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Floor Debate  
April 24, 2007

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SENATOR LANGEMEIER PRESIDING []

SENATOR LANGEMEIER: Good morning, ladies and gentlemen, and welcome to the George W. Norris Legislative Chamber for the sixty-ninth day of the One Hundredth Legislature, First Session. Our chaplain for today is Senator Deb Fischer. Please rise. []

SENATOR FISCHER: (Prayer offered.) []

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

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

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

CLERK: I have no corrections. []

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

CLERK: Mr. President, your Committee on Enrollment and Review reports they've examined and engrossed LB701 and find the same correctly engrossed, LB701A correctly engrossed. Two study resolutions: LR85 by Senator Pahls and LR86 by Senator Pahls, both will be referred to the Executive Board. That's all that I have, Mr. President. (Legislative Journal pages 1261-1262.) [LB701 LB701A LR85 LR86]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. (Doctor of the day introduced.) Mr. Clerk, we'll now proceed to the first item on the agenda on General File, LB367A. [LB367A]

CLERK: LB367A, introduced by Senator Janssen. (Read title.) [LB367A]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Janssen, you are recognized to open on LB367A. [LB367A]

SENATOR JANSSEN: Thank you, Senator Langemeier, members of the Legislature.

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LB367A, this bill would appropriate \$100 million from the Property Tax Credit Cash Fund for fiscal years '07-08 and \$50 million from that fund in years '08-09 and to the Department of Property Assessment and Taxation. This is the property tax credit portion of LB367. It would also appropriate \$59.6 million from the General Fund for additional state aid to schools as a result in the decrease in the school levy lid from \$1.05 to \$1.00 in fiscal year '08-09. That is the extent of the A bill and I ask for your passage of this A bill. Thank you. [LB367A LB367]

SENATOR LANGEMEIER: Thank you, Senator Janssen. You have heard the opening on LB367A. The floor is now open for discussion. Is there anyone wishing to speak to LB367A? Seeing no lights on, Senator Janssen, you're recognized to close. Senator Janssen waives closing. The question before the body is, shall LB367A be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB367A]

CLERK: 32 ayes, 0 nays, Mr. President, on the advancement of LB367A. [LB367A]

SENATOR LANGEMEIER: LB367A is adopted. Mr. Clerk. [LB367A]

CLERK: Mr. President, LB603, introduced by Senator Raikes. (Read title.) The bill was introduced on January 17, referred to the Education Committee. The bill was advanced to General File. There are committee amendments pending. (AM754, Legislative Journal page 951.) [LB603]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Raikes, you are recognized to open on LB603. [LB603]

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. Good morning, colleagues. I see several of you wandering out around there in the dark. I assume you can all see me. This bill is a significant effort in the direction of ESU funding and a number of other characteristics of ESUs. It is actually a combination of six bills; four of them dealing specifically with ESUs, two of them dealing with our efforts in the area of distance education. What I hope to do in this initial discussion is to give you a little bit of background on ESUs and then talk about what was in the original green copy of LB603, which was a change in the funding formula for ESUs. You have a handout coming around that's a couple of 8.5-by-11 pages. Then you'll also have one more coming that is a longer, single long sheet on both sides which goes into considerable detail on the funding formula change. So to begin, and let me also mention at the outset that this bill comes from work done by the Education Committee staff and the staff members of the members of the Education Committee, and some others actually, during the interim. It was LR336. And in case you're interested in that work, here's a copy of the report that came out. It's a very substantial compilation of work done by that group. ESUs really, the initial effort in that direction came in 1954. A bill was passed to

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establish ESUs in 1965. The basic idea is that ESUs, or educational service units, provide supplemental services to school districts, thereby equalizing educational opportunities across the state. And they also are an entity which can be used to receive federal funds. And they've served all of those purposes. The number of ESUs, interestingly, was 19 when they were established in 1965. There are now 17 ESUs, so there's been only 2 mergers and those have occurred in the last ten years. To give you an example of where ESUs work very, very well, from an efficiency and equity standpoint, you might have students in a particular school district that need a particular special education service, but it may be that there are either very few students that require that service or the service is only required once every several years. If you have several school districts go together and hire a specialist to serve those students through the ESU, it's much more efficient than each individual school district trying to provide that sort of service on their own. The current list of supplemental services provided by ESUs include technology, all the Internet stuff, in addition to media services. Certainly special ed is a key component of ESU services. Professional development of the teaching staff is another key component. And cooperative purchasing is another significant effort. I would also mention at this point that one of the significant additional functions taken on by ESUs over the past few years has been assessment. STARS, the system we use in the state for assessing students, ESUs have been a key player in terms of providing expertise for that, plus a compilation of testing materials and that sort of thing. Funding for ESUs comes, at least state funding or state funding within the state, comes from two different sources. There's core services funding, which amounts to a little less than \$11 million per year. And I'm going to make the point here at some time soon that, actually, that has been flatlined over the last several years so that there really hasn't been any increase in core service funding. There's also a property tax levy which is capped at one and half cents. So ESUs are funded by up to a one-and-a-half-cent property tax levy and \$11 million, or a little less, of core services funding from the state that is distributed currently by a formula which we're proposing to change. And that is the key or the main part of LB603. Finally, a couple of comments on governance. There is an elected board to govern each ESU. The way it is right now, there is one per county and four at large. So the ESU, the size of the board depends upon the number of counties within the ESU, and they vary greatly. In addition, you have four at-large members. And part of this bill also changes that governance structure or election structure. I hope you've received this handout which is LB603 committee amendment on the top. And you'll notice that there are six sections in there. I'd like to have you turn to the, I think it's the fourth one, which says education service unit funding formula. That is the part of LB603 that was the green copy part, so to speak, and is really probably the most significant change proposed in this bill. And I'll just go through that with you quickly. In this proposal, core services and technology infrastructure funding have been separated in the past for a number of reasons. But this would propose that we would combine those as a single stream of state funding for ESUs and there would be a new distribution formula that would begin to be in place in 2008-09. So that is the second year of the biennium that we are now budgeting for. The new formula

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would be equalized and would take into account distance education and telecommunications costs, satellite offices, sparsity, number of students, a base amount for each ESU, and funding for the ESU Coordinating Council. I want to emphasize this. Currently, the funding formula for ESUs is not equalized. As you may know, I regard equalization as a key component of state policy toward the funding of local subdivisions. It is both more equitable and more efficient. You direct the most state funding to the places where there are the least local resources available to support the service. The other thing I would emphasize in here is this formula, for the first time, takes into account the special circumstances in each ESU in a calculation of the needs so that the amount that you come up with reflects the actual cost that must be incurred by the ESU. The next section spells out those formula needs. First off, we are proposing here an ESU Coordinating Council. One percent of the funding would go to support the efforts of that council. Distance education and telecommunications allowance, it's been a standard in funding that we...the state will recognized 85 percent of net costs, not 100 percent of net costs. We want the entity involved to help pay at least part of the costs. [LB603]

SENATOR LANGEMEIER: One minute. [LB603]

SENATOR RAIKES: Base allocation for each ESU would equal 2.5 percent of the appropriations. We take into account, in this calculation, satellite office allocation and this is due to the fact that we've got some ESUs that serve very sparse areas as compared to others. And the next point is to that. There is a sparsity adjustment which would equal 1 plus 10 percent of the square miles. This is an adjustment so that you reflect how far you have to travel in order to reach the students you need to serve. Part of the calculation then is to come up with adjusted students based on the sparsity and then the student allocation would equal the remainder of the appropriation plus formula resources divided by the statewide adjusted students. So that is the needs calculation...I'll just keep going because I'm going to begin with the... [LB603]

SENATOR LANGEMEIER: Time. [LB603]

SENATOR RAIKES: ...formula resources... [LB603]

SENATOR LANGEMEIER: Time. Thank you, Senator Raikes. Time. [LB603]

SENATOR RAIKES: Thank you. [LB603]

SENATOR LANGEMEIER: As the Clerk has stated, there are amendments from the Education Committee and, Senator Raikes, as Chair of the Education Committee, you're recognized to open on the committee amendments. [LB603]

SENATOR RAIKES: Thank you, Mr. President, members. Allow me to continue on with

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the funding formula change. As in any, or at least all equalization formulas we use, you have a formula need minus a formula resource and then the difference is made up with state aid. And that's no different in this. We've talked about the needs side, the formula side, or the resources side. We have a local effort rate of 1.35, the cap is 1.5, so the local effort rate or the amount each ESU is charged in the aid formula is a little less than what the cap is. And then finally you subtract resources from needs and come up with ESU aid. That's the next section. The aid would include distance education and telecommunications allowance, plus the base allocation of satellite offices, student allocation, less the formula resources. There are some provisions to deal with mergers of ESUs. This is important because when you include a base amount for each ESU, if in fact the ESUs decide for whatever reason to merge, then there's the...part of the base allocation goes away, so that can be a disincentive for merger, which we don't want. So there's provision to hold ESUs harmless in that regard. We also, I should mention in this, have a hold harmless provision in here for the transition. So what we've done, and it does give the Legislature some flexibility in terms of the amount of funding they would want to devote to ESUs under this formula. What we have said is that...or what is in the formula is that there's a hold harmless at 95 percent of what the ESU received in the past year. The long sheet, which I think you've gotten by now, provides a lot of detail. It lists all the ESUs and there are, just so you can see it, there are two levels of funding on this sheet. On one side you'll notice a current appropriation of \$10,832,000. On the other side, there's the increased appropriation of \$15.5 million. On each of those sides then, the application of the formula is spelled out under those two funding situations. I'm going to wait in order to go into more detail or lead you through that handout so that I can have time to explain, briefly at least, the other parts of the committee amendment. There are basically five other bills that are incorporated in this bill through the committee amendment. The first one, if you go back to the beginning of this other handout, the LB603 committee amendment, educational service unit boundaries, this is somewhat of a technical provision. It basically says that when school district boundaries changes or the school district membership of an ESU changes, the ESU boundaries are automatically adjusted to correspond with the included school districts. It's, again, as I say, technical but it's something that is not currently in statute and needs to be. The second one is Educational Service Unit Coordinating Council. This would be a statewide platform for ESUs. And there are a couple of, I think, significant points to make about this. Number one, we began down this path last year in LB1206, the distance education proposal, recognizing that the key role that ESU played in distance education across the state needed to have a statewide focus or a statewide coordination. So we set up the Distance Education Council, which was such a statewide group. This proposal would expand the scope of that statewide council to include...distance education would be subsumed under this, but it would also allow for additional services on a statewide basis. And I will just mention very quickly, one of the things, the services that ESUs provide have certainly been subject to technological advance. And one of the things they do is provide software programs, for example, for school districts. It is quite often very sensible, I think, in software development--probably a trivial example would be

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payroll software--to have an opportunity to provide that on a statewide basis so that you could deal with a vendor as a single entire state rather than 12 or 17 different buyers for that service. So it seems to me that, although nothing is required in that regard, this provides an opportunity for that sort of efficiency to come about. And the next section deals with educational service unit election districts. I explained earlier that the current system is one per county plus four at large. This would change that to be more consistent with one person, one vote regulation. Each ESU would divide itself into election districts. They would have flexibility to go anywhere from 5 to 12 as they saw fit. But these would be one person, one vote election districts. We've already talked about the funding formula. The last two provisions deal with distance education. There is some money left in a fund, school district reorganization fund, that was assistance for school districts reorganizing. It was not used. And this would provide that, in effect, that money could be borrowed to move more quickly in the area of distance education; providing the cost sharing for the new equipment, in particular. And keep in mind now that this is borrowing the money, that it would be repaid back. There's a certain deadline for paying it back. And if it isn't paid back, there would be interest charged. Finally, the last section deals with an expansion of distance education incentives. You might remember from LB1206 last year that we provided incentives for school districts to participate in distance education. We were particularly focused at the secondary level, high school courses that were being...and so the incentives are directed first to sharing of course work at the high school level. This addition would simply say that if, once you funded those, if there's still some money available to be used for incentives, that that incentive money could be used for distance education course work at the K-8 level. So those are the provisions of the bill. I know that it's involved and you probably will have questions, which I anticipate, and will hopefully try to advance. And given an opportunity, I will also talk more about the long sheets you've got and the funding formula. Thank you. [LB603]

SENATOR LANGEMEIER: Thank you, Senator Raikes. Mr. Clerk, for a motion. [LB603]

ASSISTANT CLERK: Mr. President, Senator Raikes would offer AM940 to the committee amendments. (Legislative Journal page 1137.) [LB603]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Raikes, you are recognized to open on AM940 to the committee amendments. [LB603]

SENATOR RAIKES: Thank you, Mr. President, members. AM940 is...it's an amendment offered to us by the Auditor's Office, okay, which makes the Coordinating Council, as I had right on the tip of my tongue, makes the Coordinating Council subject to audit and also subject to the Budget Act. This is actually a need, I would say, that was brought to us by the Auditor's Office. This, you know, again to elaborate just a little bit, although the Distance Education Coordinating Council is not a brand new idea--we currently have the Distance Education Council--it is a further formalization of that. And as such, it seems

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appropriate to me that it be subject both to the Budget Act and also to auditing. So that's what this amendment does. Thank you. [LB603]

SENATOR LANGEMEIER: Thank you, Senator Raikes. You have heard the openings to LB603, the committee amendment, AM754, and now the amendment Senator Raikes offers in AM940. The floor is now open for discussion on AM940. There are lights on. Senator Pirsch, followed by Senator Pahls, you are recognized. [LB603]

SENATOR PIRSCH: Thank you, Mr. President, colleagues. I was just wondering if Senator Raikes would yield to a few questions. [LB603]

SENATOR LANGEMEIER: Senator Raikes, would you yield to questions? [LB603]

SENATOR RAIKES: I would, Senator. [LB603]

SENATOR PIRSCH: In light of the other education bills that are set to be deliberated over the course of this session, how would this structure, reorganization of the ESUs then fit into that? And if you can just kind of give a brief overview. [LB603]

SENATOR RAIKES: That's a very good question, Senator. This, to some extent, is its own direction, is its own track. As far as I'm concerned, particularly the equalization and funding aspect of the ESUs is something that, my feeling is, we need to look at for a long time. The committee, in working on the metro area proposal that I hope we'll be able to bring to you for your consideration, involves including ESUs as a part of the governance structure in that metro area organization. This does not include that. That part of ESU organization restructure would be brought as a part of that bill, not as a part of this one. This one deals, I think, with more fundamental and basic aspects of funding and organization of ESUs, if that answers your question. If not, why, prompt me and I'll try again. [LB603]

SENATOR PIRSCH: Yeah, I appreciate that. And could you just comment briefly on the change in funding formula? Before you had mentioned that we had the core services funding, which was I believe the state's contribution, which had been more or less stable amount of funding over the years at \$11 million. And then you indicated a property tax levy the ESUs have, up to one and a half cents. Could you just kind of...I guess kind of flesh out a little bit more how that formula specifically would change and the state's role in that? [LB603]

SENATOR RAIKES: Okay. I'll try to do that, Senator. Right now, the funding formula, or up to now, the funding formula we've used has a basic allocation for each ESU. And then, after that, it's pretty much a per student allocation. So you get some funding because you're an ESU, so to speak--number one, you've got doors to open; and number two then is strictly on the basis of how many students you serve. It doesn't take

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into account the available wealth locally through the one-and-a-half-cent levy, or any other special needs you might have or special costs you might incur as an ESU, for example, having to travel a long ways to reach students or having to, in the case of technology, having to pay a lot of trunk line charges because you're a long ways from sort of the center of the Internet trunk line. What we've done with this formula is try to modify the funding in both respects; namely, we've taken into account those special needs. And on this long sheet you can kind of see, it's square miles per student, sparsity factor, satellite locations, and another factor or two to come up with a better description of what it is the ESU actually must incur in the way of costs. Then we take into account how much property valuation is there available through the property tax levy to support that, and then base the aid allocation on the amount left. I don't want to take up all your time but I'll mention just one more thing... [LB603]

SENATOR PIRSCH: I appreciate that, go right ahead... [LB603]

SENATOR LANGEMEIER: One minute. [LB603]

SENATOR RAIKES: One of the things, we've talked before about the adjustments we made during the budget crunch times with school funding, with funding for all other sorts of government services. ESUs certainly were not exempted from that funding pullback. The intent language that's not in statute about funding ESUs basically says that it will be student growth plus the 3.5 percent, or the basic allowable growth actually, basic allowable growth plus student growth per year. In effect, we have not done any of that funding, any of that funding increase for ESUs since, I think, about 2000. So if you... [LB603]

SENATOR LANGEMEIER: Time. [LB603]

SENATOR RAIKES: Thank you. [LB603]

SENATOR LANGEMEIER: Thank you, Senator Pirsch. Senator Pahls, you are recognized. [LB603]

SENATOR PAHLS: Mr. President and members of the body, I just have a couple questions for Senator Raikes. [LB603]

SENATOR LANGEMEIER: Senator Raikes, would you yield to a question? [LB603]

SENATOR RAIKES: Yes. [LB603]

SENATOR PAHLS: These first questions will primarily deal with the formula. And I understand that...your explanation that you've given so far. I'm curious on this new formula, because I see, by the new formula, it will take...and now I'm looking at the pink

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copy of the fiscal note, it will actually take money from the metropolitan area. As I look, several of the service units will lose several hundred thousand dollars. Is that true? [LB603]

SENATOR RAIKES: Senator, it would depend upon how much is appropriated. If you look on the side of the page, yeah, if you look on the side of the page where the top says increased appropriation of \$15.5 million... [LB603]

SENATOR PAHLS: Yes. [LB603]

SENATOR RAIKES: ...and then you look at the...well, I guess, go down to the second and look at the change in aid columns. [LB603]

SENATOR PAHLS: Yes. [LB603]

SENATOR RAIKES: And for example, you're looking at ESU 3... [LB603]

SENATOR PAHLS: Yes. [LB603]

SENATOR RAIKES: ...in Omaha, the change in aid would be plus \$93,690. If you look at that same number on the other side and you say we're not going to increase the appropriation at all, we're going to flatline it like we have for the last several years, then there would be a minus \$111,000, \$111,500 funding. Now let me just add one other thing. We have in this formula now, and this will be...and you may want to interrupt me, this is your time, not mine. [LB603]

SENATOR PAHLS: No, go right ahead. [LB603]

SENATOR RAIKES: We have in this formula a 95 percent hold harmless feature,... [LB603]

SENATOR PAHLS: Yes. [LB603]

SENATOR RAIKES: ... which means that even if, for example, you keep the funding flat as it is, that no ESU would receive less than 95 percent of what they got the previous year. And that in fact trumps the operation of the formula. [LB603]

SENATOR PAHLS: Okay. [LB603]

SENATOR RAIKES: So you only move money to the extent that you don't leave anybody less than 95 percent of what they were the year before. [LB603]

SENATOR PAHLS: Okay. [LB603]

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SENATOR RAIKES: Now let me just test your understanding of this, or my ability to explain, I should say. If you had hold harmless at 100 percent of last year's and you left the appropriation exactly as it was last year, then there wouldn't be any money move. You would have the new formula in place but there would be no money move. [LB603]

SENATOR PAHLS: Okay. [LB603]

SENATOR RAIKES: The committee decision in that regard was that it was time that we appropriately fund ESUs according to the intent language that the Legislature has had. So their proposal for fiscal was \$15,500 (sic) and that basically would leave every ESU at least held harmless, except for one, and that one is Lincoln. [LB603]

SENATOR PAHLS: Okay, yeah. Thank you. Because I think through our discussion, we're going to probably get more detail. Another...what I'm curious about on the new formula--because, to me, it's the formula that makes the difference, no matter what you do--who...the various parts of the formula, who decided what the formula was going to look like? I mean... [LB603]

SENATOR RAIKES: I will have to take most of the blame for that,... [LB603]

SENATOR PAHLS: So in other words, the... [LB603]

SENATOR RAIKES: ...or credit maybe, credit. Let me be positive. [LB603]

SENATOR PAHLS: ...satellite offices, sparsity, number of students, those were your ideas. That's what I'm... [LB603]

SENATOR RAIKES: Pardon? I'm sorry. [LB603]

SENATOR PAHLS: Well, I'm just looking at the different components of the new formula. And I understand why some of these are there. It's not the issue. But I'm just...how did...why did you not include something else? [LB603]

SENATOR LANGEMEIER: One minute. [LB603]

SENATOR RAIKES: The reason, Senator, is that when you look at, in my view, when you look at the services provided and the costs incurred, these were the most important factors. [LB603]

SENATOR PAHLS: Okay, okay, okay. No other factor was considered? I'm just trying to...because the formula is going to be what drives this thing today, tomorrow, in the future. [LB603]

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SENATOR RAIKES: You're right. [LB603]

SENATOR PAHLS: Whatever we decide is going to be in that formula, so to me, that's the key to the whole ball game, the formula, because we're talking about even state aid. It's the formula a lot of people have a concern about. I'm not saying this is the wrong formula. I just think we ought to make sure that we understand that this formula will drive the bus. And you feel very confident that these are the necessary components of that formula? [LB603]

SENATOR RAIKES: Yes. I certainly welcome your comments and your careful inspection of them. But you're exactly right. The needs calculation drives the formula... [LB603]

SENATOR LANGEMEIER: Time. [LB603]

SENATOR PAHLS: Okay, thank you. [LB603]

SENATOR LANGEMEIER: Thank you, Senator Pahls. Wishing to speak, we have Senators Rogert and Engel. Senator Rogert, you are recognized. [LB603]

SENATOR ROGERT: Thank you, Mr. President. Would Senator Raikes yield to a question, please? [LB603]

SENATOR LANGEMEIER: Senator Raikes, would you yield to a question? [LB603]

SENATOR RAIKES: Yes. [LB603]

SENATOR ROGERT: Senator, can you give me your thoughts and your background on why we're changing the members of the ESU board to election districts? [LB603]

SENATOR RAIKES: Senator, it's mostly, I think, to make those boards correspond to the one person, one vote principle. And also, it still...the proposal we have does not force every ESU in the same box, so to speak, and certainly now they aren't. You've got ESUs that got 10 or 12 counties, so they'd have 15 or 16 board members. I guess we are curtailing the top number of board members down to 12. But an ESU like that could create 12 election districts, if that's what they chose to do. But they would be election districts that would be population based. They would reflect the one person, one vote principle. So it's that principle, along with the flexibility of allowing the ESUs to do what they deem most appropriate in their area. [LB603]

SENATOR ROGERT: Okay. I've got several ESUs in my district and one of them is just a touch concerned that small school districts within those ESUs will get less

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representation through this process. Do you feel that is a possibility? [LB603]

SENATOR RAIKES: That would be possible. You know, under the current arrangement, I mean, suppose you had a multicounty district and you had one person per county. Well, that county, that very small population county would get a member on the board whereas they might not if you designed election districts according to population. On the other hand, the opportunity to expand the number of board members up to 12, if they so decided, would certainly increase the chance that you would have board members that would, what...every school district could well be predominately reflected by one member on the board. Now I will tell you, too, that in the operation of ESUs, in terms of the critical function of deciding how the money is going to be budgeted, we are not changing that. And there is a superintendents advisory committee that's based upon a voting principle that takes into account both the number of school districts and the percentage of students served. And that will still determine approval of the ESU budget. [LB603]

SENATOR ROGERT: Okay. Thank you, Senator Raikes. Thank you, Mr. President. [LB603]

SENATOR LANGEMEIER: Thank you, Senator Rogert. Senator Engel, you are recognized. [LB603]

SENATOR ENGEL: Mr. President, members of the body, I guess I could just turn around and ask Ron these questions but I know he's getting a little hoarse. I just want to help him get a little hoarser back here. [LB603]

SENATOR LANGEMEIER: Senator Raikes, would you yield to a question? [LB603]

SENATOR RAIKES: Yes. [LB603]

