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Floor Debate
February 02, 2007

[LB39 LB50 LB67 LB97 LB99 LB111 LB155 LB168 LB191 LB204 LB211 LB220 LB223
LB290 LB298 LB304 LB307 LB341 LB347 LB384 LB422 LB441 LB470 LB472]

SENATOR SCHIMEK PRESIDING

SENATOR SCHIMEK: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the twenty-second day of the One Hundredth Legislature, First Session. Our chaplain for today is Reverend Daniel Seiker, from the Cathedral of the Risen Christ, in Senator Fulton's district. Please rise.

REVEREND SEIKER: (Prayer offered.)

SENATOR SCHIMEK: Thank you, Pastor. I call to order the twenty-second day of the One Hundredth Legislature, First Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

CLERK: I have a quorum present, Madam President.

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

CLERK: I have no corrections, Madam President.

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

CLERK: Madam President, a communication from the Governor to the Clerk. (Read re LB341.) Enrollment and Review reports LB39, LB99, LB298, and LB191 to Select File, some of those having Enrollment and Review amendments. Your Committee on Revenue, chaired by Senator Janssen, reports LB223 to General File, with amendments, and LB155 and LB168 indefinitely postponed. Government Committee, chaired by Senator Aguilar, reports LB50 indefinitely postponed. I have received a series of hearing notices from the Banking, Commerce and Insurance Committee, those signed by Senator Pahls, as Chair; an amendment to be printed by Senator Erdman to LB111; lobby report for this week to be inserted in the Journal, Madam President. And finally, a series of reports from Health and Human Services, Department of Insurance, and the Department of Motor Vehicles on file in the Clerk's Office, available for member review. That's all that I have, Madam President. (Legislative Journal pages 449-455.) [LB341 LB39 LB99 LB298 LB191 LB223 LB155 LB168 LB50 LB111]

SENATOR SCHIMEK: Thank you, Mr. Clerk. We'll now proceed to the first item on the agenda. Mr. Clerk.

CLERK: Madam President, LB97. (Read title.) It was offered by Senator Flood. The bill

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was introduced on January 5 of this year. At that time it was referred to the Judiciary Committee. The bill was advanced to General File. I have no amendments pending at this time, Madam President. [LB97]

SENATOR SCHIMEK: Thank you. Speaker Flood, would you like to open on LB97. [LB97]

SPEAKER FLOOD: Yes, thank you, Madam President, and let me begin by apologizing. My voice is not up to par, but I feel a lot better than I sound. So we're here today on LB97, which is another cleanup bill, and what it does, it proposes to repeal Sections 25-2922 through Section 25-2929 which set forth what was known as the settlement escrow process. Former Senator Dave Landis of Lincoln had put this together, and in the bill that he introduced that became law through these sections, it was set to terminate on July 1, 2004. So at the outset I want to let you know that we're dealing with an expired act that no longer is valid. The settlement escrow process was created by LB246 in 2001. What it did, it was meant to be an inexpensive, voluntary method designed to reduce delay in pretrial bargaining, thereby lowering costs to both individuals and the courts. It could be used for any civil case in district court involving only monetary remedies. It was amended in 2002. In 25-2925, basically it said that if one party, if the defendant offered more than the plaintiff was asking for--I would assume in the plaintiff's complaint--then it went to this system where the Office of Dispute Resolution would get involved. I can get a lot more intricate with the details, but what I want to remind everybody here is, this is a situation where we have an act that was terminated on August 1, 2004. It's no longer valid, and I think each of us should each year do our part to take things off the books so that we can shrink those statute books and hopefully keep only the relevant laws in our system. So with that, Madam President, I would return the balance of my time to the Chair and ask for favorable consideration on LB97. Thank you. [LB97]

SENATOR SCHIMEK: Thank you, Senator Flood. We will now hear discussion of LB97. Seeing no one who wishes to debate the bill, Senator Flood waives closing. The question is the advancement of LB97 to Select File. All in favor vote aye; all opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB97]

CLERK: 32 ayes, 0 nays, Madam President, on the advancement of LB97. [LB97]

SENATOR SCHIMEK: The bill does advance. Next bill, Mr. Clerk. [LB97]

CLERK: Madam President, LB67, a bill by Senator Stuthman. (Read title.) The bill was introduced on January 5 of this year, at that time referred to the Judiciary Committee. The bill was advanced to General File. I do have Judiciary Committee amendments pending. (AM142, Legislative Journal page 419.) [LB67]

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SENATOR SCHIMEK: Thank you, Mr. Clerk. The Chair would like to recognize Senator Stuthman to open on LB67. [LB67]

SENATOR STUTHMAN: Thank you, Madam President and members of the body. LB67 is a bill that amends a statute, 25-1629.04, and what it does is it allows the jury commissioners to have another method to serve jury summons. Under the existing law a summons can only be served upon a prospective juror by certified or registered mail, or by personal service. Sometimes potential jurors fail to pick up their registered or certified mail in the post office. The delivery of a summons by first-class mail would be often another option that would be able to reach a potential juror. I think this practice is already taking place in some of the counties, but I think what we're trying to do is have another option for the jury commissioners to serve summons, and it only changes the part of the bill that adds the words "first-class mail." So this is, realistically all this does, it just amends that section of the statute to add first-class mail to the methods of serving potential jurors of their notification. So with that, those are my opening comments. The Judiciary Committee does have an amendment, and we will continue with that next. Thank you. [LB67]

SENATOR SCHIMEK: Thank you, Senator Stuthman. Senator Ashford, to open on the committee amendments. [LB67]

SENATOR ASHFORD: Thank you, Madam Chair. Thank you, Senator Stuthman, for bringing this bill. The committee amendments to LB67 provide that a person failing to respond to a jury summons sent by first-class mail is not guilty of contempt of court, which would be the case if it was served by certified mail. The rationale for this amendment is that certified mail is more reliable than first-class mail and provides proof that a letter was actually received. The committee did not want to hold potential jurors accountable for failing to respond to a summons sent by first-class mail, and the amendment accomplishes this. LB67 as amended was unanimously advanced by the committee, and I urge the adoption of the committee amendments and the advancement of the bill. Thank you, Madam President. [LB67]

SENATOR SCHIMEK: Thank you, Senator Ashford. (Visitor introduced.) Senator Nelson, you are recognized on the committee amendments. [LB67]

SENATOR NELSON: Thank you, Madam Chairman. I'd like to ask a question of Senator Ashford. [LB67]

SENATOR SCHIMEK: Senator Ashford, would you yield? [LB67]

SENATOR ASHFORD: Senator Nelson. [LB67]

SENATOR NELSON: Thank you for this amendment. Just as a matter of interest, what

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happens if a summons is sent by registered mail now and the people just refuse to pick it up? Is there a...are they found in contempt of court as a practical matter, or what do they do now? [LB67]

SENATOR ASHFORD: They are. [LB67]

SENATOR NELSON: All right, and... [LB67]

SENATOR ASHFORD: They are, and so whether they pick it up or not, they are. [LB67]

SENATOR NELSON: They just...if they don't show up, why, (inaudible). [LB67]

SENATOR ASHFORD: I believe most courts do it that way. [LB67]

SENATOR NELSON: All right. So this will protect them from that, if it happens that maybe they're on vacation or something, and they just don't get their first-class mail. [LB67]

SENATOR ASHFORD: That's a good question, Senator Nelson. The sense of the committee was that most people would respond to the first-class letter anyway. But if they did not, the idea, of course, would be we would not hold them in contempt for that, because there's no proof of it being sent, or received. [LB67]

SENATOR NELSON: Thank you, Senator. That answers my question, and I return my time to the Chair. [LB67]

SENATOR SCHIMEK: Thank you, Senator Nelson and Senator Ashford. Senator Stuthman, you are recognized on the committee amendments. [LB67]

SENATOR STUTHMAN: Thank you, Madam President and members of the body. I would just like to also talk just a little about what the current practice is now with the clerks of the district court, the ones that do the jury summons. This practice is, when the initial letter is mailed out, they do follow up with a telephone call or another letter if they do not hear from the person. The contempt warrants, yes, legally that is what can take place. But what is happening at the present time is, you know, that is only issued as a last resort, and generally not ever used very often. So I just wanted to mention that, that you know, legally, yes, that can be filed. But that's a method of last resort. They do follow up with a telephone call or another letter, hopefully to allow these people the chance that, you know, initially was started, so that they can be the potential juror. I'll give the balance of my time back to the Chair. [LB67]

SENATOR SCHIMEK: Thank you, Senator Stuthman. Continuing debate on the committee amendment? Seeing none, the Chair recognizes Senator Ashford to close on

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the committee amendment. Senator Ashford, to close on the committee amendment. Senator Ashford waives closing. The question is the adoption of the committee amendment. All in favor vote aye; all opposed vote nay. We are voting on the committee amendment. Record, Mr. Clerk. [LB67]

CLERK: 37 ayes, 0 nays, Madam President, on adoption of committee amendments. [LB67]

SENATOR SCHIMEK: The committee amendment is adopted. We return to the bill, the debate on the bill. Seeing no lights, Senator Stuthman, you are recognized to close on the bill. [LB67]

SENATOR STUTHMAN: Thank you, Madam President and members of the body. I think with this amendment added to it, it realistically clarifies, you know, the possibility of the potential of being found guilty of contempt of court. And I think it allows the clerks of the district court to have another method that they can do to send out by first-class mail. I think this practice has already been in place, but realistically, we needed to identify that into the statute. So with that, I ask for your favorable support. Thank you. [LB67]

SENATOR SCHIMEK: Thank you, Senator Stuthman. The question before you is the advancement of LB67 to E&R Initial. All in favor vote aye; all opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB67]

CLERK: 36 ayes, 0 nays, Madam President, on the advancement of LB67. [LB67]

SENATOR SCHIMEK: The bill does advance. Next bill, Mr. Clerk. [LB67]

CLERK: Madam President, LB290 is a bill by Senator Pirsch. (Read title.) The bill was introduced on January 10 of this year, at that time referred to the Judiciary Committee. The bill was advanced to General File. At this time I have no amendments pending, Madam President. [LB290]

SENATOR SCHIMEK: Thank you, Mr. Clerk. Senator Pirsch, to open on LB290. [LB290]

SENATOR PIRSCH: Thank you. Madam President and members of the Legislature, I was asked to sponsor LB290 on behalf of the Nebraska State Bar Association to amend state statute 24-809. The bill passed through the Judiciary Committee on a 7-0 vote. The bill is intended to aid the process of selecting judges in the state. A little bit of background: Governors appoint judges in each of the judicial districts in Nebraska from a pool of qualified attorneys who are selected by a judicial nominating commission. A judicial nominating commission is composed of eight members--four lawyers and four nonlawyers. A statute not affected by this bill, state statute 24-806, sets out the process

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to follow to fill vacancies in a judicial nominating commission, and even the process to follow to fill vacancies with the alternate members--the backups, if you will--of the judicial nominating commission. This bill would change a different state statute, state statute 24-809. This bill addresses the question of how to find backups to the backups, if you will, should there be a vacancy on the judicial nominating commission, and where there is not suitable alternate members waiting in the wings to fill such vacancies. Members of judicial nominating commissions and alternates of those bodies sometimes resign mid service, change political parties, or must recuse themselves from service because of conflicts of interest. This bill reduces the number of candidates from two to one that the executive council of the state bar association must nominate for each judicial nominating commission vacancy. The bill would also function to say that in situations where, after reasonable effort, one candidate cannot be found in a given judicial district, the executive council of the Nebraska State Bar Association may nominate candidates from outside that judicial district. Oftentimes it is difficult to locate, on an expedited basis, a qualified candidate in a particular judicial district who is willing to serve. So I'd ask for your vote on...to vote yes on this measure, and thank you. I'll yield back my time. [LB290]

SENATOR SCHIMEK: Thank you, Senator Pirsch. You've heard the opening on LB290. We move now to debate. Senator Erdman, your light is first in line. [LB290]

SENATOR ERDMAN: Madam President, I would wonder if Senator Pirsch would yield to a couple questions, please. [LB290]

SENATOR SCHIMEK: Senator Pirsch, would you yield? [LB290]

SENATOR PIRSCH: I'd be happy to. [LB290]

SENATOR ERDMAN: Senator, just so that I'm clear, this process is designed to allow for the filling of the seats necessary on the nominating committees. Is this only the attorney representatives of those commissions, or is this all members would be subject to this provision? I just want to make sure I understood your opening clearly. [LB290]

SENATOR PIRSCH: Very good, and I appreciate the question. No, this would...my understanding is this would only affect those four lawyer members...I'm sorry, the lawyer part of the judicial nominating commission. [LB290]

SENATOR ERDMAN: And do we have a problem now, and can you give me examples where this may have been needed to be used that wasn't able to be used, based on the way the statute is written now? [LB290]

SENATOR PIRSCH: You know, I had been...when I was approached by the Nebraska State Bar Association, that they said that this had been a problem. I'm not aware of any

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specific...you know, the specifics of the details. But this statute comes into play at a point in time...24-806, the other statute, not the one in question here today, deals with the status quo, what happens when you have some time to set up the pool there, as the judicial nominating commission and the alternates. This statute deals with, as I said, the backup to the backups, and really, this comes into play at a point in time where it has been determined that there is a vacancy on a judicial...a judicial vacancy, and they've turned to that pool and to the alternate pool to fill those vacancies, and because of recusals and whatnot, that...the number of qualified candidates there are not present. And so this would occur within the context of an existing need, a clear and present need for those members to meet and to play their role. And so, it is a different situation for these type of members, as opposed to those members who serve on a continual basis, where you have the luxury, the time to do that, so. [LB290]

SENATOR ERDMAN: Okay. The next question I would have for you is that the language says that if the executive council is unable with reasonable effort...is "reasonable effort" a term of art understood in the bar association or generally, or is that just an encouragement, I guess, for them to not just jettison the idea and to actually do some work to try to determine if there is a way to find a willing applicant? [LB290]

SENATOR PIRSCH: Right. Well, it was a provision that was added to ensure that steps, reasonable steps, are taken to make sure that candidates are solicited and steps are taken to find a candidate from within the district. Ultimately, of course, would be a court's determination, in looking at that language and any steps that were taken under the dint of that language in determining whether or not that was properly executed. [LB290]

SENATOR ERDMAN: Okay. Those were all the questions I have. The only concern that I generally would have is where you are allowing individuals that do not reside in a district to be able to serve in a capacity to help determine who that individual that would represent that district might be. Just as you probably wouldn't want folks from western Nebraska to serve in a prominent capacity in helping to set those parameters in Omaha, I have some of those similar concerns if the shoe were on the other foot. [LB290]

SENATOR SCHIMEK: One minute. [LB290]

SENATOR ERDMAN: I don't think we get there, but that's just a concern that I have, is making sure that we're preserving the mechanism in place, and as I understand your bill, it's simply a safeguard or a fallback position, in the event that those other opportunities to secure that representation isn't successful. And you can respond. [LB290]

