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Floor Debate
February 23, 2007

[LB12 LB12A LB83 LB124 LB145 LB166 LB211A LB211 LB239 LB255 LB271 LB296
LB389 LB390 LB464 LB470A LB470 LB471 LB505 LB527 LB568 LB573 LR38]

PRESIDENT SHEEHY: Good morning. Welcome to the George W. Norris Legislative Chamber for the thirty-fourth day of the One Hundredth Legislature, First Session. Our chaplain for today is Senator Carlson. Would you all please rise. []

SENATOR CARLSON: (Prayer offered.) []

PRESIDENT SHEEHY: Thank you, Senator Carlson. I call to order the thirty-fourth day of the One Hundredth Legislature, First Session. Senators, please record your presence by roll call. Please record, Mr. Clerk. []

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

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Corrections for the Journal? []

CLERK: I have no corrections, Mr. President. []

PRESIDENT SHEEHY: Messages, reports, or announcements? []

CLERK: Enrollment and Review reports LB166, LB211, LB211A, LB527 as correctly engrossed. Senator Johnson, an amendment to LB296 to be printed. Mr. President, I have a new resolution, LR38 by Senator Fischer. That will be laid over. Lobby report for this week to be inserted in the Legislative Journal. And the reports...two reports received in the Clerk's Office, on file, available for member review. An announcement, Mr. President. Natural Resources will meet in Executive Session at 1:15 in Room 1525; Natural Resources, 1:15 today. That's all that I have. (Legislative Journal pages 647-649.) [LB166 LB211 LB211A LB527 LB296 LR38]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We'll move to the legislative confirmation reports. First report. []

CLERK: Mr. President, Government, Military and Veterans Affairs reports on the appointments of Keith Hansen and Larry Johnson to the State Emergency Response Commission. (Legislative Journal page 611.) []

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Aguilar, you're recognized to speak on the Government, Military and Veterans Affairs Committee journal...report. []

SENATOR AGUILAR: Thank you, Mr. President, members. I'm going to report today on two hearings we had for the Emergency Response Commission. They are Keith Hansen and Larry Johnson. They both have been involved in areas of public health, as well as

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bioterrorism, and seem like very qualified individuals. They both came to the hearing and testified and answered questions for the committee. And we approve of them, and request that the body receive this record and approve them as well. Thank you. []

PRESIDENT SHEEHY: Thank you, Senator Aguilar. We would ask if senators could minimize or lower their discussions on their sidebars. Thank you. You've heard the opening to the confirmation report from the Government, Military and Veterans Affairs. Senator Pahls. []

SENATOR PAHLS: Mr. President, members of the body, I do...would like to say something about Larry Johnson. I've known this individual for a number of years, and if we had more people like him in the state of Nebraska, we would be a much better state. Thank you. []

PRESIDENT SHEEHY: Thank you, Senator Pahls. Further discussion on the confirmation report? Seeing none, Senator Aguilar, you're recognized to close. Senator Aguilar waives closing. The question before the body is, shall the legislative confirmation report from Government, Military and Veterans Affairs be adopted? All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. []

CLERK: (Record vote, Legislative Journal page 650.) 32 ayes, 0 nays, Mr. President, on the adoption of the confirmation report, []

PRESIDENT SHEEHY: The confirmation report is adopted. Next confirmation report. []

CLERK: Mr. President, the first of two reports offered by the Education Committee. Senator Raikes, I have the report with the appointment of Mr. Tom Baker to the Board of Educational Lands and Funds. (Legislative Journal page 629.) []

PRESIDENT SHEEHY: Senator Raikes, you're recognized to open on your first report. []

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. The Education Committee encourages your confirmation of the appointment of Tom Baker to the Board of Educational Lands and Funds. Former Senator Baker is a new appointee to the board. As most of you know, he just finished his service in the Legislature. In the way of background, Senator Baker served in the Legislature from 1998 through 2006. He resides in Trenton, which is in southwest Nebraska. He works as the president of the Baker Corporation, which is involved in agriculture, as well as a truck stop operation. Senator Baker earned a bachelor's degree in agronomy from the University of Nebraska-Lincoln in 1971. He served as chair of the Nebraska Oil and Gas Conservation Commission, the Trenton Public School Board, and the Trenton

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Ambulance Service, as well as the Legislature's Transportation and Telecommunications Committee. He has also served on the Nebraska Agricultural Leadership Board. I remind you that the Board of Educational Lands and Funds is charged with the constitutional duty of managing the state's educational trust lands. Right now, the landholdings consist of around 1.34 million acres, valued at \$517.4 million. The agricultural rent on these acres, effective January 1 of this year, is expected to bring in approximately \$22 million. The revenue derived from agricultural and mineral leases is used to support K-12 education across the state. The board consists of five members, one from each of the state's four congressional districts that existed on January 1, 1961, and one member at large. With that, I'll close, and encourage your support for the confirmation of this appointment. Thank you. []

PRESIDENT SHEEHY: Thank you, Senator Raikes. You've heard the opening for the first report from the Education Committee. The floor is now open for discussion. Senator Raikes, no one is wishing to speak. You're recognized to close. Senator Raikes waives closing. The question before the body is, shall the legislative confirmation report from the Education Committee be adopted? All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. []

CLERK: (Record vote, Legislative Journal pages 650-651.) 33 ayes, 0 nays, Mr. President, on the adoption of the confirmation report. []

PRESIDENT SHEEHY: The confirmation report is adopted. Next item, Mr. Clerk. []

CLERK: Mr. President, second report from the Education Committee, involving the appointment of Mr. Richard Uhing. (Legislative Journal page 629.) []

PRESIDENT SHEEHY: Senator Raikes, you're recognized to open on your second report. []

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. Again, the Education Committee encourages your support for the confirmation of the appointment of Richard Uhing to the Coordinating Commission for Postsecondary Education. Mr. Uhing is a new appointment to the commission. If confirmed, his service on the commission would run through the end of this year. Mr. Uhing is from Norfolk, where he is president of Norfolk Beverage. He's been an employee of Norfolk Beverage Company since 1982. He has earned an associate's degree from the Northeast Community College, a bachelor's degree from Chadron State College, and an MBA from Wayne State College. He is also a 2004 graduate of the owners, presidents, and managers executive education program at the Harvard Business School. He has served on the National Beer Wholesalers board of directors, the Norfolk Chamber of Commerce, Leadership Norfolk, and the Norfolk Noon Rotary. The Coordinating Commission is the constitutional entity charged with the responsibility of coordinating the state's higher

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education system. The three general duties of the commission are, one, develop an ongoing, comprehensive statewide plan for the operation of an educationally and economically sound system of postsecondary education; two, identify and enact policies to meet the educational, research, and public service needs of the state; and three, effect the best use of available resources through the elimination of unnecessary duplication of programs and facilities among Nebraska's public institutions. The Coordinating Commission consists of 11 members; 6 of the members are chosen from evenly populated districts across the state, with the other 5 members being selected from the state at large. With that, I'll enclose...or, close, and encourage your support for the confirmation of this appointment. Thank you. []

PRESIDENT SHEEHY: Thank you, Senator Raikes. You've heard the opening to the second report from the Education Committee. The floor is now open for discussion. Anyone wishing to speak on this report? Seeing none, Senator Raikes, you're recognized to close. Senator Raikes waives closing. The question before the body is, shall legislative confirmation report from the Education Committee, second report, be adopted? All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. []

CLERK: (Record vote, Legislative Journal page 651.) 35 ayes, 0 nays, Mr. President, on the adoption of the confirmation report. []

PRESIDENT SHEEHY: The confirmation report is adopted. Next confirmation report. []

CLERK: Mr. President, Retirement Systems offers a report involving two appointments to the Public Employees Retirement Board. (Legislative Journal page 629.) []

PRESIDENT SHEEHY: Senator Synowiecki, you're recognized to open on Nebraska Retirement Systems' confirmation report. []

SENATOR SYNOWIECKI: Thank you, Mr. Lieutenant Governor, members. The Nebraska Retirement Systems Committee recently held confirmation hearings on February 21 for the position of the director of the Nebraska Retirement Systems, and an appointment to the Nebraska Public Employees Retirement Board. The first confirnee, Mrs. Phyllis Chambers, was selected by the Nebraska Public Employees Retirement Board to serve as the director of the Nebraska Retirement Systems. Mrs. Chambers has held various executive positions since 1986, including CEO of the Cornhusker Better Business Bureau, and as a state coordinator for Hartford Life Insurance Company. In addition, she has served honorably as an elected official on the Lincoln Airport Authority since 1995. Mrs. Chambers holds a bachelor's degree and an MBA from the University of Nebraska in Lincoln. Mrs. Chambers will bring much needed change to the Retirement Systems. She is committed to opening lines of communication with the Legislature, and within the retirement system. The Retirement Committee

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unanimously voted to move Mrs. Chambers' appointment to the Legislature for confirmation. I would ask for your support in confirming this appointment. The next confirmee recommended by the Retirement Committee is former state senator Don Pederson. He has been appointed by the Governor to serve a five-year term on the Public Employees Retirement Board. The Public Employees Retirement Board, or PERB, oversees the administration of the five public employees retirement plans, which include school employees, State Patrol employees, judges, and state and county employees. Mr. Pederson is an attorney who honorably served ten years in the Nebraska Legislature, including two as the Chairman of the Appropriations Committee. He also served on the Retirement Committee, and was instrumental in identifying and taking corrective action to remedy problems in efficiencies in the Retirement Systems administration. His appointment, as well, was unanimously approved by the Retirement Committee. We appreciate former Senator Pederson's commitment to public service, and ask for your support in his confirmation to the Public Employees Retirement Board. Thank you. []

PRESIDENT SHEEHY: Thank you, Senator Synowiecki. You've heard the opening to the legislative confirmation report of the Nebraska Retirement Systems Committee. The floor is now open for discussion. Senator Chambers. []

SENATOR CHAMBERS: Mr. President, members of the Legislature, although the name "Mrs. Chambers" was mentioned prominently, Mr. Chambers is here to tell you that there is no connection whatsoever. But I nevertheless am going to vote for this confirmation. Thank you. []

PRESIDENT SHEEHY: Thank you, Senator Chambers. Anyone else wishing to speak on this report? Seeing none, Senator Synowiecki, you're recognized to close. Senator Synowiecki waives closing. The question before the body is, shall the legislative confirmation report from the Nebraska Retirement Systems be adopted? All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. []

CLERK: (Record vote, Legislative Journal page 652.) 30 ayes, 0 nays, Mr. President, on adoption of the confirmation report. []

PRESIDENT SHEEHY: The confirmation report is adopted. (Visitors and doctor of the day introduced.) We'll now move to first item under General File, Mr. Clerk. []

CLERK: Mr. President, LB470 is a bill introduced by Senator Chambers. (Read title.) Introduced January 17, referred to the Judiciary Committee, advanced to General File. Yesterday, the...Senator Chambers presented the bill, Mr. President. I have no amendments pending at this time. [LB470]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Chambers, yesterday you

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provided opening to LB470. At this time, would you like to take a couple moments and provide a summary of where we are? [LB470]

SENATOR CHAMBERS: Yes. Thank you, Mr. President. Members of the Legislature, this is a bill that was drafted in conjunction with the city prosecutor of Omaha, because many cases arise where an individual has a notation of arrest for which no conviction occurred, the charges may have been dropped, no hearings, whatever. It deals only with innocent people. So what this bill will do is to, in a tiered system, require that the names of those people be dropped off that list which would be available to the public. However, their name would remain in the records of the courts and law enforcement. It would just cease to be a public record. And I think that makes it clear then. I can answer further questions, Mr. Speaker, as people call on me. [LB470]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Friend. [LB470]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. (Laugh) That's a little inside joke. I was officially...unofficially reprimanded yesterday for missing the memo. It was a good memo, too, by the way. Members of the Legislature, I kicked this around and went through some stuff last night in regard to LB470. And Senator, what I tried to do yesterday at the very end, and probably not very well or very eloquently, because I don't think that I was ready, was to lay out a scenario that we have a public policy argument here, or a...maybe not even argument, a discussion, and then later we have some fiscal concerns. And let's partition that and set those fiscal concerns aside for now, because I think that's appropriate, and the physical nature of what we're dealing with forces us to do that. But I will...I'm not going to go too in-depth here, and this certainly isn't something that's on a...you know, a rule of 33, or it's one of those type of things that we like to call suspect or questionable public policy, I don't think. But what I'd like to point out is that there are still plenty of questions and public policy decisions that are this large, or have this type of magnitude. And I'm not going to put words in his mouth, but I think Senator Chambers would agree with that. And I'm going to engage him in some...hopefully, a little dialogue here later on, to get a better feel for what we're dealing with. But one of the things that I found yesterday, to me, that may have been a little bit...I don't even know if it's troubling, but raised, I guess...raised my eyebrows a bit, was the tiered system that Senator Chambers described for us. And let me, just so we have it on the record...and I know...I don't want to spoon-feed stuff that we have in front of us, but I wanted to get this on the record so that maybe folks at home and everybody else can understand exactly what we're trying to accomplish here. On page 3 of the bill, in subsection (a), and I believe it's Section 2...no, it's all part of one section, pardon me. On page 3, subsection (a), it reads, "In the case of an arrest for which no charges are filed as a result of the determination of the prosecuting attorney, the arrest shall not be part of the public record after one year." Okay, (b),...from the date of the arrest. "(b) In the case of an arrest for which charges are not filed as a result of a completed diversion, the arrest shall not be part of the public record after two years from

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the date of arrest," hence the tiered system that Senator Chambers was talking about. Then we go to (c), subsection (c). "In the case of an arrest for which charges are filed, but dismissed by the court on motion of the prosecuting attorney or as a result of a hearing" etcetera, etcetera, that stuff should not be part of the public record after three years. And I guess what I wanted to point out, in our statutes, Section 29-3601, the only thing I think that was somewhat troubling to me, or a concern, like I said,... [LB470]

PRESIDENT SHEEHY: One minute. [LB470]

SENATOR FRIEND: ...was in Section 29-3603, a pretrial diversion plan for criminal offenses, and requirements thereof...or, therein, a pretrial diversion plan for criminal offenses shall include, but not be limited to, and then it gives you seven more or less bullet points of the things that the prosecuting attorneys will have to look at. I was very concerned before I read this last night, because it was my assumption that a diversion...that for a prosecuting attorney to slide an adult into a diversion program would require that that person, that adult, raise their hand and said, I am guilty, so slide me over into this diversion program. That's not the case, according to this...according to our statutes. So that made me feel a little bit better. But I wanted to continue here, and I've got my light pressed,... [LB470]

PRESIDENT SHEEHY: Time, Senator. [LB470]

SENATOR FRIEND: Thank you, Mr. President. [LB470]

