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Floor Debate  
April 04, 2007

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[LB31 LB57 LB218 LB265 LB367 LB415A LB415 LB427 LB457 LB479 LB500 LB562  
LB564 LB603A LB658 LB701 LB701A]

SPEAKER FLOOD PRESIDING []

SPEAKER FLOOD: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the fifty-eighth day of the One Hundredth Legislature, First Session. Our chaplain for today is Senator Kruse. Please rise. []

SENATOR KRUSE: (Prayer offered.) []

SPEAKER FLOOD: Thank you, Senator Kruse. I call to order the fifty-eighth day of the One Hundredth Legislature, First Session. Senators, please record your presence. Please record, Mr. Clerk. []

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

SPEAKER FLOOD: Thank you, Mr. Clerk. Are there any corrections for the Journal? []

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

SPEAKER FLOOD: Are there any messages, reports, or announcements? []

CLERK: I have neither messages, reports, nor announcements at this time. []

SPEAKER FLOOD: Thank you, Mr. Clerk. We will now proceed to the first item on the agenda. Mr. Clerk. []

CLERK: Mr. President, LB564, originally introduced by Senator Friend. (Read title.) The bill was discussed yesterday, Mr. President. At that time Senator Friend opened on the bill, Senator Ashford presented the committee amendments, and Senator Chambers had offered FA58 as an amendment to the committee amendments. Those are the motions I have pending at this time. [LB564]

SPEAKER FLOOD: Thank you, Mr. Clerk. Before we begin floor debate on LB564, I would ask Senator Friend, the introducer of LB564, to give us a brief update, followed by the Vice Chair of the Judiciary Committee, to recap the committee amendments, and Senator Chambers to recap his amendment. Senator Friend. [LB564]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. I will be brief. The underlying bill, LB564...purpose of the legislation, just to refresh everyone's memory, is to return the law to the status as it was previously understood by many, as we relied upon it...or as many as...a lot of the governmental subdivisions relied upon it,

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to restore to the limited immunity standard for publicly owned lands made available for recreational purposes. Simply put, the bill 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. The underlying...and again, very important--we outlined a lot of it yesterday--the underlying Judiciary Committee amendments replaced the bill. It changes the discussion, to a certain degree, and then obviously, amendments following that. I...at this point I don't have a whole lot more to add. I would say that it was a valuable discussion, and I would hope that we would have quite a bit more of that today. So, Mr. President, that's all I'd have. Thank you. [LB564]

SPEAKER FLOOD: Thank you for the update, Senator Friend. Vice Chair of the Judiciary Committee, Senator Lathrop. [LB564]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Just by way of an update or perhaps a refresher from our discussions yesterday, the...LB564, as described by Senator Friend, was essentially gutted, and in its place, AM879. AM879 has become the substance of our response, the legislative response, to the rec liability concerns of the political subdivisions in the state of Nebraska. What the amendment does essentially is provide for a standard of ordinary negligence, but allows the political subdivisions in the state three defenses. The defense for the activities of recreational activities is immunity from liability for inherent risks that follow injuries. The second defense relates to the design of skate parks and BMX parks. If they are designed in accordance with prevailing safety standards at the time they were built or reconstructed, then the city or the political subdivision is free from liability for defective design. And the third defense relates to the condition of the property. Essentially, that defense is that if the political subdivision does not know about a defect in the condition of the park or the recreational facility, they're not charged with knowledge unless their failure to learn about the defect was the result of gross negligence. Those are...that is the amendment. That is now the substance of LB564, and that's an update. Thank you. [LB564]

SPEAKER FLOOD: Thank you, Senator Lathrop. Senator Chambers, would you give the body an update on your FA58 to AM879. (Legislative Journal page 1059.) [LB564]

SENATOR CHAMBERS: Yes. Mr. President, members of the Legislature, this amendment that I'm offering is a futile, idealistic, naive attempt to bring a clean thing out of an unclean thing, to convert a sow's ear into a silk purse by showing that there should be no distinction in terms of the level of care that a governmental agency owes to citizens, based on the mere fact that a fee is charged in one instance and not charged in another, even though there may be the same hazards available in both situations. Thank you, Mr. President. [LB564]

SPEAKER FLOOD: Thank you, Senator Chambers. We will now begin with floor debate

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on LB564. Senator Friend, you're recognized. [LB564]

SENATOR FRIEND: Thank you, Mr. President, and again, members of the Legislature. I mentioned yesterday, having fun with it a little bit, that I more or less have made the determination that I'm standing on a hill. I think Senator Lathrop has manned the catapult, if you will, or maybe he's in charge. I'm not really sure. (Laugh) But I don't believe, to use the analogy again that I'm standing there, sword unsheathed, inside of a stone castle, for my Rommel lovers out there, here's a little quote, and then I'm going to quiz you later: Fixed fortifications are monuments to the stupidity of man. I'm not sitting in a fixed fortification here. In the final analysis, there's a good reason and there's a good legitimate reason that this legislation needs to happen. In 1965 there's a revised statute...one of our revised statutes, 37-1001, the law provided we as a Legislature, the people of the state of Nebraska provided that the owner of property would face liability if the injury was a result of willful or malicious failure to guard or warn against the danger, but not for ordinary accidents. This law more or less created by the Legislature promoted--now this is arguable, but a lot of people are making the argument--that it promoted the opening of recreational facilities around the state to the public, at no charge to the public for the most part, by offering that limited liability protection. In 1981 the Supreme Court ruled that the protection applied to government entities, as well as private landowners, Watson v. City of Omaha. There were other rulings that followed that. Let's say that was a mistake by the court, just for fun for a second. Let's say that it was a mistake, or just for the case of argument. These rulings are still legal precedent in the form of case law. It's established as precedent. The precedent prevents judicial inconsistency and individual judicial activism. That's what...the year I spent in law school, probably either the shortest or the longest in my life--I'm not really sure, I haven't made that determination yet--I used to...I was perplexed. They'd say, you know, judges make laws all the time. I said, well, I don't understand that concept. But they do, in the form of precedents. And there's a consistency that precedence sets that helps future decisions. Those decisions that were made encouraged the building of swimming pools, skate parks and other recreational infrastructure around the state. The 1981 decision, Watson v. City of Omaha, was...is a perfect example of that. The Supreme Court decision in Bronsen v. Dawes County changed the precedent. People around the state are going, whoa, time out. This is not what we planned on, okay? [LB564]

SPEAKER FLOOD: One minute. [LB564]

SENATOR FRIEND: The Supreme Court decision demands immediate action. That's what they're screaming for. I believe sometimes courts and judges look to the people and they look to the Legislature to say, you need to guide us. That's your job. And that's what we're going to do right now, today, or maybe tomorrow. I have said a lot of times out here, and I still believe this, sometimes legislative inaction is action; not here, not today. The courts have made statements. The recent decision is another statement. I believe it's time for the people of Nebraska, I believe it's time for us, to make our

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statement. Thank you, Mr. President. [LB564]

SPEAKER FLOOD: Thank you, Senator Friend. Senator Chambers, you're recognized. [LB564]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I am prepared to resume the journey that I started yesterday, which I said would be a leisurely one. And I intend to take my time, your time, and everybody's time. The number of people who are on one side of an issue is not determinative of whether they are correct. Senator Friend said he spent a year in law school. He posed a question and said he was going to give a little quiz on it later. I would ask him to answer this...who said this: Aye, me lad, a wee bit a learnin' is a dangerous thing. I would like to ask Senator Friend a question, though. [LB564]

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

SENATOR FRIEND: Yes, I will. [LB564]

SENATOR CHAMBERS: Senator Friend, what was the Maginot Line? [LB564]

SENATOR FRIEND: I'm...could you repeat that, Senator Chambers? [LB564]

SENATOR CHAMBERS: What was the Maginot Line? [LB564]

SENATOR FRIEND: The Maginot Line? I do not know the answer to that. [LB564]

SENATOR CHAMBERS: Thank you. [LB564]

SENATOR FRIEND: Senator Pankonin knows. (Laughter) [LB564]

SENATOR CHAMBERS: I asked the person that I wanted to put the question to. Members of the Legislature, I'm going to make some references to literature and others whom you may respect, in order to try to make my points. But first of all, I had made a reference yesterday to the attitude Jesus expressed toward children. He didn't say, big children, little children, good children, bad children, black children, white children--just children. And they were His model that he presented for a lot of things, even when he was counseling adults on how they should conduct their affairs. I had started to mention, where a question was asked of Jesus, after He said, I was in prison and you didn't come to visit me; I was hungry, you didn't feed me; I was naked, you gave me no clothing; I was homeless and you gave me no shelter. And they all were indignant. They said, Lord, when did we see you hungry and didn't feed you; thirsty, didn't give you water; naked, didn't give you clothing; homeless and didn't give you shelter? And in the

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back of their minds, but they wouldn't speak it, they were saying, that never happened to you, anyway. So in trying to be the teacher that he was, Senator Carlson, and trying to explain what the brotherhood, sisterhood, "familyhood" of all people meant he said, if you did not do these things to the least of my brethren, you didn't do them for me. I know if you saw me coming with glory all around me, raising people from the dead, turning water to wine, you would have given me anything you thought I needed. But that's not how I test your virtue; that's not how I determine nobility. Anybody would fall down and do something for one they considered great. Why, even the publicans, Pharisees, and sinners take care of their own! I'm calling you to a higher standard. I want you to look at the least individual, the one who's marginalized, the one who nobody wants to be seen with, the one nobody will even speak to on the street, the one somebody might cross the street to avoid having to look at or speak to. That's the one... [LB564]

SPEAKER FLOOD: One minute. [LB564]

SENATOR CHAMBERS: ...that I'm going to judge you by. How did you treat those people? Well, we don't find in the book what happened after that. But I take from here and take from there--here a little, there a little, line upon line. They dropped their heads, looked at the ground, shuffled their feet, and they were smitten in their wicked hearts! And they said, message received. That's what I'm trying to do here today, but Jesus had an easier job than I've got. Thank you, Mr. President. [LB564]

SPEAKER FLOOD: Thank you, Senator Chambers. Senator Louden. [LB564]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. As I left early for the debate yesterday and I noticed amendments had come on here, what I would like to remind people, that this is...this isn't about skateboard parks in Omaha, and some of the recreational facilities in some of your larger cities. What brought this around was the judgment rendered out there in Dawes County, and this had to do with small towns and villages across the whole state of Nebraska. And the way I read the summary from the court was that it wasn't that the bill was unconstitutional or anything. It's just that the bill wasn't intended to apply to...it was intended to apply to private landowners only, and it wasn't available for governmental entities, and that was the size of it. Consequently, when that ruling came about, then that turned most all of the government entities in the small villages and your larger towns upside down with their recreational programs that they do, such as their special days, their celebrations they have, and of course this brings in your class reunions, your family reunions, and it brings people in from all over, such as the case in Dawes County. The lady in question, I think, was from Utah. She was back visiting family, been around there for most of the day and literally walked around the yard and twisted her ankle and went from there. I would wonder if Senator Chambers, when he takes his hunting dog out on the lawn by the courthouse, if he happens to twist his ankle going off of the sidewalk out there, if this would apply to him,

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that the state would be liable for that. It was...be pretty near the same type of situation as what this lady incurred up there. She just literally twisted her ankle on some rough ground. With that, as I listened to the testimony at the day of the hearing on these bills--I think they did three bills all together at the hearing--and the question finally arose around whether or not there was a skateboard park east of 72nd Street, and I hate to see something like that get involved with something that's doing things for the rest of the state of Nebraska. We can't just do something because it affects Omaha, or whether Omaha is getting what they need in certain areas. These skateboard parks in Omaha, if there has to be one east of 72nd Street--and I'm not that familiar with Omaha; I don't know what that means--but why not build them a skateboard park or two? They're not that expensive, if that's what the problem was that brought this all about, if they need one there. There's enough loose change in the upper storage of some of them tall buildings in Omaha that would pay for several skateboard parks around Omaha. So I think if that was a problem, and that's what brought this all about, then I think that could be resolved on a local basis. But this is a law that's...we're trying to straighten something out for the whole state of Nebraska. This is something that has economic consequences for a lot of your rural areas and your larger towns out in these areas in the rest of the state. They all depend on things like this to bring in people from various areas. There's quite an economic benefit from it. It gets people together; it gets people traveling through Nebraska. If they're going to travel in and out of Nebraska, they're going to spend money, and this is what Nebraska has always been known for, is the travel. We've been having people go across Nebraska probably for way over 150 years now, because this is how Nebraska has always made their living,... [LB564]

SPEAKER FLOOD: One minute. [LB564]

SENATOR LOUDEN: ...whether we had the Oregon Trail or whatever. So I would like to see this bill advanced and get away from whether or not we have to have skateboard parks some place, or what we've done for skateboard parks. That isn't part of the issue. The issue is, is...are government entities in these smaller towns and villages going to be liable for frivolous lawsuits, simple as that. Thank you, Mr. President. [LB564]

SPEAKER FLOOD: Thank you, Senator Louden. Senator Lathrop, you're recognized. [LB564]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I'd like to take a few minutes, maybe, to give you a little background on the law of civil liability and what's called strict liability. And strict liability is a lot different than ordinary negligence standards in deciding liability, and what Senator Chambers has talked about is negligence, per se, and essentially what that means is strict liability, and let me tell you a little bit about how that works, and then let me tell you where it comes from, and why I don't think it's appropriate in this case. First of all, when you...if you were to insert into this bill the requirement that if you open a skate park, you are to be found negligent or

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what we call strictly liable--Senator Chambers' use of the word "negligence," per se, means the same thing--that is, if you open a park, somebody gets hurt, you're liable. It's not based upon fault, which negligence...civil liability generally is. Generally, you have to have behaved unreasonably, exposed someone to an unreasonable risk of harm before you're negligent. That's an ordinary negligence standard. Senator Chambers is talking about strict liability. Strict liability, you don't need to be careless; you just need to have done something, and if you do it, you're responsible. In the law the concept of strict liability comes to us in two manners or two ways. One is in common law, and common law is kind of the evolution of judicial opinions that lawyers and judges rely on in determining or predicting how we must behave in the future, and how we should decide controversies in the future. And the common law has evolved, and probably the best example is product liability, where judges have determined, we're going to hold manufacturers strictly liable for design defects or injuries caused by defects in a product. And the rationale behind that, which is not here, is that if a company is going to make a profit selling cars, then they have to be accountable to the people that get hurt in those cars because of a defect. The difference between the common law and the situation we have here is the city is not making a profit. They're making nothing off these parks. They're making nothing off the recreational activities. All they're doing is accommodating the demands of the population that live in the city. So the general rationale for strict liability isn't present in this situation, wouldn't support an amendment that would allow for strict liability in this case. We do have examples of legislatively imposed strict liability, and the police chase statute is a very good example of that; the dog bite statute is another. But let me talk about the police chase statute, which is the work of Senator Chambers, and I think good work. It is a good statute. There is a reason for it. The police chase situation is different than what we have here. In the police chase case, you have someone who is on their way home from work. They are, in every sense of the word and as required by statute, an innocent third party. And the police are chasing somebody through the neighborhoods to advance some public purpose. We've decided that it's important that the law enforcement be allowed to chase the bad guys, and strict liability is essentially, in that circumstance, no difference than eminent domain. If you take something from somebody in pursuit of a public purpose, you have to compensate them for it. That's not what's going on with the recreational activities, and why I believe Senator Chambers... [LB564]

SPEAKER FLOOD: One minute. [LB564]

SENATOR LATHROP: ...is misguided in his efforts to bring strict liability to these skate parks. The people who participate in these activities, many of them youth--they showed some of them on the television news--TV news--the other night. They're younger people, but just the same, the city isn't getting anything out of it, there is no profit, and these are not innocent third parties. True, they're young children. They're not engaged in an ultrahazardous activity. We haven't put up bungee jumping, we haven't asked these kids to parachute out of airplanes. They're going down a little hill on a skateboard

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and they're doing it for their own pleasure, and that wouldn't support...or doesn't provide the rationale for strict liability. And for that reason, I would suggest that my friend Senator Chambers is misguided in his attempt to introduce strict liability into this bill. Thank you. [LB564]

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

SENATOR CHAMBERS: Mr. President, Senator Lathrop is responsible for me giving you this bit of a song (singing): Killing me softly with his words, killing me softly! He is attempting to do that. Senator Lathrop is presenting a very scholarly disquisition of the law, and people would do well to heed what he is saying. But you should keep this in mind: The reason there are lawsuits is because there is more than one way to interpret the law itself, more than one way to look at whether an application of the law was appropriate or not. So despite the fact that his words were as smooth as goose grease, that does not mean that he is correct in the conclusions he drew. The main conclusion, where he fell into error, is that I am misguided in saying there should be strict liability with reference to the two types of facilities that I have focused on--the skate parks...and Senator Lathrop gave the designation of this other thing, where you do it on the bicycles, the BMX course or trail or facility. In order to be leisurely, I cannot become too hurried in what I do. I said I was going to talk about literature. Well, Senator Carlson and others know that the King James Version of the Bible is considered to be great literature. What a lot of people don't know is that when that book was being put together, there was a group of men who were called together to determine what should go into it, and when they reached an impasse, they voted. It's not like the skies opened and they were told in that sonorous voice something like James Earl Jones when he was playing Darth Vader in Star Wars, "Put this in, leave that out." They voted, and these men were not people of the highest moral values. There were some drunkards, others whose personal lives would not bear scrutiny. And if you read the history of how the King James Version came to be and the purposes behind it, you'll know that it was a political document. It was designed to be a political document, to serve a political purpose, and if you read it, you will see that they achieved the end that was intended. So that is literature, but some people think it's beyond that. So let me talk about something that people can, perhaps, say is literature in the classical sense of the word. It was the worst of times. It was the best of times. I'll tell you, when I get through using that, where it came from and who wrote it. The best thing to have, Senator Carlson, is a sensitive conscience. The worst thing to have, Senator Carlson, is a sensitive conscience. A sensitive conscience, from my standpoint, is simply the standard that a person imposes upon himself or herself, in order to guide himself or herself through this life. And my conscience requires me, during these which are the worst of times for children, to try to convert them into the best of times for children by ensuring... [LB564]

SPEAKER FLOOD: One minute. [LB564]

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SENATOR CHAMBERS: ...that the government, which is going to create and invite them into a facility which can cause harm, is going to give redress when that harm occurs. A person in that same story said, it is a far, far better thing that I do than I have ever done; it is a far, far better rest that I go to than I have never known. This man was going to take the place of a man he resembled on the guillotine. He literally gave his life for somebody else. So I've done better things than what I'm doing today, I believe, but this is among the far, far better things that I have done. But as to whether or not I'm going to a better rest, that remains to be seen. Thank you, Mr. President. [LB564]

SPEAKER FLOOD: Thank you, Senator Chambers. Senator Friend. [LB564]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. There...it almost seems like we're trying to run out and give Senator Lathrop's resume to the people of Nebraska. That's not my intent. My intent is to try to define the terms of this discussion, and who should be defining it. You know, Senator Lathrop is not just an attorney who has worked and developed experience and knowledge in this area. He's also a public policymaker, as we all are, to deal with the subject matter. So there's a...defining the terms of the discussion break down two ways--experience dealing with the subject. We're not trying to create...we're not trying to get into the public policy discussion of tort reform here. I don't think that there are any new, you know,...I don't think there are any revelations and things that are happening here, the way some of the folks have described it, that would qualify as tort reform, the folks that have the experience describing it and working in it. But the political and public policy piece of it is that we're looking at a strange situation in regard to government entities around the state, dealing with insurance rates. They don't know what to expect. That perpetuates a bunch of confusion, and a lot of folks are saying, well, these governmental subdivisions are overreacting. They don't know how to react! Call it overreacting if you want. I mean, if you close an area that a lot of kids used to like to sled on because you're afraid, that would lead me to believe that there's a bunch of confusion out there. Defining the terms of the discussion mean that we're dealing with that confusion--that's all. And LB564, in its original form, many would argue--and I'd be one of them--that that would be considered by a lot of courts as tort reform. They'd be saying you, after our latest decision, are making a huge functional change, after Bronsen v. Dawes County, a huge functional change in the way that it should be. That would qualify as tort reform. AM879 gives us...gives the people of Nebraska and gives this Legislature, at this moment, the opportunity to say, you know what? All we're doing is defining the terms. And with all due respect to Senator Chambers, he even said FA58 is a futile attempt. I don't know that he would even necessarily like to see it adopted. But in the long run, in the long run the compromise has been made, and the compromise is AM879. Thank you, Mr. President. [LB564]

SPEAKER FLOOD: Thank you, Senator Friend. Senator Chambers, you're recognized. This is your third time. [LB564]

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SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, when I reach my closing, I'm going to mention something about the amendment that is up there. And even when it is disposed of, I'm going to harp back to it, to show that logic, good public policy, and rationality are not the driving forces behind the law as it is to be given to the public. There was a song which I don't think could qualify as literature, or maybe even classical music, and part of one of the lyrics said, and these were children: "We're only just another brick in the wall," and I would say in the wall of adult apathy, insensitivity, disregard for the welfare and sensibilities of their own children. Whose ox is being gored by this bill as it's presented to us through this amendment that the Judiciary Committee adopted? The children. If life is like a teeter-totter, when one side is up and the other side is down, this will put the political subdivisions and the adults on the upside. The children are on the downside. So those who will suffer harm are the children; the beneficiaries will be the adults and the political subdivisions. And there is so much pious concern expressed for political subdivisions. Senator Friend said they don't know how to react. I'm telling them how to react. React responsibly. Be the example to these children of what you say these children ought to do, in terms of their life, when it comes to accepting responsibility. If you create harm, then there are consequences, but the first and best rule to follow is that that governs medicine--first, do no harm. But if you do harm--this is where religion comes in--atone for it! Make up for the wrong you did, and right it. But that's not the message given today, because the powerful ones are the ones setting what constitutes the public morality. Parents have to be responsible for their children and cannot subject them to known danger without suffering criminal sanctions. But the government, which is to be the example, not only can do that but is totally excused for having done it. In a society such as the kind America pretends to be, you've probably got more churches in America than any other country on the face of the earth, and some of the worst things go on in these churches, and some of the worst ideas and people emerge from them. If there were not so many churches, there would not be so many ways provided to people to find excuses for not doing as they should do. The religious people are the ones who can divide a hair between the north and the northwest side to justify doing something that is wrong. They call it by a different name. [LB564]

SPEAKER FLOOD: One minute. [LB564]

SENATOR CHAMBERS: But when you create a weighing situation, w-e-i-g-h-i-n-g, and the children come out on the short end, something is wrong. What does the city gain from this? Because of what Senator Lathrop said, I'm posing that question. They get children off the streets, out of the way, they please merchants and everybody else, so the city is deriving a benefit from this. They should have some liability for herding these children off the streets into these facilities. Thank you, Mr. President. [LB564]

SPEAKER FLOOD: Thank you, Senator Chambers. Senator Pirsch. (Visitors and doctor

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of the day introduced.) Continuing with General File debate, Senator Pirsch, you're recognized. [LB564]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I think the issue that we're addressing here today is a balancing test, where to...on the scale, where to put the level so that we are...offer the maximum amount of recreational opportunities to Nebraskans, consistent with safety. And I think Senator Lathrop's...the amendment that Senator Lathrop has crafted does a great job at striking that balance. I think it's important as we talk about this to recognize the demand for recreational opportunities here in the state, and how large of a role it plays in creating healthy children, especially healthy young people in the state of Nebraska, and they are looking for these type of opportunities and it helps contribute to a feeling that the state does have something to offer, and helps lead these people to stay in the state, these children, after they grow up. So information was provided to me that last year 300,000 people in the state of Nebraska engaged in skateboarding activities, so we're talking about recreational opportunity for an enjoyment that is brought to a large number of Nebraskans because of these type of opportunities. So I do think that in consummation that this is a fair balance, and I would yield the balance of my time to Senator Lathrop. [LB564]

SPEAKER FLOOD: Senator Lathrop, Senator Pirsch is yielding you the balance of his time, which is about 3 minutes and 5 seconds. [LB564]

SENATOR LATHROP: Thank you. Thank you, Senator Pirsch, for yielding the time and for your remarks. I'd like to visit about something that we are losing sight of in this discussion. And that is, we seem to have conceded that this is an inherently dangerous activity. It is not. This activity...and I have a list of some activities and the number of injuries that people get from them, and the percentage of the people that participate and have injuries, and I'll talk about that momentarily, but understand that this bill is about the inherent risks of any recreational activity. And the skateboard parks and the BMX parks aren't inherently dangerous. Inherently dangerous activity would be, perhaps, use of dynamite, wild animals. The law recognizes these things. If you're going to do blasting, you have a different standard of care that applies, because that is what we call an ultrahazardous activity. If you let a tiger out of a cage, you're going to be on the line for it, because that's an ultrahazardous activity. We are not talking about an ultrahazardous activity. We're talking about a recreational activity that has inherent risks, and let me tell you, and make a difference...illustrate the difference. If you're playing catch with javelins, that's an inherently dangerous activity, okay? We're not doing that; we're not immunizing anybody from that kind of nonsense. But if you play catch with a softball, if you play catch with a softball and you miss the ball and it hits you in the nose, that is an inherent risk of playing catch. So what we're talking about today--and I think it's important that we don't lose sight of it--is we're talking not about inherently dangerous activities, but the ordinary risks, the inherent risks, of just recreational activities. I have received from somebody before I came onto the floor this

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morning, a list of some of the activities, recreational activities, that people can engage in. [LB564]

SPEAKER FLOOD: One minute. [LB564]

SENATOR LATHROP: It would appear to be from the U.S. Consumer Product Safety Commission, some 1999 statistics. Skateboarding in that year resulted in just about 60,000 injuries. That sounds like a lot of injuries, but I think this is across the country, or would appear to be, because football resulted in 373,000 injuries. One...almost 2 percent of the people that participate in football are going to get an injury. By contrast, if you participate in skateboarding, you are less than 1 percent--.77 percent of the people that participate in skateboarding are injured. Softball--145,000 people were hurt. They have .73. So the risk of an injury skateboarding is about equivalent to the risk of an injury playing softball. [LB564]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Time. [LB564]

SENATOR LATHROP: Thank you. [LB564]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. You are the next light. Senator Lathrop, you are recognized. [LB564]

