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Transcriber's Office

Floor Debate
March 21, 2007

[LB198 LB255 LB299 LB328 LB334 LB389 LB395 LB405 LB415A LB570A LB638
LR6CA LR14]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Good morning, ladies and gentlemen, and welcome to the George Norris Legislative Chamber for this, the fiftieth day of the One Hundredth Legislature, First Session. Our chaplain for today is Pastor Eric Bents from Trinity Church Interdenominational, Omaha, Nebraska, Senator Pete Pirsch's district. Please rise.

PASTOR BENTS: (Prayer offered.)

SENATOR LANGEMEIER: Thank you. I call to order the fiftieth day of the One Hundredth Legislature, First Session. Senators, please record your presence. Mr. Clerk, please record.

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, Mr. President.

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

CLERK: Mr. President, your Committee on Government, Military and Veterans Affairs, to whom was referred LR14 for a public hearing, has reported the resolution back to the Legislature for further consideration; that report signed by Senator Aguilar. And I have an amendment to LB389 by Senator Aguilar. That's all that I have, Mr. President. (Legislative Journal page 915.) [LR14 LB389]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. (Doctor of the day and visitors introduced.) Mr. Clerk, we'll now proceed to the first item on the agenda, LR6CA. [LR6CA]

CLERK: Mr. President, LR6CA, a resolution originally introduced by Senator Avery and signed by a number of members. It's a resolution proposing an amendment to Article XI, Section 1, of the Nebraska Constitution. The resolution was referred to the Urban Affairs Committee for public hearing, advanced to General File. At this time, Mr. President, I have no amendments pending to LR6CA. [LR6CA]

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SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Avery, you are recognized to open on LR6CA. [LR6CA]

SENATOR AVERY: Thank you, Mr. President. I suspect the Speaker scheduled this bill for first thing today because we need some decompression after the last two days. So I think that implies that I'm not expecting a whole lot of opposition, but often when you think that, you are surprised. LR6CA would put before the voters in the November '08 General Election a constitutional amendment to Article XI, Section 1, which currently limits the types of investments that can be made by public endowments held by political subdivisions. The current law dates back to 1875 and was originally meant to protect municipalities from financial risk, and it made sense in 1875 because investments were risky in those days. The constitution was amended in 1966 to provide for the investment of retirement or pension funds of political subdivisions in the same manner proposed by this legislation, but that amendment did not include, at the time, public endowments. If this resolution is adopted and approved, the voters will be given an opportunity to amend our constitution to reflect twenty-first century standards of prudent investment practices. The amendment would allow trustees of public funds to follow the practices of a prudent investor. That means that they would be legally bound to invest the funds wisely, acting with all the skill, care, and diligence, while protecting and benefiting the public interest. Public endowments are created to hold assets given to a public entity--cities, counties, school districts--with a stipulation that the funds donated are invested to generate income rather than to be spent immediately. These funds may come as a gift, a bequest, or from the sale of a public asset. So I am not talking about tax dollars, let me emphasize that. This is not tax dollars we're talking about. The annual earnings from public endowments may be used for defined public purposes. Unspent earnings are reinvested in the fund to ensure that the endowment continues to grow and to create more finances for public benefit. Let me give you some examples of why this is needed. Last year in Hall County they were planning to build a new jail, but they abandoned the project because of concerns that the financing scheme would be unconstitutional. Their plan included making an up-front sale of the estimated interest on the taxes it would collect over the 30-year life of the jail bond. The up-front payment was estimated to be at least \$240,000, using prudent investment practices in their handling of the bond. But because Nebraska operates under Dillon's Law, Hall County officials felt they could not go forward with this plan. Dillon's Law, of course, means that governing bodies can only do what is expressly authorized in state law. Another relevant case occurred in North Platte where a rancher named John Newburn gave the city land for the purpose of creating a public trust to be used to build parks and provide recreational opportunities for the community. That land was sold for \$2.5 million, but only earned 2 to 5 percent under the restrictive terms of current constitutional limitations. A final example: In Lincoln, the Community Health Endowment was created in 1998 by the sale of Lincoln General Hospital, which at the time was a city-owned facility. The proceeds from the sale are municipal funds that form a separate public endowment. Money that is produced is used for programs that address healthcare

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needs for the poor, healthcare needs of the elderly, homeless, and mentally ill. These funds also serve refugee and minority populations, high-risk children, victims of domestic violence, and people with substance abuse problems. After nearly ten years of investing under the restrictive provisions in the constitution governing such funds, the endowment has produced a meager return of only 5 percent, because they can only invest in bonds. Had the trustees of this fund been able to invest in a diversified portfolio, including stocks, the return most probably would have been about twice that amount. I have passed out to each of you a table that shows the difference between a 5 percent return...no, it shows the differences at 5 years, at 10 years, and 20 years in money that could be generated for community projects, given various levels of earnings. My main point is this: It is time to bring the investment options for public endowments into the twenty-first century. This is not 1875, when stock market investments were unacceptably risky. In those days your money was often safer under your mattress. But things have changed and it's time to change the constitution to reflect these changes. It's time to take public endowment money from under the mattress and put it to work in a full array of available investment options. With that, Mr. President, I would ask you, ask this body to advance this to Select File. Thank you. [LR6CA]

SENATOR LANGEMEIER: Thank you, Senator Avery. The floor is now open for discussion on LR6CA. Wishing to speak we have Friend, Pirsch, Hansen, and others. Senator Friend, you are recognized. [LR6CA]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. Senator Avery did a thorough job of explaining LR6CA. I wanted to do a real quick overview of the Urban Affairs' activity in regard to this constitutional amendment. We've seen it before. Last year, Senator Beutler worked quite extensively on the language and helped the committee, and the committee helped him. Senator Landis was involved in a lot of the creation, I guess, of particular types of language. This Executive Session kicked the amendment out unanimously, 6-0, I believe, and there were no opponents to the measure. I would be happy to answer any questions in regard to this measure, historical type of information, and everything else that I can provide; I'd be happy to do so. With that I would ask for the advancement of LR6CA, and that's all I have, Mr. President. [LR6CA]

SENATOR LANGEMEIER: Thank you, Senator Friend. Senator Pirsch, you are recognized. [LR6CA]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I just had a few questions for the...either, I guess, Senator Friend or Senator...I guess Senator Avery is the sponsor, if he'd yield for a question. [LR6CA]

SENATOR LANGEMEIER: Senator Avery, would you yield to a question? [LR6CA]

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SENATOR AVERY: I will. [LR6CA]

SENATOR PIRSCH: Okay. With respect to this public endowment, currently who's making the investment decisions? [LR6CA]

SENATOR AVERY: The trustees of the fund. [LR6CA]

SENATOR PIRSCH: Okay. And currently is there any prohibition that would prohibit these trustees from investing in, say, junk bonds? [LR6CA]

SENATOR AVERY: Yeah, the prohibition is constitutional because it doesn't allow investing in anything other than bonds. [LR6CA]

SENATOR PIRSCH: Right. [LR6CA]

SENATOR AVERY: Wait, I'm sorry. [LR6CA]

SENATOR PIRSCH: Yeah, and then...and that's... [LR6CA]

SENATOR AVERY: My guess is that there would not be any investment in junk bonds. [LR6CA]

SENATOR PIRSCH: Right. But currently, even with the way the system is set up, it's fine to invest in bonds at this point in time. Theoretically, that may include junk bonds, correct? [LR6CA]

SENATOR AVERY: Theoretically, yes, but I think you need to understand the language of prudent investor. It's my understanding that prudent investors do not invest in junk bonds. [LR6CA]

SENATOR PIRSCH: Sure. [LR6CA]

SENATOR AVERY: That's a high-risk investment. [LR6CA]

SENATOR PIRSCH: Very good. And under this bill there would still be this requirement, this prudent investor standard, correct? [LR6CA]

SENATOR AVERY: That is correct. [LR6CA]

SENATOR PIRSCH: Okay. And nothing about the bill would mitigate towards allowing for a higher degree of risk than the prudent investor standard already allows for at this point in time, correct? [LR6CA]

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SENATOR AVERY: Yes. [LR6CA]

SENATOR PIRSCH: Okay. Very good. And really that's all the questions I had for you, Senator Avery. I just wanted to say that this bill, so long as we have those investment safeguards that have been proven to make sure that we don't experience a situation that occurred in Orange County, California, it sounds like that those safeguards will remain and that this will, in effect, operate to just allow for opportunities to look at investments that will yield a greater return for the public. I applaud Senator Avery for his work on the bill and will support it. Thank you. I yield back my time. [LR6CA]

SENATOR LANGEMEIER: Thank you, Senator Pirsch. Senator Hansen, you are recognized. [LR6CA]

SENATOR HANSEN: Thank you, Mr. President and members of the body. I rise in support of Senator Avery's constitutional amendment. I wanted to just add just a little bit about the Newburn funds in North Platte. Mr. Newburn died. I did not know him. Even though he was a fellow rancher, I didn't know him at the time. But he gave \$2.5 million to the city. Well, all the time...and I think this was in the very early eighties, there was a lot of discussion in North Platte about what to use those funds. They had to be used for parks and recreation. North Platte built a golf course and that was a big discussion, and those funds weren't used. Those funds have sat there for at least 20 years at a rate of 2 percent interest, 2 to 5 percent at the very most, on the bond market. Two and a half million dollars is a sizeable sum of money to be sitting there in the control of the city, with their hands tied to a bond market. I think that it's a great idea to let the people vote on this and see if those funds can't be invested more prudently by a body of people that's familiar with doing that, instead of holding it in the city and on bonds. I just rise to say that I support the amendment, or support the LR6CA, and encourage everyone else to do the same. Thank you, Mr. President. [LR6CA]

SENATOR LANGEMEIER: Thank you, Senator Hansen. Senator Wightman, you are recognized. [LR6CA]

SENATOR WIGHTMAN: Thank you, Mr. President and members of the body. I'm somewhat familiar with this in that we handle some trusts out in our area. I rise in support of LR6. I think the voters made a mistake last time. I don't know their reasons for voting the way they did when it was submitted previously, or almost the identical constitutional amendment was submitted. I don't understand it. Under the prudent investment act, and I think this should be generally known, if a trustee or someone charged with handling funds put all of their money in fixed investments in the absence of this statute, they probably...or the current constitutional amendment, they probably would be charged with misfeasance if they invested it all in fixed funds. And there have been such cases under the prudent investors act. And now to tie their hands and say that they have to be invested in bonds and fixed investments would seem to me to be

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totally contrary to the way that the state and the nation has operated during the past 20 or 30 years. We're going back to a time when everybody feared probably equity-type investments. So to be able to put that money into a balanced fund and to have trustees who can have some discretion within the prudent investors act certainly seems to me to be the direction that we should be moving. Again, I would certainly concur that this legislative resolution should be advanced to E&R. Thank you. [LR6CA]

SENATOR LANGEMEIER: Thank you, Senator Wightman. Senator Carlson, you are recognized. [LR6CA]

SENATOR CARLSON: Mr. President and members of the Legislature, I too rise in support of LR6CA from Senator Avery. I just would comment, Senator Avery, that the sheet that you passed around, to me is a little bit, I want to say unreasonable--that's not a good word--but really not true to life because I don't think that...I think a 5.2 percent return on bonds over a long period of time is too aggressive. And so I appreciate what Senator Hansen said on a true example in North Platte, where you are looking at 2 percent. And then I appreciate Senator Wightman's comments concerning the prudent investor. And so...and then the example of 70 percent stocks and 30 percent bonds, I don't think that necessarily the prudent investor would jump all of a sudden from 100 percent bonds to 70 percent stocks, but he would use the prudent investor rule. And I think your idea is good and I do support your bill. Thank you. [LR6CA]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Kopplin, you are recognized. [LR6CA]

SENATOR KOPPLIN: Thank you, Mr. President and members of the body. I'm standing neutral on this bill. I did support Senator Beutler in the end, last year, but I'm going to raise the same issue and just ask you to think about this. This bill doesn't affect just cities. It affects school districts and a whole line of public entities. And it says endowment funds, which are the gifts, should be invested in a...as a prudent man would do. And I'm just raising the issue that one man's prudent investment is another's disaster. And you are talking about a whole lot more than just cities. You're talking about a whole lot of entities and I think you should consider that as you debate this bill. Thank you. [LR6CA]

SENATOR LANGEMEIER: Thank you, Senator Kopplin. Anyone else wishing to speak? Senator Chambers, you are recognized. [LR6CA]

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, Senator Beutler, when he was here last year, and I went round and round on this proposal. I'd like to ask the introducer of the bill a question or two. [LR6CA]

SENATOR LANGEMEIER: Senator Avery, would you yield to a question? [LR6CA]

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SENATOR AVERY: I do. [LR6CA]

SENATOR CHAMBERS: Senator Avery, the last speaker touched on the group of named entities that this would affect. Are public power districts included? [LR6CA]

SENATOR AVERY: I knew you'd do this. (Laugh) I'm not sure, but I will get that answered for you in short order. [LR6CA]

SENATOR CHAMBERS: Okay. Here's what I'm getting to, though, and I thought you might have had it in front of you. That wasn't to be a trick question. The main aim of Senator Beutler was Lincoln. That's why he wanted it. That's why he argued for it. He mentioned some of these others to garner votes, but I had strong objection to including all of these other entities. There would still be the ability for them to handle these funds in the way they currently do if you were to strike them from your proposal and limit it to what is really of concern to you. Now would you be willing to eliminate school districts? And if public power districts are included on that list, would you be willing to eliminate them also, and just leave the city of whatever class it is that you are interested in? [LR6CA]

SENATOR AVERY: Actually, I'm interested in all of these, and you are right, public power districts are included, cities, villages, school districts. And the reason for that is that we're not talking about tax money here. We're talking about public endowments. These are not...these are private funds or funds that they're generated by the sale of a public entity and they ought to be able to earn a fair return in the marketplace without being confined just to bonds. [LR6CA]

