responsibility. And I cringe at the thought of equating the word "society" congruently to government. For if we do that, then the question I pose to you is, what need for the church? If the government is to provide these services or any services for which society has some responsibility, what need for the church? There are many who have responsibility here. And so the idea that if we don't pass LB599, this care cannot be provided, I don't see that. And if indeed that's where we're at as a society, then I suggest we have deeper problems than just this bill. And this bill is a big bill, a difficult bill. [LB599]

PRESIDENT SHEEHY: One minute. [LB599]

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SENATOR FULTON: We come back to this issue of the competing principles. And I ask you to remember that when we have laws in place, and this touches I think on what Senator Christensen was saying, I didn't hear all of it but I have a sense of what he was probably saying, we are left to pickup the pieces, we as a state, we as cities and counties, when our rule of law is disregarded by those in the highest places of power who are responsible for enforcing and putting forward legitimately and appropriately the laws of our lands. There are people in other parts of the world who respect our rule of law and we have to bear that in mind. There is another side to this issue. I'll stop there. Thank you, Mr. President. [LB599]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Members requesting to speak on LB599: We have Senator Schilz followed by Senator Cornett, Senator Council, Senator Howard, Senator McGill, Senator Nordquist, and others. Senator Schilz. [LB599]

SENATOR SCHILZ: Thank you, Mr. President and members of the body. Good evening. Here we are on once again prenatal care for unborn children. I have to piggyback off of what Senator Fulton was talking about when we talk about responsibility. When I was raised, my parents told me that, you know, if you're going to do something, make sure you can afford it. Make sure that you know what your actions are going to cost. And understand that when you do that, not only are you responsible for that, but you should be accountable as well. I've always considered myself pro-life for the 43 years that I've been on this earth. I couldn't imagine being in favor of taking an unborn child's life. But as someone that is pro-life, very pro-life, I understand what I need to be responsible for as well. And being responsibly pro-life means that you have to take a look at issues like this and you have to understand that you can't be everything to all people and that, yes, costs do enter into it. It is not a perfect world. It's a tough issue. There's no doubt about it. Let me ask you a question. Let's say an unwed mother comes in, needs prenatal care, the prenatal care is offered, the taxpayers of the state of Nebraska pay for that prenatal care, the baby is born, thank goodness that baby is healthy. The baby is now a citizen of the United States and the state of Nebraska. Okay? Has no ties to the country that the mother came from. What happens if three weeks after that baby is born that mother is taken and deported? Where's the fairness in that? What kind of promise does that really give for that family? What does that say about us? Yeah, we'll pay for this but no, no, no, we can't promise you anything. Senator Christensen was exactly right. It's a federal issue. We don't have the ability to do that. But we do have the ability to make sure that we don't put people in this position. I think it's essential. And I know this from listening to people from around the state: Nobody wants to see a baby suffer. Nobody wants to see a baby come into this world that has issues. None of us do. But on the other side of that there is an absolute cost to all of this and that cost has to be bore by someone. I will be in opposition to LB599. [LB599]

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PRESIDENT SHEEHY: One minute. [LB599]

SENATOR SCHILZ: And I'll be in opposition because I stand here tonight for those who believe that their tax dollars should not be used for those who want a better life for their offspring at the expense of the Nebraska taxpayers. And I don't blame the people that come here to get the prenatal care. I don't blame them one bit. But as we look at all the things that we do and we say, you know, we're not trying to attract people here; we're just trying to give them a better life, well, the beacon of America is a better life, folks. And that beacon shines brightly. And every time that we stand here and there's a crack in the armor of the laws that we have in place and the execution of those laws and the enforcement of those laws, it puts people in bad positions. [LB599]

PRESIDENT SHEEHY: Time, Senator. [LB599]

SENATOR SCHILZ: Thank you. [LB599]

PRESIDENT SHEEHY: Thank you, Senator Schilz. Senator Cornett. [LB599]

SENATOR CORNETT: Thank you, Lieutenant Governor and members of the body. This is a type of issue that I don't rise and speak to very often. I simply rise to say that I am pro-life. And for me that means life begins at conception. That means that we respect life from beginning to end. I don't need to go through any twisted logic to try and make competing policies work in my mind. I choose the policy to me that is more important. And to me any issues regarding whether people are legal or not is not as important to me as the unborn child. And with that, I yield the remainder of my time to Senator Flood. [LB599]

PRESIDENT SHEEHY: Senator Flood, you're yielded 4 minutes. [LB599]

SPEAKER FLOOD: Thank you, Mr. President, members. Thank you, Senator Cornett. I believe it was 2010 that we had this issue before us with LB1110. And as you will recall, those of you that were here, we tried to sort through the issue because at the end of the day I think everybody in here wants to do the right thing. And I wouldn't ever suggest that anybody in here wants to see a baby suffer, regardless of where you're at on this issue. I know that's not your intent. But there was something about that LB1110, we didn't take it up for a vote, we adjourned for the session, and in that summer I remember being back in Norfolk and just questioning myself, will I be proud of my service in the Legislature if I don't stand up and deal with this some day again? Because in the short-term on any issue in the Legislature there are emotions and there are policy positions and there are things to consider. But the standard for me is when I'm out of here for 20 years or 30 years and I've got a grandson on my knee and he asks me what it was like serving in the Nebraska Legislature, am I going to be proud of my service? Am I going to be proud, me, this is not a question you can answer for me. You can

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ask...you have to answer that question for yourself. And what you decide is your vote and I respect that. But that gnawed at me. It gnawed at me last year. It's something that I want to define myself. As the sponsor of the bill to prohibit abortion at 20 weeks, I'm very proud of what we did as a Legislature. It set the new tone in the entire country on preivable abortions. It set a new standard and it hasn't been challenged. And I think we all want to go to bed at night and be consistent. We all want to look back at our service and be proud. And we want to be responsive to those that we serve. I come from a district that's very strongly pro-life. I also come from a district that I'm sure there are folks that disagree with this bill. I certainly know there are many that support it. But as the instrument of the folks of the 19th Legislative District down here in our republic form of government in Nebraska, I just feel like this is what completes... [LB599]

PRESIDENT SHEEHY: One minute. [LB599]

SPEAKER FLOOD: ...my service and remains consistent in terms of protecting those that have no one else to fight for them. And that's where I'm at. And I don't impugn anybody else's motives, depending on how you vote here, because it's a choice you have to make and be fine with. And I want my record to be I stood up for unborn children on issues like this. Thank you. [LB599]