SENATOR LATHROP: Thank you, Mr. President, colleagues. Going through this list again and talking about the inherent risks of injuries, when you talk about football, which we have come to accept the risks of that injury--children are playing football, young kids are playing football--they have a 2 percent chance of getting injured. Three hundred and seventy-three people were injured. Those injuries range from probably minor sprains to things as catastrophic as spinal cord injuries. Nevertheless, we don't carve out an exception for football because we know--and the same principle is at work in every recreational activity--if you're going to do it, every recreational activity, virtually every recreational activity, has some inherent risk. And that doesn't make them inherently dangerous or exceptionally dangerous or particularly dangerous. It just means they are activities that have certain risks. More people were injured, and you have twice as great a chance of being hurt playing baseball as you do skateboarding. You miss a ball, you get hit by a bat, those kinds of things that go along with playing baseball, you're more likely to get hurt playing that activity. But we don't talk about trying to carve out a special exception, because we recognize when it comes to that activity that there are inherent risks. You could get hit with a ball, you could get hit with a bat, perhaps, or hurt yourself sliding into a base, or even get hit with the ball while you're standing to bat. Those are risks inherent in baseball. Basketball, same thing--twice as good a chance that you'll be hurt playing basketball as skateboarding. Nearly 600,000 people in this 1990 survey

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were injured playing basketball. There are inherent risks playing basketball, even when it's done within the rules. People can get elbows in the face, they can be hit in the chest, they can come down on another participant, they sprain their ankles. The chances of getting hurt are twice as great playing basketball as skateboarding. Snowboarding is another example of an activity--it's not inherently dangerous, but there are risks inherent in snowboarding. You can fall. If you are not careful you can run into a tree. You might hit another person if you're not careful. Those would be risks inherent in snowboarding, but we wouldn't...and the chances of being hurt snowboarding are greater than skateboarding, but we don't carve out an exception because it's not an inherently dangerous activity. There are simply risks inherent in that activity. And you can go on and on. More people...almost three times as many people are hurt playing softball as skateboarding; likewise, in-line skating. Almost twice as many people get hurt in-line skating, and that's something done on the straight, flat surface of a trail. So understand the difference between inherently dangerous activities, which would be trying to catch the javelin, and something that has inherent risks, like playing softball or baseball or basketball. So I think that's an important consideration to keep in mind as we go through the discussion on AM879. Thank you. [LB564]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. Senator Wightman, you're recognized, followed by Senator Carlson. [LB564]

SENATOR WIGHTMAN: Thank you, Mr. President, colleagues. Thank you, Senator Lathrop, for the information that you just gave us. I had down a number of questions that I would have propounded to Senator Chambers, had you not furnished me with all of that information. But since I don't know that he even has that information available, I'll consider that the final word with regard to the statistical matters. Senator Chambers has suggested that the municipalities build these skateboards and these arenas for inherently dangerous activities because they want to get the kids off the streets. I happened to serve 20 years on the city council at Lexington, Nebraska, and I don't remember that we ever, without a lot of indication of desire to participate in that activity, ever built any facility to get kids off the street. I think we did it as a result of a demand of the public, whether it be the children or adults, for that type of entertainment. And I think that's exactly what most municipalities do, and probably all municipalities do. I agree with Senator Lathrop that, inherently, skateboarding is not an inherently dangerous activity. It may become that because of the acts of participants in that, but that doesn't mean it's inherently dangerous. That only means that people take chances that they shouldn't take. Now I can think of many other things...and I agree that these aren't provided, usually, by municipalities now, hang gliding, flying ultralights, things like this, may be bordering on inherently dangerous activities. But I think most municipalities build skate parks, not to get kids off the streets, but because the kids want an activity that they can do, that gives them some thrills. And it does give them thrills. I have no doubt about that. And I think the statistics stated by Senator Lathrop clearly indicate that these are not so inherently dangerous that they ought not to be allowed, or that they

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ought not to be an exception...or ought to be an exception to the liability for municipalities. I think we do owe our kids, our youth, recreational facilities. Obviously, some children and youth take far more delight in things that are of greater risk than others. I think it probably is true that given...if we based it on the number of participants, that the statistics would show that perhaps skateboarding is more dangerous, would injure a higher percentage, although that's not indicated by the statistics we heard by Senator Lathrop. So I think this is an activity that we want to promote. I can assure you that a klutz like myself, even as a youth, would not have been out there, because I would have been fearful of the injuries, and I think that that would be true of most youth. They know generally their own limitations, but some of them are willing to take that risk. But if they're willing to take the risk, I don't think we hang a municipality with liability. I think a lot of times we look at who has the deep pockets. I know the trial lawyers could relate to who has the deep pockets. Well, unfortunately, the municipalities do have a deep pocket, because it's as deep as all the taxpayers within their community. [LB564]

SENATOR LANGEMEIER: One minute. [LB564]

SENATOR WIGHTMAN: And so they are the ones that are looked at for damages in a situation such as this. An individual who probably provided that for neighborhood kids would not be nearly as likely to be sued as a municipality, largely on the deep-pocket theory. So I continue to support LB564 and would ask your support, as well. Thank you. [LB564]

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

SENATOR CARLSON: Mr. President, members of the Legislature, again I stand today as a member of the chorus. I would say that the church is 100 percent full of sinners and imperfect people, and I certainly am one of them and very thankful that I can be involved. We heard earlier this is the best of days. I believe it is. Senator Chambers just admitted that he has a heart, which we all knew and would agree on anyway, in spite of what he claims. He said he has a conscience, and his conscience guides his decisions about the protection and the welfare of the children. But you can't have a conscience unless you have a heart. I wholeheartedly agree with him. Later, we'll all take action that we each believe is in the best interest of the citizens of Nebraska. We won't all agree on what the course of action should be, but we all will proceed in a way we believe is for the people we represent and is good public policy. Thank you. [LB564]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Seeing no lights on, Senator Chambers, you are recognized to close on FA58. [LB564]

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, I'll have plenty of time to address some of the comments that were made, and I think they

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were made in good faith. But, Senator Carlson, this thing of having a heart, I don't have one, and I don't see why it makes people much difference whether I do or whether I don't. One thing I can tell you--I don't have to worry about cholesterol, I don't have to worry about saturated fat, I don't have to worry about any of those things. In fact, I could take a jar of...melt down some lard and just chug-a-lug it and be none the worse for wear. Now I might get an upset stomach. But, Senator Carlson, if I were to cut one of my veins open, I could squeeze something out of those veins that would stick two pieces of paper together so tightly you could not separate them. That lets you know what I'm dealing with. Members of the Legislature, on this bill, though, Senator Lathrop, Senator Wightman, and Senator Friend are the ones who want to distract and deflect our attention. I don't care how many statistics Senator Lathrop may give me about the relatively small number of children who may be hurt skateboarding, compared to those in some other dangerous activity. I'm concerned about those who are actually hurt, and what is before us is skateboarding, and that's what I'm going to address. And I don't accept statistics that people lay out here, because I don't know where they came from. Senator Pirsch stood over there and said 300,000 people in Nebraska skateboarded. How does he know? He heard...somebody told him that. He doesn't know whether that person or anybody else counted the number of people who were skateboarding. There could be a million people who did it. There could be 100 people who did it. So when people give these statistics...and you'll notice, that's not my long or strong suit in here. I don't even come in here telling you all what is being done in other states. I talk about what's being done here. You might can develop some worthwhile, valuable information by looking at what happened in another state, but that is never the primary argument that I give because, first of all, none of those states has anybody like me in their legislature. So a lot of nutty stuff will get on the books in those states, and people will just pick that stuff up and bring it here and try to put it into the statutes of Nebraska, and I stop a lot of it. And when I begin to question them, they'll say, well, this is the language in the statute in another state. I say, well, if they had somebody like me, if they were going to write something like this, it wouldn't have been in this bunglesome kind of language. We have to be careful in what we do when we put things into the statute. But I still say, if these children are hurt and the family has no means, who is going to pay for the care of those children? That's what everybody, except me, is avoiding. It's not a pleasant thing to contemplate that everybody is running, Senator Carlson, to present these dangerous activities to the children, and if they get hurt, tell them, well, that's tough, you should have known better. Senator Wightman is standing up here talking about young people know their limitations. That's the very thing they don't know! Why do you think they get in these cars and drive like they do, or chug-a-lug large amounts of liquor, or mix dangerous drugs? Because they don't know! [LB564]

SENATOR LANGEMEIER: One minute. [LB564]

SENATOR CHAMBERS: They don't even appreciate thoroughly the concept of human mortality. To try to ascribe to children a type of knowledge and understanding in order to

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justify excusing adults for unconscionable behavior I think is, in itself, bordering on the unconscionable. This amendment that I have is to say that you want to make a distinction based on whether or not a fee is charged, between the duty owed to a person who participates in an activity. If a fee is paid, you have a higher duty. If no fee is paid, you have a lower or no duty. So if you have a swimming pool and you waive the fee for that day, then you apparently owe no duty to those people who come in, because they didn't pay the fee. If one person pays a fee, does that mean that you now owe this higher duty to everybody? [LB564]

SENATOR LANGEMEIER: Time. [LB564]

SENATOR CHAMBERS: Mr. President, I withdraw that pending amendment. [LB564]

SENATOR LANGEMEIER: Thank you, Senator Chambers. The amendment is withdrawn. Senator Chambers has offered an amendment to the committee amendments. Senator Chambers, you are recognized to open on it, as we put it into your laptops. (FA59, Legislative Journal page 1067.) [LB564]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, the only one who may be interested in this is Senator Lathrop, but on page 4, beginning in line 6, I would strike "resulting from the inherent risk of the recreational activity." You know what I would wager this morning? People who have stood up and spoken in favor of this amendment have not even read all of it. I will bet they don't even know what these underlying items are attached to, or what they're being referred to for. So I'm not going to try to embarrass anybody. I'm going to tell you. The Political Subdivisions Tort Claims Act and specified sections shall not apply to these various items. You're out in the cold, as far as having the chance of bringing a successful tort claim against these political subdivisions. One of the things that will knock you out is if you have a claim resulting from the inherent risk of the recreational activity. I am striking that, so that if there is an inherent risk, you have a claim. I think that's fair. I think that is rational. The Declaration of Independence talked about why governments are instituted among, they said, men--but they weren't talking about black people, they weren't talking about women--to procure or secure certain rights. What are those rights? The inalienable or unalienable, as you prefer, rights to life, liberty, and the pursuit of happiness. And to procure these rights, governments are instituted among men. Deriving their just powers, their just powers...Senator Schimek, their just powers are derived from the consent of the governed. But at that time, the ones who were governed were not allowed to give their consent through the political process if they were women, because they could not vote. That's why it's just talking about white men, and only some white men, at that. But whenever a government becomes destructive of these ends, it is the right--no, not just the right--the duty of the people to alter or to abolish it! The Declaration of Independence says to abolish the government and provide new guards for their future security. That's in the Declaration of Independence. So there are certain rights which

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should accrue to people in a political society of the kind envisioned by the small clack of white men who were formulating a government, with slavery, denying women the right to vote and other rights, treating the Irish like dirt. The kind of political government or society they envisioned included the notion of the pursuit of happiness. You have the right to pursue happiness. But they want to restrict what things you can do in pursuit of that happiness. As a slave, nothing would have made me happier than to be free. But if I managed to escape to freedom, the Constitution took care of that by saying I would have to be returned to slavery. So they didn't mean happiness for everybody. All of these political activities, from the beginning up to the present, are mixed, they are tainted, they are not pure. It depends on who has the clout as to which things are going to prevail in a society. I recognize that today the tainted, so-called principle of protecting political subdivisions from the consequences of the harm their work does to children will have far more supporters than I could ever muster on behalf of the children who are to be hurt. But I'm going to fight anyway and compile a record, and I do listen to what my colleagues say. I like to bring back their words to them on other occasions. When anybody talks to me about the children, I'm not going to believe that they're very serious or very sincere, because the political subdivisions got them today. That's all that this is about--the political subdivisions. Senator Friend said the compromise has been made. Yeah, compromising the safety and well-being of children. And who participated in the compromise? The politicians, the lobbyists for the political subdivisions, and they have decided that children will be hurt and the political subdivisions will not be responsible, even though they provided the instrumentality which led to the hurt. Senator Friend has blinders on. He reminds me of something Jonathan Swift said about fools in a coffeehouse. He said they make so much noise that they think the racket around their ears is being made by everybody in the world, but it's just their small circle in that coffeehouse, and that small part of the coffeehouse. I told you I'm paraphrasing. So what does Senator Friend do? He says, look who participated in this compromise--society has spoken. So society comprises politicians and a bunch of lobbyists? That's not what I mean when I use the term "society." But that gives you an idea of the thought patterns, the frame of mind of the people supporting this bill. Cite me every statistic you want to, and then I'll do what Senator Flood did the other day. If I saw a child with a spinal injury, is that one child with a spinal injury of sufficient import to me to say that something ought to be done so that if circumstances exist where another child can sustain such an injury in a facility provided by the government, then that child should have some redress from the government? We are talking about the government here. Why did those white men say, governments are instituted? To protect and procure certain rights. Should a child have the right to be safe from harm at the hands of the government? Absolutely and positively not--not in America! Because when you talk about procuring rights, you mean the rights of political subdivisions and the government to harm the vulnerable children and get away with it. I don't care about all the statistics you want to bring. We're talking about a bill which is affirmatively saying hurt the children and you're home free. Senator Wightman reminds me of those people who were made at Galileo because Galileo said the earth is not the center of the solar

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system. [LB564]

SENATOR LANGEMEIER: One minute. [LB564]

SENATOR CHAMBERS: Galileo said the earth moved, and that made some religious people very angry. I don't know what the name of the town is where Senator Wightman hails from. Senator Wightman, you can just tell me. What town do you live in? [LB564]

SENATOR WIGHTMAN: Lexington. [LB564]

SENATOR CHAMBERS: He lives in Lexington. The center of the universe is Lexington, in Senator Wightman's point of view, because in Lexington, they did not build a skateboard park to get kids off the street, but you've heard Senator Lathrop, Senator Friend, and others talk about how these kids skateboarded in the streets, on the steps of the courthouse. They needed to provide some place for them so they wouldn't be in those locations. But Senator Wightman didn't listen because the statement was not introduced with bulletin, bulletin, this applies to Lexington, (laugh) so he can tune everything out. My problem is that I hear everything from everywhere. Thank you, Mr. President. [LB564]

SENATOR LANGEMEIER: Thank you, Senator Chambers. You have heard the opening on FA59. We now open the floor for discussion. Senator Pirsch, you are recognized. [LB564]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. First of all, I want to thank Senator Chambers here. I think he has pointed out a couple of valid points, and so I'd like to clarify, with respect to any time that a speaker addresses this body and cites statistics, I think that every member should think to themselves at that point in time, what is the source of that information? What is the source of those statistics? And I apologize to Senator Chambers for not naming that, the source of that, and I'd be happy to provide that. Actually comes...the statement that I was providing, information to the extent that 300,000 individuals in Nebraska per year engage in skateboarding, was from a letter that was sent, e-mailed to me by Tony Hawk, who...and I'm not probably cool enough to probably understand the full extent of his fame, but my understanding is he is somewhat akin to what Shaquille O'Neal is to professional basketball, he would be in the skateboarding world. So that is the source of that, and I appreciate that request for clarification. I also agree with Senator Chambers when he speaks to the issue of when senators rise and give voice to how other states operate, in terms of addressing issues, and I think that he is quite correct when he states that we should not necessarily defer to actions of other states in the way they operate. There are different facts and different laws that operate in different states, and so I think we need to (inaudible), and keep it Nebraska-centered and tailored to the state and our particular facts and circumstances. And so I do appreciate Senator Chambers rising and

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giving voice to those two concerns, and I think they are indeed appropriate. I think, however, that does not change my opinion that when you look at what is occurring here in Nebraska, the facts and circumstances, the great demand that our people--and especially young people--have for recreational opportunities, I believe that this particular law, which is fashioned unique to our state, does appropriately meet that balancing test, as I indicated, between safety and meeting those recreational needs. And so I remain committed to seeing this bill as a fair balancing act there. You know, my experience is as a criminal prosecutor in the city of Omaha. I can tell you personally I would see many instances where young people were engaged in recreational opportunities with skateboarding, principally downtown, the Old Market, in very unsafe conditions, to the point where they would nearly get hit by cars, they would be "obstructionary" to other people, and it did in many ways harm the integrity of a district that the city was...and the state relies on, in large part, for economic development. And so, it does have profound implications, and I think that this, by creating these parks then, it does give the young people who desperately are looking for a venue where they can socialize, where they can have these recreational opportunities, to come together and do it in a much, much safer environment. So I think if you are really looking out for the kids' interests, that this is the way to go. And with that, I would yield my time to Senator Lathrop. [LB564]

SENATOR LANGEMEIER: Senator Lathrop, 1 minute. [LB564]

SENATOR LATHROP: Thank you, Senator Pirsch, and you make some good points. Again, it's important to recognize, when we use the term...and the amendment here is to strike inherently risk...pardon me, "resulting from inherent risk of recreational activity." Inherent risk means those things that just come along with the activity. It doesn't mean that the risks are of a dangerous activity. The statistics all suggest that the skateboarding is somewhere near snowboarding and bicycling, in terms of your risk of injury, and so I appreciate Senator Chambers' concern for children. This isn't the first time he's expressed it. But as a matter of policy, we're doing a good thing, I think, with this amendment. We're encouraging cities, municipalities, to build these skate parks. [LB564]

SENATOR LANGEMEIER: Time. [LB564]

SENATOR LATHROP: Thank you. [LB564]

SENATOR LANGEMEIER: Thank you, Senator Lathrop, Senator Pirsch. Senator Friend, you're recognized. [LB564]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. I would like to yield some time to Senator Lathrop, if he wanted to continue. He says he's all right. Can I take my yield back? Senator Chambers says, give it to him. Well, I've been here almost five years now. I don't think I've ever given him time, and I don't think he

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ought to hold his breath. He made one good point, Senator Chambers did, when I say "he." He knows I'm talking about him; that is, that a lot of folks are probably...a lot of folks out there watching--maybe even some in here; I've done it before--you're going on blind faith. I don't think there's any need to. Here's the language. I'll read it into the record. We've got time. Subsection (13)(a): Any claim relating to recreational activities for which no fee is charged resulting in the inherent risk of the recreational activity; arising out of a spot or localized defect of the premises unless the spot or localized defect--I should have said defect before--defect is not corrected by the political subdivision leasing, owning, or in control of the premises within a reasonable time after actual or constructive notice of the spot or localized defect; or arising out of the design of a skate park or bicycle motocross park constructed for purposes of skateboarding, in-line skating, bicycling, or scootering that was constructed or reconstructed, reasonably and in good faith, in accordance with generally recognized engineering or safety standards or design theories in existence at the time of the construction or reconstruction. For the purposes of this subsection, a political subdivision shall be charged with constructive notice only when the failure to discover the spot or localized defect of the premises is the result of gross negligence. There's a little bit more, but you know what I didn't see in here? Senator Chambers mentioned that this bill says that we're going to hurt the children. Boy, that's odd. I didn't see that in this legislation. Maybe I should check further, hmm? I don't see that language. Well, we make value judgments every day, right? How do we come to a conclusion on those value judgments? We accept experience, we accept knowledge. This isn't a bunch of lobbyists that got together and created this. Did they have a hand? I...yeah, I mean, I wasn't involved in a lot of it, for probably good reason. But I know how it was created and now a lot of it is read into the record, the language. This is not unreasonable. Senator Lathrop has laid out good, legitimate reasons why we can step back and make a value judgment about this language. FA59 is not necessary, obviously; AM879 is. I mentioned from the very outset of the discussion that LB564 was brought to this Legislature as framework. Heck, I don't think I grabbed the bill until maybe two days... [LB564]

SENATOR LANGEMEIER: One minute. [LB564]

SENATOR FRIEND: ...before the deadline to actually...the deadline to deal with...or the final day that we could actually drop bills in. The point is that there are enough people that have e-mailed me and talked to me about this subject matter, that I thought it was important enough to grab that framework and say, you know what, let's get started. Could take a while longer, and that's fine. Captain Lunch-hunter" doesn't come for another hour and a half, if he even shows up at all. But FA59 can just go away, as soon as possible, if you'd like. It's up to you. Thank you, Mr. President. [LB564]

SENATOR LANGEMEIER: Thank you, Senator Friend. Senator Chambers, you're recognized. [LB564]

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SENATOR CHAMBERS: Mr. President, members of the Legislature, Shakespeare wrote a comment disparaging a female. He wrote either one of these formulations or the other: She says nothing, though she speaks; or, she speaks, though she says nothing. So the mere uttering of words can manifest the ability to speak, but you can take the word "speak" to mean that something of value is being uttered. As Senator Friend uttered, we make value judgments regularly, and I'm paraphrasing. And we do! And I have made a value judgment, and the fact that everybody is on the other side of the question suggests to me that my position probably is right. Why? Because we're dealing with a very important social question. Senator Carlson could answer this question if I would ask him, but I'm not. Woe unto you, when all men speak well of you! Senator Carlson, I will never face that woe. But Senator Lathrop is on the verge, but he merits the accolades that have been handed out to him. He has done very good work in explaining the law and his position on this bill, but he has spoken learnedly and well on the wrong side of the issue. The children are the ones we're talking about, not adults. Senator Lathrop may not be aware of this, but I've had people come in to the Judiciary Committee to say that there should be no liability when children are participating in an organized Little League football group, there should be no liability of any kind if they get injured. People want to do these things and put children out there, but they don't want to assume any responsibility. Then they are the very ones who turn right around and say children must learn how to be responsible for their actions. But when you're a child, you know how you're made responsible? Somebody saying, I will beat you, I will throw you out of the house, or do some other thing in the way of a threat. How are adults made responsible? Don't ask me. They don't have to be. They don't have to be accountable. They can make all the good statements, formulate all the good philosophical positions, and ignore every one of them. Senator Lathrop, when these people who go to church--and Senator Carlson all but bore me out--they go to church on Sunday and learn the Ten Commandments and spend the rest of the week breaking every one of them every opportunity they can get, multiple times, especially the one that says covet not thy neighbor's wife, maidservant, or whoever else. So that's why I don't pay much attention when people make these moralistic statements or pronouncements. [LB564]

SENATOR LANGEMEIER: One minute. [LB564]

SENATOR CHAMBERS: We're going to go eight hours on this bill. A tree is known by the fruit it bears, and I'm going to tell you why that was said and explain the significance of it from where I sit, and apply it to what the Legislature is doing today, what it's going to do, on behalf of the political subdivisions, to the detriment of vulnerable children. Thank you, Mr. President. [LB564]

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

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SENATOR LATHROP: Thank you, Mr. President and colleagues. And if we're going eight hours, then I'm going to spend a little bit of time talking about recreational liability, I'm going to talk about inherent risks, and I'm going to talk about what is and isn't an inherent risk, because while we are providing a framework with this legislation, we can't answer all the questions that will come up every time somebody gets hurt in a city park, on a trail provided by the NRD. And so I think it might be helpful for those who will have to view this legislation and have some direction in the future to understand what we were thinking when we came up with these words. I can tell you that these words are, and the amendment is, the result of a great deal of negotiations, and those negotiations happened between political subdivisions, several of them, the state of Nebraska, and myself. And I come to this with 25 years' worth of experience representing people that have been hurt. I am not a defense attorney. I think it's pretty evident, even before Senator Pankonin outed me yesterday, that my professional life has been spent representing people that have been hurt. But today I'm here, not as a plaintiff's lawyer, not as a trial lawyer, but as somebody trying to make policy, and I think this is good policy. I think we still have retained principles of fault in this bill that will protect the children. It will encourage the political subdivisions to behave carefully, which is the intent of this legislation, and the give and take that took place that resulted in this language, all of it has particular meaning, and maybe I can take a few opportunities to visit about some of these activities. The language defines the defense in the context of inherent risks of recreational activities, and we should talk about what that means in the opportunities I'm going to take to speak in the next few occasions, because at some point that may become a contention and may become an issue that is litigated. And the court may well look to our conversation on the floor for some direction, and so I think it's useful to provide some direction in terms of what that means because, believe me, when we were negotiating these words and negotiating these terms, we talked about various activities that happen at recreational properties, and we chose the language to accommodate the various activities. I have this list that was provided to me of various recreational activities, and maybe I can go through them in the opportunities that I take to speak, and talk about what is and what is not an inherent risk. But perhaps the one principle that should be clear is not every foreseeable risk, or not every foreseeable...pardon me, not every foreseeable eventuality is an inherent risk. And that's something I'd like to talk about in the context of some of these recreational activities. Let's start with the list that I was given by Senator Aguilar, or his office, of some of the recreational activities. When we talk about football, there are certain things that you can...that are an integral part, characteristic of and intrinsic to football. You are going to block, you are going to tackle, you are going to perhaps trip or have people fall on you. Those are characteristic...those are things that are characteristic of playing football. Inherent risks that follow... [LB564]

SENATOR LANGEMEIER: One minute. [LB564]

SENATOR LATHROP: ...are going to be orthopedic injuries. You may sprain your ankle,

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hurt your knee, perhaps even have a spinal cord injury or a brain injury that can happen in the middle of, or while engaged in, those activities. But if you are playing football and the fence that surrounds the field falls on you, while that may be foreseeable, that's not an inherent risk and not intended to be covered by this act. And I think you can see the difference between something that's foreseeable--something that might happen while you're playing football--and something that we would characterize as an inherent risk. Similarly, if you are playing baseball, you might be hit by a ball, you might be hit by a bat, you might be injured while you slide into home or one of the bases. Those are activities characteristic of or inherent to baseball. They are risks... [LB564]

SENATOR LANGEMEIER: Time. [LB564]

SENATOR LATHROP: ...that are inherent... [LB564]

SENATOR LANGEMEIER: Time. [LB564]

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

SENATOR LANGEMEIER: Thank you, Senator Lathrop. Senator Chambers, and this is your third time. [LB564]

SENATOR CHAMBERS: Mr. President, members of the Legislature, Senator Lathrop is such a delight. The one who doesn't need to hear him is the one who listens to his every word, and that one is me. Senator Lathrop is more like a scholarly professor who speaks with a well-modulated, soothing voice, which has the tendency to cause people who have been wearied by my lambasting to relax, to take it easy, and go to sleep with their eyes open, because as Senator Lathrop was speaking in a logical, scholarly fashion, which will read well if somebody wants to go to the transcript and understand what was going on here, I was looking around the Chamber. Eyes were glazed over, newspapers were up, heads were down. I don't know if they were asleep or reading the paper in front of them. Computers were being plied assiduously. And nobody even made eye contact with me, because they were too busy doing something else or doing nothing. But it doesn't make me any difference whether anybody listens or not, but they will listen, even when they want to act like they're not. But whether they do or not, I remember at all times that a transcription is going to be made, and I told Senator Carlson I'd be talking about what it means to say a tree is known by the fruit it bears. The tree is known in that analogy, not by the bark--all trees have bark. Some people might be able to look at the bark of a tree and tell you what kind of tree it is. But that's not how it's going to be known. All trees have leaves. The tree won't be known by the leaves. Well, if this is a simile for a person, then why do you say by the fruit it bears, rather than the leaves? Because when wind blows through leaves, a lot of noise is made, but nothing of great substance or value is produced. That which is of value that the tree produces is the fruit, and if you know the nature of the fruit, then you don't even

