

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate April 4, 2024

Rough Draft

**KELLY:** Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the fifty-fifth day of the One Hundred Eighth Legislature, Second Session. Our chaplain for today is Reverend Brenda Peters, Unity of Omaha Church, Omaha, in Senator DeBoer's district. Please rise.

**REVEREND PETERS:** Good morning. Please join me in prayer today. And so today, we take a deep breath, knowing that we are all here, gathered together for a common cause, for a common reason, for a common purpose, and that is to lead the state of Nebraska with love, with prayer, with kindness, with oneness. And we bless everybody in here today, knowing that the job that they have is difficult. And we give them love, and we give them harmony and blessings, knowing that they will turn to their God of understanding today to guide them. And through this day, they will get through anything together. For we are great state of Nebraska. And we bless Nebraska and all who live here, and all who are of love and peace. And we are grateful for each and every one, grateful for yet another day, for the sun that rose, and for the moon that will rise. We are grateful. And we are one. And so it is. Amen.

**KELLY:** I recognize Senator Lowe for the Pledge of Allegiance.

**LOWE:** Will you please join me in the Pledge of Allegiance? I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.

**KELLY:** I call to order the fifty-fifth day of the One Hundred Eighth Legislature, Second Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

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

**KELLY:** Thank you. Are there any corrections for the Journal?

**ASSISTANT CLERK:** No corrections this morning.

**KELLY:** Are there any messages, reports, or announcements?

**ASSISTANT CLERK:** There are none of those, Mr. President.

**KELLY:** Senator DeBoer would like to recognize a guest seated under the north balcony, Valerie Buresh, of the Unity of Omaha Church. Please

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stand and be recognized by your Nebraska Legislature. Senator Albrecht would like to recognize the physician of the day, Dr. Dave Hoelting of Pender. Please stand and be recognized by your Nebraska Legislature. Please proceed to the first item on the agenda, Mr. Clerk.

**ASSISTANT CLERK:** Mr. President, the first bill this morning on General File is LB686, introduced by Senator Walz. It's a bill for an act relating to retirement; amends Section 16-1020, Reissue Revised Statute of Nebraska; to adopt the Cities the First Class Firefighters Cash Balance Retirement Act; to harmonize provisions; provide severability; repeal the original sections; declare an emergency. The bill was introduced on January 18 of this year, referred to the Retirement Systems Committee. That committee reports the bill to General File, with committee amendments.

**KELLY:** Senator Walz, you're recognized to open.

**WALZ:** Thank you, Mr. President. Good morning, colleagues. I could hardly sleep last night. Today, I am proud and honored to introduce a bill that has been long time in the making. Before I begin, I know that there are a number of firefighters from all over the state watching this debate, and I want to say thank you and let you know that what you do every single day makes a difference. The work you do, the sacrifices you make, make a difference. It makes a difference in our communities, and it makes a difference in the lives of the people who live there. We trust you. We depend on you. And now, we're going to do our very best and give it our best effort to help you guys out-- and girls. I have to tell you that out of all the bills-- I was talking to Senator Bosn on my way here, on my way up to the Capitol. And I said, out of all the bills that I've ever introduced, I want to pass this one most of all. And you all know how much I love education, and how much I love making sure that our people are healthy and safe. This is the one. Honestly. I don't think it's asking too much. In fact, I don't think it's near enough. Our firefighters deserve to be recognized and they deserve to be compensated in their retirement years. Last year, after 6 years in the Legislature, I introduced LB686. During my time here, I witnessed firefighter friends in Fremont enduring the consequences of a broken promise that was made over 40 years ago. Firefighters across our state protect Nebraskans health and safety every single day, and I am so grateful for everything they do. That's why this bill is important to me. That's why I brought this bill, to make sure that we give our firefighters the respect they deserve after retirement. There is a key distinction between first-class city firefighters' retirement plans and those of Lincoln

and Omaha firefighters. Unlike firefighters in those larger cities, first-class city firefighters don't have a traditional pension plan. Instead, they participate in a defined contribution retirement plan that was established in the 1980s. Back then, the cities assured them the plan's performance would match or even exceed their previous defined benefit plan, which guaranteed that they would attain a 50% pension. Unfortunately, this promise has never been a reality. Over the past 40 years, no firefighter has been able to achieve the secure retirement that they were guaranteed in 1984. And the consequences are clear. Some firefighters in these midsize cities, after dedicating over 30 years of service, are forced to rely on Medicaid for basic healthcare. Others continue to work while injured-- and I have witnessed that over and over and over again-- retire with minimal savings, or leave for cities and states offering true defined benefit pensions. In fact, most firefighters in our state can't participate in Social Security. This means that they lack a crucial safety net. But that's not the biggest issue. The true injustice is that the retirement plans fail to reflect the courage they demonstrate every day. Their heroism shouldn't be forgotten in their retirement plan. LB686 or a version of it has been around for years, even before I joined the legislature. The goal, as I understand it, is to provide a retirement plan for our roughly 400 first-class city firefighters that aligns, that aligns with plans offered to state and county employees. This proposed plan falls somewhere in between the existing options. It's not a traditional pension plan like those in Omaha and Lincoln, nor is it a pure 401(k) plan available in midcity-- midsize cities. Instead, it offers a defined contribution with a guaranteed 5% annual return. Since introducing LB686, I'm aware of conversations and negotiations between the Retirement Committee staff, the Firefighters Association, and the cities. Senator McDonnell will soon present a committee amendment. I understand, I understand it may not fulfill everyone's ideal vision. This amendment reflects compromises made not just with the League and the firefighters, but also with individual cities facing unique, unique situations due to Social Security. And while progress is commendable, is it the ultimate solution? Maybe not. And it's certainly not the one I had hoped for. I also want to take a minute to thank Senator McDonnell for his service as a firefighter, and his unwavering support to the men and women who serve as firefighters. After 40 years, colleagues, of inaction, this Legislature owes our firefighters a better deal than what this amendment offers, and certainly better than their current situation. Let me tell you a story about the firefighters in Fremont. During the 2019 flooding, I was here in this very Chamber when the river raged.

Our roads were impassable. People were trapped. Homes were destroyed. Fremont was literally an island surrounded by water, and that's a pretty scary situation to be in. My community was in crisis, but my friend, a local firefighter, didn't hesitate. He and his crew spent countless hours-- 24 hours without rest, a few days in a row, performing life or death rescues, putting themselves in harm's way to save countless lives and livelihoods. They didn't walk away from the danger. They charged right in. I think these heroes deserve our respect and our appreciation and our unwavering support, not just on the job, but throughout their well-deserved retirement. Not only do firefighters deserve our deepest appreciation and respect, but we owe it to our constituents to make sure they have firefighters in their communities. My top priority for my constituents is that they're healthy and safe. And when first-class cities are struggling to retain firefighters, that is a huge public safety concern. I just think about if a city has a limited amount of firefighters and most of them happen to be at a-- responding to 1 sent-- 1 incident, and another incident takes place across town, what happens if we don't have additional firefighters? It's not fair to Nebraskans, and it's not fair to put that stress on our first responders.

**KELLY:** One minute.

**WALZ:** Lastly, I'll tell you 1 more thing about our firefighters. I hope, I hope that you vote yes for firefighters. But I know that if you don't, your firefighters will still be there for you with compassion and dedication, with grace and courage, to protect you. They will still be doing the job. Let's move this bill. Let's honor this long overdue effort, and join me in supporting committee amendment and LB686. Our firefighters deserve it. Thank you, Mr. President.

**KELLY:** Thank you, Senator Walz. Senator Ibach has some guests in the north balcony, 30 Nebraska FFA Ag Issues Academy members. Please stand to be recognized by your Nebraska Legislature. As stated, there is a committee amendment. Senator McDonnell, you're recognized to open.

**MCDONNELL:** Thank you, Mr. President. Good morning, colleagues. Are you on-- because there's 1 amendment I'd like to withdraw. Are you on AM2984?

**KELLY:** Yes.

**ASSISTANT CLERK:** Yes.

**McDONNELL:** Thank you. Thank you, Senator Walz. I know she's been frustrated with me for the last-- at times, over the last couple years, based on how long this process has been going on, how important it is to her and the, the firefighters. But the idea of the negotiations, trying to come up with an agreement, it's not a quick process. But at the same time, Senator Walz realized what was happening with those firefighters and their, their personal lives, and she felt for them. So you can't manufacture passion. It's got to come from the heart. Senator Well-- Walz has the, the passion for the firefighters. And I appreciate that. So I thank you for your patience with me, the Retirement Committee, and the process. Today, I'm going to present the amendment, AM2984. LB686, heard by the Retirement Committee on March 22, 2023, 1 of a number of bills impacting first-class city firefighters. AM2984 is a white copy amendment, replacing original provisions of LB686. Committee held a hearing on, on very-- a very similar amendment, AM2285, on February 20, 2024, the actuary report presented at that hearing. And, and we made sure that over the, the, the process-- I think sometimes we forget about Retirement. You have to introduce the bills in the first year of the 90-day session. And we have to make sure that we have a actuarial, actuarial report on every one of our, our proposed changes that comes to this floor. So you'll be getting a copy of that if you have not already, on your, your desk Committee adopted AM2984 and advanced LB686, as amended, to, to the floor with a 4-2 vote. AM20-- AM2284 contains 6 changes to current statutes. Number 1, change definition of salary. Contains positions of, of Senator Ibach's LB-- provisions of Senator Ibach's LB221. Adds amounts due to overtime callback, call-in pay, as well as other salary reductions excluded from federal income tax, very similar to the first class city law enforcement provisions. It changes treatment of surviving spouse who remarry; provides that the surviving spouse with no minor children is entitled to the remainder of the employee's, the employee's account less any benefits paid. Allows 2 or more first-class city retirement committees to pool investments and administer administrative funds with a, with a single agent; allows police officers and firefighters to participate in the Section 218 referendum to participate in Social Security. Provisions of my LB197 removes restrictions on police officers and firefighters and-- as does 49 other states, so it harmonizes us with the rest of the country. Changes contribution rates by firefighters and employees and first-class cities employers. Senator Brandt's LB406 was a shell bill to change contribution rates. Current contribution rates are 13% for cities and 6.5% for firefighters. Amendment phases in contribution increases over a 2-year period-- firefighters from 6.5 to 2-- to 12.7,

cities from 13% to 15%. Separate treatment for cities under absolute coverage group for Social Security, absolute coverage group is a city that become-- became a first-class city after 1951, when the federal government expanded Social Security to include public employees. Absolute coverage groups pay Social Security 6.2% for the employee and the employer. 2 cities impacted-- Bellevue, beginning in 2010, and Papillion in 2022. AM2984 leaves Bellevue as it currently operates. Papillion contribution rate is reduced to 8.8%. Retirement health insurance allows retirement employees to-- retired employees to contribute-- continue with the city's health insurance for continuing to pay employees' share for the first 2 years. City pays their share, provides exception for cities over 60,000 population in a county over 100,000, specifically Bellevue. There is no state fiscal impact. We're talking about the first-class cities, and we're going to have another handout that'll be coming to your desk shortly. There's roughly 250 firefighters that we are talking about, outside of Bellevue and, and Papillion. This is a 40-year problem. We've been working on it. Others, as Senator Walz has said, others have tried in the past. Again, I want to thank the people that participated in this process, during the negotiation process and of, and of course, the Retirement Committee members and, and our, our team in, in my office. And I would encourage you to vote green on the amendment, AM2984, and LB686. Thank you, Mr. President.

**KELLY:** Thank you, Senator McDonnell. Mr. Clerk.

**ASSISTANT CLERK:** Mr. President, there are amendments to the committee amendments, the first offered by Senator Hughes, FA313.

**KELLY:** Senator Hughes, you're recognized to open.

**HUGHES:** Thank you, Mr. President. This amendment to AM2984 is very simple. It would simply strike Section 16 from the amendment and renumber the remaining sections. Section, Section 16 would require that all first-class cities provide health insurance to retired firefighters for 2 years after their retirement. There are several reasons I believe that this is an important change that we need to-- this amendment needs to happen. First, this requirement for health insurance coverage is not limited to providing base-- just base, base insurance for the former firefighter. Rather, it would require any existing plan to be continued for 2 years post-employment. This means that if an active firefighter chose to have family coverage with the higher-level benefits, those benefits would have to be paid for by the city after the firefighter chooses to retire. A firefighter could

potentially choose a stepped-up plan for their insurance shortly before they choose to retire, and force the city to assume the costs for that coverage, even though the city had no say in what level of insurance would be available upon retirement. Secondly, post-retirement health insurance was never discussed during negotiations between the firefighters and the first-class city representatives. In fact, when, when negotiations began, firefighter representatives stated in an email that they wanted an agreement to begin a discussion of pooling resources for healthcare purposes, with the goal of reducing costs for both parties and implementing plans more structured for firefighters for their needs, for example, cancer screenings. This amendment goes far beyond beginning a discussion of pooling resources, and it does not reduce costs, but would vastly increase costs for the cities. Third, many first-class cities currently negotiate post-retirement healthcare benefits. This is something that both firefighters and cities have stated they value. If this was to be adopted, it would eliminate the ability for cities to offer other kinds of benefits. Fourth, if firefighters wanted to include some type of pooling of funds for healthcare purposes, they had opportunity to include that in a negotiated agreement, as the cities offered more than once, to allow firefighters to shift part of their retirement contri-- contribution to a VEBA plan. A VEBA, V-E-B-A, is a voluntary employees beneficiary association plan that is tax exempt under the IRS 501(c)(9). It provides the payment of life, accident, or other qualified medical expense benefits to members and dependents of an association. Fifth, cities have to be mindful of all the employee groups that they employ. All employees deserve to have reasonable benefits. LB686 and AM2984 would remove, would remove all equity between employee groups. No other group receives post-employment health insurance. And there is no doubt that if we decide to mandate this coverage for firefighters, other groups will soon follow and expect the same. Last, this amendment presents a massive, unfunded mandate for first-class cities. I heard, oh, there's no fiscal impact for the state on this, but what about the fiscal impact for these cities? We have spent days discussing the need to reduce property taxes, and that cannot happen if we continue to send unfunded mandates to other political subdivisions. The only way cities can pay for these benefits is by increasing property taxes or making cuts to current programs and services. And these cuts would likely impact current fire department operations. And I'm going to just read some information. So our-- this only affects in District 24, York, Nebraska. And the city administrator there is Sue Crawford, a former state senator. And she had just emailed me some information, but she



said this bill, as amended, requires first class cities to pay for 2 years of health coverage for firefighters when they retire before the age of 65. 2 years of health coverage is a high cost to cities, and does not get to the firefighter goal of allowing members to retire closer to 55. There are other solutions that have been part of city negotiations with firefighters that would be fiscally responsible, and cover the gap of a 5-10 years until they can get to Medicare, instead of just flat-out 2 years. So you retire as a firefighter at 55. This 2 years takes you to 57. What happens after that? Cities have proposed options to work on these solutions throughout the negotiation process, and are still willing to work on these solutions in the interim. These solutions could also work for police and other city workers, who also have physically demanding careers that lend themselves to earlier retirement ages. 2 years of health coverage for firefighters sets the stage for the state mandating cities to pay for more years of coverage for firefighters in future years. Police officers currently pay twice as much out of each paycheck for retirement security than do firefighters. Paying for 2 years of health coverage for the small number of first-class firefighters in the state sets the stage for a much larger, unfunded mandate for first-class cities, as police come next year asking for the same or more. Multiple first-class cities already work with firefighters on healthcare retirement plans as part of our collective bargaining process, and are willing to continue to facilitate these plans to help firefighters plan for healthcare in early retirement in a fiscally responsible way. Again, our cities are willing to work and-- toward a fiscally responsible solution, hopefully to address that 5-10 year gap that first responders are most likely going to have when they retire earlier, and that they need to be covered. So LB686 as amended is not fiscally responsible and does not address this 5-10 year plan, and that is why we-- or I brought FA313. Thank you, Mr. President.

**KELLY:** Thank you, Senator Hughes. Senator Blood, you're recognized to speak.

**BLOOD:** Thank you, Mr. President. I stand enthusiastically in support of LB686, and grudgingly will support the amendment from the Retirement Committee. And I agree with Senator McDonnell. Many of us, myself included, have worked on this issue over the years. And I have to disagree with what Senator Hughes said, where she said the cities are willing to work on this. The cities have said that for decades. Senator Walz did an excellent job of explaining why this is so important. The one thing that always irks me about a lot of elected officials, and I'm not pointing fingers at any one person, is that



they always talk about how they support, support our first responders, our police, our fire, our fire and rescue. But when it comes down to giving them what they deserve, we always take pause. So it's so easy to put your face time in and say, we support you, but the hard work is in here. And I want to remind all of you what it means to be a firefighter, outside of what Senator Walz just said. You know what else it means? Cancer. A high rate of cancer. Smoke, chemicals, poisonous building materials, every single day. Depression, sleep disorders because of the sleep deprivation, hearing loss, repeated exposure to alarms and sirens, heavy machinery, noise at emergency sites, heart disease. And it's not because they're doing that-- I don't know if you see your firefighters, but a lot of them are really great cooks, and they cook on site. That's not why they're having heart disease. It's because of the smoke and the chemicals and the stress. And do you know that heart attacks account for 45% of all work-related deaths for firefighters? 45%. You always hear me talk about why I support labor. I support labor because if I believe if you work for 20 years and you work hard and you contribute into something, that you should be able to retire with full benefits and have something to look forward to. But there's been a disconnect when it comes to these firefighters. They deserve better. This is time when you need to step up to the plate, quit waving your flags, and vote green. And say yes, Senator Walz, I vote yes for firefighters. And I'm sorry that we have to water this down just to get it through. But I can tell you, after working on it for several years myself and having it handed to me from other senators, who had it handed down to them from another senator, this has to stop today. We have to make a decision. Do we support these firefighters? And it's more than taking cookies to the fire station, and it's more than posing with them at the, the fire station by the trucks. And it's more than talking about how much you love them. It's about supporting them in the way that we should have supported them decades ago. And thank God Senator Walz made this a priority for herself to get it done before she leaves. Because how many more times do we have to hand this from one senator to another senator to another senator? Either you care about the firefighters or you don't. Put your money where your mouth is. Sometimes we have to disagree with the, the municipalities. And me, of all people, I'm always standing up for the municipalities, but this is one time I support the firefighters, just like if we were talking about the police right now. I support our firefighters and our--

**KELLY:** One minute.

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**BLOOD:** --EMTs because it's the right thing to do. Because you know what, friends? All politics is local. People want to make sure that when they dial 911, that people show up in a timely manner, and that they are happy and satisfied not only with their jobs, but with what the future holds for them. And my crystal ball tells me that you just made a better future for them when you vote green today. Thank you, Mr. President.

**KELLY:** Thank you, Senator Blood. Speaker Arch, you're recognized to speak.

**ARCH:** Thank you, Mr. President. I, I will tell you, colleagues, I have not made up my mind on how I'm going to vote on AM2984, and let me explain. First, I want to acknowledge, as others have done in the countless hours Senator McDonnell has spent trying to facilitate negotiations on this measure. But despite his sincere efforts, in my opinion, we aren't there yet. I realize this bill is necessary to get firefighters in a position to realize sufficient retirement income, but the unfunded mandates continued in this-- contained in this bill and this amendment may do more harm in the long run to those who do make great sacrifices and take great risks for community safety. So here's my dilemma with this amendment, with respect to my legislative district, Papillion-La Vista. AM2984 addresses a fairly new problem that has recently added a huge burden for Papillion, but AM2984 also creates new burdens. Admittedly, my knowledge of the underlying problem for the city of Papillion and its retirement plan for the Papillion Fire Mutual Finance Organization is limited. But here it is in a nutshell. In 1951, Nebraska entered into a Section 218 agreement with the Social Security Administration to extend Social Security benefits to employees of political subdivisions, with the exception of employees who were already covered by a mandatory retirement plan, which, which was firefighters in first-class cities. Historically, first-class cities have not paid into Social security for firefighters, and neither have the firefighters paid into Social Security. Well, Papillion did not hit the population threshold to be a city of the first class until 1970. It established a paid fire department in 2002. Based on legal advice, Papillion has been operating the same as other first-class cities and has not contributed to firefighter Social Security since 2002. However, the Social Security Administration made a determination late last year that the exclusion of Social Security coverage under the 1951 agreement applied only to those cities who were first-class cities at that time. That means Papillion began contributing 6.2% for firefighter Social Security. This is in addition to the 13% contribution already mandated

under state statute. So Papillion firefighters also had to start contributing 6.2% for the first time. Without AM2984, Papillion contributes a total of 19.2%, its firefighters contribute 12.7 for a total of 31.9%, compared to other cities of the first class, who contribute 13%, plus firefighters who contribute 6.5, for a total of 19.5%. So that's 31.9% compared to 19.5% of other first-class cities. This obviously creates a huge inequity when it comes to firefighter retirement contributions for first-class cities. I should point out, at this time, Bellevue is the only other first-class city in the same boat as Papillion. But Bellevue opted to pay into Social Security when its fire department became paid, and that has been figured into its budget negotiations from the onset. So Bellevue is not part of this discussion. AM2984 attempts to solve this issue and bring equity between first-class cities. It allows for an offset of the 6.2% paid into Social Security, so Papillion would pay 8.8 plus 6.2 for a total of 15. Its firefighters would contribute 6.5, plus 6.2, Social Security, for a total of 12.7. Adjustments are made to other cities of the first class, bringing all first-class cities, with the exception of Bellevue, to the same contribution level. So that's what I like about AM2984. But here's what gives me pause. First, the bill increases the city contribution from 13 to 15%, adding to the taxpayer burden. Contributions to other city employees are not mandated in statute, are generally between 6 and 6.5% contribution range, with equal contribution between employee and employer. Second, the bill redefines salary to include overtime pay when making contributions, which results in an overall additional cost on top of the base contribution rate increase of 2%. It's my understanding this provision has been accepted by both parties, firefighters and cities. But the point is--

**KELLY:** One minute.

**ARCH:** --it is still an increase on the cost to the cities, on the cost to taxpayers. Finally, and most importantly, the bill requires health benefits post-retirement. Any firefighter who has served 21 years and has attained the age of 15 will have the option to continue on the group health insurance at the same rate, for 2 years after retirement. I do understand being a firefighter is a physically taxing profession, and that firefighters who remain on the job through an advanced age risked-- risk serious injury. I do understand there's a gap between retirement at 55 and Medicare eligibility, but this does not fix that. So I will say this. There is an amendment that is yet to come up on the board. Senator Jacobson has an amendment, AM3229, that would remove the health benefits language and fix the Papillion issue. I

will support that amendment, and the, and the underlying bill if that amendment is adopted. So I will continue to listen to this debate. Thank you.

**KELLY:** Thank you. Speaker Arch. Senator Moser, you're recognized to speak.

**MOSER:** Good morning. Thank you, Mr. President. Good morning, colleagues. How many times I've heard on this floor that the state issues unfunded mandates and how bad those are-- and I'm not going to call out names. But all of a sudden now, we're telling cities what to do. We're putting ourselves between the negotiations between the firemen and the cities. The cities, primarily-- the fire and police are primarily union, and they negotiate contracts with the cities. And Columbus just ratified their new fire contract. And the state shouldn't be involved in telling cities how much to pay, what benefits to give. Or if we are going to give those mandates, then we should put \$50 million or whatever it's going to take in aid to the cities to pay for it. Because where are they going to go to raise these funds? If we-- after they've just signed a contract-- you know, the ink is barely dry. And then all of a sudden we increase benefits, that's going to put a pinch on the city of Columbus. They just hired an extra dozen firemen to staff a second station, because they all operated out of 1 station to this point. And it was making response times kind of long to certain areas in the town. And so, they've staffed 2 stations, and this would be a terrific burden on them. The unions and the cities can always go to the CIR if-- well, the union can take the city to the CIR if they think their contract is not fair or not comparable to other comparable cities. And they always have that option. But the state of Nebraska should not be telling cities what retirement to pay. And I'm not in any, I'm not in any way discounting the value of fire and police and what they do for the community. You know, I've seen them at work. I was mayor for 12 years, and I've spent a lot of time working with them. They do a great job. But this is a case where the state should keep their nose out of it, and, and let the unions and the cities negotiate their contracts, and, you know, not be trying to tell the cities what to do. They've got problems-- budget problems, most of them anyway, and by doing this, we're just going to increase property tax. That being said, I understand there is a negotiation underway. Senator Jacobson has an amendment that resolves some of the concerns that the cities have. And so, I'm going to support Senator Jacob's [SIC] amendment when that comes up. Thank you.

**KELLY:** Thank you, Senator Moser. Senator Vargas, you're recognized to speak.

**VARGAS:** Thank you very much. Colleagues, I rise in support of Senator Walz's amendment and the underlying amendment, AM2984. I was actually struggling to read this. Maybe I need glasses. I'm against the floor amendment. A couple things I wanted to say. One, because I'm a member of the Retirement Committee, a real big thank you to the Chairman, McDonnell, for his work and his dedication to getting a-- trying to get consensus on this. And I also appreciate that this is a version that we got out of committee. So there's a couple of reasons why I support this. I was having this conversation off the mic with somebody, that I know that there are opponents on this that have told me they, they oppose this because it's a large unfunded mandate. That's 1 side which some of those same opponents are the people that say municipalities need to spend less. And we need to tell them when they can and cannot spend, and we have to put hard caps on them for a lot of different other things. One of the reasons why I have supported putting spending limits, is I don't necessarily believe and it's just part of what we do here, that everything we do is either a funded or unfunded mandate. It is a value judgment. And the reason why I supported this bill is there are a lot of things that I think are value judgments on what we do and what we say matters in this body. Very similar to when we were fighting on behalf of law enforcement and debating how much should we do in terms of meeting the needs of our State Patrol in terms of their retirement. And we had to eliminate, you know, COLA, death benefits, but we still did something in the right direction. This is not a new conversation. And the reason why I'm supportive of it is there are firefighters that are currently-- been waiting and are trying to get an advancement in, in not only their retirement and benefits, but we've come to a standstill on negotiations in a lot of different ways. And if you heard the testimony in our committee, you would say, well, this is a time for the Legislature to step in and be as much of an honest broker, and advocate on behalf of firefighters and first responders, especially obviously in first-class cities. And I think that this is part of the crux, which is I know there's just some people saying I don't want to support this because it's an unfunded mandate or because it's not our responsibility. But also, colleagues, some of you are the same individuals that will look at and say, we need to tell municipalities, we need to tell school districts to spend less. I just want to make sure that we are consistent with how we apply our value judgment. We say that taxes, specific property taxes, are getting very, very high,

which I agree. And we should say, OK, this is the reason why we're trying to reduce people's ability to spend, because that's the value judgment that's more important, is the tax relief. And the same thing in this. The value judgment is we should be honoring and funding and doing more to make sure we're meeting the needs of our first responders and firefighters in this bill that are, that are covered or increasing benefits underneath this bill. It's the value judgment, not whether or not we say we're just against unfunded mandates. Because there have been many times here on the floor, where we have supported unfunded mandates, and I'm just asking us to be consistent in how we approach that judgment. Truly, I know I've had that conversation with Senator Murman on Education bills sometimes, when we tell school districts what they can and cannot do.

**KELLY:** One minute.

**VARGAS:** It also comes with, well, it could be an unfunded mandate, but we also think it's the responsibility of a school district to take on something, even if they tell us, well, that's going to cost us more money. It's a standard that we expect of them. And when they don't do it, we tell them, no, you have to do it. This is a similar situation. Do we care about whether or not we're meeting the needs and increasing the salaries and the contributions for firefighters? And that's what the bill does. It doesn't have the support of the League. And I know that there's work that Senator Jacobson has done and others are trying to do. I'm asking you to move this on to Select, because with any good negotiation, we need the ability to have time to move something forward that can actually bring people to the table. But as you know, that doesn't always work with every single bill. But in this bill, I can say, as a member of the Retirement--

**KELLY:** That's your time, Senator.

**VARGAS:** Thank you.

**KELLY:** Thank you, Senator Vargas. Senator Conrad, you're recognized to speak.

**CONRAD:** Thank you, Mr. President. Good morning, colleagues, I rise in support of LB686 and the amendment that the Retirement Committee has negotiated with-- the committee-- to advance the bill. I rise in opposition to Senator Hughes's amendment and other amendments that are filed. I think that we have a clear understanding that we have a very compressed time table this morning and need to cover a lot of ground.

But let me just walk you or reaffirm or reiterate-- let me just walk you through a few of the key components here, for clarity's purposes. So each city is absolutely free, under the Industrial Relations Act, to negotiate for benefits. But the state told the cities, which are creatures of the state, of course, over 100 years ago, that firefighters have to have a pension. And that promise was abrogated about 40 years ago, back in 1984. Since that time, over decades, this issue has continued to languish. And the state has always had the right and the ability and utilized its authority to say how much the contributions and pay is going to be in retirement benefits. And the CIR can't take up changes to retirement benefits, so this is the remedy that is permissible and is before us. And I think of this-- let me just-- in the most simplest terms, before we get into the minutia on retirement, I harken back to my limited days practicing family law, where you have legitimate points being made by credible actors in a tough situation. And if the mom and the dad, the parents, aren't able to come together on their own accord with an agreement about something like child custody, for example, somebody will decide. If people can't get together-- and they've tried, for 40 years. If they can't get together, somebody has got to make the decision. So in the family law, law context, that's a judge. In this context, it's the Legislature. So there has been hard and good faith negotiations that have been ongoing. It's been languishing and languishing and languishing. We need to move this bill today, A, to continue negotiations, and B, because it's permissible and in line with the promises we made and the statutory authority we have. The parties can still continue to negotiate from General to Select File, but that's only going to happen if it moves. And if they're still unable to meet a resolution at that point, we'll have another decision in front of us. But we don't have to give the final word today if our goal is to continue the conversation amongst the parties. If you want to continue conversation amongst the parties, which I think there's no disagreement about, we need to move the bill today and we have a very, very short amount of time to foster those negotiations. If those negotiations are not successful amongst the parties, there will be a point where we will have to make a policy decision. It is not this morning. If you want to give the parties the last chance to come together, we need to move the bill. And sometimes, a nudge from the Legislature helps to crystallize the issues, helps to bring people together, helps them to know there is an end time in front of them for negotiations, because we're saying this can't continue to languish. So this is permissible. It is appropriate. It is in line with--



**KELLY:** One minute.

**CONRAD:** --how we handle other pension and retirement issues for public employees, and particularly, for first responders. There is nothing new or different about how we have treated first responders on this benefit in other instances. And while, of course we respect and honor local control, when locals don't keep their word to provide for a sound retirement package, the Legislature retains the authority to step in. And if we don't allow for this movement, and we allow the, the negotiations to languish or fall apart yet again, it will be an abrogation of our authority. And it will hurt recruitment and retention for first responders, that all of our communities need, and our growing communities, in particular.

**KELLY:** That's your time, Senator.

**CONRAD:** Thank you, Mr. President.

**KELLY:** Thank you, Senator Conrad. Senator Dorn, you're recognized to speak.

**DORN:** Thank you, Mr. Lieutenant Governor. Well, I have been pretty consistent the last couple of weeks. I've always gotten up and talked about our green sheet. And wow. We even outdid ourselves way more than I expected. It's on the bottom of the second page this time, not on top of the third page. But if everybody's had a chance to look at that-- I invite you to look at it sometimes-- this morning or today. I don't know about some of the people that are leaving. They don't have to worry about it. But, I do know that we passed the property tax funding bill yesterday, and that was going to show up in here. And I just didn't quite expect it to show up this big. We are there on Select File now. We are-- when we come back next year, we will be working on the budget. We'll be working out on a 2-year budget. And these are plugged in numbers. I want people to remember that. These are plugged in numbers. So our revenue sure could be higher than this. We don't know those things. This, this is just history of what we've done in the past so many years, and these are plugged in numbers. But there we are at \$1,764,000,000 in the hole. So, yeah. We're going to talk about this bill, and we're going to talk about, in my mind, unfunded mandates to the city. And I've always been opposed to unfunded mandates. But I also want people to make sure they look at this. And as we go forward-- we have about 5 days, I think, left here yet, in the Legislature. And we will have a lot of bills in front of us with a lot of funding things. A good share of this one here, this

number, and I don't want to-- I don't want to have it sound too bad, but a lot of that is the property tax issue. And we'll see where that goes. I made a comment on the mic that I thanked the Revenue Committee and them for bringing a funding source with it. If we would have passed all that funding source with it, this wouldn't be near, near where it's at. But just to show people what it does to the state, when we think we have money and we're appropriating money, and yet, we have to, we have to-- on that front page, we have to be-- this year at least, we have to be above that minimum reserve. And when I look at the number there, above the minimum reserve, we're getting pretty close to even this year. We're \$99 million above the minimum reserve for this year. So, just wanted to talk about that. Want to talk about the bill here in front of us all. Listening to some of the discussion, I know there's a lot of negotiations going on and we'll see where we go. I probably am opposed to the bill. Well, I am opposed to the bill. I am opposed to an amendment. Senator Jacobson's bringing 1, a amendment that will come later here. I am for that. I will vote for the bill if that's on there. Been asked if I will vote for this to go to Select File so they can continue negotiations. I've told them yes on that. I don't know if I will continue that though, just because of the fact that I look at our time here and the amount we have left. Would Senator McDonnell yield to a question?

**KELLY:** Senator McDonnell, will you yield?

**McDONNELL:** Yes.

**DORN:** Yes. Been listening to the discussion. There's been 1984 year brought up and everything. Today-- the way it sits today, without us passing this bill, how do I call it firefighters get some of these benefits other than negotiating with the city itself?

**McDONNELL:** So, yeah. I, I-- thank you for the question. So the promise that was made 40 years ago, we were part of that promise as the state. And, and it is fair to say, well, why aren't they taking care of this in those first-class cities, individually, at the collective bargaining table? They are attempting to. But we are part of the promise. Therefore, we're part of the problem. Therefore, we should be part of the solution. Right now-- and this is-- you look at this as a statewide first responder. This is part of our, our mission, I believe, as, as state senators. So to answer your question is, if they're doing it at the collective bargaining table, they have not been successful for 40 years. But also, there was a--

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**KELLY:** One minute.

**McDONNELL:** --there was a promise made 40 years ago that we were part of, as a state, to get rid of the defined benefit, that we would get you to that number of 50%, and it's never happened.

**DORN:** OK. Thank you for that explanation. I appreciate that. Thank you, Senator McDonnell, for answering question. I, I, I still, I, I guess, I have a, a real concern with the state mandating. And I had people explain to me, there are other things out there that we kind of mandate or put out there and-- that they have to pick up the funding. Have a hard time connecting all the funding with this, other than it's coming from the cities and I think they should be the ones negotiating. Thank you very much.

**KELLY:** Thank you, Senator Dorn and McDonnell. Senator Clements, you're recognized to speak.

**CLEMENTS:** Thank you, Mr. President. I'm on the Retirement Committee and did hear the testimony regarding this bill. And I, I was a no vote on take-- bringing it out of committee. It came out-- we have 6 people on the committee. It was 4 yes and 2 no. And so, it barely made it out of committee. I think my main reason is I think the parties involved should negotiate. Let the cities negotiate with their employees rather than having the state override what the cities have been agreeing to. From what I heard, the cities negotiated reasonable compromises. And this bill goes well beyond what those negotiations included, and I just wasn't able to support adding on items that had not been agreed to in negotiations. I do support Senator Hughes's AM313 [SIC]. The 1-- 1 of the items that was a disputed item by the cities was expensive health benefits that were not in the negotiation agreement. Paying for the benefits for employees who are no longer working is a, a problem, because you're going to have replacements that are working that they're going to be paying for, so it's going to be adding more people to the health benefit plan that is not expected. And it's going to be a complete-- additional cost. I did file a floor amendment, FA353. Just went up there. It would delete line 21 on page 3 of AM2984. That is another item that wasn't included. It's-- the amendment says base pay includes overtime, callback, and call-in pay. The current agreement with the city says it excludes overtime, call-in [SIC], and call-in pay. And that's another item that was added on in-- really, in the committee amendment. And all of these are going to end up being a property tax increase. We've heard so much about property taxes. And I think the, the cities know best what they can afford and what's in

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their budget. So I am going to be opposing AM2984, that has those-- especially the health benefits and the additional pay that's, that's in there. I would like to ask Senator-- Speaker Arch a question.

**KELLY:** Speaker Arch, will you yield?

**ARCH:** Yes.

**CLEMENTS:** Speaker Arch, there's been some talk about scheduling of this. Would you give us an update?

**ARCH:** Yes. Thanks for asking. I, I, I want to let the body know where we are. We are obviously now, at the end of our session, and we have a lot of work left to do. So what I have said to Senator McDonnell, my commitment from the beginning has, has been to get these priority bills up so that they have the opportunity to have a-- to have the hearing on the floor. And so far, have been successful. I still have some commitments of some General File bills yet to come. And so, what I said to Senator McDonnell was, this morning, the, the time that can be dedicated to this bill is, is to noon. And so, with the other commitments on the General File priority bills, we do not have time to bring this bill back.

**KELLY:** One minute.

**ARCH:** So if there is a-- if, if-- whether there's a vote, whether there isn't a vote, I just want the body to know we, we are in crunch time. And 12:00 will be the time when we will adjourn. And then we-- and I-- wherever this bill is at that time is, is where it will be. I won't have time to bring it back. Thank you, Mr. President-- oh, and, and Senator Clements.

**CLEMENTS:** Thank you, Mr. Speaker. I yield the rest of my time to Senator Jacobson.

**KELLY:** Senator Jacobson, you have 33 seconds.

**JACOBSON:** I can't even say Mr. President in 33 seconds. So I'm going to yield my time back to the Chair. I'll be up-- I am bringing AM3229, which will be up next. I believe Senator Hughes is going to pull her amendment to allow my amendment to come up. And I think I will have an opportunity to speak on it then, in my open. Thank you, Mr. President. Thank you, Senator Clements.

**KELLY:** Thank you, Senator Jacobson. Senator McDonnell, you're recognized to speak.

**McDONNELL:** Mr. President, so a couple of things. I just want to make sure we know who we're, we're talking about, which, which firefighters first. You should have gotten a handout. Of course, collective bargaining-- important. I believe in it. The idea of what happens and what's happened in Omaha and Lincoln, we're not talking about those departments. We're going back to 40 years, from a promise made, an agreement made and never kept, that we were part of that process. So we are responsible. So I know there's been effort for 40 years at the collective bargaining table for these first responders. And who we're talking about is: in Beatrice, 16 people; Columbus, 21 firefighters; Fremont, 23 firefighters; Grand Island, 63 firefighters; Hastings, 20 firefighters; McCook, 9 firefighters; Norfolk, 21 firefighters; North Platte, 39 firefighters; Scottsbluff, 15 firefighters; South Sioux City, 10 firefighters; York, 15 firefighters. So we were talking earlier, and I appreciate Senator Moser's professionalism when he said there are senators that have stood on this floor and talked about unfunded mandates. That's me. So here I am today, talking about an unfunded mandate. This mandate is based on, again, a agreement that was made 40 years ago that was never kept. That does make a difference, I think, to me. And it is public safety. But I am the person that says we should not be handing down these unfunded mandates. And we are talking about approximately-- I just read the numbers to you. Let's say it's approximately 2% of, of payroll, but it is important. It is needed. It is fair. They have been working on this, and others in the state senate have come down here, and state senators have had this discussion. They have been at the negotiating table throughout the, the state, talking about this problem. So I know people have worked on it. They just never have come up with a, a solution. What Senator Jacobson's bringing, I don't agree with, but I agree with at least he's trying to come up with his idea of, of a solution. I'm willing to work with Senator Jacobson on that. Senator Hughes, great discussion. I appreciate her position, and, and trying to work with her on-- between General and Select, but we are out of time. I appreciate the Speaker giving the time today, and we're looking at potentially using all of these-- approximately 3 hours. And it's been a good discussion. But we need to work on this today, move it from General to Select so we can continue to work on it. Take Senator Clements' ideas, Senator Jacobson's ideas, Senator Hughes's ideas, whoever wants to bring ways to improve this bill, and finally solve a 40-year problem that we helped create in, in the state of

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Nebraska, by being part of a promise that was never, never kept. Thank you, Mr. Speaker.

**KELLY:** Thank you, Senator McDonnell. Senator Hughes, you're recognized to speak.

**HUGHES:** Thank you, Mr. President. There's a couple things. I just want to give out numbers, because I think-- and, and, and Senator McDonnell also kind of mentioned, we're not talking about the big city, firefighters here. But just some interesting facts. In the state of Nebraska, paid firefighters, there are 1,491. And most of those are Lincoln, Omaha, the bigger cities. As Senator McDonnell went that through, these cities we're talking about have maybe 16, 23. My, my district has York, which is 15. We also have 308 paid per call, so those are maybe kind of hybrid. They-- they're not full time, whatever. But guess what we have 15,419 of? Unpaid volunteer firefighters across the state. And I just want to start off with saying I support firefighters, and it is long-term in my family. My grandpa, Paul Luebbe, and I believe he was one of the founding starters of the Goehner Volunteer Fire Department. My dad, Roger Luebbe, served for over 40 years in the Goehner Fire Department. My brother is a current member of the Goehner Volunteer Fire Department. My legislative aide, Matt Howe, is a current member of the Goehner Firefight-- Volunteer Firefight-- Fire Department. And I, I have participated in numerous fundraisers for these. These are also important things. And I understand as communities get bigger, we do need these paid professionals and we do need to provide them pay that-- for their work. And, and I understand they do need that early retirement, with the effort that they put in and what they go through. So with that being said, this piece of it, that 2-years piece, I don't know that that completes the gap for these guys, if they want to retire when they're 55, to get to 65. I, I think there are going to be more creative solutions to that. But I would like to pull FA313, so that-- and then we can go-- get on to Senator Jacobson's amendment. Thank you, Mr. President.

**KELLY:** Thank you, Senator. Without objection, it is withdrawn. Mr. Clerk.

**ASSISTANT CLERK:** Mr. President, Senator J-- Jacobson would move to amend with AM3229.

**KELLY:** Senator Jacobson, you're recognized to open on the amendment.

**JACOBSON:** Thank you, Mr. President. Well, I'm going to follow up a little bit. First of all, want to begin with kind of where Senator Hughes went. Firefighters are great people. They do-- they provide a great public service that we need. Yes, they go into harm's way. No question about it. I think the most striking thing about what Senator Hughes said is the number of volunteer firefighters throughout rural Nebraska. Here's an interesting factoid. Go to North Platte. We have a paid force and a volunteer force. We got folks over here, paid with benefits, and we got people over here, volunteer. Let me talk to you a little bit about volunteer firemen. When I go into rural areas, when I go up to Thetford and, and Mullen and rural areas of Nebraska, these individuals, these volunteers have full-time jobs. They have to drop doing what they're doing, get in their own personal vehicle, drive to the fire with their own money, no mileage reimbursement, put themselves in harm's way, including cancer risk and everything else. And they do it for free. They do it for free. We have talked so much on this floor about unfunded mandates. We've talked about how cities and counties and school districts, they've got to tighten their belts. And then the Legislature is going to come in and get in the middle of negotiations, and say, now we're going to mandate to you what you're going to do, and you go figure out how to pay for it. Well, you know how they pay for it? With property taxes. Any question as to why property taxes are out of control? It's crap like this. We should not be in the middle of these negotiations. We should be leaving this to the cities. These are not state employees. They're city employees. They should negotiate it. People preached to me when I brought the 2-person crew bill. And they said, this is a, this is a collective bargaining issue. What are you doing getting involved in that? It's the same thing. Only in this case, it's all these municipalities that are having to pay it, which is you, the taxpayers, not a railroad company that's making millions and millions of dollars every year, that affect public safety. My bill-- my amendment does 2 things predominantly, and I-- you've got a side-by-side comparison out there. We've heard a little bit about this from Senator Hughes, as it relates to the post-retirement benefits. That just came out of nowhere. 2 years. If you have full family benefit, you get full family paid for 2 years. No pay for. Additionally, you look at the pooling option. This pooling thing, as written in the bill, says that you can pool your retirement funds. So Grand Island and, and North Platte, for example, could pool their retirement funds. But there's no details. The cities don't have any play in that. They don't have any input on that. They didn't input-- have, have, have, have any negotiation power in that. What are the rules? What if they decide to separate it again? What are



the administrative costs? Who's going to control that? You can't just go in and say, we're going to allow pooling without any kind of agreements as to how that would work, and make it subject to the cities being able to approve that. And then, I want to talk a little bit about this promise of the defined benefit plan. For those of you don't understand defined benefit plans and defined contribution plans, there was a time back in the 80s when every major corporation and most companies had a defined benefit plan. What is a defined benefit plan? It's a pension plan. It's a guarantee that you're going to get a certain amount of money, whether the stock market is high, whether the stock market is low, whether the interest rate-- rates are high, whether they're low. And so whoever is guaranteeing that, they have to make up any differences in losses. And they have costs to go out and do actuarial projections to make sure that it's properly funded. So most everybody in the private sector went away from defined benefit plans and went to defined contribution plans, also known as 401(k) plans or 401(b) or whatever, whoever you're working for. And many governmental entities did the same thing. How does that work? There's a matching. Employee pays in, employer does a match. That's what we're talking about in here. Now let's talk about the rub that's occurred. You heard from Speaker Arch. There are, there are cities out there that have been paying into Social Security. And then they ended up in this situation-- they became a Class I city, and now they're having to pay a 13% match, plus the 6.2. Now, there's a carveout in here, in the original amendment, AM2984, that would carve that out as it relates to Bellevue, Sarpy County. But what about everybody outside of Sarpy County? Lincoln County is not part of Sarpy County. I can tell you Scotts Bluff County is not part of Sarpy County. Currently, when you go to Scottsbluff, Gering-- and they are 2 cities. I'm sure Senator Hardin would back me up on that one. There are 2 cities. In fact, there's Terrytown in between. Scottsbluff has a paid force. Gering does not. So if Gering wants to go to a paid force, they're gonna have the same problem that Bellevue has today. And LB2984 [SIC] does not fix that problem. LB30-- AM3229 does. My issue is threefold. Fix the disparity so that we're not double paying, fix the 2 years retirement. Allow that to be a negotiation. And either get details on the pooling or pull it. Off. Pretty simple proposition. The League has been negotiating for 2 years with firefighters over this. 5 more days is not going to give them the time that they need. I'm asking you to vote for AM3229. And if you do so, I will vote for LB686. Without LB3229, I'm urging you all to vote no, because this is an-- a total-- it's a huge unfunded mandate to cities that aren't willing to do this, based upon the normal negotiating process. They will agree to AM3229. If

there's negotiations that need to be had, I would suggest you meet with the League, and you like, meet, meet with the representatives of the League, the firefighters union, and you work out those differences in the next hour. Because otherwise, as Speaker Arch said, we're going to move forward. I'm adamantly opposed to moving this to Select. We all know the drill. Let's kick it to Select. And then later, when we get to Select and we're finishing things up, nobody wants to deal with it. We need to deal with it now. We need to vote for AM3229. And then we can vote for LB686, as amended by AM3229. I think with that, I think I've hit everything I need to hit here on my list of items. I would stand for any questions. And with that, I will yield the remainder of my time, Mr. President, thank you.

**KELLY:** Thank you, Senator Jacobson. And you are next in the queue.

**JACOBSON:** Well, again, I think I did enough in the open. So I'm going to go and pass over my time here and yield it back to the Chair and maybe get back in afterwards. Thank you, Mr. President.

**KELLY:** Thank you, Senator Jacobson. Senator Dover, you're recognized to speak.

**DOVER:** Thank you, Mr. President. I want to thank Senator McDonnell for the amendment. I apologize-- I want to apologize in advance for repeating some of the talking points that the senators have already made today. I want to start off before I, I do address the bill and the amendment, just to say that I support the firefighters. And in fact, we voted \$2.5 million for radios for firefighters because they were sorely lacking in the ability to communicate, and that communication is critical in a, in a big fire. And I'll say that there's a difference, though, between what we did and appropriated those funds and what we're doing here. Because we actually paid-- so we passed \$2.5 million in the budget for firefighters for radios. We paid for what our actions were, and this bill does not. So I'd like to speak to the, the bill and the amendment at this point. And the first thing I, I say is why are we trying to fix this? Why are we trying to fix LB686? You know, we sit here, and we try to, we try to work things out, meet in the middle. And sometimes, you know, the bill is just is, is, is, is not necessarily a bad bill. It's well-- are there-- most of them, I believe, truly are well-intended. But this is just-- this is not fair. This is not a fair bill. And I'll just ask you all a question. Why are we interfering with the relationship between cities and firefighters? They have a time to negotiate that which is addressed in this bill. And this is not the time. We sit here trying to cut our spending, cut

our taxes, and we will mandate this expense to the cities? And as stated earlier, what's a city to do then? Well, let's raise taxes. This seems so hypocritical-- critic-- excuse me. This seems so hypocritical to me. Please think about that. So again, will we, in the days to come-- excuse me. We will, in days to come, wrestle and debate with tough choices that have to be made to lower taxes on Nebraska's. And in the same session, we're going to tell the city to raise theirs, please. I would encourage the Legislature to address their own challenges and not force unfunded mandates on the cities of Nebraska. In many cases, cities negotiated in good faith with the firefighters. And I know in negotiations with employees in my company, sometimes they wanted healthcare, sometimes they wanted more wages. And usually, to be quite truthful, I said, well, do you want-- here's what the healthcare costs. Here's what the-- here's what that's going to cost. Would you like that in a wage or would you like the healthcare? I'll tell you, a lot of times, people take the money. And that's happened in cities. So sometimes, they may take retirement. Sometimes, they want healthcare. Sometimes-- whatever. Sometimes, they want an increased wage. So, so many of these, if not all of them, are negotiated a little differently. And so now, we want to apply some, something to lay over the entire-- all of those negotiations, and we don't belong there. Please vote no on this bill and let the cities and the firefighters negotiate in good faith amongst themselves, without a disinterested third party mandating what they will do, who is not going to pay for this bill. I would urge you to vote yes on AM3229, Senator Jacobson's amendment, just in case this bill passes. But I would encourage you to vote yes on the amendment and no on LB686. It isn't-- we're fighting-- we're trying to cut our own taxes. Everybody knows that. Why are we mandating an increase-- I mean, we're robbing Peter to pay Paul. We do good down here and we force people to do bad up in the cities. So I would, again, I encourage you to vote no on LB686. Thank you.

**KELLY:** Thank you, Senator Dover. Senator Clements, you're recognized to speak.

**CLEMENTS:** Thank you, Mr. President. I rise in support of AM3229, and thank Senator Jacobson for bringing a compromise and-- which would be a middle of the road help, and also offer some benefits for the firefighters. And I just wanted to first go over what cities are involved, what, what cities are first-class cities. So I got a list of the first-class cities. That's the, that's the limit of who is involved here. And those cities, some have more and some have less paid firefighters, but they are clear across the state. It's not just

like Senator Arch was talking about, Papillion, Bellevue. But it goes, in alphabetical order: Alliance, Beatrice, Bellevue, Blair, Chadron, Columbus, Crete, Fremont, Gering, Grand Island, Gretna, Hastings, Holdridge, Kearney, La Vista, Lexington, McCook, Nebraska City, Norfolk, North Platte, Ogallala, Papillion, Plattsmouth-- Plattsmouth is in my district-- Ralston, Schuyler, Scottsbluff, Seward, Sidney, South Sioux City, Wayne, and York. So this is an item that's going to affect-- I don't know--not all of our senators. Lincoln and Omaha are not in there, but anybody outside of there likely has a senator with a first-class city. The other item I wanted to discuss again, the healthcare coverage. I had a very informative email from the city administrator at York, talking about the healthcare coverage. The 2 years of healthcare coverage is a high cost to cities and does not get to the firefighter goal of allowing members to retire, closer to age 55. There are other solutions that have been a part of the city negotiations with firefighters that would be fiscally responsible, and cover a gap of 5-10 years instead of 2. So I think the important thing is that it is not going to help on being able to retire closer to 55, rather than having to work longer, till 60-65. And paying for 2 years of health coverage for the small number of first-class firefighters in the state, also sets the stage for a much larger, unfunded mandate for first-class cities, as police come next year asking for the same or more. And I did have a call from a city near me who was currently negotiating their police contract. And they said, this-- if the proposed paid fire contract goes through, then their negotiations will be much more difficult and hard to keep within reason and within their budget, which, which tells me they're likely to have a property tax increase if they're not already at their maximum levy. I think a city in my district that's involved here may not have levy limit available if this goes through, I'm not sure what they would do. Well, what they would have to do if this is mandated to them, they would have to be cutting other city services or raising things like their water bill or electric bill to make up the difference for the shortfall. So I think it is important that this could be a domino effect. If firefighters get more than what the cities are negotiating, then the police are going to also be requesting additional amounts. So then-- and the other thing. Back to the amendment that-- it isn't on the board yet, that I submitted. Also, was the--

**KELLY:** That's your time, Senator.

**CLEMENTS:** Well, thank you.

**McDONNELL:** Thank you, Senator Clements. Senator McDonnell, you're recognized to speak.

**McDONNELL:** Thank you, Mr. President. So, trying to clarify a few things. We have been involved with the first-class city firefighters as a state of Nebraska, since 1895. 40 years ago, we helped create a problem for the first-class city firefighters. That was not the intent. I was not here. But based on the idea that people wanted to make an agreement to help the first-class city firefighters, state was involved. And said, if you go ahead and give up that defined benefit, we're going to make sure that you get to that number, 50%, and we're going to work with everyone and we're going to accomplish that. Promise made, promise not kept. Now we're hearing the idea that you can go ahead and go to the CIR, and the CIR will fix this for you. CIR won't touch the, the, the benefit package. They'll assign a value to it. They'll assign a value to it, but they will not touch it. You cannot look somewhere else for somebody to fix a problem that you created. And I'm not talking about the 49 people. We weren't here. But we are part of this institution. We inherit, good or bad. This is something we've inherited. People have turned their back on these first-class city firefighters for 40 years. Now we're running out of time. Senator Jacobson thinks he has 25 votes on his amendment. If that's true, we got 54 senators in here, because someone's not telling the truth. What I'm asking is pull out of the cue, vote down Senator Jacobson's amendment, because that's what the firefighters are asking. Because if his amendment goes in, I want to kill the whole bill, because you've done nothing. Those firefighters are out there asking for something that they negotiated over the last 2 years, been working on negotiations at the table for 40 years. Give them a vote. We talked about this last night. We talked about yeah, put your, your, your money where your mouth is. I'm running a card-- my card might be wrong. I don't think it is. But we're going to have that card up on the, on the board. If Senator Jacobson's right, and he's got 25 votes for his amendment, so be it. That's the process. Then I want to kill the whole bill, because that's what the firefighters are asking. I don't blame Senator Jacobson for bringing this amendment. I don't agree with it. I don't think he quite understands the problem and, and our options to fix it. But I will guarantee this: If you give us a chance to move amendment from the Retirement Committee and Senator Walz's bill without Senator Jacobs' [SIC] amendment, I will work with him between now and Select. Now, the Speaker is going to tell you, hey, we're almost out of time. I understand. I will work on it with Senator Jacobson until midnight. I will work on it with Senator

Hughes, Senator Clements, I will dedicate rest of the session. And potentially, the Speaker, then, will schedule it. Potentially, he won't. I understand that. There's no guarantees. I'm just saying, finally, after 40 years, this is never-- this problem was created on this floor by others. Let's at least have a vote on fixing it. And the fix is not Senator Jacobs' [SIC] amendment. It's the Retirement Committee's amendment and Senator Walz's bill. So please push-- again. Senator Jacobson, would you yield to a question?