PRESIDENT SHEEHY: Thank you, Senator Flood. Thank you, Senator Cornett. Senator Council. [LB599]

SENATOR COUNCIL: Thank you very much, Mr. Lieutenant Governor, colleagues. Again, I have listened to the debate this evening as I listened to debate a couple years ago. And in listening to the debate I could not help but reflect back upon the presentation made by Dr. Brian Williams from Emory University about all of the societal costs of low birthweight and premature babies. A lot of people are addressing this based upon their position relative to pro-life. I look at this as simply a moral issue in terms of social justice. I hear those who say they are opposed to taxpayer funds for illegal activity. And I can almost guarantee you that my e-mail will start going nuts pretty soon because anytime I speak to addressing the needs of people, some of whom may have entered this country illegally, the very same people who will wear the banner of their particular religious belief on their sleeve are very quick to call me everything but a child of God because I talk about these issues regarding providing the best opportunity for children who by no fault of their own are born in this country. To oppose taxpayer funds for illegal activity I understand. But help me understand what illegal activity has the unborn child in this situation engaged in. They had nothing to do with their parent not entering the country legally, yet that child, as everyone acknowledges, will be born in this country. And the question becomes, do we want that to be a health, contributing member of the society that he or she will be born into? Dr. Williams gave some very startling statistics. He spoke about the impact that premature births in particular have on brain development and academic achievement. And he showed data, there was a direct

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correlation between premature birth and academic achievement and reductions in that academic achievement. The fact of the matter, whether you like it or not, that child of a parent who may have entered this country illegally will, by virtue of the state, the current state of our federal laws, will be entitled to receive a free and public education, will be entitled to receive emergency healthcare. So if you can't address this issue from what I believe to be purely a humanitarian perspective, then let's look at it from an economic perspective. Dr. Williams provided information that for every week of premature... [LB599]

PRESIDENT SHEEHY: One minute. [LB599]

SENATOR COUNCIL: ...birth, one week...for every one week that's one day in a NICU unit at a cost of \$3,000 a day. And we're talking about prenatal care that would run anywhere from \$750 to \$1,500. If the humanitarian side of you doesn't bring you to support LB599, then those of you who profess to be fiscal conservatives should support LB599. I'm often reminded of the commercial and a lot of my elders used to refer to it, it's like the FRAM oil filter commercial, pay now or pay later. And I think if we want to talk about the circumstances, the circumstances are we have unborn children who have no responsibility for where they're conceived or where they're born,... [LB599]

PRESIDENT SHEEHY: Time, Senator. [LB599]

SENATOR COUNCIL: Thank you. [LB599]

PRESIDENT SHEEHY: Thank you, Senator Council. Senator Howard. [LB599]

SENATOR HOWARD: Question. [LB599]

PRESIDENT SHEEHY: Senator Howard, we have an amendment that has been filed. I will call the call for the question out of order. Mr. Clerk, you have an amendment on your desk. [LB599]

CLERK: I do, Mr. President. Senator McCoy would move to amend with AM2739. (Legislature Journal pages 1355-1359.) [LB599]

PRESIDENT SHEEHY: Senator McCoy, you're recognized to open on AM2739. [LB599]

SENATOR McCOY: Thank you, Mr. President and members. I stand before you this evening to introduce this amendment. In the underlying bill seven different times, "unborn child" or "unborn children" is referenced. I applaud that. For four years I hope I've been one of the staunch advocates, pro-life causes in this body. I don't find any other issue to be more important, none at least to me. The amendment you see before you, if you read it, goes back to every other place in statute where the word "fetus" is

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mentioned and changes it to "unborn child" because I believe if the votes are there to advance this legislation as a matter of policy we should uphold the value of life. I applaud that it talks about life from conception. I agree with that. I believe this amendment dovetails onto this legislation and goes back and says, in the treatment of patients in the area of stem cell research, in every other area in our statute we would now say it's an unborn child because if we do not, how can we be consistent? I applaud this part of LB599. I believe it's an enormous step forward in our state's history to recognize the value and the significance and the importance of unborn life. Well, this amendment before you, colleagues, extends that. There may be those who say, well, this isn't germane. And I would argue, how is it not? It's merely changing and recording that unborn life is significant wherever it is found in statute. That's what LB599 does, that's also what AM2739 does. I believe this amendment is necessary in order to put a holistic approach on this groundbreaking, new direction we're going with this legislation. Thank you, Mr. President. [LB599]

PRESIDENT SHEEHY: Thank you, Senator McCoy. You've heard the opening of AM2739 to LB599. Members requesting to speak: Senator McGill, followed by Senator Nordquist, Senator Mello, Senator Gloor, and Senator McCoy. Senator McGill. [LB599]

SENATOR MCGILL: Thank you, Mr. President, members of the body. Right now we're looking at this amendment and trying to figure out the implications on a variety of...in a variety of ways, both according to federal law and then just the parameters of every part of statute. But as we're looking into that, I do want to yield my time to Senator Bob Krist. [LB599]

PRESIDENT SHEEHY: Senator Krist, you're yielded 4 minutes 35 seconds. [LB599]

SENATOR KRIST: Thank you, Mr. President. Good evening again, Nebraska and colleagues. I'm not sure what this piece of legislation is designed to do. I wondered if Senator McCoy would yield to a couple of questions. [LB599]

PRESIDENT SHEEHY: Senator McCoy, would you yield? [LB599]

SENATOR MCCOY: I would. [LB599]

SENATOR KRIST: Okay. Tell me again, Senator McCoy, the relevance here is that instead of calling as in reference to statute in Nebraska and federal, which would remain incongruent if we do this, but neither here nor there, we're going to call everything a "baby" rather than a "fetus." The point would be, if you could respond to that. [LB599]

SENATOR MCCOY: The point would be, Senator Krist, that we are for the first time in my knowledge in our state statute, if LB599 were to become law, we are recognizing life from conception. And if that truly is the case and that is the definition by which we are

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going to use under LB599, why should it not also be found in other areas of statute that talk about unborn life? [LB599]

SENATOR KRIST: Okay. Senator, you refer to yourself as a pro-life senator, is that correct? [LB599]

SENATOR McCOY: Absolutely. [LB599]

SENATOR KRIST: So you believe that birth...life begins at conception? [LB599]

SENATOR McCOY: I do. [LB599]

