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Floor Debate
March 08, 2007

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LB211A LB213 LB247 LB255 LB263 LB290 LB298 LB307 LB311 LB313 LB328 LB333
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SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Good morning, ladies and gentlemen, and welcome to the George Norris Chamber for this, the forty-second day of the One Hundredth Legislature, First Session. Our chaplain for the day is Pastor Edi Bickford with Peru Community Church and Tecumseh Lutheran Community Church, Senator Heidemann's district. Please rise.

PASTOR BICKFORD: (Prayer offered.)

SENATOR LANGEMEIER: Thank you, Pastor Bickford. I call to order the forty-second day of the One Hundredth Legislature, First Session. Please record your presence. Record, Mr. Clerk.

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

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

CLERK: I have no corrections this morning, Mr. President.

SENATOR LANGEMEIER: Are there any messages, reports, or announcements?

CLERK: Mr. President, a communication from the Governor to the Clerk. (Read re LB99, LB108, LB166, LB191, LB213, LB263, LB290, LB298, LB307, LB311, LB313, LB333, LB422, LB434, LB472, LB527, LB549, LB549A.) Banking, Commerce and Insurance Committee, chaired by Senator Pahls, reports LB134 to General File with amendments. And priority bill designation: Senator Pahls has selected LB482; Senator Harms, LB415; Senator McDonald, as Chair of General Affairs, LB638; and the second committee priority bill, General Affairs, LB578. That's all that I have, Mr. President. (Legislative Journal pages 777-778.) [LB99 LB108 LB166 LB191 LB213 LB263 LB290 LB298 LB307 LB311 LB313 LB333 LB422 LB434 LB472 LB527 LB549 LB549A LB134 LB482 LB415 LB638 LB578]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. First item on the agenda, LB57. [LB57]

CLERK: Mr. President, LB57 was a bill introduced originally by Senator Preister. (Read

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title.) The bill has been discussed, Mr. President, on both March 6 and March 7. When the Legislature left the issue yesterday, pending was Senator White's FA37. (Legislative Journal page 769.) [LB57]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Preister, would you give us a brief reopening on LB57? [LB57]

SENATOR PREISTER: Yes, Honorable President. Thank you for recognizing me. I will give a brief update. LB57 is a bill that would allow unions, if they're the collective bargaining unit, to be able to assess a fair proportionate share of the cost of negotiating a contract--not legal representation, but negotiating a contract--to be able to assess that proportionate share...thank you, Mr. President. [LB57]

SENATOR LANGEMEIER: Go ahead and keep going. The noise level is getting a little excessive. Thank you. [LB57]

SENATOR PREISTER: To assess that proportionate share to those members of the collective bargaining unit who are not actually members of the union. That amount could never be more than the actual union dues. It would only affect those folks who currently work in a union job. If there's no union there, it would not apply. If the employer did not agree to it, it would not apply. It has to be a part of the collective bargaining agreement with the employer. In that regard, it's voluntary. It does allow for the union to, if not able to collect the money, to seek legal recourse and to recoup those legal fees in addition to the actual fees. I think that tells you what the bill does, and I thank you, Mr. President. [LB57]

SENATOR LANGEMEIER: Thank you, Senator Preister. (Doctor of the day introduced.) Thank you for the reopening on LB57. Senator White, I would recognize you to give us a brief reopening on your FA37. [LB57]

SENATOR WHITE: That amendment, Mr. President, simply changes the effective day of the act. [LB57]

SENATOR LANGEMEIER: Thank you, Senator White. Mr. Clerk, for a motion. [LB57]

CLERK: Mr. President, Senator Preister offers a priority motion. He would move to bracket the bill until April 13, 2007. [LB57]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Preister, you are recognized to open on your motion to bracket. [LB57]

SENATOR PREISTER: Thank you, Honorable President. Friends all, I put up the bracket motion but I did not ask it to be unanimous consent. So I want to not cut off the

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discussion. I want to give anyone who wishes to address this issue the chance to do that if you choose to. The bracket motion is until April 13. It's essentially a month away. It's to get some time to be able to clear up some of the misinformation. It's an opportunity to look at the issue, in a new way perhaps, and to deal with it. I want to stress that there was no pressure to do this. I'm doing it voluntarily myself. It was with discussions with interested people on both sides, but primarily the supporters. The Speaker has not, on this issue or any others, been overly pushy or trying to influence. And this is a good opportunity to highlight that I think the Speaker has done a very good job in orchestrating the flow of our process, as well as facilitating discussion off the floor to help to facilitate rather than to pressure people to do or not do certain actions. So the Speaker has not been an influence in any negative way on this regard, and this bracket is not him saying to do it or not to do it. The bracket motion is there until a date certain, but for educational purposes I think it's important for people--outside of the body especially, but perhaps the new members--to know that on April 13, should we bracket this bill until then, that doesn't automatically put it on the agenda that day. It will not come back on the agenda before that date. But it is still up to the Speaker and the Speaker's discretion with the rest of the items on the agenda when the bill will actually come back, should it come back. It is a priority bill. It's got priority bill designation, so it likely can come back; it's just a matter of not being back on the agenda for that time period. At this point, I will allow anyone to make whatever final comments that anyone may wish to make. If no one wishes to make any, then we can just simply take the vote and move on. But I didn't want to cut off debate. I didn't want to put the bracket motion up and give no one a chance to deal with the issue for one last time. Some of us are obviously disappointed that some votes fell off. I know that there are some people who may have felt that they misunderstood or may have felt misled. For those folks, I'm sorry that they felt that way. There are some of the supporters who felt that they had been promised support by certain people and then that support backed off. Some of those folks also felt disappointed and let down. That's part of the process. We all pick ourselves up, we all dust ourselves off and move forward, hopefully with a smile on our face to go on to other issues. Disappointment aside, this will give us some time, and that's the purpose of it. Thank you, Mr. President. [LB57]

SENATOR LANGEMEIER: Thank you, Senator Preister. The floor is now open for discussion on the bracket motion. Senator Erdman, you are recognized, followed by Gay. [LB57]

SENATOR ERDMAN: Mr. President and members of the Legislature, I rise in support of the bracket motion out of respect for Senator Preister. And I believe the opportunity that they would request to work on this, I think that's fair. Those of you that are fundamentally opposed to LB57, I hope you will also join to bracket the bill. Some of you have some different ideas, and I think out of respect to the introducer of the bill, I think this is a fair request by Senator Preister. I hope you'll join me in voting to bracket LB57. Thank you, Mr. President. [LB57]

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SENATOR LANGEMEIER: Thank you, Senator Erdman. Senator Gay, you are recognized. [LB57]

SENATOR GAY: Thank you, Mr. President. I concur with Senator Erdman. I would like to thank Senator Preister as well. This issue, whichever side you look at it, I think it is a little more complex than has been portrayed maybe yesterday. And for both sides, I think it's good to take a step back, get a little more thoughtful process, especially for some of the newer members, where, you know, you learn the process and you do a little more research into things. So I would commend Senator Preister and I plan to vote for his bracket bill. Thank you. [LB57]

SENATOR LANGEMEIER: Thank you, Senator Gay. Senator Harms, you are recognized. [LB57]

SENATOR HARMS: Mr. President, colleagues, I rise to support Senator Preister and say thank you very much for doing this. And I'm sorry that we got into such a strong debate but I think it's the right thing. It's time to just continue to work on it. So I do support this. Thank you very much. [LB57]

SENATOR LANGEMEIER: Thank you, Senator Harms. Is there anyone else wishing to speak to the bracket motion? Seeing no lights on, Senator Preister, you are recognized to close on your bracket motion. [LB57]

SENATOR PREISTER: Thank you, Honorable President, friends all. Maybe I'll reconsider. I think Senator Harms said he was supporting me now. Oh, he meant the bracket motion, I'm sorry. (Laugh) I appreciate the kind words and the comments. I certainly am not giving up on the issue. The issue has been around for a while. I think it's an important one. I have supported virtually all...in fact, I don't know of one of the major economic development incentive tools that this state has had before it, I have supported that. I may have had questions about it, and I feel that it's really unfortunate that the business community, when they come in year after year asking for help, when one issue, one small item for labor is here and we can't even find it in our votes and our lobbying efforts to allow less than 8 percent--and I say less than 8 percent of the employers in the state because more than half of those are political subdivisions--so probably less than 3 percent of the businesses in the state are even union affected, so very few people would be. But that aside, the issue will stay alive. The issue isn't going away; the bill will be before us. As I said, it won't automatically come back up onto the agenda on April 13, so anybody that thinks it will, that's not the case. It is prioritized. It can come back this session, and the Speaker will make that determination sometime after April 13. The motion is to bracket. It's up to you if you choose to support it. Thank you very much. [LB57]

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SENATOR LANGEMEIER: Thank you, Senator Preister. The motion before the body is to bracket LB57 until April 13, 2007. All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB57]

CLERK: 37 ayes, 0 nays, Mr. President, to bracket the bill. [LB57]

SENATOR LANGEMEIER: LB57 is bracketed. Mr. Clerk, next item on the agenda. [LB57]

CLERK: Mr. President, LB143. It was a bill originally introduced by Senator McDonald. (Read title.) The bill was introduced on January 8, referred to Judiciary, advanced to General File. At this time I have no amendments to the bill, Mr. President. [LB143]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator McDonald, you are recognized to open on LB143. [LB143]

SENATOR McDONALD: Mr. President and members, LB143 is a bill to help victims of sexual offenses feel free to come forward to report the crimes perpetrated against them. LB143 prevents the use of polygraph testing of victims of sex offenses as a condition for proceeding with a criminal investigation. LB143 is also necessary for Nebraska to keep its federal grant funding, which is used to train law enforcement and medical personnel across the state on how to assist victims of sex offenses. Nebraska has been fortunate to receive grant funding from the United States Department of Justice Office on Violence Against Women to implement important domestic violence programs. The grant funds are distributed between the Nebraska Domestic Violence and Sexual Assault Coalition, the Nebraska State Patrol, and the Nebraska Department of Justice. In 2006, \$407,372 in grant funding was received. Throughout 2006, these organizations met with law enforcement and probation officers. Victim advocates, medical and emergency personnel, and prosecutors had a series of conferences across the state. These meetings were held from McCook to Wayne, helped rural communities develop better coordinated responses to sexual assault and domestic violence. Four conferences and 14 presentations later, nearly 500 public servants across the state are better trained and more prepared to respond to sexual assault and domestic violence incidents. This funding, which has been such a powerful tool and benefit to our state, could dry up unless we pass LB143 to conform to federal guidelines that require states to adopt legislation preventing the use of polygraph testing of victims of sexual offenses as a condition for proceeding with a criminal investigation. In Nebraska, we are fortunate to have law enforcement officers that do not use polygraph testing as standard practice for determining whether a sex crime investigation should be launched. We also know that the last thing victims need to feel is like their integrity might be questioned when they file a police report. Nebraska doesn't want to be part of victimizing them twice--once by their assailant and again by the process of pursuing justice. It's particularly important that victims don't stay silent when they've been sexually

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assaulted. According to the Nebraska Crime Commission, 566 forcible rapes were reported in 2005. The latest national crime victimization survey by the United States Department of Justice shows that an average of 59 percent of rapes over the last five years have not been reported. That's way too many. Nebraska can have the best laws against sexual offenders on the books, but one thing will stand on the way of bringing these criminals to justice, and that would be not reporting the rape. We take sexual offenses seriously in our state and victims should feel that way too, from the moment they file a report until their assailant is put behind bars. Thank you for your interest and please advance LB143 to Select File. Thank you. [LB143]

SENATOR LANGEMEIER: Thank you, Senator McDonald. The floor is now open for discussion on LB143. Senator Ashford, you are recognized. [LB143]

SENATOR ASHFORD: Thank you, Mr. President and members. And I appreciate Senator McDonald's explanation on LB143 and I appreciate that she brought this bill to the committee. This is an important measure. The committee advanced the bill on a 7-0 vote. There were no opponents to the bill. And certainly the federal grant money is an important part of the issue, but as Senator McDonald has rightly said, the issue is much deeper than that. Again, Senator McDonald has done the state a service by bringing this bill to us and I strongly urge that it be advanced. Thank you. [LB143]

SENATOR LANGEMEIER: Thank you, Senator Ashford. Senator Pirsch, you are recognized. [LB143]

SENATOR PIRSCH: Thank you, Mr. President and members of the body. I just wanted to rise in support of this bill as well. I think it is the right step for making sure that we don't revictimize victims of crime yet again. I want to point out this bill would not bar law enforcement from using...well, let me ask if the good senator would yield for a question. Senator McDonald? [LB143]

SENATOR LANGEMEIER: Senator McDonald, would you yield to a question? [LB143]

SENATOR McDONALD: Yes, I would. [LB143]

SENATOR PIRSCH: I would just like to ask you, now does this prevent law enforcement from ever utilizing these type of polygraph exams with the victims? [LB143]

SENATOR McDONALD: Well, I'm not a law enforcement officer. But I think after the initial investigation and things are proceeding in a criminal offense, at that point in time I think that probably is permissible. But it cannot be used in a criteria to prevent someone, as a condition to move forward on investigation. [LB143]

SENATOR PIRSCH: Very good. It seems as though...and that is exactly, in my

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estimation, a critical time where evidence is...you know, evidence in criminal cases disappears very fast. Witnesses leave the scene. So I think it is very critical that that not be a condition precedent to starting an investigation, and as Senator McDonald had related, that that does not thereby later prevent it from later occurring, whatever law enforcement thinks is helpful to the investigation. So with that firmly in place, I think that this is a very meritorious bill and I would urge the body to move it on. Thank you. I yield back my time. [LB143]

SENATOR LANGEMEIER: Thank you, Senator Pirsch. Is there anyone else wishing to speak to LB143? Senator Fulton, you are recognized. [LB143]

