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Floor Debate
January 25, 2018

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PRESIDENT FOLEY PRESIDING

PRESIDENT FOLEY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the fifteenth day of the One Hundred Fifth Legislature, Second Session. Our chaplain for today is pastor Andrew Anderson of the Country Bible Church in Blair, Nebraska, Senator Brasch's district. Please rise.

PASTOR ANDERSON: (Prayer offered.)

PRESIDENT FOLEY: Thank you, Pastor Anderson. I call to order the fifteenth day of the One Hundred Fifth Legislature, Second Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

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

PRESIDENT FOLEY: Thank you, Mr. Clerk. Any corrections for the Journal?

CLERK: I have no corrections.

PRESIDENT FOLEY: Thank you, sir. Any messages, reports, or announcements?

CLERK: I do. Judiciary Committee offers a series of hearing notices and Health and Human Services provides a hearing notice. That's all that I have, Mr. President. (Legislative Journal pages 427-428.)

PRESIDENT FOLEY: Thank you, Mr. Clerk. We'll now proceed to the first item on the agenda, legislative confirmation reports. Mr. Clerk.

CLERK: Mr. President, the first report is from the Retirement Systems Committee involving the appointment of Randy Gerke as director of the Nebraska Public Employees Retirement Systems. (Legislative Journal page 375.)

PRESIDENT FOLEY: Senator Kolterman, as Chair of the committee, you're recognized to open on the confirmation report.

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SENATOR KOLTERMAN: Good morning. Thank you, Mr. Lieutenant Governor. The Nebraska Retirement Systems Committee held a confirmation hearing on January 19 for Randy Gerke. Mr. Gerke was appointed to the Public Employees Retirement Board to serve as director of the Nebraska Public Employees Retirement Systems, also known as NPERS. Mr. Gerke has served as the deputy director and accounting and finance manager for NPERS since 2003. He has a bachelor's degree in accounting and information management and a master's in information systems. Prior to his position at NPERS, Mr. Gerke was the controller and human resource director for seven years at Midland Lutheran College and financial accounting supervisor for 20 years with the city of Fremont. Mr. Gerke's previous 25 years of experience in accounting and management and his recent 15 years' experience as deputy director and finance manager at NPERS make him exceptionally qualified to be the NPERS director. The Retirement Committee unanimously voted Mr. Gerke's appointment to the Legislature for confirmation. I would ask that you support...I would ask for your support in confirming Mr. Gerke's appointment as the director of the Nebraska Public Employees Retirement System. Thank you.

PRESIDENT FOLEY: Thank you, Senator Kolterman. Debate is now open on the confirmation report. Senator Kolowski.

SENATOR KOLOWSKI: (Microphone malfunction)...I just wanted to double with Senator Kolterman, the comments he made about Mr. Gerke. We have a very, very strong candidate here with an excellent background. We're very fortunate to have someone of this quality applying for the position and securing this within our confines. I think it's a really excellent move on our part and I give him the very highest marks. Thank you, Senator Kolterman.

PRESIDENT FOLEY: Thank you, Senator Kolowski. Senator Brasch.

SENATOR BRASCH: Thank you, Mr. President, and good morning, colleagues. I do support this confirmation. I believe it is a good confirmation. But I thought about something over the evening, and I thought long and hard about it and I would like to address Senator Chambers, my good colleague. And yesterday he talked about the "Bad Moon Rising" by Creedence Clearwater Revival, and I got to thinking about it. Well, Senator Chambers, "Here Comes the Sun" by the Beatles, and in all respect, Senator Chambers, I would never call you "little darling" even though the song has it. I will refer Senator Chambers, if anybody wants to hum along quietly, we have the freedom of speech and song and he relates to song. So (singing) Here comes the sun/ Here comes the sun, and I say/ It's all right, Senator Chambers, It's been a long cold lonely winter,/ Senator Chambers, It feels like years since we've been here/ Here comes the sun/ Here comes the sun, and I say/ It's all right/ Senator Chambers, The smiles are returning to the faces/ Senator Chambers, It seems like years since we've been here/ Here comes the sun/ Here comes the sun, and I say/ It's all right/ Sun, sun, sun, here it comes/ Sun, sun, sun, here it comes/ Senator

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Chambers, I feel the ice is slowly melting/ Senator Chambers, It feels like years since we've been clear/ Here comes the sun, and I say/ It's all right/ Here comes the sun/ It's all right. Have a bright, bright sunny day. Thank you, Senator Chambers, for talking about the moon. The sun requires time as well. Thank you, colleagues and Mr. President.

PRESIDENT FOLEY: Thank you, Senator Brasch. Senator Clements.

SENATOR CLEMENTS: Thank you, Mr. President. I rise in support of the confirmation report. And I also would like to ask Senator Brasch a question.

PRESIDENT FOLEY: Senator Brasch, will you yield, please?

SENATOR BRASCH: I yield.

SENATOR CLEMENTS: Senator Brasch, how many years have you been in the Legislature?

SENATOR BRASCH: Eight years.

SENATOR CLEMENTS: Eight years, thank you. And Senator Brasch, is this your last session for at least four years?

SENATOR BRASCH: This is my last session for at least four years.

SENATOR CLEMENTS: Well, thank you. You told me last night that you were planning to sing a song to brighten up the day for Senator Chambers. And so on the occasion of your last session in office, I'd like to sing a song for you with my apologies to Stevie Wonder. (Singing) You are the sunshine of our life. That's why you'll always be around. You are the apple of our eyes. Forever you'll stay in our hearts. This session is just now beginning, though it seems like a million years, and now that your term is ending, we found ourselves drowning in our tears. You are the sunshine of our life. That's why you'll always be around. Thank you, Senator "Sunshine" Brasch. Thank you, Mr. President. I yield the rest of my time to Senator Brasch.

PRESIDENT FOLEY: Thank you, Senator Clements. Senator Brasch, 3:00.

SENATOR BRASCH: I would like to thank you and also Senator Chambers for being the inspiration of not just the moon but the sun. Thank you. Have a wonderful day.

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PRESIDENT FOLEY: Thank you, Senator Brasch. Senator Kolterman, you're recognized to close on the confirmation report. He waives close. The question before the body is the adoption of the report. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

CLERK: (Record vote, Legislative Journal pages 428-429.) 36 ayes, 0 nays on the adoption of the confirmation report.

PRESIDENT FOLEY: The confirmation report is adopted. Next confirmation report, please.

CLERK: Mr. President, the Natural Resources Committee reports on the appointment of Dennis Grennan to the Nebraska Power Review Board. (Legislative Journal page 387.)

PRESIDENT FOLEY: Senator Hughes, you're recognized to open on the confirmation report.

SENATOR HUGHES: Thank you, Mr. President. Good morning, colleagues. I present for your approval the reappointment of Dennis Grennan to the Nebraska Power Review Board. Dennis came before the Natural Resources Committee for his confirmation hearing on January 18. Mr. Grennan lives in Columbus, Nebraska, and is employed as a part-time power consultant with HDR Engineering. Mr. Grennan is looking forward to serving his second term on the board. In addition to serving on the Power Review Board member, Mr. Grennan is also the Nebraska representative to the Regional State Committee of the Southwest Power Pool. He was just voted secretary-treasurer of the RSC which in total is made up of ten state commissioners and oversee cost allocation policy issues across the SPP footprint. The Nebraska Power Review Board is comprised of five members, all appointed by the Governor. The board must include an engineer, an attorney, an accountant, and two laypersons with no geographic boundary restrictions. Mr. Grennan is filling the engineer role on the board. Tim Texel, the executive director of the Power Review Board, came and testified in support of Mr. Grennan at his confirmation hearing. The Nebraska Power Review Board is a state agency created in 1963 to regulate Nebraska's publicly owned electric utility industry. As we know, Nebraska is the only state in the country served entirely by consumer-owned power entities. These utilities include public power districts, cooperatives, and municipalities. The board's duties and responsibilities are set out in Chapter 70, Article X of the Nebraska Revised Statutes. One of the board's main responsibilities in the creation and certification of retail and wholesale service area agreements between electric utilities operating in Nebraska. Any amendments to existing agreements must be approved by the board. The board also maintains the official records pertaining to these agreements, which establish geographic territory in which each utility operating in Nebraska has exclusive right to serve customers. The committee advanced Mr. Grennan's appointment by an 8-0 vote. I ask for

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your confirmation of Dennis Grennan to the Nebraska Power Review Board. Thank you, Mr. President.

PRESIDENT FOLEY: Thank you, Senator Hughes. Debate is now open on the first confirmation report from the Natural Resources Committee. Senator Larson.

SENATOR LARSON: Thank you, Mr. President. Would Senator Hughes yield to a question?

PRESIDENT FOLEY: Senator Hughes, would you yield, please?

SENATOR HUGHES: Of course.

SENATOR LARSON: Thank you, Senator Hughes. You mentioned that this individual was the Nebraska representative to the Southwest Power Pool, and I've grown fairly knowledgeable of the Southwest Power Pool over the past couple of years. And was there any questions during the hearing made to this individual about how we should adapt or change our Power Review Board or public power structure to ensure the longevity of our electrical utility systems, because obviously the SPP has offered...has turned things around or upside down in certain areas. Was that discussed at all by any chance?

SENATOR HUGHES: We did have a brief discussion about the role of SPP and what the current makeup of power generation is in that SPP footprint.

SENATOR LARSON: Okay. Did he take any stance on the proposed bill that would allow the Power Review Board to issue financial penalties, or was it asked what his thoughts were on that type of authority or intent of the Power Review Board?

SENATOR HUGHES: To my recollection, we did not talk about that.

SENATOR LARSON: Okay. What about...obviously today the energy environment is very competitive, and the Southwest Power Pool does not recognize political boundaries or Chapter 70. So was it asked should the Power Review Board request a review of the financial decisions of our public power districts in this new competitive environment, because obviously with no political boundaries that's a changing aspect?

SENATOR HUGHES: We did not get that far into the weeds with this candidate.

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SENATOR LARSON: Okay. And you mentioned Tim Texel came in, and he's the executive director of the Power Review Board?

SENATOR HUGHES: That's correct.

SENATOR LARSON: Have you ever seen him testify for or against a candidate before? Usually they...the executive directors stay out of those who hire them and he essentially hires them, correct?

SENATOR HUGHES: Mr. Texel indicated that he had never come before the committee to testify as a proponent. He felt it was necessary to do that because this gentlemen had just been (inaudible) to a special committee of the Southwest Power Pool and wanted to make sure that he was able to continue in that role representing Nebraska in a very important regional committee.

SENATOR LARSON: Okay. All right. Thank you, Senator Hughes. First, I guess, I would say that I do think that was probably a little outside the bounds of what the executive director of the Nebraska Power Review Board should be doing in terms of testifying in favor of one of his board members that obviously a neutral capacity would have been sufficient specifically to just give the committee that info. But a little bit more, I guess, I don't really have a whole lot of gripe with the Power Review Board, but I do have a little bit with what I've been reading in the paper about what happened in Beatrice and how because of NPPD's objections to one of the-- the municipality of Beatrice trying to leave a contract with NPPD and create their own generation, NPPD and OPPD objected to the Power Review Board and essentially said that they wanted to force a local power into the Beatrice municipality power district to force them to go with NPPD and not be able to create their own generation, which is wrong. And in the end, NPPD cost the state of Nebraska millions of economic development...

PRESIDENT FOLEY: One minute.

SENATOR LARSON: ...to selfishly try to keep Beatrice as a customer. Because of that, as the paper has reported, Beatrice will be building their natural gas plant in Oklahoma. Because the way that the Southwest Power Pool works, you only have to bring the amount of generation on to the system that is used. It doesn't matter where that generation is; you just have to supply that generation. So instead of the millions of dollars of economic investment that would have gone to Gage County and Beatrice, instead of the jobs that would have gone to Gage County and the city of Beatrice, we now will be sending those jobs to Oklahoma because our public power entity objected and wanted to force Beatrice into signing with them. Now, I called my NPPD...

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PRESIDENT FOLEY: Senator Larson, that was time, but you've got...you're next in the queue, so please continue.

SENATOR LARSON: Thank you. I talked to my NPPD board member about this, and I asked him, why would you object? And what I heard was one of the most disturbing things I've heard. He said that we can't let any of these people leave NPPD. Even though it's their right, we have to fight everybody leaving. We have to force them to be into our contracts; otherwise, costs will rise for us. But they in statute have that ability to leave. We've set up that ability for them to leave, but NPPD said we have to force them to be with us. Otherwise, costs will rise for the whole system. I point-blank told him that sounds very much like a communist. We want to force you to be with us so it's just better for the collective. That is not a principle that I prescribe by, and to see that our public power entities moving in that direction is very disturbing because every one of those districts--and maybe I'm using the improper word when I say that--but they have the ability to choose whomever they want to supply their generation. I believe Northeast Public Power is using someplace in Kentucky to supply their generation. And that is because NPPD is becoming less and less competitive. Their contracts with the wholesalers are becoming less and less competitive, and part of the reason that they're becoming less and less competitive is because of the investments that they're making in their own infrastructure. Now, I completely agree with the R-Line and what NPPD is trying to do there, but they just invested \$25 million in a plant in western Nebraska that in November cost \$40 a megawatt to produce, but they were only making \$10 a megawatt to sell that energy. Or their nuclear power plant, which I think cost them \$50 or \$60 a megawatt to produce, and we're only getting \$17 a megawatt to sell that energy. Now, I understand a nuclear power plant just can't be switched on and off. But the way that the Southwest Power Pool works, you have a reasonable knowledge of whether or not your power is going to be needed the next day, hence the reason we entered into the Southwest Power Pool. You can look two or three days in advance and understand if your power is going to be needed; and if it isn't, because the wind's blowing or the sun's out, essentially you can shut down. Now, you'll hear that we have to provide...ensure that there's power for the whole system. Well, the Southwest Power Pool does that. And so what's happening is we leave our plants just running and we essentially--when the wind's blowing and the sun's out or the natural gas is cheap--our plants are still running, and we are literally paying people to take our energy. That is why it costs Gerald Gentleman \$40 a megawatt to produce and they only sold for an average of \$10. Now when I explained that to my Public Power Board--NPPD board member, he said, well, sometimes we sell for more than \$40. Well, that's true depending on the market; but because we're in the SPP, we don't have those challenges of reliable energy anymore because we can pull energy from anywhere in the SPP. We're not just dependent on NPPD's energy any longer...

