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Floor Debate
April 18, 2013

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SPEAKER ADAMS PRESIDING

SPEAKER ADAMS: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the sixty-second day of the One Hundred Third Legislature, First Session. Our chaplain for today is Pastor Stephen Floyd from Church of the Nazarene in Falls City, Senator Watermeier's district. Please rise.

PASTOR FLOYD: (Prayer offered.)

SPEAKER ADAMS: I call to order the sixty-second day of the One Hundred Third Legislature, First Session. Senators, please record your presence. Please record, Mr. Clerk.

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

SPEAKER ADAMS: Mr. Clerk, are there corrections to the Journal?

CLERK: I have no corrections, Mr. President.

SPEAKER ADAMS: Are there any messages, reports, or announcements?

CLERK: Mr. President, I apologize. I do have one small correction on page 1000, line 11. (Correction read.) I do have one message, Mr. President. Senator Smith would like to file a motion with respect to LB577. That's all that I have. (Legislative Journal page 1017.) [LB577]

SPEAKER ADAMS: Thank you, Mr. Clerk. Senator Krist, for what purpose do you rise?

SENATOR KRIST: Point of personal privilege, Speaker.

SPEAKER ADAMS: Proceed.

SENATOR KRIST: Thank you. I would hope that you listen to this because it is important. It's important to me and it's important to you. Last night upon the...towards the conclusion of the debate, there was a mistake made and it's human error. The wrong button was pushed and I respect the folks that are behind that desk up there because they do a wonderful job and it's a tough job, but there was something preloaded that could have been used and was not used. After which, there was a group that decided that it was important that we talk about change in the rules and going

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forward and taking away that rule. And, you know, so I thought it was important this morning that we talk about two things. One, human error. I had no intention of filing that. In fact, I had talked to my Chair and she did not want to go forward with the course of action that I thought was an alternative. And I personally thought that it might be a tool that we put in our bag. I had it drafted after talking to many senators with more experience, those that preceded us, some of them were here yesterday. There is a rule and I passed it out to you, a suspension of the rules, I'm sorry, and it's pretty complex, complicated, but it is possible with 30 votes to end debate and to go to a vote. That's what this is. I do this as an educational...for educational reasons because if you don't bother to read the process and you don't bother to read the rules, you will not be as equipped professionally to be in this building as other people. So here it is. If you ever decide to do it, you can exercise it. It was on my desk. It is in my top drawer in case you need it again, but it should not have appeared last night. With many of you, I had a conversation in our vote count yesterday and some of you were shocked and amazed that the question was called or that we didn't have sufficient time for debate. Now, whether you're on one side or the other of that issue yesterday, once you're here long enough you're going to realize, it is time to call the question when it's time to call the question. It's time to end debate when it's time to end debate. It's time to take a vote when it's time to take a vote. You either win, lose or draw, but you move on to the next day. So, if you thought that that was a good idea or a bad idea, I'll say again on that subject, a change of the rules is a very, very serious thing. Accusing someone of something that is not fair as in being blamed for something, is human nature. So I want to start out with a fresh slate today and say, read your rules. Be very cautious about what finger you point. Thank you, Mr. President.

SPEAKER ADAMS: Thank you, Senator Krist. Mr. Clerk, we'll now proceed to the first item on the agenda.

CLERK: Mr. President, I have a confirmation report from the Government, Military and Veterans Affairs Committee regarding the appointment of Jim Heine as the State Fire Marshal. (Legislative Journal page 1001.)

SPEAKER ADAMS: Senator Avery, as Chair of the Government, Military and Veterans Affairs Committee, you are recognized to open on the confirmation report.

SENATOR AVERY: Thank you, Mr. President. Good morning, colleagues. The Government, Military and Veterans Affairs Committee brings to you a nomination for your consideration to the new...to be the new State Fire Marshal. Jim Heine, spelled H-e-i-n-e, was recommended for approval on a public hearing Tuesday, April 16, this year. He is being recommended for a term that began March 27 of this year and will serve at the pleasure of the Governor. The committee voted 6-0 to approve and 2 absent. Just a couple of words about Mr. Heine: He has extensive experience already with the State Fire Marshal agency. He joined that agency in May of 1990 as a deputy in

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the fuels division. He transferred to the code enforcement division in 1996. He served in the codes division until 2007 when he was selected to be the Assistant State Fire Marshal. He has been in that capacity until December of 2012 when he became the acting State Fire Marshal, which is his position at the current time. This individual is eminently qualified for this position, and I urge your approval. Thank you, Mr. President.

SPEAKER ADAMS: Thank you, Senator Avery. The floor is now open for discussion. Senator Chambers, you're recognized.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I have always respected Senator Avery, not only because he has gray hair and I'm partial to that, because I've noted during my many years on this earth that people with gray hair have extraordinary qualities, characteristics that are admirable. And I think all those who wear gray hair are well aware of what I'm saying. But they are also, I call it afflicted, but others would say blessed, they are afflicted or blessed with a trait known as modesty. And they will never talk about these wonderful traits they have. I give that as a forerunner to a comment I want to make to Senator Avery. Senator Avery, I want you to be careful. I want you to be very, very careful. I have begun to pay much attention to all of the negative attitudes, even on this floor, toward government. And when it was announced that the Chairperson of the Government, that's all I heard. My mind blanked out. All I thought of was the hatred, the anger, the contempt expressed toward the government. Being a person wearing gray hair, I quickly recouped my mental resources and I thought this thing over. I would like to ask Senator Avery a question.

SPEAKER ADAMS: Senator Avery, would you yield?

SENATOR AVERY: I will.

SENATOR CHAMBERS: Senator Avery, would you be willing to consider a rule change that would drop Government from the name of the committee of which you are Chair and substitute some other word or phraseology that might suggest that it deals with the activities that keep the state operational and functional in accord with the law and the constitution? Would you be willing to take something like that as the name of your committee and drop Government altogether?

SENATOR AVERY: Well, I have an open mind on most things. I guess I'd want to know what was being proposed to substitute for the name Government.

SENATOR CHAMBERS: I just did (laugh) and you wear gray hair and you didn't pay attention. See how sometimes gray-haired people undercut each other. That's all I have. Thank you, Senator Avery. Members of the Legislature, sometimes I have to use what's before us to make a point. I think we should...people should think, especially those who are a part of government, before they completely cast out the notion of the government

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being a wholesome, necessary, functioning agency or organ of this representative democracy. There are children who listen and read. They hear all of these poisoned statements against "the government." There is no nuance thinking. It has become the watchword of these people called "Teapotters," "Tea Partyers," or whatever they call themselves. And I hear the slogans, I hear those kind of things articulated. And in my view, it is not wisdom. I think we are to serve an educational, educating function. And when we indicate from what we say that we don't understand what the government is, we don't understand the necessity of having a government, then when the children...

SPEAKER ADAMS: One minute.

SENATOR CHAMBERS: ...seem to not know their direction, then who can we point to other than ourselves? We need to listen and my curse is that I listen to you all. I pay attention to you all, even when you're speaking utter nonsense, foolishness, and silliness, I listen and it has an impact on me, not that I would go the direction you're going. But I just thought I would throw those words out there this morning. Thank you, Mr. President.

SPEAKER ADAMS: Thank you, Senator Chambers. Senator Wallman, you're recognized.

SENATOR WALLMAN: Thank you, Mr. President. Thank you, Senator Chambers. Thank you, Bill, Senator Avery. This is a good man. He's went through the ranks, volunteers, and works with the government, and as we all. And we're senators. And what does senator mean? Servant. It doesn't mean make riches for other people. It just means we're supposed to serve the people. I'd yield the rest of my time to Senator Chambers if he so wished.

SPEAKER ADAMS: Senator, you are yielded 4.5 minutes.

SENATOR CHAMBERS: Thank you. And, Mr. President, members of the Legislature, this will be the last that I'll say on this subject. When I read about the government, I'm like a man who has to straddle two worlds. This government has not been fair to my people. There are several references in the U.S. Constitution to slavery and the protection of slavery. Anything in that document could be amended, anything, except the slave trade. The slave trade could not be touched for 25 years. You could have amended the constitution to have a king. You could have amended the constitution to have a parliament. You could have amended anything in that document except the trade in my ancestors. And now I stand in a governmental body, and I don't forget what has happened. I did say I wouldn't speak again. I'm going to put my light on again. Nobody in a responsible position have I ever heard condemn the Jews for saying and uttering the slogan "never again" because they know what that refers to. I have never seen or heard of anybody in a responsible position condemning the Jews for erecting

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Holocaust museums throughout this country and all over the world. Their horror, labeled the Holocaust, was compressed into a relatively few years. The hell that my people suffered--generations--treated like cows, pigs, and chickens. Look at my complexion. Black people were not jumping over fences and impregnating white people. Our women, whether mothers, sisters, daughters, could be the playthings of any white man. If a crime that would be called a crime was committed against us, it was a property offense. I majored in history. Even before I took that major, I read a lot of history and saw the things done to black people. It was a Roman Catholic Justice of the U.S. Supreme Court, Roger B. Taney, who said black people have no rights which white men and women are bound to respect. And that's supposed to have no impact on me? Then I see some of you all get upset at very trifling criticisms and you couldn't face what I face and function in the way that I function. And what do I mean about a man straddling two worlds? I know this government even now is not going to be fair to my people. The laws, even when they say the right thing, are not going to be applied in the right way because our enemies are applying the laws.

SPEAKER ADAMS: One minute, Senator.

SENATOR CHAMBERS: But you know what I have to do? I have to talk to very angry, bitter people who have every right to be angry and bitter. And were they not angry and bitter, they would be insane. To tell them don't deliver yourself into the hands of the enemy. Don't go out here and do something foolish. If you kill one of them, then your children have no father, your brothers and sisters have lost a sibling, your mother may have lost a child. Don't do it. I'm constantly counseling people what I think ought to be done. But I understand those who would like to do it differently because I know how I feel. And I know what I feel like doing, and I listen again to what is said on this floor. Thank you, Mr. President.

SPEAKER ADAMS: Thank you, Senator Chambers. And, Senator Chambers, you are recognized again.

SENATOR CHAMBERS: And this will be the end of it. But Senator Wallman gave me the time, and I think since I've embarked on this trail I need to complete the journey. When I look around this floor and consider how in most situations there are some very disturbing, troubling things that may befall a person and almost throw his or her life off the rails. But aside from those rare, infrequent occurrences, you all couldn't function if you had to face what I face. You lose a bill and it's the end of the world. Somebody criticizes you, you almost start crying, and I'm looking at all this. Then when we catch hell in the courts and the schools at the hands of the police, you don't understand why we're upset. You don't understand. You pretend not to understand. I ought to start putting on you all verbally what you put on us in fact, and you couldn't take it. Your editors couldn't take it. They'd be saying, Senator Chambers ought to be more civil. He shouldn't be angry. He should be collegial. Are they out of their mind or do they think I'm

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out of mine? They're entitled to think I'm out of my mind when I try to function according to your rules. But the only way I can fix you, the only way I can fix you is to learn your rules and beat you at your own game, then mock you and taunt you and show you that you outnumber me overwhelmingly, and you can't do anything with me. You can't put chains on me. You cannot put a lash on my back. You cannot hang me from these light fixtures. And you cannot shut me up in the way you were able to do my ancestors. I have books of pictures of black men, black children, and black women being lynched by white people; and it wasn't that long ago. Then they praise a movie about Jackie Robinson and act like that's a great American story. It's a great black people's story. And then they lionize the white man who brought him into baseball and told him you're going to have to let them call you names, they're going to put black cats on the field. I was old enough to understand what was happening to him at that time. His own teammates ridiculed him, and that was America and America's game. So when you all salute the flag, it's your flag, not my flag. There is not liberty and justice for all people in this country right now and this country is not one nation. Look at Congress. They tell you. Senator Fischer said the other day how divided the Congress is. Then you want to make black children stand up and say to a white people's flag in front of white people that this is one nation under God, indivisible, and it is propaganda and it's a lie. It is a lie and you know it. And I will never utter it, and my children didn't have to utter it when they were in school. And no child should be compelled to utter it. And I think from time to time I'm going to talk about that flag salute and I'm going to make a motion to pull my bill out of committee and force a discussion on this floor of that very issue. If you're so concerned about honoring the committee system, you ought to be concerned about the Legislature as an institution being dishonored by the State Board of Education doing an end run...

SPEAKER ADAMS: One minute, Senator.

SENATOR CHAMBERS: ...around what the Legislature had done. Thank you, Mr. President.

SPEAKER ADAMS: Thank you, Senator Chambers. Senator Carlson, you're recognized.

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. And I do rise in favor of the confirmation report by Senator Avery and thank him for bringing it and also for an opportunity that we've displayed some of our freedom this morning. As all of you know, Senator Chambers has given us something to think about in a poem every day of the session, and I looked at what he has today. I think that everybody should read through that, and I have a little statement about it. I don't scold Buffett or Gates. In some ways with them we are as teammates. Senator Chambers, however, is not my master. But much of today's poem is written like a pastor. Thank you, Mr. President.

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SPEAKER ADAMS: Thank you, Senator Carlson. Senator Avery, there are no other lights in the queue. You are recognized to close on the confirmation report. Senator Avery waives closing. The question is the adoption of the report offered by the Government, Military and Veterans Affairs Committee. All those in favor vote aye; all those opposed vote nay. Have all voted that wish to? Record, Mr. Clerk.

CLERK: (Record vote read, Legislative Journal pages 1017-1018.) 41 ayes, 0 nays, Mr. President, on the adoption of the confirmation report.

SPEAKER ADAMS: The report is adopted. Mr. Clerk, we'll move to Final Reading. Members, you should return to your seats in preparation for Final Reading. Mr. Clerk, the first bill. Mr. Clerk, the first vote is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 41 ayes, 1 nay to dispense with the at-large reading, Mr. President.

SPEAKER ADAMS: The at-large reading is dispensed with. Mr. Clerk, please read the title.

CLERK: (Read title of LB153.) [LB153]

SPEAKER ADAMS: All provisions of law relative to procedure having been complied with, the question is, shall LB153 pass? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB153]

CLERK: (Record vote read, Legislative Journal pages 1018-1019.) 45 ayes, 0 nays, 4 excused and not voting, Mr. President. [LB153]

SPEAKER ADAMS: LB153 passes. We'll now proceed to LB153A. [LB153 LB153A]

CLERK: (Read LB153A on Final Reading.) [LB153A]

SPEAKER ADAMS: All provisions of law relative to procedure having been complied with, the question is, shall LB153A pass? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB153A]

CLERK: (Record vote read, Legislative Journal page 1019.) 45 ayes, 0 nays, 4 excused and not voting, Mr. President. [LB153A]

SPEAKER ADAMS: LB153A passes. We'll now proceed to LB55. [LB153A LB55]

CLERK: (Read LB55 on Final Reading.) [LB55]

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SPEAKER ADAMS: All provisions of law relative to procedure having been complied with, the question is, shall LB55 pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB55]

CLERK: (Record vote read, Legislative Journal page 1020.) 45 ayes, 0 nays, 4 excused and not voting, Mr. President. [LB55]

SPEAKER ADAMS: LB55 passes with the emergency clause attached. We will now proceed to LB79, and Mr. Clerk, the first vote is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB55 LB79]

CLERK: 38 ayes, 3 nays, Mr. President, to dispense with the at-large reading. [LB79]

SPEAKER ADAMS: The at-large reading is dispensed with. Mr. Clerk, please read the title. [LB79]

CLERK: (Read title of LB79.) [LB79]

SPEAKER ADAMS: All provisions of law relative to procedure having been complied with, the question is, shall LB79 pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB79]

CLERK: (Record vote read, Legislative Journal page 1021.) 45 ayes, 0 nays, 4 excused and not voting, Mr. President. [LB79]

SPEAKER ADAMS: LB79 passes with the emergency clause attached. We will now proceed to LB79A. [LB79 LB79A]

CLERK: (Read LB79A on Final Reading.) [LB79A]

SPEAKER ADAMS: All provisions of law relative to procedure having been complied with, the question is, shall LB79A pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB79A]

CLERK: (Record vote read, Legislative Journal page 1022.) 45 ayes, 0 nays, 4 excused and not voting, Mr. President. [LB79A]

SPEAKER ADAMS: LB79A passes with the emergency clause attached. We will now proceed to LB158. And, Mr. Clerk, the first vote is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB79A LB158]

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CLERK: 39 ayes, 2 nays, Mr. President, to dispense with the at-large reading. [LB158]

SPEAKER ADAMS: The at-large reading is dispensed with. Mr. Clerk, please read the title. [LB158]

CLERK: (Read title of LB158.) [LB158]

SPEAKER ADAMS: All provisions of law relative to procedure having been complied with, the question is, shall LB158 pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB158]

CLERK: (Record vote read, Legislative Journal pages 1022-1023.) 45 ayes, 0 nays, 4 excused and not voting, Mr. President. [LB158]

SPEAKER ADAMS: LB158 passes. We will now proceed to LB203. [LB158 LB203]

CLERK: (Read LB203 on Final Reading.) [LB203]

SPEAKER ADAMS: All provisions of law relative to procedure having been complied with, the question is, shall LB203 pass? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB203]

CLERK: (Record vote read, Legislative Journal page 1023.) 45 ayes, 0 nays, 4 excused and not voting, Mr. President. [LB203]

SPEAKER ADAMS: LB203 passes. We will now proceed to LB230 and Mr. Clerk, the first vote is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB203 LB230]

CLERK: 39 ayes, 4 nays, Mr. President, to dispense with the at-large reading. [LB230]

SPEAKER ADAMS: The at-large reading is dispensed with. Mr. Clerk, please read the title. [LB230]

CLERK: (Read title of LB230.) [LB230]

SPEAKER ADAMS: All provisions of law relative to procedure having been complied with, the question is, shall LB230 pass? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB230]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1024.) Vote is 44 ayes, 0 nays, 2 present and not voting, 3 excused and not voting, Mr. President. [LB230]

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SPEAKER ADAMS: LB230 passes. We will now proceed to LB263 and Mr. Clerk, the first vote will be to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB230 LB263]

ASSISTANT CLERK: 39 ayes, 2 nays to dispense with the at-large reading, Mr. President. [LB263]

SPEAKER ADAMS: The at-large reading is dispensed with. Mr. Clerk, please read the title. [LB263]

ASSISTANT CLERK: (Read title of LB263.) [LB263]

SPEAKER ADAMS: All provisions of law relative to procedure having been complied with, the question is, shall LB263 pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB263]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1025-1026.) The vote is 45 ayes, 0 nays, 1 present and not voting, 3 excused and not voting, Mr. President. [LB263]

SPEAKER ADAMS: LB263 passes with the emergency clause attached. We will pass over LB265 and will now proceed to LB271. [LB263 LB271]

ASSISTANT CLERK: (Read LB271 on Final Reading.) [LB271]

SPEAKER ADAMS: All provisions of law relative to procedure having been complied with, the question is, shall LB271 pass? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB271]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1026.) The vote is 33 ayes, 8 nays, 5 present and not voting, 3 excused and not voting, Mr. President. [LB271]

SPEAKER ADAMS: LB271 passes. We will now proceed on to LB388. [LB271 LB388]

ASSISTANT CLERK: (Read LB388 on Final Reading.) [LB388]

SPEAKER ADAMS: All provisions of law relative to procedure having been complied with, the question is, shall LB388 pass? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB388]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1027.) The vote is 44

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ayes, 0 nays, 2 present and not voting, 3 excused and not voting, Mr. President.
[LB388]

SPEAKER ADAMS: LB388 passes. We will now proceed to LB495 and Mr. Clerk, the first vote will be to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB388 LB495]

ASSISTANT CLERK: 39 ayes, 2 nays to dispense with the at-large reading, Mr. President. [LB495]

SPEAKER ADAMS: The at-large reading is dispensed with. Mr. Clerk, please read title. [LB495]

ASSISTANT CLERK: (Read title of LB495.) [LB495]

SPEAKER ADAMS: All provisions of law relative to procedure having been complied with, the question is, shall LB495 pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. We need to pause for a moment. We are now in a position where we can vote. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB495]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1028.) The vote is 46 ayes, 0 nays, 1 present and not voting, 2 excused and not voting, Mr. President. [LB495]

SPEAKER ADAMS: LB495 passes with the emergency clause attached. We will now proceed to LB495A. [LB495 LB495A]

ASSISTANT CLERK: (Read LB495A on Final Reading.) [LB495A]

SPEAKER ADAMS: All provisions of law relative to procedure having been complied with, the question is, shall LB495A pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB495A]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1028-1029.) The vote is 47 ayes, 0 nays, 2 excused and not voting, Mr. President. [LB495A]

SPEAKER ADAMS: LB495A passes with the emergency clause attached. We will now proceed to LB528. [LB495A LB528]

ASSISTANT CLERK: (Read LB528 on Final Reading.) [LB528]

SPEAKER ADAMS: All provisions of law relative to procedure having been complied

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with, the question is, shall LB528 pass? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB528]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1029-1030.) The vote is 37 ayes, 9 nays, 1 present and not voting, 2 excused and not voting, Mr. President. [LB528]

SPEAKER ADAMS: LB528 passes. We will now proceed to LB612, and Mr. Clerk, the first vote is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB528 LB612]

ASSISTANT CLERK: 36 ayes, 5 nays to dispense with the at-large reading, Mr. President. [LB612]

SPEAKER ADAMS: The at-large reading is dispensed with. Mr. Clerk, please read the title. [LB612]

ASSISTANT CLERK: (Read title of LB612.) [LB612]

SPEAKER ADAMS: All provisions of law relative to procedure having been complied with, the question is, shall LB612 pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB612]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1030-1031.) Vote is 47 ayes, 0 nays, 2 excused and not voting. [LB612]

SPEAKER ADAMS: LB612 passes with the emergency clause attached. We'll now proceed to LB629. [LB612 LB629]

ASSISTANT CLERK: (Read LB629 on Final Reading.) [LB629]

SPEAKER ADAMS: All provisions of law relative to procedure having been complied with, the question is, shall LB629 pass? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB629]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1031.) Vote is 47 ayes, 0 nays, 2 excused and not voting, Mr. President. [LB629]

SPEAKER ADAMS: LB629 passes. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LB153, LB153A, LB55, LB79, LB79A, LB158, LB203, LB230, LB263, LB271, LB388, LB495, LB495A, LB528, LB612, LB629. Mr. Clerk, we'll proceed to General File. [LB153 LB153A LB55 LB79 LB79A LB158 LB203 LB230 LB263 LB271 LB388 LB495 LB495A LB528 LB612 LB629]

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ASSISTANT CLERK: Mr. President, LB553 was introduced by Senator Nordquist. (Read title.) Bill was read for the first time on January 23. It was referred to the Nebraska Retirement Systems Committee. That committee placed the bill on General File with committee amendments. (AM802, Legislative Journal page 939.) [LB553]

SENATOR KRIST PRESIDING

SENATOR KRIST: Thank you, Mr. Clerk. Senator Nordquist, you can open now on LB553. [LB553]

SENATOR NORDQUIST: Thank you, Mr. President and members. LB553 is a bill that's largely focused on addressing pension shortfalls in our school employees retirement plan. Just to refresh your memory, not that long ago, in 2008 and 2009, our defined benefit and cash balance plans lost over \$2 billion of assets during poor market returns in 2008 and 2009. Since then we've had a few years that have exceeded the assumed rate of return, although last year we only saw a 1 percent return on our investments. This year we're looking much, much stronger. Because of that, we went...we came into this session over the biennium with a \$108 million pension liability that we needed to come up with in...it would have been a General Fund obligation to keep our pension plans on the right path. Just a little longer than a decade ago in 2000 this plan was 112 percent funded, but unfortunately we, as many have deemed it or termed it "the lost decade of the 2000s," followed by toward the end of that decade including some very deep loss years, we are now at 77 percent funded. And I do...you know, 77 percent is below what is considered kind of the healthy rate of 80 percent. Most actuaries would say at 80 percent you're still kind of healthy. That 77 percent number, while it doesn't sound great, still puts us in about the top 10 percent of states. But we did need to take action, and thankfully we have great partners in our state to work with. The education community came to the table, the State Education Association, the Council of School Administrators, the school boards all stepped up and said, we are willing to take this on. We did not and will not see the knock-down-drag-out fights that we've seen in other states around the country when it has come to pension issues. I just want to remind members that we have a statutory obligation in 79-966.01 that puts this burden on the state. If the plan does not meet its actuarial required contributions, the burden is the state's burden. And our courts have also interpreted our pensions that way, so this is something we have to do. And if we don't pass a bill to make changes, we would have had a \$108 million liability that we would have had to put General Fund dollars towards. And unfortunately, Governor Heineman, in his preliminary budget, didn't include anything, any solution to this problem at all. Had we gone down that path, we would have been going down the path of Illinois and those states that have ignored their pension obligations to the point now that they are in deep, deep, deep financial trouble. We don't do that here. We meet our obligations. So instead of coming up with the \$100 million General Fund obligation that we would have had to include in our budget, we sat

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down with the interested parties. We actually started sitting down with them in the summer, knowing that this was coming, and started working out an agreement. This plan with the amendment is both a short-term and a long-term solution to our state pension issues. And while we do have other plans, the school employees plan certainly is the largest, both in terms of members and dollars and potential liabilities that need to be addressed. With a little foresight a few years ago, the committee asked the Public Employees Retirement System to contract with our actuary to come up with a 30-year model that we could enter in variables, including number of years...or the age of the members, the number of years used to determine the final average salary, a COLA amount, employee contribution rates, employer contribution rates, state matches, changing the amortization method. So that tool gave us the ability to start talking about reforming our pension plan. And using those model calculations over the interim and the first part of this session, we were able to have really in-depth discussions about different aspects of the plan. We asked the members, the membership groups, and they asked their members what were the variables that they were willing to put on the table and discuss, which ones their memberships felt strongly about and they weren't willing to enter into, and that's ultimately how we came to the package that we're at. And when I said that we have a statutory obligation and the courts have interpreted a constitutional obligation to fund these plans, since the market downturn of '08 and '09 we have really, as I said, had great partners that have stepped to the table to help us with this, and the teachers, the school employees, the administrators, and the schools themselves have come up...they've come up over the...since '09 with about 90 percent of the additional funding towards the plan. They know the state was in difficult budget times, we weren't going to be able to come up with it all, and the state's share was less than 10 percent and they came up with over 90 percent of the additional money needed to keep the plan solvent. And I think that's important to remember as we enter into this discussion. And again, even with these changes we're making, they are still going to be carrying the significant burden of this plan. This plan increases the burden on really everyone at the table, the current teachers, new teachers, schools, and the state, and we worked in partnership to come up with this. So as introduced in LB553, first it would create a new tier of benefits for new employees, starting July 1, 2013. For new employees in the new tier, their final average salary, which is a variable that goes into their benefit calculation...it used to be calculated on their highest three years of salary. We have extended that to their highest five years. So naturally, you're adding two lower years into that number; that will bring down that number. Some people say, well, why didn't you change the multiplier effect, which is a 2 percent multiplier in the formula, why didn't you bring that down? Mathematically, it has the same effect as if we were to just bring that multiplier down to 1.9 as opposed to a 2 percent multiplier. Those numbers were just reducing the number that goes into the calculation. I think this is better for one reason. We've done a lot over the past--certainly as my time as Chair, previously when I worked at the research analyst for this committee--done a lot to prevent spiking in this plan. This isn't like, you know, the horror stories we hear in other pension plans where there's spiking. We've done a lot to prevent that, to prevent people from ramping up their salary

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in the last few years. But even with those, you know, there is growth in the last few years. Expanding this to a little longer period of time just makes it more on track. People will get out more in line with what they put in over the course of their career. So that's why I like this change rather than just changing the multiplier. For current employees we do not change benefits. However, current employees and new employees are going to be contributing 9.78 percent of pay. Back in 2009, when we first started trying to address these significant loss returns, school employees were contributing 7.28 percent of pay. We increased their contribution rate to 9.78 and put a sunset on it, and that was supposed to sunset in 2017. [LB553]

SENATOR KRIST: One minute. [LB553]

SENATOR NORDQUIST: We've all realized that that's not going to happen. We need these additional contributions coming into the plan. So we've removed the sunset. So now school employees are going to continue contributing 9.78 percent of pay. School districts match 101 percent of that, so they contribute 9.88 percent of pay. The state will increase its contribution. We contribute 1 percent of total compensation to the plan right now. We are going to increase that to 2 percent. That helps us in the long term maintain these plans. Even if we do not hit the assumed rate of return, which is 8 percent--our actuary and investment advisors are saying it's likely we might come in a little lower than that--this additional contribution from the state will prepare us for that going forward. And then also I should have mentioned for the new employees... [LB553]

SENATOR KRIST: Time, Senator. [LB553]

SENATOR NORDQUIST: Thank you. [LB553]

SENATOR KRIST: As the Clerk stated, there are amendments from the Retirement Committee. Senator Nordquist, as the Chair of the committee, you're recognized to open on the amendments or continue. [LB553]

SENATOR NORDQUIST: Thank you. I'll continue on that. For new employees, we also did reduce their cost-of-living adjustment from 2.5 percent cost of living, COLA, to a 1 percent COLA. And then finally kind of the short-term aspect, you know, the contribution rates, those don't have effect for a few more years because we already are at 9.78. The benefit changes don't have much effect on the plan because...until new employees start coming in and bringing down the liabilities of the plan. So we did have to make a change that gives us some short-term breathing room, and what we did, it's a change in our amortization method from a level dollar amortization method to what most public pension plans use and that's a level percent of pay. Essentially, the level dollar that we do now, we say we owe this amount as our unfunded liability of the plan. We divide that up over 30 years and make 30 even payments. Well, those of you that are familiar with the time value of money, that last payment is not worth the same in today's dollars as

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that first payment was. So changing to percent of pay, our amount will grow as salaries grow over time, but that is offset by the influx of new employees coming in at a lower benefit. So when this is all modeled out, and I believe we have distributed a model from our actuary both by e-mail and I think at least a summary of it, when it's all modeled out we eliminate our liability in the first biennium and it significantly brings down the long-term liability. And pretty much in most years, if we hit 8 percent, we'll certainly be in good shape. Even if we come in lower than that, this sets us up well for that. The committee amendment now includes all of these changes that I talked about for our state school employees plan. We also made a change. It doesn't have much impact but I think the committee wanted this in the bill for kind of a more of a policy value piece. Currently, you have to work 15 hours a week to be qualified for the plan. This, the committee amendment, takes that to 20 hours a week. We also made all of these changes for the Omaha plan. Omaha has a separate employees' plan. We made all these changes for them as well. And we also included a change in this amortization method change, as I mentioned, both for the State Patrol plan and for the judges plan. So we put all three of our defined benefit plans on the same amortization method. That will simplify things for the actuary and we think it is the more appropriate policy. So the fact of the matter is we have a \$108 million obligation. This significantly reduces it. Our cost is in the budget right now. We have a \$20 million increase for that state share that we're increasing our contribution from 1 percent to 2 percent. That is already accounted for now in the budget. And so this bill ultimately, I've been told by the Fiscal Office, they are going to do a revised fiscal note and show that this bill would show a negative General Fund impact...or, I should say, a positive General Fund impact of about \$70 million to \$80 million, because if we do not pass this bill we will have to put \$70 million to \$80 million of General Funds into our defined benefit pension plan. Thank you, Mr. President. [LB553]

SENATOR KRIST: Thank you, Senator Nordquist. You've heard the opening. Those wishing to speak, Senators Scheer, Davis, Carlson, and Chambers. Senator Scheer, you are recognized. [LB553]

SENATOR SCHEER: Thank you, Mr. President. If I could ask Senator Nordquist to yield for a second, please. [LB553]

SENATOR KRIST: Senator Nordquist, will you yield? [LB553]

SENATOR NORDQUIST: Yes. [LB553]

SENATOR SCHEER: Thank you, Senator. And it's more of a question of clarification or maybe explanation, and I'm not that familiar with the teachers retirement program, is when you were looking at the deficit, is that...does the program allow you or did you ever have any conversation about changing the new classification away from a defined benefit program, or is that all one portion so that it could not have been separated out?

