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Floor Debate
April 03, 2007

[LB151 LB232 LB246 LB367 LB368 LB488 LB540 LB564 LB596 LB701 LR59 LR60
LR61 LR62 LR63 LR68]

SENATOR LANGEMEIER: Good morning, ladies and gentlemen, and welcome to the George W. Norris Legislative Chamber for the fifty-seventh day of the One Hundredth Legislature, First Session. Our chaplain of the day is Senator Wallman. Please rise.

SENATOR WALLMAN: (Prayer offered.)

SENATOR LANGEMEIER: Thank you, Senator Wallman. I call to order the fifty-seventh 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: Just one item. Senator Dubas would like to print an amendment to LB232, and that's all that I have, Mr. President. (Legislative Journal page 1053.) [LB232]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We will now proceed to the first item on the agenda, confirmation hearings from the Judiciary Committee.

CLERK: Mr. President, the first of three reports this morning by the Judiciary Committee, chaired by Senator Ashford. Senator Ashford, I have the appointment of Robert Boozer to the Board of Parole in front of me. That's the first report, Senator. (Legislative Journal page 1011.)

SENATOR ASHFORD: Yes, Mr. President, members. Could I go through all the list, or should I go through each...

CLERK: Well, Senator, what I have are three reports. Mr. Boozer is on one, then I've got a series of names for the Community Corrections Council--that's two; that would be a second report. All of those together?

SENATOR ASHFORD: Well, that's what I would like to do, if I could.

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CLERK: Well, you can do all those...so you want to do Mr. Boozer together with the Community...

SENATOR ASHFORD: Yes, with the others, if...that's the way I have it prepared, but I'd be happy to go with Mr. Boozer, and then the rest of the Community Corrections Council. Should I do it that way?

CLERK: That...just because that's the way we've got it entered, in terms of reports, if you are okay with that.

SENATOR ASHFORD: Okay, thanks. Thanks, Mr. President and members. Yeah, the Judiciary Committee approved unanimously the appointment of Bob Boozer to return to the Nebraska Parole Board. Mr. Boozer, a longtime community...with a long history of community involvement in Omaha and the state of Nebraska, former professional basketball player. I would ask the approval of Mr. Boozer as a member of the Nebraska Parole Board.

SENATOR LANGEMEIER: Thank you, Senator Ashford. The floor is now open for discussion on the first confirmation hearing report offered by the Judiciary Committee. Wishing to speak, Senator Pedersen, you are recognized.

SENATOR PEDERSEN: Thank you, Mr. President and members of the Legislature. Just a couple words. I know that Mr. Boozer is not going to have any problems getting confirmed by this Legislature, but I want you to know when he first started on the Parole Board some years ago, I was worried about somebody with a professional background, both in sports and business, being on the Parole Board. Mr. Boozer has done a great, tremendous job. He's been fair, consistent, compassionate and firm, which I think is necessary for anybody who works as a supervisor of people, or making decisions over people. He's got a background that's been more than helpful in working with the inmates that he paroles. I am very pleased to be able to stand up here and say what a wonderful job he's done and what a good friend he's been to the state inmates and to myself. Thank you for this time.

SENATOR LANGEMEIER: Thank you, Senator Pedersen. Is there anyone else wishing to speak to the first confirmation report? Seeing no lights on, Senator Ashford, you are recognized to close on your first...

SENATOR ASHFORD: Well, thank you, Mr. President and members, and I, as well, have known Bob Boozer for 30 years, worked with him on a number of community projects. I can think of no one more qualified to be a member of the Parole Board than Mr. Boozer, and I would certainly move his appointment. Thank you, Mr. President.

SENATOR LANGEMEIER: Thank you, Senator Ashford. You have heard the closing on

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the confirmation report offered by the Judiciary Committee. All those in favor vote aye; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal pages 1053-1054.) 31 ayes, 0 nays, Mr. President, on the adoption of the confirmation report.

SENATOR LANGEMEIER: The confirmation report is adopted. Mr. Clerk.

CLERK: Senator Ashford, the second report I have are a number of appointments to the Community Corrections Council, Senator. (Legislative Journal page 1012.)

SENATOR LANGEMEIER: Senator Ashford, you are recognized to open on the second...

SENATOR ASHFORD: Thank you, Mr. President and members, and that's correct. The next item is the number of appointments to the Community Corrections Council. Again, the Judiciary Committee unanimously approved the following individuals for appointment to the Community Corrections Council: Robert Lindemeier, who's currently the chairman of the Nebraska Commission on Public Advocacy, the past president of the Nebraska Criminal Defense Association; Julie Hippen, southeast regional director of Lutheran Family Services. She has an M.A. in psychology from the University of Missouri-St. Louis. Thomas Dorwart is an attorney with the Attorney General's Office...was an attorney for the Attorney General's Office for 30 years, former county judge, and is in private practice in Sidney, Nebraska; Jeff Davis is a Sarpy County sheriff and board member of the Nebraska Safety Council, Greater Omaha Chapter; Catherine Cook has a master's in human relations from the University of Oklahoma and continues to serve nonprofit organizations, as she has done for over 20 years. I don't know about this guy--Kermit Brashear (laugh). This was a tough one, but Kermit Brashear, a former Speaker, Chair of the Judiciary Committee, community leader, practicing lawyer from Omaha; Joe Kelly, criminal prosecutor for over 20 years with the Lincoln County Attorney's Office; and Scot Adams has a Ph.D. from the University of Nebraska and served since 1990 with Catholic Charities and now serves with the Department of Health and Human Services, and is also someone I have known for many, many years and highly endorse. With that, Mr. President, I would move the approval of these appointments to the Community Corrections Council.

SENATOR LANGEMEIER: Thank you, Senator Ashford. You have heard the opening on the confirmation reports offered by the Judiciary Committee. Is there anyone wishing to speak? Senator Chambers, you are recognized.

SENATOR CHAMBERS: Mr. President and members of the Legislature, we don't allow displays or demonstrations on the floor of the Legislature, therefore I will not engage in one. But if I happened to have a human skull rather than this ball, I would hold it in my

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hand, speaking with reference to Senator Brashear, and say, Aye, Euric, I knew him well. And I knew Senator Brashear well in other respects, too. As the Speaker, he was able to keep the Legislature, if you compare it to a train, more or less on the track, headed in the proper direction. There were groups he was able to bring together so that they would reach an accord, which ordinarily might not have been possible. He has done a tremendous amount of work to swing the direction of the state, when it comes to crimes and punishment, away from the notion of retribution, punishment for the sake of punishment, and did not even talk a lot about compassion, although he had it. He was a pragmatist, he was realistic, and he knew it was necessary to explain to people that there is a different and a better way to deal with certain categories of people who have offended against the laws of the state. And that is to not put them in prison, spend all of this money where there are not programs that can rehabilitate people, who, based on their crime and their background, may not need rehabilitation when they first go in, but if they spend time in the prison, as such, they might need rehabilitation when they come out. So he emphasized the idea of community corrections. All of those people, to the extent we can determine who they are, who do not need incarceration, to punish them, to correct their misconduct, and to put them on the path of righteousness--if such a thing is possible--they should be diverted from the lockup into other means of addressing them and their problems. And by helping them, we ultimately are helping society even more. So I am pleased to have voted for Senator Brashear's confirmation in committee, I'm pleased for the opportunity to vote for his confirmation now. For some reason, even some people in my community think that I don't like any white people. When Terry Carpenter was here, he said, Senator Chambers, if he'd just settle down, which he's not going to do, he could be a great man for this state. You all who don't know Terry don't know what a perfect imitation I gave of him. I gave it to one guy and he thought Terry's ghost was talking to him. (Laughter) Terry also said, he hates all white people, not that he doesn't have just cause. Then Terry would lay out reasons. I don't hate all white people. I don't even dislike all white people. It would be a waste of time. Even some white people who do bad things are not worthy of the consideration and the time it would take to dislike them. But when a white person does something that I think is commendable, I will offer the commendation. If I know a white person, I know that white person any and everywhere, unlike some white people who kind of whisper to a black person when nobody's looking, or around the corner when nobody sees them, but in public they happen to always be looking the other way. That's not me. I worked with Senator Brashear when he was here. Our relationship and working together was open. Now we didn't tell all of our secrets. As great a military strategist as Erwin Rommel was,...

SENATOR LANGEMEIER: One minute.

SENATOR CHAMBERS: ...he didn't tell the enemy what he was going to do, he just did it and left them amazed. I knew Senator Kermit Brashear when he was here; I know him now. I intend to continue working with him in every way, on every issue where we have

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enough in common to work together, and I'm going to continue working with him in his new capacity. I just wanted to say that, so that when Senator Kermit croaks--he'll croak before I am, because...well, because he's a lot younger--they can just play it at his funeral, because I don't go to funerals. Thank you, Mr. President.

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Nelson, you are recognized.

SENATOR NELSON: Mr. President, members of the body, I think I would support Kermit Brashear, certainly, but all that can be said has been said by Senator Chambers. I would like to support the nomination of Scot Adams, whom I've known for a number of years. He worked with Catholic Charities, fair-minded, very competent there, and I was sorry to read that he had resigned. But I was delighted to learn that he's now working for Health and Human Services. So I would certainly support his nomination. Thank you.

SENATOR LANGEMEIER: Thank you, Senator Nelson. Anyone else wishing to speak to the confirmation report? Seeing no lights on, Senator Ashford, you are recognized to close.

SENATOR ASHFORD: Well, thank you, Mr. President. I would just simply reinforce what has been said and ask that the body give support to the committee endorsement of these candidates. Thank you, Mr. President.

SENATOR LANGEMEIER: Thank you, Senator Ashford. You have heard the closing on the second confirmation report offered by the Judiciary Committee. The question is, shall this report be adopted? All those in favor vote yea; all those opposed vote nay. Have you all voted that wish to? Record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal pages 1054-1055.) 41 ayes, 0 nays, Mr. President, on the adoption of this report.

SENATOR LANGEMEIER: The confirmation report is adopted. Mr. Clerk.

CLERK: Mr. President, Senator Ashford, the third and final report I have are two appointments to the Crime Victim's Reparations Committee. (Legislative Journal page 1012.)

SENATOR LANGEMEIER: Senator Ashford, you are recognized to open on your third confirmation report.

SENATOR ASHFORD: Thank you, Mr. President and members. The...as well, the Judiciary Committee gave unanimous support for the appointment of two individuals to the Crime Reparations Committee. First, Scott Arnold. Scott is a member of the Hall

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County Board of Supervisors, and since 1982, has worked for the Grand Island Police Department. Also James Riskowski. He is a principal of the firm, Signa Development Service, Inc., and a member since 1992 of the Nebraska Crime Commission. So I would respectfully request that the body approve these nominations. Thank you, Mr. President.

SENATOR LANGEMEIER: Thank you, Senator Ashford. You have heard the opening on the third confirmation report offered by the Judiciary Committee. The floor is now open for discussion. Senator Aguilar, you are recognized.

SENATOR AGUILAR: Thank you, Mr. President and members. I'd like to speak on behalf of Scott Arnold. Scott is now, I believe, Chair of the Hall County Board, not just a member, and has been a longtime Grand Island police officer. And in his role of that, as well as the county board, he spent a lot of time in Lincoln working with me on different issues. I have a great respect for him, the man, and I think he'd do a great job in this position. Thank you.

SENATOR LANGEMEIER: Thank you, Senator Aguilar. Senator Dubas, you are recognized.

SENATOR DUBAS: Thank you, Mr. President and members of the body. I too would like to stand and rise in support of Mr. Arnold. In just the short time that I've been a state senator, he's been very accommodating, helpful to me, very open to discussion. I've attended some of their board meetings and seen him in action. I think he's a great guy and will do a really good job in this position, so I stand in support of Mr. Arnold.

SENATOR LANGEMEIER: Thank you, Senator Dubas. Is there anyone else wishing to speak? Seeing no lights on, Senator Ashford, you are recognized to close on the third report.

SENATOR ASHFORD: Yes, thank you, Mr. President. I would simply move these candidates. They're worthy of appointment, and appreciate the support of the body. Thank you.

SENATOR LANGEMEIER: Thank you, Senator Ashford. You have heard the closing on the third confirmation report offered by the Judiciary Committee. The question is, shall the report be adopted? All those in favor vote yea; all those opposed vote nay. Has everyone voted that wishes to? Record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal page 1055.) 43 ayes, 0 nays, Mr. President, on the adoption of the confirmation report.

SENATOR LANGEMEIER: The report is adopted. Mr. Clerk, next item on the agenda.

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CLERK: Mr. President, LB596 is a bill introduced by Senator Kopplin. (Read title.) The bill was introduced on January 17 of this year, at that time referred to the Nebraska Retirement Systems Committee for a hearing, advanced to General File. I do have committee amendments, Mr. President. (AM610, Legislative Journal page 789.) [LB596]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Kopplin, you are recognized to open on LB596. [LB596]

SENATOR KOPPLIN: Thank you, Mr. President, colleagues. LB596 is a bill to increase the pensions of our most elderly retired teachers, those who retired before our current system was in place, those who receive next to nothing in benefits after many years of service to Nebraska's schools. We have approximately 2,692 school employee retirees and beneficiaries over the age of 80 receiving benefits. That breaks down to 1,273 between the ages of 80 to 84, 848 between ages 85 to 89, and 571 aged 90 and over. The average pension benefit for school retirees aged 80 and over is \$362 per month, or \$4,344 annually. The average annual pension for those 571 retirees over age 90 is \$4,253. LB596 would increase these pensions by adjusting these benefits so that the benefit being paid would not be less than 90 percent of the purchasing power of the initial benefit. This is an increase from the current 75 percent of purchasing power. Because 90 percent of purchasing power would be costly to the state, the Retirement Committee has amended the bill to reflect 85 percent of purchasing power. This would require an additional state contribution of \$658,184. However,--and I stress the however--the state's education groups who make up the teacher retirement program--the teachers, the administrators, the school boards--are working together to adjust their contribution rate so that the state's required contribution would be considerably less, or perhaps we could move closer to the 90 percent. This will be ready for Select File. LB596 does require an A bill, and it has an emergency clause. I must tell you that this adjustment is being made in the retirement law, so all school employees in the retirement system would qualify. However, the likelihood of anyone except these very elderly retirees to be affected is very slim. Most retirement pensions are already higher than the 85 percent of purchasing power, and the yearly cost-of-living adjustments being made now prevent a great decline in purchasing power. That leaves us with the very elderly who are in the situation they are in because of a very low base, to begin with, and a loss of purchasing power to the 75 percent of the initial benefit level. Nebraska now has a decent teacher retirement system, but it took years to evolve into what it is now, and we still have the lowest retirement benefit of any state in the U.S. for older retirees. Let me share with you how we got where we are. The Nebraska School Employees Retirement System was created in 1945. The Omaha Teacher Retirement System began much earlier. They will be affected by this bill, but not nearly so much as the Nebraska school employees. In the 1950s, the system only required a contribution of 5 percent of the first \$2,400 in salary. That meant a maximum contribution of only \$120 per year. That contribution was matched by the school district,

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resulting in a total retirement contribution of \$240 annually. In the 1960s, the salary of an elementary teacher was in the \$4,000- to \$5,000-a-year range. The 1970s saw salaries in the \$8,000 range. Herein lies the problem. Even though the retirement benefit laws changed to allow higher contribution rates and a formula that used teachers' higher salaries as the basis for computing benefits, the base--that is, the salary earned by these teachers--was so low that the benefits needed for retirement in this age could not be reached. The group of people this legislation is intended to benefit have pensions that are inadequate for a number of reasons: low salaries during working years, low contributions during working years, some taught before the system was created, inadequate cost-of-living adjustments, rising costs of living, drastically higher medical costs, and much longer life spans. LB596 is not going to solve these problems. Eighty-five percent purchasing power of the original benefit is not a lot of money. But as little as it is, it will help. It will be spent in our local communities. It is the right thing to do. We can argue that these seniors contributed little to the system; thus, they deserve little in return. I would contend that the many years of service at low pay that these people gave us is contribution enough. We can argue that this bill will be an increased yearly expenditure for the state. I would point out that the state's contribution will be a diminishing one as the numbers of these seniors decreases. I would contend that in the coming days we will consider many bills that increase state spending. Each should be considered on its own contributions to life in Nebraska. LB596, I believe, has merits. I ask you to advance this bill to Select File, where we can consider the work done by the education groups and move on with this bill. Thank you. [LB596]

SENATOR LANGEMEIER: Thank you, Senator Kopplin. As the Clerk has stated, there are amendments from the Retirement Committee. Senator Synowiecki, as Chairman of the Retirement Committee, you are recognized to open on the committee amendments. [LB596]

SENATOR SYNOWIECKI: Thank you, Senator Langemeier, members of the Legislature. As Senator Kopplin indicated, the Retirement Committee amendment to LB596 reduces the purchasing power floor from 90 percent to 85 percent. According to an actuarial study completed on this proposed adjustment, this change would reduce the actuarial required additional state contribution from \$2,106,190 to \$658,184 for fiscal year '07-08. So essentially the committee amendment mitigates the General Fund exposure relative to the initiative. I want to thank you for your consideration of the committee amendment. [LB596]

SENATOR SCHIMEK PRESIDING

SENATOR SCHIMEK: Thank you, Senator Synowiecki. We are now on the committee amendment. First up to be recognized is Senator Erdman. [LB596]

SENATOR ERDMAN: Mr. President and members of the Legislature, I rise in support of

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the committee amendment. As you will note on the committee statement for LB596, I was present and not voting on the advancement of LB596. I believe that the committee amendment is a more appropriate target for the committee and for the Legislature to adopt as a policy. In keeping with what Senator Kopplin has shared with you this morning, we do at some point this session--maybe it's not today, and maybe it's not even on Select File on this bill--but at some point this session we're going to have to set priorities, and we're going to have to decide where this funding comes from. In the event that this is a General Fund obligation of \$700,000 with the committee amendment, we will have to make that determination. I'm not saying that today is that day to make that determination. I think Senator Kopplin has some ideas that may make this process more appropriate, more acceptable, and in that light I would think that it would be appropriate to allow him that opportunity on Select File to make that case, and I'm hopeful that that materializes. But in keeping with some of the other bills that we have advanced, and the Appropriations Committee is continuing to work, it is my hope that as we further this process of setting our budget, that we also begin to figure out which one of these proposals and what list of these proposals become the priorities that we as the Legislature believe are essential to be funded, that require the state's General Funds. Senator Kopplin has brought this idea to us, Senator Stuhr has brought it to us at least two times and maybe three times prior to this year, while she was a member of the Legislature and chairing the Retirement Committee. It is an issue; it is important for those folks that have the scenarios and the circumstances that Senator Kopplin has pointed out, that we do look at. We also have to look at them in light with the other issues that are before the Legislature in setting priorities. Again, I would stand in support of the committee amendment. I would hope that we do begin to look at these proposals as they come up on their second and third rounds, and that we make those decisions as a body, what our priorities are, and that we would stand by them. But ultimately, from what I've heard this morning, there may be some other ideas that would come forward on Select, and I hope that we as a Legislature would give due consideration to those. Thank you, Madam President. [LB596]

SENATOR SCHIMEK: Thank you, Senator Erdman. Senator Kopplin, you are recognized to speak on the committee amendments. [LB596]

SENATOR KOPPLIN: Thank you, Madam President, colleagues. I want to express my appreciation to the Retirement Committee for the work that they did do on this, the time they took to look at the financial implications. I am supportive of the committee amendment. At the same time, I would like to point out that much work is being done behind the scenes to try to do one of two things: reduce this financial impact even more, or bring us closer to the 90 percent, which in turn would increase benefits to more retirees. That work is being done by the education groups of the state, and I'm very appreciative of them. I look forward to what we can accomplish and what we can bring to you on Select File. But at this time I will support the committee amendment. Thank you. [LB596]

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SENATOR SCHIMEK: Thank you, Senator Kopplin. (Doctor of the day introduced.) Senator Synowiecki, you are recognized on the committee amendments. [LB596]

SENATOR SYNOWIECKI: Thank you, Senator Schimek, members of the Legislature. And I just want to pay respect to Senator Kopplin for bringing this bill. It was quite a compelling hearing that we had at the Retirement Committee, and I think what Senator Kopplin is trying to do is justified. I think we should attempt to do something. I think we should at least give Senator Kopplin the green light here on General File, let him continue his endeavor with the school boards, with the teachers, everyone involved in this, to see if perhaps by the time we get to Select File we can have something that everyone can agree with relative to the funding mechanism for this initiative that Senator Kopplin is doing. Essentially, members, we're talking about a population of teachers that retired prior to 1992, and we're talking about folks that have committed enormous amount of public service to the state of Nebraska and to the youngsters of this state. A couple of examples here that were provided at the hearing: There's an individual in Hastings, Nebraska, that's 105 years old; taught for 24 years--24 years--as a Nebraska teacher, and her retirement is \$200 a month. An individual from Campbell, Nebraska, 96 years old, taught for 45 years in our public schools and provided service to our youngsters for 45 years, and her retirement income is \$350 a month. I think Senator Kopplin makes a good case, in terms of justice, that we look at this, we evaluate, we see what we can do. I think it's incumbent upon us, as Senator Kopplin indicated in this opening, that the negotiations are continuing with the teacher organizations, school boards, that perhaps we may even further mitigate the General Fund exposure from what the committee amendment that we're now considering does. I just want to express my genuine appreciation to Senator Kopplin, his hard work in this area. The hearing in front of the Retirement Committee was quite compelling. Some great testimony was provided to the committee, and I think, in a sense of social justice and a sense of respect for these teachers that provided an enormous amount of public service to our state and to our youngsters, that we attempt to do something viable in this area in terms of the recognition of their public service to the state of Nebraska. Thank you, Senator Schimek. [LB596]

SENATOR SCHIMEK: Thank you, Senator Synowiecki. The Chair will recognize Senator Fulton, followed by Senators Loudon and Pedersen. Senator Fulton. [LB596]

SENATOR FULTON: Thank you, Madam President, members of the Legislature. Would Senator Synowiecki yield to a question? [LB596]

SENATOR SCHIMEK: Senator Synowiecki, would you yield? [LB596]

SENATOR SYNOWIECKI: Yes, yes. [LB596]

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SENATOR FULTON: The...well, I'm firstly thankful to Senator Kopplin for the bill. It sounds like there's an injustice, or some injustices that ought to be rectified. The math--I have a question on the mathematics here in the committee amendment. The committee amendment reduces the 90 percent purchasing power adjustment to an 85 percent purchasing power adjustment. The numbers that correspond to those percentages: the 90 percent number was \$2.1 million; the 85 percent, \$685,000. Am I reading that correctly, Senator? [LB596]

SENATOR SYNOWIECKI: Yes, I believe so. That's...whenever you have a benefit enhancement in a state retirement plan, it is required that an actuarial study be conducted, and those numbers are reflected in the actuarial study that was conducted. [LB596]

SENATOR FULTON: Okay. The...so the actuarial study that was conducted indicates...well, I guess my question is, because the 5 percent difference...the difference between 90 percent and 85 percent being 5 percent, doesn't seem to be reflected in the hard numbers, the \$2.1 million down to \$658,000. So is that...can you...do you follow my confusion there, or where have a question? The 90 percent corresponds to \$2.1 million; 85 percent corresponds to \$658,000. Percent of what, I guess, would answer my question. [LB596]

SENATOR SYNOWIECKI: You know, that's a great question. I think...and you are right. In a layman's terms, as even I approach this, there is a substantial difference in 5 percent between the \$2.1 million and \$658,000 figure. But I think what happens here, Senator Fulton, is that when we move the floor to 85 percent, you are not catching as many members. I think the number of members that are caught by the provisions of LB596 are significantly diminished so that you have this significant decrease in the state contribution needed. [LB596]

SENATOR FULTON: Okay. That I understand, and I think I'll be supporting the amendment. Thank you, Senator Synowiecki. Thank you, Madam President. [LB596]

SENATOR SCHIMEK: Thank you, Senators Fulton and Synowiecki. Senator Louden, you are recognized. [LB596]

SENATOR LOUDEN: Thank you, Madam President and members of the body. I too support...I support the amendment, and I also support the underlying bill, since I served on the Retirement Committee and I thought it was something that should be done. I don't know how many people around here know how the early days were for teacher retirement, but once upon a time when I was a young man and on the school board and that sort of thing, we deducted \$125 out of the teachers' pay, and that was all that was deducted out. There was no state match or anything. That money was turned in to the state of Nebraska, and the state of Nebraska paid them the unheard-of interest rate of 2