SENATOR ENGEL: You know, several years ago when I served on the school board in South Sioux City Community Schools, at that point in time, the ESUs, they handled basically nursing and accounting. And of course, they have certainly grown over the years and that is a great service to all of our schools because they've taken on a lot of the obligations that the school districts would have to do themselves and probably couldn't do as well because it wouldn't be as coordinated. The thing is, I was reading the fiscal note. The original fiscal note said there would be...that it would not increase the amount of state aid provided ESUs so it has no fiscal impact for the state. But I believe that's, is that correct, that's been updated to this latest one where it would be another \$5 million put in? [LB603]

SENATOR RAIKES: Right. It has been, Senator. The way it came out of committee, it was to fund it up to the intent level that's in the statute, student growth plus the basic

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allowable growth. And that would mean an annual funding of \$15.5 million. [LB603]

SENATOR ENGEL: Okay. Then my next question is, would that be new money or would that be reallocated from other school aid? [LB603]

SENATOR RAIKES: It would be both. The \$10 million, I believe, is what the, the \$10.8 million, is what the Appropriations Committee has in its budget now so it's... [LB603]

SENATOR ENGEL: That's correct. [LB603]

SENATOR RAIKES: ...flatlining. We're not allowing for any inflation or any student growth or anything. [LB603]

SENATOR ENGEL: Right. [LB603]

SENATOR RAIKES: So the difference between that flatlined amount and \$15.5 million, which is 4.2 or something like that, would be new funding and it would be in the second year of the biennium, not the first year. But it certainly is the case that it would be an ongoing expense unless the Legislature decided that they wanted to cut back the funding at some particular point. This formula, by the way, does work regardless of the level of funding. The committee is proposing that we employ this formula and the additional funding so that the formula actually can work and move, change the distribution of funding among the ESUs. [LB603]

SENATOR ENGEL: Well, that's what I was kind of getting at because it would be a new A bill then, another \$5 million, approximately that. And then I know a few years ago, too, we were working on basically combining or consolidating some of these ESUs. And some of them, like, they did go from 19 to 17. Is that as far as we want to go on that or...of course, the way they're distributed across the state, it doesn't look like there would be too much of a chance. But is there any thought of any more consolidation of the ESUs? [LB603]

SENATOR RAIKES: Well, it's a good question, Senator. And certainly on the metro proposal that the committee is working on now, which I sort of touched on, we'd be talking about another merger there in actually two of the bigger ESUs. But if you look, for example, on this page, you've got the ESU number 17 at Ainsworth serves 1,833 students. That's far and away the smallest number of students of any ESU. And you say, well, gosh, that certainly ought to be an ESU that we should consider merging with somebody else. But the fact is, that ESU serves a very, very large area. And you know, so you've got, for example, Lincoln. They've got 1,800 students on almost 7,000 square miles; Lincoln has got 31,500 students on 110 square miles. So you have those sorts of differences in the areas served. And I guess the other thing I would add... [LB603]

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SENATOR LANGEMEIER: One minute. [LB603]

SENATOR ENGEL: Go ahead. [LB603]

SENATOR RAIKES: One of the things that hopefully would be gained through the Coordinating Council is to the extent that some of these important services can be picked up on a statewide basis. In some sense, it may make a lot more sense to provide services at a statewide level rather than combine two ESUs within the state. So hopefully we can approach that from both angles. [LB603]

SENATOR ENGEL: Thank you very much, Senator Raikes. I turn the rest of my time back to, the 20 seconds, whatever it is. [LB603]

SENATOR LANGEMEIER: Very good. Thank you, Senator Engel. Senator Pahls, you are recognized. [LB603]

SENATOR PAHLS: Mr. President, members of the body, I do have some concerns because I'm picking up on a little bit what Senator Engel said. If we do not give additional money, then something has to happen. And maybe the reason why I keep referring back to my books here and it shows that there's several ESUs will lose money. And I'm looking at the sheet that you gave, but this is the assumption that the additional \$5 million will be there. So I have a little bit of an issue with that and I think we ought to really be, as a body, we ought to really be taking a look at that because this is, again, today, tomorrow, and the future. Senator Raikes, if I could have one more question from you. [LB603]

SENATOR LANGEMEIER: Senator Raikes, would you yield to a question? [LB603]

SENATOR RAIKES: Sure. [LB603]

SENATOR PAHLS: Okay. And I'm switching gears here a little bit because I'm just trying to...hopefully people will be reading some of this. Now the Coordinating Council would be one from each ESU, administrator... [LB603]

SENATOR RAIKES: Yes. [LB603]

SENATOR PAHLS: ...so that would be a total of 19 administrators who sit on this? [LB603]

SENATOR RAIKES: Actually 17... [LB603]

SENATOR PAHLS: Okay. [LB603]

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SENATOR RAIKES: ...we missed a couple of numbers some way or another... [LB603]

SENATOR PAHLS: Okay. [LB603]

SENATOR RAIKES: ...when we merged. [LB603]

SENATOR PAHLS: Okay, I just looked at my bottom number. Okay, let's say we have 17 administrators who will be sitting on this council. But one thing that I'm curious about, it says 1 percent of the appropriations distributed to this Coordinating Council, what would that, in dollars, what would that approximately be? I'm just... [LB603]

SENATOR RAIKES: It would be like, if it was \$15 million appropriation, that would be about \$160,000, \$155,000. [LB603]

SENATOR PAHLS: Okay, okay. So that's what the council would have as their budget, about \$150,000 you're saying. [LB603]

SENATOR RAIKES: Right. [LB603]

SENATOR PAHLS: Okay. I'm just trying to find out... [LB603]

SENATOR RAIKES: You know, the intent is, Senator, to not only give that entity an opportunity if they chose to carry on functions on a statewide basis on their own, or certainly they would have the ability to designate certain ESUs within the state to carry on those functions on a statewide basis as a contractual arrangement with them or as a designee some way or other. [LB603]

SENATOR PAHLS: Okay, okay. Then again, I'm going to just go back to the funding formula. If we do not get the additional \$5 million, you're telling me that the education units will not be losing anything. [LB603]

SENATOR RAIKES: No, Senator. If we leave the formula as is specified,... [LB603]

SENATOR PAHLS: Right, yes. [LB603]

SENATOR RAIKES: ...which is a 95 percent hold harmless,... [LB603]

SENATOR PAHLS: Okay. [LB603]

SENATOR RAIKES: ...and we fund them at the current appropriation level, \$10,832,338,... [LB603]

SENATOR PAHLS: Right. [LB603]

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SENATOR RAIKES: ...then the change in aid, and you've got several other columns there as well, change in aid and taxes per student would be the second to the last one on the...I'm not sure I've got that. Well, take the second column, the change in aid, the second column on the bottom... [LB603]

SENATOR PAHLS: Okay. [LB603]

SENATOR RAIKES: ...would show you the changes that would be made. So for ESU 3... [LB603]

SENATOR PAHLS: It would be... [LB603]

SENATOR RAIKES: ...it would be minus \$111,500, roughly. [LB603]

SENATOR PAHLS: Okay, okay. [LB603]

SENATOR RAIKES: Okay. Now what I also tried to make clear was, instead of a 95 percent hold harmless, you change that to 100 percent hold harmless. Then nobody would lose any money under this appropriation from what they had last year. But in effect, the formula wouldn't take effect because the hold harmless would trump the changes that are suggested in the formula. [LB603]

SENATOR LANGEMEIER: One minute. [LB603]

SENATOR PAHLS: Okay. [LB603]

SENATOR RAIKES: I hope I've made that clear. [LB603]

SENATOR PAHLS: Yes. Okay. Now, and I'm going to flip over to the \$15 million... [LB603]

SENATOR RAIKES: Okay. [LB603]

SENATOR PAHLS: ...that would show, and I'm just, because I'm familiar with this area, ESU 3, they would get an additional \$93,000. [LB603]

SENATOR RAIKES: That's correct. [LB603]

SENATOR PAHLS: Okay. And then if I'm in Kearney, I will get maybe \$560,000, almost half a million. [LB603]

SENATOR RAIKES: Right. [LB603]

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SENATOR PAHLS: Scottsbluff will get half a million, Ogallala will get half a million. So you actually, what we're doing is helping the--and I'm not saying that's wrong--but we're helping the ESUs from the large areas, I mean, the metropolitan areas. Is that not true? [LB603]

SENATOR RAIKES: Pardon? We're help... [LB603]

SENATOR PAHLS: Well, as I look at all these, when you get away from the metropolitan areas, that's when the money increases significantly. Wakefield, \$409,000... [LB603]

SENATOR RAIKES: I think, you know, again, keep in mind, this is... [LB603]

SENATOR LANGEMEIER: Time. [LB603]

SENATOR RAIKES: I'm sorry. [LB603]

SENATOR PAHLS: Okay, thank you. [LB603]

SENATOR LANGEMEIER: Thank you, Senator Pahls. Senator Pirsch, you are recognized. [LB603]

SENATOR PIRSCH: Thank you, Mr. President, colleagues. I was wondering if Senator Raikes would just yield for a question or two. [LB603]

SENATOR LANGEMEIER: Senator Raikes, would you yield to a question? [LB603]

SENATOR RAIKES: Yes. [LB603]

SENATOR PIRSCH: It mentions in here that, as a plan, or at least contingency, if ESUs were to merge. And you know, obviously you have worked in the field of education for many years now. Could you tell me, are there any incentives currently where ESUs, recognizing a better cost benefit any place, would be incentivized to merge? [LB603]

SENATOR RAIKES: Well, Senator, that's a good question. I guess I would say that in this proposal we go at least as far as to say we don't want the funding formula to discourage mergers. And that deals with the provision that if ESUs merge, the new ESU would be held harmless and receive at least as much as the merging ESUs for two years. So you know, again, it's an issue you run into when you decide that, look, we've got these entities or local subdivisions across the state, we need to recognize the cost of keeping the doors open. So there's an allocation that's made simply on the basis of the fact that there is an ESU there. All right, then we go, we add additional funding

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based on the number of students that are served. Well, if there is an allocation or a needs amount that's based strictly on the ESU being there, then if you merge two of them, two become one, and so there's less money available. That becomes a disincentive to merging so we try to address that by saying you're held harmless for at least two years if you merge. I don't know if that addressed your point. [LB603]

SENATOR PIRSCH: No, I appreciate that. That did indeed. I was just wondering if, you know, obviously two years, that would create incentive for those two years, but after that point in time I imagine that disincentive would still exist. I would yield the balance of my time to Senator Raikes, if you wanted to discuss the matter further. [LB603]

SENATOR RAIKES: Okay, thank you, Senator Pirsch. [LB603]

SENATOR LANGEMEIER: Two, thirty. [LB603]

SENATOR RAIKES: Let me just finish up a point with Senator Pahls. If you go to the \$15.5 million side of this long sheet, you look in the far right-hand corner, the third and fourth columns from the right-hand side give current aid and taxes per student in ESUs. That would be aid and taxes under the current formula. The next one to the right of that gives aid and taxes per student under the model. You can see by the bottom line on this appropriation that the total amount per student increases from \$101 per student to \$117.50 per student. And it gives you, for each ESU, how much the aid and taxes per student would be for each ESU. And I would encourage you to look at that column rather than just the aid column. Because keep in mind that this is an equalization formula. So we're talking about not only the state aid money available per student, but also the property tax money available per student. And this reflects, I think, the construction of the needs up here where we're taking into account the sparsity of students. And another point is satellite offices, the need for satellite offices... [LB603]

SENATOR LANGEMEIER: One minute. [LB603]

SENATOR RAIKES: ...and the required funding for those satellite offices which, by the way, also makes it possible or makes it more feasible to merge ESUs. The fact that you've got remote offices for the ESU that serves students in those remote areas makes it much more feasible to bring ESUs together. But considering all those things together, I think the real evaluation you need to consider in looking at how this formula would change things is reflected in those two columns, again, the bottom right, the third and fourth columns from the end, and you can compare those columns with what we would do if we kept the current formula, current appropriation, and the 95 percent hold harmless, which is on the other side of that page. Thank you. [LB603]

SENATOR LANGEMEIER: Thank you, Senator Raikes and Senator Pirsch. Senator Ashford, you are recognized. [LB603]

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SENATOR ASHFORD: Just very briefly, Mr. President, I rise to support the amendments and the bill. In my years in the Legislature before, this was an ongoing issue as how we were going to fairly and equitably distribute state aid to school districts, ESUs, and other entities, educational institutions. And I am pleased that the Education Committee has, with Senator Raikes leading us, has come up with a formula which will have longstanding impact on ESUs and school districts. I also want to pick up on something that Senator Raikes just said. And what's compelling to me is the concept of merging ESUs. Certainly that's something we're talking about in the Omaha metropolitan area. It is, I think, a very powerful idea, clearly in the urban areas, where the services provided by ESUs will be expanding. It is imperative, I think, that we bring together, and collaboratively, these kinds of services so that they can be more efficiently administered. We have unique problems in the urban areas and there are unique problems in the rural areas. And giving flexibility in the formula and providing the hold harmless, I think, is an effective way to encourage ESUs to look at ways to become more efficient, provide better services, and work more closely together. So I admire Senator Raikes and his team and the team in the Education Committee for all the hard work that they have put in over the years on the issue of equalization. It's a better way to go, it's a fair way to go, it's clearly more equitable, and treats everyone the same. And I think that, at the end, in all this sort of thing, that's what we're trying to reach, that kind of a goal. So thank you, Mr. President. I support the amendments and the bill. [LB603]

PRESIDENT SHEEHY PRESIDING [LB603]

PRESIDENT SHEEHY: Thank you, Senator Ashford. Senator Raikes. [LB603]

SENATOR RAIKES: Thank you, Mr. President. I'll use this opportunity to close if there are (inaudible). [LB603]

PRESIDENT SHEEHY: Senator Pirsch. [LB603]

SENATOR RAIKES: Oh, okay. Then I'll just remind you quickly of what we're talking about on the current amendment, and that is to add to the list of entities that are to be audited, subject to audit, and subject to the Budget Act: the Educational Service Unit Coordinating Council, any entity created pursuant to the Interlocal Cooperation Act which includes either the participation of the Education Coordinating Council or any ESU, educational service unit. So those entities would be subject to audit and they would also be subject to the Budget Act, meaning that they would need to provide a budget to the Auditor's Office and do the things that are normally required of local subdivisions. So thank you. [LB603]

PRESIDENT SHEEHY: Thank you, Senator Raikes. Senator Avery, followed by Senator Pirsch. [LB603]

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SENATOR AVERY: Thank you, Mr. President. I'm a member of the Education Committee and we've worked on hard on this and many other issues. I think that it's important to point out that the most compelling arguments for approving this bill and the amendment, AM940 and AM754, are two, two arguments. First of all, these amendments and the main bill create an equalized formula for the first time to apply to ESUs. This is important because school funding currently provides a mechanism for state aid to schools whose needs exceed their funding resources. This mechanism has not previously been available to ESUs. This bill would do that. And that is something that you should value. I would note that when the bill and its various components were before the Education Committee, no one spoke against it. I would also point out that my own district will be the only one to lose money. And that gave me a little heartburn at first. But I've talked with Lincoln, LPS representatives, and they are willing to accept that because they recognize the value of equalization being applied to ESUs. The second compelling reason why we ought to pass this is that it incorporates the recommendations that were produced in the interim study last year. A lot of work went into that. I was not around at that time, of course, but I do understand the kind of work that goes into interim studies. And I believe that we should value that and include those provisions in this bill. Senator Raikes has worked very hard on this. He might be the only one that understands it in all its details. I suppose that we have to give him some credit for that. I don't claim to understand all the details. I do understand a little bit about the education funding formula. I'm learning more every day. And if you have any technical questions, don't ask me, please. Ask Senator Raikes. Thank you. [LB603]

PRESIDENT SHEEHY: Thank you, Senator Avery. Senator Pirsch. [LB603]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I was wondering if Senator Raikes would yield to another question. [LB603]

PRESIDENT SHEEHY: Senator Raikes, would you yield for a question? [LB603]

SENATOR RAIKES: Yes. [LB603]

SENATOR PIRSCH: With respect to the creation of this Educational Service Unit Coordinating Council, again, how would that be composed, the membership that is? [LB603]

SENATOR RAIKES: Senator, the membership would be each ESU administrator. [LB603]

SENATOR PIRSCH: So 17 in total then, correct? [LB603]

SENATOR RAIKES: Yes. [LB603]

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SENATOR PIRSCH: And what is the intended purpose or how would this better the performance of the duties of the ESU? In what way would it add to the equation? [LB603]

SENATOR RAIKES: It's a good question, Senator. It has its basis currently in the Distance Education Council, which is the 17 ESU administrators coordinating the efforts in distance education. This proposal would basically expand the scope of that unit or entity to include other potential, other functions that could be handled on a statewide basis. And I will tell you that you also have precedent there. There is, for example, one of those functions is a cooperative purchasing arrangement that ESUs have used for a number of years whereby they buy certain, oh, supplies, I think, maybe paper and things of that nature. And they do it as a cooperative because they can take advantage of the power of a large purchase. And up to now, that has had to be handled through an interlocal arrangement rather than through an entity such as this that is clearly recognized and with some funding to carry out those sorts of activities. My suspicion, at least, is that there may well be a number of those types of functions that could be done on a statewide basis, particularly given the fact that the whole notion of ESUs is that they provide services to school districts that are generally in the category of services that it doesn't make sense for an individual school district to supply themselves, so that there is scale advantage that is recognized in this sort of an operation. [LB603]

SENATOR PIRSCH: Thank you very much for the answer. I guess, certainly there's an advantage when you have components like that to scale. I guess my question is, has there been a problem or certain areas identified where the scale could not be achieved through the interlocal agreements that are already available? I guess the question is, anytime that you set up a separate entity, there's the possibility of, you know, fixed overhead costs that would detract, if it is possible, to take care of the goals through interlocal agreement. Is it such that that would not be possible in this particular case, given the particular goals looked at? [LB603]

SENATOR RAIKES: Given that we're moving from the Distance Education Council to this Coordinating Council, we're not creating a separate unit. I mean, the unit already is in existence. So the notion of a separate overhead, if you will, is thereby diminished. I guess the other thing I would point out is that I think the statute, as it's proposed here, offers a great deal of flexibility. So that if this group found that there were ways... [LB603]

PRESIDENT SHEEHY: One minute. [LB603]

SENATOR RAIKES: ...that they could take advantage on statewide purchases, for example, of software, whatever it else is they might like to purchase, they could do it. If they chose instead not to do that, then that would be within what would be allowed.

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[LB603]

SENATOR PIRSCH: Thank you. I'll yield the balance of my time to the senator. [LB603]

PRESIDENT SHEEHY: Senator Raikes. [LB603]

SENATOR RAIKES: Thank you, Senator Pirsch. Just to expand on that a little bit, I believe that there are, not only potentially, now a number of services where there exists an advantage of going to a statewide base, but there are likely to be more and more as we get into the future, particularly given the fact that ESUs are the harbors, if you will, of a lot of the technological services used by school districts. As the technology expands in all the areas that it does expand... [LB603]

PRESIDENT SHEEHY: Time, Senator. [LB603]

SENATOR RAIKES: Thank you. [LB603]

PRESIDENT SHEEHY: Senator Fulton. [LB603]

SENATOR FULTON: Thank you, Mr. President. Would Senator Raikes yield to a question? [LB603]

PRESIDENT SHEEHY: Senator Raikes, would you yield to a question? [LB603]

SENATOR RAIKES: Yes. [LB603]

SENATOR FULTON: Senator, the...well, first of all, this amendment particularly is with regard to the auditing of the Coordinating Council. And I'm going to be all in favor of that. I would like to have...could you explain a little bit more of what the Coordinating Council does? Well, first of all, I would like to ask, in your...this long sheet model that you've provided, the appropriation minus 1 percent, that 1 percent, am I understanding correctly, that goes within your formula to the Coordinating Council, correct? [LB603]

SENATOR RAIKES: That is correct, Senator. [LB603]

SENATOR FULTON: Okay. Could you explain a little bit more what the Coordinating Council does? [LB603]

SENATOR RAIKES: Again, the Coordinating Council now--it is in place now, it's the Distance Education Council, but it is the same entity--and under this proposal, the function of coordinating distance education would be subsumed under this new council. So right now, if it were formed and this group met and decided to do nothing else, they would coordinate distance education in the state, which I think is a good indicator of the

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kinds of things that such a statewide base would be particularly useful for. It doesn't make a lot of sense, if you want to really provide a flat state technologywise so that any school district can reach any other state through a course work exchange, that you require several different governmental entities to be involved in each one of those. It makes more sense to say, okay, we're going to approach this from a statewide basis. Much the same, I believe, is the case if, for example, there is agreement that a particular payroll package makes sense for school districts in Nebraska generally so let's provide that, let's acquire the rights to that software one time at one place and then allow everybody to use it. Or, you know, it may well be that there are three or four software payroll packages so that the council could make the decision that we're going to act as the mass purchaser for those three or four for those, whoever wants to do them. Simply, the idea is there are functions performed by ESUs that make sense to be provided on a statewide basis, not all of them, but there are some of them and we ought to allow an opportunity for the efficiency and advantage of that to occur. [LB603]

SENATOR FULTON: The Coordinating Council, there is a specific coordinating council for each ESU, correct? [LB603]

SENATOR RAIKES: No, no. [LB603]

SENATOR FULTON: Okay. [LB603]

SENATOR RAIKES: There would be one ESU Coordinating Council statewide, that's the statewide platform. So the 17 ESU administrators would be the council itself and they would act for the ESUs on a statewide basis. [LB603]

SENATOR FULTON: Okay, that makes more sense. Thank you. And this may be more appropriate matter for the bill itself, but I'll take this opportunity. If you could explain a little more, with the LB603 model, the appropriation will increase approximately \$5 million. Could you give some indication as to how that appropriation might increase in the future if LB603 were adopted? [LB603]

SENATOR RAIKES: Well, that's a good question, because this model, as it's constructed, does not require a state appropriation of a certain amount. An important distinction is it's not like the TEEOSA formula in state aid whereby you calculate needs and there's an obligation of the state to provide that needs amount. This model, on the other hand, takes the amount appropriated by the state... [LB603]

PRESIDENT SHEEHY: One minute. [LB603]

SENATOR RAIKES: ...and distributes among the ESUs. [LB603]

SENATOR FULTON: Okay. There's no, within the...where I've had some question was

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in the 85 percent distance education part of the formula. That isn't open-ended? That's not based solely on need? That's something that is 85 percent of the appropriation? [LB603]

SENATOR RAIKES: Yes, that's an allowance. And so what you do is, in this sort of a formula, is you basically say the state is going to appropriate whatever amount it is, \$15 million or whatever amount. We are going to use this formula to distribute that amount. Now if the state decides they're only going to do \$11 million, then this formula will distribute that amount. The specific characteristic of this formula, the way it's constructed at the moment, is that there's a 95 percent hold harmless so that if you, given that in place, if you make the... [LB603]

PRESIDENT SHEEHY: Time, Senator. [LB603]

SENATOR RAIKES: I'm sorry. [LB603]

SENATOR FULTON: Thank you. [LB603]

PRESIDENT SHEEHY: Thank you. Further discussion on AM940? Seeing no further lights on, Senator Raikes, you're recognized to close. [LB603]

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. Again, I'll refer back to this particular amendment, which is brought to us by the Auditor's Office and suggests that the educational service unit or any interlocals or any ESUs in dealing with them would be subject to auditing and subject to the Budget Act. I neglected to mention, and should have, that the committee, the Education Committee, did a lot of work on this. They went to the trouble of understanding what we're trying to do here and contributed greatly in the product that's here. So they certainly should be recognized for their efforts in this regard. With that, I will ask your support of this amendment. Thank you. [LB603]

PRESIDENT SHEEHY: Thank you, Senator Raikes. You've heard the closing to the amendment to the committee amendment. The question before the body is, shall AM940 be adopted to the committee amendment? All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB603]

ASSISTANT CLERK: 34 ayes, 0 nays on the adoption of Senator Raikes's amendment to the committee amendments. [LB603]

PRESIDENT SHEEHY: AM940 is adopted. Next amendment, Mr. Clerk? [LB603]