SENATOR PIRSCH: Yeah, and absolutely--thank you. And I've been assured by the Nebraska State Bar Association that that is how they interpret it, that it is...that they will

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do, you know,...certainly take...exhaust all measures to make sure that a candidate can be located within that district. I guess the measure was added, just because in certain circumstances time is of the essence in filling judicial vacancies oftentimes. And I think that the other part of that is the Nebraska State Bar Association is, of course, governed by an executive council that is composed of individuals from western Nebraska. [LB290]

SENATOR SCHIMEK: Time. [LB290]

SENATOR ERDMAN: Thank you, Senator Pirsch. Thank you, Madam President. [LB290]

SENATOR SCHIMEK: Thank you, Senators Erdman and Pirsch. Senator Dubas, you are recognized to speak. [LB290]

SENATOR DUBAS: Thank you, Madam President. Would Senator Pirsch please yield to a question? [LB290]

SENATOR SCHIMEK: Senator Pirsch, would you yield? [LB290]

SENATOR PIRSCH: I'd be happy to. [LB290]

SENATOR DUBAS: Thank you, Senator Pirsch. Kind of a follow-up with the same type of questions that Senator Erdman asked, you know, the concern about making sure that the entire state is getting adequately represented. And I understand the difficulty of finding people to fill these positions, and I'm sure it's time constraints and responsibilities to their jobs, etcetera. I have my white copy, so I'm not sure the lines are going to match with the green copy, but on the second page, line 19, where it talks about the executive council of the state bar association shall nominate at least one lawyer, or one lawyer candidate for each vacancy. Does that mean that they have to have at least one, or can it be zero? [LB290]

SENATOR PIRSCH: Well, I...on page 2, line 19, is that...just to clarify. [LB290]

SENATOR DUBAS: That's on the white copy. I'm hoping it's... [LB290]

SENATOR PIRSCH: No, that's in accordance with mine, as well. Yeah, the plain language would say that they must...shall nominate at least one lawyer candidate for each vacancy; can allow for more. [LB290]

SENATOR DUBAS: Okay. [LB290]

SENATOR PIRSCH: And again, the idea here is the time factor, that when a judicial vacancy comes up, the state of the courts right now in Nebraska is that there is a large

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volume and flow of cases through a lot of judicial districts, and to the extent that the process in place to name, in an expedited fashion, judges, that there is a delay in that, that could cause an extreme backlog in the number of cases, and so in this case, yes. In answer to your question, it would require at least one lawyer candidate to be named; could not be zero candidates, and so. [LB290]

SENATOR DUBAS: I was fairly certain that's how it read, but just wanted to clarify. [LB290]

SENATOR PIRSCH: Sure. [LB290]

SENATOR DUBAS: I want to make sure that we have adequate representation. [LB290]

SENATOR PIRSCH: Sure. No, I appreciate the question. [LB290]

SENATOR DUBAS: Thank you very much. I yield the rest of my time. [LB290]

SENATOR SCHIMEK: Thank you, Senators Dubas and Pirsch. Senator Nelson, your light is on next. [LB290]

SENATOR NELSON: Madam President, I have a question for Senator Pirsch. [LB290]

SENATOR SCHIMEK: Senator Pirsch, would you yield? [LB290]

SENATOR PIRSCH: Yes, I would. [LB290]

SENATOR NELSON: Senator, in looking at the amendment here, it used to be, apparently, or it currently is, that 24-809 provides that two would be nominated; is that correct? [LB290]

SENATOR PIRSCH: I'm sorry. Could you say that one more time? [LB290]

SENATOR NELSON: It says...we're changing it that they shall nominate at least one, rather than two. So at the present time, they're nominating two or are required to nominate two; is that correct? [LB290]

SENATOR PIRSCH: That's correct. [LB290]

SENATOR NELSON: All right. That would... [LB290]

SENATOR PIRSCH: In this specific provision, that's correct. [LB290]

SENATOR NELSON: That would suggest, then, and my recollection is that when

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they've been nominating two, then a ballot goes out and we have an opportunity as attorneys to vote for either one of them; is that the way it's been working now? [LB290]

SENATOR PIRSCH: I believe that with two names, that is correct. [LB290]

SENATOR NELSON: All right, because there wouldn't be any point in nominating two if you couldn't choose. So what we're coming to here is that they can nominate only one, and really, that's tantamount then to election, an appointment. We aren't going to have to vote on that unless we have an opportunity to write in names. But do you know if there's any provision to cover that sort of thing? [LB290]

SENATOR PIRSCH: And I apologize. I'm having a hard time hearing you. You said is there a provision that covers what sort of event? [LB290]

SENATOR NELSON: Well, if they're only going to nominate one lawyer for the position to fill the vacancy, then apparently there's no need to do a ballot on it or to get confirmation by members of the bar, because it's tantamount to election--that would be my understanding--if they only need to appoint one. So it's a done deal at that point... [LB290]

SENATOR PIRSCH: Right. [LB290]

SENATOR NELSON: ...if the person accepts; would that be correct? [LB290]

SENATOR PIRSCH: Correct. I should point out also that that is...my understanding, the procedure that is currently...keep in mind, this is the procedure now, to pick the backups to the backup. But my understanding is that the language in the other statute, 24-806, that that is the procedure right now in place, that they're picking the original members of this judicial nominating commission and the alternates, so this would harmonize that or make that in accord with what is arguably the more important to...and apparently, since that has been in effect, there has been no reported problems to my knowledge. [LB290]

SENATOR NELSON: All right. Thank you very much. Madam President, I return my time to the Chair. [LB290]

SENATOR SCHIMEK: Thank you, Senators Nelson and Pirsch. Is there anyone else wishing to debate the bill? Seeing none, the question is the advancement of LB...I'm sorry. Senator Pirsch is recognized to close. [LB290]

SENATOR PIRSCH: Thank you again, Madam President and members of the Legislature. Again, I would urge you to vote yes to send...to vote yes on this bill. I think that this is--just a couple things I'll point out--in harmony with, largely, the way that the...again, this deals with the backups to the backups on the judicial nominating

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commission. And currently, right now in the judicial nominating commission and the alternates, the original and the first backups, so to speak, it only requires one name. That's been in effect for quite a number of years; doesn't seem to have caused any problems. So in that respect this would harmonize those provisions. And when you think about it, there would probably be a cause to have this even less stringent, not the same level of stringency as the first two, insofar as this, the backups to the backups, are going to called for in a point in time that we have an existing judicial vacancy, at a point in time that the cases are backing up, if we don't put a...you know, have a judge named in an expedited manner. And so, in any event, it does function currently without any noted problems, and so I would urge you to vote yes, so that the provisions are harmonized. [LB290]

SENATOR SCHIMEK: Thank you, Senator Pirsch. You have now heard the closing on LB290. The question is the advancement of LB290 to E&R Initial. All in favor vote aye; all opposed vote nay. Have you all voted? Mr. Clerk, please record. [LB290]

CLERK: 40 ayes, 0 nays, Madam President, on the advancement of LB290. [LB290]

SENATOR SCHIMEK: Thank you. The bill does advance. We next go to LB422. [LB290 LB422]

CLERK: LB422, a bill by Senator Erdman. (Read title.) The bill was introduced on January 16 of this year, at that time referred to the Agriculture Committee. The bill was advanced to General File with Agriculture Committee amendments pending, Madam President. (AM154, Legislative Journal page 427.) [LB422]

SENATOR SCHIMEK: Thank you, Mr. Clerk. The Chair recognizes Senator Erdman to open on LB422. [LB422]

SENATOR ERDMAN: Madam President and members of the Legislature, LB422 is a result of discussions with the former Chair of the Ag Committee and the Secretary of State, and were continued early in this session with the Secretary of State and myself, regarding a technical issue that was brought to our attention. And due to the additional responsibilities placed upon the Secretary of State, the Ag Committee heard the bill and felt that it was appropriate to advance it for full discussion and hopeful adoption of this new policy change. LB422 changes the membership of the Brand Committee of the state of Nebraska by removing the Secretary of State as a permanent member and chair of the Nebraska Brand Committee. Currently, there are three members who are producers, one member who represents the cattle feeders, and the Secretary of State is the chairman and fifth member of the Brand Committee. The bill before you would add an additional producer and allow the same percentage makeup of the producers and feeders to be maintained, but allows for one additional producer to be placed on the Brand Committee. It makes the Secretary of State an ex officio member, maintaining his

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involvement, as has been historical in our state in this process, and also adds the Director of Agriculture as another ex officio member, as well. Both the Secretary of State and the Director of Ag have the opportunity to designate an individual to represent them in their capacity on the Brand Committee. The additional provision in the law allows for an annual election of the chair and the vice chair of the committee. This language is necessary, due to the fact that the Secretary of State currently serves in that position according to statute, and his duties to sign the appropriate documentation on brand certificates and other documents are only reflective as the fact that that person is the chair of the committee. So those duties of the Secretary of State are more in the fact that they're the chairman of the committee and not necessarily due to the fact that they are the Secretary of State. So this opportunity would now be to the producers, the members of the Brand Committee, to elect the chair and the vice chair on an annual basis, and then those duties would follow appropriately. There are committee amendments that are designed to be technical in nature to correct the timing of this, and I would be happy to answer any of your questions at the appropriate time. [LB422]

SENATOR SCHIMEK: Thank you, Senator Erdman. You are now recognized to open on the committee amendments. [LB422]

SENATOR ERDMAN: Madam President and members of the Legislature, the committee amendments are for transitional purposes only. The amendment also adds the emergency clause to allow for the operative date for changes to the Brand Committee membership brought about by the bill, to coincide with the existing terms of the Brand Committee members, which will be August 28. The amendment further clarifies that the Secretary of State continues as the chair of the Brand Committee until a new chair is selected according to the mechanisms of the bill. LB422 had a committee hearing on January 30, 2007. Seven of the eight members of the Ag Committee were present, and seven of the eight members did advance the bill. The vote was 7-0, one absent, and there was no opposition from either individuals or organized groups in the state of Nebraska to the legislation. Senator Hansen is a cosponsor of the bill and is a former member of the Brand Committee, and I see that he's going to share his opinion with us, as well. And with that I will close on the committee amendments. Thank you, Madam President. [LB422]

SENATOR SCHIMEK: Thank you, Senator Erdman. Senator Hansen, your light is next. Would you like to speak to the committee amendments? [LB422]

SENATOR HANSEN: Thank you, Madam Speaker and members of the Legislature. I would just like to comment...and I'll vote for this, with all intent to vote for it. I have in my hand a 1939 letter from constitutional lawyers in Omaha, Wright, Wright, and Kennedy--I don't know if any of those are still in business or not--but they raised some constitutional issues back in 1939, prior to the conception of the Nebraska Brand Committee, and one of those was that we need a constitutional officer involved in this

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process. And as long as we can keep the Secretary of State on the board, even as an ex officio member, I think we'll be all right. I don't want to see the Nebraska Brand Committee come down, be taken down because of a constitutional problem, and I believe that Senator Erdman and the rest of the committee has studied this fully enough that I think it will pass the muster constitutionally. This is a historical bill. This brand commission has been in effect since 1940. It is a self-sustaining section of state agency. We collect brand inspection fees in the western two-thirds of the state, so it has...includes no tax money for any part of the operation of that, and works with surrounding states. It's very important to our industry that we do have brand inspection, and that always ensures that we get our cattle back in the fall and continue our ownership of our livestock. So I'll vote for this and thank Senator Erdman for his carrying this bill. [LB422]

SENATOR SCHIMEK: Thank you, Senator Hansen. Is there further discussion on the committee amendment? Seeing none, Senator Erdman, you are recognized to close on the amendment. [LB422]

SENATOR ERDMAN: Madam President and members of the Legislature, the committee amendment simply clarifies the timing necessary to make the underlying bill effective as far as when it would go into effect to be able to make the new transition a smooth one, and I would encourage the floor's adoption of the committee amendment to LB422. [LB422]

SENATOR SCHIMEK: Thank you, Senator Erdman. The question is the adoption of the committee amendment. All in favor vote aye; all opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB422]

ASSISTANT CLERK: 34 ayes, 0 nays, on the adoption of committee amendments, Madam President. [LB422]

SENATOR SCHIMEK: The committee amendment is adopted. We are back to discussion of LB422. Seeing no lights on, Senator Erdman, you are recognized to close on LB422. [LB422]

SENATOR ERDMAN: Thank you, Madam President and members of the Legislature. A couple quick things to clarify the provision that's before you and why this is able to be done. The Attorney General's Opinion that was referred to by Senator Hansen reflected that we as a Legislature can't delegate state authority to a private entity. At the time, the authority that was granted to enforce the brand laws were typically being done by a private entity. Now that the Brand Committee is truly a state agency and is a part of state function, that requirement is no longer necessary. So it's not the provision that you have a constitutional officer; it's the fact that we can't delegate our authority to a nongovernmental entity, and that provision is no longer a concern due to the fact that

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the Brand Committee is recognized in statute as a part of state authority. The conversation that we had with the Secretary of State was simply that he is still interested in the opportunity to be a part of these discussions, but due to the fact that we have a number of election laws and things that have changed and his authorities and responsibilities continue to grow, he felt it was an appropriate use of his time to focus on those duties, while still allowing him a say and a participant in whatever discussions might go on. Further, there's an additional member that was added, and that's the Director of Agriculture, or his or her designee. That is designed to further enhance our discussions in the state and to build those coalitions necessary to respond, in the event that we have brand issues or animal ID issues, in a collaborative effort. And that is why LB422 adds that language. I would encourage your support for LB422. I believe that we have addressed the concerns that were brought up by the members, and again, the bill was advanced unanimously by the Ag Committee, and I would encourage your support of LB422 today. Thank you, Madam President. [LB422]

SENATOR SCHIMEK: Thank you, Senator Erdman. The question before you is the advancement of LB422 to E&R Initial. All in favor vote aye; all opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB422]

ASSISTANT CLERK: 37 ayes, 0 nays, on the motion to advance the bill. [LB422]

SENATOR SCHIMEK: Thank you. The bill does advance. We now move to the next item on the agenda, which is LB204. Mr. Clerk. [LB422 LB204]

ASSISTANT CLERK: Madam President, LB204. It was introduced by Senator Synowiecki. (Read title.) The bill was read for the first time on January 9 of this year, referred to the Business and Labor Committee. That committee reports the bill to General File, with committee amendments attached. (AM167, Legislative Journal page 428.) [LB204]

SENATOR SCHIMEK: Thank you, Mr. Clerk. Senator Synowiecki, you are recognized to open on LB204. [LB204]

SENATOR SYNOWIECKI: Thank you, Madam Chair and members of the Legislature. I bring to you LB204. It is a bill to change provisions relating to contractor registration. The bill was heard by the Business and Labor Committee on January 22. It was advanced to General File, with amendments, on a unanimous vote. I might note there was no opposing testimony on the bill. LB204 was introduced in a response to a statewide and nationwide problem. Contractors are exploiting workers by misclassifying them as independent contractors, commonly known as 1099 workers. As many of you may know, 1099 is an IRS tax form used to classify workers as independent contractors, thus declaring such workers as nonemployees. This misclassification has substantive consequences relative to both our state coffers and the safety and wellness