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SENATOR LARSON: ...or NPPD's generation. If we're short here, we can pull from Kansas. We can pull from Oklahoma. NPPD offers transmission, which is important, as I said, supportive of the R-Line, but their fundamental business practices need to be looked at. And I hope the Power Review Board understands that, and understands that moving forward, because of the poor contracts and poor offers from NPPD because they are bleeding money elsewhere, they're screwing some of the wholesalers. So, colleagues, I'll vote to approve this, but this is something that I won't have to deal with because I'll be gone, but everybody else that will be here, I think this issue is going to keep coming up. I know Senator Wayne had a bill...had a few bills...

PRESIDENT FOLEY: Time, Senator. Thank you, Senator Larson. Senator Bostelman.

SENATOR BOSTELMAN: Thank you, Mr. President. What Senator Larson is talking about isn't true. You cannot move an electron from Arkansas to Nebraska. It doesn't work. In order to move electron that distance, you have to have DC capabilities. So what we're doing in Nebraska right now is, we are a surplus power state; and when we produce surplus power, we sell it outside of the state. What happens when we have excess power that comes in from outside of the state, we do have to shut down our coal plants and some other plants, and if not, then we're penalized. But I think we need to have a little bit more of the truth about how power actually works, how the SPP actually works. You cannot move electrons. You cannot move electricity large distances. As I said, you have to have DC lines. So what we produce in Nebraska has and always will be base load generation. It needs to be base load generation. Because if you want to turn on your lights, if you want your furnace to work, if you want your air conditioner to work, if you want your irrigation pump to work, we have to have base load power. And that's only done by our generators that we have in the state because you cannot and will not be able to move power long distances unless it's a very expensive process that goes through, and that just doesn't happen. And I think we just need to understand. I support this. Obviously, I support this confirmation. This is an important one, but we will talk more, I think, as this session goes along, about public power, about renewable energies. That discussion needs to happen, and it will happen. And you need to understand that fuel load is part of the decision-making with SPP. You also need to understand the FERC and the SPP are looking at renewables right now and how that affects our base load. Ten to 30 percent of reliability is what you're basing this on. Wind generation is a 30 percent at best. Your solar is 10 to 12 percent, I believe. Natural gas obviously would be a base load. That would be affordable as far as those facilities we have in existence in the state. But we're a surplus power state, and we just need to understand--and we'll have that conversation more as we come along--our power generation, our base load generations in the state are extremely valuable. If we do not have that and if we overgenerate in other types of power, there's real risk with our transmission system. There's real risk with brownouts or blackouts in this state because we're not designed to handle that. So as the state moves forward with power in general, it's very important for us to have an individual on the SPP board, it's very important for us to have an individual on the Power Review Board that understands what's going on nationally with

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the SPP and the FERC so that we can look at things properly that we're not harming ourselves and harming our state and being able to provide a consistent, timely, reliable energy source, electric energy source in this state. So I urge you all to please vote green on this confirmation. Thank you, Mr. President.

PRESIDENT FOLEY: Thank you, Senator Bostelman. Senator Larson.

SENATOR LARSON: Thank you. Senator Bostelman's right. We can't get it from Arkansas, but the Southwest Power Pool is divided into a north and south division. He failed to mention that. The north division is where we can pull power from--that's Nebraska, Kansas, a sliver of Oklahoma, and I think South Dakota as well. So it's not just Nebraska. All right? He made it sound like that. If we have a true understanding of the Southwest Power Pool, it is a north and south, and we pull from the north. Now, the Oklahoma plant that Beatrice is building will be supplying the south, so he's not wrong. Power can't move super long distances, but we can pull power from other states. He failed to mention that. And I understand Senator Bostelman is a longstanding proponent of NPPD, and I understand why. I mean, that's the way it is. Another thing that Senator Bostelman mentioned but failed to extrapolate on is, we have to provide as much generation as that we use to the Southwest Power Pool. He's not wrong. Wind power counts 20 percent of its base load, can count towards our generating capacity. That doesn't mean the wind or solar--since we're talking about wind, I'll say wind--that doesn't mean that the wind only blows 20 percent of the time; that's only 20 percent that can be counted to our base load. The wind can still blow 80 percent of the time, but the base load can only be counted 20 percent. That's apples and oranges. My point here is, is that certain parts of the system are being mismanaged, that public power is beginning...becoming more and more of a bully, and we have to continue to look at it. So as I said, Senator Bostelman is right. We can't pull it from Arkansas. I didn't say that we could. I said Kansas, a sliver of Oklahoma, South Dakota. That's SPP north, and that's where we can pull power. We can't pull power from SPP south, but we are all part of the same system. I mean, if we really needed to, we might be able to get SPP south, but it'd be dwindled down. That's why they've separated it into north and south. So as I said, we can talk all day. Right now, he's right: Only 20 percent can count towards the base load, but that doesn't mean it only provides 20 percent of the energy. As we've seen, it's providing a lot more energy than that because of how little NPPD is getting for their energy and bleeding money month after month on this issue. They are doing a good job on transmission lines. We need the R-Line. I support the R-Line. It's crucial to northeast Nebraska and my agricultural producers there. Maybe that's the future of NPPD, transmission, and let the market take care of generation. Thank you.

PRESIDENT FOLEY: Thank you, Senator Larson. That was your third opportunity, Senator. Senator Bostelman.

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SENATOR BOSTELMAN: Thank you, Mr. President. I agree with Senator Larson: One aspect is that we need to have power in the state, but it needs to be on equal basis, equal footing. If you're going to do a power generation in the state, take the subsidies away. Let's go one on one with generation. If you're going to subsidize one energy process, then you need to subsidize them all. We have to have base load. If we don't have base load, the lights go off. Please support this committee nomination...confirmation. Thank you.

PRESIDENT FOLEY: Thank you, Senator Bostelman. Senator Hughes, you're recognized to close on the confirmation report.

SENATOR HUGHES: Thank you, Mr. President. I appreciate the dialogue that we have. Electricity generation and transmission is a very complicated issue in this state. We do have several regulatory authorities that we need to be mindful of and make sure that we find good people to do those jobs, and I think Mr. Grennan is one of those people. So I would encourage a green vote for his confirmation. Thank you.

PRESIDENT FOLEY: Thank you, Senator Hughes. Members, you've heard the debate on the confirmation report. The question for the body is the adoption of the report. All those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

CLERK: (Record vote, Legislative Journal pages 429-430.) 39 ayes, 0 nays on the adoption of the report.

PRESIDENT FOLEY: The confirmation report is adopted. (Visitors introduced.) Next confirmation report. Mr. Clerk.

CLERK: Mr. President, the Natural Resources Committee reports on Scott McPheeters and Taylor Nelson, appointees to the Nebraska Ethanol Board. (Legislative Journal page 387.)

PRESIDENT FOLEY: Senator Hughes, you're recognized to open on the confirmation report.

SENATOR HUGHES: Thank you, Mr. President. Good morning, members. I present for your approval the reappointment of Scott McPheeters to the Nebraska Ethanol Board and also a new appointment of Taylor Nelson to the Nebraska Ethanol Board. Both Scott and Taylor came before the Natural Resources Committee for their confirmation hearing on January 18. Mr. McPheeters is a fourth-generation family farm owner and operator near Gothenburg, Nebraska. Scott currently serves on the board of managers of KAAPA Ethanol and KAAPA Grains and has also recently been appointed to the board of directors of the American Coalition for Ethanol. To

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add to his knowledge and experience, Scott also represented the ethanol industry on the Governor's ag trade mission to China in November of 2016. Mr. Nelson is a young farmer and convenience store owner from South Sioux City, Nebraska. His convenience store near Jackson is an entrepreneurial story. Mr. Nelson was part of completely remodeling this store and bringing corn straight from the farm to the pump in the ethanol-blended fuel and offering those at competitive prices. He also serves as the vice president of his local Corn Growers chapter and works with local agencies to promote ag and education literacy. Mr. Nelson is looking forward to being part of the bigger picture when it comes to the market--can go from here. The committee was very impressed with him as an ethanol enthusiast and entrepreneur. The Nebraska Ethanol Board is comprised of seven members, all appointed by the Governor. Each member represents a specific area of interest related to Nebraska's ethanol industry. Mr. McPheeters is filling the business industry portion, and Mr. Nelson is filling the corn grower portion of the Ethanol Board. The Nebraska Ethanol Board is a state agency created in 1971 by the Legislature, the first and only state agency in the United States devoted solely to the development of the ethanol industry. The board focuses on four key issues: ethanol production and industry support, market development, research and technology issues, and public policy development. The committee advanced both Mr. McPheeters' appointment and Mr. Nelson's appointment by an 8-0 vote. I would ask for your confirmation of Scott McPheeters and Taylor Nelson to the Nebraska Ethanol Board. Thank you, Mr. President.

PRESIDENT FOLEY: Thank you, Senator Hughes. Debate is now open on the confirmation report. Seeing no discussion, Senator Hughes, you're recognized to close on the report. He waives closing. The question for the body is the adoption of the confirmation report from the Natural Resources Committee. All those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

CLERK: (Record vote, Legislative Journal page 430.) 38 ayes, 0 nays, Mr. President, on the adoption of the confirmation report.

PRESIDENT FOLEY: The confirmation report is adopted. Next confirmation report, Mr. Clerk.

CLERK: Natural Resources reports on the appointment of Douglas Zingula to the Game and Parks Commission. (Legislative Journal page 419.)

PRESIDENT FOLEY: Senator Hughes, you're recognized to open on the confirmation report.

SENATOR HUGHES: Good morning, Mr. President. Thank you, colleagues. This is my last appointment. I present for your approval the appointment of Doug Zingula to the Nebraska Game and Parks Commission. Mr. Zingula came before the Natural Resources Committee on

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January 19. The Game and Parks Commission is charged with stewardship of the state's fish, wildlife, state parks, and other recreation resources. The commission is also charged with issuing state hunting licenses, fishing licenses, and boat registration. It conducts public education programs for hunting and boater safety and also provides other resources for those who wish to learn to enjoy the outdoors. The agency is governed by a board of nine commissioners, each member of which is appointed by the Governor to a six-year term. Eight commissioners serve each of eight districts across the state; the ninth serves at an at-large role. Commissioners serve on a voluntary capacity and meet in various locations across the state approximately every two months. Doug Zingula is from Sidney, Nebraska, and he is a new appointment to the commission as the District 7 representative. Before retiring in 2016, he was employed with Cabela's as a vice president of merchandising. He loves working with people and has a strong passion for wildlife. Mr. Zingula is also a member of several organizations, including being a board member of the Nebraska Big Game Society. The committee advanced Mr. Zingula's appointment by a 7-0-1 vote, with one committee member being absent. I ask for your confirmation of Douglas Zingula to the Nebraska Game and Parks Commission. Thank you, Mr. President.

PRESIDENT FOLEY: Thank you, Senator Hughes. Debate is now open on the third confirmation report from the Natural Resources Committee. Seeing no discussion, Senator Hughes, you're recognized to close. He waives closing. The question for the body is the adoption of the confirmation report from the Natural Resources Committee. All those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

CLERK: (Record vote, Legislative Journal pages 430-431.) 39 ayes, 0 nays, Mr. President, on the adoption of the report.

PRESIDENT FOLEY: The confirmation report is adopted. (Visitors introduced.) Next confirmation report. Mr. Clerk.

CLERK: Mr. President, if I may, just a quick announcement. Urban Affairs will have an Executive Session at 10:00 in Room 2022. Health and Human Services Committee offers the confirmation report on the appointment of Matt Wallen (sic) as the director of the Division of Family and...Children and Family Services, excuse me. (Legislative Journal pages 391-392.)

PRESIDENT FOLEY: Senator Riepe, you're recognized to open on the confirmation report.

SENATOR RIEPE: Thank you, Mr. President. I rise to present three appointments to the state Stem Cell Research Advisory Committee. But before I do that, I do want to express my disappointment with the musical talent that has been exhibited this morning--that I had expected Senator Hughes to sing "I'm Just a Country Boy," but he didn't give me that. And he's now

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ignoring me, so, so be it. The appointments that I have before you include the reappointment of Dr. Dennis Roop, Dr. Rebecca Morris, and the initial appointment of Dr. Rui Yi. The state Stem Cell Research Advisory Committee was established in the Stem Cell Research Act of 2008. The membership of the committee includes the dean of each medical school in Nebraska and four scientists from outside Nebraska with experience in nonembryotic stem cell research. Dr. Roop is a professor of dermatology at the University of Colorado-Denver. Dr. Roop has been a member of the Stem Cell Research Advisory Committee since its inception. Dr. Morris is a professor and section leader of laboratory on stem cells and cancer at the University of Minnesota. Dr. Yi is a professor in the department of molecular cellular and developmental biology at the University of Colorado at Boulder. All three physicians were advanced from the Health and Human Services Committee on a 7-0 vote. With that, I ask for your green vote. Thank you, Mr. President.

PRESIDENT FOLEY: Thank you, Senator Riepe. Debate is now open on the confirmation report. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, now that Senator Riepe is on the floor for a purpose other than the one I'm going to bring up, I have a question that has been weighing on my mind based on some information I got, which goes back to a directive or however you want to call it to the Department of Health and Human Services with reference to communications sent by senators to HHS. I would like to ask Senator Riepe a question or two if he will respond.