PRESIDENT SHEEHY: We have Senator Fulton, followed by Senator Chambers, Senator Wallman. Senator Fulton. [LB470]

SENATOR FULTON: Thank you, Mr. President, members of the body. There are a couple of questions that I would like to ask. I wonder if Senator Chambers would yield to a question. [LB470]

PRESIDENT SHEEHY: Senator Chambers, would you yield? [LB470]

SENATOR CHAMBERS: Yes, I will. [LB470]

SENATOR FULTON: Number one, if you could take a minute or so and, you know, describe your opinion of the fiscal note? The first thing that caused me hesitancy when reading through the bill was the fiscal note. And I understand that you might have some further opinion to offer on that fiscal note. If you could take a minute to address that, I would appreciate it, and I think the body would, also. [LB470]

SENATOR CHAMBERS: Well, Senator Fulton, I've discussed that with a number of senators, including the Speaker, and I'm not going to push for that fiscal note to be

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accepted. That figure was given by a software company that said it will put together a program of this kind. So I'm not satisfied that there's going to be any significant additional cost, because Omaha, which helped originate this bill, pointed out that it is no extra cost involved for them. So that fiscal note may be discarded, as far as I'm concerned. [LB470]

SENATOR FULTON: Okay, thank you. The second question I have, I'm going to go to the green copy of the bill, page 2. And I'm just going to...I'm going to read through this. As I read through this the other night, it occurred to me that there are a couple of words which may be problematic, and it would be...I think it would elucidate my thinking here, and I'm going to give you that opportunity. I'm going to read through, assuming the original bill, without...the original law without the provisions of this bill. Line 3: "That part of criminal history record information consisting of a notation of an arrest, when after an interval of one year active prosecution is neither completed nor pending, shall not be disseminated to persons other than criminal justice agencies except when the subject of the record"...and then we go on into the exemptions. It seems to me that "when after an interval of one year active prosecution is neither completed nor pending," then the same object...or, the intention of your bill would still be met. And so I only assume, then, that there is a problem presented with the words "active prosecution." And I notice that you had that in the summary. Could you explain a little bit more your concerns with the term "active prosecution," and why therefore it's necessary to have this bill? [LB470]

SENATOR CHAMBERS: Yes. That's a very good question, and that goes to the heart of it, Senator Fulton. As I've said, the city prosecutor came to me because we both had been approached by people facing this problem. He pointed out that the term "one year of active prosecution" is ambiguous, and it doesn't mean the same throughout the state, and sometimes to individual attorneys within an office. So to get rid of that ambiguity, since it's not clear what it means in terms of active prosecution, it would be better to give specific time frames when each one of these issues that would be involved would result in dropping that person's name. [LB470]

SENATOR FULTON: Then would it be accurate to say that if the terms...if the words "active prosecution" had a consistent relevance across the state, then there wouldn't be a need for this bill? [LB470]

SENATOR CHAMBERS: That's true, because everywhere the same standard would be applied. But to define "active prosecution" is virtually impossible. [LB470]

SENATOR FULTON: Okay. Thank you, Senator Chambers. Thank you to the Chair. [LB470]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Senator Chambers. [LB470]

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SENATOR CHAMBERS: Mr. President, Senator Fulton stole my thunder. I didn't say it while he was asking me the question, but that was the first thing I was going to launch into an explanation of, because it explains why we need a bill such as this. But it also points out why that fiscal note is outrageous, and I think unnecessary, because in the instances where somebody in a given area might decide that active prosecution is not occurring or will not occur, these names are dropped. But the circumstances differ. So this bill is designed to do away with the ambiguity. What...the way this usually comes up is that a person will have had an arrest many, many years prior. The idea of background searches is of relatively recent vintage. So a person may even have gotten a job, despite the fact that if a background search had been made, this notation of arrest would have popped up. And it could be one of those situations defined in...or, described in this bill, where there were no charges ever filed, that the prosecutor wanted the charges dismissed, or any of the other sets of circumstances herein. That was not done or even attempted to be done, because the person assumed, since I didn't go to trial, I was not convicted, my record is clean. So many years down the line, including today, when a background check is made, that pops up, and all of a sudden that person is not allowed to have the job. This that I've described is the usual situation that will call this fact to somebody's attention. They are caught in this web. A guilty person, meaning one tried, convicted, and sentenced, will have means provided within the law to expunge the record, to have something set aside, can even get a pardon. But if you're innocent, you cannot seek a pardon, because you were not convicted of anything; there's nothing to pardon. There is no procedure or process in the law to allow an innocent person to have this notation of arrest dropped from the public record. It will still be available to the courts and to the police agencies, because as Mr. Conboy, the city prosecutor, wrote to me, it will not affect the courts or law enforcement, and should not result in additional cost, since all records are now kept separately for other reasons. The public record is already different from the record kept by law enforcement. This law would not constitute an unfunded mandate, but rather, another change in the existing method of populating the two current record systems. It is surprising how many innocent people are unknowingly affected by a record entry they may not even realize exists. It is even more surprising when they learn that while convicted people have several methods of clearing their record, those arrested but not convicted face a permanent entry. Then he thanked me for undertaking this effort. So I hope that at least will give you the rationale for the bill. And any specific questions you have, I will answer them. But with reference to the three tiers, the reason there is a different time period is because during our discussions, Mr. Conboy and I wanted to be sure that each one of these categories will have run its course, and that there in fact will not be any charges filed,... [LB470]

PRESIDENT SHEEHY: One minute. [LB470]

SENATOR CHAMBERS: ...that a person, in fact, will have successfully completed a diversion plan, or, if charges had been filed, but inappropriately, within a three-year period, everything would have run its course, and that would then be taken care of. But

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in every case, the person is innocent in the face and eyes of the law. Thank you, Mr. President. [LB470]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Wallman, followed by Senator Friend, Senator Ashford, and others. Senator Wallman. [LB470]

SENATOR WALLMAN: Thank you, Mr. President. And we have to appreciate this bill that Senator Chambers brought, LB470, because there's a police officer in this city that was going to apply for a job somewhere else, and he was turned down because of a background check. And he was convicted of something, but it was a misspelled word, and so he was innocent, but they still left it on the record, so he couldn't get this other job. The Lincoln Police hired him back. But I think it's very important that we protect the innocent here. And three years is plenty long time for us to check things out, I think, as a police department. And as Senator Chambers has worked with the police department on this, I think it should be a good bill for us to consider and support. I myself would definitely support this bill. And if Senator Chambers would like a little extra time to talk, I yield my time to him. [LB470]

PRESIDENT SHEEHY: Senator Chambers, you've had time yielded, about four minutes. [LB470]

SENATOR CHAMBERS: Thank you, Senator Wallman, thank you, Mr. President, but I've explained it as clearly as I'm able to do, so I don't need additional time. But I will answer any questions that anybody wants to ask me. I'm trying to avoid being redundant, and I don't know what else I would say. Thank you. [LB470]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Friend. [LB470]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. To me--and it doesn't seem like it is to others--this is complicated subject matter, okay? And I don't think that we can take enough time to deal with the changes that we're going to make here. I'm not saying--and I have a tendency to do this all the time--I'm not saying I don't agree with LB470, the principles of LB470. What I'm saying is that I'm trying to figure it out, what it's going to do to employers, what it's going to do to citizens out there that are depending, if you will, on information to make value judgments in regard to the folks that have been arrested in those particular situations. Now, look, I was wondering briefly if Senator Pirsch could maybe enlighten me on a couple of points. Mr. President, if Senator Pirsch would yield? [LB470]

PRESIDENT SHEEHY: Senator Pirsch, would you yield? [LB470]

SENATOR PIRSCH: I'd be happy to. [LB470]

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SENATOR FRIEND: Thank you, Mr. President. Thank you, Senator Pirsch. Senator Pirsch, can you...I know this is not a quick explanation. Can you give me some...what I laid out the first time we were talking is, in Section 29-3603, it lays out some of the requirements in regard to a pretrial diversion. Section 2...or, excuse me, subsection (b) of Senator Chambers' bill talks about a completed diversion, and then you're removing from the public record information about that arrest and that person. What...can you give me, I guess as brief as possible, a rundown of some of the types of crimes and the instances that an adult would be moved into a pretrial diversion program? [LB470]

SENATOR PIRSCH: Sure. Sure. Really, diversion occurs in one of two ways, in Douglas County, in which I prosecuted, and I would imagine through the state. There are pre...and the first instance is utilized in situations in which...I guess traffic school would be a good example of this. Individuals are cited by officers and, prior to entering a plea on the charges, are offered the opportunity by the prosecuting entity to enroll in an approved diversion program, in light...I'm sorry, in lieu of having the charges pursued. So... [LB470]

SENATOR FRIEND: Okay, so...I'm sorry to interrupt you, Senator Pirsch, but you hit on something really key here. What you're talking about are a lot of instances where you had some youthful indiscretions by folks, traffic incidents, stuff like that. You're not talking about somebody in a case...they're not taking people that have been accused of...you're not taking a potential or an accused sexual predator and saying, oh, guess what, we have a way out here for you; you've never done anything like this before, you've never downloaded pornography before and distributed it to, you know, people that it shouldn't be distributed to, or whatever,...we're not taking those people and using 29-3603 to move them out of the system, if you will. I think that's safe to say, isn't it? [LB470]

SENATOR PIRSCH: Well, I can only comment on what my experiences have been, and those have been used in the context of misdemeanors. So I couldn't comment with respect to the felony. I do know that it has been used, when you're talking about types of misdemeanors, just to give you an idea,... [LB470]

PRESIDENT SHEEHY: One minute. [LB470]

SENATOR PIRSCH: ...minor in possession, possession of marijuana, those type of things. The traffic school, I think, is a good example, as well. So it is definitely utilized in that capacity. There is a second way in which diversion is utilized, and that is on a postconviction basis--that is, a person charged with a crime comes in, actually does plead guilty, in this second example, and then enters into an approved diversion...postconviction diversion program, and as long as completes that diversion, then what happens is, reappears in court before sentencing, makes a motion to withdraw his plea of guilty in front of the judge, and generally speaking, as long as he's

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complied with the terms of the diversion, that is allowed by the judge. And then the prosecutor, at that point in time, in light of... [LB470]

PRESIDENT SHEEHY: Time, Senator. [LB470]

SENATOR PIRSCH: ...the successful completion, does set it aside...I'm sorry, moves to dismiss. [LB470]

PRESIDENT SHEEHY: Senator Flood, followed by Senator Friend. Senator Flood. [LB470]

SPEAKER FLOOD: Thank you, Mr. President, members. I guess this is an interesting bill. I remember when I made my application to become a member of the Nebraska State Bar Association, I found it ironic that one of the questions the state bar was asking was, had I ever been convicted of any crimes, and then the next question was, had I ever been arrested for any crimes. And I thought, of any outfit in the state that should be asking that question, the bar association shouldn't enquire as to whether I'd been arrested but not convicted, because if anybody understands the significance of the conviction over the arrest, it should be the State Bar Association. And so when I saw Senator Chambers' bill, I thought, this is an attempt, in his efforts, to take the arrest off the table if there hasn't been a conviction. And to that end, I think there's some real significance to trying to clean this up. And then I looked at the A bill and my eyes about popped out and I thought, over a half million dollars to do this? I went out and I've chatted since with the State Patrol, Captain Maaske, and those that represent our statewide law enforcement agency, and you really have to go step by step to understand what they're doing, but if we're going to do this, we need to pay the bill. My first reaction was, that seems like a lot of money. But here's what's at play, and a lot of it has nothing to do with law enforcement; it has to do with the way that we record and keep data in Nebraska. You remember last year when Senator Beutler brought the bill to consolidate the county and the district courts? Well, he did, if you weren't here. And his idea was to put them all under one Supreme Court office, where we wouldn't have a district and a county court; we'd just have a county court clerk. Part of the reason for that, to be quite honest, is that Douglas County is on a separate and distinct computer system than the rest of the state. They are not on the JUSTICE system, which manages our court system and our caseloads in every other county in Nebraska. Douglas County has one-half of the arrests statewide, roughly, by statistic, of all the arrests made in the entire state of Nebraska, and they operate on a different computer system. The other thing you have to remember is that our system now, to interface with Douglas County requires a lot of telephone contact. And what is the food chain? How do we put this information in a database? Well, the arrest is made by police. In my community, they're taken the city jail, then taken to the county jail. They're booked into both facilities. Documents and data are retrieved from the offender, or the suspect, at that time. Then they're released on bond. They appear in county court. They may get sent to juvenile

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court, drug court, or diversion. A diversionary program doesn't even send them to court the first time, but a drug court does. And then they go to district court, and in some counties in Nebraska, you end up in diversion after you get to district court. Where the State Patrol comes from on this...and I can see what they're saying; there's a lot of different pieces to the pie to get all of this information in there. This way, the diversion officer, the county attorney, the court, the drug court, the county court, the district court, the city jail, the county jail, can be inputting the information into the system. The State Patrol, as a statewide repository, doesn't just deal with the Marty Conboys of the world, who have the city attorney responsibilities for the city of Omaha, but they have every level of the food chain. They can put it all together and make it work. I don't...I'm not an expert in data retrieving and data recovery, but I do think, if we're going to do this, after visiting with the State Patrol, I visited with Senator Chambers a little bit this morning, let's do it so it's the right system, so that people that are arrested and not convicted don't have to live the rest of their life with a cloud hanging over their head that's essentially been unresolved. I can see where Senator Chambers is coming from in his interest, and it's a question for the Legislature, but my vantage point is, if we're going to do it, you know, let's have the discussion on LB470A, and if it passes on...if this bill passes, let's pass the A bill, and then before Select, let's do a lot of looking into the issue so that we understand what's going on. Initially I thought, well, we just don't pass the A bill. But I think at this point in the system, let's trust our process, let's work... [LB470]

PRESIDENT SHEEHY: One minute. [LB470]

SPEAKER FLOOD: ...with the law enforcement authorities. If this bill passes, let's sit down before Select File and get a real understanding of what has to be done, because in ten minutes, I can't tell you that I understand it completely. But it does seem that there would be some value to having the State Patrol receive these funds, if this bill passes, so that they can do the job that we expect, and to make sure it's right. I will add one final comment. I am a subscriber to Nebraska.gov. It's the system where you can go into our JUSTICE system and you can pull up somebody's name and see if they've ever had a charge against them. It does not list date of arrest, but it does list date of the incident, which is essentially the arrest. There...with the Internet now, the information that Senator Chambers wants to curtail the release of will be a lot more prevalent, now that we're all on the Internet and we can find out just about as much as you want about anybody. So if we're going to have the discussion, let's... [LB470]

PRESIDENT SHEEHY: Time, Senator. [LB470]

SPEAKER FLOOD: ...talk about everything. Thank you. [LB470]

PRESIDENT SHEEHY: Senator Friend, followed by Senator Chambers. Senator Friend, this is your third time. [LB470]