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of Nebraska workers. Not only are workers being exploited, but the problem is compounded with the state failing to collect an appropriate level of taxes. This misclassification also allows contractors to avoid obligations to the state by not withholding taxes from the wages it pays to 1099 workers. These workers are often unaware of their classification because they are treated as if they are actual employees, and they often fail to pay the required amount of income taxes. The current Contractor Registration Act requires contractors in populations over 100,000 to register with the state and to provide proof of workers' compensation insurance coverage. This covers contractors in Douglas, Lancaster, and Sarpy counties. According to the Department of Labor statistics, 4,824 contractors are currently registered. The current statute also gives the Department of Labor the authority and responsibility to investigate contractors that do not follow the law. Given the widespread abuse of misclassifications of employees, it is obvious that enforcement efforts under the current statute have been insufficient. There is currently no monitoring by the department of contractors outside of Douglas, Lancaster, and Sarpy counties, and cases within these three counties are not being investigated or enforced to the proper extent. According to the department's numbers, there have been approximately 400 inspections into potential violations of the act and over 350 violations between 1994 and 2004, a ten-year period. We must give the department the tools they need to confront this problem and do what is necessary to stop the practice. LB204 takes a three-step approach to addressing this problem on the state level. First, it will require contractors in all 93 counties to register with the Department of Labor. This will provide for consistency of policy throughout the state and put all contractors in our state on a level playing field. Second, LB204 increases the contractor registration fee from \$25 to \$50 with the committee amendment. This fee increase, coupled with the statewide registration, will provide the department with additional resources to investigate allegations of wrongdoing and enforce the Contractor Registration Act. According to the Department of Labor, extending registration obligations to contractors in all 93 counties would require the registration of approximately 2,000 additional contractors. LB204 also stiffens the penalty for unlawful contractors operating within the state. Currently, a contractor who has violated the Contractor Registration Act can be fined up to \$500 for an initial violation, and up to \$5,000 for subsequent violations. This bill will increase the maximum penalties to \$5,000 for the first violation and a maximum of \$10,000 for subsequent violations. This clause will provide the department with more discretion relative to imposing fines on violators and will serve as a deterrent to suspect contractors. This is a clause included in the bill that would allow any contractor that has been registered under the Contractor Registration Act 60 days from the date of the citation, and they will not be penalized. That's under the committee amendments, and Senator Cornett will speak to them. Unscrupulous contractors are exploiting workers and the state through this unlawful practice, and therefore I truly believe that we need to give the Department of Labor the tools necessary to address this problem. I would thank you for your consideration of LB204. [LB204]

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SENATOR SCHIMEK: Thank you, Senator Synowiecki. Mr. Clerk, did you have an announcement? [LB204]

CLERK: I do, Madam President. The Agriculture Committee will meet under the south balcony immediately; Agriculture, south balcony immediately. [LB204]

SENATOR SCHIMEK: Thank you. The Chair recognizes Senator Cornett to open on the committee amendments. [LB204]

SENATOR CORNETT: Good morning, Madam President and members of the Legislature. AM167 is the committee amendment to LB204. The amendment makes two important changes to the bill. First, the amendment reduces the application and renewal fee from \$100 to \$50. The Department of Labor ensured the committee that a \$50 fee was enough to fund the expansion of the program and pay for the additional staff to enforce the Contractor Registration Act throughout the state. Secondly, the amendment provides a 60-day grace period for contractors who have never been registered before. When the unregistered contractor receives a citation, they will have 60 days in which to register. If they register within those 60 days, the administrative penalty will be waived. The grace period and penalty waivers provision will only be in effect for the first six months and will sunset on March 1, 2008. The committee felt this amendment was important so if there were contractors out there who are not aware of the bill's passage, that they would have adequate amount of time to correct the problem without facing the \$5,000 penalty. Thank you very much. [LB204]

SENATOR SCHIMEK: Thank you, Senator Cornett. We now move to discussion of the committee amendment. Senator Christensen, you are recognized to speak. [LB204]

SENATOR CHRISTENSEN: On this bill I get concerned of the fact that if you take a farmer that farms all winter long and then he does construction work in the winter, he works in a small town that doesn't have enough work for taking care of...you couldn't...there isn't enough work in this small town, my rural area, to keep a contractor around year-round. So farmers farm all summer; winter they come in and they work as a contractor. They hire out people to help them. They go in, they frame up things, they work, they come in and they do work. Now they're going to have to report, they're going to have to do these services when they're doing it three months of the year. They're not really full-time contractors. It's more paperwork and things that they're going to have to do, so they're going to say, forget it, I'm not going to do it. Now all of a sudden we've got gaps in these communities, and nobody can find contractors. I think we got to have some type of exemption on here that is going to address the problem of rural areas that don't have enough work for a contractor. I understand your issue here in the cities. I used to work for a contractor here in the cities. I understand this issue. But when you apply it to a rural area where I grew up, there's no full-time contractors. But the work gets done in the winter months by a couple different groups of farmers that do carpenter

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work in the winters. And I guess I would like to ask Senator Cornett this then, if she'd yield to a question. [LB204]

SENATOR SCHIMEK: Senator Cornett, would you yield? [LB204]

SENATOR CORNETT: Yes, I would, and I have some answers to the points that he's already brought up also. [LB204]

SENATOR CHRISTENSEN: My question is, is this going to affect the situation I'm talking about, of a rural area? [LB204]

SENATOR CORNETT: Senator Christensen, the bill exempts self-employed contractors, and they can also have one less...less than one full-time employee to help them out, so I believe that would answer your concerns. They would not have to...they would be exempt. They would still have to register, but they would be exempt from the fees. [LB204]

SENATOR CHRISTENSEN: The problem I have here, I guess, Senator, is the fact that I worked with two farmers as a father/son team, and then I would join them. And when we was doing big construction, doing a big project, we'd hire another one or two, and there would be four or five of us working there. Now we're going to fall under the obligation. Even the father/son team falls under that, and yet we only done it three months a year. I think this is a problem. [LB204]

SENATOR CORNETT: Well, Senator Christensen, it is...I don't believe that it will be a problem. You would have...if it was a father and son team and they did not work full time, it would...the father would be exempt as self-employed, and the son would be exempt because it's less than a full-time employee. If you are talking about three or four part-time employees, yes, they would be required to comply, and we've lowered the fee to \$50. [LB204]

SENATOR CHRISTENSEN: I guess my concern here, Senator, comes if they're working three months, full time, carpenter work--nothing else. Now you are full time for three months, or December through the first of April, is what we done it, or maybe even part of November. So we're working four months, four and a half months, full-time carpenter work. That's all we done. We were full time at it. That would throw us into these rules, correct? [LB204]

SENATOR CORNETT: Let me check very quickly. I believe it's if you are full time, year-round, because if you are doing it full time three months out of the year, that doesn't make you a full-time employee. But I will double check. [LB204]

SENATOR CHRISTENSEN: Okay, thank you. [LB204]

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SENATOR SCHIMEK: Thank you, Senators Christensen and Cornett. The Chair recognizes Senator Wightman on the committee amendments. [LB204]

SENATOR WIGHTMAN: Thank you, Madam President. I would ask either Senator Synowiecki or Senator Cornett if they would yield to a question. [LB204]

SENATOR SCHIMEK: Senator Wightman, would you like to designate which one? [LB204]

SENATOR WIGHTMAN: Whichever one is handy. I see Mr. Synowiecki here, so I'll ask him. [LB204]

SENATOR SCHIMEK: Thank you. [LB204]

SENATOR WIGHTMAN: Thank you. [LB204]

SENATOR SCHIMEK: Senator Synowiecki, would you yield? [LB204]

SENATOR SYNOWIECKI: Senator, yes, I will yield, and if the question pertains to the bill, perhaps I'd be your likely source. If the bill (sic) pertains to the committee amendment, perhaps Senator Cornett would be your resource. [LB204]

SENATOR WIGHTMAN: It would pertain more to the bill. [LB204]

SENATOR SYNOWIECKI: Then I would be your resource. [LB204]

SENATOR WIGHTMAN: You are talking about one full...and I'm looking at line 26 on page 2 of the green copy of the bill itself. It says with a maximum equivalent of one full-time employee at any one time. When we're talking about any one time, are we talking about a particular day, a particular month, a particular year? [LB204]

SENATOR SYNOWIECKI: Senator Wightman, the way I would interpret that is if you go above one employee, then you'd have to register and have to pay the fee. If you would have two, three employees, you would have to pay the fee. [LB204]

SENATOR WIGHTMAN: So if we had a contractor and he picked up various young employees, maybe students that work at some time during the year or at some times even two or three that might work for a day or two at a time, it would be one full-time equivalent at any one time? [LB204]

SENATOR SYNOWIECKI: Well, once you go above the one employee threshold, I suspect that you would then have to pay the fee. [LB204]

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SENATOR WIGHTMAN: So if you had a contractor that had two young fellows go out and work with him for a day, or even a week, does he meet the test? [LB204]

SENATOR SYNOWIECKI: I believe so, Senator. [LB204]

SENATOR WIGHTMAN: So even if it was just a pickup job...I realize he still has to meet the dollar test, but even if it's just a pickup job and he went out and did some carpentry work and he took two employees along even for a day, he would fall under the proposed change? [LB204]

SENATOR SYNOWIECKI: Yeah, the existing language is a contractor shall not be required to pay the fee if the application contains an affidavit which shows that the contractor is self-employed, and with a maximum...and the new language is, with a maximum equivalent of one full-time employee at any one time. [LB204]

SENATOR WIGHTMAN: But you don't define "one time" anywhere in the act, do you? [LB204]

SENATOR SYNOWIECKI: With a maximum equivalent of one time full employee at any one time. [LB204]

SENATOR WIGHTMAN: It just seems to me that with that language in it, and being as unclear as it is, that you would pick up under the scope of the act almost any contractor who, even for a day or two, needed one or two employees to help him out on a particular job, and maybe that happens several times a year, and almost certainly he would be under it in that situation. Would that be your understanding? [LB204]

SENATOR SYNOWIECKI: Well, the intent of the legislation, Senator Wightman, is to get...is to legitimize some of the operators out there that are...the kind...I think what you are getting at, you are talking about a proprietor does some construction work, pays some guys some cash, and...which under Senator Christensen's scenario, as well. What you are doing is you are cutting into the legitimate contractors that have a... [LB204]

SENATOR SCHIMEK: One minute. [LB204]

SENATOR SYNOWIECKI: ...contracting business, that pay income withholding taxes, that pay unemployment taxes, that pay FICA taxes and workmen's comp for their employees. Senator Christensen goes out, gets a few guys together and undercuts these legitimate contractors that are out there to do the work. And that's precisely what the intent of the bill is, is to have a level playing field, that if you are going to get into contracting, if you are going to get into work areas where you are putting up houses,

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where you are doing carpentry, that everyone throughout the state be on a legitimate playing field, and that everyone play by the rules, and that you have unemployment insurance for your workers, that you have the FICA taxes and income withholding. Because Senator Christensen and his couple buddies from town can undercut the legitimate contractors out there that can do this work. [LB204]

SENATOR WIGHTMAN: Was any thought...is my time up? [LB204]

SENATOR SCHIMEK: Time. Thank you, Senators Wightman and Synowiecki. We have a group who are wanting to speak. Senator Burling, followed by Stuthman, Lathrop, Synowiecki, Carlson, Christensen, and Wightman. Senator Burling, you are recognized. [LB204]

SENATOR BURLING: Thank you, Madam President. Thank you, Senator Synowiecki. I understand; I was on the Business and Labor Committee for four years. It is a big problem, and I understand that. But we need to work together on this problem, and the situation for rural Nebraska is, we don't have enough people out there that are willing to do construction labor. And I'm afraid that this proposal will mean we'll have even fewer people available to do construction labor. It's anti-economic development for rural Nebraska, because we can't hire people to do construction labor. So I know that we have a problem; we need to deal with it. I think there's a better way than this. There's some gray areas in this bill as it's written now, as some of the people that have spoken before me have helped get some answers for some of my questions. I appreciate that, and I appreciate the work of the committee, because it is a problem that needs to be addressed. But we're just trying to bring out the other side of the issue, and it looks like people in rural areas who are trying to fill a gap where there's a short of what Senator Synowiecki calls qualified construction contractors--there's a shortage of those--and sometimes we need to get the work done any way we can get it done in rural Nebraska. They know they need to have workers' comp for these people. The employees know that they better make sure they're working for somebody that has them insured, so how we get to the unscrupulous ones is a problem. But I'm concerned about what we might do while we're doing that, to rural Nebraska. So I just raise that question. My dilemma right now is, do I support this amendment and make a bad bill better, or not. But hopefully, there will be maybe other ideas coming down the line as the discussion progresses. So thank you, Madam President. [LB204]

SENATOR SCHIMEK: Thank you, Senator Burling. (Doctor of the day introduced.) We will proceed with Senator Stuthman. You are recognized. [LB204]

SENATOR STUTHMAN: Thank you, Madam President and members of the body. I do have some real concerns with this bill. I have a real concern mainly to the fact that here we're after another fee, charging people a fee to do the job that they're doing. Also the fact that what they have to do is register; they have to register in a timely fashion.