SENATOR FULTON: Thank you, Mr. President. I thought I should say something about the bill. I am in full support, strong support of the bill. In reading through it late last night, there was something that occurred to me that I don't know if anyone else has thought about this, but if anyone has, I'd like to address the argument now. You have two individuals, the bad guy who has done evil or has been accused of doing evil, and the victim. If we operate under the premise that one is innocent until proven guilty, then we don't necessarily know that this is the bad guy yet. And so therefore we wouldn't necessarily know that this is a victim of a sexual assault. And I bring this up because there is a case down in Duke University that made the fact that there are two sides to the story, made it prevalent. So that, at first when I read through this, caused me some concern because, well, we don't know for certain that there has been a victim. But that being said, a little bit further into the bill it actually reads that this--let's see, how does it read, "The refusal of a victim to submit to an examination as described in subsection (1) of the bill shall not prevent the investigation of the offense." So this isn't saying that someone is guilty or innocent or anything of that nature before there's been due process. It simply says that that would not prohibit the investigation from going forward. So if that is a concern that, well, you're innocent until proven guilty and so we don't know that a victim actually exists, that concern should be allayed by the fact that this is simply saying that the investigation can move forward, and that, furthermore, the investigation isn't contingent on whether or not that polygraph test is taken. So anyway, perhaps I've thought too much about the bill but I thought it's worth addressing that argument if indeed it would ever come up. So I will support the bill strongly. Thank you. [LB143]

SENATOR LANGEMEIER: Thank you, Senator Fulton. Senator Nelson, you are recognized. [LB143]

SENATOR NELSON: Thank you, Mr. President and members of the body. I have a question or two for Senator McDonald if she will yield. [LB143]

SENATOR LANGEMEIER: Senator McDonald, would you yield to a question? [LB143]

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SENATOR McDONALD: I certainly will. [LB143]

SENATOR NELSON: Good morning, Senator. I guess I'm a little bit curious as to why the victim of an assault would not be more than willing to give a polygraph test if they were truly a victim. [LB143]

SENATOR McDONALD: I would...I've not been a victim but I could relate to something like that, thinking that the tragic accident has just happened and now I have to relive it again verbally. Many times that person doesn't want to talk. I mean, they will come to law enforcement and tell them what happened, but as I read, most of them don't even want anybody to know it because they feel shameful of themselves. And to have to tell every detail of what happened before they even investigate is something that's traumatic to the victim. [LB143]

SENATOR NELSON: But wouldn't the polygraph test be taken in private with the investigator and the alleged victim? I mean, if you're going to eventually have to tell your story and be a witness, why not start off with a polygraph test that might give some determination, not only that you had been a victim but also might indicate that maybe this was a false accusation? [LB143]

SENATOR McDONALD: Law enforcement doesn't require it now. They do all investigations here in Nebraska without a polygraph. We have to remove it from our state statutes in order to continue the federal funding. And that's basically the problem that we're having. We have got to discontinue in our statute. Even though Nebraska doesn't do polygraph before an investigation, we have to take it out of state statutes to continue the funding. [LB143]

SENATOR NELSON: All right, well, that's an important thing. I think it was not brought up before unless I missed it, that we're not currently doing that as a matter of course or as a requirement. Is that correct? [LB143]

SENATOR McDONALD: Yes, in my opening I did state that. [LB143]

SENATOR NELSON: Okay, well, then I missed that and I apologize. So I'm not necessarily very keen on taking things out or putting in statutes just because the federal government is going to withdraw funds from us or could withdraw funds. But I think that concludes my questions and I...would Senator...? Thank you very much. And would Senator Pirsch yield to a question? [LB143]

SENATOR LANGEMEIER: Senator Pirsch, would you yield to a question from Senator Nelson? [LB143]

SENATOR PIRSCH: Yes, I will. [LB143]

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SENATOR NELSON: Senator, you've had quite a bit of experience as a prosecutor?
[LB143]

SENATOR PIRSCH: Yes, (inaudible). [LB143]

SENATOR NELSON: All right. And so can you confirm for me that the state of Nebraska does not automatically require these at the present time before they'll proceed with an investigation? [LB143]

SENATOR PIRSCH: That's my understanding, yes. [LB143]

SENATOR NELSON: All right, thank you very much. Thank you, Mr. President. [LB143]

SENATOR LANGEMEIER: Thank you, Senator Nelson. Senator Aguilar, you are recognized. [LB143]

SENATOR AGUILAR: Thank you, Mr. President and members. I rise in strong support of this legislation. I wasn't paying much attention but then I started listening to some of the questions being asked of Senator McDonald. And in my estimation I'd point out that when I think of a polygraph test, I think of someone that has committed a crime or accused of committing a crime and wants to prove their innocence or just get the testimony down after they've committed a crime. I think that's what polygraph is all about. To treat women who are victims in this as if they are criminal, I believe is ludicrous, absolutely ludicrous. I think Senator McDonald has come up with a great idea here and I'm strongly supporting her legislation here. Thank you, Mr. President. I'd yield any more time back to Senator McDonald if she wants it. [LB143]

SENATOR LANGEMEIER: Senator McDonald, 4 minutes. [LB143]

SENATOR McDONALD: Thank you, Senator Aguilar. The funding that we receive is spent out in many rural areas in our state to train law enforcement on how to deal with, not only sexual rape cases, but domestic violence. We in rural Nebraska have a hard time with the law enforcement dealing with those issues because they don't deal with it all the time. So this training helps them to understand what happens. Now it's not a condition for investigation to go on to have a polygraph, the investigation still goes on. And at some point in time if it's necessary by the courts, then a polygraph is taken. But not to revictimize the victim at the beginning. Thank you. [LB143]

SENATOR LANGEMEIER: Thank you, Senator McDonald. (Visitors introduced.) Back to floor discussion on LB143. There are no other lights on. Senator McDonald, you are recognized to close on LB143. [LB143]

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SENATOR McDONALD: I thank you for all the discussion this morning. I think that many times it's difficult for someone to understand the female side of being sexually assaulted. They are victims in this and we need to make sure that anyone that violates a woman should be investigated. And I hope that you will continue to support this and move it on. Thank you. [LB143]

SENATOR LANGEMEIER: Thank you, Senator McDonald. You have heard the closing on LB143. The question is, shall LB143 advance to E&R Initial? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB143]

CLERK: 35 ayes, 0 nays, Mr. President, on the adoption of the motion to advance LB143. [LB143]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. LB143 does advance. Mr. Clerk, next item. [LB143]

CLERK: Mr. President, LB661. It was a bill introduced by the Transportation Committee and signed by its membership. (Read title.) The bill was introduced on January 17 of this year, at that time referred to Transportation and Telecommunications. The bill was advanced to General File. There are committee amendments pending, Mr. President. (AM455, Legislative Journal page 732.) [LB661]

SENATOR FRIEND PRESIDING [LB661]

SENATOR FRIEND: Thank you, Mr. Clerk. Senator Fischer, you are recognized to open on the committee amendments, or excuse me, on LB661. [LB661]

SENATOR FISCHER: Thank you, Mr. President and members of the body. LB661 amends three separate acts: the Telephone Relay System Act, the Emergency Telecommunications Systems Act, and the Enhanced Wireless 911 Service Act. The Telephone Relay System Act, or the Relay Act, provides specialized telecommunications equipment and services for qualified deaf, hard of hearing, or speech-impaired persons in Nebraska. The present monthly surcharge is 5 cents per telephone line. The surcharge is collected by telephone companies from their subscribers and remitted to the Public Service Commission. As part of the relay system, the commission also administers the Nebraska Specialized Telecommunications Equipment Program. Under the equipment program, the commission issues vouchers to qualified applicants. The vouchers are used to defray the costs of purchasing specialized telephone equipment such as caption telephones and text telephones. The Relay Act sets two caps on the relay program. The first is a 20-cent cap on the surcharge for the entire program. The second cap is a one-cent cap on the amount of the surcharge funds that can be allocated to the equipment program. LB661 removes

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the one-cent cap on the amount of the relay fund available to the specialized telecommunications equipment program. The bill does not remove or affect the overall 20-cent cap. For the past two years, due to the one-cent cap, the equipment program has run out of funds before the end of the fiscal year. The commission has been forced to suspend the issuance of vouchers to those requesting specialized equipment because money has run out. The removal of the one-cent cap will not affect the overall surcharge level. The commission has estimated that there are adequate funds collected at the current surcharge level to cover the issuance of additional vouchers. LB661 also removes the requirement that the commission bear the costs of an audit under the E-911 Act and the Relay Act and removes language that relieve companies of the duty to take legal action to collect the E-911 and relay surcharges. These changes are consistent with the language in the Nebraska Telecommunications Universal Service Fund Act. Under the NUSF Act, companies must make the same efforts to collect the surcharge as they do with any other portion of an unpaid bill. In other words, if I don't pay my cell phone bill, the company must try to collect the surcharge from me when it attempts to collect the base rate. A similar policy should apply to the E-911 and relay programs as well. The companies would not need to take any extra action to collect these surcharges. Audits of carriers for relay and wireless E-911 purposes can be combined with audits conducted for the NUSF purposes, thereby lowering the overall costs. LB661 changes portions of the E-911 Act with respect to prepaid carriers. During the 2006 Legislative Session, LB1222 made several changes to the Wireless 911 Act. Prepaid carriers were given three options for calculating the surcharge and remitting that amount to the commission. Although these options were developed based on discussions with prepaid carriers, after the passage of LB1222, some carriers indicated that the methods were unworkable. Under the current bill, prepaid carriers would be required to collect a surcharge from the reseller of the prepaid service and remit that amount to the commission. This would allow the commission to ensure that all users of prepaid wireless service pay an amount comparable to that paid by users of traditional wireless services in support of the statewide wireless E-911 service. The bill is an attempt to expand and improve upon the options originally set out in LB1222 for prepaid carriers. The commission has stated on record that the previous options that were available to carriers will continue to be available through the rule-making process. LB661 also modifies the makeup of the Wireless E-911 Advisory Board by replacing one representative from the wireless phone industry with a representative of the public. Currently, the voting members of the board are local government officials and representatives from local exchange carriers and wireless carriers. Replacing one member of the wireless telecommunications industry with a representative of the public will provide a more balanced perspective on this board. The public provides the funding for the implementation of E-911 service through the surcharge and has a direct interest in successful implementation of that service. It is only fair that a representative of the public be included in making recommendations as to the provision and funding of that service. LB661 also exempts paging customers from having to pay the wireless E-911 surcharge. Paging customers cannot dial 911. They have no benefit from the 911

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system and should not have to pay that surcharge. The bill makes it clear that they don't have to pay. Finally, LB661 affects companies providing phone service through a new technology called Voice over Internet Protocol, or VoIP service. The bill requires VoIP providers to collect and remit both the landline 911 surcharge and the relay surcharge. VoIP providers are not required to collect and remit those surcharges under the current statutory language. The service provided is equivalent to traditional landline telephone service and includes both 911 and relay services. As a matter of equity and sound public policy, these providers, like any telephone company, should be required to collect and remit the amounts necessary to support the systems which their customers use. I ask for your support of this bill. Thank you. [LB661]

SENATOR FRIEND: Thank you, Senator Fischer. You have heard the opening on LB661. As the Clerk has stated, there are amendments from the Transportation and Telecommunications Committee. Senator Fischer, as Chair of the committee, you are recognized to open on those amendments. [LB661]

SENATOR FISCHER: Thank you, Mr. President and members of the body. The committee amendment, AM455, strikes the original sections and becomes the bill. The amendment makes several changes to LB661, as well as incorporates the provisions of LB560 and LB660. The changes made to the original bill are technical in nature. All parties involved have agreed to these changes, except for the provision regarding prepaid wireless service. In Section 3, this amends 86-313 to include a reference to a definition of wireless service. Language is reinserted to state that telephone companies are not liable for any surcharge not paid by a subscriber. The new subsection (6) is also added to clarify that the entire section does not apply to subscribers with no access to this relay service. Section 11 strikes a reference to define the primary place of use for wireless service. Section 12 amends 86-433 to exempt services with no access to 911 service from the county surcharge. Section 18 adds a new definition of home service provider to mean a telecommunications company that has contracted with a customer to provide wireless service. Section 20 adds a new definition of primary place of use. The definition outlines the practices for normal wireless service as well as for prepaid wireless service. Section 21 amends 86-456 to reference the definition of wireless service in federal law as it existed on January 1, 2007. Section 22 amends the definition of wireless service to include two other sections of federal law. Section 23 amends 86-457 to make several changes to the original bill. An effective date of July 1, 2007, is added. Legislative intent language is included to state that, whenever possible, the wireless E-911 surcharge should be collected from the users of prepaid wireless services. The commission shall establish surcharges comparable to the surcharge assessed to other users of wireless services and will develop the methods for collection and remittance. The amendment also strikes subdivision (3)(a), authorizing the collection from an entity that resells the prepaid wireless service and inserts a provision that the duty to remit the surcharge is the responsibility of the wireless carrier. These changes omit any reference to collection of the surcharge by the retail industry who