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percent, and that went on for years and years. And this is what has happened with these teachers that retired and taught school 50 and 60 years ago. They did have a retirement, but it was really wholesale robbery on the money that they did put in retirement. There was no investment or anything. The state just paid them a flat 2 percent. It wasn't until, as I recall, some time in the eighties, maybe, perhaps, that then we had to start matching their retirement check with 105 percent from the school district. And therein began what was something...was teacher retirement, as far as we know it today. It became a serious retirement system, and it was...the money was invested and the percentage was changed, and so time went on and they did quite well. There still was a provision in there that if anyone, I think, has to be in the system for five years before they can receive any retirement money, and also, they may wish to withdraw their retirement funding out of there if they want to, but the matching that the school districts put in stayed in there. So it never was a real giveaway system for them, and I think this is probably something that can come about, help those teachers that taught years and years ago for us, and give them a little bit of an increase in their income. So I certainly support the bill, and I'll support the amendment. Thank you, Madam President. [LB596]

SENATOR SCHIMEK: Thank you, Senator Loudon. Senator Pedersen, you are recognized to speak. [LB596]

SENATOR PEDERSEN: Thank you, Madam President and members of the Legislature. I'm going to support the amendment and the bill, but I do have some concerns. Teaching is an admirable profession. My mother taught all of her life, my dad taught part of his life, and two of my three brothers have been teachers all their lives. I taught schools for two years myself in a one-room country schoolhouse on a reservation in South Dakota many years ago. But I want us to be careful of the public dollar. Teaching is not the only profession that's admirable. I look at nursing. My wife is a retired registered nurse who worked 40 years as an R.N., and my guess is that she saved hundreds of lives. Her retirement after 40 years was \$183 a month. Are we going to help nurses, too? Are we going to help other admirable professions? We'd better keep in mind the purse strings, because I think that all these professions would have some need and wants, also. Thank you. [LB596]

SENATOR SCHIMEK: Thank you, Senator Pedersen. Senator Synowiecki, there are no further lights. You're recognized to close on the committee amendments. [LB596]

SENATOR SYNOWIECKI: Thank you, Senator Schimek, and thank you, members. The committee amendment mitigates the General Fund exposure relative to the initiative that Senator Kopplin is undertaking, and I would ask that you adopt the committee amendment to LB596. Thank you. [LB596]

SENATOR SCHIMEK: Thank you, Senator Synowiecki. You've heard the closing

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arguments on the committee amendments. The question is, shall the committee amendment to LB596 be adopted? All those in favor vote aye; all those opposed vote nay. Have you all voted? Mr. Clerk? [LB596]

CLERK: 41 ayes, 0 nays, Madam President, on the adoption of committee amendments. [LB596]

SENATOR SCHIMEK: Thank you. The amendment is adopted, and now we go back to discussion on the bill. Seeing no lights, Senator Kopplin, would you like to close on LB596? [LB596]

SENATOR KOPPLIN: Thank you, Madam President, colleagues. I simply ask you to consider carefully the retirement system as it is and what it could be for some of these people. We do have many, many issues to consider in this Legislature. I'm quite aware of that. I believe this one merits a great deal of consideration, and I ask you to advance it to Select File. Thank you. [LB596]

SENATOR SCHIMEK: You're heard the closing arguments on LB596. All in favor of advancement to E&R initial vote aye; all opposed vote nay. Have you all voted who wish to vote? Record, Mr. Clerk. [LB596]

CLERK: 38 ayes, 0 nays, Madam President, on the advancement of LB596. [LB596]

SENATOR SCHIMEK: The bill does advance. Mr. Clerk, LB488. [LB596 LB488]

CLERK: LB488, Madam President, by Senator Wallman. (Read title.) The bill was introduced on January 17 of this year, at that time was referred to the Revenue Committee. The bill was advanced to General File. I do have committee amendments, Madam President. (AM825, Legislative Journal page 943.) [LB488]

SENATOR SCHIMEK: Thank you, Mr. Clerk. Senator Wallman, you are recognized to open on LB488. [LB488]

SENATOR WALLMAN: Thank you, Madam President, and my amendment to the committee amendment would merely raise 15 percent to 25 percent, and lower the cap from \$250,000 to \$150,000. And so we believe by lowering the cap that this will be a revenue neutral amendment. And the idea behind this is to make this more appealing to small landowners. Other than this change I would like to see made, I support the committee amendment and thank them for it. And LB488 proposes to create an income tax credit for donations of perpetual conservation easements. It outlines a process by which you qualify, satisfying certain minimum requirements that are set out in this bill. To qualify you must either be in a quick-response water shortage area or overappropriated basin, or you can qualify by owning land in one of the 40 already

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identified biologically unique landscapes. This bill would preclude you from pumping groundwater except for domestic purposes, stock, or restoration of wetlands. The state of Nebraska has been in a eight-year drought. Will this bill solve all the state's water problems? No. But it may help by reducing consumption, which I think has to happen. So in a three-month period, irrigators account for 95 percent of the state's annual usage in a three-month irrigation season. This bill would not force anyone to place their land in an easement. It is strictly voluntary. So by placing acres into a perpetual easement, it would potentially reduce acres that are irrigated farming, and this does not mean that a person must not farm the land. They could still dryland farm. And the Revenue Committee has created an amendment which I support, but the only change I would like to see is what I just read. And I know this is a touchy issue. Most people don't like to get paid for letting land sit. We have CRPs, we have EQIP acres, but the state and the university encouraged irrigation in the past, and we have canals that are dry. So I think some of these landowners ought to have an option so that at least they get some money and have an opportunity to get some payback for the monies they've put out in the past. [LB488]

SENATOR SCHIMEK: Thank you, Senator. Are there those...oh, Mr. Clerk, I believe you said there are committee amendments. [LB488]

ASSISTANT CLERK: Madam President, there are committee amendments from the Revenue Committee. [LB488]

SENATOR SCHIMEK: Senator Janssen, you are recognized to open on the committee amendments. [LB488]

SENATOR JANSSEN: Thank you, Madam President and members of the Legislature. The committee amendments would replace all of Section 3 and make a number of changes to the bill to clarify the easy administration of the bill. The amendments would also cap the amount of tax credits granted in any one year to \$5 million, and provide procedures for the approval to stay under this limit. The amendment changes the application process to provide that the Department of Natural Resources may only grant easements allowing \$5 million in tax credits in any one year. Applications would be submitted no later than August 1 of the year the easement is to be granted. Applications would be approved by the department, November 1. If the value of the easements that qualify for the credit would otherwise exceed \$33.3 million, this amount times 15 percent would be \$5 million. The department is to prioritize the applications so that not to approve more than that \$33.3 million. Criteria for prioritization would be set by the department, but the criteria are to assure that the greatest amount of groundwater or unique landscapes are preserved. The amount of the credit that can be taken by any one taxpayer would remain at \$250,000 under the committee amendment, the same as the green copy of this bill. The second thing it does, the amendment provides the Department of Natural Resources to approve applications for the easement and to issue

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the taxpayer a certified copy of the approval, including the value of the approved easement. The taxpayer would then attach this certified copy to the tax return for that year, and receive the credits. The credits would be reduced by 50 percent of the value of the easement in the green copy to 15 percent, but the taxpayer would be allowed to take the federal charitable deduction. The credit would be made refundable, but it could not be carried over and could not be transferred. In this way, the person donating the easement would receive the full 15 percent credit in the first year. There would be no need to carry the credit forward for the use...a third party to buy credits at less than the full value. These changes that I've just described are the substantive dollars-and-cents changes in the bill, and that the committee felt were important to improve the bill. There are also a couple of definitional or clarification changes in the committee amendments. The amendments would clarify that a stock well purpose and restoring wetlands are allowable purposes. The annual reporting would commence January 1, 2009, instead of 2008, since the first income tax returns used, the credit would be filed in the 2008 year. The tax credits would still terminate after 2012, like under the green copy. Finally, the organization which approves the charitable organization, which in turn would receive the easements and monitor compliance with the restriction, would be changed from the Land Trust Alliance to the appropriate natural resource district in that area. Also, the NRD would be given the authority to accept the easements, in addition to the Game and Parks, and charitable entity. That is the extent of the committee amendments. Thank you. [LB488]

SENATOR SCHIMEK: Thank you, Senator Janssen. You've heard the committee amendments. Mr. Clerk, is there an amendment to the committee amendments? [LB488]

CLERK: Senator Wallman would move to amend the committee amendments with AM864. (Legislative Journal page 1050.) [LB488]

SENATOR SCHIMEK: Senator Wallman, you are recognized to open on your amendment. [LB488]

SENATOR WALLMAN: Thank you, Madam President, and I read my amendment too fast, so I'll read it again. My amendment to the committee amendment would merely raise the 15 percent to 25 percent, and lower the cap from \$250,000 to \$150,000. And we believe by lowering the cap that this will be a revenue neutral amendment, and the idea behind this is to make this more appealing to the smaller landowners. Other than this change, I would really like...I'd like to thank Ray Janssen and the committee for working on this, and I support the amendment and thank them for it. [LB488]

SENATOR SCHIMEK: Thank you, Senator Wallman. You've heard the opening on the amendment to the committee amendments. We now go to debate on the amendment, and Senator Fischer, you are recognized to speak. [LB488]

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SENATOR FISCHER: Thank you, Madam President and members of the body. I have concerns with this bill. I had concerns last year. There was a similar bill out, and at the end of session, because we did not get to that bill, there were attempts made to have amendments put on other bills. And the body decided at that time that this was not appropriate and defeated those attempts. I would like to ask Senator Wallman a question, if he would yield, please. [LB488]

SENATOR SCHIMEK: Senator Wallman, would you yield to a question? [LB488]

SENATOR WALLMAN: Yes. [LB488]

SENATOR FISCHER: Senator Wallman, did somebody bring you this bill, or was this an idea that you had? [LB488]

SENATOR WALLMAN: Yes, they did. [LB488]

SENATOR FISCHER: May I ask who? [LB488]

SENATOR WALLMAN: Dave Sands and his...and the university, some of the university people. [LB488]

SENATOR FISCHER: Okay, thank you very much. My concerns with this bill deal with a number of areas. As you all know, I'm a strong supporter of private property rights, and I believe that if someone wants to enter into a conservation easement, that is their right to do so. I don't believe it's appropriate, though, that the state would take the position to offer income tax credits. Conservation easements are available now. There's a number of organizations that enter into those contracts with willing participants. The Niobrara Council receives funds. The Niobrara Council is a local group in my area, and they receive federal funds. They also receive funds from the Environmental Trust Fund. If you would go to the Environmental Trust Fund Web site, you will see that the Niobrara Council received \$250,000, I believe it's for this year. Northern Prairies Land Trust--this is another organization; they've received \$110,000. The Sandhills Task Force, which is a great group, they received \$250,000. The Nature Conservancy has received \$400,000, and the Nature Conservancy has also received, for another project, \$304,000. That's just from one year on the grant listings from the Environmental Trust Fund. There's money available for conservation easements, and as I said, it's at the decision of a private property owner whether they want to enter into those or not. When they do, a contract is drawn up. That's what the money, just from the Environmental Trust Fund grants, goes for, then. It depends on how that contract is drawn up. In some cases the private property owner continues to pay the property taxes, and it's my understanding, in most cases that happens. People, when they enter into these contracts, they could put in those contracts that the group, such as the Sandhills Task

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Force or the Nature Conservancy would pay those property taxes. But a lot of private property owners aren't aware of all the implications and what their rights are, and even entering into an agreement with a conservation easement. But there again, that's their decision. They are the owners of that property; they can do what they want with that property. After they receive money for the contract, they then, with a perpetual conservation easement, receive federal income tax credits. That's not a decision that we make here; that was made at the federal level. [LB488]

SENATOR SCHIMEK: One minute. [LB488]

SENATOR FISCHER: But we have the decision to make today on whether the state should be involved in that. I don't believe that we need to give income tax credits at the state level, when we are already, through the Environmental Trust Fund as one organization, giving funds to purchase those conservation easements in the first place. And I will continue later. Thank you, Madam President. [LB488]

SENATOR SCHIMEK: Thank you, Senators Fischer and Wallman. Senator Langemeier, you are recognized to speak. [LB488]

SENATOR LANGEMEIER: Thank you, Madam President and members of the body. I rise in support of the idea behind LB488. I think it truly is a good idea, and we're doing it on the private level, through a number of groups, 501(c)(3)s across the state. However, at the state level, I have some concerns. I have the concern that I could own a piece of property along the Platte River on a nice bluff. I own 180 acres that I really like to hunt on, that I could get state tax dollars to protect my paradise and allow me to continue to hunt on that property forever. There is a provision in here that would say the Game and Parks has to determine whether this is a biologically sound area, and I would argue that it wouldn't take much to get that designation. If you had an erosive slope--if you take the Platte River towards this end, towards the east end of the state, you have some more erosive slopes--I would argue that you could very easily hit that designation by Game and Parks as biologically unique landscape. We might find that very unique across the whole state, and if you are looking at where Senator Johnson lives and the cranes, I would say that's biologically unique. If you looked at Nebraskaland magazine, we've cleared off an area to make it more unique, to allow for the cranes to come in. And so I have some concern that I could protect my little piece of paradise from urban growth, from higher tax dollars, because of the values going up for a secondary use over what I want to do it, and have state funding behind that. Again, I'm very supportive of the bill, and matter of fact, to disclose all, I drafted the first version that...when...that Senator Wallman took the bill, because I liked the idea and I wanted the discussion out there. I honestly didn't think it would quite get this far, but if you notice on the committee statement, I wasn't present when they voted--and that's my fault--in Revenue Committee, and I take full blame for that. And I have a number of other things I want to talk about as we go on here, but I think we have to focus here, is to narrowing this down

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if we so choose to see a use for this on the state level, whether it's to preserve water rights out in the Republican. I really see some benefit to that, but how do you narrow it down, to get it that specific, and then have it usable? I don't think it's possible, and we do have private individuals out there doing that. Now the second argument I had on this is the appraisal process. As you heard me stand up, and we talk about appraisals, we have to go out, and as an appraiser, look at this property and determine whether or not this conservation easement has value. And some would argue in some cases, if you were putting this easement on in a high growth area, that you would have the ability to lower that property's value, because you couldn't put your 300 homes per quarter section of ground in Sarpy or Douglas County, and so that would diminish the value. But I would also argue that when you get a piece of property along the Platte, we're selling Platte River ground from Columbus to Omaha for...anywhere from \$11,000 to \$15,000 an acre, for hunting. So when you go put on there a conservation easement, you may have preserved that for hunting forever, you may raise that even more. And some of this outlying ground, it depends if you take Lincoln, they're buying out right now about another ten miles south at \$10,000 an acre for future development, to hold it over time, with the time value of money. I really think that some of these properties, you put this on it, actually may defeat their purpose. Yes, they protect themselves for hunting and recreational-type use forever, but I really think that you may increase their value, as well as... [LB488]

SENATOR SCHIMEK: One minute. [LB488]

SENATOR LANGEMEIER: ...give them a tax credit. And that's my other fear with that. Some, it's going to go the other way; some, it's going to go up. It depends on where you are at. And so I think there's some concern to that. But overall, I like the idea. There's a number of groups out there doing that, and I appreciate what they've done, and I don't want to stand in their way to continue that, in any way. But I think there's some "problematicness" to this to do it on a state level, and with that, I will conclude for this time around. Thank you, Madam President. [LB488]

SENATOR SCHIMEK: Thank you, Senator Langemeier. The Chair will recognize Senator Wightman, who is followed by Senators Gay and Fulton and others. [LB488]

SENATOR WIGHTMAN: Thank you, Mr. President...Madam President, excuse me, members of the Legislature. I too generally support the concept. I had written down before Senator Langemeier spoke, what's going to be the method of appraisal, what all is to be taken into account on this appraisal? I have some real concerns that we're going to see high values placed on the land. As I understand it, probably it will...the determination will be made on the value of the easement based upon the difference in the value of irrigated land, because the idea is to take this land out of irrigation, and the value is dryland. But I can tell you that frequently the devil is in the details, and I fear that may happen here, that all of a sudden all of the land in the area becomes \$3,000 or

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\$4,000 land, that it's \$1,000 land when it becomes dryland, and we're looking at \$3,000 for easements. And if that's the case, I'm not very supportive of that, because we're talking about an area that is somewhat depressed, and I know that there's going to be a Natural Resource bill coming out here shortly that I think involves the purchase of some acres at a relatively high price--at least in my opinion it seems to be high-priced--in which we're just buying the irrigation rights for a year or two in various irrigation surface water...or not surface water, ditch water projects. And so I'm very concerned over what the method of appraisal was going to be. I think a typical case is probably going to be where the landowner is contending that his land is worth \$3,000 and \$3,500 as irrigated acres. I can tell you right now that almost no Dawson County land, where they don't have the same water problems--they may be coming in a few years--is valued at that price. And so if this is just a means to establish a high value and then put a low value on what the dryland value would be, that is a concern to me. I also wonder, when we're talking about increasing it from 15 percent to 25 percent, what the federal tax benefit will be. I'm assuming that they really aren't selling the land, the landowner who is receiving this 15 percent or 25 percent credit or whatever the credit turns out to be, that in effect, it's going to be a contribution, because they're taking a credit, and I assume they're going to get a 25 to 30 percent federal tax benefit from this, as well. And so I guess I would like to have some additional information with regard to that, exactly what the federal tax benefit...because it seems to me that the state credit is not going to be all the benefit received by these landowners. In the long run, I wonder if we might not be almost better off to buy the land itself, because I think it would be easier to determine values, and I realize it's got to be between a willing buyer and a willing seller if we do that. And some of these sellers may not be that willing. I also wonder about how this is going to fit into a 1031 exchange--and I know a lot of you would not be familiar with 1031 exchanges, but that's a like-kind exchange of real estate--whether it would be possible to defer any tax payment on this. Of course, I guess they're not going to sell it, so that may answer itself. But I do think that the federal benefits under the Internal Revenue Service Code is a consideration, at least, to be made perhaps, on whether this is to be 15 percent or 25 percent. So I'll listen to the debate. [LB488]

SENATOR SCHIMEK: One minute. [LB488]

SENATOR WIGHTMAN: I think that it presents a novel way, perhaps, to obtain land and to fulfill some of our obligation to Kansas, because it's my understanding that this involves primarily land along the Republican River at the present time. That's not to say it couldn't be along any area. I also agree that sometimes this land may be just as valuable if it lies in close to the river and is a wooded area, just as valuable after they give up the easement as it was before, and yet we're providing them with a credit. So I want to listen to the rest of the debate before I make any decisions. Thank you, Madam President. [LB488]

SENATOR SCHIMEK: Thank you, Senator. Senator Gay, you are recognized to speak.

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[LB488]

SENATOR GAY: Thank you, Madam President. If Senator Wallman would yield to a few questions. [LB488]

SENATOR SCHIMEK: Senator Wallman, would you yield? [LB488]

SENATOR WALLMAN: Yes, I would. [LB488]

SENATOR GAY: Thank you, Senator. Senator, when I read through this, I've got questions when you talk about that the Natural Resources Department, I understand, "may require that applications provide other public benefits, which include, but not limited to, ecotourism opportunities, public access for hunting, fishing, and ecotourism..." again, "...and critical habitat preservation." The question I had is...and then it reads again, on the Niobrara area, though, that would be somewhat limited on the hunting. It said public access for hunting. Is that...how would that work, I guess, when we'd do that? [LB488]

SENATOR WALLMAN: That would still be up to the individual landowner so...but you know, you couldn't...you could still do what you wanted to that way, like now. [LB488]

SENATOR GAY: Well, if it's under the conservation, though, when we say "public access," so could I or someone from the metropolitan area go out to these areas and use it. It's still up to the property owner to decide who's going to hunt on their land? [LB488]

SENATOR WALLMAN: The way it is now. But you could, you know, put an amendment on here or something, if you wanted to. [LB488]

SENATOR GAY: Okay, I might look at that. I do think there's probably an opportunity here on some of these grounds, if whatever happens is set aside, that an opportunity could be used to promote hunting and fishing in Nebraska. It could be a very useful tool. I see some of the proponents are probably thinking that way, as well. In the Niobrara area, Senator, that would be where you cannot...is that just protected by the Niobrara Council, and they're the ones that make this decision, if somebody wants to donate? [LB488]

SENATOR WALLMAN: Are you asking me a question? [LB488]

SENATOR GAY: Yes, Senator. One page 6... [LB488]

SENATOR WALLMAN: And the Niobrara...in those areas up there, the Environmental Trust Funds, they did not use that on irrigated acres. That was grasslands or...it was not

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irrigated acres. [LB488]

SENATOR GAY: Okay. And then one more question. And the Game and Parks Commission deciding, as Senator Langemeier mentioned, you know, what would define...do they have right now a written plan of ecologically sensitive areas right now that they kind of follow? [LB488]

SENATOR WALLMAN: Yes, I think I brought that map out to you. [LB488]

SENATOR GAY: That's what this is? Okay. [LB488]

SENATOR WALLMAN: So there's a lot of areas in our state. And it would have to be approved by, you know, by the Department of Revenue and certification, which areas that would be. [LB488]

SENATOR GAY: Okay. Thank you, Senator. I do...thank you, Senator. I do approve...I think there's some of those amendments that were produced by the Revenue Committee will make this a better bill. I don't know where I'm going to go on it yet, and I'm looking forward to the discussion, as well. But I do think some of the caps and limitations were needed, so this just doesn't get unlimited on what amount of tax credits could be, but I think there are a lot of other questions we need to get answered. I'm sure, through the debate, many of those will be addressed. So, I look forward to that, and again, I would agree, there's somewhat...there's some unique opportunities here, but as we debate this, let's find out whether we've covered all our angles, as far as the federal tax credits and deductions, and a lot to learn. So I hope we will get this drafted in a way that maybe could fit what everyone is looking for. Thank you, Madam President. [LB488]

SENATOR SCHIMEK: Thank you, Senator Gay and Senator Wallman. (Visitors introduced.) Senator Fulton, you are recognized to speak. [LB488]

SENATOR FULTON: Thank you, Madam President, members of the Legislature. I wonder if Senator Janssen could yield to a question? [LB488]

SENATOR SCHIMEK: Senator Janssen, would you yield to a question? [LB488]

SENATOR JANSSEN: Yes. [LB488]

SENATOR FULTON: Thank you, Senator. In the committee amendments, on AM825 right now I have a question. The Department of Natural Resources shall review applications...basically, I'll just explain. The applications...the amount of revenue foregone by the state of Nebraska would not exceed \$5 million? [LB488]

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SENATOR JANSSEN: That's correct. [LB488]

SENATOR FULTON: Okay. Could you explain a little bit of the...how would the process of prioritization be done? I know that would fall under the authority of the Department of Natural Resources, but is there some means by which prioritization is set, such that this...so that the \$5 million is not exceeded? [LB488]

SENATOR JANSSEN: Well, I would imagine it would be on a first-come, first-serve basis. I would like to see it used in just the Republican River area, because that is the area where we are under dispute the state of Kansas. The amendment and the bill does not clarify that, but I would like to see that happen, with Senator Wallman's blessings, of course. But no, it does not. I mean, it can be anywhere in the state right now, if it meets that certain criteria. [LB488]

SENATOR FULTON: Is that something that could be considered? I honestly don't know. This is something I...it's novel to me to be able to say that there's a certain limit on how much tax credit could exist. Is there a way, through amendatory language, that we would be able to direct the Department of Natural Resources in their prioritization process, or is that... [LB488]

SENATOR JANSSEN: Sure, anything is possible, um-hum. [LB488]

SENATOR FULTON: Yeah. Okay. Okay, thank you, Senator. [LB488]

SENATOR JANSSEN: You're welcome. [LB488]

SENATOR FULTON: I wonder if Senator Langemeier would yield to a question. [LB488]

SENATOR SCHIMEK: Senator Langemeier, would you yield to a question? [LB488]

SENATOR LANGEMEIER: Yes. [LB488]

SENATOR FULTON: Senator, there's a principle that I'm gleaning from the bill itself--this isn't the amendments; this would be from the bill itself--and that principle is that income tax credit could be derived for property tax value. I'm not familiar enough with property tax and with tax policy to know the answer to this. I'm hoping, maybe, with your background you could answer: Is there precedent for that, where one can derive an income tax credit of some sort for the appraised value of a piece of property? [LB488]

SENATOR LANGEMEIER: I can't answer that. I'll do some research on that. I guess I never have thought about that. [LB488]

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SENATOR FULTON: Okay. [LB488]

SENATOR LANGEMEIER: And I will talk on my time a little bit about that value and how that works, momentarily. [LB488]