ASSISTANT CLERK: Senator Harms would offer AM1075 to the committee amendments. (Legislative Journal page 1234.) [LB603]

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PRESIDENT SHEEHY: Senator Harms, you're recognized to open on AM1075, amendment to the committee amendment. [LB603]

SENATOR HARMS: Thank you, Mr. President and colleagues. I rise to support LB603. I think that the formula that Senator Raikes is asking for and the change in the dollar distribution is extremely important to what happens to our public school system and the assistance the ESU unit brings forward. I believe also that in rural America, ESU units will be called upon to do more in the future. And I think it's extremely important that we keep them healthy. LB603 does not take effect until '08-09 fiscal year. And this causes somewhat of a problem in '07-08 fiscal year for ESU unit 13. That ESU unit is in my district; part of it is in my district, part of it is in Senator Louden and Senator Erdman's district. And I would like to address that in this amendment. ESU unit does support LB603, they're just worried about how they're going to fill the gap between when this bill kicks in and the amount of funding for their core that they now have. For the past two years, ESU unit has received a total of \$693,880 for their core services. This helped them with their infrastructure and allowed them to use this money to provide the required services that are identified in the statute. This amount of money simply has not been enough to cover the cost for ESU unit 13 and they've had to take out of their general fund over the last two years an additional \$100,000. Projected for '07 and '08 for ESU unit is \$525,000. That is a net loss of about \$170,000, and by the time they have to use their general fund again that's a loss of about \$270,000. And that's their shortfall. When I first started to look at this and decided I wanted to know a little more about it, I took a look at their budget to see if there's any room in that budget. And what I found is that 10 percent of their budget is derived from the property levy, 10 percent comes from federal and state, and 80 percent comes from contracted services. And so therefore, approximately 90 percent of their dollars is fixed. They don't have much room to adjust this particular area. When I talk about contracted services, I didn't quite understand it. And that's where they contract the public schools for providing special ed services, speech pathology services, the VALT program, which is alternative schools, and the list goes on of the core that they provide. Currently in 79-1241, as you heard Senator Raikes talk about, there's a hold harmless clause in that provision which was designed to help with the merger, to encourage mergers taking place in ESU units, to make sure that they would be covered in their core costs for two years. That was enacted in 2003. In fact, that was LB53, which was sponsored by Senator Smith, Senator Erdman was a part of that, and Senator Raikes was a part of that, to encourage the mergers to take place. My amendment simply does this: it simply extends the hold harmless clause for that particular area or others that might want to do this from two years to three years; picks up that \$170,000 that they lose. I think it's extremely important. In fact, this ESU unit is the only one that has merged with any other ESU units. It has merged with ESU unit 12. It has merged with ESU unit 14. The only one in the state of Nebraska that did exactly what Senator Raikes asked and this body asked previously for them to do. In fact, when you study ESU units across the nation, it's one

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of the only few that has moved forward and done exactly what they should have done. And I want to make sure that we don't penalize them for streamlining and trying to be more cost-effective for the operations of this particular area. As we look in the future, when the STARS program testing comes forward in another bill that I think will hit this floor soon, we'll be asking for the ESU units to even do more. ESU units in rural America are going to be critical. When you see the declining number of children coming into the marketplace of these schools, the ESU units are our only hope to provide that core service, whether it be technology, whether it be staff development, whether it be for special ed, speech pathology, alternative schools. The list goes on and I just want to make sure that we don't penalize them for this, that we encourage them, and that we show the other ESU units, quite frankly, that if you do what we ask you to do, if you look at trying to streamline your cost and come together, we'll help you; we won't penalize you for doing this. And so I would ask, colleagues, that you support this amendment. It's \$170,000 and I would appreciate your support. Thank you, Mr. President. [LB603]

PRESIDENT SHEEHY: Thank you, Senator Harms. (Visitors introduced.) You've heard the opening to the amendment to the committee amendment, AM1075. The floor is now open for discussion. Senator Raikes, followed by Senator Carlson. Senator Raikes. [LB603]

SENATOR RAIKES: Thank you, Mr. President, members. I support Senator Harms's amendment. We've talked a little bit before in the discussion about the mergers of ESUs and the incentives or disincentives that are allowed. Given the particular way this formula would be implemented, his amendment fits in well. He's basically saying we should have that hold harmless, for that fixed amount that you get for being a separate ESU, for three years instead of two years. And again, I support that. I would also mention that one of the other provisions in the needs calculation that is, I think, important in the sense of at least facilitating mergers, there's no requirement for mergers, but that is recognizing and thereby encouraging the establishment of satellite offices. Satellite offices are recognized and funded separately in this needs calculation. If you think about that for a second, one of the big disadvantages or disincentives to form or to merge ESUs would be a situation in which, well, gosh, if we merge with ESU now, we go 100 miles to get to the ESU; if we merge, we'd have to go 300 miles. If that ESU, on the other hand, has and maintains satellite offices so that...and is appropriately funded for having those satellite offices, it takes away that argument against a merger; that if we merge the organization of the ESU, it doesn't mean that the ESU building that we have been going to is going to go away. It will still be there, so we will not be burdened with extra travel time or extra distance in getting those ESU services. So again, we're certainly...certainly the Harms amendment makes the proposal more merger-friendly. And I would just also encourage you to consider that the creation and...not creation of, but recognition of satellite offices and the costs of satellite offices also makes it merger-friendly. Thank you. [LB603]

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PRESIDENT SHEEHY: Thank you, Senator Raikes. Senator Carlson. [LB603]

SENATOR CARLSON: Mr. President, members of the Legislature, I have a question concerning AM1075 and would like to address that question to Senator Harms. [LB603]

PRESIDENT SHEEHY: Senator Harms, would you yield for a question? [LB603]

SENATOR HARMS: Yes, I would. [LB603]

SENATOR CARLSON: Senator Harms, I know a little bit about your background in education and know that you have a thorough understanding of the needs and know how to prioritize. And I know that, having served on the Appropriations Committee, you have concerns there. And this is \$170,000 appropriation, additional, that is requested. Is that true? [LB603]

SENATOR HARMS: That's correct. [LB603]

SENATOR CARLSON: I would just ask, are the dollars there or would there be an area or areas that must have an appropriation reduction in considering your amendment? [LB603]

SENATOR HARMS: Senator Raikes can correct me if I'm wrong, but I assume that this simply would be divided up among the other ESU units when they're funded, the \$170,000. So you might want to also refer that to Senator Raikes to make sure that's correct. That's as I understood that when we did this. There would not be A bill trailing with this, that it would be assumed in the system that they already have. [LB603]

SENATOR CARLSON: Okay, thank you, Senator Harms. [LB603]

SENATOR HARMS: Yes. [LB603]

SENATOR CARLSON: And with that, I'd like to address a question to Senator Raikes. [LB603]

PRESIDENT SHEEHY: Senator Raikes, would you yield for a question? [LB603]

SENATOR RAIKES: Yes. [LB603]

SENATOR CARLSON: Senator Raikes, did you hear my question to Senator Harms? [LB603]

SENATOR RAIKES: I'm sorry, I didn't, Senator. [LB603]

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SENATOR CARLSON: Pardon? [LB603]

SENATOR RAIKES: I'm sorry, I didn't hear it. [LB603]

SENATOR CARLSON: Okay. This \$170,000 appropriation, Senator Harms indicated it was probably accounted for in the present appropriation and, if so, would you agree with that? [LB603]

SENATOR RAIKES: I think what he's referring to is the per ESU allocation. And the distribution formula takes the total amount appropriated for ESUs and divides it up first on the basis of so much per ESU. And then after that, divides whatever is left on a per student basis and allocates strictly on a per student basis. So I don't know if that addresses your question, but that's the way the current arrangement works. [LB603]

SENATOR CARLSON: Well, I'm wanting to support the amendment. But I just have a question because I'm looking at your other long sheet that you put out that's got a lot of figures in there and difficult to digest. But is the adjustment to this additional \$170,000 going to change the figures on your long sheet for other ESUs? [LB603]

SENATOR RAIKES: That's a good question, Senator, and it would a little bit. Yeah, and I mean, a couple of things...the information you have here is based on the most recent past data we have available. This would go into the future so obviously we've got different numbers because of that, if that's clear. But yes, if you're going to change...well, actually I'm going to have to think about this as I'm talking. I apologize for that. But in effect, right now if you have 17 ESUs, you've got a base allocation for each one of those 17 ESUs. And what Senator Harms is suggesting, that instead of keeping that base allocation the way it is for two years in the event of a merger, it would actually be kept in place three years. So in effect, it would change it less rather than change it more, looked at from that viewpoint. [LB603]

SENATOR CARLSON: Okay. And with your answer, I'm taking that you're saying this is a little easier to digest than maybe I thought. [LB603]

SENATOR RAIKES: Oh, absolutely. This is... [LB603]

SENATOR CARLSON: Okay, I heard a little bit in there, too. Thank you... [LB603]

PRESIDENT SHEEHY: One minute. [LB603]

SENATOR CARLSON: ...Senator Raikes. (Laughter) [LB603]

PRESIDENT SHEEHY: Further discussion on AM1075? Senator Fulton. [LB603]

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SENATOR FULTON: Thank you, Mr. President, members of the body. Would Senator Raikes yield to another question, please? [LB603]

PRESIDENT SHEEHY: Senator Raikes... [LB603]

SENATOR RAIKES: Yes. [LB603]

PRESIDENT SHEEHY: ...would you yield to a question? [LB603]

SENATOR FULTON: The...I think I'm understanding this but I want to be clear. Your formula will work whether or not...your formula will apply, if we move this forward, regardless of the appropriation amount. Is that a correct statement? [LB603]

SENATOR RAIKES: That is correct. [LB603]

SENATOR FULTON: Okay. With this amendment, AM1075, whether or not it's actually \$170,000 is going to be somewhat dependent on what the appropriation is. Is that correct? [LB603]

SENATOR RAIKES: Well, whatever the appropriation is, the formula, with Senator Harms's amendment, would make that provision work. And the essence of that provision is that merged ESUs would be held harmless for three years instead of two. [LB603]

SENATOR FULTON: Okay. So that, Senator Harms utilized the figure \$170,000, that is a figure which is specific to a given appropriation, correct? Because if the appropriation changed and we're basing this on percentages, then \$170,000 wouldn't be the precise number. [LB603]

SENATOR RAIKES: That's correct. [LB603]

SENATOR FULTON: Okay. [LB603]

SENATOR RAIKES: It's, the appropriation is the driver rather than the \$170,000. [LB603]

SENATOR FULTON: Okay. Thank you, Senator Raikes. Thank you, Mr. President. [LB603]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Further discussion on AM1075? Seeing no lights on, Senator Harms, you're recognized to close. [LB603]

SENATOR HARMS: Thank you, Mr. President and colleagues. I would just thank you

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very much for the discussion and I would urge you to support this amendment. I think it's important and it will also encourage other ESU units in the future to look at merging because I believe that's what we're going to probably have to do. Thank you very much. [LB603]

PRESIDENT SHEEHY: Thank you. You've heard the closing to the amendment to the committee amendment. The question before the body is, shall AM1075 be adopted to AM754? All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB603]

ASSISTANT CLERK: 31 ayes, 0 nays on the adoption of Senator Harms's amendment to the committee amendments. [LB603]

PRESIDENT SHEEHY: The amendment to the committee amendment, AM1075, is adopted. We will now return to the committee amendment from Education, AM754. Anyone wishing to speak on this item? Senator Nelson. [LB603]

SENATOR NELSON: Mr. President, members of the body, I have a question or two for Senator Raikes, if he would yield. [LB603]

PRESIDENT SHEEHY: Senator Raikes, would you yield for some questions? [LB603]

SENATOR RAIKES: Yes. [LB603]

SENATOR NELSON: Senator Raikes, I've had my adding machine out here, and I've gone across subtracting and adding, and I think I've figured out pretty much what all the columns in your table are, but if you will look at the LB603 model under the \$10 million current appropriation and go down to line 3, I guess that's ESU for Omaha,... [LB603]

SENATOR RAIKES: Right. That would be ESU 3, which includes not OPS but all the other school districts. [LB603]

SENATOR NELSON: All right, okay. Moving over to the final three columns there, the third line down, total needs, a little bit over \$4 million; the total aid, slightly over \$2 million. Then you come up with a \$1,198,047 for hold harmless, and I'm not able to figure out how you arrive at that. Is there...is that a percentage of some other figure for that \$1,198,047 that they would be held harmless for? You understand my question? [LB603]

SENATOR RAIKES: Right. I do. So if you looked at total model aid under the current formula, that if you added total model aid and the hold harmless, you would come up to 95 percent of what they had the previous year. [LB603]

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SENATOR NELSON: But does that take us down to the lower lines, then, when we're looking...where is the total model? Yeah, I see that. That's \$2 million, \$2,116,970; is that correct? [LB603]

SENATOR RAIKES: Say that again, if you would please. [LB603]

SENATOR NELSON: It's the total model aid for...on that line is \$2,116,970. [LB603]

SENATOR RAIKES: Right. [LB603]

SENATOR NELSON: Is that what you're referring to? [LB603]

SENATOR RAIKES: Yes, and I had that wrong. I'm told that in order to get to the...to 95 percent of what you needed...or what they received last year, you...well, just one second. [LB603]

SENATOR NELSON: The current aid is \$2,228,000. [LB603]

SENATOR RAIKES: Oh, I...let me just correct. I see now what my error was. The total model aid is 95 percent of what they got the year before, and in order to get to that amount, you had to add \$1,190...the right column, into the calculation. [LB603]

SENATOR NELSON: All right. So I guess the total current aid, \$2,226...you apply 95 percent to that and you come up with the total model aid. Is that what you're saying, \$2,116,000? I'm just guessing that would be about... [LB603]

SENATOR RAIKES: Let me, if I might, Senator. The total needs calculation for ESU 3 would be \$4,180,000. [LB603]

SENATOR NELSON: Right. [LB603]

SENATOR RAIKES: Their yield from their local effort rate would be \$3,261,000. [LB603]

SENATOR NELSON: All right. [LB603]

SENATOR RAIKES: Okay, so if you subtracts needs...resources from needs, that would give you about \$900,000, roughly. I don't have...it isn't listed here, but I mean, just do that subtraction. [LB603]

SENATOR NELSON: All right. [LB603]

SENATOR RAIKES: And then you need to add \$1.1 million to that in order to get up to the \$2,100,000, and that would be 95 percent of what they had the year before. [LB603]

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SENATOR NELSON: All right. Okay. I understand how that is arrived at. Thank you very much, Senator. [LB603]

SENATOR RAIKES: Okay. [LB603]

SENATOR NELSON: Mr. President. [LB603]

PRESIDENT SHEEHY: Thank you, Senator Nelson. (Visitors introduced.) Senator Pahls, followed by Senator Fulton. Senator Pahls. [LB603]

SENATOR PAHLS: Mr. President, members of the body, may I have a question or two with Senator Raikes? [LB603]

PRESIDENT SHEEHY: Senator Raikes, would you yield for some questions? [LB603]

SENATOR RAIKES: Yes. [LB603]

SENATOR PAHLS: As you know, I still have an issue with the formula, and just for a little bit more clarification, if nothing happens, if there's no additional appropriations, if I'd look at ESU 3 and if I look at ESU 19, they will lose. If I'm looking at your information on ESU 3, on the \$10 million appropriation, ESU 3 will lose \$111,000, and ESU 19 will lose \$80,000. Am I reading that correctly? [LB603]

SENATOR RAIKES: You are, and also keep in mind, now, you've got a 95 percent hold harmless in here. And so you see the 5 percent over there? [LB603]

SENATOR PAHLS: Okay. [LB603]

SENATOR RAIKES: That reflects that 95 percent hold harmless. [LB603]

SENATOR PAHLS: Okay. The reason why I'm still having some problems with this is, as I look in the book and on the fiscal note, I see different figures. Is this the more updated; is that what you're telling me? As I look at... [LB603]

SENATOR RAIKES: I can't do that. Go ahead, I'm sorry. [LB603]

SENATOR PAHLS: As I look in here it says ESU 3 will lose \$471,000 and ESU 19 will lose \$134,000. [LB603]

SENATOR RAIKES: Yeah, I think that you were right in your suspicion that this is an updated version, and that was prior to a hold harmless being put in, so that's what the hold harmless does. [LB603]

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SENATOR PAHLS: Okay, okay. I just...thank you. That's what I needed--clarification. [LB603]

SENATOR RAIKES: Um-hum. [LB603]

PRESIDENT SHEEHY: Senator Fulton, followed by Senator Pirsch. Senator Fulton. [LB603]

SENATOR FULTON: Thank you, Mr. President. Would Senator Raikes yield to a question? [LB603]

PRESIDENT SHEEHY: Senator Raikes, would you yield for a question? [LB603]

SENATOR RAIKES: Yes. [LB603]

SENATOR FULTON: The...when you were explaining to Senator Nelson, and just by...of course, I'm most interested in ESU 18, but you were explaining, based on ESU 3, the math behind the hold harmless in total aid, that far right-hand column, so I'll stick with that example, so as not to confuse this. Would you explain again? This is...the hold harmless figure needs to be added to the total model aid in order to equal the 95 percent figure. Is that what I heard you say? [LB603]

SENATOR RAIKES: Yes. If you take and look at the line for ESU 18,... [LB603]

SENATOR FULTON: Okay. [LB603]

SENATOR RAIKES: ...if you add...okay, the total model aid column is a 95 percent of current aid. I don't want to be too confusing, but go down on that same page, go down to the bottom chart and look at the first column under 18, Lincoln--\$1,133,000-some dollars. [LB603]

SENATOR FULTON: Right. [LB603]

SENATOR RAIKES: Ninety-five percent of that is \$1,076,000 that you find in the second from the right column on that top section. [LB603]

SENATOR FULTON: Okay. [LB603]

SENATOR RAIKES: Okay? Now if you take the total needs calculation for Lincoln and subtract off the yield from the local effort rate, which is the resource available, you have \$2.2 million minus \$1.8 million, okay? And that's roughly \$400,000 or something like that. [LB603]

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SENATOR FULTON: Right. [LB603]

SENATOR RAIKES: You add \$715,000 to that \$400,000, and that gives you the total model aid of \$1,076,000. So we're coming from the calculated model aid under the new formula to a number that Lincoln would get because of the hold harmless provision, if that makes sense. [LB603]

SENATOR FULTON: Okay, so that...the actual...the fixed figure is total model aid, and that's calculated by 95 percent of total current aid. [LB603]

SENATOR RAIKES: Yes. [LB603]

SENATOR FULTON: The hold harmless is the variable here. This is what we're actually... [LB603]

SENATOR RAIKES: Yeah, the hold harmless is how much you had to bump the calculated aid, or the new model...or the aid that would have been calculated in the new model without the hold harmless, in order to get up to that hold harmless amount. [LB603]

SENATOR FULTON: Okay. That's...thank you. That's much...that makes it clearer. The...and, Senator Raikes, the total needs calculation that's being performed here, that is found in the committee statements? There's a pretty good summary that I've been following in the committee statement that delineates the equations. Those equations are applied to find total needs; am I following? Am I tracking? [LB603]

SENATOR RAIKES: That's right. You're right on both counts. That's correct, and also that is, I think, a very good statement in the committee statement, is exactly how that's put together. [LB603]

SENATOR FULTON: Okay. I may not ask here, but I...maybe, as we move forward on the bill, some more explanation about how the sparsity adjustments and...how these equations are found, so... [LB603]

PRESIDENT SHEEHY: One minute. [LB603]

SENATOR FULTON: ...prepare yourself, I guess (laugh). [LB603]

SENATOR RAIKES: Okay, I'll do that. Thank you. [LB603]

SENATOR FULTON: Thank you, Mr. President. [LB603]

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PRESIDENT SHEEHY: Thank you, Senator Fulton. Senator Pirsch. [LB603]

SENATOR PIRSCH: Thank you, Mr. President, colleagues. Just a...I hate to...I'm sure your voice has run out back there, Senator Raikes, and actually, I'll, I guess, while you're...well, would Senator Raikes yield to a quick question? [LB603]

PRESIDENT SHEEHY: Senator Raikes, would you yield? [LB603]

SENATOR RAIKES: Yes. [LB603]

SENATOR PIRSCH: The .95, or the 5 percent factor, quotient, that would run in perpetuity, correct? [LB603]

SENATOR RAIKES: Yes. This bill...the way the bill is drafted, that does continue, so that it's...I think what you're getting at, Senator, is that suppose you had an ESU that was way over funded currently, as compared to what would be proposed in this formula. [LB603]

SENATOR PIRSCH: Um-hum. [LB603]

SENATOR RAIKES: The first year of the formula they'd be held at 95 percent of what they got the previous year. The following year they would be held at 95 percent of the amount they got the previous year, so it would be 95 percent of 95 percent of 95 percent. So the hold harmless amount, if there were a flat appropriation, for example, would continually go down. [LB603]

SENATOR PIRSCH: Okay, so the movement, though it may be in longer periods of spans measured, might be quite acute, the year-to-years drops, as it were, would be somewhat mitigated. [LB603]

SENATOR RAIKES: Well, I'm advised, Senator, I misspoke. It's actually...I think there's a five-year period in which you have that hold harmless at 95 percent. But keep in mind now that, depending...it depends, as you recognize, on the level of the appropriation. If you have the appropriation, as is shown on the other side, \$15.5 million, then only one ESU of the 17 would be funded at a lower level than what they were, or what they are in the current year, and that would be only by less than 1 percent. [LB603]

SENATOR PIRSCH: You're saying if the funds were to stay at the current appropriation of, for example, \$10,832,338, as reflected on the handout, that only one school district would then end up with a lower appropriation? [LB603]

SENATOR RAIKES: No, actually I was talking about the other side of that sheet. [LB603]

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SENATOR PIRSCH: Oh, I'm sorry. [LB603]

SENATOR RAIKES: If you had the higher appropriation, there would be only one ESU, that would be 18, that would be funded at a rate lower than what they are in the current year, and that would be only by less than 1 percent, actually, 1 percent of aid. In terms of the aid plus taxes, it would be 30 cents a student or something like that. [LB603]

SENATOR PIRSCH: Um-hum. And again, the current formula is...the pie is kind of allocated on what type of a basis, then? Is that... [LB603]

SENATOR RAIKES: It's not equalized. It doesn't take into account how much property taxes are available to support the ESU locally. It doesn't take into account sparsity. It doesn't take into account the existence of satellite operations and so on. So this formulation makes those significant changes. It's equalized and it also, I believe, reflects much more accurately the costs incurred... [LB603]

PRESIDENT SHEEHY: One minute. [LB603]

SENATOR RAIKES: ...by ESUs in providing the services. [LB603]

SENATOR PIRSCH: Just generally, conceptually, are those... you've mentioned three factors, that property taxes are unequal in certain areas, satellites, and sparsity. Are those the only three components, and are they, in this new formula, equally weighted then? [LB603]

SENATOR RAIKES: No. You know, hopefully that's spelled out for you in that top section. We've got, you know, the descriptions of the ESUs, the number of students, the number of square miles that need to be covered in order to serve those students,... [LB603]

SENATOR PIRSCH: I see. [LB603]

SENATOR RAIKES: ...square miles per student, and a sparsity factor that is derived from that. And for example, if you look at that, you see Ainsworth, number 17, has a sparsity factor of 1.38; whereas Omaha has a sparsity factor of 1.002. So there's a great difference, as you would expect. [LB603]

PRESIDENT SHEEHY: Time, Senator. [LB603]

SENATOR PIRSCH: Thank you. [LB603]

PRESIDENT SHEEHY: Further discussion on AM754? Seeing no lights on, Senator

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Raikes, you're recognized to close. [LB603]