PRESIDENT FOLEY: Senator Riepe, would you yield, please?

SENATOR RIEPE: Yes, I will.

SENATOR CHAMBERS: Senator Riepe, in order that my questions may be on the mark, I need a statement from you as to this directive that you gave to HHS. First of all--and you may not want to use the word "directive"--is it clear to you what I'm asking of you from what I've said?

SENATOR RIEPE: I did send out a suggestion in terms of with Heritage Health--a suggestion I reinforce--that was to the other senators. That was not a directive, if you will, to the Health and Human Services Department, which I do not control. We are simply an oversight as a Health and Human Services Committee, Senator.

SENATOR CHAMBERS: When you said "a suggestion," how did you phrase it? I want to know the words that you used.

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SENATOR RIEPE: Okay. Given the fact that within...with Heritage Health we have 230,000 enrollees, if you will; we have 30,000 providers, and so my piece was coming from a healthcare background and dealing with large numbers and large processes. My communication was, as a suggestion, was that if there are concerns that the first thing that a provider would do--or even a constituent or that is a recipient of Medicaid--that they first of all talk with the managed care organization to see if they can get resolution. If they are not able to, that they then go to the Department of Health and Human Services and seek resolution. If they're not successful there, then the encouragement--again, suggestion--was they go to their individual senator and, from that, we would work with them through the Heritage Health oversight committee to try to get a process there to orderly resolve some of the many issues that we've had with Heritage Health.

SENATOR CHAMBERS: I don't think I communicated clearly with you. Words do mean something. And the information I got created a picture different from the one you painted here this morning. Now lawyers are trained to read and study documents very carefully because those documents do contain discussion that can have a bearing on consequences that can result to a client. For example, if an accusatory document is filed against an individual--it might be called a warrant, an indictment, or whatever--the lawyer will read that document very carefully because among the very words that are used to condemn, accuse, and demand that this person come forward to face charges, within those words might be other words that comprise the salvation of the person who is the subject of that document. Now I'm trained in the law. I have a law degree from Creighton. And as I've said, the only thing Creighton hates more than the fact that I graduated...

PRESIDENT FOLEY: One minute.

SENATOR CHAMBERS: ...from there is that I say it publicly. So I'm going to hold you to a more specific discussion than what my question led to you answering me the way I did...you did. But I'm going to turn on my light because there's not enough time right this minute.

PRESIDENT FOLEY: Senator Chambers, you may continue on your next turn.

SENATOR CHAMBERS: Thank you. Let me phrase it this way: Did you send a communication to HHS referring to communications that that department or agency receives from members of the Legislature? Did you send a communication to HHS with reference to such a communication they would receive from a member of the Legislature?

SENATOR RIEPE: Senator, I think what you're referring to is this--in the interest of communication--and this dealt primarily around Heritage Health--that we have exchanges of...with open carbon copies that would say...

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SENATOR CHAMBERS: Senator, I don't want to seem rude, but my time will run out. Did you send a communication to HHS that had a bearing on communications that HHS received from senators? Did you...

SENATOR RIEPE: I did not...

SENATOR CHAMBERS: Go ahead.

SENATOR RIEPE: Excuse me.

SENATOR CHAMBERS: You did not send such a...?

SENATOR RIEPE: I did not send a directive, if that's...

SENATOR CHAMBERS: No, I used the word "communication." I want to cover any methodology because you're a slippery fish this morning and I cannot just reach in and grab you. I need a net that not only encloses you but offers no means to escape. The word I'm using is "communication," whether electronically, type--because I use a typewriter. Did you send a communication to the Nebraska Department of Health and Human Services--whoever the person is that you may have sent it to, if you did--did you send a communication to that department with reference to communications that department received from a senator? Did you address a communication of that kind to anybody at the Department of Health and Human Services?

SENATOR RIEPE: My recollection is that we had a conversation when we were meeting with Chief Executive Officer Courtney Phillips, and we talked about the advantages of back-and-forth communication by showing one another what was going on. The magnitude of the Department of HHS is substantial. So we had that verbal conversation. But I don't recollect anything that was a directive piece. And I want to assure you this and I want to assure everyone else: We were very specific that we would not proceed with anything that had any violations of privacy or had anything of violation of any HIPAA. And we would not and do not within our office, without the release of a patient, use that information in any way.

SENATOR CHAMBERS: Here's what I'm dealing with, Senator.

SENATOR RIEPE: Yes.

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SENATOR CHAMBERS: I say to you, please recite the alphabet to me. And when I say that, I would not assume that I have to tell you to begin with A and go through Z. So I say, Senator Riepe, will you recite the alphabet for me? And you say, Z-Y-X-W-V-U-T-S-R-Q-P-O-N-M-L-K-J-I-H-G-F-E-D-C-B-A. I said, you recited it, but you recited it backwards. I don't know how to pin you down. I'm not talking about a conversation. When I said "communication," I said electronically, by writing, by typewriter. Did you put anything in writing that dealt with what you and I are discussing here today? You know whether you did or not.

SENATOR RIEPE: We have a lot of communication, Senator, with the department.

PRESIDENT FOLEY: One minute.

SENATOR RIEPE: But I do not recall anything that in any way restricted any state senator from contacting the department directly.

SENATOR CHAMBERS: That's not what I asked you.

SENATOR RIEPE: Well, I...

SENATOR CHAMBERS: I asked you...thank you. He's not going to answer the question that I'm putting. The information I was given is that he let the people at HHS know that if they receive communications from senators with reference to a program, send a copy of that to Senator Riepe. Now my having it addressed it to my colleagues, Senator Riepe, you don't know what I'm talking about yet, do you? I think I'm speaking English. Oh, *parlez-vous francais, monsieur?*

PRESIDENT FOLEY: Time, Senators.

SENATOR CHAMBERS: *Habla espanol?*

PRESIDENT FOLEY: Time, Senator. Thank you, Senator Chambers and Senator Riepe. Senator Chambers, you're next in the queue. Third opportunity.

SENATOR CHAMBERS: Thank you. Mr. President, and I'm going to discuss this morning some things other than what might be on the agenda. For example, a letter the Attorney General wrote with reference to the privileged status of documents, letters, memoranda, telephone calls, and so forth that are associated with a senator discharging his or her duties. And I'm going to read that. He had one of his assistants--who happened to have been a female--who wrote one of the most

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lucid, logical, scholarly opinions I've seen come out of that office, and I think she was right on the money. It touches on what I've been trying to get out of Senator Riepe. If you ask me, did I write a letter to Senator Walz, either I did or I didn't, and I know whether I did or I didn't. I'm 80 years old, but my memory doesn't slip that much. I'm not embarrassed by what I do, and I will not reject it. So if you ask me, did I write Senator Walz a letter, I would say yes. And that's the question that you ask. I haven't gotten an answer from you yet as to whether you directed communication to HHS, and that tends to make me believe that you did. And this is what I want on the record. No chairperson of any committee has the right to direct or suggest to any head of any agency of this state that any communication that that agency or any employee receives from a senator, should be shared with the chairperson of a committee. You all heard me rail from the day that that nefarious group of 27 conducted a coup to get certain people out of positions as chairpersons. I said, they have put incompetent people in the position of chairman. They don't know the subject matter. They have no experience. They should not be there and they corrupted the system. Senator Riepe was in that group. He's an example of what I was talking about. Now he knows whether he sent such a communication. All he has to do is say no, I did not send such a communication. I see Senator Williams standing, so I wonder if Senator Williams would yield to a question, and in order to do so, there will be a breath he must take.

PRESIDENT FOLEY: Senator Williams, would you yield, please?

SENATOR WILLIAMS: Yes.

SENATOR CHAMBERS: Senator Williams, did you ever address a communication to HHS notifying them that you would like to have them share with you any communication they received from another senator? Have you directed such a communication to HHS?

SENATOR WILLIAMS: No, I have not.

SENATOR CHAMBERS: Thank you. Senator Williams understands English. I speak English. I think I speak it tolerably well. And when a person answers or refuses to answer a question, obfuscation. Pretending that I'm asking something that I'm not. I am on my third time, so I can't speak again on this matter that's before us. And by the way, I will vote yes on the recommendation despite the one who is bringing it. I'm not going to attribute to those he is telling us...

PRESIDENT FOLEY: One minute.

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SENATOR CHAMBERS: ...to confirm anything about what he has shown to me this morning. You know why I'm blunt? He's a grown man and so am I and he wanted that chairmanship and he went along with the coup and now there might be a price to pay. All he needs to do is say no; but if he sent it, then that no constitutes a lie. So I'm going to see what develops. Thank you, Mr. President.

PRESIDENT FOLEY: Thank you, Senator Chambers. Seeing no other members wishing to speak, Senator Riepe, you're recognized to close on the confirmation report. He waives closing. The question for the body is the adoption of the confirmation report. All those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

CLERK: (Record vote, Legislative Journal pages 431-432.) 33 ayes, 0 nays, Mr. President, on the adoption of the report.

PRESIDENT FOLEY: The confirmation report is adopted. (Visitors introduced.) Next confirmation report. Mr. Clerk.

CLERK: Mr. President, the Health and Human Services Committee reports on the appointment of Matt Wallen to the Division of Children and Family Services. (Legislative Journal page 391.)

PRESIDENT FOLEY: Senator Riepe, you're recognized to open on the confirmation report.

SENATOR RIEPE: Good morning, Mr. President and colleagues. I rise to present the confirmation of the appointment of Matthew Wallen as the director of Child and Family Services Division for the Department of Health and Human Services. Director Wallen was appointed to the directorship on August 4, 2017. Prior to his appointment, he was the chief of staff for CEO Courtney Phillips. I have provided a copy of his testimony for his confirmation hearing, which outlines the priorities for the Division of Children and Family Services. In working with Dr. Wallen, I have found him very approachable. He has innovative ideas and is willing to work with all stakeholders to find the right solutions for Nebraska regarding the children and family programs. He has earned the respect of many stakeholders since his appointment in August. Director Wallen, if confirmed, will lead a division that will see challenges, but I am confident his energy and determination will breathe new life into the division and continue to inspire employees to provide the best services for Nebraska's children and families. Director Wallen advanced from the Health and Human Services Committee on a 7-0 vote. With that, I ask for your green vote for confirmation of Director Wallen. Thank you, Mr. President.

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PRESIDENT FOLEY: Thank you, Senator Riepe. Debate is now open on the confirmation report. Senator Chambers.

SENATOR CHAMBERS: Mr. President, there was a group named Herman's Hermits. There were some sounds that went forth this morning that were described as singing. And if I sound like they sound, I will never sing again unless my intent is to punish you. But here's where I give them credit. They put forth the effort. They meant well. And being of my advanced age, I've come to understand that it is more important sometimes to look at the motivation behind an act than the act itself. So I'm not going to sing from Herman's Hermits, "Enery the Eighth, I am, I am." But there was a point where they said, "Second verse, same as the first." I want Senator Riepe, who seems to be a graduate of the Arthur Murray tap dance school or the Gene Kelly school of tap dancing, I'm not going to put him through the second verse, which is same as the first. Now, I'm going to make a comment. Sometimes I offer descriptions, and people will apply the description to themselves and say that I said such and such about them. I say, well, I didn't mention you by name but you know yourself and your characteristics better than I do. So if I make hats and I throw them out there and you put one on your head, you identified yourself as the possessor of the hat. You know what? There was a man, he was in public office, and he was famous because he knew how to avoid answering any question. In fact, it was said of him, he is such a light-footed tap dancer around questions that he could dance across a keyboard that stretched from New York to California without striking a note. When you can dance across a keyboard like that without striking a note, that is pussyfooting indeed. I like to offer little tidbits along the way as relates to our discussions. And if anybody on this floor ever makes an allegation against me, whether it is direct or indirect, I will not sit there in silence because there's another saying, "Silence gives consent." It may not be absolutely true. You may have to look at the surrounding circumstances. But when the person who is the subject has demonstrated that he can hear, that he understands the language in which the accusation was lodged, and possesses the ability to speak and has a functioning brain and chooses to remain silent, that silence gives consent, and I'm not going to sing "Second verse, same as the first." Thank you, Mr. President.

PRESIDENT FOLEY: Thank you, Senator Chambers. Seeing no other members wishing to speak, Senator Riepe, you're recognized to close on the confirmation report. He waives closing. The question for the body is the adoption of the confirmation report from the Health and Human Services Committee. All those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please, Mr. Clerk.

CLERK: (Record vote, Legislative Journal page 432.) 29 ayes, 0 nays, Mr. President, on the adoption of the confirmation report.

PRESIDENT FOLEY: The confirmation report is adopted. Items for the record, Mr. Clerk.

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CLERK: Thank you, Mr. President. Hearing notices from the Agriculture Committee; the Revenue Committee; the Government, Military and Veterans Affairs Committee, those signed by their respective Chairs. Reference report referring LR296. Banking Committee reports LB683, LB741, to General File, and LB750 to General File with amendments. That's all that I have, Mr. President. (Legislative Journal pages 432-436.) [LB683 LB741 LB750]

PRESIDENT FOLEY: Thank you, Mr. Clerk. Proceeding on the agenda, General File, 2018 committee priority bill. Mr. Clerk.