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resells this prepaid wireless service. The committee did not believe that the Public Service Commission should have the authority over the retail industry to collect a telecommunications surcharge. It will be up to the commission through its rule-making process to come up with a solution for the prepaid wireless carriers who are having a difficult time finding a method to collect this surcharge. Section 24 amends 86-459 to state a wireless carrier is not liable for more than one audit per year unless the commission shows good cause. Section 31 adds the emergency clause to the bill. LB560 is also included in Sections 1 and 2 of the amendment. The bill requires all communication providers who are not certified by the Public Service Commission to file limited contract information with the commission and pay a one-time \$50 registration fee. The bill amends 86-125 by substituting all communication providers for, quote, a wireless carrier. Any current providers will have to register by January 1, 2008, and any new providers offering services after August 1, 2007, will have to register before they can offer services. Communication providers are required to provide to the commission a contact person regarding the Nebraska Universal Service Fund, the relay system, wireless E-911, and consumer complaints. In addition, broadband providers will need to provide a contact person with managerial responsibility for Nebraska operations. The bill also changes the time period from 60 days to 90 days as the length that the commission has to set a hearing date from the date of filing for review of the setting of access charges. This change was made to give the parties involved adequate time to conduct discovery. The act has an operative date of August 1, 2007. LB660 is included as Sections 4 through 8 of this amendment. The bill amends the Telecommunications Universal Service Act to require Voice over Internet Protocol providers, or VoIP providers, to contribute to the Nebraska Universal Service Fund. The bill amends 86-318 to add a new definition of telecommunications to the act, which means the transmission between or among points specified by the user of information of the user's choosing without change in the form or content of the information as sent and received. This definition widens the scope of telecommunications to include VoIP providers as offering telecommunications, thus requiring them to contribute to the Nebraska Universal Service Fund as any other company does that offers telecommunications. The bill also amends the current definition of telecommunications company by substituting the word "providing" for the word "offering," so that telecommunications company means any organization providing telecommunications or telecommunications service for hire in Nebraska. This wording broadens the definition and keeps Nebraska's statutory definition consistent with recent FCC rulings. The bill also amends 86-323 by striking the word "services" after telecommunications, so that the subsection reads, "All providers of telecommunications should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service." This slight change is consistent with recent FCC rulings and conveys the intent of the Legislature that all telecommunications companies, including VoIP providers, should be contributing to the Nebraska Universal Service Fund. The amendment and the bill was passed out of committee unanimously and was chosen as a Telecommunications and Transportation Committee's first priority bill. Thank you, Mr. President. [LB661 LB560 LB660]

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SENATOR FRIEND: Thank you, Senator Fischer. You have heard the opening on AM455, the committee amendments from the Transportation and Telecommunications Committee. The floor is now open for debate. Is there anyone wishing to speak to the committee amendments? I see no lights on. Senator Fischer, you are recognized to close. Senator Fischer waives closing. You have heard the closing on the committee amendments. The question before the body is, shall the committee amendments advance? All those in favor vote aye; all those opposed vote nay. Have you all voted who wish to? Record please, Mr. Clerk. [LB661]

CLERK: 33 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB661]

SENATOR FRIEND: The amendment does advance. Back to consideration of LB661. The floor is open for debate. Anyone wishing to speak on the bill? Seeing no lights, Senator Fischer. Senator Fischer waives closing on LB661. The question before the body is, shall LB661 advance to E&R Initial? All those in favor vote aye; all those opposed vote nay. Have you all voted who wish to? Record please, Mr. Clerk. [LB661]

CLERK: 33 ayes, 0 nays, Mr. President, on the advancement of LB661. [LB661]

SENATOR FRIEND: LB661 does advance. Items for the record, Mr. Clerk. [LB661]

CLERK: Thank you, Mr. President. I have amendments to be printed: Senator Rogert to LB255. I have priority bill designations: LB551 by Senator Howard; LB463 by the Health Committee; LB247 by the Health Committee; LB502 by Senator Wightman. Your Committee on Health and Human Services, chaired by Senator Johnson, reports LB82 to General File, LB523 indefinitely postponed. That's all that I have at this time, Mr. President. (Legislative Journal pages 779-781.) [LB255 LB551 LB463 LB247 LB502 LB82 LB523]

SENATOR FRIEND: Thank you, Mr. Clerk. The next item on the agenda indicates Final Reading, motions to return to Select File for a specific amendment. Next item on the agenda, Mr. Clerk.

CLERK: Mr. President, the Legislature is on Final Reading. LB25, the first bill this morning. When the issue was last discussed, Senator Kopplin had pending a motion to return the bill for a specific amendment. Senator Kopplin, your amendment would strike the enacting clause. [LB25]

SENATOR FRIEND: Senator Kopplin. [LB25]

SENATOR KOPPLIN: Yes, I had this amendment as a vehicle for discussion. I believe

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there was an amendment being crafted in agreement between some senators on an amendment to add. Has that been introduced? And I would like to move to that amendment. [LB25]

CLERK: May I interpret that to mean you'd like to withdraw this current motion, Senator? [LB25]

SENATOR KOPPLIN: If that's the best way for me to get there, yes, I will withdraw this one. [LB25]

SENATOR FRIEND: The amendment is withdrawn. [LB25]

CLERK: Mr. President, the next motion I have to the bill: Senator Langemeier, I have AM242 with a motion to return, Senator, but I understood you wanted to withdraw AM242. [LB25]

SENATOR LANGEMEIER: Yes. [LB25]

CLERK: Mr. President, the next motion I have, Senator Langemeier, is from yourself to return the bill for AM231. (Legislative Journal page 580.) [LB25]

SENATOR LANGEMEIER: Correct. [LB25]

SENATOR FRIEND: Senator Langemeier, you are recognized to open on AM231. [LB25]

SENATOR LANGEMEIER: Thank you, Mr. President and members of the body. And I do have one more amendment on there to follow this one, AM394, and I do want that one withdrawn, too, when we get to it so everybody knows that. First of all, I'd like to thank the individuals in the body--Senator Kopplin, Senator Dubas, Senator Cornett, and Senator Chambers--for working with me on this particular piece of legislation. We do have before you AM231. This amendment would, it kind of changes the bill to some degree. It would require that this law basically does not go into effect until a vaccine is created. So at the point when the vaccine for the wolf-hybrid animal is created, at that point the animal would have one year to be vaccinated. And so it changes a little bit. We don't have a drop-dead date waiting for a vaccine. This would allow it not to go into effect until the vaccine has been created. And that would conclude my introduction. I would yield my time to Senator Cornett who's been great to work through this process and I'd yield my time to her. [LB25]

SENATOR FRIEND: Thank you, Senator Langemeier. Senator Cornett, you have 8, 50. [LB25]

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SENATOR CORNETT: Thank you, Senator Langemeier. I appreciate you yielding the time. Senator Langemeier and I have worked very hard back and forth on this bill. The amendment that he has proposed would be a good compromise between both sides on this bill and I urge the body to support it. Thank you. [LB25]

SENATOR FRIEND: Thank you, Senator Cornett. You have heard the opening on the motion to return to Select File. Is there anyone wishing to speak to the subject matter? Senator Langemeier, I see no lights on. You are recognized to close on AM231. [LB25]

SENATOR LANGEMEIER: Thank you, Mr. President. I would just ask for everyone's vote to return this back to Select File so we can take up and adopt the amendment. Thank you. [LB25]

SENATOR FRIEND: Thank you, Senator Langemeier. You have heard the closing on AM231. The question before the body, shall the bill be returned to Select File for a specific amendment? All those in favor vote aye; all those opposed vote nay. Have you all voted who wish to? Record please, Mr. Clerk. [LB25]

CLERK: 37 ayes, 0 nays, Mr. President, on the motion to return the bill. [LB25]

SENATOR FRIEND: The motion does advance. [LB25]

CLERK: Mr. President, pending is AM231 as offered by Senator Langemeier. [LB25]

SENATOR FRIEND: Senator Langemeier, you are recognized to open on AM231. [LB25]

SENATOR LANGEMEIER: Thank you, Mr. President. I think I've kind of done that in its entirety. I would thank everyone for bringing this back to Select File and I'd ask for the advancement of AM231, that amendment to LB25. Thank you. [LB25]

SENATOR FRIEND: You have heard the opening on AM231 by Senator Langemeier. Anyone wishing to speak to the subject matter? Senator Langemeier, I see no lights on. Senator Langemeier waives closing. The question before the body, shall AM231 be adopted? All those in favor vote aye; all those opposed vote nay. Have you all voted who care to? Record please, Mr. Clerk. [LB25]

CLERK: 39 ayes, 0 nays, Mr. President, on the adoption of Senator Langemeier's amendment. [LB25]

SENATOR FRIEND: Thank you, Mr. Clerk. Senator Langemeier, you are recognized to readvance the bill to E&R for engrossing, if you will. [LB25]

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SENATOR LANGEMEIER: I'd move to advance LB25 to E&R for engrossing. [LB25]

SENATOR FRIEND: All in favor say aye. All those opposed say nay. It is advanced. Next item, Mr. Clerk? [LB25]

CLERK: Mr. President, just for purposes of clearing the record, then Senator Langemeier, I understand you...Senator Langemeier, do you want to withdraw AM394, is that right? [LB25]

SENATOR LANGEMEIER: Yes, please. [LB25]

CLERK: Okay, thank you. Mr. President, the next motion this morning is on LB67. Senator Ashford would move to return the bill for a specific amendment, AM416. (Legislative Journal page 632) [LB67]

SENATOR FRIEND: Thank you, Mr. Clerk. Senator Ashford, you are recognized to open on your AM416. [LB67]

SENATOR ASHFORD: Thank you, Mr. President and members. Very simply, Senator Stuthman's bill makes it somewhat easier to notify citizens of jury duty. And it allows that courts can notify citizens by regular mail when they are being asked to serve on a jury. The committee supported unanimously Senator Stuthman's bill with one caveat, and that would be that if a court decides, court clerk decides to mail out the jury notice by regular mail, that if the individual fails to appear for jury duty, that that person, he or she would not be held in contempt of court for failing to appear. It would still be necessary that if that were to be the penalty, that a certified letter notice of jury duty would have to be sent. And the amendment simply clarifies that when a regular mail notice is sent out, that there would not be a...that that person, if he or she failed to appear, could be charged with contempt. And that's simply what the amendment does, Mr. President. Thank you. [LB67]

SENATOR FRIEND: Thank you, Senator Ashford. Members, I apologize. Senator Ashford was speaking to the motion to return to Select File, not on AM416, although it encompassed information as such. You have heard the opening on the motion. Is there anyone wishing to speak to the motion? Senator Ashford, I see no lights on. You are...Senator Ashford waives closing. The question before the body is, shall LB67 be returned to Select File for a specific amendment? All those in favor vote aye; all those opposed vote nay. Record please, Mr. Clerk. [LB67]

CLERK: 37 ayes, 0 nays, Mr. President, on the motion to return the bill. [LB67]

SENATOR FRIEND: Thank you, Mr. Clerk. The motion is successful. Senator Ashford, you are recognized to open on AM416. [LB67]

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SENATOR ASHFORD: I would just move the amendment, Mr. President. I know it was a brilliant explanation, people would like to hear it again, but I think I would just move the amendment at this point. Thank you. [LB67]

SENATOR FRIEND: Thank you, Senator Ashford. Anyone wishing to speak on the amendment? I see no lights on. Senator Ashford, you are recognized to close if you wish. Senator Ashford waives closing. The question before the body is, shall AM416 be adopted to LB67? All those in favor vote aye; all those opposed vote nay. Have all voted who wish to? Record please, Mr. Clerk. [LB67]

CLERK: 37 ayes, 0 nays, Mr. President, on the adoption of the Select File amendment. [LB67]

SENATOR FRIEND: The amendment is adopted. Senator Ashford, if you will, to readvance the bill to E&R for engrossing. [LB67]

SENATOR ASHFORD: (Laugh) I move to readvance the bill. Thank you, Mr. President. [LB67]

SENATOR FRIEND: Thank you... [LB67]

SENATOR ASHFORD: I'm not helping very much. (Laughter) [LB67]

SENATOR FRIEND: You're helping a great deal. [LB67]

SENATOR ASHFORD: Thank you. I needed that, Mr. President. I can only do one thing at a time and there are too many distractions, you know, with the Speaker coming over and talking to me and everything. [LB67]

SENATOR FRIEND: We do need to take a voice vote on readvancement. All those in favor signify by saying aye. All those opposed say nay. Now the bill does advance. [LB67]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Mr. Clerk.

CLERK: Mr. President, the next bill this morning, LB185. Senator Erdman would move to return the bill. Senator, I have a note with respect to AM230, that you would like to withdraw AM230. [LB185]

SENATOR ERDMAN: That's correct. [LB185]

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CLERK: Mr. President, the next motion I have, Senator Erdman, AM386, but again I have a note, Senator, you'd like to withdraw that. [LB185]

SENATOR ERDMAN: That is correct. [LB185]

CLERK: Mr. President, the third motion I have is from Senator Erdman. Senator Erdman would move to return LB185 to Select File for purposes of considering AM405. (Legislative Journal page 605.) [LB185]

SPEAKER FLOOD: Senator Ashford, you're recognized for a point of order. [LB185]

SENATOR ASHFORD: Yeah, Mr. Speaker and members, I would rise to make a point of order at this point. This motion involves a bill that was killed by the Judiciary Committee and I believe the...at this point, and we've had a few other votes where there's been an effort to bring back a bill that has been killed in committee, I would ask a ruling from the Chair as to...Mr. Speaker,... [LB185]

SPEAKER FLOOD: Thank you, Senator Ashford, on your point of order. [LB185]

SENATOR ASHFORD: ...on this. [LB185]

SPEAKER FLOOD: Do you have anything to add? [LB185]

SENATOR ASHFORD: No. Just I'd like a ruling on where we are in the process. This is a bill that was killed. It's substantially similar to a bill that was killed in committee, and just a ruling from the Chair on what would be required to...for the body to take this up. [LB185]

SPEAKER FLOOD: Thank you, Senator Ashford. Senator Erdman, I give you the opportunity to respond to Senator Ashford's point of order. [LB185]

SENATOR ERDMAN: Mr. President and members of the Legislature, Senator Ashford is correct. LB102 was heard before the Judiciary Committee. This is not the exact same language, however it does accomplish the substantially similar result. I would offer the idea to the body that the motion to return is in order, as it is provided in our rules; however, the motion to adopt the amendment would require 30 votes and I would believe that would be consistent with the ruling of our...with the interpretation of our rules that this motion is in order, given the fact that our process would require the body to cast 30 votes in favor of the motion once it's been returned to Select File for its adoption. [LB185 LB102]

SPEAKER FLOOD: The Chair rules that the motion to return to Select shall require 25