SENATOR RAIKES: Thank you, Mr. President and members. I really appreciate your efforts to wade through this and understand what's going on. I would again try to highlight what I think are the significant changes being made by this, particularly in the funding formula. Equalization is perhaps number one. Equalization, in my view, is the appropriate way for the state to fund local subdivisions. It is most efficient, and it is most equitable. In doing an equalization formula, you need to concentrate very firmly on what are the actual costs that the subdivision must incur in order to provide the services. We attempt to do that here. This particular formula is subject to the appropriation of the Legislature; it's not the other way around. This does not tie the hands of the Legislature or demand a specific appropriation. It simply says whatever the appropriation is, it will be allocated accordingly. So those are the key functions or the key components, I think, of the funding formula. The other provisions of the bill are maybe less difficult to understand, but I think...and I think also very important, we need to specify clearly how we establish ESU boundaries. That's addressed. I think the education...ESU Coordinating Council, we already have that in the form of distance education. It, in my view, makes good sense to expand the possibilities for that entity to other functions. Election districts is something that I think needs to be addressed--one person, one vote--while still allowing ESUs a great deal of flexibility in how they go about that. And then finally the two provisions dealing with distance education allow for us to move forward more quickly on distance education, by borrowing some money that's available in a school reorganization fund, and also I think, anticipating the future, in recognizing that a lot more distance education is going to be delivered at lower grade levels, that elementary and middle school kids are going to be involved in distance education. So those are the provisions. I would urge your support. Thank you. [LB603]

PRESIDENT SHEEHY: Thank you, Senator Raikes. You've heard the closing to the Education Committee, the amendment to...AM754. The question before the body is, shall AM754 be adopted to LB603? All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB603]

ASSISTANT CLERK: 37 ayes, 0 nays on the adoption of committee amendments. [LB603]

PRESIDENT SHEEHY: Committee amendment AM754 is adopted. The floor is now open for discussion on LB603. Senator Fulton. [LB603]

SENATOR FULTON: Thank you, Mr. President. Would Senator Raikes yield to a question? [LB603]

PRESIDENT SHEEHY: Senator Raikes, would you yield for a question? [LB603]

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SENATOR RAIKES: Yes. [LB603]

SENATOR FULTON: Okay, the...if I could, Senator, I'd like to get an idea of where the formulas...how the formulas were derived, and where...how you arrived at some of the numbers. Firstly, that 85 percent figure for telecommunications services and access to data transmission networks, etcetera, why 85 percent? How did you arrive at that? [LB603]

SENATOR RAIKES: Well, that's a good question, Senator. Our general interest, I guess, as a state in that is to compensate the local subdivision for cost that's incurred, but also to incent that local subdivision to make the best deal that they can. So for example, if you agree to reimburse 100 percent, there really is no incentive for that local subdivision to cut the cost, because whatever they spend they're going to get back, so what's the big deal? If the local subdivision has to put up at least 15 percent of whatever is spent, the belief is that there will be an incentive thereby for them to make the best deal possible. [LB603]

SENATOR FULTON: Okay. Not that I'm suggesting that I would do this, but would...could there be an argument that it should be 80 percent, or 90 percent, or 75? I mean, what argumentation allows you to arrive at 85 percent? [LB603]

SENATOR RAIKES: Senator, I mean it certainly could. It could be 84, 86, or 85, or any of the numbers you suggest. This was a sort of a windshield estimate, if you will. It's a number that we've used in some other proposals. I think currently in our proposal for a revision in the aid formula we used 85 percent in that, as well. [LB603]

SENATOR FULTON: Okay. The...okay. On number...I'm reading off of the committee statement, number three, the satellite office allocation, the maximum number of satellites, and this is...I guess I'm trying to hone in on where those...on what figures were arrived at with some judgment, and then trying to understand the judgment that was used to arrive at it. The square miles divided by 4,000, the 4,000, is that...again, is that something that...a chosen number? [LB603]

SENATOR RAIKES: Well, I wouldn't say it's scientifically determined, but you look at the number of square miles in the various ESUs and the ones that apparently need satellite offices in order to do those services, and 4,000 sort of appeared to be a round number that reflected actually what was going on now, and we're using what the ESUs actually have determined is necessary, as a guide to what we ought to propose. [LB603]

SENATOR FULTON: Okay, that's fair. There are a couple more questions on...the sparsity adjustment, number eight. That...there's a parenthetical expression, 0.1 times the square miles, divided by fall membership. That figure 0.1, is that another number that was... [LB603]

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PRESIDENT SHEEHY: One minute. [LB603]

SENATOR FULTON: ...arrived at with some judgment, or is there some science behind 0.1? [LB603]

SENATOR RAIKES: No, you're exactly right. It's arrived at by judgment, and I would, I guess, point to you to look at...it amounts to about \$107,000 of needs, additional needs, for each satellite office. That seemed to us to be a reasonable number. I understand that it may well cost a lot more than that, but, you know, if you have a satellite office and consider the personnel to manage it, plus the upkeep and so on, at least...it may be a low number, but at least it gets the notion in the formula that those kinds of operations are being recognized and thereby encouraged. [LB603]

SENATOR FULTON: So if the sparsity adjustment were to become more critical to the overall formula, that 0.1 could be increased? [LB603]

PRESIDENT SHEEHY: Time, Senator. Senator Pirsch. [LB603]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I'm going to yield my time to Senator Fulton, if he so desires, to finish his line of questioning. [LB603]

PRESIDENT SHEEHY: Senator Fulton. [LB603]

SENATOR FULTON: Thank you, Senator Pirsch. Senator Raikes, back on that number eight, the sparsity adjustment, so I can understand what 0.1 is representative of, if it were decided that sparsity were a more important consideration for the overall formula, then that figure, 0.1, would be the most likely candidate of change. It could be adjusted up or down, depending on how important sparsity is considered for the overall formula. Would that be correct? [LB603]

SENATOR RAIKES: That would be correct, yes. [LB603]

SENATOR FULTON: Okay. Okay, and then there's...there may be other things that pop in my brain, but the other one that was probably most important to me was number six, the LER, the local effort rate. [LB603]

SENATOR RAIKES: Okay. [LB603]

SENATOR FULTON: I am not...I understand how this is...will be viewed by way of property taxes, as that's the buzzword right now. Could you provide how this is arrived at? [LB603]

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SENATOR RAIKES: Okay. [LB603]

SENATOR FULTON: And I know that there's some precedent here, but what...this is...we're writing this into the bill specifically. How is that different than what has been done in the past, I guess? Could you educate me on that? [LB603]

SENATOR RAIKES: Okay, and you're exactly right, there is precedent here. In the TEEOSA formula, the levy cap is \$1.05 and the local effort rate is 90 percent of that, which is a dollar, or 95...well, it's 10 cents below it, I think, which is roughly 10 percent below it. So we pattern this proposal after what's in TEEOSA, so the levy cap here is a cent and a half, so the local effort rate is approximately 10 percent below that. [LB603]

SENATOR FULTON: Okay, thank you, Senator Raikes. [LB603]

SENATOR RAIKES: Thank you. [LB603]

SENATOR FULTON: Thank you, Mr. President. [LB603]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Senator Pirsch. [LB603]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I was wondering if Senator Raikes could just yield to a quick question here? [LB603]

PRESIDENT SHEEHY: Senator Raikes, would you yield? [LB603]

SENATOR RAIKES: Yes. [LB603]

SENATOR PIRSCH: The...it's a dynamic formula, this new formula proposed, which would presumably change year after year, in which the ESUs themselves can change the components of the formula. Is...and this is kind of an opinion question. Is...the components that are capable of change by the ESUs themselves, the number of satellite offices, for instance, or the use of this communication device, would this result in big fluctuations and overall changes in the formula, in dollar terms? [LB603]

SENATOR RAIKES: That's a good question, Senator. The formula doesn't recognize a need for a satellite location unless there is one there, and so if you had an ESU that clearly met the criteria of 4,000 square miles or--(inaudible) not exactly--yeah, 4,000 square miles per, and decided, therefore, that it was more...it was appropriate for them to do one, they could establish a satellite location. It would be recognized in the formula, and if there were one, their needs to go up by \$107,000... [LB603]

PRESIDENT SHEEHY: One minute. [LB603]

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SENATOR RAIKES: ...in the formula, but it would not be a huge adjustment. [LB603]

SENATOR PIRSCH: Okay, and that's all I wanted to get at, in your opinion. Thank you, and I'll yield back the balance of my time, actually, to Senator Raikes, if he'd to do it. [LB603]

PRESIDENT SHEEHY: Senator Raikes. [LB603]

SENATOR RAIKES: Thank you, Senator Pirsch and members. Again, I would emphasize, the satellite location recognition I believe is important, because it is a very significant, merger-friendly component of this. It makes it clear that ESUs are encouraged and recognized for the creation of satellite locations, and so that if you do merge ESUs, if that turns out to be appropriate--and it may not always be, certainly--but if it does, then you don't have the battle the problem of closing an office. [LB603]

PRESIDENT SHEEHY: Time, Senator. [LB603]

SENATOR RAIKES: Thank you. [LB603]

PRESIDENT SHEEHY: Further discussion on LB603? Seeing none, Senator Raikes, you're recognized to close on LB603. [LB603]

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. I do much appreciate the discussion and, again, I will say I much appreciate the work of the committee on this. This has been a significant effort, reaching back into the interim, in which there was considerable staff and committee time put in. I think we have a proposal that, at least in my opinion, moves us forward substantially in terms of equalized funding of educational service units, and I hope you agree with that and will there accordingly vote to advance this bill. Thank you. [LB603]

PRESIDENT SHEEHY: Thank you, Senator Raikes. You've heard the closing to LB603. The question before the body is, shall LB603 advance to E&R Initial? All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB603]

ASSISTANT CLERK: 38 ayes, 0 nays on the motion to advance the bill, Mr. President. [LB603]

PRESIDENT SHEEHY: LB603 does advance. Next item, Mr. Clerk. [LB603]

ASSISTANT CLERK: Mr. President, LB603A was introduced by the Education Committee. (Read title.) [LB603A]

PRESIDENT SHEEHY: Senator Raikes, you're recognized to open on LB603A.

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[LB603A]

SENATOR RAIKES: Thank you, Mr. President and members of the Legislature. This is the A bill for LB603, the ESU funding, and the A bill calls for the increased appropriation of \$15.5 million. This was...it is in the second year of the biennium, not the first year. This was, I think, the clear interest of the committee. I'm certainly not assigning sole responsibility to other members of the committee. I, too, think this is the appropriate move for us to make. Let me remind you that in about 2000, the year 2000, I believe ESU funding was actually higher than it is currently proposed. The funding for ESUs has gone down since then. We got into a point...let me back up. The legislative intent language for funding of ESUs is the basic allowable growth rate, plus student growth each year. If you apply that formula that formula to ESU funding, the ESU funding would now be, I believe, about what is called for in this A bill, about \$15.5 million, and that takes into account that during two years when we were in a budget crunch, we set the basic allowable growth rate at zero. So even counting two zero years, the funding for ESUs would now be at \$15.5 million, if in fact the legislative intent language were followed. I think Senator Ashford and maybe Senator Avery, as well, mentioned that not only do ESUs perform a number of important functions, they've been called upon during this time of flat or reduced funding to actually carry a bigger load in terms of assessment. The proposal that the committee is working on in that area is mostly likely going to call for an even bigger role on the part of ESUs in the realm of assessment, and I would argue that that is the case, because ESUs...the idea of an ESU is a very efficient way to handle activities and functions that really can be efficiently spread over several school districts. So you have one cost center that deals with a number of different school districts. So for that reason, I urge you to support the committee's recommendation for this level of funding. Thank you. [LB603 LB603A]

PRESIDENT SHEEHY: Thank you, Senator Raikes. You've heard the opening to LB603A. The floor is now open for discussion. Senator Wightman, followed by Senator Fulton. Senator Wightman. [LB603A]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I have a couple of questions for Senator Raikes, if he would yield. [LB603A]

PRESIDENT SHEEHY: Senator Raikes, would you yield for some questions? [LB603A]

SENATOR RAIKES: Yes. [LB603A]

SENATOR WIGHTMAN: Senator Raikes, while we talk about \$15 million, we're talking about an increase, only for the second year of the biennium, in the amount of \$4,726,000. Is that right? [LB603A]

SENATOR RAIKES: That's correct. [LB603A]

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SENATOR WIGHTMAN: And this would get us up to the level where we originally set the funding formula, at the time that you provided for funding to the ESUs? [LB603A]

SENATOR RAIKES: Senator, I think to be correct, if you took the level--and I can't remember exactly the year, but I think it was about 2000, which was higher than the current level of funding--and you applied the basic allowable growth rate and student growth, or the legislative intent language to that amount of funding, you would be at the level proposed here. [LB603A]

SENATOR WIGHTMAN: Okay. Now from here on out, we would be talking a much smaller increase, I assume, than we would in 2008-2009, if we just kept pace. Is that correct? [LB603A]

SENATOR RAIKES: That would be correct, Senator. You're absolutely right. [LB603A]

SENATOR WIGHTMAN: Because we're attempting to bring it all up in one year to where it should be funded. [LB603A]

SENATOR RAIKES: That's correct. I appreciate that. [LB603A]

SENATOR WIGHTMAN: Was there any thought to doing that over a period of more than one year? [LB603A]

SENATOR RAIKES: There was, Senator, and I'll defer to some of my committee members, if they would like to join in the conversation on that. The intent of the committee, I can tell you, was that, given the burdens placed on the ESU and what has happened, their preference, their current preference, was to do it in the way proposed in the bill...in the A bill, excuse me. [LB603A]

SENATOR WIGHTMAN: Okay. But there would be none in the first year of the biennium. [LB603A]

SENATOR RAIKES: That's correct. [LB603A]

SENATOR WIGHTMAN: So you're not taking care of it, obviously, faster than it would have been taken care of had you phased it in over a two-year period during the biennium. You're going to have a lot bigger increased cost in one year, as opposed to phasing this in over the two years of the biennium. [LB603A]

SENATOR RAIKES: That would be true. That would be true, Senator, and... [LB603A]

SENATOR WIGHTMAN: What was the thought process in not phasing it in over the two

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years? [LB603A]

SENATOR RAIKES: I think, really, it was a matter of implementation of the formula, and the time required and so on for implementation of the formula, given when the budget is made and when the tax year begins, and that sort of thing. [LB603A]

SENATOR WIGHTMAN: Okay, that answers my question. Thank you. [LB603A]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Senator Fulton, followed by Senator Adams. Senator Fulton. [LB603A]

SENATOR FULTON: Thank you, Mr. President. I think it's important to understand how the A bill will affect the budget, and how this will...how we will make this determination, going forward. And I, being new to the body, I think it would be informative to get an idea of how this A bill will be incorporated into the overall budget. So I wonder if Senator Heidemann would yield to a question. [LB603A]

PRESIDENT SHEEHY: Senator Heidemann, would you yield for a question? [LB603A]

SENATOR HEIDEMANN: Yes. [LB603A]

SENATOR FULTON: Senator, we've...the Legislature, the full body, is going to be getting the Appropriations Committee's final recommendation shortly. Could you explain, and I will yield the rest of my time to you, if you...could you explain how this A bill is going to figure into the overall budget scheme? [LB603A]

PRESIDENT SHEEHY: Senator Heidemann, about 4 minutes. [LB603A]

SENATOR HEIDEMANN: This bill is just like any other bill, or A bill. It is going to be put off to the side until the budget passes in the final round. And at that time, we'll take it up and decide...figure out our priorities, and we're going to pass the bills that the body considers a priority. And as it looks right now, as our budget has been passed--we voted on it yesterday morning and we'll send it to the floor--we left \$32 million over for A bills. According to the tax cut plan, as it is now, it could be \$32 million. If the tax cut plan changes, there may be more or there may be less money for A bills. But right now, presently, the way I understand it, it's \$32 million. The water bill, LB701, takes up \$12.4 million of that. You have \$20 million left over two years--that's two years, not one year--so that's \$10 million per year. This would take up \$4 million, \$5 million of it. So we're just going to have to figure out our priorities. As it stands right now, we don't have enough money to do all the A bills that are out there. So we're going to look at priorities, and we'll go from there. But that's the way it works. The budget passes first, and the A bills that are just sitting off to the side, on a sidetrack, once the budget passes, then we'll start taking them up again. Thank you, Mr. President. [LB603A LB701]

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PRESIDENT SHEEHY: Thank you, Senator Heidemann. Senator Adams, followed by Senator Kopplin. Senator Adams. [LB603A]

SENATOR ADAMS: Thank you, Mr. President. Colleagues, I'm probably preaching to the choir. I think you all know the need for these ESUs. The demands on them increase every year, and particularly since the year 2000 and this flatline appropriation, the demands on ESUs, in terms of staff development in a variety of different areas, providing technology to school districts, and doing the things that school districts could not singly afford to do on their own, this is a coordinated effort. That was the whole idea behind the ESUs. All I'm saying is that the demands are increasing, and Senator Raikes is right. Before long, I believe that the Education Committee is going to bring out of committee a bill that's going to adjust the state STARS assessment system, and more of that work is going to be put on the ESUs, more than what they're already doing. The demands just continue to increase, so give very serious consideration to this increase to the ESUs. Thank you, Mr. President. [LB603A]

PRESIDENT SHEEHY: Thank you, Senator Adams. Senator Kopplin, followed by Senator Raikes, and Senator Stuthman. Senator Kopplin. [LB603A]

SENATOR KOPPLIN: Thank you, Mr. President, members of the body. I would just like to put in a little reminder here. We just passed a formula change bill that has a two-year hold harmless clause in it. Without this A bill to increase funds, after two years that hold harmless goes away, and there will be a lot of shifting of funds among the ESUs without a replacement for those funds shifted away from some of them. I think it's important that this A bill go with the bill, and that funding be at a rate that allows the ESUs to do the things they do so well, without hurting individual ESUs. Thank you. [LB603A]

PRESIDENT SHEEHY: Thank you, Senator Kopplin. Senator Raikes. [LB603A]

SENATOR RAIKES: Thank you, Mr. President and members. I do have a little information on ESU funding by the state that I'd like to share with you, and I misspoke a little bit. If you go to 1998-1999, there was \$9.7 million of funding. The very next year it went to \$12.7 million. That was a big increase because of the imposition of levy lids. ESUs had had a higher access to levies to property taxes before that, and so it was reduced. The funding increased to the 2001-2002 year to just over \$13 million, was state funding to ESUs. Since then, the following has happened: 2002-2003 it was decreased 5.7 percent; 2003-2004 it was decreased 14 percent; and in 2004-2005 it was decrease another .5 percent. Those years, of course, were the budget crunch years, but where some other entities were held flat, ESUs were actually decreased. Since then, we had funding...by that time it had been down to about \$10.5 million, and now it is, under the Governor's recommendation, and I think currently in the Appropriations Committee, \$10.8 million, the number that you've seen before on this

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sheet, which is a...if that appropriation were to happen, that would have been three consecutive years with no increase at all in ESU funding. So that's the context in which we're operating. I think, as a couple of committee members have spoken, ESUs provide an important set of services and, in fact, the set of services they provide has been expanding. It's, I think, time, in the belief of the committee, that we address their funding needs and this A bill and formula change would be the way to do it. Thank you. [LB603A]

PRESIDENT SHEEHY: Thank you, Senator Raikes. Senator Stuthman, followed by Senator Pahls. Senator Stuthman. [LB603A]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I would to engage in a little conversation with Senator Heidemann. [LB603A]

PRESIDENT SHEEHY: Senator Heidemann, would you yield for a question? [LB603A]

SENATOR HEIDEMANN: Yes. [LB603A]

SENATOR STUTHMAN: Senator Heidemann, I appreciated those comments that you had before on the budget and the appropriations. Is there a possibility that this could be anywhere between the \$10.8 million and the \$15.5 million, or will it be one or the other? [LB603A]

SENATOR HEIDEMANN: I'm not quite following that. [LB603A]

SENATOR STUTHMAN: Excuse me. Will the appropriations be at a set figure between those two figures? Is there a possibility of that happening, that you won't have the \$15.5 million to appropriate to it; it may be \$13 million, or depend upon how many A bills there are and what the demands are? [LB603A]

SENATOR HEIDEMANN: We...right now the Appropriations Committee has it set at \$10.8 million. The body can literally set it at any point that they want, though, the way I understand it, from probably zero to fully funded. [LB603A]

SENATOR STUTHMAN: So at the present time, in your budget package, you've got the old appropriations, \$10.8 million, is in there right now. [LB603A]

SENATOR HEIDEMANN: We're at \$10.8 million, that's correct. [LB603A]

SENATOR STUTHMAN: And only depending upon how many dollars are left to be appropriated and how many dollars are needed in all the A bills that are passed will we know as to how much additional money we will get for this. Is that correct? [LB603A]

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SENATOR HEIDEMANN: Well, that will be up to the body, I mean, how much money they want to put in this. They'll either take it...I mean, there could be an amendment put on it and not do the whole amount. They could do \$2 million over the \$10.8 million. They could do \$3 million over the \$10.8 million. [LB603A]

SENATOR STUTHMAN: So in other words, Senator Heidemann, what we're passing here today is the \$10.8 million? [LB603A]

SENATOR STUTHMAN: No. Actually, you are fully funding at \$15.5 million. That's what the A bill would do. Because we have \$10.8 million in our budget already, and this would put it up to the \$15.5 million. [LB603A]

SENATOR STUTHMAN: But there's no guarantee that we're going to get this \$15.5 million. Is that right? [LB603A]

SENATOR HEIDEMANN: Well, I guess, one never knows what the Governor is going to do to it, no. [LB603A]

SENATOR STUTHMAN: Okay, thank you. That is the concern that I had, you know, as to the possibility of only ending up with \$13 million, or if we're going to be getting the \$15.5 million. But according to this A bill that we have here and what we're voting on right now, that is the \$15.5 million. So I truly support that. Thank you, Mr. President. [LB603A]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Pahls, followed by Senator Wightman. Senator Pahls. [LB603A]

SENATOR PAHLS: Mr. President, members of the body, I would like to have a question with Senator Kopplin. [LB603A]

PRESIDENT SHEEHY: Senator Kopplin, would you yield for a question? [LB603A]

SENATOR KOPPLIN: Yes, sir. [LB603A]

SENATOR PAHLS: Senator, you sort of woke me up, because I heard sort of a "yes, but" on this. We just passed an amendment. If we don't pass the appropriations, what could happen? [LB603A]

SENATOR KOPPLIN: Well, as I understand it, there is a two-year hold harmless, which nobody is going...or 95 percent hold harmless, so there would be a little bit of loss, but not much. But what happens after that two years? Well, we have the formula in place, which will mean that a lot of funds will shift from a few ESUs statewide. So it's really a question of how you feel about funding statewide ESUs. We can either fund it with this

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appropriations bill, or we can fund it by moving money from ESU to ESU. That's my opinion on it, anyway. [LB603A]

SENATOR PAHLS: Okay, you're telling me if we do not pass this--and there is a likelihood that this may not pass muster later on, the appropriations aspect of it--then there's going to be a reshifting of funds; is that how I'm interpreting that? [LB603A]

SENATOR KOPPLIN: Well, for two years everybody is going to be okay, ordinarily okay. What happens after that, without more money going into funding for ESUs, then you see some shifting going on. So I can't answer for every ESU; I can only look and say, well, that one has some money shifting, and this one gains, this one loses. [LB603A]

SENATOR PAHLS: Okay. Then that leads me to believe that the fiscal note that I was looking at earlier, it looks like there's a possibility that some ESUs will have a significant impact. [LB603A]

SENATOR KOPPLIN: That could be true, yeah. [LB603A]

SENATOR PAHLS: Well, I do hope, sometime before this is all over with, that part is really made clear to me, because if you don't have...if you pass the appropriations now but it is not, a little later on, we could be up...really, up a crick, or creek. [LB603A]

SENATOR KOPPLIN: In my opinion, we need to look at this as a package. We do need to look at the formula for funding ESUs everywhere, but then when we do that, I think we have an obligation to put the money in to show that we meant that we're trying to fund ESUs properly. [LB603A]

SENATOR PAHLS: Okay. Thank you, Senator. Thank you. [LB603A]

PRESIDENT SHEEHY: Thank you, Senator Pahls. Senator Wightman. [LB603A]