SENATOR KRIST: So you would call that living being a "baby," not a "fetus"? [LB599]

SENATOR McCOY: I do, yes. [LB599]

SENATOR KRIST: And if you also obey the laws of the state of Nebraska, you would say that at 20 weeks and 1 day that is no longer, if you were of the other persuasion to say pro-choice, you would call that human life by law a "baby." Is that correct? [LB599]

SENATOR McCOY: Correct. [LB599]

SENATOR KRIST: So what we're really deferring here is the definition of whether it is a fetus from zero, from conception to 20 weeks, if you are a pro-choice person. [LB599]

SENATOR McCOY: Do you mind repeating that, Senator Krist. I'm not sure I follow what you're asking me. [LB599]

SENATOR KRIST: Well, I'm laying down the groundwork to say that we're only really talking about from zero to 20 weeks. If you differ in opinion between being pro-life and pro-choice, even our colleagues who are pro-choice, if they live by the law of this land, by Nebraska law, it is no longer a "fetus" at 20 weeks and 1 day, it is then a "baby." Would you agree with that? [LB599]

SENATOR McCOY: That would be understanding of it. [LB599]

SENATOR KRIST: Okay. So in the law, not in your personal belief, there is a portion in there where the law declares from zero to 20 weeks a "fetus," and after 20 weeks it becomes a "baby" and is recognized as a human being because of the sensation of pain. [LB599]

SENATOR McCOY: Is that a question, Senator? [LB599]

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SENATOR KRIST: It is. [LB599]

SENATOR McCOY: Well, I look at...and I assume you perhaps are talking about the Pain-Capable Unborn Child Protection Act. And so as not, which is found in Chapter 28-3,109 of our statute, and that area of statute is left as it is. That has not been changed under this amendment. It would be every other area of statute other than that, if that is what you are referencing, because it already in subset (9) of that statute, already talks about "unborn child." [LB599]

SENATOR KRIST: And calls it an "unborn child"? [LB599]

SENATOR McCOY: Correct. [LB599]

SENATOR KRIST: Okay. Thank you, Senator McCoy, for your time on the mike and your courtesy in answering the questions. Colleagues,... [LB599]

PRESIDENT SHEEHY: One minute. [LB599]

SENATOR KRIST: ...we missed calling the question by about 15 seconds so we didn't have to do this tonight. But we'll have to take a look at AM2739. At this point, I think it's fine. Let's just call the question and vote on this one. If Senator McCoy wants to move forward with LB599 and this makes it more palatable, then let's go ahead and do it. But I'm sure there's a group meeting to figure out whether that's in essence what we would like to do. Thank you, Mr. President. [LB599]

PRESIDENT SHEEHY: Thank you, Senator Krist. Thank you, Senator McGill. Senator Nordquist. [LB599]

SENATOR NORDQUIST: Thank you, Mr. President and members. I guess I missed a little bit of the first part of the discussion between Senator McCoy and Senator Krist. Would Senator McCoy yield to a question? [LB599]

PRESIDENT SHEEHY: Senator McCoy, would you yield to Senator Nordquist? [LB599]

SENATOR McCOY: Yes. [LB599]

SENATOR NORDQUIST: Maybe I missed it, but towards the end there, Senator Krist's comments, it sounded like that maybe you would be willing to move forward with LB599 with this amendment. Is that correct? [LB599]

SENATOR McCOY: Well, I would have to see whether this amendment were adopted, Senator Nordquist. [LB599]

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SENATOR NORDQUIST: Yeah, okay. If AM2739, my eyes are getting blurry, got adopted as is, would that mean you would be in support of moving forward with LB599? [LB599]

SENATOR McCOY: Again, I would have to see what happens with this amendment, Senator Nordquist. [LB599]

SENATOR NORDQUIST: Okay. I said that if this amendment is adopted, so we're assuming that it is adopted as you introduced it with 25 votes, which is what it takes to adopt an amendment, would you support moving forward with LB599? [LB599]

SENATOR McCOY: Well, Senator, I couldn't make an assumption on that. I don't know whether this amendment will be adopted. [LB599]

SENATOR NORDQUIST: Okay. Under my situation... [LB599]

SENATOR McCOY: I, Senator, if I may be clear, I said a moment ago in my opening that if we are to go down this groundbreaking, new area and direction in our state, then this amendment in my mind must be on this legislation, if there are enough votes to advance this legislation. I do not know whether that's the case or not. But if we are to go that route,... [LB599]

SENATOR NORDQUIST: Okay, thank you. [LB599]

SENATOR McCOY: ...then it's my belief that this amendment must be on. [LB599]

SENATOR NORDQUIST: Okay. I'm retaining the rest of my time. Thank you, Senator McCoy. It's obvious from that response and from the three nonanswers that this is not a serious attempt to improve this legislation and it wouldn't garner your support for the bill. Unless you're willing to come out and say that, I think this just looks like a ploy to burn time. Obviously, a last minute amendment like this that impacts so many sections of statute is just an attempt to throw a bomb into an issue that we had a thoughtful debate on up to this point. And again, this certainly is not groundbreaking. This is a policy we have had in this state for over three decades and it's a policy that fundamentally says life begins at conception, that life that is created at conception is independent of the situation of the mother. The mother could come here from planet Jupiter and it doesn't matter that that child is a life, and because of that, that child is an American, and because of that, that child is a Nebraskan, and because of that they are entitled to benefits. That's what this is about, members. And we can spend here tonight, you know, taking up time and burning through this amendment and taking a vote and moving forward if Senator McCoy is not serious about improving LB599. If he is with this amendment, then we can consider it. But after three attempts to try to get a yes or no answer out of him, he refused. That's disappointing because I thought we had a very

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thoughtful debate tonight about the values that we all hold. And that's what this should have been about, not about political and procedural amendments thrown up at the last minute or towards the end of debate. Certainly, I know there was discussion on the floor about when the question was going to be called and it seemed very peculiar that it got thrown up at the time that it did. So let us move forward with the thoughtful discussion and advance LB599. Thank you. [LB599]

PRESIDENT SHEEHY: Thank you, Senator Nordquist. Senator Mello. [LB599]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. Would Senator McCoy yield to a question? [LB599]

PRESIDENT SHEEHY: Senator McCoy, would you yield to Senator Mello? [LB599]

SENATOR McCOY: Of course. [LB599]