SENATOR CHAMBERS: Senator Avery, if we may continue, there's no guarantee that they're going to continue to earn money. They could lose money, couldn't they? [LR6CA]

SENATOR AVERY: They could. [LR6CA]

SENATOR CHAMBERS: So the argument that more money is going to be earned may be applicable at this point, but are you aware of this problem they're having in what has been called the subprime mortgage lending area? [LR6CA]

SENATOR AVERY: I'm aware that the market right now is in trouble, but... [LR6CA]

SENATOR CHAMBERS: And a lot of people who thought that was great at the time because they could get these mortgages, the payments were not that high, some people speculated on real estate because they could get this real estate, they could make a lot of money off it. Then when things turned around and the mortgage payments

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increased and the value of the property decreased, they are now in a world of trouble. That's an oversimplification. But many people now not only are facing foreclosure on the property they invested in for the purpose of making money, they are in trouble in terms of trying to keep their own homes. Are you aware of that? [LR6CA]

SENATOR AVERY: I am aware of that, but I think we need to keep our eye on the prudent investor principles. A prudent investor would not take risky investments like that. [LR6CA]

SENATOR CHAMBERS: When the dot-com bubble burst, a lot of investors took a bath in that debacle also. Would you agree? [LR6CA]

SENATOR AVERY: Yes. [LR6CA]

SENATOR CHAMBERS: There were some people who invested in that industry, I will call it, who at the time may have been deemed prudent to do so. Would you agree with that? [LR6CA]

SENATOR AVERY: They thought so at the time. [LR6CA]

SENATOR CHAMBERS: So the mere fact that... [LR6CA]

SENATOR LANGEMEIER: One minute. [LR6CA]

SENATOR CHAMBERS: ...at a given point in time something appears prudent, that doesn't mean it actually will pan out to be prudent in the real world. [LR6CA]

SENATOR AVERY: In all cases, you are right. Here's the point though. The point is that you have to accept a certain element of risk in order to enhance the return, and you have to rely upon prudent investors, experts in the financial field, to determine what is acceptable risk. Right now, I happen to know that it's not a very good time to be in bonds, nor is it a good time to be in stocks. Now is the time to be in money market funds. A prudent investor would make decisions of that kind. [LR6CA]

SENATOR CHAMBERS: But does that mean that money market funds are always going to perform as they are performing now? [LR6CA]

SENATOR AVERY: No. [LR6CA]

SENATOR CHAMBERS: And are they performing well, standing on their own or in comparison to others that are not performing well? [LR6CA]

SENATOR LANGEMEIER: Time. [LR6CA]

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SENATOR AVERY: In comparison to others, and that's part of the strategy... [LR6CA]

SENATOR LANGEMEIER: Time. [LR6CA]

SENATOR AVERY: ...of a prudent investor. [LR6CA]

SENATOR LANGEMEIER: Senator, that's time. Thank you. [LR6CA]

SENATOR CHAMBERS: Thank you, Mr. President. [LR6CA]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Chambers, you are the next light and will re-recognize you. [LR6CA]

SENATOR CHAMBERS: Thank you. Senator Avery, this is not opposition to the entire proposal, but it is opposition to including all these other entities. What is your primary interest? [LR6CA]

SENATOR AVERY: My primary interest, sir, is to increase the rate of return so that there is more money available for investing in programs in health and other activities, such as, in North Platte, recreational facilities. If you look at the handout that I passed out with the table of numbers, that represents 81 years of data. And while a prudent investor might not take 70 percent stocks and 30 percent bonds, the whole point here is that you give them the flexibility to invest in a wide array of diversified portfolio of investment instruments so as to enhance the return. You can't do this without some risk, I admit that, but you have to be willing to accept a certain element of risk in order to enhance return. [LR6CA]

SENATOR CHAMBERS: Senator Avery, as you pointed out, there are risks. And I will add: and there are risks. This money is not private money. It results from the sale of a public piece of property. Do you agree with that? [LR6CA]

SENATOR AVERY: It did in Lincoln, but public endowments can involve donations, private donations, to municipalities. [LR6CA]

SENATOR CHAMBERS: But when money comes into the hands of a governmental subdivision or agency, that becomes public money. Isn't that true? [LR6CA]

SENATOR AVERY: It does. [LR6CA]

SENATOR CHAMBERS: So we're not talking about public/private money now. Whatever form it may have had some other place and at some other time, it now is public money, and all of the public have an interest in that money and how it's handled.

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[LR6CA]

SENATOR AVERY: Yes. [LR6CA]

SENATOR CHAMBERS: When the bill was brought to us by Senator Beutler, there was a specific project; I think it dealt with the sale of a hospital. Is that true? [LR6CA]

SENATOR AVERY: Yes, it was the sale of Lincoln General Hospital that the city of Lincoln owned and sold to Bryan. [LR6CA]

SENATOR CHAMBERS: That's a very particularized or individualized focus. And the discussion of these other entities came up when I didn't want to let the bill extend to them. So let me ask you this question. You said that when you are talking about investments--I'm paraphrasing but I want to get to the idea of it--there are going to be risks involved, and I take that to mean there is no guarantee that the outcome will be what you desire it to be. Is that basically what you mean by risk? [LR6CA]

SENATOR AVERY: Yes, and that's true even with bonds. [LR6CA]

SENATOR CHAMBERS: Okay. Now are you willing to risk everything in your bill on having all of these entities included? [LR6CA]

SENATOR AVERY: Well, I think that I would prefer that because all of those entities might have opportunities to take advantage of the law or the change in the constitution. [LR6CA]

SENATOR CHAMBERS: Now... [LR6CA]

SENATOR AVERY: And could benefit from it. [LR6CA]

SENATOR CHAMBERS: Now, Senator Avery, and if this were Senator Carlson's bill, I would have him engaged in this discussion where God was talking to a guy about a city that he's going to destroy, and this person bargained with God. It was almost like an auction. And when this person got the number of people down to where he thought there's got to be this many people at least and the city saved...well, God knew that wasn't the case so he was going to be able to destroy it anyway, but nevertheless,... [LR6CA]

SENATOR LANGEMEIER: One minute. [LR6CA]

SENATOR CHAMBERS: ...this man was willing to risk everything on that particular bargain. Now, he would say, you want a hundred; would you destroy the city for the lack of five? And the answer was no. Would you give up your bill, Senator Avery, if public

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power districts were to be removed? Are you willing to trade the possibility of getting your bill in order to keep public power districts in? Because they didn't come here asking for this bill; Lincoln did. [LR6CA]

SENATOR AVERY: No, let me tell you something. I believe in compromise. Compromise means to me that in order to get something I have to give up something. If I have to give up something to get what I want, I'm willing to do it. A compromise means that you leave the table a little bit unhappy and I leave the table a little bit unhappy, but neither one of us is completely unhappy. [LR6CA]

SENATOR CHAMBERS: I will... [LR6CA]

SENATOR AVERY: That's the nature of a compromise. [LR6CA]

SENATOR CHAMBERS: I will be disconsolate, I will be unhappy... [LR6CA]

SENATOR LANGEMEIER: Time. [LR6CA]

SENATOR CHAMBERS: Thank you, Mr. President. (Laugh) [LR6CA]

SENATOR LANGEMEIER: (Visitors introduced.) Discussion continues on LR6CA. Senator Chambers, you are recognized, and this is your third time. Senator Chambers, you are recognized. [LR6CA]

SENATOR CHAMBERS: Thank you. And, Mr. President, since I seem to be the only one interested in discussing this bill, I will craft an amendment or two to see if Senator Avery and I might reach an accord. What I have to do in these first opportunities to speak is to make it clear where my opposition is centered. I'm not trying to take from Senator Avery what his intent is. Senator Avery, if this bill were to be restricted to cities and we leave out villages, school districts, public power districts, and other political subdivisions, would you still want the bill? [LR6CA]

SENATOR AVERY: (Microphone malfunction) Actually, what I... [LR6CA]

SENATOR CHAMBERS: I'm asking him a question, if he will yield, Mr. President. [LR6CA]

SENATOR LANGEMEIER: Senator Avery,... [LR6CA]

SENATOR AVERY: I will yield. [LR6CA]

SENATOR LANGEMEIER: ...would you yield to a question? [LR6CA]

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SENATOR AVERY: I will yield. The answer to your question is, I would like to keep cities, villages, and school districts in, but I'd be willing to concede on power districts and other subdivisions. [LR6CA]

SENATOR CHAMBERS: I'll tell you what I'm going to do. It was stated by you that this bill was put on this morning so that there could be some decompression from yesterday. I don't know why that would be necessary. When we come to this Legislature we know all kinds of things can happen, all kinds of things do happen, but that doesn't mean we alter our course, at least that's the case with me. So my vision is as clear today, my political eyes possess the same acuity today that they had yesterday, the day before, and the day before that. And the questions I'm raising now are not being raised for the first time here. When was this bill put before the public, if you are aware? [LR6CA]

SENATOR AVERY: Last year, and it failed. Do you mind if I comment on why I think it failed? [LR6CA]

SENATOR CHAMBERS: Not at all. [LR6CA]

SENATOR AVERY: I think it failed because the ballot was crowded and there was a certain element of ballot fatigue on the part of the voters, and I can assure you, sir, that we have agreed, people who support this in the private sector, that we will do it right this time. We'll raise the necessary money. We'll hire professionals who know how to win ballot issues, and we'll win it. [LR6CA]

SENATOR CHAMBERS: Senator Avery, if you were an attorney and you took a client's case and you guaranteed an outcome, you would be in violation of your ethics because you can't do that. But being a politician, we're allowed puffery, we're allowed overstatement, we're allowed hyperbole. But on what basis do you say that you know it will pass if you hire these professionals and raise money when they are not the only ones who will be voting for this? [LR6CA]

SENATOR AVERY: Because there is a right way and a wrong way to do campaigns. The right way usually wins. I can't guarantee that it will win, but I think it will. I have spent a good deal of my time in the political arena, not as a candidate but working on campaigns, and I think I know a little bit about what it takes to win and it takes skilled people doing it the right way with the right amount of money. [LR6CA]

SENATOR CHAMBERS: Do you agree, Senator Avery, that you are going to still be addressing the voting public? [LR6CA]

SENATOR AVERY: Yes, absolutely. [LR6CA]

SENATOR CHAMBERS: Do you think that between the last time they voted and the

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time they'll vote this time, if it gets on the ballot, their intelligence and understanding are going to rise measurably? [LR6CA]

SENATOR AVERY: Oh, I don't think... [LR6CA]

SENATOR LANGEMEIER: One minute. [LR6CA]

SENATOR AVERY: I'm not sure the electorate will change very much, but I think the campaign will change and people's minds can be changed. [LR6CA]

SENATOR CHAMBERS: You're going to be appealing to the same people. What approach will be offered this time that was not offered last time, if you know? Or if that's secret then you don't have to tell me. [LR6CA]

SENATOR AVERY: No, no, I think a statewide media campaign is necessary, involving television. [LR6CA]

SENATOR CHAMBERS: And they'll say, vote for this, vote for this, and the public is going to vote for it based on that? [LR6CA]

SENATOR AVERY: If it's done right, there's a good chance, yes. [LR6CA]

SENATOR CHAMBERS: I'm going to listen to the discussion further because this is my third time, but I'll prepare an amendment or two to see how much we can get done here. Then maybe I will consent to let the bill move forward and then we'll discuss it further. But that's all I have at this time. Thank you, Mr. President. [LR6CA]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Wishing to speak we have Pankonin, Stuthman, Friend, and others. Senator Pankonin, you are recognized. [LR6CA]

SENATOR PANKONIN: Thank you, Mr. President and members of the body. I've got a couple questions for Senator Avery, if he would yield. [LR6CA]

SENATOR LANGEMEIER: Senator Avery, would you yield to a question? [LR6CA]

SENATOR AVERY: I will. [LR6CA]

SENATOR PANKONIN: Senator Avery, I just have some definitions I'm curious about. The public endowment funds, does that include foundations, community and school foundations? [LR6CA]

SENATOR AVERY: I think it does, yes. [LR6CA]

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SENATOR PANKONIN: But you are not sure? And the reason I ask that question, because a lot of communities in my district have community foundations. I know our school district has a school foundation, as Senator Kopplin may have alluded to, that these...but I just want to make sure that endowments and foundations, community...and school foundations are...we're talking about the same thing. [LR6CA]

SENATOR AVERY: If it involves...if it's controlled by a public subdivision, yes. So if it's a foundation relating to schools, villages, cities, assuming I can reach a compromise with Senator Chambers to eliminate power districts, it would have to involve a set of public trustees tied to a subdivision. [LR6CA]

SENATOR PANKONIN: I think that this question is an important one, because I think foundations that are already established, and I haven't served on any of those boards, but I'm not sure they're restricted to this bond investment. And so I think whether this bill, this law or this proposal, if it includes foundations is a real important question for me. The other question is, on the bond restriction right now, are the bonds restricted to U.S. government bonds, or are they...is it open to any type of bonds? [LR6CA]

SENATOR AVERY: I think it's restricted to U.S. bonds. [LR6CA]

SENATOR PANKONIN: There again I think that would be an interesting question. I mean there's a lot of difference, as you well know, in the risk of bonds between junk bonds to the full faith and... [LR6CA]

SENATOR AVERY: Yes. [LR6CA]

SENATOR PANKONIN: ...credit of the United States government. So I think that's an important distinction that needs to be answered. And with that I'll yield the rest of my time to Senator Chambers, if he has any other questions. [LR6CA]

SENATOR LANGEMEIER: Senator Chambers, 2...Senator Chambers, Senator Pankonin now would issue his time to you, 2, 30. [LR6CA]

SENATOR CHAMBERS: Oh, thank you, Mr. President. Thank you, Senator Pankonin. Mr. President and members of the Legislature, I would like to make a proposal to Senator Avery as a step, but I've got to ask him a question first. [LR6CA]