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I'm just asking for clarification. [LB553]

SENATOR NORDQUIST: Yeah, whether or not we looked at changing to like a defined contribution plan or something? Yeah, and Senator Nelson actually brought bills to look at that. It's something the committee has looked at for a long time. There are a few issues with it. First, talking, we've had testimony for years now from school administrators who say at some point in a teacher's career this becomes a significant retention tool; that they get five, seven years in and the teachers are like, hey, there's a decent retirement plan waiting for me at the end. I will say, you know, this isn't a pot of gold at the end of the rainbow. The average benefit, monthly benefit, is \$1,700 a month in our state, so it's not like people are fleecing the state or anything like that. The other issues come in terms of dollars and that is if you were to cut off today and say we were going to go to a defined contribution plan, all current members who are paying in, they would start getting an account over here and all of their money would go over here and would still leave us with a significant unfunded liability for everyone who has come out of the plan now. Current...our actuary tells us that about half of the contribution that current employees are making, about half of that goes to pay liabilities that are accrued, and the benefits that they're going to receive are really only about half of the money they're paying in. [LB553]

SENATOR SCHEER: So simplistically stated then,... [LB553]

SENATOR NORDQUIST: Yeah. [LB553]

SENATOR SCHEER: ...in order for the current system to survive, it has to have the infusion of the additional dollars from the new members as well. [LB553]

SENATOR NORDQUIST: That's right. Yeah. Yep. [LB553]

SENATOR SCHEER: Okay. Thank you. [LB553]

SENATOR NORDQUIST: Yep. [LB553]

SENATOR KRIST: Say it again? [LB553]

SENATOR SCHEER: How much time do I have left? [LB553]

SENATOR KRIST: Two thirty. [LB553]

SENATOR SCHEER: Okay. If I could, I would like to yield it to Senator Kintner. [LB553]

SENATOR KRIST: Senator Kintner, you are yielded 2 minutes and 30 seconds. [LB553]

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SENATOR KINTNER: Thank you, Mr. President. Senator Nordquist, can you yield for a question? [LB553]

SENATOR NORDQUIST: Yes. [LB553]

SENATOR KINTNER: By the way, I'm not opposing this or anything when I have questions. Could we go to a hybrid program that would guarantee some returns but protect the taxpayers and the school districts a little better? Is that a possibility? [LB553]

SENATOR NORDQUIST: That certainly is a possibility and that is what Senator Nelson's bills actually did. His bills would have taken us to a cash balance plan, which is what our state employees have. You run into the similar issue though of we use current contributions to kind of pay off the liability we have. And once you start moving people out into their separate account, even though all the money in the cash balance is managed together they still have a separate account and they're entitled to everything that goes in there, you still have this huge liability that has no money going towards it and the state would have to General Fund that for probably 30 years, and it's probably \$150 million a year. [LB553]

SENATOR KINTNER: It looks like, Senator Nordquist, that we're going to be putting money in for the next few years. I don't know if it's going to be 30. But considering that, would it make sense? If we're going to put money in either way, why don't we wean the new employees off of this and get into a sustainable program long term? [LB553]

SENATOR KRIST: One minute. [LB553]

SENATOR NORDQUIST: Well, I would say two reasons. The retention issue I think is one of the biggest. We know that defined benefit plans keep educated, trained teachers on the job. It serves that purpose. I would also make the argument that...and we've seen, we've heard some testimony in our committee about this and there's been national research done, that defined benefit plans on the back end do save the state some money, because when you have retirees who are getting a consistent monthly paycheck, they're not going to run out of assets at some point and depend on Medicaid, on food stamps, on all other social supports. So there is some argument to be made that defined benefit plans, when people have them, they keep them out of poverty and keep them out of relying on other government services on the back end. [LB553]

SENATOR KINTNER: Thank you very much. That's very helpful. Thank you, Mr. President. [LB553]

SENATOR KRIST: Thank you, Senator Kintner. Senator Davis, you're recognized. [LB553]

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SENATOR DAVIS: Thank you, Mr. President, members of the body. I am the Vice Chair of the committee and I have to say that I'm involved in two committees which are extremely complicated, one being Retirement and one being Education. I'm not sure which one is the most difficult to grasp. But I just rise in support of this bill. I think Senator Nordquist and the committee last summer did a lot of work to try to address the problems that had developed because of the collapse in the economy in 2008-09. And while it's not a solution that I think is something that we all want to cough up funding, if we don't address the issue we're going to have a huge unfunded liability that we're going to face down the road. And with that said, I would yield the rest of my time to Senator Nordquist, if he would like to use it. [LB553]

SENATOR KRIST: Senator Nordquist, you're yielded 4 minutes and 10 seconds. [LB553]

SENATOR NORDQUIST: Thank you, Mr. President. And you know, some folks have questioned the additional state contribution rate, do we really need it? Can we just appropriate on a year-to-year basis what the required amount is? And we could. My point is though, as we look into the future and future budgets, I think it's more responsible for this body to know, to kind of put away that \$20 million a year towards this plan rather than, you know, counting on that money and just hoping that we have that money there down the road, because we could get into situations and say, you know, where, oh one year, well, we don't need all this; you know, let's spend it on this policy or let's cut taxes over here and not fully fund our pension plan. I think it's much more responsible for the state to say today we are making a long-term commitment to get this plan back as soon as we can to 100 percent funded and everyone...and the burden really is falling now on our educators. I mean most of the burden is coming from less benefits that new employees are going to be receiving and higher contribution levels for all employees into the future. Thank you. [LB553]

SENATOR KRIST: Thank you, Senator Nordquist. Senator Carlson, you are recognized. [LB553]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I would like to address some questions to Senator Nordquist, if he would yield. [LB553]

SENATOR KRIST: Senator Nordquist, will you yield? [LB553]

SENATOR NORDQUIST: Yes. [LB553]

SENATOR CARLSON: Senator Nordquist, what you handed out to us is helpful. I think there's a little mix in here between what applies only to all new employees and what applies to current employees. First of all, the final salary changed to five years rather than three. Obviously that's...is that new employees? [LB553]

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SENATOR NORDQUIST: Yes. [LB553]

SENATOR CARLSON: And so current employees that doesn't apply to. They're still on the three year? [LB553]

SENATOR NORDQUIST: Yes. [LB553]

SENATOR CARLSON: Okay, but that's...I like that suggestion. I think that's a good improvement. And the COLA from 2.5 percent to 1 percent, that applies to new people as they take benefits. Is that correct? [LB553]

SENATOR NORDQUIST: That's right. So, you know, that wouldn't apply until they start receiving their benefits. But that is correct, it would also only be for new employees. [LB553]

SENATOR CARLSON: But somebody that's currently receiving benefits stays on the 2.5 percent? [LB553]

SENATOR NORDQUIST: Yes,... [LB553]

SENATOR CARLSON: Okay. [LB553]

SENATOR NORDQUIST: ...the reason being, you know, the courts have kind of...our courts have set a precedent so far and, you know, there's future litigation I'm sure down the road that will clarify things for us, hopefully no time soon, but that we cannot reduce benefits on current employees without some offset and that's the reason. [LB553]

SENATOR CARLSON: Okay. I understand that. Now let's go down to eliminate the sunset of the 9.78 employee contribution rate. That's currently what teachers are paying, correct? They're contributing 9.78. [LB553]

SENATOR NORDQUIST: That's right, and it was supposed to sunset in 2017 and this bill would remove that and keep them at that rate. [LB553]

SENATOR CARLSON: So current employees are paying or are contributing the 9.78, as will new employees, correct? [LB553]

SENATOR NORDQUIST: That is correct. [LB553]

SENATOR CARLSON: And then the district matches with a little bit better than that, and you said...what was it? [LB553]

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SENATOR NORDQUIST: It's 101 percent so it's 9.88. [LB553]

SENATOR CARLSON: Okay. Okay. And then the state contribution from 1 percent to 2 percent, and that will be on new as well as current. [LB553]

SENATOR NORDQUIST: Yep, that would be. So basically the state says what's the total compensation, we do 1 percent of that, now we're going to be doing 2 percent of that. [LB553]

SENATOR CARLSON: Okay. And you take the whole thing, I would say this is a very generous retirement plan. However, the employees are contributing a significant portion. So I don't think it's a bad thing that in a sense they're rewarded for that. There are a lot of plans in effect that the employee contribution is not as high as what this is, and I can accept that. And then increasing the eligibility for membership from 15 to 20 hours, there's a lot of plans in effect where the requirement is 30 hours. Why was it 15 and why is it only going to 20? [LB553]

SENATOR NORDQUIST: Uh-huh. Well, we looked at kind of what the standard is in some other plans around the country, and that's kind of what it is. The actuary said it will have minimal impact on the amount, but it's kind of who gets in the front door. Because if you're only working 20 hours a week and paying your share in, you're not going to receive, you know, as much of a benefit on the back end. [LB553]

SENATOR CARLSON: Okay. And one other question. Is there a lump-sum cash option for a retiree? [LB553]

SENATOR NORDQUIST: Not with this plan. [LB553]

SENATOR CARLSON: Okay, so that, as they look at what their options are at retirement, that isn't one of them. [LB553]

SENATOR NORDQUIST: That is...I'm almost positive on that. I will double-check... [LB553]

SENATOR CARLSON: Okay. [LB553]

SENATOR NORDQUIST: ...and get back to you. [LB553]

SENATOR CARLSON: All right. Thank you, Senator Nordquist, and I do support LB553 and AM802. Thank you for your work on it. [LB553]

SENATOR KRIST: Thank you, Senator Carlson and Senator Nordquist. Senator Chambers, you are recognized. [LB553]

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SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I support this bill. I would like to ask Senator Janssen a question or two. [LB553]

SENATOR KRIST: Senator Janssen, will you yield to Senator Chambers? [LB553]

SENATOR JANSSEN: Yes. [LB553]

SENATOR CHAMBERS: Senator Janssen, are you a baseball fan? [LB553]

SENATOR JANSSEN: Very much so. [LB553]

SENATOR CHAMBERS: Did you used to play baseball? [LB553]

SENATOR JANSSEN: I did. [LB553]

SENATOR CHAMBERS: I knew that. Do you want to know how I knew? [LB553]

SENATOR JANSSEN: Maybe. (Laughter) [LB553]

SENATOR CHAMBERS: That's not a definitive answer. Are you curious as to how I know? [LB553]

SENATOR JANSSEN: I'm very curious, yes. [LB553]

SENATOR CHAMBERS: Sometimes, when it comes to me, you come from out of left field with a question, so I figured you must play baseball. (Laughter) But at any rate, are you in favor of this bill? [LB553]

SENATOR JANSSEN: I'm listening to it. I'm generally in favor with it. Actually, I will vote for it, yes. [LB553]

SENATOR CHAMBERS: Senator Janssen, how many pages does this bill have? We have an amendment that replaces the bill. How many pages does that amendment have? [LB553]

SENATOR JANSSEN: Slightly under 2,900 and more than 1. [LB553]

SENATOR CHAMBERS: Have you read all of the pages of this bill? [LB553]

SENATOR JANSSEN: I have not. [LB553]

SENATOR CHAMBERS: Huh? [LB553]

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SENATOR JANSSEN: No. [LB553]

SENATOR CHAMBERS: Senator Janssen, you said you'll probably vote for this bill, correct? [LB553]

SENATOR JANSSEN: Yes. [LB553]

SENATOR CHAMBERS: Part of that probably goes to the confidence, and I'm not being sarcastic now, that all of us will repose in committees whose expertise relates to a bill that might be very detailed and very complex. Is that a fair statement? [LB553]

SENATOR JANSSEN: Absolutely. I've served with Senator Nordquist for some time. I've spoken to him briefly. But Senator Mello had a longer conversation with him pertaining to this particular bill. [LB553]

SENATOR CHAMBERS: I can see that Senator Kintner is waiting to exhale, but I detect the palpitations. But I'm not going to ask him the same questions. Thank you, Senator Janssen. That's all that I have. But this is one of those bills where I've listened. I haven't read all the bill but I actually listened when Senator Nordquist was giving us some information at an earlier occasion. And when these bills come forth, it is not the most fun type of legislation to contend with when you're a member of a committee, certainly when you're a Chair. So when I make certain broad statements, I will continue to make them, in the way of criticism, I will also acknowledge so that it's clear that I'm aware of what is going on in committees and the work that has to be done. Not only are there figures, actuarial tables that have to be looked at, but policy simultaneously has to be taken into consideration. And there must be a rationale given to be able to answer a question of the kind that "Parson" Carlson asked: Why are you going from 15 hours to 20 hours rather than to the full 30? I suppose if my friend Senator Kintner asked, he would say: Well, I'd like to ask this question, Senator Nordquist; you're going from 15 to 20; well, 15 plus 20 is 35; why didn't you go to 35? I'm going to see if he asks that question. But having unburdened myself...oh, I'd like to ask...oh. (Laugh) I'm not sure what the signals are that I'm getting so I think I'll just leave well enough alone. Thank you, Mr. President. [LB553]

SENATOR KRIST: Thank you, Senator Chambers. Senator Schumacher, you are recognized. [LB553]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. Would Senator Nordquist yield to some questions? [LB553]

SENATOR KRIST: Senator Nordquist, will you yield? [LB553]

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SENATOR NORDQUIST: Yes. [LB553]

SENATOR SCHUMACHER: Senator Nordquist, just so I can get my head around this a little bit, we had a defined benefit contribution plan and does that mean that the employees get a retirement check based upon a calculation somebody did at one time that says, look, we're going to get a certain rate of interest on this much principal, and this is going to be able to fund the average person out in retirement at so much dollars per month, adjusted for inflation or something? Is that basically the idea? [LB553]

SENATOR NORDQUIST: That is, and we have an actuarial analysis done on those calculations every year to see where we're at. [LB553]

SENATOR SCHUMACHER: And the actuaries, when they sit down and count the beans, must have at some point counted the beans and figured out that everything was going to be hunky-dory and the employee was contributing some money and the state was contributing some money and the employer throwing a little in the pot. And if interest rates and return on investment was as they projected it to be, according to whatever projection was in vogue the day they did it, that everything would cash flow without us having to ante up extra month. Is that basically true? [LB553]

SENATOR NORDQUIST: Yeah, there have been actuarial reports done in the past that, as I said, in 2000 it showed, you know, we were 112 percent funded, so. [LB553]

SENATOR SCHUMACHER: Okay. So those actuary reports are, at best, in this economy--the new economy, the post 2008 economy, whatever we want to call it--hunches by somebody. Otherwise, we wouldn't be being asked to put in \$16 million in one pop and then turn around the next year and put in \$17 million. Is that true? [LB553]

SENATOR NORDQUIST: I'm sorry, I got pulled aside. So I'm sorry about that. [LB553]

SENATOR SCHUMACHER: Okay. If those actuary, their guesstimates and everything, were on the money, we wouldn't have to be kicking in this particular money at this time. [LB553]

SENATOR NORDQUIST: That's right. I would say the actuary did not foresee the market return of... [LB553]

SENATOR SCHUMACHER: Okay. So we're looking at a measure of error in actuaries here because they don't have any better crystal ball than anybody else. So this money that we're putting in, the \$16 million, are we guaranteed any rate of return on that \$16 million? What are the actuaries telling us we're going to get when we put that into the system? [LB553]

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SENATOR NORDQUIST: There's no guarantee, certainly, but historically with this plan, we've been over 9 percent. Our national investment consultants that work with our Investment Council are telling us we're probably going to be a little less than 8 percent. They gave us a range of...a probability range of it being...I think it's, you know, higher, higher than... [LB553]

SENATOR SCHUMACHER: And when we look at that history, are we looking back into the good old days before 2008? [LB553]

SENATOR NORDQUIST: It's the history of the plan, which this is a 1940-something plan. [LB553]

SENATOR SCHUMACHER: Okay, and so there was a real different world that's based on. [LB553]

SENATOR NORDQUIST: Yeah. [LB553]

SENATOR SCHUMACHER: Ladies and gentlemen, members of the Legislature, people of Nebraska, this looks like we've got a problem. And while we've probably got to pass this particular measure because we've got a statutory obligation, we've got a bill that we got to pay, when you tell people you're going to calculate their retirement on 8 percent in this environment and you make promises to them, that means we're going to be looking at these kind of numbers repeatedly. So when we decide we're rich in a couple weeks and start looking at the budget and pretending that we're going to get a 4.5 percent revenue growth on top of that and pretending that somehow this fixes it, this is just the leading edge of a massive problem. [LB553]

SENATOR KRIST: One minute. [LB553]

SENATOR SCHUMACHER: And while these public employees may have the full faith and credit of the state of Nebraska to back up their plan, there are hundreds of thousands of folks who are in the private sector who do not have such a guarantee. And the baby boomers, just grab your behinds because this is going to be a rough ride. Thank you. [LB553]

SENATOR KRIST: Thank you, Senator Schumacher. (Visitors introduced.) Returning to the debate, Senator Kolowski, you are recognized. [LB553]

SENATOR KOLOWSKI: Thank you, Mr. President. Good morning, fellow senators. I want to stand in support of this bill and I want to thank Senator Nordquist for his leadership. I serve on this committee and there was a great deal of detail that had to go into these negotiations with each of these groups but especially with the teachers. I have heard from a number of teachers in a number of districts concerning the changes

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in the program. They understand what the realities are as far as the financial situation we find ourselves in, and are very willing to make the necessary changes to keep this system afloat at this time. Also as a user of the system, having completed a 41-year career in public education, I know we had a good system. It was upon difficult times from 2008 and on, and I think these changes will be an excellent move to assist these public servants with their teaching careers as they move through the system and move toward retirements themselves. Again, thank you to Senator Nordquist for his assistance in this. And I yield the rest of my time to Senator Nordquist, please. [LB553]

SENATOR KRIST: Senator Nordquist, you're yielded 3 minutes and 39 seconds. [LB553]

SENATOR NORDQUIST: Thank you, Mr. President and members. You know, I certainly understand Senator Schumacher's concerns, you know, with the actuarial reports. We make assumptions but we make the best assumptions that we can, and that includes future investment returns. And when...if those returns don't materialize to the rate that we thought they would, we need to make changes. And that's what we're intending to do here. You know, we trust our Investment Council and their consultants to give us the best information that they have available to them. And with that information, this proposal will put us on a better course going forward. Thank you. [LB553]

SENATOR KRIST: Thank you, Senator Kolowski and Senator Nordquist. Still in the queue: Senator Johnson, Nelson, and Crawford. Senator Johnson, you are recognized. [LB553]

SENATOR JOHNSON: Thank you, Mr. President and to the colleagues. Most of my comments were answered when Senator Carlson spoke, and spoke from the results of the actuary study. I was in a defined benefit plan. When I first started working I was only 19 years old and was not even eligible for it, but I could go in at age 25 and I did, but it was mandatory at age 35, and that's based on a rule. It's called Rule of 85. When I became in the management area of this company, we sailed along pretty good with the defined benefit plan until about the middle '90s, and then we started seeing some deterioration in it with some different rates of interest that companies were receiving in the marketplace; 9/11 really changed the scope of things; and we started making adjustments. We looked at ways to tweak the program. We looked at ways to try and split it, did a lot of study on it. We knew we had an obligation. We had an obligation to our employees. And so we did work through the worst of it. I think probably things are smoothing off now. I do have one question, if Senator Mello would yield. [LB553]

SENATOR KRIST: I don't see Senator Mello, Senator Johnson. Would you like to address... [LB553]

SENATOR JOHNSON: Oh, excuse me. Senator Nordquist, excuse me. [LB553]

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SENATOR KRIST: Senator Nordquist, would you yield for a question? [LB553]

SENATOR JOHNSON: I'll go to him, Senator, yes. [LB553]

SENATOR NORDQUIST: It's all right. It's happened before. It's okay. [LB553]

SENATOR JOHNSON: Yeah. Okay. No, it's not for you, Mello. It's all right. Senator Nordquist, the Rule of 85 I believe applies to teachers. Does it apply to the other retirement plans within the Nebraska system? [LB553]

SENATOR NORDQUIST: I would have to dig through my binder here and double-check. The Patrol has a hard retirement age. I'm going to have to pull it up here. I don't have that memorized. Let me...here we go. The judges, you get full benefits at age 60 with 20 years of service. The Patrol, age 55 with 10 years or 50 with a variable vesting schedule; you have to retire at 60. So they have a little different criteria than the school plan. [LB553]

SENATOR JOHNSON: Okay. Thank you. So there is a plan but it's not necessarily the Rule of 85. [LB553]

SENATOR NORDQUIST: Yeah. [LB553]

SENATOR JOHNSON: One of the things that we had to do when we were making some of those adjustments, we did have the Rule of 85 in place and we had to suspend it for a period of time while we went through the tough schedules trying to make things fit. So again, I compliment the committee on the work you've done and the cooperation with the education system within the state of Nebraska, and I do support the amendment, AM802, and support LB553. Thank you. [LB553]

SENATOR KRIST: Thank you, Senator Johnson, Senator Nordquist, and Senator Mello. Senator Nelson. [LB553]

SENATOR NELSON: Thank you, Mr. President, members of the body. I have some questions for Senator Nordquist, if he will yield. [LB553]

SENATOR KRIST: Senator Nordquist, will you yield? [LB553]

SENATOR NORDQUIST: Yes. [LB553]

SENATOR NELSON: Thank you, Senator Nordquist. On the reverse side of the handout here, the results of the actuarial...and on the other side it's the "Projection of Additional Contributions. [LB553]

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SENATOR NORDQUIST: Yep. [LB553]

SENATOR NELSON: You start at 2012 with the current plan, then it changes at 8 percent and 7 point...and those are bracketed figures as you go along. What are those figures...I've had questions. What are those figures saying? [LB553]

SENATOR NORDQUIST: So those are... [LB553]

SENATOR NELSON: Is that what we're reducing the liability by? [LB553]

SENATOR NORDQUIST: Yeah. Yep. No, no. So those are...those would be positive...a positive benefit to the plan, so we're actually making up ground toward our unfunded liability. And we should, at that point, start seeing our funded ratio of 77 percent start to make ground back towards, you know, where we need to be, you know, try to get it back towards 100 percent funded. [LB553]

SENATOR NELSON: Well, when you get all the way to 2041, under 8 percent...and you've got, as I read it anyway, a negative \$444.9 million. And then at the 7.75 percent, a negative \$423.6 million. Has that reduced our liability? I'm just trying to figure out the presentation here. If, what did you say, \$110 million in the hole right now was it? [LB553]

SENATOR NORDQUIST: For the two-year budget for us to meet our actuarially required contribution, it would be, yeah, \$108 million. [LB553]

SENATOR NELSON: Just for the two-year period. [LB553]

SENATOR NORDQUIST: Yeah. So if you look at...yeah. So if you look at the sheet we're talking about here, if you look under "Current Plan," fiscal year '12 and '13, you add those together and you have a \$108 million liability. [LB553]

SENATOR NELSON: All right. That's the money we have to have available for that period of time to pay the defined benefits? [LB553]

SENATOR NORDQUIST: Yeah, to pay the...the actuary accounts for what does it cost for the benefits that are earned for that year, what is our payment for our unfunded liability. That's the total amount of money we have to come up with. And then they say...they then subtract what we are contributing to the plan, which is the member contribution, the employer contribution, and the state contribution, and then they say, what do you still owe or what are you in surplus of. And that is the amount that we would owe to be able to pay the benefits that are earned in that year and our payment on the unfunded liability. [LB553]

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SENATOR NELSON: So, okay, what we owe and also on our payments on the unfunded liability. [LB553]

SENATOR NORDQUIST: Yeah. [LB553]

SENATOR NELSON: Well, when we get to 2041, down the road, how...where are we with the unfunded liability then? I mean if you can decipher that, are we at zero? I mean are we going to be at a balance where... [LB553]

SENATOR NORDQUIST: Yeah. [LB553]

SENATOR NELSON: ...the money we're putting in is going to pay what we owe? [LB553]

SENATOR NORDQUIST: That's right. So over...we amortize the unfunded liability over 30 years, so we have 30 years of payment, and then at that point where we've got our unfunded liability paid off, and you know we... [LB553]

SENATOR NELSON: So this chart doesn't show that. That's not... [LB553]

SENATOR NORDQUIST: Yeah, that's right. [LB553]

SENATOR NELSON: Yeah. Oh, okay. [LB553]

SENATOR NORDQUIST: So it would be the next...you know, it's shown in that you can see the...under the current plan, if you get to that last year, you see that liability really dropped close to zero, so this is kind of the last year of the payment on essentially our mortgage of our defined benefit plan. The next year we would have no payment left. If all the assumptions hit as we assume, we would have no payment left on that unfunded liability. [LB553]