SENATOR MELLO: Senator McCoy, just...I couldn't get...I just printed off your amendment and I think most of the body right now is trying to understand everything. And so I'm going to walk you through at least and have you explain to us section by section all of these changes so that we can get I think a better understanding of what AM2739 does. On the first change, on page 1, you change line 14 from "fetus" to "unborn child." That's in Section 20-408. What statute are we amending there? [LB599]

SENATOR McCOY: Well, you referenced the statute, Senator Mello, and that would be the qualified patient treatment area of statute. And that would change, under subset (3), where it refers to "so long as it is probably that the fetus," would change it to "unborn child," will develop to the point of live birth. [LB599]

SENATOR MELLO: Okay. The next change in on page 2, line 9, line 11, and line 12. What section...that's in Section 71-425 of Revised Statutes. It's under the Revised Uniform Anatomical Gift Act. Can you explain what those changes would do ultimately? [LB599]

SENATOR McCOY: Certainly. It would talk about, under the Uniform Anatomical Gift Act, where it references a "fetus," it would now say an "unborn child." And furthermore, in the next line down where it has the term "decedent" it would go on to include...when it references an "embryo or fetus," it would now say an "unborn child." [LB599]

SENATOR MELLO: And actually, on line 9 you strike "infant" and use "child." Does that have any change at all? [LB599]

SENATOR McCOY: Well, I think it just makes it consistent over what we're describing here, either "unborn child" or if "born," past the point of birth, "child." [LB599]

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SENATOR MELLO: Okay. Let's move...continue to move further down the amendment. I believe it's on page, is it page 6 is the next few changes under...it would be under Section 71-7606, under the healthcare...Nebraska Healthcare Funding Act. You make changes on lines 10, lines 12. Can you explain what that...can you explain that change and how that relates ultimately to a Medicaid program that we're discussing under LB599? [LB599]

SENATOR McCOY: What line are you looking at, Senator Mello? [LB599]

SENATOR MELLO: On page 6, actually it's on page 5, you make changes to Section 71-7606, which is the Nebraska Healthcare Funding Act. On page 6 you make changes on line 10, line 12. Can you explain those changes and ultimately how the Healthcare Cash Fund interacts with the development of a new Medicaid program? [LB599]

SENATOR McCOY: Sure, it would, under subset (3) it would say, no funds appropriated or distributed under the act shall be used for abortion, abortion counseling, referral for abortion or research or activity of any kind involving the use of human, strikes "fetal," tissue of an "unborn child" is added, obtained in connection with the performance of an induced abortion or involving the use of human "embryonic" is stricken, stem cells and it adds in "an unborn child" or for the purposes of obtaining other funding for such use. [LB599]

SENATOR MELLO: And then further down the page on Section 71-8802, for the purposes of the Stem Cell Research Act, it looks like you make some very similar changes there as well. [LB599]

SENATOR McCOY: Correct. It would strike, where it says "human organism" and say "human unborn child." Further on down saying the same thing. [LB599]

SENATOR MELLO: Actually, I think it just says "unborn child," it eliminates "human" as well, but it eliminates "human organism"... [LB599]

SENATOR McCOY: Correct... [LB599]

SENATOR MELLO: ...on both things. [LB599]

SENATOR McCOY: ...and puts in "unborn child." You're correct. [LB599]

SENATOR MELLO: Okay. And then the last page, page 7, Section 71-8806, changes...it looks like you change "human embryo" to "unborn child," "human embryo" to an "unborn child" as well. [LB599]

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SENATOR McCOY: Correct. [LB599]

SENATOR MELLO: Ultimately, I guess, Senator McCoy, how ultimately do the changes in these statutes, and I know from a bill you brought last year, LB22, that dealt with abortion issues in regards to insurance coverage, why are bank and insurance statutes not integrated in this amendment? Why is it only issues that ultimately don't...aren't involved with the Medicaid program which we're discussing in LB599? Why are those amendments...are those statutes not changed at all? [LB599 LB22]

SENATOR McCOY: Because to my knowledge, as this was drafted, Senator Mello, these are the only areas of statute that were... [LB599]

PRESIDENT SHEEHY: Time, Senator. [LB599]

SENATOR MELLO: Thank you, Mr. President. [LB599]

PRESIDENT SHEEHY: Thank you, Senator Mello. Senator Gloor. [LB599]

SENATOR GLOOR: Thank you, Mr. President. Some good questions, some good issues brought forward. And I would like to respond in a very technical and methodic way to some of them. Both Senator Smith and Brasch made the common error of talking about the fact that there will be people who will provide care to the individuals involved. The problem is we've already established the fact that when people present to emergency room, care will be provided, the delivery will be done. What we're talking about here is prenatal care, care before that, not hospital care. And therein lies a challenge. We do not have a system set up, we have some free clinics, we have some federally qualified health centers that can provide some prenatal care, and we have some charitable physician clinics. But where are they? They're scattered throughout the state, they're not organized in any organized way to be able to provide referral patterns. Let me ask senators here a question, especially senators that point to the fact that there are organizations that provide care. If you needed charity care right now, do you know where you would go? These individuals have the same problem, they do not know where to go for somebody who would be willing to provide prenatal care. And for those providers who are saying, we don't turn anybody away, run an ad in the paper, say we'll provide free prenatal care. I bet you'll get some takers. It would certainly address the situation that's out there. The challenge we have is not the deliveries. The challenge we have is not providing care once people present in crisis to emergency rooms. The problem we have is getting prenatal care so we make sure we have healthy deliveries. Senator Price talked about the fact that do all pregnancies have bad outcomes? Are we talking about just the worst-case scenarios here? And, no, that's a great question and allows us to talk about the fact that eight hospitals with intensive care units for neonates gathered information for a quarter that showed 20 deliveries where the Nebraska babies providing care had costs that exceeded, excuse me, had charges that exceeded \$1