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votes. The Chair rules that a motion to adopt Senator Erdman's amendment does and is pursuant to Rule 6, sub (h) of the Legislature's rules and, therefore, shall require 30 votes. Senator Erdman, you are recognized to open on your motion to return LB185E to Select. [LB185]

SENATOR ERDMAN: Mr. President and members of the Legislature, it's not with great excitement or over the objection of the committee that I rise lightly to offer this amendment. LB102 was brought to me at the request of the Department of Health and Human Services. It generally does coincide with the language found in LB185, which was a technical bill that was brought to the Health Committee by the department, dealing, in one part, Sections 1 through 3, 10 and 13, with the Medical Assistance Act, and it updates the references in federal law as well as making technical changes to the Medicaid estate recovery and spousal impoverishment provisions. The amendment before you is germane to LB185. In fact, it's within the same section of law. It did go to the Judiciary Committee. Unfortunately, I was unable to attend the hearing due to a previous commitment and the bill was presented both by my staff and the department was present. I'd like to share with the body some information. Ultimately, I would not have done this without the insight or acceptance, at least, of this accommodation by Senator Johnson, and recognize fully that if this is problematic to the body that it can be withdrawn. However, I believe that there would be some additional information that may be an assistance to the body and ultimately recognize the limitations that I am under, as well as the obligation of taking the body's time in this discussion. The state Medicaid programs are administered within broad federal guidelines and are financed jointly by the states and the federal government. Most of us know that already and, if you don't, you'll soon figure that out through our discussions this session. Federal law has required the Medicaid estate recovery since 1993. The amendment before you does not create this authority in statute. The amendment before you is simply the process in which the state would pursue the recovery effort. The state must, at a minimum, seek recovery for services provided to a person of any age in a medical institution, or are 55 or older that have received certain services. You have received a handout that outlines the technical issues with the amendment, as well as the limitations on the Department of Health and Human Services on the type of recovery that they can actually successfully accomplish. In September 2005, the United States Department of Health and Human Services released a state-by-state analysis of collections from 2004...2002 to 2004. Nebraska had a collection rate of .03 percent of nursing home spending. Nationally, that rate is .08 percent. And South Dakota, which has a similar notice as the one proposed in AM405, has a recovery rate of 1 percent. Nebraska currently has provisions where the state may waive its claim based on undue hardships. These guidelines are prepared in conformity with the standards specified by the Secretary of Health and Human Services for such a waiver. That's a federal Secretary. Nebraska also provides for a further exemption of property of \$5,000 for adult children to ensure that limited assets will be available to be passed on to other family members. This bill does not affect the priority of other creditors and it is based on increasing the efficiency of a state recovery as

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mandated by federal law. The back half of the handout that I have given you is a bullet point of the process that's currently in place. Effectively, here's how the law works in Nebraska, and the amendment that's before you was worked on with the Nebraska State Bar Association. It is consistent. It references the statutes dealing with other creditors. Here's how it works. In the state of Nebraska, notice is given when an estate is commenced or the proceedings have begun. We have folks at the Department of Health and Human Services that simply read the obituary notices and those public notices in the newspapers to figure out how we can comply with this federal requirement of the Medicaid Act. AM405 would simply add that when the other creditors, who are subject to the opportunity or who have the opportunity to file a claim on the estate, get that notice, that the department would also receive that same notice. They do not receive any expansion of authority in order to recover. They are still held to the same standards that are in existing law. Again, this allows them to receive the notice that every other creditor would receive. The existing law is in 42 U.S.C. Section 1396, which mandates the Medicaid estate recovery. Some of the undue hardships criteria are if it's not in the best interests of the state. What would that mean? In the event that we go out and try to claim assets from an estate which would impoverish the recipients or the heirs, it is not in the best interest of the state. Examples specifically would be if the heir of the recipient resides in the recipient's home and provided unreimbursed care or, in the event that we would accomplish the recovery, that the heir would become eligible for public assistance. As I understand the testimony at the hearing, some of the questions were, could somebody go out and claim, or could the department go and claim somebody's wedding rings and those types of assets? If you read further on, there is exempt property. Adult children, 21 and older, are entitled to \$5,000 worth of property or assets. So in addition to the restrictions currently in law, there are additional restrictions in law as to actual assets above what we're limited to receive under the federal guidelines issued to us by the Secretary of State in compliance with federal law. With that, Mr. President, I will...I know there are lights on. I would imagine there are members of the Judiciary Committee who are probably opposed to this, as they were the bill. I felt it was appropriate, as it opened up the same section in LB185, to have the discussion. Obviously, if it's the will of the body not to proceed, we will address that. But if we're talking about utilization of state resources in an effective manner, hiring people to figure out how to comply with the federal requirement and requiring them to read every newspaper that may have these public notices in them, to me, doesn't make a lot of sense, and if there's a better way to accomplish it, we can work through that. Again, this is consistent with how every other creditor would receive notice. We believe, and I believe, in visiting with the department, and have come to agreement with the concept and with the State Bar Association, that this is not onerous. It's simply an opportunity to alleviate the fact that we have folks who sit at an agency, and in order to comply with the requirement that we have placed on them, they have to go and find the information through public notices in weekly or statewide newspapers. Thank you, Mr. President.
[LB185 LB102]

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SPEAKER FLOOD: Thank you, Senator Erdman. The Chair recognizes Senator Ashford, followed by Senator Chambers and Lathrop. [LB185]

SENATOR ASHFORD: There are other lights on, on this issue. This bill was killed by...in committee, basically, not because Senator Erdman wasn't there, and we of course would have loved to have him there, but essentially what this does is it creates an added obligation to send a notice directly to the Department of Health and Human Services. It is an obligation which is greater than the way notices are sent to creditors, to other creditors, so it is an added obligation that would go be put upon a personal representative or a...essentially, a personal representative after a decedent passes away, if they're over 55 years old. There just was no rationale or reason to add this obligation to the already...the laundry list of obligations that a personal representative would have. I might add that this is really a matter, in my view, that ought to be handled in a more holistic way by the Health Committee. If there is some significant concern about cost or notice or whatever, I think it has to be dealt with comprehensively and not piecemeal as it was here, in due...in all respect to Senator Erdman bringing the bill. Certainly we do not...I think the thinking in the Judiciary Committee was that this added obligation, it's just simply not justified by the facts of why the Department of Health and Human Services should be held...given this extra benefit, was just felt to be not appropriate and we killed the bill. [LB185]

SPEAKER FLOOD: Thank you, Senator Ashford. The Chair recognizes the senior member from District 11. [LB185]

SENATOR CHAMBERS: Thank you, Mr. Speaker. Members of the Legislature, I would like to ask Senator Hudkins...I was going to see which one responded by me just gesturing. I'd like to ask Senator Hudkins a question, if she would respond. [LB185]

SPEAKER FLOOD: Senator Hudkins, will you respond to a question from Senator Chambers? [LB185]

SENATOR HUDKINS: Yes, I will. [LB185]

SENATOR CHAMBERS: Senator Hudkins, the other day when you made a motion to pull a bill from the Health Committee, had your bill been killed? [LB185]

SENATOR HUDKINS: No, it had not. [LB185]

SENATOR CHAMBERS: Thank you. That's all that I want to ask. Members of the Legislature, I voted against bringing Senator Hudkins' bill out of committee. The bill had merit. I don't know whether or not, after a full-blown discussion, I would have supported the bill. It was to get mercury or traces of it out of these vaccines. That bill, if you look at the subject matter, was far more meritorious than we have being presented to us at this

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point. This bill was killed by the committee. I don't think it ought to be resurrected in the form of an amendment. Senator Ashford explained why the committee killed the bill. I stated, when I was arguing against resurrecting or pulling Senator Hudkins' bill from the Health Committee, that I have some bills languishing in committees and that I would not make a motion to pull those bills from the committee, even though by doing so I could have a discussion and maybe persuade the body that the issue is of sufficient merit to bring it before us. But I'm not going to do it, especially this session when we have many new members who are going to be approached by lobbyists to make motions to pull bills from committee. Thinking that the lobbyist is acting in good faith, the question should be put, why are some of these things offered to brand new senators? Why would a brand new senator be asked to bring an anticloning bill, as it has been called? Because some of the ones who have been here know that there is not merit in these types of things, the nature of the bill, the way it's drafted. But sometimes new people are flattered. I'm being given the opportunity to carry on my shoulders this very important issue and people I respect brought it to me, so that is raising my stature and showing great confidence in me. No, it's taking advantage of tyros. Senator Erdman is trying to, in effect, bring a bill back alive which had been killed. That's why it takes 30 votes. In essence, it is the bill that the committee killed. Let's say that it has been rewritten now to make it better. Isn't that what those people who testify before the committee are supposed to do: explain the bill? If there are problems, state what they are and that they can be corrected? But if they're not held to that standard, throw anything in, let it get killed, rewrite a bill, offer it as an amendment to another bill, and say, look at this. Forget the form it was in when it went before the committee; forget the fact that what the committee had may have justified killing it; I now have a good bill. And they're not going to seek to amend the rules to have a late introduction of that bill, then further amend the rule to allow a committee to give the required amount of notice and conduct a public hearing on it. That is too laborious. It wouldn't be done, it shouldn't be done. [LB185]

SPEAKER FLOOD: One minute. [LB185]

SENATOR CHAMBERS: So this is a way to short-circuit all of that, end run the committee, and persuade the body to raise a bill from the dead. You all remember that Lazarus had been dead three days when Jesus went and said, Lazarus, come forth, and he came first, because he was the first one to have that happen, so Lazarus didn't count so well. Well, based on this bill, how long it's been dead, Senator Erdman is calling it forth. I would say, do not comply because, to borrow words from the bard, me thinketh it stinketh. Thank you, Mr. President...Mr. Speaker. [LB185]

SPEAKER FLOOD: Thank you, Senator Chambers. Senator Lathrop, you are recognized. [LB185]

SENATOR LATHROP: Thank you, Mr. President, colleagues. This was heard before Judiciary Committee and I was among those that voted to kill it, and the rationale behind

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my thinking, at least, was that personal representatives that serve in estates, I don't know if folks know this, but generally it's somebody's wife, it's somebody's sister or brother or child. These aren't lawyers. They're not bankers, but sometimes bankers do. But generally, they're just everyday people serving as personal representatives. And we have in the probate code a process, and the process requires that if you know of a...well, first of all, when you get somebody appointed personal representative, you have to publish that, and then everybody in the world can read the paper and find out that you're the personal representative, who died, and where to file a claim. If you're the personal representative and you know of a person the decedent owed money to, you have to send them a copy of that notice. So what we're doing is we are now imposing, or would impose with this section, a requirement that people notify an agency of the government in a situation that they don't already know that the estate is indebted to that agency. Let me make it more simple because that didn't come out exactly the way I wanted it to. What we're doing is we're imposing on these personal representatives a requirement that they send notice to Health and Human Services, and it's not a logical or an intuitive thing. It's just a requirement. I felt that it was wrong to impose this responsibility on personal representatives when they didn't have any reason to believe that money was due the Department of Health and Human Services, and when you have a responsibility you create a corresponding liability. And so those personal representatives who serve in that capacity, generally as a favor to the decedent, now will be liable for not notifying Health and Human Services if it turns out they should have been notified and Health and Human Services had some money coming. So I think it's a trap for these people who agree to serve as personal representatives and that was our concern. I can't speak for everybody on the committee, but it was certainly mine. So thank you, Mr. President. [LB185]

SPEAKER FLOOD: Thank you, Senator Lathrop. Senator Erdman, you are recognized, followed by Senator Ashford. [LB185]

SENATOR ERDMAN: Mr. President and members of the Legislature, this is not the same language that was before the Judiciary Committee. That's why the rule says substantially similar. It is substantially similar in that it opens the same section of law, it applies to the same topic, but it is not the same method. The method has been changed. Senator Ashford pointed out that one of the concerns that the committee had was the time frame and the notice and the additional responsibility placed on a personal representative. In Senator Lathrop's example, if you are a personal representative for somebody in the state of Nebraska now and filing their estate and you know that that individual was a Medicaid recipient that fits this definition, you currently have this obligation under law. The question is, if you didn't know and we have this requirement, isn't it simpler for everyone to allow that representative to use the same notice to go to the same folks that are creditors now and add the department to that list and let the department determine that? In the event that you're a personal representative today, you know that the individual is under Medicaid, is going to be subject to the estate

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recovery provisions, and you do not notify the department, you have that liability now, and the department can challenge the estate collection altogether. So this is not new authority. What this is, is adding the department to the list of people who are going to get the same exact piece of paper from the personal representative. I understand that there are some concerns and the opportunity to work with the committee would have been the desired way to do that. It's my understanding the bill was killed the same day it was heard. As I was not here and my staff did not have the opportunity to visit with the committee about their concerns, or myself, after the actual hearing was ended, there are limited options or remedies available to me as a member. Ultimately, if the body doesn't think that this is a good idea, we can stop it pretty quickly. You can vote not to return; we can move on. But recognizing the fact that we have worked directly with the State Bar Association and how they treat all other notices for creditors, and we're using that existing law to accomplish the same goal, and recognizing that personal representatives have this responsibility if they know that the individual is under a Medicaid estate recovery provision now, this simply allows us efficiencies in ensuring that we are doing our best to comply with the federal law under the Medical Assistance Act. This bill could have been included, this provision could have been included in LB185 when it went to committee, and so to respond to Senator Ashford's comment about being a holistic approach, he is correct. And in fact, I made that recommendation to the Department of Health and Human Services when they introduced LB185. I said, you should have just put that bill in this one; it's a technical bill in nature, the responsibility is there, it's not a new obligation for those who know it's there, it simply allows the department the opportunity to receive the notice directly when that is filed. They said, we were concerned that there may be questions about what we were attempting to accomplish; we didn't want to make it a holistic approach. So I wanted to provide the body with that additional information. I am not standing on this floor saying the Judiciary Committee is wrong, not at all. In fact, I have heard their concerns and I believe we are trying to address them in a fair way, both for the estate, those who are heirs, as well as for the department who have a responsibility to recover under the estate per federal law. So it isn't the same language. We did listen to the committee. We didn't thumb our nose at the committee and go, well, you know what, you're right; and we didn't ignore the state bar's request. That's why there was two amendments filed prior, to give public notice of some different ideas that we thought would accomplish a goal and to get feedback. Ultimately, in working with the state bar and gathering that feedback, we arrived at AM405. So again, AM405 does not give any additional authority. What it does is it adds the list of recipients of the creditor notice to the... [LB185]