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have to see the tree and you know what tree it came from. So when I see certain issues come before the Legislature I know, Senator Carlson, what kind of fruit is going to be produced, in terms of there being any attentiveness paid. Minds are made up as to how they're going to vote on this bill, not because they understand it, not because they've read it. I could ask those who are going to vote for this amendment and ultimately the bill what various parts of it mean, and they'd have no idea. I could write something on a piece of paper and say, this came from page 4, lines 6 and 7 of this amendment; what does this mean? And it didn't come from the bill at all, and they will assume that it did, because they don't know what the bills says, so they don't know what it doesn't say. That's the nature of what we're dealing with around here. Do you think if I had people to talk to who had three brain cells working all the time that I'd have to work as hard as I do? Absolutely not! What do they say, Senator Carlson, you have to do first to get a donkey's attention? What do you have to do? Well, they say a jackass, and a donkey and a jackass are not the same. You've got to take a two-by-four and bust him upside his head, get his attention. [LB564]

SENATOR ERDMAN PRESIDING [LB564]

SENATOR ERDMAN: One minute. [LB564]

SENATOR CHAMBERS: They say that mules are stupid, but mules are not. Mules have a mind of their own. They're not going to let you work them to death like a horse will. Horses are beautiful; they run fast, but they're stupid. They'll stay in a barn and burn up, but they're beautiful and they do everything human beings want them to do. They pull a plow, they pull a wagon, they'll run around in a circle or an oval, over and over and over, break their bones and run till they literally die, because that's the way humans misuse them. Not the mule! You load a big old wagon up with whatever you want to put on it, you build a fire under a mule, and he'll walk just far enough for the fire to be under the wagon, and it will burn up the wagon. Then the mule looks at you, and you say, you stupid mule! And the mule who now is free to do nothing says, guilty as charged. Thank you, Mr. President. [LB564]

SENATOR ERDMAN: Thank you, Senator Chambers. Senator Friend, you're recognized to speak, followed by Senator Lathrop and Nelson. [LB564]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. You know, I always find it amusing, when all you have to do is do a Google search for Black's Law Dictionary, and then key in "stare decisis." You don't have to be an attorney. You key in "stare decisis" and figure out why we're here today--you're all policymakers--why we're here dealing with this subject matter. I mean, Senator Chambers treats...we're all his children. He's going to teach us something. Go in and do a Google search on "stare decisis"--to stand by that which is decided. These communities are going, hey, this was decided in 1965. If somebody would have came

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back and told us, told the Legislature, that you were going to hold them to a different...that you were going to hold governmental subdivisions and the state to a different standard back then, it could have been addressed. But court decision after court decision came out and said, you fall under the Recreational Liability Act. And guess what? This latest one, Bronsen v. Dawes County, said, no, that's not true. That's why this happened. That's why we're here now, is to try to deal with judicial activism. Sometimes...to divert...Senator Lathrop has got this soothing legal voice. Everybody is glazed over. You know what? That's fine. Well, he says I was, too. He doesn't know whether I was glazed over or not. I have that glazed look in my eye all the time. (Laugh) The point is, and the interesting part, we're going to be on this eight hours, and we're all his children, we need to listen to the wise old sage. You know what? I've listened to him for five years. It's important to listen to him. I'm not even sure that he wants any of his amendments or his ideas promoted and adopted, and he's said that in no uncertain terms. But not one person except myself has raised the concern or the idea that the reason that we're dealing with this is because of the infinite wisdom of the judiciary. We're the ones that make these decisions. The society makes these decisions, they send us down here to lay out these guidelines. The framework was LB564, and the compromise is upon us, and then we get backhanded or we get hit with the proverbial two-by-four, and everybody says you're not listening, you don't understand, you don't understand. Let me tell you something. When you go home...what do you mean, you don't understand? Senator Harms,...I want to ask Senator Harms a question, if he'd yield. [LB564]

SENATOR ERDMAN: Senator Harms, would you yield to a question from Senator Friend? [LB564]

SENATOR FRIEND: He was glazed over. He's all right now. [LB564]

SENATOR HARMS: Mr. President and colleagues, yes, my eyes are glazed. Would you please ask me the question? [LB564]

SENATOR FRIEND: I will...(laugh). How much time do I have, Mr. President? [LB564]

SENATOR ERDMAN: One minute. [LB564]

SENATOR FRIEND: Okay, good. That's enough time for a question. Fifty-five seconds now? Senator Harms? [LB564]

SENATOR HARMS: Yes, Senator Friend. [LB564]

SENATOR FRIEND: How many...have you actually heard...did you hear anything this summer in regard to this subject matter, while you...you were in the throes of campaigning, weren't you? [LB564]

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SENATOR HARMS: Yes. [LB564]

SENATOR FRIEND: What did you hear about it, from people who...when you were going door to door and talking about this subject? [LB564]

SENATOR HARMS: About the death penalty? (Laughter) [LB564]

SENATOR FRIEND: Is that what we're on? I need to step back. That was good. I have no further questions for Senator Harms. (Laughter) [LB564]

SENATOR HARMS: (Laugh) That's the best thing that's happened to me all day. [LB564]

SENATOR FRIEND: That's all I have, Mr. President. [LB564]

SENATOR ERDMAN: Thank you, Senator Friend. Senator Lathrop, followed by Senator Nelson. [LB564]

SENATOR LATHROP: Thank you, Mr. President. Wake up! Somebody nudge Harms. (Laugh) Oh, that was great. Well, let me continue with my discussion, if I can, on some of these activities and what is an inherent risk versus what might be a foreseeable occurrence, but not necessarily an inherent risk. And believe me, there is a purpose to this exercise, and it's one of our functions here, is to in some measure provide direction or a little more detail to some of the general language we've used. And we were talking about baseball and some of the things that are characteristic of or intrinsic to, and that would be getting hit by a ball or perhaps the bat, or sliding. Those are the things that happen during a game. But if you're running through the outfield and you fall into a hole up to your knee, that's not an inherent risk. That is a condition of the land, and to the extent there's liability or not liability, that would be governed by a different provision in this bill. That is not an inherent risk, nor would it be an inherent risk if something came from the outside of the field and injured a participant. Those things are not inherent. Really, to find what is inherent, you have to look at what takes place in the activity and what happens when it's being done properly and carefully. Basketball--you know, people are elbowing. You might take an elbow in basketball. You might be hit in the face, just as a part of...and not deliberately, but just as a part of...you see it happen all the time in rebounding. You might have somebody fall on you after they've jumped to make a basket or rebound, something like that. Those are activities that are characteristic of basketball, and the risks that are inherent in that is, for example, if somebody falls on you, you might have an orthopedic injury, which is typical to basketball. Maybe the number one cause of injuries in recreational activities is basketball, and those are, to the extent they happen when you jump up or fall down and have somebody land on you in the course of the game, inherent risks. But if somebody

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throws ice onto the court and you slip on the ice, it's no longer an inherent risk. That's not an inherent risk; that's a condition, and again, you would have to go back to the other provisions of the...of what will be LB564, to determine whether or not there's any liability based upon a condition. I would suggest to you that there isn't, unless that's been allowed to sit around long after they've learned about it. But at the same time, it's important to know that that's not an inherent risk but a condition that may be foreseeable--somebody throwing something onto the court--but that doesn't make it an inherent risk. We don't have any snowboarding in the state to speak of, so I'll pass on that one. But soccer is another example, and I got to tell you that more people get hurt playing soccer than they do skateboarding. Soccer, which I've coached for years and played at one time, involves, of course, kicking the ball. You're going to have people kicking it right down by your feet, and slide tackles. So you can get hit by the ball in soccer. That's an inherent risk. You can have somebody slide tackle and take your feet out from under you and have a sprained ankle or an orthopedic injury in the course of that fall or that maneuver, and that would be an inherent risk. But having somebody... [LB564]

SENATOR FISCHER PRESIDING [LB564]

SENATOR FISCHER: One minute. [LB564]

SENATOR LATHROP: ...thank you...having someone come from the sidelines and jump into the middle of a game to have...to encounter a deep hole in the middle of a soccer field, that's not an inherent risk; that's a condition. And while it may be foreseeable, it certainly isn't an inherent risk. And so I think you can see from some of the examples the direction, or exactly what inherent risk means. We also have playground equipment, and I think it's important to recognize what is an inherent risk when we talk about playground equipment versus what is a foreseeable cause of an injury. An inherent risk, if you're going to be swinging, you could let go and fall off. I suppose you could get hit by the swing if you're walking near the swing sets and somebody jumps off, and the swing comes by and hits you. Those would be inherent risks. [LB564]

SENATOR FISCHER: Time. [LB564]

SENATOR LATHROP: Thank you. [LB564]

SENATOR FISCHER: Thank you, Senator Lathrop. Mr. Clerk, are there announcements? [LB564]

ASSISTANT CLERK: Madam President, one item: the Retirement Committee will meet in Executive Session under the south balcony at 11:00; that's Retirement Committee under the south balcony at 11:00. [LB564]

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SENATOR FISCHER: Thank you, Mr. Clerk. Senator Nelson, you are recognized.  
[LB564]

SENATOR NELSON: Thank you, Madam President and members of the body. I stand to speak this morning in opposition to Senator Chambers' amendment and in support of AM879 and the bill itself. I think we have an alternative here that we have to consider. Where are we going to go? Senator Chambers would take out "resulting from the inherent risk of the recreational activity." And in so doing that, we would make the political subdivisions, the cities, absolute insurers of every recreational activity that the cities provide free of charge. And the senior senator from Omaha speaks often of the detriment to vulnerable children that we need to be cognizant of. And I think that's very important. We have to be aware of the possible injuries to our children and protection of them, but just how far, you know, can we go in that regard? We are not hurting our children by providing them recreational activities. In fact, we are doing them a lot of good. It's very important that we provide those activities for them, and we need to do so without the fear of having absolute liability placed upon us, because that's going to put us in an impossible position. We simply cannot afford to pay for every injury that might happen on the playing fields or on the skateboard park, and there are a lot of injuries. But I think all of us as parents, we have to think what's best for our children, and what are the inherent risks that they're having to face because of the things that we feel are good for them. I happen to be a parent; I don't like to bring personalities into this, and I won't. But I will say, first of all, that I had to make a choice as far as letting my three children engage in athletic activities in the parks, particularly softball. My daughter--and I'm bragging as a father--was an outstanding softball player. It was because of a couple spectacular catches that she made in the outfield that her team, her softball team, went down to Lincoln to compete in the finals. And there was a time, though, when she was out on the park, in the outfield, and here came the softball, and she was blinded by the sun. The ball went right between her two hands and struck her nose and broke her nose. And she's a very attractive young woman, and she still is. But nevertheless, her nose is not quite the same as it was before. So what did I do as a father? Did I say to the softball league, you should have turned the baseball park or the softball park around so the sun was not shining in their face when they play in the afternoon; I'm going to sue you because of that, because I think you made a mistake and you were liable? No, I'm not going to do that as a parent. I knew and my child, my daughter, knew that there was inherent risk, and yet she chose and I chose to have her play the game, because it's important to play the game and to be out there with your fellow teammates, learn the rules of the game, and learn how to get along with other kids your age. Important lessons are learned on those fields. My two sons were good baseball and softball players. And this brings me to my youngest son, who is a rather aggressive young man. He wanted to be a skater, and so he was delighted when there was a skate park built east of 72nd Street, and we don't live too far from there. I had grave reservations about that. I really didn't want him to go to the park, and looking back on it,... [LB564]

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SENATOR FISCHER: One minute. [LB564]

SENATOR NELSON: ...I'm still not sure whether I should have. But in the end, it was good for him. I insisted that he wear a helmet, and he has done that. But he has learned confidence that has taken him a long ways, as he pursues his career, confidence in his own ability. Yes, he would take a fall once in awhile, and he would hurt himself. But in the long run, the risk was worth it, and there was some inherent risk there, and we have to realize that. I think we need these activities. I think we're really looking out for our children by providing them, and it may be that someone will wind up in the hospital and hurt, and not unable to pay. Then we will have to step in and we will have to pay, to that extent. But that inherent risk is worth the great benefits of having these recreational places available for our children. Thank you, Madam President. [LB564]

SENATOR FISCHER: Thank you, Senator Harms (sic). There are no more lights on. Senator Chambers, you are recognized to close on your amendment. [LB564]

SENATOR CHAMBERS: Thank you, Madam President. Senator Harms just received what he had done to Senator Friend. Senator Nelson, sometimes I mix the two of you up myself, however, so I'm glad that Madam Chair had done it first. Senator Nelson, you probably had not watched professional baseball games or college games or even some games in baseball or softball at a lower level. But they actually have devices you can put over your eyes that will help you see when the sun is shining, and you won't be blinded, and those things can be provided for these children. But what I thought you were going to say was that when she looked up and she was blinded by the sun and the ball hit her in the nose, you filed an action against the sun. That's what I thought he was going to say, and he could have done it! But you wouldn't have won. In all seriousness, I want to ask Senator Lathrop a question. [LB564]

SENATOR FISCHER: Senator Lathrop, would you yield for a question? [LB564]

SENATOR LATHROP: Yes. [LB564]

SENATOR CHAMBERS: Senator Lathrop, is there a difference between inherent risk and inherently dangerous? [LB564]

SENATOR LATHROP: Yes. [LB564]

SENATOR CHAMBERS: And have I continued to use the term "inherently dangerous"? [LB564]

SENATOR LATHROP: Yes. [LB564]

SENATOR CHAMBERS: Which is not in the bill. [LB564]

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SENATOR LATHROP: Exactly. [LB564]

SENATOR CHAMBERS: And I'm talking about...do you believe, first of all, there are activities that are inherently dangerous that occur at these recreational facilities? [LB564]

SENATOR LATHROP: I wouldn't, no. I wouldn't agree that skating is inherently dangerous. I would say that there are inherent risks in that activity, just as there are with softball, but I wouldn't call it inherently dangerous. [LB564]

SENATOR CHAMBERS: But if we were to put inherently dangerous into the bill, we then create a fact question, if somebody is injured and alleges that the activity itself were inherently dangerous. Isn't that true? [LB564]

SENATOR LATHROP: Well, if you did that, yes, you would. That would happen. If you're asking me if we should do that, I would disagree with that, but... [LB564]

SENATOR CHAMBERS: But if you're convinced that there are no inherently dangerous activities in any of these recreational facilities, buy four hours from me by letting me put something in that you say will have no impact anyway. I say it would, and I think you know that it would. That's what I think. But you're saying that my thought is incorrect. [LB564]

SENATOR LATHROP: So essentially you would amend it to suggest or impose strict liability for inherently dangerous activities? [LB564]

SENATOR CHAMBERS: That are provided by political subdivisions, yes. [LB564]

SENATOR LATHROP: Well, I think you're going down a different course than what we've addressed here, and honestly, I can't think of an inherently dangerous activity that's being imposed, so it would be unnecessary or superfluous language in this bill. [LB564]

SENATOR CHAMBERS: Well, no, it would be unnecessary for you to oppose it, because I think there are these activities. So this is where reasonable minds get together. But I'm not going to hold you on this. Talk to some of those people out there who you work with, and you want to keep faith with them, and see what they think. But I'll bet you they'll say, oppose it, because he's right and you're wrong. That's all I'm going to ask you, because my time will run out. [LB564]

SENATOR LATHROP: Thank you. [LB564]

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SENATOR CHAMBERS: Because I'm closing now; is that right, Madam President? But I will create other opportunities to speak, and then we'll continue the discussion, Senator. What this amendment would do is say that we remove "inherent risk". The language I'm removing would be this: "resulting from the inherent risk of the recreational activity." [LB564]

SENATOR FISCHER: One minute. [LB564]

SENATOR CHAMBERS: Right now, if there's an inherent risk in the activity and you participate in it and the facilities are provided by the political subdivision, you have no cause of action. And there should not be--I'm going back to my word--any dangerous activities sponsored by political subdivision. That's what I've been continuously discussing since yesterday, because I believe there are inherently dangerous activities. Senator Lathrop has stated he doesn't think there are any. Well, those of you all who see it like Senator Lathrop, go persuade him that he can really get one up on me by persuading me to give up a lot while receiving nothing in return. But he knows that what I'm talking about is not without meaning. Thank you, Madam President, and this time I am going to take a vote. [LB564]

SENATOR FISCHER: Time. [LB564]

SENATOR CHAMBERS: So I'll ask for a call of the house. [LB564]

SENATOR FISCHER: Thank you, Senator Chambers. You've heard the closing on the amendment. The question is, shall the amendment be adopted? We have had a...shall we have a call of the house? All those in favor vote aye; all opposed, no. Record, Mr. Clerk. [LB564]

ASSISTANT CLERK: 26 ayes, 0 nays to go under call, Madam President. [LB564]

SENATOR FISCHER: The house is under call. Senators, please record your presence. Those senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Christensen, Senator Preister, the house is under call. Senator Chambers, how do you wish to proceed? [LB564]

SENATOR CHAMBERS: Who is not here? [LB564]

SENATOR FISCHER: All are present. [LB564]

SENATOR CHAMBERS: That's not what the board says, but I will take your word for it, Madam Chair. I will take a machine vote. [LB564]

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SENATOR FISCHER: Thank you, Senator Chambers. The question is the adoption of the Chambers amendment. All those in favor vote aye; all those opposed, nay. Mr. Clerk, please record. [LB564]

ASSISTANT CLERK: 0 ayes, 29 nays on the adoption of the amendment to the amendment, Madam President. [LB564]

SENATOR FISCHER: The Chambers amendment is not adopted. The call is raised. Mr. Clerk. [LB564]

ASSISTANT CLERK: Madam President, Senator Chambers would move to reconsider the vote just taken on FA59. [LB564]

SENATOR FISCHER: Senator Chambers, you're recognized to open. [LB564]

SENATOR CHAMBERS: Thank you, Madam President. I would like to resume my discussion with Senator Lathrop, if he will yield. [LB564]

SENATOR FISCHER: Senator Lathrop, will you yield? [LB564]

SENATOR LATHROP: Certainly. [LB564]

SENATOR CHAMBERS: Senator Lathrop, when our discussion ended, you had asserted that you don't think there are any inherently dangerous activities provided by political subdivisions in the realm of recreation. [LB564]

SENATOR LATHROP: I think we could probably litigate for years what that means, inherently dangerous. Maybe the more important distinction--and it's yours to make, not mine--is the risk of serious injury. But inherently dangerous activities suggests...you can have a danger that...of a nominal or a marginal, small kind of an injury. [LB564]

SENATOR CHAMBERS: Well, let's say serious injury. [LB564]

SENATOR LATHROP: Okay. [LB564]

SENATOR CHAMBERS: And serious injury probably has been defined. If you want to say serious bodily injury, I know that has been defined. [LB564]

SENATOR LATHROP: Okay. [LB564]

SENATOR CHAMBERS: Would you accept that as an amendment? [LB564]

SENATOR LATHROP: I can tell you that this language has been worked out to the

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comma, and if we start amending this bill, I'd have to talk to the people who would then want to bring amendments in from the other side. [LB564]

SENATOR CHAMBERS: Senator Lathrop, I'm the only one who seems to have any problem with this bill, sufficient to offer to amend it in any fashion. Most people don't even know what we're talking about here. They know only that their political subdivisions have written to them and said, get something to overturn the Supreme Court's decision, and that's what they think this is doing, so they'll vote for it. They're not going to offer an amendment. How are they going to amend something they don't even understand? That's my question to you. How are they going to... [LB564]

SENATOR LATHROP: Well, they're going to be asked to. I mean... [LB564]

SENATOR CHAMBERS: And we'll fight off their amendments. [LB564]

SENATOR LATHROP: Well,... [LB564]

SENATOR CHAMBERS: I'll help you fight them off. Accept this amendment, and I'll help you keep your bill intact from this point onward. [LB564]

SENATOR LATHROP: Well, perhaps it would be helpful to have your thoughts on what an inherently dangerous activity is, or an activity that has inherent dangers of serious injury. [LB564]

SENATOR CHAMBERS: The word defines itself. [LB564]

SENATOR LATHROP: What kind of activities are we talking about? [LB564]

SENATOR CHAMBERS: We're not going to name the activities. We're not going to specify, because you all don't want to deal with the ones where we know injuries are likely to occur. You don't want to deal with those. [LB564]

SENATOR LATHROP: The amendment defines what a recreational activity is, and I don't see an inherently dangerous--that's a little bit of an awkward phrase--but an activity that is inherently dangerous or risky with respect to serious personal injury on the list, or like activity. [LB564]

SENATOR CHAMBERS: Are these the only activities that are covered, the ones that are listed? [LB564]

SENATOR LATHROP: It's...no, no, because it says "or similar leisure activities," so it's open ended. [LB564]

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SENATOR CHAMBERS: Is leisure defined in the bill? [LB564]

SENATOR LATHROP: No. [LB564]

SENATOR CHAMBERS: A lot of words are in here that are not defined. Would you agree? [LB564]

SENATOR LATHROP: Well, we tried to define...we tried to define recreational activities in a manner consistent with the old Recreational Liability Act and include "and like leisure activities," because we don't know what...you know, ten years from now, nobody is going to be skateboarding, you know? We don't know what they're doing to be doing. [LB564]

SENATOR CHAMBERS: What is a scientific site? What is a scientific site? What is that? Could that be a laboratory? [LB564]

SENATOR LATHROP: No, that's...I presume that's from the Recreational Liability Act, but I presume that would be if you had some fossils out in the middle of a field, and people wanted to traipse out there and look at them, or some archeological dig that might be undertaken on some property. [LB564]

SENATOR CHAMBERS: But it mentions archeological, so that's not what it is, because we wouldn't have to say archeological and scientific, if they're the same. [LB564]

SENATOR LATHROP: Okay, well, you know, maybe it's the location of a telescope that lets you look at the stars. It could be a pond on somebody's property, or... [LB564]

SENATOR CHAMBERS: But now we're in the realm of maybe, could be, with reference to words that are in here right now, and we don't know what they mean. And the one who is in favor of the bill cannot define what these words that are there right now mean. And I'm not trying to play a game. I'm just trying to show that we can litigate words that are in here right now. If you're trying to avoid litigation, this bill and the amendment will not achieve that end, necessarily. Isn't that true? [LB564]

SENATOR LATHROP: That's true. [LB564]

SENATOR CHAMBERS: Okay. [LB564]

SENATOR LATHROP: And it's a general framework. [LB564]

SENATOR CHAMBERS: And that's all that I will ask you, because it will seem that I'm getting away from my main point. Thank you, Senator Lathrop. Members of the Legislature, if I were convinced that a certain thing were not the case, with reference to

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a bill that I have, and somebody is arguing against my bill and they say, well, give me this thing that you feel will not happen, I'd say, you got it. And I'd say, Madam President, I'm going to continue talking or have one of my colleagues talk until we can craft an amendment that will give my antagonist what it is he or she requested. And once we have that amendment, I'm going to put it on the desk and I will ask that it be adopted, and I'll support it, and then we can move this bill. That's the way I would do. But why do you listen to me? I'm only a guy who gets interviewed by Vatican Radio. (Laughter) And what is that? Somebody is going to travel all the way across the ocean, and they've heard of me when they were in Italy, wherever the Vatican is. So I don't blame you for not paying attention to anything I say. Why, you know how those people in the Vatican are! What do they know? They've got all these libraries, all these documents, all these manuscripts, all these scholars, so...I probably shouldn't have even mentioned that. I'd like to ask Senator Friend a question. [LB564]

SENATOR FISCHER: Senator Friend, will you yield to a question? [LB564]

SENATOR FRIEND: Of course. [LB564]

SENATOR CHAMBERS: Senator Friend, the last time Senator Lathrop spoke, not during his question-and-answer session that he and I had, he was talking about inherent risk, as it might pertain to recreational activities, and he mentioned playground equipment. What do you remember him saying about that when he was discussing it, if anything? Because you were sitting back there; I watched you. Because you said you were paying attention, even though your eyes looked glazed over. What did he say? [LB564]

SENATOR FRIEND: Well, he was trying to... [LB564]

SENATOR CHAMBERS: No, what did he say? You didn't hear him, did you? Be honest. [LB564]

SENATOR FRIEND: (Laugh) [LB564]

SENATOR CHAMBERS: I know it's hard to do, but try. [LB564]

SENATOR FRIEND: Let me answer it this way. You're a piece of work. (Laughter) [LB564]

SENATOR CHAMBERS: Right, but still, will you answer...you don't know what he said, do you? Be... [LB564]

SENATOR FRIEND: He said a lot of things this morning, Senator Chambers, but the answer to your question is, in regards specifically to playground equipment, I don't

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remember verbatim what he said. [LB564]

SENATOR CHAMBERS: Well, paraphrase. [LB564]

SENATOR FRIEND: Well, he said there is inherent risk with playground equipment. He said that all morning. He's been defining the difference between inherent risk and inherent danger. [LB564]

SENATOR CHAMBERS: What example did he give? [LB564]

SENATOR FRIEND: He used inherent danger of some guy out in a field using dynamite; that's inherent danger. [LB564]

SENATOR CHAMBERS: No, he's talking about... [LB564]

SENATOR FRIEND: Inherent risk is playground equipment. [LB564]

SENATOR CHAMBERS: Right, so we're not going to bring dynamite onto the playground, because he didn't do that. [LB564]

SENATOR FRIEND: No, but he talked... [LB564]

SENATOR CHAMBERS: What example did he use? [LB564]

SENATOR FRIEND: What analogy did he use? [LB564]

SENATOR CHAMBERS: What...yeah, what example did he use for the playground equipment? You didn't hear him, did you? Just save us all time. Everybody knows you didn't hear him. They didn't hear him, either. [LB564]

SENATOR FRIEND: You're badgering me. (Laugh) [LB564]

SENATOR CHAMBERS: Right, so then acknowledge that you didn't hear him. [LB564]

SENATOR FRIEND: I did not...I don't know if I heard him or not. I don't remember. [LB564]

SENATOR CHAMBERS: Thank you. [LB564]

SENATOR FRIEND: You're welcome. [LB564]

SENATOR CHAMBERS: He just used the Scooter Libby defense. I'd like to ask Senator Pirsch a question. [LB564]

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SENATOR FISCHER: Senator Pirsch, will you yield for a question? [LB564]

SENATOR PIRSCH: Yes, I will. [LB564]