**KELLY:** Senator Jacobson, would you yield? One minute.

**JACOBSON:** Yes, I would.

**McDONNELL:** Senator Jacobson, I'm not asking you at this moment to change your position. What I'm asking you is, let's clear the queue together and get a vote on your bill--

**JACOBSON:** No.

**McDONNELL:** --your amendment.

**JACOBSON:** Not going to do it.

**McDONNELL:** Based on what?

**JACOBSON:** Because we got other people that want to-- that are in the queue that want to speak, and we're gonna let them speak. You know the drill.

**McDONNELL:** No, I-- I'm not ordering people to be-- get out of the queue. I'm just saying, you and I would go to those people and say, please let us get a vote-- because we have until noon.

**JACOBSON:** Yes we do. And we'll take it if we need to. We all know how this process works here in the Legislature. They've got several people here [INAUDIBLE].

**McDONNELL:** Thank, thank you, Senator Jacobson. Thank you. And I apprec-- I appreciate working with you. Thank you. So what, what I'm asking is now, the people in the queue-- and Senator Jacobson doesn't agree with me. Would you please pull out of the queue and let the firefighters have a vote? Let the first-class city firefighters have a vote. If Senator Jacobson's got, got the votes on his amendment, I'll live with it. We're not playing time games.

**KELLY:** That's your time. Thank you, Senator McDonnell. Senator Moser, you're recognized to speak.

**MOSER:** Thank you, Mr. President. Greetings, colleagues. First of all, I would repeat my objection to telling the cities how to negotiate with their police and fire unions-- well, in this case, fire unions. That's something that the fire unions and the cities should negotiate on their own. We shouldn't be telling them what we-- what to put into their retirement, unless we're going to pay for it. And we're not paying for it. And I repeat, the unfunded mandate suggestion is that this is millions. This isn't \$100,000, \$200,000. It's millions, millions for each city. Currently, in Columbus, the fire-- firemen pay, I think, 6.5% of their wage, and the city puts in 13%. So they can put about 20% of their wages back. Under the Jacobson amendment. That would increase, I think, almost-- the city contribution, I believe, goes to 15%. And the fire union contribution goes up. You know, 6.5% is roughly equivalent to 1/2 of a Social Security contribution to retirement. And you can't live on your Social Security alone, on, you know, just putting away 6% a year. There's not enough return on it. So the cities are willing to put more money into the retirement fund. And if the fire-- firemen and EMTs are willing to put more money into it, then, you know, they can have a better retirement. But this is something that should be negotiated between the cities and the unions. It's not something that the state should be mandating. They, they just signed a contract in Columbus. So to come right up after that contract to sign and give a benefit unilaterally, with nothing else changing is-- you know, it flies in the face of contract negotiations. Jacobson's amendment is a compromise. Now, whether everybody's going to accept that if it passes, I don't know. But I think Senator Jacobson's compromise is reasonable. And I believe the cities are willing to sign on to it. You know, maybe the unions are not. But I think we'd need to pass Jacobson's amendment, because there may be 24, 25 people that would vote this bill forward. And I don't think they'd be suggesting it come to a vote if they didn't believe they had the votes. And if that happened, that's going to be a disaster for first-class cities-- a financial disaster. Thank you.

**KELLY:** Thank you, Senator Moser. Senator Jacobson, you're recognized to speak.

**JACOBSON:** Thank you, Mr. President. Well, once again, we need to continue to make sure all the infor-- information's out there on the floor, that everyone's fully aware of what's happening here. I think there's been a lot of discussion so far, making it very clear what



this is: A huge unfunded mandate to first-class cities across the state, at a time when we're telling them that we're not going to give you any other tax relief, that you're on your own on property taxes. I can't even imagine that we're having this discussion, that we're going to-- in, in North Platte alone, it's probably \$250,000 budget hit, if this bill would pass the way it is. Meanwhile, we've got a unpaid volunteer force who's taking the same risks, only getting paid nothing. We've got all of these volunteer forces out there. I agree we need to do more for firefighters. We absolutely need to do more for firefighters. We need to do more for volunteer firefighters throughout the state, whose numbers are falling because they can't afford to do it anymore. They have to take time off their jobs to run to a fire in a moment's notice, at their own expense, in their own vehicle, put their life on the line, for free. Is that fair? Who thinks that's a good deal? And oh, by the way, when they turn 55, they're probably still working. Many of them are farmers. You know what the average age of a farmer is? Right around 65. Average age of a farmer. Many are over that age. They're still working. That's a pretty dangerous job. It's one of the top 10 dangerous jobs in, in the country. They don't have a pension plan. The pension plans are outdated. Certain governmental entities are about the only ones who have pension plans today. They've all converted to defined contribution plans. And oh, by the way, many defined contribution plans are set up where the employer puts up half-- puts up-- matches whatever the employee puts up. In this case, it's 2 to 1. Fires put-- firefighters put up about 6.5%. The cities put up 13%. That's a pretty good deal. And then you take the risk in the market, like everybody else out there that's working. Nobody else has a guarantee, except certain governmental entities. This is a problem that is getting fixed-- that could get fixed with real negotiation. That's what my amendment aims to do-- make some concessions and move this forward. The bill itself is no negotiation. It's a slam down of everything that was asked for was put into this bill. You want to talk about fair? Think about the volunteer firemen. How fair are we being to them? If we want to spend more money, let's spend some money helping them, at least reimburse their costs. But we're not doing that. Same thing with, with, with emergency services. A lot of volunteer emergency services that will go out and actually pay for their training. Now, I think we've gotten to the point where we're actually subsidizing some of the training, but they go take-- do the training on their own time. And then they go out and try to do life-saving measures to people who need it in rural areas.

**KELLY:** One minute.

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**JACOBSON:** Thank you, Mr. President. So AM3229 is a reasonable compromise. If there's more to be compromised, fine. Do that from a collective bargaining standpoint. But LB626 [SIC] is a bad bill, as it stands. It's a 1-sided negotiation. It's an unfunded mandate to first-class cities. 6-- AM3229 fixes the problem for those cities that go-- that are currently unpaid firefighters, that want to go to paid-for firefighters. It will-- they will be discouraged from doing it, because they would have to do Social Security and this. My amendment fixes that. I'm not the bad guy here. I'm just bringing reasonableness to the bill and watching out for taxpayers, property taxpayers in particular. Thank you, Mr. President.

**KELLY:** Thank you, Senator Jacobson. Senator Erdman, you're recognized to speak.

**ERDMAN:** Question.

**KELLY:** The question has been called. Do I see 5 hands? I do. The question is, shall debate cease? All those in favor vote aye; all those opposed vote nay. There's been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**ASSISTANT CLERK:** 22 ayes, 2 nays to go under call.

**KELLY:** The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel, please leave the floor. The house is under-- Senator, Senator Vargas, please check in. Senators Fredrickson, Dungan, and von Gillern, please check in and record your presence. The house is under call. All unexcused members are present. Senator Erdman, the vote was open on the cease debate. Will you accept call-ins? Mr. Clerk, we're now accepting call-ins.

**ASSISTANT CLERK:** Senator von Gillern voting yes. Senator Dungan voting yes. Senator Hardin voting yes. Senator Bostar voting yes. Senator Brewer voting yes. Senator McKinney voting yes. Senator Linehan voting yes. Senator Meyer voting yes. Senator Brandt voting yes. OK.

**KELLY:** Record, Mr. Clerk.

**ASSISTANT CLERK:** 26 ayes, 4 nays to cease debate, Mr. President.

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**KELLY:** Debate does cease. Members, the question is the adopt-- Senator Jacobson, you're recognized close on the amendment.

**JACOBSON:** Thank you, Mr. President, and colleagues. I'll say it 1 more time. If you want to vote for raising property taxes, here's your opportunity. If you want to vote for creating an unfunded mandate to first-class cities across the state, here's your opportunity. This is a problem that can be fixed with AM3229. I would encourage you to vote accordingly. And we can vote for LB686 and make it a-- the best possible alternative to what we have today. Keep that in mind when you vote. Thank you, Mr. President.

**KELLY:** Thank you, Senator Jacobson. Members, the question is the adoption of AM3229. There's been a request-- there's been a request for roll call vote, reverse order. Mr. Clerk.

**ASSISTANT CLERK:** Senator Wishart voting no. Senator Wayne. Senator Walz voting no. Senator von Gillern voting yes. Senator Vargas voting no. Senator Slama. Senator Sanders voting yes. Senator Riepe voting yes. Senator Raybould. Senator Murman voting yes. Senator Moser voting yes. Senator Meyer voting yes. Senator McKinney voting no. Senator McDonnell voting no. Senator Lowe voting yes. Senator Lippincott voting yes. Senator Linehan nor voting. Senator Kauth. Voting yes, Senator? Senator Jacobson voting yes. Senator Ibach voting yes. Senator Hunt voting no. Senator Hughes voting yes. Senator Holdcroft voting yes. Senator Hardin voting yes. Senator Hansen not voting. Senator Halloran voting yes. Senator Fredrickson voting no. Senator Erdman not voting. Senator Dungan voting no. Senator Dover voting yes. Senator Dorn voting yes. Senator DeKay voting yes. Senator DeBoer voting no. Senator Day voting no. Senator Conrad voting no. Senator Clements voting yes. Senator Machaela Cavanaugh voting no. Senator John Cavanaugh voting no. Senator Brewer. Senator Brewer voting yes. Senator Brandt voting yes. Senator Bostelman voting yes. Senator Bostar voting no. Senator Bosn voting yes. Senator Blood voting no. Senator Ballard voting no. Senator Armendariz voting no. Senator Arch voting yes. Senator Albrecht voting yes. Senator Aguilar voting yes. Senator Machaela Cavanaugh changing from no to not voting. Vote is 26 ayes, 16 nays, Mr. President.

**KELLY:** The amendment is adopted. I raise the call. Senator Hardin has some guests in the north balcony, FFA students from Mitchell High School, please stand and be recognized by your Nebraska Legislature. Mr. Clerk, for a motion.

**ASSISTANT CLERK:** Mr. President, I have a priority motion. Senator Machaela Cavanaugh would move to reconsider the vote on AM3229.

**KELLY:** Senator Machaela Cavanaugh, you're recognized to open.

**M. CAVANAUGH:** Thank you, Mr. President. I am reconsidering the vote, because that vote kills this bill. So if we are genuine about supporting our first responders, I think we should all take a beat and reconsider what we just did. I understand the importance of property tax relief. I really, truly do. We should have thought of that more when we were passing the budget with pet projects in it. That comes at the expense of not being able to fund this and so many other important things. I was going to yield my time to Senator McDonnell, but I can see him in conversation. So I will yield my time to Senator Conrad. I will yield my time to Senator Conrad, Mr. President.

**KELLY:** Senator Conrad, you're recognized to speak. And you have 9 minutes, 8 seconds.

**CONRAD:** Very good. Thank you so much, Mr. President. And thank you to my friend, Senator Machaela Cavanaugh, for your leadership and quick work to file the motion to reconsider, as the body kind of works through the ramifications of the last vote, which everybody can see was very, very closely divided and very diverse, in terms of Senators' thinkings in regards to both sides of the issues presented in Senator Jacobson's amendment, and perhaps reflective of some of the general thinking in regards to the, the broader bill. So in deference to Chair MacDonnell, who is in the middle of conversations as a member of the Retirement Committee, I, I just wanted to reaffirm a, a couple of key points. As we take up the reconsideration motion and as Chair McDonnell and my friend Senator Walz, who's the primary introducer of the bill, have an opportunity to confer with each other and other legislative leaders and stakeholders, who are here from our partners in local government and our first responders, as well, to just kind of assess where we go in the, the very, very short-term, this morning. So I just wanted to reaffirm and reiterate that this is an issue before us that the Legislature has created. The appropriate forum to address the issue is in the Legislature, and that is why we are here today. We have talked about how this issue has not been able to be resolved on the local level for far too long. We have talked about how other forums, like the CIR, are not appropriate to take up this particular issue in regards to the-- in regards to the issues before you in Senator Walz's amendment [SIC]. And that is, is why they are in this forum. The, the issues and the problems that are present are a product

of legislative creation. The other entities that could perhaps address them either do not have the jurisdiction or have refused to address them. The other thing that I want to let people know about is a, a few pieces. One, as part of these conversations, the local governments were offered no-cost solutions, in regards to a different type of retirement plan. So when you hear about unfunded mandates and you hear about the dollars and cents, friends, there were offers made that didn't have those same implications, and those no-cost options were rejected. So we, we can't divorce ourselves from that reality. And of course, the local governments have their reasons for that, but we-- they can't have it both ways, either. You can't say, don't pass this because of the dollars and cents. But we also rejected no cost options. So I, I, I know not everybody outside of the Retirement Committee might know that, so I just-- I wanted to put that on the table. The other thing is, as you all know, and as time gets compressed and issues get up on the board, negotiations have continued to happen, including very recently. And what Senator Walz and Senator McDonnell was, was asking the body to do today, which we still have an opportunity to do so. And the votes reflected in the Jacobson amendment show how very, very closely divided this body is on this matter-- was we're asking for a few folks to reconsider their position so that we can move from General File to Select File, and get the party's heads together, try again. See where we are. And if indeed that fails, we'll, we'll have a straight up or down vote on where we are in the Legislature on Select File, and we'll move on with our lives. The other thing that I think we need to be clear about is-- and Senator McDonnell talked about this in his time on the mic. But if people do not support this path forward, that is their right to vote their heart, vote their head. Talk with stakeholders, talk with their constituents. Put aside the concerns that first responders and firefighters have-- that's absolutely your right. But we're also asking and first responders are asking not for platitudes, not for I support first responders but, they're asking for your vote. And even if your vote has to be no or not in favor of their position, that's OK. But working men and women have a right to know where folks stand in this body so that they can figure out next steps in negotiations so that they know what the support looks like or doesn't look like on the board, so that they know when senators come and talk to them is it platitudes or is it actual support with your vote and with your voice? Even if you don't support the policy proposals on the board in the Walz amendment or the Retirement Committee amendment, and you prefer to follow some of the policy proposals in Senator Jacobson's amendment, that can still-- those issues can still be negotiated from

General File to Select File and we should give the parties an opportunity to come back to the table to see if they can find agreement because the issue has languished far too long. And, clearly, there is a great deal of passion on both sides of this, but also a, a very, very close and significant division. So I, I think we owe it to the parties to give them at least one more chance to negotiate from General to Select File. This is an appropriate forum because this policy dilemma is a product of the Legislature's creation. The other entities or forums that could take this up at the local level have not done so at the CIR is not appropriate for adjudication in that forum. And at some point, if the parties can't agree, the decision-maker, the policymakers have to make a tough decision. And if that decision does not go in favor of the interests of working men and women, for whatever reason, working men and women have a right to know that. I want to also remind folks, when it comes to the dollars and cents, not in all instances, but in many instances, the local governments make money off of the EMS runs. They're a revenue generator for the local government. Now, not all those bills are paid, and it doesn't work the same in every single community, but that's a significant factor that hasn't been on the record. So the local governments are happy to make money on the work of the first responders, but then not come to the table for either zero cost options, which is in a reasonable position, or for these options. So we can't take that for granted either. And we can't and we shouldn't take--

**KELLY:** One minute.

**CONRAD:** --for granted-- thank you, Mr. President-- the really hard work that firefighters do, the lifesaving work that they do, the strain on them and their family, both in terms of their physical health, their mental health, their time away from home. That's why you see a higher incidence in cancer, in mental health, and a host of other physical issues for firefighters due to the arduous nature of their work on our behalf to advance our shared public safety goals. Those sort of negative impacts on health and life hit different for first responders than they do for other local-- other governmental employees who have critically important jobs and are committed to public service as well. But it's not an apples to apples, and it doesn't take an actuarial genius or scientist to know that, we all know that in--

**KELLY:** That's your time.

**CONRAD:** --our hearts. Thank you, Mr. President.

**KELLY:** Thank you, Senator Conrad. Senator Vargas, you're recognized to speak.

**VARGAS:** Thank you. I rise in support of the reconsideration motion. I rise in support of the underlying bill. I voted in opposition to Senator Jacobson's bill. And I think to Senator Conrad's words, there was division on whether or not people felt both that they support the bill, they support the amendment, and we are making sure we're giving some time to Senator McDonnell and Senator Jacobson and others to see if there's a pathway forward. And I think there should be a pathway forward, because as we're looking at this legislation-- I think sometimes we pass legislation and we, we look at the problem as-- well, the problem hasn't been able to be solved, and now it's within our locus of control to do something about it. In this instance-- and I know this is shared before, agreement hasn't been able to be made possible with the parties. It's not something that is new. It's not something that's just a year. It's not something that's just a few years. This is a long-standing set of negotiations, and it's our responsibility to step up and to do something when they can't find consensus. I mean, we do this on many different issues. We do this on many issues when it comes to not just retirement benefits, but we also do it on issues when we're talking about investments. I see this more as a moral imperative to standing up for our first responders and firefighters and saying that we support working class and middle-class families. This was not something done both lightly in committee. Chairman McDonnell worked on negotiations. We supported those negotiations. And not-- no, not everybody always agrees with what is happening, but that is the product that came out, wasn't even the initial product. And what we have in front of us and what was made very, very clear is firefighters were in opposition to Senator Jacobson's amendment. And I was surprised, there were some people that voted for that amendment that said they were in support of firefighters in that negotiation. Well, here's our opportunity to change course. If, if you are looking at that vote and saying, well, I was trying to support it because it seemed like it was reasonable, but you know that the firefighters were against it, here is your opportunity to say, well, actually, you know what, I reconsider it. I want to support the negotiations and the talks that they're having right now and to find a pathway forward. I want to support that reconsideration motion. I hope you do and other people have already told many of us working on this bill they support that and they're willing to take the time to do that. I'm asking you to think very thoughtfully about that. With the-- with the amount of remaining time



we have, especially for Senator McDonnell and others that have been working on this issue for a couple of years in our Retirement Committee, this isn't a-- just-- you know, help us just because. It's helped us because there is room to negotiate and we need the time to do that. And I should also say we were only given 3 hours for this bill. I, I, I mean, that is a concern that I have that we weren't even given 4 hours for this bill, there's 4 hours being afforded to other legislation that's coming up later. But that means we only have 3 hours to debate, work through the amendment on the floor here for a bill that is helping to not only stand by our firefighters and first responders in first class cities. That's all we have. We've actually given less time to be able to solve this issue. So I'm asking you to give us more time, that more time is coming from the reconsideration vote. It's not whether or not you are for or against the underlying bill, it's whether or not you're for making sure that we can move forward in some way, shape, or form right now on the legislation. And, and there is a chart--

**KELLY:** One minute.

**VARGAS:** --it shows Senator, Senator Jacobson's, you know, side by side on his amendment and the amendment that Senator McDonnell and our committee is proposing from Retirement. We're asking you because right now this has been put into our hands. I know some people got on the mic and said we need to leave it up to local control and the local municipalities and it's, it's their responsibility. They haven't been able to find a pathway forward. The CIR is not the place right now, this is also not where it's going to be. So it's our responsibility, in my opinion, that we, we can address some of the division on this and move forward on it. That's what we're asking of you. We're asking you to support the reconsideration motion, especially some people that said they were in support of this, but still voted for that amendment so that we can move a pathway forward and figure out what's the best way for us to stand by working men and women that are risking their lives, making sure that we are doing everything we can for their retirement. That's what we're asking of you.

**KELLY:** That's your time, Senator Vargas. Senator Conrad, you're recognized to speak.

**CONRAD:** Question.

**KELLY:** The question has been called. Do I see five hands? I do. Members, the question is, shall debate cease? All those in favor vote

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aye; all those opposed vote nay. There's been a request to place the house under call. The question is, shall the house be placed under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**ASSISTANT CLERK:** 21 ayes, 5 nays to go under call, Mr. President.

**KELLY:** The house is under call. Senators, please record your presence. All senators outside the Chamber, please return and record your presence. All unauthorized personnel, please leave the floor. The house is under call. Senators Fredrickson, DeBoer, Bostelman, Ibach, Dungan, and John Cavanaugh, please return to the Chamber and record your presence. The house is under call. Senator Ibach, please return to the Chamber and record your presence. The house is under call. All unexcused members are present. Senator Machaela Cavanaugh, you're recognized to close.

**M. CAVANAUGH:** Oh, we have to vote on call the question still. Senator Conrad called the question and I-- you need to ask her if she'll take call-ins.

**KELLY:** Correct. Thank you. Correct. Senator Conrad, the vote is open, would you accept call-ins?

**CONRAD:** Yes.

**KELLY:** Thank you. Yes. We're now accepting call-ins, Mr. Clerk.

**ASSISTANT CLERK:** Senator Dungan voting yes. Senator Bostar voting yes.

**KELLY:** Record, Mr. Clerk.

**ASSISTANT CLERK:** 25 ayes, 4 nays to seize debate, Mr. President.

**KELLY:** Debate does cease. Senator Machaela Cavanaugh, you're recognized to close.

**M. CAVANAUGH:** Thank you, Mr. President. Colleagues, this is an opportunity to save this bill and move it forward to fight for another day. And I would like to yield the remainder of my time to Senator McDonnell.

**KELLY:** Thank you, Senator Cavanaugh. Members, the question is the motion to re-- thank you. Senator McDonnell, you have 4 minutes, 35 seconds.

**McDONNELL:** Thank you, Mr. President. Thank you, Senator Cavanaugh, for the time. What I'm asking is for us to, of course, reconsider, vote no on Senator Jacobson's amendment. But I want to tell you, in the last 20 minutes, Senator Jacobson has gone out of his way to try to come up with a compromise. Now, here we are. We know we have 5 days left. We know the Speaker is stopping debate on this at, at noon. And he told us that, he told me that yesterday. But also, I really do think we could get to a compromise. And, again, not excluding Senator Hughes or Senator Clements that have brought up ideas. But I know Senator Jacobson and I can't guarantee it, but I'm 99% sure we can-- we can get there. So what I'm asking is yes on reconsider, a no on Senator Jacobson's amendment, yes on Retirement, we move the bill to Select. Now, not living in a fantasy world here, and also knowing what the Speaker told me is that we could come up with a compromise and everyone could be happy, and we still might not have time to get back to this on, on Select. That's the reality of where we are and I understand it, but I sure would like an opportunity to try. And if we don't get there, we don't get back there, if we don't get there within the compromise, of course, the Speaker is not going to schedule it on Select. But if we do, this solves a 40-year problem, a problem-- a promise that was made in agreement, and I believe it was made in good faith. I believe everyone that worked on this that was sitting in these, these chairs really believed that they could do this and, and would work for the first class cities. It hasn't. Going back to the idea of should they take care of it at the collective bargaining table? I, I don't I don't disagree with that process. I believe in it. The problem with that is if they continually can't agree, the CIR will not make that agreement for them, the Commission of Industrial Relations. We won't do it. They'll assign a value to your benefit package and potentially take it off your wages or, or add it to your wages, but they won't solve this problem. Unfortunately, the problem-- again, that was not the intent to create a problem, but it was created 40 years ago and we were part of that as the Legislature. So now we have to be part of, of the solution. That's what I'm asking for is a chance so we reconsider. We would not vote for Senator Jacobson's amendment, even though I think there's things in there we could-- we could work on together and get done before we got to Select, a vote for the amendment from the Retirement Committee, and then, potentially, if we have time the Speaker-- and have time and a, a compromise, then the Speaker would find time for us to talk it about on Select. Potentially, we won't have enough time. So I understand that, but that's what-- that's what I'm asking. And I, I think the work that's been put in on this for the, the last 2 years by, by a

number of people on both sides of the-- of the-- of the-- of the bargaining table, both sides of the issue has, has, has been done, I believe, in, in, in good faith. I want to try to continue that and come up with a, a compromise that, that everyone can, can agree upon. So please vote for the reconsider--

**KELLY:** One minute.

**McDONNELL:** --and vote against Senator Jacobson's amendment and vote for the Retirement amendment and Senator Walz's LB686. Thank you, Mr. President.

**KELLY:** Thank you, Senator McDonnell. Members, the question is the motion to reconsider. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**ASSISTANT CLERK:** 29 ayes, 11 nays on the motion to reconsider, Mr. President.

**KELLY:** The motion is adopted. Mr. Clerk.

**ASSISTANT CLERK:** Mr. President, at this point, we are back to consideration of the adoption of AM3229.

**KELLY:** I raise the call. Senator Jacobson, you're recognized to open on the amendment.

**JACOBSON:** Thank you, Mr. President. There's not a lot more that needs to be said. I-- in the interest of time, I'm going to be very brief. I think that I've stated all the facts earlier. I think this is a collective bargaining agreement that needs to be done between the cities and their local firefighters union. I believe that at this point, we reached what we're going to reach in terms of a compromise amendment in AM2920-- in AM3229. And if we can pass that, we can move on. But, otherwise, I cannot vote for LB686 in its current form. So with that, I'll yield the remainder of my time. And if people want to get out of the queue, go ahead. Let's get the vote moving forward and move on to other items. Thank you, Mr. President.

**KELLY:** Thank you, Senator Jacobson. Senator Dover, you're recognized to speak.

**DOVER:** I yield my time to their Chair.

**KELLY:** Thank you, Senator Dover. Senator Moser, you're recognized to speak.

**MOSER:** Thank you, Mr. President. Again, the underlying bill is meddling in affairs between the unions and the first class cities. And the first class cities and the unions should be able to negotiate wages, benefits, on all those things between themselves without the Legislature telling them what minimum benefits are, especially when this Legislature is not going to appropriate money to pay what those retirement funds are going to amount to. To this point, some of the unions were only paying 6% or 6.5% and actuarially that's not enough, even with the cities paying twice that at 13 is not enough to retire earlier than 65 and not at a high enough benefit to fully retire. So those are things that the unions and the cities should negotiate. Now, if we're going to meddle in that anyway, then I think Senator Jacobson's amendment is a reasonable compromise. At least the cities will accept it. It appears that, you know, maybe, the supporters of LB686 are not acceptable to Jacobson's amendment, but the first class cities, I think, are in agreement with Jacobson's amendment. So I'd encourage you to stick with Senator Jacobson on his amendment. And, and then we can go from there. This only moves at one stage, even if we approve his amendment and it moves forward, there are still two more rounds of, of approval that it needs. So there's no reason to vote no on Jacobson's amendment when at least one of the parties to the disagreement is, is in support of it. And, again, this is an unfunded mandate. The cities operate on pretty tight budgets and this is going to increase property taxes. Thank you, Mr. President.

**von GILLERN:** Thank you, Senator Moser. Senator Clements, you're recognized.

**CLEMENTS:** Thank you, Mr. President. Again, stand in favor of AM3229. I believe that's a reasonable compromise. And the-- there was a handout from the League of Municipalities talking about the differences. One of the big differences that AM2984 has that's not-- that's not been an agreement is the definition of salary. Now, I've, I've not talked about overtime, call back, and call-in pay. The cities have agreed to pay for that. But there's other benefits reported on their federal income tax withholding statement is how the wording is. In other words, the employees' retirement contribution would have to be also part of the salary which their contribution is going to be going to 12.7%. So that would increase-- the city's going to have to pay the contribution on another 12.7% of pay. It's going to be a major increase in cost to the city. So I, I think AM3229 would, would give

the overtime pay, callback, and call-in pay. But I think adding the employee's contribution to the retirement plan as well in calling back pay that is subject to the city's shared cost is excessive. There are a couple of things that are the same in the two amendments, the spouse benefit, a spouse receiving a death in-the-line-of-duty benefit is going to be able to receive the remaining amount in the retired-- in the firefighter's retirement account. And then there's also a vote to elect into Social Security. I think a lot of these really need to be electing Social Security. I was surprised at how many are not covered by Social Security benefits. And AM3229 agrees with the firefighters by allowing firefighters not already required to pay into Social Security to vote to elect into Social Security. I think that would help a lot of them and the Jacobson amendment does allow for that. And then the pooling of the accounts, putting all their different cities accounts together is not defined who, who pays the administration costs and if somebody changes what they're doing, how do they split that apart? So I-- and then, of course, the health insurance after retirement is another item that is not included in the Jacobson amendment because it's paying insurance for people who are no longer working where you just replace them, you are paying insurance for a, a working employee and additionally quite an additional cost. So they're-- those are the items that the city has been-- has worked on and agreed to a number of items, the extra items on far-- are far and above what cities' budgets are able to stand. So I stand in favor of AM3229 and ask your vote for that. But I'm not able to support AM2984 if AM3229 fails. Thank you, Mr. President.

**von GILLERN:** Thank you, Senator Clements. Seeing no one else in the queue, the question before the body is the-- oh, excuse me, Senator Jacobson, to close on the amendment.

**JACOBSON:** Thank you, Mr. President. I'll be very brief. First, I just want to say I appreciate Senator Walz for bringing the bill. I, I, I do care about firefighters. I think just like with the State Patrol, I think we've got to be mindful of what's the right number and who's the right people to negotiate. I did-- was at a signing on LB1087 last Friday in Fremont and Senator Walz was there and we were talking to people and I made the comment that I sit in front of Senator Walz, sometimes that's not a really good thing. And today might be one of those days, but I think we're going to be fine. Senator McDonnell, I really appreciate him. I'm going to miss him leaving the body. I will say the only thing I won't miss about Senator McDonnell not being here is early on when I got into the Legislature, the Governor kept mistaking me for Senator McDonnell. Now, I'm sure one of us should be

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insulted. I'm just not sure who. So with that said, I would encourage your green vote on AM3229. This is the best compromise we're going to get if we want to move the bill forward, it has to move forward with AM3229. Thank you, Mr. President.

**von GILLERN:** Thank you, Senator Jacobson. The question before the body is the adoption of AM3229. All those in favor vote aye; all opposed vote nay. There's been a request to place the house under recall. The question is, shall the house go under call? All those in favor vote aye; all opposed vote nay. Record, Mr. Clerk.

**ASSISTANT CLERK:** 11 ayes, 1 nay to go under call.

**von GILLERN:** The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel, please leave the floor. The house is under call. All unexcused members are now present. Senator Jacobson, a vote was open. Will you accept call-ins? We're now accepting call-ins.

**ASSISTANT CLERK:** Senator Bostar voting no. Senator Armendariz voting yes.

**von GILLERN:** Record, Mr. Clerk.

**ASSISTANT CLERK:** 24 ayes, 17 nays on the adoption of the amendment.

**von GILLERN:** The amendment is not adopted. Returning to debate on the committee amendment. I raise a call. Seeing no one in the queue, Senator McDonnell, you're recognized to close.

**McDONNELL:** Thank you, Mr. President. Thank you, colleagues. The work that Senator Jacobson did, the work that Senator Hughes did, the work-- the work that Senator Clements and others, we're going to continue that work. Now, there's two things that have to happen here. We have to have-- if, if you decide-- and I'm asking you to move the amendment-- Retirement amendment through and LB686 onto Select. The only way that you will see this bill again is there's gonna have to be two things happen. We have to come up with a compromise to bring to the Speaker, then the Speaker has to find the time. Now, again, I believe everyone here and on the other side of the glass is going to sincerely try to find a compromise. We're on the shot clock. Time is running out. At that point, we will go to the Speaker and say, we have a compromise. If we don't, we, of course, never go to the Speaker. But once we come, hopefully, to that point where we have a compromise,



we'll ask the Speaker to please schedule it. The Speaker might say, I'm sorry, we're out of time. That's just the reality of where we are. But at least this gives us a chance. And someone just mentioned it's almost like the comedy Dumb and Dumber, at least you're telling me we got a chance. But I think we've got a good chance. I really-- I really do. And not so much because of the, the time constraint, but because the people that are involved. I really do believe the people that on this floor will work together and the people on the other side of the, the glass and, and come up with a compromise. At that point, we can bring it to the Speaker and, hopefully, there's going to be time for us to, to discuss this on Select. So I'm asking for, please, your green vote on the Retirement amendment and Senator Walz's bill. Thank you.

**von GILLERN:** Body, the question is the adoption of AM2984. All those in favor vote aye; all opposed vote nay. There's been a request for a call of the house. The question is, shall the house go under call? All those in favor-- all those in favor vote aye; all opposed vote nay. Mr. Clerk, record.

**ASSISTANT CLERK:** 23 ayes, 4 nays to go under call.

**von GILLERN:** The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel, please leave the floor. The house is under call. Senators Dorn, Jacobson, McKinney, Vargas, Clements, and Hughes, please check in. The house is under call. All unexcused members are checked in, the vote was open. Senator McDonnell, will you accept call-ins? Roll call vote, reverse order, Mr. Clerk.

**ASSISTANT CLERK:** Senator Wishart voting yes. Senator Wayne. Senator Walz voting yes. Senator von Gillern voting yes. Senator Vargas voting yes. Senator Slama. Senator Sanders. Senator Riepe voting no. Senator Raybould. Senator Murman voting no. Senator Moser voting no. Senator Meyer voting no. Senator McKinney voting yes. Senator McDonnell voting yes. Senator Lowe voting no. Senator Lippincott. Senator Linehan not voting. Senator Kauth voting no. Senator Jacobson voting no. Senator Ibach voting no. Senator Hunt voting yes. Senator Hughes not voting. Senator Holdcroft voting no. Senator Hardin voting yes. Senator Hansen voting no. Sen-- excuse me, Senator Hansen not voting. Senator Halloran voting yes. Senator Fredrickson voting yes. Senator Erdman voting yes. Senator Dungan voting yes. Senator Dover voting no. Senator Dorn voting no. Senator DeKay not voting. Senator DeBoer

voting yes. Senator Day voting yes. Senator Conrad voting yes. Senator Clements voting no. Senator Machaela Cavanaugh not voting. Senator John Cavanaugh voting yes. Senator Brewer voting yes. Senator Brandt voting yes. Senator Bostelman voting no. Senator Bostar voting yes. Senator Bosn voting yes. Senator Blood voting yes. Senator Ballard voting yes. Senator Armendariz voting no. Senator Arch not voting. Senator Albrecht voting no. Senator Aguilar not voting. Vote is 22 ayes, 15 nays, Mr. President.

**von GILLERN:** Amendment does not advance. Mr. Clerk.

**CLERK:** OK, I'll take it.

**ASSISTANT CLERK:** OK.

**CLERK:** Mr. President,--

**von GILLERN:** I raise the call.

**CLERK:** --Senator Machaela Cavanaugh would move to reconsider the vote just taken on AM2984 with MO1364.

**von GILLERN:** Senator Cavanaugh, you're welcome to open on your motion.

**M. CAVANAUGH:** Thank you, Mr. President. This is exhausting. OK. Would Senator McDonnell like my time on the opening? Senator McDonnell, would you like my time on the opening? I'll yield my time to Senator McDonnell.

**von GILLERN:** Senator McDonnell, you're yielded 9 minutes, 45 seconds.

**McDONNELL:** Thank you, Mr. President. Thank you, Senator Cavanaugh. So it-- it's pretty clear that negotiations are deadlocked still. Senator Jacobson's amendment did not get the 25. The Retirement Committee's amendment did not get to 25. So here's what we could consider doing is that we move LB686, Senator Walz's bill, without any amendments. Now, at that point, we're still back to the discussion of can we come up with a compromise, which I think we can. If we don't, of course, we never see LB686 again this year. If we do come up with a compromise, which I think we can get there, then we ask the Speaker to find us time which, potentially, the Speaker at that point says I, I don't have time left in this session for LB686. But at least if we move the bill to Select without now the amendment from Retirement, we know we're not going to have the amendment-- Senator Jacobson's amendment, but we have all those ideas and the discussions been had on the floor,

and we will work on it today and tomorrow and, hopefully, have a compromise and bring it to the, the Speaker for scheduling. And, again, the Speaker has made it very clear that, yes, please work on a compromise. But at the same time, even if you get there, he doesn't know if he's going to have time left in this session to schedule it. So that's where we are. There's no guarantees. But if we did move LB686 without any amendments, it still gives us a chance to come up with that, that compromise amended on Select and, and have that discussion at that time if there's time left in the, the session. Thank you, Mr. President.

**von GILLERN:** Thank you, Senator McDonnell. Senator Raybould has guests in the north balcony, 30 ninth-grade students from Lincoln East High School. Please stand and be greeted by your Nebraska Legislature. Turning to the queue, Senator Jacobson, you're recognized.

**JACOBSON:** Thank you, Mr. President. Well, I'm back again. This bill without my amendment is a bad bill. If you, again, as I said before, if you want to vote for unfunded mandates, you want to vote for class one cities to have to take on significant additional debt or, or kill their budgets or cause them to raise property taxes or just lay off part of their paid force, rely on more volunteer force or fewer fire trucks, lower maintenance. This money doesn't follow the sky. There's no A bill on this. We're right, there is no-- there is no A bill. There's no appropriation, there's no fiscal note because this is an unfunded mandate. Unfunded mandate in an area that the Legislature should not be involved. We can talk all day long about protecting the taxpayer. We're not protecting the taxpayer with this amendment and this bill. So I want to make it clear, you have to go back to your constituents and explain to them why you are raising their property taxes if you vote for this bill. It can't be any simpler than that. This negotiation needs to occur between the cities and their firefighter union. End of story. Vote no on AM2984. Vote no on LB686. Thank you, Mr. President.

**von GILLERN:** Thank you, Senator Jacobson. Senator Walz, you're recognized.

**WALZ:** Thank you, Mr. President. I want to thank the Speaker, first of all. I don't know where he is, but I do want to say thank you to the Speaker for allowing us to get this on the floor and debate it. I want to thank my colleagues for the professional courtesy and the extended grace that they are giving our first responders to have one more chance to negotiate. I appreciate that work. I don't have a lot left

to say. But I do want to say this, to the people outside the glass, it is my sincere hope that negotiations taking place are thoughtful and intentional because that has not happened. That we are doing our very, very best. That we're giving it our best effort to provide benefits to our first responders, not just get by and go on another 30 years, but that we're doing our very best. Fulfilling our duty to find solutions with integrity, with commitment, and honesty-- and honesty. Putting forth your best effort, doing the very best that you can. Listen, colleagues, when our firefighters respond to a 911 call for help, they don't respond and do a substandard job. Instead, they exert every bit of energy to save a life. And it doesn't matter whose life they're saving, there's no discrimination in that. They make every effort to save a life. Again, I sincerely hope that during this time of negotiation we make every effort to do the very best that we can for our firefighters. Thank you, Mr. President.

**von GILLERN:** Thank you, Senator Walz. Senator von Gillern, that's me, has guests in the south balcony from Aldrich Elementary, approximately 76 fourth graders. Please stand and be welcomed by your Nebraska Legislature. Turning back to the queue, Senator Dungan, you're recognized.

**DUNGAN:** Thank you, Mr. President. Good morning, colleagues. I rise today just briefly to say I really appreciate the conversation we've been having. There's been a lot of running around and, and people negotiating on this and I, I really want to thank all of the stakeholders involved because I think everyone's doing a really good job. I, I just want to say I, I do stand with our firefighters. We need to make sure we do fulfill that promise that we made to them. It sounds like there's maybe some agreements that have been worked out so I would yield the remainder of my time to Senator McDonnell.

**von GILLERN:** Senator McDonnell, you're yielded 4 minutes and 30 seconds.

**McDONNELL:** Thank you, Mr. President. So here, here we are-- thank you, Senator Dungan-- what we're going to ask to do is for Senator Cavanaugh to pull her reconsider motion. Of course, we already know the feeling right now on the Retirement amendment. Just move LB686 to Select. Now, two things have to happen. We have to find a compromise to bring to the Speaker. If we have that compromise, then the Speaker has to find the time. So we might get to the compromise. We might not. But if we do, the Speaker might say we don't have time, but at least it gives us a chance to continue this discussion. And as I mentioned

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earlier, working with Senator Jacobson and others, I, I think we can get there. So at least we would have a chance. So that's all I'm asking is to move LB686 to Select. We'll work on a compromise. If we don't have one that we can all agree on, then we're done. If we do, then we'll go to the Speaker and say we have a compromise and please find the time. And he might say I can't find the time or he might schedule it. So that's-- there's no guarantees here, but at least it's a chance to continue the work on LB686. Thank you.

**von GILLERN:** Thank you, Senator McDonnell. Seeing no one else in the queue, Senator Machaela Cavanaugh, you're recognized to close on your motion.

**M. CAVANAUGH:** Thank you, Mr. President. I'd like to pull my-- withdraw my motion.

**von GILLERN:** So ordered without objection. Mr. Clerk.

**ASSISTANT CLERK:** Senator McDonnell, you had previously filed AM2285. I, I understand you wish to withdraw that.

**von GILLERN:** So ordered. Mr. Clerk.

**ASSISTANT CLERK:** Senator Clements, I have an amendment from you, FA353.

**von GILLERN:** Senator Clements, you're recognized to open on your floor amendment.

**CLEMENTS:** I withdraw that amendment.

**von GILLERN:** So ordered. Mr. Clerk.

**ASSISTANT CLERK:** Mr. President, Senator Clements would offer FA355.

**von GILLERN:** Senator Clements, to open on your floor amendment.

**CLEMENTS:** Yeah, that was also one that-- especially this paying retirement on the-- on the firefighters on the employees retirement contribution, which was one-- it's like 12.7%, another 12.7% was-- which I think would be in LB686 if this amendment doesn't pass. But I just want to say that I am not going to be able to vote for LB686, although I will-- I'm going to allow a vote as Senator McDonnell was asking for and Senator Jacobson. So I withdraw FA355.

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**von GILLERN:** So ordered. Mr. Clerk.

**ASSISTANT CLERK:** Mr. President-- Mr. President, I have nothing further on the bill.

**von GILLERN:** Seeing no one else in the queue, Senator Jacobson, you're recognized.

**JACOBSON:** Thank you, Mr. President. I'll be very brief, I'd like to go ahead and get the vote done here before noon. Senator McDonnell and I have worked together on some of these issues and trying to figure out if there is a compromise. I, I think what he's outlined, what the Speaker has outlined is correct. I still remain opposed to the amendment, I opposed-- remain opposed to the bill. I'd rather kill the bill now and move on. But I, I think what he's outlined is correct in terms of where we're at. I don't anticipate a compromise because the issues that have been talked about at this point, I think, are somewhat immovable forces. So it's going to ultimately come down, is this Legislature going to force this mandate on communities because that's where we're likely going to end up. So I just want to acknowledge that I've appreciated the cut back and forth with Senator McDonnell. I think with the days remaining, it doesn't make sense to move forward. But I'm going to vote no on the amendment and the bill and then we'll see where we go from there. So thank you, Mr. President.

**von GILLERN:** Thank you, Senator Jacobson. Seeing no one else in the queue, Senator Walz, you're recognized to close.

**WALZ:** Thank you, Mr. President. Just want to say, again, thank you to everybody who's been involved in this conversation and giving us a chance to allow for more negotiations. It's very much appreciated. Really, colleagues, a green vote today is a vote for firefighters, a red vote is a vote against our firefighters. I am asking you to please vote green. Thank you, Mr. President.

**von GILLERN:** You've heard the close, the question for the body is the advancement of LB686. All those in favor vote aye; all opposed vote nay. There's been a request to place the house under call. The question is, shall the house go under call? All those in favor of vote aye; all opposed vote nay. Mr. Clerk, please record.

**CLERK:** 30 ayes, 5 nays to place the house under call, Mr. President.

**von GILLERN:** The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel, please leave the floor. The house is under call. Senators Jacobson, Hughes, Bosn, and Hansen, please check in. All unexcused members are now present. Roll call vote in reverse order has been requested, Mr. Clerk.

**CLERK:** Senator Wishart voting yes. Senator Wayne. Senator Walz voting yes. Senator von Gillern voting no. Senator Vargas voting yes. Senator Slama. Senator Sanders. Senator Riepe voting no. Senator Raybould. Senator Murman voting no. Senator Moser voting no. Senator Meyer voting no. Senator McKinney voting yes. Senator McDonnell voting yes. Senator Lowe not voting. Senator Lippincott. Senator Linehan not voting. Senator Kauth voting no. Senator Jacobson voting no. Senator Ibach voting no. Senator Hunt voting yes. Senator Hughes voting yes. Senator Holdcroft voting no. Senator Hardin voting yes. Senator Hansen not voting. Senator Halloran voting yes. Senator Fredrickson voting yes. Senator Erdman voting yes. Senator Dungan voting yes. Senator Dover not voting. Senator Dorn not voting. Senator DeKay not voting. Senator DeBoer voting yes. Senator Day voting yes. Senator Conrad voting yes. Senator Clements voting no. Senator Machaela Cavanaugh voting yes. Senator John Cavanaugh voting yes. Senator Brewer voting yes. Senator Brandt voting yes. Senator Bostelman voting no. Senator Bostar voting yes. Senator Bosn voting yes. Senator Blood voting yes. Senator Ballard voting yes. Senator Armendariz voting no. Senator Arch voting no. Senator Albrecht voting no. Senator Aguilar voting yes. Senator Lowe voting yes. Vote is 25 ayes, 14 nays, Mr. President, on advancement of the bill.

**von GILLERN:** The bill does advance. Mr. Clerk. Raise the call.

**CLERK:** Mr. President, notice that the Education Committee will be having an Executive Session today in Room 2102 at noon; Education Committee, Exec Session, 2102 at noon. Additionally, the Transportation and Telecommunications Committee will hold an Executive Session of the committee in Room 1113 following the committee's public hearing at 12:30. Additional items: your Committee on Enrollment Review reports LB1073, LB1073A, LB1085, LB903, LB1326, LB1214, LB1070, LB910, LB1029, LB196, LB196A to Select File, some having E&R amendments. Additionally, amendment to be printed from Senator McKinney to LB1344. Finally, Mr. President, a priority motion, Senator DeBoer would move to recess the body until 1:30 p.m.



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**VON GILLERN:** Question before the body is, shall we recess till 1:30 p.m.? All in favor say aye. All opposed say-- vote-- all opposed vote nay. We are recessed.

[RECESS]

**KELLY:** Good afternoon, ladies and gentlemen, welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. Senators, please record your presence. Roll call. Mr. Clerk, please record.

**CLERK:** There's a quorum present, Mr. President.

**KELLY:** Do you have any items for the record?

**CLERK:** I do, Mr. President. Your Committee on Enrollment and Review reports LB870 and LB870A, as well as LB1331 and LB1331A to-- excuse me, as well as LB233, LB233A, all to Select File, some having E&R amendments. Notice that the Government Committee will hold an Executive Session today at 2:00 under the south balcony. Government, 2:00 under the south balcony, Exec Session. That's all I have at this time, Mr. President.

**KELLY:** Thank you, Mr. Clerk. Please proceed to the first item on the agenda.

**CLERK:** Mr. President, pursuant to the Speaker's agenda, Final Reading, Legislative Bill 850A, from Senator Lowe. Excuse me, LB685A from Senator Lowe. Senator Lowe would move to return LB685A to Select File for a specific amendment.

**KELLY:** Senator Lowe, you're recognized to open on your motion.

**LOWE:** Thank you, Lieutenant Governor. I've got good news today. LB685A, my amendment, AM3277, I'm saving the state \$1 million. We've had lots of bills come to the floor this year. And I got together with the Department of Revenue. And I said, hey, can-- any way we can reduce the fiscal note on LB685 by \$1 million? And they came through. So the new fiscal note on AM3277 is for \$1,596,870. It saves the state \$1 million. Thank you, Mr. President.

**KELLY:** Thank you, Senator Lowe. Senator Machaela Cavanaugh, you're recognized to speak.

**M. CAVANAUGH:** Ooh. Whoa. Electric. It's electric. Thank you, Mr. President. Good afternoon, colleagues. I hope you had a nice lunch break. I know some of you were in the Education Committee Executive Session, and I know what the outcome of that Executive Session was. And I-- can I have a gavel? Could I have a heavier gavel? Thank you, Mr. President. So, as-- Senator Jacobson, would you mind taking your conversation-- Senator Jacobson, would you mind taking your conversation down a few notches, please? No? Thank you. OK. How much time do I have?

**KELLY:** 4 minutes.

**M. CAVANAUGH:** Thank you. So the Education Committee voted out LB575. LB575 is the Sports and Spaces bill. And it is my understanding that it will be scheduled quickly because it's on General File. And we only have today-- or today, tomorrow and Tuesday to move General File bills. I wanted this session to go better than last year. I refuse, categorically across the board, no question about it, I refuse to let this happen without a cost. And that cost is time. Period. So, get ready to call the question constantly. Get ready to hear my recipes, my movie synopsis, and on and on. Until LB575 is dead, that's what we're going to be doing. It is unfortunate that there has been a juggernaut of wildly erratic legislation introduced this year, and that it has come to the floor of the Legislature, because our committees are broken. Because you gamed the system, Nebraskans are suffering. You continue to let down and disappoint Nebraska and its children in the name of saving its children, and its parents in the name of knowing better for parents when it comes to their children, except for when parents know best. If you agree with parents, then parents know best. If you disagree with parents, then you know best. This body loves to be a nanny state. You love big government. You love government overreach. You love being at my kitchen table and at everybody's kitchen table. You want to tell me what my kids should or shouldn't read, should or shouldn't watch, should or should learn. I may not be a perfect parent. I don't think one exists.

**KELLY:** One minute.

**M. CAVANAUGH:** But I am a good parent. And as any good parent, I am going to stand up and I am going to fight for our children. And I don't care how many times Senator Kauth gets on the mic and says that she's fighting for our children. Everything that she has said outside of this Chamber about these bills is vitriol. It is steeped in just disdain. She doesn't want to help our kids. She wants to harm

transgender kids. She wants to eliminate transgendered people from this state, whether it's driving them out of the state or making it impossible for them to live their authentic selves. LB574 is a travesty, and the implementation of it has been a travesty.

**KELLY:** That's your time, and you're next in the queue.

**M. CAVANAUGH:** Thank you, Mr. President. LB574, as passed by this body and implemented by the Chief Medical Officer, who took into consideration nothing, nothing that the medical providers and the parents and the kids themselves said about his rules and regulations. LB574 already makes it impossible for transgendered children to exist in this state with access to appropriate healthcare. And I'm not talking about cutting off genitals. I'm talking about therapy and hormone-- puberty blockers, and hormones. I'm talking about the things that you all acted like you were OK with, we have eradicated from their healthcare-- from their healthcare. We have taken away parental rights with LB574. And now, you want to ostracize these children even more. And I am going to ask over and over again, until I get a direct, actual answer. Where is this a problem in Nebraska? Where? I don't want to hear about Riley Gaines. Where is this a problem in Nebraska? Where is it a problem in Nebraska, to the point that we can't trust our schools and our parents and our communities to handle it? You all were fighting for local control this morning, and you want to take it away from schools this afternoon. Show me where this is a problem in Nebraska. Not somewhere else, Nebraska. So, we had a lot to get through. We got a lot to get through today, tomorrow, next week. And all we're going to hear is about how we get-- have a lot to get through. We passed the budget, such as it was. We don't have to get through anything. And we are choosing our priorities by scheduling LB575, that just got out of committee today, above everything else, above all of your priorities. And every person that voted for that bill out of committee knew what they were doing to this body. So come up and tell me you're not going to vote for it, and we can move on. But none of you are going to do that. None of you are going to stand up to the freshman senator. You're all going to keep your heads down, you're going to complain about me talking, and you're going to do nothing. You have the control to end this, but you won't. It doesn't have to be scheduled. It doesn't. At this point in the session, it does not have to be scheduled. We still have the Governor's taxes to talk about. That could take up an enormous amount of time. It does not have to be scheduled, but it will. Bet your bottom dollar, it will be scheduled.