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Another thing that really concerns me is the fact that the penalty if you don't get registered...maybe you miss the date to register; maybe you weren't informed by it. I don't know who would be informing these people as far as if this bill would pass, that they have to do a fee. I know there's a home builders' association that notify their membership, you know, of legislation that is passed. But we have the instance in the community, just like Senator Christensen said, you know, where you have a lot of grain farmers that have several hired men--two, three hired men. During the winter months they do contractor work, and they do have the three employees to keep them employed for all the time. I don't know, you know, who is going to be notifying them. Maybe it's their duty to find this out if legislation is passed. But when you go from a \$500 penalty to a \$5,000 penalty, I mean, it's really going to knock some of these smaller contractors if they fail to comply with the law of registering that they are a contractor. I have a real concern with that. A lot of these smaller contractors, you know, \$5,000 is a lot of money to those individuals, and when I say a lot of money, I mean a lot of money to those individuals. The thing that really concerns me is I think if this bill is passed, we're going to be getting phone calls from some of the smaller contractors that have one or two employees. And they're going to say, you know, I got this letter and they're going to fine me \$5,000; what is going on? And that really concerns me. Yes, that's a maximum penalty, but if it's a maximum penalty, it sure could happen to be \$5,000. That is a real concern. I'm a person that I don't like fees; I don't continually like to have fees tacked on. What it does, in my opinion, is to put all these fees together, hire some individual to come and look down over the backs of these contractors to make sure they're doing something right, that they have done everything right. You are contributing to a fund that allows people to come and watch over you, and I truly trust a lot of the smaller contractors. We have many, many contractors in my local community that can't keep up with the local jobs that are needed in the community. That is the thing that I found out when we had put the sales tax on contractor labor. You can't imagine how many contractors come out of the woodwork once they found out that they had to do the bookwork that they had to. I have just...I...personally, I can't support the bill, mainly because of the fact of the fees. Yes, the fees are only \$50. But \$50 here, \$50 there, that all adds up to these individuals, and I have a real concern with that. And I just think we have to take a very serious look at, are we really doing the right thing to help these people, or to...or are we trying to do something so that we make them do something, another regulation? Another thing that I hear continually in the community is, why are we having so many regulations? And those regulations are costing us. So with that, those are my comments. I give the balance of my time to the Chair. [LB204]

SENATOR SCHIMEK: Thank you, Senator Stuthman. Senator Lathrop, recognized to speak. [LB204]

SENATOR LATHROP: Thank you, Madam Chair and members of the Legislature. I would like to address the body, but primarily address the rural senators with my remarks. I have been through the body and listened to concerns about this bill. There is

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a great deal of misunderstanding about who is a contractor and who isn't, and when it will apply to you and when it won't, and I would like to address those. And then I want to tell you what it's like when you don't have work comp coverage. First of all, this bill does not make you a contractor. If you have a farm and you want to build an addition on your home and you have a friend that does dirt work and you have him come out, and he does the dirt work, you don't become a contractor by hiring your friend that's the dirt worker. And then when you need to have the masonry work done, you don't become a contractor because you've hired now, two people in the trades. You have the house framed and you are still not a contractor. You do not become a contractor by having people come out to your place and do work. The second thing that's important is that these fellows that are working on the farm, and then they come off the farm in the winter months, perhaps to do plumbing, to do electrical work, whatever they're good at besides farming and ranching, they don't become a contractor, or they don't have to pay the fee until they turn into a business. The statute, or the bill, specifically says that if you are a one-man show, you file an affidavit, you don't have to pay a fee, and you are exempt from the regulations. So what we're left with...the people that we're trying to reach with this bill are those people who are contractors. They're folks that go out and get a contract to do something, to build an addition, to build a house, to build a road, and they hire people to do different things to make that contract happen. They might hire electricians, and they might hire roofers, and they might hire framers. And when they bring these people out, it's important that they are employees and covered by this act. We're not going to watch what they do; we're not going to increase the number of people out at the job site to tell them how to do their job. We just want to make sure that we're not calling them subcontractors, and then winking, where you go, okay guys, I really don't want to deal with the paperwork when it comes to this contractor or employment business; what I want to do is call you all independent contractors. Well, I got to tell you, there's a consequence to that. We talk about unintended consequences; there's a consequence to calling somebody an independent contractor. The first thing that happens is that guy isn't paying taxes to the state of Nebraska. He is pocketing the money and so we're not getting the tax money we want. The second consequence is, when the guy gets hurt that we called an independent contractor instead of an employee, when that guy gets hurt, he's going to your hospital in your community, and he's going to get care and he's not going to pay his bill. And the guy who hired him, the employer who called himself a contractor and called this fellow an independent contractor so he wouldn't have to carry work comp insurance, doesn't pay either. And so your community hospitals, your doctors are now not going to get paid because we're going to let this go on. When this bill was heard in front of the Business and Labor Committee, we had the contractors there. This wasn't just a bunch of union folks that came in and said, this is a great idea, come on and help us get this through, Synowiecki. We had contractors there, and I'm going to tell you why. If you are a general contractor and you hire a sub to roof your house, if the sub comes in and he isn't insured and all of his employees, then the contractor now becomes the guy that has to pay the work. [LB204]

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SENATOR SCHIMEK: One minute. [LB204]

SENATOR LATHROP: So what's happened with this bill, it is good for contractors and it is good for the state of Nebraska, and we're going to have people insured when they get hurt. I've seen people fall off of buildings and I've represented people who have fallen off of houses, just two stories, where they break everything below their knees. The care, the rehab, and the cost of that, we're all going to pick up because somebody wanted to do something for cash, and we wanted to endorse the practice. I don't think that that's what we're...I truly think that what's happened is that the people from rural Nebraska, I appreciate your concern. I think the remarks I heard were based upon a misunderstanding of the statute, because I don't believe you are endorsing a scheme or a system in greater Nebraska where we essentially allow people to work in the off season without paying taxes and covering their help. And with that, I'd yield the balance of my time. [LB204]

SENATOR SCHIMEK: Thank you, Senator Lathrop. Senator Synowiecki is recognized to speak on the committee amendment. [LB204]

SENATOR SYNOWIECKI: Thank you, Senator Schimek. Thank you, particularly Senator Lathrop. You've summarized the intent and what's embodied in this legislation very well. We're not after a bunch of neighbors come together and help frame a house. We're not...this is not the intent of this legislation. If you want to have a few guys come over and have a couple beers in the afternoon and put an addition on, this doesn't apply to that. Senator Lathrop is exactly correct, is that this seeks to legitimize contractors throughout our state and get them on a level playing field. It seeks to have everyone play by the same rules in all of our counties. You know, the contractors, legitimate contractors in our state, strongly endorse this bill, including those in the rural areas. And quite frankly, what I don't understand is the devaluing of employees in rural Nebraska. Senator Stuthman was talking about some instances, and Senator Christensen. What happens? What happens if you are working for a legitimate contractor and you fall off the ladder and you break your leg? What kind of workmen's compensation are you going to receive? What kind of unemployment insurance are you going to receive? You are going to devalue your work force out in western Nebraska and the rural areas? You don't think the employees that frame a home in rural Nebraska is worth the employees in the top three counties in terms of 100,000 inhabitants? You are going to forfeit rights and privileges of your work force to others just because of the area in which they live? I'm...it's quite remarkable about some of the things that I have heard relative to the devaluing of the work force in rural Nebraska, and that they somehow should, it's appropriate and proper for them to forfeit workmen's compensation? It's proper for them in the rural area to forfeit unemployment insurance? I don't think so. I value all of our employees. I value all of our workers. I value all of our construction people in the construction trade, not just the individuals in our counties that inhabit 100,000 people or

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more. I think each and every worker throughout the state should be afforded basic rights, workers' compensation insurance, and unemployment insurance. Members, Senator Lathrop framed it quite well. This does not apply to the one-man shop or the two-man shop. It does not apply. And for those that are contracting work in the rural area and they've got three or four employees, guess what? They're probably not affording your workers. If there's an outfit in Hastings, Nebraska, Senator Burling, who's got three or four employees and he's going around doing all this plumbing work and construction work, and you are going to try to tell me that you don't want his employees to be afforded health...workmen's compensation benefits? You don't want them employees to be afforded unemployment benefits, Senator Burling? You are saying it's okay for those employees of that small shop to forfeit them basic workers' rights just because they're in Hastings? I think that's wrong. I think that's fundamentally wrong. I think we've got to treat our workers in the state equally and equitably across all 93 counties. So I can't believe the devaluing of Nebraska workers of the statements here on this floor this morning,... [LB204]

SENATOR SCHIMEK: One minute. [LB204]

SENATOR SYNOWIECKI: ...that essentially devalues the work force in our state and says that in certain areas of this state you forfeit some basic workers' rights, because that's essentially what you are saying. Thank you, Senator Schimek. [LB204]

SENATOR SCHIMEK: Thank you, Senator Synowiecki. Mr. Clerk, did you have an announcement? [LB204]

CLERK: I do, Madam President. The Health Committee will hold an Executive Session now in Room 2022; the Health Committee in Room 2022 immediately. [LB204]

SENATOR SCHIMEK: Thank you, Mr. Clerk. (Visitors introduced.) The next person to speak is Senator Carlson. You are recognized. [LB204]

SENATOR CARLSON: Thank you, Madam Chair. Members of the Legislature, I would like to ask Senator Synowiecki a couple of questions if he would yield. [LB204]

SENATOR SCHIMEK: Senator Synowiecki, would you yield to a question or two? [LB204]

SENATOR SYNOWIECKI: Yes. [LB204]

SENATOR CARLSON: Before I ask these questions, I want to respond a little bit to your immediate past testimony. We do value our workers in rural Nebraska. We are concerned about them, and make no mistake about that. And as we move forward here, hopefully we have an agreement on the fact that we do value people who work for us in

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rural Nebraska. But my first question is in Section 2, on page 2, a person doing business under more than one name has to register and pay the fee for each name. As an example, if I'm doing business--and I assume this is a calendar year--if I'm doing business as Tom Carlson Construction, and during the year I change my business name to Basements Are Us--I'm still doing the same thing--do I have to register and pay a new fee? [LB204]

SENATOR SYNOWIECKI: Senator Carlson, I'm happy to hear that you value workers in your district. I'm sure you do, and LB204 is a vehicle by which you can ensure that those workers are valued. Now, regarding Section 2, that is existing language. The only change in Section 2 that LB204 brings about is that it changes it from county with a population of over 100,000 inhabitants. So whatever is existing language would continue. This bill does not change that. And it basically says if a contractor does business under more than one name, the contractor shall obtain a registration number for each name under which the contractor is doing business. [LB204]

SENATOR CARLSON: Okay. I'm not trying to drive you into something that maybe you don't have the answer for, but can you answer my question on change of name? Is that going to require a new fee? [LB204]

SENATOR SYNOWIECKI: I don't believe so, because it says if a contractor does business under more than one name, the contractor shall obtain a registration number for each name. Now does that include paying the fee for each one? I don't know, but again I would remind you that that is existing language. [LB204]

SENATOR CARLSON: Okay. Second question is, we're hearing discussion about full time and part time. What is full time? Is it more than 1,000 hours? And if it's more than 1,000 hours, and I'm a sole proprietor and I'm working by myself, and I've got one full-time employee and I hire somebody else part time, do I count that part time right away, or is it after they reach 1,000 hours, or when do I face that? And that would change whether I pay a fee or not. [LB204]

SENATOR SYNOWIECKI: Exactly. Would it change whether or not you pay the \$50 fee, and it's with a maximum equivalent of one full-time employee at any one time. Once you go above the one full-time employee...so, yes. In answer to your question, my interpretation at this time is that once you go above one full-time employee, then you would have to pay the \$50 fee. [LB204]

SENATOR CARLSON: Okay, so if I...I'm a sole proprietor; I've got a full-time employee. During the summer I hire my son to work for me for a few weeks. At that point then I'll be required to pay a fee? [LB204]

SENATOR SCHIMEK: One minute. [LB204]

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SENATOR SYNOWIECKI: Under my interpretation, yes. Once you go above that one full-time employee threshold, you would technically have to pay the fee. [LB204]

SENATOR CARLSON: Okay. [LB204]

SENATOR SYNOWIECKI: Now if you hire your boy for a, you know, for a month or something, I don't think the Department of Labor is going to be coming running after you for doing something like that. But technically, yes, you'd have to pay the fee at that time, the \$50 fee. [LB204]

SENATOR CARLSON: Okay, I agree to technically, yes, and that makes it a little bit more difficult to deal with. I do have another question, but we're nearing the end of the time. I'll yield the remainder. Thank you. [LB204]

SENATOR SCHIMEK: Thank you, Senator Carlson and Senator Synowiecki. The next speaker is Senator Christensen. You are recognized to speak. [LB204]

SENATOR CHRISTENSEN: Thank you, Madam Chairman. Would Senator Synowiecki--I apologize if I said that wrong--yield to a question? [LB204]

SENATOR SCHIMEK: Senator Synowiecki, would you yield? [LB204]

SENATOR SYNOWIECKI: I thought this was Senator Bourne back on the floor. Senator Christensen, Senator Bourne routinely referred to me as Senator "Synowisky," so. (Laughter) [LB204]

SENATOR CHRISTENSEN: Sorry about that. To go back into my question that you referred to a little bit, after I had spoken about. The group that I used to work for 10, 15 years ago would actively go out and seek jobs, just like a contractor would, for three months a year, and then I worked for them. And I would see that following under. Well, I'm referring to, I come from a town of 200, worked in a town of 1,000 or sometimes in a town of 800 where there was no full-time contractor. And so we stepped up and filled the bill, and that has been my concern here, that we won't have a contractor at all if they got to go down to this direction. Am I correct, my question being, are they not going to fall under contractor rules with this bill, because there was three, four of us working, and we were actively pursuing jobs to work at somebody else's home? [LB204]

SENATOR SYNOWIECKI: Did the homeowner hire you individually or did you work for a company that did the work? [LB204]

SENATOR CHRISTENSEN: I worked for the contracting firm. They went out and "seeked" the job, and then I'd get paid from them, so yeah, the homeowners paid them

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and they paid me. [LB204]

SENATOR SYNOWIECKI: And so this was a legitimate contractor that had more than one full-time equivalent employee? [LB204]

SENATOR CHRISTENSEN: Correct, but they only worked for three months a year. [LB204]

SENATOR SYNOWIECKI: Were you paying the appropriate income tax withholding on this work? [LB204]

SENATOR CHRISTENSEN: Yeah, they would. [LB204]

SENATOR SYNOWIECKI: Did they cover you under workmen's comp? [LB204]

SENATOR CHRISTENSEN: I cannot answer that. [LB204]

SENATOR SYNOWIECKI: Yeah. So the only...yeah. So they would have to pay a \$50 fee. That's what they would have to do to legitimize their business and to ensure that the appropriate taxes and whatnot are being paid. [LB204]

SENATOR CHRISTENSEN: Because I would guess I was paid direct. I'm not even sure they withheld. I might have been as a subcontractor, as what you are referring to. I'd have to even think; it's been a lot of years. But I guess my thought here is and concern comes in that we won't find anybody in that little town to do work unless we bring somebody from 60 miles away or farther, and then it only adds to--because we have no lumberyard to begin with--it only adds to our cost. [LB204]

SENATOR SYNOWIECKI: Senator Christensen, the Department of Revenue might be interested in what date you were working there. No, I just...(Laughter) [LB204]

SENATOR CHRISTENSEN: I would have paid, if not, so. [LB204]

SENATOR SYNOWIECKI: I don't think that...Senator Lathrop talked a little bit towards unintended consequences. Senator Christensen, the outfit you worked for, under the auspices of LB204, would have to file with the Department of Labor and pay the \$50 fee. If they're treating their employees and valuing their employees and providing workmen's compensation, providing income withholding, providing...you know, taking the FICA taxes out, guess what? They would want this bill because it would diminish the opportunities for the unscrupulous guys that pay their workers five bucks an hour and don't give them any workmen's comp. Then when they fall off the ladder, the state pays for these folks. So the scenario you offer, if they're playing by the rules,... [LB204]

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SENATOR SCHIMEK: One minute. [LB204]

SENATOR SYNOWIECKI: ...yeah, they'd have to pay a \$50 fee, and their work would be legitimized. [LB204]

SENATOR CHRISTENSEN: Thank you. [LB204]

SENATOR SCHIMEK: Thank you, Senators Christensen and Synowiecki. Senator McDonald, you are next in line to speak. [LB204]

SENATOR McDONALD: Madam President and members of the body, I'd like to ask Senator Synowiecki a couple of questions. [LB204]

SENATOR SCHIMEK: Senator Synowiecki, would you yield to a question or two? [LB204]

SENATOR SYNOWIECKI: Yes, I would. [LB204]