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million. We don't have the ability to run all of the numbers. But when you're talking about 40 days in a neonatal intensive care unit, you can multiply that 40 days times, pick a number, at least \$2,000, more likely \$4,000 to \$5,000 per day. We know we have those charges and the ultimate cost that's paid for by Medicaid. Those costs are paid for by Medicaid. So we have 20 babies in neonatal intensive care units with costs that exceed, I would imagine, three quarters of a million dollars. And instead of spending, multiply prenatal care times \$2,000, \$40,000, the taxpayers of Nebraska are paying, because these are Nebraska babies covered under Medicaid, based upon the survey that we were able to do with the cooperation of these facilities we ended up paying almost \$1 million, three quarters to maybe as much as \$1 million, my guesstimates. Senator Fulton says, where are the churches? The churches have names like St. Elizabeth's, St. Francis, Good Samaritan, St. Mary's for one group of churches anyway, that do try and provide as best they're able services, that try and get organized as best they are. And what they are telling us is these organized, not-for-profit organizations that are trying to do the best they can, we're overwhelmed, we need some help. And their challenge once again is being presented with the worst-case scenario of people not getting prenatal care, with the bad outcomes of the lack of that prenatal care, which we can document. Therein lies our problem. There is an absolute cost here and that absolute cost is we bear... [LB599]

PRESIDENT SHEEHY: One minute. [LB599]

SENATOR GLOOR: ...the expense for these Nebraska babies when they present with conditions as a result of not getting prenatal care. Penny wise, pound foolish is an old axiom, but I think one that comes to mind when I look at it very pragmatically as a former hospital administrator. I'm certainly in support of LB599. For a second I was excited about AM2739, but this institution or this body took a look at the stem cell commission that we appointed some commissioners to, and I get to thinking about all of the components of that that may come into play on this. It appears that this amendment has not been vetted, and we don't know what path we're headed down. And I'm sorry, but I don't see that amendment as a serious amount that's had any vetting. Thank you. [LB599]

PRESIDENT SHEEHY: Thank you, Senator Gloor. Senator McCoy. [LB599]

SENATOR McCOY: Thank you, Mr. President and members. I again go back to what I said on this seven different times in LB599, "unborn children" or "unborn child," the term "unborn children" or "unborn child" are mentioned. What AM2739 merely does, it goes into our statutes and changes where "embryo" or "fetus" is referenced and changes it to "unborn child," because what truly are we doing with LB599? We are talking about prenatal coverage from conception to birth. That's why, I assume, that "unborn child" or "unborn children" are referenced in the underlying bill. This amendment to me makes it consistent across our statutes. If we are recognizing that an unborn life is a life and is

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valuable from conception to birth it ought to be consistent across our statutes. It's consistent, it's pro-life, it's the right thing to do. Thank you. [LB599]

PRESIDENT SHEEHY: Thank you, Senator McCoy. Senator Bloomfield. [LB599]

SENATOR BLOOMFIELD: Thank you, Mr. President. Good evening, colleagues. I voted against LB599 in the Health Committee. This is not an easy vote, but I still believe it to be the right vote. I don't believe we can ask the taxpayers of Nebraska to pay the bills of those who are not here as they ought to be. We have talked tonight long and it's probably going to be longer. We have talked about thoughtful and considerate debate. I want to question the thoughtful and considerate part just a little bit. So far those of us who feel obligated to protect the Nebraska taxpayer have been called, and I just wrote down a few of them, barbaric, twisted, desirous of physically harming the unborn, uncaring, unfeeling, hypocritical, unethical, and inconsistent. I don't know that that is considerate debate. This is one of the hardest votes I will make this year. I will vote... [LB599]

PRESIDENT SHEEHY: (Gavel) [LB599]

SENATOR BLOOMFIELD: ...in support of AM2739, I believe it's a vast improvement to LB599. But I don't know that it would get me to the point of supporting it, probably not. But it is a vast, vast improvement. And if Senator Coash would like a little time, he can have the rest of mine. [LB599]

PRESIDENT SHEEHY: Senator Coash, you're yielded 3 minutes. [LB599]

SENATOR COASH: Thank you, Mr. President. And thank you, Senator Bloomfield. I had refrained from speaking on this issue. There are many people on both sides who can make better arguments than I can. But, you know, since everyone else is standing up and saying it, I'll stand up and say it too. I'm pro-life. There, okay, so I'm just like a lot of folks in here. But we are talking about the amendment. I'll tell you, the amendment doesn't bother me. I was going to support...I'm supporting LB599 regardless, but the amendment for me doesn't give me any heartburn. I think it sends a message that needs to be sent. Language does mean something. We hear that all the time here. And if we have the opportunity to identify an unborn child, let...I'm going to go ahead and take it. Senator Cornett, I've listened carefully and Senator Cornett said something that I agree with. And she stood up and she said, I'm pro-life, doesn't mean on this bill that you're anti-illegal immigration. But I believe what she said is I'm going to make a priority here because we can't really separate the two. That's unfortunate. I think if we could separate the two issues we would have an amendment that would do so. But unfortunately, we can't separate the two, so we have an immigration issue or maybe a pro-life issue. And what I heard Senator Cornett say was, I'm just going to prioritize the unborn child. I thought that was a pretty good way framing it. And that's the way I'm

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going to land on it as well. We have to make priorities here. And our votes indicate our priorities. And on this particular issue I'm going to prioritize unborn children, which doesn't mean I don't find addressing illegal immigration an issue that is not worthy of our attention. I've brought a bill on that, on enforcement of illegal immigration. So I'm not worried about my record at all. [LB599]

PRESIDENT SHEEHY: One minute. [LB599]

SENATOR COASH: Thank you, Mr. President. I'm not worried about my record on illegal immigration. I'm not worried about my record on the pro-life issue either. But what we have is that we are going to have to prioritize, and that's really what I think the vote on LB599 is going to be. Do we prioritize the unborn or do we prioritize an immigration issue? And maybe we throw in a third one in there and we'll have to put order one, two, and three, and that's a taxpayer issue too. I don't begrudge people who say, okay, but the tax thing bothers me. At the end of the day I think that the science is clear. This will save us money. We do know that we've seen increased abortions since we took away this funding. Which, by the way, you know, it's been pointed out we've been doing this...we did this for decades. So this isn't a new concept. This isn't uncharted territory. [LB599]

PRESIDENT SHEEHY: Time, Senator. [LB599]

SENATOR COASH: Thank you, Mr. President. [LB599]

PRESIDENT SHEEHY: Thank you, Senator Coash. Thank you, Senator Bloomfield. Senator Christensen. [LB599]