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**KELLY:** One minute.

**M. CAVANAUGH:** And then it will move, because 33 of you would rather take away parental rights than stand up to a colleague. You're fine with allowing sexual harassment in the workplace with not a word. You're fine with people introducing bills that cause our record to be a litany of pornography that you propose you want to eliminate, while also bringing it into the public where children exist. This is going to continue to put a blight on this Legislature.

**KELLY:** That's your time, Senator. Thank you, Senator Cavanaugh. Senator Jacobson announces that his wife, Julie, is here and under the north balcony. Please stand and be recognized by your Nebraska Legislature. Senator Machaela Cavanaugh, you're recognized to speak. And this will be your third time on the motion.

**M. CAVANAUGH:** Thank you, Mr. President. I want to have a better future for Nebraska's children. And I want to be a partner with my colleagues in delivering a better future for Nebraska's children. And I am disappointed that instead of focusing on things that kids really need, like housing and food, a good education, you want to focus on taking away parental rights. It is heartbreaking. Thank you, Mr. President.

**KELLY:** Thank you, Senator Cavanaugh. Senator Vargas, you're recognized to speak.

**VARGAS:** Thank you. I rise in support of the underlying bill. I rise to support the amendment, and I rise in opposition to the return to Select File. Thank Senator Lowe for working on this bill. I'm going to talk primarily about the bill. And I feel like Senator Dorn, if he was here, would say the following, which I'm, I'm sort of embodying the Appropriations Committee side, and, and, and also, Chairman Clements here. Thank you for the-- the adjustments made in the General File-- in the Final Reading bill reduce the General Fund obligation by about \$1 million. So I'm looking at Senator Lowe. That's correct. Still reminding people that there are really good bills like this, that will require 1-time or ongoing funds. This is going to be, I believe, right now, a 1-time of \$1.5. It does require about \$400,000, maybe \$500,000 ongoing general funds. There will be revenue that comes from it, but it still won't completely cover it. But what we're doing is we are still, even though I support it, we're still spending General Fund dollars, which is taking away from the green sheet on what we're expecting at the end of '26-27. And when we are voting on A bills, I'm reminding everyone that every bill that we're now passing on Final

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Reading that requires a General Fund obligation is additional funds for us to be able to work on. So I just want to make sure that is clear. I yield the remainder of my time.

**KELLY:** Thank you, Senator Vargas. Seeing no one else in the queue, Senator Lowe, you're recognized to close. And waive. The question before the body is the motion to return to Select File. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 35 ayes, 4 nays on the motion to return to Select File, Mr. President.

**KELLY:** The motion is adopted. Mr. Clerk.

**CLERK:** Mr. President, Senator Lowe would move to amend with AM3277.

**KELLY:** Senator Lowe, you're recognized to open.

**LOWE:** Thank you. This will save the state \$1 million.

**KELLY:** Thank you, Senator Lowe. Seeing no one else in the queue, you're recognized to close. And waive. Members, the question is the adoption of AM3277. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 41 ayes, 0 nays on adoption of the amendment, Mr. President.

**KELLY:** The motion is adopted. Senator Ballard for a motion.

**BALLARD:** Mr.-- Mr. President, I move that LB685A be advanced to E&R for engrossing.

**KELLY:** Members, you've heard the motion. All those in favor say aye. Those opposed say nay. It is advanced for E&R engrossing. Mr. Clerk.

**CLERK:** Mr. President, Senator Conrad would move to return LB1393 to Select File for a specific amendment, that being AM3353.

**KELLY:** Senator Conrad, you're recognized to open.

**CONRAD:** Thank you so much, Mr. President. And again, thank you to Senator Hansen, for his leadership and cooperation in making amendments to this measure on Select File. It was brought to my attention by the Bill Drafters that they needed to make a slight change that they felt was beyond the scope of E&R. This is highly technical in nature. We had a reference in the NIL bill yesterday, for

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ensuring that public records that the University is already subject to remains under our Public Records Act. And the floor amendment said, subject to our Public Records Act, essentially. The Drafters is asking us to strike that reference, and to instead, put the Nebraska Revised Statute actual sections of the Public Records Act on it, in accordance with our practice. That is what is before you. I am sorry for the technical error and delay, but would appreciate your favorable consideration. I'm supportive of the measure and, and eager to move it forward. Thank you, Mr. President.

**KELLY:** Thank you, Senator Conrad. Senator Hansen, you're recognized to speak.

**HANSEN:** Thank you, Mr. President. I'm not going to reiterate a whole lot of what Senator Conrad said. This is a friendly amendment, just kind of almost like a cleanup to the bill and some of the amendments that we did previously. So I'd encourage everyone to vote green on AM3353. Thank you, Mr. President.

**KELLY:** Thank you, Senator Hansen. Seeing no one else in the queue, Senator Conrad, you're recognized to-- and waive closing. Members, the question is the motion to return. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 43 ayes, 0 nays on the motion to return, Mr. President.

**KELLY:** The motion is adopted. Mr.-- Senator Conrad, you're recognized to open on AM3353.

**CONRAD:** Thank you, Mr. President, again. Good afternoon, colleagues. This is the technical amendment that the Bill Drafters Office suggested, to put the actual statutory reference for our commonly described Public Records Act in place, instead of referring to it as the Public Records Act in the floor amendment that we adopted on Select File. So it's a slight technical change. I'd appreciate your support. And again, want to thank staff, and thank Senator Hansen for his leadership and collaboration on this measure. Thank you.

**KELLY:** Thank you, Senator Conrad. Seeing no one else in the queue, you're recognized to close. And waive. Members, the question is the adoption of AM3353. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 44 ayes, 0 nays on adoption of the amendment, Mr. President.

**KELLY:** The amendment is adopted. Senator Ballard for a motion.

**BALLARD:** Mr. President, I move that LB1393 be advanced to E&R for engrossing.

**KELLY:** Members, you've heard the motion to advance LB1393 for E&R engrossing. All those in favor say aye. Those opposed say nay. It is advanced. Mr. Clerk.

**CLERK:** Mr. President, pursuant to the agenda, Select File, LB856. I have no E&R amendments. Senator Fredrickson, I have AM2843 with a note you'd withdraw. Mr. President, in that case, Senator Fredrickson would move to amend with AM3218.

**KELLY:** Senator Fredrickson, you're recognized to open.

**FREDRICKSON:** Thank you, Mr. President. Good afternoon, colleagues. So, here is LB856. This is my childcare bill. So acknowledging the realities of the fiscal situation that we are in this year, I have been working with some of you on a compromise amendment to LB856, and the result of that is AM3218. So what this amendment does is that it removes the childcare subsidy categorical eligibility we were creating for childcare workers in the original bill. AM3218 instead keeps an important technical change. Currently, if an employee at a childcare, at a childcare facility who is otherwise eligible for childcare subsidy provides any direct care to their child, they are unable to utilize the subsidy. This bill would require their employer to take reasonable steps to avoid an employee providing direct care to their child. But if no reasonable steps are available, they can provide direct care and the facility can still receive the subsidy for that care. This is especially important for small centers with limited staff or open floor plans, who cannot reasonably keep kids and parents apart. This would also be helpful to assistants in family childcare homes where they are not the owner/operator, but an employee of the owner/operator. This is a common problem for providers in rural areas. I got the idea for this provision after meeting with the Governor's Office and discussing the importance of ensuring we weren't picking winners and losers between larger, center-based providers and family providers. AM3218 ensures greater access for those small providers. I also met with the Governor's staff just this morning. And as a result, I have a floor amendment to this amendment that will allow the department to develop rules and regulations consistent with these changes, and to allow for an operative date of July 1, 2025, to give the department more time to go through this process related to rules



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and regulations. While I am disappointed not to be moving forward with the larger proposal I initially brought, I know that taking this smaller step now will give us more time to analyze the data from Iowa and other states who have moved forward on categorical eligibility for providers. I have also introduced LR427, which will examine the use of childcare subsidy programs as an incentive to recruit and retain employees in the childcare industry. I want to thank Senators Linehan, Ibach, and Hughes, for co-sponsoring this study. I also want to thank all of those who co-sponsored LB856 as originally drafted. I promise to bring back a version of this lar-- a larger proposal back next year, and we en-- as we ensure the childcare subsidy serves as a vehicle we need it to be for recruiting and retaining the childcare workforce that we must have in place to address our state's larger workforce challenges. AM3218 will also remove the need for the \$10 million capped appropriation we advanced on General File. With that, I ask you to advance AM3218 and LB856.

**KELLY:** Thank you, Senator Fredrickson. Senator Bostelman, you're-- Mr. Clerk.

**CLERK:** Mr. President, Senator Fredrickson would move to amend AM3218 with FA354.

**KELLY:** Senator Fredrickson, you're recognized to open on the floor amendment.

**FREDRICKSON:** Thank you, Mr. President. So as I stated earlier, this floor amendment allows the department to develop rules and regulations, and it also allows for an operative date of July 1, 2025. I look forward to continuing to work in collaboration with the Governor's Office and other stakeholders, as well as childcare providers in the coming months, to continue to ensure our childcare subsidy is working effectively and efficiently for businesses and workers. Thank you.

**KELLY:** Thank you, Senator. Returning to the queue, Senator Bob Bostelman, you're recog-- out of-- Senator Fredrickson, you're recognized to close. And waive. Members, the question is the adoption of FA354. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 38 ayes, 0 nays on adoption of the amendment, Mr. President.

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**KELLY:** FA354 is adopted. Senator Fredrickson, seeing no one else in the queue, you're recognized to close on AM3218. And waive. Members, the question is the adoption of AM3218-- amendment. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 35 ayes, 0 nays on adoption of the amendment, Mr. President.

**KELLY:** AM3218 is adopted.

**CLERK:** I have nothing further on the bill, Senator.

**KELLY:** Senator Ballard, for a motion.

**BALLARD:** Mr. President, I move that LB856 be advanced to E&R for engrossing.

**KELLY:** Members, you've heard the motion. All those in favor say aye. Those opposed say nay. LB856 is advanced to E&R Engrossing.

**CLERK:** Mr. President--

**KELLY:** Mr.. Clerk.

**CLERK:** Mr. President, Select File, LB856A. I have no E&R amendments. Senator Fredrickson would move to indefinitely postpone LB856A.

**KELLY:** Senator Fredrickson, you're recognized to open on the motion.

**FREDRICKSON:** Thank you, Mr. President. So, here's one of those strange moments where you try to kill your own bill. So, I am asking the body to IPP this bill. This is the appropriations bill, which is no longer relevant, as I mentioned last time. We have addressed the fiscal component on this. So, Jesus, take the wheel. Here we go. Let's bring it down. Thank you, Mr. President.

**KELLY:** Thank you, Senator Fredrickson. Seeing no one else in the queue, you're recognized to close on the motion. And waive. Members, the question is the motion to indefinitely postpone. All of those in favor vote aye; all those opposed vote nay. Record, record, Mr. Clerk.

**CLERK:** 31 ayes, 0 nays on the motion to indefinitely postpone the bill, Mr. President.

**KELLY:** The motion is adopted.

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**CLERK:** Mr. President, Select File, LB1031. First of all, Senator, I have E&R amendments.

**KELLY:** Senator Ballard for a motion.

**BALLARD:** Mr. President, I move the E&R amendments to LB1031 be advanced-- be adopted.

**KELLY:** Members, you've heard the motion. All those in favor say aye. Those opposed say nay. The E&R101 is adopted.

**CLERK:** I have nothing further on the bill, Senator.

**KELLY:** Senator Ballard.

**BALLARD:** Mr. President, I move that LB1031 be advanced to E&R for engrossing.

**KELLY:** Members, you've heard the motion to advance for E&R engrossing. All those in favor say aye. Those opposed say nay. It is advanced. Mr. Clerk.

**CLERK:** Mr. President, Select File, LB1031A. I have nothing on the bill, Senator.

**KELLY:** Senator Ballard.

**BALLARD:** Mr. President, I move that LB1031A be advanced to E&R for engrossing.

**KELLY:** Members, you've heard the motion. All those in favor say aye. Those opposed say nay. LB1031A is advanced for E&R engrossing. Mr. Clerk.

**CLERK:** Mr. President, Select File, LB1335. First of all, Senator, there are E&R amendments.

**KELLY:** Senator Ballard for a motion.

**BALLARD:** Mr. President, I move the E&R amendments to LB1335 be adopted.

**KELLY:** Members, you've heard the motion. All those in favor say aye. Those opposed say nay. They are adopted.

**CLERK:** Mr. President, Senator Blood would move to amend with AM3167.

**KELLY:** Senator Blood, you're recognized to open on the amendment.

**BLOOD:** Thank you, Mr. President. Fellow senators, friends all, I just want to let you know that this is not going to be a slow walk, as our Speaker puts it, that there is a tweak in the bill that I'm requesting. I, unfortunately, have not had a chance to speak with Senator Moser, so I'm going to go through it really quickly. What this amendment does is make sure that manmade right-of-way structures are not exempted from the Nongame and Endangered Species Conservation Act. These structures have been observed by experts to be critical habitats for such species. And many of those experts testified as such, in opposition to LB1335. Now we are talking about over 130 acres and right-of-way public lands that nearly 50% of threatened and endangered species rely on, that we are putting at risk. Research has concluded roadside ditches are invaluable to plant and animal species. With so much land altered by human activity around roadsides, they often provide the only habitat available. Insects rely on the vegetation on roadsides, and wetlands within ditches are critical. This especially applies to Nebraska, with so much of our land dedicated to heavy ag depart-- development. Ditches, backslopes, and rights-of-ways are also the only corridors for wildlife to move, including bike lanes, trails, and bridges, that LB1335 includes for exemption. AM3167 wants to protect these right-of-way structures for endangered species, despite being manmade. And ODT has been able and can continue to consider environmental concerns in regards to endangered and threatened species, while still completing projects efficiently. LB1335 could see a risk of degradation to ecosystems. And in my view, exempting any state agency from the Nongame and Endangered Species Act is a huge risk for Nebraska's environment. With that, I encourage you to vote green for AM3167.

**KELLY:** Thank you, Senator Blood. Senator Moser, you're recognized to speak.

**MOSER:** Thank you, Mr. President. The-- LB1335 makes changes in how the Game and Parks and the Department of Transportation work together to ensure that they don't harm endangered or threatened species. And through the process, the hearing showed that most everybody there said some things needed to be changed. There were some that, of course, testified against it. But the gist of the story is the Department of Roads, the first time they build a road, has to go through the entire process. They need to go to Game and Parks. And, and they follow the federal environmental laws. And it creates a lot of, of, delay and expense to go through that process. But that's the federal law.

Nebraska law allowed the Game and Parks to use some discretion in how they interpreted the federal regulations. And sometimes they required, rather than just a benefit, they required 2 times the amount of land that was being used in the right-of-way as an offset somewhere else. Then later on, if you would grade the right-of-way, not necessarily disturbing the pavement in the middle, but just grading the shoulders and the slopes to account for wear and tear from rain and, and snow and people driving on it, they would have to get another permit. And sometimes, they were required to have another permanent easement somewhere, set aside for disturbing that right-of-way. And so, the, the Department of Roads approached me about this. And they felt that having an offset equal or better to the land it's taking-- being taken is enough for mitigation the first time, and then subsequent repairs are-- have already been mitigated for. You shouldn't have to mitigate for those again. So, Senator Blood's amendment is not just a tweak. It takes away over half of what the bill does. And we worked with Game and Parks and the Department of Transportation. We had there-- assistant attorney generals there, to work up this language. And this is about the seventh or eighth revision that wound up being in this bill. And it's a negotiated settlement between Game and Parks and the Department of Transportation. So it's not-- I don't want to open it up to take a few words out here and there, to amend it. Because-- yeah. Like I say, it's a hostile amendment. It's not a tweak. It takes away about half of what the bill is intended to do. So I would encourage you to vote against AM3167 and for LB1335. I'd be glad to answer any questions.

**KELLY:** Thank you. Senator Moser. Senator Blood, you're recognized to speak.

**BLOOD:** Thank you, Mr. President. Fellow senators, friends all, I actually agree with Senator Moser on most of what he said. And I think what's being missed is a disconnect. Because if we pass this bill, we will be the only state in the United States that have this exemption-- the only state in the United States that has this exemption. So we know, in ag, how important it is for us to protect what makes ag so awesome. We don't want to kill off nature. We don't want to kill off pollinators. We want to protect our land. But when we create waivers like this, we open like a really big door. Now, a lot of you live out in, in rural areas. If you walked into a ditch right now, what would you see, besides water maybe? You would definitely see wildflowers. You would likely see small animals, small rodents-- some good, some bad. You might see some birds partaking in the water. You have to really think about what some of these right-of-ways are. I, I, again,

am not trying to sink the bill. I'm trying to change one sentence in the bill. It does not hurt his bill. Because I think it's wrong when we start tapping into environmental issues and wanting to be the only state in the United States that does this type of waiver. So that is all I'm asking. I think it's fair. It doesn't carry a fiscal note on it. And to be really frank, they've been going around it for decades and it hasn't been a problem. I do understand what the intent of the bill is and how we're trying to help them, but I don't think this waiver is necessary. With that, I would yield back any time to you, Mr. President.

**KELLY:** Thank you, Senator Blood. Senator Erdman, you're recognized to speak.

**ERDMAN:** Thank you, Mr. President. Good afternoon. There was a handout passed out, I believe, is, is Senator Blood, District 3. And the comments in there, the body of that was from the Sahara [SIC] Club. I don't remember-- I don't think I've ever had a time that I supported anything Sahara Club supported. And Senator Blood also commented, we'd be the only state-- if we pass this bill, we're the only state that does that. Can anyone think of anything else we do different from all of the states? Any ideas? Oh, someone said the Unicameral. I forgot. OK. So if we can afford to be different with the Unicameral, then I think we can afford to be different with something that makes sense. This basically is a commonsense approach to what we're trying to do. So this, this amendment, AM3167, just so you know before you vote, is supported by the Sahara Club. And they're interested in your well-being, I think. That was a joke. So vote red on 13-- AM3167, and then vote for LB1335. By the way, that bill was advanced 8-0 out of Transportation. So I think they thought about it. I think they reviewed what it is going to do and the ramifications thereof. So, that's my \$0.02 worth. And I don't know where that \$0.02 worth thing ever started from. But anyway, vote for the bill. Vote against the amendment. Thank you.

**KELLY:** Thank you, Senator Erdman. Senator Moser, you're recognized to speak.

**MOSER:** I'll be brief here. I, I think that Nebraska's environmental rules with the Game and Parks and the Department of Transportation and then the federal rules, are more restrictive than any other state. Because Game and Parks had quite a bit of discretion in how they defined benefit. Benefit would be if you take part of the land and you disturb it, and pave it, or sod it, or seed it. They take-- benefit

would indicate that you would take an equal or slightly more in acreage space and then put it in a perpetual easement, so it would be perpetually set aside, taken off the tax rolls. And it'll grow cattails, or prairie grass, or, or whatever is going to grow there. The, the first time you build a road, that-- that's required. But Game and Parks, sometimes, in their discretion and their negotiations, required twice as much property be-- to, to be set aside, and in some cases, 3 times the amount of property set aside. And then, when you come back and disturb it in 10 years or 15 years to regrade that right-of-way to get your slopes correct, then you'd have to get another permit. And then they'd have to have another offset. So you'd set more ground off in a permanent easement. I, I just don't think that's the Nebraska way. I think we should follow the state law-- or the federal laws, as we're supposed to. The federal laws are always a backstop to everything we do. Whatever the federal laws are, they supersede our laws. But we shouldn't have Nebraska laws that are more restrictive than the federal requires. There's quite a bit more in the bill, and I don't know if anybody wants to get that much further into it. But I would-- just suffice it to say, that I would appreciate a no vote on AM3167, and then a yes vote on LB1335. Thank you.

**KELLY:** Thank you, Senator Moser. Senator Blood, you're recognized to speak. And this is your final time before your close.

**BLOOD:** Thank you, Mr. President. Friends, if you're actually following along and not just sitting on the side chatting, the only thing I am asking is on page 2, lines 6 and 7, to change it to say-- or to take out "including any right-of-way." That's it. Just like, 1 little sentence. Because we know that the legislative intent of the Nebraska Nongame and Endangered Species Conservation Act is to conserve species of wildlife and wild plants for human enjoyment and scientific purposes, and to ensure their perper-- perpetuation as viable components of their ecosystems. I did not write that, by the way. If we're making a good decision, we have to weigh all of the issues. Our Friends of the Niobrara said that in their letter to us. What's being asked is not excessive. What's being asked is not going to change that things get made, things move forward. It's not going to change any of that. What it's going to do is just make sure that we add in the extra criteria to make sure that we protect what's environmentally important to the state of Nebraska. And it doesn't weaken what we do, as Senator Moser just said. There is a lot in that bill. We're not asking for more restrictions. We're asking for a change in how we protect the environment. That's it. There's nothing more, nothing less. Look at the amendment. It is not going to hurt anything. DOT has been doing it



always. We shouldn't give them an exception. And you-- I've had a bunch of people come up and talk to me about the Beetles. Until you guys started coming and talking to me, I didn't know anything about the beetle story, by the way. Not Beatles, like music. Beetles, like bugs. That's not what this is about. I just really worry when we do something that is not consistent with what other states are doing, when it comes to the environment. Heck, in Colorado-- I don't know if you've been to Colorado recently, but they-- when they built new things, they made like a path over the highway, for the animals to go ahead and migrate over the road. It was pretty amazing. There are states that are taking this seriously, and we need to be one of them. I can tell by the body that there's not a lot of people really thrilled about doing anything on this amendment, because I've never seen so many disinterested people this time of day. But you can't blame a girl for trying. You have a lot of organizations in Nebraska that are against this bill, only because of those few little words. And something can happen between Select and Final, which would be really unfortunate because I'd love to see this bill move forward. But I do think that there are enough organizations that are concerned about this language that we could end up having to slow this bill down, and I would hate to see that, and I would not want to have to participate in that. But if we had enough concern, people would come to my office. I would unfortunately have to do that. So I do see this as a big issue. I've been contacted by members of Green Bellevue in my district, and Senator Sanders' district. I have been contacted by several city council people, and I have definitely been contacted by statewide organizations that protect the environment. So it's not a hippie-dippy amendment, not trying to save the planet. I'm just trying to make sure that we are consistent with the way that we allegedly view our environment here in Nebraska. Do you need to go by, Senator Kauth? And with that, I would yield any time back to the President. If no one's in the queue, I would waive my closing.

**KELLY:** Thank you, Senator Blood. Having waived closing, members, the question is the adoption of AM3167. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 10 ayes, 24 nays on adoption of the amendment, Mr. President.

**KELLY:** The amend-- the amendment fails. Mr. Clerk.

**CLERK:** I have nothing further on the bill, Senator.

**KELLY:** Senator Ballard.

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**BALLARD:** Mr. President, I move that LB1335 be advanced to E&R for engrossing.

**KELLY:** Members, you have heard the motion. All those in favor say aye; those opposed say nay. It is advanced. Mr. Clerk.

**CLERK:** Mr. President, Select File. First of all, Senator, I have E&R amendments.

**KELLY:** Senator Ballard.

**BALLARD:** Mr. President, I move the E&R amendments to LB71 be adopted.

**KELLY:** Members, you have heard the motion to adopt the E&R amendment. All those in favor say aye. Those opposed say nay. It is adopted.

**CLERK:** Mr. President, Senator Hunt, I have a series of motions, MO234, MO233, MO232, and MO235, all with notes that she wishes to withdraw.

**KELLY:** Without objection, they're withdrawn.

**CLERK:** Mr. President, Senator Sanders would move to amend with AM3284.

**KELLY:** Senator Sanders, you're recognized to open.

**SANDERS:** Thank you, Mr. President. Good afternoon, Nebraska LB71 seeks to update our parental involvement and academic transparency statute. Thank you, Senator Meyer, for prioritizing this bill. LB71 went through legislative process, beginning with an 8-0 vote out of Education Committee. On March 21, LB71 had a 43-0 vote, moving it from General to Select. I now ask for the legislative body to vote green-- a green vote moving this to Final Reading. LB71 is a reasonable and commonsense update to an outdated statute. Currently, statute school districts are required to create a parental involvement policy detailing the parent's right to access the districts' efforts to involve parents in schools. I am proud of the work my office has done on this bill, and I'm thankful for the time that stakeholders, parents, and Education Committee have committed to improving this bill. Again, thank you to the parents who chose to be involved in their children's education, learning process, and the educators who seek academic transparency. There are 2 friendly amendments on LB71. AM3284 is a technical change which gives schools the adequate time they need to implement the policy. Second, Senator Hardin has worked with Senator Conrad and my office in amending AM3312 to A-- LB71,

which you will hear from Senator Hardin to follow me. Thank you, Mr.--  
Mr. President.

**KELLY:** Thank you, Senator Sanders. Senator Hardin, you're recognized to speak.

**HARDIN:** Thank you, Mr. President. AM3312 to LB71 amends my bill, LB1201, to the bill. LB1201 is a simple bill. It allows students to remain in public preschools until they are 6 years old by adjusting requirements with early childhood education grants. Nebraska Statute 79-214 states that a school board shall not admit any child into kindergarten unless that child has reached the age of 5 years on or before July 31 of the calendar year in which the child is seeking admission. Title 92, Chapter 11 sets the guidelines for which children can be served with the Early Childhood Education Grants that many schools use to fund their preschool programs. Section 7-01A of Chapter 11 states that the children who may be served with the grant funds are all pre-kindergarten age children, ages 3 to kindergarten entrance age. This is where the issue lies. Because of section 7-01A, children are forced to leave a public preschool at age 5, and parents are faced with a decision of entering their child into kindergarten, regardless if they're developmentally ready or not, or if --they're, they're forced to pay for a private preschool. This puts rural parents that may not have access to a private preschool or parents that do not have the ability to pay for a private preschool at a severe disadvantage when it comes to the development of their child. AM3312 will make a change to allow a student to be served with an Early Childhood Education Grant until they reach the mandatory attendance age. 79-201 states a child is of mandatory attendance age if the child has reached 6 years of age prior to January 1 of then-current school year. It's important to remember that this does not force students to stay in the public preschool and out of kindergarten until the mandatory attendance age. It simply gives power back to the parents to make the best decision for their student on whether to send them on to kindergarten at the optional entrance age, or have their child academic redshirt and delay the start of kindergarten. It's crucial that we create an educational system that respects and nurtures the individual needs of each child. Research has consistently shown that delaying the start of formal schooling until the age of 6 can have numerous benefits for a child's overall development. Considering the cognitive aspect of a child's growth at the age of 6, children often exhibit increased cognitive abilities which enable them to grasp more complex concepts. Optionally delaying the start of kindergarten until the age of 6, we're allowing children the time they need to develop

foundational skills in a less structured environment, promoting a more natural and sustainable approach to learning. Emotional and social development also play a significant role in a child's academic success. Waiting until 6 years old provides each child with the opportunity to further develop essential social skills, emotional resilience, and a sense of self before beginning their formal education. This promotes a stronger foundation for future academic success and a more positive school experience. Studies have shown that the 1-year delay reduces inattention and hyperactivity in children by as much as 73%. Beyond the mental and emotional benefits of delaying the start of kindergarten, there are also physical benefits to consider. Delaying until the age of 6 ensures that children have had ample time to develop fine and gross motor skills, enhancing their physical capabilities. More mature and coordinated children are more likely to actively engage in physical activities, contributing to a healthier lifestyle and overall well-being. We must also acknowledge the long-term benefits to the education system as a whole. Children who start kindergarten later often enter school with a higher level of readiness, reducing the likelihood--

**KELLY:** One minute.

**HARDIN:** --of academic struggles. Thank you-- and overall dislike of school. If a child is able to begin school with better tools for success, they will, in turn, enjoy school more and have an overall better academic experience. This leads to a better environment for all involved in academics, from students to teachers to administrators. I want to thank Elizabeth Tegtmeier for bringing the idea to my office, and for all the work she's done on this. LB1201 was heard in committee on February 5. There's a \$0 fiscal note, and it came out 8-0. Thank you, Mr. President.

**KELLY:** Thank you, Senator Hardin. Returning to the queue. Senator Conrad, you're recognized to speak.

**CONRAD:** Thank you, Mr. President. Good afternoon, colleagues. I just wanted to add a quick note, thanking my friend, Senator Hardin, for bringing forth this legislation. It's been a really fun and impactful experience to work in collaboration with him and the State Board of Education members. Particularly, want to give a shoutout to board member, Elizabeth Tegtmeier, for her leadership and advocacy on this issue. And she travels a, a great deal, too, from home to come down to the Capitol to work on these issues together, and, of course, serves our state on the State Board of Education, as well. And it's just been

really cool to work with them, to focus on substantive issues to help improve access to quality early childhood opportunities for more kids, and particularly, more kids in rural Nebraska. This was a smart, commonsense way to go about it, but didn't generate controversy, that didn't generate a significant fiscal impact in any way, shape or form. And the other piece that I want to underscore, in addition to the importance of the substantive nature of the legislation, was I wanted to, to just put a, a clear point on the fact that there's a lot of hot-button issues in the education world today, at our State Board level and of course, in our Legislature, as well. And these same controversies are playing out at school boards all across Nebraska and all across the country. But even though those issues cause a great deal of heartache and headache for all of the people involved, we're still finding a way to work together across the state and across the political spectrum on meaningful issues, like access to early childhood. And that's what Senator Hardin has brought forward with our State Board members, and I have really appreciated working with them on that. So thank you, Mr. President. Would appreciate your green vote, as well.

**KELLY:** Thank you, Senator Conrad. Seeing no one else in the queue, Senator Sanders, you're recognized to close. And waive closing. Members, the question is the adoption of AM3284. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 34 ayes, 0 nays, Mr. President, on adoption of the amendment.

**KELLY:** AM3284 is adopted. Mr. Clerk.

**CLERK:** Mr. President, Senator Hardin would move to amend with AM3312.

**KELLY:** Senator Hardin, you're recognized to open on your amendment.

**HARDIN:** Thank you. And so I'll refer you back 3 minutes in the day, to what we did a little bit ago. So, would appreciate a green vote on AM3312, on our red shirt brigade. Thanks.

**KELLY:** Thank you, Senator Hardin. Seeing no one else in the queue, you're recognized to close. And waive closing. Members, the question is the adoption of AM3312. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 33 ayes, 0 nays on adoption of the amendment, Mr. President.

**KELLY:** AM3312 is adopted. Mr. Clerk.

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**CLERK:** I have nothing further on the bill, Senator.

**KELLY:** Senator Ballard.

**BALLARD:** Mr. President, I move that LB71 be advanced to E&R for engrossing.

**KELLY:** Members, you've heard the motion. All those in favor say aye. All those opposed say nay. LB71 is advanced for E&R Engrossing. Mr. Clerk.

**CLERK:** Mr. President, Select File, LB71A. I have nothing on the bill, Senator.

**KELLY:** Senator Ballard for a motion.

**BALLARD:** Mr. President, I move that at LB71A be advanced to E&R for engrossing.

**KELLY:** Members, you've heard the motion. All those in favor say aye. All those opposed say nay. It is advanced. Mr. Clerk.

**CLERK:** Mr. President, Select File, LB934. First of all, Senator, I have E&R amendments.

**KELLY:** Senator Ballard for a motion.

**BALLARD:** Mr. President, I move the E&R amendments to LB934 be, be adopted.

**KELLY:** Members, you've heard the motion. All of those in favor, say aye. Those opposed, nay. The E&R amendment is adopted.

**CLERK:** Mr. President, Senator Bosn, I have MO1299, MO1298, and MO1300, with notes that you would withdraw those 3 motions.

**KELLY:** Without objection, they are withdrawn.

**CLERK:** In that case, Mr. President, Senator Bosn, I also have AM2573, FA309, FA308, and FA307, with notes that you would withdraw those amendments.

**KELLY:** Without objection, they are withdrawn.

**CLERK:** In that case, Mr. President, Senator Bosn, I have AM2574, adding an emergency clause.

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**KELLY:** Senator Bosn, you're recognized to open on your amendment.

**BOSN:** Sorry. I heard-- Senator Conrad said I was done. And I thought, well, maybe I, I could just waive this. So this is an E clause. I would ask that we vote green on the E clause amendment, which isn't up yet, so I don't recall the number. But I'm asking for your green vote.

**KELLY:** Thank you, Senator Bosn. Seeing no one else in the queue, you're recognized to close. And waive closing. Members, the question is the adoption of AM2574. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 28 ayes, 0 nays on adoption of the amendment, Mr. President.

**KELLY:** AM2574 is adopted. Mr. Clerk.

**CLERK:** I have nothing further on the bill, Senator.

**KELLY:** Senator Ballard for a motion.

**BALLARD:** Mr. President, I move that LB934 be advanced to E&R for engrossing.

**KELLY:** Members, you've heard the motion. All those in favor say aye. Those opposed, nay. It is advanced. Mr. Clerk.

**CLERK:** Mr. President, LB1301. First of all, Senator, I have E&R amendments.

**KELLY:** Senator Ballard.

**BALLARD:** Mr. President, I move the E&R amendments to LB1301 be adopted.

**KELLY:** Members, you've heard the motion. All those in favor say aye. Those opposed, nay. It is adopted. Mr. Clerk.

**CLERK:** Mr. President, I have FA205 with a note that Senator DeKay would withdraw that amendment.

**KELLY:** Without objection, it is withdrawn.

**CLERK:** Mr. President, Senator DeKay would offer AM3182.

**KELLY:** Senator DeKay, you're recognized to open on the amendment.



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**DeKAY:** Thank you, Mr. President. AM3182 is a cleanup amendment to LB1301. Currently, neither Nebraska law, LB1301, nor the previously adopted amendments define the term, nonresident alien. A couple of you came to me after the debate on General File, asking if I could clarify that term in statute. AM3182 would clarify who is a nonresident alien by borrowing a federal definition of a nonresident alien in 26 U.S.C. 7701(b), used by the IRS to refer to aliens subject to United States Tax Code. Under this amendment, a nonresident would mean someone who is not a citizen of the United States, is not a national of the United States, is not a laws-- lawful permanent resident of the United States, and has not been physically present in the United States on at least 183 days during a 3-year period that includes the current year and the 2 years immediately before that. The term nonresident alien is then harmonized where needed in the rest of the bill. I worked primarily with the Nebraska Appleseed, Agricultural Committee staff, and PRO to get this amendment to where we are today. I would ask for your green vote on AM3182 and the underlying bill. Thank you, Mr. President.

**KELLY:** Thank you, Senator DeKay. Senator John Cavanaugh, you're recognized to speak.

**J. CAVANAUGH:** Thank you, Mr. President. Just-- got here just in time. I just want to say thanks to Senator DeKay, for working on this. Been a pleasure. Easy to work with. I appreciate his work on this bill overall, and specifically, getting to the place we are at in this amendment. So, encourage your green vote on AM3182. Thank you, Mr. President. Thank you, Senator DeKay.

**KELLY:** Thank you, Senator Cavanaugh. Seeing no one else in the queue, Senator DeKay, you're recognized to close. And waive closing. Members, the question is the adoption of AM3182. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 31 ayes, 0 nays on adoption of the amendment, Mr. President.

**KELLY:** The amendment is adopted. Mr. Clerk.

**CLERK:** Mr. President. Senator, I have nothing further on the bill.

**KELLY:** Senator Ballard for a motion.

**BALLARD:** Mr. President, I move that LB1301 be advanced to E&R for engrossing.

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**KELLY:** Members, you've heard the motion. All those in favor say aye. Those opposed say nay. It is advanced. Mr. Clerk.

**CLERK:** Mr. President. Next bill, Select File, LB1301A. I have nothing on the bill, Senator.

**KELLY:** Senator Ballard for a motion.

**BALLARD:** Mr. President, I move that LB1301A be advanced to E&R for engrossing.

**KELLY:** Members, you've heard the motion. All those in favor say aye. Those opposed, nay. It is advanced. Mr. Clerk.

**CLERK:** Mr. President, LB1368. First of all, Senator, I have E&R amendments.

**KELLY:** Mis-- Senator Ballard, you're recognized for a motion.

**BALLARD:** Mr. President, I move the E&R amendments to LB1368 be adopted.

**KELLY:** Members, you've heard the motion. All those in favor say aye. Those opposed say nay. It is adopted. Mr. Clerk.

**CLERK:** Mr. President, Senator Ibach, I have AM3202 with a note that you wish to withdraw.

**KELLY:** It is withdrawn.

**CLERK:** In that case, Mr. President, Senator Ibach would move to amend with AM3281.

**KELLY:** Senator Ibach, you're recognized to open on your amendment.

**IBACH:** Thank you, Mr. President. Today-- well, actually, in the words of John Lowe, I bring you good news. And it's not that the mint patties are back. I'm going to save the state some money today. So, good afternoon. Thank you, Mr. President. Today, I ask for your support of AM3281, which is a simple amendment which changes 3 items to AM3002 that had been adopted on General File. Number 1, rather than requiring the Department of Natural Resources to adopt rules and regulations, we are now allowing them to adopt rules and regulations, should the department find it necessary to do so. 2. Originally, it was required that the department apply for all grants in state,

federal and-- federal, and private sources to help find additional funds for this program. And since that would be a bit of a nightmare, we are asking them to-- making this provision permissive as well, to allow the department to focus on the grants that have the biggest bang for the buck. And 3-- here's the kicker. Instead of a \$5 million cash reserve transfer-- and Senator. Clements better be smiling back there. To help fund this program, we are now asking to transfer \$1 million of interest that is accrued in the Water Resources Cash Fund, which is unobligated at this time, to act as the seed money to help get this program off the ground. With that, I ask for your support of AM3281 and LB1368. Thank you, and I yield back.

**KELLY:** Thank you, Senator Ibach. Mr. Clerk.

**CLERK:** Thank you, Mr. President. Senator Moser would move to amend AM3281 with AM3357.

**KELLY:** Senator Moser, you're recognized to open.

**MOSER:** Thank you, Mr. President. Good afternoon, colleagues and the people in Nebraska. I'd like to thank Senator Ibach for allowing me to attach AM3357 to AM3281. This is my bill, LB1199. It was voted out of committee 8-0, and there was no opposition testimony during the hearing on the bill. It was at the request of the Department of Natural Resources, to eliminate certain fees collected by the Department of Natural Resources for performing administrative duties generally set out in Nebraska Revised Statutes Section 33-105. And it constitutes the entire fee authority for the department, except for some explicit fees in Chapter 46, that are unaffected by this bill. Section 33-105 includes a list of fees for particular surface and groundwater use permit applications, a \$10 default fee for the filing of any application for which a fee has been fixed, and a \$1 fee for certifying certain documents. This bill will universally eliminate the filing fees for all administrative petitions, petitions, including the right for a hearing for dispositions made without a hearing under Sections 61-206 with the APA. The rationale of the bill was to speed up and streamline the administrative processing, reduce administrative accounting costs, and eliminate most mandates for fees to lower citizens' cost in conducting business with the department, while simultaneously improving services. This bill will eliminate certain rarely used, insignificant fees charged by the Department of Natural Resources, in an effort to streamline the administrative processing and reduce administrative accounting costs. I ask for your support and

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ask you to vote green on AM3357, AM3281 and the underlying bill, LB1368. Thank you.

**KELLY:** Thank you, Senator Moser. Senator Clements, you're recognized to speak.

**CLEMENTS:** Thank you, Mr. President. Would Senator Ibach yield to a question?

**KELLY:** Senator Ibach, would you yield?

**IBACH:** Yes, I will.

**CLEMENTS:** Is there any cash reserve transfer now, with your amendment? How much of the \$5 million will be transferred?

**IBACH:** None-- the-- there is no cash reserve transfer with my bill.

**CLEMENTS:** And you mentioned \$1 million is coming from interest on a fund. Is that, is that it?

**IBACH:** That's correct. It comes from the Water Resources Cash Fund. And it's the interest on that fund that has not been obligated.

**CLEMENTS:** All right. And the only other spending here is there's \$706,000 for this program was already in our budget. And that's the only General Fund that you're requesting?

**IBACH:** I think that's for the-- a different bill.

**CLEMENTS:** Oh. Oh, I'm sorry. Let me see that. LB1368. Oh, yeah. This is the nitrogen bill. I'm sorry.

**IBACH:** Yeah. I think you're thinking of invasive species.

**CLEMENTS:** Right. So there is not a General Fund issue here?

**IBACH:** No. No General Fund. No cash fund. I pulled it back.

**CLEMENTS:** Thank you for the clarification. Thank you, Mr. President.

**KELLY:** Thank you, Senator Clements. Senator Vargas, you're recognized to speak.

**VARGAS:** Thank you. Senator Ibach, would you yield to some followup questions to that?

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**KELLY:** Senator Ibach, would you yield?

**IBACH:** Yes, I will.

**VARGAS:** Great. Thank you. As a follow-up, so, so it's not general funds. I think we knew that. But the, the cash fund transfer is eliminated, so is-- sorry. The cash reserve transfer is eliminated, the \$5 million. The cash fund transfer from the interest on that fund that you mentioned, is this ongoing or is this 1 time?

**IBACH:** It's a 1-time.

**VARGAS:** OK. And that's all that it needs. So you're-- it's not distributing more money in terms of grants. It's just giving those funds. What happens when that money runs out for the grant?

**IBACH:** That's a very good question. Because initially, I asked for \$5 million, which many of the organizations that support this bill didn't think that was near enough. But this money will allow us to get the program started. And then our goal is to find other grants that are available to continue to fund it.

**VARGAS:** OK. OK. My-- thank you very much. That was the only questions I have. I, I, I will be here. Senator Clements will be here. It's just a, a watchful eye, every time we start a new program or we're expanding a program. And if there's not general funds for it, and eventually they are requesting general funds, it's something that we have to be mindful for, as we're balancing our budget. Even though there's not going to be cash funds for it in the future, it's something that I just hope we're mindful for, coming into the, the next biennium. Thank you.

**KELLY:** Thank you, Senator Vargas. Senator Raybould, you're recognized to speak.

**RAYBOULD:** Thank you, Mr. President. Senator Ibach, would you please yield to a question?

**KELLY:** Senator Ibach, would you yield?

**IBACH:** Yes, I will.

**RAYBOULD:** Yes, I'm very supportive of this. And I, I don't remember and if you could refresh our memories, is regenerative farming one of

those that would be included as qualifying for being a recipient of this grant funding?

**IBACH:** Yes, it will. And I will depend on the Department of Natural Resources to actually identify all of the, the sources that are available. But yes, regenerative, regenerative farming will be included.

**RAYBOULD:** Thank you very much. I yield the rest of my time back to the Chair.

**KELLY:** Thank you, Senator Raybould. Senator Jacobson, you're recognized to speak.

**JACOBSON:** Thank you, Mr. President. Very briefly, I, I have supported this bill. And I think the key here is it is a very fall-- small fiscal note. And I think in my mind, the-- what we normally look at with farmers is you've got the early adopters, who come in and adopt new practices. And they do it because they see the value, and they're prepared to go do it. There are others who are not as excited about doing it, and sometimes need some incentives to come in and adopt the practice. Cover crops would be a good example, where it, it took some incentives to get people to understand what value cover crops could bring. And now, you've got a lot of producers out there today who will plant cover crops, whether there's a subsidy or not, because they see the value to soil health. I think that's the direction that we would be going with this bill. There's a lot of details that are not in it. Those would have to be worked out as it moves forward. But I would hope that this would be a temporary need, and would not be a long-- ongoing fiscal note. And I would not expect this to necessarily grow much over the time. I, I would hope that we would be able to get people to come in and, and take more advantage of this, and then word of mouth among the ag community would get more people involved in doing this. So with that, I'm going to support the bill, even though there's a fiscal note on it. But I'm going to be very cautious about fiscal notes as we move forward. Thank you, Mr. President.

**KELLY:** Thank you, Senator Jacobson. Senator Dover, you're recognized to speak.

**DOVER:** Yeah. I'd like to stand up in support of Senator Ibach's bill also. I think that in Nebraska, we have land, we have water, we have wind, and we have good people. I think we need to take care of those things. And I think that the water needs to be seen as the true

resource it is. It needs to be clean, clear, drinkable, etcetera. We know we-- our challenge with nitrates in our state. We are around the Norfolk area. And I think we need to be looking for solutions. I think this is a positive solution. I think that we don't want to mandate these or any way. I don't think we want to mandate anything to farmers. I think farmers know how to take care of the ground and take care of the water. I do think Senator Ibach's is a, a good opportunity here to explore different ways to take care of our nitrate problem in Nebraska. And I stand in support of that. And I'd ask you to get-- to vote green on Teresa Ibach-- excuse me, Senator Ibach's bill on nitrates. Thank you. I yield the rest of my time to the floor.

**KELLY:** Thank you, Senator Dover. Senator Machaela Cavanaugh, you're recognized to speak.

**M. CAVANAUGH:** Thank you, Mr. President. I have been in support of this bill. I remain in support of this bill. I just wanted to let you know, colleagues, that you all owe my brother, Senator John Cavanaugh, a huge thank you, because he talked me down and calmed me down. And he was right. For the record, April 4, 2024, 2:58 p.m., I am saying my brother was right, that I am going to debate-- continue to debate the things that I oppose and support the things that I support. And I am going to fight with all of my might against LB575, but I'm not going to take time that I don't think I need to take. And I am filing motions on every bill, but only as a preventative motion for other things not related to LB575. So don't freak out too much when you go up to Diane's desk, and see-- what did Carol call it? A valley of gold? There's a lot of gold paper up there. So I just wanted to let everyone know because you know me, I'm super transparent-- that John Cavanaugh was right. I-- let me clarify for the record-- the permanent record. John Cavanaugh, Jr. was right. I needed to calm down. I'm still upset. I'm still going to fight, but I am going to let us get to some business that is important. Thank you, Mr. President.

**KELLY:** Thank you, Senator Cavanaugh. See no one else in the queue, Senator Moser, you're recognized to close on the amendment. And waive. Members, the question is the adoption of AM3357. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 36 ayes, 0 nays on adoption of the amendment, Mr. President.

**KELLY:** AM3357 is adopted.

**CLERK:** I have nothing further at this time.

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**KELLY:** Thank you, Mr. Clerk. Members-- Senator Ibach, you're recognized to close on your amendment.

**IBACH:** Thank you, Mr. President. I would just say thank you to the senators who supported this bill, and ask for your green light on AM3281. Thank you.

**KELLY:** Members, the question is the adoption of AM3281. All those in favor, vote aye; all those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 42 ayes, 0 nays on adoption of the amendment, Mr. President.

**KELLY:** The amendment is adopted. Mr. Clerk.

**CLERK:** I have nothing further on the bill, Senator.

**KELLY:** Senator Ballard for a motion.

**BALLARD:** Mr. President, I move that LB1368 be advanced to E&R for engrossing.

**KELLY:** Members, you've heard the motion. All those in favor say aye. Those opposed say nay. It is advanced. Mr. Clerk.

**CLERK:** Mr. President, Mr. Speaker, my understanding is we will continue with Select File? In that case, Mr. President, pursuant to the Speaker's instructions legislative bill-- Select File, LB1368A. I have no E&R amendment. Senator Ibach would move to amend the bill with AM3290.

**KELLY:** Senator Ibach, you're recognized to open on your motion.

**IBACH:** Thank you, Mr. President. This really is just the followup to the \$5 million. So if you would push your green light, I will have the \$5 million removed from our budget. Thank you.

**KELLY:** Thank you, Senator. And you're recognized to close. And waive closing. Members, the question is the adoption of AM3290. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 39 ayes, 0 nays on adoption of the amendment, Mr. President.

**KELLY:** AM3290 is adopted.

**CLERK:** I have nothing further on the bill, Senator.



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**KELLY:** Senator Ballard for a motion.

**BALLARD:** Mr. President, I move that LB1368A be advanced to E&R for engrossing.

**KELLY:** It's a debatable motion. Senator Jacobson, you're recognized to speak.

**JACOBSON:** Thank you, Mr. President. I'm rising for a brief point of personal privilege. Once again, oftentimes we're here in the Legislature, and we're in the final stretch and we have a lot of things to do. And in keeping with what's happened with people that have had significant impacts on my life, I just wanted to note that Senator-- that John Patterson, from North Platte, passed away this past week, whose funeral was today. I wish I could be there for he and his wife, Edy, and their family, for the funeral. But I'm here in the Legislature. And so I just want to note to Edy that I'm thinking of them. And John was a great individual, who was very involved in North Platte in the area, served on the hospital board, most every board, and was really, a wonderful community leader. A real loss to our community. John lived a good life. But, wonderful individual and I just wanted to acknowledge that. Thank you, Mr. President.

**KELLY:** Thank you, Senator Jacobson. Members, you've heard the motion to advance for E&R Engrossing. All those in favor say aye. Those opposed, nay. It is advanced, Mr. Clerk.

**CLERK:** Mr. President, Select File, LB20. I have FA399 from Senator Dungan, as well as FA336, both with notes that he would withdraw those.

**KELLY:** So ordered.

**CLERK:** I have an amendment, FA337, from Senator John Cavanaugh, with a note he would withdraw that.

**KELLY:** So ordered.

**CLERK:** And I have FA365 [SIC-FAC366], from Senator Machaela Cavanaugh, that she would withdraw.

**KELLY:** So ordered.

**CLERK:** I also have MO1370, MO1369, and MO1368, with notes to withdraw those motions.

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**KELLY:** Without objection, they are withdrawn.

**CLERK:** And Mr. President, I have MO1366, from Senator John Cavanaugh, that he would withdraw that motion.

**KELLY:** Without objection, it is withdrawn.

**CLERK:** In that case. Mr. President, I have nothing further on the bill.

**KELLY:** Senator Ballard.

**BALLARD:** Mr. President, I move that LB20 be advanced to E&R for engrossing.

**KELLY:** Members, you've heard the motion. All those in favor say aye. Those opposed, nay. It is advanced. Mr. Clerk.

**CLERK:** Mr. President, LB20A. I have nothing on the bill, Senator.

**KELLY:** Senator Ballard for a motion.

**BALLARD:** Mr. President, I move that LB20A be advanced to E&R for engrossing.

**KELLY:** Members, you've heard the motion. All those in favor say aye. Those opposed, nay. It is advanced. Mr. Clerk.

**CLERK:** Mr. President, LB1195, from Senator Conrad, on General File. It's a bill for an act relating to the practice of law; changes definitions of designated legal professional shortage area under the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Act; changes provisions relating to county attorneys and public defenders; provides repayment of certain expenses for certain county attorneys, public defenders, coroners, and attorneys employed by such offices; changes provisions relating to the State Settlement Cash Fund; transfers funds; harmonizes provisions; repeals the original section. The bill was read for the first time on January 12 of this year and referred to the Judiciary Committee. That committee placed the bill on General File with committee amendments. There is an additional amendment, Mr. President.