SPEAKER FLOOD: One minute. [LB185]

SENATOR ERDMAN: ...Department of Health and Human Services. It takes out any date time lines and makes the law consistent, again, with the provision of law in 25-520.01 that deals with the published notice. I hope I understand that correctly. I

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visited with Senator Ashford. I think that's accurate. It's substantially different than other scenarios where we've tried to pull a bill out of committee in the green copy. This is not the green copy. Senator Chambers is right; we have tried to make it better. It may not stinketh as bad as it once did, and it still may not be a pleasant odor to your nose, but it's better. And whether or not you agree with this policy or not, I think it's inappropriate to ask employees of the state of Nebraska to sit and read public notices through newspapers and other means to determine whether or not we can follow federal law. Again, this simply adds the department to the list of creditors. It addresses a lot of the concerns that we heard from the committee, both directly and indirectly, and again it has been agreed to... [LB185]

SPEAKER FLOOD: Thank you, Senator Erdman. Time. [LB185]

SENATOR ERDMAN: ...by the state bar. Thank you, Mr. President. [LB185]

SPEAKER FLOOD: (Visitors introduced.) Senator Ashford, you're recognized. [LB185]

SENATOR ASHFORD: Hopefully we can bring this to a vote soon, very soon. I would not...I do not support bringing this back, and the reason for it...there's many reasons for it. The most important one is, is as Senator Chambers suggested, is precedential. It is a change now. The amendment that I have before me is somewhat different than the bill that was introduced in the Judiciary Committee in that it does not change the time frame when the notice must be sent. The way the bill was originally introduced, it was required that the personal representative send notice within 14 days to HHS if the person is 55 years or older when they died and if they're in a medical institution at the time. That was why we killed the bill. We felt that it was an onerous provision and was not necessary because there was a 30-day provision in statute as it sits now. This is a confusing area of the law. This should be handled in the Judiciary Committee. It should not be handled on the floor. Quite frankly, my reading of the amendment, and I was going back and forth because I...this is a change or a different amendment, is that they're simply restating in the amendment what already is the law, that a creditor...HHS would be a creditor; HHS should receive notice of the claim within 30 days as any other creditor would do. Yes, HHS must, to ensure that they get...they are able to have information about all the individuals that would be...potentially a claim would be filed for in their estate. They may have to read the "Daily Record." You know, that may be the case. But this is a complicated area of the law. It is a change from the bill that was introduced to us, and as we get further down the line, if the standard is going to be it's not--and this is in all due respect to my friend Senator Erdman--if we're going to change it slightly so that it isn't really the bill that was acted upon by the committee, but it's different and therefore it ought to be considered by the full body, this is not a huge issue to the state, but there are going to be massive issues that we're going to be dealing with in the next several weeks where that argument could be made. We simply must not advance this kind of an amendment, not because it's not meritorious, not because Senator Erdman is

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doing this in any other way other than trying to do something that he feels is right, but as we get to more significant issues it could become very, very difficult, especially in the last couple weeks of the session, when a bill is acted upon in committee and a member may feel that that's not...that it should be on the floor. You know, if...we could take this up again next year. If HHS wants to introduce a bill again similar to this amendment, the Judiciary Committee will consider it. If it's something that ought to be changed and if there's a reason to change it, we can most definitely. And we'd be more than willing to take another look at it next year. This doesn't need to happen today. It creates a, in my view, a precedent that we may not be happy that we've set, so I would recommend that we not adopt this amendment, that we do not return the bill to Select File, that we move ahead with Final Reading on LB185. And I will be more than happy to work with Senator Erdman and HHS and the bar, none of whom I've talked to in the last several weeks on this, so that we can get a bill out next year that will meet the needs of HHSS, if appropriate. Thank you, Mr. Speaker. [LB185]

SPEAKER FLOOD: Thank you, Senator Ashford. On the Chair's own motion, it is the ruling of the Chair and the intent of the Chair to amend my original ruling with regard to the number of votes required to return a bill to Select File from Final Reading. Pursuant to the Rules of the Legislature, Rule 6, Section 6, in that first paragraph, a motion to return a bill on Select shall require a three-fifths vote of the elected members. Therefore, to return LB185E to Select, 30 votes shall be required. Senator Chambers, you are recognized. [LB185]

SENATOR CHAMBERS: Thank you, Mr. President; well done. Members of the Legislature, I'm going to speak again on this idea of pulling a bill from committee regardless of the subject matter of the bill. I have criticized various committees for not doing the work they should do in terms of keeping trash legislation off this floor. They will bring something out as a favor to somebody. When the bill comes on the floor, committee members who voted for it cannot explain it, won't even remember what the bill dealt with, and cannot say why they voted to send it out here. It would be unfair to just give a bill number and ask somebody questions relative to how they voted on that bill, but when the issue that is contained in the bill is being discussed, the members of the committee should have their recollection stirred to the point where they can recall why they voted to send such a poor piece of legislation out here, and that's the way I characterize some of these when I'm in a very charitable mood--a poor piece of legislation. "Trash" is usually what I use when I'm trying to be dignified. But the purpose of a committee system is not just to have public hearings. Not every Legislature requires every bill to have a public hearing. Nebraska is unique in that respect. The committee's job is to cull from all of the raw material presented, in the form of half-baked worthless bills, that which may have some merit, and send it to the entire body. I'm reading something that was sent by a Chip Maxwell who is upset at the way the Judiciary Committee conducted a hearing, but he didn't come down to testify. The side that he favored sent one person to testify whom they considered an expert. Because the

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committee didn't follow his blueprint and take a lot of time with that person, he thought the committee was wrong. Now his side, as he referred to it, can lay out their strategy, and they choose who will testify and which persons will testify, but that does not bind the committee. So I think this is very simpleminded on the part of Chip Maxwell. He had been a member of the Legislature. In fact, it borders on stupidity because he knows better. He tries to pretend to be this, "Oh, gee-whiz, me, guys? I don't have any agenda." Well, if he thinks a certain position ought to be presented to the committee, as that guy says on television, come on down. What he is doing fits with what I'm talking about. This after-the-fact modifying or remodeling or changing something and saying, now undo what the committee did, is not a course of action we ought to pursue as a Legislature. But remember this. I'm not saying that a person doesn't have a right to make such a motion. It is our responsibility as legislators to vote in the way we think is most appropriate. The new people have not heard me talk about the need for us to think in institutional terms about the Legislature as a branch of government, but you're going to hear me repeat that message over and over before this particular session comes to an end. The Legislature is not respected by the other branches of government. It is not respected by newspaper editors. It's not respected... [LB185]

SPEAKER FLOOD: One minute. [LB185]

SENATOR CHAMBERS: ...by bigshot businessmen, because they make very insulting, disparaging remarks about the Legislature, which they're free to do. But if their head is in the lion's mouth, they shouldn't pull the lion's tail. But if they're convinced that the lion is really not a lion but a paper tiger masquerading as a lion, not only will they pull the tail, they'll jerk it off, they'll pull off the disguise and show that there's nothing under all that but a toothless creature unworthy of any respect. But if the rest of the body is going to let those things go by unchallenged, I will not. Although this is not my Legislature, I'm a part of it, and when I think the Legislature as an institution is disparaged, I will rise to defend it. Thank you, Mr. President, and I'm going to put on my light one more time. [LB185]

SPEAKER FLOOD: Senator Chambers, you shall continue. [LB185]

SENATOR CHAMBERS: Thank you, Mr. President. Before people start thinking that I dominate the floor, I said not one word yesterday while you all were having your debate on the issue that was before you. When I see an issue that is contentious and there seems to be a relatively even breaking out among the senators on that issue, it will be sharply defined. Whether the people argue learnedly or well is beside the point. At least there will be a discussion of that issue. If there's an issue which I feel deeply about and there will not be much support for it, then I will take all the time that I think is necessary and I will find ways to give myself that time to speak. So on this particular matter, I will not bring up the issue of pulling bills from committee, unless it's before us, in most instances. But if we're on a subject related to how the Legislature is functioning as a

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body, I may refer again to the idea of respecting the committee system. We all know that people are not put on committees because of any particular expertise. If you just got here, you don't have expertise in anything related to the Legislature. So if that was the basis for getting on a committee, you couldn't be on a committee the first year you got here. You don't have to have expertise in a subject matter to be a chairperson. These are realities of political life. But if people are serious and they receive a chairmanship, a chairpersonship, they do what they can to master the subject matter and develop the ability to operate a committee smoothly, efficiently, fairly, and so forth. There is much on-the-job learning that occurs in any legislature. We're not sent here because we're experts. We are sent here because we had a campaign that got us more votes than the other person. In some cases, the other person, if you went strictly by qualification, would have been more qualified to be here, but they did not know how to campaign, they did not have the money, they did not have the backing, so they didn't make it. It's nice to talk about democracy and the democratic process, but it is misleading to suggest that the democratic process, as it's called, places the best people in office; that the people in office always act in the best interest of society at large; that a legislative body adopts, as a general guiding principle, the greatest good for the greatest number, is a guiding principle. Those things are nice when they're uttered, but when time comes to put them to practice in a body comprising 49 people who have different motivations, different levels of ability, interest, and concern, things just because they may be right are not going to prevail. That which is just is not always going to carry the day. So we have to be practical and pragmatic, which means we deal with the reality that we're confronted with. Now the reality that I want us to look at is that we have a committee system. The job of that committee is to hold these hearings, have their Executive Session, then determine whether to send the bill to us or to hold it or to kill it. If a bill is killed then the action of the committee should be sustained. We don't have to take affirmative action to do that. All we have to do is beat off any efforts, such as that of Senator Erdman, to undo the committee's work. So I hope that the only vote Senator Erdman gets... [LB185]

SPEAKER FLOOD: One minute. [LB185]

SENATOR CHAMBERS: ...is his own, but there is a tendency around here for people to show some sympathy. I'm the only one who will wind up with all red votes because I'm strong enough to deal with that. It won't make me any difference. (Laugh) It strengthens me. It kills the issue, but it does not kill me and that's why it's not as effective as people would like. Senator Erdman will get more than his vote, I think, but I hope there are not enough votes to return this bill pursuant to his request, and that vote against what he's offering that will cast by me has nothing to do with the issue in the bill. It has to do with respecting the committee system. Thank you, Mr. Speaker. [LB185]

SPEAKER FLOOD: Thank you, Senator Chambers. There are no other lights on. Again, pursuant to Rule 6, Section 6, sub (a), this vote to return the bill to Select File following

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the closing shall require 30 votes. Senator Erdman, you're recognized to close on AM405. [LB185]

SENATOR ERDMAN: Mr. President and members of the Legislature, I appreciate the insight of those that were on the committee, specifically Senator Ashford, Senator Chambers, and Senator Lathrop. I appreciate your indulgence this morning. I'm somewhat at a loss as to the arguments against this motion, not from the senior member, which I think his point is well-taken that we should preserve our committee process, and I wholeheartedly concur with him and have, in fact, voted against the advancement of bills that I thought were in an inappropriate form that are now on the floor of the Legislature, and am now trying to do my work to fix those now that they're here. And I won't give you how that vote came out because I think it's kind of ironic. Why was the bill killed in committee? Well, I've been told that it was onerous to the personal representatives; it was 14 days, that was a different time line than other creditors. They killed the bill. Fair enough. I took that under advisement. We came back with a draft that said 30 days. The folks that are subject to this law and follow this area of law said, you know what, that's even a little onerous; let's just follow the other process that's already in place on creditors and use that as the standard. That was agreed to by the State Bar Association, generally the folks who represent those that become personal representatives. They agreed to it. We filed the amendment two weeks ago. I informed Senator Ashford, prior to that, that I was going to attempt to resurrect LB102 in a different form based on the concerns that I had heard. So what I heard today was that this is LB102; kill it because it didn't address the committee's concerns. When it was revealed that it did address the committee's concern, I was told kill it because it sets some precedent. What's the precedent? That we listen to the committee? That I wasn't given the opportunity to work with the committee to have it in a form that would be advanced and, therefore, I had no other options if I felt this needed to be addressed? So I am sensitive to the committee's wishes and, in fact, this amendment wouldn't be written this way if it wasn't for the committee's concerns. There's no precedent being set here. I've been here for seven years. This happens before. Whether it's right or not, it's happened. That's what a precedent is. When something happens, that then begins a process. Our rules are about that. They're written generally, but when a precedent happens it potentially can offset those rules. We've had that happen. In taking some of the wind out of Senator Chambers' sails, my motion will receive no votes this morning. Mr. President, I would ask that the motion be withdrawn and that we proceed to vote on Final Reading on LB185E. Thank you, Mr. President. [LB185 LB102]

SPEAKER FLOOD: Thank you, Senator Erdman. Your motion to return to Select File for a specific amendment is withdrawn. Members, please find your seats, as we remain on Final Reading. Mr. Clerk. (Visitors introduced.) Mr. Clerk, the first vote is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Record please, Mr. Clerk. [LB185]

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CLERK: 32 ayes, 5 nays to dispense with the at-large reading, Mr. President. [LB185]

SPEAKER FLOOD: The at-large reading is dispensed with. Mr. Clerk, please read the title. [LB185]

CLERK: (Read title of LB185.) [LB185]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB185E pass? All those of favor vote aye; all those opposed vote nay. And this shall pass with the emergency clause. Mr. Clerk, please record. In three minutes, please record. Record please, Mr. Clerk. [LB185]

CLERK: (Record vote read, Legislative Journal page 784.) 46 ayes, 0 nays, 3 excused and not voting, Mr. President. [LB185]

SPEAKER FLOOD: LB185E passes with the emergency clause. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LB185E. Senator Ashford, for what purpose do you rise? [LB185]

SENATOR ASHFORD: Just a point of privilege, Mr. Speaker. Very briefly I'd like to respond to Senator Erdman. I want to apologize to Senator Erdman. I think we dropped the ball, me, I think I dropped the ball personally; the committee did not. After this amendment was filed our staff was informed that an amendment had been filed. Where I...where the disconnect occurred I believe was that I did not...and Senator Erdman did clearly tell me he was going to file a motion to bring the bill back for a specific amendment. I think in my...I felt or thought I was going to be getting approached by the bar association or HHS to explain a little bit more about where they were going with this. But Senator Erdman is exactly right. I agree with Senator Chambers. We have to be very, very careful about bringing bills back. I think if I had had a little more time to look at what Senator Erdman was doing, what he was asking for was not unreasonable. But I want the body to know that I think I dropped the ball on this; it was not Senator Erdman nor was it anybody else on my committee. It was just me. I think we knew...we knew the motion had been filed, the language I think changed a couple of times. I wasn't particularly tied in to the language. I was kind of scrambling around here and... [LB185]

SPEAKER FLOOD: And thank you, Senator Ashford. [LB185]

SENATOR ASHFORD: ...and I apologize for that, but I just want Senator Erdman to know that. Thank you. [LB185]

SPEAKER FLOOD: All right, we shall proceed. Next bill, Mr. Clerk.