SENATOR CHRISTENSEN: Thank you, Mr. President. I'm not going to talk much about the amendment. I support the amendment. But I look more back at the bill. And I wanted to just go back and look at what happens if we pass this bill versus if we don't pass this bill. If we pass this bill to give prenatal care it costs the Nebraska taxpayers the prenatal care costs plus probably the birth at the hospital. And we have a high chance of a healthy baby being born. If we don't pass this bill, prenatal care, maybe they'll get it, maybe they won't, birth at the hospital we will pay. High chance of health baby? Probably not. Health baby? Probably, but if not could have a very long hospital stay. Cheap? No. Cost to whom? Nebraska taxpayer. To me this comes down to a choice. I don't see this bill dealing with the real root of the problem--illegal immigration. I talked about how, in my previous talk, how you take care of that. It's a national issue. But I would offer one more suggestion, if somebody likes it, we can write it up. But you could offer them the prenatal care for so many hours of volunteer time from their family, because then you're getting something. It's going to be some public service to offset prenatal care. That's just a thought for you to think about. Is it worth requiring some prenatal care? No, not everybody will like that. Not sure I like it. I'm throwing it out for

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discussion because I agree people need to earn what they get. I agree the taxpayer shouldn't pay for it, but I also know, as my previous example, we're paying for the birth either way. We're just not paying for the prenatal care. But we will pay for the complications if prenatal care isn't there. So what is the right approach? We've had a lot of talk on this. And I don't know that you're going to change a lot of people's minds. But I'm throwing out an idea to think about that might change some people's minds, and that is what if the family had to do some volunteer hours for that prenatal care. Just a thought to think about. I hope it spurs additional thoughts and comments, because like I said, I'm not going to bring an amendment unless people start talking about it and think it's something worthwhile. Thank you. [LB599]

PRESIDENT SHEEHY: Thank you, Senator Christensen. Members requesting to speak on AM2739 to LB599: We have Senator Karpisek, followed by Senator Fulton, Senator McGill, Senator Burke Harr, Senator Mello, Senator Smith, and others. Senator Karpisek. [LB599]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I do support LB599. I have carried illegal immigration legislation for the Governor, LB403. I do not support illegal immigration, but I think that this is different. And it is a tough one, this is tough. If we want to talk about anchor babies, I'll be there, I'd like to talk about that. I usually sign onto Senator Janssen's bills. So to me it is not about illegal immigration, but it is about having healthy babies, no matter who they are, what color they are or where they come from, but they are going to be Nebraska citizens. Again, if we want to go back and debate the anchor baby rules, which of course are not our rules, I would probably be against the anchor babies. But we can't fix that. So I just wanted to say a little bit that I am very against illegal immigration and will do what I can to curtail it. But I am in support of LB599. And I would like to yield the rest of my time to Senator Lathrop, please. [LB599]

PRESIDENT SHEEHY: Senator Lathrop, you're yielded 3 minutes 30 seconds. [LB599]

SENATOR LATHROP: Thank you, Senator Karpisek. I want to talk about AM2739. And I only have three and a half minutes to do that and I'm going to have to speak kind of fast. I think what we have in AM2739 is sort of an attempt to be clever by changing indiscriminately certain terms in statute and replacing them with "unborn children." And that may sound like a pro-life thing to do. It might if it were carefully done. I want to direct your attention to page...bottom of page 6 and on page 7. I happen to have been involved in the...what we generally refer to as the stem cell...embryonic stem cell research compromise. And every word of that was chosen carefully, every word of that was chosen carefully, trust me. It went on for weeks, seemed like months. And what we've done with Senator McCoy's amendment and what he's done on page 6, line 23, there is a definition of a human embryo, and he's replaced "human organism" with "unborn child." Okay? Go down to page 7, where we have a prohibition. And formerly,

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the prohibition, with carefully chosen words, prevented the use of state facilities, funds, fees, charges, investment income being used to destroy human embryos. We've replaced that today or would with "unborn children." The problem is we haven't defined "unborn children" and we have just neutered the human embryo definition or made it meaningless because we no longer use that term. And here is the problem. What we were trying to accomplish was very, very specific. And what we have done is now made a prohibition against doing research on a destroyed "unborn child." But we haven't said what an "unborn child" is or whether it even includes an undifferentiated cell at the beginning of life. And this is what happens when your amendment is not well thought out. This... [LB599]

PRESIDENT SHEEHY: One minute. [LB599]

SENATOR LATHROP: ...will upset what happened in the stem cell research agreement. It will affect or possibly affect...I expect it would affect what we put into law after careful negotiations and after an agreement not to come in and amend it. And so I'm just going to ask Senator McCoy to pull AM2739 because it is creating problems in the stem cell research area that he cannot appreciate or didn't appreciate when he drafted this. We need to go back to "human embryos" because that term was defined, it was defined after significant negotiation among the parties involved. And it demonstrates, in my judgment, that AM2739 isn't really a serious amendment, it is a dilatory amendment or it serves some other purpose. And because it is not well thought out, because it will have the effect of perhaps permitting this type of research... [LB599]

PRESIDENT SHEEHY: Time, Senator. [LB599]

SENATOR LATHROP: ...that we tried to prohibit... [LB599]

PRESIDENT SHEEHY: Time, Senator. [LB599]

SENATOR LATHROP: ...at state facilities. [LB599]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Fulton. [LB599]

SENATOR FULTON: Thank you, Mr. President, members of the body. Would Senator Lathrop yield to a question? [LB599]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to Senator Fulton? [LB599]

SENATOR LATHROP: Yes. [LB599]

SENATOR FULTON: Senator, I do appreciate the argument you're putting forward and it does have some merit. But I'd like the argument to apply equally within the bill. And

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so, you're in favor I think of LB599. Correct? [LB599]

SENATOR LATHROP: Yes. [LB599]

SENATOR FULTON: On page...well, throughout the bill, but page 3, line 5, the Legislature finds that "unborn children" do not have immigration status, etcetera. The definition for "unborn children"? Where would we find that in the bill? Because that's one of the reasons you're leveling to militate against AM2739. Yet... [LB599]

SENATOR LATHROP: No, no, no, I'm not. You are abandoning the idea of...you are...we have in that stem cell research bill defined the term, now I got to get back to it,... [LB599]

SENATOR FULTON: Understood, Senator. But what you said was the term "unborn child" does not have a definition and therefore could usurp what you have done, admirably, on the embryonic stem cell issue. Yet in LB599, that same term appears, lacking definition or the definition that's given anyway seems to encompass that which is put forward in AM2739. So I'm asking you to apply that same standard to LB599 and therefore you should be in favor of AM2739. I'm doing the logic here. I'm trying to give you an opportunity to... [LB599]