SENATOR CHAMBERS: Senator Pirsch, were you listening to Senator Lathrop the last time he was presenting his discussion on the bill and referred specifically to playground equipment in the context of... [LB564]

SENATOR FISCHER: One minute. [LB564]

SENATOR CHAMBER: ...inherent risk? [LB564]

SENATOR PIRSCH: I think I was outside, unfortunately, talking just outside in the lobby, just as you... [LB564]

SENATOR CHAMBERS: Actually, I think you were sitting there,... [LB564]

SENATOR PIRSCH: Was I? (Laugh) [LB564]

SENATOR CHAMBERS: ...because I was looking around, but... [LB564]

SENATOR PIRSCH: That could be. There's been...I apologize. There's been...I think he's talked about six times, so...I... [LB564]

SENATOR CHAMBERS: Talking about what? [LB564]

SENATOR PIRSCH: I think he's...Senator Lathrop has risen about six times, but go ahead. I'll try to answer as best I can. [LB564]

SENATOR CHAMBERS: Okay. My time is up. Thank you, Madam President. [LB564]

SENATOR PIRSCH: Sure. [LB564]

SENATOR FISCHER: Thank you, Senator Chambers. You have now heard the opening on the motion to reconsider. The floor is open for discussion. Senator Friend, you are recognized. [LB564]

SENATOR FRIEND: Thank you, Madam President, members of the Legislature. There is an inherent danger in the Legislature of asking another senator to yield to a question. That's an inherent danger in my book, any more. Senator Chambers probably has never found that to be an inherent danger, but he's never surprised Senator Harms in the throes of a glaze, at least not yet. You know, Senator Chambers is...I don't know how

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serious he is in regard to injecting these amendments into this idea, the idea that I call AM879. But I'll tell you this. You know, the Vatican comes out and interviews him and everything else. I mean, he's an important guy. There's a guy that's more important than him, though, right now. I'm a Creighton graduate, and last night I'm driving home, and these guys are going, hey, guess what? Altman is coming back. The radio guy is freaking out. And I said, you know what? And I've told people this before. Omaha talks about all these economic development ideas--the Qwest Center, how great it is. I'm thinking that barn would be empty if it wasn't for Dana Altman and the kids...and the young men that he puts out on that floor. So officially or unofficially, welcome back, Dana. I'm glad you're coming back. Senator Chambers, you can leave right now if you'd like, but I don't think that's going to happen, either. "Captain Lunch-hunter" is coming. Senator Pahls is hungry; I know that. Look, if this is about Senator Chambers' ego, if that's what it's about, I think that there are more appropriate places to start injecting amendments (inaudible). I don't think that's it. I haven't asked him specifically. I don't think that's it. I think he legitimately does think that he can help the situation. I don't. And as I pointed out earlier, I don't necessarily think, in the specific instances that he's bringing up, that it's necessary. And I don't...and like I brought up earlier, I don't think you need to be an attorney to realize that it's not necessary. Now here's the practical aspect of this, and it's not like I feel jilted or slighted or anything else. There are a lot of folks involved in this discussion; you're all included in that. We're going to make decisions. No matter what Senator Lathrop and Senator Chambers...what kind of decision making they come to, there are still 47 other people out here that are going to have to come to a determination and make that value judgment. What he's focused on, what Senator Chambers is focused on, I don't think I agree with. And just keeping in mind that the underlying bill just happens to have...doesn't have Dana Altman or Ernie Chambers or anybody else on there. It says Friend. So I'm going to be involved in this discussion. Bottom line is, if I don't like what gets attached to AM879, guess what happens? Thank you, Madam President. [LB564]

SENATOR FISCHER: Thank you, Senator Friend. (Visitors introduced.) Senator Chambers, you are recognized. [LB564]

SENATOR CHAMBERS: Thank you. Madam President, I thought that we were going to hear about the reincarnation of Galileo or DaVinci or somebody like that, or even Michelangelo. But he talked about a basketball coach at an insignificant little school in the insignificant town of Omaha. And this is the man carrying the banner that all of you all have rallied under? And he's not even paying attention to the discussion, because his mind is on Dana Altman. When he said that, if I hadn't heard him say baseball...basketball...I'd like to ask Senator Friend a question, so I won't misstate anything. [LB564]

SENATOR FISCHER: Senator Friend, would you yield to a question? [LB564]

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SENATOR FRIEND: Yes, I will. You've never misstated anything. [LB564]

SENATOR CHAMBERS: Senator Friend, is he a baseball or a basketball coach, this Dana Altman? [LB564]

SENATOR FRIEND: He is a basketball coach. [LB564]

SENATOR CHAMBERS: Okay. And what did you say made him great, because I think I missed something? [LB564]

SENATOR FRIEND: What did I say made him great? [LB564]

SENATOR CHAMBERS: Because you said there was somebody even greater than Chambers, and then you started mentioning this gentleman. [LB564]

SENATOR FRIEND: I don't know if I said great. I said more popular at this point, or something. [LB564]

SENATOR CHAMBERS: No, you said greater. [LB564]

SENATOR FRIEND: Well, we can go back and check it. [LB564]

SENATOR CHAMBERS: Well, I don't need to, because I know what you said. You're the one who doesn't know what you said. [LB564]

SENATOR FRIEND: Oh, I think he's greater than you. If you're asking me whether I think he's great than you, yeah. The answer is yes. [LB564]

SENATOR CHAMBERS: Okay. So what did he do that made him great? That's what I'm asking you. [LB564]

SENATOR FRIEND: He wins a lot of basketball games for that insignificant university that you're speaking of. [LB564]

SENATOR CHAMBERS: But his realm is basketball. [LB564]

SENATOR FRIEND: Yes, it is. [LB564]

SENATOR CHAMBERS: And that's greater than anything that I've done. [LB564]

SENATOR FRIEND: From an economic development standpoint, uh-huh. [LB564]

SENATOR CHAMBERS: No, you didn't qualify it. [LB564]

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SENATOR FRIEND: Yes, I did. Earlier, I did. [LB564]

SENATOR CHAMBERS: Thank you, Senator Friend. [LB564]

SENATOR FRIEND: You're welcome. [LB564]

SENATOR CHAMBERS: Members of the Legislature, look, I try to be humble around here, but it's hard. It's hard to be humble when the only argument somebody can make against my greatness is to bring up a basketball coach from Creighton University. Why, I don't know what league they're in, but he's certainly not in a league with me, and I'm sure he wouldn't say that he is. But if that's what Senator Friend uses as his standard for greatness, then he probably thinks John Wooden, who coached UCLA, should have an altar and a church built, and Senator Friend would join the religion and worship him, because this guy Wooden did things that nobody has done before. And there's a woman named Pat Summitt, who has won more basketball games than any woman, and if she continues coaching, she'll win more games than John Wooden won. And Dana Altman is not anywhere close to them! But see, that's what happens. When you grow up in Omaha, children, and that's the extent of your world, then things that are small in the global context loom very large to you, because you're not able to put it in the proper perspective. It's the concept of the big duck in a little pool. And when you have a big duck in a little pool, if that's all you're looking at, the duck can look big if in your mind that pool is big. But getting back to this bill--and that's what I want to keep us talking about--the children are the issue. Senator Friend has some bill that the Attorney General wanted, talking about electronic intimidation or something, and a lot of times when those kind of bills are brought, children are mentioned as possible victims, because one of the provisions says that if somebody 19 or older deals with somebody 16 or younger, then that can be a crime. So they're talking about children in that bill. But he doesn't care about children in this bill, if they are physically hurt. Why should I even care about that bill? And it's one of the most atrociously drafted bills that I've seen. [LB564]

SENATOR LANGEMEIER PRESIDING [LB564]

SENATOR LANGEMEIER: One minute. [LB564]

SENATOR CHAMBERS: So that bill is doomed. Senator Friend just doomed his own bill, and the Attorney General can know about it, too, because his office drafted it. They ought to stick to raising money for the Attorney General to explore whether he ought to run for an office, or sending somebody to testify for a bill in a neutral position. Then he runs out and has a press conference and condemns it, and doesn't even know what the bill says; never read it. And that's the office that gave Senator Friend a bill, and it's supposed to pass this Legislature? I'd like to see it get past me! We're going to start

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playing political hardball. We're at that part of the session now. How much time do I have, Mr. President? [LB564]

SENATOR LANGEMEIER: Six seconds. [LB564]

SENATOR CHAMBERS: And this was my second or third time? [LB564]

SENATOR LANGEMEIER: Second. [LB564]

SENATOR CHAMBERS: Thank you. [LB564]

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

SENATOR CHAMBERS: Members of the Legislature, this is a reconsideration motion, and the issue that I had offered to strike from the bill in my original motion, or offer of an amendment, was the language dealing with inherent risk. We don't know which activities qualify as having inherent risk. The definition of inherent risk found in the bill does not give us any idea of which activities are involved. Because people have not read this amendment, I'm going to, for the record, locate it and read it. On page 5 of this committee amendment, beginning in line 5 it says, "Inherent risk of recreational activities means those risks that are characteristic of, intrinsic to, or an integral part of the activity." Which activity? No activity is named. You don't know what activities are involved here, and you all popping up here like popcorn talking about, I support this bill, it does what needs to be done, and you don't even know what it's talking about. You're like the guy who was asked a question, how he felt about a certain issue. And he said, well, I'm against that issue. And he was asked, why are you against it? Do you understand the issue? He said, no, I don't understand it, but there be those who do understand it, and they're against it. And that's the argument--there be those who favor this bill, so you favor it, too, and you don't even know what it says. And there were others sitting around when Senator Lathrop was speaking, and they were not paying attention. You're not going to pay attention. You don't have to. But, Senator Lathrop, I hope, despite that, you will continue, in the scholarly way that you've shown this morning, to lay out for the record what this bill means, and what is intended by you. Because among those words, somebody is going to be able to find a way to help impress on these political subdivisions that there's an expectation that they are going to be careful when they make these facilities available. They're not given carte blanche to look the other way and say, just provide it because the public wants it, and that's all. Once it's provided, the political subdivision washes its hands and has no further obligation or responsibility. That's not true. They do have some, under some circumstances, but I don't think it goes far enough. There are too many times, too many instances when a child can be hurt in one of these activities provided by the political subdivision, and not be able to get any help in dealing with those injuries. Now I'm going

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to ask Senator Lathrop a question or two. [LB564]

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

SENATOR LATHROP: Sure. [LB564]

SENATOR CHAMBERS: And I think we have Senator Friend, your strongest ally, paying attention now. Senator Lathrop, would you concede that some child could suffer a catastrophic injury at one of these skate parks, and by that I meant a spinal injury that could result in some level of paralysis that would be permanent? [LB564]

SENATOR LATHROP: I think that can happen in almost any everyday activity, including a skate park. [LB564]

SENATOR CHAMBERS: And if that happened at this skate park under this bill,... [LB564]

SENATOR LANGEMEIER: One minute. [LB564]

SENATOR CHAMBERS: ...and there was no flaw in the manufacture or construction, that child's family cannot recover anything. Is that true? [LB564]

SENATOR LATHROP: That's true. If there is no defect in the premises, so they didn't hit a seam,... [LB564]

SENATOR CHAMBERS: Yes. [LB564]

SENATOR LATHROP: ...some piece of broken concrete, and it was designed in accordance with prevailing standards, that they would not have a claim. [LB564]

SENATOR CHAMBERS: And if the family lacks money, who will pay for the medical care? [LB564]

SENATOR CHAMBERS: Well, it would be health insurance, and if that runs out or if they don't have it, then ultimately Medicaid. [LB564]

SENATOR CHAMBERS: And who puts up some of the money in Medicaid, in addition to the federal government? [LB564]

SENATOR LATHROP: Well, the good old state of Nebraska. [LB564]

SENATOR CHAMBERS: Okay, so we're shifting the responsibility to the state to pay for these injuries. [LB564]

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SENATOR LATHROP: That's...ultimately, that's what happens with people who exhaust their insurance and their personal wealth in the care of somebody that's been...suffered a catastrophic injury. Ultimately, those people end up in the care of Medicaid. [LB564]

SENATOR LANGEMEIER: Time. [LB564]

SENATOR CHAMBERS: I think my time is up. Thank you, Mr. President. [LB564]

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

SENATOR LATHROP: Thank you, Mr. President and colleagues, again. Senator Chambers, perhaps we can continue the dialogue. I had...you've expressed some interest in trying to amend this bill to allow for or provide for ultrahazardous activities or inherently dangerous activities. I'm told that language is generally synonymous or interchangeable, and your suggestion that you would exclude from recreational activities...or from the protections of this act any activities or injuries that follow ultrahazardous or inherently dangerous activities. Do you have a list of activities that you would include on that list of activities that you would describe as inherently dangerous? [LB564]

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

SENATOR CHAMBERS: Yes, I'll yield, but I don't have prepared a list, and if there were, it would be formulated in the following manner, "such as," to give an example of the types of activities, because I couldn't list all of those that might fall into that category. But I think if we said "inherently dangerous," then courts would determine that, just as they will anything, because if we gave a list that's not exhaustive, other things could be covered that are not a part of the list. [LB564]

SENATOR LATHROP: Okay. Would you... [LB564]

SENATOR CHAMBERS: Ask me. [LB564]

SENATOR LATHROP: In determining whether or not that's a workable amendment or something that is...can be acceptable, at issue is whether or not we are going to turn any one of the normal, everyday recreational activities, such as basketball, football, a skate park, or riding a bike on a bike trail, into an ultrahazardous activity. Because you and I could sit here today and imagine a manner in which someone could participate in those activities and suffer a spinal injury or a brain injury or perhaps even death in a freakish sort of an accident in these everyday recreational activities. If we could define

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what ultrahazardous or inherently dangerous are, perhaps they can be excluded, but we don't want to end up opening the door to ten years' worth of litigation over whether or not some particular activities are inherently dangerous or simply everyday activities with some inherent danger. [LB564]

SENATOR CHAMBERS: But if I might ask you this, Senator Lathrop, for clarification on what would be the impact of the possible amendment we're discussing, there is currently a list of items or activities that are considered recreational. If at the end of that list we would say, "but except," or however we would introduce the inherently dangerous or ultrahazardous, would that automatically exclude any of those that are currently listed from coverage, even if it turns out that they are inherently dangerous? [LB564]

SENATOR LATHROP: I don't think so. I think if we amended this amendment, it would...to accommodate your concern and your suggestion, it would be at the definition of a recreational activity, and you might at the end of that definition say, "but recreational activity does not include those activities which are inherently dangerous, or ultrahazardous." And by way of example, that would be bungee jumping,... [LB564]

SENATOR CHAMBERS: Hang gliding. [LB564]

SENATOR LATHROP: ...hang gliding, parachuting, some of those things that, frankly, the state and the political subdivisions don't offer. They don't participate in them,... [LB564]

SENATOR LANGEMEIER: One minute. [LB564]

SENATOR LATHROP: ...but we don't want to leave open the question of whether or not that ultrahazardous activity includes "Rollerblading," and that's going to have to be on the other side of what's an ultrahazardous activity, or we've defeated the purpose of this bill. [LB564]

SENATOR CHAMBERS: Well, suppose one of these skateboarding constructions was very hazardous because of the height of the sides, or whatever you call these parts of it. That would be excluded, because it's listed as a recreational activity, so it could not, by definition, be ultrahazardous, no matter what. If it was constructed in accord with the standards at that time, even if it's in accord with those professional standards, then it cannot be ultrahazardous, even if it's made available for children, could it, by way of the discussion? [LB564]

SENATOR LATHROP: By way of a discussion, I'm...I mean, you bring a good point, in terms of trying to...how do you define what's inherently dangerous from those... [LB564]

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SENATOR LANGEMEIER: Time, time. Thank you Senator Lathrop. [LB564]

SENATOR LATHROP: Thank you. [LB564]

SENATOR CHAMBERS: Have I spoken twice or three times? [LB564]

SENATOR LANGEMEIER: Three times. [LB564]

SENATOR CHAMBERS: Okay. [LB564]

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

SENATOR AGUILAR: Thank you, Mr. President. I'd yield my time to Senator Chambers. [LB564]

SENATOR LANGEMEIER: Senator Chambers, you're recognized. [LB564]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Aguilar. Senator Lathrop, if you will continue with me? [LB564]

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

SENATOR CHAMBERS: I'm not trying to make this overly complicated, but I don't want to accept an amendment aimed at addressing my concerns, but at the same time giving an immunity to the type of thing which would not be contemplated with the bill, as it is now. If these things that are mentioned as being recreational activities, and then at the tail end we say, "but recreational activity, for the purposes of this limited immunity, will not include," then it would almost mean any method or any way that these things are constructed, as a matter of law, cannot be deemed inherently dangerous or ultrahazardous, whichever term we used. That would be true, wouldn't it? [LB564]

SENATOR LATHROP: Well, I think maybe the solution, and perhaps we could work on it over the lunch hour, if you like, the solution may be for you and I to agree, if we can, on a definition of what inherently dangerous is, so that it distinguishes itself from what are normal, everyday activities. And the definition would, not by way of example but by way of a good crafted...well-crafted definition, include those things that you and I could agree...you know, bungee jumping, hang gliding, those kinds of things that would...a well-done definition would include. [LB564]

SENATOR CHAMBERS: The problem that I have still is that I see inherent danger in the skateboarding and that BMX facility. But I'd be willing to talk to you, and maybe we can reach some kind of accord. But in the meantime, I can't just let the bill move, because there are other people you're working with, and I'm not saying that

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disparagingly, and you may not be in a position to speak for them. So what you'd need to do is see if they're willing to give you whatever slack you need to carry on a discussion about it. [LB564]

SENATOR LATHROP: You're excusing me? [LB564]

SENATOR CHAMBERS: Yes, right. That's all I will ask you. [LB564]

SENATOR LATHROP: All right. [LB564]

SENATOR CHAMBERS: Thank you, Senator Lathrop. Members of the Legislature, my intent in all of this is to try to create a set of circumstances where these children who are going to be hurt will have some recourse; their families, some redress. And I don't want to accept an amendment whose effect, ultimately, is going to immunize those activities and the way they're conducted, which are not immunized under the bill as it would exist now. If, without that amendment that Senator Lathrop and I are discussing, there's a certain level of care that must be exercised in the conducting of these activities that are mentioned in the bill, otherwise, there is liability, the amendment that we discussed could create a situation that is opposite to the one that I want. It could take away the requirement of care that exists right now. We would be creating a new standard, which would result in liability. [LB564]

SENATOR LANGEMEIER: One minute. [LB564]

SENATOR CHAMBERS: And that would be ultradangerous, ultrahazardous, or whatever it would be. Anything that it not ultrahazardous is a recreational activity and is immunized, regardless of how it is conducted. And that is not what my intent is. I don't want to just get some words in this bill by way of an amendment. I want to amend the bill in such a way that it addresses the problem created. When children are injured, there are large medical expenses and the family cannot afford to pay them. Thank you, Mr. President. [LB564]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Seeing no lights on, Senator Chambers, you are recognized to close on your motion to reconsider the last vote. [LB564]

SENATOR CHAMBERS: Thank you, and I do have another amendment that I'm serious about. And whether Senator Lathrop and I agree on what we're talking about or not, this amendment is one that I think ought to be given serious consideration. You're going to allow activities that are inherently risky, and if somebody is hurt in one of those activities, you cannot have a cause of action against the political subdivision, even though it's known in advance that that activity is risky, which means, as I view it, you can expect children to be hurt. And I think when a political subdivision presents an

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activity like that and children, in fact, are hurt, that governmental subdivision ought to be responsible and help the family of that child absorb the costs of that medical care and, to the extent possible, restore that child to health. What this amendment that I'm sending up there now would say--and it will be on your gadget; we won't get to it this morning, other than maybe I would have an opening on it--where you have these hazardous, these risky activities--you know they're risky--at the end you would add this language, that safety rules and regulations will be formulated, posted, and enforced. Now if you know that the activity is risky, you don't even want to post a sign to warn people that it's risky? You don't want to have safety rules advising how you should do this? You know what? When I buy batteries, Cindy, who has worked with me in my office for 35 years mocks me, because I read the directions on anything I buy that has directions. If I buy cough drops, I look at how...what they say I should do with them, because they made them. They know how they're supposed to work. So I read directions. Batteries will tell you not to do some things that it seems like most people wouldn't do. These batteries are not rechargeable. Do not throw them into the fire. And they tell you other things. So now if when it comes to batteries that practically everybody is familiar with, even children, but they're going to give warnings and cautions, and the reason is the avoid liability, why would it be unreasonable to require the government, who is going to make this activity available to children and invite those children to participate, why would it be unreasonable to require the government to develop safety rules, meaning you tell how to properly use this facility? Post those rules and enforce them. What does enforce mean? You have somebody there watching, and if somebody is going to do the wrong thing at the skate park, tell them, you've got to go, you can't stay here, or if you want to stay here you have to stop doing that. Maybe they're pushing other people out of the way. Maybe when somebody is going down the hill, somebody else wants to go straight across that person's path. Well, that shouldn't be done. You know why I'm puzzled? The things that you ordinarily would consider to be reasonable all of a sudden seem outlandish and preposterous because I'm recommending them in this context,... [LB564]

SENATOR LANGEMEIER: One minute. [LB564]

SENATOR CHAMBERS: ...where they are designed to protect children. There are not many parents who would believe that if the government is inviting them to bring their children to participate in an activity and the child is hurt, that the government says, oh, that's tough. We're not responsible. Well, my child is paralyzed. Well, get on Medicaid. You got insurance, haven't you? I don't have any insurance. Well, get on Medicaid then. You need to find out what the situation is before you bring your brat here anyway. And now, since people can't raise their brats well, you don't have to worry because he's paralyzed. What can he do in a wheelchair? He can't give you any grief. And that seems to me to be the attitude. But I'm going to see, when I get to that amendment what the arguments against it will be. Mr. President, Mr. President, I will ask for a call of the house. [LB564]

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SENATOR LANGEMEIER: Thank you, Senator Chambers. There has been a request for a call of the house. The question is, shall the house go under call? All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk. [LB564]

CLERK: 19 ayes, 0 nays, Mr. President, to place the house under call. [LB564]

SENATOR LANGEMEIER: The house is under call. Senators, record your presence. Those senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. (Visitors introduced.) The house is under call. Senators Nelson, Dubas, Carlson, Synowiecki, Wightman, Preister, Raikes, and Kruse, please return to the Chamber. The house is under call. Senators Carlson and Raikes, please return to the Chamber. The house is under call. Senator Chambers has said we could proceed with a machine vote. The question before the body is, shall we reconsider the vote we've taken on FA59? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB564]

CLERK: 2 ayes, 23 nays, Mr. President, on the motion to reconsider. [LB564]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. The motion to reconsider does fail, and with that, I raise the call. Mr. Clerk, do you have a motion? Mr. Clerk, items for the record? [LB564]

CLERK: Mr. President, your Committee on Health and Human Services, chaired by Senator Johnson, reports LB427 to General File with amendments, and LB479 to General File with amendments. Business and Labor Committee, chaired by Senator Cornett, reports LB31 to General File with amendments; LB265 and LB500, all General File with amendments. Amendments to be printed: Senator Janssen, amendments to LB367, two separate amendments; and an A bill. (Read LB603A by title for the first time, Legislative Journal pages 1068-1074.) [LB564 LB31 LB265 LB367 LB427 LB479 LB500 LB603A]

Mr. President, I have a priority motion. Senator McGill would move to recess until 2:00 p.m. this afternoon. []

SENATOR LANGEMEIER: Thank you, Mr. Clerk. You have heard the motion to recess until 2:00 this afternoon. All those in favor say yea. All those opposed say nay. The yeas have it. We are recessed till 2:00 this afternoon. [LB564]

RECESS

SENATOR LANGEMEIER PRESIDING []

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SENATOR LANGEMEIER: Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. Senators, please record your presence. Senators, please return to the Chamber and record your presence so we can proceed to continue discussion. Senator Preister, Mines, McDonald, Ashford, please return to the Chamber. Please check in so we can proceed. Senator Janssen. Senators Harms, Schimek, please return to the Chamber and record your presence. Mr. Clerk, please record. []

ASSISTANT CLERK: There is a quorum present, Mr. President. []

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

ASSISTANT CLERK: Mr. President, I do. I have an Attorney General's Opinion (re LB57) addressed to Senator Mines. Your Committee on Enrollment and Review reports LB658 to Select File with amendments; LB562 to Select File with amendments; LB457, Select File; LB415, Select File with amendments; and LB415A to Select File; as well as LB218. (Legislative Journal pages 1075-1082.) [LB57 LB658 LB562 LB457 LB415 LB415A LB218]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. (Visitors introduced.) Mr. Clerk, we will proceed to the first item on the afternoon agenda. Mr. Clerk. []

ASSISTANT CLERK: Mr. President, under consideration was LB564. The next amendment to the committee amendments on that bill is offered by Senator Chambers, FA60. (Legislative Journal page 1082.) [LB564]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Chambers, you're recognized to open on FA60. [LB564]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, Senator Lathrop and I have been talking and working, trying to reach an accord on this bill. I don't know whether we will. But this amendment that I'm offering is one that I think should be seriously considered. What it would do is say the following. First of all, so you'll know what it's attached to, one of the areas of exemption where you cannot have a cause of action is if an injury results from the inherent risk of the recreational activity. I want to add some language after that. When there is a risky activity, this is the language I would have, and this is what must be put on a sign to save the political subdivision from liability: "if safety rules have been formulated, posted prominently, and are enforced by the entity providing such recreational activity." So that neither I nor Senator Lathrop will seem to be coy, he said that he thinks the people he's working with would have a problem with the part requiring that there be an enforcement of these safety