SENATOR NELSON: Okay. [LB553]

SENATOR KRIST: One minute. [LB553]

SENATOR NELSON: Now I think you used a figure of \$40 million that the state is going to have to contribute with this additional percentage. That's for the biennium. [LB553]

SENATOR NORDQUIST: For this next biennium, we are starting that payment in year two of the biennium, so it's \$20 million and that's...we've put that in, in the Appropriations Committee, and then it will be \$20 million a year after that. [LB553]

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SENATOR NELSON: And that's through infinity or when do you think? Are we talking about we're going to have to go to 2041? [LB553]

SENATOR NORDQUIST: Yeah, we didn't put a hard sunset on it. And all these assumptions do assume it, that that amount stays in there. But, you know, at some point, depending on market returns, that amount along with working with the teachers, I'm sure they would say, you know, this 9.78 percent amount is pretty high and... [LB553]

SENATOR KRIST: Time, Senators. [LB553]

SENATOR NORDQUIST: ...I think it would be in agreement to work that down. [LB553]

SENATOR NELSON: Thank you, Senator Nordquist. Thank you, Mr. President. [LB553]

SENATOR KRIST: Thank you, Senator Nelson and Senator Nordquist. And just a reminder, colleagues, sidebars are encouraged but your inside voice should probably be used. Senator Crawford, you are recognized. [LB553]

SENATOR CRAWFORD: Thank you, Mr. President. And thank you, Senator Nordquist and all the members of the committee, for your hard work on this bill. And also I appreciate the hard work of all the stakeholders who came to the table and are making sacrifices to make sure that our retired teachers can count on their pensions. I just wondered if you would clarify one point that's made in the fiscal note. On the fiscal note it says: The stricken sunset for the school budget exclusion could have an impact on TEEOSA school aid in fiscal year 2017-2018. So I just wondered if you could clarify what that means or what that means for us as we face this, this bill? [LB553]

SENATOR KRIST: Senator Nordquist, will you yield? [LB553]

SENATOR NORDQUIST: Yes. So thank you, Senator Crawford. In the amendment we strike the sunset so there is an exclusion when it comes to TEEOSA. So the schools, when the teachers are contributing 7.28 percent of pay, the schools are contributing 7.35 percent of pay. What we did in 2009 so not to affect TEEOSA, we said any required contribution above that would be excluded from General Fund operating expenditures. Thank you. So we are not...if we included that, the additional amount that schools were paying towards the retirement plan would drive up their GFOE and, therefore, drive up the cost of TEEOSA. So we exclude everything above the rate, the amount that it was in 2009 when we worked with Senator Adams and then-Chairman Pankonin to address the pension plan. So that is kind of the base, and everything above that is excluded so it would not have a fiscal impact on TEEOSA. So there would be a revised fiscal note I think that would maybe address that a little differently... [LB553]

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SENATOR CRAWFORD: So that... [LB553]

SENATOR NORDQUIST: ...upon the adoption of the amendment. [LB553]

SENATOR CRAWFORD: So do I understand correctly that what that does is it means that the extra money that the schools would need to kick in does not count against them in future TEEOSA distributions? Is that correct? [LB553]

SENATOR NORDQUIST: It would not count...it would not grow...the growth in their GFOE because of that would not...it wouldn't benefit them in TEEOSA essentially, yeah. [LB553]

SENATOR CRAWFORD: Thank you so much. I appreciate that. [LB553]

SENATOR KRIST: Thank you, Senator Crawford and Senator Nordquist. Seeing no one else in the queue, Senator Nordquist, you are recognized to close on the committee amendments. [LB553]

SENATOR NORDQUIST: Thank you, Mr. President and members. I appreciate the thoughtful discussion. Sometimes we don't get that on retirement bills, so that was very nice. This bill, as I said, has been a work in progress for quite a while with all the interested parties. I believe it puts us on a more sustainable path for our pension plans and really appreciate the compromises that were made to get us to this point. Thank you. [LB553]

SENATOR KRIST: Thank you, Senator Nordquist. You've heard the closing on the committee amendments. The question is, shall the committee amendments to LB553 be adopted? All those in favor vote aye; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB553]

ASSISTANT CLERK: 35 ayes, 0 nays on the adoption of committee amendments. [LB553]

SENATOR KRIST: The amendment is adopted. Discussion on the...sorry. Senator Larson, you are recognized. [LB553]

SENATOR LARSON: Thank you, Mr. President. I'm sorry, I was in another meeting so I missed the debate on the committee amendments. But if Senator Nordquist would yield, I'd appreciate it. [LB553]

SENATOR KRIST: Senator Nordquist, will you yield? [LB553]

SENATOR NORDQUIST: Yep. [LB553]

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SENATOR LARSON: Senator Nordquist, it's my understanding that currently the teachers are at 9.78 percent of their contribution, which is up from 7.28 percent, but it was scheduled to sunset back but we're just not sunseting it back. Is that correct? [LB553]

SENATOR NORDQUIST: That's correct. [LB553]

SENATOR LARSON: And it's also my understanding that the employers cover...or will do at 101 percent of that. [LB553]

SENATOR NORDQUIST: That's correct. [LB553]

SENATOR LARSON: And the state was supposed to sunset back to .7 percent, where it was at, but instead it's going from 1 percent to 2 or 1.5? [LB553]

SENATOR NORDQUIST: To 2 percent. [LB553]

SENATOR LARSON: To 2 percent. Colleagues, I have some concerns when it comes to this. Essentially, you have the teachers that aren't sunseting back to the 7.28 percent that they were at. They're just going to stay at the 9.78 percent, so they have a percentage increase. The state has a percentage increase that's going from 1 percent to 2 percent, so the state is actually doubling what it's putting in and the teachers are putting in nothing more than what they currently are. Yes, they were supposed to sunset back, but essentially it's the state that is doubling its investment and the teachers are not at all. And let's not forget that employers have to do 101 percent. Now we're going to have LB407 coming up on the floor very soon, which is TEEOSA. And with it not sunseting back down to 7.28 percent, it's staying at 9.78 percent, that means that this is going to affect TEEOSA moving forward, as long as we have equalization aid, and that's part of the formula. Now we'll have that formula discussion, but it does affect it. And I'm sure Senator Sullivan will speak to something of that nature, that this does affect TEEOSA. So essentially the state is not only doubling what it has to pay, but it will also pay in TEEOSA at a higher rate because we give equalization aid. I think we have to really consider this in the fact that, like I said, teachers are just staying at their current level. They just don't sunset back. Mind you, we as a state were supposed to sunset back, too, to .7, but instead we're doubling to 2 percent. I just...and maybe no more lights will come on. I'm sure actually Senator Sullivan and Senator Mello probably just pressed his light as well and they're going to get on and talk about where it is. But let's have a little more debate possibly of whether or not we need to continue this defined benefit plan or possibly be looking...in which the state is doubling its investment and the teachers just aren't sunseting back; or if we should move forward with possibly looking at a different way to start funding teacher pensions. Thank you, Mr. President. [LB553 LB407]

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SENATOR KRIST: Thank you, Senator Larson. (Visitors introduced.) Back to debate, Senator Mello, you're recognized. [LB553]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. I'll try to do my best to clarify and clear up some information that Senator Larson just brought up. First off, Senator Larson full well knows, as Senator Nordquist mentioned on the floor, the Appropriations Committee started this year's budget \$108 million out of balance because the Governor and his administration did not provide, for the first time in recent history, a bill to deal with the state's legal obligation to our pension system. So the Appropriations Committee started out with a \$108 million hole the first day we met. I'm appreciative of the work that Senator Nordquist has done to bring the opposing sides together behind what is the compromise known as LB553. Something Senator Larson also did not mention and he may not be aware of it, over the last four years, as we've filled the state's pension liability, the employees and the employers filled 90 percent of that hole, where the state picked up 10 percent of the hole. Ultimately, that's not sustainable both for TEEOSA, the employees...the school employees, and that is where ultimately Senator Nordquist took LB553. The reality is this: If we do not pass LB553, we have a \$108 million hole in our budget, something Senator Larson full well knows, something he may not have brought up at Executive hearings of the Appropriations Committee when Senator Nordquist walked our committee multiple times through this bill of why we have to do this. As much as sometimes we don't want to have to do certain aspects of legislation as the budget, this is one that needs to be done legally because we have a legal obligation to do so. Something else Senator Larson did not mention is that new school employees now are created in a separate tier, which is very big if you talk to those who worked with Senator Nordquist on this bill. Legally, we cannot take away benefits from current plan users, so the compromise that was developed was to create a new tier for future employees, which is lesser benefits, which is what compromise is when you're dealing with a very unique pension system. I appreciate the work Senator Nordquist did of trying to bring down the \$108 million cost in our budget down to roughly \$19 million. I'm appreciative of that. Something also that Senator Larson fails to discuss on the floor is the cost if we were not to do this, outside of LB553, and tried to create a new retirement tier, so to speak, for defined benefit plan users. As I mentioned to Senator Kintner off the mike, that would be roughly a \$400 million to \$500 million one-time injection to be able to do that. Colleagues, we do not have the money to do that. The administration knows we do not have the money to do that. That idea, while it may sound good ideologically, is not fiscally responsible and it's not a fiscal reality. Senator Nordquist, I applaud what he's tried to do of making this work for employers, employees, and the state. If this is not done, I don't know what we will do in the budget moving forward because the Appropriations Committee has probably had as much briefing on this as the Retirement Committee, understanding the severity of not fulfilling this legal obligation. I'd urge the body, if you have questions, ask Senator Nordquist. He's an expert in this. He attends committee hearings. He gives

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briefings to members who want it. He understands the issue. He has educated me over the five years I've been in the body, and he's done that to a lot of members who aren't fully aware of our state retirement issues. [LB553]

SENATOR KRIST: One minute. [LB553]

SENATOR MELLO: A hundred and eight million dollars to nineteen million dollars is a big savings, colleagues. We wouldn't have a balanced budget, possibly, without it, so I appreciate his work. I appreciate Vice Chair Davis' work and Kate Allen, the legal counsel for the Retirement Systems Committee, of forging a compromise with parties who are traditionally in opposition. The years I've been here, they have been in opposition with each other when trying to find a solution with the retirement system. And this year Senator Nordquist has been able to fashion both a short-term and a long-term solution to ensure our state meets its legal and financial liability moving forward to the school employee plan. Thank you, Mr. President. [LB553]

SENATOR KRIST: Thank you, Senator Mello. Senator Sullivan, you are recognized. [LB553]

SENATOR SULLIVAN: Thank you, Mr. President and colleagues. And first of all, I do stand in support of LB553. I think we as a state and a state Legislature have to recognize that this is a necessary obligation. It's a contractual obligation that we are obligated to, over time. And as the parts have changed we have had to adjust, which I think we are trying to do in LB553. Now that being said, I think I need to explain the impact of some of these things on TEEOSA and funding for our schools. First of all, think about what is the largest expense for a school district, and that has to be, quite frankly, personnel. And currently, the largest part of the employer contribution for employee retirement funding is covered in what Senator Nordquist referred to as the General Fund operating expenditures. We take those into account when we are determining basic funding for our school districts. Now it has to do specifically with these additional contributions that school district employers have had to deal with. Currently, those are excluded from the budget lids that we put on school districts. It's currently true, those additional contributions are treated as an exception. Those were scheduled to sunset, but now under LB553 those additional contributions will not sunset. They will continue to be treated as allowing school districts to treat them as budget exceptions, but they will not be included in GFOE, General Fund operating expenditures, again as I said, that we use to determine the basic fundings for school districts. I introduced a bill in the Education Committee that would have included all of those contributions on the part of the school district, as the employer, to these retirement funds to be included in GFOE. The price tag on that was over \$40 million. So you can see where there are several entities that have to play a role in all of this puzzle that we're trying to put together and any one cannot carry the full load. But as I say that, the other thing with respect to TEEOSA funding and state aid, currently all school

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districts, equalized and nonequalized, receive some assistance for retirement aid. That is poised to go away after this next fiscal year. So those two things combined--making the additional contributions permanent, even though we're allowing the budget exception for school districts to deal with that, and the retirement aid going away--over time I can see that this will be a situation that we will have to deal with, with respect to state aid for schools. But getting back to the here and now, recognizing that things will change over time and that we perhaps will have to readdress this in the future, at this point in time I feel comfortable with the components of LB553 and its impact on state aid. Thank you. [LB553]

SENATOR KRIST: Thank you, Senator Sullivan. Senator Pirsch, you're recognized. [LB553]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I wonder if Senator Nordquist would yield to a question or two. [LB553]

SENATOR KRIST: Senator Nordquist, will you yield? [LB553]

SENATOR NORDQUIST: Yes. [LB553]

SENATOR PIRSCH: I do note in the explanation of amendments that for employees in the new tier, final average salary will be averaged over five years instead of three years. What practical effect does that do? [LB553]

SENATOR NORDQUIST: Yeah, so when they calculate the benefit, the monthly benefit, it's years served, times a 2 percent multiplier, times your final average salary. So right now over three...if you do a three-year, you take your three highest years of salary is what the current statute is, the current plan. For new members we'll add two more years. Add those years, if we now take the five highest, you're going to be adding two more years that are lower than the three highest. So you're going to reduce that final average salary variable in the equation. Therefore, when you do the full equation, you make a reduction in the monthly benefit that they will be receiving. [LB553]

SENATOR PIRSCH: I appreciate that. And just kind of going down the list, the state statutory contribution rate is increased from 1 percent to 2 percent of total compensation of all school employees beginning July 1, 2014, instead of July 1, 2013. Is that correct? [LB553]

SENATOR NORDQUIST: Yes. Yep. [LB553]

SENATOR PIRSCH: What effect does that play then? [LB553]

SENATOR NORDQUIST: Well, so that is just that it would be a \$20 million a year,

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starting July 1, 2014, \$20 million a year infusion into this plan. Partly, it was part of a negotiated package. We know that ultimately, as...and to respond a little bit to Senator Larson, this is...and Senator Mello did, this is a state obligation. So whether we say we're going to put \$20 million a year towards it or whether we say we have to fund the unfunded liability, either way we're putting money towards it. So this is just a way to budget for that \$20 million. So it's a \$20 million infusion in the plan. The reason we're doing it in the second year of the next biennium is because there's discussion going on about whether or not we should continue to assume 8 percent or whether we should assume 7.75 percent. And that's a decision that I think the Public Employees Retirement Board is having and will decide at some point probably whether they ultimately have that decision or whether that's something the Legislature and the Governor should have. But it's an assumption for our actuarial plan. So because they haven't made that decision, we've put it off a year to see how that decision goes, but that's the reason for starting it in the second year. [LB553]

SENATOR PIRSCH: Thank you. Mr. President, how much time do I have left? [LB553]

SENATOR KRIST: Two minutes. [LB553]

SENATOR PIRSCH: Two minutes, okay. A couple more questions maybe. I note that the eligibility for membership in the school retirement plan is changed from 15 hours per week to 20 hours per week. Can you comment on that, what the effect of that is? [LB553]

SENATOR NORDQUIST: Yeah. Well, I think it was more, rather than a fiscal or actuarial impact, it doesn't have a very big actuarial impact to do that, but I think it was just a policy decision that, you know, you probably shouldn't qualify for a defined benefit pension plan if you're not working more than 20 hours a week. So that was just a policy decision. It was brought to our committee by LIBA, the Lincoln Independent Business Association. It's something that sparked our interest. We looked at other pension plans and it made sense, so we decided to include that. [LB553]

SENATOR PIRSCH: So... [LB553]

SENATOR KRIST: One minute. [LB553]

SENATOR PIRSCH: ...is there a way to characterize...there's a lot of different moving pieces, it seems, within LB553, but overall can you, in the remaining time, just kind of comment, just the general overall gist of the bill? [LB553]

SENATOR NORDQUIST: Yeah. Sure. Sure. So it makes short-term corrections to our pension plan through the amortization change and long-term corrections also. The long-term corrections are we continue the higher contribution rate for all members. And

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new members, when they come into the system, are going to be at a lower benefit calculation. So as the actuary spins those numbers, we're going to have less liability on the plan with those lower benefits for new employees. So it's a short-term and long-term solution to try to improve the solvency of our pension plan. [LB553]

SENATOR PIRSCH: Okay. And, Mr. President, how much time is left? [LB553]

SENATOR KRIST: Fifteen seconds. [LB553]

SENATOR PIRSCH: (Laugh) Okay. Thank you. I will yield back the balance of my time. Thank you. [LB553]

SENATOR KRIST: Mr. Clerk for an announcement. [LB553]

ASSISTANT CLERK: Mr. President, I do have some items for the record. The bills that were read on Final Reading this morning have been presented to the Governor (re: LB153, LB153A, LB55, LB79, LB79A, LB158, LB203, LB230, LB263, LB271, LB388, LB495, LB495A, LB528, LB612, and LB629). Your Committee on Enrollment and Review reports LB579 to Select File. Amendments to be printed to LB265 from Senator Cook, and LB538 from Senator Chambers. New A bill. (Read LB579A by title for the first time.) Have an explanation of vote from Senator Coash relative to the bills that were read on Final this morning (re: LB153, LB153A, LB55, LB79, LB79A, LB158, LB203, LB230, LB263, LB271, and LB388). And I have potential conflict of interest statements from Senator Bloomfield and Kolowski. That's all that I have. (Legislative Journal pages 1032-1033.) [LB153 LB153A LB55 LB79 LB79A LB158 LB203 LB230 LB263 LB271 LB388 LB495 LB495A LB528 LB612 LB629 LB579 LB265 LB538 LB579A]

SENATOR KRIST: Thank you, Mr. Clerk. Senator Nordquist, you're recognized to close on the advancement of the bill. [LB553]

SENATOR NORDQUIST: Thank you, Mr. President and members. I appreciate again the dialogue. I just want to clarify for the record, we've had some discussion about legal precedent here in court decisions and what the courts have ruled. I just want to get that in the record that the Nebraska Supreme Court has determined that pension benefits are contractual rights protected under federal and state constitutions that vest upon the acceptance and commencement of employment. Therefore, based on the court's decision in Halpin and Calabro, pension benefits for current members of defined benefit plans may not be eliminated or reduced. As a result, as we've talked about here, legislative options certainly are limited in the short term when we're talking about affecting current employees. So with that, I just again greatly appreciate the collaboration of all of these school groups in coming to this consensus in LB553. Thank you. [LB553]

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SENATOR KRIST: Thank you, Senator Nordquist. You've heard the closing. The question is the advancement of LB553 to E&R Initial. All those in favor vote yes; opposed, no. Have all those voted that wish to? Record, Mr. Clerk. [LB553]

ASSISTANT CLERK: 33 ayes, 0 nays on the motion to advance the bill. [LB553]

SENATOR KRIST: The bill advances. Mr. Clerk, next item. [LB553]

ASSISTANT CLERK: Mr. President, the next bill is LB240 introduced by Senator Harms. (Read title.) The bill was read for the first time on January 16, referred to the Health and Human Services Committee. That committee placed the bill on General File with no committee amendments. [LB240]

SENATOR KRIST: Senator Harms, you are recognized. [LB240]

SENATOR HARMS: Thank you, Mr. President, colleagues. Today I'm here to introduce to you LB240. As a former educator, I have always believed that education is essential for the future success of young people. And when a family is involved, education can be a key to long-term stability for both the parents and the children. That's why I have long been a supporter of efforts to increase access to education for participants in the Nebraska Aid to Dependent Children Program. Last session, if you remember, the Nebraska Legislature passed LB507, a bill I introduced that altered the Welfare Reform Act to allow participants less than 24 years of age to pursue a high school diploma or a GED and remain in compliance with the Aid to Dependent Children Program. It also aligned Nebraska rules with the federal rules for participants under 20 years of age regarding participation in the high school or the GED-related educational activities. We made this change to actually break down the barriers for ADC participants who wish to pursue education as a pathway out of poverty. In fact, the core purpose of ADC Program is to move low-income families to long-term economic self-sufficiency. Unfortunately, as we went through that, I think there was an oversight that we discovered this year that prevented certain people from actually participating in this program. We have found that there are individuals who reach the age of 24 while working towards their high school diploma or their GED and we also have found that there are those over the age of 24 who wish to participate in the program. That's why I've introduced LB240. This legislation will remove the age restrictions and allow those over the age of 24 to be able to participate in the educational opportunities that will move them out of poverty and towards economic self-sufficiency. The number of those who would be made eligible for the program under LB240 is small, but the change is important in achieving the goal of continuing to move families out of poverty. According to the statistics provided by the Department of Health and Human Services, the total number of ADC participants today is 43,639. The change under LB240 would add eligibility to only about 6 percent of the total ADC participants. While the new participants would not count towards Nebraska's required 50 percent work participation

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rate, the safety valve which we put in there last year will remain in place, allowing the Department of Health and Human Services to make adjustments should the state ever have a concern about meeting the TANF requirements. And from what we have seen in these participation rates, there is no danger of ever having to use the safety valve. LB240 will correct what I call an oversight in LB507 and allow us to make the most out of the Aid to Dependent Children Program. I would urge you to support LB240 and it's my hope that this legislation is advanced to Select File to help the people who need help. And with that, Mr. President, I will close my statement and I urge you to advance LB240 to Select File. I'd be happy to answer any questions. Thank you, Mr. President. [LB240]

SENATOR KRIST: Thank you, Senator Harms, for bringing us LB240. Seeing no lights on, you are recognized to close on the bill. [LB240]

SENATOR HARMS: Thank you very much, Mr. President. I would urge you to support this bill. It's for the right reasons and it's helping the people that need to have help. So thank you, Mr. President. [LB240]

SENATOR KRIST: And again thank you, Senator Harms. The question is the advancement of LB240 to E&R Initial. All those in favor vote aye; those opposed, no. Have all those voted that wish to? Record, Mr. Clerk. [LB240]

ASSISTANT CLERK: 30 ayes, 0 nays on the advancement of the bill. [LB240]

SENATOR KRIST: Thank you, Mr. Clerk. Next item.

ASSISTANT CLERK: Mr. President, the next bill is LB23, introduced by Senator Hadley. (Read title.) The bill was read for the first time on January 10 of this year. It was referred to the Health and Human Services Committee. That committee reports the bill to General File with committee amendments attached. (AM538, Legislative Journal page 666.) [LB23]

SENATOR KRIST: Senator Hadley, you're recognized to open on the bill. [LB23]

SENATOR HADLEY: Mr. President, my colleagues, it is my pleasure this morning to bring to the body a piece of legislation, which is my priority bill for the session, that will, in two very important ways, be a new day for Nebraskans with intellectual disabilities. I originally introduced LB23 to improve our state's ICF/MR Reimbursement Protection Act, that legislation which was introduced and enacted originally at the behest of the nongovernmental intermediate care facilities for the mentally retarded, for the purpose of being a provider tax paid by the ICF/MRs, for the purpose of drawing down additional federal resources to enhance ICF/MR reimbursement under the Medicaid program. Nebraska presently has two provider taxes, one for the ICF/MRs and another for

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nursing homes. The way a provider tax works is that the facility pays the tax for the ICF/MRs in an amount equal to 6 percent of their operating revenues. Taxes are an allowable expense under the Medicaid program, and the federal government contributes its matching share--presently, a little bit less than 60 percent--to our Medicaid program. The state then reimburses facilities for the cost of the tax and uses the federal portion to enhance provider rates. Unfortunately, the ICF/MR provider tax and the fund which it supports, the ICF/MR Reimbursement Protection Fund, have been utilized only marginally to improve nongovernment ICF/MR reimbursement. At the beginning of my first term in the Legislature, I sponsored and saw the enactment of legislation intended to secure more of the protection act funding for the nongovernmental facilities that pay the provider tax supporting the fund. But the Department of Health and Human Services came to view the intent of that legislation in a manner different from what we had intended. So this session I determined to try again to improve the operation of the provider tax and protection fund for the benefit of nongovernment ICF/MRs, which are owned and operated in Nebraska by Mosaic. I suspect many of you are familiar with Mosaic, which is one of our state's outstanding organizations and recognized internationally for the excellence of its programming and facilities for persons with intellectual disabilities. In shepherding the bill through the Health and Human Services Committee and with the help of the committee and its counsel, we found the bill needed to be revised and strengthened in order to do what we wished. Accordingly, we accessed some outside expertise and crafted an amendment modeled closely on LB600 from the 2011 Session, which established Long-Term Care (sic--Nursing Facility) Quality Assurance Assessment Act. That program uses a provider tax to enhance nursing home Medicaid reimbursement and has been working exactly as intended. We are pleased that the Health and Human Services Committee saw fit to advance LB23 with the committee amendment that, in effect, becomes the bill on a unanimous vote. After the bill has been advanced, Senator Coash came to me and asked if I would be comfortable with his offering the language of LB343, which the Human Services Committee had also unanimously advanced to General File, for an amendment to LB23, thus, allowing LB23 to become law this year, as well as my own bill. I was delighted to accommodate Senator Coash in that regard, and I'm going to ask him to explain the details of his bill and the importance of it. But suffice it to say here that LB343 would replace the antiquated and pejorative term "mental retardation" with a more enlightened and contemporary expression, "intellectual disability," wherever the former term occurs in state law. There are a combination of excellent reasons for making this change at this time in Nebraska, and I say I'll allow Senator Coash to present the details of that. Now with regard to LB23, with the committee amendment, the bill removes sections of the law pertaining to fiscal year 2004-05 and adds that, beginning July 1, 2014, the department shall use the ICF/MR Reimbursement Protection Fund, including the matching federal financial participation for enhancing rates paid under Medicaid to ICF/MRs and for an annual contribution to community-based programs for persons with intellectual disabilities. The amendment requires that for FY 2014-15 and each fiscal year thereafter, funds should be remitted from the ICF/MR Reimbursement Protection

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Fund as follows: first, \$55,000 for administration of the fund, which is the same as current law; second, as in current law, the amount needed to reimburse the cost of the tax to intermediate care facilities for the mentally retarded; third, \$312,000 for community-based services for persons with intellectual disabilities. This priority and amendment is the same as the current law, although LB23 removes the restriction that directs these funds to the waiting list, allowing DHHS the flexibility to apply this appropriation to DD services as they determine the need for them. Fourth, the amendment changes, from the present \$600,000, to improve reimbursement to nongovernment ICF/MRs, as in the current law, to directing the remaining proceeds of the amount available in the fund to enhanced rates in non-state-operated ICF/MRs. It does this by increasing the annual inflation factor to the extent allowed by such proceeds and any funds appropriated by the Legislature. Ever since the beginning of the ICF/MR provider tax, the ICF/MRs have been assured that the flat amount is included in that reimbursement rate. But somehow, the total rate is never actually enhanced, and this is the reason the bill is important then. Finally, the amendment removes the provision that any remaining proceeds lapse automatically to the General Fund. If, over time, the Reimbursement Protection Fund were to grow beyond the funding necessary to support the ICF/MRs, the Legislature could, of course, redirect a portion of the fund, as appropriate, to other uses. But the incentive for the department to lapse funds to the General Fund, as opposed to using them for the purpose encompassed in the ICF/MR Reimbursement Protection Act, would be removed from the statute. LB23 also adds an important provisions that if, for whatever reason, the federal financial participation becomes unavailable under federal law or regulation, the ICF/MR provider tax would also go away. This situation is addressed rather generally in the present statute, but LB23 clarifies and strengthens that provision. Another new provision would require specifically and in detail that the ICF/MR Reimbursement Protection Act...were ever diverted to other and unintended purposes, the provider tax would be null and void. Briefly, I want to address the fiscal note on LB23. This fiscal note is a fiscal note to the bill. There will be a new fiscal note, if we approve the committee amendment, which will be given on Select File. The total effect of the provisions of LB23 is to mandate the use of the ICF/MR provider tax and the ICF/MR Reimbursement Protection Act for the purposes originally intended for it. It is as though we are saying to the Department of Health and Human Services, as loudly and clearly as we possibly can say, that this is the intent of the Legislature for the program, and this time we mean it. In saying that, I'm not attempting in any way to level criticism at DHHS or any of its officials. In my experience, they work hard and, basically, want the same thing for Nebraska's most valuable citizens, as we do in the Legislature. But we've found here in the legislative branch of the Nebraska state government, sometimes it becomes necessary to speak very plainly to the executive branch, to ensure that the intent of the Legislature is, indeed, carried out. That is the purpose of LB23, and I invite your support of this important legislation. Thank you, Mr. President. [LB23 LB343]

SENATOR KRIST: Thank you, Senator Hadley. In the interest of continuity, I've decided

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that we're going to save the committee amendment introduction and Senator Coash's amendment until after lunch. I don't think anybody will disagree with that. Mr. Clerk. [LB23]

ASSISTANT CLERK: Mr. President, I have a priority motion. Senator Howard would move to recess until 1:30 p.m.