SENATOR LANGEMEIER: Senator Avery, would you yield to a question? [LR6CA]

SENATOR AVERY: Yes. [LR6CA]

SENATOR CHAMBERS: Senator Avery, on page 1 of your proposal, in lines 14 and 15,

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beginning with the word "public" at the end of line 14, it says, "public power districts, and other political subdivisions." Senator Avery, in addition to cities, villages, and school districts, what other political subdivisions are embraced by that language? [LR6CA]

SENATOR AVERY: Fire protection districts, a number of them. If you want to strike that language with an amendment, I will not oppose it. [LR6CA]

SENATOR CHAMBERS: So here's what my first amendment would consider doing, striking the words "public power districts, and other political subdivisions," and that's all I will ask you at this point. I don't want to try to get an ironclad commitment from Senator Avery yet. I will offer the amendment, discuss it. There may be people with an interest in leaving public power districts and other political subdivisions in this proposal, but they would probably be outside the Chamber and they don't have a vote. I'm inside; I have a vote and a voice, and my voice shall not be stilled. But this is... [LR6CA]

SENATOR LANGEMEIER: One minute. [LR6CA]

SENATOR CHAMBERS: ...not one of those kind of issues that will excite anybody's emotion, and many people may not even be able to maintain enough interest to follow the discussion, but I think it is a very serious one. Public power districts, if they handle public money, in my opinion are not in the same category as a city where the membership can be vote of the...city council can be voted out. This public power district is an entity that's providing a commodity to large areas of the state, to many people, households, businesses in this state. So I think there's a justification in not lumping them with all these other entities unless it's for the purpose of restricting what they can do. If we're going to restrict them along with everybody else, I have no problem with that. But when we're going to expand what they can do and... [LR6CA]

SENATOR LANGEMEIER: Time. [LR6CA]

SENATOR CHAMBERS: ...we have not studied...did you say time, Mr. President? [LR6CA]

SENATOR LANGEMEIER: Time. [LR6CA]

SENATOR CHAMBERS: Thank you very much. [LR6CA]

SENATOR LANGEMEIER: Thank you, Senator Chambers and Senator Pankonin. Senator Stuthman, followed by Friend, Loudon, and others. Senator Stuthman, you are recognized. [LR6CA]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. First of all, I want to discuss a little bit about, you know, the process that we went through last

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year. We discussed it very thoroughly. We felt we had the right thing to put it on the ballot. It did not make it. I know there were several senators, and including myself, we did articles in newspapers explaining the benefits of it to the public, but it still didn't make it. I don't know, and Senator Avery, in his comments stated that, you know, we're going to do a lot more so that it will pass this next time. I think the main thing that a person can do is that every one of us senators needs to get out and tell the people, inform the people what it does. I think that's the most important thing that can be done. Yes, you can spend a lot of money on advertising. It was also stated that the ballot was cluttered with amendments, with constitutional amendments, with initiatives, and I think that was very true, but is there any guarantee that it won't be cluttered up the next time? I think there will probably be about as many on there. We also had the issue of raising the salaries of the senators. That was on. That went down. There's a possibility that it could be on the ballot again this next time. Are we going to take another chance on that? It possibly will happen. I think we can do as much as we possibly can, but we need to inform the public as to what we're doing down here and what the benefits of what we're doing will help in certain situations. So I don't know, and Senator Avery stated that, you know, we're probably going to spend a lot more money. You know, is it going to be worth the fact that we need to spend a lot more money on that? Who is going to be the one that is going to be spending the money on that? And maybe Senator Avery could comment on that if he would answer a question. [LR6CA]

SENATOR LANGEMEIER: Senator Avery, would you yield to a question? [LR6CA]

SENATOR AVERY: I will. [LR6CA]

SENATOR STUTHMAN: Senator Avery, you stated that a possibility of a lot more money being spent on this issue if it make it to the vote here. Where...who would be the ones that would be spending that money and where would it be coming from? [LR6CA]

SENATOR AVERY: I think the money would come from private donations, much the way you would raise money for any political campaign. I see this as a political campaign. You run it the same way you would a campaign for office. You raise the money. You get the money from private donors. You hire good people to do the job right, people who know what they're doing, and you win. I mean there is a certain art to doing this and doing it right, and there is technology out there. I'm talking about campaign technology that we all are familiar with because we've had to use it. And I have a feeling that in the last election that was not done. [LR6CA]

SENATOR STUTHMAN: Okay. Thank you, Senator Avery. I differ a little bit with that. Yes, there is some value to a professional person or group that does a campaign, but I really think it needs to be the body here getting out to the people, having trust in the people and those people having trust in the senators that what we're doing down here is

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the right thing. Thank you. [LR6CA]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. Senator Friend, you are recognized. [LR6CA]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. I wanted to take this time to allow...I didn't talk to Senator Chambers about this off the record, but I wanted to allow some time. If there are going to be enhancements to this, I wanted to allow the parties the opportunity to get some of that stuff together, and I think everybody knows I can waste five minutes as well as anyone. So I'm not going to totally waste five minutes. I do have a couple of points to make in regard to this resolution or, excuse me, not resolution, but amendment. Senator Stuthman brought up some interesting points. I think it needs to be thrown out there on the record, because it has been in the past, that there are guidelines and restrictions placed on public funds being used in campaigns, so I mean there are fire walls, if you will, stopgap measures to keep abuse at a level that's manageable by the Accountability and Disclosure Commission. You know, this is kind of like a pillow fight right now, but I've seen enough to know that pillow fights, you know, somebody can yank a big knife out of their pillow and just start whaling away. I don't think I want that to happen, but I did want to make a point about the idea of taking halfway decent language, and I'm not necessarily defending the committee or defending myself, but taking halfway decent language that has been functionally used before on a ballot measure, and, you know, maybe toying with it to a degree that then makes it worse. However, I do understand, I think, what Senator Chambers is doing. If you...and I don't want to speak for him or anyone else, but I think that if you...if something, you know, gets out to the people or goes belly up in a measure format, maybe it's worth the effort to look at the language in regard to the whole body looking at it, and say, hey, what could be more enticing, you know, type of language. We did that in the Urban Affairs Committee, but we weren't really sure. How enticing can you make language like this? Senator Chambers mentioned that some folks might not be that interested and might be losing interest by the second. Heck, I almost feel like jumping up and down and waving my arms and freaking out, because (laugh) that's the kind of...maybe that's the kind of thing that would tune people in to generic and extremely boring language. But it sounds to me like there might be an idea between some of the parties to enhance this in an appropriate manner. I guess if I feel like it's appropriate and the committee does and the body does, maybe it's an open-minded way, you know, to get past subject matter like this and help some of these organizations and endowments out. With that, Mr. President, I don't think I have anything more to say. Thank you. [LR6CA]

SENATOR LANGEMEIER: Thank you, Senator Friend. (Visitors introduced.) Also, coming around on the floor are some treats, courtesy of Senator McGill and Senator Schimek. They're both celebrating their birthday today. We wish them happy birthday. We're turning back to discussion on LR6CA. Senator Loudon, you are recognized,

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followed by Senator Schimek. [LR6CA]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. As I've looked over this, I noticed before when this was on the ballot it lost by about 71,000 votes statewide, and of course in my district it didn't carry quite well. I would like to ask Senator Avery a question, if he would yield, please. [LR6CA]

SENATOR LANGEMEIER: Senator Avery, would you yield to a question from Senator Louden? [LR6CA]

SENATOR AVERY: I will yield. [LR6CA]

SENATOR LOUDEN: Yeah, Senator Avery, at the present time these entities, what do they do with their money? Do they put it strictly in CDs or hold it, or what do they do with their money at the present time when they have... [LR6CA]

SENATOR AVERY: Very conservative investments in bonds. And as you know, bonds fluctuate, but generally they carry a relatively low yield, 2 to 5 percent. [LR6CA]

SENATOR LOUDEN: Now what about your school districts? And you say other political subdivisions. I suppose that would include counties and that sort of thing. Would...is this what you are talking about when you say other political subdivisions? Would that allow counties to invest their money in something else besides... [LR6CA]

SENATOR AVERY: Yes, it would. [LR6CA]

SENATOR LOUDEN: ...certificates of deposit? And what about credit unions? Before, the state wasn't allowed to belong to any, oh, I forget what the wording is in here, but private corporation or something like that or association. Would that...that isn't stricken out so they still wouldn't be able to belong to a credit union. Is that correct? [LR6CA]

SENATOR AVERY: I'm not sure about that, Senator, but I'll find out. [LR6CA]

SENATOR LOUDEN: Okay. Thank you, Senator Avery. I guess I have somewhat of a problem with this resolution. Senator Avery seems to think that if it's done right it would probably pass the next time. But Senator Chambers has mentioned, you know, to strike "public power districts, and other political subdivisions." I really think it should go farther and strike school districts also. Cities and villages, that's one thing, but when you start in your school districts, most of those entities use up all of their money every year because they levy the tax for what they need and that's the way it should work. It's a pay-as-you-go process. You shouldn't have huge funds out there to do something with. Now if there's an endowment fund, those...to help a school district to build a library or to fund something in schools, those can be set up differently by people to go ahead and

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furnish money for a local school district, and people have done that over the years. They've set up endowment funds to perhaps furnish a library or something for a school district, and so I have no problem with that. But to just have their extra cash from time to time or whatever they do with it, to be allowed to spend it any way they so desire, I don't think I can support that. If we had it cities and villages, that's something that I could support, but when you have other political subdivisions and more or less have the whole list put in there, therein is where I have the problem. I think this was...I think Senator Beutler brought this up before and it was mostly for city of Lincoln had some type of an endowment fund that they wanted to get more money out of and better investments. At the present time maybe the bonds aren't the investments. Maybe ten years from now or sometime perhaps bonds would be better investments. I can remember when certificates of deposit were the best investments, and that hasn't been that many years back. [LR6CA]

SENATOR LANGEMEIER: One minute. [LR6CA]

SENATOR LOUDEN: So I think to give them a wide-open system to wherever they want to invest their money and to just put in there what would be diligence, I guess, and act with skill I have a problem with, because part of our retirement funds had probably this similar wording in it and they dug themselves a big hole. And of course they blame it on the stock market crash, whereas when you talk to them they talk about trading in overseas bonds and overseas stocks. So with that I have a problem, and if anything other than just cities and villages, is the only way I could support this bill. Thank you, Mr. President. [LR6CA]

SENATOR LANGEMEIER: Thank you, Senator Louden. Mr. Clerk, for a motion. [LR6CA]

CLERK: Mr. President, Senator Chambers would move to amend with FA48. (Legislative Journal page 916.) [LR6CA]

SENATOR LANGEMEIER: Senator Chambers, you are recognized to open on FA48. [LR6CA]

SENATOR CHAMBERS: Thank you, Mr. President and members of the Legislature. What this amendment would do as a start toward pruning this proposition, is to strike from this provision, on pages 1 and 2, the following words, "public power districts, and other political subdivisions." Members of the Legislature, my colleague Senator Arnie Stuthman disappointed me yesterday, but I'm over that. He disappoints me today. He said that the public, which already rejected this very thing that they knew the Legislature put on the ballot, is going to say, oh, well, if the senator whose work product we rejected comes out and talks to me face-to-face, then I will change my mind. Senator Stuthman, I think the people in your district are as law-abiding as those in any other district, but I

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think the Frankenstein syndrome would come into play. If they knew Senator Stuthman was going to appear, they would be out there with pitchforks, clubs, and torches and baying hounds to run him out of that town. Now when have you ever seen anybody in the public say we trust the senators so much that if they talk to us they will change our mind? The joking that they make about us is that whenever we're in session everybody runs for cover because the Legislature is in session. I think those jokes are ill-advised; they are not accurate. But the public is entitled to think whatever they want to about us and they're allowed to say it. When I say entitled, I mean they are free to do it. They are not entitled if that term means that they are informed, because they don't know anything about the Legislature. Poor Senator Stuthman, it's good that we maintain our idealism, and I have a bit of it, too, but I know how and when to keep it in check. Senator Stuthman, the public that you want to go talk to and persuade that they ought to do what we tell them to do is the public that voted for term limits. Now these people, who hate us so much that they said two terms is all we can tolerate, then get out, you are going to go to them and say, do what we tell you to do? They'd say, that's exactly why we don't want you there. They don't even have to know what you are saying. Senator Stuthman, the public is not well-informed. It may have been Alexander Hamilton who said the public are a great beast, bridled, saddled and waiting to be ridden. Now he was a bit more blunt than politicians will be today, but that is not too far from factual. When Senator Stuthman, in his naivete--and isn't there something somewhat charming about that even if it's a bit quaint in 2007--he goes with his colleagues who feel very confident that the public trusts us: We would like a salary increase. No. Well, maybe they didn't understand, so this time we're going to put more money into it: We would like a salary increase. No, no. Well, now the World-Herald, the biggest newspaper in the state, is going to write an editorial in favor of it, the chamber of commerce is going to support it, a rogue minister or two is going to support it, a person who wants to run for the Legislature is going to support it. That's when they say, and I quote from that song by Ms. Tunstall, "No, no, no, no-no-no-no." What don't you understand about no? (Laughter) Now you mean to tell me that you are going to confront a hostile group like that, present a proposal like this, and they're going to accept it? One thing they might ask you is a question raised by one of my colleagues. If you have a small city or a small village, and, Senator Loudon, if they happen to have a bit of extra change laying around, what do they know about investing? Where is the expertise? And if with a little bit of money that they may have that's available, are they going to hire an investment expert? Are they going to go to some broker and wind up, themselves, "broker?" We should eliminate the villages also. If this thing is going to go forward, to let the public see that some part of his message was received, and we don't know what that really is, Senator Stuthman--in all seriousness, we don't really know why the public does what it does except that they can--we should limit this to cities of the metropolitan class and cities of the first class. No villages came asking for this. No cities asked for it. The only reason Omaha got involved is they saw a chance to jump on a wagon that they didn't even know existed. But since it's out there and it's already moving, they're going to take advantage of it. But I will concede this much to those who want this and think it's wise.