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rules, because that would require somebody to be there. I will let him give his arguments and rationale for that particular point. But I do not think it's unreasonable to have this sign posted. We have an activity which is dangerous, contrary to Senator Lathrop's opinion. People are expected to be injured. As a matter of fact, if there was no expectation that people would be injured, we wouldn't have these political subdivisions trying to get immunity. They know that people are going to be injured. I stated earlier that if you look at the amount of risk, I would say danger, there are some activities which have a high level of danger, others that have a low or even de minimis level of danger, meaning the only way you're going to be hurt in that situation is if your shoelaces come untied and you step on one of them and try to take a step and you topple over and fall on somebody else. I think the skateboard park and the BMX facility are at the high end when it comes to danger. The votes clearly are here to pass anything that is presented. I'm going to tell you, Senator Lathrop, what they would go for. There was this lady who had a little boy, and she sent him to the store to get milk, and in those days milk came in bottles. So he got the milk, and he was running home, but then he was diverted on a lark of his own and was playing marbles with his friends. He realized the time had passed, so he had to run faster. He tripped and fell and he broke the milk. He went home sorrowful and told his mother. She said, okay, if you break that milk again, I'm going to kill you. So the little boy went to the store, was diverted again, broke the milk, and came home and told his mother, Mama, I know what you told me, but I broke the milk bottle again. This was in a philosophy class. So the instructor asked for students to respond to the question, how should this matter be handled? So nobody raised their hand. So he called on one of the lady students and he said, what should have been done? She said, well, I don't know. He said, well, let me go on with the story: He went to the store and the same thing happened a third time. Now when he went home, what should have happened? They didn't have a response. He said, does this thing even make sense to you that she'd say she'd kill him if he broke the milk, and he broke the milk and she didn't kill him, and he broke it again? What kind of sense does that make? Then a hand shot up, and he called on that person and said, okay, what's your answer? She said, the mother should have killed him the first time. (Laugh) Well, she promised. That was something I wasn't quite expecting at the time. It goes back to expectation. You expect sometimes parents to overstate what they're going to do to their children. Sometimes in the military they'll overstate what's going to happen to you if you're a recruit, because you don't know the terrain or anything else. They tell you rattlesnakes are out here, tarantulas are out here. And when you crawl what they call the infiltration course, what they do, they let you see it in the daytime. They've got these little holes and dips and logs. You crawl over the log and you're supposed to hold your weapon a certain way. Then they have strings of barbed wire, and to get under them, you're supposed to put your weapon parallel with your body, and then lift the wire with your weapon and slide under them, pull you weapon. So they tell you all this stuff, and then they tell you, okay, that's a dry run; tonight, when you do it at night, there will be tracer bullets and we're going to use live ammunition. And people got scared. But in the daytime, if you look,...and first of all, they're not going to let anybody be killed. Every

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machine gun is in a fixed position. It can't be moved to the right or to the left, up or down. And bullets fly in a relatively straight trajectory, at least for the amount of distance we're going to be under it. Some guys were so intimidated, when time came to start, they wouldn't crawl. So they stayed at the beginning, and when the lights came on, they were ridiculed by everybody. Those guys expected that they might be killed, although it was clear that nobody was going to be killed, and the Army is not going to let somebody get killed in some kind of exercise like that. But in their mind, it was a reality to them, and if you perceive something as real, the psychologists say, it's real to you in its consequences. So when these parents bring their children to this facility, which is dangerous, their expectation is that if the child is hurt, the governmental agency is going to be responsible. Since you all don't want that, then do this at least. Have them post a sign, point out how this facility is to be used, and notify them that there is no liability. You assume the risk when you come here, and you're on your own, more or less. So the language says that the safety rules will be formulated, prominently posted, and enforced. Senator Lathrop, I'm sure, will give his view about which parts of it he may find obnoxious and unacceptable. Then the issue will be joined, and we'll see which can persuade you. And who knows? If somebody takes the high road, the other takes the low road, we're not going to see who gets to Scotland before whom, but whether or not there's a middle road somewhere that we can join arms and walk the same direction in an amiable conversation, and he can tell me, although he gave up a little bit, I had to give up the most. But that is my presentation, as far as an opening. How much time do I have, Mr. President? [LB564]

SENATOR LANGEMEIER: A minute, 50. [LB564]

SENATOR CHAMBERS: Thank you. I'd like to ask Senator Lathrop a question. [LB564]

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

SENATOR LATHROP: Sure. [LB564]

SENATOR CHAMBERS: Senator Lathrop, I think this is a yes-or-no question. Would you accept this amendment as it is drafted? [LB564]

SENATOR LATHROP: No. [LB564]

SENATOR CHAMBERS: Is there any part of it that you would consider? [LB564]

SENATOR LATHROP: Considering it, but I couldn't tell you I could accept any part of it at this point. [LB564]

SENATOR CHAMBERS: Senator Lathrop, will you listen to how I phrase the question, please? I asked, is there any part of it that you would consider? He doesn't even know

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what the amendment is, and he says no. [LB564]

SENATOR LATHROP: Yeah, I do. I'm looking for a word in the amendment I could live with. (Laughter) [LB564]

SENATOR CHAMBERS: Oh, okay. [LB564]

SENATOR LATHROP: The concept...here's the difficulty, here's the difficulty with putting a warning requirement, and that is, what happens when the sign falls down? Well, you know, maybe you and I could agree... [LB564]

SENATOR LANGEMEIER: One minute. [LB564]

SENATOR LATHROP: ...that a warning would be a nice idea, but then the problem comes up, what happens if somebody steals the sign? And these, apparently, are... [LB564]

SENATOR CHAMBERS: They replace it. [LB564]

SENATOR LATHROP: Pardon me? [LB564]

SENATOR CHAMBERS: They replace it. [LB564]

SENATOR LATHROP: Okay. [LB564]

SENATOR CHAMBERS: Or they put it in a... [LB564]

SENATOR LATHROP: I've gone long past yes or no, so I don't know if you want me to address the concerns, or if you... [LB564]

SENATOR CHAMBERS: Well, because the time is going to run out, if you don't turn on your light, I'll turn mine on, and then we'll resume. [LB564]

SENATOR LATHROP: It's on. [LB564]

SENATOR CHAMBERS: But I wanted you to have an idea of what I'll be discussing with you. Thank you, Mr. President. [LB564]

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

SENATOR LATHROP: Okay. Thank you, Mr. President and colleagues. Again, first of all, as written, I'm opposed to the amendment. The difficulty with formulating the rules,

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once we require that you formulate the rules, there's an opportunity to litigate or argue over whether the rules were properly formulated. Then, when you have to put a sign there and somebody steals it, is there liability when the sign is stolen, but not liability when the sign is erected, so we got to get out there and send somebody out to take a picture of the hurt person standing in front of the post that has the sign on it, or an empty post? And then there is a further problem, and probably the biggest concern with it, is the requirement that the political subdivision enforce those rules. I think that the skate parks are analogous to a basketball court at a playground, where people have pickup games all the time. And there are certain rules in basketball, certain rules that prevail in a pickup game, and that's what these skate parks are like. And once we start requiring that we enforce rules, then we got to put a fence around it, then we have to staff it, and instead of being tantamount to a basketball court that we allow people to have pickup games on, now we've got to supervise the activity and we then subject or potentially subject political subdivisions to liability for failing to properly supervise, when it's the difference between building these things and not building them. And I think it makes more sense to leave it unsupervised, as we do pickup basketball games, pickup football games, anything else that happens in recreational areas, rather than require someone to enforce rules that are to be formulated, and then subject the cities to liability for failing to properly enforce the rules. So that would be my response to the amendment. And I guess I'll yield to Senator Chambers if he has any questions I can answer. [LB564]

SENATOR LANGEMEIER: Two, forty. [LB564]

SENATOR CHAMBERS: I'm going to...if Senator Lathrop would yield, we'll have a back and forth? [LB564]

SENATOR LATHROP: That's fine. [LB564]

SENATOR LANGEMEIER: Go ahead. [LB564]

SENATOR LATHROP: I'd be happy to, if it's about this amendment. [LB564]

SENATOR CHAMBERS: Yes. Senator Lathrop, your idea is, if I can extrapolate from what you said, if a child is at one of these skate parks and falls and is knocked unconscious, there need not be anybody there to summon aid, nobody there provided by or who works for the political subdivision, correct? They're literally on their own altogether? [LB564]

SENATOR LATHROP: They would literally be on their own as it relates to participating in that activity. [LB564]

SENATOR CHAMBERS: So if we had a situation of the kind that I'm describing, and a

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child fell and had a head injury, and the child died, and it was found out later that had help been summoned promptly the child would have lived, do you think the public might begin to ask, well, why, at a facility like that, do they have nobody to summon aid if an injury occurs, when they know an accident is likely to happen? You're willing to accept that set of circumstances, correct? [LB564]

SENATOR LATHROP: Well, I think so. And I just think it would be...if we do this for skate parks, then we have to put up a sign...a fence and a sign and supervise pickup basketball games, pickup softball games, virtually everything that happens at a park. Then we have to have a park attendant who oversees it, enforces the rules of the game, and then enforces the... [LB564]

SENATOR ERDMAN PRESIDING [LB564]

SENATOR ERDMAN: One minute. [LB564]

SENATOR LATHROP: ...certain rules of conduct. And I think that's where we take the argument about enforcing the rules and having an attendant to its logical extreme, and it becomes silly. [LB564]

SENATOR CHAMBERS: Well, let me reduce the universe of activities considerably by saying this would be required at the skateboard parks and the BMX facilities. That leaves out all these others you discussed. [LB564]

SENATOR LATHROP: Well, I suppose that the answer that you would get from a lawyer who's looking at this from the point of view of the city is, well, as soon as you make me supervise the skateboarders, then why wouldn't you make me supervise the basketball players? Because more people get hurt doing that than they do skateboarding. Or you know, if you... [LB564]

SENATOR CHAMBERS: Well, they could ask that, but if we put it in the law, that's the reason. [LB564]

SENATOR LATHROP: Well,... [LB564]

SENATOR CHAMBERS: The Legislature will have made a policy decision, and they can argue all they want to why it's not different or someplace else. The law is what the law says that it is. [LB564]

SENATOR ERDMAN: Time, Senator Lathrop. Senator Chambers, your light is next. You may continue. [LB564]

SENATOR CHAMBERS: Thank you, Mr. President. So, Senator Lathrop, I'll give you a

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chance to respond. [LB564]

SENATOR LATHROP: Well, my answer to that would be that I think it would not be something that we could agree to or that...an amendment that I would be willing to accept. If it involves requirement that the city provide a set of rules and someone to enforce them, then I think we've gotten to the place where we're probably not going to have a meeting of the minds. [LB564]

SENATOR CHAMBERS: Well, if we had a set of rules and the posting of them, that is too onerous to put on these governmental bodies who are making this dangerous activity available? They are so tender that we can't even require them to do that? And we require it at these equine places, but when it comes to the children then we can't require it, huh? These political subdivisions are sacrosanct? [LB564]

SENATOR LATHROP: Well, I don't know that they're sacrosanct. Here's the difficulty. And we have several mayors in this body, and maybe they would be in a better position to... [LB564]

SENATOR CHAMBERS: Former mayors,... [LB564]

SENATOR LATHROP: Former mayors, pardon me. [LB564]

SENATOR CHAMBERS: ...or else they wouldn't be in this body. [LB564]

SENATOR LATHROP: Former mayors. [LB564]

SENATOR CHAMBERS: Okay. [LB564]

SENATOR LATHROP: And they could tell you what I've been told, and that is that when you put a...if you put a sign up that says, skateboard park, here's the rules, you skateboard at your own risk, that sign now becomes a trophy for some of those kids. They're going to find a way to tear it off and put it in their bedroom. And we even have a reported case where there was a sign that says, you can't sled on this hill, and they tore it off, sledged down on the sign, and then got hurt. So I think the difficulty with the signs is to the extent there's some implication in the liability that may or may not exist to the political subdivisions as to whether or not that sign is up at the time of the injury, or whether they got to go around and do an inspection every day, for example, and put up a new sign. [LB564]

SENATOR CHAMBERS: Senator Lathrop, right now they have one skate park in Omaha, and you are so worried about these political subdivisions. If any of you all read the paper and saw how ex-cops are getting \$88,000 a year from their pension, and then they get another full-time job, and getting all that money from the taxpayers, and he's

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worried about the cost of a cardboard sign that warns families and children of danger? Are the rest of you that concerned about the political subdivisions? Senator Howard,...thank you, Senator, that's all I'll ask you right now, because I don't want you to take all my time. You're going to have to turn on your light. Senator Howard, I'd like to ask you a question. [LB564]

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

SENATOR HOWARD: Yes. [LB564]

SENATOR CHAMBERS: Senator Howard, do you think it would be unreasonable to require the posting of a sign at this skateboard park and this BMX facility? They're not all over town. They have one skateboard park, and I don't know how many of these BMXs, if they have more than one. But do you think it's unreasonable to have a sign that would state the rules or how you use this facility, and notify people that there is no liability? [LB564]

SENATOR HOWARD: So you're saying there would be a sign that would clearly spell out that there's no one on duty, for example? [LB564]

SENATOR CHAMBERS: Right, and that there's no liability. And if Senator Lathrop says he doesn't want them to tell you how to use it, and the body feels that it's too unreasonable to give some guidelines--because not everybody may be as knowledgeable as Senator Lathrop is about this--how much would you be willing to put on these strapped political subdivisions, who are worthy and in need of such protection from us, even though the children aren't entitled to any? [LB564]

SENATOR HOWARD: I would agree with you on the issue of a sign, in terms of information. I would need information myself on how frequently the sign would need to be replaced, if in fact it's... [LB564]

SENATOR ERDMAN: One minute. [LB564]

SENATOR HOWARD: ...it's removed. [LB564]

SENATOR CHAMBERS: Well, how many times do you think it should be replaced? [LB564]

SENATOR HOWARD: I don't know, because I don't know how often it's taken. [LB564]

SENATOR CHAMBERS: How much do you think it would cost to do that? [LB564]

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SENATOR HOWARD: Probably depends on the type of sign you use, and when you have to... [LB564]

SENATOR CHAMBERS: Okay, so the cost is what is of more concern to you than the notice to these parents and the children? [LB564]

SENATOR HOWARD: I didn't say that. You asked me what I thought the cost would be, and I would have to know some factors about what you intended to put up. [LB564]

SENATOR CHAMBERS: So let me ask you this. What difference does it make what the cost is, if it's \$10 a day to replace the sign? [LB564]

SENATOR HOWARD: Well, I didn't ask the cost. You did. [LB564]

SENATOR CHAMBERS: Well, you said you needed to know what was entailed. [LB564]

SENATOR HOWARD: To answer your question. [LB564]

SENATOR CHAMBERS: So then I will ask you, do you think the sign ought to be placed, or do you think it should not? [LB564]

SENATOR HOWARD: I would say I don't see any harm in placing a sign. It's instructional. [LB564]

SENATOR ERDMAN: Time. [LB564]

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

SENATOR ERDMAN: Thank you, Senator Chambers. Senator Karpisek, followed by Senator Friend. [LB564]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I just pushed my light, since we did bring up the former mayors. And I guess my question...Senator Chambers, would you yield? [LB564]

SENATOR CHAMBERS: Yes, I will. [LB564]

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

SENATOR CHAMBERS: For the second time, yes, I will. [LB564]

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SENATOR KARPISEK: Sorry, Mr. President, I just want to get up in that chair someday, too. (Laugh) Anyway, I probably should have asked Senator Lathrop, but we...I've always been told--and, of course, I don't always listen to everything I've been told--if you put a sign up warning of a danger, you're admitting there is a danger, and then you would be liable. [LB564]

SENATOR CHAMBERS: No,... [LB564]

SENATOR KARPISEK: Would you agree with that or no? [LB564]

SENATOR CHAMBERS: Not with the way this statute is drawn. I want the sign because you're giving them immunity. [LB564]

SENATOR KARPISEK: And so by doing this, that would make it immune and not be another way? [LB564]

SENATOR CHAMBERS: They would keep... [LB564]

SENATOR KARPISEK: Because we're making state law, it would override that, correct? [LB564]

SENATOR CHAMBERS: They would keep their immunity. But here's what I would say could be done. Senator Lathrop was worried about whether or not the sign may be stolen and somebody would get hurt. Then let them keep a log of when they checked and when the sign was there. In Omaha, a woman recently lost a case. She had stepped into a hole outside her house, and she said some sign placed by the city had been there; they removed it, left the hole, she didn't know the hole was there. The Supreme Court said there was not evidence that the city was responsible. The records that may have covered whether or not they had been out there with the sign had been destroyed, they said. [LB564]

SENATOR KARPISEK: In my opinion...and we talked about Mr. Foster from Crete a little bit yesterday. He and Senator Combs, who I replaced, were working on an Alexa Check, and once a year the city would go around and inspect the buildings on their premises and make sure that all the walls are safe, all of that sort of thing. I would propose that something like this also, to check that the signs--and they should be done in May, before the places are open--propose that this also be done, if the signs are in place and in good shape. Now, I'm not an attorney to say, okay, what if it is tore down in a month? I mean, would a...you know, we have a picture of the sign there, and dated, would that be good enough? [LB564]

SENATOR CHAMBERS: Well, the city could take the sign down. I'm skeptical and

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cynical. You all, in my opinion, are too concerned about these political subdivisions. But here's what I want to serve notice on them now...and this is not you, Senator Karpisek. If this sign is not accepted, they better not come in here and try to get any state aid to local subdivisions. And if there's something in the budget, I'm going to tie the budget up until they agree with me that the local subdivisions get nothing, in order that the budget can move. I'm fed up with them, I am sick to death of them, and I'm going to keep doing everything I can to keep us on this bill for eight hours, and I'm not going to try to reason with them on anything. I got away from...and this is not anything you said, Senator Karpisek. [LB564]

SENATOR KARPISEK: For once. (Laughter) [LB564]

SENATOR CHAMBERS: I had talked about strict liability. I gave that up. I'm asking for a sign. And now they say, we've got him on the run; we won't give the sucker anything, and then we'll show how we whipped him, and everybody else knows how. Well, we're...you all will pass this bill, but we're going to stay on it eight hours here, we're going to stay on it three hours on Select File, and however many hours we stay on it on Final Reading. And there's not going to be any, I repeat, there's not going to be any consent calendar unless the Speaker wants to give me the full amount of time on every bill that's on it. That's how fed up I am with the lobby setting the agenda for this body. Senator Karpisek, your questions are valid, your concerns are valid, and I want you to know none of my heat is directed at you. But you and I wouldn't even be having this conversation if we didn't have so many jackasses out there... [LB564]

SENATOR ERDMAN: One minute. [LB564]

SENATOR CHAMBERS: ...dictating what we're going to do on this floor. And I heard Senator Howard and Senator Hansen so worried about these foster parents, and even Senator Lathrop: We got to do something for these foster parents. But for the children, no, not even a sign. [LB564]

SENATOR KARPISEK: I think that they are working toward the children, too. And we are working for the children here. And I am, as a former mayor, concerned. But I think our municipalities are, first and foremost, concerned about children, and their local taxpayers, because if we are open to a huge liability suit, then it will go back to the taxpayers. But I agree, Senator Chambers. I want to thank you for working with Senator Lathrop, and giving. I know that you are, and I hope that we can come to resolve on this. Thank you, Mr. President. [LB564]

SENATOR ERDMAN: Thank you, Senator Karpisek. Senator Chambers, you are the next light. [LB564]

SENATOR CHAMBERS: I'm back to strict liability. That's what I'm pushing for on this

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bill. They don't want to reason; neither do I. All I can get from you is eight hours. But see, you all think I mean eight hours on this bill, don't you? Let me ask Senator Friend a question. [LB564]

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

SENATOR FRIEND: Yes. [LB564]

SENATOR CHAMBERS: Senator Friend, you have some knowledge of military strategy. [LB564]

SENATOR FRIEND: Some. [LB564]

SENATOR CHAMBERS: That's what I said. [LB564]

SENATOR FRIEND: (Laugh) Uh-huh, exactly. [LB564]

SENATOR CHAMBERS: Okay. [LB564]

SENATOR FRIEND: I just wanted to reaffirm your point. [LB564]

SENATOR CHAMBERS: Wise gentleman. If I become dissatisfied with this bill, I can take my dissatisfaction out on other bills, can't I? [LB564]

SENATOR FRIEND: Absolutely. [LB564]

SENATOR CHAMBERS: And I can take eight hours on any bill that I choose to take eight hours on, can't I? [LB564]

SENATOR FRIEND: Yes, you can. [LB564]

SENATOR CHAMBERS: And if the school bill comes out here, I can sabotage that, too, and then LB1024 remains the law. Isn't that true? If we don't pass anything on the schools, LB1024 is the law, correct? [LB564]

SENATOR FRIEND: Well, that's true. Then I think that there's a... [LB564]

SENATOR CHAMBERS: There's a court...there's a judge who said,... [LB564]

SENATOR FRIEND: Yeah. [LB564]

SENATOR CHAMBERS: ...just hold it up. This judge, 40 percent of his cases are

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returned because he gets them wrong. Out of 100 cases that go up for appeal, 40 percent of them are turned back because he got them wrong. His name is J. Michael Coffey, and anybody who wants the cases, let me know, and I will give them to you. So LB1024 has not been ruled unconstitutional, has it? [LB564]

SENATOR FRIEND: No, not that I know of. [LB564]

SENATOR CHAMBERS: And the only court that can rule a law unconstitutional, meaning it's taken off the books, is which court? [LB564]

SENATOR FRIEND: Supreme. [LB564]

SENATOR CHAMBERS: And it hasn't gone to the Supreme Court yet, has it? [LB564]

SENATOR FRIEND: No. [LB564]

SENATOR CHAMBERS: So LB1024 is the law, right? [LB564]

SENATOR FRIEND: Yes. Well, yes. [LB564]

SENATOR CHAMBERS: So if they can't get a bill passed this session that modifies LB1024 in what it deals with, LB1024 is the law, right? [LB564]

SENATOR FRIEND: Correct. [LB564]

SENATOR CHAMBERS: Thank you. That's all I want to ask you. You all can thank the political subdivisions. But I'm through with this stuff of talking about negotiating. Most of the people that I negotiate with are able to reach a decision. They say they don't even want to put up a sign, and I'm supposed to roll over and take that? Well, no signs in the bill, you don't want a sign, fine. But I'm going to take my...however much time we have. We'll be here till 5:00. And you might can invoke cloture, Senator Friend, because it will be up to you, when our eight hours are up. It will either be today or tomorrow. And you can invoke cloture, and you'll get 33 votes, then others. Are all you all going to get 33 votes? Some of you couldn't get 25 votes to move your bill off General File. And those people that I've tried to work with, I will continue with them, because a promise having been made by me will be kept. But for the rest of it, everything is fair game for me. And if you all want to try to stop me, I invite you to do it, and follow the methodology of the political subdivisions. But when they get you all and whipsaw you and say, we need some aid to the political subdivisions, to the local governments, you all have to stop Chambers, don't let him do this; and just remind them that they gave it up for a sign. And what does the sign say? That the government, your government, has put a dangerous instrumentality here, your children are invited to be here, but we are not responsible. They don't want you to know that. Why should that information be kept

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from the children? We got an ex-prosecutor sitting over there, and he's the one who enforces laws and put people in jail when he could. But the political subdivision, oh no, they can do anything they want to. He's afraid of them, too. [LB564]

SENATOR ERDMAN: One minute. [LB564]

SENATOR CHAMBERS: All of you, look at you! Senator Stuthman sitting there, and he's not guilty because he wasn't here this morning. He couldn't participate in the wrongfulness, although he probably would have had he been here. But since he wasn't here, I'm not going to put that on him. And I know you all feel compelled to vote for this bill. But I'm going to do what I think is necessary on my side. And it's necessary for me to show you that I'm not going to back off and I'm not going to get tired, and the time to test me is now. I keep saying it, but you all don't test me. Well, I'm going to make you test me on this bill. We're going to be on this bill till 5:00, unless I die. So all you "Chrishians" get busy and concentrate all your prayer activities, and when all your voices in one prayer go up as one voice, you know what's going to happen? [LB564]

SENATOR ERDMAN: Time. [LB564]

SENATOR CHAMBERS: Lightning is going to strike everybody here, except me. Thank you, Mr. President. [LB564]

SENATOR ERDMAN: Thank you, Senator Chambers. Senator Friend, you're recognized to speak, followed by Senator Pahls. [LB564]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. You know, this is...there's terminology that floats around the Legislature. You know, Senator Mines, I think, is a "grease gun." If somebody needs the question called, Senator Mines has kind of developed that moniker. I don't know if anybody else calls him that but, you know, it seems appropriate. Evidently, I'm in the position now where, when discussions are going on, I'm on the mike. So I don't know what kind of moniker that would be. We can make one up. Maybe Senator Mines has an idea for one for me right now. It seems like at least once a year for the last four years, I've stood up and done something like this, what I'm about to do. He's drawn a line in the sand. There's a line drawn in the sand every year. And for Senator Chambers, it's appropriate. He sees a chance every year, a time, a week, a day, a minute to draw that line. If this is it, that's fine, because you've heard me probably on a couple of occasions already point out that he's going to do what he has to do. Other senators have pointed it out, too. And we're going to do what we have to do. And we've laid out from the very beginning that there is a good, sound public policy reason to go about our business with language like this, not the underlying LB564. But what a lot of the folks in our society have said--this is the public policy. Now, the signs, you know, if it's practical, it can work, sure. But remember, there's a line being drawn in the sand. None of us here can stop him from drawing that

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line. He's going to draw it every year. But we can make the good public policy decisions. And if it's 4:30, 5:00, whatever, we're going to make that decision. And I guess I just ask, or I hope, that we're still on the track that includes society's wishes on this bill, that we don't veer off that track too far. I don't believe that we have. But I've also been involved in enough of these discussions where it can happen awful quickly. Mr. President, how much time do I have? [LB564]

SENATOR ERDMAN: One minute, thirty seconds. [LB564]

SENATOR FRIEND: Thank you. This language, if I could reiterate--I think I brought this up a couple of times, and Senator Chambers harped on this a little earlier--I don't think it's a lobby full of people pressing their faces up to the glass. That's not how the language was created or who created it. We're talking about county attorneys calling my office, calling Senator Lathrop's, calling all of our offices, and saying, we've got a problem, we don't know how to address this,... [LB564]

SENATOR ERDMAN: One minute. [LB564]

SENATOR FRIEND: ...it needs to be addressed. We're talking about just constituents who are confused about the issue. Let's talk about confusion for a second. There's a church up by my house. Every time it snows, the kids want to go and slide down that hill. There are no trees around or anything else. But the fact of the matter is, they had a person posted up there saying, we are not going to let you guys...this is where the confusion was. They had a person up there, sitting in the lot, the last snowstorm, saying, you're not going to slide down this hill. Been doing it for four years. The confusion and the fear, that's what we're trying to deal with. That's all. I think we're going to get there. If it's 4:30, it's fine with me. [LB564]

SENATOR ERDMAN: Time. [LB564]

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

SENATOR ERDMAN: Thank you, Senator Friend. Senator Pahls, you're recognized to speak on FA60. [LB564]

SENATOR PAHLS: Mr. President, members of the body, I don't know the legal ramifications of the signage that Senator Chambers is talking about, but I can tell you, for thirty-some years I lived with signs. And the reason I'm going to say this, I was around a number of schools, and some of my schools were larger than some of the towns in the state of Nebraska. Now, we had signs, and occasionally some of these signs became very favorite objects of some students or young adults...or, I should say, older adults also, perhaps. After the newness wore off, those signs were left alone. Now, we had all kinds of signs. But I made it my obligation, as a person in charge of that