**KELLY:** Senator Conrad, you're recognized to open.

**CONRAD:** Thank you, Mr. President. Good afternoon, colleagues, I am pleased to introduce LB1195. And just want to give you a, a very brief overview of what this, this measure looks like to-- today, on General File, hopefully after the committee amendment, which is very different than it looked upon introduction. Originally, LB1195 was a collaborative effort to address workforce shortages for rural practice attorneys, specifically attorneys committed to public service, willing to serve as prosecutors and public defenders throughout the state, but in particular in rural parts of Nebraska. We were unable to have a meeting of the minds on some key components of that legislation. So we will continue the collaborative discussion in efforts into the interim period. However, thanks to Speaker Arch, for designating that important measure as a Speaker priority. We would hate to leave a Speaker priority opportunity go unutilized at this point in this session. So, due to the extraordinary nature that the-- extraordinary opportunity that the Judiciary, Judiciary had before it this year-- typically-- not always, but typically, you see the Judiciary identify and designate 2 committee priority bills: 1 generally related to civil practice and 1 related to more criminal justice issues. Due to the gravity and significance of so many criminal justice issues before the Judiciary Committee and the extraordinary opportunity to move forward on the Veterans Courts piece, that didn't leave a lot of latitude for some of the civil practice issues that generally, not always, but generally are less controversial. So through a lot of collaboration and creativity, I was pleased to work together with Senator Wayne, the Judiciary Committee, Senator Bosn, Senator DeBoer, and Senator Blood, who all have component parts of this committee amendment that will be on the board soon, to try and identify measures that were related to civil practice, that were non-controversial, that had no opponents, that had no fiscal notes, that had been advanced otherwise, but didn't find a home on consent calendar. And so, it was really cool to bring everybody together. And I want to thank Speaker Arch, and particularly Senator Wayne, for their leadership and guidance and support in this process, that I think will help us move a lot of very important bills forward. I think each of the members who have measures up today will tell you a little bit about their components, but I wanted to make 3 things clear. So if you pick up LB1195 and look at the copy as introduced, the committee amendment is going to gut that 100%. There's not going to be anything left of the original LB1195. We're going to keep working on that in the interim period and hopefully come back together in the next session. But the 2 bills that I have in the committee amendment that will replace the bill, 1 is LB1265 and 1 is LB1268. LB1268 relates to updating our thresholds for homestead

exemptions in the bankruptcy context. I brought this measure on behalf of the Civil Practice Section at the UNL Law School. We had a great hearing on it. There was no opponents. It had been many years since we had updated this threshold and addressed a quirk in the law in regard-- related to the marriage penalty. So that's the first piece. The other piece is ensuring that the funds that we grant out through-- that we take in through court fees, and then we push some funds out to try and address civil-- the civil legal needs of Nebraskans and improve access to civil legal services in Nebraska. What we wanted to do was tighten up that program a little bit and provide some accountability. We have removed the controversial parts of the bill as-- that was originally introduced. And all this says is that if you are going to get a grant to provide civil legal services, you have to provide civil legal services. You can't use it to pad your bottom line for anything else at the nonprofit. And not only do you have to provide civil legal services, you got to prove you're providing them, through a retainer or other sort of documentation. So those are my 2 parts. That removes the only opposition that was at the committee level. There is no fiscal impact. It doesn't change the dollars and the cents. But, but I think it has improved, hopefully, efficacy for how we utilize those public funds, and fidelity to what those public, public funds were intended to do. With that, I stand ready to help to answer any questions, and appreciate the body's consideration of this proposal before you today. Thank you, Mr. President.

**KELLY:** Thank you, Senator Conrad. As previously stated, there is a committee amendment. Senator DeBoer, you're recognized to open.

**DeBOER:** Thank you, Mr. President. Good afternoon, colleagues. I am opening on AM3291, which is the Judiciary Committee amendment. What we have here is a suite of bills, a flight of good government bills, as it were, that came out of the Judiciary Committee, dealing with civil matters. We have LB832, from Senator Blood. It came out of committee, 8-0. It has no fiscal impact and had no opposition in the hearing. That bill will authorize acceptance of cession or retrocession of federal jurisdiction for juvenile matters and provide for concurrent jurisdiction. Then we have LB902, which is my own bill. And that bill would provide that if you have a contract for a third-party guarantee of payment from-- for a, a assisted living facility, that you cannot do that in the same stack of paper, that you have to have a separate stack of paper. And you sign that you will guarantee that as a separate document. It contains-- in the committee amendment, changes made by AM2857. It came out of committee, 8-0. It has no fiscal imposition-- impact and no opposition. We also have LB1220, from

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Senator Bosn, which changes provisions relating to decedent's estate, transfers to minors, protected persons, powers of attorney for healthcare trusts and powers of attorney. That contains changes made by AM2915. Came out of committee, 8-0. It has no fiscal impact and had no opposition. As Senator Conrad has already discussed, we have LB1265 and LB1268. Again, no fiscal impact. And as amended, we are able to get rid of the opposition on 1 bill and had no opposition on the other bill. So I would ask for your green vote on this, this quintuple of good government and no impact fiscally, no opposition bills from the Judiciary Committee. I ask for your green vote. Thank you, Mr. President.

**KELLY:** Thank you, Senator DeBoer. Mr. Clerk.

**CLERK:** Mr. President, Senator Conrad would move to amend the committee amendment.

**KELLY:** Senator Conrad, you recognized to open on the floor amendment.

**CONRAD:** Thank you, Mr. President. Good afternoon, colleagues. In pulling together the different measures, I think that perhaps there was a technical error that had escaped my review until a moment ago. But we are striking 1 word in the committee amendment. That's "statewide." I don't think it's necessary, because arguably, all of the nonprofits that are providing legal services in Nebraska are chartered under Nebraska law and have a statewide reach, but I think it will provide, perhaps, some clarity and some comfort to those stakeholders involved. So I would ask you to strike the word "statewide" from the committee amendment. Thank you, Mr. President.

**KELLY:** Thank you, Senator Conrad. Seeing no one else in the queue, you're recognized to close. And waive closing on the floor amendment. Members, the question is the adoption of FA364. All those in favor vote aye All those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 31 ayes, 0 nays on adoption of the amendment, Mr. President.

**KELLY:** FA364 is adopted. Seeing no one else in the queue, Senator DeBoer, you're recognized to close on the committee amendment.

**DeBOER:** Thank you, Mr. President. Colleagues, I did just want to say thank you to the Speaker for the Speaker priority, and Senator Conrad, for allowing the Judiciary Committee to use her bill as a vehicle for these great-- this great quintuple of good government civil practice bills from the Judiciary Committee. Thank you, Mr. President.

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**KELLY:** Thank you, Senator DeBoer. Members, the question is the adoption of AM3291. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 33 ayes, 0 nays on adoption of the committee amendment, Mr. President.

**KELLY:** The amendment is adopted. Mr. Clerk.

**CLERK:** I have nothing further on the bill, Mr. President.

**KELLY:** Members, the question is the-- Senator Conrad. Excuse me. Senator Conrad, you're recognized to close. And waive closing. The question is the-- for the members is the advancement of LB1195 to E&R Initial. All those in favor vote aye; those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 38 ayes, 0 nays on advancement of the bill, Mr. President.

**KELLY:** LB1195 is advanced to E&R Initial. Items for the record.

**CLERK:** Thank you, Mr. President. Your committee on Enrollment and Review reports LB262A, LB287A, LB867A, LB1200A, LB1355A, all correctly engross-- as correctly engrossed and placed on Final Reading. Your Committee on Government, chaired by Senator Brewer, reports LB1417 to General File, with committee amendments. Senator-- amendments to be printed: Senator John Cavanaugh to LB541, Senator Machaela Cavanaugh to LB685A, amendment to be printed from Senator Bostar to LB937A. Motions to be printed from Senator Machaela Cavanaugh to LB20, as well as an amendment to be printed to LB20. That's all I have at this time, Mr. President.

**KELLY:** Thank you, Mr. Clerk. Please proceed to the next item on the agenda.

**CLERK:** Mr. President, General File, LB1317. Senator Erdman would move to indefinitely postpone the bill pursuant to Rule 6, Section 3(f).

**KELLY:** Senator Linehan, you're recognized to open on the bill.

**LINEHAN:** Thank you, Mr. President. And good afternoon, colleagues. LB1317 and AM3246. LB1317 as amended by AM3246 encompasses many good bills that came front of the Revenue Committee. And we've been referring to this package as the "good things for all Nebraska" package. The bill includes the following-- and I'm going to call on

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each senator who has something in the bill to explain their parts.  
Senator Bostar, would you yield to a question?

**KELLY:** Senator Bostar, would you yield?

**BOSTAR:** Yes.

**LINEHAN:** Senator Bostar, could-- would you please explain what LB1093 for first respond-- the First Responder and Recruitment Retention Act will do?

**BOSTAR:** Absolutely. LB1093 was brought to clarify and harmonize provisions within the First Responder Recruitment and Retention Act, that this body supported overwhelmingly last year. LB1093 brings the definition of law enforcement officer in line with Chapter 81, making it consistent across statutes and aligning language with the intent of the original act. Under LB1093, all professional law enforcement officers in good standing will receive the recruitment and retention benefits of the act. And I want to thank everyone that was a part of identifying these gaps and fixing them.

**LINEHAN:** Thank you, Senator Bostar. Appreciate that. The next part we will talk about is LB1134. Senator von Gillern, would you please explain what that does?

**KELLY:** Senator von Gillern, will you yield?

**von GILLERN:** I will. Thank you, Senator Linehan. LB1134 was brought to correct kind of an unusual thing that happens when TERC determines that a valuation on a property should be higher. The taxpayer owes additional taxes and interest is charged on that. And what LB1134 does was provide, was provide the taxpayer with a 30-day window to pay the balance owing before interest begins to accrue. So without the-- it equalizes the-- if you owe me money, if I owe you money, it's the same terms coming both directions, based on a TERC evaluation. It came out of committee, 8-0, and has no fiscal note.

**LINEHAN:** So this is a cleanup of TERC bill, basically?

**von GILLERN:** Yes, it is.

**LINEHAN:** Thank you, Senator von Gillern. Senator Bostar, the next on my list here is LB1217, which is revises statutes to add property tax exemptions for nursing and living facilities. And I think you probably

need some time here to explain what's going on in Lincoln, if we don't do this. Right?

**KELLY:** Senator Bostar, would you yield?

**BOSTAR:** Yes. And, and, and thank you. Absolutely. So LB1217 proposes tax exemptions and valuation methods for some of the most unique and critically important classes of affordable and rent restricted property in our state, which includes skilled nursing, nursing facilities, assisted living facilities, student housing operated by charitable organizations, land use restricted housing, and sale restricted housing. Nebraska has a, a dire shortage of affordable homes for low-income households, with only 77 units affordable and available in 2023 for every 100 renters with incomes at 50% of the area median. Land use restricted housing, commonly referred to as Section 42 housing, plays a vital and important role in ensuring access to affordable housing throughout our state. Unfortunately, undetected flaws in the valuation methods for Section 42 properties contained in the existing statutory provisions became amplified over time, leading to zero and sometimes negative valuations on certain projects, due to fluctuations in income and expenditures. LB1217 addresses these issues by averaging income and expenses as they become available, producing up to a 3-year rolling average for purposes of calculating valuations. Sales restricted housing is a form of shared equity home ownership that can take on a number of forms, and assists low and middle-income families participating in wealth building through homeownership, similar to the long-standing special valuation of Section 42 housing. LB1217 proposes to apply a special valuation method in recognition of the limited marketability of these housing projects, due to the explicit restrictions imposed on the sale of these properties.

**LINEHAN:** Thank you, Senator Bostar. I appreciate that. Senator Murman, again, I think this is a, a fix in something that's not set up quite right, right now. Would you like to explain LB1397?

**KELLY:** Senator Murman, would you yield?

**MURMAN:** Yes, I will. Thank you, Senator Linehan. My piece of LB1317 is-- was originally LB1397, which looked at the classification of ag land. Specifically, this bill adds a provision which says that land use for nonagricultural or horticultural purposes, such as solar or wind farms, are not included in that classification. The logic behind this change is simple. Agricultural and horticultural property tax



rate is for farming purposes only. In the case of creating wind and solar energy, energy, this is a commercial venture. This classification is not about punishing any industry, but instead about making sure our classifications make sense to why we have them. The classification of ag land was designed to reflect the true nature of-- as the name implies-- agriculture. Wind and solar farms, whatever your position on them is, fit-- don't fit that nature. This is a bill that has a broad range of support from our agriculture community, including the Nebraska Cattlemen, Corn Growers, Farm Bureau, Pork Producers Association, Sorghum Producers, Soybean Association, State Dairy Association, Wheat Growers Association, and Renewable Fuels Nebraska. Thank you, again, Senator Linehan.

**LINEHAN:** Thank you, Senator Murman. Senator Clements, you have an amendment, too, you can speak to you right now, AM1314 [SIC], which is an inheritance tax fix, I believe?

**KELLY:** Senator Clements, will you yield?

**CLEMENTS:** Yes. I have AM3314-- is just the inheritance tax reporting cleanup from LB1067. There's suggestions from the Department of Revenue. The current wording has created some issues. There are estates that owed inheritance tax in multiple counties. Currently, they're reporting that tax to only 1 county. This would have them report the tax paid in each county, so that the data that we get back on the reports is accurate. And so that's-- nothing to do with inheritance tax rates, just how it's reported so it's more accurate. Thank you.

**LINEHAN:** Thank you, Senator Clements. Senator von Gillern, would you yield to a question?

**KELLY:** Senator von Gillern, will you yield?

**von GILLERN:** Yes.

**LINEHAN:** Senator von Gillern, could you explain what the financial institution- excuse me-- Financial Institution Data Match Act does?

**von GILLERN:** Yes. Thank you. This was originally LB1295. It creates the Financial Institution Data Match Act. This is a-- establishes a system between the Department of Revenue and financial institutions that facilitates the identification of tax debtors. It outlines the procedures for data matching, confidentiality measures, and the potential involvement of vendors. It's not a new concept. This is

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already used by the state and the federal government. And the act made, made possible the financial institution data match for purposes originally so that government agencies could locate the assets of those who owed child support obligations-- in place. It's been utilized by DHHS to track down individuals who own child support debt. And it's been successful there. They have successfully navigated the, the privacy issues, which is one of the questions that came up in the conversation around this. It was voted out of committee 8-0. There's a small \$85,000 fiscal note to implement it, but the Department of Revenue estimates that it'll generate approximately \$2 million in additional revenue that they would not be able to track down the, the debtors of otherwise.

**LINEHAN:** Thank you.

**KELLY:** One minute.

**LINEHAN:** Thank you, Senator von Gillern. Senator McKinney, could you tell us what yours-- and we'll give you more time later, but get a start.

**KELLY:** Senator McKinney.

**McKINNEY:** Yes, I got shocked. But LB1043 is a bill that I brought to deal with nonprofit economic development corporations that, in my opinion, a lot-- and a lot of times hoard property. And what the bill does, it tells them they have a time period to develop the property. And if they don't develop the property within that time period, they, they begin to get penalized. And after a certain period of time, they could lose their tax exemption. And I brought the bill because a lot of property in my community is owned by nonprofit economic development corporations that are hoarding property. And it's a huge problem not only in my district and what we found in the hearing, it goes on across the state. Thank you.

**LINEHAN:** Thank you, Senator McKinney. There's also fixes to the, the good life district economic development act and then--

**KELLY:** That's your time, Senator.

**LINEHAN:** Thank you.

**KELLY:** Senator von Gillern, you're recognized to speak.

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**von GILLERN:** Thank you, Mr. President. Would Senator McKinney yield to a question?

**KELLY:** Senator McKinney, would you yield?

**McKINNEY:** Yes.

**von GILLERN:** We just ran short on time there so I punched in. Is there anything else you'd like to add regarding your bill regarding taxation of properties?

**McKINNEY:** Yes, it excludes political subdivisions. That's one thing I wanted to make a point of that I wasn't able to, that it excludes political subdivisions.

**von GILLERN:** OK. Thank you.

**McKINNEY:** Yep.

**von GILLERN:** And, and also just to-- just add a little bit more to the conversation because it was a really intriguing hearing. As you mentioned, it's, it's been found and it's not just in your district. It's been determined-- it was commented in the hearing that this is happening all over the state of Nebraska, where there are properties that are being held by nonprofit organizations who, therefore, defines those properties as property tax exempt. And they're sitting on those properties allowing them to grow in value with possibly, maybe, maybe not, any intention of ever developing them. Is that true?

**McKINNEY:** Yes.

**von GILLERN:** OK. So this would-- this would eliminate that, that, what we kind of determined in the hearing was possibly a scamming of a good system. So--

**McKINNEY:** Right.

**von GILLERN:** --accurate? OK. Thank you.

**McKINNEY:** Yep.

**von GILLERN:** I would also ask Senator Linehan if she would yield?

**KELLY:** Senator Linehan, would you yield?

**LINEHAN:** Certainly.

**von GILLERN:** Same thing, we just ran out of time there at the end. Did you have anything else you wanted to add?

**LINEHAN:** Yes, a very important part is LB863, which revises statute Section 77-2716. So last year, if you'll recall, we, we did a fix but we over fixed. We had a mistake in drafting the fiscal note. It just-- we missed it. So there is a group of people who most likely would be over 65, if not over 70 or close to 70, that were in the old FERS retirement system, the federal retirement system, previous to 1982 or '83, I think it was '82. They never paid into Social Security, so they don't get Social Security. So last year what we did is if they weren't on Social Security, we exempted income taxes on that FERS retirement. What happened in the mix was people like myself who I have a federal retirement but I also paid into Social Security because I didn't go into federal government until the '90s. So I've-- I should not get that exemption. So this fixes the bill. So it's only those that don't also get Social Security. So this is actually a fiscal note the Revenue Committee is bringing that brings us revenue. Now, there'll be some revenue loss here, but I think the fiscal note said that this is a correction that will save the state \$12 million. Also, can we yield time if we been yielded? I would suggest that maybe Senator Bostar has some more-- has some other things to say.

**KELLY:** Senator Bostar, would you yield?

**BOSTAR:** Yes, I would. Thank you. Just wanted to touch on LB1218, which I'm sure we'll have more--

**KELLY:** Excuse me, Senator Bostar.

**LINEHAN:** We can't--

**von GILLERN:** I would ask Senator Bostar if he would yield?

**KELLY:** Senator Bostar, will you yield?

**BOSTAR:** Yeah, I think so. Thank you, Senator von Gillern, Mr. President. So LB1317 also includes provisions of LB1218, which is legislation to establish an excise tax on electric energy used at commercial electric vehicle charging stations, makes federal dollars accessible to the state of Nebraska for electric vehicle infrastructure through the National Electric Vehicle Infrastructure Formula Program, and established regulations for the construction and operation of commercial vehicle-- electric vehicle charging stations.

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**KELLY:** One minute.

**BOSTAR:** Thank you. LB1218 was supported by the Nebraska Department of Transportation. And without the passage of this legislation, the 30,214,832 estimated dollars by the U.S. Federal Highway Administration that Nebraska is eligible to receive will not be available to our state, and we would not enjoy the opportunity to enhance our transportation infrastructure. Thank you.

**KELLY:** Thank you.

**von GILLERN:** How much remains, Mr. President?

**KELLY:** 33 seconds.

**von GILLERN:** OK, I'll yield back. Thank you.

**KELLY:** Thank you, Senators. Senator Erdman, you're recognized to open on your priority motion.

**ERDMAN:** Thank you, Mr. President. I was overlooked. I should have been up before you recognized Senator von Gillern. I didn't take a point of personal privilege, but we need to be aware of the fact that I had a priority motion. I should have been second after Senator Linehan. So just let me say a few things about this bill and, specifically, about what Senator Bostar just mentioned about the electric charging stations. It's not my intention to take this for the full 8 hours. My intention is to be able to make several points about this bill. It is a significant lift to have this many bills included in one bill. We've talked about that several times. So I'm going to speak about the electric charging stations and the fallacy that people have the opinion if we don't do it exactly according to this bill, we won't get the money from the federal government. I don't believe that to be the case and I will explain that and I also have an amendment that will be up later. And so I will try to help this bill move along so that it gets to my amendment and others that fix the issue that I have with these electric charging stations. These electric charging stations, these EV stations, are here to stay. We have to figure out a way to collect enough money for them to pay the road tax they should be paying equal to what the fossil fuel vehicles pay. But, anyway, let me-- let me go through this. And then when it comes time for the, the amendment, I won't spend a lot of time on it, but I want to give you time to think about it. OK, first of all, the electric vehicle provision in this legislation is problematic to our security. It's a

very security concern to me. The electric vehicle charging stations contain Chinese components made, and they should be outlawed because of these Chinese components. We have voted on several bills to ensure we don't have foreign components in any of the equipment in this state. You may remember last year we had a bill by Senator Bostar that had legislation that enacted the law to rip out and, and replace telecommunications equipment made by Chinese companies. Then we had LB120, a bill by Senator Bostelman, that doesn't allow foreign components within 10 miles of military installations. This was included in the bill passed on Select File. Then we have LB1120, a bill by Senator Hardin that seeks to protect land within the-- and, and restrict within 10 miles radius around military installations being purchased by an individual or individuals affiliated with foreign adversaries. We passed this yesterday or the day before, whenever that was, the bill is on Final Reading. LB1300, a bill by Senator Bostar that prepares the state to supply-- in the supply chain critical infrastructure for the risk of pacific conflict. Again, this is a bill to ensure that we do not have any foreign adversaries within our critical infrastructure and to ensure going forward we are protected. And lastly, LB1301, a bill by Senator DeKay to adopt Foreign-owned Real Estate National Security Act and modernize existing statutes relating to the state's restrictions on foreign persons or foreign-owned companies from owning agricultural land. We passed that bill 39-0. So we have passed all these bills to protect Nebraska against foreign adversaries, mainly China. The electric vehicle language in this bill brings Chinese components directly into the electric infrastructure. This is a problem. We have outlawed this and all of the legislation, now is the time to do this on this bill as well. My amendment will make sure all components and parts of the commercial electric vehicle charging stations are direct-- and the direct current charging stations shall be produced, manufactured, assembled within the United States. In order to be eligible for the program funds administered from the State of Nebraska, these, these-- not only these, but they must keep with the American-made products and the infrastructure to keep it safe. There was a bipartisan vote by both the House and Senate on, on the Congressional Review Act resolution to overturn the Biden administration Buy America waiver for the federal electric-- for federal electric vehicle chargers. That's exactly right. The Biden administration waived the Buy America provision from the NEVI funds. The waiver allows Chinese companies to benefit the profit-- and profit from growing-- the growing need for charging infrastructure in the United States. President Biden-- President Biden vetoed the resolution, therefore keeping the Chinese

components and electric vehicle charging components in our charging stations. The waiver of Buy America resolution would send American tax dollars to overseas companies and competitors and make America more dependent on the supply chain controlled by foreign adversaries, including Chinese, the Communist-- Chinese Communist Party. My amendment would ensure American businesses remain in the forefront of the electric vehicle innovation and manufacturing, and unless this state-- this act is-- unless the United States act like this amendment does, we are allowing foreign companies to profit from Nebraska and worse yet-- a worse yet scenario allowing opening our manufacturing to Chinese manufacturers and compromising Internet connection charging stations that can weaken and havoc our infrastructure. So let me read you what the amendment is. It's very simple and straightforward. The amendment is starting on section-- in Section 55, page 48, on the amendment to the bill on 45-- Section 45 says: For the purpose of this section, program means a National Electric Vehicle Infrastructure Formula Program or the Federal Highway Administration of the United States Department of Transportation. All components, parts of the commercial electric charging station or a direct current, fast-charging station shall be produced, manufactured, and assembled within the United States in order to be eligible for the program funds administered by the State of Nebraska. As a requirement before receiving any of these funds for the program, an eligible-- an eligible recipient of the program funds shall first submit documentation to the Nebraska Department of Transportation in a manner prescribed by the department clarifying the natural origin of all components and parts for each commercial electric vehicle charging station or direct current fast-charging station operated by the recipient of such funds. That's the amendment. That's what we're going to do. That's what we're going to fix in this bill. There's going to be other amendments that speak about these electric charging stations. We have spent a significant amount of time developing and passing those bills that I spoke about that protect our infrastructure and our security. If, in fact, we have passed those bills, and two of those bills were Senator Bostar's, I believe it is time for us to fix this so that we can also be secure in our electric charging stations. And if you want to see the resolution and the override, they tried to override President Biden's veto and they didn't-- they were not able to do that. And so don't let anybody tell you that we won't be able to get the funds if we don't pass it as it is. And don't let the Department of Transportation, anyone tell you that there is a provision to have American only parts. That's not the case. I've just

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stated that and you should understand that. So if I have any time left, I yield that to Senator Linehan.

**KELLY:** Senator Linehan, you have 2 minutes, 5 seconds.

**LINEHAN:** Thank you very much. So I'm going to ask if Senator Bostar would yield to a question?

**KELLY:** Senator Bostar, will you yield?

**BOSTAR:** Yes.

**LINEHAN:** So, Senator Bostar, there are a lot of people out in the lobby. Do you want some more time on your part of the bill about-- we, we are-- explain again what you're trying to do with electric vehicles.

**BOSTAR:** OK, so there is federal dollars available. Nebraska has an allocation of approximately \$30 million. In order to receive those funds, there are certain things we need to do in statute. Particularly, allow for the kilowatt hour sales of electricity through commercial vehicle charging stations. Now, when we start on that path, we get a lot of folks with a lot of thoughts, and that's fine, and so we end up where we have legislation that is to ensure we can pull down the federal funds, that we are ensuring that all vehicles are paying into-- paying for--

**KELLY:** One minute.

**BOSTAR:** --for roads and road construction.

**LINEHAN:** So, Senator Bostar, can I interrupt you just quickly?

**BOSTAR:** Absolutely.

**LINEHAN:** How long-- I remember you brought this bill last year, right?

**BOSTAR:** Yes.

**LINEHAN:** And in frustration you stopped-- and so you've been working on this pretty much nonstop for 2 years?

**BOSTAR:** At least. Yes.

**LINEHAN:** At least. OK. I just-- this is--



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**BOSTAR:** And I'll-- and I'll-- yeah, I'll add just, just briefly, if I may. This is the last opportunity. If we don't actually pass it this session, we don't have another shot at getting the money.

**LINEHAN:** OK. Thank you, Senator Bostar.

**BOSTAR:** Thank you.

**KELLY:** Thank you, Senator Linehan, Bostar, and Erdman. Senator-- Senator Linehan, did you conclude?

**LINEHAN:** Yes.

**KELLY:** Senator Dungan, you're recognized to speak.

**DUNGAN:** Thank you, Mr. President, and good afternoon, colleagues. I do rise today opposed to the indefinitely postpone motion, and I am in favor of LB1317. As I spoke about yesterday, when you look at a committee statement, it often contains a lot of helpful information. But one of the first things you can look at is whether or not a bill came out of committee unanimously or not. I was in support and remain in support of LB1317, because I think that, all things considered, the bill does a lot to really help Nebraskans, and I think it does a lot to both clean up some issues that came up last year while then addressing some ongoing issues that we have. It is a, a package bill. And so I think that so far the producers have done a very good job of introducing their individual portions. I understand that people may have questions about one part or, or a different part as we go on here today, but I just wanted to be on the record voicing my clear support for LB1317, because I think it seeks to achieve a lot of really beneficial goals. And I want to thank the rest of the Revenue Committee for working very hard to get these bills to a place where they do come out, obviously, 8-0, understanding people aren't always happy with certain parts of it, but sometimes you make decisions to push things forward. I understand some people in the, the lobby may not be happy with certain parts of this, but I know Senator Bostar has worked very hard on this, Senator Linehan has worked very hard in her parts, and so I do think that the bulk of LB1317 is things that we can all agree on. So I would urge a red vote on the IPP motion. I would urge a green vote on LB1317. And I would yield the remainder of my time to Senator Bostar.

**KELLY:** Thank you, Senator Dungan. Senator Bostar, you have 3 minutes, 30 seconds.

**BOSTAR:** Thank you, Mr. President, and thank you, Senator Dungan. I wanted to take just a moment to speak to the, the proposed amendment from Senator Erdman, although it isn't on the board yet. So, Senator Erdman, I-- here's, here's what I'm thinking about your amendment. I, I agree with it. I agree with it. But here's what I want to do, because, as Senator Erdman knows, he mentioned a few bills of mine that I've worked on and, and championed and tried to shepherd through the legislative process that would ensure we are protecting Nebraskans from foreign threats. And I think that that is a, a critical endeavor of this body. So what, what I would ask of Senator Erdman is for us to just work on the language. I, I just want to ensure that we aren't putting in language that could have unintended consequences. I think we want to ensure that, that the consequences of the amendment are to make sure that this is American production, American products, especially if it's going to be using U.S. and Nebraska incentives. So I'm on board. That's what I want to do. I just would ask that if he would just work with me on the amendment language, I would be really appreciative. Thank you.

**KELLY:** Thank you, Senator Bostar. Senator Brandt, you're recognized to speak.

**BRANDT:** Thank you, Mr. President. Would Senator Bostar be available for a question?

**KELLY:** Senator Bostar, would you yield?

**BOSTAR:** Yes, I would.

**BRANDT:** Senator Bostar, I know you've probably done more work on the problem that Lancaster County has had on valuing low-income housing. And the consequence of that, I believe, is now we've seen old people's homes and sororities and fraternities, and they're getting hung with astronomical valuations and possible taxation. Can you tell me, maybe in a minute, how that all happened?

**BOSTAR:** Yeah, absolutely. And, and thank you for the question, because I think-- I think this background is important. And so we, we have in statute, currently, provisions for assessing rent restricted housing, particularly Section 42 housing, at below market levels. The way it's written had some unintended consequences that have compounded over the years to the extent that we were seeing valuations, not just in Lancaster County, but this started in Lancaster County, seeing valuations of zero and negative amounts. And so what happened is,

frankly, eventually, the, the-- my understanding is the county and the assessor got kind of tired of zero dollar valuations for property. And so they went to TERC and, effectively, got permission to revalue the properties using another method. They were approved to use market-based valuation, basically ignoring what we have in statute. And so what was very low valuations and the intent of the statute was to provide some valuation relief, ended up being full-market value. So you, you had multiples of thousands of percents, valuation spikes for certain kinds of property across the county that led to a lawsuit. The provisions in-- proposing legislation in this bill would satisfy the parties on both sides of the lawsuit. If you look at the testifiers who came in, both sides, both the counties, as well as the plaintiffs on the-- on the case, both came in and testified as proponents for this because I think it strikes a nice balance. It would-- it should eliminate the zero valuation, should eliminate the negative valuations, but still be responsive to the realities that if you can't collect market rents, it's really hard to pay market assessments. And so we're trying to solve that.

**BRANDT:** And I would agree with that until that apartment house sales and the new owner makes it nonrestrictive housing. Because much like a house or farm ground, just looking at the building, it's going to have that true value. So how do they-- what is the equation to establish new value? Do they take a percent of market value or how does this work? Do you have any idea?

**BOSTAR:** So for Section 42, there's actually a formula. And it, it basically goes into income and expenses. And so it's derived through a formula through that. And I can-- I can get you that. I don't-- I can't rattle off the formula off the top of my head. But it is-- it is a-- it is a income and expense derived solution for finding that valuation.

**BRANDT:** Do you know if the Revenue Committee fiscal note or the bill that this originally was, does a fiscal note reflect what that costs the state of Nebraska to use this new valuation or does it make the state money?

**KELLY:** One minute.

**BOSTAR:** So I would say that since the state-- since we are just talking about the impact on property tax valuations, we don't see an implication at the state level. There is, obviously, an impact at the subdivision level, right, because you're, you're changing what the,

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the valuation is of properties within a given area. So there, there will be changes, right, we're going to-- some will come down-- some-- from, from where they have been historically. Some will come up from where they have been historically. I think it will be for the most part a wash. You know, we didn't get any opposition to this. We had counties come in, in support as well as the property owners and developers as well. I, I think you're not going to see seismic shifts in, in that. I think-- I think this is something that means--

**KELLY:** That's your time.

**BOSTAR:** --a great deal to a few.

**BRANDT:** All right. Thank you.

**ERDMAN:** Thank you, Senators. Senator Hansen, you're recognized to speak.

**HANSEN:** Thank you, Mr. President. I do-- I think more-- I don't if it's concerns as it is questions about that Section 44 of Senator Bostar's bill with EV charging stations. I was hoping he could yield to a couple of questions.

**KELLY:** Senator Bostar, would you yield?

**BOSTAR:** Yes.

**HANSEN:** And I'm sorry, I didn't-- I didn't-- I just got my head into this here a little bit ago. I didn't get a chance to ask Senator Bostar these questions beforehand, but the purpose-- and maybe you brought this up and I missed it-- but the purpose of, of this section preventing public power from putting in charging stations or limiting their ability to do it. What's the purpose of doing that? Why, why put it in here at all?

**BOSTAR:** The right of first refusal?

**HANSEN:** Yeah.

**BOSTAR:** Yeah, so I, I-- look I appreciate the question. And I think what was alluded to a little bit with some of the dialogue I had on the mic with, with Senator Linehan is this, this EV bill is-- exists in a very delicate state. And we haven't gotten to a place where everyone is on board. That's a reality. We're closer than we were a year ago, which is saying something. But there are challenges, and,

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and one of the-- one of the things that the private fuel retailers wanted was to ensure that they weren't having to compete head to head with a public entity. I think the idea being that that would be inherently unfair within the marketplace. So the right of first refusal exclusion provisions were included to allow the private sector to develop first in an area. And if that development didn't happen, then the public sector could come in and develop. That-- that's, that's the intent behind that level.

**HANSEN:** OK. And I know it's kind of a tricky situation because we do have private, you know, competing with public, you know, power, in essence. And so I can kind of see maybe where, where the intent lies, like, kind of what you just mentioned. And I notice they-- if public power decides to put an EV charging station in a certain location, they have to put it in a notice 90 days prior. Correct?

**BOSTAR:** Yes.

**HANSEN:** Does the private entity who wants to put one in, do they have to put notice in the paper?

**BOSTAR:** No.

**HANSEN:** OK. And is that mainly to notify private industry that they're going to put one in so they could put one in before them and have first right of refusal?

**BOSTAR:** Yeah, I mean, that's, that's the execution of the first right of refusal, right, so that's-- that would be the notice portion is the public entity would have to notice their intent to develop in a manner in this case, you know, in the paper something of, of circulation so that the private sector could identify and say, say, yeah, OK, they, they want to build here. And then they could look to see if they wanted to develop in that area, and if so they could execute their first right of refusal.

**HANSEN:** OK. And, and, and I'm-- I think my primary goal would be to make sure that the people of Nebraska or people coming through Nebraska are able to get the cheapest supply-- power supply that they could for these electric charging stations.

**BOSTAR:** Sure.

**HANSEN:** And I think this might hinder that a little bit. Right? I think if we're looking-- we're looking out for the taxpayer of

Nebraska, allowing them both equal opportunity to put in charging stations without first right of refusal. And if that ends up leaving-- you know, leading to cheaper, you know, power supply for people for their cars because the public power, I think that's not a bad thing. But I also understand, maybe, what you're trying to do with this bill because of the, the situation between public and private. If we ended up modifying this or taking it out, would that still affect our ability to get federal money?

**BOSTAR:** No.

**HANSEN:** OK. I'm still listening to the conversation. I really appreciate you answering my questions.

**KELLY:** One minute.

**HANSEN:** Just trying to wrap my head around this section, in particular, so.

**BOSTAR:** Yeah, yeah, if I-- if I may--

**HANSEN:** Yep.

**BOSTAR:** --follow up on that. So, no, these-- the provisions that we're talking about now wouldn't impact the eligibility for the federal funds. But, but I would say that having tried to work on this for the last 2 years, there is-- there isn't a way to get the bill to a position where everybody's happy. Right? So if you-- if you scale back on, on the right of first refusal provisions, you're then going to engender opposition from the private sector. Right? And, and so it's just this balancing act, this is the way the bill came out. But I, I absolutely understand where you're coming from.

**HANSEN:** Yeah, and I think you're-- I think you're in a tough position trying to balance what makes people happy versus what's fair. I think-- I think that's the rub, I think, right now that-- and I think you've worked hard on this bill and this section as well. And so I just-- I just wanted to clarify some of those questions so I can kind of figure out what to do with this, so.

**BOSTAR:** I appreciate it.

**HANSEN:** All right. Thank you, Mr. President.

**KELLY:** That's your time, Senators. Senator Ibach, you're recognized to speak.

**IBACH:** Thank you, Mr. President. I just want to share a couple observations from my public power managers who have been in touch with me and we've kind of been back and forth regarding the EV and I really appreciate this dialogue because it speaks directly to what some of their concerns are and it ties in with Senator Hansen's and Senator Erdman's comments and, therefore, I appreciate Senator Bostar's comments on this. From one of my managers, he says: Within LB1317, has language about right of first refusal that would prohibit or restrict electric companies within Nebraska from installing or building electric vehicle charging stations. And then he kind of gives some examples which you can appreciate because it kind of dumbs it down for me. But it says if, if, if The Twilight Zone were still on today, this would make a great script, electric utilities prohibited from selling electricity to an end-use customer. While we're at it, he says maybe we can create a bill that restricts local Internet or cell companies in a way that, that they would have to get first right of refusal from Verizon or AT&T or another example he gives is local ranchers from selling beef without Walmart's approval. He says Section 44 on page 47 goes too far and takes the control out of local communities and favors vendors from outside the state, which I think is what Senator Erdman was alluding to. Restricting an electric company from selling electricity will set a bad precedent and impact other future decisions. I have another manager that reached out to me as well and says that: Within the amendment is the inclusion of LB1218, which contains language about electric vehicle charging stations and taxation. The Nebraska Rural Electric Association has been working for years to help create changes to deal with this emerging technology. We are generally supportive of the changes, however, along with other power providers in the state, we're opposed to one particular section of LB1218 and testified to this at the hearing, which I was not privy to, but they provided that they were at the hearing. He goes on to say: It's extremely unfair for us to allow other businesses to participate in our business space and then say that we must get permission from these other businesses to do what we may want to do. This is a direct affront to free enterprise. There are already 250-plus charging stations in the state that have been successfully implemented without these restrictions. The only reason to implement these restrictions is to give preference to special interest groups who, who want to have a monopoly on this area of commerce. Removing Section 44 does not affect the essential elements of this bill and

he's urging me to share this information. So as Senator Erdman and Senator Hansen both alluded, EV stations, I think, are likely here to stay, but we should not exclude the local control. So, anyway, I appreciate this dialogue, I appreciate Senator Bostar's input on it, and I would yield my time back. Thank you, Mr. President.

**KELLY:** Thank you, Senator Ibach. Senator Raybould, you're recognized to speak.

**RAYBOULD:** Thank you, Mr. President. For full disclosure, I am wildly supportive of electric vehicles. I own two of them. Also, with our company, we've installed six electric vehicle charging stations. And most of those stations were established using a grant from the Nebraska Department of Environment and Energy from the settlement funds from the Volkswagen emission scandal. So we were able to do this with getting funds because those components and parts are incredibly expensive. And so I hear Senator Erdman's complaint about Chinese equipment, Chinese components. But I think if we step back and look at the broader picture of our trading partner, China, the Republic of China, Communist Party, whatever, they are a significant trading partner for us, our agriculture products. And I don't want to throw out the baby with the bathwater, particularly when it comes to electric vehicle charging stations. A lot of those components are manufactured already in the United States of America. But I, I heard Senator Hansen's comments and I thought they were all very well taken. You know, establishing additional electric vehicle charging stations is going to happen, whether it's the private sector or the public sector. And I'd like to see the public sector step in more. That was a suggestion I had with the Department of Transportation. We should have EV charging stations at the rest areas along Interstate 80. But I was concerned-- and this question is for Senator Bostar. Will you yield to a question?

**KELLY:** Senator Bostar, would you yield?

**BOSTAR:** Yes.

**RAYBOULD:** OK, here's the question. So we know that there's a big difference between EV, EV, electric vehicles and those vehicles that have emissions. And so how did you come about establishing that excise tax amount? And my thought process for full disclosure is because electric vehicles, they use the roads just the same as the emission emitting vehicles. But the point is they have zero emissions, so shouldn't there be an incentive? And how does the current excise tax



that you've established in this legislation compare to those vehicles that emit emissions?

**BOSTAR:** Well-- yeah, thank you for the question. I would-- I will start by saying that these provisions that you're asking about are similar to all of the provisions in the bill, insofar as they are the result of a great deal of compromise and negotiation with a multitude of stakeholders and interests. So I'll, I'll start there. So 3 cents-- so we're seeing this pick up more and more of establishing excise taxes on electricity sales from commercial vehicle charging stations. And that revenue being put forward into roads funding, roads maintenance, roads repair, road creation. And 3 cents is about on par with what we have seen other states create so that's my understanding of where the proposal for 3 cents per kilowatt hour came from. And it's-- you know, there's a lot of variables at play. And I-- and I understand the argument that should there be, you know, effectively a discount for, you know, emissions and, and, and that sort of thing. And, and I think that's fair. I think 3 cents per kilowatt hour-- if you were to just use commercial vehicle charging stations only, I still think you'd be-- end up paying less than you would in gas taxes.

**KELLY:** One minute.

**RAYBOULD:** OK. The question I have, would you be able to get us more information on how that compares with the excise tax on ethanol blends versus unleaded blends versus-- and I'd like to see your data on all the surrounding states and how you got to that comparable excise tax, because as you stated correctly, I'm, I'm big on there should be an incentive for us to look at giving a discount to those that have no emissions. And then can a public entity qualify for some of the federal dollars? I know you have your right of first refusal, but can a public entity be in line? I know that they're in line for some of the grant money from the Volkswagen emission settlement funds.

**BOSTAR:** It's my understanding that they can. I can certainly verify that. You know, the money would come down to the Department of Transportation here at the state level is my understanding of how that logistically would work, but I, I think--

**KELLY:** That's your time, Senators.

**BOSTAR:** --it's broadly applicable.

**KELLY:** Thank you.

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**RAYBOULD:** Thank you, Senator Bostar.

**KELLY:** Senator Erdman, you're recognized to speak.

**ERDMAN:** Thank you, Mr. President. I appreciated Senator Bostar's comments about working together. I, I exactly hope that that would be the case. So let me-- let me just share this, we're on Day 55, and we don't have a lot of time to make amendments and do those kind of things. And so I'm not intending to hold up this bill and especially the whole LB1317 because a lot of people have worked hard on it. That's not my goal. But my goal is to fix this, and I had intended to not leave that IPP motion up there long so we can get to the amendments. But I will leave that IPP up there until we have an agreement going forward on how we're going to deal with these. And if we don't get an agreement, then that IPP will stay there and we'll go 8 hours. And I don't want to go 8 hours. I don't know of anybody in here that wants to go 8 hours. And I know the redcoats don't want to go 8 hours. Right, Burdette? OK. So as soon as possible, Senator Bostar and I need to sit down and figure out what the language should be. I don't think Brandon wants to go 8 hours either. We need to sit down on what the language needs to be and get that done real, real, real soon because I would like to pull that IPP motion and move to the-- to the amendments. But that's my charge, that's my intention, and I'm willing to move on as soon as we can figure out how to do that. Thank you.

**ARCH:** Senator Dover, you're recognized to speak.

**DOVER:** Yeah, I received a letter from Mark Johnson at Elkhorn Rural Public Power. I just want to read part of it. I-- I'm not up to speed on this, but I think it might help some that may be in the same position I am. They have opposition to it, not the entirety but, actually, Section 44, that was talking to Senator Erdman on. So public power was asked if they would draft the language to allow electric vehicle charging station operators to sell electricity in our state by the kilowatt. Currently, only public power is authorized to sell electricity by the kilowatt in Nebraska. They didn't say no. They entered in the process in good faith and were-- produced the language you see in this bill that allows for the private operators to resell electricity in Nebraska. This is important because selling by the kilowatt hour is a requirement to receive much of the-- much of the available grant dollars. Section 44 goes, goes too far. It says that a public power district can't own or operate EV charging stations without first obtaining a right of first refusal from any public-- so

would be any private operator within 15 miles, a proposed site that has plans to construct a fast-charging station within the next 18 months. Public power should not have to ask anyone permission to sell electricity in their state. This is what they do and this is a core to their business. Section 44 is a solution in search of a problem. Public power can be a good partner on these projects. They're more than happy to sell these companies electricity that they need to power these charges. They can't do a-- they can't do-- support a statute that says public power is not allowed to sell electricity in Nebraska without first obtaining permission to do so. There are 246 level CDC fast charges in Nebraska. These were all successfully installed without the right of first refusal provisions in Section 44. We know of no project where public power has someone undercut-- has undercut a private charging station operator. Quite the opposite, these very same companies often seek out public power to partner with on these projects. We know of no evidence of any problem that would justify this clause in the bill. Removing Section 44 in the bill would not change any of the essential elements of the bill. It would still allow the private companies to access federal NEVI funds they seek to help to install these charging stations. I was wondering if Senator Bostar would yield to a question?

**ARCH:** Senator Bostar, will you yield?

**DOVER:** Is he here? OK. I guess, I will just-- but my main concern is, why are we limiting, limiting them? If it doesn't affect them, I think that this would limit, perhaps, what's available in Nebraska. And then think about, if you're in a small-- in a small town, is there one gas station or is there-- is there one truck stop? If you're in a small town, isn't there a gas station on either side of that community? And I think-- think about it, 15-mile limit. Think about it. I don't think that makes sense. I don't think that anyone in a gas station would, would agree with that either. And I think this would limit the access and the competition to, to EV charging stations. I yield the rest of my time to the Chair.

**ARCH:** Senator Jacobson, you're recognized to speak.

**JACOBSON:** Thank you, Mr. President. Well, I'd like to weigh in and give a couple of answers to two of the issues that are out here. First, I'd like to talk a little bit about the NEVI funds. First of all, the NEVI funds require Buy America. So I think we got some belt and suspenders going on here. You are required to Buy America to get access to those funds-- that funding and that funding is down the

corridor of the interstate, essentially. Also, if you look at Tesla, they build their equipment in Buffalo, New York, not New York City, Buffalo, New York. So they are made in America. And just-- so to clear that up, that would be the issue I'd want to speak to there. As it relates to the right of first refusal, there was a, a-- there was an interim study last summer where we had everyone come in, all the parties weigh in on this, what we've ended up with is really where the compromise is. And now they brought the, really what I think was a compromise to the floor so we can rehash it again. Why is there a requirement or is there a need for a requirement for right of first refusal? We've talked a lot about where do you go to fuel your car today? You go to a gas station or a truck stop down the interstate. So if they want to put in these high-speed chargers, you're talking about huge money to install that charger. Private enterprise would put it in and they would use NEVI funds to subsidize it. But once they put it in, if public power, who has all the ratepayer capacity to use all the ratepayers and just tweak their rates up a little bit and put one in themselves a year later or put one, one in themselves, where's the incentive now for those gas stations and those truck stops to put in a high-speed charger? If we want to get those charging stations out and we want the logical locations, which would be the gas stations and the truck stops, who also have the ability to go into a restaurant, be able to do other things, pick up the snacks where they inside sales, I would think we'd want to bring them to those convenience stores and those truck stops, but they want some assurances that they aren't going to spend the money to put them in, which is a major capital expenditure, and then have government come in, essentially government controlled power come in and use taxpayer or use ratepayer subsidies to build something and compete with them. That's what the issue really is. Now you can decide how you want to handle that, I don't have a dog in this fight. But I'm just telling you that's the reason, and that was what was debated last summer as it related to the right of first refusal. And, and, again, you make up your own mind on how you see that. NEVI funds, if we don't get something down now, we're one of the few states that haven't taken it down, those funds are going to go away. So it'd probably be good to get something done this session. And they do have a Buy America requirement in there now, I think there's willingness to do any kind of change on the language to require those pieces there. But it's, it's already in-- it's already in the NEVI fund guidelines at the federal level. Thank you, Mr. President.

**ARCH:** Senator Linehan, you're recognized to speak.

**LINEHAN:** Thank you, Mr. President. Couple of lessons here. When you punch out in front of somebody, it's nice to give them a heads up. But I've done it to other people, so I understand it. The other thing I messed up earlier in this conversation, I'd like to apologize to Senator Erdman, when somebody yields you time, you don't yield-- you don't ask the person they're having a disagreement with a question, so. I've been here 8 years, you still make mistakes. So I am sorry. I am going to talk here, maybe babble, because I have been through our-- my parts of the bill. I don't know if we missed anybody. Please come slip me a note if we did. I am talking because Senator von Gillern, and I have great empathy for him, he's-- nothing like trying to debate a bill and trying to work on an amendment to fix the problem at the same time. It becomes very complicated. So I didn't get clear to the back of this. I think-- Senator Meyer, are you here? And I didn't give him a heads up, so-- oh, there he is. Thank you. Would, Senator Meyer, would you yield to a question?

**ARCH:** Senator Meyer, will you yield?

**MEYER:** Yes, I would.

**LINEHAN:** Senator Meyer, could you explain the part that is about nitrates that's in this bill?

**MEYER:** Yes, I would be happy to. So this is some money that will go out through the Department of Natural Resources and the NRDs. Technology has been developed to do real-time testing of nitrates in groundwater. As you travel across Nebraska, there are some areas with problem nitrates. The safe level for human consumption is about eight parts per million. There are some that are higher than that. The Governor is trying to get a handle on that and be at the forefront of technology. With the technology that is now available, they would like to start testing real-time groundwater nitrate level at the wellhead and then coordinate that level with the parts per million that are-- or the amount of nitrogen that then is applied through the center pivot. So it's kind of on the cutting edge of technology. We hope to be a leader in, in doing that in the-- in the Corn Belt, especially in the Western Corn Belt, where we irrigate from. And this is just a little money to kind of get us started to motivate some farmers to look at this technology and implement, implement it on their farms. So that kind of wraps up what that's all about.

**LINEHAN:** Thank you, Senator Meyer. Also, we've got amendments coming up here regarding a fix that the Governor wanted, I think on gaming

dollars? Gaming dollars. There's a couple of them. So we'll take one down and then we've got a substitute and they're filed so if you want to look ahead to those. And then I'm hoping that the team out there can find some solutions. And people that have questions about Senator Bostar's part of the bill, if they could-- oh, there you are, Senator Bostar. Do you need any time, Senator Bostar? No. Last thing he needs is to be on a microphone right now. OK, I yield my time back to the Chair.

**KELLY:** Thank you, Senators. Senator Kauth, you're recognized to speak.

**KAUTH:** Thank you, Mr. President. The, the EV portion of this bill is a compromise. When we started talking about it in committee, the big part was the public utilities are the only ones who can sell electricity by the kilowatt hour. So the problem is, how do we get these EV charging stations across the state if public utilities are the only ones who can-- who can do it? So that led to us saying, OK, well, we will now allow the kilowatt hours to be charged or retail to charge by the kilowatt hour as well. But then how on earth does a retail establishment compete with a public utility if they decide to go do it? Senator Jacobson is exactly correct. They have much more money. They have much more reach. It puts retail at an extreme disadvantage. So this was the compromise that came up. Public power will let the retail group sell at the kilowatt hour and the retail establishments will give a right of first refusal. So they're asked first. So when one of these charging stations need to go in, if the public power says, hey, I really want to do it, but there's a, a retail establishment, whether it's a Bucky's or a Kum & Go or a Bosselman's within 15 miles of that, they get the right of first refusal. That means they could say, yeah, we're not interested in doing that so you go ahead and provide that service. But we don't want to have it set up where retail establishments are in direct competition with a government body that is selling utilities. This is-- this was a really, really good compromise, I hope everybody can get behind it, and I yield my time.

**KELLY:** Thank you, Senator Kauth. Senator Dover, you're recognized to speak.

**DOVER:** Thank you. I'd like to ask Senator Bostar a couple of questions if he would yield?

**KELLY:** Senator Bostar, would you yield?

**BOSTAR:** Yes.

**DOVER:** Thank you. Was there-- I just-- I'm a little concerned about the 15-mile proposal. I mean, obviously, where I come from, Madison is about 15 miles from Norfolk. What-- where did you come up with the 15 miles and is there a possibility that, you know, because you can't be closer than 15 miles that somebody may not make it to the next charging station?

**BOSTAR:** Yeah, that's a fair question. So the proposals came from the private industry stakeholders, right, so the 15-mile provision, the 90-days provision, all of those specifics came from the private industry stakeholders that were worried about maintaining a level playing field. As far as my appetite toward tweaking those numbers or, or finding a better balance, I'm absolutely open to it. I was just talking to Senator DeKay who asked if, if I would be willing to sit down with both of the sides on this between General and Select and see if there was any more room to meet in the middle. And I said that I absolutely would. So I'm sure that the, the specific provision that you're inquiring about can be part of that discussion.

**DOVER:** And so as far as competition, I mean, you could, obviously, handle the, the cost of kilowatt per hour that they could sell it at through some arrangement contractually, but I suppose is the problem with competition is simply them using their resources that they would have as opposed to a private business?

**BOSTAR:** Yes, it's-- I mean, I think that-- there's, there's public first, private in general, which is that the public entity can effectively retail the electricity while recouping margins from ratepayers. And the, the private entities, you know, they can't-- they, they don't function that way. So that-- you know-- I think there's-- that was the root of the concern. There were other concerns around the public entities selling the electricity-- effectively retailing electricity for cost versus retail compatible or, or comparisons. I think a lot of that, actually, was addressed. So there are just some of these lingering concerns that are related to how competitive a private entity can be in selling electricity with a public utility.

**DOVER:** OK. Well, I guess I'll just say that it, it sounds like if you're willing to work with Senator DeKay that I would definitely support this. Thank you.

**BOSTAR:** Yeah, well-- and I just, just want to say thank you. And, you know, I've been working on this for a few years now so I appreciate that going forward there's going to be a lot more of us at this table. I'm looking forward to it, it's going to be a lot of fun, and I think all of you will get to experience what I've been dealing with in this bill for the last couple of years.

**KELLY:** Thank you, Senators Dover and Bostar. Senator DeKay, you're recognized to speak.

**DeKAY:** Thank you, Mr. President. I've been taking in a lot this afternoon from all entities involved in this situation. My roots go back to the public power world and I understand how that business kind of works and understand what their intent is. When it comes to generating and selling electricity, that's their business. And taking them out of their core values of being able to sell electricity doesn't seem that's what the proper method of the job description is with this. So with that, we talked about competition. If we're going to stymie competition and we talk about petroleum and filling stations and stuff, are we going to limit certain truck stops from selling fuel or bio diesel fuel compared to the other truck stops involved just because it might drive competition, might drive the price down? We need to take everything into account with this. And I'm willing to work with Senator Bostar on this. There are things that in Section 44 that I don't agree with right now and I'm trying to wrap my head around everything. If Senator Bostar would yield to a question?