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And that doesn't mean I'll vote for it. You saw that happen yesterday. Senator Flood offered an amendment but he still worked very assiduously to defeat the bill. So the mere fact that somebody offers an amendment does not bind the person to vote for that proposal. It's designed to say that if you feel you must do this, then the form that is more desirable will be the form that exists after the adoption of an amendment. Senator Avery has more or less agreed to this one, but as I stated when we were in our bantering stage, that was not an ironclad commitment by him. I wanted to have the amendment drafted on the machine, which I call the gadget, so people can see exactly what it is. He will have time to consider if that is his position. And then I will attempt to do additional things to this proposal, but in manifesting some collegiality, some togetherness, I will reserve the remainder of my amendments for Select File. And those amendments would be designed to remove villages and school districts, and substitute for all this other verbiage "cities of the metropolitan class, cities of the first class." If a first-class city obtained enough population to fall into the metropolitan class, then that city's interests would still be maintained. If a city just below the first class procured enough population, it would move into the first class. But these cities have sufficient size and sufficient wherewithal so that the Legislature might have a bit more comfort in allowing them to just go out there in the open market and hire somebody who says I'm prudent and take a bath. Here's the only thing that happens when you have an investor. If the investor does not behave prudently, you don't recover what you lost. Now if some of you all think that, then you are stone crazy. You might try to do something against the investor, but you are not going to recover what you lost. If that investor had invested in the dot-com bubble and it burst and everything was gone, you are not going to get what you lost back from that investor. So simply putting in the terminology, and I fought to have it put in last time, something referring to the prudent person, that doesn't mean that the one selected will indeed be prudent, and it does not mean that that person's best and honest judgment will turn out to be prudent in terms of doing that which protects the interests of the people whose welfare is affected by the way this money is handled. So right now the only amendment I have... [LR6CA]

SENATOR LANGEMEIER: One minute. [LR6CA]

SENATOR CHAMBERS: ...is to eliminate public power districts and other political subdivisions, and I will answer any questions you want to ask me about my amendment or any other parts of the bill because I am familiar with it. And although it's mine, I think I can probably answer questions. Even if you had one to offer Senator Avery, ask me. My answer might be different but I'll answer it nevertheless. Thank you. [LR6CA]

SENATOR LANGEMEIER: Thank you, Senator Chambers. You have heard the opening on FA48, offered by Senator Chambers to LR6CA. We now return to discussion on that amendment. Senator Schimek, you are recognized. [LR6CA]

SENATOR SCHIMEK: Yes, thank you. Mr. President and members, I turned my light on

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primarily to say I rise in strong support of LR6CA, but then Senator Chambers said something that caught my attention and he said something about he wasn't sure that the voters would want to pass something the next time around either, and so I went over to him and I said, well, Senator Chambers, then maybe we shouldn't put the salary increase back on the ballot again because the voters already rejected it once. So many times you have to put something in front of the voters more than once. Think about the Unicameral Legislature itself. That went on the ballot three or, I don't know, three or four times. Senator Chambers, you may...I know you don't remember personally, but you may remember historically if that's true or not. But anyway, I think that Senator Avery makes a strong case that there needs to be more of an attempt to educate the voters, and that wasn't a very large attempt last time. Now having addressed that, I would also like to address the language of the bill. This is not about subdivisions using local or using general funds to do this investing. It's endowment funds we're talking about here, if they have an endowment fund or a foundation where they have money that they have available to invest, and some do. Some schools have foundations, some cities, of course, like Lincoln, have endowment funds that were established for one reason or another. So I just want to clarify this is not going to have school districts spending their general fund monies, their state aid, if you will. They're not going to be doing that. The third thing that I would like to mention to you, and I want to ask Senator Chambers about this a little bit, and I'm wondering, Senator Chambers, if there shouldn't be a sit-down discussion about this between General and Select. But as I look at the language, I have no problem either with what you are trying to do in your amendment, but when you take out...when you strike "political subdivisions," "other political subdivisions," you strike "county" from there. And I'm trying to think if...I doubt that there would ever be a need for it, but that's a fairly substantial subdivision and I'm thinking that maybe we should insert the word "county" between "city, villages, and school districts" somewhere, and I'm wondering what you think of that idea. And I also was listening to your talk about striking "villages" and I don't know what Senator Avery thinks about that. I don't think that's a bad idea because you do need to be a prudent investor and you do need to have the kind of expertise in your community that will help you do that. So, Senator Chambers, would you like to respond? [LR6CA]

SENATOR LANGEMEIER: Senator Chambers, would you yield to a question? [LR6CA]

SENATOR CHAMBERS: I would like to answer first the part about whether I think "county" should be there. There is an expression that people often use. They misquote it. They say music hath charm to sooth the savage beast. That's not what it says. Music hath charm to sooth the savage "breast," meaning that's what's inside of you. They might say beast because these people with the little flutes are supposed to charm these snakes, but the snake is following the movement because snakes cannot hear. But, Senator, I would be against putting in the counties, and I would want to remove the schools and the villages... [LR6CA]

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SENATOR LANGEMEIER: One minute. [LR6CA]

SENATOR CHAMBERS: ...because a proposal... [LR6CA]

SENATOR SCHIMEK: Senator, thank you. [LR6CA]

SENATOR CHAMBERS: Oh. Okay. [LR6CA]

SENATOR SCHIMEK: I would be terribly opposed to taking the schools out, terribly, because some of them have significant foundations and I think they should be able to prudently invest their money. So that part of it, I, for myself, speaking only for myself, and I think Senator Avery is shaking his head up and down, yes, that that might be very problematic if we try to take out schools. With that, thank you, Mr. President. [LR6CA]

SENATOR LANGEMEIER: Thank you, Senator Schimek. Senator Avery, you are recognized. [LR6CA]

SENATOR AVERY: Thank you, Mr. President. I am not going to oppose Senator Chambers' amendment, but I would just point out that the language in LR6 reflects an amendment to the constitution in 1966 to Article XV, Section 17, subsection (2), in which it authorizes "the investment of retirement or pension funds of cities, villages, school districts, public power districts, and other governmental or political subdivisions in such manner and in such investments as the governing body of such village, city, school district, public power district, and other governmental or political subdivisions may determine but subject to the limitations as the Legislature may by statute provide." It doesn't even include prudent investor principles in it. So this is a more restrictive piece of legislation here. It does reflect what we did in 1966 to include other subdivisions and public power districts. I am, however, willing to go along with Senator Chambers on this amendment and I would then invite those counties and other subdivisions that want to be a part of this legislation to come to us and help us make the case. There are other things that I will want to address. I may save that for my closing or I may put my light on again. I'd yield the rest of my time to Senator Friend. [LR6CA]

SENATOR LANGEMEIER: Senator Friend, 3, 30. [LR6CA]

SENATOR FRIEND: Thank you, Mr. President, and thank you, Senator Avery. You actually had brought up the pensions language, which it is important to note that there is...this was not...LR6CA, the language in LR6CA, as Senator Avery just pointed out, we aren't reinventing the wheel here. I'm not saying I'm against FA48. I think that Senator Avery has made it clear that he is on a road that he's seeking to be as open-minded as he can about this. But again, just to make it clear, the wheel was not reinvented here. LR6CA is existing language in the constitution and it's been mirrored. It's as simple as that. The second thing is, and Senator Schimek did a great job of pointing this out, I

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don't want there to be any confusion out on this floor about where this money is coming from because for three hours of debate a year ago we had the same thing going on. And it's not a bad idea to put into the record as many times as we can the fact that this does not change any of the current investment practices related to general operating funds of the cities, counties, or school districts. These are endowment funds; public endowment funds, granted. And the prudent investor standard, by the way, is also part of mirrored language and historical language. Mr. President, that's all I'd have at this point. And by the way, sorry, Mr. President, FA48, I am going to stay as open-minded as I can about this. I know Senator Schimek had brought up the idea that this is of a concern, but, you know, I know that Senator Avery is working with Senator Chambers on this and I'm going to stay as open-minded as I can about it. Thank you, Mr. President. [LR6CA]

SENATOR LANGEMEIER: Thank you, Senator Friend and Senator Avery. Senator Pankonin, you are recognized. [LR6CA]

SENATOR PANKONIN: Thank you, Mr. President and members of the body. I just wanted to get back. I had a couple questions and I think I've got them answered, and one of the things that I think is also confusion here is the difference between endowed funds and foundation funds. And Senator Schimek pointed out that these aren't operating tax monies, but there is a difference between endowed funds and foundation funds. Endowed funds are for...it could be like the example here, a sale of Lincoln General Hospital went to the city of Lincoln, or someone directly left in their will money to an entity, a school or a community. But a foundation has separate rules, as I understand from talking to folks today and Senator Kopplin, that already aren't as restrictive because that's private funds for a purpose of a school. So I don't think we're talking about school foundations here, so I think that's an important distinction. But yet I do think some narrowing might be important, and I'll use an example of a county. If someone left a county a considerable sum of money but that county does not have high population or the sophistication of being able to have investment services right there and they may not feel comfortable going a long ways away, well, then the bond option is maybe the prudent thing for that county to do and the easier thing for that county to do; same way with our schools and villages. So I'm in favor of the amendment and I'm in favor of further narrowing the focus. I think, and I'm for LR6CA because I think for Lincoln and Omaha and larger entities they can afford to hire investment services and have the ability to do this, but I think we have to be careful about smaller entities, that this may be actually a burden because the prudent rule is a much more difficult thing for them to achieve. So that's why I rose to clarify a couple of those things. We're talking about something different than these small foundations. Thank you. [LR6CA]

SENATOR LANGEMEIER: Thank you, Senator Pankonin. Senator Stuthman, you are recognized. [LR6CA]

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SENATOR STUTHMAN: Thank you, Mr. President and members of the body. First of all, I want to discuss a little bit more. Maybe I have a question for Senator Chambers, if he would be willing to answer one, please. [LR6CA]

SENATOR LANGEMEIER: Senator Chambers, would you yield to a question? [LR6CA]

SENATOR CHAMBERS: Yes, I will. [LR6CA]

SENATOR STUTHMAN: Senator Chambers, even if we change this legislative resolution, constitutional amendment, do you think that the voters will accept it? Do you think the voters are going to be informed enough that they will pass it the second time? Or do you think that they're going to just say no again? [LR6CA]

SENATOR CHAMBERS: If they perceive whatever is presented as the same thing as last time, I believe they'll vote the same way. What I'm saying is that those who are going to conduct the campaign that Senator Avery is talking about would be able to say these things were eliminated. If those were the problems, because there were entities you didn't think should have this, and it's been restricted to cities, the larger cities, maybe they'll go for it. I still don't think they will. [LR6CA]

SENATOR STUTHMAN: That's a concern that I have because, to me, it seems like when you bring something back and it's got a possibility of the same title, it's up to the group that is promoting it or maybe the senators, if they have trust of the people, to bring that information to the people of what the difference is and what made it better. Then it may have a possibility. But I think if we take the same thing back to the people, they're going to say no again. I think I do agree with Senator Schimek when she states, you know, people need to be educated, and that is the reason that I said that the senators, the members on the body here, the members of the body need to educate the people as to what that bill or that constitutional amendment means, because we are the people that have thought, hopefully thought it through enough and made a good decision to put it out to the people. And I think that demands our time to do that. I would like to ask Senator Chambers another question, please. [LR6CA]

SENATOR LANGEMEIER: Senator Chambers, would you yield? [LR6CA]

SENATOR CHAMBERS: Yes, I will. [LR6CA]

SENATOR STUTHMAN: Senator Chambers, do you feel that our constituents out there in the community have trust in the senators? [LR6CA]

SENATOR CHAMBERS: I think most of them don't even know who their senator is, being quite frank. I believe there are others who think that we have gone off to Washington, D.C., and when we ask for a salary increase they think we're making too

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much anyway. So I really cannot speak with certitude about what happens with reference to any particular senator and his or her constituents. [LR6CA]

SENATOR STUTHMAN: Thank you, Senator Chambers. I will agree with you, Senator Chambers, that there are times when people think that we're a senator, we go to Washington. I know there's times that people have said, well, are you in Washington right now? But I think that's part of the problem that we have as senators, that we're not out in the public explaining what we're doing. I think that's one of the reasons that I made that statement that, you know, we need to be out in the public, explaining. We are the ones that, you know, hopefully have put something out there to the people. But the majority of the people do not read a lot of the publications, they possibly do not read the whole ballot, and when it's several pages I'm sure they don't read it except for just the headline. So I'm really concerned that we put it out one year... [LR6CA]

SENATOR LANGEMEIER: One minute. [LR6CA]

SENATOR STUTHMAN: ...and they say no; put it back on the ballot and they see the possibility of the same headline of what it's trying to do, people are going to say, you know, I think I voted no last time, what's different about it this time? And the majority of the people, if they're not informed, are going to vote no, and that is a fact. Thank you. [LR6CA]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. Senator Friend, you are recognized. He waives his time. Senator Gay, you are recognized. [LR6CA]

SENATOR GAY: Thank you, Mr. President. I'd like to discuss a little bit. I agree with Senator Chambers on some of these things. If this isn't changed and was brought back in exactly the same manner, I think voters probably will say no. Senator Avery mentioned a few points that I...I wanted to ask him a question because...if I could, if Senator Avery would yield to a question. [LR6CA]

SENATOR LANGEMEIER: Senator Avery, would you yield to a question? [LR6CA]

SENATOR AVERY: I will. [LR6CA]

SENATOR GAY: Senator Avery, reading through the bill, is there...when you talk about prudent investor rule, would there be...most of these would have an investment policy statement. Don't most people, or do you envision most people would have that under this program? [LR6CA]

SENATOR AVERY: Normal practice is...requires that you have an investment statement so that you lay out the plan and it has to be approved, is my understanding. [LR6CA]