SENATOR FULTON: Okay. I'll...I don't know specifically who to ask, but I'll throw that out as a question. It's something...it's worthy of consideration, just from a policy standpoint, to provide an income itself is very...it's . There's no disputing how much income somebody makes, and therefore, an income tax credit or amount of income tax that is paid, it's fairly undisputable, how much is exempted, or how much is paid, is the item that's debated. But numerically, income tax, it's numbers. There's a level of subjectivity or a level of judgment incorporated into the valuation of property tax, and that's my suspicion, is why property taxes are so reviled here in Nebraska. So this seems to me...if this hasn't...doesn't happen before, this would be incorporating a level of subjective judgment, that being the appraisal process of property tax value, and incorporating that into something that's more mathematically set, an income tax credit. It seems to me that would be quite a step, by way of policy and by precedent, if indeed there is not precedent before. So I would throw that question out to the body. If someone could point out where... [LB488]

SENATOR SCHIMEK: One minute. [LB488]

SENATOR FULTON: ...we have property tax value applied to an income tax credit or calculation, I'd be very interested to hear that. With that, I will cease. And thank you, Madam President. [LB488]

SENATOR SCHIMEK: Thank you, Senator Fulton. Senator Wallman is next, followed by Senators Fischer, Langemeier, Loudon and others. Senator Wallman. [LB488]

SENATOR WALLMAN: Good morning, Madam President. This has nothing to do with property tax values, so. And protection of private lands does not just serve the people or serve private interests, there are a whole range of public benefits that flow from the protection of private lands. And this bill has been narrowed considerably from previous attempts. If there's no drop in value, as Senator Langemeier suggests, there would be no tax credit. The Department of Revenue can require a copy of appraisals, to make sure they are not inflated. One year ago, the American Society of Appraisers and Farm Managers offered a three-day course on appraising easements, and Nebraska appraisals, all acres across the state, are involved in this. So you can do that, and there can be a drop in value, sure. And...but you know, the Department of Revenue must approve the issue of the certification, and the Water Task Force has recommended this bill for two years in a row. And Environmental Trust Funds are not used to retired irrigated acres, like I mentioned before, and when an easement is donated, there is a drop in the value of land, so there can be, so the landowner only receives 25 percent on

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the dollar for this drop. And there are about 40 designated areas in our state which would qualify for this. And you know, it says "water quality." Are we concerned about our water quality? Water quantity? Some of these areas that are sandy, maybe we should be protecting those areas. Flood protection, so we have what they call spillways over...you know, when it floods you don't build next to this. And if you sell your land to a developer, it's gone forever. And if you have a water easement for your family or want to keep an easement for, say, John's grandchildren or something, you have this opportunity to set a certain portion of land aside in designated areas, which would be good for the state, be good for us all, and have the quantity and quality and flood protection, and also for wildlife habitat. And you know, we have permanent protection of ag lands, may not be an issue in most of our state, but it is in some. Urban counties must be reminded that food does not come from the grocery store. In Sarpy and Douglas, the loss of virtually all ag land is a real possibility within 50 years. And at a time when consumers are increasingly seeking local-grown food, conservation easements are often used in other states to preserve prime ag land or open spaces like parks for the people. And so I think it's...it doesn't sit very well with most people to pay people to conserve their land, or conservation easements, but I think it's a necessary thing. And also outdoor recreation, we want our kids to be more...you know, want them outside more. And I was always an outdoor person from a little kid. It's kind of hard for me, sitting in here every day. And also tourism, we have lots of beautiful areas in Nebraska, and I want to see lots of kids see those areas, and protected. I don't want to see houses here and there and everywhere, with urban development. And scenic areas, I don't see any trouble protecting that. And thank you, Madam President. [LB488]

SENATOR SCHIMEK: Thank you, Senator Wallman. Senator Fischer, you are recognized to speak. [LB488]

SENATOR FISCHER: Thank you, Madam President. I have to disagree with Senator Wallman when he made the statement that these easements have nothing to do with property taxes. Last June, I had the opportunity to visit with Cathy Lang. She was up in my area, and we got into a discussion about conservation easements and I asked the Property Tax Administrator if she knew what would happen to the value of land if you signed an easement. And she said that they haven't had enough of them, with recent sales or anything, to make that determination. So I said to her, can you make a guess of what you think is going to happen to the value of that land? And she said that she felt that the value of the land would decrease, and in that case, when the value of the land with a conservation easement on it decreases because there can't be any development, the surrounding property owners, their property taxes will go up, because they have to make up the difference of that decrease in valuation on land that has a conservation easement on it. I have a concern with that, and the people in my area have a concern with that. As you know, we have the Niobrara River through my backyard, and we're very proud of it, and we think it's a Nebraska treasure, and it is a jewel. And we also believe that the people who live on that river and who have land along that river are

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taking care of it. Some people...property owners have already decided to enter into conservation easements, and as I said earlier, they can do that. They own that land and they make the decision if they want to or not. And for one reason or another, a few of them have entered into conservation easements. But I have a problem with the state becoming involved in this, more than they already are doing through the Environmental Trust Fund. I have a problem with the state saying we're going to give income tax credits. If you look at the fiscal note, you'll see that 3.25 new employees will be required by DNR if this bill passes. That's before the amendment. That's because these employees have to go out and look at all the land that is being considered for a conservation easement, and they then have to approve it. When you add employees to a state agency, you add cost. You add more cost there than you probably would from the conservation easements that are being allowed under this bill, and the tax credits for those. If you look...oh, also Senator Wallman earlier spoke about the donations of conservation easements. These aren't donations. Private property owners who enter into a conservation easement, they enter into a contract, and with that contract they are then paid something for that contract. It's not a donation on their part. They're receiving money for a contract that they have entered into, with whatever private group such as the Nature Conservancy or the quasi-governmental group such as the Niobrara Council. They're receiving money for that. That's what the funds are, the grants from the Environmental Trust Fund, to help pay for those contracts that these people enter into. If you look at the amendment, AM825, on the first page of that it says that a charitable organization, line 12, "A charitable organization that proposes to hold a conservation easement shall name in the easement a cooperating..." [LB488]

SENATOR SCHIMEK: One minute. [LB488]

SENATOR FISCHER: ..."agency or organization that will automatically accept the easement, should this charitable organization no longer exist." I have a concern with that. As a private property owner, if you enter into a contract with one entity, and then that entity no longer exists, they can pass that contract off to somebody else. As a private property owner and citizen, you are now in a contract with possibly a group or a person that you don't especially want to have that contract with. And remember, in this bill and in this amendment, we're talking about these contracts, these conservation easements, lasting into perpetuity. I think that's a problem. I would hope that we could address that somehow, although I have no suggestions on how to address that. [LB488]

SENATOR SCHIMEK: Time. [LB488]

SENATOR FISCHER: Thank you, Madam President. [LB488]

SENATOR SCHIMEK: Thank you, Senator Fischer. The next speaker is Senator Langemeier, followed by Senators Loudon, Pirsch, Stuthman, and others. [LB488]

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SENATOR LANGEMEIER: Madame President and members of the body, I appreciate that. I would like to...first of all, I would like to tell Senator Wallman I agree with him 100 percent. As a matter of fact, as an appraiser I took the three-day class offered by the American Society of Farm Managers and Rural Appraisers, where I am a member. And conservation easements are kind of slowly becoming a cash cow for appraisers. It's a new facet and it doesn't really affect housing upswings and downswings in our business. It's a new area that not many of us have a high enough license to even dabble in, and so the market could be very strong. So for that regard, in this bill, that's a positive for our business. Senator Wallman, can I ask you a question? [LB488]

SENATOR SCHIMEK: Senator Wallman, would you yield to a question? [LB488]

SENATOR WALLMAN: Yes, I will. [LB488]

SENATOR LANGEMEIER: As we...thank you, Senator Wallman...as we talk about this issue, over time here, there was a lot of discussion about using this in the Republican River Basin for reduce of irrigated acres, reduce of irrigation, and try and help be part of that solution. Would you be receptive to an amendment that would limit this in its initial offering just to the Republican Basin, instead of statewide? [LB488]

SENATOR WALLMAN: Yes, I would. [LB488]

SENATOR LANGEMEIER: Okay. Well, you can think about that a little more and let me know... [LB488]

SENATOR WALLMAN: Yeah, I'll let you know. [LB488]

SENATOR LANGEMEIER: ...if your thoughts change. If we do want to go into this, how big of a program do you want this (inaudible) to be and dabbled with? I guess I would...and I'm having it drafted then. We will bring an amendment that would restrict this just to the Republican Basin. That's all I have for a question; thank you. I want to talk a little bit about how you come up with values for these. And another concern I have with that is, if you own the family farm, and I keep going back to some geologically pristine area along the Platte River, the Elkhorn River in Douglas and Sarpy County, or even Saunders County is building out that way, and I own that family farm and I like to hunt on it and it has some unique characteristics due to water, due to landscape, and that's a real positive, but I don't like that urban growth and I want to protect that family farm forever, but the conservation easement, right now, I can offer up that decreased value. Let's say my ground, we got it at \$1,000 an acre because there was a lot of trees, it was typically waste ground, and as development comes we start to see elevated values to \$20,000 an acre. Right now, what I get is a reduction in that value from that development value down to a waste or a recreational value, decrease, and I get a federal...I can get some federal credits for that, but I don't get any money for that dollar

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difference. And that's why people don't do this, and people aren't voluntarily giving these up that easy because, yes, it's a loss, but they never had the money and so...but they get some tax credit on it. This would allow us to actually give them some cash in their hand for that decreased value. And that's where I start to wonder, are we protecting private landowners to preserve a piece of property that's been in their family forever, and has some unique characteristics to it, and so they want to protect their little paradise at the state's expense, forever. And so that's some of my concern with that, and I'm going to bring...I will...I am having it drafted right now, bringing an amendment that I'll show to Senator Wallman when it gets drafted--completed, excuse me--that would restrict this to the Republican River Basin only. And if the body chooses to send this forward, that we started in an area where we know we have some water issues, they would like to use this as part of the tool out there--I don't think it's part of the solution but it is a tool--give them the opportunity to demonstrate that it can and would work over time out there. So with that I will conclude. Thank you. [LB488]

SENATOR SCHIMEK: Thank you, Senator. Senator Louden, you are recognized to speak. [LB488]

SENATOR LOUDEN: Thank you, Madam President and members of the Legislature. As I look through this, the amendment to LB488, the amendment AM825, which mostly just changed part of the section in the underlying bill, there's some questions I'm kind of concerned about in there. And part of it would be on the part where...and I guess under (i), it wouldn't require that the conservation easement provide public access. And then it goes on to say, but it also...public access for hunting, fishing, and ecotourism. So I wonder what we're trying to do here, if you are going to give a conservation easement that doesn't necessarily provide for public access, but then it's got to be listed and not limited to where there is some public access in hunting, fishing, and ecotourism, later on in it. So I kind of question that part of it. Another part that kind of concerns me is, you get down into the...I guess the (ii) in the section here, where you talk about the Nebraska natural legacy plan. And we're starting to put that into statute, and that's a plan that's done by the federal government that the Game and Parks had to follow in order to get some of their funding. And I'm questioning whether we should start putting that in statute as some type of a plan to follow, because if you look at the map that was handed out by Senator Wallman, you have a lot of the Sandhill areas, the Oglala Grassland areas, and alkaline areas, as they call it down there in Sheridan and Garden County. And also, there was a big concern when this plan was brought forwards of where you see the Dismal River headwaters. And those people in there have actually formed an organizations to hire legal counsel to watch what goes on about that, because that was their concern, was that something could be found in those areas, some kind of a snail or bug or Lord only knows what they might find in there, and actually they couldn't use those lands for some of the things it's been used for, which is mostly cattle and hay, over the years. So when you start involving this Nebraska natural legacy plan in it and start putting that in statutes, I have a real problem with that. I don't

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think that that should be in there as a reference point on what should be done for what you are trying to do. And when you get down here in the Niobrara Council, I think...I'm not that familiar with the Niobrara Council. There are other people who are. But my understanding was that that's more or less a private organization that works through the...with the federal government and those. So there's parts in that that I think we have to be very careful about when we have these conservation plans. Now, there's...as I've seen it, I think these all can be taken care of, or people are doing it nowadays through the Nature Conservancy, because the Nature Conservancy does buy land, keep it for a while, put some type of perpetual easement on it for their wetlands or something like that, and then sell it back to people to be used again. They don't necessarily own a lot of land, but they always own some, and they're usually turning it from time to time and selling it back. So I would like to see something patterned probably a little bit more after what the Nature Conservancy does, or some looking in to see how they operate the thing, rather than as to have the plan such as it is. And I agree with Senator Langemeier that someone could go down along your rivers or something and... [LB488]

SENATOR SCHIMEK: One minute. [LB488]

SENATOR LOUDEN: ...buy a piece of wetland ground and turn it into a hunting preserve and put it into your conservation easement, and probably get half or two-thirds of it paid for it, folks with...that would need those tax credits. So they...this would be quite a benefit to people that they want to just buy something for hunting. With that, I have questions about it. I think it's a good idea. I think things like this need to be done. I don't know if we've got the right tool right here, if it's been thought through well enough. With that, thank you, Madam President. [LB488]

SENATOR SCHIMEK: Thank you, Senator Louden. Senator Pirsch is next, followed by Senators Stuthman, Wallman, Carlson, and others. [LB488]

SENATOR PIRSCH: Thank you, Madam President, members of the body. I was wondering if Senator Wallman would yield for a number of questions? [LB488]

SENATOR SCHIMEK: Senator Wallman, would you yield? [LB488]

SENATOR WALLMAN: Yes, I would. [LB488]

SENATOR PIRSCH: Senator Wallman, is it a correct understanding that the territory, or geographical area that is encompassed in your bill is the same as in the amendment? Is that correct? [LB488]

SENATOR WALLMAN: Yes. But Senator Langemeier suggested an amendment that could be (inaudible). [LB488]

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SENATOR PIRSCH: More limiting? Yeah. Certainly. And I'll just touch on it briefly, what...so that I have a better understanding. As originally drafted in your bill, and in the amendment, what types...or what geographical area would this tax benefit and possibly accrue to? Is it limited? [LB488]

SENATOR WALLMAN: Mainly, water-short areas, at first, or, you know, biologically sensitive areas. [LB488]

SENATOR PIRSCH: And how would that be determined? If I, someone who lives in Omaha, would like to have that, would I be eligible? Or how...what's the triggers that allows for it? Or are there? [LB488]

SENATOR WALLMAN: In the original bill, you would be allowed, if you were in an area like that. But if the amendment of Senator Langemeier, then you wouldn't, at this present time. But it can be amended next year, or see... [LB488]

SENATOR PIRSCH: I see. I see. And is there a...with respect to...and I'm referring to the amendment, and so I'm not sure that it's entirely in accord with...obviously not entirely in accord with your bill, but in many instances it is. Had a question with respect to...on the amendment, page 3, beginning with line 7, which begins with the verbiage "Preclude any pumping of ground water except for (A) domestic purposes, (B) stock well purposes, and (C) restoration of wetlands." Could...was this language in your bill, or was that added by the amendment? [LB488]

SENATOR WALLMAN: Yes. That was in the bill. That was...you know, you could recreate wetlands. [LB488]

SENATOR PIRSCH: Okay. Could you help my understanding with respect to what the words "domestic purposes" means? [LB488]

SENATOR WALLMAN: Domestic purposes would mean, like, if you lived on this area and you had a few cattle or hogs or whatever, and if you made your living on that. It would be for domestic purposes like livestock and people. [LB488]

SENATOR PIRSCH: Is there a limitation in your bill as to--I know that you have to have--the size of the easement? [LB488]

SENATOR WALLMAN: Yes. [LB488]

SENATOR PIRSCH: What would be the maximum size of the easement? [LB488]

SENATOR WALLMAN: \$150,000. So whatever the appraiser figured, how many acres that would be. [LB488]

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SENATOR PIRSCH: I see. And "stock well purposes," what does that encomp...what do those words mean? [LB488]

SENATOR WALLMAN: A stock well is...I come from the farm. That's what you figure your domestic well, what you use, you know, for your house and livestock. And most of them are under 50 gallons a minute. [LB488]

SENATOR PIRSCH: Okay. On some of the bigger stretches of land, do these two exceptions have the potential to... [LB488]

SENATOR SCHIMEK: One minute. [LB488]

SENATOR PIRSCH: ...be large costs, or high values, domestic water, in other words, water usage? [LB488]

SENATOR WALLMAN: Well, as far as large livestock operations, it probably wouldn't be in this area. But we could put a limit on the gallons per minute. You know, most irrigation wells pump 500 to 1,200 gallons a minute, and livestock wells aren't near there, so. [LB488]

SENATOR PIRSCH: Okay. With respect to page 3, and now down in subsection (e), it says that they'll..."The holder of the perpetual conservation easement shall have a monitoring program to ensure..." Does that...is that monitoring program currently in place in the areas, or would these have to be created? [LB488]

SENATOR WALLMAN: That's what the extra employees, they'd be created to see that it's taken care of. [LB488]

SENATOR PIRSCH: Okay. And I do appreciate the answer. And... [LB488]

SENATOR SCHIMEK: Time. [LB488]

SENATOR PIRSCH: Thank you. [LB488]

SENATOR SCHIMEK: Thank you, Senators Pirsch and Wallman. Senator Stuthman, you are recognized to speak. [LB488]

SENATOR STUTHMAN: Thank you, Madam Chair and members of the body. I've been listening very close to the debate this morning, and I have some concerns about what the real intent of this is, and how it's going to affect other property owners in communities where they have this easement that is taken place. And some of this discussion was stated, that the value of that property would be possibly lower when it

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had an easement attached to the property. In that case, if the property value is lower, what happens to...you know, to the county's valuation and the revenue that they need from this...from personal property...from real property, I mean? And I would also like to echo the comments that Senator Fischer made. If you got some property where the value is lowered on it, what happens to the property around it in that community? Those people are going to have to pay a little bit more in taxes, and they're going to have to pay a little bit more in taxes to give someone an income tax credit. Why would we want to do this, penalize people in the areas and in the communities, having them give a little bit more money to run the operations of the counties, of the schools, of the fire districts, of the public libraries, at the expense of someone getting an income tax credit? That is a real concern of mine. I truly think...I have a real concern. I'm for conservation, but I'm not for conservation easements at the expense of other people in the community. I think if we allow this to start--and I've heard the rumor of...well, I guess it wasn't a rumor, it's a fact that there's going to be an amendment drafted that will just designate the one area in the state, that this is the only area that these easements can be acquired for. And...but once we allow something to happen in the state of Nebraska like this, a new tax credit for people, it's going to become all over the state. I see large property owners, large groups of people getting large income tax credits. I don't think this is to help a small family farm operation. That is what I feel is going to happen. There's going to be individuals that own a lot of property, probably have a lot of income generated from other sources than from that property, and are going to benefit from this tax credit at the expense of the other property owners in the community that are trying to make their livelihood on that property. I'll continue to listen to the debate. I have real concerns with this, once we give income tax credits at the expense of other property owners. Thank you. [LB488]

SENATOR SCHIMEK: Thank you, Senator Stuthman. Senator Wallman, you are recognized to speak. [LB488]

SENATOR WALLMAN: Thank you, Madam President. Senator Stuthman, this would not necessarily lower property tax values. In some places, it's upped property tax values, because if you leave your land for conservation and it looks nice and your property is next to that, it has dropped property values in some areas; in some areas in other states it's actually raised property tax values. So that might not be an issue. I, too, have concerns about property taxes, as you well know. And as conservation easements, Senator Langemeier's bill would...amendment, if he so chooses, would probably be unconstitutional because it would just pick one area of the state. So I think we'd have to cover overappropriated areas, and...but I'm not a constitutional lawyer, and my friend Tom White isn't here. But...so it might not...it doesn't necessarily decrease property tax values. And so I think it's a problem we have in overappropriated basins. And there's a book out called Collapse, what happens to underground basins. And whether it be from Texas or parts of Egypt, when we deplete our underground aquifers in sensitive areas,...and I, too, am a farmer. I hate to...and we encouraged irrigation way back when

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Lake McConaughy was put in, and we have canal systems and stuff like that. And property owners coming in to me and say they haven't used them for five, six, seven years. And if they choose to put some of this in a conservation easement,...because they're still paying taxes on this, they're still paying taxes on water they don't even get to use. And so I have sympathy for them, because they were led to believe this water would be there forever, and it may never come back. You know, this might be a 50-year drought, 60-year drought. When Lake McConaughy was built, we had above-normal precipitation in this state and Colorado. And if you look in the Stuhr Museum in Grand Island, you'll see the weather patterns for 100 years. So there's lots of "ifs." We can't control nature, we can't control the rain, we can't control the snow. And as conservation easements, if it's a start, it's...you know, we're supposed to start somewhere to save water. Kansas is watching us, and we shouldn't have a hammer on our head. And maybe we won't have nothing done this year. I don't know. But it's a start for some landowners to keep land naturally pleasing to other people. And it's a physical note, and I hate that myself, as I know. But I would appreciate if you'd support this. And thank you. [LB488]

SENATOR SCHIMEK: Thank you, Senator Wallman. We are continuing debate on AM864. Senator Carlson, you are recognized. [LB488]

SENATOR CARLSON: Madam President and members of the Legislature, I want to follow up on a concern that Senator Louden indicated a few minutes ago, and I'd like to phrase this as a question, and so I would ask Senator Wallman if he would yield. [LB488]

SENATOR SCHIMEK: Senator Wallman, would you yield to a question? [LB488]

SENATOR WALLMAN: Yes, I would. I'm sorry, Tom...Senator...what's the question? [LB488]

SENATOR CARLSON: Okay, Senator Wallman, on the amendment, page 2, in line 5, it mentions that in this qualifying property, it does not require public access. Senator Louden referred to this. But it must have public benefits, and amongst these public benefits are hunting or fishing, ecotourism. And if there's not a public access, how can this be a benefit? I'd like your response to that. [LB488]

SENATOR WALLMAN: I asked that. But the reason we put it that way, because if it's your land and you get this, and you still could have control. And some people don't like hunters, you know. They would like to see the...some people are against hunting, and they might allow fishing, if you are along a stream. So you could limit the access to fishing if you don't like hunting. So I still like that, to have the private landowner have his choice, and even though the state is paying some money. And...but CRP is the same way. You know, you don't have to let people hunt on your land. [LB488]

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SENATOR CARLSON: Okay. If that's the case then, define for me where the public benefit is. If it's my piece of property and I don't allow hunting and I don't allow fishing and I don't allow ecotourism, because of public access I don't allow it, where is the public benefit? [LB488]

SENATOR WALLMAN: Well, the public benefit is your family. And also, some people will allow hunting and fishing, you know. And maybe all of them will, I don't know. I allow hunting and fishing on my property, and...but some people won't. So I hate to take away all individual rights. [LB488]

SENATOR CARLSON: Okay. Thank you, Senator Wallman. I am for private rights, as well, but I'm struggling here with the idea of public benefit but not necessarily public access. Thank you. [LB488]

SENATOR SCHIMEK: Thank you, Senator Carlson. Senator Christensen, you are recognized to speak. [LB488]

SENATOR CHRISTENSEN: Thank you, Madam President. I rise here just to bring up a few of the different issues that I see on this bill. I guess some of these have been said before, but I do believe this probably would help the wealthy more than it's going to help the small farmer. But more to it, you look at what the conservation easements do. There can be a couple of benefits and costs here. It's going to...any time you put in grass, if that happens to be the approach taken, that affects stream flow. I realize in this it can be left as dryland and farmed. But if they take that route, that's a detriment. It cleans water, but it also reduces flows. Another thing it can do that's a benefit, if you decrease the pumping, you know, and move it to dryland, that's a benefit. But I looked over this bill and I go, you know, \$5 million cap, and with the limited resources we have, are we better off to put it into these easements as a tax credit, or apply them to a better solution for the different watersheds that have the problems? And I guess I look at, you know, I'm from the Republican district, I know the Platte has got an issue coming, too, that until we get unlimited funds, we might be better off putting them towards better solutions. On the property tax value, if any of the irrigated land is reduced to dryland, then you have a decrease in property values. Also, you may have, as been mentioned, if there's an easement attached, I've also been told that can hurt land values. It may or may not. You know, you look at if the person has got it for hunting, it goes back to hunting, it's not going to hurt the value. But if it's an easement that somebody would like to develop and they can't, it does affect. You know, that can have pros and cons, both sides. And just leave you with where I'm at on it. I'm going to oppose this, because I think we have a better way to reach the needs of the Republican and the Platte as we go forth with solutions, meeting the cooperative agreement, and things this way. Thank you. [LB488]

SENATOR SCHIMEK: Thank you, Senator Christensen. The Chair would recognize

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Senator Preister to speak. [LB488]