SENATOR KRIST: You've heard the motion. All those in favor, aye. Opposed, nay. We are in recess.

RECESS

SENATOR GLOOR PRESIDING

SENATOR GLOOR: 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. Roll call. Mr. Clerk, please record.

ASSISTANT CLERK: There is a quorum present, Mr. President.

SENATOR GLOOR: Thank you, Mr. Clerk. Do you have any items for the record?

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

SENATOR GLOOR: Thank you, Mr. Clerk. We'll proceed to the first item on this afternoon's agenda.

ASSISTANT CLERK: Mr. President, under consideration is LB23, which was introduced by Senator Hadley. The bill was considered before lunch. At that time, Senator Hadley had opened. There are committee amendments pending. (AM538, Legislative Journal page 666.) [LB23]

SENATOR GLOOR: Thank you, Mr. Clerk. As the Clerk stated, there are amendments from the Health and Human Services Committee. Senator Campbell, as Chairman of that committee, you are recognized to open on the committee amendment. [LB23]

SENATOR CAMPBELL: Thank you, Mr. President and members of the Legislature. I'm going to review some of the major points that...because Senator Hadley covered much of it in his opening. But since we've all had lunch and probably need a review, here we go. The committee amendment replaces the bill, and the amendment adds that, beginning July 1, 2014, the department shall use the ICF/MR Reimbursement Protection Fund, including, including, the matching federal financial participation for enhancing rates paid under Medicaid to ICF/MR and for annual contributions to

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community-based programs for persons with developmental disabilities or people with intellectual disabilities. The amendment requires that, in FY 2014 and '15 and each fiscal year after that, the funds shall be remitted from the ICF/MR Reimbursement Fund in the manner as current law. So I'm not going to repeat that part. The amendment then changes the current fiscal distribution from the annual specified \$600,000 to the remaining proceeds of the tax amount available in the fund to enhance rates for a non-state-operated ICF/MR by increasing the annual inflation factor to the extent allowed by such proceeds and any funds appropriated by the Legislature. In addition, the amendment removes the provision that any remaining proceeds be remitted to the General Fund. And additionally, beginning July 1, 2014, the amendment allows for the end of the tax if the federal financial participation to match becomes unavailable. Any funds remaining shall be returned to the facilities in the same manner as collected or if the money in the ICF/MR Reimbursement Protection Fund is appropriated, transferred, or otherwise expended for any other use than permitted by this act. Finally, the amendment reiterates that, beginning July 1, 2014, no proceeds from the tax, including the federal match, shall be placed in the General Fund unless otherwise provided in the ICF/MR Reimbursement Protection Act. As Senator Hadley indicated, Senator Hadley and I will meet with the Fiscal Office in order to relook at how the amendment would affect the fiscal note. And so we decided to proceed with the committee amendment and the bill, knowing that we would have to come back on Select File with, perhaps, an amended fiscal note or additional amendments to the committee's amendment. I fully support what Senator Hadley is trying to do. He has been a diligent watcher of these funds and how we can help the nonstate ICF/MRs serve Nebraskans. Thank you, Mr. President. [LB23]

SENATOR GLOOR: Thank you, Senator Campbell. (Doctor of the day introduced.) Mr. Clerk for an amendment. [LB23]

ASSISTANT CLERK: Mr. President, Senator Coash would offer AM761 to the committee amendments. (Legislative Journal page 885.) [LB23]

SENATOR GLOOR: Senator Coash, you are recognized to open on your amendment to the committee amendments. [LB23]

SENATOR COASH: Thank you, Mr. President, and good afternoon, members. It is my pleasure to bring AM761, which is, actually, LB343. So if you want to see where the committee stood on the original bill that has now become the amendment, you can look at LB343, which was advanced unanimously from the Health and Human Services Committee. Here's what this bill does. It's very straightforward. We have, as you all know, books and books of statute and in those statutes we have references to people with intellectual disabilities. In many chapters of our statutes those references to people with disabilities are as retarded people. And there are, in fact, so many references to retarded people in our statutes that it took a 63-page amendment to catch all the

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sections that we needed to catch in order to change this term. What AM761 does is it takes all those references to retarded people and changes them to a term which is the correct term to use, which is a person with an intellectual disability. Let me explain to you, colleagues, why this is important. Twenty years ago or so--well, longer than that--our statute was full of these terms: idiot, moron, and imbecile. Those were words in our statute that described a person's disability. And we all know what happened with those terms, idiot, moron, and imbecile. They became slang and they became terms that are used to disparage someone who has a disability. So in the '80s, Senator Sieck decided to make a change, and he changed those three terms to the terms "mild mental retardation," "moderate mental retardation," and "severe mental retardation," and those were also medical terms that were used to describe a person's disability. Well, what's happened to those terms, colleagues? The term "retardation" has also now become slang. And so we have to come back to this Legislature, again, and we have to look at our statute, look at the language that we use to describe people with disabilities, and we have to make a change. And this change is more than just changes in the words of our statute. These changes...if our laws represent our values, then we have to amend our statute to represent those values as well. Our Legislature, especially the Legislatures that I've been a part of, has repeatedly expressed our support for people with intellectual disabilities through contributions of financial resources, support from the waiting list, support for providers who support people with disabilities. And now we have an opportunity to support people with disabilities that costs nothing, and we do that by removing the word "retardation" from our statute. By adopting this amendment we will be showing the citizens of Nebraska who have developmental disabilities that we value them, we honor them, and we treat them with dignity and respect. So you can look through AM761, all 63 pages, and you'll find all sorts of changes. And I want to bring a couple to your attention. In addition to changing the words "retardation" to "intellectual disability," we've also taken the opportunity to make sure that we have sensitive approaches to these terms. You could say an "intellectually disabled person," but that wouldn't be correct either because that would connote that the disability is who the person is, and that's just not the case. People with disabilities, their disability is part of who they are. It does not define who they are. We had a great hearing on this bill in front of the Health and Human Services Committee, and we had some very articulate advocates, self-advocates who came to the committee, and they shared their story about why this bill is important to them. And I'm going to read you a couple of things from their statements. But I want to be clear, colleagues. Changing the terms doesn't erase the hearts of people who would use those terms. But it does show our citizens where we stand, and that's with AM761. One testifier, Haley, came to our committee and said: The word retarded is a degrading word and it is the same classification as every other minority slur. In high school, sometimes, someone called me that name and I have never forgotten it. Another time, a person I thought was my friend even called me this. It made me feel bad, and I realized she wasn't my friend. She said it was her free speech, but it is never right to call another person a hurtful name. I know this law cannot stop people from using this word overnight, but it will show the people of Nebraska that

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this language is not acceptable. Another testifier, Lynn, said that, when she was in high school, she was a little slower than her classmates. Not only was she trying to adjust to her high school, like any other kid, she was trying to make friends and to fit in. She said: Every day I was bullied; every day I was called a retard. I was thrown into lockers, having my peers tell me to "go home, retard, you don't belong here." Later on, it was my support team that used that term. It was a really big blow to hear that people that I had trusted and who should have known better called me that word. I felt betrayed, isolated, and segregated all over again, and I crawled into a social role that their language had created for me, a shell that I'm just breaking out of. When Nebraska uses terminology, it gives legitimacy to the language used to put people with disabilities down, and that terminology should be changed. Colleagues, this is an opportunity that we have to send a message to our citizens across the state who have disabilities. We can be the 44th state to do so, we can follow the federal government, and we can send a message. And for that, I would urge your adoption of AM761. Thank you, Mr. President. [LB23 LB343]

SENATOR GLOOR: Thank you, Senator Coash. Members, you've heard the opening on LB23, the committee amendment, and the amendment to the committee amendment. We now move to discussion. Senators in the queue: Lathrop, Mello, Hadley, Krist, Dubas, and others. Senator Lathrop, you are recognized. [LB23]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I want to begin by thanking Senator Coash for bringing AM761. This isn't just trying to become more politically correct. This is an important amendment to AM538 and, ultimately, to LB23. Senator Coash has been very diligent in his time here in working on issues for those who have intellectual disabilities. And I certainly appreciate his work on the bill that became the amendment that will be incorporated into this, and I encourage your support. I also wanted to stand up for a few moments to talk about LB23 and the ICF/MRs and visit about Mosaic, in particular. Mosaic is a...it's actually a business that's not far from my home. They provide services to individuals with disabilities. And when...I want to give you a little back story on Mosaic. When we had the problems at BSDC and we had to remove a number of people from there because the place lost its ability to provide for the medically fragile, the Governor turned to Mosaic. The Governor turned to Mosaic as part of the solution for providing services and a residential facility for people who are medically fragile and others who needed residential services. We entered into a contract to have Mosaic build a number of ICF/MRs. They're basically, sort of, a home-style place to live, with appropriate levels of care, depending upon people's needs. This was who we chose to be our partner in trying to find a solution for the medically fragile when BSDC had that certification taken away by the folks over at the Department of Health. They're a good outfit, and this is an opportunity to help take care of those people who provide services to this population. I want to, again, thank Mosaic for the partnership they've been and the relationship they've had with the state of Nebraska and the services they provide to this population who desperately need the services. And the resources that will be available for community-based care is very

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important to advancing the state's ability to provide services to this population. So I would encourage your support of both amendments and LB23. Thank you. [LB23]

SENATOR GLOOR: Thank you, Senator Lathrop. Senator Mello, you are recognized. [LB23]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. I initially was rising to discuss the fiscal note associated with AM538 and LB23. And I do appreciate Senator Coash bringing AM761, which I support. The underlying issue...and Senator Campbell mentioned this in the introduction of the committee amendments and in speaking both with Senator Hadley and Senator Campbell, everyone understands that there is some work to be done between General and Select File. Obviously, the committee amendment does some changes to the bill, fiscally, that Senator Hadley had originally not wanted to see. It's no fault of his own or the committee's. It was simply an oversight, and which Senator Hadley and Senator Campbell both mentioned previously that this something that will be worked on between General and Select, to try to bring the fiscal note back down to where they originally anticipated it to be, which was, roughly, about \$400,000 a year, something that everyone felt was something much more attainable with what Senator Hadley is trying to do under LB23. With that, I want to thank Senator Lathrop for bringing up Mosaic, actually. He was absolutely right in regards to, a few years ago, the partnership that the state entered into with Mosaic in light of issues at BSDC that, frankly, they came in to provide much-needed assistance at a very critical time for the state as we were wrestling with issues surrounding the removal of individuals from BSDC and, ultimately, where they may or may not go. So I appreciate Senator Lathrop's work on that issue, as well as him just reminding the body of the importance of Mosaic's important role in regards to helping the state move past and move forward with this developmental disability issue surrounding the removal of people from BSDC, so. But, underlying, the fiscal impact of LB23 will be changed from General to Select. That was the main reason that I rose to discuss this issue. And I appreciate Senator Hadley, Senator Campbell both working on this issue moving forward. With that, thank you, Mr. President. [LB23]

SENATOR GLOOR: Thank you, Senator Mello. Senator Hadley, you are recognized. [LB23]

SENATOR HADLEY: Mr. President, members of the body, I want to speak in favor of Senator Coash's amendment. Can you imagine having a child and having someone use the term "retard"? When I...this is the second time I have introduced bills like this. The first one passed. This is the second one. And the first time we passed the bill, I got e-mails, saying, Senator Hadley, why did you use that term? Well, because it's in the law. I think it's great we're going to change this. I looked up the definition of "retard," and let me give it to you: an offensive term that deliberately insults somebody with a learning disability or someone as unintelligent. What a terrible term. I fully support Senator

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Coash's amendment. I would hope that we would have a green light from everybody on that amendment. I would yield the remainder of my time to Senator Krist. [LB23]

SENATOR GLOOR: Senator Krist, 3 minutes 38 seconds. And, Senator Krist, you are next in the queue. I'll tell you when you're on your time. [LB23]

SENATOR KRIST: Thank you, Mr. President. Good afternoon, colleagues, and good afternoon, Nebraska. This hits close to home for me because I am one of those people who have a child who has been called a "retard" and derogatory terms. I was in the company of one of us, one of the 49 of us, and he made a comment about not wanting any dessert because he had enjoyed, that day, a cookie that the "tards" brought us. It hurt. It was offensive. I've also heard in campaign logo that these people don't vote. Well, my daughter does, and she remembers. And there's other folks out there that do. And the people who came into our committee and testified, some of them that were quoted by Senator Coash, are pretty smart ladies, pretty smart men. I said "men" and "ladies" not "people of disability." If you define someone by the chair they sit in, whether it has wheels or not, by the disability that they have, rather than defining them as a human being, you are wrong, wrong, wrong. And this bill, this amendment, does a lot and says a lot about us and about the state. There was a time when there were some socially acceptable words defining people of color, defining ethnic persuasions. We seem to have come to an era where most of that, most of that, thankfully, is gone, and there is a respect between human beings. This is a "hanger-oner." This one needs to disappear. There is no reason to define a person by the disability. We define the person as a person. That's all I'm going to say about the amendment, and I thank Senator Hadley for his time. I'll just start my time at 5 minutes now. I'd like to discuss to you or discuss with you the evolution and why it is so important that LB23 and the underlying amendment, AM538, go forward. And I know I bash on the Department of Health and Human Services occasionally. I know I've painted a picture of the department as not managing a program correctly, here and there. But this is a perfect testimony of how you can screw up the simplest thing. Senator Hadley's bill redefines what we need to do in this state to make sure that those organizations that are out there, as Senator Mello said, who are helping us solve a problem, nonprofits and for-profits, get the correct funding and make sure that those dollars are spent in the correct way. I was here and proud to have voted for Senator Hadley's bill the first time around, and I am happy that he brought it back again. And I thank Senator Campbell and her staff and our committee for the amendment which, actually, replaces the bill. But the intent of Senator Hadley's initial bill is there, in full bloom, with technical corrections that needed to be made. Green, green, green, that's all I'm going to ask for you. Thank you. [LB23]

SENATOR GLOOR: Thank you, Senator Krist and Senator Hadley. Senator Dubas, you are recognized. [LB23]

SENATOR DUBAS: Thank you, Mr. President. Good afternoon, colleagues. I'd like to

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thank Senator Coash for working so diligently on this amendment and for the Health Committee and Senator Hadley's work on the bill and being inclusive with this amendment. I am in very strong support of both of them. As far as the amendment goes, you know, we talk very frequently in here about words having meaning, and that couldn't be more true than what we are talking about here today. You know, this isn't about being politically correct or passing some kind of feel-good legislation. This is about bestowing dignity on citizens of our state in the way that we reference them. I think, in more ways than one, it's time for us to stop referring to individuals as "these people" or applying labels that are demeaning or derogatory. It's time we simply start referring to each other and to all individuals as people because that's who we are. We are all people. We all have goals and aspirations and dreams and heartaches and everything that goes along with being people. And I think what this amendment does is start to break down those barriers, those labels that we are far too quick to apply to certain individuals to put them into some kind of category that differentiates them from the rest of us. And if we can begin, in small steps, to eliminate those labels and to put us all on the same footing, we'll all be the better for it. As far as the underlying bill, I appreciate Senator Hadley's work on this. We are continually talking about the importance and the need for community-based care. And that's the best place for individuals who have specific needs to receive the treatment to allow them to be fully engaged in their communities and society and be contributors to our society. And so it's through organizations, like Mosaic, that have been referenced today that we are able to have opportunities for individuals to be in their communities and to participate and to meet those goals and dreams and those aspirations that I referenced earlier. But if we want to have community-based care, if we need to have community-based care, if that is a priority of the state--and it's a direction that we seem to have been moving for quite some time--then we have to make sure that those people who provide the community-based care have the resources needed to be able to help provide the needed services and opportunities for individuals. So as Senator Campbell said, she has appreciated all of the effort and attention that Senator Hadley has put into this issue, and I simply want to echo that and thank him for his efforts and stand in full support. Thank you. [LB23]

SENATOR GLOOR: Thank you, Senator Dubas. The Chair recognizes Senator Wallman. [LB23]

SENATOR WALLMAN: Thank you, Mr. President and members of the body. Thank you, Senator Coash, and thank you, thank you, Senator Hadley. And this is a special population. And I've had family who worked with this population for a long time, and friends and relatives. And if you know some of these people, it's a special, special thing. And it's too bad it took us this long to realize these things, and I'm just sorry that I didn't think of it first. And so this is a good bill. Vote like Senator Krist says: Vote green, green, green. Thank you, Mr. President. [LB23]

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SENATOR GLOOR: Thank you, Senator Wallman. Senator Chambers, you are recognized. [LB23]

SENATOR CHAMBERS: Mr. President, members of the Legislature, one of the biggest lies that little children are told says, sticks and stones may break my bones, but words will never hurt me. Yes, they will. Words hurt. Words can kill. Words can lead to killing. Even in the "Bible," which a lot of people believe, there were people called lepers. They were compelled and required to shout out "unclean, unclean," human beings reduced to the status of diseased things. And they were forced to make that declaration. There should have been somebody who said, this is not right. Now I didn't ever read where Jesus said, that's not right, but his conduct is what I would judge him by, like everybody else. He went where nobody else wanted to go. He did that before Star Trek. So if people say that's who they're worshipping, that's fine. But then, when they don't practice what he preached, then I feel it's blasphemous and I feel it's sacrilege for them to even utter that name, if they believe that is the name of a god. But beyond that, I want to thank Senator Coash for what he is doing. I'm not going to talk about the "n" word right now. I'm going to put my light on again and listen to the other discussions and maybe mention a couple of things that happened to me when I was growing up. And I'm aware of how much damage words can do. People are familiar with a comment Martin Luther King made, judge people by the content of their character and not by the color of their skin. Perfect. But when I was in grade school, my mother, who was born in Rayville, Louisiana, recited a poem to me--and I had to write it down--that she wrote in the eighth grade. It said--this is a child who wrote it--"I'm glad to meet a person who is glad that he is black, who is conscious of his color and appreciates the fact; I am glad to meet a person who is glad that he is white, every person has some color, any color is all right; I am glad to meet all people when they strictly understand character makes the person, color does not make the man." My mother wrote that, as a child, in grade school. And I'm glad Martin Luther King said something similar and people latched onto it. But there are children who have to be taught certain things by their parents so they won't feel like they're utterly worthless. And that's what could have happened to me, and it could have happened to every black child. I didn't have anybody in my family who would be referred to by this horrendous word that Senator Coash is having removed from the statutes. I can't even form my mouth to say it. Under that balcony to my right, many years ago, stood I, about four of the senators, and a female senator named Bernice Labeledz. And a senator came up--she was Polish--and said, I want to tell a Polish joke. And I said, not here, you won't tell it now. And this senator said, oh, Bernice doesn't mind. And Bernice didn't even look at him. She put her hand on my wrist. She said, thank you, Ernie. There are people who don't like these things. They don't feel comfortable objecting. But those of us who understand ought to be the ones to object for them, but, too often, it doesn't happen. How much time do I have, Mr. President? [LB23]

SENATOR GLOOR: A minute 30 seconds, Senator. [LB23]

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SENATOR CHAMBERS: A minute 30 seconds? I can't finish this. But I want to mention something that happened when I was in grade school, and it involves my dealings with a young white boy who was an albino. And I won't take all my time now because I can't begin to finish it in the short time I have left. Thank you, Mr. President. [LB23]

SENATOR GLOOR: Thank you, Senator Chambers. Senator Janssen, you are recognized. [LB23]

SENATOR JANSSEN: Thank you, Mr. President and members. I apologize, I haven't read LB23 through and through, and I wanted to put that in the record before Senator Chambers asked me if I have done so. I rise to speak to AM761. Tonight, it's Thursday, and I just got a note from the outside--and I won't say who it's from--that said, ask me about the reception tonight. I don't go to many receptions. I haven't been to one all year. I don't like going to them, in reality. I don't go to the lunches. I don't go to the breakfasts. I go home. Now, Thursday night, what are you going to, Senator Janssen, what are you going to do? Well, first off, something that you may not know about me: I am a member of the Fremont Bowling Hall of Fame. I don't bowl any better than, maybe, any of you. I don't know what your bowling prowess is. But I'm a sponsor of several teams. I sponsor teams: kids bowling, youth bowling leagues, adult bowling leagues. And one league I'm partial to. It's Thursday nights, except in the summer. I believe they're still going tonight, it's cold enough, ENCOR, talking to the DDs, that league. I show up. They know me. There's hugs, handshakes. They don't care where I've been. They're happy I'm there, and it's really gratifying. I had the opportunity my first year down here to tour the work facility there in Fremont. And they're working and happy to see me. I think I even signed an autograph. So Thursday, when I leave out of here and I skip whatever the reception is tonight--there's one every night; I don't really pay much attention to them--that's where I'll be, earning my Hall of Fame credits. I can't bowl, but I'm in the Hall of Fame--bowling. I also belong to a very small investment club in Fremont. Three of the parents have children in that league. And I speak to them about their children, adult children--adults now but they're always their children--and hear about how they are doing and what's going on. And they know me by name and that means a lot to me. This is the reason, many of the reasons, I mean, we all should support and we all will support AM761. I know, a lot of times, people look down here and they say, well, you know, myself, rough exterior, we can go ahead and say whatever we want. I won't talk about this much on the mike. Yes, I think we all know I'm running for a different office and sometimes political fodder gets thrown. The only thing that truly hurt me was when somebody lied about that because that's something that shakes me to the core and something I don't wear on my sleeve--my children, I don't. I don't wear that on my sleeve. But guess what? I have a child diagnosed with autism. And for somebody to come to me and say things like that, to say anything and doubt me, is the only thing that's ever bugged me. And shame on people for the political process, shame on them, because my son doesn't suffer with that. He flourishes in it. You want to know how to

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play Minecraft? I'll show you an expert. [LB23]

SENATOR GLOOR: One minute. [LB23]

SENATOR JANSSEN: He's already designing computer programs beyond me. And I know computers. I'm not saying I'm a person that doesn't know computers. He's designing them. So we have got to be very, very careful when we throw out terms, slang. We've all got to check ourselves because we have to mean it. And that's all I have, Mr. President. [LB23]

SENATOR GLOOR: Thank you, Senator Janssen. Senator Price, you are recognized. [LB23]

SENATOR PRICE: Thank you, Mr. President, members of the body. Well, here I am, rising to tell another story. I know, surprise, surprise. But it's not funny and it's not cute. I can't say that I'm totally enthused by the amendment, because I'm going to tell you a personal story, and it's my experience as being labeled "retarded." When I was a young'un, I had a significant speech impediment and some hearing issues. So when I went to kindergarten and I didn't interact well, they put me in front of the class; they put a dunce cap on me; they said I was retarded. And then they walked me down to the retarded room. Now I'm blessed, I'm really blessed, and I'm not developmentally disabled. But I remember that walk down. But more so, I remember the walk back, when they put me back in the general population. It doesn't go away. Thank you. [LB23]

SENATOR GLOOR: Thank you, Senator Price. Senator Chambers, you are recognized. [LB23]

SENATOR CHAMBERS: Mr. President, members of the Legislature, I went to Lothrop School, Lothrop grade school. And I don't know that I knew the term "albino" then. But there was a kid in the school. His name was...well, I won't give his name. But anybody who went to Lothrop, if they're still alive, they will know who I'm talking about. His skin was white--and maybe I've mentioned it here before--and if you touched him and you moved your finger, then you'd see it redden where your finger had been. I guess that's blood coming into that spot. His eyes were pink and he couldn't see very far. So when he would read in class, I don't know why nobody got him glasses. But he'd have to put the book right up in front of his face. And if you're talking to him, his eyes danced all the time, all the time. The part of the story where I get involved had to do with what the kids called him. They called him "bunny rabbit," and they thought it was funny. Children think things are funny. Children will not know better if we don't teach them better. And bunny rabbit, in and of itself, is not a bad, mean, hurtful word. But the application of it was wrong. Now I was a child like they were. But I knew that, when they called him that, they were making...we called it making fun of somebody. They were making fun of him. And he never laughed and he didn't think it was funny. And I had a way of taking up for kids

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when I was at Lothrop School, and most of them were white. And they were set upon by other white children. That's why I know why white people would do each other, even as children. They were not taught at home, and that's why I'm offended when people talk about what we, as black children, need to be taught at home. I was taught to take up for anybody who needed it, and there was no color distinction. So these white children fell within the ambit of what my parents taught me was the group I ought to take up for. So I told them, don't call him "bunny rabbit" anymore. What are you going to do about it? I said, call him "bunny rabbit," and you'll have to do something to me, or I'm going to do something to you. That's the way kids understood each other. And whenever I was around, he was not called "bunny rabbit" anymore. He never said, thank you; he never said, you helped me. That wasn't even why I did it, and that's not the way that children do. And unfortunately, when he was a teenager, there's an area in far north Omaha, called Hummel Park, near hills, and for some reason his friends put him on a motorcycle. And I guess he wanted to belong. So we was riding this motorcycle--he couldn't read this paper here, if you had it here--and there was a curve which he didn't see. So he went right off an embankment and was killed, and that was the end of that kid. And I thought more about it after I became grown than I did when I was a child because taking up for kids is what I do. But when I was the only black child in a white classroom and the teacher read Little Black Sambo and all those little white kids could look at me and laugh, there was nobody to take up for me. I have feelings. My feelings were hurt, but it didn't matter. And I told some of this to the Education Committee. That teacher knew what she was doing. When the kids laughed, they looked at the picture that accompanied the story. And it would have been funny to a child. So my anger wasn't directed at the children. I felt shame, I felt humiliation, and I felt very much alone. In those days, we didn't have air conditioning, we didn't have fans, and it got very hot. And I could feel sweat running down the center of my back. I started itching. I wouldn't scratch it. I wouldn't swallow. I would not move. Children try to cope. And I guess the thought in my mind at that time was, if I'm still, they won't see me. But in the way she had said before when a white child was being laughed at, we don't laugh at each other,... [LB23]

SENATOR GLOOR: One minute. [LB23]

SENATOR CHAMBERS: ...she didn't say that when I was being laughed at. Serious messages came to me after I got older. Grown white people will mistreat black children. Then during the years when black children were trying to go to school--that's all they were trying to do, go to school and get that education that's so important--there were white grown men with bayonets stopping them, grown white people cursing them, throwing bricks at them. And there's a picture of this five-year-old little girl, surrounded by four huge, federal marshals, and white people were throwing rotten fruit at that little girl. And the guy who painted all of those Saturday Evening Post covers, Norman Rockwell, had a picture of that little girl, and a tomato had smashed against a wall, and the juice was running down, like blood. Some of us have had experiences and we can

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tell you, words hurt. [LB23]

SENATOR GLOOR: Time, Senator. [LB23]

SENATOR CHAMBERS: Thank you, Mr. President. [LB23]

SENATOR GLOOR: Thank you, Senator Chambers. Are there other senators wishing to be recognized? Seeing none, Senator Coash, you are recognized to close on your amendment to the committee amendment. [LB23]

SENATOR COASH: Thank you, Mr. President, and thank you, members, for your comments and your support of AM761. I do want to thank Senator Hadley for working with me on this amendment and thank the HHS Committee for giving a vehicle to this bill because this is important. And it may not be the most important decision we make this year. It may not be the most important bill we do this year. But it's important to a lot of people. And we are being watched and we are being judged by our actions, as we should be, on this bill. And it's been said by several people: Words matter. And when I talk about, whether it's this bill or outside of this bill, why it's important to use words that are reflective of a person's value and their dignity and I tell them that words matter and I...frequently, people will tell me, well, Coash, they're just words. Typically, when people say that, they've never been on the other end of a word that is hurtful. This law...this amendment, when it becomes law, will reflect our values, as all of our statutes should. And for that reason, I would ask for your advancement of AM761 and all the...and the underlying bill so that we can send a message to those people for whom these words can be hurtful and say, Nebraska sees it differently and, to show that we see it differently, we're going to pass AM761 and the underlying bill. Thank you, Mr. President. [LB23]