SENATOR LATHROP: No, there's nothing...if you want to amend LB599 to put a definition of an "unborn child" in there, run the amendment. That's not what you're doing, however. And what you've done instead is gone into the stem cell research provisions that were carefully negotiated, each term, and you've abandoned, you've abandoned the definition or the use of the term... [LB599]

SENATOR FULTON: Well, Senator, I understand what you're saying, but do you not... [LB599]

SENATOR LATHROP: ...human embryos which is what the stem cell research is done on. And you've replaced that with "unborn children" without defining an "unborn child." [LB599]

SENATOR FULTON: Is "unborn child" or "unborn children" defined in LB599? [LB599]

SENATOR LATHROP: I couldn't tell you. I assume you're telling me it isn't? I'll agree with that. But... [LB599]

SENATOR FULTON: Or the definition would apply. [LB599]

SENATOR LATHROP: But changing the language in the stem cell... [LB599]

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SENATOR FULTON: Okay. [LB599]

SENATOR LATHROP: ...research bill doesn't accomplish a definition in LB599, Senator Fulton. [LB599]

SENATOR FULTON: I do understand, thank you, Senator Lathrop. I do understand the arguments given here by Senator Lathrop, not without merit. But this term was taken, at least ostensibly, I've talked to Senator McCoy a little bit about this, this also appears in LB599. From a pro-life standpoint it certainly wipes the slate clean such that "unborn children" has consistency with respect to this bill and other places in our statute. That's all I'm saying here. I will yield the remainder of my time to Senator McCoy, if I could, Mr. President. [LB599]

PRESIDENT SHEEHY: Senator McCoy, you're yielded 1 minutes 55 seconds. [LB599]

SENATOR McCOY: Thank you, Mr. President. Thank you, Senator Fulton. I appreciate that time because I think what Senator Lathrop just outlined is very interesting. And I know I need not remind him or any of you that a Legislature may not bind a future Legislature. So while I respect the hard work that Senator Lathrop and others did on the area of statute that apparently he has concerns over as it relates to stem cell research, I was not in this body, I was not a member of this body. And I will tell you that I stand before you here tonight on this amendment and on this bill, no one put me up to this amendment, no one wrote this amendment other than myself and my staff. And I will tell you that when I go across my district, my Legislative District and I talk to my constituents they would appreciate and they do appreciate consistency across state statutes and they appreciate consistency in respect to pro-life causes and valuing unborn life, and that's what this amendment does. Senator Lathrop said it's an attempt to be clever. It is not. I object to that. It's not an attempt to be clever. This isn't a game. I don't stand before you at 9:51 p.m. on day 55 of the session in an attempt... [LB599]

PRESIDENT SHEEHY: Time, Senator. [LB599]

SENATOR McCOY: ...to be clever. Thank you. [LB599]

PRESIDENT SHEEHY: Time. Thank you, Senator McCoy. Thank you, Senator Fulton. Senator McGill. [LB599]

SENATOR MCGILL: Thank you, Mr. President, members of the body. Believe it or not, I am neither here nor there on this amendment. In fact, adopting it could actually put many of our statutes in jeopardy of being ruled unconstitutional, which could end up having the counter effect of what Senator McCoy is trying to do, because we are just making such a mass change all at once without intention when we're looking at part of statute, for instance, the differences between this part in the stem cell research and all

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the different statutes he's looking to change. And since I'm not an attorney, I'm going to yield my time to Senator Conrad to elaborate on that. [LB599]

PRESIDENT SHEEHY: Senator Conrad, you're yielded 4 minutes 25 seconds. [LB599]

SENATOR CONRAD: Thank you, Mr. President. Thank you, Senator McGill, for the time, I appreciate it. Let's be clear what this is. This is a group of senators who are terrified to take an up or down vote on LB599, so they're utilizing every right that they have in front of them to change the debate and to once again utilize reproductive health issues to pursue a personal, political agenda. But let's be clear. Nebraska statutes are riddled with a variety of references proclaiming our pro-life values in a variety of contexts. So the fact that Senator McCoy is attempting to switch out "fetus" or "embryo" for "unborn child," let's be clear, it doesn't stop one abortion, it doesn't stop one unintended pregnancy, and it doesn't end Roe v. Wade or the federal Constitution from which these reproductive rights emanate. So you can switch out "fetus," you can switch out "unborn child," you can put in purple triangle, like it or not, Senator McCoy, Roe stands and our rights stand. And no matter how cute you attempt to be with this amendment or otherwise, because you're afraid to take an up or down vote on LB599, you're not doing one thing in terms of stopping an abortion or stopping an unintended pregnancy. So if you want to push this to the wall for your own personal, political agenda, throwing into question carefully crafted statutes based upon existing federal precedent, utilizing carefully chosen legal term of art for some personal, political agenda and shenanigans, go ahead. I welcome throwing all of those sections into question and potential challenge. Thank you, Mr. President. [LB599]

PRESIDENT SHEEHY: Thank you, Senator Conrad. Thank you, Senator McGill. Senator Burke Harr. [LB599]

SENATOR HARR: Thank you, Mr. Lieutenant Governor. I raise a point of personal privilege. I want to ask if...make a motion on germaneness on this amendment. [LB599]

PRESIDENT SHEEHY: Senator Harr, please explain why you think the amendment is not germane. [LB599]

SENATOR HARR: Thank you. We are dealing with Chapter 68-901 and 910, which deal with the Medicaid Assistance Act. We are dealing with whether to provide prenatal care. This amendment deals with 20-408, 71-4825, 71-7606, 71-8802, and 71-8806. And it has to deal with the definitions of an "unborn child," which has nothing to do with the merit or the basis of this underlying LB599 which is...has to do with providing prenatal care. If we open the door here, anytime one definition appears anytime in any amendment, it opens up the whole statute book to wherever that same word would appear later on. And it would in fact make the germane law or rule irrelevant. Again, this is about providing medical assistance, it is not about...and it's found under Chapter 68,

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public assistance. It has nothing to do with Chapters 20 or 71. With that I would yield my time. [LB599]

PRESIDENT SHEEHY: Thank you, Senator Harr. Senator McCoy, if you would explain why you think the amendment is germane. [LB599]

SENATOR McCOY: Thank you, Mr. President. Page 7 of the underlying bill in line 10 and line 11 says, child means an individual under the age of 19 years, including any period of time from conception to birth. AM2739 changes six different places in statute that deal with this very same definition in some way or another, that is why, Mr. President, I believe that it is germane to LB599. [LB599]