SENATOR McDONALD: Yes, Senator Synowiecki, I'm not sure exactly how I'm going to vote on this bill. I have some definite concerns. Looking at the ag industry--and several years ago we passed a bill saying that if a farm corporation had X amount of employees, unrelated employees and all of that, that they had to require workmen's comp if they had over a certain amount. Would this bill affect them at all? [LB204]

SENATOR SYNOWIECKI: I'm sorry, Senator McDonald. [LB204]

SENATOR McDONALD: Would they be considered a contractor? [LB204]

SENATOR SYNOWIECKI: Who? [LB204]

SENATOR McDONALD: A farmer that hires employees to work for them. [LB204]

SENATOR SYNOWIECKI: No. [LB204]

SENATOR McDONALD: They wouldn't, okay. So it doesn't affect them. But looking how we put that bill together, we exempted some of our small farmers from this because they didn't have enough employees--chances are they were already giving them health insurance and taking care of that risk--but we exempted them from having to have workmen's comp for a small, small business. Could that be an opportunity that we could put into this bill, so we could exempt some of those really small businesses that might have father and son, a relationship, maybe two or three employees? Because I don't think that's where the abuse is. I think the abuse is on the bigger size, and so if we could put an amendment in that makes it exempt for our very small contractors, that

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maybe you would get more rural support. [LB204]

SENATOR SYNOWIECKI: Senator McDonald, this doesn't do anything as far as wage and hour regulations and law. It does nothing relative to what the threshold is. If you have an employee, you are already under statute, and if you have a small plumbing outfit, regardless of the contractor registration, apart and aside from contractor registration, you are already statutorily bound, if you have an employee, to take out the appropriate withholding taxes. You are already bound, regardless of what this thing does, you are already bound to pay unemployment insurance for that employee. You are already statutorily bound to do FICA taxes. This is a registration act. It has nothing to do with the statutes which force employers to comply with employment law. [LB204]

SENATOR McDONALD: So why are our employers not registering? [LB204]

SENATOR SYNOWIECKI: Well, Senator Lathrop spoke to it. Here's what some of the larger contractors do that are unscrupulous. They'll get 30-40 employees to throw a roof on the Qwest Center or a Wal-mart; they'll get 40-50 employees and put them all under 1099s. And they'll all fly down to...the Department of Labor will get a hundred 1099s in one day. And I can assure you, Senator McDonald, that those are employees; they're not subcontractors. And by them utilizing that practice, by them utilizing that practice, they do precisely...they evade precisely what the small shops have to do. If you've got a plumbing shop, you've got one employee, you've got to do compensation insurance. You've got to do income withholding apart from this bill. But guess what? The big guys get out of doing that by classifying their employees as 1099. If you've got a father-and-son plumbing outfit, and the son is a legitimate employee of that, this Contractor Registration Act, Senator McDonald, does nothing to diminish the employer's responsibility to their employee in terms of employment law. This is a registration act. [LB204]

SENATOR SCHIMEK: One minute. [LB204]

SENATOR SYNOWIECKI: So what some of these guys, the unscrupulous guys will do, will falsely misclassify their employees so they get out of doing what your small "Pop" operation has to do, and I don't think that's fair. [LB204]

SENATOR McDONALD: So basically, in the reverse, it's the larger companies that are abusing it and not the smaller ones. [LB204]

SENATOR SYNOWIECKI: Senator McDonald, I think it's twofold. I think the situation Senator Christensen speaks to, I am emboldened and I'm happy to hear that that contractor in his small town of 200 provides workmen's comp insurance and does income withholding and does all those appropriate things that they have to do under the law anyway. I'm happy to hear that. But I would suspect a lot of individuals in the rural

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areas don't afford their employees the appropriate level of benefits under the law now. And the Contractor Registration Act is simply to ensure that they do what they have to do under the law. This is a registration act. It has nothing to do with employment law. [LB204]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Time has expired, Senator. [LB204]

SENATOR McDONALD: Thank you, John. [LB204]

PRESIDENT SHEEHY: Senator Wallman, followed by Senator Rogert, Senator Carlson, and others. Senator Wallman. [LB204]

SENATOR WALLMAN: I am a rural person, and thank you, and this seems like an antilabor bill. Is that what's it's turning out to be? The labor union? Folks, my brother-in-law had these people come through his house in Iowa, and they took off his roof, and they took off. And he made a down payment and they took off. This is about protection for the people who you hire, and also for the homeowner or the property owner. If you have somebody come on your place, like we went through them tornados, and here come these private contractors out of the woodwork. Folks, they broke windows; they had accidents. Who paid for it? You better have good liability insurance because it was you; it was the person who owned the house; it was the person who owned the barn. And there were injuries. So who did they come after? The person who had the property. This is about protecting you. It's not about socking it to the poor people. Most people would be glad to pay that \$50 and then you are registered. They know who you are. And I think it's a good bill. I know it seems like antirural against city, but I'm a rural person and I can support this bill. Thank you. I yield the rest of my time. [LB204]

PRESIDENT SHEEHY: Thank you, Senator Wallman. Senator Rogert. [LB204]

SENATOR ROBERT: Thank you, Mr. President and members of the body. I just want to speak a little bit on behalf of the bill, as a committee member and a rural senator as well. I don't see any issues with this as a rural versus an urban bill. This is a bill that protects workers in all fashions, and it puts those who are skirting the process and the law in check with the rest of the club. It doesn't change how you classify your workers; it doesn't change how you do your business. It just puts you under scrutiny if you are doing your business incorrectly. So they can still have subcontractors with 1099 work; they're just going to be made sure that they're doing it correctly and they're not doing it out of the scope of the law, and protecting the workers that they're contracting with. It keeps them under insurance with workmen's comp, unemployment, and any other (inaudible), and all the FICA taxes and those types of things that we have to take out as

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an employer. I support the bill wholeheartedly and as a rural guy and I see no problems with it. It's not going to hurt. It's not going to slow down those that are working and doing those summer or winter projects when they're not farming. And it's a good bill and I applaud Senator Synowiecki for bringing it forth. I yield the rest of my time. Thanks, Mr. President. [LB204]

PRESIDENT SHEEHY: Thank you, Senator Rogert. Senator Carlson, followed by Senator Engel, Senator Nantkes, and others. Senator Carlson. [LB204]

SENATOR CARLSON: Mr. President and legislative body, again I would like to ask Senator Synowiecki one more question. [LB204]

PRESIDENT SHEEHY: Senator Synowiecki, would you yield? [LB204]

SENATOR SYNOWIECKI: Yes. [LB204]

SENATOR CARLSON: I appreciate being able to ask you this question. And being elected to represent people from rural Nebraska, if I don't ask the question now, it won't get asked and I may be grilled a little bit on why weren't you more careful. There are always and a very high probability of unintended consequences to any piece of legislation, so this may seem like a small question but I'm going to ask it. If my son who is in late high school years or early college years, and he has taken some industrial art/industrial technology work, and I'm trying to encourage him to learn a little bit about business, if in the summer, now with this passing, he decides to see if he can't contract to shingle some garages of people in our community. And so he makes a little name for his business and he is by himself and he is going to do this by himself. So he does it and he's not going to have to pay a fee, but he is going to have to register, correct? [LB204]

SENATOR SYNOWIECKI: Would it be on his own, Tom? [LB204]

SENATOR CARLSON: He would be on his own. [LB204]

SENATOR SYNOWIECKI: Yeah. He would have to register. He would not have to pay the fee. [LB204]

SENATOR CARLSON: Now, I don't know this. Is this registration process a tedious, difficult thing, or is it very simple? [LB204]

SENATOR SYNOWIECKI: I don't know precisely. I think it's a rather simple document they fill out. [LB204]

SENATOR CARLSON: Okay. If it goes well enough in the first month and he does good

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work and other neighbors see that and he ends up with about a half dozen garages to shingle, and he decides I better hire a couple of my buddies to finish this work. Then he would pay the fee? [LB204]

SENATOR SYNOWIECKI: He would have to, under current law, then do the income withholding, do the unemployment taxes, workmen's comp. Under current law he would have to do that. And, yes, he would then have to pay the fee because he would exceed the one-time full-employee threshold. [LB204]

SENATOR CARLSON: Okay. Thank you. [LB204]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Engel. [LB204]

SENATOR ENGEL: Pardon? [LB204]

PRESIDENT SHEEHY: Senator Engel. [LB204]

SENATOR ENGEL: Oh, I'm sorry; I had a conversation with Senator Schimek. Mr. Lieutenant Governor and members of the body, in this particular issue I was in the insurance business for many, many years, and I just insured small contractors. But I always warned them that there is a work comp statute in the state of Nebraska; there is a definition of subcontractors and you should comply with those laws. If you are not, then you are the one that's going to be holding the bag, so speak, and your employee is not going to be covered adequately. And I have personal experiences, personal experiences where they did not comply and they knew they were supposed to, and as a result, at different times the workers themselves had no recourse. They themselves had to declare bankruptcy; wound up on Medicaid because they were very serious. And the small contractors themselves wound up declaring bankruptcy because they could not afford to pay the claims against them. Another thing they've always mentioned, they say, well, this person...you know, they say they are a subcontractor. But I say, well, you better check out that definition. If they are truly a subcontractor, get a certificate of insurance from them. And also they say, well, this person will never sue me. Well, that is true up to the point of something happening. Then when something happens where they cannot work, they cannot support their family, they cannot pay their rent or their house payment and so forth, you darn right they're going to go after somebody because their first priority is going to be their own livelihood, their own family. And so it puts the burden...I mean, they have to sue whether they in the beginning said, well, we won't sue you. Well, that doesn't hold any water. The only time it holds water: if there's never a claim. So I don't believe in a lot of more regulation or anything like that, but I do believe that something like this is good. As far as the fine, perhaps the fine is a little too high at \$5,000, at \$10,000. That's something you can work with. But as far as the registration, I think it's very important, and it not only protects the worker but also it protects the employer so they know where they're at; they know what they're supposed to do. And if

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everybody is complying, everybody is better off. Thank you and I return the rest of my time to the Chair. [LB204]

PRESIDENT SHEEHY: Thank you, Senator Engel. Senator Nantkes. [LB204]

SENATOR NANTKES: Mr. President and members, I rise in support of this issue, and just very briefly wanted to point out to each of you that we have a tremendous opportunity before us with this bill. So rarely do we find an issue where we have the industry and labor and all those affected on the same page. We have the opportunity with this issue. With that, I yield the balance of my time back to the Chair. [LB204]

PRESIDENT SHEEHY: Thank you, Senator Nantkes. Senator Mines, followed by Senator Pirsch. Senator Mines. [LB204]

SENATOR MINES: I'll waive. [LB204]

PRESIDENT SHEEHY: Senator Pirsch. [LB204]

SENATOR PIRSCH: Thank you, Mr. Lieutenant Governor. I was wondering if Senator Lathrop would yield to a question? [LB204]

PRESIDENT SHEEHY: Senator Lathrop, would you yield? [LB204]

SENATOR LATHROP: Certainly. [LB204]

SENATOR PIRSCH: And, Senator Lathrop, you are on the Business and Labor Committee, is that correct? [LB204]

SENATOR LATHROP: That's true. [LB204]

SENATOR PIRSCH: Okay. And could you tell me, was there any...when the committee hearing was held on this bill, was there any opposition? And just to clarify that and you may have touched on it, did anyone speak in opposition insofar as the industry is concerned, the contractors? [LB204]

SENATOR LATHROP: Thank you for that question, Senator Pirsch. We actually, when the bill was originally drafted it had a \$100 fee in it, and there was no grace period. Those are both the changes made in the amendment that we are discussing right now. Originally, there was a lot of opposition. We were getting e-mails and everything, and those people all showed up. And when Senator Synowiecki expressed a willingness to amend the bill and allow for a \$50 fee, all of the people who were in opposition jumped on the support side and testified in favor of the bill. And so we had, in support of the bill, the contractors, labor, and no one in opposition. [LB204]

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SENATOR PIRSCH: Okay. Thank you very much. [LB204]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. Senator Mines, followed by Senator Stuthman. Senator Mines. [LB204]

SENATOR MINES: Question. [LB204]

PRESIDENT SHEEHY: Are you calling for the question? Question. The question before the body is, shall debate close? Do we see five hands as a motion and in support? The question before the body is, shall cease now close on the committee amendment? All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB204]

CLERK: 29 ayes, 4 nays, Mr. President, on the motion to cease debate. [LB204]

PRESIDENT SHEEHY: Debate is ceased. The question now before the body is, shall committee amendment AM...oh, Senator Cornett, you are recognized to close. [LB204]

SENATOR CORNETT: Thank you. Again, I want to just go over what the committee amendments are. The first one is that it would reduce the registration fee, or the application fee from \$100 to \$50, and that the state felt that this was a fair fee that they would be able to administer this with. And secondly, it implements a grace period for the contractors that have never previously been registered. And I do want to stress the fact that at the hearing, that we had no opposition to the bill once the amendments were discussed. And since that time the general contractors have met and are in favor and support of this bill. We have received notes from individuals that do not like the bill, but overall the association feels that this is a good bill and a good amendment. Thank you. [LB204]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You've heard the closing to AM167 to LB204. The question is, shall the committee amendment be adopted? All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB204]

CLERK: 34 ayes, 3 nays, Mr. President, on adoption of committee amendments. [LB204]

PRESIDENT SHEEHY The committee amendments is adopted. The floor is now open for discussion on LB204. Senator Stuthman. [LB204]

SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. I would like to have a little conversation with Senator Synowiecki, the primary introducer.