SENATOR GLOOR: Thank you, Senator Coash. Members, the question before us is, shall the amendment to the committee amendment to LB23 be adopted? Those in favor vote aye; those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB23]

ASSISTANT CLERK: 40 ayes, 0 nays on the adoption of the amendment to the committee amendments. [LB23]

SENATOR GLOOR: The amendment is adopted. We return to debate on the committee amendment and LB23. Senator Hadley, you are recognized. [LB23]

SENATOR HADLEY: Mr. President, I think we just took an outstanding vote. Again, I want to thank Senator Coash for doing this. I think it makes the committee amendment and my bill a much better bill. It gives it much more meaning. But I want to come back to the original bill now and the committee amendment. I want to thank Health and Human

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Services for the work that they've helped with. And we're going to continue to work to Select File because it is a pretty complicated issue. And it does involve BSDC because this provider tax has to be available to any ICF organization in the state, whether it's governmental or nongovernmental. So this will impact BSDC also. Again, just to reiterate, this allows an ICF to tax themselves. They can tax themselves a dollar. The state sends that dollar to Washington. Washington is interested in helping these types of organizations, so they sent \$1.60 back to the state. We get a 60-cent addition for every dollar we send back. With that money that we get back, the first thing we're going to do is to give DHHS, continue to give them, \$55,000 to administer the program. That's pretty good, folks. That's a full-time person to administer this program. The second is both BSDC and Mosaic get back the tax that they sent. The third, we're going to use \$312,000 to let the department use at their discretion to help those people with developmental disabilities. Fourth, then we will divide up the remainder, basically, between BSDC and Mosaic. So it's a way to leverage money not only to help the ICFs but, also, to help the developmentally disabled in this state. I think it's a great opportunity. It's something we need to do. We need to be very specific with DHHS as to how we want it to work, and that's why we're going to work very hard between now and Select to be sure that we've got all the "t's" crossed and all the "i's" dotted. And I pledge to work with anybody who wants to work with it, with our Fiscal staff, to make sure we have the right fiscal note. But remember, the key on this is we're sending money to Washington. A dollar to Washington gets us \$1.60 back. So we're getting additional funding to help with this very serious problem. And I would encourage you, if you're ever...Beatrice, Axtell, the six cities that now have community-based operations for Mosaic, stop by and say hello. You'll find a group of people so dedicated to their jobs it's unbelievable, unbelievable. And they're hiring people, for example, in Axtell at \$8.50 an hour. And these people want to work there because they want to work with the clients there. They're great people. So I urge you to adopt the amendment and then adopt the bill as amended. Thank you very much. [LB23]

SENATOR GLOOR: Thank you, Senator Hadley. Seeing no additional senators in the speaking queue, Senator Campbell, you're recognized to close on the committee amendment. [LB23]

SENATOR CAMPBELL: Thank you, Mr. President and members of the Legislature. I, too, want to emphasize the importance of this amendment. And while I cannot bring back the experience for all of our new members, I do want to remind you that this system/structure of sending money and then having it come back is exactly what we used in LB600 to help the long-term care facilities in communities all across the state. And so I appreciate very much that Senator Hadley has also been working, at the same time, on a structure that would certainly help the ICF/MRs. And I know--one other short point--if Senator Gloor was not in the Chair, he would have, I'm sure, spoken about a very articulate young woman by the name of Lynn Redding who testified, on this bill and several other bills, before the Health and Human Services Committee. And she has now

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become, also, a frequent person in the Rotunda, talking to you. But it is, truly, her heartfelt words and, certainly, Senator Coash has been a great mentor to help articulate for many people across the state. And I wanted to thank Lynn Redding. What was really touching in the hearing is that I kept watching her and, every once in awhile, she'd wave and she'd wave. She was waving at her senator, Senator Gloor, so we all enjoyed that very much. So I'd encourage a green light on the amendment and, certainly, the underlying bill. Thank you, Mr. President. [LB23]

SENATOR GLOOR: Thank you, Senator Campbell. The question is, shall the committee amendments to LB23 be adopted? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB23]

ASSISTANT CLERK: 39 ayes, 0 nays on the adoption of committee amendments. [LB23]

SENATOR GLOOR: The amendment is adopted. We continue discussion on the advancement of LB23 to E&R Initial. Seeing no senators wishing to speak, Senator Hadley, you're recognized to close on the advancement of LB23. [LB23]

SENATOR HADLEY: Mr. President, members of the body, I very much appreciate your vote on Senator Coash's amendment, on the committee amendment, and I would ask for a green vote on the bill as amended. Thank you. [LB23]

SENATOR GLOOR: Thank you, Senator Hadley. The question is the advancement of LB23 to E&R Initial. Those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB23]

ASSISTANT CLERK: 38 ayes, 0 nays on the advancement of the bill. [LB23]

SENATOR GLOOR: The bill advances. [LB23]

SENATOR COASH PRESIDING

SENATOR COASH: Next item, Mr. Clerk.

ASSISTANT CLERK: Mr. President, the next bill is LB487, introduced by Senator Wightman. (Read title.) The bill was read for the first time on January 23, referred to the Health and Human Services Committee. That committee placed the bill on General File with committee amendments. (AM508, Legislative Journal page 690.) [LB487]

SENATOR COASH: Thank you, Mr. Clerk. Senator Wightman, you are recognized to open on LB487. [LB487]

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SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. LB487 is a bill that modifies the certificate of need statutes for rehabilitation beds. I would guess that many of you don't know what the certificate of need is, so let me first give a little background on the certificate of need and then explain the purpose of the bill. The certificate of need, sometimes referred to by its initials, CON, was a health planning process in place in Nebraska from 1979 to 1997. At that time, all healthcare in the state was subject to CON review prior to any expansion of services or facilities. The CON laws attempted to control healthcare costs by regulating the supply of services. CON was encouraged by the federal government and had three goals: to restrain skyrocketing healthcare costs; to prevent unnecessary duplication of resources; and to provide access to care at a reasonable cost. In 1997, Nebraska eliminated our CON law for hospitals but made a conscious decision to keep CON, or certificate of need, for rehabilitation beds in long-term care or nursing home beds. Rehab can be very specialized and expensive care, especially in the specialized or complex cases that involve spinal cord injury, brain injury, stroke, or catastrophic accidents. For a rehab hospital or a unit to be able to provide this specialized level of care, a large population of patients is required who, fortunately, do not exist in large numbers. But it takes thousands of these patients to support the specialized care and expertise that is needed to treat the most complex cases. Rehab CON exists because of the need for a critical mass of patients. If any facility could license rehab beds, the critical mass would be diluted and the level of care necessary, for the most difficult cases, either will not be available or will be extremely expensive. As a result, our CON statutes restrict how many rehabilitation beds can be licensed and how they can be transferred. The law today states that rehab beds cannot be relocated from one healthcare facility to another healthcare facility. It was assumed that this language meant that a hospital A could transfer rehab beds to hospital B or that one hospital couldn't--and I should have said, couldn't transfer rehab beds to hospital B or that one hospital couldn't transfer rehab beds to a different hospital. And it was believed that a hospital could transfer rehab beds between facilities that it owned. The Department of Health and Human Services has taken a position that no beds can be transferred, even if they are being transferred between buildings of the same hospital. Since there is a question about where beds can be located, it is important to clarify the statute. If a facility wanted to move beds from Lincoln to Omaha, where there is a larger patient population, that could not happen today under existing statutory language. Or if a hospital with locations in several cities wanted to consolidate their rehab beds into one unit, located in one city, it could not happen today, under the current CON statute. This is because the Department of Health and Human Services has taken the position that no rehab beds can be transferred, period. They can't be transferred to a different building owned by the same hospital; they can't be moved to different cities where more patients are located; and they can't be consolidated on one campus from different facilities owned by the same hospital. Clearly, that doesn't make much sense. There is a reason for the language that you can't move rehab beds from one facility to another facility. Several years ago, the federal government reimbursed for rehab in a manner that encouraged the creation of

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rehab beds. As a result, there was incentive for a hospital to create or license ten beds and then sell them. One hospital could then buy up a number of beds from other hospitals and not be in violation of the certificate of need. To prevent this proliferation of beds, the hospital was changed to prevent the transfer of beds from one facility to another or from hospital A to hospital B. It was never the intention that the law prevent the transfer of beds between buildings that one hospital owns. LB487 clarifies that, as long as a hospital owns and operates the beds in the first facility and continues to own and operate them in a second facility, the beds can be transferred. Stated another way, a hospital can transfer its own rehab beds to another facility as long as it owns and operates a second facility and continues to own and operate the beds at that facility. This clarification would allow a hospital to transfer a portion of its beds from Lincoln to Omaha or vice versa and it would allow a hospital to consolidate beds into one unit from several facilities that it owns and operates. As I mentioned, we also have a certificate of need for our long-term care beds, and we allow these beds to be transferred, so there is precedence for this type of procedure. Part of my reason for carrying this bill this year is that I spent more time than any other member of the Legislature in some of these facilities. I want to point out that the bill does not circumvent the certificate of need process. The bill does not allow any new beds to be created. The bill just allows the owner of beds to determine where in the state they are best utilized. Our legislative Fiscal staff makes the correct assumptions in the fiscal note and finds that LB487 has no direct fiscal impact on the Medicaid program. Because no new beds are created and beds are merely moved from one city to another, there should be no fiscal impact. LB487 is a good bill that will allow rehab beds to be located where they are most needed without circumventing the certificate of need process that is currently in place and working. I would urge your support for LB487. Thank you, Mr. President. [LB487]

SENATOR COASH: Thank you, Senator Wightman. As the Clerk has stated, there is an amendment from the Health and Human Services Committee. Senator Campbell, you are recognized to open on the committee amendment. [LB487]

SENATOR CAMPBELL: Thank you, Mr. President and members of the Legislature. The amendment that you have before you to this bill is a suggestion of Dr. Joann Schaefer, who was, at that point in time, as the Director of the Division of Public Health with the Department of Health and Human Services. Dr. Schaefer certainly had worked with the Health and Human Services Committee on a number of issues. She indicated that the original bill's language was unclear and would be difficult for the department to administer accordingly. She came to the committee and suggested the new language, which is provided in the committee amendment, and I quote: No certificate of need is required for relocation or transfer of rehabilitation beds from a healthcare facility to another healthcare facility owned and operated by the same entity. And Dr. Schaefer felt that was abundantly clear. What the body needs to understand is that the department and the facilities seeking this had been in long conversations and trying to determine if the current law and the current rules and regs would suffice. And finally, the

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department said, no, we think you need to seek out a legislative bill, and so the bill came. Really, Senator Wightman's office, I thought, did a great job in bringing this together because that was near to the last day or the last day of bill introduction. So I appreciate that Senator Wightman and his staff have spent a considerable amount of time trying to prepare for this. The other point that I'll just throw out for you to know is that when we look at certificate of need, for instance, in long-term beds, that's divided up by district or region so, I mean, it's a whole different setup. When you look at rehabilitation beds, the entire state is considered as one region or one entity. So it's very different to compare what you might do, in terms of moving long-term beds, to rehab beds. So you...that's why the bill is necessary, why the amendment is necessary. And with that, I would certainly encourage your support of the amendment and the underlying bill, and I do support both because I think it answers some questions permanently rather than just saying, well, does it fit or does it not? So it is an important bill and an amendment. Thank you, Mr. President. [LB487]

SENATOR COASH: Thank you, Senator Campbell. Members, you've heard the opening to LB487 and the committee amendment. The floor is now open for discussion. Those wishing to speak: Senators Ashford, Gloor, Watermeier, and Bolz. Senator Ashford, you are recognized. [LB487]

SENATOR ASHFORD: Thank you, Mr. President. Senator Campbell, could I...could I ask Senator Campbell a question? [LB487]

SENATOR COASH: Senator Campbell, will you yield? [LB487]

SENATOR CAMPBELL: Certainly. [LB487]

SENATOR ASHFORD: So I...my, I guess, two questions. One is, why do we need the bill, number one, and in a macro sense? And then, secondarily, is there something specifically moving this? Is there a rehabilitation facility that wants to move somewhere and they can't, under the...or at least they can't without a certificate to do so, under current law? [LB487]

SENATOR CAMPBELL: Very good questions, Senator Ashford. First of all, the department had deliberated for a long period of time whether this could have been covered under current statutes and rules and regs. And they finally got back to the entity and said, no, we feel you need legislation. So the department was the one who said, you need to seek this bill. The entity that is looking at using this is Madonna, and Madonna has beds, has a facility in Lincoln. They would open a facility in Omaha, but they would still have the same number of beds. Madonna is a facility that brings people, truly, from all across the United States, for care into the facility. So that should answer the two questions. [LB487]

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SENATOR ASHFORD: So, in essence, as it sits now, the department is questioning whether or not it can approve at... [LB487]

SENATOR CAMPBELL: Absolutely. [LB487]

SENATOR ASHFORD: ...Madonna doing additional...providing additional beds in Omaha? Is that what it's...? [LB487]

SENATOR CAMPBELL: I think Dr. Schaefer's point to the committee when we developed the amendment was, let's be absolutely clear in the language of the statutes what can be done. And I think the department felt that what they currently had on the books did not provide that clarity. [LB487]

SENATOR ASHFORD: And there wasn't...again, this may be beyond the scope of this bill, but there wasn't any particular policy concern or operational concern, I guess is a better description, for Madonna going to Omaha with additional beds? Or there wasn't a concern there were too many beds in Omaha now or...? I noticed that Alegent was opposed to the bill, and I... [LB487]

SENATOR CAMPBELL: From the department's standpoint, Senator Ashford, their concern had to do with the clarity in the law. [LB487]

SENATOR ASHFORD: Okay, and so Alegent then was...was their argument that they had enough beds in Omaha? Is that what they're saying? [LB487]

SENATOR CAMPBELL: I think that, as we listened to the testimony that day, Alegent was trying to talk about the capacity within their own facilities. And yes, I suppose that you could look at it that way. I think we also tried to look at it in terms of the capacity regionally. [LB487]

SENATOR ASHFORD: And I, you know, I really defer to you on these matters, Senator Campbell. But I did notice that Alegent was a...had opposed this. And we don't have to get into a total discussion. Maybe Senator Gloor will go into certificate of need in greater detail with his testimony, but I appreciate your answers to the questions. Thank you. [LB487]

SENATOR COASH: Thank you, Senator Ashford. Senator Gloor, you are recognized. [LB487]

SENATOR GLOOR: Thank you, Mr. President. Good evening or good afternoon, members. And Senator Ashford has sort of teed this up a little bit for me. He and I speaking on the mike two days in a row about certificate of need must make us the silver-haired group. I think it's a...this is older legislation that really hasn't been

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addressed in a number of years, but it comes in this instance. And I think, since I'm a member of the committee who voted to move this forward, I have some knowledge of certificate of need and, more importantly, introduced a bill several years ago that changed certificate of need that affects long-term care. Senator Wightman referenced that. I should explain my rationale. I should explain that bill by way of explaining my vote and support of LB487 and the committee amendment. Certificate of need remains, in a very limited way, in effect. And several years ago it was brought to my attention is that certificate of need as it relates to long-term care beds, operated with a moratorium. There could be no new long-term care beds. The state of Nebraska was considered to be then, is considered still, to be overbedded when it comes to long-term care beds, nursing home beds. But, unfortunately, when this was put in place over several decades ago, that moratorium related to different districts or regions around the state of Nebraska. And you could, in fact, sell or move those beds around these different regions--Panhandle, north-central, central, eastern. You could move them around the regions, but you couldn't move them around the state into different regions. And, unfortunately, as demographics of this state have changed, what happened is the less-populated areas of that state, of our state, have become those rural areas and those rural regions. The more populated areas, the eastern regions. And so you'd find nursing homes that would like to sell their beds or move their beds but can't do so because there is more than enough beds in those more rural areas as populations have moved out. There was, however, a market demand for those beds, a need for those beds in communities like Omaha and Lincoln. And so what my bill did was remove the regions and said, rather than being trapped within regions, you could move or sell those beds across the entire state of Nebraska. And we made that change in certificate of need. So as I considered LB487, my thought process then, my support still is banked upon the issue of we felt it appropriate as long as there wasn't an increase...I felt it was appropriate, as long as there wasn't an increase in overall beds, that those beds could be moved to wherever the market called for or demanded those beds and, in this case, some of the beds in Lincoln are now being moved up to Omaha. It's the decision of the owner of those beds that there is a market in Omaha and choose to make that move of some of the beds in Lincoln to Omaha. They could move them to Scottsbluff if they wanted. They could move them to O'Neill or Atkinson if they wanted. In this case, not surprisingly, they see the growth and the need for those rehab beds in Omaha. And so, it seemed to me, consistent with the changes I made in the certificate of need law for long-term care that I'd be supportive of LB487 and moving these rehab beds. That's my reason, my rationale, and why I'll be supportive of the committee amendment and LB487. Clear as mud, I am sure. Thank you, Mr. President and members. [LB487]

SENATOR COASH: Thank you, Senator Gloor. Senator Watermeier, you are recognized. [LB487]

SENATOR WATERMEIER: Thank you, Mr. President. Good afternoon. It's not evening yet, I hope, Senator Gloor. Good afternoon, Nebraska. I wanted to rise and just explain

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a little bit my position. I think I did vote against this bill in committee, and I...just a couple things that had come up. First one was a red flag immediately when I had heard this was a Madonna bill. And not to necessarily poke fun at Madonna, but when anytime you have legislation or anything that I've been involved with over the years, if it's for one single entity, I'm just going to really have to struggle with something like that. I think they were quick to come to the point to call it a Madonna bill because it all came up at the 11:30 hour. It was Friday, as far as bill introductions, and they were scrambling to get things together, and it kind of got sold in that regard. The second red flag that came up for me was in discussion. The Omaha population and the Omaha hospitals had shown a clear need that their beds were of excess capacity. They have beds that are laying available, and so I struggled with the idea that, is this really something we want to do? But the reason I'm going to lay off of this bill and not go against it at all is mainly the fact that I think it would be overregulating to tell somebody they can't. And so, for that reason, I'm going to stand aside of this, I'm not going to pursue it, and I think it's probably fine. If somebody is willing to move beds around the state and they see a need, I'm not going to be one to stop that. They're going to make a significant investment in Omaha and, I believe, that's justified. And, plus, the other reason: The CON, the certificate of need...and I'm sure glad that Senator Gloor spoke in front of me, because I wouldn't want to go down that path to try to explain or justify anything that goes on in that. But I'm convinced now that I want to stay away from this. I'm not going to fight it at all. And I really didn't have serious objections before, but it was in the way it was presented early in the process. Thank you, Mr. President. [LB487]

SENATOR COASH: Thank you, Senator Watermeier. Senator Bolz, you are recognized. [LB487]

SENATOR BOLZ: Thank you, Mr. President. I rise in support of this bill. I support certificate of needs programs. I think they help eliminate unnecessary projects that detract attention to more urgent healthcare needs. But I think that LB487 makes a small and strategic change in that law that increases flexibility of healthcare providers. And while LB487 would apply to multiple types of providers, a hospital in my district, Madonna Rehabilitation Hospital, did bring this to our attention. And I think, as a regional leader, it's good and appropriate that they were the ones who brought this to us and asked for this flexibility because I think, as a regional leader, they have capacity, not just in terms of beds and physical locations, but expertise in terms of how to do this well and how to do this right. And I appreciate Senator Wightman's ability to bring this bill to give Madonna Rehabilitation Center and other such entities the capacity to leverage their expertise to serve people who are injured and in need of rehabilitation. So I urge your support on this bill. Thank you. [LB487]

SENATOR COASH: Thank you, Senator Bolz. Senator Krist, you are recognized. [LB487]

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SENATOR KRIST: Thank you, Mr. President. Good afternoon, colleagues and Nebraska. It is a very big man who can admit that he is absolutely wrong and, Senator Watermeier, you are big today. Thank you very much. Those were misconceptions, to begin with, during the testimony. Special legislation? No, this changes the rules. This is going to allow people who own beds to move the beds around. Something that's not been alluded to so far: There are no regions with these types of beds; the entire state of Nebraska is the region, and those beds can be moved anywhere in the state. Overbedded in the Omaha area? Ninety percent plus to capacity in the one area that we had been told, initially, was overbedded. Now that they have converted their beds to single-bed rooms, they are now 90 percent plus, so the capacity is near being filled, so there is a critical need. Business decision? Absolutely. They're going to invest in the Omaha area. They're going to bring folks into the eastern region, which will probably attract more business from Minnesota, Iowa, and all over the country. Note, folks, one-third of the population that currently is at Madonna here in Lincoln is from the Omaha area, one-third. Over two-thirds of the physicians are traveling down the interstate to Madonna. That's still not going to change because there is going to be a need here, but a lot of those specialties, in terms of the physicians and the special attention, those people, those talented professionals, are coming from the metropolitan area, from Omaha. One other plug: Please, at some time during the next, what are we down to, less than 30 days now, stop by my office and shake Rod Krogh's hand, and then say a prayer for Madonna, because that whole rehabilitation for Rod in the last year and a half has been thanks to Madonna Rehab Center. Obviously, the critical specialties, the emergency folks that got him to where he was going to go, but, as Senator Wightman, I'm sure, can testify to, a wonderful facility, wonderful capability. And I'm not "dissing" you guys in Omaha; I'm just saying Madonna is doing a good job. Thank you. Please vote green on both the amendment and the bill. [LB487]

SENATOR COASH: Thank you, Senator Krist. Senator Wightman, you are recognized. [LB487]

SENATOR WIGHTMAN: Thank you, Mr. President. I thought I would just say a few additional words. Number one, as I said, I have been a patient there for some period of time over the last several years, three years or four. I've kind of lost track of time. But I've spent about three months in their facility, as far as Madonna is concerned. Madonna, as Senator Krist just said, provides a tremendous amount of service not only to people in Omaha but to the people beyond the state of Nebraska. I don't know if I have the figure right here, but I think that it served maybe 16 different states in the past year, and it may be more than that. But it is a specialized facility and when you're dealing in a specialized facility, sometimes location is very important, and it is to Madonna in this instance. They do, as I said, provide services to so many people outside the state. They're not asking for an increase in beds. They're really just asking for an increase...or a change in their position, in part, so that they can better provide the people they have. And I'm sure they intend and hope to obtain patients from outside the

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state that they're not getting now, but it is a very specialized facility. Thank you, Mr. President. [LB487]

SENATOR COASH: Thank you, Senator Wightman. Seeing no other members to speak, Senator Campbell, you're recognized to close on the committee amendment. Senator Campbell waives closing. The question before the body is, shall AM508 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Record, Mr. Clerk. [LB487]

ASSISTANT CLERK: 29 ayes, 0 nays on the adoption of committee amendments, Mr. President. [LB487]

SENATOR COASH: The committee amendments are adopted. We return to discussion on LB487. Seeing no members wishing to speak, Senator Wightman, you are recognized to close on the advancement of LB487. [LB487]

SENATOR WIGHTMAN: Thank you, Mr. President. I'm just asking that you do support LB487, that you give us a green vote. With that, I think most of the language and any questions anyone had have been discussed so, again, thank you. [LB487]

SENATOR COASH: Thank you, Senator Wightman. Members, you've heard the closing to LB487. The question before the body is, shall LB487 advance? All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Record, Mr. Clerk. [LB487]

ASSISTANT CLERK: 30 ayes, 0 nays on the advancement of LB487, Mr. President. [LB487]

SENATOR COASH: LB487 is advanced. Next item, Mr. Clerk. [LB487]

ASSISTANT CLERK Mr. President, LB563 introduced by Senator Krist. (Read title.) The bill was read for the first time on January 23, referred to the Government, Military and Veterans Affairs Committee. That committee placed the bill on General File with no committee amendments. [LB563]

SENATOR COASH: Thank you, Mr. Clerk. Senator Krist, you're recognized to open on LB563. [LB563]

SENATOR KRIST: Once again, thank you, Mr. President. Good afternoon, colleagues and Nebraska. I'm not sure I can beat Senator Harms's time from this morning in passing his bill along, but I'm sure going to try. I want to thank the colleagues of the Legislative Performance Audit Committee for helping me with this bill and prioritizing this bill as it was the subject matter of several studies and audits by the Performance Audit Committee. As indicated in the committee statement, LB563 advanced from the

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Government, Military and Veterans Affairs Committee unanimously, 8-0 vote. There were no opponents or neutral testifiers offered during the committee hearing last month. Last year, Senator Avery introduced and the Legislature passed, LB858. It was then a culmination of many contract bills that came in to his committee. Essentially this bill, an agency proposing to contract for services over \$15 million will submit to the Materiel Division of the Department of Administrative Services, DAS, a copy of a proposed contract and a completed proof-of-need analysis. Cost analysis and proof-of-need, I feel, are very important when this government contracts with anyone. The overall intent of the legislation was to establish an open and fair process for selection of contractual services using performance-based contracting methods to the maximum extent practical. The problem was there was a loose interpretation because it applied at that point to contracts in general. This change in this piece of legislation changes one word, "new." It puts the word "new" in so that it specifies that it applies to new contracts only. I would ask you for your support on LB563. Pretty simple, one word change, and it does not change the intent of the statute but clarifies what contracts should require a proof of analysis. Thank you, Mr. President. [LB563]

SENATOR COASH: Thank you, Senator Krist. Members, you've heard the opening to LB563. The floor is now open for discussion. Senator Avery, you're recognized. [LB563]

SENATOR AVERY: Thank you, Mr. President. As Senator Krist said, this bill did come before the Government Committee and I wanted to add my support for it. It is an improvement on a bill that I carried last year that is now law. There's no reason why all contracts, except new ones, would need to go through this proof-of-need analysis. This is a good bill. It makes the government more efficient, but it still maintains the essence of what we did last year, which was a needed change in our law regarding service contracts. I urge your support. Thank you, Mr. President. [LB563]

SENATOR COASH: Thank you, Senator Avery. Seeing no other members wishing to speak, Senator Krist, you are recognized to close on the advancement of LB563. [LB563]

SENATOR KRIST: Thank you, Senator Avery and the Government Affairs Committee, for placing this out. Thanks to the Legislative Performance Audit for allowing me to use one of the priorities, and please vote green. Thank you. [LB563]

SENATOR COASH: Thank you, Senator Krist. Members, you've heard the closing to LB563. The question before the body is, shall LB563 advance to E&R Initial? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB563]

ASSISTANT CLERK: 36 ayes, 0 nays on the motion to advance the bill, Mr. President. [LB563]

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SENATOR COASH: LB563 does advance. Next item, Mr. Clerk. [LB563]

ASSISTANT CLERK: Mr. President, the next bill is LB3, which is legislation introduced by Senator Krist. (Read title.) The bill was read for the first time on January 10, referred to the Judiciary Committee. That committee placed the bill on General File with committee amendments. (AM351, Legislative Journal page 500.) [LB3]

SENATOR COASH: Thank you, Mr. Clerk. Senator Krist, you are recognized to open on LB3. [LB3]

SENATOR KRIST: Thank you, Mr. President. Good afternoon, colleagues, again, and hello, Nebraska. I want to thank Speaker Adams for designating LB3 as one of his Speaker priority bills this session. LB3 advanced from the Judiciary Committee on a 7-0 vote with 1 member absent. I want to thank Chairman Ashford and the members of the Judiciary Committee for advancing the bill. LB3 allows individual property owners in the state of Nebraska to be promptly notified of a nonconsensual lien that has been filed against them at the county recording office without their knowledge. This bill does not, it does not, apply to mortgages, deeds of trust, or encumbrances where all parties involved have knowledge of said encumbrances. At the present time, without passage of this law, it is unreasonable for a property owner to be left completely in the dark, perhaps for years, and only made aware of a lien when it is time for them to check or dispose of the property. Notification of a nonconsensual lien being officially filed is what this bill accomplishes. It is what it is all about. There are some news accounts of IRS agents having false, nonconsensual liens placed on their property by antigovernment activists. The news indicated the tax protestors, while claiming the act in the interest of the freedom of personal liberty, used a nonconsensual lien filing as a way to harass private individuals in their private lives as part of the taxpayers' protest campaign. It is terrorism, in other words. Other news accounts have related disturbing details of prominent elected officials, judges, lawyers, doctors, and other targets with frivolous practice liens which, clearly, is a means of harassment and to intimidate the individuals. As introduced, LB3 merely requires the lien filer to provide a postage-paid, preaddressed envelope at the time of the filing. The committee amendment that you'll hear in just a bit replaces this bill and it has strengthened this bill. Ultimately, this bill is being introduced to prevent two words: paper terrorism. I want to thank my constituents for some...two of my constituents for providing information to the Judiciary Committee to explain what they went through when someone filed a nonconsensual lien against them. In closing, I want to thank the Judiciary Committee for their support of LB3, for unanimously advancing it, and their putting the priority that was on it and Speaker Adams for his priority. I'll note that on the list of priorities, I think he must have felt it was the most important bill to prioritize because it ended up number one on the list. And with that, I am done. [LB3]