SENATOR PREISTER: Thank you, Honorable President, friends all. It will probably not surprise members of the body that I rise in support of AM864 to AM825, and also to the underlying committee amendment, and also the Wallman bill itself. And Senator Wallman, thank you, I do appreciate you championing this issue and this cause. We have largely spent our time talking economics and talking about property values and dollars. And that's generally the way we view the world. We don't often view the world in terms of aesthetics, in terms of taking care of the resources that we have been so fortunately blessed with. We are stewards of these resources. And yes, we frequently term them economically, but there's more to it than just economics, although I think this also makes good economics, and I will address that, as I have time, too. But preservation is preservation, and I think we have a responsibility to future generations in some of these environmentally sensitive, unique areas, to attempt to preserve some of it for posterity. We have been blessed with these resources, but that doesn't give us the entitlement to use them up, to essentially destroy them in any way that we choose, just because we have a title to the land or to the property. I think we have some responsibility to future generations. Once we go in and destroy ecosystems, those ecosystems can be attempted to be reinstated, but we never put them back the way they were originally created. And most of us in here believe in a higher power that we usually term God, and we believe that that creation was done in a masterful way, and that we should honor and respect it. If we do that, this is an opportunity to help to preserve, to help to keep it in a fashion, in some very limited areas--and many people are not even going to take advantage of this--but in some areas where people believe in it, even if it's only preserved for that family, as Senator Langemeier said, even if it's their little preserve, it's still preserved. Preservation is preservation, and the uniqueness is still there. And maybe by not bringing a lot of people into it, it's better protected. Other areas may be allowed for hunting. Maybe some areas are kept from hunting so that the species can develop and so that they can be available in neighboring areas. The process is one that, with good stewardship and wise management, through Game and Parks, through Department of Environmental Quality, through other agencies working with the local landowner, it can be done in a way that the land can still be used in some fashions, and yet the easement put on the property and some of those areas preserved. And some folks would think, well, preserving bugs, what do we want to preserve bugs for? Well, let's look at the vanishing honeybee and the problems we're having in pollinations right now because a little bug is being impacted by some processes that have contributed to its decline. And when you can't get pollination, that little bug becomes extremely important. We shouldn't put other creatures automatically ahead of human life. Certainly, we have a priority system. But all life forms interact in a very dynamic fashion. That's the way life was created. We don't always understand that, but sometimes we understand it when it's too late and when it's gone. [LB488]

SENATOR SCHIMEK: One minute. [LB488]

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SENATOR PREISTER: This is an opportunity for some of that conservation. We don't know if it will affect property values, and in some cases it's going to, as Senator Wallman said, enhance those values. We establish policies for economic development, rural economic development. We give funds to provide those incentives, in the best interest of all of us, so that it does enhance development in those areas. For the good of the many, we make those contributions. This can have that same impact and same effect. We make a small contribution, and that can benefit many of us. I would think that Senator Wallman would be more than happy to work with anyone who has concerns, between General and Select File, if we could just advance this to Select File. There's not problems that can't be worked out. I would like to see this statewide, rather than just limited for water issues, because we have other issues besides just water,... [LB488]

SENATOR SCHIMEK: Time. [LB488]

SENATOR PREISTER: ...and the water issues are also statewide. Thank you. [LB488]

SENATOR SCHIMEK: Thank you, Senator Preister. Senator Hansen, you are recognized to speak. [LB488]

SENATOR HANSEN: Thank you, Madam President, members of the body. I, too, also thank Senator Wallman for bringing this bill up to us today, but I think it has some genuine concerns. The idea of going to the state funds for this type of conservation, I don't think is a good idea. And I'll try to explain that to you. It needs to be statewide, for one thing. And Senator Carlson has already brought up the fact that you can deny access to that. That really questions whether it's actually benefitting the state. I think that has some questions in it, too. Senator Langemeier has brought up the idea of, maybe we should look at limiting this to one river system. Well, if we do that, then the people in York, people in Madison County are going to be paying for a conservation program that is not in their district and they have no...you know, they're not going to benefit from it. They have no consequence in the action. If we allow \$5 million, \$7 million, whatever the dollars are, I don't see how this is ever going to be revenue neutral, especially when you are taking property taxes...lowering property taxes on some of this conservation land. I'm a conservationist also, and I...we've done this on our ranch without any property tax lowering or anything. I mean, we've planted trees, we've done water projects, we built a lake, we stocked it with fish. We've done several of these things, at our own expense. And people will continue to do that. I think rural people in general are the original conservationists, anyway. But I still have a problem with setting this up for one area of the state, as Senator Langemeier...and he hasn't introduced the amendment, so I guess I was just talking to the idea. Whatever we do in the Republican River Valley, whatever money we decide to spend or not to spend, is going to be a model for the Platte River. The Platte River system is much bigger. It's much...certainly not more important, but it's much more economically vital to the state, because it's

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bigger and it's recharged from a much larger aquifer. Whatever they do in the Republican River is going to affect the Platte River system. The model is going to be there, and we need to be careful of what we do. If you do tax credits for river frontage, I think it's going to kill what Senator Carlson wants to do with his vegetation bill. If you give tax credits to someone, that will lower the value of that land, and the people will come in there and that will be a hunting preserve from one end of the Platte to the other. Hunting is important, and I agree. Conservation is important, I will agree to that, too. But we can't have all of that at the same time. If we're going to do some vegetation control, that's going to be antihunting to some extent. So we need to be careful with this. Senator Wallman, I can't support your amendment or your bill, but I do support conservation done on a private basis. Thank you, Madam President. [LB488]

SENATOR SCHIMEK: Thank you, Senator Hansen. (Visitors introduced.) Senator Burling, you are recognized to speak. [LB488]

SENATOR BURLING: Question. [LB488]

SENATOR SCHIMEK: The question has been called. Do I see five hands? I see five hands. The question is, shall debate cease? All those in favor vote aye; all opposed vote nay. Have you all voted who wish to vote? Record, Mr. Clerk. [LB488]

CLERK: 20 ayes, 13 nays, to cease debate. [LB488]

SENATOR SCHIMEK: Debate does not cease. We continue with the speaking order. Senator Langemeier, you are next. [LB488]

SENATOR LANGEMEIER: Thank you, Madam President and members of the body. And I, too, want to...I want to agree with Senator Hansen wholeheartedly that it's crucial that whatever we do in the Republican River Basin is going to set policy statewide. It's going to affect how we treat the Platte River outside of Omaha, the Elkhorn, the Loup, statewide. There's no argument about that, and I think that's crucial. I do want to rise in opposition to AM864. This increases the amount of tax credit that's available. I don't think it's necessary. And with that, I would like to yield my time to Senator Wallman, who wanted to speak one more time on this amendment. And with that, I would yield my time to Senator Wallman. [LB488]

SENATOR SCHIMEK: Thank you, Senator. Senator Wallman, you are recognized. [LB488]

SENATOR WALLMAN: Thank you, Senator Langemeier. In regards to property tax and large property owners, \$150,000,...when somebody comes into my office and 4,000 acres, and one guy has 90 pivots, \$150,000 is not any money at all. So I don't think it really benefits large property owners. And the property tax issue...so we don't really

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know where that property tax issue is going. If you enhance your land and improve your land, it will probably go up. And if you live next to a development area, your land is going to go up. And your income might not go up, but they put all this in a pot in the county assessor's office, and even though you can have ag land values, it still goes up. Developers buy half sections at a crack, and they pay \$20,000-\$30,000 an acre. And if you live in that county, I guarantee you, your property taxes are going to go up. So I don't think we can talk about property taxes here too much. I don't think it's going to affect the state all that great. And as far as tax credits, you know, our university system, we've encouraged irrigation for years, and we put some of these guys in a position where they're not getting the water they should, because they probably got bad advice. You know, sometimes we get bad advice and we actually listen. And ag...you know, farmers are no different than anybody else. And so that's where I'm at on this bill, and I would hope you could support this. And that's why we lowered the amount from \$250,000 to \$150,000, so I thought it would not affect the large people so much. So, thank you. [LB488]

SENATOR SCHIMEK: Thank you, Senator Wallman. Thank you, Senator Langemeier. Senator Karpisek, you are next to speak, followed by Senator Carlson. [LB488]

SENATOR KARPISEK: Thank you, Madam President, members of the body. Could I ask Senator Wallman a question? [LB488]

SENATOR SCHIMEK: Yes. Senator Wallman, would you yield? [LB488]

SENATOR WALLMAN: Yes, you can. [LB488]

SENATOR KARPISEK: Thank you. Senator Wallman, if this land is given over to the charity, is there still property tax paid on this land? [LB488]

SENATOR WALLMAN: Yes, there is. [LB488]

SENATOR KARPISEK: And that is paid by the person who is donating it? [LB488]

SENATOR WALLMAN: Yeah. [LB488]

SENATOR KARPISEK: Okay. So to me, the property tax issue that we're talking about really isn't there, is it? [LB488]

SENATOR WALLMAN: It's hard telling where that's at. You know, actually, your land might go higher, or it might go down. [LB488]

SENATOR KARPISEK: It would just be what it would affect the surrounding land. [LB488]

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SENATOR WALLMAN: Yes. [LB488]

SENATOR KARPISEK: But this is not a way to get out of paying your property taxes. [LB488]

SENATOR WALLMAN: No, it's not. [LB488]

SENATOR KARPISEK: Okay. Thank you, Senator Wallman. Thank you, Madam President. [LB488]

SENATOR SCHIMEK: Thank you, Senators Karpisek and Wallman. Senator Carlson, you are recognized to speak. [LB488]

SENATOR CARLSON: Madam President, members of the Legislature, I simply want to make a statement a little bit in opposition to my good friend Senator Hansen, in referring to vegetation control. And this is going to be on the floor next week, and I want to say very little about it, but I don't want any misgivings between now and next week. I am very adamant that my vegetation bill will help hunting and fishing and not hinder it. And I want you to keep that in mind. I ask you to do that, as we approach next week. Thank you. [LB488]

SENATOR SCHIMEK: Thank you, Senator Carlson. Senator Erdman, your light is next. Senator Erdman waives. Seeing no further lights, Senator Wallman, you are recognized to close on AM864. Senator Wallman waives closing on AM864. The question is the adoption of AM864 to the committee amendment, AM825. All in favor vote aye; all opposed vote nay. Have you all voted? [LB488]

SENATOR WALLMAN: Call of the house. [LB488]

SENATOR SCHIMEK: Senator Wallman, did you wish...? [LB488]

SENATOR WALLMAN: Could I have a call of the house? [LB488]

SENATOR SCHIMEK: There has been a request for a call of the house. All in favor indicate by voting aye; all opposed vote nay. Record, Mr. Clerk. [LB488]

CLERK: 29 ayes, 0 nays, Madam President, to place the house under call. [LB488]

SENATOR SCHIMEK: The house is under call. Would all senators please return to the Chamber and record your presence. The house is under call. The house is under call. Would all unauthorized persons please leave the floor, and all senators please return to the Chambers. Senators Johnson, Dubas, Kruse, Wightman, Mines, and Ashford,

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please return to the Chamber. Everyone is present. Senator Wallman, how did you wish to proceed? [LB488]

SENATOR WALLMAN: Reverse order, please. [LB488]

SENATOR SCHIMEK: Roll call vote? [LB488]

SENATOR WALLMAN: Roll call vote. [LB488]

SENATOR SCHIMEK: Roll call vote, reverse order. Mr. Clerk. [LB488]

CLERK: (Roll call vote taken, Legislative Journal page 1056.) 17 ayes, 13 nays, Mr. President,...or, excuse me, Madam President, on the amendment. [LB488]

SENATOR SCHIMEK: Thank you, "Madam" Clerk. (Laughter) The amendment fails. Mr. Clerk, do you have another amendment? [LB488]

CLERK: I do. [LB488]

SENATOR SCHIMEK: Oh, the call is raised. [LB488]

CLERK: Senator Langemeier would move to amend with AM924. (Legislative Journal page 1057.) [LB488]

SENATOR SCHIMEK: Senator Langemeier, you are recognized to open on your amendment. [LB488]

SENATOR LANGEMEIER: Thank you, Madam President. And when I had,...this is what Senator Wallman and I had talked about a little bit earlier, is trying to narrow the scope of the use. And I brought up narrowing this down to the Republican River Basin, and that's not really what it does. What it does is, on page 2 it strikes the section, lines 15 down to 26, and would restrict this use in areas designated by the Department of Natural Resources as over or fully appropriated. So this would actually affect some of the Platte River in the western end of the state, as well as the Republican River Basin. I think there's some constitutional issues to restrict it only to the Republican; but it does...it would allow us to restrict it to fully and overappropriated areas. And with that, I would listen to the discussion and see what people think of that idea. Judged on the last vote, maybe they don't like the bill at all, and maybe this doesn't help, or does. We'll see how it goes, whether we take this to a vote at the end. So I'm looking for your input. Thank you. [LB488]

SENATOR SCHIMEK: Thank you, Senator Langemeier. Before we proceed, the Speaker would like to have a minute. Senator Flood, you are recognized. [LB488]

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SPEAKER FLOOD: Thank you, Madam President and members. Briefly, we're going to be handing out at this time a memo that outlines the process for a proposed 2007 consent calendar. Essentially, this is a very similar procedure to what we've seen in the past. I'm not going to explain the memo, but I would ask especially the new senators that you read the same and ask any questions so that you better understand it. The one major change we're going to have this year is that to get a bill on consent calendar you will not only have to follow the rules, but you will have to have the committee chair of the committee that has the jurisdiction over the issue, and the bill is located in, write the recommendation letter. These recommendations are due no later than a week from tomorrow, April 11, 2007. So please, if you have a bill that you think should be on consent calendar, get moving on it, talk to the chairman/chairwoman, and get that in process. Secondly, tomorrow, Wednesday, we will recess around noon, until 2:00, at which time we will reconvene. From noon to 2:00, the Natural Resources Committee will be having and holding a hearing on its water proposal in the Capitol. I've agreed to give an additional half-hour to make it easier for them to accept testimony, to make things happen. And on Thursday, as we approach the Easter holiday, please plan on us adjourning no later than 1:00 p.m., so that you can get an early start on your holiday weekend, given the fact we've been very productive the last couple of weeks. That's the quick update. You'll be receiving this memo on consent calendar. See the chairperson of the committee that the bill is located in. And the deadline is April 11. Thank you, Madam President.

SENATOR SCHIMEK: Thank you, Mr. Speaker. (Visitors introduced.) Senator Wallman, you are recognized to speak on AM924. [LB488]

SENATOR WALLMAN: Thank you, Madam President. Obviously, this is not the solution I wanted, but I will support this amendment. And I thank Senator Langemeier for bringing it forth, and I would appreciate the support. Thank you, Madam President. [LB488]

SENATOR SCHIMEK: Thank you, Senator Wallman. Senator Burling, you are recognized to speak. [LB488]

SENATOR BURLING: Thank you, Madam President. Would Senator Langemeier answer a question? [LB488]

SENATOR SCHIMEK: Senator Langemeier, would you yield to a question? [LB488]

SENATOR LANGEMEIER: Yes. [LB488]

SENATOR BURLING: Senator Langemeier, fully or overappropriated areas, is that as of a date certain, or could more areas come on line and then qualify for this exemption?

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[LB488]

SENATOR LANGEMEIER: That portion is in the committee bill, as well as the committee amendment, and it is not date certain. As more areas become fully appropriated or overappropriated, that area could grow naturally. [LB488]

SENATOR BURLING: Okay. Thank you very much. Thank you, Madam President. [LB488]

SENATOR SCHIMEK: Thank you, Senators Burling and Langemeier. Senator Janssen, your light is next. [LB488]

SENATOR JANSSEN: Thank you, Senator Schimek, members of the Legislature. We talk about this not being constitutional and it could create a problem. I don't...I can't see that happening, because we treat different areas differently throughout the state, the way it is. And one of the areas that we're talking about now in that Republican River Valley or whatever you call it, and that would...that is an area that the other states are...Kansas especially, is looking at. And there's no mention of the Niobrara River, or the Elkhorn River, or any of the Logan Creek, or any of those areas. So we're treating it differently there. And I believe that there would not be a constitutional problem with this, in my humble opinion. Thank you. [LB488]

SENATOR SCHIMEK: Thank you, Senator Janssen. We are debating AM924. Senator Friend, your light is next. [LB488]

SENATOR FRIEND: Thank you, Madam President. I was told that I needed to get up and speak. Where should I start? You know, oddly enough, I have read the amendment, I have read the committee amendments, and I have read the bill, so I could probably speak to all three of the above--AM924, AM825, and LB488. But I heard something this morning that was rather disturbing. Once again, after four years of working with him, Senator Chambers tramps...brings out this Erwin Rommel banter. Erwin Rommel, ooh, how brave and great he was, and how smart he was. Members of the Legislature, we're going to go down this road, not right now, but we're going to go down this road...well, maybe we are. (Laugh) Maybe we are. We're going to go down this road later, when things really start bogging down, the Erwin Rommel/George S. Patton debate. Some of you have missed it. Some of you have...Senator Synowiecki, you have heard it, I can tell by the pained look on your face. But I digress. Erwin Rommel was a hack. (Laughter) Now I digress. I have a little bit of trouble...and Senator Janssen just spoke a little bit to this amendment. I have a little bit of trouble parsing out these type of political ideas, or these type of public policy ideas. Senator Janssen is absolutely right, we do this all over the state. That doesn't necessarily mean that it's a great idea. I'm a little bit concerned about Senator Langemeier's amendment. (Laugh) You told me to speak, and I'm just speaking. He says he's done. I'm a little bit concerned about it. But the

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underlying Revenue Committee amendments and the bill, I have concern with, as well. Look, I brought plenty of things into this Legislature, and believed in some of the income tax credits or the benefits that we could try to promote to certain entities and certain folks in the state that would drive behavior. An example of that is the idea that I promoted in regard to tax credits for citizens who send their children to privately funded educational institutions in the state. So I'm not trying to be hypocritical at all here. I think that things like this and things that Senator Wallman is approaching with this legislation are valid discussion points. But that doesn't mean that we...I think that there's some trepidation...I mean, we've gone through this for an hour and a half or two hours. That needs to happen, so I think it's totally relevant and totally pertinent that we do things like this and spend the time on public policy decisions like this,... [LB488]

SENATOR SCHIMEK: One minute. [LB488]

SENATOR FRIEND: ...because we're changing the way we do business. Every time we see an initiative like this,...not to shoot off the subject matter, I saw some tax increment financing numbers this morning. Talk about the way we change...talk about changing the way we do business. Tax increment financing was not meant to be an economic development tool. That's what we're using it for. Those type of discussions we're going to have out here. This is not that far off the beam from what I'm talking about in regard to tax increment financing. You start making decisions that remove people from the tax rolls,... [LB488]

SENATOR SCHIMEK: Time. [LB488]

SENATOR FRIEND: Sorry. Thank you, Mister...thank you, Madam President. [LB488]

SENATOR SCHIMEK: (Laugh) Thank you, Senator Friend. Seeing no further lights, Senator Langemeier, you are...oops, Senator Chambers, you are recognized to speak. [LB488]

SENATOR CHAMBERS: Madam President, members of the Legislature, why would I bring up Erwin Rommel, the Desert Fox? Let me read a little something from this book. And the book was called Knight's Cross: A Life of Field Marshal Erwin Rommel, by David Fraser, F-r-a-z-e-r (sic). "Winston Churchill said in 1942, what else matters but beating him? In any numbering of the captains of history, the name of Erwin Rommel must stand in the first rank. He was the outstanding Axis field commander of the second world war, and was respected, even admired, as well as feared, by his opponents. Here, it seemed to the Allies, was a supremely professional soldier--chivalrous, decent, untainted by the crimes of the Nazi regime, carrying out his duty with often dazzling success. Rommel believed that war is a reckless, untidy business, and that the habits of mind of a methodical manager are alien to what is required. Instead, Rommel's hallmarks were boldness of maneuver, ferocity in attack, and tenacity in pursuit. This is

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first and foremost the biography of a soldier, but Rommel reached a position in which he almost inevitably became embroiled in politics. When he realized that the 1944 Allied invasion was going to succeed, he realized also that the only way to save Germany was somehow to negotiate a peace settlement." That's what Senator Friend needs to learn how to do with me. "He tried to prevent...to present Hitler, to whom he had been devoted, and who had shown him a particular respect and affection, with military realities. He was branded a defeatist, and ignored. Rommel was not a flawless hero, but he had that instinct for battle and leadership which sets him apart from his contemporaries, and places him among the great commanders." That's what was said of Erwin Rommel. I respect him tremendously, and I will tell you why. He had what was called the Afrika Korps, A-f-r-i-k-a, Korps, K-o-r-p-s. They had captured a fort, and there were large numbers, to my shock and amazement, of black soldiers in the South African Army, as it is shocking and amazing to Africans that there were many black soldiers in the U.S. Army, which segregated them in the army, discriminated against them in the army, and told the French, don't treat them with respect because that's not how we treat them in America. When the French wanted to award black soldiers the Croix de guerre, the American general said, don't grant it because they will forget their place, and we do not treat them like that in our country. The South Africans,... [LB488]

SENATOR SCHIMEK: One minute. [LB488]

SENATOR CHAMBERS: ...when they were captured, had asked that the considerable number of black prisoners should be segregated from the whites, a request Rommel turned down flatly, saying that the blacks were South African soldiers, had fought alongside whites, worn the same uniform, and were all captives together, and despite the fact that the Americans segregate these men, that will not be done when soldiers are captured by Erwin Rommel. They're all soldiers; they'll all be treated like soldiers. If Rommel were a Nazi, I would be saying, heil Hitler. But he wasn't a Nazi, so I say, hail Rommel. Thank you, Madam President. [LB488]

SENATOR SCHIMEK: Thank you, Senator Chambers. Seeing no further lights, Senator Langemeier, you are recognized to close on AM924. [LB488]

SENATOR LANGEMEIER: Madam President, members of the body, I thank you for your great attention to this matter. This amendment would limit this use into overappropriated and fully appropriated basins in the state of Nebraska. And Senator Burling has very eloquently stated that that can expand over time, due to the continuous adding additional acres into that fully appropriated area across the state. And with that, I'd urge your adoption of AM924. Thank you. [LB488]

SENATOR SCHIMEK: Thank you, Senator Langemeier. You've heard the closing on AM924. The question is, shall the amendment be adopted to the committee amendment? All in favor vote aye; all opposed vote nay. Have you all voted? Have all

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who wish to vote, voted? Record, Mr. Clerk. [LB488]

CLERK: 19 ayes, 3 nays, Madam President, on the amendment. [LB488]

SENATOR SCHIMEK: The amendment is not adopted. We are back to the committee amendments. Is there further discussion on the committee amendment? Seeing none, Senator Janssen, to close on the committee amendment. [LB488]

SENATOR JANSSEN: Thank you, Senator Schimek. We've had good discussion on the committee amendments, and I hope you will support the committee amendments. Thank you. [LB488]

SENATOR SCHIMEK: You've heard the closing on the committee amendment. The question is the adoption of the committee amendment. All in favor vote aye; all opposed vote nay. Senator Wallman, did you wish to be recognized? [LB488]

SENATOR WALLMAN: Madam President, a call of the house. [LB488]

SENATOR SCHIMEK: There's been a request for a call of the house. All of those in favor vote aye; all opposed vote nay. The house...record, Mr. Clerk. [LB488]

CLERK: 36 ayes, 0 nays, Madam President, to place the house under call. [LB488]

SENATOR SCHIMEK: Thank you. The house is under call. Will all members please return to the Chamber and record your presence. Would unauthorized personnel please leave the floor. The house is under call. Will Senators Heidemann, Nelson, Pankonin, and Avery, please return to the Chamber and record their presence. Everybody is here. Mr. Clerk. Senator Wallman, did you wish to be recognized? [LB488]

SENATOR WALLMAN: Machine vote. [LB488]

SENATOR SCHIMEK: Machine...call-in votes? [LB488]

SENATOR WALLMAN: Yeah. [LB488]

SENATOR SCHIMEK: Okay. There has been a request for call-in votes. [LB488]

CLERK: Senator Rogert voting yes, Senator Nantkes voting yes, Senator Erdman voting...changing from yes to no, Senator Raikes voting yes, Senator Kopplin voting yes. [LB488]

SENATOR SCHIMEK: Record, Mr. Clerk. [LB488]

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CLERK: 25 ayes, 6 nays, Madam President, on adoption of committee amendments. [LB488]

SENATOR SCHIMEK: The amendment is adopted. We now go to debate on LB488. Senator Langemeier, you are recognized to speak. Raise the call, please. [LB488]

SENATOR LANGEMEIER: Thank you, Madam President. I wanted to explain my vote a little bit on that. The committee amendment needed to be adopted to make a very, very...in my opinion, that green copy, a very bad bill, forward. I will not continue to support LB488, but I thought it was important that we vote to get the committee amendments adopted to this bill. And with that, I'd return my time. Thank you. [LB488]

SENATOR SCHIMEK: Thank you, Senator Langemeier. Are there others wishing to speak? Senator Chambers, you are recognized. [LB488]

SENATOR CHAMBERS: Madam President, members of the Legislature, I have listened to this debate and have not participated, and had not Senator Friend misrepresented a historical personage, I wouldn't have said anything. But my position on the bill is similar to Senator Langemeier's. It is similar to dropping a pebble into a pond, and the ripples spread outward, and you don't know for sure how far they're going to go or what they will touch as they move away from the point where the pebble dropped. I'm not convinced that all of the ramifications of this bill are clear. I had voted earlier to support an amendment which turned out not to be adopted. Senator Langemeier is correct that the committee amendment does do something to make a bad bill--with all due respect to Senator Wallman--better. However, it does not give me the degree of certitude that I need to support the bill. So at this point, I am joining Senator Langemeier in abandoning ship. Thank you, Madam President. [LB488]

SENATOR SCHIMEK: Thank you, Senator Chambers. Senator Fischer, your light is next. [LB488]

SENATOR FISCHER: Thank you, Madam President and members. I hate to say this, but I agree with Senator Chambers. (Laughter) As you know, I've been opposed to this bill. I think it's a policy shift that would be of major proportions in the state, when we start giving income tax credits for conservation easements. And I have concerns with that, among many other things that you've heard about in the discussion on this debate. I hope you will join me in opposing the bill. Thank you. [LB488]

SENATOR SCHIMEK: Thank you, Senator Fischer. Seeing no further lights,...Mr. Clerk. [LB488]

ASSISTANT CLERK: Madam President, I do have a motion. Senator Langemeier would move to lay the bill...to indefinitely postpone the bill. That would... [LB488]

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SENATOR SCHIMEK: Senator Wallman, the motion would lay the bill over unless you wish to take it up. [LB488]

SENATOR WALLMAN: Yes. [LB488]

SENATOR SCHIMEK: Yes, you wish to take it up? [LB488]

SENATOR WALLMAN: Lay it over. [LB488]

SENATOR SCHIMEK: Yes, lay it over. [LB488]

SENATOR WALLMAN: Yes. [LB488]

SENATOR SCHIMEK: Thank you, Senator Wallman. The bill is laid over. [LB488]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR59, LR60, LR61, LR62, and LR63. Mr. Clerk, items for the record, motions? [LR59 LR60 LR61 LR62 LR63]

CLERK: Mr. President, two things, if I may. Senator Preister has an amendment to LB701 to print. An announcement: the Education Committee will meet in Executive Session, Room 2102, upon recess today; Education Committee, Room 2102. (Legislative Journal page 1058.) [LB701]

And a priority motion, Mr. President. Senator Flood would move to recess until 1:30 p.m.