CLERK: Mr. President, LB758. (Read title.) Introduced in January of this year. Yesterday, Senator Hughes presented his bill. He presented the committee amendments from the Natural Resources Committee. When the Legislature adjourned for the day, Senator Chambers had pending FA92 as an amendment to the committee amendments. (Legislative Journal page 421.) [LB758]

PRESIDENT FOLEY: Senator Hughes and Senator Chambers, if you would like to take a minute or two each to kind of refresh us where we left off yesterday. Senator Hughes, proceed, please. [LB758]

SENATOR HUGHES: Thank you, Mr. President. Good morning again, colleagues. LB758 is a bill that solves a problem in southwest Nebraska for a couple of different counties, Lincoln and Dundy County. There's been a significant amount of land that has been taken off the tax rolls to provide water to help Nebraska meet the compact compliance with Kansas in the Republican River Compact. Currently those acres are being...taxes are being paid, property taxes are being paid. But it is under protest because the state constitution says that one taxing entity should not be paying taxes to another taxing entity. This bill will allow that to...in lieu of taxes to be paid on that property to keep the counties and the school districts whole. It also allows that the taxes that have been paid do not have to be repaid, which is a very big concern for a couple of the school districts that are involved in that area. We had school board members from the Dundy County Stratton School Board and the Wallace School Board come and testify on this bill, and they're very concerned about that. It also does create some oversight and some reporting requirements that we need to have moving forward for streamflow augmentation projects. Thank you, Mr. President. [LB758]

PRESIDENT FOLEY: Thank you, Senator Hughes. Senator Chambers, if you'd like a couple of minutes, you're welcome to it. [LB758]

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SENATOR CHAMBERS: Thank you. Mr. President, I believe that I have a motion pending and the motion is to indefinitely postpone this bill. And I will save my discussion for that motion, but that at least lets know...lets the record show where I am on it at this point. [LB758]

PRESIDENT FOLEY: Very good. Thank you, Senator Chambers. Proceeding now to debate on the bill and pending motion, Senator Harr. [LB758]

SENATOR HARR: Thank you, Mr. President and members of the body, fellow Nebraskans, friends all. Would Senator Hughes yield to a question? [LB758]

PRESIDENT FOLEY: Senator Hughes, would you yield, please? [LB758]

SENATOR HUGHES: Of course. [LB758]

SENATOR HARR: Thank you. I am still trying to get a baseline on this bill. And I have spoken to a number of individuals, and I think I have a better idea of what is going on. But I just want to clarify for the record what is, I believe, happening here. So it's my understanding--and correct me if I'm wrong--that currently NRDs have the stance that they shouldn't pay property taxes. Is that correct? [LB758]

SENATOR HUGHES: They have been paying the property taxes, but they have protested that to TERC because it was pointed out that they should not be paying those. [LB758]

SENATOR HARR: And who pointed out that they should not be paying the property taxes? [LB758]

SENATOR HUGHES: I am assuming...I do not know who the individual was, but an attorney of some sort who looked at the law and found in the constitution that one taxing entity should not be paying taxes to another taxing entity. [LB758]

SENATOR HARR: Okay. So now I am confused. Is Senator Kolowski here? [LB758]

PRESIDENT FOLEY: Senator Kolowski, would you yield, please? [LB758]

SENATOR HARR: Senator Kolowski, would you yield to a question? [LB758]

SENATOR KOLOWSKI: Yes, of course. [LB758]

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SENATOR HARR: Thank you. You in a previous life were a school principal. Is that correct? [LB758]

SENATOR KOLOWSKI: Correct. [LB758]

SENATOR HARR: And on top of that you were also on an NRD board. Is that correct? [LB758]

SENATOR KOLOWSKI: That's correct. [LB758]

SENATOR HARR: And you were president of that NRD board. Is that correct? [LB758]

SENATOR KOLOWSKI: Yes, three out of the eight years. [LB758]

SENATOR HARR: That's amazing. Good job. Hey, so my question is, do you know if your NRD paid property taxes? And I apologize, I didn't get you (inaudible). [LB758]

SENATOR KOLOWSKI: No, I appreciate that. I couldn't say on that exactly because I wouldn't know every bit in memory. That is a number of years ago now,... [LB758]

SENATOR HARR: Okay. [LB758]

SENATOR KOLOWSKI: ...Senator, that I was on that board and served in that capacity. Within all of the taxes or all of the payments of different kinds that we probably were involved in, I wouldn't say that we didn't along the way, but probably it's not a regular endeavor. [LB758]

SENATOR HARR: Okay. Thank you. So I went back and I read the case law and I read some of the briefs. And what I think happened--and I hope someone will correct me if I'm wrong--is that, at least for N-CORPE, they weren't paying property taxes. This land, according to testimony in Natural Resources, was taxed at approximately \$700,000 and then it was taken over to dryland and N-CORPE took it over and no taxes were being paid. And then the Lincoln County Board of Equalization said no, you have to pay taxes on this. And it was based on its dryland use. And so it went from \$700,000 to \$195,000 so there's a loss in there, but, hey, you got to pay on this. The N-CORPE agreed to pay that tax under protest, saying, we don't think we should have to pay that because it's public purpose, which, by the way, I agree with them. It is. They then appealed it to TERC and TERC said, N-CORPE, you're correct. For that land that you're holding... [LB758]

PRESIDENT FOLEY: One minute. [LB758]

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SENATOR HARR: ...for the public purpose, you do not have to pay taxes. This is a situation and now N-CORPE, while it's appealing, it's continuing to pay those property taxes, and those property tax entities will have to pay those taxes back if they are ultimately...N-CORPE is ultimately successful. I'm going to hit my light again because, folks, this is a complicated issue. Senator Hughes was correct. It's a complicated issue that appears to me to be made of some other entity's making that didn't need to be made but for political purposes, and now we're expected to come in and clean up that mess. And I'll get into that a little bit more on my next time. Thank you. [LB758]

PRESIDENT FOLEY: Thank you, Senator Harr. Senator Groene. [LB758]

SENATOR GROENE: Thank you, Mr. President. Let's clarify the truth. Senator Harr's scenario is completely wrong. What happened when N-CORPE was created, it was created in a rush. Right away the county said, what about the property taxes? The N-CORPE...the NRDs because N-CORPE didn't exist yet, they did not create the interlocal agreement; they wanted to buy the land. Said, we will pay the taxes. Our intent is to make sure the county and the schools are whole. The county assessor played no part in it. They made the promise. They paid the taxes for four years. Their legal counsel then told them, you're breaking the constitution. You should not be paying these taxes. They went to the TERC board and protested their taxes. That is the correct scenario. I think Senator Hughes would back that up. They had been paying their taxes by a verbal agreement. It could have continued. There's nothing in the constitution says they can't do it, really, says you don't have to. They could have continued to do it. The fear is now it's in the appellate court. If we do not act on this legislation and the court rules that they should not have been paying those property taxes, my school districts--Wallace, Hershey, North Platte a little bit, Maywood in Senator Hughes's--will have to pay those taxes back to the NRDs. Let me explain again something else that's unique to western Nebraska. Those school districts are not equalized. So you would say in Omaha, well, if the NRD took that property off the payroll, TEEOSA fills that money back in. That does not happen in rural Nebraska because we're not equalized school districts. That is the true scenario what happened. This bill needs to pass so we can predate the court's decision because once that court rules, we can't pass a law later and say, you didn't have to pay those taxes back. We need to do it now so the court looks at that statute and says, the intent of the Legislature is that they will not pay these taxes back. This case is mute (sic--moot). I'm not a lawyer. But I did see it happen before when the court said that. You can look at the Springer case, the Kuhns case where they "retroacted" back that the statute meant, ahead of the court case. It happens. If we do not do this, my school districts are going to have to come up with--between the school districts and the county and the NRDs themselves, all taxing entities--probably about \$600,000, \$700,000, closer to a million probably. Let's pass this law. This is common sense. It affects the whole state and issues that will come up into the future. It needs to be done. Water is a big problem in the state of Nebraska. It's going to continue to be more

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people, no more water. We need to straighten the water law out as it happens, and this is one of those issues. Thank you. [LB758]

PRESIDENT FOLEY: Thank you, Senator Groene. Senator Hughes. [LB758]

SENATOR HUGHES: Thank you, Mr. President. Senator Harr, you raised some questions and I do have answers for you now. As to who pointed out, it was pointed out by a county official that the constitution says a public entity is exempt from paying taxes if the land they own is being used for a public purpose. We do have a court case that has defined that. N-CORPE and Rock Creek are for a public purpose. To reiterate what Senator Groene said, the taxes have always been paid. That has been very clear from the front, very beginning of Rock Creek, which happened before N-CORPE did. I've talked to several of the people who were involved in those discussions when they took place, and everyone has always said, we intend to pay the property taxes; and they have. But once it was pointed out by the county official because it was for a public purpose, they could not, and that is why at that point then they protested to...they protested the taxes to TERC just to cover, you know, to make sure they were covering their backside. I hope that explains it a little bit better. Thank you, Mr. President. [LB758]

PRESIDENT FOLEY: Thank you, Senator Hughes. Senator Chambers. [LB758]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I got to mess with Senator Groene because he was part of that coup. He is the head of the Education Committee. What he meant to say was the issue would be moot, not mute. If it was mute, then we wouldn't have to worry about any further discussion of it, but there's going to be a lot of discussion. It's the opposite of mute. It is very vociferous. And I'm going to start doing that to you all on this floor because the way you all do me. You take these positions and you ought to know the subject matter of the committee. You ought to know how to deal with the matters that come before that committee. And certainly the English language is something that is considered by anything that pertains to education in this state. Don't feel sorry for Senator Groene. He is a grown man. I was here when he screamed at Senator Pansing Brooks, hollered at her. So don't misplace your sympathy. This bill shows the lack of integrity of people on this floor. When goods are ill-gotten, however long you keep those ill-gotten goods you do not develop good title. When a thief is caught with the goods, the thief must give up the goods. If somebody has benefited from that which is ill-gotten, the Legislature should not be a party to excusing that ill-gotten whatever it is because I see how harsh they are when it comes to somebody who has committed a minor infraction of the law. But when we get to something that involves hundreds of millions of dollars and taxpayers, then all of a sudden you have to become sympathetic. I'm not. They took that money and they should not have taken it. Now if all of these lawyers that are being quoted have said that it was all right for what was done in disbursing these goods which I

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say are ill-gotten, you don't have to worry about what I am saying or anybody else. You don't have to worry about what the court is saying, but somebody is worried about that, somebody who has got a conscience but somebody whose conscience is becoming seared the longer he's in this body and will offer things that I never thought I would hear offered by him, never. But our thoughts can be wrong. We can misjudge people. But now I'm a skeptic with reference to everything. That's what Descartes said when he came...arrived at the conclusion, "I think, therefore I am." He was going to question and doubt the existence of everything; but while he is doubting the existence of everything, he who is doing the doubting does exist himself. So since I am thinking and I am here, I think, therefore I am; if nothing else is, I am. Now you know what Descartes meant when he said, "I think, therefore I am." But you won't pay attention. This bill is what I consider immoral. It is not illegal. Stupidity is not unconstitutional. It's right there in the United States Constitution and reflected in the Nebraska Constitution. Every law-abiding and non-law-abiding American citizen, noncitizen, has the right to be stupid. [LB758]

PRESIDENT FOLEY: One minute. [LB758]

SENATOR CHAMBERS: And this is a right which will be upheld and protected by the constitution. However, the results and consequences of your stupidity may cause certain consequences that are untoward. We're going to be on this bill a long time, and maybe they've got 33 votes. But they are going to have to invoke cloture as far as I'm concerned. And I notice some people whining in the paper about the Governor using some campaign funds to oppose some kind of proposal that itself is numskull. You know what the Governor is. When he went your way, you liked it. When he spent personal money and his daddy did--between them almost a half million dollars--to reinstate the death penalty, overturning legislation, the conservatives thought that was great. Now that the dog has turned and bit them, they're whining. Well, the Governor shouldn't do this. I don't know that a Governor ever did this. So what? [LB758]

PRESIDENT FOLEY: Time, Senator. [LB758]

SENATOR CHAMBERS: Thank you, Mr. President. [LB758]

PRESIDENT FOLEY: Thank you, Senator Chambers. (Visitors introduced.) Continuing discussion, Senator Harr. [LB758]

SENATOR HARR: Thank you, Mr. President. So when we have committee hearings, we have them for a reason. And we try to send to the committees that have that knowledge about the area that we're talking about. This is really about property taxes. It went to Natural Resources. You heard Senator Hughes yesterday say it went there because he had a shell bill. He brought an amendment because he wanted it to come there. That's fine, it's part of the game. But as a result,

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the public does not always get a chance to speak and those who are affected may or may not know. I was talking to a government agency this morning. This is the first they had heard or realized this because it was in Natural Resources and they didn't read that bill, which is too bad that we short-circuited the system. That being said, Senator Geist, Senator Albrecht, Senator McCollister, they did a really good job questioning. I was very impressed with their questions in committee, and I thought they did a nice job trying to figure out what this is and what we're trying to do. And one of the things that came out in the testimony was that previously the property tax was roughly \$700,000 on this farmland. It's converted over to pasture and \$484,000 of that value was lost and it became \$196,000. Now how \$196,000 turns into millions, I don't know. I want to find out because I want to turn my \$196,000 into millions that Senator Groene spoke of. Folks, the real question we have...and I want to thank Senator Groene and Senator Hughes for enlightening me a little bit better on the background of this. We have a constitution out there, and the reason we have that constitution is there are certain things that we think are so important. Senator Chambers would agree with me--the right to hunt is so important it has to be in the constitution. And that's why we say you can't tax public...land owned by the government that is being used for a public purpose. My district, the largest employer is UNMC. The land that that sits on: tax exempt. And yet the state gets the benefit of having a premiere medical facility in this state, and my district pays the price. I don't come up here and hoot and holler and scream and whine. Right? I understand that there are things that happen in certain parts of the state that affect one district, disproportionately burden one district, but it has a benefit to the whole state. That is what we have here, folks. If UNMC's property tax valuations, if they paid on that, we would have so much more money in Douglas County, but they don't. Creighton University doesn't. Our churches don't. Our county governments don't. We say there are certain entities out there that serve a greater good; and for that reason, we don't collect property taxes on them. That's what this is. We have decided not to collect property taxes on it. [LB758]

SPEAKER SCHEER PRESIDING

SPEAKER SCHEER: One minute. [LB758]