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CLERK: Mr. President, LB211A on Select File. Senator Cornett would move to return the bill for a specific amendment, AM474. (Legislative Journal page 669.) [LB211A]

SPEAKER FLOOD: Senator Cornett, you are recognized to open on AM474. [LB211A]

SENATOR CORNETT: Thank you, Mr. President, members of the body. AM474 is an amendment to LB211. LB211 provides the raises for members of the Commission of Industrial Relations. The original bill was drafted based on a daily per diem of \$439 per day. LB211 was amended to set the dollar amount in statute at \$475 per day. This amendment to the A bill adds an additional \$6,754 to accommodate that daily rate change. I would ask your support in adopting AM474. Thank you. [LB211A LB211]

SPEAKER FLOOD: Thank you, Senator Cornett. There are no other lights on, on AM474. Senator Cornett, you are recognized to close on your motion to return LB211A to Select File. Senator Cornett waives her closing. The question before the body is, should LB211A be returned to Select File for a specific amendment? All those opposed vote nay; all those in favor vote yea. Record please, Mr. Clerk. [LB211A]

CLERK: 44 ayes, 0 nays, Mr. President, to return the bill. [LB211A]

SPEAKER FLOOD: LB211A is returned to Select File for a specific amendment. Mr. Clerk. [LB211A]

CLERK: Senator Cornett would offer AM474, Mr. President. [LB211A]

SPEAKER FLOOD: Senator Cornett, you're recognized to open on AM474. [LB211A]

SENATOR CORNETT: Thank you, Mr. President and members of the body. As previously, I have opened on the amendment with the motion to return to Select File. I will refresh everyone. This is a bill that...LB211 is a bill that provides the members of the Commission of Industrial Relations a raise. The amendment deals with a change in the dollar amount. When the...the bill was originally drafted on a daily per diem of \$439 per day, and the amended amount, the dollar amount, statute at \$475 per day. This amendment to the A bill adds an additional \$6,754 to accommodate this daily rate change. I urge the body to support the amendment. Thank you very much. [LB211 LB211A]

SENATOR LANGEMEIER PRESIDING [LB211A]

SENATOR LANGEMEIER: Thank you, Senator Cornett. You have heard the opening on AM474. The floor is now open for discussion. Does anyone wish to speak to AM474? Seeing no lights on, Senator Cornett, you are recognized to close. Senator Cornett waives closing. The question before the body is, should AM474 be adopted to LB211.

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All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB211A]

CLERK: 38 ayes, 0 nays, Mr. President, on the adoption of the Select File amendment. [LB211A]

SENATOR LANGEMEIER: The amendment is adopted. Senator Cornett, we will recognize you for a motion to readvance to Select File. [LB211A]

SENATOR CORNETT: Thank you, Mr. President. I move to advance LB211 with the amendment to E&R for engrossing. [LB211A]

SENATOR LANGEMEIER: Thank you, Senator Cornett. The motion is to advance LB211 to E&R for engrossing. All those in favor say aye. All those opposed say nay. It does advance. Mr. Clerk. [LB211A]

CLERK: Mr. President, an announcement, if I may. The Retirement Systems Committee will meet in Executive Session at 11:00 a.m. in Room 2022; that's Retirement Systems at 11:00 a.m. And Revenue Committee will meet in Executive Session in 2102; Revenue Committee in 2102.

Mr. President, the next bill, LB402, is a bill originally introduced by Senator Schimek. (Read title.) The bill was introduced on January 16 of this year. At that time it was referred to the Executive Board for public hearing. The bill was advanced to General File, Mr. President, and I do not have committee amendments. I do have other amendments and motions pending, Mr. President. [LB402]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Schimek, you are recognized to open on LB402. [LB402]

SENATOR SCHIMEK: Thank you, Mr. President and members of the body. This bill is about redistricting, and I know it's a little ways down the line but it's something I think that we should begin thinking about, and I will outline the reasons why I think so as we go along here this morning. First of all, a little bit of background about the history of redistricting. Redistricting has traditionally been a redrawing of congressional and legislative district boundaries, and it's always been a political process in this state, as in other states--this state probably less so than any other state because we generally don't concern ourselves with party affiliation when we're looking at legislative districts. But admittedly that does happen sometimes with congressional districts. For both congressional districts and legislative districts, constitutional and statutory provisions generally required the redrawing of district boundaries based in part on population. However, until 1962, most states generally ignored any requirement to redistrict congressional and legislative districts based upon changes in the state's population.

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However, in 1962, the U.S. Supreme Court ruled that a person could bring a challenge and seek judicial redress for an allegedly improper redistricting plan. As a result, state legislatures were forced to redraw...to draw redistricting plans consistent with constitutional and statutory requirements, or else be subject to having their district boundaries drawn by the courts. That's just a little bit of background. What LB402 does is it changes in some aspects the way redistricting is done in the state of Nebraska. It marries the process that we used in 2001 with the statutory framework with which the Iowa legislature has been conducting redistricting since 1981. One of the reasons I began thinking about this at this time is because of term limits. I realized that, because of term limits, it could be possible that no senator would be here in 2011 who was...it would be possible that no senator would be here in 2011 who had been part of the redistricting process in 2001. So other than Senator Ashford and Senator Dierks, there would be nobody left, and who knows whether they will run for reelection or be reelected. So I thought that we ought to be giving some consideration to what we did in 2001, and for those of you who weren't here then, I think that most of us felt that the process worked very well. We didn't have any serious challenges to our redistricting plan, and it was a process that led to the redistricting plans without huge battles. And for the most part, I would challenge...or I would credit Senator George Coordsen for leading that effort and making our process, for the most part, nonpartisan, transparent, timely, and open to the public. Knowing that the Legislature would be hit hard by term limits in the near future, I began considering ways we could structure the redistricting process so that the loss of experience wouldn't necessarily harm the overall procedure. As I mentioned earlier, the bill was modeled after Iowa law. While I was Chair of the Government, Military and Veterans Affairs Committee, I began taking a look at what other states do. Many states form redistricting commissions, members of which are selected by or appointed by various officials, including governors and legislative leadership. Depending on the state, these commissions are responsible for legislative as well as congressional district plans, or just one of the two. Despite the differences among states with this type of plan, the commissions essentially share the same goals. And if you will look at this yellow sheet that I had distributed to you, you will notice that there are, I think, 12 commissions that deal with the responsibility for drawing a plan, and it tells you who appoints those commissions. There are two commissions established that are advisory in nature, and then I think there are five states that appoint backup commissions in case the original redistricting plan is not adopted, and if the legislature does not adopt a redistricting plan, if they fail to meet their deadlines. The thing that sets Iowa apart from the other states is that it does not put the task of redistricting in the hands of a commission, but rather the legislature as a whole votes on the various plans. Nonpartisan legislative staff develop maps without any political or election data, including--and this may make you nervous--including the addresses of incumbents for the House and Senate, as well as congressional districts. Given that our Legislature is a nonpartisan institution, this seems like a natural fit for the redistricting process in Nebraska. The basic idea behind LB402 is to streamline the redistricting process and put it into the hands of this nonpartisan entity, as it is done in Iowa, and the

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bill authorizes Legislative Research Division, which makes eminent good sense in my opinion, because they have been involved in the process at least since 1991, to some extent. In the bill, the division would only serve as staff, and present ideas, essentially maps drawn on up-to-date information from the U.S. Department of Commerce. They would present it to the redistricting committee, which is the actual committee that would administer the redistricting act. The redistricting committee itself would be appointed by the Executive Board and composed of nine members, and this is exactly as it was done in 2001. There would be three from each congressional district, with no more than five from the same political party. The redistricting committee would introduce shell bills at the beginning of the session, just like any other bill, and then specific plans that are developed by Legislative Research would be amendments to the redistricting bills. Another important aspect of the process established by LB402 is public involvement, and again, this mirrors what we did in 2001. Under this bill, the committee is required to schedule and conduct at least one public hearing on the plans in each congressional district. After the hearings, the committee will prepare and submit to the Legislature a report summarizing the information received by the committee. The Speaker would then bring the redistricting bills to a vote expeditiously, and no amendments would be permitted other than amendments by the committee, and the only amendments permitted by the committee would be purely... [LB402]

SENATOR FRIEND PRESIDING [LB402]

SENATOR FRIEND: One minute. [LB402]

SENATOR SCHIMEK: ...corrective or technical in nature. In the event that no redistricting bill advances, the research division would draft a new bill based on the concerns of the Legislature, to resubmit for consideration. Much of the actual procedure regarding redistricting guidelines remains unchanged from 2001 by LB402. The same basic criteria for redistricting would be implemented. And I think I will stop there, before I go into the specifics of that, because I will run out of time. Thank you, Mr. President. [LB402]

SENATOR FRIEND: Thank you, Senator Schimek. Mr. Clerk, motion on the desk. [LB402]

CLERK: Mr. President, Senator Erdman would move to recommit LB402 back to the Executive Board. [LB402]

SENATOR FRIEND: Thank you, Mr. Clerk. Senator Erdman, you are recognized to open on your motion to recommit to Executive Board. [LB402]

SENATOR ERDMAN: Mr. President and members of the Legislature, I hope you vote for this motion, because if you don't, then we have to do what should have been done in

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the committee. There are a number of problems with LB402. Senator Schimek is aware of some of my concerns, and I'm sure she's had an opportunity to view the amendment that I have offered. This bill was heard on the same day as another bill that was advanced from the committee without the opportunity to amend, and now we're going to do it on the floor. So whether we agree with the philosophy or not in what Senator Schimek is trying to accomplish, if we are going to do this, there are some major issues that need to be addressed, and I see that we have two options. We can try to send this back to committee and allow the committee to work out a committee amendment, bring that amendment back to the full body and discuss it. Or we can proceed to an amendment that I have filed. I see Senator Schimek has an amendment filed on Select File. I also have a motion to indefinitely postpone LB402 filed, as well. I hope you have had the opportunity to read the bill. And let me preface any of my comments by saying this: I have absolute respect for Senator Schimek and what I believe she is trying to accomplish. We have a fundamental disagreement on how. I have absolute respect for the folks who work for the Legislature, especially those in the Legislative Research Division, and the work that they provide and the information that they share with us is an immense value. And I don't want my comments to be perceived that I disagree with their efforts, because they are a part of Senator Schimek's vision here. But just as Dorothy realized that she wasn't in Kansas any more, folks, we're not in Iowa. This bill...this bill does not work in Nebraska. I'll walk through why. Probably the most objectionable part of LB402 is that the Legislature doesn't draw the map--any of them; not a one. The language...and if you read the statement of intent, it says the redistricting plans would be created by the Legislative Research Division. They would compile the information, they would redraw the lines, and they would submit that plan to the legislative redistricting committee. It makes sense. They're going to gather the information; they're a nonpartisan, nonpolitical entity. Fair point. Anything that we can do to try to remove politics from probably the most political discussion that any political body will have would be of value. But recognize that every bill that comes to this body ultimately should be treated the same, not in the same in which they are voted on or others, but the way that the rules apply to each of those bills. If a bill is heard before a committee, the committee themselves should have the opportunity to directly amend that bill. If the bill is advanced to the floor of the Legislature, the members of this Legislature should have the opportunity to directly amend that bill. That is not in LB402. I was here in 2001, and I was here in 2001 when this body voted to put Senator Dierks and Senator Cunningham in the same legislative district. That was a political decision. I voted against the redistricting bills, not because it was unfair to me. I actually had to fight on the floor of this Legislature to make sure that my district wasn't drawn by senior members, and to make it look like a snake that stretched all over the southern Panhandle, all the way down to Imperial. And if it wouldn't have been for the opportunity to offer an amendment on the floor of the Legislature to that plan, my district would be unworkable. It would have violated the communities of interest that we generally strive to accomplish, and it would have been unfair. Those are things that are in this bill that need to be addressed. My amendment addresses those. Let's go on. Have you looked at the committee