SENATOR COASH: Thank you, Senator Krist. As the Clerk stated, there is a committee

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amendment. Senator Ashford, as Chair of the Judiciary Committee, you are recognized to open on AM351. [LB3]

SENATOR ASHFORD: Thank you, Mr. President, and thank you, Senator Krist. The problem of nonconsensual liens is very real. There are horror stories that we've heard about in the committee for a couple of years now about these liens. What happens...and most of you are probably aware of these types of situations where, for example, if work is done on your home by a contractor, and a subcontractor does not have a contractual relationship with you, the homeowner, can file a lien without your consent, and if those...or without an underlying contract with that particular subcontractor. Those can be legitimate, of course, but if they are fraudulent they can cause significant damage to you as the homeowner. The committee amendment, which is substantially the bill, is the product of work done by the bar association, the Land and Title Association, and the Attorney General to address this problem. The amendment would replace the green copy, and it would create the crime of fraudulently filing a financial statement, lien, or document as a Class IV felony. The crime is committed if a person submits for filing or recording in the public record a nonconsensual lien, a financing statement not based on a bona fide security agreement or not authorized or authenticated by the alleged debtor, or a document containing false information in an attempt to harass or obstruct. And the amendment goes on to provide a process of notification. On page 2 and 3 of the amendment, there is a process of notification to the owner of a nonconsensual lien. The lien, or notice of the lien, is served upon the owner of the real property, upon which the nonconsensual common law lien is recorded. And the sheriff shall make return without delay by filing proof of service with the register of deeds of the notice. There shall not be a filing fee for the filing of the proof of service. And a judicial proceeding to enforce a nonconsensual common law lien shall be instituted by the claimant within ten days. What happens is these nonconsensual fraudulent liens remain for a long period of time on the record or can do without any notice to the owner of the real property. And when the owner decides to sell or otherwise mortgage or otherwise deal with the property in some way that requires a clean title, it's determined that there is a lien on file, unbeknownst to the property owner. This bill, with the amendment, is intended to address that problem. And Senator Krist has worked hard on this and has brought to our attention a case that he can talk about if he wants to; otherwise, we won't. But there are harrowing examples of filers who go around filing these liens against real property in the state of Nebraska. It is a problem, we need to address it, and I believe AM351 does so and I would urge its adoption. [LB3]

SENATOR COASH: Thank you, Senator Ashford. Members, you've heard the opening to LB3 and the committee amendment. The floor is now open for discussion. Seeing no members wishing to speak, Senator Ashford, you are recognized to close on the committee amendment. Senator Ashford waives closing. The question before the body is, shall AM351 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Record, Mr. Clerk. [LB3]

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ASSISTANT CLERK: 27 ayes, 0 nays on the adoption of committee amendments. [LB3]

SENATOR COASH: The committee amendment is adopted. Returning to discussion on LB3, Senator Nelson, you are recognized. [LB3]

SENATOR NELSON: Thank you, Mr. President. I'd like to ask Senator Ashford a question or two, if he will yield. [LB3]

SENATOR COASH: Senator Ashford, will you yield? [LB3]

SENATOR ASHFORD: Just a sec, I will...yes. No, I will right now answer the question, as a matter of fact. [LB3]

SENATOR NELSON: All right, thank you, Senator. There wasn't much discussion on this, and things are moving a little fast, which bothers me a little bit, although... [LB3]

SENATOR ASHFORD: Well, it was a pretty comprehensive answer, I thought, Senator Nelson, so... [LB3]

SENATOR NELSON: Yeah. (Laugh) All right. I understand the bar association, but I'm a little bothered by, on page 2, line 18, Section 4. [LB3]

SENATOR ASHFORD: Okay. [LB3]

SENATOR NELSON: Liens can be nonconsensual. I mean, there can be a subcontractor. [LB3]

SENATOR ASHFORD: Right. [LB3]

SENATOR NELSON: And if they don't think they can collect from their contractor, they can go after the owner. [LB3]

SENATOR ASHFORD: Correct. [LB3]

SENATOR NELSON: All right, so here we're saying a nonconsensual common law lien is not binding or enforceable at law or in equity. That's kind of far-reaching. Are you trying to pinpoint something? Does common law mean something there? Does it have to be a statutory lien? [LB3]

SENATOR ASHFORD: It does have to be a statutory lien, but let me check with...let me just check with Stacey real quick. [LB3]

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SENATOR NELSON: All right, fine. We'll just wait. [LB3]

SENATOR ASHFORD: Okay. We're...if we refer to 52-1901, nonconsensual common law lien means a document that purports to assert a lien against real or personal property of any person or entity and is not expressly provided for by the specific state or federal statute. So there is a specific definition in 52-1901. [LB3]

SENATOR NELSON: So I guess what we're saying there, if you don't follow the statutory language in...and I don't know. I haven't had an opportunity to look it up. I'll just reserve judgment and comment on this, I guess, until I have a chance to take a better look at it. And maybe if things need to be clarified by Select, we...I'll talk with you, off the mike, and that's...it just popped out at me there. [LB3]

SENATOR ASHFORD: Well, I'd like to answer, you know, and I think you raise a good question. It is a bit confusing, so I might turn my light back on again... [LB3]

SENATOR NELSON: All right. [LB3]

SENATOR ASHFORD: ...and we can talk about it for a second. [LB3]

SENATOR NELSON: All right, fine. Well, that was the only question I have at this time without going through the entire amendment. Thank you. Thank you, Senator Ashford. Thank you, Mr. President. [LB3]

SENATOR COASH: Thank you, Senator Nelson. Senator Schumacher, you are recognized. [LB3]

SENATOR SCHUMACHER: Thank you, Mr. Chairman and members of the body. We're just having a bit of a discussion as to how this interacts with LB210, that I believe we've already passed this year, which deals with fraudulent filings in the Secretary of State's Office and the procedure for getting around such a fraudulent filing if you were a victim of it. Senator Ashford, would you yield to a question? [LB3 LB210]

SENATOR COASH: Senator Ashford, will you yield? [LB3]

SENATOR SCHUMACHER: Senator Ashford, in the development of this bill, was there any consideration or discussion as to how it might interact with LB210, which was something I think we passed already this year out of Banking and Insurance? [LB3 LB210]

SENATOR ASHFORD: There was no discussion, but illuminate me, and maybe I can... [LB3]

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SENATOR SCHUMACHER: Okay. Senator Gloor, would you yield to a question? [LB3]

SENATOR COASH: Senator Gloor, will you yield? [LB3]

SENATOR GLOOR: Yes, I would. [LB3]

SENATOR SCHUMACHER: Senator Gloor, I don't believe in the Banking Committee we've looked at the possible interactions between this bill and that bill. Is...do you see any conflicts at this point? [LB3]

SENATOR GLOOR: Actually, counsel has looked at this once it came out of committee. And I think the difference--this is a very brief explanation--is that LB3 deals with real property records, and LB210 that has already been passed by this body, deals with UCC issues and personal property. And so we have a difference here that we're pretty comfortable doesn't provide any degree of conflict or oversight. We can sit down and talk further about that, off-mike,... [LB3 LB210]

SENATOR SCHUMACHER: Okay. [LB3]

SENATOR GLOOR: ...if necessary, Senator Schumacher. [LB3]

SENATOR SCHUMACHER: Thank you, Senator Gloor. We just wanted to, as things are moving along here, make sure that we weren't passing something that conflicted with something else, and it appears that we can work out any differences if there is a difference. Thank you. [LB3]

SENATOR COASH: Thank you, Senator Schumacher. Senator Gloor, you are recognized. Senator Gloor waives. Senator Krist, you are recognized. Senator Krist waives. Senator Ashford, you are recognized. [LB3]

SENATOR ASHFORD: Yeah, I just...I think, Senator Nelson...Senator Nelson has disappeared. But I think, to be clear, there are legitimate liens that are authorized by statute that one can file. And a subcontractor can file a lien. What we're talking about here are liens that are not provided for in statute. The reason for the bill--and I think Senator Krist has explained it--is that there are liens that are entirely fraudulent. They are filed on properties to harass people. And the reason that...and oftentimes they are filed by parties outside the state of Nebraska, and they are filed by individuals to fraudulently attempt to elicit some sort of payment from the owner of the property. And maybe Senator Krist would want to talk about, in an abstract way, some of the examples that he is aware of. But to Senator Nelson's question, we're not talking about statutory liens. We're talking about liens that are not statutory, and they are nonconsensual and they're fraudulent. And the reason we put a felony IV penalty in here was to allow for and provide for extradition of individuals to the state who are filing

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these liens from outside the state. And there's evidence of citizens of other states or other individuals who do not live in Nebraska who file these liens to harass individuals in our state, and that's the problem. And unless we make it a felony IV, it would be, well, unlikely, not even likely at all that there would be any proceeding to extradite these people into the state so they could be prosecuted. That's the reason for the felony punishment or penalty. And again, we're not talking about legitimate liens, so I don't know if...Senator Nelson, do I...could I ask you a question? [LB3]

SENATOR COASH: Senator Nelson, will you yield? [LB3]

SENATOR ASHFORD: And maybe I'll just give you the rest of my time. [LB3]

SENATOR NELSON: Well, thank you, Senator Ashford. I'll be happy to take your time. And I just got in on the last 50 percent of your testimony here. I was out in the lobby talking with representatives of the Attorney General's Office and county officials, bar association. And there is, both in statute, it's my understanding now, both in statute and also in judicial decisions, kind of a pretty narrow definition of a nonconsensual common law lien. And so they say that with surgical precision, they have gotten this language here. So it achieves what they want to do, and that is to bring pressure to bear and prosecution, especially on out-of-state perpetrators here that are filing these liens against public officials and things of that sort. So I apologize if I caused any consternation by asking about this. But I think the answers are good and I, under the circumstances, certainly have no objection to the language now or what you're trying to do here. Thank you, Senator Ashford. Thank you, Mr. President. [LB3]

SENATOR COASH: Thank you, Senator Nelson. And, Senator Nelson, you are next in the queue. Senator Nelson waives. Seeing no other members wishing to speak, Senator Krist, you are recognized to close on the advancement of LB3. [LB3]

SENATOR KRIST: Constituents came to me and outlined over a decade of trouble in trying to rid themselves of nonconsensual liens that were put on properties and they knew nothing about them. When I investigated this four years ago, I also found folks that were dealing with the estates of their parents and loved ones and, for the first time, they found a lien upon the property. And they had to solve the issue and, as you can well imagine, if you're not a lawyer, it will cost you money to have these things taken care of. So, as inconsequential as it might be, they had to pay the \$500 or the \$1,000 or the \$10,000 because it was going to be more expensive to fight it. If you're a property owner in the state of Nebraska, be aware that, as of the time when this is put into law, you are protected, you will be informed, you will know, and then it will become your obligation to go and speak to the authorities to make sure that that lien is justified and is on your property for the right reasons and to solve the issue before it becomes a problem for your surviving family members or for you in the distant future. Thank you to the Judiciary Committee, Senator Ashford as the Chairman, and thank you to the

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Speaker for the priority. And I ask for a green vote. [LB3]

SENATOR COASH: Thank you, Senator Krist. Members, you've heard the closing to LB3. The question before the body is, shall LB3 advance to E&R Initial? All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Record, Mr. Clerk. [LB3]

ASSISTANT CLERK: 35 ayes, 0 nays on the advancement of the bill. [LB3]

SENATOR COASH: LB3 does advance. Next item, Mr. Clerk. [LB3]

ASSISTANT CLERK: Mr. President, the next bill is LB99 introduced by Senator Mello. (Read title.) The bill was read for the first time on January 10. It was referred to the Judiciary Committee. That committee reports the bill to General File with committee amendments. (AM34, Legislative Journal page 592.) [LB99]

SENATOR COASH: Thank you, Mr. Clerk. Senator Mello, you are recognized to open on LB99. [LB99]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. First, I'd like to thank Speaker Adams for making LB99 a Speaker priority bill this year. Nebraska's current ban on racial profiling was first passed in 2001 and one of its primary components was the requirement that law enforcement agencies statewide collect statistical data that could be used to assess the prevalence of racial profiling relative to motor vehicle stops. This data is submitted to the Nebraska Commission of Law Enforcement and Criminal Justice, commonly referred to as the Crime Commission, on a quarterly basis, who in turn produces an annual report on traffic stops and allegations of racial profiling for the Governor and members of the Legislature. A copy of the latest version of this report was distributed to all of our offices earlier this month. The reporting requirements for both local law enforcement agencies and the Crime Commission have been extended three times, most recently by a former colleague of ours, Senator Bob Giese. The most recent extension is scheduled to expire in 2014, and as introduced, LB99 would extend the requirements an additional four years to 2018. While the first of these requirements would not expire in so more than a year from now, a temporary lapse in these requirements being in effect has actually resulted in some agencies failing to submit quarterly reports to the Crime Commission in the past. While the data included in the traffic stops report is vital to both local law enforcement agencies and the communities that they serve, the numbers are just that: numbers. Since the original racial profiling ban was passed the ability of the Crime Commission to do a more comprehensive analysis of the data has been limited both by existing financial resources and by a lack of statutory authority in guidance. As introduced, LB99 included a provision requiring the Crime Commission to seek out additional outside funding sources to help fund a comprehensive review of the data. The

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Judiciary Committee amendment, which Senator Ashford will describe in great detail, still encourages the Crime Commission to seek out such funding, but also provides them with the authority to analyze the raw data and make recommendations to local law enforcement agencies if there is a potential appearance of racial profiling. With that, I would like to thank the Judiciary Committee for working with me on this bill. Earlier in the session, there was many ideas presented and which, ultimately, I think we all felt the committee amendment that Senator Ashford will discuss, tries to address a lot of the issues that were raised both at the hearing and posthearing. I'd remind everyone, if you look at the committee statement, LB99 did not have any opposition nor did it have a fiscal note, and with the adoption of a cleanup amendment I have, as well as with the Judiciary Committee amendment, it also will continue to have no fiscal note. With that, I'd urge the body to advance LB99. Thank you, Mr. President. [LB99]

SENATOR COASH: Thank you, Senator Mello. As the Clerk has stated, there is a committee amendment. Senator Ashford, as Chair of the Judiciary Committee, you are recognized to open on the committee amendment. [LB99]

SENATOR ASHFORD: Thank you, Mr. President and thank you, Senator Mello, first of all, for your interest in this issue which is intense, and your tenacity in getting these changes made so that we could bring this matter to the floor. The committee amendment, AM34, amends 20-502 to emphasize that antiprofiling law again, the reporting of data or information to the Crime Commission includes traffic stops, clearly, but it also includes detentions. And Senator Crawford has asked a good question. You know, what is a detention? And we can talk about that, but it clearly does mean detention and not just traffic. Section 3 would amend 20-504 to require that each law enforcement agency in the state commit their antiracial profiling policy to writing. So again, the policy must be in writing and that a copy of the policy that is placed in writing must be submitted to the Crime Commission. If a law enforcement agency does not commit its policy to writing, the commission and the Racial Profiling Advisory Committee of the Crime Commission can develop a model or may develop a model racial profiling policy and submit that to the department or a city that does not have such a policy for implementation. Section 5 of the amendment amends Section 20-506 to increase the powers of the Racial Profiling Advisory Committee of the Crime Commission to provide that this committee can and has the authority to provide assistance to law enforcement departments across the state on developing policies and implementation of racial profiling policies. AM34 would authorize the committee to advise the executive director of the Crime Commission on the following: the annual review of the data by the Crime Commission; the completeness and acceptability of the antiracial profiling policies submitted by law enforcement agencies; the collection of data and any needed follow-up or inquiry as provided for in Section 20-504(3); and finally, the prevention of profiling and the need, if any, for enforcement by the Nebraska Department of Justice if there is a failure to comply with the prohibition or a failure to supply the needed reporting. In essence, what we've done with this amendment is we've taken what exists

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in statute today. And there is not a fiscal note here, so the Crime Commission believes that it can complete this task of much more interactivity between the Crime Commission and the various law enforcement agencies in the state, not only to gather data, but to create that collaborative piece between the Crime Commission and the departments on applying best practices to both identify and to reduce racial profiling. It is a significant problem, I know, in Omaha, for a variety of reasons. And in certain sections of the city there are significantly more traffic stops than in others. And on its face, that could create questions that need answers. And this particular committee amendment would allow for and authorize the Crime Commission to be more engaged with that department in ferreting out the reasons for the difference in the number of stops between areas of the city of Omaha. And that may very well be the case in other cities as well. With that, Mr. President, I would urge the adoption of AM34. [LB99]

SENATOR COASH: Thank you, Senator Ashford. Mr. Clerk, you have an amendment to the committee amendment. [LB99]

ASSISTANT CLERK: Mr. President, I do. Senator Mello, the first amendment I have from you is AM782. I understand you wish to withdraw this one. [LB99]

SENATOR MELLO: Correct. [LB99]

ASSISTANT CLERK: In that case, Senator Mello would offer AM1021. (Legislative Journal page 1003.) [LB99]

SENATOR COASH: Senator Mello, you're recognized to open on AM1021. [LB99]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. Following the enactment of the original racial profiling ban, the Legislature created the Racial Profiling Advisory Committee which was tasked with advising of the executive director of the Crime Commission on the production of the annual traffic stop reports. The membership and role of that advisory committee was expanded in 2010 to include representatives from the Latino-American Commission, the Commission on Indian Affairs, the Nebraska branches of the NAACP, and the Nebraska State Bar Association. The intent of these changes was to allow the advisory committee to make recommendations to the Crime Commission on how to improve the annual traffic stop reports. After LB99 was advanced by the Judiciary Committee, the Racial Profiling Advisory Committee met to review the proposed changes in both the bill and the Judiciary Committee amendment. The advisory committee felt, rather than just extending the data collection provisions again, the time has come to repeal the sunset clauses relating to data collection. Per their request, AM1021 would eliminate the sunsets, ensuring that this data will continue to be available into the future of absent additional legislative action on this topic. In addition, AM1021 makes a technical change to correct an error that was made when the Racial Profiling Advisory Committee was

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expanded in 2010. When representatives from the NAACP and the Nebraska State Bar Association were added, the language was written to allow each of these private organizations to submit a list of three names to the Governor, from which one person would be appointed to the advisory committee. Unfortunately, the list of three requirement may potentially run afoul of the language in Article IV, Section 10, of the Nebraska State Constitution which gives the Governor the power to appoint and remove executive branch officials. Existing case law in this constitutional provision has stated that while the Legislature has the ability to define the qualifications of office, the Governor's appointment choice cannot be limited to just a few names. Additionally, multiple Attorney General Opinions dating back to 1978 has advised that a list of three or fewer candidates would be constitutionally suspect. AM1021 would change the number of candidates on the list from three to five, addressing the potential constitutional issue. With that, I'd urge the body to adopt AM1021. Thank you, Mr. President. [LB99]

SENATOR COASH: Thank you, Senator Mello. Members, you've heard the opening of LB99, the committee amendment, and the amendment to the committee amendment. The floor is now open for discussion. Senator Schumacher, you're recognized. [LB99]

SENATOR SCHUMACHER: Thank you, Mr. Chairman and members of the body. It appears to me that originally this started out with something that was going to expire over time and would develop a basic pattern of research. It requires every stop to be reported, the racial characteristics of the person stopped to be reported, nature of the violation. A lot of paperwork for a lot of communities and I'm a little bit curious as to what's been the result of the paperwork up to this point. How many communities have been found to be in violation? Are we making a lot of overhead for small communities who maybe have limited resources and no real problem with this particular stuff? Unnecessary work because they haven't had problems and we're doing that just because there's one or two cities or a number of cities or departments that are having problems? Senator Ashford, would you yield to a question? [LB99]

SENATOR COASH: Senator Ashford, will you yield? [LB99]

SENATOR ASHFORD: Yes. [LB99]

SENATOR SCHUMACHER: Senator Ashford, what have we learned from all this reporting that's been going on from 2002? Are we having a whole lot of communities that are having this problem that need to be burdened with this extra paperwork? There may be no fiscal note for the state, but there's certainly paperwork done for local police departments. Do we know what the data looks like? Are we overkill here? Should we limit this to cities of the primary or metropolitan class or where the problem is? [LB99]

SENATOR ASHFORD: I think the problem is pervasive across the state, Senator

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Schumacher, and it has to do with disproportionate stop. Well, the data relates to traffic stops as opposed to any other kind of a stop. But the information since '02 is relatively glaring. I mean, clearly in Omaha, there's a disparity in traffic stops between parts of Omaha and other parts of Omaha. And in smaller communities there is data in and around the reservations, for example, where there seems to be a disproportionate number of stops of minorities. [LB99]

SENATOR SCHUMACHER: But we have like 93 sheriffs' departments. We have, oh, probably a couple hundred at least, cities that have got their own police departments. I mean, we are saying everybody needs to do reporting. We've apparently got ten years' worth of reports up to this point. I mean, have we learned...does every small town, does every small community that has cleaned up its act to the extent the act was ever dirty, do they need to continue to report? Shouldn't there be some threshold barrier? [LB99]

SENATOR ASHFORD: I think that's a great question. I think the answer is, we shouldn't do this at all if we didn't have these amendments. I think it would...to simply have data collected and put it in a filing cabinet, which is what we've been doing so far, I would say, no, it's ridiculous. But I do think by giving this committee more authority to talk to law enforcement agencies and to think about ways of, well, why does this disparity exist and do you need to change your policies, I think that's a very legitimate thing to do. But it does not seem...it seems to be along the interstate corridor and near reservations. [LB99]

SENATOR SCHUMACHER: Well, I mean, if we got ten years of data, it would seem to me, maybe we should go back through it and see those ones that there's probable cause to see a problem with and figure out a mechanism that they get on a review list or extra obligations. And a small town... [LB99]

SENATOR COASH: One minute. [LB99]

SENATOR SCHUMACHER: ...of five hundred with no problem, why are we making them do this to year, whatever it is, 2018 or whatever? If there's been no problem over the last period of time and we don't expect it and, you know, if they turn bad and start becoming a problem, maybe a trip to get them moved from one pile to the other. But on the surface, this strikes me as probably necessary in some communities, but a lot of communities it may very well not be a problem and they shouldn't be burdened with the paperwork. Thank you, Mr. Chairman. [LB99]

SENATOR COASH: Thank you, Senator Schumacher. Senator Crawford, you are recognized. [LB99]

SENATOR CRAWFORD: Thank you, Mr. President. And I wanted to take a chance on the mike to help us make sure we clarify the record on the detention portion of the

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amendment. And I apologize to Senator Ashford for asking him the question on that right before we came up to this bill. We went quickly from one bill to the next. So, it's my understanding from reading the amendment that the detention language that is added is simply indicating that we are recognizing as a state that we're concerned if racial profiling occurs in detentions, but we are not adding any new data collection requirements in terms of detentions. And I just wanted to make sure that I have the correct understanding and that the record is correct on that front. Senator Ashford, would you yield to a question? [LB99]

SENATOR COASH: Senator Ashford, will you yield? [LB99]

SENATOR ASHFORD: Yes. [LB99]

SENATOR CRAWFORD: Is that understanding correct, there is no new data collection requirements for detention? [LB99]

SENATOR ASHFORD: Correct. [LB99]

SENATOR CRAWFORD: Thank you. Now, also for the record, could you help us...could you clarify what a detention is? [LB99]

SENATOR ASHFORD: A detention as opposed to a motor vehicle stop is contact between law enforcement and a citizen or another individual on the street, primarily, where the individual is stopped, and for whatever reason. And it can be somewhat subjective as to whether or not they're being detained, but if they're stopped and that individual believes that they are being...that they are not free to leave or not free to move, their movement is constrained by the stop, then that's a detention, so. And that's what it means. [LB99]

SENATOR CRAWFORD: So, does adding this mean that if I feel that I'm walking down the street and a police officer comes up to stop me, to ask me about what I'm doing, that would be detention. And if I felt I was being approached or the people in my neighborhood were being approached in a manner that reflected racial profiling, then I could make an allegation about racial profiling. [LB99]

SENATOR ASHFORD: Absolutely. [LB99]

SENATOR CRAWFORD: Okay. Now does this have anything to do with detention in jail or detention in a squad car? [LB99]

SENATOR ASHFORD: It could. I mean, that's certainly is...that is a more serious form of detention. But yes, I mean, there could be a complaint filed by an individual who is detained in a car or who is brought down to the central station of the police department,

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that's also detention. But then there are other rules that would apply at that point, but yes, that is detention. [LB99]

SENATOR CRAWFORD: Okay. So everything...when you're sort of impeded in... [LB99]

SENATOR ASHFORD: Well, they could be in custody. [LB99]

SENATOR CRAWFORD: ...whatever you want to do or you're held in some way, all of those things are what we mean by detention. [LB99]

SENATOR ASHFORD: Right, and there are forms of...there's custody where there's an arrest being made, there's detention prior to any arrest simply by stopping someone to ask what they're doing can be detention and someone can...for example, I'm aware of cases in parts of Omaha where young people, in a park, are asked to...or not asked, they're ordered to sit on the ground or lay on the ground, any number of youth, and there may or may not be anything else done other than lay on the ground, lie on the ground...excuse me, lie on the ground. [LB99]

SENATOR CRAWFORD: All right. Thank you. [LB99]

SENATOR ASHFORD: So that's a detention of a number of individuals at the same time. It can be lots of different things. [LB99]

SENATOR CRAWFORD: Okay. And so the policies that are...the model policies that have been created and the policies that law enforcement are going to be submitting will need to make sure they address this broad range of detention possibilities as well as traffic stops. [LB99]

SENATOR ASHFORD: Right. What would you do in these sorts of situations... [LB99]

SENATOR COASH: One minute. [LB99]

SENATOR ASHFORD: ...what activities should you...what should you do with those individuals if you are an officer, a law enforcement official? [LB99]

SENATOR CRAWFORD: Excellent. I'll yield any remaining of my time to Senator Ashford if you want to clarify this any further. [LB99]

SENATOR ASHFORD: No, I appreciate, Senator Crawford, the question and it helped me understand it as well. And it's important to note that we're talking about filing data on traffic stops. And as I suggested to Senator Schumacher, most of those traffic stops...many of them occur on I-80 and near reservations and in some of the large urban areas. [LB99]

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SENATOR COASH: Thank you, Senator Ashford. Senator Cook, you're recognized.
[LB99]

SENATOR COOK: Thank you, Mr. President. Good afternoon, colleagues. I rise in support of AM1021, AM34, and LB99. I was fortunate enough to be part of the original dialogue, along with LaMont Rainey, who has served the Judiciary Committee for quite a few years--it goes by quickly, doesn't it, around here--as Governor's director of Urban Affairs with Governor Johanns, we were part of the original meetings in which people from the aforementioned constituencies brought out specific examples about being stopped on the way to powwows, or stopped in what would be outside of the part of town that they were supposed to be in, in the case of Omaha. So I wanted to speak to something that Senator Schumacher mentioned in his questioning about why the sunset exists. And from my consultation and from my memory in confirming that, that sunset was originally placed as a way to address concerns through law enforcement about the price of the bill at the time. Something else that I would like to address from our conversation, and from what I have learned over the years about racial profiling, policies across the state as they exist in statute, certainly Senator Schumacher's concern about creating more paperwork, creating more staff time that takes away from what we might view as actual law enforcement activities, that is a reasonable concern. And while it might sound boring to most of us, we also recognize that the gathering and analysis of data is important to develop good policy. We in the Nebraska State Legislature have a Planning Committee along with other resources like the Legislative Research Council to provide us with statistics that ideally drive our policy decisions. So, the mechanism that is put forward in these amendments are ways in which we can drill down to say that, okay, is it people that are driving around north Omaha? Are there people who are on their way to a powwow in Thurston County that are being stopped? And in terms of not just using the data that we have now to drill down to bad actors or bad apples, which is another issue that Senator Schumacher raised, we certainly don't want to remove that data gathering and analysis from other parts of the state--first of all, because we develop statewide policies here. But it is very likely and possible that as our state's demographics change, that populations of people from around the world would emerge and we certainly don't want to not have a mechanism to gather any statistics that they're being discriminated against with. Pardon me for ending that sentence with a preposition. With that, I would once again ask for the body's support of each of the amendments, and the underlying bill is an issue that we see in my district and across the state, and it is our responsibility to address it through policymaking. Thank you, Mr. President.
[LB99]