SPEAKER FLOOD: An item for the record before we vote on that. We will be resuming with LB564 at 1:30. The question before the body is, should the Legislature recess until 1:30 p.m. this afternoon? All those in favor say aye. All those opposed say nay. The ayes have it. We are adjourned.

RECESS

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber, for the afternoon session is about to reconvene. Senators, please record your presence. Record, Mr. Clerk.

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

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Do you have any items for the record?

ASSISTANT CLERK: Mr. President, I have no items at this time.

SENATOR LANGEMEIER: Thank you. We will now proceed to the first item on this afternoon's agenda, LB564. [LB564]

ASSISTANT CLERK: Mr. President, LB564 was introduced by Senator Friend. (Read title.) The bill was read the first time on January 17, referred to the Judiciary Committee. That committee reports the bill to General File with committee amendments. (AM879, Legislative Journal page 1015.) [LB564]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Friend, you are recognized to open on LB564. [LB564]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. I wanted to preface my remarks just for a second to thank Senator Aguilar for prioritizing this legislation. At the conclusion of my opening I should have some time, and I'd like to yield the balance of that time to Senator Aguilar if he'd like to comment on the legislation, as well; give him a chance up front. The committee hearing for LB564 held back in February--February 14, 2007, to be exact. There were 18 proponents testified at the hearing, two opponents, one neutral testifier. The bill was advanced from the Judiciary Committee with an amendment on a vote of 6-1, with one member absent. The amendment is key and we'll be getting to that amendment in a moment. In September of 2006, the Nebraska Supreme Court, in the case of Bronsen v. Dawes County, expressly overruled more than a quarter century of precedent, or at least perceived precedent, and declared that the Recreational Liability Act did not provide to governmental entities the limited immunity that it provided to private landowners who made their land available free of charge to the public for recreational purposes. As a result, the state and its political subdivisions are now liable for damages for accidents occurring on public lands caused by simple negligence. Believing that they were protected by the Recreational Liability Act, the state and many of its political subdivisions have opened up thousands of acres of public land for hunting, fishing, swimming, hiking, biking, and numerous other types of recreational leisure activities. Now they find themselves open to what some would consider significant legal and financial vulnerability, if you will. Many feel that if action is not taken to change the law, the state and its political subdivisions will be forced in a lot of ways to close or severely limit the access to their lands, or severely limit the scope and the range of activities permitted on those public lands. The purpose of this legislation is to return to the law the status as it was previously understood by many and as many relied upon it to restore

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some sort of limited immunity standard. Now remember, I talked about the amendment and I talked about the fact that it's important. The bill itself, LB564, changes the definition of "owner" under the Recreational Liability Act to include the state of Nebraska, a state agency, and any political subdivision of the state, bringing them clearly under the terms of the act. A lot of this is done for, as some have pointed out, for insurance reasons. Putting these subdivisions in the state into catastrophic categories where it would just be, as we had mentioned earlier or as I had mentioned earlier, creates some sort of financial vulnerability. I brought this legislation as framework; that was my thought process--or as a starting point, I guess. The Judiciary Committee, Chairman Ashford, particularly it's my understanding Senator Steve Lathrop, their experience redefined this discussion. Their experience dealing with tort law redefined this discussion, and for that I'm grateful because I don't have that experience. I trust, I hope, that you'll find that the Judiciary Committee work and an amendment that has been created an excellent balance to the framework that I originally laid out here. And Senator Louden was part of that discussion, as well, with a different piece of legislation. In closing, I guess...not in closing...I do want to yield some time to Senator Aguilar, if he would like. I want to thank him for designating this as a personal priority, and again, not to beat a drum too hard, but the Judiciary Committee for putting the work in on this and getting this out to General File. I think everybody realized the importance and they dealt with it appropriately. I would ask for the eventual advancement of LB564 with the committee amendments because of the balance that I talked about that the committee amendments provide. With that, I would like to yield the remainder of my time to Senator Aguilar. Thank you, Mr. President. [LB564]

SENATOR LANGEMEIER: Senator Aguilar, 4, 20. [LB564]

SENATOR AGUILAR: Thank you, Mr. President and members. Thank you, Senator Friend, especially. I also want to thank the Judiciary Committee, along with Senators Ashford, Lathrop, and all the other members that worked diligently on this to get it into the shape it is in now. Now, Senator Friend did a great deal of discussion about what the bill does, and Senator Ashford and Lathrop will go into that in more detail later, as attorneys tend to do. What I want to talk about a little bit is why I prioritized the bill. It's been on my radar screen since the first of the interim last year when the discussion was going on across the state with skate parks closing. We even heard a situation where people were in the process of building bike/hike trails, and they just stopped construction on it, worried about liability. Now, this bill, let me be very clear, doesn't alleviate any type of negligent liability for anybody. That's not what it's about. It's just strictly the more frivolous lawsuits are somebody that gets hurt skateboarding because they fell down. You know, the city shouldn't be liable if there's no negligence there. One of the things that we feel very strongly about is keeping these parks open. I'll give you an example. The city of Grand Island has invested a great deal of time and money into building their skate park, but let me tell you what it's done for the city, what it's done for the kids in our city. It's got them off the streets. It's got them off the sidewalks

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downtown. It's got them off the steps of buildings in a much safer environment than they could have anywhere else in the city. That's what it's done and that's what it will do in other communities as they progress forward on this, if the body chooses to advance this legislation. I think it's good legislation. I support the committee amendments, as well as the bill, and I encourage the rest of the body to do the same. Thank you. [LB564]

SENATOR LANGEMEIER: Thank you, Senator Aguilar. As the Clerk has stated, there are amendments from the Judiciary Committee. Senator Ashford, as Chair of the Judiciary Committee, you are recognized to open on the committee amendments. [LB564]

SENATOR ASHFORD: Thank you, Mr. President and members, and I'm going to defer to my friend, the Vice Chair, Senator Lathrop, in just a moment to go over this amendment, and I do want to second the comments that were made regarding Senator Lathrop's participation. He is a person who has many years of experience in tort law. This is an extremely technical area of the law. We are changing actually some very fundamental and altering and modifying some very fundamental rules regarding tort liability and injury resulting from negligence, so I'm glad and...that Senator Lathrop was able to spend the time that he did. I appreciate the efforts of Senator Aguilar, Senator Friend, and Senator Loudon and their staffs in working to get this bill in shape. This is a balancing act. Cities and other political subdivisions across the state have elected to provide a variety of different kinds of recreational activities, and it's...this issue has come before us because the Supreme Court, in a decision last year, called into question some of the traditional assumed view of how liability is assessed against political subdivisions. And as a result, there was a considerable amount of activity regarding these kinds of activities, and I am glad that we have put together what I believe is a true compromise. It does not, as Senator Aguilar suggests, alleviate culpability or liability in all tort cases. It does reduce it and restrict it in some cases, but keeps it intact in others. And with that, Mr. President, I'm going to, if I could, give the rest of my time to Senator Lathrop to describe the amendment. [LB564]

SENATOR LANGEMEIER: Senator Lathrop, 8, 30. [LB564]

SENATOR LATHROP: Thank you very much, Mr. President, Senator Ashford. Colleagues, you've already heard the explanation for why this is necessary. Just as a little bit of background, the Bronsen v. Dawes County case, the Supreme Court concluded, to the surprise of political subdivisions across the state, that the Recreational Liability Act does not apply. I think, frankly, as a lawyer, I think the decision of the Supreme Court was probably well-reasoned. The Recreational Liability Act originally was intended to open up farm and ranchland to hunters and fishermen and the like. In any case, the consequence of the decision from the Supreme Court was that many, all political subdivisions in the state of Nebraska, began...expressed concern about liability for recreational activities in the parks across the state and in the political

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subdivisions. Senator Friend introduced LB564. Senator Louden had a similar bill. I appreciate the efforts of both of them to bring this to our attention, and the Judiciary Committee has worked hard to craft a bill, which is the amendment. We've essentially taken the contents out of LB564 and replaced it with the amendment, so the discussion today on the amendment is essentially the discussion on the bill. The amendment, AM879, amends the Political Subdivision Tort Claims Act. The Political Subdivision Tort Claims Act is where you find the Legislature's expression of liability for political subdivisions. It also amends the State Tort Claims Act. The State Tort Claims Act is a corresponding statute that says when is the state going to be liable for its activities to the citizens of the state of Nebraska. It is a logical place to amend if we are to address recreational liability for the state and the political subdivisions. That's what's been done. Generally speaking, we start out with the political subdivisions, and the state being liable, just as an ordinary citizen would be, for their activities, except in certain circumstances. And what we are doing is adding a thirteenth circumstance to the State Tort Claims Act and the Political Subdivision Tort Claims Act. The substance of AM879 is this. The liability of the political subdivisions in the state will be limited in three respects. First, political subdivisions and the state will not be responsible for injuries that are the result of the inherent risks of activities that are of a recreational nature. What that means is if you are going to go to a skate park and skate and you fall down and you break your wrist, the cities are not responsible for that. It is...in the law we call it assumption of risk. This is very similar to assumption of risk. If you are going to go into an activity that has risks of injury, you cannot look to the state or the political subdivisions under this first principle of AM879 for compensation for your injuries. The second limitation on liability found in AM879 has to do with a design of skate parks and the design of motocross parks. And the skate parks, as you all know, you've probably gotten calls from your constituents on them, that's where kids go to skateboard. It's kind of a bowl and you can go down it and up it and that's what a skate park is. The motocross park we...I understand that the city of Omaha has one, I've never seen it myself, but it's a place where kids can ride their bikes. There's hills. They can get airborne if they want. There's a certain amount of risk in that activity. The second provision in AM879 is that if those parks, skate parks and motocross parks, are designed in accordance with prevailing standards at the time, so if you design one now and you've incorporated into your skate park all the safety standards that engineers and architects would use as of today, you won't have liability to someone who gets hurt and claims that there was a design defect in the way the skate park was constructed. That's an important principle for the cities who want to have skate parks and motocross parks. And the third limitation on liability has to do with defective conditions of the premises, and as you might imagine the state and the political subdivisions own acres and acres, thousands of acres of parks, and miles and miles of trails, and many swing sets and playground equipment, and from time to time they may fall into a state of disrepair. The political subdivisions in the state, under the third limitation in liability, will only be responsible for those defects in the property that they are aware of. So from time to time a neighbor to a park or somebody who's been at the park may call the city up and say,

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look, the swing set is falling apart out there at the park; you need to get out and fix it. Once the city, the political subdivision, or the state know about a condition, they have a reasonable time to fix it, and if they don't, then they're subject to liability if the person that's hurt can prove that the city or the political subdivision was negligent. This is...if the city or the political subdivision or the state does not know about a condition--so they have something that's broken, something that creates a hazard, something that creates a danger but they don't know about it--then they're not responsible for it unless they didn't know about it because they were approaching their responsibility for inspection and care in a grossly negligent manner. And what that means is that in order for someone who doesn't know about a condition to be responsible for it, they have to have constructive notice of that. And in law school we learned about that as the typical situation or example, is a grape or a banana peel or something that's found on the grocery store floor. Many times the grocers don't know about it, but if it sits there all afternoon they should know about it, and that part where you get to "should know about it" is constructive notice. Well, cities, political subdivisions, and the state won't be regarded as having known about it or even should have known about it unless they haven't demonstrated even slight care... [LB564]

SENATOR LANGEMEIER: One minute. [LB564]

SENATOR LATHROP: ...even slight care in the performance of their duty to inspect. These are the three limitations on liability. They apply in those instances where no fee is charged. So if you can imagine...and the concern we had in coming up with the fee language was that we want the kids that go to the swimming pool and pay a dollar to go swim every day, we want lifeguards paying attention. So these limitations on liability apply where there is no fee charged or paid to participate in the activity, basically when you go into a park. We've also...we have some definitions with respect to fees that I should talk about, as well. A fee is essentially what you pay to participate in an activity. A fee is not what you pay to enter a park. So if you buy a sticker to get into the state parks... [LB564]

SENATOR LANGEMEIER: Time. [LB564]

SENATOR LATHROP: Thank you, Mr. President. [LB564]

SENATOR LANGEMEIER: Thank you, Senator Lathrop and Senator Ashford. (Visitors introduced.) You have heard the opening on LB564 and the committee amendments, AM879. We now go to floor discussion. Senator Lathrop, you are recognized. [LB564]

SENATOR LATHROP: Thank you, Mr. President and colleagues, if I can continue on with a bit of an explanation with respect to the particulars of AM879. The fee language is important. It distinguishes between what is a fee and what is not a fee. That's important because our state parks, you have to have a permit to go in, or a sticker. You

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pay something for that. Specifically, this defines that as, or excludes that, as a fee. The reason behind that is, is that if you go into a state park that's different than going to the swimming pool and paying. So if you go into Mahoney State Park and you pay the permit fee to go in, that's not...that doesn't afford you or take you outside of the protections. In other words, the amendment that we're talking about today, AM879, those concepts, those principles, will apply while you are in the state park, notwithstanding the fact that you have bought a permit to enter. Now if you are at Mahoney and you go to the swimming pool and you pay something to participate in that activity, that would be outside of the protections here, and the state, in that instance, would be bound to exercise ordinary care in the protection of the children that would participate in swimming. There is another facet to the fees that I'll explain and that is in paragraph (iv) on page 5, line 11. A fee, there are occasions--and this was a concern of the cities and the state--there are occasions when the city will open up city property to groups who will have an activity and may charge a fee, and so we had to account for that. And the language here does this. A fee that is paid to someone who the city is allowing to use the property is not a fee in the sense that it would avoid the protections afforded by this amendment, except to the extent that they've retained control over the property. Let me explain what that means and give you...and explain it by way of an example. The city of Omaha has a summer arts festival. They don't charge there, but let's assume that they do. The people set up booths to display art, pottery and whatnot. Communities have these all across the state. To the...many times those people will come into the city parks and they'll create hazards in setting up their booths. They might put drop cords down. They might have hoses. They might have different activities that go on in connection with that festival or that event. And what this does is it avoids liability for those activities that are done by people that you let onto state property or city property. So if the city of York or Grand Island, for example, allows someone to use the auditorium, and they put drop cords down and they don't tape them or there's some hazard and somebody trips and gets hurt, the city doesn't have any responsibility for that even if a fee is paid, except that the city would have responsibility if they retain control over some part of the property after they've allowed an organization to use it. I'll give you an example that was specifically discussed in coming to this language, with the city of Omaha. The Civic Auditorium in Omaha is owned by the city. It has...from time to time, it will take money from an organization, like the Home Show. [LB564]

SENATOR LANGEMEIER: One minute. [LB564]

SENATOR LATHROP: And the Home Show will come in, they'll charge people, and then they'll go into the area in the middle of the auditorium. They might create hazards. The city is not responsible for those. But they retain control over the bathrooms, they retain control over the walks out front. So to the extent that they have retained control over any portion of the property that they're letting an organization use that would charge a fee, they remain responsible for injuries that are caused by ordinary negligence. I think with that I'll encourage you to ask me any questions. That's an

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overview of the bill and it is a framework for determining liability. We cannot, in this context, detail what cases are going to be meritorious and which cases will not. In liability law, all we can do is provide a general framework. This framework strikes a balance between the need... [LB564]

SENATOR LANGEMEIER: Time. [LB564]

SENATOR LATHROP: Thank you, Mr. President. [LB564]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. Wishing to speak we have Flood, Pirsch, Chambers, Engel, Louden, Schimek, and many more. Senator Flood, you are recognized. [LB564]

SPEAKER FLOOD: Thank you, Mr. President and members. I, too, want to join in thanking Chairman Ashford for recognizing the abilities of Senator Lathrop, especially as Vice Chair of the Judiciary Committee, and nominating him to be the spokesperson for the committee to deal with the interests at the table. And to give you an idea of what kind of a challenge this was, not only was it the League of Municipalities, the Association of County Officials, school boards, resource districts, Nebraska Intergovernmental Risk Association, the League Association of Risk Management, MUD, NMPP Energy, OPPD, NPPD, Nebraska Power...I mean, the list goes on and on and on. It's a very pluralized discussion about how to address recreational liability. And what I think has happened here is that two sides have come to as close together as they can get, and it has taken a painstakingly long process, with Senator Lathrop's ability and others on the other side, that can sit down and wordsmith out this amendment. Is this what the cities wanted at the beginning of the session? They wanted a willful, wanton standard. Could they go for something less? Yes, they could go for gross negligence. Did they get gross negligence? No. They got gross negligence when it comes to constructive notice. But if they know about the condition, fail to fix it--if I'm correct, Senator Lathrop: ordinary negligence. What does this allow cities and political subdivisions in the state to do?--well, political subdivisions especially? It allows them to get insurance that they can afford to cover the injuries that may occur that they're liable for at the city park, at the playground, the school playground, the NRD resource area where they have, like, a lake and fishing. But what I really like about this is the language is in there that allows them to get insurance on a skate park. This isn't some free ride that the cities have that some may interpret our celebration over the amendment as a blank check to cities, say go ahead and have an ultrahazardous activity and you don't have to worry about paying the bill if somebody gets hurt. If there's a defect at that skate park and you know about it, either in the design or construction, or you have constructive notice of a defect, it's ordinary negligence. So this isn't a runaway victory for political subdivisions, and I think at the same time it does strike that balance between taking care of citizens injured as a result of a political subdivision's negligence while at the same time maintains an environment that we can let our kids go to the

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skate park and the city park and the tornado slide, understanding that when you pay a dollar to go to the city pool in Ord, Nebraska, or whatever it is, there's a lifeguard there and there's a different standard that's applied. This isn't about swimming pools; this is about city parks and tornado slides. And I think we're making progress. I just thank Senator Lathrop, Chairman Ashford, members of the committee. When the session started, I didn't know if anything would come out of there, and I think this is the best result. Thank you, Mr. President. [LB564]

SENATOR LANGEMEIER: Thank you, Speaker Flood. Senator Pirsch, you are recognized. [LB564]

SENATOR PIRSCH: Thank you, Mr. President and members of the body. I think the need for this bill is imperative. I'd like to thank those individuals who have expended a lot of hard work on getting this bill to this point: Senator Louden and Senator Friend, who introduced measures; Senator Ashford, Chairman Ashford of the Judiciary Committee; and especially Vice Chairman Lathrop for his...I think it's pretty clear that you've expended a lot of hard work on this particular bill, and I think that the necessity of this bill is very high and it is a fair bill and one that works hard to strike a fair balance. And so I would urge passage of the amendment and the underlying bill here today, and with that I'd cede my time to Senator Lathrop. [LB564]

SENATOR LANGEMEIER: Senator Lathrop, 3 minutes, 50 seconds. [LB564]

SENATOR LATHROP: Thank you, Senator Pirsch. I appreciate the opportunity to continue with my explanation. When we talk about tort principles and civil liability principles and the need for some protection for the cities, understand that what we are doing is providing the cities more protection than you get as a homeowner, more protection than your business gets as a business owner, and that is a response to the fact that it's a political subdivision. And, frankly, it's a response to the fact that the cities are engaged in things such as building skate parks. This bill, I believe, does something important in the sense that it strikes a balance between providing political subdivisions and the state with an incentive to behave carefully. They still must behave carefully. They still must watch out for the children that play on the playgrounds, and there's still liability in certain circumstances that are such that it will encourage them to be careful in the way they run their parks, be careful in the way they engage in their activities, but at the same time provide some limitation on liability so that they can get insurance, some limitation on liability so that they can provide the kind of facilities that people in the cities want, the skate parks. A word on skate parks: It would be easy for us to say we could solve this problem by outlawing skate parks, but the fact of the matter is that the kids are going to skate; they're going to get their skateboards. And in the city of Ralston, which I represent, there is a controversy right now, probably happening in your community as well. The kids are riding their skateboards down in downtown. They're riding it past and down the hills in downtown. They're chipping some of the cement.