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statement? There were six members of the committee who voted yes and three who voted no. Now you might find some irony in the members who voted yes, but let me provide some cover, if you will, for their vote. The Exec Board is probably not the best place to debate and to have bills dealing with substantive information or language, because of the nature of the time constraints that we have. We've had this battle on the floor trying to get the Retirement Committee a committee day, in which we have the opportunity to devote additional time and effort, in addition to what we're trying to do now, to have this time. So in fairness to those that voted to advance it, they didn't feel we were going to spend the time to try to fix the bill in committee, and they were comfortable sending the bill out so that we could fix it. And I think that's contrary to why we have committees. We should fix the bills in committees. I believe that was what I was told on my motion earlier, if I'm not mistaken. Further, if you go through the time line, and Senator Schimek and I may have a disagreement on whether or not my time line is better than her time line--and I think that's accurate--and again, Senator Schimek's intentions here, I think, are valiant. And here is the ultimate reason why. We have been successful in 2001 in drawing lines. While they had political consequences for existing members of the Legislature, they were legally upheld and not challenged. We preserved those communities of interest. We tried to do what we should have done outside of politics, in fundamental fairness, and I think it's appropriate for us to try to determine if there are ways that worked, that we could be successful. In 1990, that didn't happen. I wasn't here, thankfully. Some of you were. From what I'm told, that was a circus. You were called back into a special session, you had to fix the lines. That is chaos. We need to avoid chaos. But given the track record that we have in 2001, and recognizing that most of the people that were key players in that discussion, as far as the staff that helped facilitate that process, will be here, we will have the expertise and we will have some of the seniority still here. Let me also point out an obstacle or an issue that I think is problematic in the green copy of LB402, and why I think it should go back to committee to be fixed. In Section 3 of the bill, the committee of redistricting, which would become a committee similar to what Senator Schimek has proposed on her special committee on state tribal relations, would have to be put into our rules, as well, in order to allow them to be as effective as they should be, as any other standing committee. Ironically, that's how we did it...or excuse me, as a special committee. Ironically, that's how we did it in 2001. We may have had enabling legislation to get the information, but ultimately, the redistricting committee was in rules, not in statute, and I think that's a widely accepted reality. But the committee shall be appointed by the Executive Board in January of each year ending in zero. So let's go back to 2000; 2000 is the last year of a session. Somebody may be term-limited out in 2010. The Executive Board will appoint the committee in 2010. Whoever those members are, will be compelled or shall continue to exist through the redistricting process and shall be reconstituted in the event of a successful legal challenge. That's the committee. Senator Friend is going to be here in 2010. It's my understanding Senator Friend is not going to be here in 2011. Senator Friend has every opportunity--and I would believe obligation--to attempt to be put on the redistricting committee in 2010, according to this

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bill. In the event that Senator Friend is put on that committee, as I read the language he will no longer be a member in 2011, when we actually have to vote on it. My time line says you make the appointments in the year ending in one. You can avoid that. Again, I hope you've had a chance to read this bill, and it's not contrary to what I think Senator Schimek wishes to accomplish. If we're going to have a committee, let's use it, and if the committee doesn't want their responsibility--of which I'm a member--then let's not accept these bills to be referenced to us. I think that would be fair to Senator Schimek, and I think that would be fair to the body. Senator Chambers pointed out earlier that you don't have to have a lot of skill or talent or expertise to be a chair of a committee. Guilty as charged. But at least we have the time, and before we'll advance a bill out here, my committee members are willing to allow us the opportunity to work with the members to resolve the issues. That was not afforded on LB402 to Senator Schimek, or to the members of the committee that had concerns. And you'll notice the Chair of the Executive Board voted no. [LB402]

SENATOR FRIEND: One minute. [LB402]

SENATOR ERDMAN: The Speaker voted no, and little old Senator Erdman voted no. But it takes five to advance. Five votes were there--actually six were. So this is not at this point about a disagreement about whether we need a bill or not. This is about, if we're going to do a bill, it should be drafted, it should be done out of respect to Senator Schimek, out of the members of the committee that were tasked with the responsibility of reviewing the legislation, and to be the gatekeeper from bills coming out here in poor form. If we're not going to do that, then why on earth do we reference bills to committee? I think it's fair at this point to ask the body to recommit this bill to the Executive Board. The committee hearings are completed for most committees. We would have time in the afternoons to be able to have this discussion, if the members of the Exec Board would attend. [LB402]

SENATOR FRIEND: Time. [LB402]

SENATOR ERDMAN: Thank you, Mr. President. [LB402]

SENATOR FRIEND: Mr. Clerk, items for the record, please. [LB402]

CLERK: Mr. President, at this point I just have an announcement. The Banking Committee would like to have an Executive Session right now underneath the south balcony. Thank you, Mr. President. [LB402]

SENATOR FRIEND: Thank you, Mr. Clerk. You have heard the introduction, members of the Legislature, on the recommit motion to committee. The floor is open for discussion. Senator Erdman, your light is next. [LB402]

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SENATOR ERDMAN: Mr. President, out of respect to Senator Schimek, if she would like the opportunity, I would yield my time so that she has the first opportunity to respond to the motion that is before us. Senator Schimek, I would yield you my time. [LB402]

SENATOR FRIEND: Senator Schimek, will you yield? [LB402]

SENATOR SCHIMEK: Yes, I would, and that's very generous of Senator Erdman. Is my light on next, then Senator? [LB402]

SENATOR FRIEND: It is. [LB402]

SENATOR SCHIMEK: Then I will trade times with you, Senator Erdman. How's that? Thank you. Yes, I do want to respond, and I just find this whole discussion so ironic because it is I who have come to the floor time after time, and said we shouldn't be sending bills to the Executive Board. It's ridiculous. And we never even started doing it until the early nineties, when the Legislature was besieged by the Auditor of Public Accounts, who thought we were misusing our phones, and we had to address some of those concerns. And so at that point we changed the rules and allowed the Exec Board to have hearings on bills. Well, I think this is a very good illustration, perhaps, of why we do need to send these bills to other committees. The state tribal relations bill should have gone to Government Committee, this bill should have gone to Government Committee, etcetera, etcetera. But I find it ironic. I'm thinking that maybe, because of the discussion on these two bills, I will introduce that rules change again. But I would like to address some of the concerns that Senator Erdman raised, and I think that he and I do have perhaps a fundamental, underlying disagreement. But one of the things that I would like to point out to you is that I do agree with the fact that at some point the Legislature ought to be able to come back and amend a bill, if necessary. And I have put an amendment on Select File, to be taken up on Select File, that will give the Legislature a third opportunity to address it, so if the first two bills were not accepted by the Legislature, then Legislative Research would draw the third plan, and the Legislature at that time could amend the bill, the legislative or redistricting bills, if necessary. Now let me tell you what happened in Iowa. In 1981 they used this scheme for the first time, and they actually went to that third plan in 1981. However, they didn't adopt any amendments to that third plan. In 2001...oh well, 1991 and 2001, they actually adopted the first plan that Legislative Research put out. So you can see that they are comfortable with their process, they think it works, but they have the opportunity at the third try to change a plan if they're still not happy with it. I don't think there are any problems with the bill, Senator Erdman, and I don't know if you're...I think you may be in a committee meeting or something. I don't think there are any problems with it. This bill was actually introduced before--last year, I believe it was--and the Exec Board actually prioritized it last year but did not send it to the floor. I don't know if that's because they didn't want to take the time to work on it, or if they thought it would be

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better to wait until later... [LB402]

SENATOR FRIEND: One minute. [LB402]

SENATOR SCHIMEK: ...to address it, but I don't think there are any serious problems with the bill. This bill has been worked on over the interim, totally reorganized, so that it stands alone and makes sense from a chronological order. I don't think there is any problem, significant problems with the bill, and if there are I would be glad to try to address them. I also want the opportunity at some point to talk about the Erdman amendment, because I'm not sure that that works for us. I think that...well, I think that I will just leave it there, Mr. President, and turn my light on again. Thank you. [LB402]

SENATOR FRIEND: Thank you, Senator Schimek. Senator Schimek, your light is next, so you may continue. [LB402]

SENATOR SCHIMEK: Yes. Thank you, Mr. President. I did want to give my time to Senator Erdman at this point. I agreed to change with him. If he's not on the floor, I can certainly use the time. [LB402]

SENATOR FRIEND: Senator Erdman has moved to an Executive Session in one of his committees. You are recognized to continue if you'd like. There are other lights on after you. [LB402]

SENATOR SCHIMEK: Okay, I would like to continue, Mr. President, because I did not finish the explanation of the bill itself, and I would like to do so at this time. At the point where I stopped, I wanted to go into the actual proceeding...or the actual criteria, I should say, for redistricting under this bill. And I want to explain that these criteria have been talked about in 1991, and they were talked about in 2001, and they are the criteria that were adopted on both of those occasions. Number one--and this is found in Section 6 of the bill, on page 4--it says that congressional districts are based on population, and county boundaries should be utilized as district lines whenever possible. Secondly, it says, "No congressional district shall have a population which causes a redistricting plan to have a relative deviation in excess of plus or minus one-half percent, based on the idea of district population." Third, it says, "The number of counties, cities, and villages divided among more than one congressional district...shall be as small as possible." If such a division cannot be avoided, it should be made along recognizable boundaries that meet the requirements of the U.S. Department of Commerce. And finally, "...districts shall be composed of contiguous and compact territory. Areas which meet only at the points of adjoining corners shall not be deemed contiguous." I need to tell you that these criteria are based on what the Legislature has ascertained to be the most...or the safest way to go in order not to have a challenge to redistricting, and there have been a lot of court cases on redistricting since 1962, and there are statutory provisions at the federal and state levels, as well. With that, Mr. Chairman, I would

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relinquish the rest of my time, and thank you very much. [LB402]

SENATOR FRIEND: Thank you, Senator Schimek. Senator Avery, your light is next. [LB402]

SENATOR AVERY: Thank you, Mr. President. Senator Erdman mentioned a desire to avoid chaos in this process. I've never witnessed a redistricting effort that didn't involve chaos, because you're dealing with political careers, you're dealing with incumbents who want to protect their districts and their ability to be reelected. So my experience, observing this over some 32 years, is that every time you have redistricting there's blood on the floor. I would...I'm not sure how I'm going to vote on this resolution to recommit to committee. I can tell you, though, that if certain things could be worked out with this recommitting, I could probably support it. What am I talking about? We know that in a redistricting season, there is the temptation always of incumbents to protect themselves. This is strengthened by the fact that legislators want to draw their own maps and literally choose their own voters. I don't think that's a good idea, but that's the way, often, these things work out. It seems to me there's an inherent conflict of interest present when legislators design their own political futures. There is precedent in other states for the creation of independent commissions that can reduce the partisan influence and the corrosive effect of incumbent protection. Right now, 17 states currently give independent commissions some role in redistricting decisions. Only four of those states, however, give them the final say. You can have an independent commission make responsible recommendations that could be subject to judicial review, and this could perhaps improve the process. So back to my original point: If this resolution to recommit to committee would allow us to take it back to committee and consider the positive benefits of an independent commission that would create a process based on objective criteria and fairness, one that would inspire confidence in the process, then I can support this. I suppose, then, that would require me to ask of Senator Erdman a question, and would request that he yield. [LB402]

SENATOR FRIEND: I'm sorry, Senator Avery. Senator Erdman, would you yield? [LB402]

SENATOR ERDMAN: I would, Mr. President. [LB402]

SENATOR AVERY: My question is, if we vote to recommit to committee, would that committee be able to consider the broad range of alternatives in how we structure the redistricting, including the creation of an independent, nonpartisan commission to make recommendations? [LB402]

SENATOR ERDMAN: Senator Avery, I have no opinion of how the committee would conduct their business. It would be my opinion that if the bill is recommitted, that if you had that idea, you could submit that to the committee for our discussions, as well. I don't

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know that it would be supported, but you could definitely submit that, and we could consider that along with all the other concerns that I have. [LB402]

SENATOR AVERY: Thank you very much. I suspect that when you start talking about trying to remove partisanship from something so partisan as redistricting, it might be considered... [LB402]

SENATOR FRIEND: One minute. [LB402]

SENATOR AVERY: ...pie-in-the-sky thinking. I'm usually not guilty of pie-in-the-sky thinking, but certainly I believe that this process, throughout the United States...and by the way, we're the only country in the world that does this, and I think that is a great compliment to us, because it's a very difficult thing to actually go about the painful process of redistricting our representative bodies in order to stay true to that one-person, one-vote principle that we adhere to and we try to promote around the world. But we're the only democracy in the world that does it. So I think this is worthy of consideration, and to the extent that I might be able to influence that committee to consider this, I think I will vote to recommit. Thank you. [LB402]

SENATOR FRIEND: Thank you, Senator Avery. (Visitors introduced.) There are more lights on. Senator Erdman, you are next. You are recognized to speak on the recommit to committee. [LB402]

SENATOR ERDMAN: Mr. President and members of the Legislature, I apologize for my absence, and I believe Senator Schimek was being generous, as well, and was going to yield me time, and I did allow her the opportunity to use all the time she needs. I think this is her opportunity to present the bill, and I want to make sure that she feels like she's had that option. Is this the silver bullet to move it back to committee? I don't think so, but I guarantee you I don't like the shotgun approach that we're using. Let me go through the bill, because it may be of value for you to understand all of the other issues that are addressed in this bill that need to be corrected, and since I can do it in probably five minutes, then we can at least have an understanding. And then you can decide whether or not you want to fix it on the floor, or if it needs to be fixed, or if the bill even needs to be here. If you go through the bill, the green copy of the bill, you go down to Section 3. I've already talked a little bit about the time line. You can appoint a member who is term-limited out in 2010. They would be, further, a part of that committee, and obviously, we'd have to have a provision in here, or you would preclude those people with that senior experience from being a part of this process at all, because they wouldn't be here the year we actually voted, and you had the public hearings, and you went out to the congressional districts, and you did the videoconferencing, and you had the debate on the floor. So it technically would probably be more of an independent commission that Senator Avery is looking for than he thinks, because of the fact that you'd have people who were no longer members of the Legislature, which I believe