**KELLY:** Senator Bostar, would you yield?

**BOSTAR:** Yes, I would.

**DeKAY:** And I know you stated earlier, but just to make sure, the NEVI funds will not go away if Section 44 is stricken, will it?

**BOSTAR:** It will not.

**DeKAY:** So going forward, those-- that \$30 million of federal grant would still be in, in place. I'm trying to figure out how we could get to a point where-- and, obviously, it's statewide-- each statewide-- each entity has its own problems to work with in the cities. You're going to have filling stations that would be selling within 2 miles or 15 miles of where we're at right now. How do we get to a point where everybody can go home-- and being a basketball official, I would like to say if I can make everybody go home mad at me, and that's about



where I'm at right now, I've done my job, so. But how do we get to that point where everybody can claim partial victory at least and working forward with that? And in a rural sector, we-- you know, we're going to have filling stations 15, 20 miles apart and how do we address those issues to make, make that being able to be sold in rural sectors in different parts of towns that way?

**BOSTAR:** Well, yeah, I mean, I'm certainly committed to working with you in trying to get to a point where everybody can be a little bit happy. If, if you are as you-- as you sort of asked, too, how to get to a point where everyone can be mad at you, then I think just try to-- try to bring this bill under your own name and I, I think-- I think that's a pretty quick way to get there.

**DUNGAN:** OK.

**BOSTAR:** But, yes-- no, no, let's work on it. I'm always happy to-- have been for a while, it's-- you know, there are some fundamental opposing forces and interests on this-- on this bill. That's a reality. So getting closer together, that's something I support and happy to try to get there.

**DeKAY:** I would say that I think there needs to be the serious conversations going on between the entities involved in all of this. I do have an amendment to strike Section 44, and if we can get to a point between General and Select, I won't drop it.

**KELLY:** One minute.

**DeKAY:** Thank you, Mr. President. But if we can't, I'm going to have to drop that amendment to try to kill the bill, so.

**BOSTAR:** Understood.

**DeKAY:** OK. Thank you, sir.

**KELLY:** Thank you, Senators. Senator Bostelman, you're recognized to speak.

**BOSTELMAN:** Thank you, Mr. President, and good afternoon, colleagues and Nebraskans. I'm just going to speak fairly briefly on this and mostly this-- what I have to say is for the lobby, for those in the lobby, because my understanding and Senator Bostar has said he's tried to work on this for quite some time. And we still got some distance between us on trying to get a, a path worked out to get the parties to

agree upon. Several senators have already stood up and talked about that Section 44. That's a concern with me as well. There needs to be language that we can work out with this, that we are a public power state. Public power is not-- I don't think public power is interested in going in and providing these type of services, but public power wants to ensure that there are some, some reasonable expectations and things that are done within this that needs to be worked out. And, again, I'm saying this for those in the lobby, and we need to get serious on this thing. We need to get it worked on because I believe there's enough of us on the floor right now. Let's say Section 44 needs a lot of work. If it's not removed completely, then it needs a lot of work to get done. So let's get to it and let's get it done. The second part, I want to talk to Senator Bostar off the mic probably, it's on page 43, lines 40-- 24 through 27 and it's about the excise tax. And the Transportation and Telecommunication Committee over the years, we've talked about how are we going to tax EVs? How are we going to tax, get a fuel tax, how are we going to do those things? So I want to understand a little bit better where that 3 cents came from? How did you come up with that number? Is that a fair number to have or should it be something different? I want to make sure if we're going to collect a tax on it, we've got to pay for-- we've got to make sure-- at some point in time we have revenue coming in to, to maintain the roads, to build our roads and maintain our roads. So I want to make sure if we do put some tax in here, a number in here, that it is the appropriate amount and I want to make sure it, it was thought through and, and we have that done at the right level. Thank you, Mr. President.

**KELLY:** Thank you, Senator Bostelman. Seeing no one else in the queue, Senator Erdman, you're recognized to close on your motion.

**ERDMAN:** Thank you-- thank you, Mr. President. So over the last 45 minutes or whatever we've been talking here, had several conversations with folks involved in this. And what I'm going to do when I finish my comments here, I'm going to withdraw this IPP. So I have been in discussion with those involved. And we are going to make an adjustment to an amendment-- to this amendment that I have so that we make sure that we're protecting the security of not only Nebraska, but the United States. And we hope to have that for Select. And so I would withdraw the IPP motion and allow us to get to the amendments that are on the agenda. Thank you.

**KELLY:** Without objection, it is withdrawn. Thank you, Senator Erdman. Mr. Speaker-- Mr. Clerk.

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**CLERK:** Mr. President, LB1317, introduced by Senator Linehan. It's a bill for an act relating to revenue and taxation; states findings. The bill was read for the first time on January 17 of this year and referred to the Revenue Committee. That committee placed the bill on General File with committee amendments, Mr. President.

**KELLY:** Thank you, Mr. Clerk. Senator Linehan has already opened on the bill. Senator Linehan, you're recognized to open on the amendment.

**LINEHAN:** I think we covered most of the amendment in the bill so there's other amendments coming up so let's just keep rolling here.

**KELLY:** Thank you, Senator Linehan. Mr. Clerk.

**CLERK:** Thank you, Mr. President. Senator Clements would offer AM3314.

**KELLY:** Senator Clements, you're recognized to open.

**CLEMENTS:** Thank you, Mr. President. AM3314 is a cleanup amendment for inheritance tax and it doesn't change any of the tax rates. It just changes how the reporting is done. Right now, they're reporting all the tax to the county where the estate is processed. But if there is tax owed in, in another county as my father's was, he had-- taxed to two different counties, but it was all reported in one county so that's a mismatch from what the counties are actually receiving. So this would have the report of inheritance tax be given for the amount that each county has received. So there, there-- there'll be a separate report for each county where there was inheritance tax. And, also, I just had a question from the bar association. It does say-- we also added that the county treasurer or the county attorney may complete the form in place of the beneficiary, and so that is to help them. If, if they need some help, the county is able to complete the form as well. But I also wanted to say that I am sorry to report that my priority bill LB1067, the inheritance tax phaseout is currently unable to move forward. NACO's representative and I worked out an agreement to change the Class 2 and 3 tax rates from 11 and 15% to 6% and 6%, and I prepared an amendment providing full revenue replacement of \$12 million to the counties to cover the loss of revenue. And this amendment also reduced a 5-year phase out just to a 1 year change and hoping to do something this session. Unfortunately, the NACO board decided not to approve this step. And despite my compromise with them, they're not supporting the inheritance tax bill. I am still dedicated to getting rid of this antiquated, arbitrary, unfair form of taxation that makes Nebraska an island in the Midwest and only 1 of 5 in the

country that still have this tax. I am very disappointed by NACO for their behavior this session with not approving a very reasonable compromise they helped author and their representative worked out with me. But the amendment that you're seeing there is-- leaves the inheritance tax where it is, just changes the reporting which the Department of Revenue requested. Thank you, Mr. President.

**KELLY:** Thank you, Senator Clements. Seeing no one else in the queue, Senator Clements, you're recognized to close and waive closing. Members, the question is the adoption of AM3314. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 31 ayes, 0 nays, Mr. President, on adoption of the amendment.

**KELLY:** AM3314 is adopted. Seeing no one else-- Mr. Clerk.

**CLERK:** Mr. President, Senator Erdman would move to amend with AM3358.

**KELLY:** Senator Erdman, you're recognized to open.

**ERDMAN:** Thank you, Mr. President. We had a, a, a good discussion about this amendment. I read this in my opening on the IPP motion. So just, again, I want to just reiterate what we're going to do. We're going to move forward with an amendment that's going to include this, but protect the opportunity for us to make sure we have the security we need. So I would just ask for you to-- I'll tell you what let's do, let's withdraw this one and we'll put in another amendment later. Withdraw this one.

**KELLY:** Thank you, Senator Erdman. So ordered.

**CLERK:** Mr. President, Senator von Gillern would move to amend with AM3300.

**KELLY:** Senator von Gillern, you're recognized to open.

**von GILLERN:** Thank you, Mr. President. There was a section in the bill on page 47, lines 4 through 7 which require training-- specific training for installation of the vehicle infrastructure devices. When I read through that and I saw who the-- where the language came from, I was concerned that this would be limiting the ability for vendors and the utility companies to contract with parties that they deemed fit and qualified to do the work. Obviously, those contractors would need to be qualified, licensed, insured, bonded, and so on. But after doing some further research, I find that it's not as inhibiting as I

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believed it to be. And I would request that the amendment be withdrawn. Thank you, Mr. President.

**KELLY:** So ordered. Mr. Clerk.

**CLERK:** Mr. President, Senator-- it's all I have at this time.

**KELLY:** Seeing no one else in the queue, Senator Linehan, you're recognized to close on AM3246 and waive. Members, the question is the adoption of AM3246. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 34 ayes, 0 nays on adoption of the amendment, Mr. President.

**KELLY:** AM3246 is adopted. Mr. Clerk.

**CLERK:** Mr. President, Senator McKinney would move to amend with FA380.

**KELLY:** Senator McKinney, you're recognized to open.

**McKINNEY:** Thank you, Mr. President. This is a simple amendment just to clarify some language. I got this from the counties. Just in the event that these property owners do end up getting their property exempt-- exemption taken away, it happens on the county level and not on a state level. And that's all it's doing. It just says: make a written recommendation to the county board of equalization in the county where the property is located. And that's all. Thank you.

**KELLY:** Thank you, Senator McKinney. Senator Linehan, you're recognized to speak.

**LINEHAN:** Thank you, Mr. President. I just want to thank Senator McKinney for working with NACO to figure out this issue that we had in the bill so we don't have to bring it back later and fix it, so. It's a friendly amendment and I'd appreciate your green vote. Thank you.

**KELLY:** Thank you, Senator Linehan. Seeing no one else in the queue, Senator McKinney, you're recognized to close and waive closing. Members, the question is the adoption of FA380. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 37 ayes, 0 nays, Mr. President, on adoption of the amendment.

**KELLY:** FA380 is adopted. Mr. Clerk.

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**CLERK:** Mr. President-- Senator Linehan, I have AM2672 with a note you would wish to withdraw.

**KELLY:** It is withdrawn.

**CLERK:** In that case, Mr. President, Senator Ibach would offer AM3135.

**KELLY:** Senator Ibach, you're recognized to open.

**IBACH:** Thank you very much, Mr. President. AM3135 is a very simple amendment. This amendment provides a minor change to the ImagineNE Nebraska Act, which will allow businesses which manufacture liquid fertilizer, other chemicals applied to ag crops, or liquid additives for farm vehicle fuel to be eligible to apply for a property tax exemption under the act for the manufacturing equipment under the ImagineNE Nebraska Act. I would like to remind the committee that these credits are not provided to the business unless the hiring wage and investment thresholds are met. Business equipment located at a qualified location that is involved directly in the manufacture or processing of ag products. Under current statute, ag products do not include liquid fertilizer or similar products. By allowing companies that produce these products to qualify under the ImagineNE Nebraska Act, we will be able to attract additional industry to our state, which provides high-skill, high-paying jobs that further support the agriculture industry across our state. This amendment has a minimal fiscal impact to the state and will not impact our General Fund revenue. For that, thank you. And for this, I ask for your consideration and your time.

**KELLY:** Thank you, Senator Ibach. Seeing no one else in the queue, you're recognized to close. Waive closing. Members, the question is the adoption of AM3135. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 31 ayes, 0 nays, Mr. President, on adoption of the amendment.

**KELLY:** AM3135 is adopted. Mr. Clerk.

**CLERK:** Mr. President-- Senator Linehan, I have AM3079.

**KELLY:** Senator Linehan, you're recognized to open.

**LINEHAN:** AM3079 is a very important concept for the Legislature to consider. I'm gonna be real short. This helps-- so if-- it creates a Gambling Winnings Setoff for Outstanding Debt Act, which allows the

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interception of gambling winnings, parimutuel winnings, sports wagering winnings, or cash device winnings due to unpaid child support or Nebraska taxes. This process mirrors the process that already exists to intercept lottery winnings in our state. In Nebraska, there are nearly 65,000 child support cases with arrears owed to children and family. That number is outstanding. We need to make sure that the Child Support Enforcement Program at the Department of Health and Human Services has every tool available to capture this money for the children of our state. I'd appreciate your green vote.

**KELLY:** Thank you, Senator Linehan. Seeing no one else in the queue, you're recognized to close and waive closing. Members, the question is the adoption of AM3079. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 33 ayes, 0 nays on adoption of the amendment, Mr. President.

**KELLY:** AM3079 is adopted. Mr. Clerk.

**CLERK:** I have nothing further on the bill, Mr. President.

**KELLY:** Members, the-- Senator Linehan, you're authorized to close and waive. Members, the question is the advancement of LB1317 to E&R Initial. All of those in favor vote aye; all of those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 37 ayes, 0 nays on advancement of the bill, Mr. President.

**KELLY:** LB1317 is advanced to E&R Initial. Mr. Clerk.

**CLERK:** Mr. President, LB-- General File, LB1317A, introduced by Senator Linehan. It's a bill for an act relating to appropriations; appropriates funds to aid in the carrying out of the provisions of LB1317. The bill was read for the first time on March 26 of this year and place directly on General File.

**KELLY:** Senator Linehan, you're recognized to open.

**LINEHAN:** This is just the A bill and we won't, actually, know how much money this generates on this until we get a new fiscal, fiscal note, which hopefully will come quickly so we can bring this back. So I'd appreciate your green vote. Thank you, Mr. President.

**KELLY:** Thank you, Senator Linehan. Seeing no one else in the queue, you're recognized to close and waive closing. Members, the question is

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the advancement of LB1317A to E&R Initial. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 40 ayes, 0 nays on advancement of the bill, Mr. President.

**KELLY:** LB1317A is advanced to E&R Initial. Mr. Clerk, items for the record.

**CLERK:** Thank you, Mr. President. Your Committee on Enrollment and Review reports LB852, LB1027, LB1027A, LB1030, LB1088, LB1306, LB1306A as correctly engrossed and placed on Final Reading. Additionally, your Committee on Enrollment and Review reports LB631, LB631A to Select File. LB631 having E&R amendments. Amendments to be printed from Senator Clements to LB686. Amendments to be printed to LB575 from Senator Machaela Cavanaugh. Amendment to be printed from Senator Wayne to LB1344A, and from Senator Ben Hansen to LB1317, Senator Murman to LB1329. That's all I have at this time, Mr. President.

**KELLY:** Thank you, Mr. Clerk. Next item on the agenda.

**CLERK:** Mr. President, General File, LB25, introduced by Senator Wayne. Senator Bosn would move to indefinitely postpone LB25 pursuant to Rule 6, Section 3(f).

**KELLY:** Thank you, Mr. Clerk. Senator Wayne, you're recognized to open.

**WAYNE:** Well, the fun begins. I was-- started working on an opening yesterday, and then had to come on the floor and do some other things, and this morning I had a protection order hearing that was supposed to last on a-- maybe an hour to an hour and a half and it went 5 hours with no lunch. And it made me think about litigation is hard. And the idea that people have already made up their mind because they don't know how litigation really works and the issues before us, and many people won't even listen and be engaged is, is somewhat troubling. But I just counted on LB575, originally, there's over 28 senators who cosponsored that, cosponsored the bill as is. And what's interesting is the bill as is-- first introduced that you cosponsored had a cause of action by anybody to sue a school district. So we are willing to sue school districts to enforce sports, but not if a child is sexually assaulted by an employee. Now here's why I frame it that way-- and that bill had the full Governor's support-- and here's why I frame it that way. The first amendment on this amendment, AM3327 replaces my entire bill. You are not even voting on punitive damages. In fact, you specifically say punitive damages don't apply to political and-- the



state or political subdivisions. So if you don't know, there are some courts who rule right now in Nebraska that punitive damages actually are a thing. I can cite the case that was huge down in Peru State where the individual was killed. So courts already do that. There's a mixed bag of tricks on whether it's constitutional or not. And my bill actually fixes all that, but we won't even get to that part yet. We're going to talk about Senator Halloran's bill, which is the bill that replaces my entire bill. And it says that if a child is sexually assaulted by a state employee, they should have the right to be compensated because you can't redo it, you can't undo it, but you can provide compensation to make that child whole. Because right now you can't even file a lawsuit, and if you do there's a motion to dismiss already filed before they even answer because you have to in litigation. So I don't want to lecture people here, but there are just a lot of people who are-- don't understand civil litigation. And it's completely different than criminal prosecution. Civil litigation with the state-- I passed it out, it's complicated. You have to-- first of all, you don't have 4 years and you only have 2, 2 years. And one of those years you have to give notice within the first year. Then the state or a political subdivision has 6 months to review the case and, and build their entire case before you can even get discovery. They have 6 months to respond before you can even ask them questions that you would in a discovery. So they have 6 months head start. And then they can either send you a letter or after 6 months you can file a lawsuit, but you have to file it within 2 years. If it's just a regular person, not the state, you have up to 4 years. And what this act does is says: state and political subdivisions who employees sexually assault a child get to have a right to be heard in the court of law to make sure they get an opportunity to be made whole. Now, what you'll hear, and it's amazing that I hear this, is that the floodgates will open, our schools will go broke. I think Senator Holdcroft said last time. Wasn't concerned about schools going broke when it comes to kids playing in sports, but our concern about kids-- about schools going broke because an employee molested, assaulted, sexually assaulted a child. My answer to that, if schools are going broke because of that, we have a bigger problem with how we're hiring and what we're doing. Let that sink in. If your argument is schools will go broke, then we have a bigger problem. Because if they're not getting made whole right now, then what's happening to those children as they grow up because right now they have no remedy? Somebody is going to argue the second argument, they can file in federal court. I'm going to tell you, they tried in 1983, entitled 9 cases, in state court, too, the first thing that happened is there is a motion to

dismiss. I can pass out the most PG version of their brief, because there's about 5 cases, I didn't pull them all, why it doesn't work. The last thing is, it's going-- part of this floodgate argument you're going to hear. Well, how do I know? That is the point. You're not liable unless you knew or should have known. That is a high standard to me. So what I tried to pass out was the complicated-- the, the complication of suing, in general, that it's so complicated the state puts out how to do it to make sure you get it right. Because if you don't file a notice with the state, your claim is barred. You can't-- you messed up. You can't even get in. Same as the political subdivision, if you don't file within the first year and notice, it's just barred. So all this talk that we're going to hear today about money, money, money, I'm going to say this as blunt as I can, you're either going to side with the victims or you're going to side with big government today. And you don't represent government. You represent the families that put you in here with their vote, and you are silencing their ability to be made whole. I can't say it any clearer than that today. So all these motions and whatever they want to do on this bill, I'm, I'm all for it. But it comes down to this critical question, are you siding with the survivors or are you siding with big government? So anybody who brings up punitive damages, we don't get to that yet. My first amendment up is to replace this entire bill with Senator Halloran's amendment-- Senator Halloran's bill. So if you don't want to get to that, that's fine. But understand that is the vote, and you're going to have to work real hard to filibuster because the amendments you got up there right now aren't enough to go 8 hours. We are going to get to votes. And if you don't want to vote on this issue, go home. And when you go home, you're saying you're siding with big government. Because the hardest litigation out here is the state, the most obstacles thrown up against somebody is the state with damn near unlimited resources. And we're saying, hey, you can't sue. You can't figure out how to be made whole for children who were sexually assaulted by state employees. Now Senator Brandt asked some questions and we were having a dialogue, the bill was clear, has to be within the scope of their employment, and you have to know or should have known. This isn't strict liability,--

**KELLY:** One minute.

**WAYNE:** --it's about making this child as whole as we can make them because they have to live the rest of their lives dealing with this. So I want to be clear with this last minute, punitive damages is the third amendment. If you don't like punitive damages, fine, vote it

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down. But we, at least, have to pass Halloran's bill. We can't leave these families out here with nothing. Thank you, Mr. President.

**KELLY:** Thank you, Senator Wayne. Senator Bosn, you're recognized to open on the priority motion.

**BOSN:** Thank you, Mr. President. Colleagues, with all due respect to Senator Wayne, I very much disagree that this vote comes down to siding with victims or siding with big government. And I take issue and offense to any accusation that I do not or have not or will not stand with victims in this or any circumstances. I joined this body just under a year ago, and this will now be my second effort at killing a bill that I believe is a bad bill and I lost last year. I'm hoping for a better outcome this year. So sit tight, I will do my best to explain the 3 bills that are added to LB25, all of which are substantial and complicated bills dealing with tort liability, punitive damages, things of that nature. So LB25, for a history lesson here, was Senator Wayne's bill he filed last year that was punitive damages. Following the hearing and the vote on that bill out of committee, there was a request for an Attorney General's Opinion on LB25. The Attorney General, in that Opinion, found that LB25 as written was unconstitutional. And I know that was Senator Ibach's request, and she plans to speak on that. Shortly after that, Senator Wayne prioritized LB25. And that was a red flag. So I filed the motions to indefinitely postpone because I was concerned as to what we might be doing with a bill that has a finding of unconstitutionality from the Attorney General. Then we had a floor debate a couple of weeks ago where we started talking about all the bills still stuck in the Judiciary Committee, I believe everyone recalls that day. And Senator Wayne put to a vote what was LB325, formerly Senator Dungan's bill, and LB341, which was Senator Halloran's bill, those both dealt with tort claims. And what you will hear is that LB325 did not come out of committee. It was stuck in committee. And you will hear that LB341 did come out of committee. He then redrafted LB25 to an amendment that is now LB320-- or excuse me, AM3329. And so that has some modifications. LB-- or excuse me, AM3328, which is the former LB325, Senator Dungan's bill still in committee, is still in committee. And so we should not, and I'm hoping we do not get to a place where we are voting on a bill that did not come out of committee. And interestingly enough, yesterday I watched 43 of you say that we should not be voting on bills on the floor that are still stuck in committee. Senator Machaela Cavanaugh was outraged that we were doing that on Senator Bostar's bill. Senator Wayne himself was upset that we were doing that yesterday on the winner take all bill.

Everyone was up in arms about a bill being pulled from committee that was stuck in committee and added to a bill. That is AM3328. The third amendment that Senator Wayne then added to this bill is AM3327, which is formally LB341, Senator Halloran's bill, that did come out of committee, did not come out clean, but it came out, I believe it was 5-3, don't quote me at that. So that's where we have 3 bills, all of which are certainly contested and certainly have a lot of complicating factors. And along with what Senator Wayne told you, you will hear, I will assure you that the claim that these are complicated issues and attorneys aren't filing these correctly so these plaintiffs can't get their, their damages and they're not being made whole, none of that changes if we pass each and every one of these bills. All of these individuals will still need attorneys to help them navigate each and every one of these areas. Full stop. That doesn't change. So I'm going to go through-- Mr. President, how much time do I have?

**KELLY:** 5 minutes, 20 seconds.

**BOSN:** Thank you. I'm going to go through each of these amendments and we'll talk them through and we can agree to disagree. I'm sure Senator Wayne and I will have lots of debates on what is and isn't good policy. But this will change, substantially, civil liability for the State of Nebraska. All of these amendments were filed on April 3, 2024, and I will be shocked if all of you have read all 3 of them because they are long and they are complicated. This would add intentional tort exceptions under the Political Subdivisions Tort Claims Act and the State Tort Claims Act, as well as the State and Political Subdivisions Child Sexual Assault Liability Act from last year's hearing and amend that into LB25. Each of these amendments have the potential to make a major impact on state and political subdivision litigation and their respective funding sources moving forward should any of them be adopted. The funds managed by political subdivisions will be affected no matter how you-- how you explain this. AM3329 authorizes punitive damages in civil cases. It breaks it down into 3 categories of punitive damages with various caps, all of which are \$1 million or more. Should this amendment, the punitive damages amendment, become law, a single punitive damage award against the state or political subdivision has the potential to completely drain the funding sources in the political subdivision, compromising the entity's ability to pay other claims. So in the first category-- like I said, there's 3 categories-- the first category is subject to a cap of either \$1 million or the amount of any compensatory damage awarded, whichever is greater. The second category is subject to a cap of a \$5 million award, 3 times the amount of any compensatory damage

award, or the increased financial benefit a defendant received as a result of the conduct causing injury to the plaintiff, whichever is greater. The third category of punitive damages is not subject to any cap. So punitive damages, think-- punitive damages, if the city builds a road and they use poor concrete, the concrete doesn't last and it causes you to have your tires damaged while you're driving down the road. Under compensatory damages, you would be able to seek compensation to replace your tires. Let's say that's-- I don't-- I haven't bought tires lately-- \$2,000. You could seek damages for \$2,000. Punitive damages would allow you to seek monetary awards above and beyond the \$2,000 to punish the city for using concrete that wasn't good. Under AM3328, which is still in committee, this expands state and political subdivision liability for intentional torts committed by nonstate actors and does not exempt the state or political subdivisions from an award of punitive damages should the previous law, the punitive damages law, become-- go into effect. So there is no specific waiver of sovereign immunity in AM3329, the, the punitive damages amendment, and both the political subdivisions and the state tort-- so the Political Subdivisions Tort Claims Act and the State Tort Claims Act provide that they will be liable in the same manner and to the same extent as a private individual, which basically means that anyone--

**KELLY:** One minute.

**BOSN:** --thank you-- would be subject to the provisions under the punitive damages award. The example you will hear regarding LB325 or AM3328 is the example of the Moser case. And the Moser case, the facts of that are bad. But here's what you won't hear them talk about, is that the state did pay out that claim because the facts were bad, and the state did have a responsibility to the family in those circumstances that was acknowledged, it was negotiated, and it was-- it was paid by the state to the victim's family in that case. Mr. President, I will get on the mic-- I'll yield the rest of my time and get back on the mic to talk about the last amendment. Thank you.

**KELLY:** Thank you, Senator Bosn. Senator Slama, you're recognized to speak.

**SLAMA:** Thank you, Mr. President, and good evening, colleagues. I promise I'm not leading anything. Senator Bosn, who I would never, ever want to go up against in court, is the lead on this. But I do want to take some time to contribute to this debate. LB25, which is the baseline bill of what we're dealing with, it is punitive damages.

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It was deemed unconstitutional by Attorney General Hilgers before Senator Wayne prioritized it. And I want to take some time to read the AG's Opinion into the record on that so that you're taking a far more qualified Attorney's Opinion on this bill, not mine. But as Chair of the Banking, Commerce and Insurance Committee, I do want to make the point that punitive damages are not covered by insurance policies. So if we bring this into law and you're a farmer or a small business owner-- so if you're Senator Ballard with The Rabbit Hole Bakery or you're on any one of the farms that are owned by people in this body, and you have an employee cut off their finger in your-- in your place of business, the punitive damages awarded as a result of the lawsuit that would, would follow would not be covered by your insurance policy. And I think that's very important to know in terms of how this would impact, if we pass it, everyday Nebraskans just trying to function in their day-to-day business operations. But I do want to get to the Attorney General's Opinion on LB25. I know several other people will be referencing it as well. I just want to make sure that it is in full on the legislative record so that everybody can say that they were warned if we do choose to advance LB25, that we are advancing a bill that has been deemed by the Attorney General's Office to be pretty clearly unconstitutional. So this is a Attorney General's Opinion. Subject line: Constitutionality of Legislation Authorizing the Award of Punitive Damages for the Support of the Common Schools, LB25. Requested by: Senator Teresa Ibach. Now, just-- I'm going to do an aside because we have the time. Her name is pronounced Ibach. It's not Ibach, it's not Ibach. There are no vary-- it is Ibach. Written by: Mike Hilgers, Attorney General, and L. Jay Bartel, Assistant Attorney General. Introduction: LB25 proposes to authorize the award of punitive damages in civil actions when a party "has displayed actual intent to cause harm or causes an injury through action taken in reckless disregard for the lives and safety of others." LB25, Section 3. "Punitive damages" are defined as "damages that a party in a civil action are ordered to pay (a) based on aggravating circumstances, (b) to penalize such party, or (c) to provide additional deterrence and discourage similar conduct in the future." LB25, Section 5(3). LB25 includes legislative findings that "Article VII, Section 5, of the Constitution of Nebraska provides in part that all fines, penalties, and license money arising under the general laws of the state shall belong and be paid over to the counties respectively where the same may be levied or imposed," and that this constitutional provision "further provides that all such fines, penalties, and license money shall be appropriated exclusively to the use and support of the common schools in the respective subdivisions

where the same may accrue." LB25, Section 1(1) and 1(2). It further declares that "punitive damages are in the nature of fines or penalties." LB25, Section 1(3). If punitive damages are awarded, the county--

**KELLY:** One minute.

**SLAMA:** --attorney-- thank you, Mr. President-- must be notified, and "may become a party solely to protect the interests of the common schools in such damages." "Any award of punitive damages shall be remitted to the State Treasurer for distribution in accordance with Article VII, Section 5, of the Constitution of Nebraska." Your request or opinion-- you request our Opinion on the constitutionality of the bill's authorization of an award of punitive damages for the support of the common schools. You also ask us to address whether punitive damages are fines or penalties within the meaning of Nebraska Constitution, Section 7-- I mean, Article VII, Section 5, and, if so, may the county attorney be made a party to the civil action in which punitive damages are awarded to protect the interests of the common schools in such damages. We'll get into the analysis on later turns on the mic. Thank you, Mr. President.

**KELLY:** Thank you, Senator Slama. Senator McKinney, you're recognized to speak.

**McKINNEY:** Thank you, Mr. President. I yield my time to Senator Wayne.

**KELLY:** Senator Wayne, you have 4 minutes, 53 seconds.

**WAYNE:** Thank you. So we're going to talk about punitive damages because they don't want to talk about the real issue in Senator Halloran's bill. So what's ironic is this body thought we shouldn't do a winner take all because it hasn't got kicked out. But Senator Bosn voted for it, so she doesn't feel that way, but now it's a good argument today. Let's be consistent. The second thing is Senator Halloran's bill on the amendment, the first amendment up, says punitive damages does not apply to political subdivisions or nor the state. I'm having another drafted amendment up again to reiterate it, and we can vote on that. If that's a sticking point, I'm-- I agree, take it out. I don't want punitive damages to apply. Why? Because it goes to the school. What sense does it make to have punitive damages, we sue the city, and the city turns around and gives it to Lincoln Public Schools? That makes no sense. So take-- gone. What's going to happen here today is, I will concede damn near every point here and



make an agreement and they still won't vote for the bill. That's-- this is the gamesmanship. And I think it's a beautiful thing because I, I like it. But at least just be honest, just say you never want to get there. If the cap is the issue, bring me a number-- bring me a number. Not an issue to me, bring me a number. I did that last night with Senator McDonnell's bill, said, hey, let's get it from General and Select and see if we can fix it. Bring me a number if the cap-- if you want a, a lower cap, bring me the number. But you won't, because we've been directed not to do something here. We're getting pulled out by PRO not to do something here. That's fine. And here is what I mean by facts, stick to the facts. If a 3-- if a 3-page amendment is long, then better not hope Revenue-- any more Revenue bills come out because they're damn near 100 pages. It's 3 pages. We're talking about kids and it's LB325, it's stuck in committee. It's stuck in committee. And so what does that mean? That means if it isn't-- don't get-- don't start thinking about prisoners. Let's, let's change the narrative, sexual harassment in the workplace. Change the narrative, a kid at a school is getting bullied and beat up every day. The principal says we're going to remove that kid from the class. They don't. That kid gets sexually assaulted. Parents can't sue. No recourse to that school for failing to do what they said they would do. Imagine that in a workplace at a state where there is a sexual harassment issue going on and it's a culture, they can't sue. But we're OK with that, too. You're not going to run from this. I'm gonna pull my Senator Slama moment right now. You're not going to run from this vote because it's a motion and you want to-- and it's the-- no, you are clearly voting on LB341. And Senator Bosn is leading you from making a change to give families and kids who are sexually assaulted by state and public employees made whole. Now, if you want to talk punitive damages, go ahead and defend a company that was already found liable. In order to get the punitive damages, a jury or judge has to say they already did something wrong, and even to get to punitive damages has to be malicious, reckless, and they should be held accountable.

**KELLY:** One minute.

**WAYNE:** Because there's no criminal activity, so they're not being held accountable that way when it's something else. So that's why I stacked these. I understand this body, and I understand it's going to take a long time to educate people on punitive damages. So that's why the first amendment up is something I thought we could agree on. When I was talking about it on the floor, everybody seemed outraged. What do you mean people can't sue when they're kid is sexually assaulted at school by, by a teacher or by a principal or a state employee? We



narrow the class to sexual assault of children. If the floodgates open for that, we need to fire every HR director. That's what's amazing about what's going to happen today. And this is about government versus survivors. Don't get up and talk about how you want survivors to have life-- or people, people who have life in prison--

**KELLY:** That's your time, Senator.

**WAYNE:** --in the constitution if we can't even get remedies. Thank you, Mr. President.

**KELLY:** Thank you, Senator Wayne. Senator Halloran, you recognized to speak.

**HALLORAN:** Thank you, Mr. President, and good afternoon, colleagues. So let's talk about why this is needed, LB341. Dr. Charol Shakeshaft is an educational researcher noted for her studies on sexual abuse of students by school staff. In 2004, Dr. Charol Shakeshaft published a report commissioned by the U.S. Department of Education entitled "Educator Sexual Misconduct: A Synthesis of Existing Literature." Shakeshaft found that nearly 10% of students are targets of educator sexual misconduct sometime during their school career. In her estimation, she found that in a given year, more than 4.5 million students are subject to sexual misconduct by an employee of a school sometime between kindergarten and 12th grade. This data is consistent with the 2017 case study issued by the U.S. Department of Justice. These scientific studies are made more real through the investigative reporting of the media. In 2007, the Associated Press, AP, ran a three-part story in which, quote, found more than 2,500 cases of child sexual abuse for 5 years that were reported and led to disciplinary action against the educators. Although the investigation recognized the countless educators who are faithfully devoted to the education of children, the investigation revealed a number, quote, a number of abusive educators, which speaks to a much larger problem in a system that is stacked against the victims. The AP investigation recognized that clergy abuse has been a part of the national consciousness, but that-- but that there had, quote, been little sense of the extent of educator abuse. As Dr. Shakeshaft has asserted, the physical abuse-- sexual abuse of students in schools is likely more than 100 times that of the abuse of priests. And to be clear, my coming here today, or my purpose for bringing this bill is not meant in any way to defend the historical clergy sexual abuse problem, it's meant to help us recalibrate our senses of this issue so we can see the whole problem for what it is and find just solutions for all victims. So as Senator

Justin Wayne has pointed out very clearly, I can't do any better than he has. We're holding-- we're holding people in private institutions accountable for sexual abuse, but we're not holding institutions that are public accountable for sexual abuse of kids. This, this shouldn't surprise me, I've got a history of being here protecting kids from abuse. So you can run away from this, and I see that half the body or better has left the room and that's fine. But the public needs to be aware of this, and that's why it's televised. The public needs to be aware that this abuse does happen. And if the worry is, as Senator Justin Wayne has pointed out, Chairman Wayne has pointed out, if the worry is-- the concern is that this is going to be a huge financial liability, then that's an admission that there's a problem. Now, it could be a problem resolved with this legislation. And will there be suits? There will be suits because there are problems out there of institutions protecting schools, protecting educators, protecting other educators.

**KELLY:** One minute.

**HALLORAN:** They see grooming going on, they see it going on, but they dismiss it. And then that child is sexually abused. That educator may be dismissed quietly and it may not be-- may not be on their record that they sexually abused somebody. They'll be-- they'll be dismissed for other reasons. And then guess what? Some other school will pick that teacher up or that educator up and hire him without any knowledge of that abuse. The term for that is "passing the trash" because there's no liability. Once liability is in place, policies will be improved. More awareness will be improved in the schools and grooming will not be tolerated. They'll deal with it when it's seen and that's when it should happen. Thank you, Mr. President.

**KELLY:** Thank you, Senator Halloran. Senator Erdman, you're recognized to speak.

**ERDMAN:** Thank you, Mr. President, and good evening. So as you listen to the comments and you listen to what Senator Wayne said and then what Senator Halloran said, trying to protect children should be the first and foremost things on our mind. It's peculiar to me when we have a bill such as this that is doing just that, protecting children, that it is a conflicting bill that causes a lot of people heartache. So I wonder if Senator Bosn would yield to a question?

**KELLY:** Senator Bosn, would you yield?

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**BOSN:** Yes.

**ERDMAN:** Senator Bosn, I see that you're adamantly opposed to this by the bracket motion and the IPP. So if this isn't the solution, what is?

**BOSN:** If this isn't the solution, what is?

**ERDMAN:** Yes, how do you protect children? So we, we currently understand that the system we have now is not working. And so what happens, and it happens to me all the time, I have a tax proposal, people don't like it when I say, if you don't like mine, what is your proposal? So I'm asking you what is your solution if this is not the solution?

**BOSN:** So I, respectfully, disagree that there isn't a solution available. And this is sort of what we were talking about the last time this was brought up. And that is, that you can sue, parents do have a cause of action when these very tragic situations occur, both in state and in federal court under a 1983 claim. And so they have the ability to have those schools should there be a situation, like what we are-- all agree is horrendous, occur.

**ERDMAN:** OK. But-- so going to federal court is difficult. Would you agree to that, that that's a true statement?

**BOSN:** OK. But I just want to make sure you heard me say--

**ERDMAN:** I heard you.

**BOSN:** --that you can go to state court--

**ERDMAN:** I heard that.

**BOSN:** --and you can go to federal court.

**ERDMAN:** Or either or. You said both, right?

**BOSN:** Yes.

**ERDMAN:** Going to federal court is not easy. Is that correct?

**BOSN:** I've never been there so I can't speak to that, but I would say filing these actions will not be made more or less complicated by this legislation.

**ERDMAN:** So are you concerned this is going to open the floodgate for many more lawsuits? Is that what your issue is?

**BOSN:** I have that concern on each of these amendments, but, yes, that is a concern.

**ERDMAN:** OK. So thank you for answering those questions, I appreciate that. So we've listened to the conversation on this bill before and it seems like no one has moved in either direction. There doesn't seem to be a lot of communication and negotiation going on, so I'm not sure exactly what's going to happen. But I guarantee you this, when I vote on that little green light over there, I'm going to vote to protect children. And Senator Wayne, I think, fairly described it. What is your goal? And if your goal is not to protect children, then continue this discussion and be against this bill. If your goal is to protect children, hit the green light. And by the way, just so you know, we have voted on a lot of bills that never were voted out, a lot. We just did it a day or two ago. We've done that a lot. Last year, we did it on hundreds of them. So don't stand up and say the bill wasn't advanced out of committee so it shouldn't be on the floor because that argument does not hold water. So this is a decent bill, this is a good bill, and I'm going to be with Senator Wayne. Senator Dungan--

**KELLY:** One minute.

**ERDMAN:** --and anyone else that has bills in this bill, I'm going to vote with them. Because when I leave here next week-- 2 weeks from now on the 18th, I want people to say I voted-- you voted to protect children. Thank you. That's going to be my vote. Thank you.

**KELLY:** Thank you, Senator Erdman and Senator Bosn. Senator DeBoer, you recognized to speak.

**DeBOER:** Thank you, Mr. President. And good evening, colleagues. So I'll just say one thing quickly about the-- well, I'll, I'll talk briefly about the punitive damages issue, which is that I'm not really sure how I'll vote on this. The first 4 years, I think I was in here, Senator Wayne and I argued about punitive damages back and forth. And then he put some changes in the bill, and I thought it was better. And I voted it out of committee so we could have a conversation about it, but I'm not sure where I'm at. But I do want to clarify something. Punitive damages, you can't just be walking down the street and slap-- somebody comes with punitive damages at you. You can't just-- it's not just a normal-- it's a-- I think somebody said something about

everyday Nebraskans. It's not just like your average Nebraskan could have punitive damages against them. Punitive damages are assessed in egregious cases against people who have done something specifically. They have, we call it an intent factor. The mens rea-- the, the intent has to be more than just negligence. So it would be something like somebody's working in your business and you have a machine-- a dangerous machine. There's a safety mechanism, and you break off the safety mechanism so that they can work faster on the machine. That might subject you to punitive damages. The point of punitive damages is to try to prevent those sorts of things from happening. So, that's a little bit about punitive damages. I don't know that I would vote for the amendment to put punitive damages back on this bill, but that's the-- that's what they really are. They're not just sort of damages you get as a matter of course. They're only in the most extreme and egregious cases. But I will talk about LB341, which is this sexual assault of a child by a public official. Now this is, this is the kind of thing that if we can't do this, if we can't say that our children are going to be safe in school from sexual assault by one of the employees of the school-- one of the people that our taxpayer dollars pay for. If we can't say we're going to, we're going to make sure they're safe from that, what, what are we doing as a government? What are we doing as a government, if we're saying we can pay for lots of things, but we cannot pay to make sure that our kids are safe from being sexually assaulted in schools, by people who are in the course of their business-- course of their job, who are being paid by taxpayers? I don't understand what we're doing if we're saying we're not going to allow an avenue, under state law, for children-- for parents of children to bring cases on the behalf of children, to make them whole again. If we have a school district who screws up so badly that they knew or should have known that this was going to happen and they still did nothing, and we're not going to make them whole? I, I really don't understand what we're doing in here. We've talked about protecting children. We've had all sorts of conversations about protecting children. We've gone to Herculean efforts to talk about protecting children. We don't want them to read about sex, but we don't care if they're assaulted? Like, if we, if we are allowing children--

**KELLY:** One minute.

**DeBOER:** --who have been assaulted to not have a state claim against that entity which should have been protecting them, that had a duty to protect them, that breached that duty by knowing or should have knowing that this was going to happen, what are we doing here? I will

be supporting LB341 as an amendment onto this bill. Thank you, Mr. President.

**KELLY:** Thank you, Senator DeBoer. Senator Blood, you're recognized to speak.

**BLOOD:** Thank you, Mr. President. Fellow senators, friends all, I stand against the IPP motion and will support the bill once amended. I have to say I disagree with Senator DeBoer and Erdman and Wayne, when they say that this is about protecting the children. Because what it's really about is our failure, our failure to protect these sexual assault victims. Because that's where we're at when we get to this point. We failed to protect these children. And so when you vote, you're not voting to protect these children. You are voting to get these children and their families justice. It's like Senator DeBoer and Senator Wayne said, we are voting to make these children whole. You've heard me talk about it before. I ran a crisis center for abused women and children-- sexual assault, domestic violence. And I have seen it all, friends. And worked maximum security prison, so I've seen both sides. And it's not pretty. And I want to tell you that out of every 1,000 sexual assaults that happen, only about 995 of those people that are committing the crime, they're going to walk free. Only 310 of those cases are actually even going to be reported to the police. So 310 out of 1,000. 50 of those reports might lead to an arrest. 28 of them will lead to a felony conviction. Out of a 1,000, 28. 25 will actually be incarcerated. And I can tell you, having dealt with people that have been incarcerated, very few have guilt-- feel guilt. Some of the things that you see and read in their files will turn your stomach. That little girl kept wearing short dresses to school, and she was flirting with me. They sexualize them. They justify it. We're not opening the door to anything except finding justice. Because, like it or not, a child's emotional response, it's really complex and is very confusing for them. And they don't just get over it. You heard me talk about it earlier in the week. Trauma, PTSD, it's like wearing a wet blanket. They carry that burden around. When there's trauma, there's things like PTSD, mood swings, panic attack, indecision. They have trouble making decisions. I, I don't know what pair of shoes I want to wear today, mom. I, I don't know if I want to go inside or outside. As they get older, often they self inflict pain. They cut. They just want to feel something. It's-- some-- sometimes, too, they are persistently re-experiencing the trauma. And so, they need help. And yes, Senator Bosn has done a really good job of explaining the options. I've really enjoyed-- except when Mom and Dad fight, Senator Bosn and Senator Wayne sharing their different views. I

have learned so much, and I'm sorry to be leaving Judiciary this year. But it's got to be about the child. We can't say that this bill is about protecting these, these, these children because we've already failed. This bill is about making them whole. And to make them whole, they're going to need money. Because there was a reason that victim was picked out, right? That victim was likely groomed, if we're talking about this type of setting. Because that person was a good victim, right? Maybe they come from a single-parent household--

**KELLY:** One minute.

**BLOOD:** --where they didn't feel they were getting enough attention. And I'm not saying anything against the single moms and dads. You guys are doing a great job. I'm talking about people who look for victims. They might come from a lower-income family, where other parents work more than one job. They might be the outcast in the school. These people that sniff out these victims know exactly what they are doing. And it can take this child years of therapy. And not just psychological, but it can affect them physically, as well. There is plenty of data that show that people that are sexually abused, physically abused grow up with really serious health issues. There's even a scale that you can take. If you ever want to take the test, come see me and I'll show you where it's at online. That you could have more health issues, cancer, heart issues. You're more you're more likely to be sick as an adult, the more trauma that you experience.

**KELLY:** That's your time. Thank you, Senator Blood. Senator Lowe, you're recognized to speak.

**LOWE:** Thank you, Lieutenant Governor. Senator Slama was doing such a good job reading the Attorney General's Opinion that, I'd like to have or continue reading that opinion, before dinner so that she doesn't lose track of where she was at. I know, I know, she wouldn't, but, I'd just like to give her some time.

**KELLY:** Thank you, Senator Lowe. Senator Slama, that's 4 minutes, 35 seconds.

**SLAMA:** Thank you, Mr. President. Appreciate Senator Lowe's offer, but I do want to see if Senator Bosn would like to yield to a question.

**KELLY:** Senator Bosn, would you yield?

**BOSN:** Do you want me to read it?

**SLAMA:** No.

**BOSN:** Yeah.

**SLAMA:** I was going to ask if you had anything-- any response that you wanted to make after the last few people?

**BOSN:** Sure. So, one of the comments that was made by Senator DeBoer regarding specifically, the standard of proof here. And perhaps, we just have to agree to disagree as to what the standard is. But, I'm looking at a letter that was drafted by the Assistant Attorney General, Jennifer Huxoll, on February 24, 2023, in regards to the bill. And it says, however thereto, victims of sexual abuse can currently bring a Section 1983 claim against a state employee who is alleged to have acted with, quote, deliberate indifference, essentially, that they were aware of a risk of serious harm and disregarded that risk, resulting in an injury. A finding of deliberate indifference is more serious than a finding of simple negligence, which is the standard proposed by this bill. It's the difference between observing danger and choosing to look the other way, which is what the standard is in Section 1983, versus applying hindsight to how things might have been handled better under the circumstances, which is the standard for negligence. And so when Senator DeBoer explains, we need to protect children with this. Because the schools are hiring people and they know, and they didn't do anything, and we should be protecting kids. I agree. And that is what a Section 1983 claim allows and quite frankly, should allow. But I respectfully take issue that we aren't-- that our schools aren't taking every single precaution available. And if we have further things that we would like to ask them to do to avoid more or potentially future issues, we should make those proposals. But passing this-- they're not able to do more than they're doing is the argument I am making. The schools are educating their teachers. They're running the background checks. They're doing ongoing continuing education to try to make sure that there is not one single potential for this kind of abuse. And I would submit to you that it is not because they don't want a civil liability or they don't want to pay out. It's because they're humans, they're moms, they're dads. They go into the teaching profession because they love kids. And so, to imply that if you don't vote for this bill, teachers are going to continue doing bad things is ill-informed, because I have a lot more respect, apparently, for our public education, parochial education, and every other teacher than some of the others. I've done a handout also to that, to further provide some information to everyone regarding what's posted in every public school in the state,



regarding incidents of things such as sexual violence. Thank you, Mr. President.

**KELLY:** Thank you, Senator Bosn. Senator Bostelman, you're recognized to speak.

**BOSTELMAN:** Thank you, Mr. President. A couple things to talk about. One, mostly on some of the things that Senator Bosn had mentioned before, I want to talk about. And it's happened multiple times. Senator Erdman said it happened multiple times, as well, is some changes I've seen over the last 8 years in this body is when we first came here to the body, if you had a bill that was in committee and it wouldn't come out, you had to pull it. You had to have a pull motion to get it out of committee. And you had to have 25 votes on the floor, I think it was. I think it was 30. Maybe it's 30-- votes on the floor to pull that bill out of, out of the committee to get it to the floor. Now, we can amend it in or bring it out without committee approval, without that committee process. That's something that's changed here in the last couple of years, that, that-- I guess, it's, it's, it's interesting to me where we're at with that. The other thing that's happened, too, is, is some-- one senator can take over another senator's bill and bring it to the floor. That one-- something that concerns me just a little bit as we-- as things go forward, too. I have not seen that in the previous years. Maybe it did happen, but both those things, I think are changes that we've seen in the body, where, where bills now can come to the floor without being pulled, without having those-- that requirement for it to come out. Before, we debated it on the floor and have a-- have the debate that we have. As I heard folks talking-- and I've been talking to Senator Halloran about us-- about the bill and the reasons for it, and why, why he feels so strongly about it. One thing I think that needs to be said, I think Senator Bosn has mentioned it somewhat and talked about this a little bit is, is there are penalties and there are things that do happen with an individual who does commit this crime-- that does commit this, this abuse, as well as if there's a, a supervisor, or a principal, or superintendent, or whoever it might be, that also could be charged and, and gone to court. And they could face criminal charges. And they could face oper-- you know, those type of charges, as they come before. So there-- it's not that there is absolutely nothing that can be done. There's not absolutely nothing that is being done. There are things that are being done that, that do happen when an individual is charged, taken to court on this type of, of a horrible incident-- process to a, to a, to a young person. I was going to ask Senator Bosn on the mic if she would answer a question. But, I

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don't know. Maybe Senator Slama could answer a couple questions for me.

**KELLY:** Senator Slama, would you yield?

**SLAMA:** I'll do my best.

**BOSTELMAN:** Thank you, Senator Slama. And I see Senator Bosn is available now, but we'll, we'll see. So I'm-- what I've heard a couple folks say is there's nothing that happens to our children. We're not protecting our children. I-- I'm one on the criminal side. Have you had any-- could you explain to me a little bit more, is if a person's charged-- say there's a teacher that commits an act. Is-- so is there anything that happens to them? If they're charged, what happens to them?

**SLAMA:** Yeah. No, that's a great question. And I think Senator Bosn's done a really good job of touching on this, in that there is-- there are options in terms of civil, civil rem-- remedies that already exist. LB341, which is on down the list as an amendment to the bill, would simply expand that. So it's a position of whether or not you think that the--

**KELLY:** One minute.

**SLAMA:** --remedies available now are enough.

**BOSTELMAN:** So can they be charged with a crime, taken to court, and put in jail?

**SLAMA:** Oh, gosh. Yes. Yes, absolutely. That's the criminal side of it. Yes.

**BOSTELMAN:** So-- I mean, I mean the criminal side of it.--They can, right now, that teacher--

**SLAMA:** Yes. Absolutely.

**BOSTELMAN:** --that superintendent or principal, if they knew, or another, another person within that school knew that this was going on, could they also potentially be charged?

**SLAMA:** I mean, if it rises to the realm of criminal negligence, yeah.

**BOSTELMAN:** So just to be clear, and-- that there are charges that can be brought to an individual who is committing a crime on anyone within that-- say it's a school, within the school. There, there are charges that can be brought, so there are punitive things-- criminal charges can be brought. So it's not like there's nothing is going to happen to them-- not like, oh, we're going to fire you and that's all there is.

**SLAMA:** Yes. And there's also civil, civil remedies available.

**KELLY:** That's time, Senators.

**SLAMA:** Thank you, Mr. President.

**KELLY:** Thank you, Senator Bostelman and Senator Slama. Senator Wayne, you're recognized to speak.

**WAYNE:** Thank you, Mr. President. Colleagues, first of all, indifference-- deliberate indifference and negligence and reasonable standard are completely different. Like, let's make sure we're clear on what we're talking about. Eighth Circuit Court of Appeals and the Nebraska district courts have clearly said that in-- deliberate indifference requires more than negligence, more than the lack of ordinary care. Negligence is a reasonable person is sitting here-- what would that reasonable person do? If there's a duty-- you still got to prove that there's a duty. Like I-- if I'm a plaintiff, I have to prove that there was a duty. What was that duty? That's why I tried to hand out this negligence chart and-- so you guys could read it, but most people are already looking ahead and not really paying attention. It's fine. But it's about what would that reasonable person do? And it isn't-- you can't like 5 years from now say, oh, I would have done things differently and now I'm liable. That's not how it works. You have to take the totality of the circumstances at that moment. And what would a reasonable person have done at that moment? Not when you learn about facts a long time ago. That's what-- kind of the should have known. And this is an implied thing in law. The should have known is, well, did you do a background check? If you did one, then you're covered. If you didn't do one, and there was a whole bunch of things, like drunk driving offenses and you having them transport kids from-- in DHHS, and you didn't do one, then you had a duty to at least do a background check. Every reasonable person in that position would have done a background check, and you chose not to. And that is how you breached a duty. I can think back-- man, I wish I would have done it. That doesn't matter. It's at that moment, with the totality of circumstances. That's why a reasonable person in an emergency

situation is different than a reasonable person walking down the street. These are all just games right here. And at the end of the day, Senator Bosn didn't vote for LB341. Doesn't want to get to that vote now. We're gonna get tied up with punitive damage talks? That is the last vote, if we even get to it. Let me be clear. This kid-- this bill is about protecting children. How? Because it changes behavior when there is a lawsuit, and that board-- sitting on a school board is responsible. Hey, we, we messed up. We need to fix this. We can't keep spending money like this, to help-- and our kids. We're hurting our kids. That's how you change it. A 1983 action is different. There's qualified immunity. There's all these other defenses. So, so the question is, if I brought a bill to make it harder to prosecute criminals, she would be against it. But we want to make it harder for these families to get-- to be made whole, by going through a 1983 action. Even in state court, they get dismissed. Soon, you'll see a case that comes around that outlines why 1983-- and what the school district here submitted in their brief, and why it's difficult. Because they lay out what I would say, pretty good arguments. Because 1983 is hard. It's hard to get through. If that was the case, you would see tons of lawsuits and tons of verdicts for police brutality. That is a 1983 claim. I know, because I prac-- I, I did that in Omaha, and it went on for 2 years. People are like, why are you, why are you getting upset? Like, there's very few things that get me upset, but children do. And sexual assault of children do.