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SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. I wanted to thank Senator Pirsch and Senator Flood, and also some of the conversations I've had off the record in regard to this subject matter. I wanted to give you a hypothetical. And I would concur with the statements that Senator Flood made. If we're going to do something like this and it's good public policy, we need to do it right. Now, I look at Senator Heidemann when I say that, and I haven't really talked to him ad nauseam about what this...what a \$500,000 price tag means. But again, that's partitioned off. I'm not talking about that right at the moment. Let me give you a hypothetical, not as an attorney, but as a...I guess, from a...you know, from a corporation or a human resources, you know, person's standpoint, within a corporation, or even a business owner. I'm arrested for a crime. And I think what we've established, to a certain degree, and Senator Pirsch helped with that, is that a lot of times these statutes that Senator Chambers is making an effort to change are, especially in subsection (b), are crimes that just don't rise to the level of some of the things that I had feared. Nobody is going to give a diversion option to somebody that this society is afraid of. I'm arrested for a crime. Let's say I'm driving wildly or I'm driving intoxicated or something of that nature. The employer asks that question, says, have you ever been arrested for that particular crime? Now, I say, yes, because I was arrested for it. The employer hires me. It happened when I was 19 or 20. I'm 40 now...I'm actually 45 now, but I'm...okay, I'm 45 now. The employer hires me. I go out and do something in my vehicle, I'm all drugged up or something and I run into somebody, and I kill that person. We have to...all of us have to ask the question, how is that employer...or, how could that employer potentially be liable for my actions? The employer knew I was arrested. I said I was. And the employer still hired me. And then, after work, I go out and I do something to cause harm to somebody else. Now, the...now, you can make the argument that that...that we...that LB470 could technically, or theoretically, in a lot of ways, be protecting that employer. You could make that argument. You could also make the argument that it puts that employer in a really tough spot. But I get the feeling I'm a proponent of the first argument, that I want to know as an employer whether Mike Friend was arrested when he was 20 years old for that particular offense. But I would rather know...I would rather not know, and then know that I'm protected from those previous indiscretions, if you see my point. So in other words, I'm not sure that I want to know that. I want to be able to hire this guy with a clean slate, because he probably deserves that, and then be able to turn around and say, you know what, how in the world were we to know that this guy was going to cause that harm at the age of 45, because we couldn't...I mean, it wasn't part of the public record, we couldn't ask that question. So we are not liable. I think that's a fairly... [LB470]

PRESIDENT SHEEHY: One minute. [LB470]

SENATOR FRIEND: ...I think that's a very...fairly valid argument. Now, quickly, let me shift to the other partition, because we're going to move to that pretty quick, I'm pretty

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sure of that. I would concur with Senator Flood. I'm worried about the \$500,000. But I'll tell you this, you hire two full-time COBOL programmers to try to do what we need to do,...first of all, Douglas County has got a huge problem, a huge problem. They're not automated like everybody else. I know that sounds strange, but they're not. So let's talk about that here in a few minutes. But let's say this, \$500,000 is a lot of money. You hire two full-time COBOL programmers, let's just say, off the top of our head. Maybe I'm antiquating the system that we use, but let's say that you did. That's \$100,000, that's \$200,000, that's every year, at least for probably three years, in order to maintain this system. That's a lot of money. So I don't know. I say we move on and discuss that piece, that second partition,... [LB470]

PRESIDENT SHEEHY: Time, Senator. [LB470]

SENATOR FRIEND: Thank you, Mr. President. [LB470]

PRESIDENT SHEEHY: Senator Chambers, followed by Senator Pirsch. Senator Chambers. [LB470]

SENATOR CHAMBERS: Mr. President, members of the Legislature, here is the issue. Does this society mean what it says when it says an individual is innocent till proved guilty? If the criminal justice and the judicial system themselves put a person officially in the status of being innocent, what is all this other talk about? Well, somebody might have plea bargained this way, or plea bargained that way. If they had a child, they would want the plea bargain. And I think Senator Pirsch, Senator Flood, and anybody else who is familiar with the way prosecutors bring charges, they will often do what is called overcharging. They don't expect to take every one of the charges they list to trial. They are designed to exert pressure and bring about a plea bargain. People not familiar with the system would be stunned at how many criminal cases are resolved by way of a plea bargain. You need to know what the real world is and what the dynamics are. We're talking about innocent people here. And some of this busybody conversation about, well, I want to know if when somebody was 13 years old they got picked up for stealing a candy bar, even if it didn't go to trial, I just want to know that because I want to know. Members of the Legislature, I am so frustrated, because I'm not dealing with high school children. Where are the employers if they're worried about it? Not one employer spoke against this bill. Not one employer said, I want to know this, I want to know that. Nobody spoke against the bill. Not a judge, not a police officer, nobody. And a prosecutor was the one who helped initiate it. You think he doesn't understand? If Senator Friend doesn't understand, he's entitled to ask the questions, and my job is to answer them. But a point is reached where we're getting no traction, the wheels are spinning, and we're going nowhere. If you are of the opinion that somebody who is innocent should have a notation of arrest follow him or her the rest of his or her life, vote against the bill. I don't know what else to tell you. But if it was you or a member of your family, you would be saying, go to Senator Chambers and ask him what can be done,

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because that's the way this stuff comes to me. Some of them have gone to other senators, who had no answer. And when prosecutors and judges refer these people, they refer them to me, because they feel I will do something about it. And that's what I'm doing, and I can't even make my colleagues understand that if you're innocent, you should not bear any of the stigma of guilt. That's what Marty Conboy wrote in his letter. That's what he said to the Judiciary Committee. We had a young woman who had problems because of this situation. Now, why is it that all of a sudden these people on the floor are going to speak in behalf of those who have not even raised the issue? Not an employer. I don't know what else to say. Maybe what I ought to do from now on, on an issue like this, is tape record my first comments, and then punch my button, and then push the play button, and just play it again, because all I'm doing is repeating, repeating, repeating. I want somebody to stand on this floor and just be honest and say,... [LB470]

PRESIDENT SHEEHY: One minute. [LB470]

SENATOR CHAMBERS: ...I think if a person is innocent but got caught up in the system, that notation of arrest should follow that person all his or her life. There is no way for an innocent person to clear the record. There is no way for an innocent person to clear the record, but a guilty one can. The next person who...look, I'm pleading. I'm pleading. Tell me what I need to say to you to make you understand what I'm trying to get across to you. Make me know what you need to have me tell you, and I will tell you. But summing it up the best that I can, the innocent should not be treated as though they are guilty. These are people whom the system itself... [LB470]

PRESIDENT SHEEHY: Time, Senator. [LB470]

SENATOR CHAMBERS: ...have certified as being innocent. Thank you, Mr. President. [LB470]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Ashford, followed by Senator Pahls, Senator Louden, and others. Senator Ashford. [LB470]

SENATOR ASHFORD: Thank you, Mr. President, members. And much has been said, but I would urge the body to move this bill. We...the committee heard a great deal of testimony on it. There's no question that there's an issue that needs to be addressed. Alan Peterson, who's probably the most...is the number one First Amendment attorney in the state, came in and told us that he had drafted the language that is in the bill...not in the bill, but in the law now, and indicated that it was vague, that it needed to be changed. This really is a very straightforward, simple matter that must occur. It must be addressed by this Legislature. As Senator Chambers indicates, there was no opposition at all. No one came in to oppose it. Experts in the field have come in and said we need the legislation. This is a matter that's been out there. It was out there when I was here

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before. It was not addressed. I can't think...there just is...there's such a basic unfairness not...to let this continue the way it is. We...I'm trying, as Senator Chambers is, trying to find a reason why we would not move this bill. You know, Alan Peterson came in and indicated, I drafted the language in the existing legislation, and I agree I drafted vague language. And I don't know how more clear he can be. I think this is a case where we should move forward now and move this bill across. If there are any questions of me as a Chair on any of the technical parts of the bill, I'd be happy to answer them. But I think this is about as straightforward a matter as we can get. Thanks, Mr. President. [LB470]

PRESIDENT SHEEHY: Thank you, Senator Ashford. Senator Pahls, followed by Senator Louden and Senator Avery. Senator Pahls. [LB470]

SENATOR PAHLS: Mr. President, members of the body, I'm going to speak to this on simply a very practical matter. This past year, I've been working with several groups on how to find jobs for individuals who do not, quote, have the college education, or may not have a high school education. I'm told there are hundreds of jobs in the area of transportation that go wanting. And I says, I know we have young men and women who could qualify for a number of these jobs, for example, in the area of trucking. You're in that area for two or three years, you can make maybe \$50,000 a year. I said, that would be an ideal position for some of these young men and women. And they said, well, the problem is, a lot of times in their youth they may have done something wrong. It gets on their record. It is not necessarily that significant, but they can't be hired, because people are looking at records. Insurance companies are very concerned about allowing...I call, allowing people to turn their lives around. So I think this could be an answer to some of those young individuals out there. Thank you. [LB470]

PRESIDENT SHEEHY: Thank you, Senator Pahls. Senator Louden. [LB470]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. As I haven't paid that much attention to the discussion early on in this, I have therefore now read the bill previously, and I've looked it over some more, and my observation is, is it's something that very well needs to be done, because people can be cited in court, and that record will stay there for the rest of their lives. And nowadays, with your Internet service, and if you subscribe to the right kind of system, you can pull that up all over. So this isn't something that, it used to be that if you wanted to find out someone's record you had to go to the local courthouse. You can set in your living room and find out from any part of the world what someone's record has been. And it could be some minor fractions, too, if they were cited for...arrested for a traffic ticket or something like that. If there was a citation issued, my understanding is that that goes on the record. I would like to ask Senator Chambers some questions, if he would yield for questions, please. [LB470]

PRESIDENT SHEEHY: Senator Chambers, would you yield? [LB470]

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SENATOR CHAMBERS: Yes, Mr. President. [LB470]

SENATOR LOUDEN: Senator Chambers, on this bill there's a, what, \$500,000 fiscal note or something with it. That money would go to the State Patrol for their funding to take care of this thing? Are they the ones that would clean those records up? [LB470]

SENATOR CHAMBERS: At the state level, yes. The records that they would handle as a state facility, that's correct. [LB470]

SENATOR LOUDEN: What about at the county level and something like that, on county courts and stuff? Who would take care of those? And is that included in this bill? [LB470]

SENATOR CHAMBERS: Well, the ones who are taking care of it now. And a lot of them do it manually because they don't really have that many. It's being done now, but this language makes it crystal-clear when these names are actually supposed to be taken off. Under the existing law, there is language which says, when no active prosecution is contemplated, or words to that effect, and it's unclear to everybody what the term "active prosecution" means. That doesn't mean necessarily that it's before a court and there's a case proceeding in the form of a trial. It's just unclear what that means. So this language is setting up three categories in which people may fall who are innocent and will be declared innocent by the system. Since it takes differing amounts of times for these processes to run their course, one category would be one year after the date of arrest, the other category two years after the date of arrest, the third category three years after the date of arrest. I've been told by some people, and I agree with the Speaker, that we should let the A bill proceed, that additional information will be sought from the Patrol justifying this amount of money. And if they can justify it, then I would fight to give them what they need to do it. But I haven't been shown enough to satisfy me that that amount is needed. [LB470]

SENATOR LOUDEN: Okay, but this would help clear up the records on the county level also? Because that's where a lot of those minor arrest records that they were never charged with anything, or were never...I guess the charges were never filed or filled out or whatever it is that they do in court, that's never been done, and most of those are on a county level. And this would take care of stuff on the county level? [LB470]

SENATOR CHAMBERS: Yes. This, by being a state law, takes care of the city level, the county level, and the state level, which would be the State Patrol, which is kind of a general repository for this information. [LB470]

SENATOR LOUDEN: And they would have the responsibility... [LB470]

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PRESIDENT SHEEHY: One minute. [LB470]

SENATOR LOUDEN: ...to see to it that that was done, then? [LB470]

SENATOR CHAMBERS: Yes. And the argument being made--and if they convince me, then I will support them--is that the system they have now cannot do this, and they need that additional money to be able to carry out the requirements of the law. [LB470]

SENATOR LOUDEN: Thank you, Senator Chambers, for the discussion, because I intend to support this bill, and this is something that I think goes forwards. Thank you, Mr. President. [LB470]

PRESIDENT SHEEHY: Thank you, Senator Louden. Senator Avery, followed by Senator Pirsch and Senator Nelson. Senator Avery. [LB470]

SENATOR AVERY: Thank you, Mr. President. Senator Chambers speaks with a clarity that is to be admired in this body. Senator Chambers, I do understand what you're saying and what you're trying to do, and I support it. It's the right thing to do. We should do it. We should do it now, and get on with other business. Thank you. [LB470]

PRESIDENT SHEEHY: Senator Chambers. [LB470]

SENATOR CHAMBERS: Am...does somebody want to ask me a question, Mr. President? [LB470]

PRESIDENT SHEEHY: Senator Avery, did you have a question for Senator Chambers? [LB470]

SENATOR AVERY: No, actually, I was flattering him and he wasn't even listening. (Laughter) [LB470]

SENATOR CHAMBERS: May I respond? And I had done this in a room...in a rhyme. Flattery is like perfume; you sniff but do not swallow it. (Laughter) [LB470]

PRESIDENT SHEEHY: Thank you, Senator Avery. Senator Pirsch. [LB470]

SENATOR PIRSCH: Senator Avery, I'll take that flattery. (Laugh) I just wanted to clear up the question that was posed by Senator Friend previously with respect to diversion, how that operates. Again, there's two situations. One is where you're cited for a particular offense, and prior to coming to court, you are...certain types of crimes are eligible for diversion, and as long as you complete that, then the charges are never filed against you by the prosecutor. The second type, where charges are filed against you, you actually plead guilty to the charges, sentencing is deferred, you go through the

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program in the meanwhile, and should you complete that diversion program, then you reappear, make a motion to set aside...I'm sorry, to essentially set aside your plea of guilty, and the judge would grant that, and then the prosecutor would dismiss the charges against you. So, two different approaches. Did want to clarify that in Douglas County, the way that I understand it is that not only do we have misdemeanor preconviction diversion, but we do do it with certain types of felony crimes, crimes involving property crimes, certain theft crimes, as well. There is no statutorily defined set of crimes that are allowed to be...to have this pretrial diversion. It is typically, to my knowledge, only occurs in those...in the context of nonviolent type of crimes, crimes of...as I kind of mentioned there, theft or property crimes, those types of crimes. The second type, the post...where you go in and plead guilty and then you're put on the diversion program, those do involve, two examples of those, domestic violence and drug court is an example of types of actions that involve that second. So I just wanted to make sure that I did kind of give you that explanation there. It was a little bit fuzzy. We ran out of time. I'll yield back the balance of my time. [LB470]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. Senator Nelson, followed by Senator Heidemann. Senator Nelson. [LB470]