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would probably either be unconstitutional--and if it's not, it would just be a really bad idea. A vacancy that's filled by the Executive Board..."A vacancy on the committee shall be filled by the Executive Board within fifteen days after the vacancy occurs." That's on page 3, lines 6-8. This is going to be done in a legislative session with 90 days. Now that sounds like a lot of time, but as all of you are aware, we're almost halfway through this session, as far as legislative days. Most of this work has to be done early on, as it was in 2001, as it has been done this year with other bills, to make sure that those bills are ready for floor debate when we go to full-day debate. Fifteen days is too long. It should be as soon as is practical. It should be upon whatever the term needs to be, essentially immediately, so that in the event that we have a vacancy, for whatever reason, that that vacancy is filled as soon as is practical, to make sure that this process continues on. Further, if you go to page 3, in Section 4, subsection (3), line 22, "If in preparation of redistricting plans the director is confronted with a necessity to make any decision"--now this is the director's authority to make any decision--"for which no clearly applicable guideline is provided by section 6"--which is the guidelines that Senator Schimek has pointed that, that we have generally adopted by legislative resolution in this body when we did redistricting in 2001--"the director may"--and that word is circled; it was circled by the senior member of this body, it was circled by a bunch of other of us on the committee, and said that is not the right language--"may submit a written request for direction of the committee." In the event that we don't have guidelines that are specific enough and address every issue, the director of research for the legislative body, an employee of ours, gets to make that decision on their own. That word at least needs to be "shall." If they are going to be at the direction of the Legislature, if they are going to be the staff for the redistricting committee, they should act as other staff or committees do: at the direction of the committee. Further, you go to page 4, Section 5, "The committee shall introduce the redistricting plans as amendments to redistricting bills." Unnecessary. That's how every other bill gets addressed, and in fact, that's exactly what we did in 2001. [LB402]

SENATOR FRIEND: One minute. [LB402]

SENATOR ERDMAN: Shell bills were introduced. Once the committee determined what the plan was, they had public hearings on it. Once the public hearings were held, they had the amendments filed, read by the Clerk, and debated on the floor. Section 6, again, is unnecessary, in my opinion, as it can be done...and it could actually be more specific. Some of the testimony in front of the committee that day was concerned that it doesn't preserve some of the issues that have generally presided over redistricting in the past, and have resulted in the division of areas such as Sarpy County into three districts, when other counties in the state have one representative. And I'll continue on with my light at the next opportunity. Thank you, Mr. President. [LB402]

SENATOR FRIEND: Thank you, Senator Erdman. And Senator Erdman, that was your third time speaking. Senator Schimek, you are recognized. [LB402]

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SENATOR SCHIMEK: Yes. Thank you, Mr. President and members. And Senator Erdman, unless you need to leave, could I keep you here for a minute? I would like to ask you a question or two regarding the comments that you just made, because I didn't hear all of them, frankly. And you were concerned about Section 3, and you were concerned about the "may," the provision that the Legislative Research director may ask the committee for guidelines. I think that's... [LB402]

SENATOR FRIEND: I'm sorry. I thought you were finished, Senator. Senator Erdman, will you yield? [LB402]

SENATOR ERDMAN: I would yield, Mr. President. [LB402]

SENATOR SCHIMEK: I do not really have a problem with what you're saying. I take that as a constructive...that would be a constructive amendment, in my opinion, but... [LB402]

SENATOR ERDMAN: And just briefly, Senator Schimek, I believe that's consistent with your response at the hearing, that was raised by Senator Chambers and others. Again, it points back to the fact that we didn't do your bill justice by advancing it out without addressing those things first. [LB402]

SENATOR SCHIMEK: Right. But I don't think there are that many things that need to be addressed, but let's continue this discussion. Section 5 of the bill...what was your problem with Section 5 of the bill? [LB402]

SENATOR ERDMAN: Senator Schimek, this restates existing law and is unnecessary. Every bill that's introduced before the Nebraska Legislature has to be introduced within the first ten days of legislative session of each year ending in one, or any other year,... [LB402]

SENATOR SCHIMEK: I... [LB402]

SENATOR ERDMAN: ...and you're trying to limit it to the first year, so we only do it one time. [LB402]

SENATOR SCHIMEK: I think this just makes it clear, Senator Erdman, that this...the shell bills, s-h-e-l-l... [LB402]

SENATOR ERDMAN: Understood. [LB402]

SENATOR SCHIMEK: ...shall be introduced during those first ten days. And I don't think it hurts anything to have it in there, because what we tried to do when we rewrote this

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over the summer, was put everything that needed to be in one section so that it would be very clear to the public and to the Legislature. Section 6, I think just states an overall desire to meet that goal: establishing it on the basis of population and in accordance with the constitution. There are other places in the bill where we get into very specific guidelines that talks about dividing counties or not dividing counties, that kind of thing. So I don't see a problem with that particular section either. And were there any others that I missed that you mentioned? [LB402]

SENATOR ERDMAN: Not that I have mentioned, Senator Schimek. [LB402]

SENATOR SCHIMEK: Okay. [LB402]

SENATOR ERDMAN: I think you've gone through them. I think there are others. I don't want to take your time. [LB402]

SENATOR SCHIMEK: Okay. Then... [LB402]

SENATOR ERDMAN: I have time on my closing, I guess,... [LB402]

SENATOR SCHIMEK: Sure. [LB402]

SENATOR ERDMAN: ...to finish, but I think so far, you've kind of gone through them, and we may ultimately disagree on whether it needs to be in here or not, but I'll leave your time to you. [LB402]

SENATOR SCHIMEK: Right, okay. Thank you very much, and I'd like to ask Senator Avery a question at this point, if I might, Mr. Chairman...Mr. President, I mean. [LB402]

SENATOR FRIEND: I'm sorry, Senator Schimek. Senator Avery,... [LB402]

SENATOR SCHIMEK: I'd like to ask Senator Avery a question. [LB402]

SENATOR FRIEND: Senator Avery, will you yield? [LB402]

SENATOR AVERY: I will. [LB402]

SENATOR SCHIMEK: Thank you, Mr. President. Senator Avery, thank you. I would like to ask you what your reasoning was for sending this back to committee, if I might,... [LB402]

SENATOR AVERY: Yes, thank you. [LB402]

SENATOR SCHIMEK: ...because I didn't really...I don't think I really heard it. [LB402]

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SENATOR AVERY: Thank you for the opportunity to readdress this. Senator Schimek and I had a conversation in which I was assured that the bill would address most of the concerns that I had previously raised. Then I went back and reread, I believe it was Section 3. My interest--and I'm not sure that it does this, Senator Schimek--my interest is in having nonpartisan independent committee. [LB402]

SENATOR FRIEND: One minute. [LB402]

SENATOR AVERY: Section 3 calls for a nine-member committee to make recommendations, but that nine-member committee is made up entirely of members of this body. [LB402]

SENATOR SCHIMEK: That is correct, Senator Avery, and that... [LB402]

SENATOR AVERY: So that does not satisfy my concern. [LB402]

SENATOR SCHIMEK: No, it doesn't, but there's more to it than that, and I indicated in my opening remarks that this nine-member committee is based on the committee that we did establish in 2001. But this takes it one step further, because it takes the redrawing of the district plans and gives it to Legislative Research, which is basically how they do it in Iowa, is an independent body that draws the plans. And actually, Iowa is a little unique in the way they do theirs, but I think it's very good because in other states, if you looked over the yellow sheet that I... [LB402]

SENATOR FRIEND: Time. [LB402]

SENATOR SCHIMEK: ...gave you...thank you. [LB402]

SENATOR FRIEND: Thank you, Senator Schimek. Senator Nelson, you are recognized to speak. [LB402]

SENATOR NELSON: Thank you, Mr. President. I didn't mean to supersede the Speaker here. Mr. President and members of the body, I'm one of the new senators. I think that...and as Senator Avery...and it appears to me in my recollection that maybe this is the first time that Senator Avery and I are in agreement on something. It does sound to me as though this needs to be recommitted to the committee. We can take a lot of time talking about these individual amendments, but there's enough here in this bill that we've heard discussed that I think it would save time in the long run to send it back to the Executive Committee, if they have time to address this--and apparently they do--and at least iron out some of the things, in the interest of time, before it comes back to us again. And so I would support committing and I will give the rest of my time to Senator Erdman, if he needs some additional time to finish up. Thank you, Mr. President.

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[LB402]

SENATOR FRIEND: Thank you, Senator Nelson. Senator Erdman, you have 4 minutes.
[LB402]

SENATOR ERDMAN: Thank you, Mr. President. And Senator Nelson, thank you for your kindness. Where we left off, at least on my time, we were discussing a little bit about Section 6, and Senator Schimek and I have followed up on it. If you'll look at the committee statement, there was an individual who represented himself, came down to the Legislature simply because of some of the concerns that they have seen in their area--I believe he's from Sarpy County--came down and had some concerns about the broadness of the language. And even though Senator Schimek says that in other areas of the bill it is more narrowly drawn, he didn't feel it was even sufficient according to the guidelines that we had in the past. So when we go through this process...again, these are the conversations we would have had in committee, or at least I hope we would have, and if we wouldn't have had them in committee, we would have had them with Senator Schimek. And I've had conversations directly, some of the concerns that I have, and ultimately we may disagree. But similar to the other bill that we heard today, when a committee takes a final action on a bill without having the opportunity to either hear the alternative options that would be available or to think through the ones that are exactly in front of them, I think it's a disservice to this process on the floor. I don't like to be up here talking about Senator Schimek's bill this morning without saying, look, if we can do this more appropriately, let's do that. I wasn't afforded that opportunity in the committee, and if you'll ask the members of the Executive Board who were there, even those who voted in favor, most of them kind of nodded their head and thought, yeah, you're probably right, but we don't have the time. Let's just kick it out. How many of you have picked a priority bill yet? Wouldn't it be great if those committees would just kick it out? I've got a couple I'm interested in already. I've got till tomorrow about this time to choose. Both of them are still in committee. Why doesn't the committee just kick them out? Because the committees are doing their job, and it's not a knock or a shot at the Executive Board. It's a reflection of reality, and Senator Schimek is right. I said it in my opening on this motion: If we aren't going to devote the time, we shouldn't take the bill. That is an institutional issue. It's not a knock on the board as an entity; it's a reflection of reality. The reason I wasn't here and visiting with Senator Schimek is because the Retirement Committee was across the hall having an Exec Session, which I'm a member of, as well. Let's go back to the bill. Section 8 of the bill on page 6 specifically gives the director the authority to redraw congressional district boundaries and other district boundaries. In the event that that is not successful...excuse me, let me back up. That will be the basis then for the committee's hearings. Once the committee has the public hearings, whether they're in Scottsbluff, Omaha, or Lincoln, or whether they're held here at the Capitol using videoconference, as well, the committee can only make technical changes to those plans--technical changes. That seems logical. [LB402]

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SENATOR FRIEND: One minute. [LB402]

SENATOR ERDMAN: However, it does tie the hands of that committee, and I think unfairly so. And I will ask you to recall the testimony that I gave you earlier about how the process worked in 2001, where what I offered was not a technical amendment, but it was a necessary amendment to reflect communities of interest. That would have been prohibited under this bill, and I would have had to convince 25 of my colleagues who weren't affected by the case I was in to vote against the entire plan, just to give me the accommodation of going back and trying to make my case, when the Clerk and the director are the only people that have the conversation when that bill doesn't advance before the committee. Thank you, Mr. President. [LB402]

SENATOR FRIEND: Thank you, Senator Erdman. The Chair recognizes Speaker Flood for some announcements. [LB402]

SPEAKER FLOOD: Thank you, Mr. President and members. Just a reminder: Tomorrow at adjournment is the deadline for senators to designate a priority bill, and as of this morning when we went back into session, 33 had not done so at that time. I know that we've received a couple since, but the deadline for senator priority bills is at adjournment tomorrow, on Friday. Committees also have the deadline to make sure they designate their two priority bills: their first committee priority bill and their second committee priority bill. And also tomorrow at adjournment is the deadline to notify me by letter if you want me to pick a Speaker priority bill, of which I have 25 authorized under the rules, and a reminder that if you are requesting a bill to be prioritized, you must receive the signature of the introducer of that bill. It must be on the actual request form. Senator priority bills, committee priority bills, need to be given...the notice has to be given to Jeanette and Laurie in my office, and also a copy to the Clerk's Office so that the same can be read into the record. For requests on Speaker priority bills, those simply come to my office. See Jeanette or Laurie. Thank you very much for your consideration. After we have the opportunity to look at everything, we'll be advising you as to how we will proceed early next week. Thank you, Mr. President. [LB402]

SENATOR FRIEND: Thank you, Speaker Flood. Mr. Clerk, items for the record, please. [LB402]

CLERK: Thank you, Mr. President. Your Committee on Executive Board, chaired by Senator Engel, reports LR1CA advanced to General File; LR3CA indefinitely postponed. A bill read on Final Reading this morning, Mr. President, was presented to the Governor at 11:07 a.m. (re LB185). Priority bill designations: LB425 has been selected by Senator Pankonin; LB342 by Senator Engel; LB677 by Senator Fischer; and LB328 by the Retirement Systems Committee. Mr. President, in addition, I have a unanimous consent request that the Appropriations Committee meet in Room 1003, as opposed to Room 1524, on Tuesday, March 20, for their public hearing. The Business and Labor

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Committee will hold an Executive Session on Friday at 10 a.m., in Room 2022; Business and Labor Committee tomorrow morning at 10 a.m. A series of adds: Senator Synowiecki, to add his name to LB57 and LR48; and Senator Pirsch to LB143. (Legislative Journal pages 785-786.) [LB402 LB185 LB425 LB342 LB677 LB328 LB57 LB143 LR48 LR1CA LR3CA]

Mr. President, I have a priority motion. Senator Engel would move to adjourn until Friday morning, March 9, at 9:00 a.m.

SENATOR FRIEND: Members of the Legislature, the motion is to adjourn until Friday morning, 9:00 a.m. All those in favor signify by saying aye. Those opposed say nay. The ayes have it. We are adjourned.