**KELLY:** One minute.

**WAYNE:** And at some point, we got to stop worrying about the school districts in the lobby being afraid of facing the fact that they didn't do something right. I'm face-- I am facing and I'm looking directly at the family and the kids, and I'm saying, I want you to be whole. I want you to have all the remedies that is available to you under law. I don't want you to have to go figure out how to do a 1983 claim, and figure out how to find federal court, and make it more difficult. I want to make it as easy as possible, with all the guide rails in our legal system. And there are tons of them. We're going to walk through what a complaint is, an answer, motion to dismiss, summary judgment, and then the trial. That all has to happen. Those are all guardrails. I want to get to a vote. I want to get Senator Halloran's bill up there and passed. I hope you all do, too, because next time I'm going to call the question. And that's going to determine--

**KELLY:** That's your time, Senator.

**WAYNE:** --whether you want to save kids and help kids and make them whole or not. Thank you, Mr. President.

**KELLY:** Thank you, Senator Wayne. Speaker Arch, for an announcement.

**ARCH:** Thank you, Mr. President. Colleagues, I want to kind of preview what I, what I see happening in, in most of our remaining days here in the session. And, and so, I just want to take a few minutes to do that. I-- we've taken a look at what, what is on right now, on Select and Final. And we have approximately 110 bills on Select and Final. And most of those have been well worked. We, we do have some amendments that are sitting out there, that are still being developed, and fiscal notes along with those. And so we're, we're waiting on some of that, but most have been, have been well worked. And, and the way the calendar runs right now, we have only 3 days to handle General and Select. We have 5 days to, to get all the way through Final, but only 3 days to handle General and Select. So that's, that's our, that's our time limitations right now. As I have mentioned from the beginning, my goal was always to get priority bills up. And, and we've been largely successful in that. And, and that has been my goal. And now, I have a little different goal in addition to that. But I also want to-- I also want to get these bills on Select and Final. I want to allow a final decision on these bills by the body, over the next few days. So, that's, that's what you're going to see in how I'm-- in how I'm scheduling. We have a lot of these bills that have been, I mentioned, really well worked, and compromise have been reached. And I think many of these bills will move quickly, because they, they probably will end up being unanimous in some cases. And, and that's great. And so those are, those are out there. We have a few that, that are going to be controversial. Not a lot, but, but we do have a few, and, and so we'll work through those, as well. I want, I want to talk about-- I want to talk about tomorrow. So tomorrow, we'll, we'll gather at 9:00, as usual. And I think what we'll see is-- on the agenda, and I don't-- we haven't identified exactly which of those bills yet. But I think we'll see some Select and Final in the morning. And, and then, I'm, I'm sure you're all well aware that LB575 was voted out of committee today. I do intend to schedule that no later-- starting no later than noon. And, and on-- in March-- on March 20, I indicated that with regards to some of these social bills, that, that some of those I'll identify as 4-2-1 instead of 8-4-2. And I'm identifying LB575 as that, so cloture would be in order after 4 hours on LB575 tomorrow, which means that if we start at noon, we'll be done by 4. We do intend to work through, through lunch. And then, at the end of, of the vote-- if it goes, if it goes 4 hours, at the end of the vote, then we will be adjourning at

that time. With the number of bills and amendments that we have, we need, we need time to check with the offices. So now, I'm talking about Tuesday of next week. With regards to Tuesday's agenda, you're probably not going to see that until Monday. Because we need time to work with the offices to see what bills can move Tuesday, which ones are ready. So what we're looking for when we schedule those, we are looking for is the amendment-- is the amendment done? Is it ready to go? Fiscal notes. Where are the fiscal notes? And, and those 2 things, to make sure that they're completed. In order to do that, we have to check with the senator's office, Fiscal Office, and, and the Revisors. So you're probably not going to see Tuesday's agenda until later in the day on Monday, after we know for sure that the bills that we put up Tuesday are ready to go. And so, you'll, you'll be seeing-- I just wanted to let you know. Usually, of course, we try to drop the agenda as close to adjournment as, as we possibly can. It's going to be a little different for next Tuesday. I'm also on Tuesday of next week, going to be, going to be filing one more General File bill. And that is LB1402. So what's going to happen on Tuesday of next week, because of where we're at in our timeline, we will, we will, beginning at the-- beginning when we, when we get together on Tuesday morning, we'll be working through a lot of these Select bills, in particular. And, and what has to happen is because of, again, the layover day necessary, we're going to work through those. We will go to 1402 at some point in the day-- late, late in the day. And then, we have to wait for the Revisors to get these Select bills back to us, so that they can layover and be ready for Final on Thursday of next week. So that's, that's a little bit about what we're, what we're, what we're looking at for the next few days here. And at this point, the body will stand at ease until 6:30. Thank you, Mr. President.

**KELLY:** Thank you, Mr. Speaker. We are at ease.

[EASE]

\_\_\_\_\_: Attention, Senators. The Legislature will reconvene in 5 minutes.

**DORN:** Colleagues, we're ready to reconvene. Mr. Clerk, for items.

**CLERK:** Thank you, Mr. President. Your Committee on Education, chaired by Senator Murman, reports LB575 to General File with committee amendments. Amendment to be printed from Senator Kauth to LB575. A new LR, LR469, from the Natural Resources Committee. That will be referred to the Executive Board. That's all I have at this time, Mr. President.

**DORN:** Returning to the queue. Senator Jacobson, you're recognized to speak. Senator Jacobson, you're recognized to speak.

**JACOBSON:** Thank you, Mr. President. Well, I thought I'd weigh in here a little bit on things I've heard. I'm looking at Senator Wayne and some materials he's handed out. Make no mistake about it, any of these acts that are occurring to children is horrible. It's deplorable. It should not be tolerated. You get no argument out of me. The problem is the remedy. OK. So it seems to me that when someone does this, as far as I'm concerned, they ought to be locked up, and we ought to throw the key away. And they ought to be sued for every penny they've got. And that may not be much, but if they're in-- people are in bankruptcy and they're imprisoned, trust me, it sends a chilling message to those who choose to offend. I can also tell you that if you've got situations in, in-- whether it be in a public school, what you've looked at on some of this material, or other places of-- that are state or those that are protected today, then you ought to look at ways that we can make their, their superiors accountable, as well. I'd be all in favor of that. Here's where my rub is. My rub is that the trial attorneys couldn't have done a better job of crafting these bills, to be able to come in and find a deep pocket to go sue and take their fee in the name of protecting children. How does suing a public school or the state or anyone else protect that child? The damage is done. All this is, is just a big payday for some people. If we want to go after the real problem, let's deal with the real problem. And that's going after the offenders themselves and putting them in prison. Let's look at their superiors who should have known. Why is that a concern of mine? People often talk about the government. Well, who is the government? Well, we're the ones who fund the government. All of us and all of our constituents fund the government through taxes. So if there's someone who's working, I don't care whether it's a school system, the state, a county, a municipality, coming after them as an entity for punitive damages, which aren't allowed in the state today, how does that fix the problem? Seems to me what it does is just rewards the attorneys that want to file the suits, so that they can ensure that they're going to get paid, and it ultimately costs the taxpayer money. And oh, by the way, property taxpayers. Once again, property taxpayers get to pick up the, the tab. So we say whoa, no, no, there's all these safeguards. There's all these safeguards here, so that won't happen. We need to trust the court system don't we? Well, let me just tell you a story. I'm not making any deter-- judgments here. I'm just going to state some facts. I heard there's a guy out there. His name is Donald Trump. I've heard he's kind of got

some scrapes of the law, like massive lawsuits filed against him. Some would argue there may be a little frivolous. I can tell you one in particular, as a banker. When you have someone that files a lawsuit--

**DORN:** One minute.

**JACOBSON:** --against you for offering a financial statement that you believe is the right numbers, and you're sued because-- and no one was damaged. And you're being sued because you, you submitted a false financial statement, it's the biggest crock of crap I've ever heard of. But nonetheless, he's in serious trouble. They're prepared to take his assets away from him in New York. So when you start thinking about, oh, this is no problem. We got all these safeguards. Just trust the system. I don't trust the system. And that's why I don't-- will not be supporting these bills, or this bill and these amendments, because I think we look-- need to look at other remedies. Money isn't the answer. And that's what we're looking at here, is a money grab. Thank you, Mr. President.

**DORN:** Thank you, Senator Jacobson. Senator Holdcroft, you're recognized to speak.

**HOLDCROFT:** Thank you, Mr. President. I think there's a little bit of confusion out there exactly what bill we're, we're talking about. And I think we started the debate speaking about LB325, which is actually Senator Dungan's bill, which is the one that did not come out of committee. So I think that was a lot of the initial debate was about whether or not we should be debating this bill because it didn't come out of committee. And then we've shifted over to LB341, which is Senator Halloran's bill about the sexual assault in schools. And that one did come out of the committee. I mean, that one was voted out. But I'd like to go back to LB325, to, to talk a little bit more about that, Senator Dungan's bill. And there's no sexual assault issue there. It's just-- it opens up the state and political entities to a lawsuit. And there's no-- there's nothing listed there about sexual assault of children-- is just opens up state and political entities-- counties, cities-- to, to, to lawsuit. Does away with eminent domain. And now, the, the premise there had to do with a prisoner who was killed while in the custody of the Department of Corrections. And, and there was some negligence there. But of course, the-- we-- the state is immune from, from a lawsuit in that case. And so, that's why Senator Dungan brought forward LB325, to, to address that issue. So I, I, I take a-- you know, first of all, you know, on the Judiciary Committee, we did hear what,--230 bills between last year and this



year. 230. And we, we heard them all. And we, we, we Execed on dozens. And we advanced a lot, but we did not advance LB325. And I take it a little bit personally that, you know, when I, when I make my vote in committee against a bill, I expect it to be honored. And I think we should honor the committee process. Otherwise, why do we have committees? And I take exception on Senator Erdman's statement that we passed hundreds of bills last session that did not get voted out of committee. We voted hundreds of bills in packages, and some Christmas tree packages where there were 20 and 30 bills, but all of those bills were advanced out of committees. So they were not, not-- they were voted on in committee, and they were advanced to, to General File. So I would be interested in the list of hundreds of bills of the 291 that we passed last session that were not advanced out of committee. But let me turn back to LB325. And one of the issues with debating a bill on Final-- or on General File when you don't advance it from committee is there is no committee report. I mean, you cannot go to the website now and look at the committee report, and see how members voted and who spoke for and against that particular bill in-- at the hearing. But never fear. My staff-- on the ball. My legislative assistant, Jon Shipman, and my administrative assistant, Tyona Alm, were able to pull up my notes from February 24, 2023. That's when we heard LB3-- LB325, was last February--

**DORN:** One minute.

**HOLDCROFT:** --over a year ago. Thank you, Mr. President. And at that hearing, there were 2 proponents. There were the trial lawyers-- not surprising. And there was a victim. And the victim's case was extremely touching. I mean, it, it plucked at your heart strings. But then the opponents were the Intergovernment Risk Management Association, the Nebraska Association of School Boards, the Attorney General, and the County, County Officials, and also, the County Attorneys. And so with the remainder of my time, I'd like to read their statement, since we don't have a committee, committee report. So this one is from the National Association of County Officials. It says, Dear Chairman Wayne, on behalf of the Nebraska Association of County Officials, we appreciate the opportunity to appear--

**DORN:** Time.

**HOLDCROFT:** Thank you, Mr. President.

**DORN:** Thank you, Senator Holdcroft. Senator Hughes, you're recognized to speak.

**HUGHES:** Thank you, Mr. President. I wanted to stand and speak on LB25, specifically. Speaking about AM3327. In-- prior to being in this wonderful new job that I have, I was on the Seward Public School Board. So I kind of wanted to speak to this, coming from a school board perspective. So LB25, with this amendment, AM3327, which is filed on this, could seriously impact all public entities, school-- public schools included. Regarding liability and in a domino effect, it would make it difficult for public schools to obtain insurance coverage or at the very least, it would increase the cost of insurance. I also-- I just wanted on a side light, mention Senator Holdcroft saying I find it interesting that the trial attorneys support this. Because, guess what? That gives them more business, doesn't it? The bill addresses the liability of a public entity in the event of a sexual abuse or sexual assault claim. What the bill would do, if brought into law, would increase the liability and remove the current tort claim cap. So one, it completely subverts the Nebraska Political Subdivision, Subdivision Tort Claims Act and begin-- begins the further dissolution of sovereign immunity. This amendment also creates a new liability under a negligence standard that has not previously been recognized, meaning the political subdivision would be liable for the criminal acts of others, not just staff members, but outside parties like other students or visitors or even intruders to the school. This amendment is broad enough that a political subdivision could be liable for any sexual assault that occurs on its premises, no matter what time of day, whether it's on a playground or a gym. By removing sexual assault claims outside the Political Subdivision Tort Claims Act, it creates an inconsistency on how to bring tort claims against political subdivisions. Currently, there's a specific procedure to bring a claim against a political subdivision. This bill removes that procedure for a specific type of tort and gets rid of 54 years of precedent. This amendment also creates inequitable results. The statements of intent calls for equity for victims of sexual abuse. However, private parties cannot be liable and private schools do not need to comply with Title IX. It is untrue to say that victims have no remedy for a sexual assault against the school district. They have a remedy. And the remedy is through Title IX, which prohibits sexual harassments of students by employees and students. This includes sexual assault. Section 1983 and Title IX do not have damage caps. This amendment will ultimately force taxpayers to pay for the actions of criminals, and will cost taxpayers more money. It will allow more claims to be brought against political subdivisions and removes the damages caps, which opens political subdivisions to much larger judgments. In short, changing this law

does not keep any kids safer. I'm just going to say that again. This law does not keep kids safer. Schools do not want to see these incidents occur. And that's why schools are very diligent in background checks of staff, visitors, and substitutes, as well as training their school staff on boundaries, and having policies in place for boundaries. ALICAP schools have completed more than 134,000 training courses already this school year. Grooming, boundaries, sexual abuse, and sexual harassment, and duty to report are all courses among those trainings. Lastly, I would like to stress the importance of educating and encouraging students to see something, say something, the Safe to Help app, which the legislator supported, is a great step in helping students and schools be safe. And Senator Bosn did a handout-- everybody should have on their desk-- it's in color-- of that app. So thank, thank yourselves, other senators for support in this. This communication hub is a great effort in getting these type of concerns communicated to the right people, so schools can address the concerns and prevent harm.

**DORN:** One minute.

**HUGHES:** Raising-- thank you, Mr. President. Raising the liability of a school does not keep the school students any safer. And I just-- I had gotten 1 example email, and I just wanted to mention it. And this happened-- this is this year, for a situation in a public school. A high school student was convicted of a sexual assault last school year. The student moved into a new district, and the public school was told the student needed to be in school as either a condition of probation or while the court sought treatment options. This court directive put an offender who could offend again in a public school setting. The school did their best to provide proper supervision and had safety plans in place, but the school was obligated to educate the student, and also has its-- the duty to keep other students safe. According to this bill, if this offender, offender reoffends, the school district will be liable for monetary damages for the actions of a student then, in essence, is in the school building by a court directive. According to this bill, the public school would be liable and with no tort claim act-- cap.

**DORN:** Time.

**HUGHES:** Thank you, Mr. President.

**DORN:** Thank you, Senator Hughes. Senator Armendariz, you're recognized to speak.

**ARMENDARIZ:** Thank you, Mr. President. I'm, I'm really confused at where-- which direction I would go on this bill. Personally, I would throw the book at anybody and everybody involved in any-- anything like this going on. Professionally and here in this body, I, I am a fiduciary of the taxpayer. So that's where I'm getting a little conflicted. And I have asked Senator Wayne if he will answer some questions for me, when it comes to the liability portion of this.

**DORN:** Senator Wayne, will you yield to a question?

**WAYNE:** Of course.

**ARMENDARIZ:** Thank you, Senator Wayne. So we talked a little bit. And you gave me a comparison of a private school child, public school child. The private school child family can sue--

**WAYNE:** Correct.

**ARMENDARIZ:** --to the full extent of the law and, and recover financial damages, correct?

**WAYNE:** Yes.

**ARMENDARIZ:** And the public school--

**WAYNE:** Underneath the, the regular negligence standard, yes.

**ARMENDARIZ:** --and the public school family cannot cover any financial damage?

**WAYNE:** They would have to have a higher burden. And it's-- yes. It's harder. Yes. But right now, under state law, it's barred. They would have to go under federal law.

**ARMENDARIZ:** So I want to focus on-- because it's, it's kind of a big animal. I want to focus on the state, since that's who I work for here. Would you agree the state is not actually some corporation, it's us.

**WAYNE:** Correct.

**ARMENDARIZ:** So we are financially liable if the state is sued?

**WAYNE:** If it was a state employee or the political subdivision, yes.

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**ARMENDARIZ:** So would you say a school district could sue the state, as well?

**WAYNE:** No.

**ARMENDARIZ:** A student that is abused in a school could also sue the state, all the way up from the school, the city--

**WAYNE:** No.

**ARMENDARIZ:** --the state?

**WAYNE:** No, because there's, there's not a, a duty under an employment relationship there. So it would have to be that school district. There has to be an employment relationship in the course of their employment, and that duty has to arise from their employment. And the school district has to be negligence, so it, it would never-- only, only people that would get to a state level are state employees like HHS or State Patrol. Like, we don't-- and we have--

**ARMENDARIZ:** So if it was an employee that worked for the state directly?

**WAYNE:** Correct.

**ARMENDARIZ:** So not a public school?

**WAYNE:** No. A public school would be liable for public employees, if they breached their duty in, in the process.

**ARMENDARIZ:** OK. So then it would be the taxpayers of that public school?

**WAYNE:** Yes.

**ARMENDARIZ:** So that's where I'm conflicted, because the taxpayer of the public school is quite different than a parishioner at a church.

**WAYNE:** Yes. And that's why I said at the beginning of this, you can either focus on the government or the remedy for the student. And so for me, it's about the child. I'm focus-- I want to make sure that child is whole, that they get as much as they can to fix that gap.

**ARMENDARIZ:** Yeah. I understand that. I understand that part. And I want to know-- I guess I'm struggling with how we keep-- how we make

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the taxpayer financially liable for something they have very little, if any, control over.

**WAYNE:** We do that all the time.

**ARMENDARIZ:** It-- but is it, is it right to do that? Because if, if they don't have control over changing the problem--

**WAYNE:** But they do.

**ARMENDARIZ:** --why would we penalize them?

**WAYNE:** But they do. The local school board, through elections, and through policy, and through everything else. We, we do that all the time here. So for example, if State Patrol is in a high pursuit, we have a \$6 million judgment. We held ourselves liable because under strict scrutiny-- I mean, under strict liability, because we said, you should know when you're pursuing a criminal at high pursuit on the interstate or where else, there is an inherent risk. And by doing so, if it's a third party, we're going to pay for those damages. So at the state level-- just think about that, Senator Armendariz. A third party walking down the street who gets hit by a State Patrol person chasing after somebody, they are made whole. That kid who is child molested by a DHHS employee, employee? Not made whole.

**ARMENDARIZ:** I get that. I'm, I'm going to have a little bit of difference to you, personally, that--

**DORN:** One minute.

**ARMENDARIZ:** --money isn't going to make them whole for sure.

**WAYNE:** 100%. But that's the only thing we have on the civil side.

**ARMENDARIZ:** I, I get that. So then, if-- so in a private school, they are sued, and the church goes bankrupt, they go away.

**WAYNE:** And that's--

**ARMENDARIZ:** The parishioners can walk away. But if a public school gets sued, they don't go away. They-- like you said, there's unlimited resources because they go to the taxpayer and just get them. There's no bankruptcy caused by this at all. The taxpayers just pay more, until it's met.

**WAYNE:** So if you would like a cap, I have no problem on that, either. Vote, vote, vote from here to Select. Give me a cap. We can sit down with Halloran. We can look at some cases that are out there and see what those are. We can put a cap on that. I have--

**ARMENDARIZ:** I would, I would prefer having a lot more control over the school district, as, as the people that are paying for the school district, if we're going to be liable for what happens in that school district, and we're--

**DORN:** Time.

**ARMENDARIZ:** Thank you, Mr. President.

**DORN:** Thank you, Senator Armendariz and Senator Wayne. Senator Slama, you're recognized to speak.

**SLAMA:** Thank you, Mr. President. Good evening colleagues. I do want to reset debate because I do feel like we're getting caught up on LB341, which is the first amendment up on LB25, should we get there. However, my opposition to the bill-- and I'm, I'm going to be very transparent about how I lay out what my strategy is. I just discussed this with Senator DeBoer. And I support the IPP. Because the baseline bill-- we have a great AG's analysis on why LB25 is unconstitutional. I will get back to reading that here in a second. And I will support, if there is a reconsider that needs to be filed, one of those, if that stops LB25 from moving forward. However, I will vote in support, LB341. I filed a pull motion on it in committee. I am completely in support of it. However, if we're gutting it and attaching it to a bill that was deemed unconstitutional and then prioritized, we're in a weird gray area when it comes to procedure. So I wanted to be entirely transparent about where I'm at. I fully anticipate we'll have the chance to get to LB341 if this goes the full 8 hours. But for right now, I do want to get back to the AG's analysis of LB25, which is the bill that we are debating right now. So when I left off last, couple hours ago, I was just starting out on the analysis section of this AG's Opinion, requested by Senator Ibach. Analysis, Nebraska Constitution, Article VII, Section 5, the "Penalties Clause," provides, with certain exceptions, that all fines, penalties, and license money arising under the general laws of the state shall belong and be paid over to the counties respectively where the same may be levied or imposed. All such fines, penalties, and license money should be appropriated exclusively to use in support of the common schools and the respective subdivisions where the same may accrue. LB25 would

allow the award of punitive damages in civil actions, with the damages treated as fines or penalties required to be distributed to the common schools as directed under Article VII, Section 5. Before addressing your questions related to the bill, we begin with a summary of the Nebraska Supreme Court's case law addressing the constitutionality of punitive damages. A. Nebraska case law addressing the constitutionality of punitive damages. The Nebraska Supreme Court has identified 2 separate bases for finding punitive damages unconstitutional under the Nebraska Constitution. The first is the Due Process Clause. The second is the Penalties Clause. We discuss each in turn. 1. The Court's first recognition of punitive damages as a violation of the Due Process Clause. In *Boyer v. Barr*, the Nebraska Supreme Court considered whether punitive damages could be awarded in a civil action for assault and battery. The jury was instructed that, if it found the defendant acted deliberately and maliciously, it could award punitive or exemplary damages in addition to compensating the plaintiff for the actual injury. The court noted that the adjudicated cases and conclusions of eminent tax [SIC] writers of either this country or England were pretty evenly divided, both in numbers and weight of authority, and whether punitive or exemplary damages can be allowed in a civil action, and that this was the first time it had considered the question of punitive, vindictive, or exemplary damages. Discussing authorities from other jurisdictions disapproving the practice of awarding punitive damages in civil actions, the Court, approving the law as laid down in those cases, found the jury instruction on punitive damages improper. While not expressly citing the Due Process Clause as the basis for its holding, the cases relied on by the Court in *Boyer* included a New Hampshire Supreme Court decision rejecting punitive damages in civil actions to keep the civil and criminal process and practice distinct and separate--

**DORN:** One minute.

**SLAMA:** Thank you, Mr. President-- and characterizing such damages as destroying every constitutional safeguard within their reach. I'll come back to this opinion on a later turn on the mic. But I, I want to be clear with where I stand. LB25 had an Attorney General's Opinion come back calling it unconstitutional, and then it was prioritized. And now, we're trying to gut it and add in LB341. While I support LB341 and will support it if it were to come up, I can't support the practice of prioritizing bills after they've had an unfavorable AG's Opinion returned on them. And if LB341 is the priority-- and I understand that we had a debate similar to this last night. If LB341



is the priority and not LB25, LB341 should have been the bill that was prioritized. Thank you, Mr. President.

**DORN:** Thank you, Senator Slama. Senator Kauth, you're recognized to speak.

**KAUTH:** Thank you, Mr. President. I have a lot of questions about this, so I'm trying to play catch up and read through everything. I've been making a lot of, of notes about what's going on. I'm looking at LB341. And when it talks about political subdivisions shall be liable, it says, for money, on account of personal injury or death. And I would really rather, instead of people being able to sue for money, if the goal is to make a child whole, which the goal should always be to make that child whole, why aren't we suing for therapy? Why aren't we saying do what actually will help that child? Because as has been pointed out a few times, a pile of cash to a trial attorney is not necessarily going to help that child. I think if we want to be serious about this, we look at it and say, what does a child who has been sexually abused need? Do they need therapy? Do they need to be moved to a different school? Do they need a change of surroundings? What is it that will help them the most, and then look at providing that. Rather than saying, hey, there's, there's a big, big public purse, that are taxpayers. And when people think about that big public purse, they think that there's no limit. They don't think that it's going to affect them. But it's going to affect each and every taxpayer when we have this. I also have some questions about what happens when you say, you're not responsible financially for this. You, the perpetrator, are not going to be held liable. We're going to hold a third party liable for this. What happens when we remove that, that financial responsibility from the actual responsible party and put it on the public? Will we see more charges? Will we see more people saying, hey, guess what? This happened to me. Or will it make people more willing to say, hey, I could get away with stuff? Senator Wayne was exactly correct. It changes behavior when there is a lawsuit, but whose behavior do we actually need to change? I'm concerned about lowering the standards, figuring out exactly what happened and who's responsible. Again, when we talk about making kids whole, I don't think a pot of money is what's going to make them whole. I would much prefer to see this say that the school would be responsible, or the public entity-- maybe it's state employees. Maybe it's, you know-- you don't know who it is. But I would really prefer that it say we will make them whole through therapy. I have some concerns about LB341. One of the, the things that caught my eye was that criminal-- and we're looking at Section 6. Criminal prosecution under this section is not

required to maintain a civil action under the State Political Subdivision Child Sex-- Sexual Abuse Liability Act. So what they're saying is, if you-- even if you haven't been found criminally liable, civil is a different standard. And I have concerns with that. I think that's-- oh, the, the last thing I want to say is the, the time limits-- having no time limitation. That's setting a pretty wide bar. That starts getting into decades. How do you possibly plan for that? So I, I, again, I'm listening to all of the discussion, trying to read through all of the different bills that are attached. I-- surprised that it was-- I'm just surprised at how the process has gone, as far as getting these bills out and, and put together.

**DORN:** One minute.

**KAUTH:** Thank you, Mr. President. So I will continue listening. Thank you. I re-- leave my time.

**DORN:** Thank you, Senator Kauth. Senator McKinney, you're recognized to speak.

**McKINNEY:** Question.

**DORN:** Question has been called. Do I see 5 hands? I do. The question is, shall debate cease? All those in favor, vote aye; all those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 13 ayes, 8 nays to cease debate, Mr. President.

**DORN:** Debate does cease. Senator Bosn, you're recognized to close. Debate does not cease, excuse me. Senator Bosn, you're recognized to speak.

**BOSN:** Thank you, Mr. President. I have somehow misplaced my-- you're in luck. I found it. OK. So a couple people have brought up that they're confused about what we're voting on and where we are and what we're doing here. So there are 3 amendments-- substantive amendments that are filed to LB25. None of those were filed by me. Senator Wayne filed all 3 of those, and-- focusing on 1, but this isn't about just 1 bill. Senator Slama tried to explain that, as well. So this is a bill that has-- it's LB25 that has a filing on it, based on an Attorney General's Opinion that it is unconstitutional. There are 2 additional bills. So it's not just 1 bill. It's 3 bills, all of which were filed by the same individual. So, there was some discussion, and I did a handout on the efforts that schools are making because I do support victims. And I do think that we have an obligation that if we're going

to send our kids to schools, we need to have teachers be in the best place possible to identify potential sexual assault, to hit it head on when there is a problem, to report it, and to have it absolutely-- there are no excuses. And I agree. And my position is this bill will not change the efforts that they are making. The question here is whether or not this bill will divert more public funds to civil litigation, and whether or not that's an effective means of reducing any sort of bad actors, or assaults, or potentially increase safety, or helping potential future victims. This isn't going to reduce the occurrence or frequency of assault at schools, because public entities are already taking proactive measures to avoid criminal assaults and remedial measures when they occur. And again, they are not doing this because of potential lawsuits. They are doing this because they are teachers. They are humans. They are moms. They are dads. They are aunts and uncles and individuals who care about kids, who care about raising the next generation. And they don't want these things to happen. Subjecting public entities to duplicative state law litigation isn't likely to make the public entity operation different. Every budget-- excuse me. Every budget hit to a public entity is going to result in less money to adequately staff and supervise and hire quality employees. It will mean less things like cameras. It will mean more things like isolation and jail cells and prisons. It will result in less training. It will result in no, no additional ability to protect kids and inmates. It will just result in less money to do more. The notion of hitting them in the pocketbook to prompt change works for private businesses, but not public entities. Let me say that again, because everybody here is under the impression that if you can do it to a private business, why should the school be any different? Because hitting a private business in the pocketbook does motivate change. But Senator Armendariz is correct. Hitting a public entity--

**DORN:** One minute.

**BOSN:** Thank you, Mr. President. Hitting a public entity just results in higher taxes. It won't do the fundamental changes that you are articulating need to be made. If the issue is teachers aren't getting enough training on bullying or on, on whatever the issue that you may have, and it may be different for all 49 of us, then we should be bringing laws that address those issues. I will support those laws, and I have. But allowing political entities to bear the burden of, of things that we wish were different and we all agree should be different, isn't going to do it. Accountability already does exist in the federal law remedy for any case where a public entity turned a blind eye or ignored a clear path to preventing an assault. There is

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no cap. There is no limit to a federal Section 1983 claim. They can be brought in either state or federal court, and you have the ability to cover-- recover your attorney's fees.

**DORN:** Time.

**BOSN:** Thank you, Mr. President.

**DORN:** Thank you, Senator Bosn. Senator DeKay, you're recognized to speak.

**DeKAY:** Thank you, Mr. President. I'd like to be on record to say that myself, and probably the other 48 members of the body, want to protect children from abuse. I'm sure we are all on the same page on this issue. Right now, I am probably leaning in opposition to LB25 if all of the proposed amendments get attached. I get where Senator Wayne is coming from when it comes to trying to help victims of some of these crimes. A concern of mine, which may need more explanation, is that we are trying to bring a-- back a, a bill that the AG pretty much said was much constitutionally suspect. I guess I will be listening to more on that. And would Senator Wayne yield to some questions?

**DORN:** Senator Wayne, would you yield to a question?

**WAYNE:** Yes.

**DeKAY:** Thank you, Senator Wayne. I have several questions, and I'll do them in 3 different bullets. Number 1, how many states have what LB341 does in their statutes? And if you-- and if so, do you know how recent their statutes were changed to allow what you're proposing?

**WAYNE:** Thank you. Most states don't have the exact language, but most states-- actually, almost all states allow you to sue the political subdivision if there is a sexual assault and it's in relationship. We are-- our statute-- and actually, federally, you can sue, too. We copied the language exactly from the federal. When I say we, the Political Subdivision Act and the sort-- Claims-- State Claims Act, our Supreme Court had a different ruling than every other Supreme Court. So, a lot of states have the ability to sue.

**DeKAY:** Thank you.

**WAYNE:** And I want to, I want to clarify something. I fixed the constitutional issue in the amendment. The constitutional amendment is due process. And I'll be real quick because it's your time. But the

due process comes down to 3 things. Notice: You have to specifically plead; opportunity to be heard, which is the jury and judge; and a separate trial for punitive damages-- or a separate proceeding for punitive damages in front of somebody who is neutral. That, that is the federal requirement for due process, and you can ask Senator Bosn if nobody believes me. That is, that is the state requirement for due process. That is fixed in my amendment.

**DeKAY:** OK. Thank you. How many states-- and switching gears just a little bit. How many states have what LB320 does in their statute, and a-- do you know how recent their statutes-- same question.

**WAYNE:** Same question. All states, you can sue if there is a duty of care underneath a, a State Tort Claims Act and we violate that duty. Our ruling by the Supreme Court was an anomaly.

**DeKAY:** OK. And with what you're proposing in AM3329, could you explain how those statutes would work in--

**WAYNE:** AM3229 is the punitive damage part. That was actually a statute taken directly from Oklahoma. I did increase the caps. We are 1 in 4 state in the country that doesn't allow punitive damages. So 46 other states allow punitive damages. And somehow, insurance companies still work there. Somehow, people work there. And the state has not went bankrupt. Thank you.

**DeKAY:** OK. Thank, thank you, Senator Wayne. I just-- you know, some of the things that are mulled through my mind-- I would, you know, I'd like to know who would be liable if a school kicks a can or a bad player down the road after an incident, however serious or minor it might be. Not-- and not be per-- reported on a permanent record. Who would be, be responsible for that? Would that be the unknowing new school that hired that person, or the old school that, for whatever reason, failed to report it? And I do-- like what Senator Kauth said about therapy, maybe the schools would be--

**DORN:** One minute.

**DeKAY:** --responsible-- thank you, Mr. President. Maybe the schools would be responsible for that. And I'd like to have the satisfaction of knowing that the perpetrators of these crimes are put away for as long as we can put them away. Thank you.

**DORN:** Thank you, Senator DeKay and Senator Wayne. Senator Linehan, you're recognized to speak.

**LINEHAN:** Thank you, Mr. President. I've got a bunch of articles from newspapers since I've been in the Legislature laying on my desk. I am going to quote from one. It's written by Joe Dejka, and Emily Nitcher, and Jeffrey Robb. It was a huge in-- investigation the Omaha World-Herald did, after a horrendous incident in Omaha with abuse of children at a public school. There is no single central database containing complete, real-time records of such misconduct. Records that exist are spread across several different databases from several different state agencies. I bet if we pass this law, we get a database. We pass, we pass laws all the time to deter criminal activity. Senator Holdcroft had a bill today, where we increase-- I think it was today. I can't really tell, like all of us. It's like we're here 24 hours all the time. I think it was today. We increased penalties if somebody killed an unborn child. Why do we do that? Because we think if we do that, behaviors will change. The idea that everybody in the world can get sued, but we can't sue a public entity because it's taxpayers' money? Really? Because-- somebody-- that's-- a child is getting abused. And we can't sue? Would Senator Wayne yield to a question?

**DORN:** Will Senator Wayne yield to a question?

**LINEHAN:** I'm just-- or-- Senator Wayne, I have a child in a private school. Let's say you have a child in a public school. My child gets sexually abused. Can I sue the private school?

**WAYNE:** Yes.

**LINEHAN:** Can I sue the church that is asso-- associated with that private school?

**WAYNE:** Yes.

**LINEHAN:** Can you sue your public school?

**WAYNE:** No.

**LINEHAN:** What would be the difference?

**WAYNE:** We make sure we protect the elected and connected and those who can afford. But the school districts, who are-- particularly in my area, who are maybe low income, and who can't afford to go to a public school, and maybe can't afford an attorney, are left out of luck.

**LINEHAN:** So thank you, Senator Wayne. I also heard on the floor tonight that, oh my goodness, these could go back decades. Absolutely. They should. I'm a Catholic. Our church screwed up. It's embarrassing and horrific. And we're getting sued, and we should be getting sued. Now we're sitting here, though, and saying, oh, if you're public school, you shouldn't get sued. And, and from the lobby that this would cost hundreds of millions of dollars? Oh, that should scare us all to death. How big is this problem? And, and don't tell me that if we had tougher rules and they might get sued, their behavior wouldn't improve. I've got all the stories here, but I don't even have to read them. I remember them. You got a principal that left Kansas. Came to a school in Nebraska. Had an affair with a 16-year-old. Tell me, guys. We're all grown-ups here. High school? How many people don't know what everybody's doing in high school? Like how hard you have to-- how many questions do you have to ask before some 16-year-old that may not actually be involved in the situation knows about it? Every kid in high school knows everything.

**DORN:** One minute.

**LINEHAN:** It, it is silly to say that we can't be better than this. It's just silly. And if we're going to hold other institutions liable, we should hold ourselves, the taxpayers, school boards, the principals, the superintendents, the teachers, liable. Thank you, Mr. President.

**DORN:** Thank you, Senator Linehan and Senator Wayne. Senator Wayne, you're recognized to speak.

**WAYNE:** Question. Call of the house.

**DORN:** The question has been called. Do I see 5 hands? I do. The question is, shall debate cease? All those in favor-- there's-- yeah. There's, there's been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 19 ayes, 4 nays to place the house under call, Mr. President.

**DORN:** The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel, please leave the floor. The house is under call. Senator Conrad, Senator Linehan, Senator Wayne, Senator Murman, Murman, Senator McDonnell,

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Senator Riepe, Senator Hughes, the house is under call. Please check in. All unexcused members are now present. The question is, shall debate cease? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 29 ayes, 5 nays to cease debate, Mr. President.

**DORN:** Debate does cease. Senator Bosn, you're recognized to close on your motion.

**BOSN:** Thank you, Mr. President. I would ask for your green vote on the indefinitely postpone for LB25. And with that, we will get to a vote.

**DORN:** Question before the body is the adoption of the motion to indefinitely postpone. All those in favor-- there's been a request for a roll call in reverse order. Mr. Clerk.

**CLERK:** Senator Wishart voting no. Senator Wayne voting no. Senator Walz voting no. Senator von Gillern voting no. Senator Vargas voting no. Senator Slama voting yes. Senator Sanders voting no. Senator Riepe not voting. Senator Raybould. Senator Murman voting no. Senator Moser voting yes. Senator Meyer voting no. Senator McKinney voting no. Senator McDonnell voting no. Senator Lowe voting yes. Senator Lippincott voting yes. Senator Linehan voting no. Senator Kauth voting yes. Senator Jacobson voting yes. Senator Ibach. Senator Hunt. Senator Hughes voting yes. Senator Holdcroft voting yes. Senator Hardin voting yes. Senator Hansen voting yes. Senator Halloran voting no. Senator Fredrickson voting no. Senator Erdman voting no. Senator Dungan voting no. Senator Dover not voting. Senator Dorn voting no. Senator DeKay voting yes. Senator DeBoer voting no. Senator Day. Senator Conrad voting no. Senator Clements not voting. Senator Machaela Cavanaugh voting no. Senator John Cavanaugh voting no. Senator Brewer voting no. Senator Brandt voting yes. Senator Bostelman voting yes. Senator Bostar voting no. Senator Bosn voting yes. Senator Blood voting no. Senator Ballard voting yes. Senator Armendariz voting yes. Senator Arch not voting. Senator Albrecht not voting. Senator Aguilar voting yes. Senator Bosn voting no. Excuse me. Senator Bosn not voting. Vote is 16 ayes, 23 nays, Mr. President, on the motion.

**DORN:** The motion is not successful. Raise the call. Mr. Clerk.

**CLERK:** Mr. President, Senator Bosn would move to reconsider the vote just taken on M01281.

**DORN:** Senator Bosn, you're recognized to open on your motion.



**BOSN:** Thank you, Mr. President. I rise, asking for a reconsideration of the vote that was just taken. I have tried to spend the last several hours explaining why proceeding on LB25 is a bad move for the state of Nebraska. I think there is a lot of misunderstanding about the role and the position that I'm taking on this, and that somehow, by supporting LB25, you are protecting children. And I disagree with that. And I'm happy to have those conversations. Sounds like we're going to continue having those conversations. It's my position that this bill does not accomplish that goal. I'm happy to talk about different ways to accomplish that goal. But if we vote to vote yes on the reconsider and we are successful on the motion to reconsider, then I will ask for another green vote on the motion to indefinitely postpone the bill, and commit to having further conversations with the parties over the interim. So, again, I'm asking for a green on the motion to reconsider. And I'm asking for a green on the indefinitely postpone. Thank you, Mr. President.

**DORN:** Thank you, Senator Bosn. Returning to the queue. Senator Ballard, you're recognized to speak.

**BALLARD:** Thank you, Mr. President. I'd like to yield my time to Senator Bosn.

**DORN:** Senator Bosn, you're yielded 4:15.

**BOSN:** Thank you, Mr. President. And thank you, Senator Ballard. So, going back to some of the issues. So, we'll start with LB341. I'd like to read the letter that was offered at the hearing, from Attorney General Jennifer Huxoll, on February 23-- excuse me-- 24, 2023. She writes to say, I am an Assistant Attorney General and the bureau chief of the Civil Litigation Bureau in the Attorney General's Office. Today, I am testifying on behalf of the Nebraska Attorney General in opposition to LB341. LB341 presents a significant erosion of sovereign immunity protections-- and I refer to my testimony for LB325, which is the other bill that's an amendment to this bill-- regarding the background and significance for sovereign immunity. LB341 proposes to waive the state's sovereign immunity and create a new action against the state that operates completely outside the State Tort Claims Act, for torts claims arising out of child sexual abuse. These actions-- excuse me. These would be actions to recover damages brought by victims, victims injured by the intentional conduct of criminals. The policy question presented by LB341 is whether those bad actors should be held responsible for their criminal behavior, or whether the financial responsibility to compensate victims should fall on Nebraska

taxpayers. Whenever the Legislature contemplates waiving the state's inherent immunity, it must be extremely cautious in doing so, because the ramifications will have a significant impact on the state, both in terms of the number of claims which will be brought against the state, and the inherent costs to defend the claims, as well as taxpayer dollars, which must be appropriated by the Legislature to pay judgments, settlements, and other costs which will result from these claims. First, is very important to note that victims of child sexual abuse are not without a remedy if LB341 is not advanced. A civil action may always be brought against the perpetrator of the abuse. In addition, victims of sexual abuse can currently bring a Section 1983 claim against a state employee who was alleged to have acted with, quote, deliberate indifference. Essentially, that they were aware of a substantial risk of serious harm and disregarded that risk, resulting in injury. A finding of deliberate indifference is more serious than a finding of simple negligence, the standard proposed by LB341. It's the difference between observing danger and choosing to look the other way, which is the standard under Section 1983, versus applying hindsight to how things might have been handled better under the circumstances, which is the standard for negligence. If sovereign immunity is waived as proposed in LB341, the state can then be sued for the actions of child sexual abusers, whether they were state employees or not. I've managed to lose the second page of that, so I'll have to come back to reading that letter. But to go back to what was discussed with the standard and the burden of proof here. Under a Section 1983, the plaintiff has to show that the defendant's conduct was reckless or callously indifferent. That's from a case, City of Canton v. Harris. Recklessly, intentionally, or with gross--

**DORN:** One minute.

**BOSN:** Thank you, Mr. President-- or with gross negligence-- the deliberate indifference of those actions. Negligence is a different standard. The failure to exercise the level of care toward another person that a reasonable or prudent person would exercise under similar circumstances. So the, the standard here is-- un-- under 1983, if the school knows or, or turned the other way when it was occurring, there are ways to hold them accountable. There are-- is to hold them responsible. And you should do that. This is different. This bill would be drastically different than a Section 1983 allegation. Thank you, Mr. President.

**DORN:** Time. Thank you, Senator Bosn and Senator Ballard. Senator DeBoer, you're recognized to speak.

**DeBOER:** Question.

**DORN:** The question has been called. Do I see 5 hands? I do. The question is, shall debate cease? All those in favor vote aye; all those opposed vote nay. There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 17 ayes, 3 nays to place the house under call.

**DORN:** The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel, please leave the floor. The house is under call. Senator Blood, Senator Jacobson, Senator Armendariz, Senator DeKay, Senator Bostar, Senator McDonnell, Senator Hughes, Senator Arch, the house is on call. Please return to the Chamber. Senator Bostar, Senator McDonnell, the House is under call. Please return to the Chamber. Senator Bostar, Senator McDonnell, the house is under call. Please return to the Chamber. All unexcused members are present. The question is, shall debate cease? There's been a request for a roll call vote. No request for a roll call vote. OK. All those in favor-- the question is, shall debate cease? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 26 ayes, 13 nays to cease debate, Mr. President.

**DORN:** Debate does cease. Senator Bosn, you're recognized to close on your motion. Senator Bosn waives. The question is the motion to reconsider. All those in favor of vote aye; all those opposed vote nay. Have all of you voted that care to? Mr. Clerk, record.

**CLERK:** 20 ayes, 20 nays on the motion to reconsider.

**DORN:** The motion is not adopted. I raise the call. Mr. Clerk.

**CLERK:** Mr. President, LB25, introduced by Senator Wayne. It's a bill for an act relating to courts; states findings; defines terms; and authorizes punitive damages as prescribed. The bill was read for the first time on January 5 of this year-- excuse me, of last year for the Judiciary Committee. That committee placed the bill on General File with committee amendments. There are additional amendments, Mr. President.

**DORN:** Senator Wayne, you're-- to-- you're recognized to open on the committee amendment.

**WAYNE:** Don't I get to open on my bill first or did I already? Maybe I did. I can't remember. I've been in court all day-- morning. So, look, everybody's caught up on punitive damages. Let me tell you why I introduced punitive damages, and Senator Brandt can confirm this. It was my attempt as Judiciary Chair to figure out property tax relief. I believed every person should figure it out. And because it is a penalty, it is a fine. That means it goes to the local school district. Senator Brandt was here when I first introduced it on Judiciary. That has been my basis. I did it this year because every-- I thought every Chair should figure that piece out. So when we have a special session on property tax relief, it'll come back. And here's why I say that, I am willing to forego that amendment, Mr. Clerk, that deals with-- the third amendment that deals with punitive damages. I will withdraw my amendment. If that's the issue, I'll withdraw it. But if the real issue is we don't want to-- we want to protect big government, then we'll just-- we just won't do anything and we'll just have a straight up-and-down vote on everything. But if people want to talk to me and figure out a compromise, if you think some school district is going to go bankrupt and you want a cap, let's come talk. Let's figure it out. I want to make that kid whole. That has been my-- when Senator Halloran brought this bill, that has been my whole point. I prioritized it last year. That was the priority in my committee. I couldn't get it out. And with everything going on last year, I couldn't put the pressure of the body to say we should do something. That's what that Final Reading was when I got up and started talking about it, and we voted it and we got it out. LB325 is not out, that is true. I want to have that debate. I want to understand why it's OK in a real-life situation that I'm about to pass out on LB325 where a special needs kid was supposed to have 1 to 1, the school district failed to do so and that kid got assaulted. And how come that can't be liable for the school? That's what we're talking about. But if you want to have a conversation about caps, I have worked on every bill down here every year from General to Select to figure it out. Now, the lobby is not going to like that I said that because most of them don't want caps. I get that. I am talking about making children whole. When we get to the Second Amendment with Dungan, and he'll talk about prisoners, it's broader than just prisoners. It's anywhere where there is notice given to a state or political subdivision, and they choose to not act. They fail to not act. And you know who that usually involves besides prisoners, when they're overcrowded and double bunked

and they tell them, hey, I'm going to kill this guy if you don't remove him and they don't do anything about it and the person dies. It involves children. It involves workplace sexual harassment policies. It involves those kind of institutions that just say I'm turning a blind eye. And when you talk about 1983 has to be a policy, it has to be some kind of culture. It is bigger than just the one action. And Senator Bosn will admit it is a higher burden. So Senator Slama pointed out to Senator Ballard, small business might have a problem. Here's the crazy part. Senator Ballard gets sued under the regular negligence standard. Private institutions get sued under regular negligence standards. Under Senator Bosn's theory, we have to have a heightened burden because they're a public institution. That is choosing big government, that is choosing government protection over making people whole. I wish I could mandate 100% therapy, but you know what the argument will be when I say we're going to mandate therapy? Which therapist? The \$1,000 therapist or the \$500 therapist? We're still back into the same argument of costs. Civil suits, honestly, you can't demand them to say you have to choose this therapist. You have to do-- what happens is a jury sits down or a judge and they look at all the evidence. And that judge says, here's my past medical expenses. I'm going to make you whole on that. You have to prove my future medical expenses are necessarily-- necessary and reasonably related to what happened. I have to prove that. And the only way I can prove that is with the expert, minimum expert that I know costs \$5,000 to \$7,000. And guess what, colleagues, 90% of the attorneys won't do it. Why? Because some of them believe it's a conflict, that now you're invested in the case. Some of them just, in all their retainer agreements, say you are-- you are responsible for expert fees because they don't want to get into that. They don't want to be liable if the expert isn't paid. So you have to get an expert to calculate your damages in the future. We know what they are in the past, but even then you argue. You have one doctor who says, ah, that knee injury-- I'm talking a personal injury-- doesn't really go with what happened. So you have to bring in your doctor or an expert to say, no, it is reasonably related and a jury decides or a judge. But future, it always comes down to an expert. What will it cost to make this child whole? In workers' comp, we call it "maximum improvement". This is it, it ain't gonna get no better. All that's expert driven. And what we did in workers' comp, is we say for your hand, here's how much you're actually going to get. We make it very simple, but it's all cash base. It's all compensation. So I am saying today, right now, if you're so concerned about punitive damages, which is crazy to me because there have to be malice or grossly negligent. So that means they already did

something wrong and the jury already found that. And then in a separate proceeding, the jury has to conclude not just were they bad, but they were really bad and we're going to punish them. And everybody-- there is not one court case that I could find that says punitive damage is not a punishment or a penalty. And the purpose of punitive damages in every other state that has them is to deter that conduct-- to deter that conduct and it works. That's why every state has it except for us. And it's not that we don't have it, go back and read the case and read the actual Opinion. The first section on the penalty clause says, no, it's constitutional. Wayne's right. It goes to the school fund. So all you worried about property tax relief and local school funding, it goes to the school fund. So when that bad actor treats their employees really bad or does something grossly negligent, it isn't a run on the mill for the attorney, Senator Jacobson, it's a fine. It goes to the school district. The attorneys can't get it. It goes to the school district. There's no money by the attorney being made on, on, on that. But if you have that big a problem with it, I'll get rid of it. I'll get rid of it. Although, I think punitive damages applies in many cases and we're trying to deter bad actors, that's your stumbling block. Fine, then help me make kids before. You think, oh, for those who are saying let's go after that actor and sue them, let's take child sexual assault. They're in prison. They're judgment proof. You sue them, which they are still named on the lawsuit. They'll say you're liable for-- we'll just throw a number out, \$50,000. At the going rate of the State Penitentiary, that child will be dead before they can collect \$50,000. It's 50 cents a day. Well, how much is it Senator McKinney?