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They're breaking away some of the improvements in downtown. This gives them a place to go to participate in this activity. And on the whole, affording this protection will allow us to build more skate parks, to build motocross parks, and to allow the cities to be free from those claims that really are about the risks that are inherent in the kinds of activities that people want to participate in when they go to the parks. So that's the balance we've struck with this bill, I believe, and the reason why I think it makes perfect sense for limiting the liability of the state and political subdivisions. Thank you. [LB564]

SENATOR LANGEMEIER: Thank you, Senator Lathrop and Senator Pirsch. Wishing to speak we have Chambers, Engel, Loudon, Schimek, and others. Senator Chambers, you are recognized. [LB564]

SENATOR CHAMBERS: Mr. President and members of the Legislature, to put us into the spirit of this debate, "Twas the night before Christmas and all through the house not a creature was stirring, not even a mouse. The stockings were hung by the chimney with care, in hopes that St. Nicholas soon would be there. Mamma in her 'kerchief, and I in my cap, had just settled down for a long winter's nap." Digression: We're going to be here a long time so settle down. "When out on the lawn there arose such a clatter..." There will be one person clattering here today. The rest are going to join the "Hallelujah Chorus" in praising the work that was done by the Judiciary Committee, Senator Lathrop notably--and they did put in a lot of work in an unworthy cause. They'll be praised. So I don't feel like a bully, there was a player for Oklahoma. His name was Brian Bosworth. He played at a position known as linebacker, and he said he always felt energized when Oklahoma played Nebraska. And when asked why, he responded: Because at last we're playing somebody, we're picking on somebody our own size. Well, today I feel like Brian Bosworth. With 48 against me, I feel like at last it's a fair fight. I'm picking on people who have come as close as they can to being my size. Back to The Night Before Christmas. "Out on the lawn there arose such a clatter, I sprang from my bed to see what was the matter. Away to the window I flew like a flash, tore open the shutter, threw open the sash. The moon on the breast of the new-fallen snow gave a luster of midday to objects below. When what to my wondering eyes should appear but a sleigh full of toys and eight tiny reindeer. With a little old driver so lively and quick that I knew in a moment it must be St. Nick." I'm not going to through all of it because you've heard it a thousand times, but there is a point in the poem where it says, "He whistled and shouted and called them by name. Now, Dasher! Now, Dancer! Now, Prancer! Now, Vixen! On, Comet! On, Cupid! On, Donner and Blitzen!" There were eight reindeer; there were eight reindeer. Some people who rewrite history have added a Walt Disney character and thereby have corrupted literature, and they now no longer know the difference between the original item and the counterfeit, and that's what often is wrong in this society. People cannot distinguish the real from the imaginary; that which has validity and substance from that which has only form and appearance. This bill has an appearance and we're going to be on it as long as I can keep us on it. I'm going to take my time, your time, and everybody's time because everybody else is going

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to stand up and sing the praises of this bill. On other occasions, they talk about something called personal responsibility... [LB564]

SENATOR LANGEMEIER: One minute. [LB564]

SENATOR CHAMBERS: ...usually when they're talking about children or people who are deprived and marginalized. But when it comes to the state and political subdivisions, there is to be no significant responsibility. I'm going to tell you all when I get a chance--but it will be way down the line because many want to join the "Hallelujah Chorus"--about a man in the Old Testament who was going to sacrifice his son because he heard voices, and you all want to sacrifice these children. But I'll be like that angel who stopped the old fool's hand and said, don't kill your son. I will try to stop you from sacrificing the well-being of our children. Thank you, Mr. President. [LB564]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Engel, followed by Loudon. [LB564]

SENATOR ENGEL: Mr. President and members of the body, I don't sing very well but I am part of that chorus. And I'd like to mention that, Senator Chambers, if you put on one of those little funny hats with the tassel on it and your beard was a little grayer, I think you could pass for Santa Claus. But with that, joining the chorus, in most communities, in mine and everybody else's, we're always looking for activities for the young people, and it's very hard to keep them occupied and keep them off the streets doing other things. We have a lot of problems in our community, like all of them do--graffiti, etcetera, etcetera, etcetera. I think the more active we can keep these children in good activities like this, where they're getting rid of their energy, enjoying themselves, the better off we are. So I'm very happy the Judiciary Committee is doing what they're doing. I'm very happy with Senator Lathrop, how he's explaining the law to us. And I have all the faith in Senator Lathrop and others in the legal profession to bring a bill out, to make this bill palatable so that it will pass the muster and that it will be, where the communities will be able to restore these activities in their communities. And I think without this bill, that they are closing up now. Some of them are closing down because they are concerned. And I believe, and he explained as far as the liability, if it's willful and malicious, if the communities are not responding to something that they know is a problem, then I think we should sue. And if I happen to...if I was in a situation such as that I would want to sue, myself. So I that's...I think that's being taken care of. But we do have to...we do have to provide as many facilities as we can for these young people to keep them active, keep them off the street, and keep them on the straight and narrow. And I think this is one way of doing it and I hope we can resolve this, and like Senator Chambers says, as long as it takes. Thank you. [LB564]

SENATOR LANGEMEIER: Thank you, Senator Engel. Senator Loudon, you are recognized. [LB564]

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SENATOR LOUDEN: Thank you, Mr. President and members of the body. As I look over this bill, why, this was something that needed to be brought forwards as the whole thing started out there in Dawes County and Chadron. And this isn't all just about skate boards or swimming pools or anything like that. It also includes some of the special occasions that these cities and towns have on their...through their summertime, promote the tourism, promote participation, and help to bring people into their areas. And so they consequently won't be held hostage for some minor incidences that may happen if someone stumbles or falls in an area. How many of you ever went to rodeos or something, you parked out in a pasture someplace and Lord only knows what you might walk through, whether it's something piled up or whether it was small holes? This is part of it. You have to look where you are going. So this is...this was part of it there that a claim was brought forwards where a person probably knew that the ground was uneven but, consequently, they stepped in a hole and felt they were...they should a been compensated for their injuries. Nowhere in this bill that I see does it say that the towns or villages or anyone is immune from upkeep and care and diligent maintenance of the places where they are having people come. Grandstands fall down at times, but it isn't because someone probably didn't inspect them. Things like that have to be inspected and this is where the bill comes in. If there's some gross negligence in there, then I agree then, the cities or towns or whatever is having these special occasions would be liable. But this has to be something in there so that the everyday occurrence that they have to have these agendas and have...promote your tourism and have people come in from different areas, they won't be held liable. Most of the towns in your rural communities, I think you can name about every small town, have their special days anymore and that's a major economic driver for these towns. You can name dozens of towns around, I'm sure you've all went to some of these festivals, and it isn't just the smaller towns, but the larger towns have them also. In fact, many towns nowadays are having two or three of them through the summer, some of them as many as a couple of months, and this makes quite a difference for their economic driver in their towns to bring somebody downtown, put them on main street, have people around there spend some money, and take care of it. Not only that, there's people that use these same things for some of their school functions, such as their graduation celebrations and that sort of thing. So I think this is a bill that needs to happen. We have to do something to protect these towns for instances where it's probably not that much of an accident-prone condition, but there are conditions out there where someone can hurt themselves. So I certainly support the amendment. I support the bill. The committee has done a lot of work on this to bring these bills forwards. This was something that after the court case out in Dawes County it was brought to the attention because it literally shut down all the skate... [LB564]

SENATOR LANGEMEIER: One minute. [LB564]

SENATOR LOUDEN: ...parks, swimming pools, and some of the recreational facilities

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all across the state of Nebraska. So this was something that had to be done. I would like to see the bill brought forwards in a timely manner and I hope we can continue to do so. Thank you, Mr. President. [LB564]

SENATOR LANGEMEIER: Thank you, Senator Loudon. (Visitors introduced.) Returning to the discussion on AM879, wishing to speak we have Schimek, Aguilar, Carlson, Karpisek, and others. Senator Schimek, you are recognized. [LB564]

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. I arise on this amendment partially for my own information. I was not in the Judiciary Committee Exec Session when this bill was voted to the floor and I did not hear the discussion on the amendment. So I do have, ultimately, some questions on the amendment, Senator Lathrop. My interest in this particular issue started several years ago, in fact maybe a year ago, when Senator Combs brought a bill to the Legislature on behalf of a constituent in her district who lost his little girl in an accident at Crete park, in a Crete city park, and in that accident the rest room walls collapsed on this little girl. And the bill that Senator Combs brought was not one that we thought would work very well because it involved posting inspection notices and so forth, so we did an interim study over the summer and had a lot of people involved in that interim study. And one of the things that we did, Senator Lathrop, was we worked with the architects and engineers to put together a brochure that would indicate to any public entity or any entity at all, even a private entity, what kinds of structural things needed to be done with walls that were built of these blocks, these cement blocks. And that brochure is almost ready to go and I think there will be some publicity about it at the time. But we're working with the League of Municipalities, the county officials, the city parks and recs departments. We're trying to add to our mailing list, groups that have private campgrounds and so forth. And so we're trying to get the word out as to how you prevent these kinds of things from happening. So my questions are, Senator Lathrop, if I might,... [LB564]

SENATOR LANGEMEIER: Senator Lathrop, would you yield to a question? [LB564]

SENATOR LATHROP: Sure. [LB564]

SENATOR SCHIMEK: If this bill had been in effect when the very terrible accident happened in the Crete park, would the city of Crete been liable in that instance? Does it apply to buildings? I believe it does. [LB564]

SENATOR LATHROP: Sure, it would. [LB564]

SENATOR SCHIMEK: And so it wouldn't even necessarily take the brochure that is being developed to send out to all of these entities, to say, look, you better be doing inspections or you may be liable. This bill would probably do it without that. [LB564]

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SENATOR LATHROP: Well, the one thing that we can do is go back to the idea that we're developing a framework. And many of those situations, and like this situation in Crete, and we heard about it in committee,... [LB564]

SENATOR SCHIMEK: Yes. [LB564]

SENATOR LATHROP: ...those things are fact-specific. And so ultimately,...and when you talk about a claim against the state or a claim against a political subdivision, those cases are tried to a judge, not a jury, which is an additional protection afforded to the state and political subdivisions. But ultimately, we develop the framework and then the judge has to listen to the facts and decide. My own thought is that if there is something about that bathroom, my guess is it didn't look like a solid wall to start with. Somebody is in the bathroom cleaning it. They probably knew that it was dilapidated. If they did, then they'd have the... [LB564]

SENATOR LANGEMEIER: One minute. [LB564]

SENATOR LATHROP: ...responsibility to fix it. [LB564]

SENATOR SCHIMEK: Oh, as a matter of fact, my memory is a little poor, but I think they had already fixed some walls in that rest room and perhaps didn't see the need to fix and make sure that the others were all well-grounded. So maybe it's possible even that they could have been held liable anyway, I don't know, but definitely they would be under this bill. It's not just skateboard parks, it's not just walking trails, but it's actual facilities as well. [LB564]

SENATOR LATHROP: Yes. It would include structures. It could include swing sets, you know, the playground equipment, but it could also include the rest rooms. It could include the pavilion that's at a lot of these parks and picnicking areas. [LB564]

SENATOR SCHIMEK: Well, thank you, Senator Lathrop. I think I'm going to support this amendment and this bill. Originally,... [LB564]

SENATOR LANGEMEIER: Time. [LB564]

SENATOR SCHIMEK: ...I had doubts about it. Thank you. [LB564]

SENATOR LANGEMEIER: Thank you, Senator Schimek. Senator Aguilar, followed by Senator Carlson. Senator Aguilar, you are recognized. [LB564]

SENATOR AGUILAR: Thank you, Mr. President. (Singing) Hal-le-lu-jah! I need to ask Senator Chambers a question. [LB564]

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SENATOR LANGEMEIER: Senator Chambers, would you yield to a question? [LB564]

SENATOR CHAMBERS: (Singing) Mi-mi-mi-mi. Yes. [LB564]

SENATOR AGUILAR: The rest will be a dialogue, thank you. (Laugh) Senator Chambers, I've worked with you now for eight years, and one thing I've learned from you is that you never do anything without a good reason, without it being well-thought-out in your own mind. And in this instance I have to say I'm a little troubled and questioned by your motives. Would you not agree...well, first of all, did you not make the statement that you thought this put young people at risk? [LB564]

SENATOR CHAMBERS: Yes. [LB564]

SENATOR AGUILAR: Okay. Would you not agree that having an enclosed facility, like a skateboard park, is somewhat safer than having kids riding down steps of a building onto the sidewalk, sometimes out into the street, absolutely no supervision whatsoever, and just doing this randomly, knowing that kids are going to skateboard whether we have the parks open or not? [LB564]

SENATOR CHAMBERS: That's not the issue that I raised. The issue that I raise is this: We're talking about an inherently dangerous activity. The city knows that it's dangerous. They expect children to be hurt. They provide a facility where they know children are going to be hurt; then they don't want to be responsible to respond in damages when these children are hurt. And that's what I say is wrong. [LB564]

SENATOR AGUILAR: Do children get hurt in Little League baseball or football? [LB564]

SENATOR CHAMBERS: Yes, they do. [LB564]

SENATOR AGUILAR: Why is that different? [LB564]

SENATOR CHAMBERS: Because this is an activity where an injury is not par for the course. The reason people say these skateboarding activities need to be in a park is because of the inherent danger in the activity, and that does not go away when they go to these parks to do it. When a child plays football, we're talking about Little League, or baseball, there's not the expectation that these children are going to be hurt or even a great likelihood that they're going to be hurt, and, if hurt, that it will be a serious injury. It could be a spinal injury. It could be a multiple fracture. It could be a brain injury. Those are not expected to occur when children are in the activities you mention. But the skateboarding, the motocross activity, those are not unexpected. And when you say that the city, because of state law, is not going to have any liability other than if there was some design flaw, I think an immoral action is being placed by society because the responsibility to see to the welfare of children is being cast aside for the benefit and

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sake of a political subdivision, and that's why I say this is a wrongful approach. [LB564]

SENATOR AGUILAR: Thank you, Senator Chambers. I guess he and I will have to agree to disagree on that, because, you know, I contend that children can get hurt just as bad, everything he described, playing football, wrestling. Both my sons wrestled in high school, all the way through grade school till high school, even into college. And in watching those matches, you know, I've seen kids paralyzed. I mean there are dangers that comes with sporting activities. This is a sporting activity. There are dangers that come with it. We can't, you know, expect kids to grow up through life without a few scrapes and scratches along the way and bumps on their heads and broken arms. That's a natural part of growing up. [LB564]

SENATOR LANGEMEIER: One minute. [LB564]

SENATOR AGUILAR: And with that, I'll close. Thank you. [LB564]

SENATOR LANGEMEIER: Thank you, Senator Aguilar. Senator Carlson, you are recognized. [LB564]

SENATOR CARLSON: Mr. President and members of the Legislature, I too rise as a member of the chorus, and I would like to address a couple of questions to Senator Lathrop. [LB564]

SENATOR LANGEMEIER: Senator Lathrop, would you yield to a question? [LB564]

SENATOR LATHROP: Yes, I'd be happy to. [LB564]

SENATOR CARLSON: Would you clarify a little further--you mentioned it and I didn't understand it all--actual or constructive notice? Would you explain that again? [LB564]

SENATOR LATHROP: Sure. Those are common principles that we use in premises liability cases, which is when somebody gets hurt on somebody's property and you make a claim. Actual notice is if you know about a defect. So if we can use your home for an example, if you have wooden steps out front, and you walk down the steps and one of the boards breaks, you know it's broken, that's actual notice. If you have some portion of your property and you are not aware of a defect but it's been there long enough that you've probably run the mower over it a few times, that you have been to that part of your property, if you were paying attention you'd know about it, that's constructive notice. It's what the law presumes you should know because a condition has been there long enough for you to know. [LB564]

SENATOR CARLSON: Okay. I guess...and I'm thinking a little bit differently here on things that I think happen very frequently. For example, in a park, if somehow there's

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maybe a metal post that had been used to help support a young tree or something, and that ends up broken off and it's 18 inches out of the ground, and that's a hazard, and so I'm there with my grandchildren and I see that and I know it ought to be removed, and I call the city and tell them about it, is that actual notice? [LB564]

SENATOR LATHROP: That's actual notice. That's a good example of actual notice and, in that case, the city would have a reasonable time to fix that before they'd be liable. [LB564]

SENATOR CARLSON: Now how can I be assured that they're paying attention to my actual notice? [LB564]

SENATOR LATHROP: We've had cases...I've been involved in cases against political subdivisions. Typically, they keep a registry of calls that come in. In Omaha, it might be on the mayor's hot line, it might be to the parks department. But any complaints they get, typically they'll write them down. They don't always, and so sometimes we have an issue over whether or not they knew about it or not. [LB564]

SENATOR CARLSON: Okay. Thank you, Senator Lathrop. I'd also like to address a question to Senator Chambers. [LB564]

SENATOR LANGEMEIER: Senator Chambers, would you yield to a question? [LB564]

SENATOR CHAMBERS: Yes, I will. [LB564]

SENATOR CARLSON: Senator Chambers, are you basically opposed to an activity or the construction of a public facility? [LB564]

SENATOR CHAMBERS: I'm opposed to the activity. The reason I mentioned the construction, Senator Lathrop pointed out that if there were a design flaw in the construction, meaning that it was not constructed according to the best standards at the time, then there would be liability. But if the construction is in accord with the principles for that kind of facility, then there can be no recovery based on a design flaw. I'm saying that I don't believe the activity can be made safe, based on the facilities provided for these activities. [LB564]

SENATOR CARLSON: Okay. And if you feel like an activity cannot be made safe, I think you would agree with me that it's not the city's responsibility to prevent children from engaging in that activity. [LB564]

SENATOR CHAMBERS: I say that when the city produces this facility and invites the public to bring their children, the city should respond in damages if a child is hurt. That's what I'm saying. If you are going to have the facility, don't give the city immunity.

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[LB564]

SENATOR CARLSON: Okay. And that's why I asked you the original question: Are you opposed to an activity or the construction of a public facility? You're really opposed to both. [LB564]

SENATOR CHAMBERS: Yes, when the city... [LB564]

SENATOR LANGEMEIER: One minute. [LB564]

SENATOR CHAMBERS: ...is the sponsor. [LB564]

SENATOR CARLSON: Okay. Let me give an example then of skateboarding, and there's no facility in the park but there's a tennis court; it's a hard surface. And kids go in there and they try and jump the tennis net with their skateboarding, and somebody falls and ends up paralyzed. Is the city liable? [LB564]

SENATOR CHAMBERS: Under all of the standards that I'm aware of, probably not. [LB564]

SENATOR CARLSON: Okay. Okay, thank you. Thank you. [LB564]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Wishing to speak we have Karpisek, Wightman, Lathrop, Chambers, and others. Senator Karpisek, you are recognized. [LB564]

SENATOR KARPISEK: Thank you, Mr. President and members of the body. I rise in support of this bill, but I do have many of the concerns that Senator Chambers has also. As Senator Schimek pointed out, the Crete case was in my district, and the father is not only a constituent but a good friend of mine, so I have a lot of sympathy and interest in this bill. And I think Senator Schimek did ask that this would be covered now, but at that time it wasn't covered. The family did settle on enough money for the burial and a headstone, and I guess if they would have proceeded to try to sue the city, they probably would have been the first case maybe to overturn this law rather than the lady stepping in the hole. Mr. Foster's push now is not to make money for himself, nor the people that would be injured. His push now is to try to make things safer for the rest of our children. And, Senator Chambers, I think that's where we can definitely agree. We want that to be safer. My fear, though, is there will be nothing built for the kids to do. We talk about trying to keep them out of trouble, give them things to do. And I do worry that there won't be anything for them if we're always worried about a lawsuit. Now should it always be no risk at all to the city? I don't know about that. Senator Chambers, would you yield for a question, please? [LB564]

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SENATOR LANGEMEIER: Senator Chambers. [LB564]

SENATOR CHAMBERS: Yes, I will. [LB564]

SENATOR KARPISEK: Would you agree to anything saying that there wouldn't be further damages to the city, like if they would pay for the broken ankle, broken arm, anything like that, but no...I can't come up with the right word right now. [LB564]

SENATOR CHAMBERS: Punitive? [LB564]

SENATOR KARPISEK: Yes. [LB564]

SENATOR CHAMBERS: Okay. Here's what...and punitive damages have to do with pain and suffering... [LB564]

SENATOR KARPISEK: Thank you. That's what I was looking for. [LB564]

SENATOR CHAMBERS: ...so without going that far, here's what I will say. If society, acting through the political subdivision, says that these activities should be allowed, knowing that they're dangerous, society should agree to make whole any person's child who is injured. The parents and the children are entitled to expect that something which their government puts before them and invites them to make use of is going to make them whole if they use it in the way they should. So here's what I'm getting to. Let society...let the cost be spread throughout society, as is the case when the political subdivision has to respond in damages. I'm not saying that the park attendant or any individual, but the entity that represents the society which says these dangerous activities are better for the children than not having them, then let society make whole those children who are hurt. And I think my position is more rational and reasonable than what I've heard so far. [LB564]

SENATOR KARPISEK: Thank you, Senator Chambers. I think we're all struggling with this issue a little bit and I think we all like to, as Senator Aguilar said, to see where you are coming from because we know that you are...you are concerned about the children. I guess the other question, Senator Lathrop, would you yield? [LB564]

SENATOR LANGEMEIER: Senator Lathrop, would you yield to question? [LB564]

SENATOR LATHROP: Yes. [LB564]

SENATOR KARPISEK: In the amendment I read about what is a reasonable amount of time after notice has been given. [LB564]

SENATOR LATHROP: Do you want me to tell you what's a reasonable time? [LB564]

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SENATOR KARPISEK: Yes, please. [LB564]

SENATOR LATHROP: A reasonable time, I hate to sound like a lawyer but I'm going to have to,... [LB564]

SENATOR LANGEMEIER: One minute. [LB564]

SENATOR LATHROP: ...a reasonable amount of time really is a function of two things: what you have to fix, and how big of a danger it is. So when you talk about reasonable, it's a sliding scale. If you have something that presents an immediate and imminent risk of death or very serious injury, then a reasonable amount of time is a lot shorter than if you have a condition like that might potentially cause some injury, probably not a very serious injury. So the more danger that's presented, the less time you have to fix it, and that's a fact question for a judge to decide what's reasonable under the circumstances. [LB564]

SENATOR KARPISEK: And I think that could be a problem. As Senator Chambers says, make laws that say what they mean and mean what they say. So I have been listening, Senator Chambers. Thank you, Mr. President. [LB564]

SENATOR LANGEMEIER: Thank you, Senator Karpisek. Senator Wightman, you are recognized. [LB564]

SENATOR WIGHTMAN: Thank you, Mr. President and members of the Legislature. I too would like to thank Senator Ashford and particularly also Senator Lathrop for all of the work they have done in putting together this bill. I think it is well-thought-out. I'm not saying it answers every problem that we have, but I'm here to join the Hallelujah Chorus, as well. I, as all of you, I'm sure, in this body, have many towns and communities who provide recreational facilities and opportunities for recreational facilities. I would have a question if Senator Chambers would yield for a question. [LB564]

SENATOR LANGEMEIER: Senator Chambers, would you yield to a question from Senator Wightman? [LB564]

SENATOR CHAMBERS: Yes, the defender of the children certainly will yield to a question. [LB564]

SENATOR WIGHTMAN: Thank you, defender of the children. And I think you are a defender of children. I guess I am interested in exactly how far you would go. You had mentioned skate parks and motocross. Are there other things you would consider in this inherently dangerous activities that you've discussed? [LB564]

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SENATOR CHAMBERS: Senator Wightman, those are the two that continue to leap out to me and they are the ones who are inherently dangerous. So if we're talking about compromise, give me those two, not where you banned them but where there's liability based on an ordinary negligence standard, and I'll leave your bill alone, even with other problems and deficiencies that I see in it. [LB564]

SENATOR WIGHTMAN: Now, I know, Senator Chambers, within the state there are a number of communities, the small community of Elwood, which happens to be in Senator Carlson's district, I believe, have their own amusement park. It's not year-round, but it's part of their fair, and the community actually bought a number of the amusement park facilities so that they would always have one at such times. Would you consider that to be an inherently dangerous activity? [LB564]

SENATOR CHAMBERS: It depends on what they're doing there, Senator Wightman, and I'm not trying to be evasive. But if I just gave a blanket "yes," there could be activities that might be even more dangerous than the two that have been mentioned so far. So I could not just give a blanket yes, that I think they're okay. [LB564]

SENATOR WIGHTMAN: I don't think that's the case here, and they're mostly fairly generic-type rides and kiddie rides. But I think you could get into the same situation with providing amusement park activities. Would you agree? [LB564]

SENATOR CHAMBERS: Well, now that I know what you are talking about, the types of rides, they are not the ones that I am particularly concerned about with reference to this bill. [LB564]

SENATOR WIGHTMAN: Thank you, Senator Chambers. Going on, most of the children that would be using this skate park or motocross, I would suggest to you, are children who are old enough that they understand something about assumption of risk and that this is dangerous. Whether they have the full maturity of an adult is questionable, but certainly they and their parents anytime are aware of the danger of the activity that they're participating in. We have a whole body of case law that, and statutes, that deal with assumption of risk and contributory negligence. Those have been eroded some over the years by court decisions, but those theories of law are still in effect, and that is that if somebody goes out and knows the risk involved... [LB564]

SENATOR LANGEMEIER: One minute. [LB564]

SENATOR WIGHTMAN: ...and continues to participate in that activity, that they've assumed the risk, or they may be "contributorially" negligent in the way that they participate in the activity. When strictly applied, I would suggest that these provide some personal responsibility, and we all want to talk about the individual personal

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responsibility. But nevertheless, with all of the problems, and I would suggest that perhaps it doesn't...the proposed bill or the bill does not go quite as far as I probably would have it in protecting the municipalities, I think it does a good job. I will continue to support it. I think that it allows municipalities to provide those activities that would be dangerous whether they were provided by the municipality or not, and probably would be participated in by the residents of the community, even if there was no public facility. So I do stand in support of the bill. I have some problems with it, but I think overall it does what we... [LB564]

SENATOR LANGEMEIER: Time. [LB564]

SENATOR WIGHTMAN: ...hope that it will do. Thank you, Mr. President. [LB564]

SENATOR LANGEMEIER: Thank you, Senator Wightman. Senator Lathrop, you are recognized. [LB564]