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[LB204]

PRESIDENT SHEEHY: Senator Synowiecki, would you yield? [LB204]

SENATOR SYNOWIECKI: Yes. [LB204]

SENATOR STUTHMAN: Senator Synowiecki, what this bill is doing now, if this bill passes with the amendment that we have, you are adding the contractors to this, the registration of them have to be from all of the state, where presently we have only the ones that are in municipalities or counties that have over 100,000 population, correct? [LB204]

SENATOR SYNOWIECKI: Senator Stuthman, you are absolutely correct. And let me tell you what...the Home Builders Association was in support of this bill because what they're seeing out in the rural areas is individuals not complying with current law. Current employment law requires the various workers' rights be afforded to your workers when you are on a job site, such as workmen's comp. And what was going on was that these guys were just paying cash to their employees or some other...or just paying cash and were not abiding by the rules that are already out there in employment law. And it was felt that it would be good public policy to have an even playing field in rural Nebraska relative to the treatment of employees for contractors. [LB204]

SENATOR STUTHMAN: So in other words, Senator Synowiecki, that beings now the law is in place right now and the ones that are in these large metropolitan areas, are you saying that just because the rural areas don't have to comply at the present time is because those people, there's more of them that are cash customers, and you don't have cash contractors, you don't have that situation in the larger areas? [LB204]

SENATOR SYNOWIECKI: As far as employees? [LB204]

SENATOR STUTHMAN: Yes. As far as the... [LB204]

SENATOR SYNOWIECKI: Oh, that's another dynamic of the bill. From the counties, the larger counties, there was gross, gross defrauding. There was gross manipulation of workers in the higher-populated areas. We had individuals falling off ladders and whatnot, that found out that they didn't have workmen's compensation insurance as they should have had. It's a phenomenal problem in Nebraska and throughout the states. But it's twofold. There's a rural perspective to this and there's a metropolitan and a more populated-area perspective to this. Both of them, both of those issues, Senator Stuthman, wrest with the treatment and the welfare of workers--both of them. That's what's uniform here. What's uniform between the less populated and more populated areas is that this is an issue of workers and having them being treated fairly, as the law provides. Let me remind you, this is just a registration act. There's already employment

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law...if you've got a few contractors running around Columbus and they're paying their employees cash, that's illegal now regardless of what we do with this thing. [LB204]

SENATOR STUTHMAN: Yes, that is very true. The only thing that also concerns me with this is you are going to have a lot more contractors that are going to have to register under the contractor part of this bill,... [LB204]

SENATOR SYNOWIECKI: Senator... [LB204]

SENATOR STUTHMAN: ...and they're going to have to register. Now, in the past it's been your contractors in the larger communities had to pay \$25. Now that you are adding on the rural or the out-of-town ones, initially you had it up to \$100. Twenty-five was good enough for the one, but you went up to \$100, and now we've got her back down to \$50. Why do you even want to have it up to \$50? If \$25 was good enough for those large metropolitan areas, why are you coming out... [LB204]

PRESIDENT SHEEHY: One minute. [LB204]

SENATOR STUTHMAN: ...and wanting the people out in the rural areas to pay twice as much? [LB204]

SENATOR SYNOWIECKI: Senator Stuthman, that's an excellent question, and the fee is being raised to \$50 and I'll tell you why. It's because we have a Contractor Registration Act that's essentially unenforced. With these proceeds, the Department of Labor, under the auspices of this bill, will hire individuals to follow up on the unscrupulous contractors. And believe me, the Builders Association was very much in favor of this aspect because these unscrupulous contractors were routinely and consistently getting away, just getting away with violating the workers' fundamental rights. And that's why we need to raise this fee so we can have some teeth to this thing; so we can have some enforcement; so contractors will know they've got to extend basic fundamental rights to their workers in the areas of workers' compensation. [LB204]

PRESIDENT SHEEHY: Time, Senator Stuthman. Senator Janssen, followed by Senator Stuthman. Senator Janssen. [LB204]

SENATOR JANSSEN: Thank you, Mr. Speaker and members of the Legislature. If I could ask Senator Synowiecki a couple of questions? [LB204]

PRESIDENT SHEEHY: Senator Synowiecki, would you yield? [LB204]

SENATOR SYNOWIECKI: Yes, I would. [LB204]

SENATOR JANSSEN: Senator Synowiecki, my wife and I had some remodeling work

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done on our home this summer, and we hired a contractor, a local man, to do the foundation, which he sublet out to a masonry man. He did the framing of the room, the siding, and so on, and he hired a masonry man to do that and he had a drywaller come in, and we paid each one of those individually, and then we paid him for the work he did. The electrician came in, whom we hired, and paid that electrician. The plumber, we paid the plumber also. Now, because he was, I would say, the general contractor, is he responsible for those people or are they on their own? [LB204]

SENATOR SYNOWIECKI: You know, Senator Janssen, if you paid those others individually, number one, he'd be on his own. And if you paid them individually, my knee-jerk answer to your question without consulting anyone because I'm not in the business, but from the scenario that you described, Senator Janssen, it sounds like you contracted with a plumber to do the plumbing; sounds like you contracted with an electrician to do the electricity; and then you contracted with the individual that did the addition. [LB204]

SENATOR JANSSEN: Um-hum. [LB204]

SENATOR SYNOWIECKI: So these were three separate contractors, so I don't perceive that scenario as you had a general contractor and he sublet to all these others. It sounds like you contracted individually with the three. [LB204]

SENATOR JANSSEN: That's true. [LB204]

SENATOR SYNOWIECKI: So, now, what impact that would have on this bill, are all three of them one-man shops? [LB204]

SENATOR JANSSEN: Yes. [LB204]

SENATOR SYNOWIECKI: All three of them would have to register, under this bill, but they would not have to pay the fee. [LB204]

SENATOR JANSSEN: Now, would that particular individual, say the drywaller, would he have to...if he is in this business, he would have to register when? I mean, he does apparently a lot of drywalling. When would he...would he have to register with every job that he did? [LB204]

SENATOR SYNOWIECKI: No, no. It's one-time registration, and if you would allow me to kind of be responsive to Senator Carlson's question, the application is one page and it can be done on the Web. [LB204]

SENATOR JANSSEN: Well, in my part of the country (inaudible) have the Web. (Laugh) We just got pens and pencils here a few years ago. [LB204]

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SENATOR SYNOWIECKI: (Laugh) Well, Senator Janssen, they could mail it in. They could...(laugh)...mail it in; it's a one-page form. [LB204]

SENATOR JANSSEN: Well, if they're in the business, I'm sure that they would...they would just have to do this once or for every project? [LB204]

SENATOR SYNOWIECKI: No, no, no. Just...I believe it's once a year. [LB204]

SENATOR JANSSEN: Well, that's fine. I don't need to know that right now. [LB204]

SENATOR SYNOWIECKI: I've been told it's once a year they would have to register. [LB204]

SENATOR JANSSEN: And I think, wouldn't you say that most of the contractors in rural areas do that now? [LB204]

SENATOR SYNOWIECKI: They don't have to register. I don't think anything prevents them from registering. Perhaps if they go into some of these counties that abide by this, they may register. I, quite frankly, don't know, Senator Janssen. [LB204]

SENATOR JANSSEN: Now, so this would be in any county? I live in Dodge County. In my legislative district there are, what, 36,000 people live in that district. So there is no variation? I mean, each county would have to do this then? [LB204]

SENATOR SYNOWIECKI: Yeah. It would be a consistent policy throughout the state, which we do not now have, and it would attempt to address the unique dynamics of the rural area problem, if you will, and the dynamics of a more populated area. It attempts to have some teeth in the registration act. It does nothing regarding employment law now with, if those contractors you speak to have a couple three employees, they still have to do everything they need to do under employment law now. This says you've got to register. [LB204]

SENATOR JANSSEN: Okay. Thank you. [LB204]

PRESIDENT SHEEHY: Thank you, Senator Janssen. Senator Stuthman. [LB204]

SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. I would like to engage in a little more conversation with Senator Synowiecki, if he may, please? [LB204]

PRESIDENT SHEEHY: Senator Synowiecki, would you yield? [LB204]

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SENATOR SYNOWIECKI: Yes. [LB204]

SENATOR STUTHMAN: Senator Synowiecki, currently the way I read in the fiscal note, there's probably 4,600 contractors that are registering right now, and those would be the ones that would be in the Lincoln-Omaha area, correct? Or those populations that are identified? [LB204]

SENATOR SYNOWIECKI: What page are you on, on the fiscal note? I haven't... [LB204]

SENATOR STUTHMAN: On the fiscal note, the first page, the second paragraph, it says there are currently 4,215 fee-paying contractors. [LB204]

SENATOR SYNOWIECKI: Yes, there are currently...there you go, I found it. There are currently 4,215 fee-paying contractors. [LB204]

SENATOR STUTHMAN: Yes. Okay. Now, the contractors that we're trying to get to register, they're in the rural areas. Is there any idea as to how many of those contractors there would be, a possibility? Realistically, there is no record. Those people do not have to have a contractor's license at the present time, do they? The only way that we could get some information would be like from the Homebuilders Association with membership to the Homebuilders Association. There's a lot of other contractors would also be involved in this, you know, like heavy dirt movers, excavators, and everything like this. [LB204]

SENATOR SYNOWIECKI: It says on the preceding sentence: "The Department of Labor estimates the extension of this Act"--and I think they're talking about moving it outside the current three counties--"will result in the additional registration of approximately 2,080 in state contractors and 500 out of state contractors." So I think when you come in from Kansas or South Dakota and you do some work in the state, or Iowa, for that matter, you would need to register under the act. [LB204]

SENATOR STUTHMAN: Okay. Yes, and the discussion I had earlier with raising it from \$25 to \$50, which is currently in the amendment, with that amount...with the current ones having to double...and they would have to pay the \$50 fee, too, also now. They would double theirs, would that be correct, Senator Synowiecki? [LB204]

SENATOR SYNOWIECKI: Yes. [LB204]

SENATOR STUTHMAN: That would double theirs. So it would be twice the income there, plus we're adding about another 3,000 contractors to it--the 2,000-some and the 500. Twenty-five hundred would be the closer figure--2,500 new contractors that would have to register. [LB204]

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SENATOR SYNOWIECKI: The state Homebuilders Association worked with the Department of Labor on this, and \$50 fee was recognized as the level that would provide the appropriate amount of resources to hire the enforcement provisions within the act. [LB204]

SENATOR STUTHMAN: And currently there is no enforcement provisions right now for those three counties because they're only paying \$25? [LB204]

SENATOR SYNOWIECKI: I would refer you to the Department of Labor. They have filed...they do file...there is some level of enforcement, but it's...I think it's widely recognized by people in the industry, in the contracting business, it's widely recognized in and out within the Department of Labor that the enforcement provisions are insufficient, woefully insufficient. [LB204]

SENATOR STUTHMAN: Okay, thank you. And I'll return the balance of my time to the Chair. [LB204]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Anyone else wishing to speak on LB204? Seeing none, Senator Synowiecki, you are recognized to close. [LB204]

SENATOR SYNOWIECKI: Thank you, members of the Legislature. I very much appreciate the conversation, appreciate the dialogue, appreciate the debate, and I can appreciate the concerns. I think initially there was a lot of misguidance relative to what this bill does. Let me assure you that if you have contractors in your counties, whether they be rural or urban, and if they have employees, they already, they already have to abide by employment law. They already have to abide by regulations that call for income withholding, unemployment insurance, workers' compensation, and those sorts of things. This is a registration act. This is a registration act which will help the Department of Labor in their enforcement of the provisions of this act which are now inept and which are now, they do not have the resources to do. Members, whether our employees that are doing this heavy lifting in our communities, these people that are doing our heavy lifting with remodeling...we learned of Senator Janssen's remodeling this past summer...we've got to ensure that each and every one of these workers are afforded their basic fundamental rights which are already under law, which are already under an employment law. And we must demand that there is a certain level, threshold of adherence to employment law. And what this bill does is it's a registration act and essentially it will provide consistency and policy throughout our state and it will help to ensure that workers in our state are treated equitably and fairly under the law. Thank you, Senator. [LB204]

PRESIDENT SHEEHY: Thank you, Senator Synowiecki. You've heard the closing to LB204. The question before the body is, shall LB204 advance to E&R Initial? All those

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in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk.
[LB204]

CLERK: 27 ayes, 11 nays, Mr. President, on the advancement of LB204. [LB204]

PRESIDENT SHEEHY: LB204 does advance. Next item. [LB204]

CLERK: Mr. President, LB472. It's a bill by Senator Chambers. (Read title.) The bill was introduced on January 17, referred to the Business and Labor Committee, advanced to General File. At this time I have no amendments to the bill, Mr. President. [LB472]

PRESIDENT SHEEHY: Senator Chambers, you are recognized to open on LB472.
[LB472]

SENATOR CHAMBERS: Mr. President and members of the Legislature, after the tenacious questioning of Senator Stuthman, after the flaming passion of Senator "Snicky," my bill is going to be less than anticlimactic. It does a very simple thing. It properly designates the individuals who are members of the Commission of Industrial Relations. Formerly, this commission was known as the Court of Industrial Relations. In 1979, the name was changed to "Commission." An attempt was made to change the name of the members to "commissioners." I opposed changing that designation from "judges" to "commissioners." That was nearly three decades ago, and at that time there was even more hostility to labor openly expressed than is the case now. My feeling was that changing the Court of Industrial Relations to a commission was the first step toward trying to gut it. So even though the body did that, I and Senator Landis I believe was the other one, maybe some others spoke, prevented the name of the members from being changed to commissioners from judges. That was to allow a measure of credibility to attach to this commission. In 1979, the Nebraska Supreme Court ruled that the Commission of Industrial Relations is not a court; it cannot carry out judicial functions; that it is an administrative agency performing a legislative function. Since the Supreme Court made that declaration, there can be no argument that the commission is a court in any sense or that its members are judges in any sense. If you call up the statement of intent, you will see where I mention various state commissions, all of which have members known as commissioners. I pointed out activities which judges carry out, the ethical code to which judges are subject, but these commissioners are not. What this body has to determine is whether or not we're going to give the proper designation to people who sit on a commission or if we're going to leave a misnomer there for whatever reason somebody may have for wanting to do that. As a Legislature, we should call things what they are when we're going to deal with them. A commissioner simply is not a judge. Commissioners are appointed by the Governor with the advice and consent of the Legislature. That is not how judges are appointed. The Legislature has no role whatsoever to play in the appointment of judges. They are appointed by the Governor when names are submitted to them by that judicial selection committee or

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whatever it was called that you all talked about this morning. Judges are removed by the Supreme Court, when necessary, if they have violated the code of judicial conduct to such an extent that they are unfit to continue serving as judges. These commissioners are removed by the Governor, not the Nebraska Supreme Court. There is no shred of evidence or rational argument that would justify referring to commissioners as judges. They simply are not. If you adopt my amendment, you change none of the activities of the commission. You neither add to nor take from the duties or authority or powers that they now enjoy. You do nothing other than calling them what they are. Cindy, the lady who works with me, has one of the most delightful miniature poodles, toy poodles, that you will ever see in your life, and I really like her, but if I liked her so much that I would call her Tyrannosaurus rex, she still remains a delightful, lovely, lovable toy poodle. So calling these commissioners, judges, only misleads the public and everybody else as to what they are. I'm going to listen to the discussion, and if the body believes and establishes, that such is their belief, that commissioners ought to be called judges, I'm going to offer an amendment to name every member of every commission a judge. Either all people who are on commissions are commissioners or we will mislabel all of them. I'm sure that the commissioners on the Athletic Commission would love to be called judges. I'm sure that the members of the Nebraska Equal Opportunity Commission would especially love to be called judges. But such ought not to be done. Words have meaning. Words in statute carry even more meaning. And if, as a favor to people who may sit on the commission or to those who appear before that commission because they want to feel that they're engaging in some kind of activity which ought to be presided over by a real judge, that is not a reason for us to misname these individuals. If I thought that calling them judges and renaming the commission a court would in fact make it a court, maybe I would change my mind. But the Nebraska Supreme Court, reviewing what this operation does, has said it is not a court. It does not carry out judicial functions. So if people get up on this floor, as some did before the committee, and say, well, they hear evidence; they weigh the evidence and make a decision. The Nebraska Supreme Court knew all of that. Any agency that resolves disputes, takes evidence, weighs it, arrives at a decision. If they tell you that a decision from this commission can be appealed to the Appellate Court or the Supreme Court, that can be done after certain stages of consideration with decisions from other bodies in this state that make decisions. So I'm going to listen to the debate, and I hope I have not left any stone unturned because I'm not trying to mislead you or deceive you as to what it is I'm trying to do. But if anything is unclear, lay it on me. We shouldn't let the session end with a whimper after the passion of Senator "Snicky." Thank you, Mr. President. [LB472]

PRESIDENT SHEEHY: Thank you, Senator Chambers. You've heard the opening to LB472. The floor is now open for discussion. We have Senator Ashford, followed by Senator Carlson. Senator Ashford. [LB472]

SENATOR ASHFORD: I was going to say, Senator Chambers, that the...thank you, Mr.