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SENATOR GAY: So if they'd have that written and somebody were...and they would lose money, let's say, because that is a possibility as well, they could be held accountable or possibly sued being on that board of trustees? [LR6CA]

SENATOR AVERY: Well, if they deviated from the previously submitted investment strategy or statement, then I suspect they would be exposed to some liability. [LR6CA]

SENATOR GAY: Okay. I assumed they would. But I support this. In the ballot, one more question, Senator Avery, you had mentioned, I forget the term you used as far as, you know, it was further down on the ballot, this amendment, I forget the term you used but can you repeat again what are the plans here to promote this a little more. [LR6CA]

SENATOR AVERY: Well, I stated that I believed it failed last time because of two things: one, it was a very extensive ballot, ballot crowding; and secondly, voter fatigue. And a lot of people just simply got tired of trying to read through all these amendments, and when people don't understand something there's a tendency to just vote no. What my plan is, and I've talked with the supporters in the private sector, is to do it right; run it like a professional campaign where you raise the money you need, you adopt the...you use the practices of modern, sophisticated campaigns, you hire good people to do it, you have a good chance of winning. And I'm committed to that. [LR6CA]

SENATOR GAY: Thank you. As we have this discussion, I guess I agree with Senator Avery on that comment because I did follow this last election and talked to a few people. And I think it was just one of those things: no. They thought it was, well, government has more opportunity to spend money. I heard all sorts of answers and I was kind of confused because I do support this resolution. And Senator Chambers has some merit. I don't think a lot of...some of these shouldn't be allowed to do this. And, Senator Avery, I know you'll watch what's happening here on these amendments and work with Senator Chambers to make a good bill, but sometimes when we talk about it, I don't think there are a lot of excess funds that counties or other people have, and you are fortunate, and Senator Hansen mentioned in North Platte they have some money. But I'd like to, as we work through this, find out who really is affected, because I'm sure there will be some good uses for this and we want to give them that option. But on some of these cities and counties, I'm not so sure they have this extra money, and even if they did, that they should be utilizing this method. But with that, I'm looking forward to the discussion and I would like to find out a little more, if we could, who exactly would...you know, how many more entities are there that might be using that. And I'll look forward to listening to the discussion. Thank you, Mr. President. [LR6CA]

SENATOR LANGEMEIER: Thank you, Senator Gay. Senator Carlson, followed by Erdman, Avery, and Chambers. Senator Carlson, you are recognized. [LR6CA]

SENATOR CARLSON: Mr. President and members of the Legislature, I'd like to just

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make a couple of points about things. Before I was a member of the Legislature and listened to some criticism given by senators as to why people voted as they voted, if something is important to me and I'm a member of this body, it's my responsibility...part of it is my responsibility to let people know what this item is about and why it is important. I believe voters have plenty of intelligence in knowing how they want to vote and how they should vote, but it's our responsibility if we put something before them to make sure that they understand what our point of view is. If I put forth a bill, it's my responsibility to try and inform others senators of what my bill is about and strive for their support, and I don't think that we can forget that. But the other point is, we're talking about endowment dollars, and something goes into an endowment with the idea that that money is going to stay there for a long period of time. From that endowment, the plan should be that over time that endowment grows and only the income from that endowment is spent for whatever the purposes are. So I disagree with Senator Chambers on his amendment. I don't think that villages and schools and other entities should be taken away from the possibility of investing dollars in a prudent manner so that they can grow over time and so that the income from those dollars, over time, can keep up with inflation and have increased buying power. And we talk about a good investment or a risky investment or a prudent investment. Now, an investment over time that guarantees 2 percent and only 2 percent is not a good investment. That would be not what a prudent investor would recommend. An investment over time that has the potential of gaining 15 or 20 percent is an aggressive investment. If any of those dollars are put into such an investment it ought to be a small portion because to chase yield and put everything into a position of risk is not something a prudent investor would do. It's got to be a combination of those things and the market should be available, and so as these entities have dollars that are put into a position to stay there and earn over time, they need several options available and we need to keep that in mind. Thank you. [LR6CA]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Erdman, you are recognized. [LR6CA]

SENATOR ERDMAN: Mr. President and members of the Legislature, I just wonder if Senator Stuthman would yield to a question, please. [LR6CA]

SENATOR LANGEMEIER: Senator Stuthman. would you yield to a question? [LR6CA]

SENATOR STUTHMAN: Yes. [LR6CA]

SENATOR ERDMAN: Senator Stuthman, I at times watch comedies, movies, and one of the movies that I seem to apply a quote to is a movie called Billy Madison. Have you seen that movie? [LR6CA]

SENATOR STUTHMAN: No, I haven't. [LR6CA]

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SENATOR ERDMAN: Okay, thank you, Senator Stuthman. Members of the Legislature, I listened intently, and not always does the testimony or the speeches on the floor sway my vote, but I do listen. And those of you that are familiar with the movie Billy Madison understand that there's a part in the movie where the heir of the estate is in an academic decathlon with the challenger to be the heir of the estate. And he answers the question in some elaborate scheme about how the Industrial Revolution relates to a puppy dog. And at the end, the individual who is the moderator says, Mr. Madison, what you've just said quite possibly could be the most insanely idiotic thing I've ever heard in my entire life; we are all now dumber for having heard it; I award you no points and may God have mercy on your soul. And in which Mr. Madison responds and says, well, that's great; a simple wrong would have been just fine, but okay. And that's not an exact...I mean, that's my recollection. I don't know what some of you do when you go home from the session. I don't know how you conduct your business when we're not in session. But to stand on the floor and say that the reason that some of these things don't pass is because the people of the Legislature aren't out trying to work with their constituents and educate them on the issues, to me rivals that analysis. I've got five townhall meetings planned this next weekend. I represent eight counties. Last month I had seven townhall meetings planned in three days. If you want to go home and hide in a cave and not go out and visit with your constituents, fine, but don't stand on the floor and say the reason why people don't know what we're doing is because we're not out telling them. That's ridiculous. We are. The reason why constitutional amendments don't pass is because there's a good reason why the people are skeptical about putting something in our constitution. Senator Chambers stands on the floor and fights against those for valid reasons. They are longevity. They are there for all purpose. They are above statutes that can be changed on a whim of the Legislature. Senator Stuthman can represent his position; that's fine. But for the sake of the body and for the sake of the discussion, I see a disconnect. We do, I think, an exceptional job as members of this Legislature of trying to put the issues before the public, whether they're statutory issues, whether they're constitutional provisions, or whether they're stuff that apply to us that affect federal law. I got an e-mail the other day, so did Senator Loudon, asking us to support federal funding, from a constituent in western Nebraska. Great; here's our congressional representatives. Yeah, there is that overlap, but to stand on the floor and say the reason people don't know what's going on is because we as a Legislature aren't doing our job to go out and visit with our constituents I think oversimplifies the realities of the day. LR6CA may or may not pass this Legislature and it may or may not pass the voters, but just because it doesn't pass, don't accuse the voters of the state of Nebraska of being ignorant. After all, they elected you and they elected me. So there are probably valid reasons why some of these proposals do not pass. And if we need to do a better job of educating them, fine. If it needs to be done in a professional manner, similar to what Bill Avery or Senator Avery has shared with us, fine, but be specific to your area and don't try to make comments that apply to all of us because those designations... [LR6CA]

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SENATOR LANGEMEIER: One minute. [LR6CA]

SENATOR ERDMAN: ...and stereotypes do not fit. And I apologize this morning for my candor. Sometimes there are things to be said and sometimes you have to say something. Admittedly, I felt I had to say that. Thank you, Mr. President. [LR6CA]

SENATOR LANGEMEIER: Thank you, Senator Erdman. Senator Chambers, you are next and the final light. Do you wish to use your time or close? [LR6CA]

SENATOR CHAMBERS: Mr. President, I want to use my time. Thank you, Mr. President. Members of the Legislature, the reason I want to use my time, I want to comment on a couple of things that have been said by other senators. And the reason I'm not going to continue too much on this bill, I will have a few more comments, I had said if this amendment is adopted I will not stand in the way of the bill advancing but I will still continue to work on it. Senator Carlson was the speaker who spoke most recently and I'd like to comment about something he said. Not paraphrasing or quoting, he gave his view of what prudent investing would consist of. But not all investors would follow the same course, the same mixture, even put together the same portfolio that Senator Carlson would, yet both of them, when you look at where he or she may be coming from, could be deemed to be a prudent investor because there is not one single proper way to invest in a prudent manner. And then all of them may fail because you are guessing, you are gambling, you are hoping, you are praying. But as the song said, Senator Carlson, all your wishin' and hopin' and singin' and prayin' ain't going to make...is not going to make any difference if things don't pan out the way you hope they will, and there are things beyond your control unless you are an insider on Wall Street and can manipulate some things that will benefit you and some friends. But ordinarily speaking, you are not going to control those market forces. So Senator Carlson gave us an idea of the way a prudent investor may proceed, but no investor in the real world may choose to do it that way and yet would be considered prudent. Who is going to watch the watcher? The watcher is the investor. If you are in a small community and you put your trust in this person, how do you know...how do you know how to judge? And if the investor commits fraud and steals all the money, you are not going to get it back. People think that they can go to the government, I suppose, in the way that if you have a bank account insured up to \$100,000 and something happens, that that money is insured and you'll get up to that \$100,000. That's not going to happen here. You lose and that's it. Senator Schimek had asked, would I be opposed to a sit-down discussion between General and Select? She didn't tell me General's last name; she didn't tell me Select's last name. So I don't know what this sit-down discussion between General and Select would consist of; I would have to know more about the characters involved. But if they have the same approach that some of my colleagues in the Legislature would have, I say instead of a sit-down discussion, we need a knock-down-drag-out, because this really is a serious matter that we're dealing with. The policy is very important. Senator Stuthman and others from different points of view talked about how to educate

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the public. Senator Avery gave his idea of how you could put together a campaign. Senator Gay didn't use the term "slick" when he was describing the campaign, but I would sum up what he said with the word slick. By having a slick campaign, you make the approach and appeal to people that seems to work and that does not involve actually educating and informing them. You don't have time for that. Your ads cannot do that. They've got to be quick; they've got to catch people. If you watch the little Geico gecko, you'll hear him say, well, Governor, you've got to catch the people's attention in the first ten seconds--maybe quicker than that. [LR6CA]

SENATOR LANGEMEIER: One minute. [LR6CA]

SENATOR CHAMBERS: And that's all you are going to have, if that, especially when it's clearly a political issue, and that's what this will be. When it comes on the television and the final is a box with an X in it and it says yes, then the public generally says, um-hum, I'm going to mark no. Anybody who comes to me like that, can't be trusted. No. And I have a few more things to say when I close. Thank you, Mr. President. [LR6CA]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Pahls, you are recognized. [LR6CA]

SENATOR PAHLS: Mr. President and members of the Legislature, the word "prudent investor" has really been tossed around a number of times this morning and also last year Senator Chambers made me become more familiar with that, so I looked it up. And under 30-3883 it has a definition of that rule; 30-3884, they talk about the standards of care, portfolio strategy, risk and return objectives; 30-3885, diversifications. But here's one small sentence that really did bring this to my attention, the concern I have about the concept of investing: A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust. It brings to my attention we are throwing the word around or that concept around, but there's a lot of latitude on the factors involved in whether it's a prudent decision or not and does give some individuals the opportunity to play with money. Thank you. [LR6CA]

SENATOR LANGEMEIER: Thank you, Senator Pahls. Senator Carlson, you are recognized. [LR6CA]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I want to make a point rather quickly if I can. Senator Chambers, I read in a book that there was this employer and he was going to leave the country for awhile and wouldn't be back so he decided to choose three of his employees and have them invest for him while he was gone. And to one of those employees he gave five talents and to the other one he gave two and the third one he gave one, and he left. And when he came back he got a report from these three employees. And the first one that had five talents

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showed him, sir, as you were gone I invested these and earned five more and here they are. And the one that had been given two talents, took these and he said, Mr. Employer, while you were gone I took these two and I earned two more and here they are. To the both of them he said, well done, you good and faithful employees. And the third one said, you are a tough man and I was afraid of what might happen so I took that talent and I buried it and here it is. And the employer said, you wicked employee; I'm going to take that away from you and give it to the one that earned five. And my point is, let's not make wicked employees out of small subdivisions and schools and villages. [LR6CA]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Chambers, you are recognized. [LR6CA]

SENATOR CHAMBERS: Thank you, Mr. President and members of the Legislature. And, Senator Carlson, I'm very familiar with these employees, but that particular story was the kind that is woven to make a point. I would like to ask Senator Carlson a question because he does understand investing. [LR6CA]

SENATOR LANGEMEIER: Senator Carlson, would you yield to a question? [LR6CA]

SENATOR CARLSON: Yes, yes, Senator. [LR6CA]

SENATOR CHAMBERS: Senator Carlson, that first person had five talents and gave the original five plus five. Now, what growth does that represent percentagewise? One hundred percent. [LR6CA]

SENATOR CARLSON: One hundred percent, yes. [LR6CA]

SENATOR CHAMBERS: What stock do you know of that you can invest in and get 100 percent return on your stock? [LR6CA]

SENATOR CARLSON: There would be many of them; it's just a matter of time. [LR6CA]

SENATOR CHAMBERS: So if you invest \$100, you are going to get back \$100. [LR6CA]

SENATOR CARLSON: Depends on the time. [LR6CA]

SENATOR CHAMBERS: Do you know of some stock that operated like that over time? Because you had said something like 15 percent return is aggressive investing. [LR6CA]

SENATOR CARLSON: Yes, it is. [LR6CA]

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SENATOR CHAMBERS: So we're talking about 100 percent return. I think that's...that's unbelievable unless you are gambling. [LR6CA]

SENATOR CARLSON: Oh, no, this is not gambling. All you need is time, and that's what these endowments are about. There is time involved. You've got to have time available or it is not a prudent investment, so we're talking about time here. I think this employer was gone quite a bit of time. [LR6CA]