SENATOR LATHROP: Thank you, Mr. President and colleagues, once again a couple of things maybe by way of giving further explanation as to what this does. Basically what the amendment does is it doesn't so much provide in political subdivisions as it does provide three defenses. And the defense with respect to activities is the inherent risk of the recreational activity defense, and the inherent risks of an activity are those that are characteristic of, intrinsic to, or an integral part of the activity. That is not a foreseeable thing that can happen when you engage in a recreational activity, but those that are part and parcel of the activity, the types of things that would constitute inherent risks would be, if you were talking about the typical activities that happen in a park. If you got hit with a ball, got hit with a puck, fell down ice-skating, fell down skateboarding, injured while you are being tackled or playing football, those are examples of things that are integral parts of the activity. Much of the discussion, and are anticipating Senator Chambers' concerns, which I think he'll express right after me in further detail, involve the idea that we have a facility or we have cities developing facilities that are...where children can participate in risky activity. It's not great risk. They are not jumping from buildings. They're in skate parks. They are going down hills and up hills on rollerblades. They're going down hills and up hills on bikes and on skateboards. The risk in these activities for paralysis and spinal injuries is not great, perhaps some broken limbs, but the activities in skate parks aren't any different than what we see when you go skiing in Colorado. If you go snow skiing or perhaps even waterskiing, there's going to be certain risks involved with those activities. Those, snow skiing for example is an adult activity, typically, and people (inaudible) to assume the risk associated with the activity. It's part of physical fitness. It's part of exercise. It's part of entertainment. And what the cities are trying to do with the skate parks is respond to a need, and the need is a place for kids to go to get off the streets, to get out from perhaps more dangerous circumstances where they might be skateboarding and to do this in an environment where the skateboard park has been engineered and constructed according to prevailing standards. I think

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we're doing a service to children and to the citizens to provide or afford that much protection to the cities that will enable them to get insurance and to allow them to build these skate parks. I think it's also important to know that this does not change any other defenses that the city may have arising out of claims based upon recreational activities. As Senator Wightman correctly indicated, in addition to these defenses the political subdivisions will still have the defense of assumption of risk, although the inherent risk defense is very much like assumption of risk, and it will also have comparative fault. In comparative fault...and civil liability examines not just the conduct of the political subdivision--did they do something wrong, were they not careful--but you have to look at and, ultimately in a civil liability trial, compare the carelessness... [LB564]

SENATOR LANGEMEIER: One minute. [LB564]

SENATOR LATHROP: ...of the person who is making the claim, and a judge would have to weigh (recorder malfunction) anyone would make a recovery. They'd have to be...the city would not be responsible if they were 50 percent or less at fault, and if they were 75 percent at fault, under comparative fault, the person would only receive...pardon me, if they were 25 percent at fault the person would only receive 75 percent of the recovery. So those defenses remain, in addition to the three that are found in AM879. And again, if I can repeat to the choir and to Senator Chambers, that I believe this strikes a good balance. The bill is the result of negotiations with the League of Municipalities, the city attorney from the city of Omaha, and many others who agree that it's not everything they want. And believe me, if you were to talk to the trial lawyers, they'd tell you it's not what they want either. [LB564]

SENATOR LANGEMEIER: Time. [LB564]

SENATOR LATHROP: Thank you. [LB564]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. Senator Chambers, you are recognized. [LB564]

SENATOR CHAMBERS: Mr. President, because I'm going to carry the burden alone, and I feel like Atlas right now, who had the earth on his shoulders. They say if Atlas supported the world, who supported Atlas? And the answer is, his father-in-law. Members of the Legislature, I'm going to have to take my time because I cannot say everything during one speaking opportunity. In fact, is this my third time speaking? My second? [LB564]

SENATOR LANGEMEIER: It's your second. [LB564]

SENATOR CHAMBERS: Thank you. I'm going to put my light on again (recorder malfunction) so that I can continue to speak, and that's not unusual because if there's a

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person with a person that many support, others will give that person time. But since everybody favors this bill, I'm going to have to create my own opportunities. But I know you all are waiting to exhale on the story that I was going to tell you about this man in the Old Testament named Abraham who was going to kill his son. The son's name was Isaac. They did a lot of things together. Senator Lathrop would be pleased to know that Abraham had in his backyard a skateboarding bowl. As much as they knew about making bicycles, he had what would have passed for a bicycle. It didn't have peddles on it, but you kind of walk with your feet and the wheels went around, and he'd given little Isaac this to play with. Isaac loved and trusted his father. Whatever his father taught him was the truth as far as Isaac was concerned, because his father had never lied to him. His father had kept him safe from hurt, harm, and danger. So Abraham, getting up in years, heard voices, and a voice told him one night, Abraham, kill your son. And Abraham said, oh no, buddy, I don't know what you are talking about, but Isaac is my life. And besides, if I kill Isaac, his mother would kill me. They had a sense of humor in those days. Senator Harms, they had to, because God had to have a sense of humor. Look what's going on around here today. Abraham was convinced that some god was talking to him and this is what he must do, so he said, Isaac, we got to go up here to this hill because God called me up there. And Isaac knew as much about God as a child could understand, so he said, well, Father, why are we going up to this hill and why did God tell you that we got to go up there?--because that's a long hill and you get tired. He said, God wants me to make a sacrifice. So like all children, Isaac was kind of curious and he wanted to see what would happen when this animal was killed, so they got up to this place that was the altar, this pile of stones, and Abraham had whetted his knife so that it had an extremely keen edge, because he knew what was in store for his son and he wanted to kill him with as little pain as possible, and the sharper the blade, the lesser the pain, he reasoned. So little Isaac knew something about religion and these things. He said, Father, the altar I see, the knife I see, but where is the sacrifice? And Abraham said, Son, don't you worry about that; God will take care of it. But what I want you to do is lie down on this stone. He said, Father, that's the altar. Abraham swallowed hard. He said, Son, have I ever misled you? [LB564]

SENATOR LANGEMEIER: One minute. [LB564]

SENATOR CHAMBERS: Isaac said, no. So he said, lay down on this stone, which the kid did. In the twinkling of an eye, Abraham had secured his wrists, secured his feet, and secured him to the altar. And something began to dawn on his son. This man who is my father, that I trusted, has something that's not in my best interest, because he has never tied me up before. I have to try to finish it the next time I speak, Mr. President. Thank you. [LB564]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Schimek, you are recognized, followed by Avery, Carlson, and then Chambers. [LB564]

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SENATOR SCHIMEK: Thank you, Mr. President and members. I intend, after I ask him a couple of questions, to give Senator Chambers my time, because he's sort of the lone wolf here today. But, Senator Chambers, I think that, like Senator Aguilar, I often learn while I'm listening to you, and I think I heard you, in the discussion with Senator Wightman, I believe it was, talking about a couple of activities that are particularly bothersome to you, and they are, as I understand it, your reason for objection to the bill. But maybe I can make this into one question. What would it take to make this bill more palatable to you? [LB564]

SENATOR LANGEMEIER: Senator Chambers, would you yield to a question? [LB564]

SENATOR CHAMBERS: Yes. Any political subdivision or public entity which was going to provide these two facilities that I'm talking about would be held to an ordinary negligence standard, which meant that, if under the circumstances that attach to these activities, due care or that care which a reasonable person would be expected to show to prevent injury from befalling a person, there would be no liability. But if that negligence did occur and due care was not exercised, then when a person is injured as a result of that negligence, the entity would be liable. [LB564]

SENATOR SCHIMEK: Thank you, Senator Chambers. That makes it very clear to me and I assume to others on the floor as well. So I would be happy to give you the rest of my time. [LB564]

SENATOR CHAMBERS: Thank you. [LB564]

SENATOR LANGEMEIER: Three minutes. [LB564]

SENATOR CHAMBERS: Thank you, Senator Schimek. And I'll finish that story because I'm going to have the opportunity to address the bill specifically, because we're going to be eight hours on this bill. I'm not like a lone wolf. Because I see Senator Carlson interested, he'll understand this allusion--the voice of one crying in the wilderness. And they said he was crazy because he ate locusts, wild honey; he dressed in an animal skin and lived out there among the beasts. Yet people call him one of the greatest ones who ever came. In fact, Jesus even said he may have been the greatest one born of a woman. That was John the Baptist. So being the lone voice doesn't mean that you are wrong or mistaken. It means that what you see, you are willing to fight for even against all of the odds. So on this bill you are talking about compromise. I don't think what I'm offering is unreasonable. Have these dangerous activities, if you must, and you feel that society is demanding them, but accept the responsibility for presenting them and agree that if the political subdivision is negligent according to ordinary negligence standards in these two activities, then the political subdivision is liable so if that child is hurt there's going to be wherewithal provided by society at-large to pay whatever it takes to make that child as whole as can be done through the expenditure of money. And usually we'll

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be talking about the providing of medical care, sometimes healthcare. And even though Senator Lathrop said the kind of catastrophic injuries I'm mentioning are rare,... [LB564]

SENATOR LANGEMEIER: One minute. [LB564]

SENATOR CHAMBERS: ...what happens when it does befall a child? And say that the child is a part of a single-parent family, or there are two parents but they're struggling. Nobody expects their child to be hurt. I don't think anybody who is sane would deliberately send their child into a dangerous situation with the expectation the child would be hurt. So they are not ready for that phone call that says your child fell, he sustained a serious injury, it's not life-threatening but it doesn't look good and we need you to come to the hospital before we discuss it with you further. Then that parent is going to say forever, I should have kept him home; I knew this was dangerous, I shouldn't have done it. Then after all of that guilt is gone,... [LB564]

SENATOR LANGEMEIER: Time. [LB564]

SENATOR CHAMBERS: ...how am I going to pay the medical bills? Thank you, Mr. President. [LB564]

SENATOR LANGEMEIER: Thank you, Senator Chambers and Senator Schimek. Senator Avery, you are recognized. [LB564]

SENATOR AVERY: Thank you, Mr. President. I'd like to address some questions to Senator Lathrop, if he would yield. [LB564]

SENATOR LANGEMEIER: Senator Lathrop, would you yield to questions? [LB564]

SENATOR LATHROP: Certainly. [LB564]

SENATOR AVERY: I'd like to start with a basic restatement of why we decided to amend the State Tort Claims Act instead of the Recreational Liability Act. I know you talked about that before, but I'd like to have that clarified. [LB564]

SENATOR LATHROP: Well, the liability for the political subdivisions is generally set forth in the Political Subdivision Tort Claims Act. If you think about it this way, the act generally waives sovereign immunity, which the state and political subdivisions have to start with. They don't have any responsibility except to the extent they allow themselves to be liable. They've done that in the Political Subdivision Tort Claims Act. The act then goes on and sets out 12 separate exceptions to the waiver of sovereign immunity. Because this deals with liability of political subdivisions, it's the logical place and I think the lawyers representing the political subdivisions agreed with me in that respect. And that's why it got there. [LB564]

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SENATOR AVERY: Thank you. If you may, I still have some more questions, because I'm concerned that perhaps we may not have everything we need here. For example, does the amendment we're now discussing impose on subdivisions the duty to keep facilities safe? [LB564]

SENATOR LATHROP: Yes. [LB564]

SENATOR AVERY: It does. [LB564]

SENATOR LATHROP: Yeah, they have a responsibility. Look, we're talking about general principles of tort law. Generally speaking, we have a responsibility to behave as reasonable people. That's the primary principle of tort law. You have to behave reasonably in the protection of other people and to avoid injury to other persons to whom you owe a duty. Everything else is some further principle or some more particular principle of that general rule. Here the political subdivisions and the state does have a duty to inspect their property to make sure they're not exposing members of the public to a hazard. [LB564]

SENATOR AVERY: I have another question, if you don't mind. [LB564]

SENATOR LATHROP: I don't mind at all. [LB564]

SENATOR AVERY: Does the amendment include the duty to warn? [LB564]

SENATOR LATHROP: The duty to warn is part of...or is...is part of the fix. Generally speaking, if you can fix something you have a responsibility to fix it. Some things you can't fix. So if you had a cliff, for example, at the edge of the park and there was some erosion that happened in a storm and now you have a very dangerous situation where there's a cliff and you can't do anything to fix that, but you are aware of it, your responsibility then is to warn somebody. So you'd put up some kind of a fence and a warning that says, you know, cliff here, don't come any further. [LB564]

SENATOR AVERY: Is that implied in the tort law, or is that explicit? [LB564]

SENATOR LATHROP: No, that is a principle of tort law. [LB564]

SENATOR AVERY: Okay. One final question: Would political subdivisions have liability for willful and wanton misconduct? [LB564]

SENATOR LATHROP: Yes. There's nothing about here that...well, willful or wanton misconduct...again, we're providing a general framework so if I knew the...if you gave me a fact situation I could kind of address it in that context, but generally speaking we

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have ordinary negligence principles at work here with three defenses that are allowed political subdivisions for their actions when it comes to recreational activities for which no fee has been paid. [LB564]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: One minute. [LB564]

SENATOR AVERY: My concern is that we're defining exemptions and that we may be, in the process, overlooking some important safeguards. But thank you for your answers. That's all I have, Mr. President. [LB564]

SPEAKER FLOOD: Thank you, Senator Avery. The Chair recognizes Senator Carlson. [LB564]

SENATOR CARLSON: Mr. President and members of the Legislature, I do have another question for Senator Lathrop. [LB564]

SPEAKER FLOOD: Senator Lathrop, will you yield to a question from Senator Carlson? [LB564]

SENATOR LATHROP: Yes. [LB564]

SENATOR CARLSON: This is kind of peripheral question, but as you were explaining how things might work it ran across my mind, so I'll ask you before I forget it, about fees. And I understand, like a swimming pool, you pay to get in, and so it's expected there's going to be a lifeguard and so forth. But I think of some facilities that people donate to, and they bill, I can even think of a golf course, for example, where in a sense, people are on their honor to either pay a fee or give a donation, but nobody is there collecting it. Is it possible to have those kinds of things where facilities are built and people who use them are encouraged to leave something for the use of that facility, but it's not a fee, and it's not mandatory. And maybe, under this bill, that kind of thing would no longer be allowed. [LB564]

SENATOR LATHROP: Well, this bill won't tell you...doesn't prescribe whether you can or cannot do that. The question is whether or not, if you have a...in Omaha, they charge every time you play golf. I don't know if they got you on the honor system in Holdrege, but if you go play golf, and you can play golf for free but you are encouraged to leave some money on the plate or leave some money behind in some kind of a depository, then that probably isn't a fee. That's just a goodwill donation. [LB564]

SENATOR CARLSON: So let's change it to a skateboard facility that costs money to build, and a community does it on donations, and so they might have that kind of a

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setup there, because as parents come along and let their kids use it, or...it would be possible to leave some money there, but it's not mandatory, and I would hope that wouldn't affect how we'd look at this law. [LB564]

SENATOR LATHROP: No, and I appreciate that. That never occurred to me that that might be how you fund your skate park, but it's the fee to participate. If you don't have to pay it to participate, then it isn't a fee. It's simply, help us pay for the skate park. [LB564]

SENATOR CARLSON: Okay. Thank you, Senator Lathrop. Thank you. [LB564]

SPEAKER FLOOD: Thank you, Senator Carlson. The Chair recognizes Senator Chambers. [LB564]

SENATOR CHAMBERS: Thank you. Mr. President, I'm going to resume my version of the story in the Old Testament, and we're at the point where little Isaac is looking up at his father and wondering how things could have reached this turn. Now as they do, Senator Carlson, they switch to another location where others are observing this, and the angels are sitting around, and they're mocking God. They said, you made men, didn't you? Yes, I did. And it said in your plan you made him just a little lower than us, the angels, right? God said, right. And the angels said, we told you there's a design flaw in your creation, didn't we? And you didn't believe us. So God stroked His chin, from which sprouted a long beard, and said, well, you expressed that view. And they said, this is proving it again. And God said, we're going to see, because Abraham is the paradigm of the loving father, and he will not kill his son. I put a brain in his head that is able to think logically, and that logic is going to assert itself and he's not going to kill his son because he thinks he heard a voice. So the angels just sat back and they said, we'll see. So as that hand, that arm of Abraham's was coming up, and that glint was in his eye at first, then it switched to a glazed, vacant stare, and that hand with the knife was coming down, and God said, Good God, the fool is going to do it. And the angels said, yes; what do you say about your design flaw now? And God told the swiftest angel He had, He said, you go down and you stop that fool, because the child is not responsible because he has a fool for a father. The design flaw is on me. I created a being with a flaw. But should the child suffer because of the flaw in the father? And all this happened in a moment, in a twinkling of an eye. And with great relief, but with a broad smile on his face--because all angels are masculine, whether you all know it or not--that angel shot out of heaven like a bat out of Hades, after Hades would be created. And as Abraham's hand was coming down in that wide arch, that angel, with great pleasure, grabbed his wrist. And angels can be a little vengeful also, like Christians of today--you must be punished for what you did. So he gave a little twist and was crushing at the same time, and those two bones in the lower arm rubbed against each other and Abraham felt excruciating pain. And the angel told him, this is nothing like what your child would have felt; this hand will never hold a knife again--and gave another twist, and there was a loud crack and a sharp scream from Abraham. That's the way I view the story. Children

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are made to suffer for the foolishness of their parents and adults. The "Bible" said, "The fathers have eaten sour grapes, and the children's teeth are set on edge." You all think that the New Testament is more enlightened because they didn't talk about sacrificing children. In fact, Jesus spent a lot of time... [LB564]

SPEAKER FLOOD: One minute. [LB564]

SENATOR CHAMBERS: ...talking about how much he cared for these children. He said, suffer the little children to come unto me, for of such is the kingdom of heaven. He didn't say, bring the little children to me and I'll make them suffer. And he also said, if one offends against one of these my little ones, it was better that a millstone be hanged about his neck and he be drowned in the sea. And here you all are, sacrificing the little children for the sake of the political subdivisions. Thank you, Mr. President. [LB564]

SPEAKER FLOOD: Thank you, Senator Chambers. That was your third time. Senator Pankonin, you are recognized. [LB564]

SENATOR PANKONIN: Thank you, Mr. President and members of the body. As I listened to the debate today, I think there's some, as usual, some dilemmas and questions that come up. The first one...and this was an issue that came up in the campaign last fall, and if you would have told me then that I was going to trust a big-time Omaha trial attorney to come up with this solution, you would have knocked me over with a feather. But I personally thanked Senator Lathrop this morning for his work on this, and I think it shows that there's been an honest effort to try to have some safeguards and compromise in this issue, and I appreciate him and all those that worked on it. The second dilemma that Senator Chambers has come up with, and I want to tell him a little bit about my personal experience as a city council person and mayor in Louisville, and first of all, I want to say, though, that I am in agreement with his assessment of German General Erwin Rommel from World War II, and we had a little discussion on that today, and that was enlightening and enjoyable. I'm a World War II history buff, and I agreed with his assessment. But here's the situation I think that comes with the skateboard parks, and I'm not as familiar with motocross, but in our community over the last several years, we had kids or children that--young teens and younger--who were riding skateboards down the middle of our streets and on our sidewalks, and were not only a risk to themselves but to other folks that were walking on the sidewalks. We had a lot of complaints. We did not have the money to build the very, very technical skate park, but we had some of the kids involved come to city council meetings with parents, trying to come up with some kind of solution, because we knew it was so dangerous for them and also other citizens, to be riding right down the middle of the streets. So we ended up doing probably a modified skate facility on a tennis court, it's been described, with some ramps and simple apparatus, and tried to make it as safe as possible, and it seems like that helped. The kids rode there for awhile, but really our problem went away because, for whatever reason, those kids graduated to cars and we

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didn't have that next wave come up. But I think what we were trying to do, and what we're trying to do maybe with this act is that...and when you talk about risky behavior, risky activities, the kids were actually participating with the skateboards and rollerblades, in activities that I would deem to be even more risky to not only themselves but to others. So we designed these parks, or come up with a facility for them to actively participate and engage themselves in that activity, but without being just open on the streets. And parents seemed to prefer that, as well. The other side of the dilemma is the insurance costs and the costs to the community, if we had the full liability for that, and I don't know what that...you know, what difference that would make from a cost standpoint. I think that's part of the issue here. I agree with Senator Chambers that it's unfortunate we can't protect those children maybe to the full extent that we'd like to, and I hate to say you balance that with cost, but I actually think the communities, the Nebraska cities in my district is one of them that did a very nice skate park, were actually trying to eliminate a lot of risk for the children by having a central place that they could be and participate at a less risk level than just riding down the streets and sidewalks, and being a risk to themselves and other people. Thank you. [LB564]

SENATOR FLOOD: Thank you, Senator Pankonin. Mr. Clerk. [LB564]

ASSISTANT CLERK: Mr. President, Senator Chambers would move to amend the committee amendments with FA58. (Legislative Journal page 1059.) [LB564]

SPEAKER FLOOD: Senator Chambers, you are recognized to open on FA58. [LB564]

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, you all may have seen that television program that talks about eerie, strange things, and it says: get your hand off your television button; we're in control of everything. I'm taking control of this debate because the children deserve it. What my amendment would do is to say that on page 4, in lines 5 and 6, we would strike the words "for which no fee,"--it should be "for which no fee is charged." So let me finish that if I didn't write it completely. I've got to look at this. Could you read that back to me, Mr. Clerk? [LB564]

ASSISTANT CLERK: On page 4, lines 5 and 6, strike "for which no fee is charged." [LB564]

SENATOR CHAMBERS: Oh, then I did get it all. Thank you. I had put a circle around the words "no fee." What this would do, if you adopt it and you won't, is to say that even if a fee is charged, there's going to be no liability. You all don't make sense. If the activity is dangerous, what difference does it make whether a fee is charged or not? If no fee is charged, then it can be as hazardous as the city wants to make it, and there's no recovery. But if a fee is charged, all of a sudden there's going to be liability. Suppose the fee is a nickel. What sense does that make? None, because you are not operating from a principle of logic, but rather one of expediency. You want to placate these

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political subdivisions, and I don't. Let me give you all an example of something that I did. Before I ever got into the Legislature, I observed--through newspaper articles, television presentations--high-speed police chases in Omaha, the vast majority of which were from some minor traffic infraction that resulted in serious damage to property caused when police cars or the person being pursued would go up in somebody's yard, run into a house, knock down a fence, or actually death. What galvanized me to try to do something, by making an appeal to the city council to do something about the police chases, was the death of a teacher--had four children. And the person being pursued ran a stop sign and hit the car, killed the teacher, and there was no recovery for that man's widow and the children because they ruled that the cop was not negligent in the chase. Cops are never found negligent. So when I got in the Legislature, I knew something had to be done, and I prevailed on my colleagues to enact a law that requires strict liability. If an innocent third party is hurt as a result of a police chase, whether the injury is caused by the one being pursued or by the pursuing officer, that innocent third party is going to be made whole. The limitations of recovery are those found in other laws, but there doesn't have to be a proof of negligence. The rationale that I gave, which my colleagues accepted, was similar to the one I'm offering today, which you are going to reject. If society believes that these chases, as hazardous as they are to the person being chased, to the cops doing the chasing, and to innocent third parties, is to be considered...if these chases are to be considered a legitimate part of legitimate law enforcement, then society should assume the cost of making innocent people who are harmed whole. And Nebraska is the only state with a law like that, and I could give you other laws that I've gotten on the books that exist nowhere else in this country, because I take seriously the things that happen to people. And I don't have a family member who was ever injured in or as a result of a police chase, but I saw what was happening to other people. And all these other politicians and supposedly responsible leaders of society didn't think anything should be done, and that's the law now, and Omaha has been crying like a pig with its nose stuck under the gate ever since, but it applies to the cities, the sheriffs' departments, and the State Patrol. And I went a step further. Because these chases sometimes originate in Omaha or go into Council Bluffs, and Iowa cops will chase into Omaha, the liability attaches to the agency they work for. And you might say, if that agency is not in Nebraska, how can they be held liable? Well, when you show a sufficient connection to the state where the injury occurs and the person who committed it, you can use the long arm of the law and reach across those state boundaries and get the perpetrator, so that is in the law now. And these Iowa cops and their leaders may not know it, that when they come barreling across the river into Omaha they are covered by Nebraska law, and if an innocent third party is hurt, the agency that hired that cop in Iowa is liable. I think about these things; I come up with solutions. And now I'm looking here, and I'm not saying strict liability; I'm saying, as I've said and I'll say it again and again and again, children should be protected from the insensitivity of political subdivisions and the shortsightedness of their parents. People who testified before the Judiciary Committee, and some have intimated the same thing on this floor today, that the public demands that these facilities be made