SENATOR NELSON: Thank you, Mr. President, members of the body. I have a question for Senator Chambers, if he will yield. [LB470]

PRESIDENT SHEEHY: Senator Chambers, would you yield? [LB470]

SENATOR CHAMBERS: Yes, I will. [LB470]

SENATOR NELSON: Good morning, Senator. I may be a bit premature on this. We might...probably should discuss this when we get to the A bill. But did I understand you to say that some of these records are being changed...I mean, these are past records that are being done manually at this time, that people are going back and expunging that over a long period of time in the past? [LB470]

SENATOR CHAMBERS: Well, some of them, but there are others that go way back which have not been picked up to this day, but they were being done manually. And if you're asking me about the Patrol, they have indicated, and others who have talked to them say the same thing, but they're all getting it from the same source, that with the system the Patrol has now, and these specified time periods, they cannot handle it with the system they have now, whatever that means. [LB470]

SENATOR NELSON: Well, I guess my question goes to this. Is the \$500,000 figure, is that for implementing a system that's going to take care of things in the future? [LB470]

SENATOR CHAMBERS: Oh, yes, that's what my understanding is. Right. They would

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get it in place, and from then on, that system will take care of doing this. [LB470]

SENATOR NELSON: But there's going to be additional cost in going back and expunging the record, going back a number of years? Have they addressed that, or how that's going to be done? [LB470]

SENATOR CHAMBERS: From what I was told--and I've invited people to talk to the Patrol themselves--once this system is in place, they can do everything required by the bill, which means that any existing instances that are still around because nobody knew what "active prosecution" meant, so they just hang in limbo, all of that will be cleaned up, because if it's more than a year from the date of arrest for the certain category, or two or three, as the case may be, all of those will be swept away. [LB470]

SENATOR NELSON: Maybe this will have to come up with the Patrol, but is there some reason why the prosecutors, the county attorneys in the various counties and the cities can't set up their own automatic type of system within their own departments where this could be done manually as...after a year or two or three have transpired? [LB470]

SENATOR CHAMBERS: A lot of things are possible, but I'm trying to handle it in the way that is practical, as the matter has been presented to me. I don't know what a city or a county would do, in terms of manual versus technological or electronic. But none of them said they could not do it. So on this floor, I don't go around and ask everybody who might possibly have an issue and say, do you have an issue with this? If they don't come forward, they don't have a problem, as far as I'm concerned. But the only A bill amount that we have is from the State Patrol. And if you look at your fiscal note, it will tell you if any county or any other entity said that it's going to affect them. [LB470]

SENATOR NELSON: All right. Well, thank you. I support the bill itself. I think it's a great idea. I'm just concerned about the cost and the future cost, in terms of the amount of money that we're talking about. Thank you, Senator. [LB470]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Senator Heidemann. [LB470]

SENATOR HEIDEMANN: Thank you, Mr. President, fellow members of the body. There have been some questions on the fiscal note, and I thought I would just touch base just a second on that. Between now and Select File, I have been told we can look into just...the fiscal note just a little bit further about where the cost came from, and if they are justifiable. And we can address them maybe down the road just a little bit. Also, there seems to be concern in the body about how the money is going to be spent, where the money is going to be spent, if it's going to be spent to...for the purpose of this bill. I have talked to Senator Chambers somewhat about this, and maybe to alleviate the concerns of the body on this, I have indicated to him that we could put language with this A bill that would earmark the money for this that would be appropriated for...to carry

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out this bill, that could only be used for the purposes of carrying out this bill. If there's any money left over after that purpose, if we appropriate \$500,000, it could be lapsed back into the General Fund. So if there are concerns with the amount of money and if it would all be used for this purposes, with the language that we could draft, and we will draft this to be put with the A bill by Select File, that this...the money would only be able to use for this purposes. Hopefully that would alleviate some concerns with the amount of money being spent for this, and we can definitely, you know, continue to look into this between now and Select File about exactly where the money is being used. If there are any further questions down the road, I would try to...be happy to try to answer them. Thank you. [LB470]

PRESIDENT SHEEHY: Thank you, Senator Heidemann. Senator Christensen. [LB470]

SENATOR CHRISTENSEN: I'm going to pass my time to Senator Friend. [LB470]

PRESIDENT SHEEHY: Senator Friend. [LB470]

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. I wanted to make a couple of things really, really clear, and this is the last thing I'm going to say about this issue. What I tried to establish on the record was for a reason, with Senator Pirsch. I didn't ask Senator Chambers any questions, but I asked Senator Pirsch specific questions, because I wanted them on the record and I needed it for myself. I didn't tell this body, when I was about to sit down, that I was going to vote against LB470. I raised a couple of scenarios that could be troubling out there from a public policy standpoint. Senator Chambers pointed that out, too. But I'm ready to move on and vote on...yes on this bill, too. But make no mistake about something. Anybody that knows me should know this, and if you don't know, I'm about to tell you. Don't ever, please, tell me that we should just move on with the bill. I think it was referring to me. I will speak and question anything that I feel I need to question out here. We have spent 45 minutes on this bill. That's not that extravagant. Last year, we spent eight hours on prairie dogs, the eradication of prairie dogs. I didn't once stand up and say, let's just move on, let's get over...let's get done with this. I'm a little fired up, folks, and I'll tell you what. Two people have stood up already and said, we need to just slide through; let's move on with this. Senator Chambers wasn't one of them. I will either push my button or get time from somebody else to speak on any issue that I choose to speak on. That's all I have to say, Mr. President. Thank you. [LB470]

PRESIDENT SHEEHY: Thank you, Senator Friend. Further discussion on LB470? Seeing none, Senator Chambers, you're recognized to close. [LB470]

SENATOR CHAMBERS: Mr. President, members of the Legislature, Senator Friend said he wanted to be perfectly clear. Now, one thing that he made perfectly clear is something with which I agree. A member has the right, the unquestioned,

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unchallengeable right to discuss any issue to the extent that he or she feels discussion is necessary. When I have said all I can say on a bill of mine, I make it clear I don't know what else I would need to say, but I'll answer any questions. But I've never called the question. I never vote yes to call the question. I may have done so by mistake on one or two occasions. But I know that people want to have certain things on the record. Maybe they have a constituency, and realize that certain questions will be raised by that constituency, and that senator would like to produce the transcript of our debate to show what it was that led the Legislature to behave in the way it did, or the explanations that the senator gave for his or her vote or nonvote. So I am not one who will say, let's just move along. I'm going to be here for the 90 days, if I don't croak. And I don't plan to do that, so you all who are happy at that prospect, just forget it. I give and I take away, Senator Carlson. (Laugh) Okay. I listened to you this morning. What...I have one thing I want to say to Senator Friend. If I had a heart, which I don't have, I would say, this is from the heart. But since I don't have a heart, I'll say, this is from the gizzard, Senator Friend. (Singing) You better leave my groundhogs alone. Not groundhogs, prairie dogs. I'm the one who wanted to rescue those prairie dogs, and I took a lot of time. And Senator Friend did not stand up and say, Ernie, you're talking too long. I don't know that he stayed on the floor the full time. But keep this in mind, my brothers and sisters. You are not aware of all the issues that are going to come before us, and even the ones that you are aware that will come before us, there can be developments that will lead you to take far more time discussing that than you thought would be the case. So you will never see me voting for a rule change to cut anybody off, not even to get even with them for having done so to me. I recognize what it means to have people trying to stop you from expressing your view. But what it makes you do is find a way to survive in a hostile environment. I don't resent any questions that were asked this morning, any comments that were made. I expressed my frustration, and told why I was. I didn't know what else to say to alleviate anybody's mind or doubts. But all that having been taken care of appropriately, I'm going to ask that we take the vote. But I will request a call of the house, Mr. President, then I'll take a machine vote. [LB470]

PRESIDENT SHEEHY: All right. Thank you, Senator Chambers. You've heard the closing to LB470. We do have a request for a call of the house. The question before the body is, shall the house be placed under call? All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB470]

CLERK: 29 ayes, 0 nays, Mr. President, to place the house under call. [LB470]

PRESIDENT SHEEHY: The house is placed under call. All unexcused senators please report to the Legislative Chamber. All unauthorized personnel please step from the floor. The house is under call. Senator Janssen, Senator Cornett, Senator Raikes, Senator White, Senator Avery, the house is under call. Senator Chambers advises that we can proceed. The question before the body is, shall LB470 advance to E&R? Senator Chambers desires to move with a machine vote. All those in favor vote yea;

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opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB470]

CLERK: 41 ayes, 0 nays, Mr. President, on the advancement of LB470. [LB470]

PRESIDENT SHEEHY: LB470 does advance to E&R Initial. The call is raised. Also, at this time, the Legislature would like to congratulate Senator McDonald and Larry Harnisch for their one-year anniversary. Congratulations. Next item under General File, Mr. Clerk. [LB470]

CLERK: Mr. President, LB470A. It's a bill by Senator Chambers. (Read title.) [LB470A]

PRESIDENT SHEEHY: Thank you. Senator Chambers, you're recognized to open on LB470A. [LB470A]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I had said earlier that we could just dispense with the A bill, but as pointed out by the Speaker, that would not be a responsible position. The State Patrol may be able to justify the figure that they've given to us. Our Appropriations Committee Chair indicated that whatever amount we appropriate to carry out a bill can be earmarked so that the money in that appropriation will be spent only for the purposes of that bill, and if there is anything left over after the necessary expenditure has taken place, it will lapse back to the General Fund, or wherever lapsed money goes. It never lapsed into my lap, so I just can't deal with that. (Laughter) But I'm going to ask that we advance the A bill, which is the way our process operates. In the interim, between today when we advance the bill and the matter comes before us again on Select File, there are individual senators who said they will talk to the appropriate people, with the State Patrol. I will make inquiries. And we will come back at that time with figures that are firm. If the State Patrol can establish that this is the amount of money that is needed to carry out the purposes of the bill, and if the Legislature believes that innocent people should have this notation of arrest expunged or dropped from the public record, we should be prepared to spend the amount of money necessary to have that done. But it would not be an ongoing \$500,000 a year expenditure. This would be to put their system in the state it needs to be in to carry out the purposes of this bill. So I'm asking that we advance the A bill. And if you have questions which you think I can answer, ask me. If you think I can't answer them but you want to show that I'm merely human, ask me. And if you have questions about our appropriation process, Chairman Heidemann has pointed out that he's willing to give reassurances or explanations on that score. That's all I would have. Thank you, Mr. President. [LB470A]

PRESIDENT SHEEHY: Thank you, Senator Chambers. You've heard the opening to LB470A. The floor is now open for discussion. Anyone wishing to speak on this item? Seeing none, Senator Chambers, you're recognized to close. Senator Chambers waives closing. The question before the body is, shall LB470A 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.
[LB470A]

CLERK: 29 ayes, 2 nays, Mr. President, on the advancement of LB470A. [LB470A]

PRESIDENT SHEEHY: LB470A does advance. Speaker Flood, would you rise.
[LB470A]

SENATOR FLOOD: Thank you. Mr. President and members, I thought we would just kind of update everybody as to where we are as we look forward to next week. On Monday we will continue on General File. On Tuesday we will do some work on Select File, and we'll have some Final Reading toward the end of next week. So as you plan ahead, put those three different levels of debate in your calendar, if you wish. You know, the deadline for priority bills is just about two weeks away at this point, and to date we have four priority bills that have been designated. Two of those three have been debated, one will be debated in March, and the other remains in committee at this time. Now if you're a committee Chair or a senator looking forward to designating a priority bill, I might add for your benefit that there may be some advantage to doing so should the bill be out of committee at this time. Scheduling decisions, of course, will be made pursuant to the memo that I handed out in mid January, but there may be some advantage if you do have a priority bill that you have been looking at that is out of committee and you'd like to designate the same for the 2007 Session. I offer that to you as just a kind reminder of our process and look forward to your decision. Again, the last day to designate a priority bill is March 9. Thank you for your kind attention. []

PRESIDENT SHEEHY: Thank you, Speaker Flood. Items for the record, Mr. Clerk. []

CLERK: Mr. President, Enrollment and Review reports LB124, LB145, and LB83 to Select File. Government, Military and Veterans Committee reports LB389 to General File with amendments; that signed by Senator Aguilar. Business and Labor, LB255 to General File with amendments; LB271 indefinitely postponed; those signed by Senator Cornett. Reference report referring LR37 to standing committee. Priority bill designation: Senator Kruse has selected LB573. That's all that I have, Mr. President. (Legislative Journal pages 653-658.) [LB124 LB145 LB83 LB389 LB255 LB271 LB573]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Next item under General File. []

CLERK: LB239, a bill by Senator Fischer. (Read title.) Bill was introduced on January 10 of this year; at that time referred to Transportation and Telecommunications for public hearing. Bill was advanced to General File. At this time I have no amendments to the bill, Mr. President. [LB239]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Fischer, you're recognized to

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open on LB239. [LB239]

SENATOR FISCHER: Thank you, Mr. President and members of the body. LB239 amends the reference dates for three specific Department of Motor Vehicles programs that are governed by federal laws, as well as the Federal Motor Carrier Safety Regulations carried out by the Nebraska State Patrol. First, LB239 adopts the most recent version of the international registration plan, or IRP. Nebraska has been an IRP member jurisdiction since 1975. Membership in IRP allows trucking companies in Nebraska to pay registration fees in Nebraska for all the jurisdictions through which that company operates. The Motor Carrier Services Division of the department distributes the collected registration fees to other jurisdictions based on a pro rata share of the mileage that the carrier travels in each jurisdiction. Generally speaking, IRP has made registration of trucks traveling in interstate commerce more efficient for the industry. These amendments will allow Nebraska to follow IRP as it was revised on October 1, 2006. LB239 also updates references to federal regulations governing commercial motor vehicles and the issuance of commercial driver's licenses. The changes allow the DMV to follow the federal regulations as they exist on January 1, 2007. It is important for Nebraska to remain in compliance with federal laws in this area. If Nebraska fails to comply with these laws, the Federal Motor Carrier Safety Administration has the authority to withhold funding for Nebraska's Motor Carrier Safety Assistance Program and also withhold federal highway funds. The bill also updates references to federal law governing occupant protection systems, more commonly called seat belts, to incorporate the most recently published version of the federal rules through January 1, 2007. This does not represent any changes in the substantive requirements applicable to seat belts in Nebraska, but allows the state to reference the newest printing of those federal rules instead of the 2006 release. Nebraska also has adopted the Federal Motor Carrier Safety Act. The emphasis of this act was placed on the states adopting uniform safety measures with the ultimate goal of a reduction in the number of commercial motor vehicle accidents. In order for the state to remain consistent and compliant with these federal requirements, it is necessary to update our commercial vehicle safety regulations annually. This update will enable the Nebraska State Patrol to continue enforcing updated federal motor carrier safety regulations and hazardous material regulations as they went into effect on January 1, 2007. Enforcement of these safety measures increases the likelihood that safety defects, commercial driver deficiencies, and unsafe motor carrier practices will continue to be detected and corrected. As you can see from reading the bill, date changes are the major changes to this statute, and that is in order to be compliant with federal laws. The other major change is on page 14, under number (3), which strikes the lines 8 through 13, and this is striking obsolete language that expired on January 1, 2000. So I would ask for you to please advance this bill so Nebraska can be in compliance with these federal laws. Thank you. [LB239]

PRESIDENT SHEEHY: Thank you, Senator Fischer. You've heard the opening to LB239. The floor is now open for discussion. Anyone wishing to speak on this item?