SENATOR CHAMBERS: Thank you, Senator Carlson. He took...he didn't go...he took a journey. He probably picked a very nice person with whom he would like to spend some time and travel to an out-of-the-way place where he could have a little R&R, then he came back. But he said to that one who did bury it and give it back, you knew I was a hard man; you knew it and yet you behaved in this fashion. There are two ways to look at it. If you know somebody is very hard in the way they judge, should you risk what you were given to be a steward over and possibly lose it and face the wrath of this hard person, or say, at least I held you harmless? So there would be more than one way to look at that story. But I very seriously doubt that you are going to find any legitimate stock in which you can invest and get a return of 100 percent. Now where you can get several hundred percentage points of return is when it comes to exploiting young football players at these football factories, give the small amount of money that is allowed under NCAA rules for scholarship, room and board, and then look at the millions that they bring in. So when you can get return in the millions of dollars on an investment of a few thousands of dollars, that is the kind of investment everybody would like to make. But the ones who generate that money cannot get any of it. Now in the book where Senator Carlson read his example, it also said, muzzle not the ox that treadeth out the corn. If the ox is doing that work, let the oxen eat or be rewarded. The workman is worthy of his hire. If somebody is working, pay a fair wage. But those things don't happen in the real world. Something else was said about the educating of the public. The schools are the ones who should educate the public. Now on a specific issue such as one of these that we're talking about, the legislators who support it would have that obligation, but the schools have the responsibility to let students know that a member of the Unicameral, the Nebraska Unicameral Legislature, goes to the statehouse which is located in Lincoln, Nebraska, not Washington, D.C. [LR6CA]

SENATOR LANGEMEIER: One minute. [LR6CA]

SENATOR CHAMBERS: But there is a difference between a state senator and a U.S. senator. Now you can ask some of these people who don't know where we go when we leave, what do we do? And they say, I don't know, but if you don't know, you shouldn't even be there; you ought to quit and go home. That's the attitude they often take toward members of the Legislature. But we take decisions every day that affect the lives, the welfare, even the fortunes if there be people who have that much that it could be called a fortune. People ought to be made aware while they are in school of what it is that we

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do and then maybe we would get different people willing to come here. Thank you, Mr. President. [LR6CA]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Seeing no other lights on wishing to speak, Senator Chambers, you are recognized to close on FA48. [LR6CA]

SENATOR CHAMBERS: Thank you. Mr. President, having addressed all the issues that I wanted to, all I'm going to do is remind the body what is before us. This amendment would strike from this proposal to amend the constitution, the words "public power districts and other political subdivisions." Senator Schimek and others have gotten together and I've agreed to meet with them between now and when this bill appears on Select File to see what can be done. And what would make me cease to oppose the bill is to get rid of the villages and the school districts. Remember, it was brought to us by Lincoln. Lincoln didn't even care about this. Nobody, Senator Gay, cared about this and nobody offered it, and the only reason Lincoln did, Senator Beutler who at that time worked for the city of Lincoln also seeking grants and other benefits for the city, so it was very narrow in its sweep. If Lincoln had not had the sale of a public hospital and the proceeds enter a foundation, it would not have come to us from Lincoln. This is not activity being engaged in all around the state where this kind of change in the constitution is needed. It's for one city that had one project. One city with one project, and we're going to amend the constitution and we're going to include villages, public power districts, and other political subdivisions, and none of them has a reason to want this bill. But if you go to them and say, look, we've got something where you might be able to double your money, you know they're going to go for it. Why do all these scams work? Because they are spun to people who are desperate, and these people are made to think that there is a pot of gold at the end of the rainbow and I have the map that will take you to the pot of gold; even if the rainbow itself should dissipate before you get there, follow this map. But you have to give me something first, and what you give is what you lose and you get nothing. We need to stop presenting these chimeras, these will-o'-the-wisps, to these political subdivisions who weren't even thinking about this. They are functioning as well, I guess, as they need to be; not as well as people would like them to without this. This thing failed on the ballot last year. Not one political subdivision, not even Lincoln can say that they were substantially, or substantively even, harmed. So if this amendment is adopted and the debate on the matter continues, I'll have a few more things to say but I'm not going to offer any more amendments at this time and I will not impede the movement of the bill even though I don't think it's a wise policy. Thank you, Mr. President, and I will ask for a call of the house and I will accept the machine vote. [LR6CA]

SENATOR LANGEMEIER: Thank you, Senator Chambers. There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk. [LR6CA]

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CLERK: 28 ayes, 0 nays, Mr. President, to place the house under call. [LR6CA]

SENATOR LANGEMEIER: The house is under call. Senators, please record your presence. All those senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senators Aguilar, Fulton, Christensen, Raikes, Nantkes, the house is under call. Please return to the Chamber. Senators Lathrop, Wallman, and Christensen, please return to the Chamber. The house is under call. Senator Chambers wishes to proceed. The question before...and Senator Chambers also asks for a board vote. The question before the body is, shall FA48 be adopted to LR6CA? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LR6CA]

CLERK: 45 ayes, 1 nay, Mr. President, on adoption of the amendment. [LR6CA]

SENATOR LANGEMEIER: The amendment is adopted. With that I raise the call. We return now to discussion on the bill itself, LR6CA. Is there anyone wishing to speak to LR6CA? Seeing no lights on, Senator Avery, you are recognized to close on LR6CA. [LR6CA]

SENATOR AVERY: Thank you, Mr. President. I just have a few comments. If you look on the second page of this amendment, or of this legislation, you will see in the first five lines there language that really just sets the maximum authority for the investment of these funds, and I will call your attention to line 5 which does enable this body to set limitations by statute after this is in the constitution. It allows us to limit, by statute, in any way that we might wish to limit that authorization. For example, we might want to limit what villages can do, for example, and we would have to do that by statute. I think that's an important provision. Also a couple of questions were raised about public entities contributing to the campaign. That is not allowed and I believe that is in statute or in the constitution. I would just like to make a point about the risk, and I think I made this point before but I will make it once more. There is no risk-free investment. Even Treasury notes are not risk-free. And we all know that a more diversified portfolio of investments is likely to produce greater return. If you have all of your funds in bonds, you are restricted in what you are likely to earn to around 5 percent. That's in good times. In fact, this table that I passed out to you that shows 100 percent bond investment returns at 5.2, bonds aren't doing that now. At the time we prepared this table, bonds were doing much better. A prudent investor would move that money around and would put money where it's likely to get the best return. And right now that's probably money market funds. But let me give you an example of what would have happened if the Lincoln Community Health Endowment had been invested in the same manner as the city of Lincoln invests the police and fire pension fund, so this is just for fiscal year '05-06. The value of the health endowment fund would have increased by an additional \$3,096,000 in just one year, so we're talking about significant money that

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goes to worthy purposes, and I think that's something that we need to keep in mind. I do appreciate the people who have spoken on behalf of this, particularly those who helped clarify the issue. I appreciate Senator Chambers' concern about reaching a compromise. As I said before, I'm willing to compromise, not on the core principle but certainly if we can get this advanced I'd be happy to do that. We will be meeting. I would ask you to advance this to Select File and then I was going to say I'll arm wrestle Senator Chambers over the next amendments, but I looked at his biceps and I said, no, I'm not going to do that. [LR6CA]

SENATOR LANGEMEIER: Thank you, Senator Avery. You have heard the closing on LR6CA. The question before the body is, shall LR6CA 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. [LR6CA]

CLERK: 42 ayes, 0 nays, Mr. President, on the advancement of the constitutional amendment. [LR6CA]

SENATOR LANGEMEIER: LR6CA does advance. (Visitors introduced.) Mr. Clerk. [LR6CA]

CLERK: Mr. President, some items: new A bills. LB415A introduced by Senator Harms. Senator Loudon offers LB570A. (Read LB415A and LB570A by title for first time, Legislative Journal page 916.) [LB415A LB570A]

Confirmation hearing reports from the Health and Human Services Committee; those two reports signed by Senator Johnson. Amendments to be printed: Senator Cornett to LB255; Senator Erdman, LB328; Senator McDonald, LB638; Senator Johnson, LB395; Senator Fulton, LB198. And I have notice of hearing from the Education Committee, a confirmation hearing, Mr. President. That's all that I have. (Legislative Journal pages 917-918.) [LB255 LB328 LB638 LB395 LB198]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We'll proceed on to General File, LB198. [LB198]

CLERK: LB198, offered by Senator Schimek. (Read title.) The bill was introduced on January 9 of this year. At that time it was referred to the Government, Military and Veterans Affairs Committee. The bill was advanced to General File. I do have committee amendments, Mr. President. (AM211, Legislative Journal page 610.) [LB198]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Schimek, you are recognized to open on LB198. [LB198]

SENATOR SCHIMEK: Thank you, Mr. President and members. The first thing I would

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like to do this morning is to thank Senator Fulton for prioritizing this bill and I would like to probably give him some of my time on my opening remarks when I conclude. LB198 is a response to the public outcry that happened during the last election year when there were prerecorded campaign telecommunications, also known as robocalls, and that's the way I'm going to reference them from now on. Several stories were printed in the press about the possible abuses of current state law and also on the fact that some of these may have been a form of harassment to the public. Currently, automatic dialing devices must be registered with the Public Service Commission, and permit holders must notify the commission of their intent to deliver political messages. The message delivered by an automatic dialer also must be submitted with the application. LB198, the green copy now, it will be changed somewhat by the committee amendment, but the green copy does three basic things with regard to political campaigns using robocalls. First, these types of telecommunications can only be made between the hours of 8 a.m. and 9 p.m. You can't be calling somebody at 2:00 in the morning, in other words. Second, the identity of the person on whose behalf the call is made must be done at the beginning of the call. And third, a campaign can only make one robocall to a household on any given day. As introduced, this bill did not apply to federal races. In order to regulate the federal races, then we would have had to have gone into the Public Service Commission statutes and regulate those that deal with Automatic Dialing Devices Act, and ADAD is sort of the acronym for that. The Automatic Dialing-Announcing Devices Act addresses solicitation calls or calls in which the caller wishes to sell you something, and we didn't want to bring everybody into this act so we just kind of stayed away from it. However there are many restrictions for these solicitation calls, including time restrictions and identification of the caller at the beginning of the message under the Public Service Commission statutes. And both of those gibe very well with the provisions of LB198 which really references the Accountability and Disclosure statutes or state races. And we also did a little bit of investigation of some of the court cases that may have been involved in robocalls in other states, and we do think that because of a ruling in the 8th Appeals Circuit that the bill is defensible regarding free speech as protected by the First Amendment. And in addition to that there was a U.S. District Court for the Western District of Oklahoma that also ruled in favor of these kinds of limitations in state statute. I think that would be all of the explanation I would need to give now. You need to hear the committee amendment but I will give a little time to Senator Fulton to make any remarks that he cares to, so if I might yield my time, Mr. President. [LB198]

SENATOR LANGEMEIER: Senator Fulton, six minutes. [LB198]

SENATOR FULTON: Thank you, Mr. President. Thank you, Senator Schimek. I should also thank Senator Aguilar and Senator Mines and the Government, Military and Veterans Affairs Committee for putting this bill out. The reason I prioritized this bill, it seems that there...well, I'll start by saying that there is a certain level of decorum, I think, that follows political life--at least that's my opinion. I think that service is a high calling

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and something that we should regard as such. To have what happened in the last campaign, political campaign, there were some calls, I think, out in western Nebraska that probably prompted the necessity for this bill--harassing-type calls that were not identifiable. That serves to drag us down. It serves to drag the political discourse down and it scandalizes a public that deserves better. And so part of my intention here in prioritizing this, and I thank again Senator Schimek for taking this on, is to bring a level of accountability to the public during the political process such that it elevates politics to a level that it ought to hold in the public eye, and we all recognize, we're all in politics, that there is a certain cynicism that we are viewed with. So we hope to provide a level of accountability and therefore return a level of dignity to the process, at least in some way, shape, or form, in a small, small way, shape, or form, with this bill. So please listen to the amendments as they'll be introduced, and please delve into this bill to understand what it can do in the long term for the political process. Thank you, Mr. President. [LB198]

SENATOR LANGEMEIER: Thank you, Senators Fulton and Schimek. You have heard the opening on LB198. As the Clerk has stated, there are amendments filed from the Government, Military and Veterans Affairs Committee. Senator Aguilar, as Chairman of that committee, you are recognized to open on the amendment. [LB198]

SENATOR AGUILAR: Thank you, Mr. President and members. The committee amendment makes two changes in the original bill. First, the amendment eliminates the requirement that only one prerecorded message relating to the candidate or ballot question is allowed to any one residential telephone line per calendar day. Secondly, the amendment adds provisions to the Automatic Dialing-Announcing Devices Act to require any person using an automatic dialer for messages of a political nature to state clearly at the beginning of the message the identity of the person on whose behalf the message is being transmitted. Also, such messages shall only be transmitted between the hours of 8 a.m. and 9 p.m. The effect of this change is to require that the same restrictions which are applied to state political races are also applied to federal political races. The committee advanced the bill and the amendment with a 6-0 vote with 2 members being absent. I ask your support in adopting the committee amendment. Thank you, Mr. President. [LB198]

SENATOR LANGEMEIER: Thank you, Senator Aguilar. You have heard the opening on the committee amendment, AM211. Mr. Clerk, for a motion. [LB198]

CLERK: Mr. President, Senator Schimek would move to amend the committee amendments with AM705. (Legislative Journal page 871.) [LB198]

SENATOR LANGEMEIER: Senator Schimek, you are recognized to open on your amendment, AM705, to the committee amendments. [LB198]