SENATOR WIGHTMAN: Thank you, Mr. President, members. I would like to engage in a little conversation with Senator Heidemann with regard to procedures, because I think...I, as a freshman senator, am not exactly sure where all this could be changed, and I think it would be good for the clarification of the entire body. [LB603A]

PRESIDENT SHEEHY: Senator Heidemann, would you yield? [LB603A]

SENATOR HEIDEMANN: Yes. [LB603A]

SENATOR WIGHTMAN: Senator Heidemann, just fill me in. If we vote for the \$15.--whatever it is--5 million today, which would be an increase of \$4.78 million, or

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approximately that, then it goes to the Appropriations Committee, and we can act on it. I gathered from what you said, we can't come up with some in-between figure at the Appropriations Committee. We would take it as the bill was passed; is that correct? [LB603A]

SENATOR HEIDEMANN: Our work is already done, Senator Wightman. We will not go back and do this in Appropriations. Our budget bills are already up here. We have \$10.8 million in the budget for ESUs. This A bill appropriates another \$4.7 million, the way I understand it, on top of our \$10.8 million. We as the Appropriations Committee would not go back and readdress this; the body would. [LB603A]

SENATOR WIGHTMAN: But on Select File, we could pass it at \$5 million, and when we looked at all of the appropriations bill, that could be pared back or amended to provide for some in-between figure. Is that correct? [LB603A]

SENATOR HEIDEMANN: Anybody in the body could do that,... [LB603A]

SENATOR WIGHTMAN: Okay. [LB603A]

SENATOR HEIDEMANN: ...put an amendment on. [LB603A]

SENATOR WIGHTMAN: That answers my question. Thank you. [LB603A]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Further discussion on LB603A from the floor? No lights are on. Senator Raikes, you're recognized to close on LB603A. [LB603A]

SENATOR RAIKES: Thank you, Mr. President, members of the body. I appreciate the discussion on this A bill, because I think it previews an important discussion we're going to have as we get down the road here. I'm advocating strongly that we support ESUs at the funding level proposed here. But I also want to tell you that this is one round of debate. This would be General File. If this goes to Select File, it's got more room to go. There are basically--I don't want to express or expose my vulnerabilities--but there are two levers to pull here. One of them is the total amount of the appropriation. As I've explained, if the body would decide, based on other priorities, that something other than \$15.5 million, even all the way back to \$10.8 million or even less than \$10.8 million, is what they wanted to do, they could do that. And this formula would work with that appropriation, whatever the appropriation is. Senator Kopplin mentioned the hold harmless. He mentioned two years' hold harmless; it's actually five years' hold harmless. So there is a...built into this there is a stabilization mechanism, if you will. The hold harmless level is 95 percent. The body could decide that some other level was more appropriate for hold harmless. I would assume they wouldn't want to go above 100 percent, but they might go to 100 percent, so that nobody got anything less than what

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they had last year. And I will tell you that the reason the committee didn't do that is, we have a new formula which we think should be allowed to work. If you didn't appropriate any more than what is now in the Appropriations Committee, \$10.8 million, and you had 100 percent hold harmless, the hold harmless would trump all the changes, so no money would move. You'd be funding every ESU exactly as it was last year. So those are the options that are available. What I am asking you to do at this stage, from General to Select, is to advance this bill, to get it in consideration, and recognizing the mainline bill that we've already advanced, the A bill along with it. We will, as we always do as the Legislature, figure out what it is we need to address in terms of priorities, and how much money we have, and we'll address that appropriately, and I'll pledge to you that I'll be right with you in that task. So with that, I would support this advancement to Select File. Thank you. [LB603A]

PRESIDENT SHEEHY: Thank you, Senator Raikes. You've heard the closing. The question before the body is, shall LB603A advance to E&R Initial? All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB603A]

ASSISTANT CLERK: 31 ayes, 0 nays on the motion to advance the bill, Mr. President. [LB603A]

PRESIDENT SHEEHY: LB603A does advance. Mr. Clerk, do you have items for the record? [LB603A]

ASSISTANT CLERK: Mr. President, I do. Education Committee will meet in Executive Session in Room 2102 today following recess. I have a motion relating to LB396A from Senator Johnson that will be printed. Your Committee on Enrollment and Review reports LB218, LB343, LB343A, LR6CA as correctly engrossed. Your Committee on Appropriations reports LB542 to General File with amendments; Judiciary reports LB478 to General File with amendments. New A bill. (Read LB236A by title for the first time.) New resolution, LR87, offered by Senator Christensen. That will be laid over. And Senator Johnson has an amendment to LB396 to be printed. (Legislative Journal pages 1263-1268.) [LB218 LB236A LB343 LB343A LB396 LB396A LB478 LB542 LR6CA LR87]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We'll move to next item under General File. []

ASSISTANT CLERK: Next bill, LB373, offered by Senator Schimek. (Read title.) The bill was read for the first time on January 12 of this year, referred to the Judiciary Committee. That committee reports the bill to General File with committee amendments. (AM447, Legislative Journal page 691.) [LB373]

PRESIDENT SHEEHY: Senator Schimek, you're recognized to open on LB373. [LB373]

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SENATOR SCHIMEK: Thank you, Mr. President and members. I'm here today to introduce LB373, often referenced as the "I'm sorry" bill. I'd particularly like to thank Senator Ashford for choosing this as his priority bill, and I know he will be talking about it as he introduces the amendment from the Judiciary Committee. As we're all aware, advances in medicine are tremendous. We see miracles happen daily, due to research and the application of that research. However, medicine is not perfect and adverse outcomes occur, even with the best of care. The radiation treatment that doesn't kill all of the cancer cells, the scope in the colonoscopy that nicks the lining of the intestine, the heart catheterization that doesn't take are all examples. When an unanticipated adverse outcome does occur, how healthcare providers respond has a powerful effect on all parties concerned. Based on a number of studies, patients expect caregivers to acknowledge an incident and to explain what happened, to the extent that it is known. Patients expect someone to take responsibility, and if an error has occurred, to admit it and apologize. And patients expect that the hospital will take a serious look at the incident and, when possible, to make changes to ensure that it doesn't happen to someone else. I think those are reasonable expectations. Unfortunately, there is often a difference between what patients expect and what they receive after a medical error occurs. The reason is that medical injury is different from other types of physical or emotional injury. A medical injury is a result of treatment intended to help, caused by a person to whom you have entrusted your life, and in most cases, patients will continue to be cared for by the same caregiver after an adverse event. Thus, the lack of an apology and the failure to be direct and caring often becomes most traumatic. The relationship between the patient and the caregiver is damaged when a clear acknowledgement of mishap has occurred and is not forthcoming, and when no one seems to take responsibility for what has happened. Most importantly, this relationship is damaged when no one apologizes. Doctors don't apologize, often due to concern about reputation and the possibility of malpractice suits. This fear of speaking up has long been legitimized by risk managers and lawyers who have advised healthcare providers not to admit responsibility or apologize--advice that is still given in many institutions. Historically, physicians and medical providers have erected a wall of silence to protect themselves from possible litigation. The result of that wall of silence is often frustration, anger and, in many instances, a resort to the legal system in order to get information, or the satisfaction of an apology. Due to the work of a number of groups--the National Patient Safety Foundation, the Harvard School of Public Health, the University of Michigan, and Stanford University Teaching Hospitals, and the Veterans Administration Hospital of Lexington, Kentucky, to name a few--efforts are being made to break through that wall of silence and to change the way that institutions and caregivers respond when bad outcomes occur. LB373 is an effort to break through that wall of silence in Nebraska. LB373 is an effort to encourage providers to give full disclosure of a bad outcome and to apologize. LB373 provides that any apology or statement of fault not be admissible as evidence of an admission of liability, or as an admission against interest. LB373 is an effort to maintain the patient/provider

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relationship and to assure patients and their families that the caregiver recognizes the hurt and is committed to taking every possible measure to prevent further injury. In fact, studies have shown that apologizing may be the most important thing we can do after a serious event to help the patient and his or her family begin to heal. It is just as important to state what LB373 is not. It is not a bar to malpractice claims. Only the statement of the caregiver is excluded from evidence. A suit that can still be brought and evidence gathered as a result of the apology is still admissible. It is not an attempt to avoid responsibility. In many instances, compensation, when warranted, is provided by the caregiver often faster. At the University of Michigan Hospital, the response time for compensation dropped from an average of 20 months to 9.5 months after "I'm sorry" standards were put in place. In fact, the vast majority of adverse outcomes is not malpractice and will not result in compensation in a court of law. An apology and assistance by the provider may be the only compensation a patient will receive. It is not the end of the story. When full disclosure is made both to the patient and to the hospital or insurance carrier, evidence is gathered to learn why a bad outcome occurred, and whether there are steps that can be taken to ensure that the outcome doesn't occur again. "I'm sorry" legislation has passed in 29 states, and you have a map before you that shows you where the legislation has passed. The bill before you is identical to the bill passed with little fanfare in Colorado just a couple of years ago. The legislation is supported by patient safety organizations, the National Medical Ombudsman/Mediator Program, and providers across the board, many of whom testified at the hearing. In conclusion, LB373 removes the barrier to immediate full disclosure and apologies in medical situations. It is the right thing to do, it's what patients expect, and I hope it's what you will support. Thank you, Mr. President. [LB373]

PRESIDENT SHEEHY: Thank you, Senator Schimek. You've heard the opening to LB373. We'll now move to committee amendment from Judiciary Committee, AM447. Senator Ashford. [LB373]

SENATOR ASHFORD: Thank you, Mr. President, and thank you, Senator Schimek, for bringing this bill to the Legislature. Senator Schimek has very accurately reflected what is in the bill. The committee amendment, a very simple amendment, adds to the language the words that if a doctor were to admit fault in a particular...after a particular procedure, that that admission of fault would be admissible in a courtroom setting. Let me just back up, though, just a second on this. The reason that I find this to be an important piece of legislation is this: Any time we can advance a policy in this state that will bring claims to conclusions quicker, and in somewhat of a format that would be akin to mediation, I think we're doing a service both to claimants and to individuals that allegedly cause harm. I'm a proponent of voluntary mediation, have been throughout my career here in the Legislature. If a physician is allowed to apologize to a patient without that apology being utilized as a form of an admission in a subsequent court case, I think it does, in fact, encourage the parties to, as quickly as possible--especially in a medical setting, when treatment is the goal, and cure is the goal--to...is an encouraging

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development. In talking to physicians that I know about this, what I have found is that most physicians do apologize if something goes wrong, and they apologize without any particular concern about a malpractice claim, but they apologize because that's what they do. That's how they interrelate with other people. But there are cases, and I understand there are situations where physicians are not encouraged to do this; where they are instructed, maybe in medical school or sometime during their training, that you'd better not admit to anything or that admission is going to be...could be used against you. With the committee amendment, if a physician, a hospital, or healthcare provider admits, in an oral statement or written statement, that he or she is at fault, then that statement is certainly admissible in court. And furthermore, the claimant in a claim for malpractice would have access to all other forms of evidence that would be introduced in a particular case. My sense is that this is not a significant change. My sense is that most doctors, most physicians are professionals and they apologize because they're human beings, and they get into human situations, and they feel sorry for someone, and because they're physicians doesn't mean that they don't feel sorry for a patient who is hurting because of a procedure that may not have come out the way that the patient would have liked. But I am convinced, in looking at other states that have adopted measures like this, that it does encourage the claimant and the physician or the hospital, the care provider, to work through these problems early on in the process, to encourage proper treatment if there has been a mistake made, and to just get on with the deal. And I'm...the VA has adopted rules similar to this. Many states have. It seems to make a difference. In fact, it seems to make a significant difference on the amount of claims. But I'm not suggesting that we adopt this simply because it would reduce claims. It just makes sense to me. It just makes sense to me to encourage this kind of contact between physician and patient after a procedure has gone wrong, and not create boundaries or walls between physicians and patients but try to break those down. You know, I really like this bill, and I like it because it encourages, I think, resolution. And if we can encourage resolution in any area of the law where there are significant numbers of disputes...and clearly, medical claims are such disputes. There are many, many filed, and many are settled. And I know Senator Lathrop has raised some issues about this bill, and I respect his opinion because he's involved in this kind of litigation. And I believe Senator Chambers also raised some concerns about what does this mean to patients and their rights and their ability to get a claim to court. And I respect those opinions. Normally, we have 8-0 votes in the committee. This is one where it was 6 to 2, so they're not all unanimous. But I just...any time we can do something like this, bringing the parties together, I think is good public policy, and I'm not so much concerned about going back and looking to see how many claims are not filed. That, to me, is not the big deal. To me it's just a human kind of thing that we want to encourage, where professionals and patients--clients, patients, whomever it is--are encouraged to work out their issues, and to resolution without protracted litigation and claim processes. So with that, again, just to remind you what the committee amendment does, it takes out the fault language from the bill so that if there is an admission of fault by a physician or healthcare provider, that admission of fault can be utilized in a

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courtroom setting or during a claims process. Thank you, Mr. President. [LB373]

PRESIDENT SHEEHY: Thank you, Senator Ashford. You've heard the opening to the Judiciary Committee amendment, AM447. The floor is now open for discussion. We have Senator Engel, followed by Senator Lathrop, Senator White, and others. Senator Engel. [LB373]

SENATOR ENGEL: Mr. Lieutenant Governor and members of the body, I certainly support this bill, and it sounded like that amendment took care of some of the other concerns. We'll find out about that later. But I want to tell you about an experience. Last summer my grandson passed away here in Lincoln, and he was 22 years old, just graduated from college, and he was sick one morning and he was gone the next night. And it was very traumatic and it still is. But the thing is with that, my...there's a lot of guilt, a lot of blame, you know, to start with. But what made my daughter feel the worst, and she wrote, I think, to the committee on this particular bill; she said that...in favor of this particular bill, because the doctor was a friend, basically, and he did everything in the world he could do, and he wanted to say he was sorry that this happened, not admitting fault or anything like that. In fact, there was no fault, nothing anybody could do, no matter who you were, except God Himself. And therefore...and later on, then, she's talked to him since then, and he said, I wanted to, but I was concerned. I was advised not to, and so forth. I think this is just a matter of compassion. I think this is something that doctors should be allowed to say, that I am sorry, because I think...I don't think any of them do anything intentionally, and I know there are some that are haphazard, and they probably need to be sued. But in so many cases, I think it's just a matter of compassion, that not only relieves the doctor himself, but it also helps the family. And I'm saying that from the experience of my daughter and her husband. Thank you. [LB373]

PRESIDENT SHEEHY: Thank you, Senator Engel. Senator Lathrop. [LB373]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I am one of the two votes from Judiciary Committee that were in opposition to this measure, and I'd like to visit a little bit this morning about malpractice claims. We have a tendency, perhaps through the media and through some of the information we've gotten out of the news over the last several years, to equate a malpractice claim with a frivolous claim. We oftentimes hear that...those frivolous malpractice claims. Well, they may seem frivolous until something happens to your family, and your father or your wife or one of your kids is now paralyzed or killed. Every day in this country we have killed, through medical negligence, through medical negligence, the equivalent of a jet full of people. That's a lot of folks, and we don't hear about it in the news because everybody thinks that malpractice claims are frivolous. And I will, maybe on another occasion a little bit later, stand up and talk to you about some of them that I've seen that are egregious. But what we are doing with this measure today, and what's being proposed, is that we give

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doctors an opportunity to say I'm sorry. I'd like you to understand two things. We have bad outcomes. Bad outcomes are over here, similar to what Senator Engel just talked about--things that happen to people when they receive medical care. Maybe it's the natural advancement of a condition, maybe it's one of the risks of a procedure, but something bad happens to somebody you care about in a hospital or in a doctor's office, and it's not because somebody made a mistake. We call those bad outcomes. They are not medical negligence. There is nothing stopping a doctor from expressing empathy with a family because of that. They're not going to be sued. It's not a medical malpractice claim. And then we have those instances where doctors make a medical mistake. In the law we refer to it as a breach of the standard of care. Every...virtually every procedure in medicine has set forth the proper way to handle a set of symptoms, the proper way to conduct a procedure, and when you deviate from that and someone is injured, that's a breach of the standard of care. What this bill does, it addresses the second group. It says to the people who have been injured because of a doctor or a nurse or a hospital making a medical mistake...this isn't a frivolous claim; it's a medical mistake. They did something everybody practicing good in that profession wouldn't do. They want to come and say I'm sorry and not have that admitted into court, and that seems like such a simple thing, a "sorry," it seems like such a simple thing, such an innocuous thing, but I'm going to tell you, it's a very cynical bill in this sense. What they want to do is say I'm sorry after they make a mistake, and go to trial and deny liability. Think about that. What LB373 does is it gives a doctor permission to say, I'm sorry, and then go into a courtroom and say, I didn't do it. What interest, what policy are we advancing? What policy are we advancing when we let someone who knows they've made a mistake say I'm sorry, and then go into a courtroom and deny it? And you say, Steve, that can't happen. These people, after they make a mistake, they feel terrible, and they go into court and they admit liability. They do not. There isn't a tort case more heavily defended, more difficult to prosecute than a medical malpractice case, because the other side doesn't give in on these. Maybe had one or two verdicts in favor of a plaintiff in Douglas County in the last five years. I mean, these aren't rampant, these aren't frivolous. It's hard to take a judgment against a doctor. People don't want to believe they made a mistake. There is, colleagues, nothing stopping a doctor from saying I'm sorry. When we had this hearing in committee, Dr. Pete Whitted came down. Dr. Whitted is an ophthalmologist in Omaha, a terrific guy, a member of the board of the Metro Omaha Medical Society, and he also happens to have a law degree, and someone whom I respect a great deal, as does Senator Ashford. And he acknowledged, when we were in committee, that there's nothing stopping a doctor from apologizing, nothing stopping them from apologizing in the situation described by Senator Engel. [LB373]

PRESIDENT SHEEHY: Time, Senator. [LB373]

SENATOR LATHROP: Did you say time? [LB373]

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PRESIDENT SHEEHY: Time. [LB373]

SENATOR LATHROP: Yeah. Thank you. [LB373]

PRESIDENT SHEEHY: Senator White, followed by Senator Carlson, Senator Ashford, Senator Schimek. Senator White. [LB373]

SENATOR WHITE: Thank you, Mr. President. Ladies and gentlemen, my colleagues, I'd like to speak to you a little bit about this area. I have tried cases in this area. First of all, medical malpractice, depending on who you follow, is between the third and the fourth leading cause of preventable death in the United States. Medical malpractice is an enormous problem, and that carries a gamut of simply giving the wrong pills while you're in the hospital, to cutting off the wrong leg. Now despite that fact and those statistics I, unlike Senator Lathrop, cannot recall even one verdict for a plaintiff in Douglas County in the last ten years, and I can tell you I recall dozens and dozens of verdicts for defendants. That is just how it is, and this is not something that doesn't touch you, and let me explain why. One of the things that you will regularly see is, when these cases are settled, we of course have a cap on the amount of exposure for medical malpractice. One of the most common kinds of medical malpractice cases that are settled are failure to deliver infants by Cesarean section, insisting that they be delivered vaginally. The consequence of that is oxygen deprivation, palsy, and brain damage. Today's dollars--and this is several years ago, and I'm sure it's more expensive now--but in today's dollars the last time I checked, the cost of maintaining a child who is so damaged for life--its life expectancy, of course, is greatly reduced--is \$7 million present value; that means today's dollars, \$7 million. What happens in these circumstances are, if they get the million, the \$1.25 million, the cap money that is available, that goes directly to the care of the infant. That soon is burnt through, and the families go on welfare. The counties end up picking up the expenses of these. The problems of medical malpractice are profound, they affect all of us, they cost us all tremendous amounts of money. The argument that this is an area of the law that's out of control could not be further from the truth. Nationwide, the cost of medical malpractice, including premiums and defense costs, is estimated to be between less than 1 percent to as much as 1.25 percent of the total medical bills. It's inconsequential. And yet we use it regularly as a whipping boy to describe why our medical costs are so high. That is also faulty reasoning. If we--and again, one of the arguments are that medical bills are too high because we're afraid of malpractice--if everyone who was even close (inaudible) were delivered in a Cesarean section manner, we would save money. The point of this is to join with Senator Lathrop that it's time we stopped looking at the myth and start looking at the reality. And that's not because we're going to change the jury's minds, or change the substantive law. But the reality is, one child brain damaged by a failure to do a proper Cesarean section will save you more money than doing a tremendous number of Cesarean sections. When we take away responsibility and we limit the costs in this kind of case, we don't change the problem, because in fact, you

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can, as Senator Lathrop has said, allow people to apologize but then go in and deny liability, and that doesn't help the system, doesn't help people be more responsible. We can cap costs, but we don't cap costs, we just shift them. And in the case of medical malpractice, overwhelmingly, the costs we shift are the costs of... [LB373]

PRESIDENT SHEEHY: One minute. [LB373]

SENATOR WHITE: ...taking care of the injured person, and moving that cost, we move it away from the person who made the mistake onto society as a whole. I know that colleagues will vote as they see fit on this, but understand: Never in my experience is the difference between myth and reality greater than in this very area. Thank you. [LB373]

PRESIDENT SHEEHY: Thank you, Senator White. Mr. Clerk, do you have messages, reports, announcements, or items for the record? [LB373]

ASSISTANT CLERK: Mr. President, I do. A reminder that Education will meet in Executive Session in Room 2102 upon recess. A series of reports--Committee on Revenue reports the following bills indefinitely postponed: LB23, LB325, LB331, LB366, LB430, LB436, LB444, LB453, LB510, LB511, LB608, and LB648. (Legislative Journal pages 1268-1269.) [LB373 LB23 LB325 LB331 LB366 LB430 LB436 LB444 LB453 LB510 LB511 LB608 LB648]

Priority motion, Mr. President: Senator Howard moved to recess until 1:30 p.m. [LB373]

PRESIDENT SHEEHY: I have a motion to recess until 1:30 p.m. All those in favor say aye. Opposed, nay. The yeas have it. We're in recess. [LB373]

RECESS

SENATOR LANGEMEIER PRESIDING []

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

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

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

ASSISTANT CLERK: Not at this time. []

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We'll return to the discussion. Prior to

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recessing for lunch, we were discussing LB367 (sic). We were on the committee...on the Judiciary Committee amendments. Excuse me, LB373, and the committee amendments, AM447. When we left for lunch, we had a number of lights on. We had Carlson, Ashford, Schimek, Wallman, Lathrop, and others. We will return to discussion on AM447. Senator Carlson, you are recognized. [LB373]

SENATOR CARLSON: Mr. President, members of the Legislature, I'm rising to speak to both AM447, as well as the underlying bill, LB373. In the process of what I have to say, I am going to ask Senators Lathrop and White for some clarification on their testimony earlier. And I respect their abilities. If I had somebody after me in the courtroom, I'd just as soon it wouldn't be Lathrop or White. They are trial attorneys. They are competitors. And the only parallel that I can draw to what they do is my experience in the past as an athlete and a coach. And both groups play to win. The object is to win. You learn to compete by established rules. And if I can give an example in athletics, one time I was a pitcher, baseball, and I think about...I learned to pitch from the mound, and it was 60 feet, 6 inches to home plate, and it's still that. And if a rule had come along that would have changed the distance to 70 feet, I wouldn't like that rule. I'd had to completely adjust my skills and practice and the way I approached the game. Now, LB373 is a change that may affect trial attorneys' ability to compete. It may be necessary to adjust and change their ways in the courtroom. Senator Lathrop, you talked this morning about a bad outcome on one hand, and you put up your left hand, versus, I'm going to call it negligence, on the other hand. But I think that your stance, unless I'm hearing wrong, prevents a doctor, in a bad outcome, from expressing true sympathy. And I've thought of a couple of statements that a doctor might make. A doctor could say, I'm sorry. A doctor might say, I feel like I did everything I could have done; I'm sorry. A doctor might say, I could have waited awhile to perform the procedure, but I thought it best to proceed; I'm sorry. Doctor could say, I could have scheduled the surgery a little sooner, but I felt she needed time to regain strength; I'm sorry. Now, whether the outcome is a bad outcome, or whether it's negligence, what's the difference when it comes to those kinds of statements? And I think statements such as my examples, in my mind, shouldn't be admissible as evidence. And so I would ask either one of you, is this a good part of why you don't like the bill? And, Senator Lathrop, you look like you'd like to speak. [LB373]