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Seeing none, Senator Fischer, you're recognized to close. Senator Fischer waives closing. The question before the body is, shall LB239 advance to E&R Initial? All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB239]

CLERK: 35 ayes, 0 nays, Mr. President, on the advancement of LB239. [LB239]

PRESIDENT SHEEHY: LB239 does advance to E&R Initial. (Visitors introduced.) Next item, Mr. Clerk. [LB239]

CLERK: Mr. President, LB12 is a bill introduced by Senator Mines. (Read title.) The bill was introduced on January 4 of this year; at that time referred to the Agriculture Committee. Bill was advanced to General File. There are committee amendments pending, Mr. President. (AM161, Legislative Journal page 459.) [LB12]

PRESIDENT SHEEHY: Senator Mines, you're recognized to open on LB12. [LB12]

SENATOR MINES: Thank you, Mr. President, colleagues. No, this isn't Marian Price standing in front of you, but the issue is similar. This is about puppy mills, and for those of you that haven't been through the puppy mill discussions and want to know more about it, you're just about to. Let me give you a little background on what puppy mills really are. There are about half a million puppies every year that are bred in puppy mills, and each of the 4,000 to 5,000 puppy mills in the United States, many of which are right here in the Midwest and Nebraska, they house between 75 and 150 puppies. Female dogs are usually bred the first time they come into heat, which is about six months of age, and then they're bred back twice a year until they can no longer breed anymore, usually by the age of five. And typically, because they don't serve a purpose anymore, these female dogs are killed. LB12 inserts language in Chapter 54 that would change the Commercial Dog and Cat Operator Inspection Act. Essentially, this bill is about stopping puppy mills. Let me...before I go any further, there are some great breeders in Nebraska. In fact, the vast majority of breeders that we have in our state are great operators. They do a great job. This is for the bad actors. The changes made by this legislation will go a long way in eliminating puppy mills and turn, in fact,...lend legitimacy to those reputable breeders in our state. Now you're going to hear a couple of committee amendments, but let me tell you what the bill will do, as amended. It will do four things. First of all, it allows for a flat license fee for those licensees that don't serve cats or dogs. Last year, our bill said you will issue a sliding-scale fee on all pets, and so the more pets you have, the higher the fee in your breeding facility. What we didn't account for were those animal facilities that don't have dogs and cats; fish, birds, so you could have 10,000 fish and the sliding scale would kick you over the top. So this bill would simply establish a set fee for those facilities that don't have cats and dogs. Secondly, it would require the Department of Agriculture to conduct preinspections of facilities applying for a license, as well as we would have inspections every other year.

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Right now, we don't do that. We don't inspect facilities. If you come in, fill out an application, you've got a license. Oh, by the way, you do have to pay a fee. This would require a preinspection to ensure that the facilities are up to the standards that are in statute today. And thirdly, the bill would allow the Department of Agriculture to administer administrative fines, up to \$5,000, in case of violations of the act. Today the Department of Ag can't fine anyone. They can threaten to take their license away. This recommendation came from the Department of Agriculture and I agree with it completely. The fourth and final change to the act contains committee amendments that require the Department of Agriculture employ sufficient personnel to carry out the inspections. Language has been inserted that would further allow these additional inspectors to be available for temporary reassignment, as needed for other activities, functions of the Bureau of Animal Industry in the event of livestock disease emergency or any other threat to livestock and public health. It's a sharing of personnel. We're going to ask that there are...there will be an A bill and we're going to ask that there are provisions so that, if necessary, in time of emergency, these inspectors can also be used in...throughout the department. The A bill that you're going to see is a request for about \$267,000 in year 2007 and '08, and \$201,000 in fiscal '08-09. These funds would be used for three additional inspectors. Right now, Nebraska has but one inspector for 700 pet shops and breeder facilities, and he is only able to respond if he's called in, if he's given a heads up. He doesn't make routine inspections. So this bill would authorize three inspectors and bringing us to a total of four. To give you an idea of how this compares with other states, Kansas and Iowa each have between 6 and 8; Missouri has 12. Realize they have larger populations, but population doesn't equate to puppy mills. So we would still be somewhat less than two bordering states. The addition of inspectors would allow for regular inspections and preinspection, because they're so critical. It's important to note that the USDA also inspects breeder facilities. They've never required dealers who sell their animals direct to the public to apply for licenses, regardless of the size of the operation. Under the Nebraska program, however, all dealers are required to be licensed, which under this bill would then require them to be inspected. This was heard in the Agriculture Committee with...there was...and advanced out of the committee, 7-0-1. There was some opposition from the Breeders Association. We think we've addressed what their issues are, and I would urge you and encourage you to support LB12. Thank you, Mr. President. [LB12]

PRESIDENT SHEEHY: Thank you, Senator Mines. You've heard the opening to LB12. We do have a committee amendment, AM161. Senator Erdman. [LB12]

SENATOR ERDMAN: Mr. President, members of the Legislature, the committee amendment to LB12 makes what I would consider to be technical changes to the bill. Senator Mines and his staff have worked diligently with the Department of Ag and with the committee staff to try to address some of the issues that were brought up, both at the committee hearing and from the discussions within the committee itself. And the amendment before you is, again, designed to be a clarifying amendment. There will be

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a further amendment that is cosponsored by Senator Mines and myself that addresses an additional issue that we have since determined to be a concern, and hopefully you will look favorably on both of the amendments that will be before you. LB12 was heard before the Ag Committee on January 16. We did have a very spirited debate that day on a couple of issues, one from Senator Langemeier and one from Senator Mines. A well-attended hearing; a lot of folks had some very good ideas and recommendations. And generally can be said, if not unequivocally, that everyone there had the same goal in mind, and generally the disagreement was on how to accomplish the goal. And hopefully we're able to figure out a way to merge those two disagreements or ideas and proposals together and come up with a policy that makes sense for the state of Nebraska. Specifically, committee amendment AM161 does the following: It strikes Sections 10...or Section 10, excuse me. As Senator Mines has pointed out, this type of language that you find in Section 10 of the green copy of LB12 is typically found in an A bill; therefore, we believe that it was inappropriate to put it in statute. It actually has no effect because the statute itself cannot authorize the appropriations of funding, and LB12A will actually contain the issues that are previously in Section 10. So Section 10 is removed, which has been placed in the A bill. Senator Mines has already pointed out that it also provides for the inspections of licensees at least once every two years, rather than annually. One of the decisions that I believe was made by Senator Mines and was accepted by the committee was the opportunity that this would provide to begin the process of more regular inspections. Recognizing that there is a cost of doing these inspections and determining the best way to get the most for our money, the decision was made to go for every two years rather than annually. This should reduce the department's annual inspection burden from the original bill by approximately 40 percent, and that will reduce the need for some of the costs in the bill, as well. It does retain the prelicense inspection for all initial license applicants contained in the amendments. The committee amendments also restores the parallel language that was stricken by the bill to retain the authorization for prelicense inspections for new licensees and for license renewal applicants if the department were to deem that prelicense inspection appropriate. Finally, it specifies that the department shall employ sufficient personnel to carry out the inspection. It provides that personnel funded through the General Funds shall be available for utilization under the Bureau of Animal Industry programs in the event that livestock disease emergency or public/livestock health threat occurs. There is going to be a commitment by the state of Nebraska to fund LB12, should it go forward. These amendments are simply designed to clarify the application of the proposal. Given the constraints of both financial and policy decisions, Senator Mines has agreed to AM161, and we will also have a discussion, I believe, on AM317 that Senator Mines and I have cosponsored that further clarifies some of the language in the committee amendment, and we would look forward to your favorable review of both amendments and look forward to also a discussion on LB12. Thank you, Mr. President. [LB12 LB12A]

PRESIDENT SHEEHY: Thank you, Senator Erdman. You've heard the opening to the

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committee amendments. (Visitors introduced.) Mr. Clerk, do you have an amendment to the committee amendment? [LB12]

CLERK: Senators Erdman and Mines would move to amend the committee amendment with AM317, Mr. President. (Legislative Journal 658.) [LB12]

PRESIDENT SHEEHY: Senator Erdman, you're recognized to open on AM317. [LB12]

SENATOR ERDMAN: Thank you, Mr. President and members of the Legislature. AM317 is almost essentially the same language that is in the committee amendment, but we have clarified something. And instead of drafting it as striking the language, we have simply rewritten that amendment to reflect the agreement between Senator Mines and myself and working through these issues. It generally does two things to clarify. First of all, it authorizes the department to perform an inspection as a condition of licensure, if the department deems appropriate, whether for an initial application or renewal. It's just a technical change, a wording of how that condition is determined. Secondly what it does is that it changes the terminology that states that the department shall employ appropriate and sufficient personnel to carry out the inspections. This language that is before us gives us the limitation of financing. It is the concern of the department and others that if we have that language in there and the appropriate funding is not allowed, there is the chance that other Bureau of Animal Industry would have to subsidize this program. And simply, this allows that the available funding would follow the program, as it's intended to do, making sure that we balance both the ability of the department to meet the requirements under LB12, as amended, as well as balancing the interest of animal industry in this state, so that they are not competing against one another, but rather that they're recognized independently but ultimately as a cohesive part of the Department of Agriculture. So the two provisions clarifies the language regarding the determination by the department on the licensure inspections. And second of all, it further clarifies that due to the fact that the bill has some financial limitations compared to the original bill, that we have clarified that and that we have made sure that the language is appropriate for the policy decision that has been moved out of the committee and agreed to by Senator Mines. With that, Mr. President, I would yield the remaining time to Senator Mines, if he would choose to use it. [LB12]

PRESIDENT SHEEHY: Senator Mines. [LB12]

SENATOR MINES: Thank you, Mr. President. Thank you, Senator Erdman. Couldn't explain it better. I do appreciate the work that's gone into this, not only by the Department of Agriculture, but Senator Erdman, the Agriculture Committee. This brings...this closes a lot of loops and a lot of holes, and I just urge the body to support both the amendments and LB12. Thank you, Mr. President. [LB12]

PRESIDENT SHEEHY: Thank you, Senator Mines. You've heard the opening to the

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amendment to the committee amendment. The floor is now open for discussion. We have Senator Preister, followed by Senator Dierks, Senator Wightman, and others. Senator Preister. [LB12]

SENATOR PREISTER: Thank you, Honorable President, friends all. I serve on the Ag Committee and so I had a chance to hear this bill this year, but we've also dealt with this issue in previous years. Senator Dierks, even in his previous legislative term, dealt with this issue. I do support AM317 to the committee amendments, and I thank Senator Erdman for his leadership within the committee. I certainly thank Senator Mines for taking on the issue and continuing to make it important, and it is important. I certainly support also the underlying bill, LB12, which has probably generated more e-mail than any other single item this year, and there are a whole lot of folks out there that are paying a lot of attention to this who are concerned from various perspectives. But the one perspective that I think is important to share with you is the consumer perspective, because in these breeding mills, these puppy mills, these breeding factories, there are a lot of genetic defects that are being rebred and rebred into these animals, and the unsuspecting consumer then purchases the animal and what would normally be a youthful animal that is healthy, energetic, is suddenly showing defects like joint defects where they can't walk, where they need hip replacements at ages when they should be just still youthful and in their prime. The unsuspecting consumer then is faced with having become attached to the animal, either having to afford operations and the cost of that, or to put the animal down, neither of which is a good consequence, neither of which is good for the families and in some cases, many cases perhaps, the children of the families who purchase the pet for them. The consumers are unwary. They don't know necessarily that the dog came from a puppy mill. They don't know that it's been genetically bred with these defects, and they then suffer the consequences along with the animal itself. The animals do need the inspections. The locations need the inspections. And with the committee amendment, those inspections even reduce the fiscal note and cut it dramatically so that with the every other year inspection to ensure that there is compliance with our state regulations and the sanitary conditions, the health conditions, I think we get very good value for our investment of dollar and we help to ensure that those consumers are less likely to be buying animals that have these genetic defects and animals that are continually rebred without any consideration of the well-being of the animal or the well-being of the offspring of those animals. So the conditions of these animals is very important, but equally important is the impact on the consumer, the ultimate customer who's likely to purchase these animals. And I think they, too, need to be factored in. I do support the amendment, as I said, the underlying committee amendment, and the bill itself, and I appreciate the body's attention and certainly encourage support in your "yes" vote. Thank you very much. [LB12]

PRESIDENT SHEEHY: Thank you, Senator Preister. Senator Dierks. [LB12]

SENATOR DIERKS: Thank you, Mr. President. Members of the Legislature, I, too, am

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supporting the amendments and the bill. I think it's a real step forward for our state that we've gotten this far with this legislation. We've been trying for a number of years to perfect it, and I think we came closer this year than we have any other time. One of the opponents on the legislation is a former client of mine, and I think now I understand that he is supporting because of the work that the committee did on the amendments, and that just speaks to the work that they are able to do and help make things happen around here. You...many of you, I think, can understand if you've been...if you've had pets, had dogs and cats around in your life, the importance of their health and the importance of the genetic factors that can come to play in how these dogs behave, dogs and cats behave. And sometimes the people who are in the business of raising these animals found that the shortcuts to make money on them involve maybe crossbreeding or inbreeding and sometimes that just causes many problems. And with the inspection program I think we're back on track as to providing good animals, good, healthy pets, and it sure is nice for me to know that this is happening. I've seen too many of those genetic defects in small animals when I was in practice, and I think this would be an excellent way for us to get away from some of that. So with that, I'm just going to tell you I hope you'll support the amendments and the bill. I think it's an excellent piece of legislation, and I'm sure in support of it. Thank you. [LB12]

SENATOR LANGEMEIER PRESIDING [LB12]

SENATOR LANGEMEIER: Thank you, Senator Dierks. Is there anyone else who wished to speak to the amendment? Seeing no lights on, Senator Erdman, you're recognized to close on your amendment to the committee amendments. [LB12]