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SENATOR SCHIMEK: Thank you, Mr. President. And thank you, Senator Aguilar, for the explanation of the committee amendment and for advancing the bill to the floor too. We don't say that very often. But I, in fact, suggested to the committee that we might want to include federal elections in this, and that's what the committee amendment does. The only other thing that they changed was they eliminated the requirement of only one call per campaign per day. And realizing that that came out of the committee discussion and it was Senator Avery who was most concerned. In fact, he raised the question at the hearing, what if...what if some scurrilous piece of campaign literature goes out against you and you've already made the call for the day, you need to be able to make another call. So I said, well, yeah, that's something to think about for sure. So I went back and I talked with Senator Avery about it, and he conceded that having two, a restriction of two a day would be reasonable rather than having an unlimited number of calls that a campaign could make. I don't know why a campaign would want to do that and I think you would tick off the voters, but that was sort of our discussion. I also talked with Senator Fulton about it, and he thought that would be a good way to address it. So the three of us did put an amendment to the committee amendment, and filed it several weeks ago, or a week ago anyway, I think. So that's all this amendment does is it puts a specific number into the committee amendment that says the campaign would be limited to two per day. With that, Mr. President, thank you. [LB198]

SENATOR LANGEMEIER: Thank you, Senator Schimek. You have heard the opening on AM705 to the committee amendments. The floor is now open for discussion. We have Senator Erdman, Nelson, Schimek, and others. Senator Erdman, you are recognized. [LB198]

SENATOR ERDMAN: Mr. President and members of the Legislature, I would wonder if Senator Schimek, or actually would Senator Aguilar yield to a question? [LB198]

SENATOR LANGEMEIER: Senator Aguilar, would you yield to a question? [LB198]

SENATOR AGUILAR: Yes, I would. [LB198]

SENATOR ERDMAN: As I understand the committee amendment that's before us, it includes both state candidates and essentially the federal candidates for elected office or ballot issues, and obviously we haven't had or won't have a federal ballot issue. Why...? Let me stop here. Why was the time line chosen for both provisions, if you know, and if you don't, that's fine, but really what I want to know is what is the enforcement mechanism for the federal candidates under Public Service Commission, if you are aware? In other words, if somebody violates the Section 3 of the bill, that would be a different enforcement mechanism than Section 1 of the bill which is Accountability and Disclosure's authority. Do you know that procedure? Or maybe...? Mr. President, I would redirect the question to Senator Schimek. I believe she is willing, or at least... [LB198]

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SENATOR LANGEMEIER: Senator Schimek, would you yield to a question? [LB198]

SENATOR SCHIMEK: Yes, thank you, Mr. President, and thank you for the question. There is a capacity to fine for violations of the Public Service Commission statutes. [LB198]

SENATOR ERDMAN: And so when an individual receives a robocall at 9:01 and they say it's after 9:01, they would file a complaint with the Public Service Commission. The Public Service Commission would commence some type of investigation to verify that that infraction did happen, and then either the applicant or the person who has been approved to do these types of calling would be fined or have their rights...is it an applicant that would be able to do this or can anybody do this as long as they're not violating the outline of the law? Do they have to have a permit to do robocalls? [LB198]

SENATOR SCHIMEK: Yes, they do, from the Public Service Commission. [LB198]

SENATOR ERDMAN: So they could lose their application... [LB198]

SENATOR SCHIMEK: That is correct. [LB198]

SENATOR ERDMAN: ...or they could lose their permit or they could be fined, or both. [LB198]

SENATOR SCHIMEK: Yes. Both. [LB198]

SENATOR ERDMAN: Okay. Senator Schimek, can you give me the basis of why the 8 a.m. to 9 p.m. was chosen? Is there a standard somewhere else or was that just kind of a common courtesy that you shouldn't call before 8 a.m. or after 9 p.m.? [LB198]

SENATOR SCHIMEK: I think it's more common courtesy. It could have been 8 a.m to 8 p.m., in my opinion, but 8 a.m. to 9 p.m. is a reasonable standard. Most people are up and about between those hours. [LB198]

SENATOR ERDMAN: And as I understand the language, so that it's clear for anybody that may be following, if I, as a candidate, or if I as a representative of a ballot committee, personally make those calls, this does not apply. It only deals with prerecorded or automated-dialed phone calls. [LB198]

SENATOR SCHIMEK: That is correct. [LB198]

SENATOR ERDMAN: Okay. The final question I would have for you, Senator Schimek, is the amendment before us limits it to two phone calls during that time frame, both for a

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state candidate...a candidate in the state of Nebraska or ballot issue in the state of Nebraska subject to Accountability and Disclosure, or federal candidates subject to the Public Service Commission's authority. [LB198]

SENATOR SCHIMEK: Correct. [LB198]

SENATOR ERDMAN: The committee chose not to put a number in there, and you have offered on the floor an amendment that limits that to two. [LB198]

SENATOR SCHIMEK: Correct. [LB198]

SENATOR ERDMAN: Do the other states that have similar provisions limit the number of calls, as well, or do they generally just limit the time frame in which those calls can be made? [LB198]

SENATOR SCHIMEK: I'm going to have to check on that. My initial reaction is I think they do, but I need to check it. [LB198]

SENATOR ERDMAN: You think they do limit the number? [LB198]

SENATOR SCHIMEK: Yes, but I need to check on that. [LB198]

SENATOR ERDMAN: Okay. Thank you, Senator Schimek. I come from the area of the state in which some of this scurrilous activity occurred,... [LB198]

SENATOR LANGEMEIER: One minute. [LB198]

SENATOR ERDMAN: ...and did hear from constituents that didn't appreciate it. I don't necessarily see a problem here. I want to make sure that we're clear. The only other question that I would have, and this is an open question, I haven't had a chance to visit with Mr. Daley from Accountability and Disclosure, but if you do...if there was a way, and I don't know what this costs, but if there was a way to not meet the \$5,000 requirement of filing a campaign, would you be subject to Section 1 of this act? Because as I understand it, it's a candidate who is subject to the expenditures under the Accountability and Disclosure. So is that any candidate or is that any candidate once they've reached the threshold of organizing a political committee? And I'll go visit with Mr. Daley or possibly Senator Aguilar may know that question, because I think the intent is that anybody would be held to the same standard, and that logically came to mind that that may be an issue that we have to make sure that if that's truly the intent, that the language reflects that. Thank you, Mr. President. [LB198]

SENATOR LANGEMEIER: Thank you, Senator Erdman. Senator Nelson, you are recognized. [LB198]

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SENATOR NELSON: Thank you, Mr. President. I have some questions I'd like to pose to Senator Schimek. [LB198]

SENATOR LANGEMEIER: Senator Schimek, would you yield to a question? [LB198]

SENATOR SCHIMEK: Yes, I will. [LB198]

SENATOR NELSON: Senator Schimek, I have a few questions regarding the intent of this bill, LB198, and I am particularly interested in what disclaimer would be necessary in three different scenarios, and I would just like to give you those three scenarios. The first...this may be self-explanatory, but in the event of a candidate paying for robocalls in support of him or herself, is it your intent that the robocalls disclose the name of the candidate or candidate committee paying for the robocalls? [LB198]

SENATOR SCHIMEK: That the candidate committee pay for the robocalls. But you will see an amendment, I think on Select File, which Senator Fulton and I have introduced that would make it clear who authorized, and that would be the candidate, himself or herself. [LB198]

SENATOR NELSON: All right. Thank you. Second, in the instance of an independent political committee paying for robocalls in support of a specific candidate, with coordination and authorization from that candidate him or herself, is it your intent then that the robocalls disclose the name of the independent political committee paying for the robocalls or the candidate referenced in the robocalls? [LB198]

SENATOR SCHIMEK: Well, we have to clarify that a little bit, I think, Senator Nelson. If the independent committee is calling, paying for the calls, and they are doing it on behalf of a candidate with the candidate's knowledge, then it becomes an in-kind contribution to the candidate's campaign, I believe. And so it would have to be disclosed and...well, it would have to be disclosed as an independent committee expenditure but with...no, I take that back a minute. Yes, as a campaign expenditure with the...according to the amendment on Select File, with the authorization of the candidate. Now, if the independent committee is doing it without the knowledge of the candidate, is not going to be charged as an in-kind contribution to the campaign, then it's the independent committee whose name would be on there and who would be, according to the amendment again on Select File, that would say that the candidate did not authorize this campaign message. [LB198]

SENATOR NELSON: Now, on this same matter, when you are talking about knowledge of the candidate, that still infers some authorization and coordination. It's not if I were a candidate and all of a sudden I heard something, I got a robocall that I knew nothing about. That's not what you are talking about here. [LB198]

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SENATOR SCHIMEK: No. [LB198]

SENATOR NELSON: Okay. Then thirdly, in the instance of a robocall paid for by an independent committee supporting a specific candidate but not authorized by any candidate, then it is your intent that such a robocall disclose the name of the candidate referenced in the robocall or the independent committee who is paying for the call? [LB198]

SENATOR SCHIMEK: Well, this is...I kind of got into your third question. I think it would have to be an expenditure of the independent committee, and it would have to say if it is on that candidate's behalf...I mean, if it is... [LB198]

SENATOR LANGEMEIER: One minute. [LB198]

SENATOR SCHIMEK: It would have to reference the fact that the candidate did not authorize this particular political ad. [LB198]

SENATOR NELSON: All right. Thank you very much. I experienced some of this during my campaign and I think it's just very important that we understand what we're trying to do here with these robocalls, but as far as the disclosure requirements here, and I'm not necessarily in opposition to the bill. I think it has merit but I just wanted to make sure that we understood what the intent of the bill is. Thank you, Senator, and thank you, Mr. President. [LB198]

SENATOR LANGEMEIER: Thank you, Senator Nelson. (Visitors introduced.) Continuing the discussion on AM705, Senator Avery, you are recognized, followed by Friend and then Senator Fulton. Senator Avery. [LB198]

SENATOR AVERY: Thank you, Mr. President. I would just point out that this legislation is restricted to electronic calls. It does not restrict live calls, and in live calls you are likely to be asked who are, who you are calling for. The amendment that we are considering now to allow two calls per day was made at my request. In my campaign we often faced multiple negative, misleading and distorted attacks, and we did, on occasion, have the need to respond very promptly to these attacks. We did that in at least one case with two robocalls in one day. I am in full sentiment with the need for restricting the annoying, harassing, and deceptive nature of much of these calls, but I think we need to retain the ability on the part of campaigns to respond promptly to disturbing, deceptive, and negative and misleading messages that are often in these robocalls. Most campaigns are not likely to have to face more than two but I do think that's a reasonable amendment. Robocalls, you may know, are legally required to disconnect when someone hangs up. They must also disconnect when the call engages an answering machine. If we pass this legislation, and I hope that we do, it will

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contribute to a more fair political process, allow the voters to avoid confusion of multiple deceptive and distorting calls, and it might clean up a bit the campaigning that we've seen over the past several years. There are a number of states, I believe, that have done something like this, and I hope that we will advance this amendment and ultimately the main bill. Thank you. [LB198]

SENATOR LANGEMEIER: Thank you, Senator Avery. Is there anyone else wishing to speak to AM705? Senator Erdman, you are recognized. [LB198]

SENATOR ERDMAN: Mr. President and members of the Legislature, I'm going to vote against this amendment, and the reason that I do that is that Senator Schimek has yet to provide me the supporting documentation that other states have this provision in law. Not that I'm saying that it's not valid, but if the argument is brought to the body that there are defensible reasons of limiting speech in this manner as consistent with other states, I think we should at least have that information before we would proceed, and so I will be voting against this amendment. I recognize that Senator Fulton has an amendment on Select File and I would think that it would be appropriate, as well, to review that regardless of the outcome of whether this amendment is adopted or not, to make sure that we are reflective of other trends and policies that are defensible since we are stepping out. The other thing is an observation that this is based on existing language, the time line is based on existing language for those commercial calls subject to the Public Service Commission's authority. There are no similar provisions as to the number of calls on a daily basis, that I am aware of in statute or that have been able to find, that equate to limiting these actions in noncampaign-related activities. And so because of that inconsistency in trying to accomplish what I believe is the intent, before we would go down that path I would like to have the supporting information, and Senator Schimek has shared with me that she is working to get that, and until then I will be voting against AM705. Thank you, Mr. President. [LB198]

SENATOR LANGEMEIER: Thank you, Senator Erdman. Senator Fulton, you are recognized. [LB198]

SENATOR FULTON: Thank you, Mr. President and members of the body. If you are able to check on our laptop gadgets here, we're able to see that there will be an amendment. I've talked with Senator Schimek and I have an amendment coming up on Select File that hopefully adds some clarity to whom is providing this call. Senator Nelson I've spoken with, and there could be...I'll lay out the concern here. Let's say you have Candidate X and there are a number of different groups that are in support or against Candidate X. If there are five or six different groups out there that are making calls that have reference to Candidate X, well, clearly it would go over two calls if the intention were to tie the number of calls to Candidate X. The intention of the bill is not to limit the number of calls being made on behalf of or against Candidate X. It's to limit the number of calls that are being made. And so the language is clear that it is the person

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making the call, so that's where the limit exists. So I don't know if that's a concern or not but it is a concern that was raised by Senator Nelson and it's a legitimate concern. There is no way to actually control how many people or entities call for or against me or Candidate X. There is, this amendment, it will be on Select File, provides some clarifying language which may assuage some of the concerns that are out there, so I ask you to take a look at that amendment that will be coming on Select File. With that, I'm through, and thank you, Mr. President. [LB198]

SENATOR LANGEMEIER: Thank you, Senator Fulton. Senator Chambers, you are recognized. [LB198]