SENATOR LANGEMEIER: Senator... [LB373]

SENATOR CARLSON: Could I allow him to respond? [LB373]

SENATOR LANGEMEIER: Senator Lathrop, would you yield to a question? And one minute. [LB373]

SENATOR LATHROP: I'd be happy to, and I'll try to be responsive to your question. The point I heard you trying to make, or I understood you to be making, was, well, jeez,

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Lathrop, you represent plaintiffs from time to time, and this might make it just a little bit harder for you, and so of course you're going to be opposed to this. That's not it. I mean, this really gets down to, fundamentally, is it fair to let somebody say, I'm sorry, I did something wrong, and then go to court and actually say, I didn't do anything wrong, and, by the way, you can't use that last statement, where I said I had, against me today? [LB373]

SENATOR CARLSON: Okay, I'm going to interrupt for the last 30 seconds or whatever,... [LB373]

SENATOR LATHROP: Sure. [LB373]

SENATOR CARLSON: ...because you just said the doctor that did something wrong but says I'm sorry. He may not have done anything wrong, and could have made all those statements that I said, but you're not wanting him to be able to say that, unless I'm not understanding what...how you responded. Thank you, Mr. President. [LB373]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Ashford, you're recognized, followed by Schimek, Wallman, Lathrop, Chambers, and others. Senator Ashford. [LB373]

SENATOR ASHFORD: The reason I'm rising is just to respond to what Senator Carlson asked me a few minutes ago, just to reiterate the point of the amendment. And I don't think I was particularly clear, Senator Carlson. I could have been clearer. And that is that the amendment does allow statements made by a physician that indicate fault to be admissible in court. So if a physician or healthcare professional indicates to someone that they are at fault, a statement to that effect, that those statements are admissible. Again, I just would want to reiterate my thinking on this bill, and that is that it really isn't...and I respect Senator Lathrop's points, and Senator White's. They're absolutely right, medical malpractice claims are very difficult to prove, may be very difficult to prove, and that there are very few cases that are actually tried to the point where a jury issues a verdict. And I agree with that. And in many cases, the plaintiff has...and in all cases, the plaintiff does have a heavy burden in proving fault. I don't think anything in this bill makes it, in my...the way I am looking at this, I don't think anything in this bill makes it harder to prove fault, at all. The ability or inability to prove fault, I think, is grounded much more in other parts...pieces of evidence that are relevant to these kinds of cases. And it's really not my intent in supporting this bill to reduce claims or to make claimants less likely to recover. I don't think that's a laudable reason or purpose for the bill. The reason...and the data...I respect the data that indicates that the number of claims filed in states that have legislation like this has been reduced. I do respect that. I think that's important data. But again, my support for this bill really is grounded in my belief that claims, especially claims that are...can be as emotionally...as emotional as these claims can be, when there's injury to a person resulting from the alleged

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negligence of a healthcare professional, any effort, especially early in the process, of expressing remorse, expressing an apology, and breaking down some of the boundaries that immediately go up when there is a potential claim for malpractice, and doing it in such a way as not to exclude evidence from a jury that is important for that jury to hear, I think is good public policy. Again, I was struck by...and Senator White and Senator Lathrop are professionals. They try lots of cases and they do good jobs for their clients. I know that very well. I know about Senator White and Senator Lathrop and how well they are respected in the bar. And if one is injured in any kind of a...whether it's a malpractice claim or any other kind of an injury case, that, you know, anyone would be well represented if they were represented by either Senator Lathrop or Senator White. And they're talking about reality, the difficulties involved in representing clients who are injured. [LB373]

SENATOR LANGEMEIER: One minute. [LB373]

SENATOR ASHFORD: Again, I think this is good public policy any time we can encourage behavior that will bring down boundaries, that will help settle disputes in an amicable manner, but not preclude people from having a fair and equitable opportunity to recover just compensation, I think is worthy of this body. And it's...I certainly urge the passage of this bill, because I think it does just that, without cutting off the opportunity for just compensation. Thank you, Mr. President. [LB373]

SENATOR LANGEMEIER: Thank you, Senator Ashford. Senator Schimek, you're recognized. [LB373]

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. I wanted to stand to simply say that I support the committee amendment, and to say that I think even with the bill as it originally was, I don't think you precluded somebody from being sued for malpractice. I think what the bill...original bill did is it precluded that statement of "I'm sorry," or that statement of fault being introduced into the court proceedings. I, however, am somewhat of a political realist, I guess, after being in here for some 19-odd years, that I know that sometimes you have to compromise your original bill in order to satisfy all the parties involved. And the trial attorneys were opposed to this bill in the first place, and I believe that they are taking a very neutral stance, if not a stance of approval, now. So anyway, I wanted to thank Senator Engel for talking about his daughter and his grandson. I'm...that was a very, very heartrending situation. And his daughter wrote us a beautiful letter which said that she, as a medical professional, understood why some of the doctors that were involved didn't say I'm sorry to her and her family, even though, as it proved in the long run, nobody did anything wrong, nobody knew at the time exactly what was wrong, as I understand it. I do appreciate Senator Lathrop's and Senator White's comments. It seems to me that what they're talking about is the tort system and how it doesn't always work as well as it should. And I, too, have concern about the cap we have on tort claims because I believe that, particularly in the case of, I guess, an

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infant--this example was brought up by Senator White--the infant who is deprived of oxygen because delivery wasn't maybe what it should have been, and sometimes, even though the doctor is very accomplished, those kind of things happen. But that infant is going to require care for the rest of his or her life, and the, what is it, \$1.5 million cap now, I think it is, 2.5...\$1.25 million, thank you, thank you for correcting me...oh, it's \$1.5 million? I was right. I had a lucky guess then. That doesn't cover that care, and it's something that this Legislature has chosen to do. But anyway, I want to thank you all for the discussion, and I hope you will support the committee amendment. [LB373]

SENATOR LANGEMEIER: Thank you, Senator Schimek. Senator Wallman, you are recognized. [LB373]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. I, too, support the amendment. I've been in hospital emergency rooms, and where it probably was a doctor error, and they never did say, I'm sorry. And one of my very good friends is a doctor. And my daughter has married into a family of doctors, and one of them is an attorney and a doctor, and he thought this was a very good bill. He says, we do make some mistakes and we are very scared to say I'm sorry. And I guess if I'm in an emergency room, my good friend was hurt in a farm accident, and I would have never...they did explain to us what could happen, and it happened. But never was there an I'm sorry. And whether it was they were scared to say I'm sorry or not...and this attorney friend of ours, he said this is a good bill, so I have to go along with him. And we shouldn't have to do that in today's society. And you're right, Senator Lathrop and Senator White are right, if you're going to have...file a malpractice lawsuit, you will not find any doctors. They'll stick together, whether they know this doctor is bad. And this one doctor told me, if you ever go in the hospital, Norm, you'll never see this certain person. He wouldn't mention the name. So I think the medical profession is probably behooved to look at itself and police its own ranks. And...but the doctor I do know, very good friend of mine, he's a good doctor, and if he makes a mistake on me, so be it. But some of it is blatant incompetency. And so I think then we have to look at attorneys to straighten us out. And it's a sad state of affairs, but that's the way it is in our society, and thank you for the attorneys. And thank you, Mr. President. [LB373]

SENATOR LANGEMEIER: Thank you, Senator Wallman. Senator Lathrop, you're recognized. [LB373]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I appreciate the opportunity to visit a little bit at further length about this issue. And some of the questions and some of the comments have suggested to me that there is a misunderstanding about what this bill does and what it does not do, and what we might expect if it's the law. First of all, you should understand that there is nothing, nothing stopping a doctor from apologizing today. Whether they have a bad outcome, which is not malpractice, or whether they commit a mistake that injures somebody for the rest of

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their life, the right thing to do, regardless of whether LB373 passes, is to go apologize. If you make a mistake, if I make a mistake in my business, in my profession, I apologize for it. Think about what you do for a living. You write insurance, you write somebody the wrong policy, you're going to say I'm sorry. You don't come to the Legislature and ask for immunity, or you don't come to the Legislature and ask that your "sorry" not be used in evidence when the time comes to be accountable for your mistake. And that really is what this is about. And it's also important for you to understand that LB373 doesn't mandate an apology. So if we pass LB373, it doesn't mean that you'll start hearing apologies from doctors. The doctors don't apologize because of who they are, they don't apologize because of what the risk manager tells them, they don't apologize because somebody scared them. But there's nothing stopping them from apologizing. And you know, when we had a hearing on this case in the Judiciary Committee and Dr. Whitted showed up, he said, you know something, the apology is the beginning of a lot of healing when there's been malpractice. And I'm going to tell you that's true. I've seen it. I get calls from people that say, you know what, the guy cut this off, or he nicked that, or he did this, and he never even said I'm sorry. There is good reason for them to apologize. They should apologize, because it's the right thing to do. And if they'd apologize to these people they make mistakes on and whose families have lost a loved one, they probably wouldn't have as many claims. And I would agree that there may be some policy with this bill, but understand something: They should be doing it because it's the right thing to do. And we all do it in our practice; we do it in what we do for a living. Every one of us apologizes, because it's the right thing to do. The medical community won't. And to suggest that now they will if LB373 passes isn't being honest with you, honestly, in my judgment, because when you have a doctor who hasn't made a mistake and he won't come out and talk to the family, that isn't because he's afraid of being sued; that's because he doesn't think he has to, or it's uncomfortable to go out and talk to a family after somebody has suffered a serious injury or died in the course of medical treatment. We are carving out an exception for a profession, ladies and gentlemen, and we are carving out an exception for a profession that has the Medical Liability Act, which limits the amount they have to pay in the most egregious cases. It's \$1.75 million. Sounds like a lot of money; it's not when you're taking care of a brain-injured child. There are peer review care committees. You can't review them. They can have a committee meet and talk about the care that was provided. Lawyers can't even get to it. It may say, this guy is a complete incompetent, we should run him from the hospital, but we can't get to it to use in a case against them. And you should also know that when you make a mistake and you run somebody over in the crosswalk, or you run a stop sign, you can be charged with motor vehicle homicide; when doctors kill somebody, they're not charged. That's okay. I'm not suggesting that we should charge them with manslaughter. But understand, any one of us in this room that makes a mistake... [LB373]

SENATOR LANGEMEIER: One minute. [LB373]

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SENATOR LATHROP: ...driving an automobile, we can be charged with a homicide, and when they make medical mistakes, they aren't. We have accommodated the medical community in many, many ways, many, many ways to this point in time. To allow them to apologize so that they might reduce the chance that they get sued, and if they do get sued, to pretend like they never apologized and then deny liability, that means the person that's been hurt, who was apologized to, now has to get a lawyer, now has to hire expert witnesses, and now has to prove the doctor's mistake, which will cost thousands of dollars in expert witness fees. This is not good policy. Thank you. [LB373]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. Wishing to speak we have Chambers, Nelson, Kruse, Johnson, and White. Senator Chambers, you're recognized. [LB373]

SENATOR CHAMBERS: Mr. President, I am the other person on the Judiciary Committee who voted against this bill, and I don't like it. I don't think it's good policy. And it's one of those feel-good bills, in the minds of some people, so they'll come up here and say, well, these doctors are good people and you ought to let them say I'm sorry and it can't be used against them. That is nonsense. This is a bill to protect doctors. It's not to protect the patient. And because some people testified before the Judiciary Committee, and I have transcripts, I'm going to take some time this afternoon and read some back-and-forth questioning between myself and those medical professionals. Here's a comment that I made to a Dr. Whitted, whom Senator Lathrop has told us is very competent as a doctor, and he's also a lawyer. Chambers: I'm trying to get something from a person who's trained in both the law and medicine. And remember, everything we say is recorded, everything will be transcribed, and anything you say can and will be used in the appropriate way. That's why I'm taking this time with you, because anybody else who comes up, I'm not going to put these questions to that person. Would you, if you are willing to answer the question, do any of these things that you feel were necessary to maintain a proper relationship between you and the patient and maybe contribute to the healing, even if we didn't have this bill? Dr. Whitted: I do it. Chambers: You do it now? Has it harmed you, do you feel? Whitted: I don't think so, but I don't know. But I don't think so. Chambers: Have you been sued? Whitted: I felt better about it. Chambers: Have you been sued for malpractice? Whitted: Never. Chambers: You mean to tell...have you ever made a mistake that you admitted to a patient? Whitted: I've made a lot of mistakes, admitted a lot of mistakes, to a lot of patients. Chambers: I would tell the court that this witness has just made the case against the necessity for this bill. You're my exhibit A. That's not all the exchange. I'm going to read more of it, and I'm going to take the body's time to do it, because we as a body tend to get all mushy and sentimental when we're talking about some of the most high-paid people in this society, some who make the loudest protestations to having...or about having compassion, understanding, and feeling. But what is one of the reasons for the spiraling cost of all healthcare? Doctor costs. Not just medicine and the drug

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companies--doctors. And they charge you for everything. Don't hold eye contact with one too long, Senator Carlson, or that will be about \$1.50. Oh, you laugh. You laugh, Doctor...Senator Carlson? Senator Carlson would say, oh yes, I laugh. He'd say, well, you know, laughter is the best medicine; that will be about \$6.80. Oh, and you laughed again; \$6.80. And you get that bill, and most people are disheartened and won't even look at all the specifics, because they know that doctors and hospitals will charge for everything they can, and they charge for some things they don't provide. Some have charged for medication which, if it were given to the patient, would have killed the patient. [LB373]

SENATOR LANGEMEIER: One minute. [LB373]

SENATOR CHAMBERS: And then, when their hand is called on it, oops, that shouldn't have been on the chart. And the person dealing will say, well, it's a good thing it was just on the chart and not put in the patient. Don't tell me how careful these doctors are. Do you know that a person can go in, and the chart says amputate the right leg, and they amputated the left leg? So they actually will make a mark on the limb that is to be amputated. And these doctors were not educated at OPS. They've gone through a residency, an internship, four years of medical school. They may have been cutting on people for I don't know how many years. And all of a sudden, you all feel sorry for these people who, through their negligence, will kill people. There are diseases, and these diseases have a specific name, and if you do some studying about mad cow disease,... [LB373]

SENATOR LANGEMEIER: Time. [LB373]

SENATOR CHAMBERS: Thank you, Mr. President. [LB373]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Nelson, you are recognized. [LB373]

SENATOR NELSON: Mr. President, members of the body, I rise in support of AM447, as well as the underlying bill, LB373, which I think is a very good bill. I'd like to address some of the things that...perhaps, that Senator Lathrop is talking about, and perhaps distinguish some things. He talks about bad outcomes and medical mistakes and the breach of a standard of care, and that's what makes these cases difficult. And I would agree with both Senator Lathrop and Senator White, there aren't very many cases of malpractice that actually come to trial in Douglas County, let alone any verdicts of malpractice. And I suspect that's because most of them that are brought, or where suit is filed, are settled well ahead of time. But when Senator Lathrop says that a doctor apologizes and says I'm sorry and then when he does get sued--and I'm not talking just about a doctor, but a medical provider of any sort--and then is sued and has to go to trial, that when he says that I didn't do it, I don't find that consistent at all. And that's

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probably not the words he's going to use, "I didn't do it," but what we're talking about there is having to prove that there was a breach of the standard of care. And the doctor would be saying, I may have made a mistake, I may have been somewhat negligent, but I did not violate or breach the standard of care. When the suggestion is made that there's nothing to stop a doctor or a medical provider from saying I'm sorry, yes, there is. There are several things. First of all, it's the fear of a suit, a lawsuit, and that anything he might have said or she might have said is an admission against interest or an admission of liability. That's the first thing that they would be afraid of. I would...I know Dr. Whitted, and he's a very fine doctor, he's also a lawyer, said. But Dr. Whitted leads a charmed life, I think, because he's never been sued for malpractice. And when you are sued for malpractice, whether you're an attorney or a doctor or some other professional, you become very gun shy, you become very careful. And you're not going to make an apology of any sort if it can be construed that you're making an admission against your own interest. The second reason is that you might be violating the terms of your malpractice insurance policy, to the extent that if you are making any admission against interest, in violation of that policy, you might lose your coverage down the road, and certainly no one wants to lose coverage in this day and age. And you might also be acting on the advice of your own personal attorney: Don't say anything that would suggest that you were at fault or that would be against your interest. I'd like to...we have good language, I think, in this bill, but I think that Senator Ashford may have made reference to the ABA, which actually is the American Bar Association, just so that's clear, and they had a study and a report from their standing committee on medical professional liability. And this is the recommendation that they made and which was passed by the ABA. The ABA supports enactment of state legislation that provides that all statements, affirmations, gestures, or conduct by a medical provider expressing apology, sympathy, commiseration, condolence, compassion, or general sense of benevolence which relate only to the pain, suffering, or death of a person, to that person, or that person's family,... [LB373]

SENATOR LANGEMEIER: One minute. [LB373]

SENATOR NELSON: ...the result of an unanticipated outcome of medical care, shall be inadmissible as evidence of an admission of liability. And I think it just makes good sense. We want doctors to feel free and not have any fear of coming to say, I'm truly sorry for what happened, and couch it in terms that doesn't suggest that they made a mistake. And when we can do that, and when people who have been hurt, who are grieving, hear that and realize there is compassion on the part of the medical provider, I think it's going to make a great big difference in the relationship of those parties, and also in the number of claims that are going to be brought. Mr. President, thank you. [LB373]

SENATOR LANGEMEIER: Thank you, Senator Nelson. Senator Kruse, you're recognized. [LB373]

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SENATOR KRUSE: Thank you, Mr. President and colleagues. I stand in support of the amendment and the bill, strongly in support. And I give strong objection to some of the statements that have been made--one, that a doctor in the death scene is talking about malpractice issues in any way. This is a death scene. That this is an evaluation of the doctor's practice and mistakes, as Senator Chambers is getting off into, yes, people make mistakes, physicians make mistakes, surgeons make mistakes, but that's not what we're talking about. I especially object to the thought that if a physician says I'm sorry, that's admitting guilt, or saying that he made a mistake. I would hope that any one of us could go up to any one of the other of us who's lost a child and say, I'm sorry. And if I say to somebody on this floor, I'm sorry, it doesn't mean that I was responsible for the loss of that child. It is a simple expression of compassion. I do have an advantage that I would share with you on the floor. I'm sure more than any other person in the room, I have been on that scene. I would like to take you into that death room. I've been there hundreds of times as an observer, because I am a chaplain in a hospital. I've been there for 25 years. I have a bed in the hospital. The pager goes off, and I get my shoes on and get down to that room faster than the physician, so I'm there when the physician arrives in the middle of the night. And the scene has the family standing around the bed, some nurses hovering over mother, let's say, and affirming that her life is slipping away. The physician comes, goes over to the bed, checks, and determines that she is no longer alive. Now, what's he going to do at that point? Let's say that it's "he." Is he going to turn on his heels and walk out of that room? That would be a horrible act in that setting. That would just be horrible, uncaring, and the family would feel like a kick in the gut. I don't think he would say some of the things that Senator Carlson modeled for us. At least, I wouldn't...I've never heard it said: well, maybe we could have rescheduled the surgery, or maybe...you know, maybe we should have done this or that. But...no, that's not the time for that either. It's kind of like an automobile accident, and as you know, our family suffered a serious one. Many a time, I have thought, well, if he'd only turned at the corner before, if he'd only eaten another pancake for breakfast. Yeah, yes, yes, yes, yes, yes, but that doesn't have anything to do with it, and at the death scene, it has no relevance at all, none. It is a time for a physician who's been their family physician for 25 years to turn and say, I'm sorry. And I've seen physicians who felt restricted in that, with tears streaming down their face, go around and shake hands with each of the family members that are there. It was an elderly death, it was coming, there was nothing going to stop it. [LB373]

SENATOR LANGEMEIER: One minute. [LB373]

SENATOR KRUSE: There's nothing that the physician did that was inaccurate. But if the physician hadn't cared enough to say...to shake hands or do something, but I wish the physician would say, I'm so sorry you lost your mother, and then move on. That will make a lot of difference to that family, and every one of us can know it. Again, I've been in that room hundreds of times. Thank you. [LB373]

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SENATOR LANGEMEIER: Thank you, Senator Kruse. Senator Johnson, you are recognized. [LB373]

SENATOR JOHNSON: Mr. President, members of the body, I'm going to sound a little bit like the Reverend Kruse, I believe. One of the things that came to mind as this discussion was going on was the tragedy at the Kansas City hotel, now 15 to 20 years ago. A brand-new hotel, and there were some structures that collapsed, and many people were injured and many people were killed. This hotel was owned by the Hallmark Card people. They were advised that they couldn't send any flowers with an accompanying card to any of those that were injured or killed. This last week, we had the tragedy at Virginia Tech. Wasn't it refreshing and good for us all that the family of the boy who killed all of these people came forward and said, we're sorry? The physician who truly is sorry thinks he can't say it, yet it would be good for both the patient and the physician. I think the real tragedy here today is that we have to have a bill that allows us to say we're sorry. Thank you, Mr. President. [LB373]

SENATOR LANGEMEIER: Thank you, Senator Johnson. Senator White, you're recognized. [LB373]

SENATOR WHITE: Thank you, Mr. President. I want to correct something. Talking to Senator Lathrop, a bill was passed in the last two years raising the cap to \$1.5 million, to now \$1.75 million, and it had been \$1.25 million for many, many, many years. So I wanted to correct that, and I gave Senator Schimek false information, as well. But beyond that, I know Senator Carlson had some questions for either Senator Lathrop or myself, and I'd ask if he'd yield to a question. [LB373]

SENATOR LANGEMEIER: Senator Carlson, would you yield to a question? [LB373]

SENATOR CARLSON: Yes, I would. [LB373]

SENATOR WHITE: Senator Carlson, please ask any questions of either myself or...that you may wish. [LB373]

SENATOR CARLSON: Okay, thank you, Senator White. Let me just give an example. I am a doctor, even though I can't operate. But let's suppose that my patient is Senator Hansen, and I operated on Senator Hansen; he experienced great complications, and died. I did no wrong, I know I did no wrong. I'd like to talk to his wife Linda, but she doesn't know that I did no wrong, and she's got a decision to make to sue or not to sue. I'm sorry about Senator Hansen, and want to express that to his family. That statement should not be admissible, should it? [LB373]

SENATOR WHITE: The statement that "I'm sorry," or any conversation you have with

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her should be admissible, yes, sir. It should be. [LB373]

SENATOR CARLSON: Any conversation I have with her? [LB373]

SENATOR WHITE: Absolutely. [LB373]

SENATOR CARLSON: Okay. [LB373]

SENATOR WHITE: Absolutely. [LB373]

SENATOR CARLSON: I appreciate your allowing me to ask a question, and I don't agree with that, but thank you for allowing me to ask. [LB373]

SENATOR WHITE: Let me tell you why, Senator. The reason is that a trial is supposed to be a pursuit of the truth. The point of a trial is, it's an adversarial system in which competing versions of what is true are presented to a neutral finder of fact--the jury. And the presumption is very, very, very strong that any kind of relevant information should be presented so they can consider it. I would submit to you that it makes no sense specifically that you as an auto driver,...the same physician makes a mistake driving, hits a car, gets out of the car and says, I'm so very sorry. People are just hurt just as badly in that situation that, of course, is admissible. But why should that be different if a person is hurt in the course of their professional activities? I, like Senator Lathrop, would tell you also, you assume people want to sue, and in fact, the frequency of these suits is very low, very, very low, and the success is very, very low. And Senator Nelson indicates, well, he hopes they'd all be settled, or he thinks they would. But he knows as well as I know, the number of tort suits filed in this country per capita is much lower today than it was ten years ago. In fact, these kind of suits are increasingly infrequent. And if you look at the cost, the out-of-pocket cost of bringing a medical malpractice suit, I think Senator Lathrop would tell you \$50,000 to \$75,000 is nothing. And I don't mean...I mean how much you pay for witnesses and court reporters, just to get it ready to present to trial. But when you're looking at success ratios that are less than 1 percent, in my experience in Douglas County, you don't file these. So people don't come to the conclusion that they're going to sue. And we have already made major accommodations. I know and Senator Lathrop knows, there are physicians who have made horrible mistakes. They're human, like the rest of us. People have died as a result. [LB373]