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President and members...that until you came to the last two sentences about the Court of Appeals and all of that, that you hadn't given a reason that I thought was appropriate, but you did at the end. You caught yourself and were able to...(laugh). Can I ask Senator White a question? Senator White, are you available? [LB472]

PRESIDENT SHEEHY: Senator White, would you yield? [LB472]

SENATOR ASHFORD: I just wanted to see how long it will take for Senator White to yield. No. [LB472]

PRESIDENT SHEEHY: Senator White, would you yield? [LB472]

SENATOR ASHFORD: Do you have a moment? (Laugh) [LB472]

SENATOR WHITE: I think I need to yield just to protect myself, I suspect. Certainly. [LB472]

SENATOR ASHFORD: I notice that...thank you, Senator White...I noticed on the committee statement that you voted...you were the one nay vote on this. Could you explain your reasoning for that? [LB472]

SENATOR WHITE: Well, beyond the fact that Senator Chambers was bringing it? [LB472]

SENATOR ASHFORD: Yes, other than that. (Laugh) I mean, did you have some other reason that...? [LB472]

SENATOR WHITE: Well, certainly. And it was...it's very limited. But it is because I had a case in front of this body, and they wrote an opinion. And I used the opinion in federal litigation in another court, and because they were entitled a judge, I believe that it was given more weight and it was helpful, and that our federal colleagues are more likely to listen to what occurs if we call this particular court a judge. The other thing is that I think lawyers are vain and they all want to be a judge, or many of them do. I'm free from that particular disease, but...and it doesn't cost us anything so we can recruit better quality talent if we call them a judge, and it's a cheap subsidy for the state. That's it. [LB472]

SENATOR ASHFORD: Thanks, Senator White. You've described me to a T. And I was a judge on the Court of Industrial Relations...you may remember that, Senator Chambers...and once a judge, always a judge. The thought of not being a judge anymore or a past judge...does this affect...let me ask you, Senator Chambers, if we change this to commissioner, can I still say that I was a judge or do I have to say I was a commissioner? [LB472]

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SENATOR CHAMBERS: He had to turn on the mike. Senator Ashford, at the time that that false flag was flying over that body, you were incorrectly designated a judge so you are justified in referring to yourself as a former judge. [LB472]

SENATOR ASHFORD: Okay. Thank you, Senator Chambers. That pretty well answers my concern. (Laughter) As long as I can still call myself a judge/senator, you know, when I go around the town and I can say all that of all these things, then I'm okay with this. I do agree with Senator White that the opinions of the Commission of Industrial Relations do have precedential value. They are decided, like other court cases, and they are appealable, as you mentioned at the end of your talk, directly to the Court of Appeals. But I will...I do understand your point and will support your bill, but as long as I can continue to be a judge. Thank you. [LB472]

PRESIDENT SHEEHY: Thank you, Senator Ashford. Senator Carlson, followed by Senator Wightman, then Senator Chambers. Senator Carlson. [LB472]

SENATOR CARLSON: Mr. President and members of the body, I would like to ask Senator Chambers a question. [LB472]

PRESIDENT SHEEHY: Senator Chambers, would you yield? [LB472]

SENATOR CHAMBERS: Yes, I will. [LB472]

SENATOR CARLSON: In the hearing, I guess it's probably evident as to why the Court of Industrial Relations objected to this change, but so did NSEA, and would you comment on their reasoning and perhaps further on the opposition from the Court of Industrial Relations? [LB472]

SENATOR CHAMBERS: I believe, and I stated this at the hearing, that the NSEA objected because I was bringing the bill. They have officially voted to take positions against a piece of legislation that I helped get enacted into law. I pointed out to their lobbyist that this bill has nothing to do with education, it has nothing to do with wages, hours, conditions of labor, and there was nothing that impacted the NSEA whatsoever. He talked for a good while and he may have said things...I wish other members of the committee might try to relate what he said because I don't want it misrepresented. But there was nothing he said that suggested that my changing this bill, this designation as I'm trying to do, would any way impact what NSEA can do before that commission, how their issues will be handled, that it would cause the commissioners not to be as careful as they have ever been. Nothing of substance was stated by their lobbyist other than that they're opposed to the change. The gentleman who spoke for the commission expressed similar ideas to that of Senator White, that they liked being called judges; that there was more in the way of...and I don't want to give a word and misrepresent him, but I'll try to describe what I understood him to say. If he is referred to as a judge,

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then it carries more weight in the minds of the public than if he were called a commissioner. And my response was that he is to do nothing different as a commissioner from what he does as a judge. Since there is a relatively discreet and small group who come before that commission, they will know that it is not changed in any way. And that's the best that I can do in trying to relate to you what that opposition was, in a nutshell. And you know what else comes in a nutshell? A nut. (Laughter) [LB472]

SENATOR CARLSON: Thank you, Senator Chambers. I yield the balance of my time. [LB472]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Wightman. [LB472]

SENATOR WIGHTMAN: Thank you, Mr. President. I have a question that I would like to ask Senator Chambers. [LB472]

PRESIDENT SHEEHY: Senator Chambers, would you yield? [LB472]

SENATOR CHAMBERS: Yes, I will. Ask away, Counsel. And you can refer to me as Your Honor or Your Highness. [LB472]

SENATOR WIGHTMAN: A board or commission that seems to be somewhat similar to this would be the TERC board, the Tax Equalization and Review. Can you tell me what the members of that commission or board are... [LB472]

SENATOR CHAMBERS: The TERC board? Well, I would assume they're called "TERC-eyes." (Laugh) [LB472]

SENATOR WIGHTMAN: Are they called judges? [LB472]

SENATOR CHAMBERS: I really don't know what they are called, but if they are board members that's what they would probably be called. [LB472]

SENATOR WIGHTMAN: Well, the official name of the commission is now the Tax Equalization and Review Commission, so it would be very much like the Industrial Relations Commission. But right off hand you can't give me that? If somebody can, I... [LB472]

SENATOR CHAMBERS: Well, they probably would be called commissioners then. If that's the official designation, they would be called commissioners. [LB472]

SENATOR WIGHTMAN: Well, now I understand that's the official designation of the Industrial Relations Commission, but they're called judges. [LB472]

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SENATOR CHAMBERS: Right, because at first they were called the Court of Industrial Relations. [LB472]

SENATOR WIGHTMAN: I'll yield the rest of my time. [LB472]

PRESIDENT SHEEHY: Senator Chambers. [LB472]

SENATOR CHAMBERS: Are there other lights on, Mr. President? [LB472]

PRESIDENT SHEEHY: No. [LB472]

SENATOR CHAMBERS: Then I will let this serve as my closing. Members of the Legislature, now that this matter has been brought before the body, the vote will determine whether we are going to appropriately designate people as they ought to be designated based on the body of which they are members. There are a lot of people who would like to have other titles. And if I used a different kind of language that's saltier when Senator Wightman asked me what are members of the TERC board called, I could have designated them the way I've heard other people designate them, but I don't use that kind of language anywhere and I certainly wouldn't use it on the floor here, and I don't necessarily share in those designations. But none of those would be official. We are taking an official action this morning. There was a guy who was of my complexion, sitting in a southern court, and this happened some decades ago. And people call us by titles that are high sounding but designed to be insulting: captain, colonel, judge, whatever. So this elderly black gentleman was sitting in the witness box, and the judge leaned over and said, I understand you are called Colonel. And the man swallowed hard because he thought he was going to be insulted by the judge like he is by everybody else, and he dared not show any displeasure although it was rising up in him. The judge said, you are called Colonel? And the man dropped his eyes and said, yes, Your Honor. He said, well, you are too old to have been in a current war, but even at your advanced age you would have been too young to be in that war, so am I to understand that you never served in the military? He said, that's correct, Your Honor. He said, well, considering the fact that you are called Colonel and you never served in the military, what does the designation Colonel mean? And before he could catch himself, the old man said, just what Your Honor means when it's attached to your name: It don't mean nothing. Sometimes people can be pushed to the point where what has been suppressed will come out. Calling these people judges is like calling somebody who never was in the military, Colonel. Maybe these people who called themselves judges, like it. Former Chief Justice of the U.S., Rehnquist, used to wear chevrons on his sleeves to designate some kind of military status, I presume, and no judge had ever done that before. Chief Justice of the Supreme Court was not adequate so he had to have emblems that let people know, I'm a cut above everybody on this court and whoever sat on this court. So if you want these commissioners to be called judges, you

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have the opportunity to let the public know, and then you can explain to them why you are doing it. That's all that I have, Mr. President. All this bill does is designate the members of the Commission of Industrial Relations, commissioners, rather than judges. And we even passed a bill out of committee to give them a raise even though their designation will be commissioners. Thank you, Mr. President. [LB472]

PRESIDENT SHEEHY: Thank you, Senator Chambers. You've heard the closing on LB472. The question is, shall LB472 advance to E&R Initial? All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB472]

CLERK: 34 ayes, 0 nays, Mr. President, on the advancement of LB472. [LB472]

PRESIDENT SHEEHY: LB472 does advance. Next item, Mr. Clerk. [LB472]

CLERK: LB347 is a bill by Senator Mines. (Read title.) The bill was introduced on January 12, referred to the Urban Affairs Committee, advanced to General File. At this time I have no amendments pending, Mr. President. [LB347]

PRESIDENT SHEEHY: Senator Mines, you are recognized to open on LB347. [LB347]

SENATOR MINES: Thank you, Mr. President, colleagues. LB347 will change provisions relating to the giving of bonds by cities and villages. It would amend Sections 11-104; 14-208 and 551; 15-251, 307, 308, 317; and 16-219, 304, 318; as well as 17-604 and 541, which have to do, again, with the bonds required for municipal officials. These are oath of office bonds that certain public officials are required to obtain when taking office, to ensure that they perform faithfully and dutifully in their positions. LB347 changes statute in two ways. First, it authorizes a municipality to provide a blanket bond that would cover all municipal officials. Today's state officials, as well as county officials, are covered by blanket bonds. That's one bond that you purchase to cover all elected officials or appointed officials, as opposed to individual bonds. A blanket bond is intended to allow the governmental agency, again, to purchase one blanket bond to cover all officials and employees. The second change is it allows municipalities to provide equivalent insurance coverage in place of an individual bond for each official. A similar provision was adopted for school boards; I think it was LB380 in 2005. This change allows municipalities that purchase employee dishonesty and fidelity bond insurance to protect against theft and fraud instead of purchasing an official oath of office bond. It will protect municipalities and be able to save money. As an example, during the hearing, the Bellevue city administrator testified that this bill would save Bellevue \$1,000 a year. Again, municipalities are buying blanket bonds today to cover everyone, even those that aren't required to have coverage. And then they are also buying the individual bonds, so they're covering them twice and it's just not necessary. This bill, as the Clerk mentioned, was heard by Urban Affairs. It was voted out by a vote of 7-0, no opposition testimony. Mr. President, I would urge the adoption of LB347.

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Thank you. [LB347]

PRESIDENT SHEEHY: Thank you, Senator Mines. You've heard the opening to LB347. The floor is now open for discussion. Anyone wishing to speak on LB347? Seeing none, Senator Mines, you are recognized to close. Senator Mines waives closing. The question before the body is, shall LB347 advance to E&R Initial? All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB347]

CLERK: 37 ayes, 0 nays, Mr. President, on the advancement of LB347. [LB347]

PRESIDENT SHEEHY: LB347 advances. (Visitors announced.) Next item, Mr. Clerk. [LB347]

CLERK: LB307 is a bill by Senator Stuthman. (Read title.) The bill was introduced on January 11 of this year, referred to the Transportation Committee for public hearing, advanced to General File. There are committee amendments, Mr. President. (AM163, Legislative Journal page 428.) [LB307]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Stuthman, you are recognized to open on LB307. [LB307]

SENATOR STUTHMAN: Lieutenant Governor and members of the body, LB307 amends Section 60-6,356 of state law regarding all-terrain vehicles. This statute prohibits all-terrain vehicles from operating on the highways of this state. Under this section there are currently three exceptions with varying requirements that allow the operation of ATVs on a highway. Section 3 allows ATV highway use for agricultural purposes; Section 4 allows it for parades; and Section 5 allows it for electric utility personnel operating within the scope of their employment. LB307 changes this exception so that it applies to the highways outside the corporate limits of any municipality. The intent of this amendment is to give the cities authority over all-terrain vehicles within the corporate limits of the city. There is a committee amendment so I will end my opening statements and we will turn our focus on the committee amendments. [LB307]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. You've heard the opening to LB307. We'll now move to committee amendments from Transportation and Telecommunications, AM163. Senator Fischer. [LB307]

SENATOR FISCHER: Thank you, Mr. President. The committee amendment, AM163, changes the state's policy towards ATV operation on our highways. There are three statutory exceptions currently in statute, for parades, electric utility personnel, and agricultural use. This amendment does not significantly change the parade or utility personnel exceptions. The amendment does limit the agricultural use exception to

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outside the corporate limits of a municipality. In other words, a person operating an ATV on the highway for agricultural purposes cannot drive into town on that ATV. The amendment does authorize a city or village to permit the use of ATVs on highways within the corporate limits of a city or a village, by ordinance. When the village is unincorporated, it shall be up to the county board, by resolution. Operation of an ATV within the city must comply with the requirements outlined in the current statute, and that is that you have to have a Class O driver's license and drive less than 30 miles per hour, and they can require further restrictions if they see fit. In no case will an ATV be permitted to operate upon a controlled access highway or cross a controlled access highway. Thank you, Mr. President. [LB307]

PRESIDENT SHEEHY: Thank you, Senator Fischer. You've heard the opening of the committee amendment to LB307. The floor is now open for discussion. Anyone wishing to speak on AM163? Senator White. [LB307]

SENATOR WHITE: Yes, Mr. President. Will Senator Stuthman yield for a question, please? [LB307]

PRESIDENT SHEEHY: Senator Stuthman, would you yield? [LB307]

SENATOR STUTHMAN: Yes. [LB307]

SENATOR WHITE: Senator Stuthman, what, if any, provisions are made for insurance coverage should the ATV, while operating on a highway, cause an accident? [LB307]

SENATOR STUTHMAN: Senator White, it is my understanding that the insurance coverage of an ATV is covered under the policy of the farm ownership, the liability policy of the farm operator, the ag purpose, the one that is utilizing the ATV. It would be the same situation as if you were running your tractor and you caused an accident. That part would be under the same insurance, in my opinion, as far as the liability is concerned. [LB307]