SENATOR HARR: Now if we want to start having talks about who should and who shouldn't pay property taxes and whether the constitution is right or wrong, I'll have that conversation all day. But to say we have to do this because certain school districts are losing millions of dollars or because, you know, certain counties are being unduly burdened, that happens across the board, and sometimes life isn't always fair. The fact that the NRDs were paying, N-CORPE was paying for a while, they got a free ride. They should appreciate what they had. Now that N-CORPE wants to pay this payment in lieu of tax pilot, well, that's kind of for us to decide: Should NRDs do this or not? I don't know. I'm still listening to the arguments. But the fact that the school districts spent the money or... [LB758]

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SPEAKER SCHEER: Time, Senator. [LB758]

SENATOR HARR: Thank you. [LB758]

SPEAKER SCHEER: Thank you, Senator Harr. Senator Kolowski, you're recognized. [LB758]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. I want to come back to the topic of this bill and the amendment connected to it. Senator Harr asked me a question a few minutes ago, and I would have to go back in my own history from 2004 to 2012 when I was on the NRD board in the Papio-Missouri River area. I'd have to ask our general manager the question that I was asked this morning and find out if there was any particular property taxes we might have been involved in. All that is fine. We can get the answers to those things. But this discussion on this topic seems to be off target. I have a background in what we're talking about in the sense of when I was on the Papio NRD board, and the last years on the board...on the committee here at the Legislature. This whole issue is about water and we're far away from that, even though we're talking about the taxing and the situation that certain counties find themselves in and the responsibilities they have toward the state and where they are with this compact. We have a three-state compact between Colorado, Nebraska, and Kansas. When there's not enough water going down through us to Kansas, that is not good. And we have a responsibility and in court and the rulings have been we've got to put water in the river to make sure there's enough for operations in Kansas with their irrigation and other uses of that water. I hope we can keep that in mind as we're going through this, and I support this legislation. Is it great legislation? No, but it's okay legislation in the sense of trying to get to where we need to be. The NRDs met this past week here in Lincoln. I know there was action and agreements taken between NRDs and within the association as a whole concerning the lawsuits, the payments, the taxes, and the property tax issues that we're talking about today. When we find out how those come out within this particular bill, this bill would help us get to where we need to be in the future. It's an okay bill. It's not a perfect bill. It needs improvement perhaps in some areas, but it's the best we can come up with at this particular time. And I think it's worthy of our endeavors to step forward and support this bill and see where the other decisions lie when they are decided by the NRDs and the various agencies that they're working with. So I would look for and ask for your support in helping us with this bill, remembering it's about the water compact between Colorado, Nebraska, and Kansas. That is the big issue. That is the big picture. Don't lose the big picture when we're majoring in minors. Thank you. [LB758]

SPEAKER SCHEER: Thank you, Senator Kolowski. Senator Chambers, you're recognized. [LB758]

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SENATOR CHAMBERS: Mr. President, members of the Legislature, Senator Kolowski, whom I respect a great deal, we spent time working together on the Learning Community, but I disagree with him saying that this is good legislation. He said it may not be the best. Well, it's far from that. I don't think it's even good. I don't think it is good policy. At least Senator Groene was straightforward enough to explain what the language in this amendment that we're considering would do. He called it the grandfather clause. Some people had goods which were ill-gotten, and they fear that if a court looks at this situation, the court may say the goods were ill-gotten. Those who received such goods never can obtain good title no matter how long they hold them, and those goods must be returned. When money is passed from one public entity to another, that money does not belong to the entity. The money comes from the taxpayers. I hear all these people who are talking about reducing property taxes, reducing income taxes, say, leave the money in the pockets of the taxpayers. Well, that ill-gotten money came out of taxpayers' pockets, but we hear conservatives saying something different now because it's in their area. It's their ox being gored, and all of a sudden the general conservative principle based on morality and fairness and equity that they harp about until they found out that the application affects them negatively, then they want the law changed, not to be in accord with that principle they ballyhoo but to give them a way out. Then stop all of this preaching and lecturing that you all do on this floor. I listen to you. You don't pay attention to the law. You don't care about the constitution. And then you become afraid of what the court will do without having any basis for knowing or even having a meaningful opinion one way or the other, so you go by what some lawyer who is on your side will tell you. Lawyers can't tell you how the court is going to rule on an issue such as this. But the court has said, in different contexts, that that which cannot be done directly cannot be done through indirection. You cannot by the Legislature define what is a bribe as something else, allow that bribe to be given under a false flag, and then have the court be bound by the shenanigans of the Legislature. The court would say, a bribe is a bribe is a bribe. Dress a monkey as you will. A monkey is a monkey still. You hear people flip-flopping. If you ask them to explain the legal significance of terms in this amendment that you all want to put into the law, it wouldn't be done. When I asked Senator Hughes whether or not a very important water management bill--a subject that his committee handles--he said he's not a lawyer. And I said, but you're the Chairperson of the committee. He is not aware of all the details. That was far from a detail. That's the way you all dismiss things. You don't want to admit you don't know so somebody like me has to drag it out of you, and I do it not to embarrass the one who is trying to trick you, but to make you understand that on these important issues we need to pay attention. We have a responsibility, and my responsibility is to stop bad legislation. [LB758]

SPEAKER SCHEER: One minute. [LB758]

SENATOR CHAMBERS: If I can't stop it, slow it down; and that's what I'm going to do. I have an amendment up there that we're going to consider, and it will take us a little bit past 11:00. Then I know you're not going to accept that amendment. If I would just let it go and not say

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anything, you probably would. But then I have motions that will keep us on this bill. I don't know how much time there will be given to this bill before we leave it, but I'm enjoying it so much. I'm developing what you might call an affection for this piece of legislation, and I include in, quote, this piece of legislation, the green copy which this that we're talking about purports to amend because there is language in the green copy which contains the actual wording relating to the subject we're discussing... [LB758]

SPEAKER SCHEER: Time, Senator. [LB758]

SENATOR CHAMBERS: ...that I think themselves are deficient. Thank you, Mr. President. [LB758]

SPEAKER SCHEER: Thank you, Senator Chambers. Senator Harr, you're recognized; and this is your third time at the mike. [LB758]

SENATOR HARR: Thank you. So my question is, this \$196,000 pilot that we're going to pay, that's fine. I mean, if someone wants to voluntarily pay it, that's fine. Senator Groene, would you yield to a question? [LB758]

SPEAKER SCHEER: Senator Groene, would you please yield? [LB758]

SENATOR GROENE: Thank you. Yes, I will. [LB758]

SENATOR HARR: Thank you. So I read in the testimony that they plan to eventually lease this land. Is that correct? [LB758]

SENATOR GROENE: That is the plan, I guess. I haven't seen it yet. [LB758]

SENATOR HARR: Okay. When they lease this land, who is responsible...first of all, will there be property taxes on the land at that point? [LB758]

SENATOR GROENE: I believe the statutes say if you make a profit, you should pay the taxes. [LB758]

SENATOR HARR: Okay. And I agree with you there. I think it's somewhat incumbent upon what is the intent of the lessee, not the lessor, and how they use it. And if they're using it for cattle grazing, they should pay property taxes; and I believe the statute says they should pay

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property taxes. So then what happens is the lessee pays property taxes on it for the use of that property on that value of \$196,000. And then you have over here the NRDs who are paying their pilot on the \$196,000, the value of that property. It's a windfall for the schools. How does that work? Are we saying there's nothing in the statute that says, hey, minus whatever a lessee may pay on that property? It's voluntary. We provide no guidance other than they can't pay more than what the assessed value would be. Why are we doing this? I don't know. This will take care of itself, folks. We have part progression through the courts who will tell you whether they should or should not be paying property taxes. And if they shouldn't, well, guess what? The constitution says you shouldn't, you shouldn't. And then if you're making money on the side off of leasing that land, well, gosh darn it, you should be paying property taxes; and I think we all agree. And I haven't seen anyone or any court cases...well, there is an old case out of York, but I don't think that's relevant. And I think the jurisprudence of the court has changed with Keith County and this Box Butte that they don't pay. They'll pay the property tax. That lessee has a responsibility to pay that property taxes. They do it on lakes where you have cabins. It already happens. So again, folks, this is a problem, a solution in search of a problem. I understand there are people who are angry because for a short period of time some tax dollars were taken off or property was taken off the tax roll, less than 1 percent according to the testimony, by the way, of the county's overall tax rolls. And here we are wasting, in a 60-day session on floor debate, we're going to waste at least a day; if Senator Chambers has his way, more. Think about that. It's a bigger part of our time than it is of those individuals' budget, and we found time for it. And we're still going to find time for other bills as well. They're going to get the money. They may have to wait a little bit. They're going to get the money. They may not get it in the way they want it, but they're going to get the money. And here we are saying, well, but they should pay it now. I don't see a public policy reason for it. We have some entities that do pay pilots, but they receive benefits of emergency care, police, and a lot more government assistance than a blank, empty piece of land. [LB758]

SPEAKER SCHEER: One minute. [LB758]

SENATOR HARR: So--thank you. I get what we're doing here. I finally think I understand what is going on, but I don't really see a public policy reason that we should be paying on the \$196,000 when when the property is leased, the lessee will make that payment of the \$196,000, the value of the property. Thank you, Mr. President. [LB758]

SPEAKER SCHEER: Thank you, Senator Harr. Senator Lowe, you're recognized. [LB758]

SENATOR LOWE: Thank you, Mr. President. It's been a long morning so far, so I thought I would just continue on with what a couple of my colleagues started this morning. So, Senator Chambers, I normally do this to my wife, so I'm sorry. (Laughter) She was here today. The other

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night, Senator, as I was sleeping, I dreamed I held you at arm's length. But when I awoke, Senator, I was mistaken. So I hung my head and cried. You are my sunshine, my only sunshine. You make me sad when skies are blue. You'll never know, Senator, how much I respect you. Please, don't take my sunshine away. I'll always respect you, and you make...and I make you grumpy. If you will only say the same; but if you leave me, and filibuster another, you'll regret it someday. You are my sunshine, my only sunshine. You make me sad when skies are blue. You'll never know, Senator, how much I respect you. Please, don't take my sunshine away. You told me once, Senator, you really liked me. And no one else could come between. But now you have left me and filibustered another. You have shattered all my dreams. You are my sunshine, my only sunshine. You make me sad when skies are blue. You'll never know, Senator, how much I respect you. Please, don't take my sunshine away. I am very sorry that I did that and just butchered Johnny Cash. But I am for LB758 and the AM1573. Thank you, Mr. President. [LB758]

SPEAKER SCHEER: I'm not sure I thank you, Senator Lowe. (Laughter) Senator Chambers, you're recognized. This is your second, so you'll have your closing left. [LB758]

SENATOR CHAMBERS: Thank you. Members of the Legislature, I quote Popeye and my mantra: I am what I am, and that's all that I am. And I shall be what I am. And one thing you all can say: You'll know what my position is, and it will not change in order to gain simply an advantage. I have told you that because of what was done yesterday to my bill, I'm going to get my pound of flesh. Well, this is a peewee bill. This is not a pound of flesh. This might be a couple of ounces. So I have to look for bigger quarry as we go through the agenda. And I want to assure you all that when you reach my age, the longer you stand on the floor, the stronger you become. The greater the opposition, the strong and more...the stronger and more determined becomes your resolve. So I will stand alone if necessary. Senator Groene and others whom I have called by name, Senator Hughes, that I'll call people out because actions are done by people and people have names. I'm not going to have it floating around in there that somebody said such and such unless I'm trying to be humorous, and then I will ultimately identify the person I'm referring to. But when it comes to bad legislation like this, even if Senator Hughes were not the one behind it, I would fight it. Yesterday--because I do pay attention to what senators say-- Senator Harr had said, we don't need this legislation. We may not even need litigation. And I was going to stand up and say in the words of Pink Floyd: We don't need no education. And to get in the Legislature, you don't need no education, and I'm not going to look at a gentleman but he gave...he voted against my prairie dog bill and shocked me. And I quoted what John Kennedy, Robert Kennedy, and all the other Kennedys who are the son of Joseph Kennedy, a statement: Don't get mad, get even. And that gentleman came to me and said, there's another one that says: Don't hold grudges, but remember their names. Now he knows who he is. He doesn't have to give himself up. Um-hum, um-hum. He just gave himself away, huh? And he voted against my little prairie dog bill. But those who are "Repelicans," the answer and the solution to the prairie dog matter was given to me by a person who was watching our debate. And it's based on something

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you all's President said. You don't want prairie dogs coming on your property, then build a wall. Build a wall. Build a wall. Build a wall. And you know what? Somebody said they had a dream. And he woke up. Well, I had a dream about the prairie dogs, and they were having a conference. And the issue of the bill that I'm bringing came up, and they were very appreciative of what it is that I'm trying to do. And they knew that the culprit, as far as their welfare was concerned, was Senator Hughes. [LB758]

SPEAKER SCHEER: One minute. [LB758]

SENATOR CHAMBERS: They said they liked the idea of build a wall, build a wall. Maybe we'll tunnel under it. But if they sink it deeply enough into the ground, then we'll find another path to go. That would do it without a whole lot of random poisoning. And then I asked them, what would we do...what should we do with Senator Hughes? And in their little prairie dog voices they said, lock him up, lock him up, lock him up. So they must have been watching you all's President. See, you don't like it when it comes back to you, do you? But unlike your President, I don't run and hide. I come right here and I don't put a woman out to speak for me and tell those lies that I told and make her look like she is completely insane. I don't do that. I come here among you. Look how many empty seats you've got. Where is Senator Larson, your leader... [LB758]

SPEAKER SCHEER: Time, Senator. [LB758]

SENATOR CHAMBERS: ...who helped lead some of you to mess over my bill... [LB758]

SPEAKER SCHEER: Time, Senator. [LB758]

SENATOR CHAMBERS: ...for Jello? I was just kidding. Thank you, Mr. President. [LB758]