SENATOR ERDMAN: Mr. President, members of the Legislature, again, just briefly, AM317, that was cosponsored by Senator Mines, further clarifies the language in the committee amendment. I would encourage your adoption of AM317. Once AM317...if, excuse me, if AM317 were to be adopted by this body, it would need a second vote because, essentially, it does replace the committee amendments. But I would encourage your initial support for AM317 and then ultimately, as it becomes a committee amendment, that you would adopt that as well. Thank you, Mr. President. [LB12]

SENATOR LANGEMEIER: Thank you, Senator Erdman. You have heard the closing on the amendment. The question is, shall the amendment to the committee amendments to LB12 be adopted? All those in favor vote yea; all those opposed vote nay. Have all those that wish to vote have done so? Record, Mr. Clerk. [LB12]

CLERK: 37 ayes, 0 nays, Mr. President, on the adoption of Senator Erdman and Mines' amendment to the committee amendments. [LB12]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. The amendment is adopted. We're

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back to discussion on the floor on the committee amendment. Is there anyone that would wish to speak to the committee amendment? Seeing no lights on, Senator Erdman, you are recognized to close on the committee amendment. [LB12]

SENATOR ERDMAN: Mr. President, members of the Legislature, you have adopted the committee amendment once in that AM317 actually replaced the committee amendment. You favorably supported that, 38 of you, and I would encourage you to adopt the committee amendments as well. Thank you. [LB12]

SENATOR LANGEMEIER: Thank you, Senator Erdman. You have heard the closing on the committee amendments to LB12. The question before the body is, should the amendments be adopted, the committee amendments be adopted to LB12? All those in favor vote yea; all those opposed vote nay. Have all those that wish to vote have done so? Record, Mr. Clerk. [LB12]

CLERK: 32 ayes, 0 nays, Mr. President, on the adoption of committee amendments. [LB12]

SENATOR LANGEMEIER: The committee amendments are adopted. We're back to...the floor is now open for discussion on LB12. Senator Wightman, you are recognized. [LB12]

SENATOR WIGHTMAN: (Microphone malfunction)...President, members of the body, I wonder if Senator Mines would yield to some questions. [LB12]

SENATOR LANGEMEIER: Senator Mines, would you yield to a question? [LB12]

SENATOR MINES: I will, Mr. President. [LB12]

SENATOR WIGHTMAN: Have a couple of things that I have questions about. With regard to the fiscal note, I'm not quite sure where we stand because we have two fiscal notes, and I'm gathering the later one of those, the January 19th, would have been the more recent one. But then we have an A bill in our...that accompanies the bill, which is a lesser amount than either of the two fiscal notes. Can you inform me on that? [LB12]

SENATOR MINES: I can, Senator. The bill originally...we looked at staffing inspectors, adding several more than we have in here. But we introduced the bill, and as we studied it even more, I think we started out with \$470,000, \$411,000, and realized we could accomplish what we really needed to accomplish by inspecting these facilities every other year as opposed to every year, like we had in the original bill and, thus, cutting down the costs from \$411,000 to about \$269,000...\$267,000. So that's the reason. We've eliminated the total number of personnel necessary to complete the project. [LB12]

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SENATOR WIGHTMAN: So the A bill then supersedes either of the fiscal notes. Is that correct? [LB12]

SENATOR MINES: That is correct. [LB12]

SENATOR WIGHTMAN: Next thing I have a question about, and I'll direct your attention to the administrative fine section, which I think is...well, I'm not sure where that is, but the amount is \$5,000; apparently no differentiation between a first or a second offense. Is that correct? [LB12]

SENATOR MINES: That is correct, Senator. [LB12]

SENATOR WIGHTMAN: Is there a reason that you feel this administrative fine should start at \$5,000? [LB12]

SENATOR MINES: I think the fines can be levied up to \$5,000, Senator, and I don't have that language handy. I don't believe it starts. It gives the Department of Agriculture range in which to offer fines, rather than right now they have no authority to levy anything against those violators of the dog and cat act, so they'd like authority to be able to levy fines as opposed to simply threatening people with removing a license. [LB12]

SENATOR WIGHTMAN: Do you think it would be as good or better if you had a smaller fine on a first offense and then maybe a larger amount, not larger than \$5,000 necessarily, but larger than the first offense, for a second or subsequent offense? [LB12]

SENATOR MINES: Yeah, Senator, I'd be absolutely willing to look at that between General File and Select. Think it would make some sense, and certainly if you have ideas, I'm open to those as well. [LB12]

SENATOR WIGHTMAN: Now how many examiners or investigators or whatever we may call them under LB12 are you foreseeing that there would be? How many are included in the \$266,000 first year expenditure? [LB12]

SENATOR MINES: Four inspectors. Four inspectors. [LB12]

SENATOR WIGHTMAN: So we'd be adding four full-time inspectors. Have you included the health insurance? [LB12]

SENATOR MINES: Yes, that's all included in this number, and it also includes...one of those is a veterinarian, Senator, that would act as the administrator for this program as well. [LB12]

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SENATOR WIGHTMAN: So one would be a veterinarian? [LB12]

SENATOR MINES: Yes, sir. [LB12]

SENATOR WIGHTMAN: And then three or four inspectors. [LB12]

SENATOR MINES: We'd have three inspectors that would be funded under the A bill with LB12, and we have one...currently have one inspector that's cash funded. So we'd have a total of four inspectors, and one veterinarian administrator. [LB12]

SENATOR WIGHTMAN: Now your A bill provides for \$260,000, I believe, on the second year. Is that correct? [LB12]

SENATOR MINES: Yes, sir. [LB12]

SENATOR WIGHTMAN: Or, excuse me, \$200,000 on the second year. Is that correct? [LB12]

SENATOR LANGEMEIER: Thirty seconds. [LB12]

SENATOR MINES: You've got it in your hand. I trust that's true. [LB12]

SENATOR WIGHTMAN: And I'm just wondering at this point how you would employ a veterinarian and four inspectors. [LB12]

SENATOR MINES: In the second year of the biennium, we don't have to have vehicles included for \$200,000; thus, the reduction from \$270,000 to \$200,000, roughly. [LB12]

SENATOR WIGHTMAN: But are you still...I'm asking are you still including a veterinarian plus... [LB12]

SENATOR MINES: Yes, sir. [LB12]

SENATOR WIGHTMAN: ...four inspectors? [LB12]

SENATOR LANGEMEIER: Time. [LB12]

SENATOR MINES: Yes. [LB12]

SENATOR WIGHTMAN: Thank you, Mr. President. [LB12]

SENATOR LANGEMEIER: Thank you, Senator Wightman. Wishing to speak we have

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Heidemann, Erdman, and Fulton. Senator Heidemann, you are recognized. [LB12]

SENATOR HEIDEMANN: Thank you, Mr. Speaker and fellow members of the body. I'm going to be really brief. I'm not going to get in details on this bill because I really don't have that much of a problem with this bill. What I want to convey to you is that we are starting to look at a lot of bills with A bills that follow them. We're looking at bills with cost, and there's no problem with that either. I think we as a body and we as a state need to do things in this state that is going to be beneficial for the state and good for the state in the long run, and if that costs money, there is nothing wrong with that. But I think we as a body, as we are starting to go through the bills that cost money, what I ask you to do is look for priorities, because there are a lot of good things out there that we could do, there are some...even some necessary things out that we probably should do, but I don't know if we can do them all. So all I'm asking you to do, as these bills start to come before us and you look at them, I ask that you look at the bill and ask yourself, is this a priority, is this a priority for me? Because we can only do so much as a state, and we need to make sure, as these bills come to us and as we move these bills on, that it is a priority. And if this bill is a priority for you then I urge you to support the bill and to pass it, and then after you pass the bill we need to support the A bill, because this body has an obligation to fund the things that we pass, and that's my opinion. But I believe that, generally speaking, the obligation is there to fund it if we so desire to support the bill. With that, that's all you'll hear from me at this time. Thank you, Mr. President. [LB12]

SENATOR LANGEMEIER: Thank you, Senator Heidemann. Senator Erdman, you're recognized. [LB12]

SENATOR ERDMAN: Mr. President, members of the Legislature, would Senator Heidemann yield to a question, please? [LB12]

SENATOR LANGEMEIER: Senator Heidemann, would you yield to a question? [LB12]

SENATOR HEIDEMANN: Yes. [LB12]

SENATOR ERDMAN: Senator Heidemann, can you turn to Table 9 on page 13 of the preliminary committee report from the Appropriations Committee. [LB12]

SENATOR HEIDEMANN: Yes. [LB12]

SENATOR ERDMAN: As I read the language referring to the Department of Agriculture, which is Agency 18, the Appropriations Committee has recommended an overall reduction in their budget over the next two years of approximately \$60,000. Is that how you would read that? [LB12]

SENATOR HEIDEMANN: Yes. [LB12]

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SENATOR ERDMAN: Twenty thousand one year, \$40,000 the second year. [LB12]

SENATOR HEIDEMANN: Yes. [LB12]

SENATOR ERDMAN: Is that an actual reduction, or is that a reduction from the Governor's proposal? [LB12]

SENATOR HEIDEMANN: This probably would be an actual reduction. There were two things that came up, Senator Erdman. As Appropriations Committee, we ourselves look at priorities and where we can do a better job and where we can be more efficient, and there were two things that came up to us in modification. One was dealing with seed testing in the state of Nebraska, where the Department of Agriculture tested seed that farmers or seed people would send in to them. We are looking at trying to do something maybe with the University of Nebraska, not to have duplicate efforts, and at that time the Department of Agriculture would not have to do that. That was part of the reduction that we was able to get from them. The other part was, I believe, a noxious weed program that we looked at and we didn't fund at this time. [LB12]

SENATOR ERDMAN: Okay. [LB12]

SENATOR HEIDEMANN: So this might not be as much of a reduction as you would see, but actually maybe trying to gain efficiencies. [LB12]

SENATOR ERDMAN: Understood. I just wanted to make sure that I understood the proposal that was before us, and it seemed fitting, since we were discussing a bill relating to funding for the Department of Ag. So that was...I just wanted to make sure I had it accurately. Members of the Legislature, let me be at least a little bit clear about what LB12 does and what LB12 does not do. LB12 requires inspections of licensed facilities. Now there are facilities in the state of Nebraska that may not be licensed. In the event that the example that Senator Mines gives you of a facility that would be deemed a puppy mill, those issues generally fall under animal cruelty statutes. Last year the Legislature had adopted a provision of law relating to the commercial cat and dog inspectors, that they have the authority similar to local law enforcement, or law enforcement in general, in regards to enforcing animal cruelty in the event that an inspection is being done. So in addition to the local law enforcement that we have, a county sheriff or a police officer, maybe it's an animal control unit in a community, they have the authority to enforce animal cruelty law under existing law. Senator Mines' bill, LB12, that was advanced from the committee, clarifies the inspections and the number of inspections that need to be done for someone who is licensed. I think there's a valuable distinction there because at our committee hearing we had some that wanted to come in and say that this will eliminate all puppy mills. It would eliminate them in the event that they were licensed and that the inspections found those issues. In the event

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that they are unlicensed in the state of Nebraska, there is already a mechanism in place under the animal cruelty laws, and it's a matter of balancing those two issues out. So LB12 isn't a global solution to all of our problems relating to animal breeding, specifically the commercial operations, but it does address some of the concerns that have been brought up about the need for additional inspections, to make sure that those that are subjecting themselves to a license are held to that standard. So I wanted to make sure that the body was clear that this isn't the solve-all, that there are other provisions under law that help to address some of the concerns and that LB12 applies to the approximately 700 licensed facilities in the state. [LB12]

SENATOR LANGEMEIER: One minute. [LB12]

SENATOR ERDMAN: They would be subject to the provisions under LB12. Thank you, Mr. President. [LB12]

SENATOR LANGEMEIER: Thank you, Senator Erdman. Senator Fulton, you're recognized. [LB12]

SENATOR FULTON: Thank you, Mr. President, members of the body. Mr. President, would Senator Mines yield to a question? [LB12]

SENATOR LANGEMEIER: Senator Mines, will you yield to a question? [LB12]

SENATOR MINES: I will, Mr. President. [LB12]

SENATOR FULTON: Senator Mines, the...there's a certain amount of cash funded...there will be some revenue derived from a cash fund. And can you clarify what that revenue in the cash fund is going to fund? [LB12]

SENATOR MINES: Well, currently the cash fund is used to fund the one inspector and some administrative backup for that inspector, as I understand it, Senator, as well as operating the program, and that's really all it does, and it would continue to do just that. It would use those same monies for that purpose in the future. [LB12]

SENATOR FULTON: Does the cash fund pay the full salary of that inspector right now? [LB12]

SENATOR MINES: Senator, I believe that is...it fully pays the salary, but I can't answer that for sure. [LB12]

SENATOR FULTON: Okay. The concern that I have, I guess, and maybe you could allay my concern, is the...we create an agency, another agency, which could potentially grow. I'm not saying that's necessarily bad. My concern has to do with the money that's

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involved with that. If the cash fund isn't adequate to support this inspector's position, then would I be correct in assuming that the remainder of money necessary to support this position would come from the General Fund then? [LB12]

SENATOR MINES: No, that's not correct. It's a cash-funded agency...or program, excuse me, and I was just off, under the balcony, was told that the cash funds received does pay fully for the program that's in place today. The A bill would add additional inspectors and a veterinarian to that program. [LB12]

SENATOR FULTON: Okay. So the A bill is in addition to the cash-funded position. [LB12]

SENATOR MINES: Yeah, that's correct. [LB12]

SENATOR FULTON: Okay. Okay. I don't know for certain how I'll vote on this, but I appreciate your yielding to question, and I'm through. I won't yield the rest of my time. I'll just shut off now. [LB12]

SENATOR LANGEMEIER: Thank you, Senator Fulton. Senator Mines, you're recognized. [LB12]

SENATOR MINES: Thank you, Mr. President. Senator Erdman is absolutely correct, this won't solve all of our problems, but what LB12 does, it does give the department authority to levy a fine, which they don't have now. It also adds additional inspectors for those 700 currently licensed facilities. And we believe that it also, with additional inspectors throughout Nebraska, will encourage, maybe through fear, intimidation, or other means, those illegal puppy mills to straighten up and become licensed. Now there are mechanisms under current statute that would deal with those separately, but we think that LB12 helps encourage the bad actors to become nice folks. And ultimately, Senator Heidemann is exactly right--I'm glad that he stood up and brought this to your attention--we do need to identify priorities this session. We're all going to have priorities. Most of them will cost money. This is not a one-year priority for those of us that support LB12. This is a...has been an ongoing battle, and frankly, it's...we're at the finish line. And I never thought when I entered this body four years ago that I would carry a bill that would help reduce the abuse to puppies, because frankly, that just wasn't a priority to me. My constituent is the direct...one of my constituents is the director of the Nebraska Humane Society and has taken the time to educate me, and over the last several years I've come to see what atrocities there really are in Nebraska with our cats and dogs. That's why I bring this. That's why it's a priority for me, and I hope it becomes a priority for you and the body. Thank you, Mr. President. [LB12]