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building, to make sure those signs were there on a regular basis. It's relatively simple. Now, I know it's much harder if you're in a large metropolitan area to do some of these things. But the simple thing I did, I had somebody who worked for me in my building, it was his obligation every week to check on the playgrounds, to check on the pathways, and signages and all those things. They had...that was part of their job. They checked on a regular basis, and I knew whether those things were up there or if they were missing. So if a sign is the issue...if it's not, there's some hidden agenda somewhere that I'm not privy to. I can understand that. But if we are being held up because of signs, I think we're not thinking past that sign up there at the top of the...that says dealing with this bill. Again I say, I do not know the hidden agenda. But placing a sign...and I can tell you the cost of them, and once it stops...you know, I don't think it's quite the issue that some people may believe it, because I've lived it. Thank you. [LB564]

SENATOR ERDMAN: Thank you, Senator Pahls. Anyone else wishing to speak on FA60? Senator Friend, you're recognized to speak. [LB564]

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. Is this my second time? [LB564]

SENATOR ERDMAN: It is. [LB564]

SENATOR FRIEND: Thank you. Mr. President, members of the Legislature, there is...there are philosophical reasons that we've gotten put into this position. I think the practical ones have been laid out pretty nicely. I think Senator Lathrop, Senator Chambers, Senator Pirsch have talked about case law, they've talked about statutory law, for that matter, natural law, I mean, what's fair, what's right, what do we expect from these recreational...from the folks that allow us the recreational opportunities that we have. Philosophically, though, we haven't really gone down the road...and I think, as philosophical discussions go, this one is pretty simple. I was talking about the person planted up there watching and waiting for kids to come up and sled in 11 inches of snow and then saying, you know what, we're afraid, we're afraid of what might happen, or we're concerned, or we're confused about what might happen. But look, the hill is not inherently dangerous. The parking lot wasn't inherently dangerous. The trees 500 yards away aren't inherently dangerous. But when you take a sled, decide to stand up on it and see if you can make it to the trees, that act is inherently dangerous, or at least, at the very least, fairly risky. I guess the philosophical piece of this is that I think what AM879 has done for us is to promote or to push some common sense. You know, it's a cliché, we say that all the time, but it's true. How do you find that in a bill like this? The only way our governmental subdivisions are going to feel like they have alleviated some of that confusion or some of that fear or some of the unknown is if we address it from a commonsense standpoint. The feedback that I've received on the framework that I talked about, LB564, ooh, time out, you know, we're not even sure...from the outset, we're not even sure if this is going to provide the right answer. But I haven't heard that

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about AM879. I haven't heard that about the Judiciary Committee amendments. There's been a lot of talk and there have been a lot of people calling, a lot of people trying to communicate about what is the standard, what are we going to do. After Bronsen v. Dawes County, what we ran into philosophically was there is no standard anymore, right? People in Hall County, people in Buffalo County, people anywhere around the state,... [LB564]

SENATOR ERDMAN: One minute. [LB564]

SENATOR FRIEND: ...what is the standard? Where are we now? Everybody was asking it. To me, AM879 lays out a pretty clear standard to help us move that philosophy of common sense forward. I don't know that FA60 is even feasible, in its entirety. The sign piece, like I said earlier, seems to make sense to me, I guess, if you wanted to try to do that. But I think that this goes a little deeper than that, and I'll probably talk about that a little bit later. Thank you, Mr. President. [LB564]

SENATOR ERDMAN: Thank you, Senator Friend. (Visitors introduced.) Senator Friend, you're recognized to speak, and this is your third time. [LB564]

SENATOR FRIEND: Boy, time flies when you're making excellent, geometric, logical associated points. (Laugh) Geometrically...Mr. President won't help me with that one. Look, members of the Legislature, I don't have a whole lot of comfort level, as you can tell. When we start breaking down amendments like FA60, which is not even that intense, frankly, start breaking down amendments like AM879, the Judiciary Committee amendments, you lose a sense of the comfort level. The entire body, the entire body that hasn't been legally educated loses that sense of comfort level. But what I have tried to point out from the outset is I don't think you need that type of comfort level. I think what you have to end up having is an overall, high-level view of what the goal and the motivation was of the Judiciary Committee in creating an amendment like that. Keep in mind, at the hearing for LB564, we had this army, this plethora, of proponents who were ready to just take the framework and drive it forward; two opponents; and one neutral testifier. The second opponent, oddly enough, was there to testify for one of my bills, but he looked at the legislation and he said, oh, I better testify against this. Well, he was an attorney. Nothing against attorneys. My brother is an attorney. We have a lot of attorneys out here that have framed, helped frame, this legislation. But I guess the point is, all you had to do was go back to LB564 at its origination, look at the hearing, and realize the massive confusion out there in the community. Eighteen testifiers coming in and saying, yeah, we need help? They don't just come in for their health. They're coming from all over the state. It takes a while to get to Lincoln from a lot of points in our state to testify on a bill. They didn't do it to hear themselves talk, the way I am doing it right now. They did it because of the confusion. They did it because of the high-level feeling that they had about the subject matter. And if you get your information regarding this subject matter from the World-Herald, the Journal Star, the Telegram, the North

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Platte Telegraph, I believe, Scottsbluff's Scottsbluff Times-Herald (sic)...no? Sorry. You get your information from those type of outlets on this subject matter, it's just not enough. So you have 18 testifiers down here saying, yeah, we're confused and we need help. [LB564]

SENATOR ERDMAN: One minute. [LB564]

SENATOR FRIEND: And like I said, it wasn't just a bunch...if you look at the committee statement, it wasn't just a bunch of folks who have their faces pressed up against the glass right now. Some pretty smart people from all around the state--not that they're not; they are--but some other pretty smart people from around the state trying to filter through this subject matter, just like we're trying to do it right now. I would finally say this. If a conclusion can't come and an agreement can't come, cloture is coming. Make no mistake about that. Thank you, Mr. President. [LB564]

SENATOR ERDMAN: Thank you, Senator Friend. And again, that was your third time. Senator Chambers, there are no other lights on. You're recognized to close on FA60. [LB564]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I'm going to let the political subdivisions know...you said my light is on? They punched my lights out on this bill. They're going to win. But I'm prepared to take my whipping. Everybody should take a whipping every now and then to let you know you're not invincible. But as I put on Senator Pirsch, and I'm going to put it on all of you, (singing) there's got to be a morning after. And that morning after is what they better be thinking about. You know, will you still love me tomorrow? Well, it's fun right now, but there's a tomorrow, and a tomorrow, and a tomorrow. And I will be here, but the political subdivisions are not going to be here supporting the rest of you all. They've got you where they want you. Now when I go after the school bill, are you going to have the lobbyists for the political subdivisions coming in here lobbying to help you with your school bills? Is that what they're going to do? They don't have to, because they know they're dealing with the people that P.T. Barnum, Phineas T. Barnum, was talking about. There's a sucker born every minute, and they're all in the Nebraska Legislature. And when you find one, bump his head, bump her head. We're at the hardball time in the season, and I can take my whipping. Will you all be able to take yours? You can still clump together. There still will be 48 of you against 1 of me. So just do that on every bill and on the budget. And to save time, you ought to invoke cloture on the budget bill as soon as it comes out here, give the Governor everything he wants, because that's what you have to do when you invoke cloture. You take the bill just like it is when you invoke cloture, and it moves. And what do I care if you cloture every bill? We get out of here sooner. We'll end in record time. How many of you think that every bill you've got you're going to be able to get 33 votes on? You know the only reason they're supporting Senator Friend's bill today? Because he's carrying water for the political subdivisions,

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that's why. I know he's charming. Well, that might be an overstatement. But sometimes, when you look at him just right, and the light is right, and you need glasses but you don't have them on, he looks a little like Mel Gibson. (Laughter) See? How do I whip people? Not...I don't be punching people and grabbing people. Words, all I have are words. A guy caught a grasshopper, and he was going to kill him. And the grasshopper looked up at this man and he said, why are you going to kill me? And the man said, because I can. The grasshopper said, I'm not harming you; all I have is my song, and I sing it only for a short season, then nature takes care of me and I am no more. The man let him go. All I have are words. That's why I want black children to do better in language and reading than they do in OPS, where they're testing out at 20-something percentile. I see all of these things together. Senator Loudon is going to be back there talking about, why does he care anything about what's east of 72nd Street, because he doesn't know what that means? Well, ask somebody, because I know. And I'm going to take some time while we're here to rehearse for you a discussion we had with the city's attorney who came here on this bill, and he was forced to acknowledge, although he did everything he could to avoid it, how they closed every swimming pool in the black community in Omaha and substituted some little water parks where the water is about six inches deep, for little children, but they didn't close all the swimming pools in white neighborhoods. And they're going to build another skateboard park, but it's in northwest Omaha. And he doesn't know...he's going to pretend he doesn't know the significance of that or what I'm getting at when I raise these issues. [LB564]

SENATOR ERDMAN: One minute. [LB564]

SENATOR CHAMBERS: That's why I speak the way I speak. I'm the only one on this floor who will talk about these issues, and I'm going to do it. You shouldn't have made the rules of your Legislature what they are, because you made them without contemplating somebody like me being here. But I'm going to play by your rules, and I'm going to whip you with your own rules. And you're going to take a whipping for the political subdivisions because they get to put a whipping on me today, thanks to your help. Well, whip me and I'll take it. But you won't see me pouting, you won't see me running and hiding, you won't see me licking my wounds. You'll see me like that great tusker, the boar who had the long tusks. He was always sharpening them. They said, what are you sharpening them for? He said, I'm getting ready for war. They said, there's a war coming? Yeah. Well, what do you do when there's no war? Well, I get them ready in case there will be a war. So his tusks are always sharp. I will always be here. You start looking and seeing how much work these other senators do on all the significant issues that come before us on this floor. They're not even in the Chamber. They don't talk on the issues. [LB564]

SENATOR ERDMAN: Time, Senator Chambers. [LB564]

SENATOR CHAMBERS: Time for what? Oh, I'm...thank you, Mr. President. I'd ask for a

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call of the house. [LB564]

SENATOR ERDMAN: Members, the question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record please, Mr. Clerk. [LB564]

ASSISTANT CLERK: 15 ayes, 0 nays to go under call, Mr. President. [LB564]

SENATOR ERDMAN: Members, the house is under call. Would all unauthorized individuals please leave the floor. Unexcused senators please report to the Chamber. The house is under call. Senator Johnson, Senator Gay, Senator Burling, Senator Rogert, please report to the Chamber. The house is under call. Members, the house is under call. Please report to the Chamber. Senator Chambers, all members are present or accounted for. How do you wish to proceed? [LB564]

SENATOR CHAMBERS: I'll take a machine vote. [LB564]

SENATOR ERDMAN: Members, you've heard the closing on FA60. All those in favor vote aye; all those opposed vote nay. Have all members voted who care to? Record please, Mr. Clerk. [LB564]

ASSISTANT CLERK: 6 ayes, 18 nays on the adoption of FA60, Mr. President. [LB564]

SENATOR ERDMAN: The amendment is not adopted. Mr. Clerk, motion on the desk? [LB564]

ASSISTANT CLERK: Mr. President, I do. Senator Chambers would move to reconsider the vote just taken. [LB564]

SENATOR ERDMAN: Before we proceed to the motion, I raise the call. Senator Chambers, you're recognized to open on the motion to reconsider. [LB564]

SENATOR CHAMBERS: Thank you, Mr. President, members of the Legislature. There is what's known as a circle of life, but I won't go into what that is. But if you are dealing with a figure that comprises 360 degrees...I'd like to ask Senator Fulton a question. [LB564]

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

SENATOR FULTON: I will. [LB564]

SENATOR CHAMBERS: Senator Fulton, what would be the configuration of an object comprising 360 degrees? [LB564]

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SENATOR FULTON: The configuration could be any number of shapes that are fully enclosed. [LB564]

SENATOR CHAMBERS: And what would the general outline be if it's one continuous line. [LB564]

SENATOR FULTON: It could be a circle, but I will point out that it could be a triangle, square, octagon, hexagon also. [LB564]

SENATOR CHAMBERS: Now, how can you get 360 degrees in a triangle? What type of triangle would comprise 360 degrees? [LB564]

SENATOR FULTON: Any type of triangle. It could be an isosceles or an equilateral triangle. If you add the angles that comprise a triangle, you'll get 360 degrees. [LB564]

SENATOR CHAMBERS: While they remain in the form of a triangle, where you have three sides, but nevertheless, 360 degrees? [LB564]

SENATOR FULTON: Technically, if it's closed then, yeah, it would be 360. But you're asking if a circle is 360 degrees, and I would agree with you. [LB564]

SENATOR CHAMBERS: No, you answered correctly the first time. You said it could comprise a circle. But what I'd like you to do for me, and you don't have to do it right now, is draw a triangle, and show me 360 degrees within that triangle. You don't have to do it right now, but I'd like you to do that. And then if you do succeed in doing that, you're going to square the circle for me. But that's all I would ask you. Thank you, Senator Fulton. [LB564]

SENATOR FULTON: Okay. [LB564]

SENATOR CHAMBERS: But I was contemplating a circle. I wanted to ask an engineer, because they like to find some other alternative from the one that probably a person is thinking of. But we've gone full circle here. I started out wanting strict liability. The political subdivisions say, you're not going to get anything. So I compromised, I temporized, and they said, you're still not going to get anything. So I said, what have I got to lose? I'll go right back to where I was when I was seeking strict liability. Then the effort I put forward, even if it's unsuccessful, is at least aimed at achieving something that is worth the effort expended. Getting a sign is not worth that much effort. They don't want a sign, they don't need a sign. They want this bill in the form that the Judiciary Committee gave it to them; they can have it in that form. But we're going to spend some time on it, and I'm going to force Senator Friend...I own him, because I'm going to force him to invoke cloture. And he knows that I own him, in the way that Rommel owned the

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battlefield whenever he was on it. And he...you know, he'll say, Senator Friend will say, I'm not doing this because you're forcing me; I'm doing it because I want to. I've thought about this, and this is what I want to do, and I'm going to do it no matter what you say. And then he'll look back there at the lobby and they'll say, no, not yet. He'll say, but on second thought, I'm going to let you talk awhile longer. Then, when I've talked awhile longer and he looks back out there, like bobblehead dolls, in unison, all the lobbyists for the political subdivisions will bob...be bobbing up and down, and he'll say, I'm going to put my foot down now; I want to invoke cloture. And then he'll invoke cloture, and you all will vote for it. But I'm going to spend some time on this bill before we do. There was a man named Katz, K-a-t-z (sic--Kratz), who was representing the city of Omaha. And he and I had some exchanges, as I do on occasion when a person comes before us. And since we're going to be spending time on this bill anyway, I think some of it might be interesting. Chambers: Mr. Kratz, are you a lawyer? Kratz: Yes, sir. Chambers: How long have you been a lawyer? Kratz: Thirty-one years. Chambers: And where did you take...? Kratz: Thirty-two years. Chambers: How many? Kratz: Thirty-two years. Chambers: Okay, where did you take your degree? Kratz: University of Nebraska at Lincoln. Chambers: Is it still an accredited law school? Kratz: Yes, sir, it is. Chambers: A lawyer takes the case of his or her client and represents that client zealously. Kratz: Yes, sir. Chambers: If he or she is to be ethical. Kratz: Yes. Chambers: You're here to represent the city's interests zealously. And we were discussing LB564 and a companion bill, but basically LB564. Kratz: Yes, sir. Chambers: You're telling us...I'll put it as a question. Is there land...are there facilities made available by the city on which dangerous activities can take place? Kratz: Well, the obvious one is the skateboard rink. This is the lawyer for the city of Omaha. Here's the question, brothers and sisters: Are there facilities made available by the city on which dangerous activities can take place? And you heard me ask him how long he'd been a lawyer, didn't you? Kratz: Well, the obvious one is the skateboard park. Certainly, the BMX park, motorbike park, the dog parks, and then maybe on a little bit different level would be certainly all the sledding activities in our parks. He's telling you what he sees as being dangerous. I didn't mention a single thing. I just asked him the open-ended question. So he and Senator Lathrop disagree. Chambers: Should a public entity provide areas where unsafe activities are going to occur, with the knowledge that these activities are unsafe? Kratz: I guess that presupposes...well, I guess that's not the right way to put it. You need to look at what you consider unsafe. There are obviously different levels of risk. Chambers: Let's say dangerous then. Kratz: I think, again, different levels of danger. Certainly, a skateboard park has some element of risk, and probably the higher level. Swinging has some risk, but at the very lower level. I think the city has to take into consideration where do you want to go along that scale. As I mentioned earlier, there would not be a skateboard park, assuming no private entity would provide a skateboard park, because of the liability. The city, under the Recreational Liability Act, is able to, and there seems to be a demand for skateboard parks, along with some of the other activities. I'm reading from the transcript of that hearing before the Judiciary Committee, pages 26 and 27 so far. Who said that the skateboard and the BMX facilities are dangerous? The

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lawyer for the city of Omaha. The lawyer for the city of Omaha, telling why this bill needed to be enacted--because these dangerous activities are provided, and the city is worried about liability. Chambers: But you would want to be able, as a representative of the city, to provide the location where these known dangerous activities can occur, or you used the term "risk" or "risky," and when the person is injured, that person is on his or her own in terms of trying to be made whole. Kratz: I think as people, citizens, engage in any recreational activity, there is an element of risk, and that is part of the recreational activity. Chambers: Well, you're conceding what I put in my question. What I'm asking with you, with those things being said and agreed to, isn't it true that the city is saying that these areas will be provided, knowing there are risky activities occurring, and if a person is harmed, the city does not want to have any responsibility in making that person whole if he or she should be injured? Kratz: I don't think I'd agree with that. He disagrees with that. [LB564]

SENATOR ERDMAN: One minute. [LB564]

SENATOR CHAMBERS: Chambers: Well, tell me what you're saying then. Kratz: Okay. Under the prior interpretation of the Recreation Liability Act, the city would be liable if it was willfully and wantonly negligent. Then he and I were talking at the same time. I said, "Let's..."; Kratz said, "And..."; Chambers: ...discuss what that is. Kratz: I figured you'd like to. Chambers: If something is willful, what does that mean the state of mind of the person who does it would be? Since my time is just about out, I'm going to have to put my light on again. But I think it's of importance to see what the city's attorney was saying to the committee that helped persuade the committee to send this bill out here. Thank you, Mr. President. [LB564]

SENATOR ERDMAN: Thank you, Senator Chambers. Members, you've heard the opening on the motion to reconsider FA60. Those wishing to speak: Senator Friend, followed by Senator Lathrop, Karpisek, Stuthman, and Chambers. Senator Friend. [LB564]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. I don't know how much I've learned since I've been here for five...the almost five years that I've been here, five sessions now, four and a half. But you watch a filibuster every year, or you participate in it, and the sponsor of the bill, they all handle them a little bit differently. I remember I used to like...I think everybody did, they used to like to watch Senator Landis work. I would watch Senator Landis. And Senator Brashear, I didn't really get a chance to watch him through long, tremendously long debates. But Senator Landis had a...he wore glasses, and he would, for...I should do it sometime, but then it would be copying him. He'd bring law books up here, and he'd read out of them, then he'd slam them shut, and then he'd turn around and sit down, or he'd...I mean, everything was calculated, everything was played out, and he was good. Well, you've all got to see Senator Chambers work through these things, and he's calculated, and everything is

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thought out, and he's good. Well, I don't think any of those things apply to me. I've never truly filibustered anything myself, or come at it from that type of angle. But you don't really get a full appreciation of how difficult it is to continue along that train of thought and that plane for an extended period of time until you actually do it. And the thing is, probably about two years in or three years in, the debates for me started getting pretty extensive. But I hope...so, you know, I think I established that everybody handles these things a little differently, and I love to watch those things. I don't know how this is being handled right now, how well it's being handled. But I hope that people understand this, and I think Senator Chambers does understand this. You know, I carry water not because it's necessarily Omaha, not because it's a particular entity or anything else. I end up carrying the water because I feel it's water worth carrying. And I think it is. I think that's where we're at now, at this juncture of the debate, to try to decide as a body whether it's water that is worth carrying for all of us. I've poked the city of Omaha in the eye before. I don't really find it that enjoyable, but I've done it, because I felt like it was water that I had to carry on that particular...in that particular instance. My daughter was asking me the other day, she said, do you...I don't know if they got home from school and they were watching it. She's eight. I don't know if they got home from school and they were watching us, but evidently Senator Chambers was on the floor, and others among us, myself, I guess, included. She said, were you fighting with Senator Chambers? I said, no, honey, you've seen me fight before; that's not...you know, that's not really fighting. But she said, he's famous. I said, Elizabeth, in his own mind. (Laughter) [LB564]

SENATOR ERDMAN: One minute. [LB564]

SENATOR FRIEND: She said, no, no, no, he's famous. And I conceded. I said, yeah, he's famous, okay, fine. What am I, chopped liver? She said, no, you're dad. You know, I can honestly say that when I...I don't even have the manuscript started, but I'm a hack writer by trade. I can honestly say that I'm going to write a book someday about the famous people that I've met and either worked with or talked to or something. Not somebody like...you know, see Tommy Lasorda in an airport and he tells you to go away because he's trying to catch a flight. It happened. He was nice about it. But not those type of things. The type that you really have some work and some negotiation and some discussion with. He's going to be in the book. It's not going to be a kiss and tell, but he's going to be in it. [LB564]

SENATOR ERDMAN: Time. [LB564]

SENATOR FRIEND: I'm just wondering if I need permission. Thank you, Mr. President. [LB564]

SENATOR ERDMAN: Thank you, Senator Friend. Senator Lathrop, you're recognized to speak on the motion to reconsider. [LB564]

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SENATOR LATHROP: Thank you, Mr. President, colleagues. Again, I'm back at the mike. I hope I'm not wearing you out. The motion before us...did somebody laugh at that? (Laugh) The motion is to reconsider. And what we're reconsidering is the amendment which would require signs and some other things. And requiring signs is something that the cities, frankly, are already doing. Frankly, the cities are okay with offering or putting up signs. They just don't want to be liable when somebody steals them, and I think that's something that we've explained to Senator Chambers. We're not going to find an agreement, I don't believe. I don't believe there's any interest in finding an agreement any longer. And so I'm going to address this amendment as we start using up the clock. The amendment would not only require that we...that political subdivisions post a sign, but it would also require that they establish safety regulations. And if you establish...if you require that you have safety regulations and post them, then you can find yourself litigating whether or not you put the right things on the sign. Okay? So if you say, you can't cut in front of somebody else, but you don't say, you know, if you're not experienced, you shouldn't be going down a particular hill at the skate park, then you're responsible, because the sign didn't meet somebody's standard or somebody's idea of a standard. And frankly, we don't do that at the basketball court. And if you think of the skate park as a basketball court, with two hoops on it and a net, and people go there for recreation and they play basketball and they do the things that they want to do there, they've been doing it for decades, for as long as basketball has been around, and we haven't come in before the Legislature and said, we need a sign for that, or we need to make somebody strictly liable if somebody gets hurt on a playground. We wouldn't do that, because there's nothing about our existing principles of tort law that would be advanced by that kind of a rule. So the things that we're arguing about today, frankly, the things that we're arguing about today, and this amendment that we're here on, AM879, is perfectly consistent with prevailing and existing tort law. The primary accommodation is in the constructive notice and, going back to the amendment that we're reconsidering, the other requirement is that the city have someone around to enforce the rules. So once we develop the rules, then we have to have somebody from the city at the skate parks. And we've just taken a huge leap in these things. And if we don't want skate parks around, then maybe we ought to outlaw them. But you're going to effectively end skate parks if you require that the city have somebody present to enforce certain rules, as you might in a swimming pool. There's a good reason we do that with swimming pools. There is a very significant risk of death if you don't have somebody there to keep order. But not true with a skate park. And so again, I think this amendment, amendment FA60, offered by Senator Chambers, is...while I appreciate that he's made a genuine attempt to keep children more safe and provide a remedy for families whose children have been hurt, I don't think it's necessary. I think it's misguided. And the next time around, we should, after reconsideration, we should vote against it. Thank you. [LB564]

SENATOR ERDMAN: Thank you, Senator Lathrop. Senator Karpisek, you're

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recognized to speak, followed by Senator Stuthman, Chambers, and Pirsch. Senator Karpisek. [LB564]

SENATOR KARPISEK: Thank you, Mr. President. Thank you, Mr. President, members of the body. I did vote for the signage to be on the fences, because I am a little bit torn on this bill on what can happen to children at a play area, and what kind of repercussions that can happen; what can they get in return, not that they are there to get anything. I think some personal responsibility would go a long way, but we're not going to go there on this bill. I didn't vote for the sign because of the threats from Senator Chambers. I voted for it because I do think it would be fine to put up a sign saying enter at your own risk. There are swimming pools that don't have lifeguards, say, at hotels, and they do say, no lifeguard here. I don't know that on a skateboard park we would have to have someone there watching it 24/7. I know it could be a problem if things are happening and they're calling city office...city hall, saying, hey, so-and-so is doing the wrong thing there. But I do agree with Senator Lathrop that if we can't reach a compromise here, skate parks are a thing of the past. In my opinion, maybe that isn't a bad thing. But I want things for kids to do. I want kids to be safe at them. So if it takes putting up a sign, not to appease Senator Chambers, but to help the kids stay safe, and parents feel safer, then I can go there. Otherwise, I think we have a lot of problems out there that people aren't going to step up and say, oh, I didn't know that it was dangerous. Well, people should know. Maybe they don't. So I just wanted to say why I did vote for the signage. Again, I will vote for cloture on this, because I think we do have to get somewhere. We have to do something, or a lot of these kids are going to have nothing, or not as much, to do. Thank you, Mr. President. [LB564]

SENATOR ERDMAN: Thank you, Senator Karpisek. Senator Stuthman. [LB564]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I haven't spoke on this issue at all today or yesterday yet, but have been kind of listening to Senator Friend. Senator Friend and I came in at the same time, and we've had four and a half years of experience. And as he said, you know, we're learning a lot. Every day we're learning a little bit more. As Senator Chambers stated, you know, I was late this morning, but I'm going to talk a little bit about what happened this morning. I did go home. I attended to my livestock this morning, the beautiful moon shining, a few clouds in the air, the spotlight checking the cows for any newborn calves, the snow coming down so nice, the wind blowing. But there's one thing that I have a concern with, and I have debated as to who I should ask this question to, whether I should ask it to an attorney, a grocer, an engineer. But I think I've been listening to a person that has had the most experience, and I feel should have an answer to my question. So if I may ask Senator Chambers a question? [LB564]

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

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SENATOR CHAMBERS: (Laugh) The way he set that up, I probably should say no. But, yes, I will answer, Senator Stuthman. [LB564]