SENATOR WHITE: Would you agree to any type of an amendment that would make it clear that an ATV must be covered by such policy in order for it to be lawfully operated on the highways and streets of the state of Nebraska? [LB307]

SENATOR STUTHMAN: I could be supportive of that, but since the ATVs are not currently registered, there's no method of registering them, there's no method of licensing them. The only thing it would be is it would be up to the individual that is the owner of the all-terrain vehicle, that if he wants to have it under his current blanket farm policy for agricultural use, there could be a provision where we could put in there that it be covered by insurance. I don't know...and maybe I could ask. I could make the comment as to I don't know who would be the one that would police this, that the ATVs

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have insurance. That is my only concern as to who is going to be the one that polices it. [LB307]

SENATOR WHITE: Do you agree that the policy, sir, that we should have, whether it's a tractor or an ATV on the public highways, should be covered by some type of insurance? [LB307]

SENATOR STUTHMAN: Yes, I truly agree with that. I think there should be some type of a blanket coverage of liability on equipment owned for agricultural purposes. This is what we have. You have your liability policy, you know, millions of dollars, and that's when you operate your tractor on a highway or anywhere, that you have coverage on that equipment. [LB307]

SENATOR WHITE: Were those issues considered at all by the committee on insurance and how we might assure that these vehicles are, in fact, insured before they're on the highways? [LB307]

SENATOR STUTHMAN: Senator White, I can't...I don't recall that we realistically talked about the insurance part of it. If we did, we talked about it only in the fact of how are you going to police it since they're not a registered vehicle that's registered and having a document in the courthouse. You know, they do have a certificate of title for these all-terrain vehicles. But in my instance, they're covered underneath my blanket farm policy and they're identified on that blanket farm policy. So I don't know, and I maybe could relate...maybe you could address that question to Senator Fischer also, but I do not think we addressed the fact of the insurance part of it. [LB307]

SENATOR WHITE: Thank you for your courtesy. I yield the rest of my time, Mr. President. [LB307]

PRESIDENT SHEEHY: Thank you, Senator White. Senator Wallman. [LB307]

SENATOR WALLMAN: Thank you, Mr. President and members of the body. In regards to your question about insurance, Senator White, my insurance has to have a writer on it, on my farm policy. It has a writer for ATVs or all-terrain, or motorcycles if I'm using them off the road. So my insurance company, you have to have a writer. And I yield the rest of my time. Thank you. [LB307]

PRESIDENT SHEEHY: Thank you, Senator Wallman. Further discussion on the committee amendment to LB307. Senator Stuthman. [LB307]

SENATOR STUTHMAN: Thank you, Lieutenant Governor. I just would like to discuss a little bit more of some of the things that happened, why we came up with this bill. In the situations of who has the jurisdictions over all-terrain vehicles in some of these

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communities, some of the towns, you know, who has the jurisdiction. Yes, they are used hopefully for ag purposes, but how can you prove that they're for ag purposes? And I think since we adopted this amendment, I think it identifies who has the jurisdiction over them. Hopefully, you know, that under that jurisdiction they may will allow that, but I think it gives the people, the law enforcement, it gives them a direction as to who is in control and who has the jurisdiction in certain parts of the county. I'll give the balance of my time back to the Chair. [LB307]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Flood, followed by Senator Mines. Senator Flood. [LB307]

SPEAKER FLOOD: Thank you, Mr. President and members. I guess I just agree with the bill. I see which direction it's going. My question is this: We have some offenders that are prohibited from driving a motor vehicle because they've been convicted of drunk driving, whether on their first, second, or third offense. And I know one of the problems in rural areas is that a very creative offender will get on their ATV and drive down the highway to avoid operating a motor vehicle. And I know that some sheriffs have expressed a concern that they can't make an arrest if the individual is intoxicated, driving their ATV. Now this may seem kind of far-fetched, but this very issue was presented to me some time ago. I guess I would defer to Senator Stuthman or Senator Fischer or maybe the Transportation Committee counsel to better understand if there is anything we can do to make sure that we tighten up our regulations in our statutes so that people that shouldn't be operating a motorized vehicle can't use an ATV. And maybe the law is clear enough that we could still make an arrest of an offender for drunk driving on an ATV, but sometimes in rural areas they'll drive the tractor to the bar or they'll drive the ATV to the bar. This may give us a chance to address that situation. So would Senator Stuthman yield to maybe answer this question? [LB307]

PRESIDENT SHEEHY: Senator Stuthman, would you yield to respond? [LB307]

SENATOR STUTHMAN: Yes. Senator Flood, you know, I really respect the comments that you have because this situation has arisen, but I don't know whether we can really differentiate between an all-terrain vehicle or a four-wheel-drive tractor or a lawn mower or a horse if they ride their horse to town. And this situation has happened in my area where the individual was without a license and he rode his horse to town. Now, I don't know how we can put something in this statute that deals with that. You know, it is a problem. But I don't know how we can address that to take care of all of those situations. [LB307]

SPEAKER FLOOD: Well, I guess I would just ask this question, and I know that it may seem far-fetched that we are having this discussion. But when you live in a rural area and someone has lost their license for 15 years, and he or she wants to go to the bar, they use creative transportation to get there. And I think that if you operate an ATV

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while intoxicated, a lawn mower, or a golf cart, and you are on a public road or highway, we need to make sure that you can also be charged with drunk driving. So I guess I would just ask for your indulgence as we get towards Select File on this bill. Maybe we could deal with it as an amendment on Select if there is something we could do. [LB307]

SENATOR STUTHMAN: Yes, Senator Flood, I would be very receptive to that, that maybe we should try to put something in for that. But if we're going to have something with the driving while under the influence or something like that, maybe we should have riding while under the influence also, so. But that could be added into it and I would be very receptive to that. Thank you. [LB307]

PRESIDENT SHEEHY: Thank you, Senator Flood, Senator Stuthman. Senator Mines. [LB307]

SENATOR MINES: Thank you, Mr. President, colleagues. I was on the Transportation Committee; we heard this bill. And my opinion is all-terrain vehicles shouldn't be allowed on any roadway anywhere, and that's not a popular view with Senator Stuthman or other members that think that they should be. But I voted to send this bill out of committee because it actually tightens up the standards and identifies where all-terrain vehicles can be regulated. Municipalities can each decide if they want all-terrain vehicles to use their roadways. Controlled access highways are identified. So I'm in support of the bill and the committee amendment only because it tightens up what we have. Now, if we also had an amendment to eliminate all-terrain vehicles on all roadways, I would vote for that first, but this is better than we have today. And maybe ideas by Senator Flood and Senator Stuthman on drunk riding will enter into the discussion. But I voted to send this out of committee. It's an improvement on current statute. It's not the best solution but it's a better solution than what we have today. Thank you, Mr. President. [LB307]

PRESIDENT SHEEHY: Thank you, Senator Mines. Senator Karpisek. [LB307]

SENATOR KARPISEK: Thank you, Mr. President and body. Would Senator Stuthman yield? [LB307]

PRESIDENT SHEEHY: Senator Stuthman, would you yield? [LB307]

SENATOR STUTHMAN: Yes. [LB307]

SENATOR KARPISEK: Thank you, Senator Stuthman. My concern is the safety aspect. Do these all-terrain vehicles need to have...I see in the bill, headlights, taillights. How about blinkers, that sort of thing? [LB307]

SENATOR STUTHMAN: Senator Karpisek, I think the majority of the new ones do have

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blinkers, brake lights; they do have that. I know some of the older ones don't have. But in the statute it has that it has to have that 5-foot pole with the flag on, which you have to have anyway. And I think with the newer ones, they do have a lot of that. I know some of our new ones that we have, have the blinkers. That they do. In my opinion, they're just like a small automobile without a cab on it. [LB307]

SENATOR KARPISEK: And how fast will these travel down the highway? Do you know? [LB307]

SENATOR STUTHMAN: According to this statute here, we really can't go over 30 miles an hour. [LB307]

SENATOR KARPISEK: So my concern is a 60-mile-an-hour semi coming up on a 30-mile-an-hour ATV, and what happens? [LB307]

SENATOR STUTHMAN: Well,... [LB307]

SENATOR KARPISEK: I think we know what happens. (Laugh) [LB307]

SENATOR STUTHMAN: I think as an individual travels down the road, a lot of times something comes up upon a person a lot faster. But I think that's where the flag is, should be on. Lights are to be on all the time. But, you know, an ATV and some of these ATVs are a small thing, and I have a concern with that also. But are you...maybe we should have it so that they don't go over speed limit, but I don't know whether you can control them at 70 or 65. [LB307]

SENATOR KARPISEK: I know I understand where you are trying to get with this, and I agree that in the rural places it's very nice to have your 4-wheeler to be able to carry things. We've just had a lot of trouble in towns, back in Wilber, of people supposedly going to check crops, and of course they weren't. But just a safety issue, because if there's not something in here for blinkers, that sort of thing, so then how can you mandate that a car or anything else needs blinkers if you let them out from under that? [LB307]

SENATOR STUTHMAN: Senator Karpisek, there is, in the bill, in the amendment, and that was in the original bill as to what an all-terrain vehicle has to have as far as lights, lights on, brake lights, the flag, things like that. The realistic thing that we're trying to do is make sure that in an area there is jurisdiction over the control of the all-terrain vehicles. And that's the main idea behind this bill. So in a community like yours, a smaller community like that, that village board has the jurisdiction. Maybe they will outlaw them totally in the town or maybe they will just for ag purposes yet or just for something else. And I think that's what we're trying to do. [LB307]

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SENATOR KARPISEK: And I did see that and I do appreciate that. I think that's a great part of the bill, to let the city board deal with that. I guess I don't know how I feel about the bill yet. I am concerned about safety and just the use of it that isn't under this bill, but they'll get out from under it. I did want to comment that I think the horse doesn't have a motor, so that's why you can do that unless it's one horsepower. (Laughter) Thank you, Mr. President. [LB307]

PRESIDENT SHEEHY: Thank you, Senator Karpisek. (Visitors announced.) Senator Fulton. [LB307]

SENATOR FULTON: Thank you, Mr. President. Would Senator Stuthman yield to a question? [LB307]

PRESIDENT SHEEHY: Senator Stuthman, would you yield? [LB307]

SENATOR STUTHMAN: Yes. [LB307]

SENATOR FULTON: Okay, I just want to be...I've heard some interesting commentary back and forth, and I want to be sure that I understand what this bill does. Presently, the statute reads, "An all-terrain vehicle may be operated on a highway when such operation occurs only between the hours of sunrise and sunset and such operation is incidental to the vehicle's use for agricultural purposes." It's how it reads now. This bill would introduce the following language such that it would read, "An all-terrain vehicle may be operated on a highway outside of the corporate limits of a municipality..." So to clarify, Senator Stuthman, my question is this, basically there really isn't any change for areas outside a municipality, isn't that correct? [LB307]

SENATOR STUTHMAN: That is correct. There is really no change outside of the municipality. That it's the same as it was originally with the ag exemption, with the utility exemption in that part of it. Then there is the portion in there that has for the parades and the other one, and that's in the municipality. [LB307]

SENATOR FULTON: Okay. That's all I need. I will yield the rest of my time. [LB307]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Further discussion on AM163? Seeing none, Senator Fischer, you are recognized to close. [LB307]

SENATOR FISCHER: Thank you, Mr. President. If you look at subsection (3) of the amendment, that outlines the requirements of operation on a highway as they currently exist in statute. And that includes the operation of the ATV during the day. You have to have a valid Class O license or farm permit. You can only travel at a speed of 30 miles per hour or less with a headlight and taillight on and a safety flag. Those are the requirements that are currently in statute. None of that changes under this amendment

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that becomes the bill. I think we had some questions on that. In regard to Senator Flood's concerns about driving while intoxicated on an ATV, as Committee Chair I would be willing to look at the possibility of addressing that concern on Select File if we can do that. One obstacle that we have in that is that I think ATVs might require a registration at that time in order for us to address that. If we go to requiring registrations for ATVs, they could be considered motor vehicles. That could be a problem in the future too. Once they're considered motor vehicles they could be considered as having free rein on the highways, which is why we did not look into that. Please remember that this amendment, the bill does not change anything in regard to how those ATVs already operate on our highways. It does, as Senator Mines said, and I think he clarified this very well for the body, it tightens up the law in regard to ATVs. It gives the cities the ability to regulate ATV use within their corporate city limits. There would not be the ag exemption then, if a city so chose that they would limit that and not allow it within their city limits. Some communities, some counties in this state, I happen to represent at least one, in Tryon, Nebraska, that's an unincorporated city. There are no incorporated cities in McPherson County, and that is why we have in the bill that the county board can pass a resolution to deal with how ATVs are handled in an unincorporated city or village. I hope that addresses concerns and answers some misunderstanding that we had during the debate on the bill. I would urge you to advance the committee amendment. Thank you. [LB307]

PRESIDENT SHEEHY: Thank you, Senator Fischer. You've heard the closing to AM163. The question before the body is, shall AM163 be adopted to LB307? All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB307]

ASSISTANT CLERK: 32 ayes, 0 nays, on the adoption of committee amendments, Mr. President. [LB307]

PRESIDENT SHEEHY: The committee amendment is adopted. The floor is now open for discussion on LB307. Anyone wishing to speak on LB307? Senator Stuthman, you are recognized to close. [LB307]

SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. First of all, I want to thank everyone that got involved in the discussion; I really appreciate that. And the insurance issue that was brought up by Senator White, I think we need to take a look at that also. Maybe in the future we can get something that would make sure that this could happen. So I think we have made the bill a lot better with the amendment as far as the jurisdiction, and that was the main intent of this bill as to who has jurisdiction over all-terrain vehicles in certain areas. So with that I ask for your support. [LB307]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. You've heard the closing to

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LB307. The question before the body is, shall LB307 advance to E&R Initial? All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB307]

ASSISTANT CLERK: 34 ayes, 0 nays, on the motion to advance the bill, Mr. President. [LB307]

PRESIDENT SHEEHY: LB307 does advance. Mr. Clerk, do you have reports or announcements on your desk? [LB307]

ASSISTANT CLERK: Mr. President, I do. I have a notice of hearing: a time change from the Retirement Systems Committee; notice of committee hearing from Business and Labor--several notices from Business and Labor, Mr. President; the Committee on General Affairs reports LB441 advanced to General File, and LB470 advanced to General File. (Legislative Journal page 457.) [LB470 LB441]

A series of name adds: Senator Dwite Pedersen to LB220, Senator Engel to LB304, Senator Dwite Pedersen to LB384. (Also AM59 on LB211, Legislative Journal page 458.) [LB220 LB304 LB384 LB211]

Mr. President, priority motion. Senator Wallman would move to adjourn until Monday, February 5, 2007, at 10:00 a.m.

PRESIDENT SHEEHY: There is a motion by Senator Wallman to adjourn until Monday, February 5, 2007, at 10 a.m. All those in favor say aye. Opposed nay. We're adjourned.