**McKINNEY:** About \$1.20-- \$1.20 a day.

**WAYNE:** \$1.20 a day. That's a long way to get to \$50,000. So that kid can't even pay for their mental health therapy that will be required. But we're OK with that. So you can't run on emotions no more because the next amendment is going to be Halloran's, then the following amendment is going to be 330-- 25 [SIC]. We can argue--

**DORN:** One minute.

**WAYNE:** --about why it is stuck in committee. That's fine. Maybe we should Exec under it and have one more vote right now, I'll bring my staff back because somebody's got to tell me publicly when a school district takes a special needs kid and they know they're supposed to have 1 to 1 and just decide on this field trip, no, don't need 1 to 1 today. And that kid gets assaulted, no remedy. Go after that kid's

parents. Well, let's hope that kid's parents is rich that you can actually do-- let's hope they have some insurance that would be liable. But intentional torts that Senator, Senator Slama already said, usually aren't covered by insurance, especially not covering punitive damages. But let's hope that it is. Let's hope that they have a big enough policy to pay for that because the school district decided that day on a field trip, nah, we don't need to bring that extra employee. We're cool. Even though the IEP says it's required, they decided not to follow. We're--

**DORN:** Time.

**WAYNE:** --OK with that, too. So if the issue is punitive damages,--

**DORN:** Time.

**WAYNE:** --I'm taking it off the market right now. Thank you, Mr. President.

**DORN:** Thank you, Senator Wayne. Senator Lowe, you're recognized to speak. Oh, Mr. Clerk, for items.

**CLERK:** Mr. President, Senator Bosn would move to bracket the bill until April 11.

**DORN:** Senator Bosn, you're recognized to open.

**BOSN:** Thank you, Mr. President. I found some of the guidance for the schools in their sexual misconduct guidance policies that were adopted in 2020 as part of their effort to address these types of ongoing concerns. So I will go through some of that. I have a copy, it's kind of long, but I'm happy to make copies if people want it or I'll have it at my desk and you're welcome to review it. It goes through and it talks about sexual misconduct, defines sexual misconduct, aiding and abetting, grooming, sexual conduct, sexual penetration, personal communication, personal communication system, school employee, student teacher or intern, and certified educator. It then goes on through the federal prohibition on aiding and abetting, defines what all that is. It further articulates that all teachers at the school are mandatory reporters and what steps they have to take under that requirement and those laws. The next section goes through the required school district policy. Nebraska law now requires all public, private, nondenominational, or parochial schools to adopt a policy addressing the professional boundaries between students and school employees before June 30, 2021. It then gives the outline for what the policy



must include, several requirements that they have to meet. The next section goes through criminal statute-- excuse me, creating the offense of sexual abuse by a school employee. So that's a new law that went into effect November 14, 2020, by this Legislature. Offense is sexual abuse by a school employee. Some of you were probably here and recall passing that bill, then goes on to talk about the guidelines for best practices for administrators in conducting an investigation into an alleged sexual misconduct. It has at 1, 2, 3, 4-- 4 pages on that, then goes through and talks about red flags, things teachers should be aware of and look for when acting in their professional capacity at the school. Then goes through the Title IX requirements that the school has to comply with, and also provides links to 1, 2, 3, 4 different links for further information and resources. This is their policy that they have. These are the guidelines that they are adopting in an effort to address these concerns. And I think any implication that they have not done so or are not doing everything they can to-- I mean, the implication here is that we have teachers that are-- teachers and administrators that are sexually abusing or grooming children and that we're OK with that if we-- if we don't want this bill and that-- that's just such a mischaracterization of what this is. I am 100% on board with holding those perpetrators accountable. And when the school has acted with deliberate indifference and they knew or they should have known and they still didn't do something to protect that child, that's not what I'm standing up here and saying that they shouldn't be held accountable for. But the reality here is that we are telling them that there is nothing that they could do more. And we're still saying, but we still want to be able to sue you and hold you accountable and say that you should of, would of, could of, and you didn't. And that's just not true. When you read these, these guidelines and you go through and you think about the number of hours that teachers are putting in for continuing education and ongoing training, the requirements that the school has, the protocols that they have to imply that they are just willy-nilly ignoring these red flags is-- it's, it's, it's, it's crazy. I mean, it is just not the reality of what the schools are or have been doing to keep our kids safe. I, I would encourage you to review these. I'm happy to-- as I said, I'm happy to share them. There's also several of the terms are defined in statute. Several of the requirements are, are criminal penalties in the statutes for individuals who are bad actors. And I am, again, not standing here and telling you that I condone sexual assault of children in school and I take issue with anyone who wants to tell you otherwise. Please come see me if you have those beliefs. That is not what this is. This will



not fix a problem that the schools are saying tell us what we need to do. I mean, do we want to say, OK, the only solution to this is that kids should never use the restrooms in their public schools because that's where most sexual assaults happen. If you want to go to the bathroom during the school day, you have to go all the way home. I mean, is that the solution here? They are-- they're working hard to educate our kids, and we're making it more and more-- we're attacking them from a perspective of you're not doing enough and we're not telling them what they're not doing enough of. I, I still maintain that we've got several motions on here, some of which are still in committee and I do take issue with that. No matter how many times people try to bully me into saying that that's not a problem, we have a process. That bill was held up to a vote. It did not pass out of committee. And instead of going through the process to do a pull motion, we just added it to a bill. And for the purposes of-- I, I don't-- I mean, now we're talking about pulling the, the bill. I, I don't understand exactly where we're going with that. I may have missed some of the discussion on that while I was looking at other things, but I am asking for you-- for your green vote on the bracket motion on LB-- well, I guess it'd be on the amendment, AM440 at this point. So thank you, Mr. President.

**DORN:** Thank you, Senator Bosn. Senator Lowe, you're recognized to speak.

**LOWE:** Thank you, Mr. President. I yield my time to Senator Holdcroft.

**DORN:** Senator Holdcroft, you're yielded 4 minutes, 50 seconds.

**HOLDCROFT:** Thank you, Mr. President. Thank you, Senator Lowe. And, again, I'm speaking on continuing my, my debate on LB325 and, again, to kind of bring us up to speed, I know if, if-- as, as, as Senator Wayne just outlined his sequence would be to bring up first LB341, which is Senator Halloran's bill about being able to sue political entities for sexual assault of a child. And keep in mind that it's not just the school board, it is political entity. So if somehow there's fault found at the-- at the county level or the city level or the state-- the state level, they can also be sued under LB341. But the one I would like to continue to, to talk about is LB325, which would be the second bill that Senator Wayne would, would bring up, and that is a Senator Dungan bill. And that one really is based on an incident that happened in our prisons where we had an inmate who was, was killed, and there was some neglect on the part of Corrections. And so it does the same thing, though, it opens up our political entities to,

to tort to being sued at the state level, at the county level, at the city level, at the-- at the school board level. And so it's-- it really-- I mean, LB341 limits it, essentially, to sexual assault of a child, but really LB325 really opens it up to just, essentially, proving neglect. So LB325 is not-- is still in committee. The hearing for it was held on February 24, 2023, so well over a year ago. There is no city-- there is no committee statement on LB325 because we didn't vote it out of committee and so you don't see that. As I mentioned earlier, the proponents for LB325 at the hearing were the trial attorneys and one victim, the opponents were the Intergovernmental Risk Management Association, the school boards, the Attorney General, county officials, and also the county attorneys. So I'd like to read some of the testimony that we had at the hearing. My first reading is from the Nebraska Association of County Officials. And keep in mind, this is LB325. It's-- it was about a state issue, really, an incarcerated individual who was killed while under custody of the state. But the way the bill is written, it opens up all political entities, whether it's state, county, city. So it says: Dear Chairman Wayne, on behalf of the Nebraska Association of County Officials, we appreciate the opportunity to appear before you in opposition to LB325, which would expand the scope of liability to counties beyond what has ever permitted-- ever been permitted in Nebraska. It would allow claims to proceed when the harm caused by an intentional tort is approximate result of the failure of a political subdivision or an employee of the political subdivision to exercise reasonable care. Reasonable care to either a controlled person over whom it has taken charge or protect the person who is in the political subdivision's care, custody, or control--

**DORN:** One minute.

**HOLDCROFT:** --thank you, Mr. President-- from harm caused by a nonemployee actor. The legislation has proclaimed its intent under the Political Subdivisions Tort Claims Act in that it, it provides, in part, no political subdivisions shall be liable for the torts of its officers, agents, or employees, and that no suit shall be maintained against such political subdivision or its officers, agents, or employees on any tort claim, except to the extent and only to the extent provided by the Political Subdivisions Tort Claims Act. The Legislature further declares that it is-- that it is its intent and purpose through this enactment to provide uniform procedures for, for the bringing of tort claims against all political subdivisions, whether engaging in governmental or proprietary functions, and that the procedures provided by the act shall be--

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate April 4, 2024

Rough Draft

**DORN:** Time.

**HOLDCROFT:** --used. Thank you, Mr. President.

**DORN:** Thank you, Senator Holdcroft and Senator Lowe. Senator Erdman, you're recognized to speak.

**ERDMAN:** Question.

**DORN:** The question has been called. Do I see 5 hands? I do. The question is, shall debate cease? All those in favor vote aye-- there's been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 15 ayes, 5 nays to place the house under call, Mr. President.

**DORN:** The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel, please leave the floor. The house is under call. Senator DeKay, Senator Fredrickson check in. Senator Lippincott, check in. Senator Slama, Senator Vargas check in. Senator Hansen, Senator Dover, and Senator Bostar, the house is under call. Please return to the Chamber. Senator Hansen, please return to the Chamber. The house is under call. All unexcused members are now present. The question is, shall debate cease? There's been a call-- request for a roll call vote in reverse order. Mr. Clerk, please record-- please do the roll call.

**CLERK:** Senator Wishart voting yes. Senator Wayne voting yes. Senator Walz voting yes. Senator von Gillern voting yes. Senator Vargas voting yes. Senator Slama voting no. Senator Sanders voting yes. Senator Riepe voting no. Senator Raybould. Senator Murman voting yes. Senator Moser voting no. Senator Meyer voting yes. Senator McKinney voting yes. Senator McDonnell voting yes. Senator Lowe voting no. Senator Lippincott voting no. Senator Linehan voting yes. Senator Kauth voting no. Senator Jacobson voting no. Senator Ibach. Senator Hunt. Senator Hughes voting no. Senator Holdcroft voting no. Senator Hardin voting no. Senator Hansen not voting. Senator Halloran voting yes. Senator Fredrickson voting yes. Senator Erdman voting no. Senator Dungan voting yes. Senator Dover voting no. Senator Dorn voting no. Senator DeKay voting no. Senator DeBoer voting yes. Senator Conrad-- excuse me, Senator Day. Senator Conrad voting yes. Senator Clements voting no. Senator Machaela Cavanaugh voting yes. Senator John Cavanaugh

voting yes. Senator Brewer voting yes. Senator Brandt voting no. Senator Bostelman voting no. Senator Bostar voting yes. Senator Bosn voting no. Senator Blood voting yes. Senator Ballard voting no. Senator Armendariz voting no. Senator Arch not voting. Senator Albrecht voting no. Senator Aguilar. Senator Erdman voting yes. Vote is 22 ayes, 20 nays, Mr. President, on the motion to cease debate.

**DORN:** Debate does not cease. Returning to the queue. Senator Holdcroft-- I raise the call. Senator Holdcroft, you're recognized to speak.

**HOLDCROFT:** Thank you, Mr. President. I'll continue my reading of the testimony. Again, this is from the Nebraska Association of County Officials speaking against LB325, and it says-- continues: Under common law prior to the adoption of the PSTCA, which is the Political Subdivisions Tort Claims Act, the court explained. This court long ago adopted the traditional common law view that a public entity engaged in governmental activities is not liable for negligence. Immunity has been based upon a public policy which subordinates mere private interest to the welfare of the general public. I think it's worth repeating. This is from the court. The court long ago adopted the traditional common law view that a public entity engaged in governmental activities is not liable for negligence. Immunity has been based upon a public policy which subordinates mere private interests to the welfare of the general public. It continues: Not long after the Brown case was decided, the PSTCA was adopted in 1969. The State Tort Claims Act and the Political Tort Claims Act were the result of a-- of an interim study committee created by the Legislature. Both acts were patterned after Iowa statutes and the Federal Tort Claims Act. In *Webber v. Andersen*, 187 Neb. 9, which appears to be the first case decided by the Nebraska Supreme Court after the Legislature adopted the PSTCA in 1969. The court addressed the intention-- intentional tort exemption by stating, in part, it is quite apparent that this court has not wiped out the full scope of the doctrine of governmental immunity. It has attempted only to eliminate government immunity in certain areas, and then only until such time as the Legislature occupies the field. We are, therefore, faced with the problem whether or not the abrogation of the doctrine of governmental immunity should be extended to actions for false arrest, false imprisonment, and libel and slander. We conclude that governmental immunity should be and is a defense to these types of claims. We are influenced by the fact that this is the proper public policy to be adopted because of the enactment in 1969 by the Legislature of a Political Subdivisions Tort Claims Act prohibiting tort claims except

in the extent and only to the extent provided by this act. Through enactment of the PSTCA and the state form-- State Tort Claims Act, the Legislature has allowed a limited waiver of sovereign immunity with respect to some, but not all, types of tort claims. Both the STCA and the PSTCA expressly exempt certain claims from the limited waiver of sovereign immunity. We ask that you not expand the current exemptions under PSTCA as LB325 would do by significantly weakening the original intent of the international tort exemption under the PSTCA and create significantly heightened litigation exposure and costs for governmental entities such as counties. We encourage you to oppose LB325 by voting to indefinitely postpone LB325. Thank you for your consideration--

**DORN:** One minute.

**HOLDCROFT:** --of these comments-- for these comments. And it's signed by Elaine, who's the legal-- Elaine Menzel, legal counsel. And I'll, I'll give back to the President my remaining time. Thank you.

**DORN:** Thank you, Senator Holdcroft and Senator Lowe. Senator Jacobson, you're recognized to speak. Senator Jacobson, you're recognized to speak.

**JACOBSON:** Thank you, Mr. President. Well, I think we're continuing to try to talk about whether there is some kind of middle ground here. Clearly, from the vote you see on the board is that this is a very divisive issue. And if we're talking about moving the bill in its entirety, that's, that's really a problem. I will tell you, from my standpoint, punitive damages are a game, game changer, that absolutely cannot happen. I'll fight tooth and nail on punitive damages. I think I'd start looking at Senator Halloran's bill, there might be some pieces in there that we could, potentially, look at with caps, and limiting it to who could be-- could be sued. But I still believe that the challenge still comes back to really making-- fixing the problem as opposed to suing people as we've talked before. Yes, when this child is damaged, we need to be able to try to find help for them, which is not necessarily money, but more counseling. And sometimes money might be the worst thing for them after what they've been through. And recognizing that that could also lead to abuse of alcohol and drugs, and now they have the money to pay for it. What we're really focused on, I think, is getting counseling for these kids and getting the perpetrators locked up, and potentially the supervisors of those people being fired. But we've talked about this before, that if you're a private entity, talked a lot about parochial schools, private

schools versus public schools. If you're a private school, I'll guarantee you, go to any private school, look at those parents that are there pitching in, helping on everything, fully engaged in what they're doing. Yeah, they have a real vested interest in what they're doing. I'm not saying that the public schools don't, but I'm just saying that in a larger public school, being able to look at that large employment base and to have one bad actor or two bad actors, or worse yet, or also go to any other political subdivision. What if it happens with a Parks and Rec person that your city, the city is not going to get any of those punitive damages. How are they going to pay for it? Well, in many cases they're not paying for it. We are. And does it really solve the problem if we still have to deal with the problem with how do we now try to make it whole with a kid, in addition to how do we try to dissuade others from doing the same thing? So I think that's what we've got to get worked out here. If there's anything that's going to be moving forward, we've got to significantly skinny down this bill. And Senator Wayne, I've had a conversation with him. I think he's open to, to negotiating something that we can agree to and I think that would be good. I think we need to get a lot closer to have what would-- what this framework would look like. And then if it were to move forward that we would-- we would pull-- we would skinny this down significantly before it would go to Select with an understanding of what the-- what the other changes would have to be once it gets to Select if it's going to be refiled again. So that's what I'm working on right now. But I don't want to-- I'm not on Judiciary--

**DORN:** One minute.

**JACOBSON:** --not have been involved in this fight, initially. Senator Bosn, I respect immensely, and I really want to hear what she has to say and what her concerns are going to be as we move forward. Same thing with Senator Holdcroft. These are people that, that-- Senator Holdcroft voted against the bill. Senator Bosn was a PNV at the-- on the-- on the hearing. So I think-- I, I want to weigh heavily into what their thoughts are. But at the end of the day, we're talking about some pretty serious steps in terms of breaching this, this veil of immunity and we better do that with their eyes wide open. And I'm not sure we are doing our best work here at 8:12 in the evening after a late night last night and a long day today. So those are what my concerns are right now. Thank you, Mr. President.

**DORN:** Thank you, Senator Jacobson. Senator McKinney, you're recognized to speak.

**McKINNEY:** Thank you, Mr. President. I oppose the bracket motion. I support the committee amendment, and I support LB25. And, Senator Jacobson, I am on the Judiciary Committee so I think my voice matters as well, not just the people that oppose this bill. And it's very interesting, I think there are a lot of people who have kids in this body. There are a lot of parents in this body. And I would ask you the question, if your kid was assaulted in school and your only remedy was to be able-- and, and, and you wanted a remedy and you weren't a, a parent that was well-off and your kid was dealing with trauma and you couldn't afford therapy, and your kid was dealing with it and you couldn't afford it, but you wanted some type of way to pay for that type of therapy to help your kid deal with that trauma and you wanted to seek some type of remedy to hold somebody accountable. A show of hands, who would want to hold the schools accountable? It's very sad that a lot of parents in here wouldn't want to hold the schools accountable to get their kids help if they were sexually assaulted in school. It is crazy. It is-- it-- honestly, it's shameful. My daughter turns 14 next week and, thankfully, we'll be done. She turns 14 on the 14th, actually, that's-- and my nephew turned 4 today on the 4th. So-- but, honestly, we're talking about kids today. We're talking about important topics. And if the schools go bankrupt, if the counties go bankrupt, if the state goes bankrupt because kids are being assaulted and we're-- and, and, and we're trying to help them out and help kids out because they're dealing with trauma, then they-- then the state and the counties and the schools deserve to go bankrupt because they're hiring people who shouldn't be hired. And that's the truth. Why are we trying to protect ourselves from accountability because people are being hired that shouldn't be hired? Let's be honest here. That is a problem. We're talking about protecting kids. There's been a bunch of bills this year about protecting kids from reading books. It's been a-- it's been a bunch of bills about protecting kids since I've been in, in, in this building. It's been a, a bunch of bills about protecting victims. We, we have discussions about victims all the time. I introduced some bills about changing the criminal justice system and the first conversations I get is Terrell or Senator McKinney, what about the victims? You got to think about the victims. Well, what about the victims of sexual assault? What about the kids that are sexually assaulted? Let's think about them. I don't care about the money. The money shouldn't matter, it's protecting the kids. And if the floodgates open, they deserve to be open because the kids need protection. And how-- like, it, it is illogical to me that people stand up and say no to this, honestly, and people stand up and say we, we should protect kids. It is super hypocritical that people try to



pass bills this year to say, oh, we want to protect kids from this, this and that, and you should support this bill because you, you should want to protect kids, but they're saying no to this bill or these bills or these type of bills. You're, you're being hypocrites,--

**DORN:** One minute.

**McKINNEY:** --and that's the honest truth. And it's sad. A lot of people have kids in here and grandkids in here. And if your grandkid was assaulted and, and you weren't well-off and you lived in poverty and your-- and your grandkid was living with trauma and you wanted to get them counseling and help, are you just not going to get them help because you can't afford it and you can't sue the schools? This is sad, bro. This is really sad, honestly. We-- this is-- this is the-- this might be the saddest debate we had since I've been in the Legislature. And we always talk about protecting victims and protecting kids. This is the saddest debate we've had since I've been in a body. Thank you.

**DORN:** Thank you, Senator McKinney. Senator Vargas, you're recognized to speak.

**VARGAS:** Thank you very much. I echo a lot of my colleagues' sentiments here, Senator McKinney. You know, part of the reason I'm frustrated with part of the dialogue is hearing one of the rationale behind opposing this being that it's going to increase property taxes. When it was made abundantly clear by Senator Wayne that that, one, the burden-- the burden of proof is higher and would be higher; two, nothing is automatic. It still needs to be-- they need to be held liable. They need to be proven liable. And that we're talking about abuse of children and that there's an opposition to allowing accountability to exist within the system and also allowing punitive damages, which I support as well because it's going to be a cost that's going to be an increase in property taxes for a school. That's ridiculous. Many of us in the past years, which includes Senator Halloran, worked on bills to try to increase some of the penalties for, for grooming and sexual assault. And part of the reason is we kept hearing these stories, we kept hearing these, these incredibly awful, awful stories and cases. And the issue being that there is no way-- hearing some of my colleagues talk about, well, let's just pay for mental health when we don't hold that standard with private entities. The point is, there needs to be a way to be able to hold an entity accountable. That's the point. And to be able to approve, it is not a certainty. The cases that we're talking about or cases that are



currently right now, could could be happening are some of the worst cases you can ever imagine and we're talking about whether or not the accountability can be served, the same accountability that could be provided for a private entity or in the case that Senator Linehan and the question she was asking for private schools couldn't be held accountable to public schools. It's appalling that the rationale that's being used against this is completely void of accountability for people that have gone through abuse. And I commend Senator Wayne because he's already said he would remove the punitive damages. And if the body was going to entrust him to move it forward, they would allow or move the bracket motion and move forward and, and see if there's something that can happen. We did that this morning with the firefighters bill. I understand some people are completely against that component, but if he's willing to take that part off, I don't understand what we're debating. And this is somebody-- I'm speaking for myself as a former teacher and as a former school board member. I still believe that accountability should be held to any public or private school or entity, and that the burden of proof and the damages need to be in law.

**DORN:** One minute.

**VARGAS:** So, colleagues, I rise in support of LB25. I rise in support of the amendment. I rise opposed to the bracket motion. This is about accountability. This is about making sure that victims of crime have a process for being able to get some punitive damages and that's one component of this. And as you heard from some of the other bills, which I support that are part of this, we have a responsibility to do something about this. And if rationale is talking about windfalls for lawyers, that this is going to increase property taxes and that that's your rationale against providing accountability for victims of sexual assault or abuse, victims of crimes, I think we have to look at ourselves in the mirror and think differently about--

**DORN:** Time.

**VARGAS:** --fairness in the process.

**DORN:** Thank you, Senator Vargas. Senator Albrecht, you're recognized to speak.

**ALBRECHT:** Thank you, Mr. President. I'm not rising to call the question. I can't even believe how many times the question was called on the floor tonight. And this is not funny, this is a very serious

issue that every one of us that are lined up in the queue should have an opportunity to talk about. We're talking about our schools in this situation and our children. I couldn't even get 3 extra votes to pass LB441 when they sexualize our children in ways that we don't even want to know about, and we don't care about that. But we're going to stand here tonight and not really understand what we're talking about. I'm not an attorney. There's 3 different things they want to do. We have people that are serving on the Judiciary Committee that are trying to help us understand this. But if there's already in law the 1983, 42 U.S.C. 1983, whatever the heck that suppose to mean. I'm not an attorney, but what I am is a concerned grandparent of 15 grand babies that are going to be worried-- I have to worry when we drop them off at school if it's a safe haven. You know, I'm-- serving on Education, my eyes have been opened in ways that I never thought they, they could be, and serving 8 years in this legislation has just turned my head upside down knowing what can happen in situations like they have in the schools. We had a bill this year that they're asking for-- a peer review shouldn't be a part of this. It shouldn't be peer reviewed whether somebody should lose their license to teach because they've done something so egregious to our children in the classroom. They should be in front of a court of law. And should you hold the school boards responsible? Heck, the school board doesn't even know what's happened because nobody tells them it's happened. It's all done behind the scenes and do whatever you want to do. But when I have a book that's in my office right now, I should have gone down to get it, but I don't have a key to it. I'm sure I could get that security to unlock it for me, but there's a book down there that talks about school teachers or coaches that are still coaching today because they don't take it to the next level and find out if they're guilty or not, because they're, they're just going through the process in the school themselves. Folks, that's not how it works. These people that have done something-- and most parents, if they don't even have the ability to get an and retain an attorney, they're not going to go the extra mile, but that child's going to suffer with whatever happened to them, however they were being sexualized. But things like this are very serious, and we need to decide as a State Legislature whether we need to, to cover this or not. So I'm trying to decide right now, am I voting for this or am I voting against it? You know with the conversation we had about Senator Halloran, I went up to him and I said, hey, if I get LB441 across the finish line, you should put your bill on mine. But you know what, we all have to understand what's already in law and what we can do and what we can't do. But this is-- this is crazy tonight that we're going to play with, with our kids by

calling the question so we are not allowed to find out what-- what's really in this so that we can try to understand it. Because not many of us have a law degree, and those that have it are trying to stand up and talk about it. And those who sit on the Judiciary Committee, whether they understood it or not, just like I'm trying to understand it, are not for LB25. You know, this is-- this is really serious business that we conduct here--

**DORN:** One minute.

**ALBRECHT:** --on a daily basis. And if we can't take the time to try to understand why we shouldn't be voting for it, or why we should be, and help us make those decisions, everybody's in the corners, you know, laughing and having a good old time tonight, but this, this is a serious bill. And we need to, to understand what we're going to be doing with it and why. Are we going to vote for all 3 of these amendments? Heck, we don't have time because we're not taking the time to understand them. I'm really frustrated right now, and I'd like a little bit of decorum in the room so that we can get through this. Thank you, Mr. President.

**DORN:** Thank you, Senator Albrecht. Senator Wayne, you're recognized to speak.

**WAYNE:** Thank you, Mr. President. So there's no more confusion, punitive damages off the table. So when I talked about property tax relief and school fund, that is strictly for punitive damages. So ignore that concept right now. It's gone. All right. I am trying-- because I know that-- I'm looking at Brandt, the reason why I know punitive damage is going to come back when we have our special session. It is property tax relief. So I'm comfortable waiting on that. So let's, let's explain a little bit about how this works. If something happens at a school with, with, with the teacher or a, a sheriff, there has to be a duty that is established. So Senator Albrecht talked about 1983 claims. I'm going to talk a little bit about negligence claims, tell you a difference. It is not the same standard. I don't care what anybody says, case law is clear, it is more than just negligence. It is a higher burden of proof. Now, what that means is still clear and convincing, but you have to prove more than just negligence. Negligence is a reasonable standard. What that means is if I--let's do the notice idea. So if somebody tells me my kid is getting bullied and beat up, etcetera, I sit down, inform the principal, inform the school district this is going on and they just say, nah, we're not doing nothing. That's negligence. That's a

problem. They should try to do something. That's how you get there. If, if somebody just walks up to my, my daughter and punches her, I have no claim against the school district unless the teacher knew and the teacher breached her duty in that situation by not informing the principal or not doing anything to control the classroom. So what that means is, if they're out on the playground and there's nobody supervising the playground, and the school district or the school knows these kids are going at it, but we're going to leave them unattended. That is a problem, especially if a kid gets sexually assaulted by the teacher. That's, that's bill number one. So they have to know something or been on notice of something. It isn't simply just this-- it's regular negligence. You have to have a duty. It isn't a free-for-all lawsuit. And I-- and I-- the headlines write themselves, people. If you get up here and say the sky is falling and school districts are going to go completely broke, that might be OK if it is that big of a problem in that school district. Think about that. That might be OK, because something's really wrong if there is that many sexual assaults and the school district knew about it and didn't do anything about it. Think about that. And you're worried about frivolous lawsuits. Note-- first of all, the attorney has an ethical obligation not to file frivolous lawsuits. And the client can be required on a frivolous lawsuit to pay damages of their attorney on a frivolous lawsuit. That is the law. If it is a frivolous lawsuit and deemed frivolous, my clients can be held liable for the attorney fees of somebody else. That is why you don't file frivolous lawsuits. Period. What, what I'm, I'm kind of just dumbfounded is we're worried about an institution that knows about something and fails to act.

**DORN:** One minute.

**WAYNE:** Make it make sense. We handed out on my-- an example of Senator Dungan's bill that involves a real-life case, a real case where the school district failed to protect a kid with special needs because they thought, nah, we don't need extra supervision, even though it's required in the child's IEP. But you want them to go to a higher burden, do it harder, make it more difficult for that kid to recover. We're better than this. We are better than this. And you say sue the individual, hold them accountable. Sue what? The para who didn't go. She's making 36-- or he's making \$40,000 a year. The medical bills for the broken arm are \$100,000. Sue who? The school failed to act. Why should that parent or grandparent be stuck paying that--

**DORN:** Time.

**WAYNE:** --medical bill? Thank you, Mr. President.

**DORN:** Thank you, Senator Wayne. Senator Conrad, you're recognized to speak.

**CONRAD:** Thank you, Mr. President. Good evening, colleagues. I rise in opposition to the bracket motion and in support of the underlying legislation and committee amendment. We've talked about these issues at great length during this session and it's good to have them on the board now so we have an opportunity to take action. But I want to inject a couple of pieces into the record here as a mom and as a civil rights lawyer. So I-- just number one, and I know my colleagues who have children and grandchildren in this body care deeply, deeply about their families. As, of course, I do as well. And, and I'd ask you to think about if it was your kids in this situation and think about if it was your family in this situation. And so before I get into the lawyer-- lawyering, I, I want to focus on a little "momsplaining" here, I think, because I had a chance to watch some of the debate before I got a chance to get it in the queue and I'm going to tell you that it is not a good look emanating from this Nebraska Legislature tonight. And it's pretty sad to see a lot of moms that I respect on this floor fighting against families and kids getting justice. The other thing that I want to make clear is some of my colleagues have danced around the different-- what's distinguishable or analogous for private schools and public schools. So let me just unpack that quickly. So in private schools, if a kid gets hurt or if there's an issue like this, there is no extra level of protection. So what we're talking about is making-- giving access to justice in the public schools like they have in the private schools. The reason the courthouse door is closed is because the government has given itself extra protection. OK? That-- that's, that's why it works that way. The government has given itself extra protection that doesn't exist for your private schools. That's why there's more accountability there in the courts. OK? The other thing, and I know that not everybody is a lawyer, and some of these issues are complex and it's actually beneficial. But not everybody is a lawyer, so that we can look at these from a lot of different angles. But I've heard thoughtful, compassionate colleagues say the remedy isn't money. The remedy is counseling. Friends, this is-- I, I know your heart's in the right place, but let me be clear. The civil justice system's remedy is money. It's money. You're awarded damages. You're not awarded counseling. That's, that's not how it works. It's up to the, the individual or the family to utilize that award for counseling or medical needs or lost wages or pain and suffering or whatever it might

be. So I just-- I want to just make that point clear. You can have a legitimate opposition to this bill, but the opposition can't exist on a remedy that doesn't exist. The, the criminal justice system, you have a loss of liberty. The civil justice system is based on compensation to make you whole for wrongs, whether that's private parties or a private party and a public entity, that-- that's the crux of the civil justice system. So I, I just want to make sure that people know about that. I also just want to be clear that people are-- this argument that we should just cede authority and punt to the federal courts is a weird argument for state legislators to make. We don't just cede authority and punt to the federal government.

**DORN:** One minute.

**CONRAD:** The issue is opening the state courthouse doors as they were meant to be opened, writing the wrong by the legal fiction and the court decisions, making sure people have access to justice closer to their home. That's more responsive. That's quicker. That covers more issues. 1983 cases are not for negligence. They are for civil rights violations. There has to be a constitutional violation or nexus to walk into federal court on 1983. It's not just generally available when somebody gets hurt. OK? We just-- we, we can have our own opinions, but we can't have our own facts. Those are basic facts about litigation and jurisprudence. The other thing, and I'm probably going to run out of time, is I really want to push back against this greedy lawyer's mantra that's emanating on the floor. Look no further--

**DORN:** Time.

**CONRAD:** Oh, OK.

**DORN:** Thank you, Senator Conrad. Senator Kauth, you're recognized to speak.

**KAUTH:** Thank you, Mr. President. May I ask Senator Conrad a question?

**DORN:** Senator Conrad, will you yield to a question?

**CONRAD:** Yes.

**KAUTH:** Would you like to finish your statement?

**CONRAD:** Oh, you're so kind, Senator Kauth. Thank you. Thank you. I'll be very quick, as I know I'm on your time.

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**KAUTH:** No, you're fine.

**CONRAD:** My point is this, there was a story in the Journal Star, front page, just in the last week or so. It talked about a sex discrimination case employees brought against the city of Lincoln. And it talked about how it took years for the case to move through the courts. It talked about how the city attorneys have a full department of attorneys to protect the city and they hired a huge corporate firm. And a plaintiff's law firm that was small couldn't take on other cases because they were working full time on the sex discrimination cases. They weren't bringing revenue in the door. So, yeah, they did successfully settle for their client years later, but they're backfilling wages that they weren't bringing in for years when they're up against the city with unlimited attorneys who also hired corporate attorneys. So I want people to get real about what's happening in the dynamics of this case. Senator Kauth, thank you for your graciousness in allowing me to finish that thread. I really appreciate it.

**KAUTH:** You're very welcome. And kind of selfish on my part, I-- like I said, I'm listening to all of this. I very much appreciate your, your comments and finishing that up. I appreciate that Senator Wayne sat down and tried to walk me through all of this. It's incredibly complicated. Very complex. A lot of moving pieces. I was pleased that he said the punitive part is off the table. That seems to simplify things just a little bit. I still have a lot of questions about how it's going to impact the, the taxpayer, city government. What things-- what are the unintended consequences? I feel like I'm going to need to be reading through a lot of things. Talk a lot more. We've got 3 hours, 3 and a little bit hours left for a whole lot more conversation on it. But I am very, very pleased with the conversations that have been being had. Everyone seems to be interested in educating each other, and I appreciate that because I need a whole lot of that right now on this issue. I, I have a lot of questions still. So I will, actually, relinquish my time and get back to-- let Senator DeBoer take over. Actually, do want my time, too? I will yield my time to Senator DeBoer.

**DORN:** Senator DeBoer, you're yielded 2 minutes, 20 seconds.

**DeBOER:** Thank you, Mr. President. I am, sufficiently, chastened. Senator Albrecht, we were trying to, I think, get through the bracket motions and the other motions so that we could get to the individual separate amendments, but not calling the question. OK. So one thing that I think, maybe, I can help explain is the State Tort Claims Act

writ large. So there is a principle in common law that is really kind of what all of this is about. We inherited this from days of yore. And, yes, I said of yore on the microphone, and that is a principle called sovereign immunity, which is that there's a king. It's good to be the king, and the king doesn't let you sue the king. You all, we're the king now. So the principle of law is that you cannot sue the sovereign, in this case the state, unless we say you can. So the states have State Tort Claims Act that say you can't sue us except in this room.

**DORN:** One minute.

**DeBOER:** Colleagues, in this room, we decided to say in some cases you can sue us. In this room, our predecessors got together-- I don't know who it was-- I don't know how far back it was-- and they said if there is a city driver and they get in a car accident with you and because of their negligence you are injured, you can sue the state. You can sue the political subdivision. That's what our Tort Claims Act say. If you are on city or state property and there's a slip and fall, people in this room got together and decided you can sue the state, you can sue the subdivision.

**DORN:** Time, and you are next in the queue so you may continue, Senator DeBoer.

**DeBOER:** Thank you, Mr. President. We have the responsibility for deciding in which situations it is OK to sue the sovereign. That's us. What Senator Wayne and Senator Halloran are asking with LB341 is that we say, like in the case of a slip and fall, like in the case of a car accident by a driver employed by the city, by the state, whoever, if there is negligence on the part of the state actor, let's say the car driver, you can sue us. What we're looking for here is if there is negligence on the part of the state actor, and as a result your child gets sexually assaulted, we want to say we'll let you sue us for that. Just like slips and falls, just like a car accident. What we're trying to do is create that option so someone can go to the courthouse and ask for justice. Doesn't mean they get it. And, by the way, you have to show in negligence. You have to show there was a duty. You have to show that the, the person you're suing breached that duty. You have to show that you have damages, and you have to show there is a causation-- that there is causation between their breach of duty and your damages. Your damages have to be caused. And it's not like Senator Ballard sues my mom because I hit Senator Ballard and he says if Wendy's mom hadn't given birth to her, then she couldn't have hit



me. That's not the kind of causation we're talking about here. And this is a well, well-trod legal doctrine. Negligence is a well-trod legal doctrine. It says that the causation must be-- we use the word proximate. That means it has to be foreseeable. It has to be close in time, in, in-- not time, but it has to be close enough. It has to be the cause that is connected. So what we're saying is, we're asking our colleagues here in this room to say if there is a duty to take care of a child, if there is a breach of that duty, if the breach of that duty caused, that close proximate caused damages to a child, we're asking you to stand up with us and say in that situation we recognize that we can be sued like we do in these other cases. That's what we're asking for. If there is a business out there, if there is a private school, if there's a daycare and a child is sexually assaulted in one of those businesses, we look for duty, we look for breach, we look for causation, and we look for damages. And that private entity, they can be sued because people in this room created a negligence statute that says for private entities, they can be sued under those circumstances. We created that.

**DORN:** One minute.

**DeBOER:** What we're saying is, since we created that for other businesses, people, etcetera, let's create it now. We already say if you're hit by a city bus, we're going to take care of that because we understand. And, and this is where Senator Wayne has said we'll put caps on it. If the worry is we're going to be out of money or something like that or it's going to be extraordinary, let's put caps on it. We can put guardrails on these things. We're not-- we just want to say that if there is a duty, a breach, causation and damages for a child who's been sexually assaulted under our watch, that we give them the same operating to come to justice that we would give someone who was hit by a city bus driver. Thank you, Mr. President.

**DORN:** Thank you, Senator DeBoer and Senator Kauth. Senator Dungan, you're recognized to speak.

**DUNGAN:** Thank you, Mr. President, and good evening, colleagues. I've not spoken really at all yet on this, as I was waiting to get to the amendment that contains LB325, which was the bill that I originally introduced and a lot of people have spoken about. But I felt compelled to get on the mic for at least a short period of time while we're talking to-- touch on a couple of things. One is I want to make sure that we're all very clear about what these potential proposed amendments do and what they don't do. These do not open up political

subdivisions for any claim whatsoever. These do not blow up the Political Subdivisions Tort Claims Act at all. In fact, LB325, which is the bill that I brought that will be an amendment down the road here, doesn't change the law in any way, shape, or form except return us to what the law was, what the precedent was for decades. This is not a new concept. We didn't come up with this in a lab and think this would be a cool, fun thing to try to do in Nebraska and see if it works. This was the law of the land until the case was issued by the Nebraska Supreme Court in 2020. That case upended the precedent that we had for decades on whether or not some political subdivision, a school, could be held liable in the event that they failed to take care of the people that were in their care. And then an intentional tort or some bad act happens and they, they could have stopped it and didn't do it. When that case came down from the Supreme Court, there were cases pending that were working their way through the justice system that were dismissed because they were bound by the precedent of the Nebraska Supreme Court saying, gosh, gee, sorry, we were working our way through the system, but this case came down, so you're out of luck. A school district had a field trip for students with special needs, one of the students was known to be violent with the other students and had an individual education plan, an IEP, stating that the student always needed a para educator with them always, at all times. The para educator was out for the day and the school district did not bring in a substitute. The student was out-- the student sexually assaulted another student with special needs while on the trip. A student with special needs was sexually assaulted on a trip when the school was in charge of them. That got brought to the courts, and that case against the school district was working its way through the courts when that Supreme Court Opinion came down upending the law and the case was dismissed. There was no accountability. That family, that student never had an opportunity to be made whole in that circumstance and have the school held accountable, despite the fact that the school had knowledge and the school failed to act, and it was a direct breach of their obligation to that special needs student, and in doing so and failing to act, that student was sexually assaulted and nothing could be done for the family in the courts. I'm not OK with that. If you've paid attention in the Legislature to me for quite some time, you know I love my public schools. We talk about it all the time. I love my public schools here in Lincoln. I love my public schools across the state. I still don't think they should be able to get away with that. If they fail to act and they have knowledge and they are in charge of a special needs student and they know darn well that if they don't do a certain thing something bad's going to happen

to that kid and they still make the decision to not act, yes, they should be held liable. In what world--

**DORN:** One minute.

**DUNGAN:** --thank you, Mr. President-- in what world do we just shrug and say you know what, I thought about it. I contemplated the costs and, gosh, at the end of the day it might-- it might be too much money. So, yeah, it's really sad-- it's a really sad story that happened. But you're right, we checked the checkbooks. We, we balanced our ledgers and we're worried about what that means at the end of the day. Accountability matters. These court cases matter. People deserve to have their day in court. People deserve to be made whole. Students deserve to know that if somebody fails to protect them, there's going to be recourse. So I encourage everybody to understand that is what we're talking about here. And when we get to Senator Halloran's bill, which is a great bill, I encourage people to vote for it. And when we get to LB325, I would encourage you to vote for it because it matters not just to Nebraska, but it matters to the students who are affected by that. Thank you, Mr. President.

**DORN:** Thank you, Senator Dungan. Senator Linehan, you're recognized to speak.

**LINEHAN:** Thank you, Mr. President. I would like to ask if Senator Wayne would yield to some questions.

**DORN:** Senator Wayne, will you yield to some questions?

**WAYNE:** Yes.

**LINEHAN:** Senator Wayne, you-- I know you've had sidebars and discussions all over the floor and, hopefully, people are paying attention, whether they're here on the floor or back in, wherever they are in the building, what exactly would you walk away with from this-- this was a committee priority, right?

**WAYNE:** Personal priority.

**LINEHAN:** Pers-- oh, personal priority. But you are the Chairman of the committee, right?

**WAYNE:** Yes.

**LINEHAN:** So what could you walk away with tonight and feel like we've made the place better, though we didn't get everything you had in your bill.

**WAYNE:** So we, we already scrapped punitive damages. I'm willing to keep that out. So what I would do is, on Senator Halloran's bill, and I'm hoping Senator Halloran nods his head and says it's OK, I would take what currently is the medical malpractice cap, so that means doctors who get sued is \$2.5 million. That is what we would cap a child sexual assault at \$2.5. I would take Senator Dungan's bill, roll it in, but, but keep a cap on political subdivisions of \$1 million. That is the current law, by the way, that's the current law, \$1 million. So this idea that a school district is going to go broke, the most they can get is \$1 million, child sexual assault would be \$2.5. And, again, that has to be proven out. And against my side, I am willing to cap what attorneys can make at 25%. My justification of that is medical reim-- medical-- Medicare reimbursements, when your clients have Medicare and you're trying to figure out claims, our state law caps attorney fees at 25%. I will be perfectly honest, my side won't like it, your side is not going to like it, and that usually tells me we have a pretty good deal, that we're in the middle. I'm willing to take that. The point of it is I'm trying to get kids who have been sexually assaulted help. I'm trying to make sure that when a special needs kid has an IEP and the district just fails to act and they get broken arms and broken legs, that there is a way for that parent to at least get their medical bill paid and pain and suffering of any future medical bills and pain and suffering for that-- for that child. So that's-- I believe that's easily-- if you think about medical costs for surgeries are over \$1 million anyway. So we're capping it. I'm willing to do that. And if you think this is a run on attorney fees, let me tell you, most contingency or contingency agreements have a 33%. And if you go to trial it's 40%. My attorneys will not like what I just said about 25%. Why is that important? It's important what Senator Conrad said. These cases take years, and you are spending all that time, years, and let's say at a very, very low rate of \$100, which-- an hour, which is probably-- and not even-- you get that for court appointed cases at least in Omaha. Think about 2 years before you get to a jury, how many hours you put in, a cap of \$1 million and 25% at \$250,000, you've literally went through all of that because you're going to have expert fees. You're going to-- you're behind. You're taking this because you think it's the right thing to do at that point. Just like you take the Medicare cases. And when you do that and you're fighting with the federal government, CMS on

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Medicare reimbursement, you're doing it because you think it's the right thing to do for those individuals, but you're not going to do it for free. I will tell you, talk to the lobby on my side, they're going to probably be, I don't like this at all, especially the attorney fees part. I'm willing to move. I am negotiating right now against myself because I think it's the right thing to do for kids.

**LINEHAN:** So, Senator Wayne--

**DORN:** One minute.

**LINEHAN:** --Senator Wayne, is this only about minors?

**WAYNE:** No, it's not-- his bill-- the first bill is only about children sexual assault. Only about. Senator Dungan's bill covers the other part where not just kids, but if a state has a duty, like, again, I bring up sexual harassment policies, things like that, where you are informing the actor this is a problem and they fail to correct it or fail to act. They fail to protect you. You have to be-- and it's not a free for all. It has to be in the care of or in the custody of so it isn't just, like, when I say workplace, it isn't just two workers, there has to be some kind of care of, some kind of duty to help this person. So it could be special needs adults. It could be people in prison. It could be children. Yes, our most vulnerable, we are trying to help.

**LINEHAN:** Thank you, Senator Wayne.

**DORN:** Thank you, Senator Linehan and Senator Wayne. Senator Erdman, you're recognized to speak.

**ERDMAN:** Thank you, Mr. President. Good evening again. I told this to Senator DeBoer a few minutes ago. I don't think I've heard a better description, a better explanation on what we're trying to do. She spoke that in a language that I think all of us could comprehend. And I-- and I appreciate that. I want to speak a moment, just briefly about calling the question. Senator Albrecht, I didn't do that to make fun or to be lighthearted about this. I did that because I wanted to get by the priority motion so that we could get to the amendments. We spent a lot of time talking about this bill, not much time talking about the real bills. And that's what happens when you do an IPP or a bracket. So the goal was to get us to the place where we had the amendments up that we were talking about so we could have a full discussion about those. So if you were offended by me calling the

question, it was not my intention to offend anyone. It was my intention to bring the discussion to what actually the bill means and I think we've done that. I think Senator Wayne-- I believe-- I know Senator Wayne has taken the concerns that the people have on this floor to heart. You've noticed he has, as he said, negotiated against himself. He's taken away punitive damages. He's done and would do whatever is necessary to make this work. Senator Wayne is a negotiator. He understands how you make laws better and he's trying to do that. So Senator Wayne has offered those things to us I think in a very honest and straightforward opinion. And I believe when he says I'm protecting children, I want to protect children, I believe him. I hope you do as well. So we're going to get ready to vote here sometime before midnight, I would assume, so if you have not made a decision about how to vote on this bill, I think there's been plenty of evidence given for you to draw a commonsense conclusion as to what the answer is. That's what we do here when we make good legislation. We thoroughly discuss it. We consider all the avenues and the ideas and we make adjustments. We've done exactly that tonight. So when we get ready to vote on this, keep in mind what we're trying to do is just bring these units of government into the same place the private sector is. And so if you don't think the government should have special protection, maybe the private sector should have the special protection that the government has. That's not what we're trying to do here. We're trying to make it the same. We're trying to protect children. We're trying to protect the most vulnerable. And I think that's what Senator Wayne has concluded in his comments. So when you get ready to vote--

**DORN:** One minute.

**ERDMAN:** --for this-- thank you, sir-- when you get ready to vote, please vote, vote your conscience. And remember we're protecting children. Thank you.

**DORN:** Thank you, Senator Erdman. Senator Holdcroft, you're recognized to speak.

**HOLDCROFT:** Thank you, Mr. President. I've heard a couple times people say that there's no recourse for the-- for the victims. And, of course, I think we've, we've mentioned a couple times that they, they can be sued at the-- at the federal level. That's harder, harder level of proof of burden and-- or they can be sued-- you can go after the perpetrator at the state level. And, and my concern, if we open it up at the state level to go after schools and counties and, and the

state, and you're worried about paying lawyer bills and everything else, court fees, why would you go after the perpetrator? Because all the money is at the state, county, and city levels and school boards. So get a bigger bang for your buck. [INAUDIBLE] the perpetrator, go after the-- where the money is. And, of course, where the money is, is with the political entities. And where do they get their money? They get their money from you and me through property taxes. So all this work we're doing to try and reduce property taxes, I think would be from not much if we open this up for the suit-- for, for lawsuit in this case. Now, again, Senator Wayne has eliminated LB25, I mean, as far as the punitive damage goes, we're really concentrating on LB341, which is, is minors and he's putting caps on that. And LB325, which is Senator Dungan's bill, really opens it up, as has been already stated, for lawsuit-- for-- at-- through adult any time the political entity is negligent in the protection of someone under their care. So LB325 again, to beat a dead horse, is still in committee. We don't have a committee report and, and as I mentioned, we had at the hearing, and I don't know how many of you were at the hearing. I was, and I voted against the bill based on what I heard at the hearing. And so to, to continue my education for you on what occurred at the hearing, I would like to read a statement then that came from the Attorney General. And, again, this was at the hearing February 24, 2023, so well over a year ago. Good afternoon, Chairman Wayne and members of the Judiciary Committee. My name is Jennifer Huxoll, and I am an assistant attorney general and the bureau chief of the civil litigation bureau in the Attorney General's Office. Today, I'm testifying on behalf of the Nebraska Attorney General in opposition to LB325. LB325 presents a significant erosion of sovereign immunity protections, resulting in additional exposure to the state of Nebraska. It is the duty of the Attorney General's Office to defend claims brought against the state. And for the reasons explained below, we are opposed to the erosion presented in LB325. Sovereign immunity is a fundamental protection of taxpayers and is fundamental to the ongoing operation of our government. Claims against the government are paid by the taxpayers who fund the government-- who fund the government. Long-standing principles of sovereign immunity, stretching centuries and applying to all 50 states, along with the federal government that limit claims for damages against the government to only those specific circumstances where the Legislature has made a policy determination that taxpayers should be financially responsible--

**DORN:** One minute.

**HOLDCROFT:** --thank you, Mr. President-- for the tortuous conduct of certain individuals. Current law does not permit a claim against the state where the claim arises out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights. Nebraska revisions-- stat. 81-8.219. That's the statute. These claims are often summarily referred to as intentional torts, but it is important to note that the list provided in statute is not exhaustive. Therefore, LB325's general use of the term intentional torts, rather than listing the specific intentional torts waived, would expand the claims where sovereign immunity--

**DORN:** Time.

**HOLDCROFT:** --is waived. Thank you, Mr. President.

**DORN:** Thank you, Senator Holdcroft. Senator Bosn, you're recognized to speak.

**BOSN:** Thank you, Mr. President. I just want to provide some clarification here because we've talked about a lot of examples and the-- certainly, the situation that Senator Dungan brought to our attention is, obviously, quite sad situation. But there is-- I, I just want to be clear when we say there is no remedy for that family, there wasn't a claim brought under a 1983 filing, so I don't know what-- why that is. I don't know what the answer to that is. But it's my position that that case likely would have and should have been successful under a 1983 claim and probably also under a Title IX claim. So when we say that there's no remedy or that that family has no opportunity, it, it is true that it is a tragic situation, but I don't want someone to walk away from here and say we have no remedies. Because as I've tried repeatedly to point out, we have a remedy for victims of sexual abuse under Section 1983. And no matter how many times that we say that can only be brought in federal court, I am telling you that we have concurrent jurisdiction and we can file those claims in state courts as well. And as Senator Conrad pointed out, if that's closer to home, you can file them there. You can file those claims against the state employee who is alleged to have acted with, quote, deliberate indifference. So when we talk about negligence, that's a standard. And when we talk about deliberate indifference, that's another standard. It is a more serious finding than simple negligence. The standard that is proposed in LB25 and, and LB341 and LB325 is a negligence standard. What's in 1983 is a heightened sense, because what you're suing for is different when it is a political subdivision. You are suing



individuals as taxpayers, as opposed to a business who is likely to be able to say I-- we can't do that anymore. That's obviously a bad act. We are going to either go bankrupt, as they should, or we're going to change our attitudes and do something different, make money doing something else. When you're suing a political subdivision, it's a different situation. The difference is between observing danger and choosing to look the other way under a Section 1983 claim versus applying hindsight to how things might have been handled better under the circumstances which is a negligence standard. I earlier was reading a letter and couldn't find the second page, and I've now found it, so I, I will use this time to finish reading that. LB341, therefore, exposes the state and taxpayers to additional costs from the possibility of a judgment or verdict on these claims. To reiterate, this is the letter that was submitted at the hearing by the Assistant Attorney General. That letter is dated February 24, 2023. So it goes on to say LB341, therefore, exposes the state and taxpayers to additional costs from the possibility of a judgment or verdict on these claims, resulting in significant financial consequences to Nebraska's taxpayers for the actions of other bad actors. And if this passes, it will put state agencies in the same category as perpetrators by eliminating the statute of limitations for claims against those agencies based on the actions of nonstate employees. This will make it more difficult for state agencies to timely--

**DORN:** One minute.

**BOSN:** --investigate-- thank you, Mr. President-- maintain records and locate witnesses if claims are brought many years after the alleged incidents occurred. We haven't talked a lot about that and, perhaps, we'll do that on our next time on the mic. But the statute of limitations in the bill that's being proposed is different than what the current statute of limitations is. So the bill would propose that the statute of limitations be 21 years of age plus 12 years. That ties into our last concern, which is that this legislative bill provides for these claims to proceed outside the existing procedural protections of the State Tort Claims Act. Historically, the Legislature has been very specific in the manner in which it waives sovereign immunity and the procedures that must be followed. The State Tort Claims Act procedures apply to all other tort claims brought against the state. One of the policy benefits of the State Tort Claims Act is it allows the state an opportunity to investigate claims made against it prior to litigation.

**DORN:** Time.

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**BOSN:** Thank you.

**DORN:** Thank you, Senator Bosn. Senator Clements, you're recognized to speak.

**CLEMENTS:** Thank you, Mr. President. I think it, it was good for Senator Wayne to come up with a number because unlimited liability who knows what that would be and he was quoting a \$2.5 million number, which I think would be per claim, and you could have many claims, and I'm sure if they did a fiscal note on that, that would exceed our A bill limit in our budget this year. But I-- still, I appreciated what Senator Bosn said that this bill still doesn't make a change to protect children. I think that's what she meant. And if Senator Bosn would yield to a question?

**DORN:** Will Senator Bosn yield to a question?

**BOSN:** Yes, but I apologize, I didn't hear what the question was.

**CLEMENTS:** I think I heard you say this bill still doesn't make a change to protect the children from, from abuse-- a sentence to that effect. Was that part of it?

**BOSN:** Well, I-- if I said that, what I was intending to imply was that the issue here would result in litigation, certainly, and the child would have already experienced the incident.