SENATOR STUTHMAN: Senator Chambers, as the snow was coming through the beam of my spotlight, it was white. The question is, where does the white go in snow? [LB564]

SENATOR CHAMBERS: I don't even understand the question, so you got me on that one. I don't even know what you're talking about, to be frank. (Laugh) [LB564]

SENATOR STUTHMAN: Well, when there's drifts across the road and it's white, then where does the white go when the snow is gone? [LB564]

SENATOR CHAMBERS: Where does the white go when the snow goes? It goes wherever that which allowed it to be there has gone. So when the snow goes and the snow is that which was the vehicle for the whiteness, then when the vehicle goes, the snow goes with it. So wherever that vehicle went, the whiteness went, too. When the vehicle ceased to exist, the snow ceased to exist, the whiteness was gone. [LB564]

SENATOR STUTHMAN: But when the white vehicle was gone, where did the white go? [LB564]

SENATOR CHAMBERS: (Laugh) I don't know, but wherever it went, I wish it well. [LB564]

SENATOR STUTHMAN: (Laugh) Thank you. [LB564]

SENATOR ERDMAN: Thank you, Senator Stuthman. Senator Chambers, you're next to speak. [LB564]

SENATOR CHAMBERS: (Laugh) Senator Stuthman ought to be a stand-up comic. I mean, you'll be laughing and not able to stand up, and people will say, what are you laughing at? You say, I don't know, but it was the funniest thing I ever heard. But members of the Legislature, to try to regroup, I'm going to spend time on the bill. Senator Karpisek, I don't think you will cast a vote based on what I say or don't say, unless I persuade you. But I never would have thought, that because I was railing against the political subdivisions, you voted a certain way. But do you see how difficult it becomes when Senator Lathrop has to talk to his minions out there? Now it's no longer what I suggested, a sign that warns that this...you know, you can be hurt, and they could select the language for that, and the city or county, whichever entity it is, is not liable. Now it's, well, did you put that you can't cut across somebody; and if you don't put, you can't cut across, and they do, then you're liable? If you put, you can't cut

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across, but you don't put, you can't run into somebody...is that what I was talking about? I don't believe a person on this floor thought that's what I meant. And that's how we degenerate into that which is nonsensical when the lobbyists, who have to make their money, start dictating to us as to what we're going to do or not do. When there is a recommendation that is eminently reasonable, they make it so ridiculous that the rest of us look like we're a bunch of fools. And that's why I speak, so people know I'm not in that group. Now, if they can't figure how to put together a warning sign, let them ask somebody. But as Senator Lathrop acknowledged, I'm not interested in dealing with those people on anything. It's impossible. And Senator Karpisek doesn't have to worry about this bill not going. Senator Karpisek, they have the votes to get this bill whenever Senator Friend invokes cloture after the eight hours, because that's the tradition, despite what the rule says. But I wouldn't care if they invoke it when we first start. I've just got more bills that I would go after then. So I will have my time and my opportunity to take the time. Their rules cannot stop me. Under their rules is what I operate. I do everything I do according to their rules. They will get this bill in this form, even if they don't get to vote on the committee amendments while I'm engaging in extended debate. The first thing that you vote on is whether or not there's cloture. They'll get Senator Friend and at least 32 tagalongs, 32 empty buckets, 32 empty wagons. They'll be there, clattering down the street, because they're conformists and nonthinkers. After they vote on whether there's cloture, they will vote for whatever amendment is pending. If there's a pending amendment to the amendment, they vote on that. Since it will be mine, they'll vote that down--no. Then they say, well, now are you going to vote for what the political subdivisions want, as filtered through the Judiciary Committee? Then you'll vote yes. That becomes the bill. The next vote is whether the bill advances, and you'll vote yes. You think I don't know this? That's why I said I'll take my whipping. You all are going to win. You can't lose anything but time. And it's not going to be today and it's over. I'm not like those people who, because they feel a certain way emotionally one day, they make all kind of representations of what they'll do, then tomorrow their mood changes and they change. [LB564]

SENATOR ERDMAN: One minute. [LB564]

SENATOR CHAMBERS: I will be here tomorrow, and when I'm here tomorrow, it will be just as vivid as if it were today, in terms of what I'm determined to do. So what I intend to continue doing is reading from this transcript, at the appropriate time. But I want to tell you all something. If black kids were riding those skateboards in the street downtown, you know what they'd do, like they did to the black kids of Central High when they didn't want them in downtown Omaha streets? They brought out the horse patrol and the dogs. That's the way they treat black kids. What do they do with the white kids? They build something so they don't have to do in the street that which white businessmen and white people don't want them to do. I see it all over Omaha. I see what white people give to their children. You think we don't pay taxes? You know how I know that there's certain equipment that cleans white people's streets? Because black people work for

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the city, and they tell us the work they do in white communities that is never done in ours in the city of Omaha. So we pay a higher percentage of taxes, or a higher rate... [LB564]

SENATOR ERDMAN: Time. [LB564]

SENATOR CHAMBERS: ...than white people, because we don't get the benefits. Thank you, Mr. President. [LB564]

SENATOR ERDMAN: Thank you, Senator Chambers. Senator Friend, followed by Senator Lathrop. Senator Friend. [LB564]

SENATOR FRIEND: Thank you, Mr. President. I would yield the time to Senator Lathrop, if he would like. [LB564]

SENATOR ERDMAN: Senator Lathrop, you have 4 minutes and 50 seconds. [LB564]

SENATOR LATHROP: Very good. I think we've gone past the point where this amendment is relevant to our discussion, and for that reason I want to go back and talk a little bit about AM879 and what some of it means and what some of it doesn't mean. We had some discussion. Maybe I'll come back to that when I have another chance to talk about what inherent risks are and what they're not in certain recreational activities. But I do want to talk about the fee language, if I can, so that the record reflects some of my thoughts with respect to the fee language. That's found on page 5, line...beginning on line 11. And the distinction is made in this bill between those things for which a fee is paid, and those things for which no fee is paid. And there can be some gray areas, and we've attempted to clarify that in that paragraph (iv) or Roman numeral five. The distinction and the reason the fee language is important is that the defenses available to political subdivisions as a result of this amendment are dependent upon the fact that the recreational activity is provided at no fee. So if there is a fee paid for admission to participate in or to serve...view or be a spectator at an event, these provisions don't apply. A political subdivision is bound by ordinary negligence standard of care. What a fee is and isn't, it does not include the payment of a fee to park, nor does it include a charge for a vehicle entry permit. And that would include, for example, an entry permit for state parks. There is an area, and it deserves a little bit of explanation so that, if a court needs to, they can understand what we were trying to do with this language. And I'll read it: A fee shall include payment by the claimant to any person or organization other than the political subdivision only to the extent the political subdivision retains control over the premises or of the activity. And you might think that that's all lawyer language. It probably is, because lawyers drafted it. But it's important language, and it's intended to get to those events where--and this happens, apparently, frequently--where the cities or the political subdivisions have a facility, and it can be grounds or it can be an auditorium or even a schoolhouse, I suppose, where you pay a fee to enter, but the

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fee is paid to an organization that might be having Fur Trader Days, it might be an art exhibit, could be any one of those kinds of events, but where the city receives something, they don't have to receive something, they just have to retain control over a portion of the premises. And what's important in the distinction there is that when those people come into that state or political subdivision facility and they use the facility and they create hazards themselves, that the cities are not responsible for the hazards that have been created by the folks who come in and use the property and to whom you've paid a fee. So yesterday I think I used the example of hoses and drop cords. There's all kinds of hazards in activities that could be done by these groups that might cause someone injury. The city or the political subdivisions would not have any responsibility over that. That, again, is perfectly consistent with general tort principles,... [LB564]

SENATOR ERDMAN: One minute. [LB564]

SENATOR LATHROP: ...where liability is contingent upon or pinned to your control over the activity. If you don't have control over that activity, as the city or the state, even though it's happening on your property and a fee is charged, you don't have any responsibility. To the extent you pay a fee and the city retains control over the premises, they do have a responsibility. And let me give you some examples of what that might mean. If you're down at the city auditorium...Civic Auditorium in Omaha and there is some kind of a show going on down there, a car show, and you go in and you pay a fee to the car show folks and then you go into the bathroom and you slip and fall because of some hazard they should have fixed and didn't, or a ceiling tile falls out of the ceiling and hits somebody and hurts them, those are areas over which the political subdivisions retain control, and they would be responsible for...or liable for that if... [LB564]

SENATOR ERDMAN: Senator Lathrop. [LB564]

SENATOR LATHROP: Yes. [LB564]

SENATOR ERDMAN: Senator Friend's time is up. Your light is next. You may continue. [LB564]

SENATOR LATHROP: Oh, thank you. I appreciate that. So that if the city has retained control over a portion of the premises after they've let an organization come in that's charging the fee, they remain responsible for the areas over which they've retained control. And the example is a slip and fall, something that happens out on the walks, if they don't clear the sidewalks and that presents a hazard, all of it being dependent upon the person that's been hurt being able to establish that somewhere along the way the political subdivision was careless or negligent, they failed to act reasonably in the protection of the safety of others who are going to enter upon the premises. So to the extent that legislative history is necessary to clarify that, the use of the term "claimant" I think is more general than specific, in the sense that we're talking about. You know, if

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you go in with your parents and your parents pay the fee, that's the claimant paying the fee. If you go with the Girl Scouts and the Girl Scouts pay the fee and you help collect the money and that sort of thing, that's still a payment by the claimant, as contemplated by the fee. It is a charge to participate or be a spectator at the recreational activity. So I appreciate the opportunity to add a little clarification of that language. And that's all I'd have for now, Mr. President. [LB564]

SENATOR ERDMAN: Thank you, Senator Lathrop. Senator Chambers, your light is next, followed by Senator Friend. [LB564]

SENATOR CHAMBERS: Is this my third time, Mr. President? [LB564]

SENATOR ERDMAN: It is. [LB564]

SENATOR CHAMBERS: Thank you. Members of the Legislature, what I was getting into is the kind of experience that people of my complexion have in Omaha. If it wouldn't embarrass Senator Pirsch, he'd have to acknowledge, as Marty Conboy, the city prosecutor does, that white kids and black kids are treated differently when it comes to filing charges for similar conduct, the way the police handle them. Many white kids wind up at home, that's it. They don't have a police record. Our kids do, for the rest of their life. And a lot of times you'll read about a black kid who gets in some kind of trouble, how many contacts he or she has had with the police. They don't say convictions, because the cops know if they pick our kids up and take them downtown, that's a police contact, and that's going to follow them the rest of their life, like those chains that Marley was dragging around, the cash boxes, the ledgers, symbolizing all the wrong he had done while he was on this earth. And that's what white people do to our children. So when they're dealing with their own, that's what lets me know that they know how to treat children and give them some kind of opportunity. You know good and well what would happen if black kids were skateboarding downtown in the streets and white businessmen got upset. You think that the city council would get busy and build a skateboard park? They'd call the police. That's who they would call. And our children get beaten by the police. One young man--he was not a child, but he was a young man--they handcuffed him, and they used the Taser on him ten times. They "Tased" him into unconsciousness. I guess they thought he was a threat because he's black. That's what happens. Who talks about that? Me. And people look the other way like I'm not saying anything, because they know it's true, and they're not even going to talk about it, let alone try to do anything about it. I have experienced a lot of things that make me stronger than the people on this floor. So if you're going to wait me out and think I'm going to get tired or weak, you can forget it. And I haven't lived the kind of life where I've mistreated people because they're helpless and can't help themselves, any kind of way. I haven't lived the kind of life where I watch one category of children mistreated and the other favored and didn't do anything to correct it. But there are people on this floor who have done that, and will continue to do it. I know what I'm

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dealing with down here, and you all are going to find out what you're dealing with when it comes to me. At some point, you're going to deliver the session to me, as you've delivered this bill to me. On this bill, you have time to get cloture. A point is going to be reached in this session when you cannot get it back. You simply will not have enough time. So start figuring how you're going to beat me. Senator Friend talked about how he liked to watch Senator Landis. Senator Landis couldn't tell him how to beat me. Senator Beutler, who had a mind like a steel trap, couldn't tell him how to beat me. They would all come to me so we could reach an accord. And you know what the accord would be? What I had started out talking about in the first place. I know the steps I have to go through to get anything done around here. And then you know what I tell them? If you'd have paid attention, you would have seen it. Because here's what they say: Oh, is that what you're talking about? Yeah, you knew what I was talking about. [LB564]

SENATOR ERDMAN: One minute. [LB564]

SENATOR CHAMBERS: But I believe in giving a mouse a way out if he or she wants to take it. And they can pretend they didn't know, that they didn't understand. But if that's what they have to go through to come to the light, I'll let them come to the light. But if they choose not to and they're going to challenge me, then I'm going to whip them or they're going to whip me. On LB564, you all will whip me. But you ain't done much, because you were all together on something that everybody told you they agree with, so what does it take for you to come down here and agree with what everybody agrees with anyway? Nothing. But you wait till you get one of those issues where you might be standing here virtually alone. I'm going to watch and see if you'll fight for it like I'll fight for it. But I know you're not. Senator Friend tried to give you a hint and tell you it's not as easy as you all might think it is. Highly skilled people make the most difficult things look easy. Then people who don't understand and don't analyze try to do the same thing, and they see they're not up to. Thank you, Mr. President. [LB564]

SENATOR ERDMAN: Thank you, Senator Chambers, and that was your third time. Senator Friend, you're recognized to speak on the motion to reconsider. [LB564]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. When I was young and more emotional--I think it was my second year here, when I was younger and more emotional--Senator Chambers was railing on something. It was near the end of the session. Everybody was tired, except him, of course. At least that's what he'll claim. I think he was tired. I saw the bags under his eyes. But he was railing on something,...and Senator Chambers used to call him "Quackenbush"; Mark Quandahl used to sit right where Senator Pahls sat. And I said, Senator Quandahl, where are those little yellow books? He goes, oh, amendment sheets, or whatever? I said, yeah, give me one. I didn't know what I was doing. I grabbed it, and I said, I'm going to throw up a motion to sine die. We had, like,...I think we had like six days left or something. And this is not to pat myself on the back, but just to show you...(laugh) to show you how

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quickly things can change when you have half a full Chamber and you toss a grenade in the middle of the room. Well, so I walk up there and I dropped it off over on the side, and Patrick O'Donnell, the Clerk, looks at it, and he walks over to somebody--I don't know who he walked over to--and the next thing you know, Kermit is running up there, Kermit Brashear. There was about three people up there, and hands are flailing around and everything else, and I'm just sitting there going, uh-oh, maybe I shouldn't have done that. And then Kermit catches me over on the side and he goes, do you know what you're doing? And I said, yeah, I know what I'm doing. He goes, do you realize what this does? And I said,...that's how he talked, isn't it, kind of? (Laugh) Do you realize--he's real loud, too--do you realize what this does? I said, I...Kermit, I know exactly what it does. I want it in there and I want to vote on it. He goes, you want to vote on this? And I said, yes, I do. Actually, he wasn't the Speaker at the time. Senator Bromm was. But Kermit was exercised, to say the least. So anyway, Senator Bromm grabs the mike and says, we can't do this, we can't leave. So they...people are running up there, and they're angry, part of them, I guess, some of them. And Gene Tyson...I got three votes. I got mine, I got...I believe I got Senator Louden's, and I got Gene Tyson's, the triumvirate...no, maybe Senator Stuthman. I'm sorry, I'm going to have to go back and look. I was not prepared. It was three votes. One of them was mine, I'll find out who the other one was, but Gene Tyson was one of them. I went over and asked Gene later and I said, why did you vote yes? I'm just curious. He goes, because I don't care if I hang around here any longer. I mean, he was...that was close to the way he used to...I'm ready to go; hell, let's leave. Then I asked Senator Chambers and I said, why didn't you vote for my sine die. You were crazy. You said you hated us all and you were ready to leave. He goes, I'm not finished here. I go, okay, all right. He's never finished, folks. He's never finished. This will happen again, over and over again. You'll see the cloture motion here soon enough. Just vote your conscience, not like the sine die motion. (Laugh) Vote the way you know you need to vote for your communities. [LB564]

SENATOR ERDMAN: One minute. [LB564]

SENATOR FRIEND: Vote the way you know you need to vote for your city managers, who are scratching their heads and don't have the inside knowledge and the ability, because of the positions that they're in, scattered around the state, to grab hold of this issue. Do it for the right reasons. I think there's plenty of them. He's never finished. I'm getting to the point where I don't think I am, either. Thank you, Mr. President. [LB564]

SENATOR ERDMAN: Thank you, Senator Friend. Senator Chambers, you're recognized to close on your motion to reconsider FA60. [LB564]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, having heard all of the gentlemen speak whom Senator Friend imitated, he came pretty close on some of them, so he does have a life after the Legislature. But in that other life, people can throw tomatoes and old shoes and things at him if they don't like what he

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says. (Laugh) And I'm glad that he's reaching the point where he'll never be finished. I'm going to read some more from this transcript. I'd been asking the lawyer about willfully and wantonly being negligent, and said, we'll discuss it. And Kratz said, I figured you'd like to. Chambers...going from the transcript: If something is willful, what does that mean the state of the mind of the person who did it would be? Kratz: I think when we're looking at the negligence aspect, you're looking at what's the defendant's state of mind. Did the defendant know or have knowledge that there was a dangerous situation that the entity allowed to continue? Chambers: Well, if you fail to exercise due care, then that means you know that there's something here that you ought to do, but you're not going to do it. And if you fail to do that which you ought to do, and somebody is harmed, then you're liable, under an ordinary negligence standard. Kratz: That's ordinary negligence, yes, sir. Chambers: Now you want to go beyond that. You know that it's dangerous. You know that if a person is unaware of that and is harmed, you don't have liability in that situation. Kratz: What I'm suggesting is, if we have an ordinary negligence standard, you are going to see fewer activities. You're going to see cities allowing fewer activities, recreational activities, because of that particular standard, because of likely...he stopped. Chambers: Wouldn't that be wholesome for society, to require its public entities to exercise due care? Or you're telling us we should take an affirmative stand and say, you don't have to exercise due care, we're not requiring you to do that? Let me go to something else, because I don't want to badger you or argue, because others will be here...with the implication that I could badger and argue with them. Back to the transcript. Kratz: That's fine. Chambers: But I do want you to tell me about willful and wanton. If I'm a property owner, I can have on my property what the law describes as an attractive nuisance. Isn't that true? And somebody can be hurt on my property without me having...or saying come on my property. And if there's the attractive nuisance and the person is hurt, I'm liable. Isn't that true? Kratz: That's correct. Chambers: Would you tell, for those of us who don't know what it is, what an attractive nuisance is? Kratz: I think an example that's used a lot in law schools is a swimming pool, an unguarded swimming pool where kids tend to want to play. That's attractive to them, so they go. And without a fence around it, it can become a nuisance and can become dangerous. Chambers: And society, through its lawmakers, have taken, or through interpretations by the court, has taken the position that I owe a duty of care to people that I don't even want on my property, that I have not invited on my property, that I don't expect to come on my property. But the law is going to say, because of this that I have on my property, it can be expected that somebody might come and be harmed by that. [LB564]

SENATOR ERDMAN: One minute. [LB564]

SENATOR CHAMBERS: Now, the city is not liable for an attractive nuisance right now, is it? Kratz: I think the distinction--and you're kind of getting to it--is that there's a difference between private owners, private landowners, and cities. Cities I wouldn't say have an obligation, but part of what people expect of a city is to provide recreational

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activities for the betterment of the citizens. I'll stop there and resume. They expect recreation. What the citizens expect is that if a child is hurt through those recreational facilities, the city should pay. Thank you, Mr. President. I'll ask for a call of the house, because we may not have a quorum, in which case we go home. [LB564]

SENATOR ERDMAN: Thank you, Senator Chambers. Members, the question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record please, Mr. Clerk. [LB564]

CLERK: 13 ayes, 0 nays, Mr. President, to place the house under call. [LB564]

SENATOR ERDMAN: The house is under call. All unauthorized guests please leave the floor. Unexcused senators please report to the Chamber. The house is under call. Senator Schimek, Senator Gay, Senator Dierks, Senator Mines, Senator McDonald, the house is under call. Senator Schimek, Senator Gay, Senator Dierks, the house is under call. Please report to the Chamber. Members, the house is under call. Please report to the Chamber. Senator Gay, Senator Dierks. Senator Gay, please record your presence. Senator Chambers, all members are present or accounted for. How would you wish to proceed? [LB564]

SENATOR CHAMBERS: I'd like a roll call vote. [LB564]

SENATOR ERDMAN: Regular order? [LB564]

SENATOR CHAMBERS: Yes. [LB564]

SENATOR ERDMAN: Members, you've heard the closing on the motion to reconsider FA60. Mr. Clerk, please call the roll, regular order. [LB564]

CLERK: (Roll call vote taken, Legislative Journal page 1083.) 4 ayes, 21 nays, Mr. President, on the motion to reconsider. [LB564]

SENATOR ERDMAN: The motion is not successful. I do raise the call. Mr. Clerk, motion on the desk. [LB564]

CLERK: Mr. President, we're back to consideration of the committee amendments. [LB564]

SENATOR ERDMAN: Anyone wishing to speak on the committee amendments? Senator Chambers, you're recognized to speak. [LB564]

SENATOR CHAMBERS: Thank you, Mr. President, members of the Legislature. There are activities going on that some people may be unaware of, but some of us are very

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much aware of them. We're going to be here for a good little while, so there should be some worthwhile things done. I'm going to read some more from this transcript. I had asked the lawyer for the city about an attractive nuisance, and he had pointed out that there's a difference between the private landowner and the city. Chambers: Well, if this law were now passed, I would still be liable if there's an attractive nuisance on my property. Would the city be liable for what would be an attractive nuisance if that land were privately owned, or would it not be liable? Kratz: Under the law as it is today, the city would be liable for any ordinary negligence if somebody gets hurt. And the law he's talking about today is the one that Senator Friend, wherever he is, had talked about when he was here, that because of the Supreme Court decision, ordinary negligence was the ticket. Senator Friend had said he wants to take the Legislature backward to where it had been prior, the state, to that Supreme Court decision. When the Supreme Court, through enlightenment, made an appropriate decision that would protect the public, that was a move forward. It was an evolving by the society toward a status of maturity and consideration, where responsibility would be assumed by those who are responsible. The political subdivisions scream bloody murder because they don't want to be responsible. So this bill would do away with the ordinary negligence standard that the lawyer, who was testifying before the Judiciary Committee on this bill, said was in existence, and he was correct. Chambers: But they're not worse off than the private owner, because I'm still under the burden of the attractive nuisance. Kratz: Under the...see, again, you're confusing some of the issues. Under the existing law, private owners can allow people to come onto their property, I mean to hunt or to do whatever, and to engage in recreational activities, and not be liable. Currently, the cities would be liable,... Chambers: That's why I use this... Kratz: ...under an ordinary negligence standard. Chambers: That's why I put the wild card in. There is no invitation, no expectation, but I'm still liable. Tell me about "willful." How is willful different from ordinary negligence? Kratz: Willful is...again, it goes back to knowledge. If you have knowledge of a dangerous situation or a situation that can harm people, and you allow that to continue, that's a willful action. Under ordinary negligence, you can certainly, a lot of times, act properly and take standard care and still become liable if there's an accident. Chambers: Well, if you exercise due care under the circumstances, you're not going to be liable. Kratz: That's up to the court, but you're right. Chambers: Exactly. Kratz: And that can vary from jury to jury. Chambers: That's why I was stating what the principle is. And then, when the application comes to the facts, the court may go one way or the other. But we're dealing with the principle. As Senator Lathrop was doing so capably, I'm compiling my record, and I want Paul Kratz, the city attorney from Omaha, to be a part of it. Kratz: Yes. Chambers: I still don't see the difference between willful and ordinary, so let's go to "wanton," which is even a worse level of inappropriate attentiveness. What is wantonness? Kratz: I think it's similar to willful, maybe just a tad bit more (laugh), in that you know something is bad, you allow it to continue, and you do it maybe with the intent that somebody might get hurt. Now, that might be an extreme definition, but... Chambers: When we go to malicious, how is malicious different from wanton or willful? Kratz: I'd say it's very similar to wanton. So here's what we get. Malice

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up here. What is...malice is similar to wanton, which is similar to willful, which is similar to ordinary negligence. So one is similar to the other, but he will not give something to distinguish one from the other. And people on this floor couldn't either. [LB564]

SENATOR ERDMAN: One minute. [LB564]

SENATOR CHAMBERS: I would defy Senator Lathrop, as capable as he is, to give a meaningful distinction between wanton and willful. But there can be a difference shown when it comes to malice, and I offered it. Chambers: Could malice imply some level of intent? Kratz: Intent to harm, sure. Chambers: Because malice indicates a bad motive, and to have a bad motive you must know something and intend that bad result. Kratz: Again, it gets back to knowledge. Chambers: They talk about excusing people unless there's willful or malicious... Kratz: Uh-huh. Chambers: ...frame of mind involved. If you don't get this law, you said that there's certain activities the city of Omaha no longer will allow on its property. Is that what I understand you to say? Kratz: I think that's a fair assumption. [LB564]

SENATOR ERDMAN: Time. [LB564]

SENATOR CHAMBERS: I'm not... [LB564]

SENATOR ERDMAN: Mr. Clerk, motion on the desk. [LB564]

CLERK: Mr. President, I have a priority motion. Senator Chambers would move to bracket LB564 until May 15, 2007. [LB564]

SENATOR ERDMAN: Senator Chambers, you're recognized to open on the bracket motion. [LB564]

SENATOR CHAMBERS: First, I will make that a unanimous consent motion. [LB564]

SENATOR ERDMAN: Any objection to the...Senator Langemeier? [LB564]

SENATOR LANGEMEIER: I object. [LB564]

SENATOR ERDMAN: Senator Langemeier objects to the unanimous consent request, Senator Chambers. [LB564]

SENATOR CHAMBERS: (Laugh) The way you phrased it, Mr. President, you said, does anybody object to Senator Langemeier? And if that was the question, I was going to say, I object to him standing up, sticking his nose in something that doesn't concern himself. But now I understand the question. So I will treat it as a motion. I'm going to... [LB564]

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SENATOR ERDMAN: You're recognized to open. [LB564]