SPEAKER SCHEER: Thank you, Senator Chambers. Senator Groene, you're recognized. [LB758]

SENATOR GROENE: Thank you, Mr. Speaker or President. Correct the record again on Senator Harr's testimony. I have a bill called LB1123 that will allow the NRDs to sell their land...sell that land, our land, not their land. The government owns nothing; the people own everything--all of government. To put it back on the free market and then the tax situation will be resolved. The N-CORPE situation, the augmentation project, both at Rock Creek and at N-CORPE, are unique because there is a huge tax on irrigated land of \$10 an acre to pay for it. Common...when we have in lieu of taxes, it's debt-free land, school lands, land donated to a government entity, and

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then they're leased out, and, yes, it makes sense to pay the property taxes with that. But in this situation, we are taxing somebody \$10 an acre and then taking that money and paying another tax. Common sense would tell you if we didn't pay the tax, the lease money would go against the \$10 an acre and lower that tax. The land needs to be sold, not leased. It needs to be sold, and it will be. I think some of the members of the Natural Resources Committee are having some common sense and bringing back their old belief in free markets, and we'll get it on the floor. Now I am going to ask Senator Chambers--he said we never call him out but I respect his wisdom--as his learned lawyer, I'm going to read some evidence that I would present in a court case. And then I want him to ask if the jury would rule in his favor. As far as the Gang of 27, the year that vote took, the Speaker won by 27 votes. Committee on Committees was unopposed. Executive Board was 28 votes. Vice Chair, unopposed. Ag, unopposed. They didn't do a very good job of ganging up, did they, if they didn't have a candidate for each of these. Appropriations, unopposed. Banking and Commerce, unopposed. Business and Labor, 26-23. That's not 27. Education, 28, not 27. General Affairs, Senator Larson, 31 votes. He had a candidate against him. Military...Government and Military, unopposed. HHS, 27. Judiciary, unopposed. Natural Resources, 30, Senator Hughes got 30 votes. He didn't get 27. Retirement, unopposed. Revenue, unopposed. Transportation and Telecommunications, unopposed. Urban Affairs, 30, a democratic honest about it, individual. Urban Affairs, 30 votes. Folks, Senator Chambers, if you took that evidence to a jury, would they agree with you that there was a Gang of 27? [LB758 LB1123]

SPEAKER SCHEER: Senator Chambers, would you please yield? [LB758]

SENATOR CHAMBERS: The jury would say there were at least 27, sometimes there were more, but there would be at least 27. [LB758]

SENATOR GROENE: There was a couple of 26s... [LB758]

SENATOR CHAMBERS: And some of it was irrelevant. Every now and then you find somebody not paying attention or decides to break from the herd. [LB758]

SENATOR GROENE: Thank you, Senator. [LB758]

SENATOR CHAMBERS: Well, don't ask if you don't know what the answer is going to be. [LB758]

SENATOR GROENE: Thank you, Senator Chambers. [LB758]

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SENATOR CHAMBERS: You're welcome. [LB758]

SENATOR GROENE: But in order to win a chairmanship, you have to have 25 votes, folks, period. So sometimes you get 25, 26, 27. Sometimes you get 31. If you look at this, the most respected senator in this body is Senator Larson. He got 31 votes in a contested vote. Senator Larson is the most respected senator here. [LB758]

PRESIDENT FOLEY PRESIDING

PRESIDENT FOLEY: One minute. [LB758]

SENATOR GROENE: Anyway, let's put that aside. Let's get rid of that old theory. There was a gang of 25 this year when we had a chairmanship vote. Let's correct the public, let the public know that this body works well, continues to work well. Let's sell the land--back to the issue--LB1123. We need it on the floor. We need to sell the land and all this goes away. The state is made whole with the state of Kansas and Colorado on the augmentation project. Free markets are put back into effect and managing the land and paying taxes. Good government. So when that bill gets up here, and it will, let's pass it. Then, yes, "mute," "Republicans," "Bibble," however you want to pronounce words, it will make this bill mute (sic), at least on my N-CORPE because it's going to be back on the tax rolls when LB1123 passes. Thank you. [LB758 LB1123]

PRESIDENT FOLEY: Thank you, Senator Groene. Senator Larson. [LB758]

SENATOR LARSON: Thank you, Mr. President. I hear all the time from a specific member on this floor that words have meaning. Understand the word that you are saying. Well, I've continually heard "coup" brought up by a specific member on this body. That made me think. Let's look up the Oxford definition of coup: Noun 1) meaning a sudden violent and illegal seizure of power from a government; 2) an instance of successfully achieving something difficult or an unusual, unexpected but successful tactic in card play. I don't know which kind of coup Senator Chambers is discussing. He keeps calling the election of Chairs last year a coup. But I'm not sure he understands the word he's using because, as he says, everything has a meaning. Judging by the definition from above, unless he's trying to be complimentary of everything that happened, like "what a coup," it just points out in this instance, I'm not sure he understands because there was no violence. There was nothing illegal that happened or else we would have had to call the police. It just...I'm at a loss of why it was a coup. Maybe finding a different word would be better because it wasn't a coup. So I understand that members want to paint a picture of something, but that's not what happened. As Senator Groene just went through and listed out,

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there weren't just 27 on every election. Many were unopposed. Some had more. Colleagues, as we continually hear, words have meaning. Thank you. [LB758]

PRESIDENT FOLEY: Thank you, Senator Larson. (Visitors introduced.) Items for the record, Mr. Clerk. [LB758]

CLERK: Thank you, Mr. President. Transportation Committee reports LB733, LB860, LB895, LB896 all to General File. I also have hearing notices from the Education Committee and the Executive Board. (Legislative Journal pages 437-438.) [LB733 LB860 LB895 LB896]

Mr. President, returning to LB758, I have a priority motion. Senator Chambers would move to bracket the bill until April 18 of 2018. [LB758]

PRESIDENT FOLEY: Senator Chambers, you're recognized to open on your bracket motion. [LB758]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, this lawyer, as Senator Groene described me, I'm not a lawyer. I don't belong to the Bar Association. I do not practice law. I'm trained in the law. If Senator Larson is still here, I would like to ask him a question or two. [LB758]

PRESIDENT FOLEY: Senator Larson, would you yield, please? [LB758]

SENATOR LARSON: Yes. [LB758]

SENATOR CHAMBERS: Senator Larson, what dictionary were you reading from? [LB758]

SENATOR LARSON: Oxford. [LB758]

SENATOR CHAMBERS: There's more to it than just Oxford. What is the entire name of the dictionary? [LB758]

SENATOR LARSON: I...the Oxford dictionary. If there's more to that, then I don't know. [LB758]

SENATOR CHAMBERS: Is it the Oxford dictionary of Deutsch? [LB758]

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SENATOR LARSON: I don't know. [LB758]

SENATOR CHAMBERS: Is it the Oxford dictionary of El Espanol? [LB758]

SENATOR LARSON: Maybe the Oxford dictionary of English, if that's what you're getting to, but I'm unsure what the title on the dictionary says. [LB758]

SENATOR CHAMBERS: So, but you accept it even though you don't know what the title of the dictionary is, you accept what it says is valid? [LB758]

SENATOR LARSON: The Oxford dictionary, yes. [LB758]

SENATOR CHAMBERS: Did you read every definition under the word that you were defining? Were there additional definitions? [LB758]

SENATOR LARSON: I looked real quick. I believe those are the definitions that I read, yes. [LB758]

SENATOR CHAMBERS: But there were more definitions to it than that, weren't there? [LB758]

SENATOR LARSON: I'll double-check. I don't have it up anymore, but I can check for you. I don't think so. [LB758]

SENATOR CHAMBERS: Here's a fat mouth who wants to say a lot and he didn't even read all of the definitions. So I'm going to give him a chance to make it clear what he meant before I proceed. Senator Larson, how do you spell the word that you were defining? [LB758]

SENATOR LARSON: C-o-u-p. [LB758]

SENATOR CHAMBERS: Senator Larson, what is a homonym? [LB758]

SENATOR LARSON: Excuse me? [LB758]

SENATOR CHAMBERS: What is a homonym? [LB758]

SENATOR LARSON: A word that sounds similar to another word? [LB758]

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SENATOR CHAMBERS: Not similar. [LB758]

SENATOR LARSON: They're the same? [LB758]

SENATOR CHAMBERS: Well, you're the one who brought the dictionary. [LB758]

SENATOR LARSON: I did read all the...just so you know, I did...I didn't read the one on billiards, I'm sorry. It's a direct pocketing of a cue ball which is a foul stroke. [LB758]

SENATOR CHAMBERS: And there is no other language following what you just read. Is that correct? [LB758]

SENATOR LARSON: There is one on historical--an act touching an armed enemy in battle as a deed of bravery. [LB758]

SENATOR CHAMBERS: And that's all that remains, is that correct? [LB758]

SENATOR LARSON: Yes. [LB758]

SENATOR CHAMBERS: Now, how do you spell "coo"? [LB758]

SENATOR LARSON: C-o-u-p. [LB758]

SENATOR CHAMBERS: How do you spell "coo," the sound that a pigeon makes? [LB758]

SENATOR LARSON: C-o-o? [LB758]

SENATOR CHAMBERS: Do you know for sure? [LB758]

SENATOR LARSON: Yes, I do. [LB758]

SENATOR CHAMBERS: What does "coo" mean? What are all the definitions for "coo," c-o-o? [LB758]

SENATOR LARSON: "A soft murmuring sound of a dove or a pigeon or of a person to speak in a soft, gentle voice." [LB758]

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SENATOR CHAMBERS: And you're getting that definition from where? [LB758]

SENATOR LARSON: There's also...that's the verb version. The noun version is "a soft murmuring sound made by a dove or pigeon." That is also from the Oxford Living Dictionaries. [LB758]

SENATOR CHAMBERS: And you feel that you scored a coup on me with that definition you read the first time around, is that true? [LB758]

SENATOR LARSON: I wouldn't say so because I wasn't doing anything violent or an illegal seizure of power. Or I don't think there was an instance of doing anything extremely difficult. I wasn't playing cards... [LB758]

SENATOR CHAMBERS: Okay. [LB758]

SENATOR LARSON: ...or billiards and I wasn't touching you either, so. [LB758]

SENATOR CHAMBERS: When you went to school in Washington, D.C., what was the name of the university you attended? [LB758]

SENATOR LARSON: Georgetown. [LB758]

SENATOR CHAMBERS: Did you learn anything about slang? [LB758]

SENATOR LARSON: I mean, I speak slang. I wouldn't say that I had a specific class...my English class was more of a literature class, I guess. [LB758]

SENATOR CHAMBERS: Literature, you mean the spreading of trash? Litter is trash. Literature is the spreading of trash. Right? [LB758]

SENATOR LARSON: I'll focus more on the reading of literature. [LB758]

SENATOR CHAMBERS: Oh, then say what you mean since you want to be so precise. But here's what I want to ask you. First of all, how old are you? [LB758]

SENATOR LARSON: 31. [LB758]

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SENATOR CHAMBERS: So you've been in the world more than three decades. [LB758]

SENATOR LARSON: Yes. [LB758]

SENATOR CHAMBERS: Are you aware that words have meanings that are popularly understood which are not the strict dictionary definitions? Are you aware of that? [LB758]

SENATOR LARSON: Yes. [LB758]

SENATOR CHAMBERS: Have you heard the term "coup" applied to things other than violent overthrows? [LB758]

SENATOR LARSON: I believe you have tried to apply that as what we did was a coup. [LB758]

SENATOR CHAMBERS: No. I'm asking what you have heard. I'm not asking you to read my mind. If you're... [LB758]

SENATOR LARSON: Most of the time...I mean recently, most of the time I hear "coup" specifically, well, take the Turkish coup. That was more of an attempt of a violent overthrow of President Erdogan. It failed. [LB758]

SENATOR CHAMBERS: I'm asking you what...and I don't want you to be Arthur Murray this morning. That's why I'm asking what you have heard and what you know. [LB758]

SENATOR LARSON: I think most of the time when you hear the word "coup" it is an overthrowing of an institution, which we did not do on the first day. We voted for committee Chairs. I was currently a committee Chair. [LB758]

SENATOR CHAMBERS: Don't be so defensive. Have you heard in the political realm, the political arena, commentators, editorialists, columnists refer to something as a political coup in this country without reference to anything violent? You've never heard the word... [LB758]

SENATOR LARSON: As I said... [LB758]

SENATOR CHAMBERS: ...used in that... [LB758]

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SENATOR LARSON: Yeah. [LB758]

SENATOR CHAMBERS: If you haven't, just say yes and I'll...I mean if you haven't heard it, I won't question you further. You've never heard that? [LB758]

SENATOR LARSON: No. I think the second instance of doing...successfully achieving something difficult, I have heard that. Unless you were complimenting us on what we did... [LB758]

SENATOR CHAMBERS: Thank you. [LB758]

SENATOR LARSON: ...of achieving something difficult... [LB758]

SENATOR CHAMBERS: Thank you. Members of the Legislature, Senator Larson has demonstrated what happens when somebody tries to be smart and the basket they are carrying is not large enough to contain what needs to be in it to carry off what he's trying to do. Everybody other than Senator Larson understands the context in which that word was used. And if he didn't, then his education has been improved. And the fact that I have improved his education does not diminish him. When a person's education is improved, the person is better off than he was when he was ignorant. So how can that, which adds to and improves a person, diminish the person? He is not diminished by having had his education improved. He will be diminished tremendously if he cannot accept instruction. When the courts are dealing with issues, they will start by saying if a word is used, it's in the popularly understood usage of the word. And that's how they're going to interpret it. If they're using what is called "a term of art," that means the word does not mean in the context of the statute what it ordinarily means. For example, the word "person" in the law is a term of art; a corporation is not a person. But as it has come to be used in the law and in statutes, "person" includes any number of objects, organizations, collections which are not natural persons, meaning they were born of a father and mother. Now Senator Larson doesn't understand all of that, and I don't mind taking the time to instruct him. And if he won't accept the instruction, there may be other people who don't know and they will be instructed. There are two types of ignorance if you want to break it down into two broad categories: vincible ignorance and invincible ignorance. [LB758]