PRESIDENT SHEEHY: Members, what we are reviewing is the rules under germaneness, Rule 7, Section 3(d): No motion, proposition or subject different from that under consideration shall be admitted under color of an amendment. Any amendment that is not germane is out of order. Germane amendments relate only to details of the specific subject of the bill and must be in a natural and logical sequence to the subject matter of the original proposal. A nongermane amendment includes one that relates to a substantial different subject. Members, I would rule that the amendment is not germane. We will now return to discussion on LB599. Members requesting to speak: Senator Mello, followed by Senator Smith, Senator Nelson, Senator Fischer, Senator Lathrop, and Senator McCoy. Senator Mello. [LB599]

SENATOR MELLO: Question. [LB599]

PRESIDENT SHEEHY: There has been a (gavel) call for the question. Do I see five hands in the cover of darkness? I do. The question before the body is, shall debate cease? All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB599]

CLERK: 29 ayes, 2 nays, Mr. President, to cease debate. [LB599]

PRESIDENT SHEEHY: Debate does cease. Senator Campbell, you're recognized to close on LB599. [LB599]

SENATOR CAMPBELL: Thank you, Mr. President and colleagues. I'd like to make several comments before we go to a vote on LB599. In the poll that I had mentioned to you, 99 percent of the people of Nebraska who took that poll believe in prenatal care and that it's important. In a statement that was made by Dr. Amanda McKinney, who is an ob-gyn from Beatrice, and I quote, the well-being of every pregnant mother and child matters. We cannot prevent every death or disability to pregnant women and babies, but most times we can. It's not okay with me when pregnant women and babies die or become disabled in situations when it is preventable. It should not be okay with any of us. Problems that a child can experience without having prenatal care are numerous

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and, yes, Senator Schumacher talked about those babies who die before they can even have a chance. Babies born too small or too soon are more likely to experience mental and behavioral disabilities, chronic respiratory, deafness, blindness, or cerebral palsy in a study done by the American Journal of Nursing. Colleagues, we were asked earlier if there was a cost to the taxpayer. There is an enormous cost when that baby is born with significant problems. As I started out this evening I indicated that prenatal care matters, but it matters for a lifetime. And I would very much appreciate your vote green on LB599. Thank you, Mr. President. [LB599]

PRESIDENT SHEEHY: Thank you, Senator Campbell. You have heard the closing. The question before the body is on the advancement of LB599. All those in favor vote yea; opposed, nay. Senator Fulton. [LB599]

SENATOR FULTON: Record vote, please. [LB599]

PRESIDENT SHEEHY: There has been a request for a roll call vote. [LB599]

SENATOR CAMPBELL: And a call of the house, Mr. President. [LB599]

PRESIDENT SHEEHY: There has been a request for a call of the house. The question before the body is, shall the house be placed under call? All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB599]

CLERK: 43 ayes, 1 nay, Mr. President, to place the house under call. [LB599]

PRESIDENT SHEEHY: The house is placed under call. All unexcused senators please report to the Legislative Chamber. All unauthorized personnel please step from the floor. The house is under call. Senators, please record your presence. Senator Campbell, all members are present and/or accounted for. Mr. Clerk, there has been a request for a roll call. [LB599]

CLERK: (Roll call vote taken, Legislative Journal pages 1359-1360.) 30 ayes, 16 nays, Mr. President, on the advancement of LB599. [LB599]

PRESIDENT SHEEHY: LB599 advances. The call is raised. Mr. Clerk, we'll now proceed to LB599A. [LB599 LB599A]

CLERK: Mr. President, LB599A. (Read title.) The bill was introduced. I do have an amendment to the bill, Mr. President. [LB599A]

PRESIDENT SHEEHY: Senator Campbell, you're recognized to open on LB599A. [LB599A]

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SENATOR CAMPBELL: I want to thank my colleagues for the vote on the last bill. As I indicated, your gadgets should have the correct amount. And this is within our budget as we had discussed this morning. Thank you very much, Mr. President. [LB599A]

PRESIDENT SHEEHY: Thank you, Senator Campbell. You've heard the opening to LB599A. Amendment on your desk, Mr. Clerk. [LB599A]

CLERK: Senator Campbell would move to amend with AM2741. (Legislative Journal pages 1360-1361.) [LB599A]

PRESIDENT SHEEHY: Senator Campbell, you're recognized to open on AM2741. [LB599A]

SENATOR CAMPBELL: Thank you, Mr. President. I believe the amendment replaces the original A bill and is the correct amount. Thank you, Mr. President. [LB599A]

PRESIDENT SHEEHY: Thank you, Senator Campbell. You've heard the opening of AM2741. Member requesting to speak, Senator McCoy. Senator McCoy waives his time. Seeing no additional requests to speak, Senator Campbell, you're recognized to close on your amendment. [LB599A]

SENATOR CAMPBELL: Thank you, Mr. President. My request would be a roll call vote in reverse order, please. Thank you, Mr. President. [LB599A]

PRESIDENT SHEEHY: Thank you, Senator Campbell. You have heard the closing of AM2741. Mr. Clerk, there's been a request for a roll call vote in reverse order. [LB599A]

CLERK: (Roll call vote taken, Legislative Journal pages 1361-1362.) 33 ayes, 9 nays. [LB599A]

PRESIDENT SHEEHY: Mr. Clerk, AM2741 is adopted. We'll now return to LB599A. Seeing no requests to speak, Senator Campbell, you're recognized to close. [LB599A]

SENATOR CAMPBELL: I'll waive closing. [LB599A]

PRESIDENT SHEEHY: Senator Campbell waives closing. The question before the body is on the advancement of LB599A. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB599A]

CLERK: 32 ayes, 4 nays, Mr. President, on the advancement of LB599A. [LB599A]

PRESIDENT SHEEHY: LB599A advances. Mr. Clerk, items for the record. [LB599A]

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CLERK: I do, Mr. President. Enrollment and Review reports LB727, LB745, LB817, LB817A as correctly engrossed. I have name adds: Senator Janssen to LB745; Senator Schumacher to LB357. (Legislative Journal page 1362.) [LB727 LB745 LB817 LB817A LB357]

And a priority motion, Senator Flood would move to adjourn the body until Wednesday, April 4, at 9:00 a.m.

PRESIDENT SHEEHY: You have heard the motion to adjourn until Wednesday, April 4, at 9:00 a.m. All those in favor say aye. Opposed, nay. We are adjourned.