SENATOR LANGEMEIER: One minute. [LB373]

SENATOR WHITE: They have lost privileges in hospitals, and yet their peers have defended their actions in that case, in testimony. And I'm sure Senator Lathrop has seen that, as well. I do think...I do not think it is ever good to deny relevant information from a jury when the object of a trial is the pursuit of the truth. Thank you. [LB373]

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SENATOR LANGEMEIER: Thank you, Senator White. Senator Pirsch, you're recognized. [LB373]

SENATOR PIRSCH: Thank you, Mr. President, colleagues. I'd like to just establish a little bit of legislative intent for the record. I was wondering if Senator Ashford...well, he's not on the floor. [LB373]

SENATOR LANGEMEIER: Senator Ashford, would you yield to a question? [LB373]

SENATOR ASHFORD: Yes. [LB373]

SENATOR PIRSCH: I just wanted to concentrate on the plain language of the...both the bill and the amendment that came forward from the Judiciary Committee. Essentially, in changing the written bill, it would strike out the word "fault" and add a statement after the first...after...at the end of Section 1, and add: A statement of fault which is otherwise admissible and a part of or in addition to any such communication shall be admissible. Correct? [LB373]

SENATOR ASHFORD: Yes. [LB373]

SENATOR PIRSCH: Okay. Now, is...and obviously, the words in line 5, skipping the first two words and moving...starting with "sympathy": sympathy, commiseration, condolence, compassion, or a general--down in line 6--or a sense of benevolence, pretty clear to be understood that that does not...the difference between those words and the word "fault," which has some measure of culpability implied with the word. I guess my question is respect to the first word, "apology." And since we're striking "fault," can a meaningful distinction...I assume in real-world practical application of this, are we...I want to be clear for the record what our intent is here, so that if it is, in fact, this bill does pass, that we have an understanding. I suppose there's an unlimited number of combinations of words that could one day be written in such a situation. Can we...I just want to make sure that we're clear when some words are used that...can we distinguish between apology and fault, which would...? [LB373]

SENATOR ASHFORD: Well, let me...that's a good question, Senator Pirsch. The answer is that in all cases we can't distinguish between apology and fault, but the court can. And generally what would happen in these cases would be that the...a motion would be filed to exclude certain statements under...based on the statute, and the standard would be, the judge would determine whether or not it was a statement of fault or an admission of fault. I don't think...the bill does not imply that the word "fault" is the only word that, you know, can or can't be used. What would happen, though, is the court would determine whether or not the words that were used, or, as Senator Johnson talked about, some sort of other expression of condolence or apology rose to the level

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of an admission of fault. So when there isn't clarity, as you suggest that there may not be in all cases, the court would determine whether it was an admission of fault. If it is, then the court would then allow those statements to be in evidence. If it was determined that it was a statement of condolence or apology, sending of flowers, talking to relatives or whatever, that was more an expression of apology or condolence or sympathy, those words would not be admissible. So the judge would be the final arbiter of the admissibility of that evidence. [LB373]

SENATOR PIRSCH: Very good. So "apology"... [LB373]

SENATOR LANGEMEIER: One minute. [LB373]

SENATOR PIRSCH: So "apology," used here, is somewhat not connoting specific...or, implicating oneself in somehow causing... [LB373]

SENATOR ASHFORD: Well, it's a generic...it's a term that references, I think, certain expressions of, I'm sorry, gee, I wish this hadn't happened. Something to that effect, I think it would generally be considered an apology, but did not rise to the level of, but I'm the one that caused this to happen. Admissions like that would be admissible, and I think properly so. [LB373]

SENATOR PIRSCH: Okay. [LB373]

SENATOR ASHFORD: But statements that are more of sympathy and condolence would not be. But in the final analysis, the judge would determine it. [LB373]

SENATOR PIRSCH: Very good. Well, I appreciate that, and I think that's an important distinction. So thank you. [LB373]

SENATOR LANGEMEIER: Thank you, Senator Pirsch. Senator Chambers, you're recognized. [LB373]

SENATOR CHAMBERS: Thank you, Mr. President. As I was saying when I ended the last time, if you study the history of mad cow disease, you will inevitably come to the Creutzfeldt-Jakob disease, which is the human version. And when you look into this, you will find that doctors, before they knew what was going on, could transmit this disease to somebody else by handling infected tissue, then passing it on to somebody else. And there is a specific name for diseases that are caused by doctors--that's the assignment for somebody on the Internet--and these diseases not only have been done in the past, but they continue to be caused today, not that the doctor is the pathogen, but the doctor is the transmitting instrumentality. I'm going to go into this transcript, which was the hearing before the Judiciary Committee, February 7 of this year. And the person that I had a little discussion with is a Rowen, R-o-w-e-n, Zetterman,

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Z-e-t-t-e-r-m-a-n. He is the current president of the Nebraska Medical Association. So after he spoke, we...he and I had an exchange. Chambers: This is not going to be a grilling, Doctor, so I'm going to try to be a better man. I try to do the right thing. Am I to understand that doctors will not express sorrow or condolence, these various things, for fear of being sued? Is that what inhibits them? Zetterman: I believe that many physicians have been advised by their attorneys to not speak up and talk and provide answers to the patient whenever they feel that there may be a tort claim filed. Chambers: Will a physician allow a lawyer to tell that physician how to perform an operation? In other words, will that physician accept medical direction from an attorney? Zetterman: Well, Senator Chambers, in this particular instance, they would accept that from another physician, because that's who they're going to for counsel and advice. Chambers: But that's not what I'm asking. Zetterman: And in this particular case, they would be going to a lawyer for counsel and advice about a legal issue, and in that case, they would accept the opinion of the lawyer. Chambers: That's not what I'm asking you. Zetterman: I understand what you're asking, but I'm telling you that they would do it, of course, for a legal opinion. Chambers: Is it a problem for you to answer the question I ask? Would it violate your ethics? And if it will, I won't ask it again. Zetterman: I don't think...I can just simply say no and concur with what you said. Okay...Chambers says: Okay, lawyers don't advise doctors on how to treat patients. Zetterman: Correct. Chambers: Now I think I heard you say that this is a part of healing. Did you say that? Zetterman: I did say that. I did say that. Chambers: Is healing a part of the art of practicing medicine? Are doctors in the business of healing? Zetterman: I certainly hope so, Senator. Chambers: So this would be a part of medical practice? Zetterman: Correct. Chambers: But they're letting a lawyer tell them, you might be sued, so don't do what might result in healing for this patient, and the doctors are accepting that advice from a lawyer, more or less? Zetterman: I certainly believe that has happened, yes, sir. Chambers: So they fear being sued more than they feel an obligation to be a healer? Zetterman: I believe that can be a problem, yes, sir. Chambers: And that's what is happening, just being frank and direct, so that we know what we're dealing with, true? Zetterman: I agree with you. [LB373]

SENATOR LANGEMEIER: One minute. [LB373]

SENATOR CHAMBERS: Chambers: Okay, that's all I wanted. Thank you. And I will be talking more to this gentleman. And I want this on the record. When Senator Johnson mentioned that the parents of Cho went on the television and said they're sorry, they're not responsible for what he did. That's that old notion that everybody who looks oriental, as they say, or Asian, is responsible. And that's what those kids on that campus felt, and their parents came to get them because they know how racist white Americans are, and they were in fear of retaliation. And this...the shooter's parents were being moved from place to place, and they live way up near Washington, D.C., and watched by law enforcement officials, because threats had been made against them, and they hadn't done anything. So don't tell me how refreshing it is that a person who didn't do

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something wrong feels the necessity to stand up and take the responsibility for it. We're talking here about things that doctors did. [LB373]

SENATOR LANGEMEIER: Time. [LB373]

SENATOR CHAMBERS: Thank you, Mr. President. [LB373]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Carlson, you are recognized. [LB373]

SENATOR CARLSON: Mr. President, members of the Legislature. Senator Chambers, you won part of a round a little bit earlier. You said that rich doctors...or your message was that rich doctors don't need legislation to help them do the right thing and to say that they're sorry. Now, the Good Book teaches us to bless those who may persecute you, and also, inasmuch as is possible, do the right thing and get along with everyone, obey the commands, whether it's easy or not. So a doctor shouldn't use the absence of a law to prevent him or her from doing the right thing. Doctors charge a lot. It costs a lot to be in practice. Liability insurance is a big part of that cost. I know; my son is a doctor. And I believe that frivolous lawsuits are a scourge on our society, but there's no penalty for such and I think there should be. What's happened to being responsible for our actions at both ends of the spectrum? Legitimate lawsuits are most appropriate. I don't think frivolous lawsuits are. Thank you, Mr. President. [LB373]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Wishing to speak we have Lathrop, White, Wightman, Chambers, Pirsch, and others. Senator Lathrop, you're recognized. [LB373]

SENATOR LATHROP: Thank you, Mr. President. And I'd like to respond to some of the comments that I've heard today. But perhaps before I do that, let me say something that I haven't said, which is, I think the amendment, AM447, makes this a better bill. And while I am opposed to LB373, I do support AM447, which makes this...takes out of consideration statements regarding fault. In its original form, LB373 included statements of fault. That's been amended...or, with the amendment, would take that out of the bill, and I think that's a good thing. I would encourage you to support AM447. Beyond that, we had...Senator Carlson, maybe I can respond to a couple of things he said, and that is that there's no penalty for frivolous lawsuits. That's not true. We have frivolous...we have penalties in the law for frivolous lawsuits. Most of what you hear is, you know, kind of the Fox News Network sort of, the biggest problem with commerce today is that we have tort cases, and that's just simply not the case. There are laws that prohibit frivolous lawsuits. In fact, you may be interested to know that more...the bigger problem is with the defenses. Where there is no defense, we see an awful lot of defenses asserted which I'd call frivolous defenses to legitimate claims, and that's a bigger problem than frivolous lawsuits. I think one of the difficulties with having this discussion is, is that

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when we stand up and we start talking about, well, let's assume that it's not your fault and then you want to go apologize to somebody, that's not what we're dealing with, folks. This is an evidentiary bill. It talks about whether something is going to be admitted in a trial over a medical malpractice claim. We're not talking about cases where nobody made a mistake, nobody did anything wrong, you're free to apologize. This doesn't even address that situation. The difficulty is, I think it's hard for people to get themselves to a place where they can appreciate what it's like to have malpractice visited upon your family. And I can tell you, I've seen it. I've seen where the pharmacy mixes a medicine the wrong way and somebody dies from it. And I've watched doctors unwilling to respond to emergent circumstances, and a little girl loses a leg. These things happen. These aren't frivolous cases. These things happen. And when your wife dies, when your daughter dies, when your husband dies, or the breadwinner in a family dies or can no longer work or maybe is paralyzed for the rest of their life, this gets very real. And this bill is very real when it comes to those people receiving compensation from a doctor that breached the standard of care, did something they weren't supposed to do, or didn't do something they would. We're not talking about splitting hairs. We're talking about--and Senator Johnson can address this if he cares to--the standard of care is pretty clear defined. You know what you're supposed to do. You either do it or you don't. And when you...if you breach that standard of care, you're responsible, and you've made a mistake that touches a life forever. Those of us that have been involved in traffic accidents, those of us that have made mistakes in our profession apologize to people. We do it because it's the right thing to do. Now we have risk managers telling doctors not to apologize, we have defense lawyers telling doctors not to apologize, and so they come to the Legislature to fix a perception, and the perception is that they can't apologize. The fact is, the decent thing to do is to apologize... [LB373]

SENATOR LANGEMEIER: One minute. [LB373]

SENATOR LATHROP: ...when you make a mistake. If it exposes you to liability, Senator Nelson, if it exposes you to liability, that's liability that belongs there. You know, litigation isn't a game, civil liability isn't a game. It's not whether you can sneak out of some responsibility when you get to the courthouse. If you're going to take responsibility for your actions, you apologize, and then when it comes time to make somebody whole or accountable for your actions, you don't try to worm out of it by hiding behind a bill like LB373. Thank you. [LB373]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. Senator White, you're recognized. [LB373]

SENATOR WHITE: Thank you, Mr. President. I'd like to also let the body know I support the Judiciary amendments to this bill, though I would oppose the bill. Second, Senator Carlson, I would indicate to you that in fact not only are there penalties for frivolous lawsuits, they are levied not only against the party who brings them, they're levied

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against the attorney who signs them. And those penalties can include all the costs and expenses taken to defend them, and can include fines and substantial amounts of money, and they are not unusual if, in fact, frivolous lawsuits are filed. But your best defense against frivolous lawsuits are the realities of the marketplace. Juries do not award very much money, if at all...they don't award, they don't find for plaintiffs in "med mal" cases very often. You don't take weak "med mal" cases. In fact, many of us...and I would tell you right now, I won't even take good ones, because they are so extremely difficult to win. Not only can you find it very hard to convince a jury; you can't get a witness. You fly doctors in from other states, and they're enormously expensive. That's just a myth that there are a lot of these that are frivolous. They're not. They are not many of them filed that are, in fact, frivolous. And the ones that are filed and that are settled have merit. Now, in terms of whether or not this should be the law or not, I would say Senator Pirsch and Senator Wightman have brought issues to me about what "apology" means. I read it, and I must confess I read it to mean, oh, I'm sorry that your husband died. But if you look at the literal meaning of it, an apology would indicate some measure of fault. I would say, in a courtroom, if I run into your car and I say...get out and say, you know, I'm sorry, that was my fault, that should come in. That should come in, because I have admitted guilt. I have admitted that it was my responsibility. And the process is made less honest, less forthright, less responsive, if I can say to you privately, hey, I'm sorry about that, you know, I just wasn't looking, but then in the courtroom stand up under oath and deny it. That just, to me, is an inappropriate use of the law, and should not occur. Thank you, Mr. President. [LB373]

SENATOR LANGEMEIER: Thank you, Senator White. Senator Wightman, you're recognized. [LB373]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I would like to ask Senator Ashford a question, if he would yield. [LB373]

SENATOR LANGEMEIER: Senator Ashford, would you yield to a question? [LB373]

SENATOR ASHFORD: Yes. [LB373]

SENATOR WIGHTMAN: The word "apology" bothers me. I know Senator Pirsch brought that up, and I visited a little bit with yourself and Senator White about that. And I guess I am wondering, was any consideration given, when you talked about removing or striking the word "fault," of also removing or striking the word "apology"? [LB373]

SENATOR ASHFORD: No. [LB373]

SENATOR WIGHTMAN: Well, I happened to do some looking, since you (inaudible)... [LB373]

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SENATOR ASHFORD: Oh, I mean, there was...I'm sorry, I mean, there wasn't...maybe I misunderstood. The focus was on the word "fault," and the idea was that if someone said, I'm sorry, it was my fault, that that would be admissible evidence because it was an expression of fault using an apology as part of the expression of fault. So it was considered in that regard, but... [LB373]

SENATOR WIGHTMAN: Well, I did some looking with regard to what the dictionary says about the word "apology." And first, it says it's a statement or expression of regret or asking pardon for a fault, as in an offense, a formal justification, or defense. Those are the three different definitions that are given, and two of those pretty obviously refer to fault. And it just seems to me that perhaps the legislation could be made better with the elimination of the word "apology," and maybe leave it out with regard to stating that admission of fault...I don't know that you need it in there. But I think that "apology" is such an ambiguous word with regard to whether it denotes fault or not. And when two of the three definitions that are listed in the bill indicate that it does have to do with fault, I wonder if that might not be considered. I also have a question, if Senator White would yield to a question. [LB373]

SENATOR LANGEMEIER: Senator White, would you yield to a question? [LB373]

SENATOR WHITE: Yes. [LB373]

SENATOR WIGHTMAN: Senator White, you gave some figures this morning about the cost of medical malpractice, which I was shocked were as low, as far as the percentage of total medical expenses. Could you tell me those again? [LB373]

SENATOR WHITE: Yeah, as I understand it--and this is based on a number of different reports--generally, and it depends on how you calculate it, 1 to 1.5 percent of the total medical costs in the United States goes to paying for medical malpractice; 1 to 1.5 percent. And, Senator, just so you know, if you want to see how that plays out in your own life, take a look at your auto policy. If you have comprehensive coverage, the coverage that you would pay if you injured somebody, including their medical bills, will cost less than the cost of repairing your automobile if you damage its fender. [LB373]

SENATOR WIGHTMAN: Now, I think when I spoke to you personally that that...you indicated that was from a 1987-88 study? [LB373]

SENATOR WHITE: One of the first studies I read was the New England Journal of Medicine published a Harvard Medical School, and it was exhaustive study, over a number of years in New York hospitals in medical malpractice. They had a number of just absolutely outstanding, well, and stunning findings, including that a very small percentage of people killed or seriously injured ever receive meaningful compensation. They also talked about the very low amount of money from the system that goes into

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medical malpractice awards or settlements. [LB373]

SENATOR WIGHTMAN: That doesn't necessarily mean that the percentage of cost of a doctor's total income for a year would be 1 or 1.5 percent of his total income, on average, does it? [LB373]

SENATOR WHITE: No, that's...the doctor's income is different than the cost of provision of medical goods and services. [LB373]

SENATOR LANGEMEIER: One minute. [LB373]

SENATOR WHITE: The cost of medical goods and services include medicine, operating tables, the money we spend on medical care. The number has generally been accepted in a lot of debates on tort reform as 1 to 1.5 percent is the cost of medical malpractice coverage and medical malpractice. [LB373]

SENATOR WIGHTMAN: Thank you, Senator White. Just in closing, I would say that I generally am supportive of this. I do question the word "apology" being included in it, because it seems to me that it may have the same connotation of fault that the word "fault" itself has. And perhaps removing that word, striking that word, as well as "fault," might be advantageous to the general content of the bill. Thank you, Mr. President. [LB373]

SENATOR LANGEMEIER: Thank you, Senator Wightman. Senator Chambers, you're recognized. [LB373]

SENATOR CHAMBERS: Mr. President, members of the Legislature, I shall resume my reading of the transcript between Mr. Zetterman...Dr. Zetterman, I guess, and myself, so that it's in the record. And it should be, because a lot of people are trying to attribute things to doctors that the doctors didn't attribute to themselves. Continuing, after the doctor had had a discussion with another senator. Chambers: Doctor, playing the angel's advocate, I'd like to ask a question or two. But before I do that, speaking of angels, that reminds me of the "Bibble," and something "Parson" Carlson said. He said we need to learn to take responsibility for our actions. He said that. But he was using it in the context of people filing what he called a frivolous lawsuit. But he doesn't want the doctor to take responsibility for his actions. He wants the doctor to be able to slither and slide like a salamander covered in Mazola oil. That's what he wants to let the doctor do. But somebody who's suffered perhaps a grievous injury at the hands of an incompetent doctor a competent doctor who performed a procedure incompetently is not to have any recourse. Remember this--and I'm going to use layperson's terms--under a standard of negligence, no matter what field it's in, negligence exists when a person fails to exercise due care and another person is harmed as a result. So if a doctor performs a procedure or uses a device or instrument in a way that comports with what is considered the

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standard of practice or due care, even if a person is hurt as a result, there is no liability on the doctor's part, because there is no standard the doctor violated which would make him or her liable. There can be unanticipated, unexpected, undesirable results from the most carefully and expertly performed procedure by the most meticulous, careful surgeon. So a medical care provider or healthcare provider is not automatically liable simply because a person is hurt. There are a number of factors that have to be present. So if this doctor fails to use due care and a person is hurt, the doctor is liable and the doctor should have to respond in damages. To the extent that money can undo the harm or help make whole the person who is harmed, money is what this society allows to be obtained, and that's done by way of a lawsuit. And these people who just have a general low opinion of lawyers should realize that the other side has lawyers, too. Doctors have lawyers, hospitals have lawyers, businesspeople have lawyers. But those lawyers are okay. That's like saying a Baptist preacher is anathema, but a Catholic priest is the intercessor between God and person. It depends on which frock the person is wearing. But not so with me. And all of these terms are being used, and they're being used loosely. Nobody who is... [LB373]

SENATOR LANGEMEIER: One minute. [LB373]

SENATOR CHAMBERS: ...speaking in opposition to this bill has suggested that a doctor without liability should have liability. And remember this: A doctor who did not violate the standard that must be met could think he or she did, and tell the patient, I committed negligence, mea culpa, I'm wrong, I'm guilty, and upon examination the doctor did not commit negligence, and merely saying it was negligent does not make it so. It's determined by what the law has established, and not what a person says. I could say I murdered somebody, but it wouldn't be murder. The mere killing of a person is not always murder. So I think we need to think in more nuanced terms and express ourselves in more nuanced ways on the floor. Thank you, Mr. President. [LB373]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Pirsch, you're recognized. [LB373]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I just wanted to be clear with respect to the last line of questioning that I went down. I wanted to establish for the record legislative intent, that when we're using the verbiage on line 5 on page 2, "apology," that that is in fact used in the context that would not carry with it some level of culpability, but rather more synonymous with the following terms: sympathy, commiseration, condolence, compassion. And that the amendment, committee amendment, would help further that interpretation of the word by adding that a statement of fault which is otherwise admissible as part of or in addition to any communication shall be admissible. And so I just want to make that interpretation of that word clear for the record, that it...not...it is...has been interchangeably, to some extent, been used for the term "I'm sorry." So I just want to establish that for the record. Thank

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you very much. [LB373]

SENATOR LANGEMEIER: Thank you, Senator Pirsch. There are no other lights on. Senator Ashford, you're recognized to close on AM447, Judiciary amendment. [LB373]

SENATOR ASHFORD: Thank you, Mr. President. This has been an interesting discussion, because what it's turned into is a...one of the classic battles between the trial lawyers on one side, and the insurance companies on the other side. And I remember in 1986, when I first ran for the Legislature, that was the big issue, that you either...you were on one side or you were on the other side. And there was a group formed on the insurance side called Project Justice, and you had to adhere to the tenets of Project Justice, 350...I think one of the tenets was a \$350,000 cap on liability cases; and it was versus unlimited recovery on the trial lawyers' side. And we've had a little of that today, and we don't have that many issues before the body anymore that get to that classic battle. But I really don't think that's what this is all about here. What we are trying to do is to advance legislation here in Nebraska which has been passed in 30 other states, or 29 other states, which encourages communication between physicians and patients. And I'm not going to go through all the evidence--Senator Schimek has already put that into the record--of what other has happened when standards such as what is included in this legislation are utilized in other places. It does make a difference when parties communicate to each other early on. There's certainly no intent on the proponents' part, my part, or I don't believe Senator Schimek's part to narrow liability in any way. The...if a claimant, if a plaintiff has been injured because of the malpractice of a healthcare provider, I don't think there's going to be much change in recovery. But what is alluring to me is the evidence from Michigan that Senator Schimek talked about, that once Michigan put into place these standards, that the time elapsing from the time a claim arose to the time it was settled was much reduced. And I think that's healthy, that we can bring these claims to fruition, that they can become settled, that care of the patient is undertaken more expeditiously. Senator Johnson I thought made a good point about sending the flowers and making other expressions of sympathy. I think we know how we're going to vote on this. This really is not a liability issue that we're...where we're narrowing the scope of liability. If we were, I wouldn't have supported it. You know, I think this is a good, healthy way of reducing claims. And then, just to remind you, this amendment...and I...narrowly, it talks about elimination of expressions of fault, so that any expression of fault is certainly still admissible, and that indications of sympathy or expressions of sympathy and commiseration and that sort of thing would not be admissible. I think that's a very fair and equitable way to handle these things. And I would urge the advancement of the committee amendments. Thank you. [LB373]