PRESIDENT FOLEY: One minute. [LB758]

SENATOR CHAMBERS: Vincible ignorance is that kind which can be overcome through information, experience, instruction, sometimes argument. Invincible ignorance is the kind that cannot be corrected; it cannot be overcome. Senator Larson often manifests invincible ignorance,

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and I wouldn't waste my time trying to change his mind. But the discussion will inform those who are listening of things other than just what the specific or particular items are that constitute the subject of the discussion. [LB758]

PRESIDENT FOLEY: Thank you, Senator Chambers. You're next in the queue; you may continue. [LB758]

SENATOR CHAMBERS: Thank you. And, Mr. President, the fact that Senator Larson didn't turn on his light makes it unnecessary for me to proceed with this motion. But I wanted Senator Groene and all the other smart people on the floor who when they wait until I've spoken my third time on a matter and therefore can't speak again on that matter will try to get their blows in. They think my hands are tied behind my back and now they're bold. But I know your rules and I said I'll master your rules and beat you at your own game. And I don't care what you're discussing. I will bring a motion that is a priority motion and I can speak immediately or I can bring the superpriority motion and make sure nobody other than the Speaker speaks again, and that would be a motion to adjourn. However, there is a motion that tops that. You didn't know that, did you? I'm looking at Senator Larson over there glowering, trying to grasp...see, when somebody is struggling mentally to understand, they get a frown. Look at him over there and you'll see in work, you see manifestation on his face by the expression. Uh-oh, the Caucasian lie detector is working. He's turning bright crimson. See? I understand body language. Don't mess with me if you don't want to go all the way. That motion is to recess. That would even trump adjournment. Now if you don't believe it, pull out the Rule Book and check it. And even if I don't have it right, you will have learned something because no longer is your mind halting between two opinions. You now know what the rule says. But you're not going to be able to outsmart me. You're too young. But even if you were older, you wouldn't be able to. I made a hat. I didn't call a name. But if somebody wants to put that hat on his or her head, it's on them. I'm going to stay on this bill for a long time, and I don't care what it takes to do that. So when we are diverted to a side issue, it plays into my hands. Time marches on. That's all that I want to see happen. And there are some people who would rather that time marches on in this fashion than to have me read from the transcript of the hearing before the Ag Committee on my prairie dog bill because they had made statements which were contradicted by their then voting against the bill when "Dr." Larson came around--or whoever did--and told them, you can't vote for this. You can't vote with Chambers on this. And then Senator Brasch who sang to me this morning "You Are My Sunshine," the chairperson of the committee, who was quoted in the paper correctly as to why that bill was advanced, why it should be supported, why she supported it and that there were layers and layers of ways to control prairie dogs. I had said in that article, we are going to discuss prairie dogs more during this session and we shall. Senator Larson told you all... [LB758]

PRESIDENT FOLEY: One minute. [LB758]

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SENATOR CHAMBERS: ...Ernie can bring it up next year. No, I don't wait until next year. I bring it up now. He led you out of the wilderness into the swamp and you all followed. Do I care? This is piddling what we do on the floor of this Legislature. There are important issues we ought to deal with, important issues we have the power to deal with. However, they are ignored. Then I see much ado about nothing in the paper this morning where some people are upset because the Governor is using campaign funds to put out a flyer against a piece of legislation before the body. Is that the biggest thing they have to deal with? Don't they understand anything about politics? The Governor didn't break a law. The Governor is a consummate politician. [LB758]

PRESIDENT FOLEY: Time, Senator. [LB758]

SENATOR CHAMBERS: Don't whine. [LB758]

PRESIDENT FOLEY: Time, Senator. [LB758]

SENATOR CHAMBERS: Thank you, Mr. President. [LB758]

PRESIDENT FOLEY: Thank you, Senator Chambers. (Visitors introduced.) Speaker Scheer. [LB758]

SPEAKER SCHEER: Thank you, Mr. Lieutenant Governor. Colleagues, we have reached the point of the time commitment on LB758 for the first half. So we will now pass over and move on to the next item, I believe a bill by Senator Briese, LB256. Thank you.

PRESIDENT FOLEY: Thank you, Mr. Speaker. Next bill, Mr. Clerk.

CLERK: Mr. Speaker, do you want to proceed to LB256 or LB589? I'm sorry.

SPEAKER SCHEER: I do have trifocals, and they're still not working. We will go to Crawford. Thank you.

CLERK: Thank you, Mr. Speaker.

PRESIDENT FOLEY: Thank you, Mr. Speaker.

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CLERK: Mr. President, LB589 is a bill by Senator Crawford. (Read title.) The bill was introduced on January 18 of last year, referred to the Judiciary Committee, advanced to General File. Senator Crawford presented her bill on January 23. The committee amendments by Judiciary were presented at that time. Those committee amendments are pending, Mr. President. (AM438, Legislative Journal page 695, First Session, 2017.) [LB589]

PRESIDENT FOLEY: Senator Crawford, if you would like a couple of minutes just to refresh us on the bill before we start the debate on the bill, please proceed. [LB589]

SENATOR CRAWFORD: Thank you, Mr. President, and good morning, colleagues. LB589 is an important continuation of our work that we have been doing as a body to strengthen our child advocacy centers and their role in protecting our most vulnerable children. We have, as a body, we have supported and created child advocacy centers and continued expanding their involvement and created funding for additional child advocacy centers across the state and put into place statutes to say that we want this child advocacy center and this trained forensic interview to be an important part of the process when any of our children are put in a position where they have experienced or witnessed this most violent crime or sex abuse. So LB589 continues that conversation. I think one of the issues that we really need to consider as we're examining this bill is the fundamental question of what does justice require? And it's critical that we understand in our system, yes, someone is innocent until proven guilty. But also, what are the appropriate discovery tools and what are the impacts on those who are in the justice system? And impetus behind LB589 was a concern that while we have created in our system these forensic interviews and while we've worked to make sure those forensic interviewers are trained and certified so that we get unbiased information about what the child has seen, we allow the child to tell their own story in an age-appropriate environment with a trained and certified interviewer, that that information become a true part of our deliberation. And that that information be taken seriously before we consider other deposition as a...discovery deposition as a tool to ask the child more questions and have them retell the incidents that occurred that they have already told in that forensic interview environment that we have established. Thank you, Mr. President. [LB589]

PRESIDENT FOLEY: Thank you, Senator Crawford. I do not see Senator Ebke on the floor. Senator Pansing Brooks, you're Vice Chair of the Judiciary Committee. If you would like a couple of minutes just to refresh us on the Judiciary Committee amendments, you're welcome to those minutes. [LB589]

SENATOR PANSING BROOKS: Thank you, Mr. President. The Judiciary Committee amendment is quite simple. It basically just includes that a court-appointed special advocate is also included in the people that can be present at any kind of deposition for the child. And it also

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adds that a service or therapy animal might be also present, so it's quite simple. Thank you very much, Mr. President. [LB589]

PRESIDENT FOLEY: Thank you, Senator Pansing Brooks. We'll now proceed to debate on LB589 and the pending Judiciary Committee amendments. Senator Blood. Actually, Senator, if I can interrupt you just one second. (Visitors introduced.) Thank you, Senator Blood. You may proceed. [LB589]

SENATOR BLOOD: Thank you, Mr. President. It's funny that Senator Crawford mentioned justice today, and I'm going to lead to that in a minute, but I do stand in support of her bill and of the amendment from the committee. After the last debate, I have to be honest, I went home and I couldn't sleep because I thought about this bill and I thought about everything I heard on the floor. And all I could think about is what is the definition of justice? And I blame you for not sleeping, Senator Crawford. But I want to share what I thought about. I remember when I was a doe-eyed girl coming in off the farm from central Nebraska to Omaha, and one of the first friends I made was this beautiful and strong black woman named Brenda Bell. And we were sitting amongst her peers talking about justice, and I'll always remember they said: There is no justice, there's just us. And for me, coming off the farm from a very cloistered community, that was very eye-opening to know that your demographics affects how you feel about whether there's justice or not. Then I started thinking about is it justice when an abuser goes to prison and then the spouse, although in a safe environment, is then left to fend for the family? I started thinking about other types of justice. What is justice? Is it justice when a defendant has to pay an average of \$3,000 to \$4,500 to exercise his or her right to a sound defense? Is that justice? That's justice if you can afford it. What about in the case of incest? It's a complicated issue. Do you send the family member to prison that is a family member? Even if the abuser is prosecuted, once that abuser leaves prison, that victim has to see that abuser at Christmas, at Thanksgiving, at weddings, at special holidays. Is that justice? And I don't know the answer. But what I do know that what Senator Crawford is doing is just. It is just to protect these victims because every time you expose them to what has happened, they're being revictimized. That is not justice. Justice is making sure that due process is done which she has made sure that that is still going to happen in this bill. It is not eliminated. And one of the things that really concerns me is that I was told by several attorneys here on the floor that the concern is that, yes, if they went to a judge and they had to ask for another interview, that judge might not like them or might have an issue with them. Well, I don't know if I believe that. I mean, if indeed that's the case, then it would be your job to make a complaint about that judge not doing his job. I look at our Supreme Court Justice, who is one of the most admirable, honest men I know on this planet; and I find it hard to believe that it's going to be a huge issue for you and that it's more important than these children. So with that said, I hope that you're pondering what you truly believe justice is. And if you believe justice is about taking care of our children and not retraumatizing them, I hope that

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you, too, join me in supporting Senator Crawford's bill. With that, if I have any time left, I would relinquish it to Senator Crawford. [LB589]

PRESIDENT FOLEY: Thank you, Senator Blood. Senator Crawford, 1:40. [LB589]

SENATOR CRAWFORD: Thank you, Senator Blood. Again, what I think is critical is to ensure that we as a body are supportive and show our support for the forensic interview process--that again we've been setting up through our work here--and the importance of taking that forensic interview seriously in this process and making sure that if there is a deposition, if that's necessary, that that forensic interview has been taken into account. And that we foresee if the information that is needed is already in that forensic interview so that we're not bringing that child forward if it's not necessary. It's really critical to be sure that we're looking at what the child has already revealed in the forensic interview and trying to determine whether or not it is essential to depose the child again. The second part of the bill says if we are going...if you are going to depose a child, that it is critical that you ensure there are protective orders in place to ensure that we put some protections in place to make it a less traumatic experience for the child in all the ways that we possibly can. Thank you, Mr. President. [LB589]

PRESIDENT FOLEY: Thank you, Senator Crawford. (Visitors introduced.) Senator Crawford, you're recognized. [LB589]

SENATOR CRAWFORD: Thank you Mr. President. I just wanted to enter into the record a letter that was sent from one of the county attorneys and just wanted to put it in the record in terms of the kinds of situations and concerns that we're trying to address by LB589. And the letter is from Joseph Smith, Madison County, County Attorney. Gentlemen, Recently I tried a case as a matter of courtesy for Antelope County. The case, State v. Lierman, had been marked historically by a great deal of very aggressive and harmful behaviors to the victim within the legal system. I was requested to assist in this case by the little girl's guardian ad litem, an Antelope County Attorney. The defendant was eventually convicted on three counts of first-degree sexual assault of a child, three counts of sexual assault, and two counts of child abuse. The victim in this case had been extremely traumatized, first by the years of sexual assault committed upon her by her foster dad and second by the tremendous abusive behaviors of the defense lawyers prior to trial. During the first deposition, the lawyer for the defendant insisted on the girl being required to sit for a great number of hours with no breaks, that her counselor not be present, nor could she be allowed to listen in electronically in case there was a breakdown. I did not agree to that, and there was a tremendous amount of yelling by the lawyers. The judge did impose some restrictions which helped, but the next deposition of the little girl by the defendant's new lawyers took two days and is recorded in 398 pages of testimony. For a period of that time over these two days, the little girl was crying at one time, ran out of the room to throw up in the bathroom. The defense lawyer was

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insisting on details of each and every time anything happened and then wanted her to place those details and incidents in the correct order. The abuse, as the jury decided, had occurred over at least three years. No human being could have done what was asked of that little girl in that deposition. The deposition also caused problems for the little girl at Boys Town. Problems included tremendous depression, fear, and suicidal ideation. The staff and counselors helping her at Boys Town were rightly appalled at what had happened. I'm disappointed in myself for not being able to stop it. I could send you in the deposition--all 398 pages of it--and you would be convinced that the general intent was to put pressure on the little girl. That little girl endured two days of deposition, resulting in 398 pages and at trial 30 minutes of examination. In Nebraska and every other state of the Union, discovery is not part of due process. Discovery is a legislative thing. There are many lawyers and many cases that conduct meaningful, productive, and appropriate depositions for little girls in juvenile cases. On the other hand, there are many whose desire seems to be to traumatize little girls. The Lierman case is a terrible case. It's terrible in what happened to the two little girls. It is terrible that the system failed to protect them from abuse over the years, and terrible being treated so poorly once they came into the system. Therefore, I encourage you to support LB589. And, colleagues, I just encourage you to turn to the second half of LB589, which starts on page 3. And it indicates that when there is a request to depose a child under 18 years that the court shall make any protective order that justice requires to protect the child from emotional harm or distress, harassment, undue influence, or intimidation and then indicates the kinds of things the protective order may provide: that the deposition is taken only at specified terms and conditions; designate a time and a place and a manner of taking the deposition; and that the scope of the deposition may be limited to certain matters as designated by the court. [LB589]

PRESIDENT FOLEY: One minute. [LB589]