SENATOR LANGEMEIER: Thank you, Senator Mines. Senator Synowiecki is recognized. [LB12]

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SENATOR SYNOWIECKI: Thank you, Senator Langemeier. Senator Mines, would you yield for just a quick question? [LB12]

SENATOR LANGEMEIER: Senator Mines, would you yield to a question? [LB12]

SENATOR MINES: I will. I will, Mr. President. [LB12]

SENATOR SYNOWIECKI: Senator Mines, the General Fund appropriation for the program, can that be mitigated at all? Does your bill address the fee costs? Is there any possibility of increasing the fees in an attempt to mitigate the General Fund costs of the program? [LB12]

SENATOR MINES: Senator Synowiecki, there are. The fees are capped today, and we're not asking for a change in the cap, at \$250 for a license. The Department of Agriculture has full authority to charge fees based on a scale that they decide. We don't decide that for them. And if the Department of Agriculture would so choose, they could increase fees. I think that you're going to see a standardization of fees for those facilities that don't have cats and dogs. So the short answer is, yes, Senator, there is a facility, and that would be determined by the Department of Agriculture. [LB12]

SENATOR SYNOWIECKI: Can we...so we don't, statutorily, we don't have no jurisdiction over them fees? It's not statute-based then? [LB12]

SENATOR MINES: Well, it is, but we set a cap of \$250. We don't establish the fees for the different sizes of facilities, so if this body would choose to increase the fee to \$500, the cap...and I'm not suggesting that; I'm just saying we do have the ability to set the cap, and we have chosen as a body not to get involved in the day-to-day fee structure. [LB12]

SENATOR SYNOWIECKI: Senator Mines, my question originates because all of our elevator inspectors, electrical inspectors, they're all cash funded and they're funded through their fees and so forth of the work they do, and we don't have General Fund appropriation typically and normally for inspection-related work. Do you understand what I'm trying to get at? And what happens is these fees will kind of go up and down, depending on the workload of the inspectors, and to assure that the work that they do is essentially paid by the industry that they regulate. Is that possible with this industry? [LB12]

SENATOR MINES: Well, the Department of Agriculture does have a blend. They use general and cash funds in their agency. And, if I might, Senator Erdman understands the fee structure, and if I could defer those questions to him, he is prepared to answer those. Is that okay? [LB12]

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SENATOR SYNOWIECKI: That would be fine. Senator Erdman, would you yield?
[LB12]

SENATOR LANGEMEIER: Senator Erdman, would you yield to a question? [LB12]

SENATOR ERDMAN: I would, Mr. President. [LB12]

SENATOR SYNOWIECKI: Senator Erdman, as I...I don't know if you were listening or not, but my...during my tenure on the Appropriations Committee, it's been my understanding and my awareness that pretty much all of our inspection-based roles, in terms of safety and whatnot relative to whether it be elevator safety inspections, whether it be electrical inspections, fire marshal inspections, is all essentially paid for by the industries that they regulate and that we do not have General Fund appropriations typically and normally for inspection-based endeavors. [LB12]

SENATOR LANGEMEIER: One minute. [LB12]

SENATOR SYNOWIECKI: Is there any possibility of this industry essentially regulating itself like the other industries do? [LB12]

SENATOR ERDMAN: Senator Synowiecki, I'll give you a brief answer. I have my light on as well and we can continue this, I believe, after Senator Chambers addresses the Legislature. The fee structure is designed to allow for some General Fund and some cash fund, and that's been a goal of most of the groups, is to balance those out. A couple of the bills that we have passed this session, the Pure Food Act and the Milk Act, actually balance the cost of inspection or application of the law 50-50 between General Funds and cash funds. So there always has been a balance. The question that is before the Legislature every year is, what is a fair balance between those two funds? And like I said, I do have my light on. I can give you some more information. [LB12]

SENATOR SYNOWIECKI: Thank you. Also, I think we're running short of time, but I'd be interested to know that the fines levied against these operators...I see it's remitted back to the State Treasurer. Is that a constitutional... [LB12]

SENATOR LANGEMEIER: Time. [LB12]

SENATOR SYNOWIECKI: Okay. [LB12]

SENATOR LANGEMEIER: Thank you, Senator Synowiecki. Senator Chambers, you're recognized. [LB12]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I'm

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going to speak more to the bill and what we're attempting to accomplish here. I've been in the Legislature 37 years now. There have always been attempts during that time to find the funds to see that animals are not treated viciously, brutally, cruelly, inhumanely. Animals don't treat each other the way that human beings do. If an animal kills, the animal is killing for food, to protect itself, its young. And even when you're dealing with a territorial situation, territory becomes a problem only between animals of the same species. Nature put that instinct or that drive into them because it's going to take a certain amount of territory for an animal and its offspring to survive. If you have too many animals of the same species in too small a space, the balance of nature is thrown off. It has been found that in zoos, in laboratories, when they put too many animals of the same species in too small a space, their societal structure breaks down, attacks are made against animals which would not ordinarily occur. So in the wild you will find the territorial instinct present only among individuals of the same species. Now if you have a predator/prey situation, that is different. The predator is going to get what prey it can, but within its territory. Now these things that people attribute to animals when they talk about an animal being vicious are inappropriate. Viciousness stems from rational thought and intent. Animals are behaving the way they do because of their nature. Their nature is what it is because of the way they were created or wired. Human beings have no excuse to be cruel and brutal to these animals. There's a tiny poodle who comes to my office every day practically, and she was rescued from a puppy mill. They had tried for five or six years to breed her and couldn't, so they were going to put her away. She was rescued, and the lady in my office, Cindy Grandberry, rescued her. And now if Nicole, which is her name, were able to speak and she knew that I were not going to take this position, as much as she likes me under ordinary situation, she would bite me as soon as I go into that office. And before you think that a small poodle's bite cannot inflict pain, remember that those little teeth crush bones, and we have bones, and before you get to that bone it's flesh and muscle. So I don't want to upset Nicole. In reality, with all of the people I have discovered who love animals, I am shocked that it is so difficult for us to get money to protect these animals, these creatures, who bring us so much joy, so much solace, when nobody else can be relied on. And we quibble about what amounts to pennies. Every time we refuse to provide the protection needed, there are untold numbers of animals suffering unspeakable cruelties. So this is a bill that I support. I would be in favor of a total General Fund appropriation and in a greater amount than what is in this bill. But there is a practical aspect to this entire discussion, and Senator Mines is recognizing... [LB12]

SENATOR LANGEMEIER: One minute. [LB12]

SENATOR CHAMBERS: ...that and bowing to it. We have to get something, and this bill is a minimal amount. I hope that we will adopt this bill and it will just be a start. If you have an animal that meant anything to you, think of how you'd feel if you came upon somebody bludgeoning that animal. It has been found by HHS and other social welfare type agencies that when you have a home where animals are being abused then you'll

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find child abuse, spouse abuse, and other types of human abuse occurring at the same time. So since we have made these animals dependent on us, taken away their ability to survive in the wild, we owe something to them as a society. This bill is an attempt to assume and discharge that responsibility. You must be faithful stewards over those living creatures delivered to you. You were granted dominion over all of the earth, and in exercising that dominion we must show some compassion. Thank you,... [LB12]

SENATOR LANGEMEIER: Time. [LB12]

SENATOR CHAMBERS: ...Mr. President. [LB12]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Erdman, you are recognized. [LB12]

SENATOR ERDMAN: Thank you, Mr. President. Senator Synowiecki, I'll go ahead and ask you to yield so we can continue your dialogue in case some of the...or ask you if you would yield in case some of the things that I share you would have further questions on. [LB12]

SENATOR LANGEMEIER: Senator Synowiecki, would you yield to a discussion? [LB12]

SENATOR SYNOWIECKI: Yes, I would. Thank you, Senator Erdman. I was getting into the...when you levy the fines. Is it unconstitutional then to keep those levied fines and recycle them through the program? [LB12]

SENATOR ERDMAN: It is. There are actual provisions in law that allow for administrative costs to be recovered that go back into the program, but fines are required by the constitution to go to the permanent school fund. And so it doesn't matter what fine it is. As I understand the law, we are required to place those fines into that fund. [LB12]

SENATOR SYNOWIECKI: Okay. Thank you. I just, as my conversation with Senator Mines indicated, I was just looking at every way possible that we can potentially mitigate General Fund exposure for the program. I support the program, I think it's needed, and I understand where we're going with this, but I was just hoping that we could look at every avenue available to us, which I'm sure the committee did, to lessen the exposure of the General Fund. And thank you for your willingness to be responsive to some of the concerns relative to the General Fund appropriation. [LB12]

SENATOR ERDMAN: You're welcome, Senator Synowiecki. And let me further go on, members. The process now is that we do set the cap on what the fees that can be charged for licensed facilities in the state. Right now, that cap is \$250. Under the

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authority that we have granted the Department of Agriculture to set that fee, it is currently set at \$150. With LB12A, the cash fund authority for the Department of Ag actually increases to be able to allow them, should they choose to raise that fee to the maximum, that they would be able to then expend those dollars for the purposes of this program. So there is somewhat of a balance there in that it is a cash fund, part of it. The limitation still has to be authorized by the Legislature, and under LB12A we will actually be authorizing the amount necessary for them to reach their maximum. As I understand, just doing some quick figuring on the back of paper here, to be able to try to cash-fund the bill, as it stands as amended, the fees would have to approximately triple. So you'd have to go from \$250 to \$750 in an attempt to try to fully cash-fund the program. We had some discussions in the committee from some of the dog breeders' representatives about trying to maximize some fines, or, excuse me, some funds from out-of-state individuals who come to Nebraska to purchase animals for resale, whether they be another breeder or whether they be a facility. That was looked into, and Senator Mines' office did an exceptional job of finding out what the actual number would be. I think we came up with less than half a dozen, maybe even three folks that would fall under that definition. You can't place a fine...or a fee, excuse me, I keep interchanging those. You can't place a fee reasonable enough to make a real dent in the fiscal note. And, in fact, if we would place it high enough that it would need to be, there would probably be some interstate issues that would have to be addressed. And instead of getting ourselves tied up in some of those concerns, the committee chose not to pursue that. So there were other areas that the committee and Senator Mines' staff did look into. The other thing that might be a topic of discussion for the Legislature to consider is truly to understand what the target of the bill is. Currently the bill, as written and as amended, requires that all facilities be charged this fee. It also then requires that those... [LB12 LB12A]

SENATOR LANGEMEIER: One minute. [LB12]

SENATOR ERDMAN: ...facilities all be considered for the opportunity to be inspected. There would be some ways that may be able to limit or narrow the scope, because animal shelters and other areas are also included in these inspections, and it would be a matter of further clarifying, if the decision has to be made that the fiscal note isn't acceptable in its current amount, to further narrow that down. But ultimately you're still going to have some cost due to the limitations of the ability to raise cash funds, due to the fact that none of the breeders would be aware of not only the increase above the \$250 but possibly as high as the \$750 if you were going to try to cash-fund this program. So there are some practical things that if the Legislature would choose to pursue those, we, the committee, and ultimately Senator Mines would have to have the opportunity to discuss those possibilities with affected parties to determine if there are more palatable ways to accomplish a similar goal. Thank you, Mr. President. [LB12]

SENATOR LANGEMEIER: Thank you, Senator Erdman. Wishing to speak we have Dubas, Mines, and Chambers. Senator Dubas, you're recognized. [LB12]

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SENATOR DUBAS: Thank you, Mr. President. As a member of the Ag Committee, this was probably one of the first bills that I heard as a freshman senator in committee, and to be very honest with you, I'm thinking, this is a big deal? And it is a big deal. The more I learned about it, the more of the abuses that I became aware of, I realize that this definitely is something that the state needs to pay attention to and try to get some regulatory authority in place. I guess I'm just rising in support and reinforcing what Senator Erdman and Ag Committee counsel has worked on, and Senator Mines and his office have worked on. And we definitely took into serious consideration how we could minimize the costs to the General Fund while at the same time addressing this real, real serious issue. And so I do appreciate the work that the Ag Committee Chair and counsel and Senator Mines' office put into this, and that we definitely did take into consideration costs and how we could provide this service at minimal effect to the General Fund. And I see the role of government as protecting those who can't protect themselves: children, puppies, animals, those. If we're going to have these types of agencies in place, we need to put the funding behind it and make sure that they're able to do their job. So, you know, I encourage my fellow members to pass this bill on to Select, and again, thank the Ag Committee Chair and Senator Mines' office for the work that they did. Thank you. [LB12]

SENATOR LANGEMEIER: Thank you, Senator Dubas. Senator Mines, you are the last light on. I'd recognize you to close, if you're so willing. [LB12]

SENATOR MINES: I will close, Mr. President. Thank you very much and thank you all for your comments. I think the discussion has been good. I don't know that anybody is opposed to protecting the animals, specifically cats and dogs, that are in breeder mills right now. This is intended to do four things, again. The first one would be to allow the Department of Agriculture the authority to levy fines of up to \$5,000 in the event of violations of the Commercial Dog and Cat Operator Inspection Act. The second thing it will allow...would do, would insert language that inspectors would be available temporarily for other activities within the department, and that would be in case of livestock disease emergency or other threat to livestock and public health. So not only are the inspectors allocated to this particular program, they are available as well to other parts...other services within the Department of Agriculture. The second thing this...or the third thing this would do, would allow the department to conduct preinspections of facilities that apply for new licenses, as well as inspections every other year for already licensed facilities. And under the act it would also then, for those facilities that do not have cats and dogs, they would have a flat \$150 fee, and likely be about \$150, and so they are exempted from the graduated scale that the Department of Agriculture currently uses. This is a public issue. Again, I think the use of public funds, when it's in the public interest and the public safety, is important, and that's why I think we're using a blend of public and cash fund to support this program. I think it's important that we do that, and I would urge you to vote green on LB12. Thank you, Mr. President. [LB12]

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SENATOR LANGEMEIER: Thank you, Senator Mines. You have heard the closing on the advancement of LB12 to E&R for initial. All those in favor vote yea; all those opposed vote nay. Have all those that wish to vote have done so? Record, Mr. Clerk. [LB12]

CLERK: 27 ayes, 2 nays, Mr. President, on the advancement of LB12. [LB12]

SENATOR LANGEMEIER: LB12 does advance. Next item on General File, Mr. Clerk. [LB12]

CLERK: LB12A, Mr. President, by Senator Mines. (Read title.) [LB12A]

SENATOR LANGEMEIER: Senator Mines, you are recognized to open on LB12A. [LB12A]