SENATOR COASH: Thank you, Senator Cook. Senator Avery, you're recognized.
[LB99]

SENATOR AVERY: Thank you, Mr. President. I am going to support this bill and I'm

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going to support the committee amendment and AM1021. It doesn't make any sense to me that you would sunset something this important. But I note that the Crime Commission has this advisory committee on racial profiling and that the conclusion that has been reached by a number of people who have looked at this commission and its operation is that it needs more teeth; that it needs to have more power than just a strictly advisory committee. And this prompts me to ask a question as to whether this bill is even strong enough. I mean, I don't see anything in here that gives the commission or the committee any enforcement authority. So I guess I need to ask, perhaps, Senator Ashford if he would yield to a question or two. [LB99]

SENATOR COASH: Senator Ashford, will you yield? [LB99]

SENATOR ASHFORD: Yes. [LB99]

SENATOR AVERY: Thank you, Senator Ashford. Am I wrong, or is there no enforcement mechanisms in this bill? [LB99]

SENATOR ASHFORD: No, there is not. And really, I think the remedy, Senator Avery, and we discussed this in great detail in the committee. The remedy really is to have this information provided to the Legislature and for the Legislature to enact, if it deems necessary, legislation to address racial profiling. But that's the remedy. That's the remedy. That's the remedy. There is no other enforcement remedy in it. [LB99]

SENATOR AVERY: But don't we already know that racial profiling takes place? I looked at some of the testimony given before your committee and it's horrifying. [LB99]

SENATOR ASHFORD: Well, I mean, the numbers are, there's...the numbers, if you look at the records from the Crime Commission, there are glaring examples of disparity on traffic stops. There's absolutely no... [LB99]

SENATOR AVERY: And if you read the anecdotal testimony, that's where the human side of this issue is put in stark reality and stark view, I think. But that, just providing more information is not probably sufficient without some enforcement. It seems to me we ought to be talking about ways to put teeth into this advisory committee. Would you agree with that? [LB99]

SENATOR ASHFORD: I agree. I agree. No, I tend to...I'm on your side, Senator Avery, on this. And I think what we have done in the committee amendments essentially is to give to this committee...and I like the committee makeup, quite frankly. I think it's a good makeup of people and we are empowering them to discuss these matters with these law enforcement agencies as the data comes in. The Crime Commission essentially was saying to us, we really don't think we have...the only authority we have under existing law is simply gather data. Now, they're requiring the law enforcement agency to

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at least submit the data or adopt a model plan. There is no remedy or punishment, or so to say, for not doing it. But the Legislature...we are...I think the idea would be that we are here as a Legislature... [LB99]

SENATOR COASH: One minute. [LB99]

SENATOR ASHFORD: ...to receive that information and take whatever action we deem necessary. [LB99]

SENATOR AVERY: Well, isn't it true that most police departments deny that racial profiling takes place in their departments? And so if we're going to require them to provide the remedy or enforcement, I don't know how this would work. [LB99]

SENATOR ASHFORD: That's correct. That is what most law enforcement agencies say. [LB99]

SENATOR AVERY: Yeah, they circle wagons and they defend themselves. The deputy sheriff defends the sheriff, the sheriff defends the deputy, and the deputy defends the other deputies, and everybody is innocent. [LB99]

SENATOR ASHFORD: Well, I mean, quite frankly, Senator Avery, I think you raise a great point. And we have, for example, an Ombudsman Office here with many years of experience in dealing with these kinds of matters. And it may be in the future we may want to expand the role of the Ombudsman to deal with law enforcement agencies across the state. I think that's a possibility, but I think you raise a good point. [LB99]

SENATOR AVERY: Thank you. [LB99]

SENATOR COASH: Time, Senators. [LB99]

SENATOR AVERY: Thank you, Mr. President. [LB99]

SENATOR COASH: Thank you, Senator Avery. Senator Chambers, you are recognized. [LB99]

SENATOR CHAMBERS: Mr. President and members of the Legislature, there are people bringing legislation of this kind because they know how unwilling the Legislature is to do...unwilling to do anything of substance. So you do things incrementally. The first bill was designed to gather data to show that this kind of activity occurs. People, anecdotally and otherwise, knew that it occurred but the populous at large denied it, not just the police. So when the data started to be collected, then people who were interested in that said, what else can be added to move toward doing something to address the problem which the data show exists. That's what's being attempted now. If I

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were to offer an amendment this session to put some teeth into that law, it would be defeated out of hand and we know it. I would rather see something on the books that continues to focus attention on the problem, than to say there's not enough being done, so do nothing. I live in a city where the police are rogues, they run riot. When they have been in the Judiciary Committee hearing room, I have said that they are liars, that they are crooked, that they violate the law. They observe other cops violating the law and will not intervene to do anything about it. And I said, you want me to tell you how I know that a cop is lying? When his lips are moving, he's lying. And the judges know they lie too. But when you have somebody of my complexion accused by a cop of doing something wrong, and we're in court, who are the white people in the jury going to believe or pretend to believe? The cop, every time. And they know how these cops lie. And I will say that they are liars because a liar is a liar is a liar, but the worst ones are those wearing the badge and on oath to uphold and enforce the law impartially. It's not just a matter of being stopped on the street and embarrassed by people seeing the cop talking to you. They make young black guys get down on the ground and then don't charge them with anything and don't arrest them. It's to hound and harass because they know they can get away with it. This most recent atrocity in Omaha where the cops stormed the house, an elderly, heavy, actually overweight woman was in her wheelchair, they knocked her out of the wheelchair, terrorized another woman in the house, ransacked the house looking for the telephone that was used to record what they were doing out in the street. Had there not been a neighbor across the street videoing, you wouldn't have Chief Schmaderer talking about, we're going to do something. There have been these kind of instances on a regular basis but it's not on video, so all the cops lie and if you get their reports and read them, they don't hang together. They lie and then the chief will say, it's your word against the cop's word, it's uncertain, unsubstantiated. And the cops get away with it and laugh, and they know it. And if you tell them, I'm going to file a complaint, they say, I'll tell you where to go file the complaint. Jesse James investigating Frank James. There was another video assault on a black man outside of Creighton Hospital. [LB99]

SENATOR COASH: One minute. [LB99]

SENATOR CHAMBERS: And it was caught by the video of the hospital. And you could see this female officer drawing her leg back and kicking this guy in the area of his shoulders, his face, and his chest. The cops were fired. They went to secret arbitration. They have an arbitrator who always clears the cops. They said that she was kicking him on the leg and when you look at the video, you see where she was kicking him. Her lie was that he was trying to take a knife out of her pocket. Well, now he's stretched on the ground, he's dog-piled by about six officers, she's off to his right kicking him, and she told the lie that he was trying to take a knife out of her pocket. And that's accepted despite what's on the video. Thank you, Mr. President. I'll turn on my light again. [LB99]

SENATOR COASH: Thank you, Senator Chambers. Senator Bloomfield, you're

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recognized. [LB99]

SENATOR BLOOMFIELD: Thank you, Mr. President. I read the report that comes out from the arrest record and it was at that time I started to put a little more weight on what Senator Chambers says about some of the police in Omaha. I will probably support AM34, but I am opposed to AM1021 removing the sunset. I think we need that sunset there so that this body looks at this again in three or four years. Let us remind the body that this is there. Let's not let it go off to a little division that claims they're going to do something on it and be forgotten. I would like to see that sunset remain and I will oppose AM1021 eliminating the sunset clause. And if Senator Chambers would like a little more time, he can have whatever I have left. [LB99]

SENATOR COASH: Senator Chambers, 4 minutes. [LB99]

SENATOR CHAMBERS: Thank you, Senator Bloomfield. Thank you, Mr. President. There was a judge discussing misconduct by other judges. He made the comment that sunlight is the best antiseptic. That when you expose these misbehaving judges, that is the way to bring them in line. When you're dealing with a correction system, a county jail or a city jail, public exposure is what they fear more than anything else. If reporters are looking at the situation, there might be more achieved in terms of deterring the wrongdoing than any other thing. The chief in Omaha is more or less powerless against the union. The mayor fears the police union. The city council fears the police union. I used to have a weekly cable program and I talked about the police all the time. I have no fear of them. I've been arrested by the police. One time, it was when I was working in the barbershop, to show you how they do, there's a bus stop because the barbershop was about two doors from the corner. This elderly black woman catches the bus there. This cop had parked his car in the bus zone while his friend went in to a fish house a couple of doors away to get some fish sandwiches. So I came out and I asked the lady, are you trying to catch the bus, because I saw you talking to this cop? She said, well, yeah. So I went back in the shop and I got a pad of paper and I went out and I just started writing on the paper. And guess what happened? He arrested me. Well, not at that point. He took me into custody and put me in the police car. So I said, where are we going? He said, we're going downtown. I said, for what? He said, you interfered with an officer. I said, am I under arrest? He said, well, no. I said, then take me back where you picked me up. He said, well, you're under arrest now. And the fool told the same story in court and the judge dismissed the charges. But I was arrested publicly, put in the police car, taken downtown, charged, and taken to trial. So when people say, well, the charges were dismissed, the system works. No, the system is corrupt and these police are corrupting it. What we would need in Omaha is what was called a police auditor, or you can have a civilian review board. But either or both of them must be given power. They must be given subpoena power. They must be empowered to conduct hearings. [LB99]

SENATOR COASH: One minute. [LB99]

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SENATOR CHAMBERS: And if you're not going to allow them to impose discipline, let them make recommendations and put that report before the public. The last person who held that position did what she was supposed to do. She took evidence from citizens, documented these things, put them in a report which was her job, and released the report. When the police union saw how many documented cases she had, they got angry and went to Mayor Fahey and said, we don't like what she did. So he fired her for insubordination because she didn't get his permission before releasing reports, which she had done before without his permission. But the union attacked the mayor, so he fired her, and that office has not been filled since. So something along that line has to be done. Thank you, Mr. President. [LB99]

SENATOR COASH: Thank you, Senator Chambers. Senator Lathrop, you are recognized. [LB99]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I thought I'd stand up and talk about this bill and the time it spent over in the Judiciary Committee. And maybe I'm motivated to stand up in response to some things Senator Avery said about teeth. Here's the reality of racial profiling. It doesn't happen where law enforcement pulls, for example, African-Americans over by greater numbers for nothing. What typically happens and what the statistics are useful in telling us is that the police in any one case typically have a reason that they can articulate for pulling somebody over. I'm going to use a broken taillight or having your car not registered properly. But let's use a broken taillight. Every time they pull somebody over for a broken taillight, you look at the numbers and you say--and these are in the reports, they've been keeping them--they're pulling African-Americans or Native Americans or Hispanics over in larger numbers as a percent of the population than they are Caucasians. If you were to look at any one particular occasion, you would say, well the taillight was broken, he had a right to pull him over. The fact of the matter is, it's showing the pattern of pulling over minorities more frequently for a violation or for usually a traffic infraction, than they do Caucasians. The thing we struggled with is, what do you do with that information? If you know that they pulled somebody over with no good reason, said the taillight was broken and it wasn't, then you can file a motion to suppress, having a hearing, and have the thing thrown out because it's an unreasonable search or seizure. But when they can articulate a reason and they have a reason, they just enforced that particular violation more against minorities than they do whites, then the information we get from this is useful. But the question is, what do we do with it? And that's what Senator Avery asked. The problem is in any one case, the only good it does an individual motorist or an individual citizen is, if you can prove my taillight wasn't broke, they didn't have any reason to pull me over and they did, and they did it because I'm black, then you can have your case dismissed because it's a violation, the stop is a violation. We struggled with, in Judiciary Committee, what do we do with the information? Do we take it out to Grand Island to the Law Enforcement Training Center? Do we...what do you do with it? What do you do with

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it? And they're great questions to be asking, Senator Avery, and I will tell you to a person in Judiciary Committee, we're willing to listen to somebody who knows what to do with the information, because do you have a class action? Well, that really isn't the answer because some of these people that get pulled over, white or black or Hispanic or Native American, it could have been the one that they should have pulled over and didn't pull over because it was racial profiling. The numbers do tell us there's a problem. The question about what to do with it is an open one. I think gathering the information, as this bill would do, is beneficial and if somebody has an idea on what the remedy is to stop the practice, I would tell you that the members of the Judiciary Committee would be anxious to hear your thoughts on the matter. Thank you. [LB99]

SENATOR COASH: Thank you, Senator Lathrop. Senator Chambers, you're recognized. [LB99]

SENATOR CHAMBERS: Mr. President and members of the Legislature. Senator Lathrop is 100 percent correct in what he said, but he spoke as a lawyer. I speak as a resident of a community and one who has been hounded by the police. I've been arrested three or four times. I have an arrest record, but no convictions. One time I was arrested for looking at a cop, looking at him, and he testified to that and said I was interfering with an officer. And I asked, well, what was I interfering with? And he couldn't tell. The charges were dismissed. But see, that's not fun. Courts are not friendly places to be. And when you're hounded like that, they don't have to articulate a reason, as Senator Lathrop mentioned. When Marty Conboy was the city prosecutor, I would take cases down to him that people brought to me where a cop would follow somebody and follow somebody; then if the person pulled over, then the cop would pull over behind that person and say, well, you crossed the center line or you didn't signal when you got ready to pull over and stop. They might arrest the person, they might not. What happens when they don't arrest you? They don't file reports. You've been stopped. You've been harassed. You don't like these cops. You don't respect them. They are your enemy. They are the enemies of black people in our community. They are occupiers and they are people confronted with somebody who is about to commit a crime against them. And they fear the police more than they fear this person. There are numerous cases where the ones who call the police are the ones who wind up being arrested, being hounded. If you're looking at one of these situations, they tell you go on home. And you say, I am home, this is where I live. Then get in your house. And if you don't go in your house, you'll be arrested. Cindy who works with me, several years ago had seen...not that many, three or four years ago, these cops had these three or four little black boys, maybe nine or ten years old, and they were down on the ground and she was across the street and she said, you can't do that to them. Why have you got them on the ground? And they were telling her, she better get on away and stop meddling or she'd go to jail. And she told this one woman cop, I saw you slap that little boy. And then she called me and I got there as soon as I could. These...and then if they see that I'm there, they're coming, then suddenly people...the cops disappear. What do you think those

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little boys think about the police? And then when they see them take off because here's Senator Chambers. Well, Senator Chambers is now a hero to them because the ones that they fear, fear him. That's not the way I want it to be. When I started talking about a man straddling two worlds, that's what it is. I can't tell these little boys, I feel like killing them. It's a good thing you're not my children because I know what I'd do to them and maybe people would be coming to my funeral. I don't tell little kids that. That's what is inside of me and I have to restrain all of that. And I have to pretend to be rational. One time I was arrested on some federal charge and they took me down and put me...I don't even know whether I was actually arrested, but I was in the courtroom and the judge had the prosecutor questioning me and I said, well, I respectfully decline to answer that question on the grounds that it might intimidate me. After it went on like that and that's what I said, the judge actually got up and left the bench. There were two guys standing by the door... [LB99]

SENATOR COASH: One minute. [LB99]

SENATOR CHAMBERS: ...in which you enter, in plain clothes, and you could see the guns that they had so I felt like this was probably the FBI. So pretty soon, there were just those two guys in the courtroom and me sitting in the witness box. The prosecutor left. So then these two guys left also. And I was young then. So when everybody was gone and I was the only one there, I left also. You all won't confront that. That happens to us. It happened to me. So when people want to say these police are not as bad as I say they are, they're telling the truth because they're worse. They have no respect for us. On a Mother's Day, two cops had stopped these two middle-aged black women, who I presume were going to church because it was a Sunday, and they pulled them over into a street that led to Baker's Supermarket and I was coming out of the store and that's how I saw them. So the two cops are in their car behind the lady's car and I came and I pulled up and I said what's going on here? [LB99]

SENATOR COASH: Time, Senator. [LB99]

SENATOR CHAMBERS: Thank you, Mr. President. [LB99]

SENATOR COASH: Thank you, Senator Chambers. Senator Schumacher, you're recognized. [LB99]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. This may be a way not to solve a problem. Seems that, apparently, this law has been in operation for 10 years or so and dutifully, no matter of whether it was convenient or expensive or whatever, departments all over the state have been reporting information thinking that somebody on the other end was doing something with it. Well apparently they were. They were recording the information in a ledger and submit a little book with the information in to the Legislature and calling it quits. That's what was being done. What

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problem was being solved by all that paperwork? Admittedly, supposedly, nothing was being done with it. We haven't accomplished anything. And now we're going to take the sunset off that thing so we just do this paperwork forever and ever. Well, no, maybe we're going to analyze it a little bit. And I read through that committee amendment and there's no magic in there that says what criteria we're going to use to analyze it or what we're going to do if we find something. It would seem to me that if we really want to deal with the kind of issues that Senator Chambers, and I have no doubt he is legitimately raising, the kind of discriminatory action, the kind of stuff...and unless somebody was one heck of a Photoshop artist, appeared on those television clips from a couple of weeks ago, that's got to be dealt with. And I have no doubt had that film not been running that there had been a story and it had all been the other guy's fault. So we've got to deal with that in a very meaningful way. Why those fellows, if they are found to have done with that film clip indicated they did, aren't being charged with oppression under color of office with assault and facing a little time and bring some discipline to the system, I'd be thinking some prosecutor isn't doing his job properly. But this paperwork, let's analyze the 10 years of paperwork we have. Why in perpetuity continue to have these reports that we don't have any direction on what they're going to be done with the information that comes it? It's a paper chase. And let's deal with it if we have a problem. And those communities that don't have a problem, let's set them free from the paperwork requirements. How do you deal with the problem? You're assuming if this problem exists, you have a bad cop, a bad supervisor of a cop, a bad county attorney, a bad county judge all looking the other way; plus a defense bar who is looking the other way and not reporting it. If we're going to do something, if there is a problem, let's make a requirement be, just like we have in child abuse cases, that if you're in any one of those professions and you have reason to believe you have a bad cop or somebody pulling this stuff, that you got to turn them into the Crime Commission and at that point all kinds of punitive and reporting measures come into play. But this is a paper chase. It may make us feel good, but apparently in 10 years of it hasn't done much good, at least in the major community where this seems to be a major problem. And Senator Chambers, if you want to work on something that puts some teeth into this, let's put some teeth into it, but let's not make ourselves feel good by filing pieces of paper from every small town in this state. And Senator Chambers, if you'd like the rest of my time, I'll give it to you. [LB99]

SENATOR COASH: Senator Chambers, 1 minute 30 seconds. [LB99]

SENATOR CHAMBERS: Thank you, Senator Schumacher. I don't want the sunset to go away. We need to keep the focus. As the information is brought in, some of us are talking to the U.S. Department of Justice. We need to have an overwhelming amount of information generated, not by us, and the Justice Department knows how these police misbehave, if anybody does. But if I say it, it's not going to carry the weight that will be accorded if it's collected by the law enforcement agencies themselves, even if they don't want to put the proper label on it because those to whom we may be able to persuade

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to have a thorough going investigation of police misconduct in Omaha, and other parts of the state where the problem is shown to exist, we can say the evidence is here. And in addition to this that the police have collected, we will provide you with witnesses who are willing to go on record telling you what happened, but nothing was done about it; no police report taken; or if one is taken and I get involved and I talk to the city prosecutor and he wants to look for it, well, for some reason the reports are no longer there. You have corruption in the Omaha Police Department. You don't see The World-Herald writing columns or articles about that. They are not going to do it. We know they won't do it. But back to these two elderly ladies, I asked them what happened and they were trembling. They said, well, these officers were following us and then they put their lights on and we just turned up on this street. I said, what did they say you did? She said, they didn't say anything. [LB99]

SENATOR COASH: You are on your own time, Senator. [LB99]

SENATOR CHAMBERS: Thank you, Mr. President. Will that be my third time? They said, we're just sitting here. They told us, just sit here. So then I looked back at the police car and they backed up and left. The women couldn't understand that except once again Ernie Chambers, the one that the police are afraid of, I'm saying this on the record, let the cops say that I'm lying about everything I'm saying, they know, they let...I'm their hero. But I am fuming; I am furious because we have no redress. Now, in the recent incident, I've talked to Don Kleine, the county attorney, and charges are going to be filed against some officers and the command officer. But I've told Don I want to be able to mention to people in my community that I've talked to him and something is going to be done. But whatever time it takes you to put together an ironclad case, I want you to take that time. You've got the fraudulent reports they wrote; you've got the documentation from the videos, statements they made that contradicted each other; the tampering with evidence; the wrongful conduct inside the house. And the last thing we'd want is a cop to be able to walk out of the courtroom snickering at you and, if I happen to be able to watch it, at me, because you were in a hurry to get something done. And again, I have to straddle the two worlds. I have to tell the people in my community who justifiably are furious and want something done right now, I have to tell them we have to give the time necessary to put together the case. But I wanted something done even before now. But I'm a realist and I know that every effort is going to be taken by the judicial system to let these cops go, even with what the video showed, their self-contradictory reports, the report itself is contradictory, then the conflicting reports, and then the evidence of the cover-up that they started immediately, not knowing that that video of what they had done was available. They were talking about how hostile this guy was, how aggressive he was, but the video shows the cop has hold of him and they're both walking out, I guess, toward a cruiser; then suddenly the cop grabbed him by the neck and spun him around and threw him to the ground. Nothing in the way of aggression by the man. But to read the police report you'd have thought there was a fist fight going on. And you know what all this was based on? All these cops, because there

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were two cars with expired license plates. They don't do that in white neighborhoods. And you know how many cruisers were there? Ten or 12. Twenty to 24 cops there. And it started in a black community, two cars with expired license tags. They don't do that in white neighborhoods; they don't have the police power to do it. But when they want to mess over somebody, they come into our community, they take something and escalate it into what happened, then they lie about it and then I read where white people are saying, well, if they had gotten their tags done the police wouldn't have been there in the first place. That's what white people see. [LB99]

SENATOR COASH: One minute. [LB99]

SENATOR CHAMBERS: But what we see is, no reason to have the police there in the first place, write a ticket. And then all of the violence, invading a house, messing over these women in the house, then lying about it. Well, white people, not all of them, they're willing to overlook everything the cops did and say, well, the cops are just doing their job, it's a high-crime neighborhood. Not every place where we live is a high-crime neighborhood. I live in the middle of what white people would call the ghetto. I live there. And I will always live there. And I walk up and down the street. There are children who play. Well, the squirrels know me too because they'll come and let me feed them out of my hand. But they wouldn't go to a cop, because a cop would probably see that happen and shoot the little squirrel. But the squirrels, I don't talk squirrel, but they know that I'm the only one that they can trust. I don't think they'll go to anybody else. [LB99]

SENATOR COASH: Time, Senator. [LB99]

SENATOR CHAMBERS: Thank you, Mr. President. [LB99]

SENATOR COASH: Thank you, Senator Chambers. Senator Ashford, you are recognized. [LB99]

SENATOR ASHFORD: Thanks, Mr. President. And I will give Senator Chambers most of my time if he wants it. I think Senator Bloomfield is absolutely correct on this one that the AM1021 should not pass for the reasons that Senator Bloomfield has suggested. And that is, we need to keep a light on this. The way to keep the light on it is to have the sunset and have the bill reviewed and the progress reviewed during the...at that time, whether it's four years or whatever. But I would just say this, I think Senator Schumacher is right and his skepticism about paperwork is right. But this is an impressive debate and an impressive conversation. I know in my experience, and I'm not going to sit here and compare notes with Senator Chambers, because I would be remiss in doing that, but I've had many, many years working as a white person from west Omaha working in north Omaha in the area of housing, and I say at the inception of my conversations about these years, that I can never understand the full extent of the fear and the anxiety that people have who live in north Omaha, in Senator Chambers'

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legislative district. But I have had, so many occasions, so many times young children...in fact, even today I have friends of my son who is 15 years old and goes to Westside High School and three of his buddies are on his basketball team have related...who live in north Omaha or near north Omaha and grew up in that area and have told me stories similar to what Senator Chambers has talked about. And I have other friends, good close friends in north Omaha, women who have explained to me how they have so much anxiety and fear about driving into their own neighborhoods; these are women who work in downtown Omaha in professional jobs. And I can't even...I wish I had written some of them down because there are just so many, so many examples of it. And I also had so many experiences when I would go to...in the Housing Authority, I would go to talk to the families who live in the housing authorities, the women, the elderly women, mainly, or the young women and their families and talk to them about some of these things that were going on. And day after day, week after week, incident after incident, incident after incident, these are our people trying to make it, living in poverty, and have a very difficult time of it. And the examples given are, certainly to me, you know, just shaking your head is an understatement, but. And I did have conversations, on many occasions at that time with Chief Warren about these things. We'd sit down and talk about them and say, you know, why can't we iron these things out? Why does this go on? But I do think this conversation is incredibly important because the Crime Commission will take this matter seriously. And I know, over the summer and fall, we can sit down with the Crime Commission as a Judiciary Committee and have conversations about what they see out there. As I said, the committee that's been formed is representative, I think, and it can serve a useful purpose. [LB99]

SENATOR COASH: One minute. [LB99]

SENATOR ASHFORD: Sorry, Senator Chambers, I didn't have any time left. But I do think this is an important bill. I think Senator Mello has brought us an important piece of legislation. Senator Bloomfield is absolutely correct that AM1021 should not pass and that we should adopt AM34. Let's give it a little more time, Senator Schumacher; a little more of a microscopic view of what's going on over the next year or so and, hopefully, get some more actionable information that the Legislature can review. Thank you. [LB99]

SENATOR COASH: Thank you, Senator Ashford. Senator Bloomfield, you're recognized. [LB99]

SENATOR BLOOMFIELD: Thank you, Mr. President. Again, I stand opposed to AM1021 and Senator Ashford has joined in that now. I think we need to keep looking at this as time goes on. I'm going to yield the rest of my time to Senator Chambers and I'm going to sit down and be quiet the rest of the day. Thank you. [LB99]

SENATOR COASH: Thank you, Senator Bloomfield. Senator Chambers, 4 minutes 30

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seconds. [LB99]

SENATOR CHAMBERS: Thank you, Senator Bloomfield. Thank you, Mr. Chairman. Senator Schumacher, I can understand what you're doing, but I don't want the sunset to go away. I'm going to bring you all an example or two to confirm what I'm telling to you. The police, after those early days of taking me downtown, they don't bother me. And I say that if they know how to leave me alone, they know how to leave everybody alone. But my philosophy was that I would never encourage young black people to do anything. And when I would see them doing something that could bring the police on them, I would calm them down and stop it. I'll bring an article or two to show you. There were some young black guys up at Tech High, when it was a high school, handing out leaflets referring to two cops as racist, which the cops were. One of them was arrested. When I read that he was arrested, what I did was to take the same leaflets and go down outside the city hall and when the mayor and the safety director or the chief of police came out, I handed them these leaflets and I said, if you're going to arrest that young black man, you have to arrest me. They didn't arrest me. So I said, since you're not going to arrest me, turn him loose, and they did. I have to put myself in the same jeopardy that the young black people in my community face so when they're mistreated for something, I put myself in the same situation. Why should I have to do that? I had young children then; I had a wife. My family counted on me. But somebody had to stand up for our community. When I was working in the barber shop, fortunately I wasn't in there and nobody else was, but a police car came by and shot out the window. The reason we said the police did it, because an undercover car was seen and people in the community know what these car are. It was double-ought buckshot that went through the window; some of the shots lodged in the back of the chair, some in the wall. And when the report was made to the FBI, they said we don't believe that the shooter intended to violate the civil rights of target Ernest Chambers, because I was being surveilled by the FBI then, which I didn't know at the time. So, since there was no attempt to violate my civil rights they closed the case. Suppose there was an allegation that some black guys went by and shot the window out of a white establishment in west Omaha? You think they would have closed the case? They'd have had a dragnet sweep through our community. We see these things. There was a black woman who was indeed a prostitute. This cop arrested her. And this is documented and you'll see why I say it's documented. He was going to take her downtown; she said, I don't have any way to get back if you take me down. He said, I'll tell you what, you give me oral sex and I'll let you go, I'll take you back where I picked you up. So that's what she did. But the hunted became the huntress. She kept his semen in her mouth. And when he let her out, she had a plastic card and... [LB99]