SENATOR CHAMBERS: Mr. President, colleagues, Senator Fulton, I am conflicted on this bill. I have listened and the arguments are persuasive. I'm 95 percent persuaded. However, suppose there were a person on the moon who had an unregulated device which could make telephone calls any place on the earth, I think we need to take that into consideration. Who can say at some time in the future that will not be the case? I mean, you can't be too careful. So if we are going to regulate what happens in federal elections, shouldn't we be concerned about this idea too? Now, I'm listening but I'm greatly conflicted. I'm 95 percent of the way there but I just can't support this. Sometimes, brothers and sisters, in order to show how ridiculous and preposterous something is, an argument should not be made but a mirror or reflective surface should be held up to throw back at the one who made the preposterous notion--throw it right back at him or her, then it becomes clear. Senator Fulton is staring at me for some reason...(laugh)...which I don't mind. My job on the floor of the Legislature as I perceive it is to address the issues that I think are worthy of being addressed. A person can offer any reason or excuse for doing or not doing a certain thing, and I would not want to take away from anybody the right to do that, however I will respond and react to it. That's the nature of the work that we do on the floor of the Legislature and that's what makes our job interesting, and it might sometimes caution us to proceed carefully and think through what we're saying and see whether or not that is the principle which is going to be applied to every bill that comes before us. Now, we know it has been stated that a slavish consistency is the hobgoblin of small or little minds, so a slavish consistency may not always be the thing that is wanted, but a certain logical consistency, a certain philosophical consistency, is different. That kind of consistency is based on a person having thought and cogitated. And when that's going on, the face will assume an expression as intense and intent as that of my young friend, Senator Fulton. And when a consistency is found in that regard, it's based on the idea that similar facts and circumstances result in a similar outcome. By the same token,... [LB198]

SENATOR LANGEMEIER: One minute. [LB198]

SENATOR CHAMBERS: ...if the same course is pursued then it is not logical to expect a different outcome. So what am I talking about? I'm talking about what I want to talk

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about as I always do, and having said what I wanted to say, I am through. I am now, after having listened to myself, persuaded 99.44 percent to support the bill. Thank you, Mr. President. [LB198]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Anyone else wishing to speak to AM705? Seeing no lights on, Senator Schimek, you are recognized to close on AM705. [LB198]

SENATOR SCHIMEK: Thank you, Mr. President and members. Senator Chambers, I am glad you clarified that you didn't know what you were talking about either because I sure didn't know what you were talking about. (Laugh) I would just like to make a few points before we move on here, and I did share with Senator Erdman that we chose that 8 a.m. to 9 p.m. period of time because that's what the PSC statutes already say in regulation of robocalls. And so we just tried to harmonize, and I had forgotten that that was the main reason. And I will try to find out, between now and Select File, what other states may be doing as far as if they limit the numbers that each campaign can make because I think that is a legitimate question and deserves an answer. All this amendment does is does limit those calls to two per campaign per day. Now, this, in my mind, is not very limiting because how many days do you have for a campaign? Some of them go 365 days out of the year. There are plenty of opportunities to have your phone calls go out if you choose to use this method,--and again I'm not sure why anybody would choose this method; I think it's very irritating to people--but if you are going to do it, then we would like to say a limit to two per day per campaign. That's all this amendment does. Thank you. [LB198]

SENATOR LANGEMEIER: Thank you, Senator Schimek. You have heard the closing on the amendment. The question is, shall the amendment be adopted to the committee amendments to LB198? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB198]

CLERK: 29 ayes, 2 nays, Mr. President, on the adoption of the amendment. [LB198]

SENATOR LANGEMEIER: The amendment is adopted. [LB198]

CLERK: Mr. President, Senator Chambers would move to amend the committee amendments. (FA49, Legislative Journal page 919.) [LB198]

SENATOR LANGEMEIER: Senator Chambers, you are recognized to open on your amendment to the committee amendments. [LB198]

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, if you look on the first page of the committee amendment in line 12, you will see language telling when these calls can be made without running afoul of the law--"disseminated

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between the hours of 8 a.m. and p.m." I would restrict it even further by saying after the word "and," insert the following: 4 p.m., and 6 p.m. and". This is how it would read: ...disseminated between the hours of 8 a.m. and 4 p.m., and 6 p.m. and 9 p.m. That would leave a two-hour period during which these calls could not be made. The complaints that I've heard most that people give, in addition to the general annoyance, is that the calls often are made and seem to be timed for when a family or an individual may be sitting down to eat dinner. So for people who engage in that activity, not only can we say the family that prays together stays together, maybe the family that eats together, meets together and stays together. So if this amendment gives Senator Schimek any problem whatsoever, I will withdraw it, but I'm wanting to make a point. There should be some times when an individual or a family can be free of these types of intrusions. When you have a telephone, it could be said that you are inviting anybody else who has a telephone to enter your premises by way of that telephone. You can answer it. You can refuse to answer it and let it ring and ring and ring until the caller chooses to hang up. But simply because something can be done due to the technology and a person taking advantage of it, does not mean that it ought to be done. So there should be some periods of time other than very early in the morning or late at night when you are free from this kind of activity. It is not commercial speech, and I think that ought to be limited too, but we're not talking about that. Hustlers for charities or anybody else ought to know that there are certain times of the day only when they can do this kind of activity, invade a person's premises and not be afoul of the law. They say that a man's home is his castle. No, they should say a person's home is his or her castle. You know what makes a man's home a castle, Senator Aguilar, rather than a dungeon or an old bailey or a reading jail? The company of somebody who means a great deal to you. That can convert a cave into a delightful place to be. I'm going to ask Senator Schimek a question, and her answer will determine how much further I proceed with this. [LB198]

SENATOR LANGEMEIER: Senator Schimek, would you yield to a question? [LB198]

SENATOR SCHIMEK: Certainly. [LB198]

SENATOR CHAMBERS: Senator Schimek, I'm going to make the question as easy for you to answer as possible. Would you prefer that I not proceed with this amendment? [LB198]

SENATOR SCHIMEK: Yes,... [LB198]

SENATOR CHAMBERS: Thank you, Senator Schimek. [LB198]

SENATOR SCHIMEK: ...even though I'm in full sympathy with what you are saying and what you are trying to do. [LB198]

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SENATOR CHAMBERS: Thank you, Senator Schimek. As a man who responds more to directness than sympathy, I'm going to accept that first word which was no and strike what followed from the record as being unresponsive to the question. Mr. President, I withdraw that pending amendment. [LB198]

SENATOR LANGEMEIER: The amendment FA49 is withdrawn. (Visitors introduced.) We return now to...the floor is now open for discussion on the committee amendments AM211. Senator Chambers, you are recognized. [LB198]

SENATOR CHAMBERS: Mr. President, I have a question of Senator Schimek. [LB198]

SENATOR LANGEMEIER: Senator Schimek, would you yield to a question? [LB198]

SENATOR SCHIMEK: Yes. [LB198]

SENATOR CHAMBERS: Senator Schimek, beginning in line 11 of the committee amendment... [LB198]

SENATOR SCHIMEK: Of the green copy or the amendment? [LB198]

SENATOR CHAMBERS: The committee amendment, and I'll give you time to find it. [LB198]

SENATOR SCHIMEK: Line 7 did you say? [LB198]

SENATOR CHAMBERS: Line 11. [LB198]

SENATOR SCHIMEK: Oh, 11 on page 1? [LB198]

SENATOR CHAMBERS: Yes, beginning with the word "such." [LB198]

SENATOR SCHIMEK: Okay. [LB198]

SENATOR CHAMBERS: "Such messages shall only be disseminated between the hours..." Wouldn't a better and more logical construction be, such messages shall be disseminated only between those hours? [LB198]

SENATOR SCHIMEK: Either way sounds better than that, Senator, but I think the intent is the same. [LB198]

SENATOR CHAMBERS: And it's more grammatical also. [LB198]

SENATOR SCHIMEK: Yes. [LB198]

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SENATOR CHAMBERS: Shall be disseminated is not divided by the word "only."
[LB198]

SENATOR SCHIMEK: Yes. [LB198]

SENATOR CHAMBERS: Which do you prefer? And again it's in your hands. [LB198]

SENATOR SCHIMEK: Well, if you would like, we could probably address this...I like it better the way you said it, Senator, okay? But I hate to offer it as an amendment, but we could do it if you want to. [LB198]

SENATOR CHAMBERS: I don't have to do it right now. [LB198]

SENATOR SCHIMEK: Okay. [LB198]

SENATOR CHAMBERS: But I want you to think about it because...and that's all I will ask you. This construction is used often in the statutes and I'm troubled every time I see it. Words have a meaning and their placement and punctuation have a meaning. Are there any other lights on, Mr. President? [LB198]

SENATOR LANGEMEIER: No. [LB198]

SENATOR CHAMBERS: Then I must continue, but I'm thinking my way through this before I do so I'd like my time to continue running. Senator Schimek, I'd like to ask you a question. [LB198]

SENATOR LANGEMEIER: Senator Schimek, would you yield to a question? [LB198]

SENATOR SCHIMEK: Yes, I would. [LB198]

SENATOR CHAMBERS: If I put no punctuation in this sentence, "This day shall thou be with me in paradise," that's a declarative sentence, right? [LB198]

SENATOR SCHIMEK: Yes. [LB198]

SENATOR CHAMBERS: Suppose I put a question mark after it and said, "This day, shall thou be with me in paradise?" Is there a different meaning even though the words are exactly the same and in the same order? [LB198]

SENATOR SCHIMEK: Yes. [LB198]

SENATOR CHAMBERS: Punctuation can sometimes improve meaning. I would agree

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with you that the meaning is clear from the words that are here but I pursued it just a little further to indicate why when I see some of these things it makes me a difference. I am fascinated by and to some extent ruled by language and its construction. I'm trying constantly to improve my grasp of language, my understanding of it, and the usage of it so that the words I use express the idea that I have in my mind, and that doesn't always happen even though I think that I've done it. But in this case I think you and I are together in saying that whichever form would be taken, if we have the word "only" following "shall" or we strike it there and place it after "disseminated," it would be clear what is intended. But I'm letting you know what my almost compulsive urge is so that you will, on this score, extend a bit of sympathy to me as I think you already have. [LB198]

SENATOR LANGEMEIER: One minute. [LB198]

SENATOR CHAMBERS: But I'm not going to offer an amendment and I will not discuss the bill further at this point, but I want to ask you another question, then I'm through, and you don't even have to answer it. Everything is in your hands. Did you understand to what, to which, to whom, and to when I was referring when I first began to talk? [LB198]

SENATOR SCHIMEK: No. [LB198]

SENATOR CHAMBERS: About the system on the moon that might do certain things? [LB198]

SENATOR SCHIMEK: No, I didn't. I didn't get it at all, Senator. [LB198]

SENATOR CHAMBERS: Sister Schimek, do you believe in telling the truth? [LB198]

SENATOR SCHIMEK: Yes. [LB198]

SENATOR CHAMBERS: Sister Schimek, are you telling the truth now? [LB198]

SENATOR SCHIMEK: Yes. [LB198]

SENATOR CHAMBERS: The whole truth? [LB198]

SENATOR SCHIMEK: Yes. [LB198]

SENATOR CHAMBERS: And nothing but the truth? [LB198]

SENATOR SCHIMEK: Yes. [LB198]

SENATOR CHAMBERS: Do you know where all fibbers shall have their parts? [LB198]

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SENATOR SCHIMEK: Where what? (Laugh) [LB198]

SENATOR CHAMBERS: I'll tell you about that off the mike. Thank you, Mr. President. [LB198]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Is there anyone else wishing to speak to the committee amendments? Seeing no lights on, Senator Aguilar, you are recognized to close on the committee amendments. [LB198]

SENATOR AGUILAR: Thank you, Mr. President. Just to briefly say we've had a great discussion on this and I would ask you to support the committee amendments. Thank you. [LB198]

SENATOR LANGEMEIER: Thank you, Senator Aguilar. You have heard the closing on the committee amendments. The question is, shall the committee amendments be adopted to LB198? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB198]

CLERK: 26 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB198]

SENATOR LANGEMEIER: The committee amendments are adopted. We return now to...the floor is now open for discussion on the bill itself, LB198. Is there anyone wishing to speak to the bill? Seeing no lights on, Senator Schimek, you are recognized to close on LB198. [LB198]

SENATOR SCHIMEK: Thank you, Mr. President and members. What the bill is now is a bill that would restrict robocalls between 8 a.m. and 9 p.m. It would have to say or have to identify on whose behalf the call is being made and it would restrict the number of calls to two per day, and it expands it with a committee amendment to federal candidates as well. Thank you, Mr. President. [LB198]

SENATOR LANGEMEIER: Thank you, Senator Schimek. You have heard the closing on LB198. The question before the body is, shall LB198 advance to E&R Initial? All those in favor vote yea; all those opposed vote nay. Has everyone voted that wishes to? Record, Mr. Clerk. [LB198]

ASSISTANT CLERK: 31 ayes, 0 nays, on the motion to advance the bill, Mr. President. [LB198]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. LB198 does advance. Speaker Flood for an announcement. [LB198]

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SPEAKER FLOOD: Thank you, Mr. President and members. Just a quick announcement. Tomorrow will be the first day of this session that we work through the noon hour. I want to make sure that we make that very clear. We will start at 9:00 a.m. We will be working through the noon hour and adjourn early to midafternoon depending on our progress. So if you are making plans for tomorrow, please plan accordingly. Thank you.

SENATOR LANGEMEIER: Thank you, Speaker Flood. Mr. Clerk, items for the record.

CLERK: Thank you, Mr. President. Amendments to be printed: Senator Loudon on LB299; Senator Mines to LB405. Your Committee on Revenue, chaired by Senator Janssen, reports LB334 to General File with committee amendments attached. (Legislative Journal pages 919-922.) [LB299 LB405 LB334]

An announcement, Mr. President: Natural Resources will meet in Executive Session today at 1:30 p.m. in Room 1525; that's Natural Resources in their normal hearing room at 1:30 p.m.

And I have, Mr. President, a priority motion. Senator Gay would move to adjourn until Thursday morning, March 22, at 9 a.m.

SENATOR LANGEMEIER: Thank you, Mr. Clerk. The motion before the body is to adjourn until Thursday, March 22, at 9 a.m. All those in favor say yea. All those opposed say nay. The ayes have it. We are adjourned.