SENATOR CRAWFORD: Thank you, Mr. President. And that a victim advocate, guardian ad litem, or other support person not witness to the proceedings shall be present; and that the defendant shall be physically excluded from the deposition but attend via electronic means as determined by the court; and any other provisions that the court determines is justified and appropriate when issuing a protective order; and also that the court consider the age, health, level of intellectual functioning, developmental level, and emotional condition of the child and whether the child has material knowledge proof of defense; and whether the child has already provided a full written, taped, and transcribed account of his or her proposed testimony for the trial. And, colleagues, I expect in Select File to also add in to those considerations whether or not the child has given a taped forensic interview in terms of considering how long and what other conditions and protections... [LB589]

PRESIDENT FOLEY: Time, Senator. [LB589]

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SENATOR CRAWFORD: ...to be put in place for that child. Thank you, Mr. President. [LB589]

PRESIDENT FOLEY: Thank you, Senator Crawford. Senator Hilgers, you're recognized.
[LB589]

SENATOR HILGERS: Thank you, Mr. President. Good morning, colleagues. I rise again in support of LB589 and thank Senator Crawford for bringing this bill. And I also want to thank my colleagues for, I think, the thoughtful conversation we have had over the last couple of days about the various interests that I think are implicated by this bill. And I want to focus on really two points, I think, to help crystallize some of the issues here and sort of help frame part of the debate. And the first is, I think, some confusion that we might be in some ways eroding the constitutional right to be able to confront your accuser. And certainly the Sixth Amendment of the U.S. Constitution provides that right. And what we are not talking about is that constitutional right. In other words, what we're not saying is that a criminal defendant could not confront their accuser at trial, for instance. As Senator Crawford and others have noted, this is a pretrial discovery procedure, one that does certainly have some value; but it is also one that is not implemented or allowed in a number of states. In fact, I think the number I heard was 39 along with the federal government. So I think point one is this is not a constitutional issue. It certainly does implicate some constitutional concerns of due process, and I do acknowledge that. But to be clear, this is not the same thing as being able to erode someone's right to confront their accuser at trial. So I think that's an important distinction to make as we go through this conversation. And the second point I would like to make sort of dovetails off the conversation that Senator Wayne and I had yesterday, which went to this idea of sort of the procedure and what might happen. And I think this kind of goes to the heart of my support of LB589. And that is that in many of these cases--and maybe most but certainly some and I would think more than some, maybe many--the individual victim or witness does not have counsel. So as we frame this dispute or this issue, we know who has counsel. The state or the county has a prosecutor, and that's their client. The defendant has a right to counsel, so it's either a private attorney or they have a constitutional right to counsel and so they have an attorney. But the victim does not necessarily have an attorney or the witness does not necessarily have an attorney. Now it is true, certainly it is true and I would concede that in many cases the prosecutor would be looking out for the interest of the victim or the witness; and the prosecutor and the witness are oftentimes aligned. But oftentimes aligned is not always aligned and oftentimes aligned is not the same thing as I represent you. And so as you think about how this plays out in a deposition, this is how it goes. If someone wants to take the deposition of a victim or witness, they would serve a notice of deposition. So the reason why I emphasize "notice" is that a notice of deposition doesn't go to a court. It is a notice that is served on the individual. You need to come at this time on this day at this time at this place; and you must, under compulsion of law, show up and you must take this deposition under oath. Now someone can, and Senator Wayne pointed this out and it is absolutely true, someone can file the motion to quash that notice. And what a motion to quash is,

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is you go to the court and you move the court and you say, I don't think this is an appropriate deposition notice. Court, you either cancel it altogether or you limit it in some way. And that is true. However, and this is a big however, if you are not represented by counsel and if you're a nine-year-old child, you're not going to know, you're not going to have the ability to go and move the court for that deposition notice to be quashed. Now it may be in some cases that the prosecutor will file that motion for the reasons that the prosecutor, again, is defending their client. And so for reasons that are important to their client, they will file that motion. The prosecutor might even file a motion because it wants to look out for the best interest of the witness. And maybe that's in most cases, but it certainly is not in all cases. So point one to that...maybe a (a) to that second point is that the child does not always have someone looking out for them to file that motion in the first place. But the second subpoint to that point... [LB589]

PRESIDENT FOLEY: One minute. [LB589]

SENATOR HILGERS: Thank you, Mr. President. Now I'm really speaking like a lawyer so I'm probably tuning everyone out. Now you're...yeah, Senator Lowe is nodding. I think this is an important point in the depositions. And in depositions, it can be very adversarial; and there are some amazing defense attorneys that I know and that I know are members of the Bar of Nebraska. And they would never, no matter if there's an attorney or not in that deposition, ever think about using that as a tool of harassment to that child. But there are others, either intentionally or not, who might. And in that deposition, the person who can object to the questions if it goes too far, if it's harassing, if it's oppressive is the witness' lawyer, not the prosecutor. The prosecutor has different grounds that they can object on. And so the child in that instance, if they don't have an attorney and they're in a deposition, the way in which those depositions are set up leads itself to the potential for more aggressive questioning, more harassing questioning, even if going into the deposition they didn't intend to. [LB589]

PRESIDENT FOLEY: Time, Senator. [LB589]

SENATOR HILGERS: Thank you, Mr. President. [LB589]

PRESIDENT FOLEY: Thank you, Senator Hilgers. Senator Wayne. [LB589]

SENATOR WAYNE: Thank you. I just have to disagree with Senator Hilgers. One, it's factually incorrect that the courts are not served, because the courts by definition when you give a notice of deposition you have to file that with the court too. So you serve that with the court, so the court is aware of that. But the issue is this is just a bad bill. This doesn't deal with victims. I have to remind you of that. This deals with anybody up to the age of 18 who has a forensic interview. That could be a witness that really has information that either side has to come out. So what I'll

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do now if this bill passes as a defense attorney, if I have any kid, whether it's shoplifting to anything else, that is charged and they're 18 and under, I'm going to use this to delay any proceeding. I'm going to make sure justice won't get served if I'm defending my client zealously because I have to use what the tools have. And what we're going to say is, county prosecutor, you can't even depose; you can't even talk to my client. County prosecutors, you're not going to like this, because every child that is a witness--and I will make sure my clients go get a forensic interview to fall underneath this--they'll never get to interview. But what's interesting about this is that the way the bill is written, this only affects defense counsels. If I'm interviewing, I get the information from the prosecutor. I can continue as a prosecutor, as a law enforcement person, question, question, question that witness. I can continue right now even as a defense attorney, I can go up to that witness and question them. I just can't make a formal deposition. So we're not solving the issue of not having a kid relive a traumatic event, because law enforcement underneath this bill can continue to interview them, continue to interrogate somebody. Prosecutors can do it. Me as a defense attorney, I can do it, I just don't have to file a formal deposition. We're not solving the problem here. All we're doing is taking away a tool of a defense attorney, but the actual saving and helping the victim is not occurring underneath this bill because I can still interview them. I just...they can tell me no and then I get to do a formal deposition, but I can still interview them. But nothing stops the police from doing 1,500 interviews on that same victim or that same witness. And as a defense attorney, there's nothing I can do. That's overly broad. So this only limits defense attorneys, and I don't think we should get in the business of doing that. Again, police can continue to have interview questions. Other people can continue to have questions that make this child relive a traumatic event or a witness. My issue is only defense counsels can't. That's the problem with this bill. You're limiting only defense counsels; because everybody else when the prosecutor says, yes, go talk to the law enforcement agency, go talk to this caseworker, tell them the story, they...parents and people and witnesses are going to say, well, the prosecution is on my side. They're pursuing this case. So yes, I'm going to do that. But only the defense is limited, and we shouldn't do that. It goes against the nature of innocent until proven guilty and it goes against the nature of understanding something. Depositions, let's talk about what depositions are used for. Depositions are used for two things: to find out what really happened in a case, to limit the trial because now that you know what happens, it limits the trial length, and for credibility purposes. What I mean by credibility purposes, if somebody gets on the stand, an 18-year-old kid and lies or changes their story from the original deposition, the only way I can impeach them is with a deposition. And what impeachment means is you show the jury that the person lied or changed their story. I can't do that unless it's under oath according to the rules of evidence. So you're taking away my tool if I have an 18-year-old kid who changes their story four times... [LB589]

PRESIDENT FOLEY: One minute. [LB589]

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SENATOR WAYNE: ...to show the jury that they changed their story. I have no other tool because without a deposition under oath, I can't do it. And it's unclear right now if this bill passes and there's all these protections if I can still even do it. Because how do I show it to the jury in a protective order? Some of those things you can't do. So now I got to have another hearing to clarify whether we can do it. But without a deposition, you're taking away the defense ability to do many of the things that we need to do. And in juvenile cases, it gets even more convoluted. And the last thing I'll say, and I'll push my button again because this is very important, all the things we're trying to do in this bill can currently happen without this being passed. You simply go before a judge. You ask for a protection order against what was done. You say, hey, matter of fact, we're going to have an in-camera deposition where the judge is also there and it's just you and the attorneys. Sometimes parents aren't even allowed. [LB589]

PRESIDENT FOLEY: Time, Senator. [LB589]

SENATOR WAYNE: Thank you, Mr. President. [LB589]

PRESIDENT FOLEY: Thank you, Senator Wayne. Senator Chambers. [LB589]

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, this is a difficult issue. I'd like to ask Senator Hilgers a question or two. [LB589]

PRESIDENT FOLEY: Senator Hilgers, would you yield, please? [LB589]

SENATOR HILGERS: Absolutely. [LB589]

SENATOR CHAMBERS: Senator Hilgers, you support this bill as written. Is that correct? [LB589]

SENATOR HILGERS: I do, Senator Chambers. [LB589]

SENATOR CHAMBERS: Are you willing to restrict...Senator Wayne dealt with what I was going to bring up. Are you willing to restrict the county attorney, the advocates, and the police to one interview? Not each one of them, because they say that the repetition is putting the child through the same thing that is traumatizing. Is it less traumatizing when it is said to the prosecutor then said again to the police then said to an advocate? Then the advocate will feel that something was said to the police which contradicted, so they want to take an additional video. You don't feel...do you feel that there should be a limitation as to how many times the prosecutor, the police, and the advocates could question the child? [LB589]

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SENATOR HILGERS: If the questioning is just the witness interview where the child has the right to say no, I would not think that those were the same thing and I wouldn't support restrictions. However, Senator Wayne has raised some issues that I'll talk to him off the mike about how prevalent that might be. [LB589]

SENATOR CHAMBERS: If a deposition is taken and the child says no, that child cannot be beaten or coerced into saying yes. Isn't that true if a deposition is being taken? [LB589]

SENATOR HILGERS: They can't be beaten but certainly they could be coerced. The power of the court can hold anyone in contempt. [LB589]

SENATOR CHAMBERS: And suppose...how would the court make a child answer and how would contempt be enforced against an eight-year-old child, for an example? [LB589]

SENATOR HILGERS: I would hope that a court with an eight-year-old child would have a very light touch, Senator Chambers, and not treat that child like the court might treat an adult. [LB589]

SENATOR CHAMBERS: Well, if the child just said, no, I'm not going to answer. No. Then that's the end of it, isn't it, as far as that question? The court cannot coerce that child to answer. [LB589]

SENATOR HILGERS: For a question or showing up to the deposition? Because I think there's a difference. [LB589]

SENATOR CHAMBERS: Questioning, answer the questions. [LB589]

SENATOR HILGERS: At the moment of the deposition, the court is not there. If the child is not answering, theoretically whoever is taking the deposition could later go to the court and get some sort of order. [LB589]

SENATOR CHAMBERS: And if the court gives the order, that's what I'm saying, the order will not comprise the permission to unduly coerce that child with the threat of violence or anything else. I don't believe an order like that can be enforced against a child through contempt or anything else, but I want to ask you something else. Would you be willing to say that that video statement can be used for the purpose of impeachment, even though it was not taken under oath? Because that's the only statement, prior statement you have. [LB589]

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SENATOR HILGERS: The video, and to be precise, we're talking about the video from the CAC, the interview, the forensic interview? [LB589]

SENATOR CHAMBERS: That the advocates or the police or the prosecutor took. No statement under oath. But if there is a statement and it's relevant because of what the child said--and remember, the child could be up to 18 years old--would you be willing to let that statement that had been taken be used for impeachment purposes at trial? [LB589]

SENATOR HILGERS: So my initial reaction to that, Senator Chambers, is that you can always use a prior inconsistent statement as an exception to hearsay so it would be admissible. To the extent that impeachment adds something to that, my initial reaction would be yes, although maybe I'm missing some implication of saying yes that I can't capture right now. [LB589]

PRESIDENT FOLEY: One minute. [LB589]

SENATOR CHAMBERS: And I'm not trying to use trickery either. This is a difficult matter. I think the way I'm looking at it now that the law in this area should not be changed based on what we've had by way of a discussion on the floor. That's my opinion. But I told Senator Crawford I would discuss it further with her. But I haven't heard anything compelling. I'm sympathetic toward children. I have contempt and a feeling worse than that toward those who would abuse children. But I need to try to preserve the integrity of the system, as Sir Thomas More said, for my own safety's sake. The devil must be given benefit of law. And if because of the devil you don't have to give benefit of law, then that can be extended to other areas where people who support this bill would not want it to be extended. But that's all that I'll ask of you. My time is up. Thank you, Mr. President. [LB589]

PRESIDENT FOLEY: Thank you, Senator Chambers and Senator Hilgers. Items for the record, Mr. Clerk. [LB589]

CLERK: Mr. President, name adds: Senator McCollister to LB44; Wayne, LB696, LB756, LB809; Brewer, LB1123; McDonnell, LB1123; McCollister to LR293CA. (Legislative Journal page 438.) [LB44 LB696 LB756 LB809 LB1123 LR293CA]

Mr. President, Senator Kolterman would move to adjourn the body until Friday, January 26, at 9:00.

PRESIDENT FOLEY: Members, you heard the motion to adjourn. All those in favor say aye. Those opposed say nay. We are adjourned.