SENATOR CHAMBERS: Thank you. I'm going to continue going through this transcript. If you...Chambers: If you don't get this law, you said that there are certain activities the city of Omaha no longer will allow on its property. Is that what I understand you to say? Kratz: I think that's a fair assumption. I'm not sure yet what those are going to be--certainly, skateboard parks, BMX parks, and maybe some others. What does the lawyer for the city of Omaha keep mentioning? Skateboard parks and BMX parks. They know what I'm talking about. Their lawyer kept telling the Judiciary Committee over and over. When I talked about dangerousness, skateboard parks for certain, and BMX parks for certain. When I talked about the signs, I said skateboard parks and BMX facilities, I said, but it's BMX parks. The political subdivisions couldn't understand what I was talking about. They couldn't understand. They can understand it to object to it, but they can't understand it when it comes to putting a sign on it. And I want this in the record. That's why I'm reading this transcript. For some of you all who were not here, and some of you who were but were not attentive, the Legislature voted to impeach a former Regent, whose name was David Hergert. And people on the floor of the Legislature, notably Senator Bourne, who was Chair of the Judiciary Committee, mistakenly said that if we impeached him, the Supreme Court would not convict, and there wasn't a basis anywhere for the Legislature to vote impeachment. And he hired a lawyer named...I've got to think of this guy's name...Mock, Harold (sic--Clarence) Mock. And he came back with some report talking about, the Legislature could find better things to do with its time. I said it was a political document. It was wrong. At any rate, the Legislature voted to impeach David Hergert, which put the matter before the Nebraska Supreme Court. And I pushed hard to get us to vote to impeach, in spite of all those people who were saying we couldn't do it, we didn't have a basis. To get ahead of the story, as some of you know, we impeached, and the Supreme Court convicted him and removed him, which we were being told wouldn't happen, and I was insisting that I thought it would. What does that have to do with what I'm doing here? David Hergert had been questioned, interrogated during a discovery proceeding, and there were about two hours or so of material in a transcript. And at first, the lawyer for the state was going to have certain portions of that transcript read into the record. But Hergert's lawyer gave the indication that the whole thing should be in the record. So rather than merely submitting that document, the lawyer for the state wanted me to serve as David Hergert, take the witness stand, and read David Hergert's responses to the questions that were put to him. And I did it. And when I asked the lawyer, why do you want me to read this, he said, when it comes to integrity and trust, there is no politician in the state in whom people have more confidence than you. That's what he said, and that's apparently what the judges felt, too. So I was on the witness stand an entire afternoon, reading from that transcript. So nothing that I do here is new to me. It might be news to you all, but it's not new to me. So I'm going to continue. If I could be on the witness stand all afternoon on that occasion, I certainly can go through this little bit of back-and-forth that took place

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before the Judiciary Committee on February 14, as we considered this bill. Kratz had just said that they probably wouldn't have skateboards and BMX parks. Chambers: And how would that hurt society as a whole? Kratz: Well, for example, with the skateboards, and you'll hear some of this testimony later on, is that a while there we had skateboarders all over the city of Omaha, downtown and in businesses, skateboarding. You heard Senator Wightman say they didn't put in a skateboard park because kids were on the street. This is the lawyer from the city of Omaha telling you all why they built the skateboard parks. And I'm going to get it in the record. I'm going to read it again. Paul Kratz, the city attorney for the city of Omaha: Well, for example, with the skateboard parks, and you'll hear some of this testimony later on, is that for a while there we had skateboarders all over the city of Omaha, downtown and in businesses, skateboarding. They didn't call the police on these white kids. Uh-uh. They built them a skateboard park. Chambers: But how would... Kratz: Okay. Chambers: ...how would doing away with it on city property help society as a whole? Kratz: Because those skateboarders will go back to the streets, so to speak, the sidewalks. By having a place for skateboarders to go, they're off the street, they're not destroying private property, and they're in a confined...not..."confined" is not the right word, but in a location where they can engage in the activity. So they're destroying private property? Why not call the cops and arrest them and charge them as juveniles, as they would do black children? Because these are white people's children. They were messing up the business area, downtown. I'm glad the representative from Lexington is here, because he can hear how the city of Omaha's lawyer acknowledged that they built the skateboard parks to get them off the streets and off the sidewalks and to get them to stop destroying private property. Chambers: Does the city of Omaha provide those facilities for any group of youngsters, wherever they live, even if they happen to be poor and cannot afford skateboards, so that they'll have a place to go? Or are these provided for the kids of maybe the affluent people, those who live in certain neighborhoods, those who can afford these, and so you then provide places for them, don't you? Kratz: We have...well, we have one skateboard park in Omaha at this point. We have plans for another one in northwest part of Omaha. Chambers: I mean something other than...where? Kratz: Northwest part of Omaha. Chambers: Where's the current one? Kratz: Current one is at Roberts Park. Chambers: Where is Roberts Park? Kratz: 75th and Center Street. For those of you all who don't know, that's west Omaha, where white people live. Chambers: Do you have any east of 75th Street? Kratz: Again, the one in northwest, I'm not sure where that was going to be. I think around... Chambers: I thought you said around 80th or something? Kratz: No, I thought somewhere...I shouldn't say. It's going to be in the northwest part of town. Chambers: Are there people who live east of 72nd, as far as the city of Omaha is concerned? Kratz: Sure, of course there are, and we provide a number of activities and parks, any and all parts of Omaha. Chambers: But not a discrete activity like skateboarding, right? Kratz: Skateboarding is just provided (inaudible)... [LB564]

SENATOR ERDMAN: One minute. [LB564]

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SENATOR CHAMBERS: ...provided one location. Senator Chambers: And all that's going to be west of 72nd? Kratz: Well, the one that's there now. Again, I'm not sure where the planned one is going to go. Chambers: So most of the people who skateboard, based on the knowledge that the city has of demographics, are west of 72nd? Isn't that true? Kratz: I'm not sure we looked at that. I don't think that was a consideration. I'll stop there. But I have a second or two. That was a consideration. They always will do things for white people. And if you don't believe me, drive through Omaha. Look at where the affluent white people live, and look what is provided by the city. Then drive to the part of Omaha where black people, Latinos, and poor white people live, and you will see what looks like two different cities. And he says it was not a consideration? Just by coincidence and happenstance the good things always wind up where the white people who are affluent live? [LB564]

SENATOR ERDMAN: Time. [LB564]

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

SENATOR ERDMAN: Thank you, Senator Chambers. Members, you've heard the opening on the motion to bracket LB564 until May 15. Those senators wishing to speak: Senator Friend, followed by Senator Flood, and Senator Chambers. Senator Friend. [LB564]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. The bracket motion, I obviously can't support that. We're approaching a time in the debate where I think we can step back over across some of the things that have been going on and some of the stuff that's already been put on the record, and at times even revisit it, and not have to kick yourself after you're done for being too redundant. I could tell you the sine die story again, but it's a little fresh. There were some people that weren't here. I'm not going to do that. That would be redundant. But let's step back, because Senator Chambers brought up something that I think didn't necessarily strike a chord, but it goes to the root of, again, why we're here dealing with the subject matter, the reason that it's happening. Remember when I said earlier that we have a law that was created in 1965 that provided the owner of property, more or less give that owner a certain type of protection, for lack of a better way to describe it, from the type of things that could happen with this risky behavior. Then, over a certain period of time, the courts ruled on that understanding, on that expressed statutory understanding. In 1981, as I had mentioned before, Nebraska Supreme Court ruled that the protection did apply to the government entities, as well as the private landowners. And that was Watson v. the City of Omaha. And then other rulings followed after that. And as I pointed out, let's say all of that was a mistake. Let's say all that precedent was a mistake. When you lay out the standards of jurisprudence, it wouldn't have mattered. Until that's overturned, or until somebody...until a group does what the Nebraska Supreme Court just did, it's irrelevant,

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because the precedent tells you that this is the way it's going to be. This is decided law, if you will. Now, people can say, people can point out that Bronsen v. Dawes County was a bad decision. I'm not here to point that out. What I am here to point out is that it deviated from precedent, understanding, what the communities understood the law to be. That's what it deviated from. And that's... [LB564]

SENATOR ERDMAN: One minute. [LB564]

SENATOR FRIEND: Thank you, Mr. President. And that's why the Legislature is here to deal with this at this point. We could...had we known that those deviations were going to occur 20 years ago, the Legislature could have handled it. I think it's intellectually lazy to think that the Legislature wouldn't have handled it, had we known the Supreme Court was going to drop that. Again, say what you want about Bronsen v. Dawes County, say that it's a good decision. It's still a bombshell. It still surprised everybody, didn't it? It surprised these communities, and that's why we're dealing with this now, because of the surprise. Clearly, when we come to the point of the day--and I think it's coming soon enough--if the bracket motion is still up there, you got to vote against the bracket motion. That's obvious. And we have to move this forward. Move it forward,... [LB564]

SENATOR ERDMAN: Time. [LB564]

SENATOR FRIEND: ...at the very least, to make this conversation continue. Thank you, Mr. President. [LB564]

SENATOR ERDMAN: Thank you, Senator Friend. Senator Flood, you're recognized to speak on the bracket motion. [LB564]

SPEAKER FLOOD: Thank you, Mr. President and members. What a day we have had, listening to the sweet sounds of Senator Chambers, taking us through a tort liability summary that none of us can ever say we've heard before. I stand up here for several reasons, but first of all, to share my excitement that in minutes we will be advancing, not a bracket motion, but the Judiciary Committee amendment, which I still think is a very reasonable response to the Supreme Court's decision last summer. And I want to bring us back to how we've grown over these several hours today. I like to focus on the positive, to look at the glass half full instead of half empty. And Senator Lathrop has done a very fine job of commanding the proponents' efforts on LB564, as amended. Senator Chambers has, as always, demonstrated that he is an able foe, one that will rise to the challenge upon the issue presenting itself. And I'm sure we will see this again. But as we vote on this, I think it's important to remember that we have two more rounds of debate, and at no stage of debate is talking about resolution ever inappropriate. At no stage during the debate is looking for an accommodation or a compromise ever inappropriate. And we will move this bill today, I'm confident. And the discussion will come again, and I'm sure that Senator Chambers will provide leadership

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for the opponents, of which he is the only one at this time. And that leadership will no doubt, I'm sure, be effective. But a delegation or, if you will, shuttle diplomacy between the opponent and the many supporters, should continue to discuss ways that we can avoid this type of an extended discussion at our next two levels of debate. If you are in your office right now, enjoying the midafternoon sun, possibly an iced tea, now would be an excellent time to make it to the floor, to join the rest of your colleagues as we prepare for what I will believe will be many of your first experience with a cloture motion. This is like...this will be your first filibuster, and you remember it like the first big blizzard you had growing up as a youth. You'll look back on this fondly in future years, and remember Senator Chambers' articulation of his points, even to the point that he began reading the transcript, performing a public service for those of you that were unable to attend the Judiciary Committee hearing on LB564. I would repeat, if you're in your office, this is a good time to join us on the floor, as we move forward on this important bill. Thank you, Mr. President. [LB564]

SENATOR ERDMAN: Thank you, Senator Flood. Senator Chambers, you're recognized to speak. [LB564]

SENATOR CHAMBERS: Thank you, Mr. President. And I'm going to continue with this transcript. People are not going to get the transcript of the hearing. For most people, it never happened. I could say what Mr. Kratz said, but it would be better for me to read it into the record. Then, if he gets a copy of the transcript and he says, I didn't say that, the transcript will speak for itself, and by his own words he will be condemned. He'll either think better next time, or he'll stay home. But his words are going to be into the record. I had asked him whether or not there are people who live east of 72nd Street. He conceded that there are, and that they provided things for the people east of 72nd. Chambers: But not a discrete activity like skateboarding, right? Kratz: Skateboarding is just provided (inaudible) provided one location. Chambers: And all that's going to be west of 72nd? Kratz: Well, the one that's there now...again, I'm not sure where the planned one is going to go. Chambers: So most of the people who skateboard, based on the knowledge that the city has of demographics, are west of 72nd? Isn't that true? Kratz: I'm not sure we looked at that. I don't think that was a consideration. I think it... Chambers: Would you build a skateboarding facility where people don't live who are going to skateboard? Kratz: Right now, we have the one skateboard park, and people from all over, actually, the region, come there and skate. Chambers: But why don't you put one east of 72nd Street? Kratz: Again, I think at the time that decision was made, it was an available park, and I could not tell you the reasons why. That was before my time, but... Chambers: You said you're planning to build another one? Kratz: We are. Chambers: Are you going to build it east of 72nd? Kratz: I'm not sure of the planned location. I know it's in the northwest quadrant of town. Chambers: Have you advised the city where they ought to build it? Kratz: I don't do that, no. That's for the parks and recreation department. Chambers: Maybe you ought to tell them that somebody thinks you ought to give them some advice, because you've just made it...you've put me in a

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position where I'm going to oppose all these bills, I'm going to dig my heels in. So tell them to start getting 33 votes. Kratz: Okay. Senator Ashford: Thank you, Senator Chambers. Anybody else? Then Senator Lathrop had some exchanges with Mr. Kratz, which he can read into the record if he chooses to. But I want to get my exchanges with him into the record. Chambers...because I was recognized by Senator Ashford, who is the Chair: Mr. Kratz, how long have you been the lawyer for the city of Omaha? Kratz: Eight years, nine years, since 1998. Chambers: Are you aware of the location of Kellom School? Kratz: Yes, generally. Chambers: Are you aware that there used to be a swimming pool right near Kellom School? Kellom School is in north Omaha. Are you aware of that? Kratz: I know that. Chambers: And there is no... Kratz: I don't remember if there was a pool there or not, but I just...I just don't have knowledge of that. Chambers: They closed it and filled it in. Did there used to be a swimming pool at Miller Park? Kratz: I believe so. Chambers: There's not one there anymore, is there? Kratz: Now we've gone away from some of the pool concept to the swim parks. Chambers: But I'm just...that's not my question. That swimming pool is not there anymore, is it? [LB564]

SENATOR ERDMAN: One minute. [LB564]

SENATOR CHAMBERS: Kratz: I believe you're correct. It's not. Chambers: There are swimming pools in north Omaha...there are no swimming pools in north Omaha operated by the city anymore, are there? Kratz: We have a water park or two, water parks in north Omaha. Chambers: Is a water park a swimming pool? Kratz: That's...well,... Chambers: How deep is the water in a water park? Kratz: It's shallow, and... Chambers: Okay, so here's my question, Mr. Kratz. I think you understand English, and I think I speak it clearly. Kratz: Yes, you do. Despite having been educated by OPS, said Chambers. Are there any swimming pools operated by the city of Omaha in north Omaha? Kratz: There are water parks. I don't believe there are any swimming pools. I'll stop there. Thank you, Mr. President. [LB564]

SENATOR ERDMAN: Thank you, Senator Chambers. Anyone else wishing to speak on the bracket motion? Senator Chambers, you're recognized to speak, and this will be your third time. [LB564]

SENATOR CHAMBERS: Thank you, Mr. President. And I don't have to repeat this, because it's in the record. And one reason I don't care whether there's anybody on the floor or not, what we say here goes out all over the country, so other people are hearing that. And I want to emphasize the racism that exists in Omaha, and how it's demonstrated by what the lawyer for the city of Omaha said, in terms of closing the swimming pools, but they can build skate parks to get the little white juvenile delinquents off the street. They don't put them in jail. They don't have the cops arrest them. They build a skateboard park for them. Let me continue. Kratz: There are water parks. I don't believe there are any swimming pools. Chambers: Are there swimming pools operated by the city of Omaha in west Omaha? Kratz: No, I think the furthest one

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west is 120th and Center Street, but west of that, there are none. 120th and Center is west Omaha. He felt, I guess, that other people on the committee did not know that fact. Chambers: Is that considered west Omaha? Kratz: Well, at one time. I'm not sure it is anymore. As the city grows west, middle...I'd say it's middle Omaha. And he's lying through his teeth. Chambers: You don't get the direction I'm going, do you? Kratz: I understand where you're going. Chambers: In other words, where black people and poor white people live,... Kratz: No, I... Chambers: ...things are not made available there. Kratz: I disagree with you on that. Chambers: You've closed the only two swimming pools in the black community. Kratz: We had a long, I guess, debate on that through the city council, and... Chambers: I'm not talking about a debate. Kratz: ...and it was... Chambers: I'm talking about the fact... Kratz: ...and it was decided that water parks... Chambers: The swimming pools are not there, are they? Kratz: Water parks are instead. And thus it goes. This is the way white people with responsibility treat nonwhite people, then cannot even give forthright answers to questions when they know those answers, because they know what the answer will show about them. And if admitting what they did is so embarrassing, why do they do it? They ought to just do the right thing. But they're not going to. So when these kind of issues come before us, I'm going to do exactly what I'm doing now. And these issues will come before us, in my opinion, not just when a bill is before us that addresses this issue, but when anything tangentially is related to what I'm talking about here today, I'm going to talk about what I'm talking about today. Senator Flood told you what I told you. You will advance this bill. But you're not through with the bill, and you're not through with me. Tomorrow, we're going to be here. This bill won't be before us, but other bills will be. The Speaker can lay out the agenda, but somebody else is going to determine what will happen with that agenda. And I will say what a person said...and I don't have time to go into all the story that led up to it: Catch me if you can. I will say, stop me if you can. And if you stop me, what can I do but accept it, in the same way I have to accept my whipping on this bill? You think I didn't know what my colleagues were going to do when I saw the newspaper stories where all the cities were telling you all what you had better do? Then I got copies of the letters from the cities... [LB564]

SENATOR ERDMAN: One minute. [LB564]

SENATOR CHAMBERS: ...that were sent to all of you. I know how you operate. I know there's no backbone. Senator Lathrop, as I've said, I can make better spines out of Jell-O than the spines in the people on this floor...on the floor of this Legislature. And somebody say, well, because of what you said, I don't like it, I'm going to vote against you. I own you, because I made you vote against your own best interest and your conscience, because I own you, and with my words I made you vote in a way that you shouldn't, because you think it's going to hurt me when you violate your conscience. That's when I'm at my best, when I own you to such an extent I can force you to vote other than the way you know you ought to. You all know how you ought to vote on this thing. You know that there are some amendments that would be appropriate to this bill.

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You know you couldn't go home and talk to your constituents in the same simpleminded way you've talked on this bill, that the city administrations are more upset about being liable than they are concerned about the welfare of their children. [LB564]

SENATOR ERDMAN: Time. [LB564]

SENATOR CHAMBERS: Wait till one of your constituents' child gets hurt, then tell them what you've said here. Did you say time, Mr. President? Thank you. [LB564]

SENATOR ERDMAN: Thank you, Senator Chambers, and that was your third time. Senator Friend, you're recognized to speak on the motion to bracket. [LB564]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. I don't know how many opportunities that we've all had...or that I've had to go through the high-level, and like I've tried to talk about, the philosophical reasons to move forward with legislation like this. And in a perfect legislative world--I think George Norris probably thought that he had one when he created or helped mastermind the Unicameral--good legislation...the old adage, good legislation is supposed to pass fairly rapidly. I don't know if it's an old adage. But bad legislation probably should never slip through the cracks, right? Folks, this is good legislation. Have you ever heard somebody stand up on the floor--and it doesn't matter; Senator Chambers, in the past, I've heard other people--this is a bad bill; I'm going to kill this bill? It's not just Senator Chambers. I've heard other people say that. It's like laying down a gauntlet. The reason the numbers are the way they are is because it's a good bill. With the Judiciary Committee amendments, I'd be so bold as to say it's a great bill. And Senator Chambers knows it; never admit it. He did say that Senator Lathrop...he didn't call him a genius, but he said he's really smart. It's about as close as it's going to get to a superlative, and Senator Lathrop will take it and run. The superlative I get is that I'm looking like Mel...yeah, Mel Gibson. That's embarrassing (laugh), to Mel Gibson, probably. It's been a long day, and I understand that. And I thank you for your patience. But this is part of what I like about this process, and it's part of what I dare say that the public may not understand about the process sometimes. Some issues take this long. I...personally, I don't think this issue should have taken that long, but it did. And you smile, and you deal with it, and you do what you have to do to push them across the finish line, or at least on to the next level. This is the judiciary...this is the legislative process. And you may not think it's fun, but as long as a person like Senator Chambers, or somebody remotely close to him in talent level, is here, you're all going to run into this, where you've got eight hours or nine hours to have to go through all this stuff, to make... [LB564]

SPEAKER FLOOD PRESIDING [LB564]

SPEAKER FLOOD: One minute. [LB564]

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SENATOR FRIEND: ...your case. I'm not saying I've made a very decent case. But I think a good case, overall, has been made to move legislation like this forward. Thanks to all of you out here that understand the concerns and the problems that our cities are faced with, or at least, at the very least, the confusion. Mr. President, that's all I'd have. Thank you. [LB564]

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

SENATOR LATHROP: Thank you, Mr. President and colleagues. I wanted to take an opportunity to kind of summarize. We've heard an awful lot of argument back and forth, and maybe I can take us back to where we started, which was a summary of what this bill does and why I think it's good policy. The bill is a response to a Supreme Court decision. The cities need some relief. The bill was negotiated between myself and the city. I understand these liability issues, as hopefully that's evident from what we've...the discussion we've had. And in arriving at this amendment, AM879, we have struck a balance. We've...any time you provide immunities, you take away the incentive to be careful. And so when we craft limitations on liability, it's important that that be done narrowly, it's important that it be done carefully and with the least amount of exceptions to tort principles as possible, so that we have left the cities and political subdivisions in the state of Nebraska with an incentive to be careful in the way they conduct recreational activities, or in the facilities that they provide for that purpose. This bill, I think, does that. After the Bronsen v. Dawes County case, the state of Nebraska and the political subdivisions went back to an ordinary negligence standard of care. This bill leaves that standard of care in place, but provides three defenses to the cities. One is, they have a defense based upon the inherent risks of an activity. That's a fair standard. In the law, we talk about assumption of risk. This is very close to assumption of risk, in terms of someone knowingly encountering the risks attendant with a particular recreational activity. That's a commonsense...we're not leaving kids out in the cold with that one. It's a commonsense concept that comes to us by way of assumption of risk, a recognized principle of law. The other is the design of a skate park. The language that we've used to determine the defense for a negligently designed skate park is, did they conform to the standard that was available at the time the skate park was built? Frankly, that would probably be the standard if it wasn't there and we were just fighting over it in court. We've just made it clear. We've made it clear as an element of defense in a claim based upon a negligent design of a skate park or a BMX park. And then, of course, the last thing is the negligent condition of the land. We call them a spot or a localized defect. That's something that we borrowed from a different provision, an earlier exception found in the Tort Claims Act. The standard is an ordinary negligence standard. If you know about the condition, you have a reasonable time to fix it. That's fair. The cities believe that's fair. If they know about it, they're perfectly willing to be responsible to fix it. The primary exception found in this bill and in this amendment is for

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those conditions that the political subdivisions do not know about. And they're charged with knowing about it only where they have behaved in a grossly negligent manner in carrying out their responsibility to investigate and find defects in the premises. That's the substance of this bill. It is good policy. We will provide a safe place for children to skateboard, instead of on the... [LB564]

SPEAKER FLOOD: One minute. [LB564]

SENATOR LATHROP: ...on the steps of the churches and the businesses in downtown, instead of the hills out in front of their house, and the driveways with steep hills. Every bit of this is good policy. Every bit of it makes sense. We have struck a good balance between public safety and a limitation on liability. I would ask shortly for you to vote against the bracket motion, and in favor of both the amendment AM879 and LB564. Thank you. [LB564]

SPEAKER FLOOD: Thank you, Senator Lathrop. Senator Friend. [LB564]

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. This is a good bill. And if you believe that, too, I suppose we're at a point where we vote yes for cloture. You vote no on the bracket motion, and then you vote yes on the committee amendments. And then I guess ultimately I'd ask you respectfully to vote yes on the advancement of LB564. Thank you, Mr. President. [LB564]

SPEAKER FLOOD: Thank you, Senator Friend. Mr. Clerk, do you have a motion on the desk? [LB564]

CLERK: Mr. President, I do. I have a priority motion. Senator Friend would move to invoke cloture on LB564, pursuant to Rule 7, Section 10. [LB564]

SPEAKER FLOOD: Senator Friend, for what purpose do you rise? [LB564]

SENATOR FRIEND: Mr. President, I'd like a call of the house and a machine vote. [LB564]

SPEAKER FLOOD: There's been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record please, Mr. Clerk. [LB564]

CLERK: 32 ayes, 0 nays, Mr. President, to place the house under call. [LB564]

SPEAKER FLOOD: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is

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under call. Senators Synowiecki, McDonald, Pankonin, please record your presence. Proceed immediately to the Chamber. A roll call vote has been requested. Senator Chambers, in regular order? [LB564]

SENATOR CHAMBERS: Yes. [LB564]

SPEAKER FLOOD: Mr. Clerk, please read the call for a roll call vote in regular order. [LB564]

CLERK: (Roll call vote taken, Legislative Journal page 1084.) 40 ayes, 1 nay, Mr. President, on the motion to invoke cloture. [LB564]

SPEAKER FLOOD: The motion to invoke cloture passes. Now that cloture has been invoked, Mr. Clerk, the first vote taken by the body shall be on Senator Chambers' bracket motion, bracketing LB564 to May 15, 2007. A roll call vote has been requested. Mr. Clerk, please read the roll. [LB564]

CLERK: (Roll call vote taken, Legislative Journal pages 1084-1085.) 1 aye, 42 nays, Mr. President, on the motion to bracket. [LB564]

SPEAKER FLOOD: The bracket motion is not adopted. We will now proceed to a vote on AM879, the Judiciary Committee amendments to LB564. A roll call vote has been requested. Mr. Clerk, please read the roll in regular order. [LB564]

CLERK: (Roll call vote taken, Legislative Journal page 1085.) 42 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB564]

SPEAKER FLOOD: The committee amendments to LB564 have been adopted. We will now proceed to the vote on advancing LB564 to E&R Initial. A roll call vote has been requested in reverse order. Mr. Clerk, please read the roll. [LB564]

CLERK: (Roll call vote taken, Legislative Journal page 1086.) 42 ayes, 1 nay, Mr. President, on the advancement of LB564. [LB564]

SPEAKER FLOOD: LB564 advances to E&R Initial. I do raise the call. Mr. Clerk, items for the record? [LB564]

CLERK: Mr. President, your Committee on Natural Resources, chaired by Senator Loudon, reports LB701 to General File with committee amendments attached. I have a new A bill. (Read LB701A by title for the first time.) Senator Harms, an amendment to LB415; Senator Chambers, a motion to LB564. And that's all that I have, Mr. President. (Legislative Journal pages 1086-1087.) [LB701 LB701A LB415 LB564]

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SPEAKER FLOOD: Thank you, Mr. Clerk. Any additional motions on the desk? []

CLERK: Priority motion: Senator Heidemann would move to adjourn until Thursday morning, April 5, at 9:00 a.m. []

SPEAKER FLOOD: The question before the body is, should the Legislature adjourn until Thursday, April 5, 2007, at 9:00 a.m.? All those in favor say aye. All those opposed say nay. The ayes have it. We stand adjourned. []