SENATOR COASH: One minute. [LB99]

SENATOR CHAMBERS: ...she deposited the semen on that card and filed a complaint. And when they analyzed the semen, it was his. He went to trial, he was convicted, he

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was fired, and the judge gave him probation because he had been a good guy up to then. That's what happens in this community. And that was a practice and is a practice of the Omaha police. There is no recourse. What are we to do? Suppose some of these young guys started realizing that their enemy is not each other, but the cops who is the enemy of both of them and start shooting at the police cars? Would there be outrage then? Would people pay attention then? Only to say we got to get those young criminal. What about the ones who are provoking them and provoking somebody like me, trying to be a law abiding citizen, trying to be a peacemaker? And I see these thing, I hear them. And there's no place for me to go... [LB99]

SENATOR COASH: Time, Senator. [LB99]

SENATOR CHAMBERS: ...for redress. [LB99]

SENATOR COASH: Thank you, Senator Chambers. Senator Schumacher, you are recognized. [LB99]

SENATOR SCHUMACHER: Thank you, Mr. Chairman, members of the body. One of the reasons that I got kind of excited about this bill and worked up a little bit over it is when I learned earlier this summer that there was going to be an extension attempted on this and maybe some efforts to change it, I wanted to find out locally what kind of a situation we had. And I called one of the leading defense attorneys in town, I said, do we have a problem with this? And the report I got back was, here we don't have a problem; that the police chief was doing an excellent job, we had good discipline. He says, there is a community where there is a problem, he says, and I'll tell you what's causing the problem and how they're working it. And I doubt if it would show up in any of these paperwork and we'd never be able to detect it. He says, you've got a statute on the books and the statute on the books says that you have to signal your turn 140 feet before the intersection or it's an illegal turn. And that just makes it a pick-and-choose world of who you want to stop and every ticket you write is going to be a fine because a lot of people don't signal their turn 140 feet, there isn't room to do it in some cases if you back out of an angled parking lot or if you pull out of the senate parking lot over here and you want to head south at that first intersection, there's not 140 feet between that exit and where you have to signal. Every one of you that heads south is breaking the law, can't get out of breaking the law. And so if somebody wanted to pick you up, they can; and if they want to let you go, they can too, and they can be perfectly legitimate and perfectly discriminatory at the same time. So the logical thing to do, hey, let's bring in an act. Let's bring a bill that will correct that problem with that 140-foot restriction. Well, who shows up in opposition in the Transportation Committee? The County Sheriffs Association. Why? Because they like it the way it is. But whose responsibility it is for not clarifying the law? It's in this room; it was down in the Transportation Committee, but you won't see that bill advanced. You won't see that opportunity. And meanwhile, across this state, there's a door open in Omaha and anywhere else where somebody

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wants to be mischievous, to use that law indiscriminately. And I've no doubt there's other piles of it. But the defense attorney knew where the problem was. Where's the input into this from those people who know? The judges, the defense attorneys, the probation officers, those people who know that this is going on. This paper chase, and it may be fine and I may end up being agreeable with a lot (inaudible) continue or not screaming about this at some future point for a couple more years, better result in something, because other than that it's a paper chase, a feel good. And Senator Chambers, if you'd like to have the rest of my time you sure can. [LB99]

SENATOR COASH: Senator Chambers, 2 minutes. [LB99]

SENATOR CHAMBERS: Thank you, Senator Schumacher. Thank you, Mr. President. Senator Schumacher, you're absolutely right, all that you say. You're identifying what these situations are. In Omaha on 30th Street there are various black establishments. And when you come out...they have a driveway. You can come out of the driveway and you can go either north on 30th or south on 30th. Well, if you want to go north on 30th, then you have to cut across the lane of traffic that's right out...you know, there are two lanes of traffic. You have to cut across one lane to make your turn. There is no sign that says you can't do that. The only way you can get in that direction is to cross that lane of traffic when you come out of the driveway and then make your turn. There were people being stopped and ticketed. And one person came to me and I went to the city prosecutor and he threw out the ticket. But again, not everybody knew to come to me. They felt it was easier and quicker to pay the ticket; they couldn't hire a lawyer. And the cops, when they had nothing to do, that gave them something to do to make it look like they were enforcing the law. And when people ask me, don't you want the police to enforce the law? I say, there are laws they ought to enforce that they're not and they don't care about us by stopping people in the way that Senator Schumacher described... [LB99]

SENATOR COASH: One minute. [LB99]

SENATOR CHAMBERS: ...and that I just described to you. If they cared about this community, they would do differently. But they're trying to find every excuse and opportunity to hound and harass and that's why when bills come before this body that allow for any additional contacts between the police and the public, I oppose them. That's why I don't want a safety belt to be a primary offense because it will be used, not because they're concerned about safety, but they'd watch every car that goes by and they will see no safety belt they'd stop them and give them a ticket. And that's not all, they hound and harass; and if it's a woman, they'll proposition her and they try to frighten her. And if you don't give me what I want, I'll take you to jail. And if you got kids, I'm going to notify the people who look out for children and your children... [LB99]

SENATOR COASH: Time, Senator. [LB99]

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SENATOR CHAMBERS: ...will be taken away from you because you were arrested and you're not there to take care of them. That's what they do to our women. You all don't believe it,... [LB99]

SENATOR COASH: Time, Senator. [LB99]

SENATOR CHAMBERS: ...but that's the truth. [LB99]

SENATOR COASH: Thank you, Senator Chambers. Senator Crawford, you are recognized. [LB99]

SENATOR CRAWFORD: Thank you, Mr. President. And I'm very concerned to make sure that we are doing all we can to protect against racial profiling but also sympathetic to those concerns that Senator Schumacher raised about whether or not this data is being used and are we asking people to collect something. Are we being...are we doing our due diligence to make sure if we're asking law enforcement to collect information that we're doing something with it. And on that front, I just call your attention to page 5 of the committee amendments. And I believe what's happening there is that we are saying that we're changing a "may" to a "shall." And so it's my understanding on page 5 that we are telling the commission, not that they "may" analyze this data, but they "shall" analyze this data. We want something to happen to this data. And it's my understanding, and I'll yield time to Senator Mello if he wants to correct me, it's my understanding that, you know, part of what's going on here is a concern to make sure that we are using this data. And so I believe that the language in the committee amendment clarifies that we do want them to analyze this data and we want to authorize the commission to follow up with investigations on this data and that's part of what we're doing with these committee amendments is, again, indicating that we...you "shall" conduct these investigations and we want you to do that and we mean it. And we want you to bring that information back to us. And I would hope, also, that there would be an effort with the reports brought back in discussions with the commission after they're collecting the policies and collecting the data and doing more analysis, we'd be able to get some better information from them about changes that may need to be made in policies, or changes that need to be made in our data collection so that it will, actually, be more useful data that we'll be able to use or that the local enforcement will be able...law enforcement or judicial system will be able to use. And so I believe...for that reason, I believe that it's important to support the committee amendments to this bill. I believe it is trying to move in that direction of using this data and trying to make the data more useful in the long run. Thank you. I'll yield any other time to Senator Mello. [LB99]

SENATOR COASH: Senator Mello, 2 minutes 30 seconds. [LB99]

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SENATOR MELLO: Thank you, Mr. President and members of the Legislature. And thank you, Senator Crawford, for your comments. I think there just may be just an honest disagreement with my good friend, Senator Schumacher, on the purpose of this bill and the purpose of the statute; why it was created in 2002 and why we need this statute moving forward in regards to providing oversight over our law enforcement agencies. A little background and clarification in the sense of who makes up the Racial Profiling Advisory Committee. It's not just the organizations I mentioned when I introduced the bill...or opened on the bill. But the 12-member committee is made up half of law enforcement. The executive director of the Crime Commission; the superintendent of the State Patrol; ultimately, someone representing the Fraternal Order of Police; the Nebraska County Sheriffs Association; the Police Officers Association of Nebraska; and the Police Chiefs Association of Nebraska. I have to believe in the leadership of those organizations that are part of this advisory committee, when they asked me to introduce AM1021 to remove the sunset. So a committee made up half of law enforcement said we feel this is an important enough committee and an important enough statute to remove the sunset. That is why I introduced AM1021. I appreciate the work the Judiciary Committee did of extensively looking through a variety of ways to, I would say, add... [LB99]

SENATOR COASH: One minute. [LB99]

SENATOR MELLO: ...more teeth and beef up the existing statute on our racial profiling laws. I appreciate the work they did, the committee counsel did, working with my office on a variety of things, I'm appreciative of it because I believe this is necessary, it's needed. Oversight over law enforcement is needed and the more we can provide, the better. But to think that AM1021 is something that just is...I would say, is an outlandish idea or it's something we just don't need to do, it came from that committee, colleagues. I offered to introduce it because they sent me a memo asking me to do it. If, ultimately, I'm going to respect the Judiciary Committee Chair when he says we shouldn't do it, he'd rather have it be in front of the Judiciary Committee every four or five years, if that's the will of the Judiciary Committee Chair, I can acquiesce to that. But I think the committee amendment which adds significant teeth to this current statute is needed. And I believe it's good public policy moving forward. [LB99]

SENATOR COASH: Time, Senator. [LB99]

SENATOR MELLO: Thank you, Mr. President. [LB99]

SENATOR COASH: Thank you, Senator Mello. Senator Carlson, you're recognized. [LB99]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I've been interested in testimony that we've heard and we're talking about racial profiling,

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but I'm going to use this opportunity to talk a little bit about immigration profiling. It was interesting to listen to Senator Chambers talk about some of his experiences about racial profiling and the kind of thing that happens. And I really believe every word of what he said. I'm furious about an immigration issue. And on immigration I think that I agree with probably most of you in this Chamber. I think that we ought to secure our borders. And I don't approve of people who knowingly break the law to enter our country. I think those people deserve to be caught, to be stopped, and to be sent back from where they came. But what about people who unintentionally, illegally enter our country? I'm dealing with four families...with two of four families right now who gave a substantial amount of money to someone to bring them here, have the proper papers to make them legal in requesting asylum in the United States. They were swindled. Somebody took their money. So they are now here with little money and no legal papers. Four families ended up in the Holdrege area in that circumstance 13 years ago. They went to the Immigration Office in Omaha to start the process for becoming legal. They didn't hide. They started the process of seeking asylum. This was 13 years ago. They got jobs. They started businesses. They never wanted or have taken one dollar of public assistance; they don't want aid. They want freedom to work and the freedom to pursue their citizenship. And in the last 13 years, every few months they have a hearing scheduled in Omaha at which they hoped the legal papers would be given, the asylum would be granted, and they would have the right to start the path to citizenship. The answer has never come--13 years. They leave their jobs; they lose the salary for that day. They come to Omaha and then things aren't ready for them, another date will be set. They come back again--13 years. And one of the families this week got a letter saying they have 25 days to leave the country. It is unbelievable, unbelievable, that in this country we have people that experience things this way. And I'm going to bat for them with Senator Fischer's office, Senator Johanns' office. But up until this point, and they get the letter that says you got 25 days to leave the country, they don't dare to say anything. They go to Omaha. They get the message: We're not ready, come back in so many months. They come back. We're not ready, come back in so many months. They don't dare to say anything because they're scared they're going to be told: Leave the country. But when they get a letter that says you've got 25 days, then they knew it's either seek assistance or we're gone. This is happening in our state. This is happening in our country and when I hear people talk about let's throw the illegals out of here, don't say that close to my face. I know what's happening. [LB99]

SENATOR COASH: One minute. [LB99]

SENATOR CARLSON: It's absolutely unforgivable. When we have good people that come here, they're productive, they want to work, they want to become citizens, they want to add to our society, and in spite of all their experience that they've had in 13 years, they still have a dream; we need to rethink how things are happening. We need to help people that deserve to be helped. This is a really bad situation. Thank you, Mr. President. [LB99]

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SENATOR COASH: Thank you, Senator Carlson. Seeing no other members wishing to speak, Senator Mello, you're recognized to close on AM1021. [LB99]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. As I mentioned in my previous couple of minutes that Senator Crawford gave me, I introduced AM1021 on behalf of the Racial Profiling Advisory Committee because that committee recently met after the committee amendment was already passed out on the floor with the bill. And they passed a unanimous resolution asking the Legislature to consider removing the five-year sunset that's in the version of the bill. After hearing Senator Bloomfield's comments, Senator Schumacher's comments, and, ultimately, the Chair of the Judiciary Committee Senator Ashford's comments, feeling that it would be best to keep the sunset in and only extend it the five-year period which was the green copy of LB99, I, ultimately, have a feeling of disappointment, but, ultimately, I have a respect for the committee process, and I, ultimately, have a respect for my colleagues when they feel that, one, the issue is important and it's an issue that they'd like to revisit on a regular basis. Ultimately, as Senator Chambers mentioned, there's a bit of pragmatism in regards to where this concept and this statute has come in the last 10 years. Senator Schumacher has raised some concerns and issues in the sense of why is it that we've only collected data? That, as I've mentioned, is part of the pragmatism that's behind the statutes that created the racial profiling laws in Nebraska in the sense of starting out of trying to collect data first so the state could be able to make the determination of what's actually occurring in cities and counties across the state. AM1021, ultimately, removes the sunset of the committee, removes the sunset of the provisions of the laws, which at the end of the day I'm willing to acquiesce at this moment in time because I think the committee amendment, AM34, is extremely important because it starts to add teeth to what has simply been more of a data collection bill over the last decade. And from what I interpret, from what Senator Schumacher's concerns have been is that that's all it's been and that should raise concerns, which is why the Judiciary Committee has gone out of their way this session to work on this bill so that we could provide the body something that actually does something with this data. And so I'm appreciative of what the Judiciary Committee has done. While I have some reticence in regards to the concerns about AM1021, I'm a pragmatist. And pragmatists, ultimately, know that sometimes you've got to compromise, to ultimately see something move through. So with that, Mr. President, I'd like to withdraw AM1021. [LB99]

SENATOR COASH: Without objection, so withdrawn. Mr. Clerk. Okay. We return to discussion on the committee amendment. Okay. Senator Ashford, you are recognized to close on the committee amendment. [LB99]

SENATOR ASHFORD: Very briefly, thank you. Don't close yet. (Laugh) I'd like to give some of my closing, but don't close. (Laugh) Okay. Senator Chambers has his light on, I

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think. [LB99]

SENATOR COASH: Senator Chambers, you are recognized. [LB99]

SENATOR CHAMBERS: Thank you. Mr. President, this is not a stratagem. I was working with the Clerk when that amendment was withdrawn and I didn't know that nobody was going to discuss the committee amendment. So I'm saying something on the committee amendment which I support. But I'll tell you something else that I'm going to do. I think there should be a vote on the amendment that Senator Mello offered. In disregard of what Senator Ashford said, and disregard of what Senator Schumacher said, I don't think that amendment should be withdrawn. I think the sunset should be eliminated. And I'm having that amendment drafted and I'm going to offer it. And I think there should be a vote taken on it. We have a committee created by the Legislature to do work in this area. The amendment that the committee is offering, as was pointed out by Senator Crawford, changes of "may" to "shall" in terms of analyzing. I stated that you do things incrementally. If a point is reached where they don't want this bill, don't want this to be the law, then don't let it just go away by operation of law; make the Legislature take a vote and make somebody introduce a bill that says we're ready to bail out on this effort, it's not of any value, and do it that way. Even though there are a number of years remaining for this committee to work, the idea of the sunset is repugnant to me--the sunset, not Senator Schumacher. I understand what he is saying. I don't think he could be more frustrated than I am about the studies that are held, the discussions, the committees and then nothing results from it. But there is an attempt by the people on this committee now to be in a position to take an incremental step. And I would like to ask Senator Ashford a question. [LB99]

SENATOR COASH: Senator Ashford, will you yield? [LB99]

SENATOR ASHFORD: Yes. [LB99]

SENATOR CHAMBERS: Senator Ashford, do you know some of the entities or individuals who make up this committee? [LB99]

SENATOR ASHFORD: Yes. [LB99]

SENATOR CHAMBERS: Could you give some? [LB99]

SENATOR ASHFORD: Well, I can give them by...not by individual name, I can give them by category. [LB99]

SENATOR CHAMBERS: No, no, I meant the entities or the organizations. [LB99]

SENATOR ASHFORD: The law enforcement public...the superintendent of Law

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Enforcement and Public Safety, the director of the Commission on Latino-Americans, the executive director of the Commission on Indian Affairs, Fraternal Order of Police, Nebraska County Sheriffs Association, Police Officers Association, American Civil Liberties Union, AFL-CIO, Police Chiefs... [LB99]

SENATOR CHAMBERS: That's sufficient, thank you. Members of the Legislature, they want the sunset to go away. They know that time is needed. These are some of the professionals working in this area with these problems. Five years might seem like a long time, and it seemed like an eternity to me, but I know that effort and progress in this area, if it can be called that, moves with the speed of a glacier. When those who are a part of law enforcement are aware of problems in their own agencies, this puts them in a position and provides them cover so that they're not out there as the head of the State Patrol or a police chief saying that I have officers in my agency who are disobeying the law. Then he's out there and he has no loyalty. This gives cover. And they can work...it doesn't say they're going to take five years and do nothing. Give them a vote of confidence. [LB99]

SENATOR COASH: One minute. [LB99]

SENATOR CHAMBERS: We created the committee. Things are not moving at the rate that I want to see them move. The county attorney, as I stated, is not moving at the rate I think he should move. But he's got to cross every "t" and dot every "i" because he knows how hard it is to successfully prosecute police when they are charged with serious crimes of wrongdoing, crimes of violence. So he is taking the time necessary to prepare the case. And that's what I'm telling people in my community, even if there is some of them who will condemn me for going along with the system. I don't even care about that criticism or from whom it comes. When I see time passing in the process of doing something, I am more patient than Job. Thank you, Mr. President. [LB99]

SENATOR COASH: Thank you, Senator Chambers. Mr. Clerk, you have an amendment. [LB99]

ASSISTANT CLERK: Mr. President, Senator Chambers would offer FA59 to the committee amendments. (Legislative Journal page 1035.) [LB99]

SENATOR COASH: Senator Chambers, you're recognized to open on FA59. [LB99]

SENATOR CHAMBERS: Thank you. Members of the Legislature, in order that we can move forward, this is the amendment that Senator Mello felt that he was more or less obliged to withdraw in view of some of the things that had been said. Senator Mello is a person, and I hope he's not offended by this, who is on the outside looking in, but he still sees a serious problem and he's willing to do as much as he can to help solve it. He brought the amendment. And Senator Ashford read off the names of some of those

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entities interested in this amendment and wanted it brought. Senator Mello did not bring this amendment by cutting it out of whole cloth. He was requested and he brought it. I think there should be a vote. I think that committee is entitled to have a vote on record by the Legislature. And here's the way I would characterize the vote. If this amendment is indeed rejected, the committee does not cease to be, but what it will be is a vote of no confidence; that the committee, despite what they know about law enforcement, despite the work they've done in this area already, when they come to the Legislature that created them and will tell that Legislature our work will be facilitated if you get rid of this sunset, and we reject it, then we're rejecting them. All some entities have to do is wait it out. So I don't expect there to be a long debate. I'm not going to prolong it. But I think they're entitled to a vote on that amendment. So what you see before you is the identical amendment that Senator Mello offered, but which he felt constrained to withdraw. Thank you, Mr. President. [LB99]

SENATOR COASH: Thank you, Senator Chambers. Members, you've heard the opening to FA59 to AM34. The floor is now open for debate. Seeing no members wishing to speak, Senator Chambers, you're recognized to close on your floor amendment. [LB99]

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, I appreciate the fact that there is not debate on it because we've had all the debate that is needed. But I'm going to just reemphasize one thing. I am not doing this to give that committee the idea that they can shilly-shally and drag their feet forever and come up with nothing. I want to give them what they need, and in the process while that is going forward I will be considering legislation that will not only give teeth, but, Senator Johnson, it will create a jawbone in which those teeth will reside, a skull to which that jawbone will be attached, and a body that can carry and make use of those teeth to actually bite into this problem and do something concrete. But if we won't take this step, which is not going to cost us anything, which is not going to inconvenience anybody, and give those who are doing this work the only small thing they're asking, I think we ought to do it. So what this amounts to in my view is a vote of confidence or no confidence in that committee. It was not originated by Senator Mello. It was not originated by the Judiciary Committee. So, Mr. President, I'm going to ask for a call of the house and then I would like a roll call vote. [LB99]

SENATOR COASH: Thank you, Senator Chambers. Members, there has been a request for a call of the house. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB99]

ASSISTANT CLERK: 28 ayes, 0 nays to go under call, Mr. President. [LB99]

SENATOR COASH: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and

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record your presence. Those unauthorized personnel please leave the floor. The house is under call. Senator Larson, please check in. Senator Krist, please check in. Senators Scheer and Kintner, please return to the Chamber and record your presence. The house is under call. Senator Nelson, please check in. There has been a request for a roll call vote. Members, the question before the body is, shall FA59 to AM34 be adopted? Mr. Clerk, please read the roll. [LB99]

ASSISTANT CLERK: (Roll call vote taken, Legislative Journal page 1035-1036.) The vote is 38 ayes, 0 nays, Mr. President, on the adoption of the amendment. [LB99]

SENATOR COASH: FA59 is adopted. I raise the call. Mr. Clerk, you have another amendment. [LB99]

ASSISTANT CLERK: Mr. President, Senator Schumacher would move to amend. (FA60, Legislative Journal page 1036.) [LB99]

SENATOR COASH: Senator Schumacher, you're recognized to open on FA60. [LB99]

SENATOR SCHUMACHER: Thank you, Mr. Chairman, members of the body. As I looked through the teeth in this piece of legislation, if anything is needed to help it out is that this commission or this committee have the foggiest notion of where to look in the data and what its supposed to suspect it will find. And without that it's kind of wandering in the desert trying to figure out some statistical analysis or something else. So the amendment that is now being prepared and entered into the gadget, which I propose, is very simple and that is after line 12 on page 5 of the committee amendment we create a legal obligation on the part of any law enforcement officer, any prosecutor, defense attorney, and probation officer who is aware of incidents of racial profiling and who is not bound by legal privilege not to disclose the same, to report to this commission that they are aware of incidents of legal profiling. That way the commission will have a clue as to where to start in this heap of data looking and what profiling looks like when it appears in the data. Otherwise, I think we're collecting this just as a school experiment. Very simple amendment and what it does is it says, hey, if you're in law enforcement, you're in the legal profession--I hesitate, I was going to put judges in here but I think we have some conflict between the branches of government--and you're aware of this stuff going on, you got an obligation to report it just as if you were aware of child abuse and wanted to report it to...and you need to report it to the welfare people. Very simple amendment. It's designed to, if this is a problem, to put some punch into it to help these fact finders smell out where the problem might be and to assist in the eradication of it and make this data, that we're going through some effort to compile, meaningful. I do not in this amendment include any criminal penalties for not doing so, but it does create a legal obligation to make a report to the commission. Thank you. [LB99]

SENATOR COASH: Thank you, Senator Schumacher. Members, you've heard the

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opening of FA60 to AM34. The floor is now open for debate. Seeing no members wishing to speak, Senator Schumacher, you're recognized to close on your amendment. [LB99]

SENATOR SCHUMACHER: I'll waive closing. [LB99]

SENATOR COASH: Senator Schumacher waives closing. Members, the question before the body is, shall FA60 to AM34 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Record, Mr. Clerk. [LB99]

ASSISTANT CLERK: 28 ayes, 0 nays on the adoption of Senator Schumacher's amendment. [LB99]

SENATOR COASH: FA60 is adopted. We return to discussion on the committee amendment. Seeing no members wishing to speak, now Senator Ashford, you're recognized to close on the committee amendment. [LB99]

SENATOR ASHFORD: Where is Senator Chambers? I'm going to close now. (Laughter) Okay, I just wanted to clear that up. I've learned from this experience today that the best way to get something done for me is to take the exact opposite position and then eventually I'll get exactly what I want. So I appreciate that lesson in legislative practice. I would urge the adoption...I would like to thank--Senator Carlson is gone--but thank him for his comments on an issue which is not directly related, he's there, to this bill, but certainly related to a situation that exists in Holdrege and something that's important that we as a Legislature be aware of. But with that I would urge the adoption of AM34. [LB99]

SENATOR COASH: Members, you've heard the closing to the committee amendment, AM34. The question before the body is, shall AM34 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Record, Mr. Clerk. [LB99]

ASSISTANT CLERK: 37 ayes, 0 nays on the adoption of committee amendments. [LB99]

SENATOR COASH: The committee amendments are adopted. We return to discussion on LB99. Seeing no members wishing to speak, Senator Mello, you're recognized to close on the advancement of LB99. [LB99]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. Thank you, Senator Chambers and Senator Ashford and Senator Schumacher, for what turned out to be, I think, a much longer debate than many of us thought, but it was a very healthy debate because this is an important statute. I think for those of us who have legislative districts and live in communities that see this occurring or feel that this is

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occurring in our communities, this really hits home. And I think that the committee amendment that we just adopted makes and improves a data-reporting statute significantly better. Some of the things that the committee amendment we just adopted does is it requires law enforcement agencies to provide a copy of their racial profiling policy to the Crime Commission; establishes minimum requirements for policies prohibiting racial profiling by law enforcement agencies; permits the Crime Commission to establish a model policy prohibiting racial profiling to be utilized if a particular law enforcement agency fails to establish one that meets minimum requirements; authorizes the Crime Commission to analyze and investigate information in traffic-stop reports that suggest the appearance of possible racial profiling; and to make recommendations to the local law enforcement agencies of possible steps to prevent such profiling or even the appearance of such profiling. It expands the authority of the Racial Profiling Advisory Committee to allow them to make recommendations of the Crime Commission, including the possibility of referring racial profiling incidences to the state Attorney General. And with the adoption of Senator Chambers' floor amendment, it removes the sunset of this advisory council moving forward. Colleagues, I believe LB99 is a positive step moving forward. We know at the end of the day it will not stop all instances of racial profiling. But, ultimately, it strengthens our existing law significantly from where it was when it was established in 2002. It's my hope that this is an issue that while we did remove the sunset, it's something that this Legislature will continue to be vigilant on moving forward, in light...and specifically in light of Senator Schumacher's questions that we have collected data now for 10 years; and now with the new authority and power that we give both the advisory committee and the Crime Commission, that next year with the passage of LB99, we should start to see recommendations both for the State Patrol, county sheriffs, and local law enforcement agencies moving forward to ensure that we even stop the appearance of what looks to be racial profiling in our state. I'm grateful for the Judiciary Committee's, I think, due diligence and hard work of bringing in a variety of ideas, policy options that other states have looked at and, ultimately, have passed which help make up the committee amendment and, ultimately, change the direction of the bill. And I believe we're going to see positive steps moving forward. With that I'd urge the body to adopt LB99. Thank you, Mr. President. [LB99]

SENATOR COASH: Thank you, Senator Mello. Members, you've heard the closing to LB99. The question before the body is, shall LB99 advance to E&R initial? All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Record, Mr. Clerk. [LB99]

ASSISTANT CLERK: 36 ayes, 0 nays on the advancement of the bill, Mr. President. [LB99]

SENATOR COASH: LB99 does advance. Items, Mr. Clerk. [LB99]

ASSISTANT CLERK: Mr. President, I do. Amendment to be printed from Senator

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Lathrop to LB103. A request to withdraw a name from Senator Krist on LB577, as well as LB578. (Legislative Journal pages 1036-1038.) [LB103 LB577 LB578]

Finally, a priority motion. Senator Ashford would move to adjourn until Friday, April 19, 2013, at 9:00 a.m.

SENATOR COASH: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. We are adjourned.