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available for these children. The parents or society makes the demand. Well, if society is making the demand and these facilities are produced pursuant to the demand of society, let society as a whole assume responsibility for making these children whole. And you all don't want to do it because you care more about political subdivisions than you do these children. That's what the whole thing is. Political subdivisions have a lobbyist. The children don't. But we heard all that talk from Senator Hansen in behalf of children in foster care, and Senator Dubas, and I'm not denigrating what they did. I applaud it. But I knew I would bring it back to bite them, and my dog has teeth. And there is Senator Howard, forever the guardian of the children. And who is the villain? HHS, a state agency, which is an easy target. But HHS is not deliberately, with malice and knowledge of forethought, producing facilities known to be dangerous to children, and saying, we have no responsibility. All of you all are like Pilate, everyone of you, because you say, give me that basin of water and let me wash my hands so that I have no guilt or responsibility when these children are hurt, and I know they're going to be hurt. Well, what about Jesus' comment that if you offend against these little ones? Oh, Jesus. He's dead; he's no longer on this earth. He doesn't have to pay insurance premiums. Jesus is like the Easter Bunny, Santa Claus, and the Tooth Fairy. We tell kids these stories, but they don't mean anything to us. You think Jesus means something to us? Why, you know why we look forward to Easter? Because that's when they nailed him to a tree with his ignorant, foolish, simpleminded self. That's how much we think of Jesus. [LB564]

SPEAKER FLOOD: One minute. [LB564]

SENATOR CHAMBERS: What did he do that week before? What was Palm Sunday? Isn't that when he rode into town on a jackass and the people laid all these palm branches out, hollering hosanna, hosanna, like you all every morning here? Then what did they say a week later? They treated him like an ass, and they hollered, crucify him. And you all crucify him day after day after day. And how do you do it? You offend against these children. And you say, when did we ever offend against those children? He said, if you offend against children anywhere, you offend against the children I'm talking about. This is what you all teach, and it means nothing to you, where the rubber meets the road, and that's where we are now. Thank you, Mr. President. [LB564]

SPEAKER FLOOD: Thank you, Senator Chambers. Senator Lathrop, you are recognized. [LB564]

SENATOR LATHROP: Thank you, Mr. President and colleagues. It would seem that this discussion has gone to the concerns that Senator Chambers has, and I'd like to perhaps identify those from a legal point of view, and address them. First of all, when you talk about changing the amendment, AM879, to provide for ordinary negligence standard for activities that happen at a skate park or a BMX park, the one thing that would happen if we did that is, we would then still have available to the political

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subdivisions the defense of assumption of risk. And basically, assumption of risk is where you knowingly encounter a known and specific danger. And frankly, we're not that far from that spot in this bill. Essentially, what happens at a skate park, if someone is injured...first of all, if you want to make a claim because the place was defectively designed, the law, long before this amendment came long is, was the place built to the prevailing safety standards at the time? We've codified that, but I've got to tell you, it's existing law. And so we are not shortchanging children with the statute; we are simply making it very clear and very specific with respect to skate parks and BMX parks that the rule that prevails in a design defect claim prevails in this situation. So what else could the city be negligent for? If you set a skateboard park out there and somebody participates in this activity, they are assuming the risks that follow when you take wheels down a hill and then go back up another hill on the other side: You can fall and get hurt. So even if we were to take you up on the offer to change this amendment, Senator Chambers, to provide for ordinary negligence, the city would still have at its disposal the defense of assumption of risk, and I would suggest to you that that's essentially also what we've codified here. The defense of assumption of risk has been around in tort law and civil liability law for generations--forever. And it is an absolute defense, just as it is in this amendment. And so even if we did not give special consideration to skate parks or to BMX parks, I think we would come back to the same conclusion. And as a lawyer that's handled these kind of cases, I was a little surprised by the reaction after the Dawes County case that people started closing skate parks, because, frankly, the city had the defense of assumption of risk and probably was never going to be liable in the first place. So I don't think that we have made a great departure in dealing with skate parks. I understand principles of civil liability, I understand the absolute defense of assumption of risk, and we've tried to craft this amendment to be close to, but perhaps not identical to, the defense of assumption of risk. And the idea here is that if you are going to engage in an activity voluntarily, and it involves falling down or getting hurt, and that's an integral part of it, and you do it knowingly and intelligently and voluntarily,... [LB564]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: One minute. [LB564]

SENATOR LATHROP: ...then you can't come to the city and say, I got hurt doing exactly what I knew might happen if I did this activity. Senator Pankonin made a very good observation, I think, and that is, we offer an opportunity with this bill to create more of these skate parks. That's a good thing. These things must be constructed by engineers to the best safety standards available at the time of their construction, and that affords children an opportunity to participate in this activity, not on the steps of the courthouse or not on a railing at the business downtown, but in a safely designed skate park. So I think we're doing...we're making good policy with this amendment and with this change to Nebraska law. Thank you. [LB564]

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PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Carlson, followed by Senator Friend, Senator Chambers, and Senator Wightman. Senator Carlson. [LB564]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. Senator Chambers, most of the time when you refer to the Bible, I enjoy it, and many times you quote Jesus. Many times you quote Him very accurately. Many times you quote Him reverently to make a point, and you do it very well. Today you talked a little bit about Abraham, and so I have a freedom to respond when I want to, and in this case you left out a thing or two, and so I'm standing to tell the rest of the story. Abraham had faith in God, and when you have faith in God, you obey Him. When you obey Him, good things happen, sometimes immediately, sometimes later. Sometimes God uses angels; sometimes he doesn't. Now the story of Abraham, I don't really believe that He used angels that day, but here's the part of the story that's important that you didn't bring up. Abraham took some servants with him when he and Isaac set out to obey God, and before they went on to the place of the sacrifice, they stopped, and Abraham told his servants, you stay here, and the boy and I will go over there, we will worship, and then "we" will come back to you. And so I would say that Abraham, because of his faith, he knew that God was going to provide a sacrifice. He knew that God would deliver, which is what happened, and I would submit that's the rest of the story. Thank you. [LB564]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Friend. [LB564]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. I always think back to the...it was the first year that I sat in this Chamber, and you tend, especially on the days where it was really cloudy out, you tend to look around and the dark nature of this place, okay? And I...granted, I love this place just like you guys do, but it's eerie. And one of the things that happened to me when I was looking around and trying to anticipate, boy, what's coming next, I stood up and made some...you know, I was bloviating on something. And Senator Chambers got me off to the side, and he said, there's going to be a day when you are standing on a hill and you are ready to pull your sword out of your sheath and die on that hill, and he goes, I'm going to be here when you try to do that. I don't know if he remembers that, but--I'm paraphrasing, I don't know if those were the exact words--but, members of the Legislature, we're here. This isn't even my language. I couldn't do justice to a bill like this by trying to create my own language to try to do what we need to do for our society. Practically, where we're at in a lot of ways...I don't think it's a gauntlet. I don't think we're at a...you know, in a position where Mike Friend or anybody else would stand on the floor and say it's ultimatum time. But I just told you, I'm on the hill. Senator Chambers reached out and he said, well, wait a minute, society's interest, where is that? More or less. This is an observation on my part, like I said, not a gauntlet that I'm tossing out. And I'm trusting, but I've also verified, as people like to point out here on the floor, that there's a practical nature to this bill. I've talked to Senator Lathrop about it, I've talked to Speaker Flood, I've talked to others. I've

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talked to Senator Chambers briefly about it. Let's do talk about what society wants. I think this is it. Society didn't want LB564. If it did, the Judiciary Committee wouldn't have gotten the type of experience involved in this subject matter that it did, to retool it; to say, Mike, you know, nice, but here's the way this has to go, this is what society has to have. I pointed out in my opening that the experienced members of that committee--I guess notwithstanding Senator Chambers, because I don't know how much of the discussion he was involved in, in regard to, you know, this subject matter during Executive Sessions and the drafting--but the experience, the background in that committee said, this is what would be best for society. But they didn't just do it in a vacuum. I know who they worked with. [LB564]

PRESIDENT SHEEHY: One minute. [LB564]

SENATOR FRIEND: I was kept informed all along. This is society speaking out, folks. The committee amendment is what society has come up with. And I'm not trying to oversimplify it, but what I am saying is that Senator Lathrop, and it's my understanding that Senator Ashford, as well, and others did not work in a vacuum here. There were a lot of folks involved, and with the idea, the simple idea, of fairness in mind. There's a rule of 33, and there's a rule of 25. I'm not totally positive what we're on, but I'll tell you this: Sometimes, I firmly believe this, you are on the rule of 33. Sometimes it's going to take a majority. I'm standing on the hill, and I'm not going anywhere, and the fact of the matter is, LB564 is my bill,... [LB564]

PRESIDENT SHEEHY: Time, Senator. [LB564]

SENATOR FRIEND: ...and I'm ready to charge down the hill. Thank you, Mr. President. [LB564]

PRESIDENT SHEEHY: Senator Chambers. [LB564]

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, first, to dispatch what Senator Carlson gave as the rest of the story. If Abraham told his servants not to come, do you know why that would be? No witnesses. He knew what he was going up there for. And by the way, a ram was found entangled in the bushes after all this was over, so some innocent creature, nevertheless, had to have its blood shed for this barbaric ritual, which was rejected eventually by the very people who engaged in it. I'd like to have a little conversation with Senator Lathrop, if I may. [LB564]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to a question? [LB564]

SENATOR LATHROP: Certainly. [LB564]

SENATOR CHAMBERS: Senator Lathrop, if I were to accept as completely true

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everything you said with reference to a standard of ordinary negligence for these facilities, and you say that the assumption of risk theory would be an absolute defense, what objection would you have to humoring me and saying that these two facilities will be governed by the standard of ordinary negligence? What would be given up, if it's as you say it is? [LB564]

SENATOR LATHROP: Well, first of all, I think they are governed by a standard of ordinary negligence. The question is whether or not the defense involving inherent risk is the same as assumption of risk. And I think that the inherent risk language is a bit different than assumption of risk. It's close to it, but if one were to imagine all of the risks that are intrinsic to an integral part of an activity or characteristic of that activity, that's a little broader than assumption of risk, which is knowledge of a specific known risk with respect to that activity, at a given time. [LB564]

SENATOR CHAMBERS: Suppose I were to tell you that I listened very carefully to what you said and I'm going to agree, and I've been educated by you, and what I wrote last night is really the way it ought to be, and this is the way I formulated it. It would be negligence per se, to construct and make available for public use a facility which is inherently hazardous/dangerous. That's different, isn't it? That comes very close to what I've tried to do with the high-speed chase. Strict liability, isn't it? [LB564]

SENATOR LATHROP: Well, I think you are only halfway there, if that's your thought. And to make it negligence per se, that means that you start out with this principle in deciding a particular case. The city is negligent; now let's go on to the defenses available to the city, which would include comparative fault, it would include assumption of risk, and it would include the defenses available in this bill. [LB564]

SENATOR CHAMBERS: But there would be a possibility of a recovery, which would not be available the way the bill is crafted now, with the amendment. [LB564]

SENATOR LATHROP: Honestly, honestly, I've thought about this a lot. I don't know how the city could be negligent in the situation with a skating park. You would essentially be setting the case up to be, the city is negligent; now let's start looking at the defenses. And if we used ordinary negligence, Senator Chambers, I got to tell you, if that person calls my office and says, I got hurt over at the skate park--right now, we have no protection--I wouldn't take the case. [LB564]

SENATOR CHAMBERS: But to say it's negligence per se is different from an ordinary standard of negligence. This is saying, if you present that to the public, you are negligent by presenting it, and if somebody is hurt,... [LB564]

PRESIDENT SHEEHY: One minute. [LB564]

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SENATOR CHAMBERS: ...then you are liable. That's what negligence per se is saying. [LB564]

SENATOR LATHROP: Yeah, and I don't know that Nebraska...I don't think Nebraska recognizes that. Obviously we would if it were in the statute, but then I don't know where that would leave us with comparative fault. [LB564]

SENATOR CHAMBERS: We wouldn't even have to worry about comparative fault. All we'd need to show is that the city provided this facility, a person was injured at that facility, and the city's negligence is a matter of law. But that would be different from an ordinary standard of negligence, wouldn't it? It would be a much higher standard. [LB564]

SENATOR LATHROP: It would be strict liability, much like a police chase or a dog bite. [LB564]

SENATOR CHAMBERS: Thank you, and because my time is up, that's all I'll say at this point. Thank you, Mr. President. [LB564]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Wightman. [LB564]

SENATOR WIGHTMAN: Thank you, Mr. President, colleagues. I would like to engage in a little discussion, both with Senator Lathrop...first with Senator Lathrop, and then with Senator Chambers. [LB564]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to a question? [LB564]

SENATOR LATHROP: Yes. [LB564]

SENATOR WIGHTMAN: We've talked some about the doctrines of assumption of risk and comparative negligence, and we talked about it earlier, and you just engaged in a conversation with Senator Chambers, correct? [LB564]

SENATOR LATHROP: That's true. [LB564]

SENATOR WIGHTMAN: With regard to assumption of risk, and probably both assumption of risk and comparative negligence, there would be somewhat a sliding scale, would there not, based upon age and the person's understanding of the risk? [LB564]

SENATOR LATHROP: When you talk about comparative fault as an objective standard for someone of like age and ability to reason, assumption of risk requires an element of knowing, and knowing may be a function of age. I had occasion to research that in a

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case I was handling not long ago, and I couldn't find a case that said that defense isn't available with children, so I think it is. [LB564]

SENATOR WIGHTMAN: It might well be different with an eight-year-old than it would a 12- to a 16-year-old, is that correct? [LB564]

SENATOR LATHROP: I would sure think so. [LB564]

SENATOR WIGHTMAN: And so part of the problem we have here is, even if we gave notice, if we gave notice of the dangerous nature of the act they were going to participate in, and I'm thinking primarily of the skateboarding, we may not be able to give notice to these younger persons that would be sufficient to eliminate the liability. [LB564]

SENATOR LATHROP: With simple assumption of risk, I think that's true. [LB564]

SENATOR WIGHTMAN: And probably even with comparative negligence, because negligence also would be based some upon their age and their understanding, would it not? [LB564]

SENATOR LATHROP: I would agree with that, too. [LB564]

SENATOR WIGHTMAN: If we were, for example, to say that nobody under a certain age--let's say 10--could participate or was allowed in, or at least we gave notice to parents that they should not enter the skate park, would that take care of some of the problems, if perhaps a younger child could not assume the risk? I'm just throwing this out for discussion. [LB564]

SENATOR LATHROP: Yeah, and it's a great point, and I think that...I don't know that I have the answer, and that is, if a parent is aware of it, is that the equivalent of assumption of risk when the child goes ahead and participates in an activity? I think it's not. I think it's more comparative fault. When you look at all the people that have fault, then you are talking about the parent's fault and whether that exceeds the city's fault in that liability, in that situation. [LB564]

SENATOR WIGHTMAN: And I agree with you, that that may be subject to interpretation, and any time it's subject to interpretation, then the limitation of liability is problematic, at best. I would ask if Senator Chambers would yield to a question. [LB564]

PRESIDENT SHEEHY: Senator Chambers, would you yield to a question? [LB564]

SENATOR WIGHTMAN: Thank you, Senator Lathrop. [LB564]

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SENATOR CHAMBERS: Yes, would you phrase the question for me? Oh, you mean that series of questions that you asked? [LB564]

SENATOR WIGHTMAN: Oh, I would start over with you. [LB564]

SENATOR CHAMBERS: No, my answers would...because I did pay attention. I thought there was maybe something new. I think generally I would agree with the answers Senator Lathrop gave, except that I think there are some things in the law that are crafted based on an adult's experience, knowledge, and understanding, and they would not be applied whole cloth to a child. There are some things...I don't think a child can assume a risk, I don't think a child can be comparatively negligent, because when you talk about the reasonable person, you are usually talking about an adult, and an adult with all his or her faculties. So I think it is a very good area to explore, but I can't give a definitive answer. But I do think that children would not be... [LB564]

PRESIDENT SHEEHY: One minute. [LB564]

SENATOR CHAMBERS: ...subject to the standards that would apply to adults. [LB564]

SENATOR WIGHTMAN: Do you think you could consider any compromise here that might involve notice to parents and maybe a prohibition from entering the facility to people under a certain age? [LB564]

SENATOR CHAMBERS: That would help some, but again, I think the activity is so dangerous, of its very nature, that no matter what a person's age or skill is, there can be these injuries. And but for the city providing these facilities, those injuries would not occur. So I don't want the city to escape, which they'll do under this bill as it's crafted, in my opinion. [LB564]

SENATOR WIGHTMAN: Would you agree, Senator Chambers, that at some age, even though it may be a dangerous instrumentality, you could voluntarily assume that risk? [LB564]

SENATOR CHAMBERS: Oh, yes, at some age. I just can't say what it is at this point. [LB564]

SENATOR WIGHTMAN: But something along that nature might be better than nothing, is that correct? [LB564]

SENATOR CHAMBERS: It would be better than nothing. And when we talk about the dangerousness of some of these activities, you can see there's a high... [LB564]

PRESIDENT SHEEHY: Time, Senator. [LB564]

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SENATOR CHAMBERS: Oh, okay. [LB564]

SENATOR WIGHTMAN: Thank you, Mr. President. Thank you, Senator Chambers. [LB564]

PRESIDENT SHEEHY: We have Senator Chambers, followed by Senator Schimek. Senator Chambers, this is your third time to speak. [LB564]

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, there can be a high level of danger, a lower level of danger. Somebody playing tennis could get hit in the eye with a tennis ball. Somebody could release a racket that would hit somebody upside the head. That's at the low end, and those things are not what I'm concerned about, and they're not the kind of things the city is concerned about. We all know what it is we're concerned about. That's why that definition of inherently dangerous is in this bill, because we all know the kinds of activities that are dangerous in and of themselves, and are likely to create harm. We can read the language of the bill and know that, so we don't have to pretend we don't understand. Exactly where the line would be drawn between the high end and the low end so that you are in one quadrant rather than the other, I can't draw it, but I know that this skateboarding and the motocross biking are at the high end. And I do think, rather than saying ordinary negligence, it should be negligence per se, for the city or any political subdivision to provide these activities. Senator Howard knows--but I don't see her here--we all know that if a parent puts his or her child in a set of circumstances where that child can be hurt, that parent is guilty of endangerment of a child. You could not do as a parent to your child without liability, even criminal in some cases, what is being suggested here. If you put your child in a position to have a broken arm or broken leg and you know it, and that happens, you've endangered that child. Senator Howard wouldn't agree that children should be put in a situation where a reasonable person knows that the child is going to be hurt, and the only reason that the child is put in that position is for a recreational purpose. There is what is known as an attractive nuisance. On your property, if you have....they usually give the example of a swimming pool, but something that could harm a child, that you know will draw a child, you didn't want that child on your property, you didn't invite that child on your property, you didn't expect the child to come on your property, there are no children in the neighborhood. But if a child comes on your property under those circumstances and is harmed, you are guilty. It's your property, in a sense, that was invaded. The law calls it an attractive nuisance. Well, you as a private person, who don't want the children on your property, are nevertheless responsible and liable. Here the city is putting the dangerous instrumentality out there, is inviting the children to come, and the cities should be liable if the child is hurt, period. So what I'm really talking about is strict liability. Why do you think I gave the example of the police chases? And Senator Lathrop has handled some of those cases, and I've never heard him say that that law should be repealed because there are innocent

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people hurt, and there should be some way for them to get some redress. There are innocent children hurt here, and I think if they're hurt, no matter what the circumstances, on a facility provided by the city, which the city knows is dangerous, the city should be liable. Senator Friend said he's ready to fall on his sword. Well, he's got a few more hours before he has to do it. What the city... [LB564]

PRESIDENT SHEEHY: One minute. [LB564]

SENATOR CHAMBERS: ...puts out there, the public is allowed the expectation that their children will be safe, that the city is not going to put something out there that will harm their children, and if there is this great risk and the child is hurt, the city would respond in damages, but not under this bill. More concern is being expressed for the political subdivisions than these children, and here was the formulation that I had made, knowing that it will fall on deaf ears: How can a compassionate, responsible society which proclaims an interest in protecting children and seeing to their welfare, how can it be more concerned about the wishes of political subdivisions than about the welfare, safety, and care of the children? We are charged with seeing to the interests and needs of people, and especially children, not political subdivisions. [LB564]

PRESIDENT SHEEHY: Time, Senator. [LB564]

SENATOR CHAMBERS: Thank you, Mr. President. [LB564]

PRESIDENT SHEEHY: Senator Schimek. [LB564]

SENATOR SCHIMEK: Thank you, Mr. President and members. I think this is a very good discussion, and I think it illustrates the difficulty of this bill, and I have to confess it's very difficult for me, as a nonattorney, to follow this discussion and be able to make reasoned judgments on it. But I do think that the discussion is good and we ought to have it, and I don't know if there's any way to find some common ground here, in order to take care of Senator Chambers' concern and maybe the concern of some others on this floor, and at the same time allow the cities to have their skateboard parks, have their motocross parks, if they want. I don't know if there's any way to do that. I was going to give my time to Senator Chambers, but I can see that he is engaged. He would like to have the time, so if I could, Mr. President, I would like to give my time to Senator Chambers. [LB564]

PRESIDENT SHEEHY: Senator Chambers. [LB564]

SENATOR CHAMBERS: She gave me her time. Thank you. Thank you, Senator Schimek. I didn't want it to be mistaken and it be taken that I'm giving my closing. The reason I offered that amendment was so that I would have time to speak. I had spoken my third time. I'm going to have to create my opportunities, which I shall do, but I did

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really want to go into more depth than I did about this distinction between when somebody pays a fee to enter a facility, and when the person doesn't. If you had to pay a fee to go to one of these parks, then the city is held to a much higher standard just because you give a fee. So you say, okay, we're not going to require a fee. The same amount of danger and hazard is there. The likelihood of the injury is there, and if your child is injured, the city is not going to contribute one nickel to making that child whole, and that's something that hasn't been discussed yet, but since we're going to be on this bill eight hours, I'll have opportunities to delve into that area also. What becomes of the child who suffers a catastrophic injury? Well, it's up the parents to find a way. Go let the state pay for it; the state passed the law. And that's what will happen. But is that child going to get the same kind of care that would be made available had the family recovered a judgment that would require the payment of the medical care, the costs of that care? We all know it would be different. The example I give is what was happening at Walter Reed Hospital to these veterans. If they had been in a position to have enough money to go to a private hospital and pay what the cost was for the care they got, there wouldn't have been rats and roaches running around on the floor, there wouldn't have been peeling paint and all these other things, because just from the standpoint of PR, public relations, hospitals would present a better face than Walter Reed did. So when you all hear these government people and the other deluded people who are supporting this war talk about we got to take care of the soldiers, well, you don't take care of the ones who come back here who have given next to everything. And some of them have said they're in a worse state than if they had been killed. Some have said they'd be better off dead. They've lost parts of their limbs, some of their faces have been damaged and mutilated, almost beyond human recognition,... [LB564]

PRESIDENT SHEEHY: One minute. [LB564]

SENATOR CHAMBERS: ...and they ask why did--well, they say God--why did God even let me live? And I say, well, God ain't got nothing to do with it. Whoever shot at you didn't shoot straight enough. That's what that is. So you are putting these children in a set of circumstances where they are hurt, and they have nothing that society is going to offer to help make them whole. So when you all get up here talking about foster care, I'm going to say what about the children who are hurt? You don't care about them. When you talk about HHS not talking to these foster parents, what about the cities putting stuff out there to harm these children? That's where I see the disconnect. But you get one bill and one idea, and that's all you see, and disconnected from everything it's related to. Senator Carlson, the reason I quote from the Bible is because people claim to believe it, and there are examples to be taken. You remember Jesus said you didn't visit me when I was in prison, you didn't feed me when I was hungry, you didn't give me water? [LB564]

PRESIDENT SHEEHY: Time, Senator. [LB564]

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SENATOR CHAMBERS: That's what they always say at that point. Thank you, Mr. President. [LB564]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Mr. Clerk, do you have messages, reports, announcements on your desk? [LB564]

CLERK: I do, Mr. President. Your Committee on Judiciary, chaired by Senator Ashford, reports LB151, LB246, and LB540 to General File, with amendments. Senator Rogert offers LR68, Mr. President. That's a resolution that will be laid over. I have three amendments to be printed from Senator Janssen to LB367. Education Committee will meet in Room 2022 upon adjournment; the Education Committee upon adjournment in Room 2022. Some name adds: Senators Flood and Gay to LB368; Senator Erdman to LB564; Senator Loudon, LB564; Senator Pirsch, LB564; Senator Howard, LB596. (Legislative Journal pages 1059-1065.) [LB564 LB151 LB246 LB367 LB368 LB540 LB596 LR68]

And Mr. President, I do have a priority motion. Senator Flood would move to adjourn until Wednesday morning, April 4, at 9:00 a.m.

PRESIDENT SHEEHY: I do have a priority motion to adjourn until Wednesday, April 4, 2007, at 9:00 a.m. All those in favor say yea. Opposed, nay. We are adjourned. [LB564]