**CLEMENTS:** Yeah, that's what I thought you meant.

**BOSN:** OK.

**CLEMENTS:** I'll, I'll yield my time to Senator Bosn so she can complete that. Thank you.

**DORN:** Senator Bosn, you're yielded 3 minutes, 20 seconds.

**BOSN:** Thank you, Mr. President. OK, so I'm going to finish reading this letter, hopefully, here. OK. So we were talking about the policy for State Tort Claims Act and that it allows the state an opportunity to investigate claims made against it prior to litigation and to proactively manage its risk. That was one of the things Senator Wayne was discussing. And what that means is you, you point out to them that there's a problem, they investigate that, it may get resolved through negotiations at that time. You can file a lawsuit if they are not responding in the way that you want-- the political subdivision

doesn't respond in a way you want. So that's what that-- you have a year after that investigation period to file the claim or 2 years, I believe. For example, the STCA requires that a claim be filed with the risk manager, giving the state notice of the potential claim and allowing the state an opportunity to investigate the claim to pay the claim, if appropriate, to determine whether the merits of the claim would be more appropriately resolved through the court system, and to potentially set aside reserves of state funds if payment by legislative appropriation appears possible. That was one of the bills we voted on a couple of weeks ago. LB341 provides that these claims for child sexual abuse would operate outside the existing procedures of the State Tort Claims Act, which represents a departure from long-standing legislative practices for waivers of sovereign immunity. She goes on to say that they oppose that bill. So that is one of the individuals who came in and testified in opposition of LB341. There were others and I will continue looking for those here so that we are aware of who came in and on what grounds. But I don't have them right now, so-- oh, yes, I do. So this is a letter that was submitted on behalf of the Nebraska Association of County Officials also--

**DORN:** One minute.

**BOSN:** --thank you-- also dated February 23, 2023. It's a letter from Elaine Menzel, who is their legal counsel. Dear Chairman Wayne. On behalf of the Nebraska Association of County Officials, we appreciate the opportunity to appear before you in opposition, which would expand the scope of liability to counties beyond what has ever been permitted in Nebraska. It would allow claims to proceed under a newly created Political Subdivisions Child Sexual Abuse Liability Act. I'll finish the rest of this letter on my next time on the mic. Thank you, Mr. President.

**DORN:** Thank you, Senator Bosn. Senator Holdcroft, you're recognized to speak and this is your third opportunity.

**HOLDCROFT:** Thank you, Mr. President. You know, when I was assigned to the Judiciary Committee, I got some guidance that the two most critical things you need to protect on the-- on the committee was sovereign immunity and eminent domain. Those are the two things that were most important in the Judiciary Committee. And that's, that's got me crosswise with, with two senators, both Senator Halloran and Senator Erdman. Because both had priority bills, one having to do with sovereign immunity, which is the one we're debating now, and the other one with eminent domain. But I really-- and I really appreciate what

Senator Wayne has done to take out the punitive awards. That was really the, the most important thing, I think, and to neck down on, on LB341 with caps. But it's still-- to me, it's not enough. I mean, we're still crossing a line here. We're eroding our sovereign immunity and so I'm-- I would like to continue the testimony that we got from the assistant attorney general. She was talking about LB320-- I'm talking LB325, which is Senator Dungan's bill, which is not-- you know, it's-- it not only applies to minors, but also anyone who's under the care of a political entity. They said, therefore, LB325's general use of the term intentional torts, rather than listing the specific intentional towards waived, would expand the claims where sovereign immunity is waived far beyond those currently defined. Only the international intentional torts identified in current statute have been analyzed and decided by Nebraska courts, and this broader use of the phrase "intentional torts" will introduce a new analysis that has never existed in Nebraska case law. We have the same concern with regard to LB325's introduction of a new legal analysis regarding whether the intentional tort is a proximate result of the failure of a state agency to exercise reasonable care to either control or protect persons over whom the state has taken charge, or who are in the state's care, custody, or control. This is a new standard not previously defined by Nebraska case law, which may result in significant fluctuations and potentially inconsistent rulings by district court judges for many years to come. It will take time for these cases to make their way up through the district courts to the Nebraska Supreme Court for interpretation. In the meantime, it will fall upon the state to defend itself from this new category of potential judgments, and it will broaden the liability of the state beyond just the actions of state employees themselves. For example, by making the state potentially responsible for illegal acts by dangerous individuals who received long sentences for serious felony convictions. First, under LB325, the state would likely lose the defense of sovereign immunity and be liable for claims brought by inmates alleging they were hurt by another inmate in a fight, possibly a fight they started. Claims brought by inmates alleging they have PTSD following a riot caused by the other inmates. Claims by committed patients who allege injury or property damage by other patients, everything from broken glasses to broken radios to injuries sustained in mutual fights.

**DORN:** One minute.

**HOLDCROFT:** Thank you, Mr. President. Claims of inmates whose property is stolen by other inmates. Claims by community members and others

that a foster child placed in the custody of DHHS harmed them or caused them property damage. Pursuant to current law, the state would be most like-- would most likely be granted immediate dismissal in the above scenarios based on sovereign immunity. LB325, therefore, exposes the state and taxpayers to additional costs from the possibility of a judgment or verdict on these claims, resulting in significant financial consequences for the state and taxpayers. Second, and related to the first, permitting these actions exposes the state to significant litigation costs and expenses. Even if the state is, ultimately, successful under LB325--

**DORN:** Time.

**HOLDCROFT:** Thank you, Mr. President.

**DORN:** Thank you, Senator Holdcroft. Senator Kauth, you're recognized to speak. Senator Kauth. Senator Kauth waives. Senator Hughes, you're recognized to speak.

**HUGHES:** Oh. Thank you, Chairman. Sorry, I was expecting to have a little bit more time, but I don't, so. Again, I speak to rise on this, again, coming kind of from the school board side. And I wanted to read a little bit of the testimony that was presented on-- or in February in 2023 when Senator Halloran brought LB341. And this, this statement was done by Jennifer Huxoll, the assistant attorney general, civil litigation bureau, bureau chief, Nebraska Attorney General's Office. So I was just going to read it for the record. Good afternoon, Chairperson Wayne and members of the Judiciary Committee. My name is Jennifer Huxoll. Spells it. I'm assistant attorney general and the bureau chief of the civil litigation bureau in the Attorney General's Office. Today, I'm testifying on behalf of the Nebraska Attorney General in opposition to LB341. As with LB325, LB341 presents a significant erosion of sovereign immunity protections. And I refer my testimony for LB325 regarding the background and significance for sovereign immunity. At the outset, our office wants to make clear that we support the ability of a child assault-- sexual assault victims to be able to hold perpetrators to those crimes to account. And we appreciate Senator Halloran bringing this bill to highlight the importance of that right to those victims. Critically, those victims currently already have the ability to do just that. Victims can now bring a civil action against the perpetrator of the abuse. What LB341 would do would be expand the scope of suits to the state. However, thereto, victims of sexual abuse can currently bring a Section 1983 claim against a state employee who is alleged to have acted with

deliberate indifference, essentially, that they were aware of the substantial risk of serious harm, disregarded that risk, and that resulted in injury. A finding of deliberate indifference is more serious than a finding of simple negligence, the standard proposed by this LB. It's the difference between observing danger and choosing to look the other way, which is Section 1983, versus applying hindsight to how things might have been handled better under the circumstances. Negligence. We would raise three concerns. First, LB341 would potentially shift the responsibility to pay damages from the wrongdoer, the criminal or the perpetrator to the state and its taxpayers. The policy question is not whether there should be a defendant held responsible. There currently is such an avenue and that-- this is on me-- this is my statement, that avenue should be pursued if this happens. But rather those bad actors should be held responsible for their criminal behavior, or whether the financial responsibility to compensate these victims should fall on Nebraska taxpayers. Second, and related, LB341 would expose the state and taxpayers to additional costs of litigation from having to defend the lawsuits, even if a judgment was not rendered against the state. Third, this bill provides for these claims to proceed outside the existing procedural protections of the State Tort Claims Act, the STCA. The STCA procedures apply to other tort claims brought against the state. One of the policy benefits of the STCA is that it allows the state an opportunity to investigate claims made against this prior litigation and to proactively manage its risk. For example, the STCA requires that a claim be filed with the risk manager giving the state notice of the potential claim and allowing the state an opportunity to investigate the claim to, to pay the claim, if appropriate, and to determine whether the merits of the claim would be more appropriately resolved through the court system, and to potentially set aside reserves of state funds if payment by legislative approved appropriation appears possible. LB341 provides that these claims for child sexual abuse would operate--

**DORN:** One minute.

**HUGHES:** --thank you, Mr. Chairman-- outside the existing procedures of the STCA, which represents a departure from long-standing legislative practice for waivers of sovereign immunity. Then I was also going to read-- there was a, a board member, school board member that came and sent in comments. Under current law, any claim made by-- against the school for child sexual abuse would fall under the political-- the PSTCA. This act provides a financial cap of \$1 million for liability claims made against school. LB341 removes sovereign immunity provided

by the PSTCA and, therefore, eliminates the liability cap for all political subdivisions. If passed, it can greatly increase the financial exposure to political subdivisions. And I'm just going to interject here. We are talking about-- I had a conversation with somebody walking outside that, OK, this will not break schools. Schools will not go under from this, but it will cost schools more money. It will cost counties more money and it will cost cities more money. And you know who's making that money? Insurance companies. And they will--

**DORN:** Time.

**HUGHES:** --see this and be happy to increase their fees. Thank you.

**DORN:** Thank you, Senator Hughes. Senator Lowe, you're recognized to speak.

**LOWE:** Thank you, Mr. President. I'm going to give Senator Holdcroft a, a break from reading some of the testimony that was done before the Judiciary Committee. Chairman Wayne, and members of the Judiciary Committee, my name is Brandy Johnson. I serve as general counsel for the Nebraska Intergovernmental Risk Management Association, or NIRMA. NIRMA is a self-insurance and risk management pool owned and operated by 83 of our Nebraska counties. I'm here representing the county members of NIRMA in opposition of LB325. I want to clarify at the outset that, by statute, NIRMA is not an insurance company. It is-- it is a self-insurance and risk management pool. This means NIRMA member counties pool their taxpayer dollars together to pay claims. Over 50 years ago, our tort claims acts were enacted, which provided sovereign immunity for public entities for certain kinds of claims. Our opposition to LB325 is about preserving the tort claims acts because they are critical to NIRMA's mission of self-guarding taxpayer dollars. LB325 seeks to erode the tort claims acts. Those efforts aren't new, and this particular bill seems to be in reaction to the 2020 Moser v. State case decided by our Nebraska Supreme Court. But it is important to point out that Moser didn't cause a new or major shift in the law, it only corrected a single inconsistency or outlier, Doe v. OPS, in a larger body of many years of case law. Sovereign immunity had applied to claims arising out of assault under the tort claims acts well before Moser, for example, Jill v.-- Jill B. v. state. It is also worth noting that 6 of our 7 justices agreed to reach a sovereign immunity outcome in Moser. In the court's subsequent Edwards case, the majority pointed out that any expansion of the claims that can result in governmental liability necessarily involves the important public

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policy issue of the impact of the public fiscal. After all, protecting taxpayer funds from litigation exposure was part of the purpose of the passage of the tort claims acts in the first instance. Additionally, to the extent of LB325, it is an effort to have the Legislature adopt the view of one dissenting justice from the Moser case, the bill doesn't align with that dissent, it opens a far wider door of litigation. It would allow civil litigation whenever it is alleged that a government entity should have done more to control someone it has taken charge of from causing intentional harm or whenever it is alleged that a governmental entity should have done more to prevent harm by a third party to someone in its care, custody, or control. So what kind of cases does this open the door as a practical matter? In my litigation experience, by far the biggest category would be inmate-on-inmate violence cases. These are types of cases that have arisen in appellate case law several times during the nearly 3 years since the Moser case was decided in 2020. It would also encompass student-on-student and student-on-teacher violence, harm caused to third persons and combative arrestees when law enforcement can't ensure complete security during an incident. But there is also--

**DORN:** One minute.

**LOWE:** --uncertainty-- thank you, Mr. President-- about how to interpret LB325 references to persons over whom a public entity has taken charge or who were in the public care, custody, or control. If the wording, wording extends to those who enter a public building, LB325 would require public entities to be monetarily liable for injuries caused by an active shooter in a public building. And does an employer take charge of its employees? I don't know what courts would conclude, but to suffice to say that the language leaves a lot of room for litigation over interpretation questions. In the vast majority of the cases that LB325 would create, we are talking about adding a civil penalty for criminal behavior that would be paid by the taxpayer instead of the criminal. LB325 would shift responsibility for the crime away from the perpetrator who directly--

**DORN:** Time.

**LOWE:** --caused the harm. Thank you, Mr. President.

**DORN:** Thank you, Senator Lowe. Senator Bostelman, you're recognized to speak.



**BOSTELMAN:** Thank you, Mr. President. Good evening, colleagues. Good evening, Nebraska. Senator Bosn had said something earlier on the mic that I wanted to talk about a little bit. She's off the floor right now. Hopefully, she'll come back in just a few minutes and we can have that conversation. Specifically, what I want to talk about is I, I want to make sure I understand, and everyone else understands, the word-- the testimony that we're hearing or that's being read by certain people on the floor talks about immunity. And when I hear immunity and other people talking-- to me, it means that there-- immunity means there's nothing you can do, you have no recourse. There is no responsibility. There is nothing that you can do. And I don't think that's right. And Senator Bosn had said some earlier when she was on the mic that, that caught my attention. And I kind of go back to the time when I went on active duty because I worked in the claims office. So we did medical malpractice claims and [INAUDIBLE] tort claims, those type of things. And there's a process that you go through when you sue the government. So you file a claim first. And if the claim is denied, then you can sue. Or if you file a claim and there's no acknowledgment at time-- at a certain time, then you can sue. So what--I'll let Senator Bosn listen as I speak with what I'm saying, and then I'll ask her to respond here in just a few minutes. But my understanding with what I was hearing being discussed and talked about was if you're a private business, there's a different set of statutes, a different way which you can-- if, if some-- one of your employees, one of the people within your business causes harm or damage, you do have recourse because you can sue. There is a specific way that you can do that. When we talk about a political subdivision of schools, take it, the employees of that school, you don't necessarily-- as, as a State Tort Claims-- Tort Act says, is that if something happens to that, your recourse is to file a claim. That's what I want to talk to her about and make sure I understand. You can file a claim for, for what those damages, what-- whatever it is for-- and maybe Senator Bosn can explain that if it's for medical, it's for those, they can file a claim. So then that entity would be-- have an X amount of time like you do on the federal side to respond to that claim to either pay it or deny it. If you deny it, then you have the, the ability to sue and recover. So what I think is being talked about here, and that's what I'm going to try to work through, is when people are talking about immunity, doesn't mean that there is no recovery and there is no-- there is no course of action to be taken. There is a course of action taken. It's just different than when you're on private side. If you own a business and you're private sector, you have a-- you have a, a different course of action to take than if, if it's a school. So,

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again, if something happens and it's a school, you file a claim, claim gets paid or not, and if not then you sue. So would Senator Bosn be willing to answer a question?

**DeKAY:** Senator Bosn, will you yield to a question?

**BOSN:** Yes.

**BOSTELMAN:** Senator Bosn, hopefully-- I tried to talk through my questions I have of my understanding what-- of what I think I heard on how the differences between a private-- well, you've been explaining between a private business and say a school political subdivision on how you can file a claim or how you can sue. Have you-- were you able to kind of follow what I was-- what I was talking about?

**BOSN:** Yes, and that is what I recall you asking me earlier.

**BOSTELMAN:** And was that fairly accurate? I mean, we don't have complete immunity, but there is a course of action you can take in that-- in that public school setting to where a claim can be filed--

**DeKAY:** One minute.

**BOSTELMAN:** --and then their suit could be followed if it's not-- if it's denied.

**BOSN:** Correct. So under Nebraska Revised Statutes section-- excuse me, Chapter 81, Section 8,209, that is the State Tort Claims Act. It explains its purpose, how one would comply with a filing under that. So that'll tell you how to walk through that process. Then if that claim-- they could pay that claim out, they could come to a negotiation on it, they could deny it, and you can then proceed.

**BOSTELMAN:** Thank you. So there is a financial recourse a person can go through. There's also a criminal side. So if there is-- there is-- a criminal side meaning if a person that commits the act.

**BOSN:** Correct.

**BOSTELMAN:** That person can be criminally prosecuted and then that entity then could be-- have a file claim against it and then sued if it's not resolved and if it's denied or it's not resolved. Correct?

**BOSN:** And that's what we-- that-- OK. Yes.

**DeKAY:** Thank you, Senator Bostelman and Senator Bosn. Senator Erdman, you're recognized to speak and this is your third and final time.

**ERDMAN:** Thank you, Mr. President. I can't believe my third time already. So I wasn't going to speak again, but someone-- how should I say this-- aroused my curiosity by talking about eminent domain. And Senator Holdcroft came here to protect sovereign immunity and eminent domain. I came here to try to fix our broken tax system and do something for the voters who sent me here to make your life better. I didn't come here to protect the government. I came here to make a difference in people's lives. So let me give an example about a conversation with Senator Holdcroft. I had an eminent domain bill that was going to ask whoever does the eminent domain to pay twice the value for ag land to make up for the lost revenue, and to pay replacement costs for any facility that the government was going to take. The fiscal note came in at \$15 million, and Senator Holdcroft said that's \$7.5 million a year, and we have to watch out for what the government spends. And my answer-- my question was, so if the government doesn't pay the \$7.5 million, who does? The answer is the private landowner. So then the next question is, would you rather have the private landowner made whole and the government pay the \$7.5 million or have the landowner pay the \$7.5 million? And by his vote, not voting my eminent domain bill out, we've seen what his decision was and it was to protect the government. So saying I came here to protect eminent domain is a peculiar position to take. And as I said, I wasn't going to bring this up, but I couldn't resist after what he had said. I don't know how in the world that got into the conversation about what we're trying to discuss here, but it did. So Senator Wayne, as I said last time on the mic, he's trying to make an adjustment, several adjustments to make this work. And we talk about they still have the opportunity now under our current system to sue and all those things that are a remedy to their problems. Senator Wayne is trying to fix that to make it more fair, open, and transparent and easily-- easier for people to make that claim. So I haven't changed my position, I'm still for whatever Senator, Senator Wayne negotiates. And if he doesn't negotiate any other changes, I'm still for that. Because when I leave here on the 18th, I want people to say that I came here to protect people and make their lives better. I didn't come here to protect the government. Thank you.

**DeKAY:** Thank you, Senator Erdman. Senator McKinney, you're recognized to speak.

**McKINNEY:** Thank you, Mr. President. I oppose the bracket motion. I support the AM and the bill. And just like Senator Erdman, I ran for office, and I came to the Legislature to fight for the people of my district and the people of Nebraska. And, frankly, government has not worked for the people, especially not the people in my community, ever in life, ever in the history of this state. And, honestly, the, the discussion around this bill is perplexing to say the least. It's let's make sure that the floodgates don't open, all these other things that is wild. You know, if a kid is hurt, we'll rather argue, let's make sure that the government doesn't lose money, essentially. If the government or a correctional officer ignores somebody, somebody saying, I am going to kill the person in my cell if you put me in there and they do it. We don't care about that. No, we don't, because let's protect the government. Let's protect sovereign immunity. And I was just sitting back there and I'm, like, are we in Russia? Are we in China? I thought this was America. You know, I thought this wasn't a dictatorship. You know, I thought we cared about the people. I thought we cared about a democracy. The greatest country in the world because American values. It's very interesting today. It really is. We care about people until the government has to be held accountable for wronging people. That is the problem. I think finding a solution on this bill and all these issues shouldn't be difficult. It shouldn't take this amount of time. When we got on this bill, I think it was, like, 4 or 5:00. It's 9:43 right now. I don't think we should have to discuss this bill. We shouldn't had to discuss this bill this long, honestly. What is wrong with accountability? I don't care who it is. We want to do enhancements for penalties in a criminal justice system all the time. All the time. But we don't want to hold the government accountable. I don't understand it. Fair is fair. And that's the-- it's just plain and simple. I believe we all were here to fight for the people of our communities of this state. We were not here to protect the government. The government hasn't worked for the people because if it did, we wouldn't have so many problems. Literally, we have a lot of problems because government hasn't worked. And government hasn't worked because I could-- honestly, I got a lot of reasons, you know, dating back to the origins of this country. Well, we don't have to get to that tonight, but hasn't worked for a lot of reasons. And you can start at when the first slave ships came to this country, but we could go before that when people came here and took land from Native Americans, but neither here or there, we should be here trying to make sure that we're fighting for people and trying to protect people, especially kids,--

**DeKAY:** One minute.

**McKINNEY:** --especially people in vulnerable positions, people that we want to say we want to hold accountable and place in these institutions. Maybe they did do something wrong, but they don't deserve to die because the government refused to listen to somebody saying I am going to kill him if I-- if you put me in a cell and they do it, and that person's family can't get any justice. Nothing. Government won't be held accountable. I'm just dead. Government won't be held accountable. That person's just dead, that kid's just assaulted, nothing, nothing is going to happen. That should-- that is wrong and there's no justification for it and I, I, I really don't understand it. Thank you.

**DeKAY:** Thank you, Senator McKinney. Senator Lippincott, you're recognized to speak.

**LIPPINCOTT:** Thank you, sir. I'd like to yield my time to Captain Holdcroft.

**DeKAY:** Senator Holdcroft, you have 4 minutes, 52 seconds.

**HOLDCROFT:** Thank you, Mr. President. Thank you, Senator Lippincott. Yeah, interesting, you know, the difference that's being made between people and government. I think it was Abraham Lincoln that said the government is: of the people, by the people, and for the people. I don't look at government as being different from people, government is the people. And when we try to uphold sovereign immunity for the government that we are trying to protect the people, this opens up government to lawsuits and who pays the price for that? Well, the people do. And that's the whole idea behind sovereign immunity is to protect the people. So I would like to continue my testimony that came from the Attorney General, and she was going-- the assistant attorney general, and she was listening-- just a few more things. She said second and related to the first, permitting these actions exposes the state to significant litigation, costs, and expenses, even if the state is ultimately successful. Under LB325, no longer would these cases be decided at the outset of litigation. Instead, these types of claims would require discovery and development of the case to analyze whether the state exercised reasonable care in each of the varying scenarios which would, in many cases, require expensive expert testimony. Litigating cases requires expenditure of taxpayer funds. Taxpayer funds. Third, LB325 would also compromise numerous pre-Moser Nebraska Supreme Court decisions interpreting the meaning of arising

out of an international tort language in favor of the state. This, perhaps, is an unintended consequence of the bill, but one we would urge the committee to consider. Fourth, as previously mentioned, the language of LB325 would open the state up to liability for any intentional tort which expands the type of claims for those intentional torts, specifically, defined in Nebraska statute 81-8,219. The phrase "intentional tort" is a term of art created by judges and lawyers that can include any act causing harm that was done with intent. Using the phrase "intentional tort" as broadly as LB325 does could expose the state to any action where creative pleading can establish harm plus intent, including intentional infliction of emotional distress, trespass, and conversion of chattel. Last, but certainly not least, a remedy is available for these individuals, specifically, an individual injured by an intentional tort can bring a 42 U.S.C. 1983 action against state officials who are deliberately indifferent to their duties, meaning they knew of and disregarded a substantial risk of harm in the injured person.

**DeKAY:** One minute.

**HOLDCROFT:** Thank you for the opportunity to testify today. I would be happy to answer any questions the committee may have. So, again, there is a remedy for the victims. It's available, specifically, an individual injured by an intentional tort can bring a 42 U.S.C. 1983 action against state officials who are deliberately indifferent to their duties, meaning they knew of and disregarded a substantial risk of harm to the injured person. I would also-- you know, we've heard this-- I've heard two different things at different times from the presenters. First, it's not about the money. OK? We're trying to hold government accountable and then I hear it's, it's all about the money.

**DeKAY:** Time.

**HOLDCROFT:** Thank you, Mr. President.

**DeKAY:** Thank you, Senator Holdcroft. Senator Ibach, you're recognized to speak.

**IBACH:** Thank you, Mr. President. I would just like to say thank you to Senator Holdcroft because he has embraced this whole issue completely. And I would also from the last two times he's been on the mic, I would just like to add that he actually hit the nail on the head because if a family wants accountability for a sexual abuse claim, they'd want to get the perpetrator to pay, but the perpetrator never has any money or

is accountable. And Senator Halloran and I were just having the same conversation. And so because of that, they-- because they never either have the money or the accountability, they sue the entity. And so the entity, which is the school, is stuck paying the bill. And so your school districts' taxpayers, who are you and me, are always on the hook to pay the demand awarded to the family for the act of the perpetrator. And it's not fair, but that simplified, that's exactly what Senator Holdcroft just said in his last two scenarios. So, anyway, no-- nobody wants to see a kid sexually assaulted. But in my opinion to bankrupt a public school or a city or a county is not accountability, that's-- it's totally misdirected. And so, thank you, Senator Holdcroft for outlining it so eloquently. But in simple terms, I think we all understand that, that the accountability should be with the perpetrator. So with that, I would yield my time to Senator Machaela Cavanaugh.

**DeKAY:** Senator Machaela Cavanaugh, you have 3 minutes and 6 seconds.

**M. CAVANAUGH:** Thank you, Mr. President. Colleagues, I have a very important announcement to make if you could all bear with me for a moment and wish our former page and now part of the Clerk's Office, Kate Kissane, happy birthday because today is her birthday. And also a couple of weeks ago, our page Maggie, who's up in the timekeeping, had her golden birthday on March 21st. Happy Birthday, Maggie. Happy Birthday, Kate. Thank you so much for spending your time with us. I yield my time, Mr. President.

**DeKAY:** Thank you, Senator Cavanaugh. Senator Lowe, you're recognized to speak and this is your third and final time.

**LOWE:** Thank you, Mr. President. I will continue. In the vast majority of new cases that LB325 would create, we are talking about adding a civil penalty for criminal behavior that will be paid by the taxpayer instead of the criminal. It's not the government paying, it's the taxpayer. LB325 would shift responsibility for the crime away from the perpetrator who directly caused the harm and, instead, places the prospect of the civil monetary damages on the public entity having custody or control over the criminal under the theory that the public entity caused the harm indirectly. LB325 would require public entities to hire attorneys to prove that crimes by the third parties weren't foreseeable. And if a case settles or there is a judgment, it would be paid by taxpayer dollars not the government. The government really doesn't have dollars, they have taxpayer dollars, little old ladies, young men and women. LB325-- because our public employers work

diligently to prevent crimes in public spaces, I believe public entities could defend and prevail in many of these new cases. But in those instances, LB325 would be opening a new door to litigation for the sake of litigation. In other words, taxpayer dollars would be spent on litigation, but ultimately the victims of assault would not recover. Surely, we can all agree that our law enforcement and Corrections officers, school teachers, and others who are charged with the task of taking custody or control of people have a very difficult job. On one hand, they have the respect of the civil rights of the people they are taking into or have in their custody, for example, by being cautious about how much force they use and by making sure those in custody aren't too isolated or restricted in freedom or movement. On the other hand, LB325 would create a potential for new civil liability and money damages if governmental employees in these settings don't do enough to prevent third persons from doing harm. How do they strike that balance? How much security is enough security to prevent harm? How much does it-- does that add security in itself cost taxpayers? How much-- how many restrictions can public entities place on people to make an environment secure enough from harm to avoid the potential civil liability that would be created under LB325 without running afoul of prisoners and arrestees and ordinary citizens' civil rights? Further, even with best efforts at security and control, it is very difficult to foresee, predict, or stop people who may be irrational, mentally ill, or under the influence from coming-- committing crimes like assault in custodial custodial settings and at chaotic arrest scenes. The effects and impacts of LB325 are largely unknown and can't be quantified. Whenever law-- unsettled law is altered, it is going to result in more mitigation if for no other purpose than to test--

**DeKAY:** One minute.

**LOWE:** --the waters. Thank you, Mr. President. For public entities, that means more taxpayer dollars used to defend and settle litigation no matter which side prevails. Taxpayer dollars, little old ladies' money that they pay their taxes with. It is important to point out that in any instant where appropriate, preventive measures of public employees truly fail, there has always been a federal legal remedy for victims to seek civil damages regardless of LB325. Remedy that currently exists under federal law is for civil rights violations, and it applies if a governmental supervisor official has been deliberately indifferent to risk of assault in a custodial setting. The existing federal remedy has a 4-year statute of limitation and no cap on



damages, as well as attorney fees for successful plaintiffs. This federal remedy ensures that government--

**DeKAY:** Time.

**LOWE:** Thank you.

**LOWE:** Thank you, Senator Lowe. Senator Hughes, you're recognized to speak.

**HUGHES:** Thank you, Mr. President. I wanted to, to stand up, and I thought I'd read more comments that were given during the hearing for LB341 on-- in February of 2023. Just different ones, this, this was from someone from District 25 representing themselves. I am president of the District OR1 School Board in Palmyra and Bennet, these comments are my own. I oppose this bill. Under current law, any claim made against the school for child sexual abuse would fall under the political subdivision-- we've done this 100 times-- PSTCA. This act provides a financial cap of \$1 million for liability claims made against schools. LB341 removes sovereign immunity provided by the PSTCA and, therefore, eliminates the liability caps for schools. If passed, it could greatly increase the financial exposure for all political subdivisions. Currently, public schools can be sued under federal law for egregious claims regarding sexual abuse that do not have a financial cap. This bill adds additional state law financial liability with a much lower threshold and unlimited financial liability. Property taxes are already too high due to a lack of state support. We were 49th out of 50 in the United States, and we do not need any additional potential financial liability. So, again, this is not protecting government, we're trying to protect the taxpayers as well. Here is another opponent representing themselves, this is from District 17. I'm opposed to LB341 that removes sovereign immunity provided by PSTCA and, therefore, eliminates the liability cap for all political subdivisions. Currently, there is a \$1 million liability for child sexual abuse claims. If this is passed, it would greatly increase the financial exposure for all political subdivisions. Currently, public schools can be sued under the federal law for egregious claims regarding sexual abuse and do not have a financial cap. This bill adds additional state law financial liability with much lower threshold and unlimited financial liability. This one's also from someone in District 17. I had a hard time with this bill and understanding the intent. To my knowledge, and after talking to several teachers, there is not a problem in schools with teachers not being held accountable for sexual abuse of children. Schools are not

protecting teachers from prosecution. I think this could also open up the state to a lot of lawsuits. It just says state agencies. That could mean if a child was sexually abused in foster care, they could sue the state. Theoretically, if the state let a child sex abuser out of jail or chose not to prosecute and be re-offended-- and he-- re-offended, they could sue the state. I always want to hold people accountable, but this is just another layer we possibly do not need. Also, it be-- it is being promoted by hate groups in the state for a way to hold public schools and libraries accountable and I'm leery of that and, therefore, adamantly opposed. There was another one in here, maybe. OK, here it is, finally. This one is from District 1, representing themselves. With LB341, schools will be forced to place more emphasis, emphasis on preventing sexual abuse. Currently, there is little motivation for a school to do so. They just react to incidents as they happen and then more often than not, how many cases, they commit suicide and that is how it is discovered after the fact. I think this person was a proponent. It was written wrong. Anyway, anyway, I just wanted to--

**DeKAY:** One minute.

**HUGHES:** --mention-- oh, thank you, Mr. President. Just coming from a school board, again I just think we've got the things in place. The teachers go through-- it's teachers and staff, it's not just teachers, staff and administration go through tons of education on what to look for in these things. This is just opening up more money. It's going to cost more for insurance and there are ways that people can sue the perpetrators of what is happening and these perpetrators get in trouble. I just don't know that this is actually necessary. So thank you, Mr. President.

**DeKAY:** Thank you, Senator Hughes. Senator Bosn, you're recognized to speak and this is your third and final time before closing. Senator Bosn.

**BOSN:** What did you say? I'm sorry. Oh, thank you. OK, so I just wanted to clarify a couple of things because Senator McKinney was discussing a, a very tragic situation that occurred in Tecumseh with an inmate and among the things that occurred in that case was that someone died. And that is a-- the situation is horrible that occurred there and, certainly, I would agree that there should be some recourse for the family in that case. But Senator McKinney said that there was nothing that family could do, there was nothing they could recover. And I want to be clear with everyone that in that particular case, specifically,

the state did settle that case with the family because it was-- it, it met the-- it met the threshold of this was exactly the type of case that this bill is already covered under. So in that particular case at the Penitentiary-- or excuse me, at the Tecumseh Correctional Facility, two individuals were put into a cell together. He-- the one individual had said he was going to hurt the other inmate and, tragically, subsequently, did do that. And in the order, the U.S. District Court Judge Laurie Smith said given Schroeder's regular placement in restrictive housing and known behavioral problems, it is plausible that Brown [PHONETIC] and Hustler [PHONETIC], the correctional officers, were deliberately indifferent to a substantial risk of harm posed by Schroeder to Berry. And so in that particular case, one, the individual who committed that crime was held accountable for it, but also the state did settle that so, so the system worked, the State Tort Claims Act worked. I found a letter in the file here that I inherited dated February 24, 2023 from Bo Botelho, who is the general counsel for the Department of Health and Human Services. It's regarding LB341. Good afternoon, Chairperson and members of the Judiciary Committee. My name is Bo Botelho, and I am the general counsel for the Department of Health and Human Services. I am here to testify in opposition to LB341. The bill would impose liability on state agencies in the same manner and to the same extent as a private individual or entity under like circumstances for all claims arising out of child sexual abuse. This means that a state agency would lose its qualified immunity and could be liable under theories beyond those currently allowed under the State Tort Claims Act. It would expose state agencies liable-- excuse me, it would expose state agencies to liability for child sexual abuse perpetrated by third parties. The bill would not require the victim to have been under the state agency supervision or under its care, custody, and control when the abuse happened. It would not require the victim to have been under the state agency's supervision or under its care, custody, and control when the abuse happened. The taxpayers of Nebraska could be paying for the intentional wrongful acts of third parties, even when the state agency acted reasonably with due diligence and was not negligent. The welfare of children in Nebraska is tremendously important to all of us. The Department of Health and Human Services takes its obligations and services--

**DeKAY:** One minute.

**BOSN:** --and service-- excuse me-- thank you-- to Nebraska families seriously. LB341 would likely increase the number of lawsuits filed against state agencies and defending those lawsuits would be longer

and more difficult. The people of Nebraska would pay the price for the intentional bad acts of other individuals. Thank you for the opportunity to testify. Happy to answer any questions. So there was another example of the testimony that was heard at the time of the hearing and was provided at the time of the hearing regarding the situation here. So with that, I will yield the rest of my time.

**DeKAY:** Thank you, Senator Bosn. Senator Wayne, you're recognized to speak.

**WAYNE:** Question. Call of the house.

**DeKAY:** Do I see five hands? The question is, do I see five hands? I do. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, report.

**CLERK:** 17 ayes, 1 nay to place the house under call, Mr. President.

**DeKAY:** The house is under call. The house is under-- the house is under call. Senators, please report your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. Unauthorized personnel, please leave the floor. The house is under call. Senator Dorn, Senator Conrad, Senator Jacobson, Senator Kauth, Senator Hardin, Senator Bostelman, Senator McDonnell, Senator Erdman, Senator Dungan, Senator John Cavanaugh, please check in. The house is under call. Senator Erdman, Senator Dungan, Senator John Cavanaugh, please check in. The house is under call. Senator Dungan, Senator John Cavanaugh. All unexcused members are now present. The question is, shall debate cease? There's been a request for roll call, reverse order. Mr. Clerk, please call the roll.

**CLERK:** Senator Wishart voting yes. Senator Wayne voting yes. Senator Walz voting yes. Senator von Gillern voting yes. Senator Vargas voting yes. Senator Slama voting yes. Senator Sanders voting yes. Senator Riepe voting no. Senator Raybould. Senator Murman voting yes. Senator Moser. Senator Meyer voting no. Senator McKinney voting yes. Senator McDonnell voting yes. Senator Lowe voting no. Senator Lippincott voting no. Senator Linehan voting yes. Senator Kauth voting no. Senator Jacobson not voting. Senator Ibach voting no. Senator Hunt. Senator Hughes voting no. Senator Holdcroft voting no. Senator Hardin voting no. Senator Hansen not voting. Senator Halloran voting yes. Senator Fredrickson voting yes. Senator Erdman voting yes. Senator Dungan voting yes. Senator Dover voting no. Senator Dorn voting no. Senator DeKay voting no. Senator DeBoer voting yes. Senator Day.

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Senator Conrad voting yes. Senator Clements not voting. Senator Machaela Cavanaugh voting yes. Senator John Cavanaugh voting yes. Senator Brewer voting yes. Senator Brandt voting yes. Senator Bostelman voting no. Senator Bostar voting yes. Senator Bosn voting no. Senator Blood. Senator Ballard voting no. Senator Armendariz voting no. Senator Arch not voting. Senator Albrecht voting no. Senator Aguilar. Vote is 22 ayes, 17 nays, Mr. President, to cease debate.

**DeKAY:** Debate does not cease. I raise the call. Senator Lippincott, you're recognized to speak.

**LIPPINCOTT:** Thank you, sir. I yield my time to Captain Holdcroft.

**DeKAY:** Senator Holdcroft, you have 4 minutes and 50 seconds.

**HOLDCROFT:** Thank you, Mr. President, and thank you, Senator Lippincott. I'd like to, to start off talking about accountability and I have some experience with accountability with 28 years in the Navy. And so the big-- the big question is how do we hold people accountable for their actions? This bill says you sue them, and it's all about the money to make the victim whole. It doesn't necessarily fix the issue. The, the premise, the argument is if, if they're subject to being sued and they-- and they-- and they're threatened by large amounts of, of settlement, then they'll fix things. But the problem is, it's not their money. It's the taxpayers' money. And if they get-- if they get sued and have to pay out, probably the insurance company will pay. If you want to hold somebody accountable, you need to put some other mechanism in place to hold individuals accountable. And in this case, you would fire them or you would increase their training or you-- because, because, frankly, people make mistakes and not intentionally. No one wants, except for the perpetrator, no one wants to hurt a child. And so, to me, opening up these organizations to large numbers of sued, even if it is \$2.5 million, million dollars, it's not the right thing to do. It's not the solution. The solutions should be to put mechanisms in place to ensure that we don't let this happen again. So I have more to read, but I would like to talk about accountability from, from a service-- a Navy service perspective and tell, tell a few sea stories, I guess. So to be commanding officer of a ship, of a destroyer, it takes about 20 years. It takes about 20 years of-- that's, that's when people rise to the rank sufficient for, for, for command at sea. And that's the goal of every naval officer is command at sea, whether it is command of a-- of a ship, whether it's a command of a submarine, whether it's a command of an-- of an air squadron or

an aircraft carrier. And that's what we really strive for. And to get there, it takes a lot of experience. It takes about 10, 10 years worth of experience aboard ships. So when you-- when you join the Navy, you don't always-- you're not always assigned to a ship. They let you go ashore for a couple of years and then you go back to a ship and then back to shore. And at each step, you take on more responsibility and you have more authority. And, eventually, hopefully, you'll get up to command of a destroyer. And, typically, that is about the top 4% of a year group. That's what it takes. I mean, it's a pretty steep pyramid. You start aboard your first ship as a-- as a junior officer. There's probably between 20, 25 junior officers and then-- and then the next level of the pyramid is for department head so it's pretty steep there, and then there's one XO and there's one CO. But the CO is really responsible for everything that happens aboard the ship and that's where the accountability is ultimately. And when you're the CO and you're underway,--

**DeKAY:** One minute.

**HOLDCROFT:** --thank you, Mr. President-- you are making all the decisions. Once you get away from the pier and you get out to sea, there's no fire department to respond, there's no police department to respond. You're, you're cooking your own meals. You're, you're, you're making way through the ship. And, ultimately, the CO is responsible for the training and the performance of its crew. And the Navy holds them to a very high standard. And if they mess up, it is-- the punishment is swift and unforgiving. A collision at sea, running aground, that CO is immediately relieved. There's no investigation because there's absolutely no reason why a ship should run into another ship or should run aground, because the CO is not doing his job if that happens and that CO is done.

**DeKAY:** Time.

**HOLDCROFT:** Thank you, Mr. President.

**DeKAY:** Thank you, Senator Holdcroft. Senator Armendariz, you're recognized to speak.

**ARMENDARIZ:** Thank you, Mr. President. Speaking from experience, a child that's been abused is never made whole with money or a check. What we're talking about here is really making people accountable for their actions. So let's think about how we do that in private institutions or retail environments or even nonprofits such as

churches. We get the choice-- if, if there have been bad actors, we get the choice to patronize that business, to participate in that church or institution. And if they're found to be bad actors, we can leave with our money. And that has been proven to be extremely effective in causing change. That is why this is so different. If somebody is abusing my child, I'm still-- and they go to a public school, I'm still forced to pay for that public school, maybe even forced to pay more for that public school because of lawsuits. I don't get a choice. That's what makes this so different than any other way we sue institutions that are doing wrong. Until you give me a choice to move my child and pay for it, I'm a no on this bill. I need to have that choice as a taxpayer to not fund an institution that is doing bad. With that, I would like to offer the rest of my time to Senator Bosn if she'll have it.

**DeKAY:** Senator Bosn, you're yielded 3 minutes and 5 seconds.

**BOSN:** Thank you. Thank you, Mr. President and Senator Armendariz. OK, I'll go back to my letter from February 23 from the Nebraska Association of County Officials. This was a letter from their legal counsel, Elaine Menzel. I started reading it and then realized I was going to run out of time. So a 2019 report on the Federal Tort Claims Act from the Congressional Research Office stated: Empowering plaintiffs to sue can ensure that persons injured by employees receive compensation and justice. However, waiving the government's immunity from tort litigation comes at a significant cost. The U.S. Department of Treasury's Bureau of the Fiscal Service reports that the United States spends hundreds of millions of dollars annually to pay tort claims under the FTCA, Federal Tort Claims Act, and the Department of Justice reports that it handles thousands of tort claims filed against the United States each year. Moreover, exposing the United States to tort liability arguably creates a risk that government officials may inappropriately base their decisions, quote, not on the relevant and applicable policy objectives that should be governing the execution of their authority, but rather on a desire to reduce the government's, quote, possible exposure to substantial civil liability. That-- end quote for all of the report. Similarly, empowering plaintiffs to sue political subdivisions such as counties, municipalities, schools, etcetera, in additional situations comes at a significant cost, including possible substantial civil liability exposure, possible monetary costs due to damages, etcetera.

**DeKAY:** One minute.

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**BOSN:** Thank you. Additional concerns that arise due to provisions included within LB341, the removal of statutory recoverable damage limits, notice provisions, statute of limitations, and jury trials. To expound on why the 1-year notification provision is beneficial under the Political Subdivisions Tort Claims Act, the court in Campbell v. City of Lincoln, which is a case from 1976, said: The taxpaying public has an interest in seeing that prompt and thorough investigation of claims is made where a political subdivision is involved. The public does not have such an interest as to claims against private persons or corporations. The taxpayers who can provide the public treasury with funds have an interest in protecting that treasury from stale claims. I'll conclude my time on that and finish the letter if I'm-- if I have more time. Thank you.

**DeKAY:** Thank you, Senator Armendariz and Senator Bosn. Senator Clements, you're recognized to speak.

**CLEMENTS:** Thank you, Mr. Chairman. I would like to ask Senator Holdcroft a question.

**DeKAY:** Senator Holdcroft, would you yield to a question?

**HOLDCROFT:** Yes.

**CLEMENTS:** Senator Holdcroft, I was looking up LB325 and don't see any committee statement. Could you tell me what, what action did the committee-- has there been any action in the committee on LB325?

**HOLDCROFT:** Yes, I think we've Execed on it at least twice, possibly three times. And each time it's been a 4-4 vote so it's not come out of committee.

**CLEMENTS:** All right. So, right, it's-- it was a stalemate so there's-- it hasn't moved out of committee, it's still in committee. Right?

**HOLDCROFT:** That's correct.

**CLEMENTS:** All right. Thank you. I heard Senator Bosn had-- needed some more time, I believe, so I'll yield the rest of my time to her.

**DeKAY:** Senator Bosn, you have 3 minutes and 55 seconds.

**BOSN:** Thank you, Senator Clements. So I'll finish my letter from the legal counsel, Elaine Menzel, for the Nebraska Association of County Officials and this letter is regarding LB341. So it says: Through



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enactment of the Political Subdivisions Tort Claims Act and the State Tort Claims Act, the Legislature has allowed a limited waiver of sovereign immunity with respect to some, but not all, types of tort claims. Both the STCA and the PSTCA expressly exempt certain claims from the limited waiver of sovereign immunity. We ask that you not expand the additional liability exposure to political subdivisions under a new act that would not contain the guidelines currently provided under the PSTCA. LB341 would significantly weaken the original intent of using the structure of the Political Subdivisions Tort Claims Act to govern the methodology in which political subdivisions are responsible for torts. Further, LB341 would enhance the litigation exposure to political subdivisions including counties. She then goes on to conclude her letter. I also have a letter here dated February 23, 2023 from the same individual as it relates to LB340-- excuse me, LB325. That is Senator Dungan's bill to change immunity for intentional torts under the Political Subdivisions Tort Claims Act and the State Tort Claims Act. Dear Chairman Wayne, on behalf of the Nebraska Association of County Officials, we appreciate the opportunity to appear before you in opposition to LB325, which would expand the scope of liabilities to counties beyond what has ever been permitted in Nebraska. It would allow claims to proceed, quote, when the harm caused by an intentional tort is a proximate result of the failure of a political subdivision or an employee of the political subdivision to exercise reasonable care to either, one, control a person over whom it has taken charge or, two, protect a person who is in the political subdivisions' care, custody, or control from harm caused by a nonemployee actor. The Legislature has proclaimed its intent under the Political Subdivisions Tort Claims Act in Nebraska Revised Statute Chapter 13, Section 930-- excuse me, 902 that provides in part, quote, no political subdivision shall be liable for the torts of its officers, agents, or employees and that no suit shall be maintained against such political subdivision or its officers, agents, or employees on any tort claim except to the extent and only to the extent provided by the Political Subdivisions Tort Claims Act. The Legislature further declares that it is-- that it is its--

**DeKAY:** One minute.

**BOSN:** --thank you-- intent and purpose through this enactment to provide uniform procedures for the bringing of tort claims against all political subdivisions, whether engaging in governmental or proprietary functions, and that the procedures provided by the act shall be used in the-- to the exclusion of all others. Under common law prior to the adoption of the PSTCA, the court explained: This

court long ago adopted the traditional common law view that a public entity engaged in governmental activities is not liable for negligence. Immunity has been based upon a public policy which subordinates mere private interests to the welfare of the general public. That case is Brown v. City of Omaha from 1968. I'll finish there because I know I must be almost out of time. Thank you, Mr. President.

**DeKAY:** Thank you, Senator Clements, Holdcroft, and Bosn. Senator Conrad, you're recognized to speak. The question has been called, do I see five hands? I do. The question is, shall debate cease? All those in favor vote aye; all opposed vote nay. Been a request to place the house under call. Shall the house go under call? All those in favor vote aye; all those opposed vote nay. Report, Mr. Clerk.

**CLERK:** 22 ayes, 5 nays to place the house under call, Mr. President.

**DeKAY:** The house is under call. Senators, please report your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel, please leave the floor. The house is under call. Senator Hughes, Wayne, please check in. All unexcused members are present. The question is a roll call vote in reverse order. The question is please cease debate. Call the roll.

**CLERK:** Senator Wishart voting yes. Senator Wayne voting yes. Senator Walz voting yes. Senator von Gillern voting yes. Senator Vargas voting yes. Senator Slama voting yes. Senator Sanders voting yes. Senator Riepe not voting. Senator Raybould. Senator Murman voting yes. Senator Moser. Senator Meyer not voting. Senator McKinney voting yes. Senator McDonnell voting yes. Senator Lowe voting no. Senator Lippincott voting no. Senator Linehan voting yes. Senator Kauth voting no. Senator Jacobson voting yes. Senator Ibach voting yes. Senator Hunt. Senator Hughes voting no. Senator Holdcroft voting no. Senator Hardin voting no. Senator Hansen voting yes. Senator Halloran voting yes. Senator Fredrickson voting yes. Senator Erdman voting yes. Senator Dungan voting yes. Senator Dover voting no. Senator Dorn voting yes. Senator DeKay voting no. Senator DeBoer voting yes. Senator Day. Senator Conrad voting yes. Senator Clements not voting. Senator Machaela Cavanaugh voting yes. Senator John Cavanaugh voting yes. Senator Brewer voting yes. Senator Brandt voting yes. Senator Bostelman voting no. Senator Bostar voting yes. Senator Bosn voting no. Senator Blood. Senator Ballard voting no. Senator Armendariz voting no. Senator Arch voting yes. Senator Albrecht voting no.

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Senator Aguilar. Vote is 27 ayes, 13 nays, Mr. President, to cease debate.

**DeKAY:** The, the, the debate does cease. Senator Bosn, you're recognized to close on your bracket motion.

**BOSN:** Thank you, Mr. President. I would ask that we vote green on the bracket motion to bracket this. It does not appear we're going to have a consensus. And if we bracket it, we can save ourselves the next 3 hours of General File debate. Vote green.

**DeKAY:** Thank you, Senator Bosn. The question is the motion to bracket the bill. All those in favor vote aye; all those opposed vote nay. All voted who care to? Record, Mr. Clerk.

**CLERK:** 19 ayes, 19 nays to bracket the bill, Mr. President.

**DeKAY:** The motion fails. I raise the call. Mr. Clerk, for items.

**CLERK:** Mr. President, Senator DeBoer would move to reconsider the vote just taken on MO1282.

**DeKAY:** Senator DeBoer, you're recognized to open.

**DeBOER:** Thank you, Mr. President. I would like to withdraw.

**DeKAY:** Without objection, so ordered. Mr. Clerk, next item.

**CLERK:** Mr. President, Senator Bosn would move to recommit the bill to the Judiciary Committee.

**BOSN:** Senator Bosn, you're recognized to open.

**BOSN:** Thank you, Mr. President. Excuse me. I rise once again in opposition of the bill and ask that we recommit this to committee. I will finish reading my letter from Elaine Menzel on LB325: Not long after the Brown case was decided, the PSTCA was adopted in 1969, the State Tort Claims Act and the Political Tort Claims Act were the result of an interim study committee created by the Legislature. Both acts were patterned after Iowa statutes and the Federal Tort Claims Act. In Weber v. Anderson, which is a 1971 case, which appears to be the first case decided by the Nebraska Supreme Court after the Legislature adopted the Political Subdivisions Tort Claims Act in 1969, the court addressed the intentional tort exemption by stating in part, quote, It is quite apparent that this court has not wiped out

the full scope of the doctrine of governmental immunity. It has attempted only to eliminate government immunity in certain areas, and then only until such time as the Legislature occupies the field. We are, therefore, faced with the problem whether or not the abrogation of the doctrine of governmental immunity should be extended to actions for false arrest, false imprisonment, and libel and slander. We conclude that the governmental immunity should be and is a defense to these types of actions. We are influenced by the fact that this is the proper public policy to be adopted because of the enactment in 1969 by the Legislature of a Political Subdivisions Tort Claims Act prohibiting tort claims, quote, except to the extent and only to the extent provided by this act, end quote. Through enactment of the Political Subdivisions Tort Claims Act and the State Tort Claims Act, the Legislature has allowed a limited waiver of sovereign immunity with respect to some, but not all, types of tort claims. Both the State Tort Claims Act and the Political Subdivisions Tort Claims Act expressly exempt certain claims from the limited waiver of sovereign immunity. We ask that you not expand the current exemptions under the PSCA-- excuse me, PSTCA, as LB325 would do by significantly weakening the original intent of the intentional tort exemption under the law-- it create-- and creates significantly heightened litigation exposure and costs for governmental entities such as counties. We encourage you to oppose LB325 by voting to IPP. Thank you for your consideration to these comments. So, again, we've got-- I was told there was a motion that removed LB25 in its amended form. I haven't seen it, but I venture to believe that it's true. So that would leave the two bills that have been filed to LB25 to be LB325 and LB341. LB325, still in committee. We've talked about that ad nauseam. That is still in committee. It was voted on not once but twice and according to Senator Holdcroft, potentially, three times and is still in committee. LB341 was voted out of committee and I rise in opposition to that bill. I think that that bill creates more problems than anyone here thinks it solves. If there are ways that we need to enhance security at schools for our children, I am all in so we can have those conversations. But this bill will not do that and I would submit that I believe it does the opposite of that. And so I am asking that we recommit these bills back to the committee so we can have an actual vote on them coming out of committee and that we can work out the kinks that there are in LB341. Thank you, Mr. President.

**DeKAY:** Thank you, Senator Bosn. Mr. Clerk, for items.

**CLERK:** Mr. President, amendments to be printed from Senator McKinney to LB164A, Senator Machaela Cavanaugh to LB1300, Senator Lowe to LB25,

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Senator Wayne to LB25, Senator Holdcroft to LB25, Lowe-- excuse me, Lowe, Kauth, Wayne, Holdcroft to LB25. Amendments to be printed from Senator Walz to LB358A, Senator Bostar to LB874. Finally, Mr. President, a priority motion, Senator Lowe would move to adjourn the body until Friday, April 5, 2024 at 9:00 a.m.

**DeKAY:** The question is, shall the Legislature adjourn? All those in favor say aye. All those opposed say nay. The question is, shall we adjourn? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, record please.

**CLERK:** 22 ayes, 13 nays to adjourn, Mr. President.

**DeKAY:** We are adjourned.