SENATOR MINES: Thank you, Mr. President. Colleagues, this is part two. This...you have approved advancement from General File to Select of LB12. We've been discussing the A bill along with that, and this bill would appropriate \$266,929 from the General Fund in fiscal year 2007 and 2008. The second year of our biennium it's \$200,929, and that is because there's...we don't have to purchase vehicles in that second year. So I respectfully ask for your consideration, appreciate your vote in advance to advance the A bill for LB212...or LB112...LB12. Thank you. [LB12 LB12A]

SENATOR LANGEMEIER: Thank you, Senator Mines. You've heard the opening on LB12A offered by Senator Mines. The floor is open for discussion. Senator Harms, you're recognized. [LB12A]

SENATOR HARMS: Senator Mines, would you yield for just one question? [LB12A]

SENATOR LANGEMEIER: Senator Mines, would you yield to a question? [LB12A]

SENATOR MINES: I will, Mr. President. [LB12A]

SENATOR HARMS: Yeah, I'm listening to the discussion and everything. The only question I have is in regard to your...the amount that you're asking for. Can you actually believe you can hire a veterinarian and two other individuals for that amount and to be able to accomplish really what we're out here to try to accomplish? I find that hard to believe. When you look at the fringes and look at the amount that it cost to hire today, I just...I find that difficult to understand whether we can do it for that amount, plus all the other things you want to do here. [LB12A]

SENATOR MINES: Senator, the fiscal note is the result of consultation with the

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Department of Agriculture. Now realize we also have cash funds as well. We'll have about a hundred and...I don't have it handy, forty, fifty thousand dollars of cash funds as well. The department is confident that this number is accurate and appropriate, and I think our Fiscal Office is as well. So that...I didn't make up the number. This is where it came from. [LB12A]

SENATOR HARMS: No, I wasn't accusing you of that. I just know what it costs to hire people and particularly as you get more specialized, such as a veterinarian and other people that you're going to want to have. It's...costs can be much higher than that, and that's why I was just curious. I definitely am supporting the bill, but I'm just questioning the amount, that's all. And thank you very much. And, Mr. President, thank you. [LB12A]

SENATOR LANGEMEIER: Thank you, Senator Harms. Is there anyone else that would like to wish to discuss LB12A? Seeing no lights on, Senator Mines waives closing. You've heard the closing on the advancement of LB12A to E&R for initial. All those in favor vote yea; all those opposed vote nay. Have all those that wish to vote have done so? Record, Mr. Clerk. [LB12A]

CLERK: 28 ayes, 3 nays, Mr. President, on the advancement of LB12A. [LB12A]

SENATOR LANGEMEIER: LB12A does advance. Mr. Clerk, next item on the agenda. [LB12A]

CLERK: LB390, Mr. President, is a bill by Senator Aguilar. (Read title.) Bill was introduced on January 16, referred to Natural Resources, advanced to General File. At this time I have no amendments to the bill, Mr. President. [LB390]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Aguilar, you are recognized to open on LB390. [LB390]

SENATOR AGUILAR: Thank you, Mr. President, members. LB390 is a very simple, straightforward bill that deals with underground storage tanks. In Nebraska, the State Fire Marshal's Office administers the underground storage tank program. The current program involves licensing, installation standards, and inspection. The United States Environmental Protection Agency is now mandating that all states add to that program by creating the means to identify storage tanks that have a leakage problem, or where owner-operators are unwilling to bring the tank into compliance with other primary provisions for state and federal UST regulations, and placing a seal on the intake valve to prevent further deliveries until the tank is fixed. Included in this new responsibility is a training program for tank operators from the retail businesses who own the tank. This provision is intended to provide tank operators with the knowledge of the operational requirements of the UST regulations. LB390 authorizes State Fire Marshal to create rules and regulations to address these responsibilities, and by doing so brings the state

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of Nebraska law into compliance with federal law. The bill was advanced by the Natural Resources Committee unanimously. The fiscal note reflects that any cost of promulgating rules and regulations can be absorbed in the current agency budget. I ask for your support of this bill and your vote to advance it to Select File. Thank you very much. [LB390]

SENATOR LANGEMEIER: Thank you, Senator Aguilar. You have heard the opening on LB390. The floor is now open for discussion. Senator Fulton, you are recognized. [LB390]

SENATOR FULTON: Thank you, Mr. President, members of the body. Didn't dawn on me that I'm sitting right next to Senator Aguilar. (Laugh) I probably could have asked this privately, but I'll ask it very quickly here. The... [LB390]

SENATOR LANGEMEIER: Senator Aguilar, will you yield to a question? [LB390]

SENATOR AGUILAR: Yeah. [LB390]

SENATOR FULTON: The...oh, let's see, in the green copy of the bill, page 4, at the bottom it says, "Effective August 8, 2009, requirements for training and certification of operators." Will the Fire Marshal be able to incorporate this...the requirement for training and certification on August 8, 2009? Will they be able to incorporate that into their budget? [LB390]

SENATOR LOUDEN: He's the one that chose that date, so I'm sure that is a possibility. [LB390]

SENATOR FULTON: Okay. Yeah, that's the only concern I have, is that it...when this gets...when...if this were to become law, the requirements for training and certification, if that could be accomplished without increasing budget then I would certainly support the bill. [LB390]

SENATOR AGUILAR: That's correct. He brought this legislation to me and he set those dates, so he's very confident that that can, indeed, happen. [LB390]

SENATOR FULTON: Okay. No further questions. Thank you. [LB390]

SENATOR LANGEMEIER: Thank you, Senator Fulton. Are there any others that wish to speak to LB390? Seeing no lights on, Senator Aguilar waives closing. You have heard the closing on the advancement of LB390 to E&R for initial. All those in favor vote yea; all those opposed vote nay. Have all those that wish to vote done so? Please record, Mr. Clerk. [LB390]

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CLERK: 34 ayes, 0 nays, Mr. President, on the advancement of LB390. [LB390]

SENATOR LANGEMEIER: LB390 does advance. Next item on the agenda, Mr. Clerk. [LB390]

CLERK: LB568, introduced by the Natural Resources Committee and signed by its members. (Read title.) Introduced on January 17, referred to the Natural Resources Committee, advanced to General File. I have no amendments pending at this time, Mr. President. [LB568]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Louden, you are recognized to open on LB568. [LB568]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. This is a simple bill. It simply extends a grant program under the Waste Reduction and Recycling Incentive Fund. It does have the emergency clause, since this program is scheduled to sunset on June 30, 2007. The bill extends the sunset to June 30, 2012. One of the examples of a program that benefits from this grant fund is a tire amnesty program. Tire amnesty programs are held in communities across the state, and the grant money helps the committees collect and dispose of the scrap tires collected during the program. Another example are schools who have accessed this money for playground and athletic fields. The Department of Roads has also accessed this fund to assist with the purchase of crumb rubber to use in road construction. There was no opposition to the bill, and it was advanced unanimously by the committee. I would ask for your support in advancement of this bill. [LB568]

SENATOR LANGEMEIER: Thank you, Senator Louden. You have heard the opening on LB568. The floor is now open for discussion. Senator Preister, you are recognized. [LB568]

SENATOR PREISTER: Thank you, Honorable President, friends all. Senator Louden, could I ask you some questions, please? [LB568]

SENATOR LANGEMEIER: Senator Louden, would you yield to a question? [LB568]

SENATOR LOUDEN: Yes, go ahead, Senator Preister. [LB568]

SENATOR PREISTER: Originally, I was here when we established and separated out these funds for grants dealing specifically with tires. The reason that we did that was because we had large scrap tire piles around the state we needed to clean up. Do you know the status of those piles? Didn't we already accomplish that, since we've extended this now, I think, three different times? [LB568]

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SENATOR LOUDEN: Well, I think that's true, Senator Preister. Those particular problems that existed when this was brought about have been taken care of, but there always comes a time when, whether just pure dumb luck or whether it was foresight or what, but this is a program that has continued on and they keep on collecting a lot of tires. And they have these tire amnesty programs, and these communities will have hundreds of tons of tires at the time, and this is how they collect them each year. I agree that it wasn't meant to be that way in the beginning, I don't think. I wasn't around here when it came about, but like I say, it's turned out to be one of the more sunshiner sides of grant programs that we've done in Nebraska to get rid of old tires. And of course, the... [LB568]

SENATOR PREISTER: I understand that. [LB568]

SENATOR LOUDEN: ...the dollar is still being charged, you know, to this. [LB568]

SENATOR PREISTER: But they could still get the grant funds, even if this extension wasn't done. They can still apply, still get those grants, but they wouldn't be specifically earmarked out. So my concern is, if we've cleaned up the piles and we've gotten the big problem done, why do we need to extend this? The amnesties can still go on without this extension. The cleanups can still go on without this extension. Everything can still be done. The reason we extended it was because we had these big problems. I understand you're saying, and my understanding is, we've cleaned up the big problems. My question is, why do we need to specifically earmark these funds now? [LB568]

SENATOR LOUDEN: I think by doing this then these communities don't have to compete with other funding or other people, whatever other people are trying to get grant funding out of there. This is set aside for some particular recycling of these tires, the scrap tire program. That would be the difference. It would mostly be money set aside so that they didn't have to compete with all the other funding that would come down the pike. [LB568]

SENATOR PREISTER: Do we know the status? Did the committee get an update from DEQ in terms of where we may still have problems or still have tire piles, and information on any applications for grants that went unfunded? [LB568]

SENATOR LOUDEN: I...no, as far as I know we haven't gotten anything like that, that would have...that there are still problems out there. At the present time, it's mostly that there's a continuing, what would you say, scrap tires or used tires keep showing up all the time at the rate that we use tires in Nebraska and places like that. And so this is mostly the reason where the amnesty program comes in, and it's amazing that they come up with as many tons of tires that they are. Sure, we don't see these big huge piles laying around like we used to, but evidently there's still a lot of tires out there, and I think this is a very good program to continue. It's been extended again for, what, a

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period of five years, and I'm sure in five years' time from now there will still be a bunch of tires out there to be picked up. [LB568]

SENATOR LANGEMEIER: One minute. [LB568]

SENATOR LOUDEN: So I think this is something that we really need to advance and continue this program. It's one of the better programs that's been going on. [LB568]

SENATOR PREISTER: I really haven't heard any justification from you, though, for extending it. Yes, it's a good program, but we can do that same program without extending and removing the sunset. Five years, to me, is too long to allow it to keep going on. And since we're about to adjourn for the day, perhaps I can visit with you in between. But I think five years is too long a time to extend it again, particularly when we've dealt with all the big piles. It served its intended purpose. We've extended it more than once already. And the funds can still be accessed. There's still the opportunity for people to apply for the grant funds. They can still get those grant funds and... [LB568]

SENATOR LANGEMEIER: Time. [LB568]

SENATOR PREISTER: Thank you. [LB568]

SENATOR LANGEMEIER: Thank you, Senator Preister. Senator Wallman, you are recognized. [LB568]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. I, too, agree this is a...I can understand Senator Preister's concerns, but I'm a farmer, and lots of farmers have a bunch of trucks and everything. They buy their tires and put on their own tires and everything, new tires, so they got all these old tires. It's...and then the city people come out to the farm and put on their tires and leave their tires at your place. So I think this is going to be an ongoing problem like Senator Louden said. And why should we extend this? Otherwise, it's a hassle for small communities, county agents, to keep worrying about where they get their funds. And I guess if we can clean up our countryside, I'm all for extending something to make it easier for our county agents, because they have to go do paperwork, and my county agent was concerned about this, they'd be done with it. So that's where I'm coming from. Thank you, Mr. President. [LB568]

SENATOR LANGEMEIER: Thank you, Senator Wallman. Senator Fulton, you're recognized. [LB568]

SENATOR FULTON: Thank you, Mr. President, members of the body. Would Senator Louden yield to a question? [LB568]

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SENATOR LANGEMEIER: Senator Louden, would you yield to a question? [LB568]

SENATOR LOUDEN: Yes, I would. [LB568]

SENATOR FULTON: Where presently...these grants are afforded by the Department of Environmental Quality, correct? The grants are awarded by the DEQ? [LB568]

SENATOR LOUDEN: Yes. [LB568]

SENATOR FULTON: Okay. And where does that money come from? Is that...do they apply for federal grants, or does this come from part of DEQ's budget? [LB568]

SENATOR LOUDEN: No. Every time you buy a tire, Senator Fulton, do you ever notice there's a \$1 fee on that tire? That's where that comes from. Every tire you buy in Nebraska, whether it's one for your four-wheeler, one for your tractor, doesn't matter the size of the tire, there's a \$1 disposal fee on the top end of your purchase. Now that isn't the \$2.50 that the service station charges you to dispose of your tire, but it's that \$1 tire recycling fee or whatever is on the top end of your bill. [LB568]

SENATOR FULTON: Okay. This bill, in principle and intention, it's a good bill. I guess I have questions about the money. One final question about the money that's involved: If this weren't enacted...and the sunset provision is in 2008, right? [LB568]

SENATOR LOUDEN: 2007, next June, is when it goes out, yeah. [LB568]

SENATOR FULTON: 2007. Okay, it's coming right up. If the date were allowed to pass, what would happen to these funds? Would DEQ absorb these funds into their budget? Would these funds go into a separate cash fund? If this bill were not enacted, what would happen to the money? [LB568]

SENATOR LOUDEN: Well, it goes back into the Litter Reduction and Recycling Fund, is what it goes back into. The only difference with this, by having this in here, it gives the people that want to do tire disposal, it gives them a chance to have a separate fund to leverage rather than being in with the whole group to keep trying to get grant funds. That's the primary purpose of it. It makes it easier for communities to go ahead and leverage that grant funding rather than be in line with everybody else that's trying to get some funding out of there. [LB568]

SENATOR FULTON: That makes it clearer for me. This is an extension of an existing cash fund to do what DEQ has been doing. That clears it up for me. I will support the bill, and I thank you for your time. [LB568]

SENATOR LANGEMEIER: Thank you, Senator Fulton. Senator Preister, you're

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recognized. [LB568]

SENATOR PREISTER: Thank you Honorable President. I move that we adjourn until Monday morning. []

SENATOR LANGEMEIER: Mr. Clerk, items for the record. []

CLERK: Mr. President, I have a preliminary report from the Appropriations Committee, pursuant to Rule 8, Sections 2 and 3. Copies have been distributed to the members. Priority bill designation: The Government Committee has selected LB464. Business and Labor Committee reports LB505 to General File with committee amendments attached. Senator Pirsch would like to add his name to LB145, Senator Mines to LB471. Once again, Mr. President, an announcement: The Natural Resources Committee will meet in Executive Session at 1:15 today. (Legislative Journal pages 659-660.) [LB464 LB505 LB145 LB471]

And, Mr. President, Senator Preister's motion is to adjourn until Monday, February 26, at 10:00 a.m. []

SENATOR LANGEMEIER: Thank you, Mr. Clerk. The motion before the body is to adjourn until Monday, February 26, at 10:00 a.m. All those in favor say aye. All those opposed same sign. We are adjourned. []