SENATOR LANGEMEIER: Thank you, Senator Ashford. You have heard the closing on the committee amendments. The question is, shall the committee amendment to LB373 be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB373]

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ASSISTANT CLERK: 39 ayes, 0 nays on the adoption of committee amendments, Mr. President. [LB373]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. AM447 is adopted. Mr. Clerk. [LB373]

ASSISTANT CLERK: Mr. President, Senator Chambers would move to amend. (FA89, Legislative Journal page 1269.) [LB373]

SENATOR LANGEMEIER: Senator Chambers, your amendment will be up shortly. I'll recognize you to open. [LB373]

SENATOR CHAMBERS: Yes, my amendment will be up shortly; I'll be up directly, which means right now. The word "apology" had been discussed. I'm offering a definition, to show how ridiculous I think this bill is. I don't think Senator Schimek is ridiculous for having brought it. She's trying to help some pathetic individuals. "Apology means, whether separately or in any combination: I'm sorry for doing what I ought not to have done. I'm sorry for not doing what I ought to have done. I'm sorry for not saying I'm sorry if I ought to have said I'm sorry. I'm sorry for saying I'm sorry if I need not say I'm sorry. I'm just plain sorry." That's what these doctors are. See, they're just people to me. I'm aware of doctors who have been rude, who have been careless, who have refused treatment to people, who have been insulting, and they show one face to some people and a different face to others. My amendment is up there. You can read it and understand what it says. But I'm going to go back to reading from this transcript, because I want what these gentlemen said to be in the record. Peter Whitted, W-h-i-t-t-e-d, he described himself an ophthalmologist in private practice in Omaha, and member of multiple professional organizations, including the NMA. I guess that's Nebraska Medical Association. I'm also a member of the Nebraska Bar Association. I am the Nebraska representative to the board of COPIC, C-O-P-I-C, Colorado Physicians Insurance Company, one of the major malpractice carriers in Nebraska. He and I had a little exchange after he had had some lively exchanges with other committee members. Senator Chambers: are you to be, during this hearing, addressed as Counselor, or Doctor? Whitted: Pardon? Chambers: You're a lawyer and a doctor, so how do you prefer to be addressed? Then he said he could be addressed by his first name. Chambers: Well, I can't get that familiar, because I'm like an interrogator here. Then we begin our discussion: If we were going to strip away everything and get right down to what this bill is, it is more a protect-the-doctor, not a bill to heal the patient, isn't that true? Whitted: I don't agree with that, Senator Chambers. Chambers: Well, a doctor can apologize. The only thing that stops the doctor, based on what Dr. Zetterman said, is advice from a lawyer not to do this because there may be liability. And the liability fear trumps the necessity or the duty of the doctor to heal, because something which could contribute to healing is not going to be done. Whitted: I would make one correction. I don't think it necessarily comes from your attorney. I think it's a general atmosphere that

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pervades the two professions. It creates a barrier for people that had these frank discussions. And I think you're correct in saying that it does keep us from healing these patients, and I think that that's wrong. Chambers: And it's the fear of liability. Whitted: I think that that's true. Chambers: So this is a protect-the-doctor bill. By saying, you can make any statement that you choose and it's not admissible in a civil action against you, that's to protect the doctor, not the patient. Isn't that true? Whitted: I think it's to encourage a frank discussion where one doesn't occur right now. Chambers: Counselor, the question is, this bill is designed to protect the doctor by saying, you can follow your conscience, and whatever your medical ethics would require you to do or say with this patient, and it cannot be used against you. That protects the doctor rather than heals the patient. Isn't that true? Whitted: Well, I think it protects the doctor. If he had the discussion, it may heal the patient as well. Chambers: But here's the point. The doctor can say all these things without this bill, can't he or she? Whitted: And it happens. Chambers: And we don't really need this bill if the doctor is going to be ethical and give preeminence to the duty to heal. We don't need this bill, because the doctor will do that. Isn't that true? Whitted: We're all human, and I think we make decisions, all sorts of fears that affect the way we confront others, and I think that some people are driven by those fears, and that outweighs this other overlying need to heal patients. So I think that that's true. Chambers: Well stated, Counselor. Then there was some other discussion. I pick it up, and want to mention about the relationship between a lawyer and the client, and that the lawyer, if he makes an admission against his or her interest, that can be used against the lawyer in a medical malpractice...I meant, in a malpractice lawsuit against the lawyer. And he was saying that he didn't know for sure what the procedural rules were. Chambers: Let me ask you a simple question that I think any lawyer will know. The lawyer-client privilege is not the privilege of the lawyer; it's the privilege of the client. Isn't that right? Whitted: I think so. Chambers: The client can waive that privilege. So the lawyer cannot say, because there's a lawyer-client privilege, the client cannot introduce a statement against my interest in a malpractice lawsuit against me. In other words, the lawyer cannot invoke that privilege against the client. Whitted: That's true. Chambers: But I, as the client, can stop you, my lawyer, from saying certain things. Isn't that true? Whitted: That's true. Chambers: Now let's bring it over here to the doctor and the patient. This is a discussion not between two experts, as occurred between you and Senator Lathrop, but between an expert and one struggling, I being the one struggling. Then that's when I went through the exchange that I read to you earlier, where I mentioned to him that everything we say is recorded, and he acknowledged that he had made mistakes, he had acknowledged to his patients he had made mistakes, and it had not harmed him in the least. We come to a Bruce Rieker, and this is the last one I will read from. His last name is spelled R-i-k-e-r (sic). He is the vice president of advocacy for the Nebraska Hospital Association. And we had a very brief exchange: Mr. Rieker, what does the "VP" after your name stand for? Rieker: Vice president. Chambers: Oh. I wanted to be sure it wasn't a certain degree. Again, educated in OPS. You said this bill is a bold step. In what sense is it a bold step, and by whom? Rieker: Well, I think it's a bold step by our state to move forward in creating an

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environment...I wish I could just bring the doctor back up here, as he so...as he eloquently said it. We have a society in the healthcare area whereby when there is the chance that there was negligence or malpractice, as it may be, to lock up and not say anything, and thus... Chambers: So it's that fear factor? Rieker: It's the fear factor, absolutely. It's a step forward removing the fear factor. Chambers: But you're not suggesting that this should cause us to view these people who get this protection as being courageous in any sense, are you? Rieker: No. Chambers: But it's really the opposite, isn't it? Rieker: It's doing the right thing. Chambers: It's abject cowardice that we're dealing with on the part of these healthcare providers though, isn't it? Because they're afraid to do what their conscience tells them they ought to do unless they're protected from the consequences of following their conscience? And Rieker acknowledged that that's the case. [LB373]

SENATOR LANGEMEIER: One minute. [LB373]

SENATOR CHAMBERS: We're not dealing with noble people here. Remember this: If the doctor did not commit an act of negligence that harmed a person, the doctor can say anything he or she wants to and it is not going to be used because there is no cause of action that will stand. It doesn't matter. What we're talking about is that situation where harm was done because the doctor failed to follow the standards that governs the procedure he or she was utilizing, or use of the instruments the doctor was making use of. The doctors brought this to protect themselves, not the patient. If they felt their first job was to heal, they would do what healing required. And when something intervened, let the doctor admit... [LB373]

SENATOR LANGEMEIER: Time. [LB373]

SENATOR CHAMBERS: ...frankly. Thank you, Mr. President. [LB373]

SENATOR LANGEMEIER: Thank you, Senator Chambers. You have heard the opening on FA89, offered by Senator Chambers. It is available for your review. Speaker Flood, you are recognized for an announcement. [LB373]

SPEAKER FLOOD: Thank you, Mr. President and members. Just a quick reminder, the list of consent calendar bills for tomorrow are attached to today's agenda. I'm sure you've seen them. Now, if there is a bill that you are opposed to or you do not think belongs in consent calendar, you'll have to give note in writing to the Clerk stating more or less that you request that LB such and such be removed from the consent calendar. And that note does require the signature of three senators to remove a bill from consent calendar. Now, if you intend to have a bill removed, it would be really nice if you would do that this afternoon so that we aren't rushing in the morning, get that to the Clerk, and the Clerk will begin accepting those requests today. Also, please note that you may offer amendments to the cleanup bill to clean up the bill, but if the amendments are

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added tomorrow that adds another bill, portions of another bill, or any new subject matter, I will not be scheduling the bill on the agenda again. So essentially, the bill will be on hold until next year. If you have any questions, we'll send this out on e-mail so that you can follow through. But we are preparing for consent calendar tomorrow morning. Thank you, Mr. President. [LB373]

SENATOR LANGEMEIER: Thank you, Speaker Flood. You have heard the opening on FA89, offered by Senator Chambers. The floor is now open for discussion. Wishing to speak we have Senator Schimek and Chambers. Senator Schimek, you are recognized. [LB373]

SENATOR SCHIMEK: Thank you, Mr. President and members. Senator Chambers, I'm sorry. I don't like your amendment. I thought I had better get up and say so. But I think...I know you're trying to make a point here and I understand your point and I appreciate everything that you and Senator White and Senator Lathrop stand for because I know that you care about the legal system. I know that you care about people who might fall through the cracks of that legal system. And so I am listening intently to what you have to say. But the goal behind this bill is to simply open up the dialogue between patients and physicians, and I know you think that we shouldn't have to do that. But you know what? We pass laws all the time in here that brings about behavior that we would like to see, whether it's saying that you can't run a red light, to anything else that we dream up in here. So I think this bill will bring very good results. It has been proven in other states that have passed such legislation. We did eliminate the statement of fault from the bill, and even though I didn't have a problem with having that in there because I...as I think has already been suggested in here, malpractice is not easy anyway, and finding fault is going to be a lot more difficult than just taking somebody's statement and introducing that into evidence and making your case on that. That's not going to be a big deal. But I do think it encourages physicians to apologize about an outcome, not necessarily for any error that occurred, and, in fact, I guess apology is not really a confession. Apology is just simply saying I'm sorry. I happen to have a transcript of that committee hearing, too, because I wanted to go back and look at some of the things that were said. And I would like to also quote from Peter Whitted, if I might, and he was responding to a question from Senator McDonald. And I'm not going to repeat the question; I'm not even going to repeat the entire answer because it's kind of disconnected in a way. But he says at one point in this paragraph that the doctor would go out and say something to the effect that: I'm not happy about the way this came out and I know you're not happy; I feel your pain, so to speak; let's see what we can do to right this situation and make sure it doesn't happen again. That's the goal of this legislation, that's what we're trying to do, and I think that this gives us an opportunity to do that. In deference to Senator Chambers, he goes on, I think that you bring up good points. I mean, I can't disagree with that. But I think that the cloud of silence has become so deeply entrenched, that I think it's very difficult to overcome. And that's why I come before you today and the Legislature to urge you to support a way to try to begin

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to break down that code of silence so that we really do get to the bottom of medical errors, so that we do try to make things more safe,... [LB373]

SENATOR LANGEMEIER: One minute. [LB373]

SENATOR SCHIMEK: ...and that we do compensate people that are injured by "maloccurrences," or whatever term you want to use for those. So I think he is saying, yes, your points are good, Senator Chambers, but in spite of that, I believe that the bill is a good one and that it will bring good results and that it has been proven in other states where it has been tried. Thank you, Mr. President. [LB373]

SENATOR LANGEMEIER: Thank you, Senator Schimek. Senator Chambers, you are recognized. [LB373]

SENATOR CHAMBERS: Mr. President and members of the Legislature, like old Daniel, I can read the writing on the wall, so I'm going to make a different use of my time. I'm going to talk about your Attorney General who decided he is going to take on a war hero. Now, I can't say whether Attorney General Jon Bruning has any military experience, but I doubt it. But I do believe he has probably seen some war movies with John Wayne in them and he's probably seen some Rambo movies, too, so that probably qualifies him. He may have been in the Boy Scouts, and had he not been in the Boy Scouts, I'm sure he knew some Boy Scouts. So he's going to come bounding in like a puppy and say, I'm going to take on Senator Hagel because people don't like what he is saying about President Bush and what he is saying about the war. So he had a poll taken, and the poll, in effect, said, do you like what Senator Hagel is saying about President Bush? Heavens, no! Sixty-five percent say, heavens, no; thirty-five percent said, Hades, yes. So in my poll I got this many more points than Senator Hagel; look how many people like me. Do you like what he is saying about impeach the President? Same answer; same breakdown. So he's way ahead of Senator Hagel. Now, Senator Hagel is a professional as a politician. He is a heavyweight. Jon Bruning is a lightweight, not physically speaking of course. When he was in the Legislature, I don't know...I don't remember how many years he was here but I don't know if he passed a bill for every year he was here, and he was not here more than six years. He is running for a legislative position and he has no record as a legislator that would recommend him to anybody to send to the U.S. Senate to take Senator Hagel's seat. Senator Hagel not only has seniority, he has clout and he is respected and he is a man of the world from having traveled throughout the world. And here Jon Bruning is not even doing his job as the Attorney General. And some people might figure I'm bitter against Jon Bruning because he won't do his job as far as this execution protocol. He wrote a response and admitted that there are doubts about it, but he is not going to get involved because he's running against Mr. Hagel for the U.S. Senate seat some months down the line. So he's got to get this poll taken and put that in the newspapers. You know why I say he's not doing his job? His job as the Attorney General is to defend the legislation which we

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enact. There is a bill, LB1024, languishing in court which his office will not defend. The constitution and the laws place that duty on him and he's not doing it. That's point one for Mr. Hagel to use: Do your job as Attorney General; you can't handle that. But that ain't all, brothers or sisters. You've seen this guy who sells you all these inventions: I got a butcher knife; I've got steak knife; I've got a paring knife, but that's not all; I've got something you can stick in a turkey and stick it in this little device and he'll be cooked to a turn in a three minutes, and that ain't all. That's Bruning. But that ain't all. We were considering a bill that would narrow the application of the death penalty. So whereas Bruning won't defend a law that's on the books, he said, I will challenge that in court because it's unconstitutional. And no bill had been passed; it wasn't even in its final form. But that's what he said. That's political posturing. That's the man who is going to take on Hagel, the professional? Bruning has not been in a political campaign where hardball is played. [LB373]

SENATOR LANGEMEIER: One minute. [LB373]

SENATOR CHAMBERS: He doesn't know what a campaign means. He's Poor Johnny One-Note: Why, that's dastardly. He'll jump up here and say all these things he would say if he's running for an office on the university campus. He cannot stand up to Chuck Hagel; Hagel will swat him like a gnat. And I'll move on. Now we come to this protocol, and he says the court may rule one way on it; the court may rule the other way, meaning that I could be right, that is was not adopted by following the procedures of the Administrative Procedures Act. He said the authority in the country is split; that the issue I raised would require an answer and the answer is far from easy to give. And he said a court might do this; it could do that. But when... [LB373]

SENATOR LANGEMEIER: Time. [LB373]

SENATOR CHAMBERS: Thank you, Mr. President. [LB373]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Chambers, you are recognized. [LB373]

SENATOR CHAMBERS: When the state is going to kill, it should not be an iffy situation. The fact that he can talk about the uncertainty should cause him, as an ethical lawyer, to take that before a court and see what the court does say. You're going to kill somebody under circumstances where there is a cloud over the procedure? It may not be the correct one, but he said he's not going to get involved. What does that procedure consist of? They had talked to this so-called expert down in Florida where they've had some botched executions, a Dr. Wright, without giving his credentials, who told them to pass a current of electricity through a person's body, and the voltage would be 2,540 volts...or 2,450 volts for 15 seconds. Now, if he is an expert...and Senator Fulton is hobbling out but he could confirm this...if a formula is laid out based on scientific

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principles and expertise, it's valid and it's not going to have to be modified because somebody questions it. This expert had his procedure challenged by me when I wrote to the Attorney General, so you know what he did? He said, oh, well, not 15 seconds; run it through him for 20 seconds. And what about the likelihood or possibility of fire? When he was first talking to the department when they first made a change for the 15 seconds, he wrote in his report, in case of fire, talking about setting the individual on fire. This is a Christian country, 2007. This is what the Attorney General knows can happen. In the case of fire, the use of a fire extinguisher approved for high voltage is appropriate. CO2 extinguishers should be adequate for the task and should be available for use. The current should be stopped before the extinguisher is used. So you're running this current through and the person catches on fire or there is excessive smoke, and you stop the current and you extinguish the fire, then you check the sponges that are under the electrode on the head and maybe you soak them or moisten them again and reposition the electrodes and you start this macabre, barbaric burning again. That's what the Attorney General is saying is all right; that's what you all are approving of. Nobody will say anything on this except me who is...I'm not a Christian, and I know what barbarism is and this is barbaric. So when I wrote my challenge to the Attorney General and said that two district courts have said...and I'm going to put whatever motions I need up there to finish what I've got to say. This bill I'm through with; I'm not going to mess with Senator Schimek's bill. And this is not to stop that bill; it's to say something that needs to be said so that the Attorney General, the Governor, and the Nebraska Supreme Court will have been called to account. And I will use this transcript so that when they run that juice through that man, according to what they're doing and Jon Bruning said they should and the Governor approves and the court won't step in, and the man catches fire, I'm going to bring the transcript like I'm reading it today. And you all don't care, do you? Where is your compassion, your humanity? I'm not talking about whether there should be a death penalty. I'm talking about the manner in which it's carried out. Even with lethal injection, 11 states have suspended all executions because of problems. And they have a death penalty; they are not talking about abolishing the death penalty. [LB373]

SENATOR LANGEMEIER: One minute. [LB373]

SENATOR CHAMBERS: And has happened as a result of legislative action, judicial action, and gubernatorial action. And we don't have a man worth his salt in any position, in the Governor's Office, in the Attorney General's Office, sitting on the Nebraska Supreme Court--cowards, all; moral cowards, all. So let's say they carry out the execution in the middle of our legislative session. That's what they're going to do. And it winds up going to court, and the court says, well, yes, that protocol was not adopted legally; it should not have been used, but the execution was done; that's tough. That's not the way I feel about it. Thank you, Mr. President. [LB373]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Schimek, you are

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recognized. [LB373]

SENATOR SCHIMEK: Thank you, Mr. President. Senator Chambers, would you like some more time? [LB373]

SENATOR CHAMBERS: Yes. Thank you, Senator Schimek. I would. [LB373]

SENATOR LANGEMEIER: 4:50. [LB373]

SENATOR CHAMBERS: I make no bones about the fact that I don't want the state where I live to kill anybody and I'm trying to stop it from doing that, and I will leave no stone unturned and I will use anything at my disposal to do it. But that's what happens when you're not one of these hypocrites who say I respect life everywhere but it might be politically inconvenient to do something here. We have an impending, barbaric slaughter confronting us: a person in that electric chair is burned to death. There are fourth degree burns. The blistering, the burns have been seen on the corpses. The autopsies have disclosed the horrific damage done to a person. But my Christian colleagues say, as they pray every morning to that God, well, that's the way it is and that's the way it's going to be. Now, you all, if you say prayers, pray that the man does not catch fire, because if he does, since your state is the only one that uses electrocution as a sole means...and I'm going to contact the Supreme Court. I'm going to have a document of everything that I try to do. You think this won't be talked about on CNN? Fox? You think it won't be blazoned around the world? America, which is telling everybody else how to conduct their affairs, is still burning people alive? So let's say that you put the fire extinguisher on the person, and then you have a malfunction with the equipment. They do have an electrician on hand to try to fix anything that happens. So what then? You've got somebody half-cooked, half-dead, sitting in this electric chair, having been extinguished. And they turn the juice off and you have these witnesses sitting there. When the Attorney General says that this is strictly an internal matter, he forgets that the public is a part of this activity. It is not internal. The witnesses are there pursuant to the law. The public is there. The news media are there on behalf of all the public who cannot see it. This is not an internal item and the Attorney General knows it, but he is a moral coward. The Governor is a moral coward, and I'm going to show you that the Supreme Court is too. I'm going to write them a letter and I'm going to tell them it might be impertinent but as an elected official and a human being it's my responsibility to try to make this appeal to you. And you, on your own motion, which the court can do and I don't have to have standing to suggest this to them, on your own motion, with all of the questions surrounding this protocol which a so-called expert changed because it was criticized by me, changed, just like that, that doesn't show you it's haphazard? That's it cavalier? That it's breezy? The court should satisfy itself that, before it allows another execution pursuant to any protocol adopted by the Department of Corrections, that, first of all, this is not a barbaric means of inflicting death on a person; secondly, if you don't want to reach that far, you don't want to touch that issue, then make them

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adopt their protocol according to the requirements of the Administrative Procedure Act. [LB373]

SENATOR LANGEMEIER: One minute. [LB373]

SENATOR CHAMBERS: There would have to be a public hearing. Genuine experts would testify. A record would be made. But I will remind the court that pending before it right now are cases where that record can be used to take a second look at and reevaluate the use of the electric chair. Suspend the executions until you do that. Is that asking a court to do too much? These are supposed to be the ones who state what the law is, and they know that the Eighth Amendment to the U.S. Constitution is violated by the use of this electric chair and by these documents that the Department of Corrections will use itself to justify what it did. It doesn't both you that this expert admits that he was wrong? He should have gotten it right the first time. And you know what the model was? Using a person weighing 155 pounds. [LB373]

SENATOR LANGEMEIER: Time. [LB373]

SENATOR CHAMBERS: Thank you, Mr. President and Senator Schimek. [LB373]

SENATOR LANGEMEIER: Thank you, Senator Chambers and Senator Schimek. There are no other lights on. Senator Chambers, you are recognized to close on FA89. [LB373]

SENATOR CHAMBERS: Thank you, Mr. President. And I will not have to offer another amendments because when the motion is made to move the bill, I may can speak one or two times, however many I have left. But I look at this Jon Bruning, and when questions were put to him after his seven-page letter was written to me...I'm going to make a copy and distribute it to all my colleagues; I haven't had time to do that yet...and serious issues was raised, this coward cannot even confront the media and say, no comment. The paper points out that his spokesperson said he has no comment. And this is the man who is going to stand up to Chuck Hagel? So we're debating. Senator Hagel, we want to know what you have done while a member of the U.S. Senate that would give "Repelicans" a reason to vote for you as their standard bearer in this upcoming primary for the U.S. Senate seat? And Chuck Hagel will stand up and he will lay out the things that he has done that benefitted the state of Nebraska, the fact that he was willing to take positions which were unequivocal even when they were highly unpopular. He was willing to stand up to the President, although he supported the President when he thought he was right, and do the kind of talk that Chuck Hagel can do without lying. Then he sits down. We will now hear from Attorney General Jon Bruning, known by Senator Chambers as Poor Johnny One-Note: No comment; no comment. So, Attorney General Bruning, what do you have to say about what you did as Attorney General? Well, I would like to call on my spokesperson. So she comes up to

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the mike, and he points to her. He says, tell them. She would say, with all due respect, the Attorney General has no comment. And that's the way it will go. Those are the kind of officials you all have. That's what's happening in your state. But I'm going to try to stop your state from doing what some of you all may want to see happen and I'm not going to leave a stone unturned. My colleagues are showing me things; the Attorney General is simply reconfirming things that I've already known about him; and the Governor has always been a political creature. But remember, this thing will not be done in a corner. The Governor can do something. But he'll be like the Attorney General--I'm not going to get involved. I'm going to be deeply involved throughout and I'm going to do everything that occurs to me that I can do that is within the law. What can the court tell me if I write them this letter? Go jump in the lake. They can tell me that; I'm not going to do it. But I haven't lost anything except some time, wasted some effort. But I also am creating a paper trail and I'm going to document for the court what I'm saying, and I will send a copy of everything that I send to the court to the Attorney General, so that the state will have notice, and nothing that I do and say is going to be a surprise to anybody. But I'm kind of surprised that you all can know that somebody is going to literally be burned alive. Judge Hippe, who took evidence from experts, saw autopsy photos, photos of a body prior to autopsy. [LB373]

SENATOR LANGEMEIER: One minute. [LB373]

SENATOR CHAMBERS: And from the accumulated evidence presented, a person does not suffer instantaneous death. The brain is not cooked. The skull causes the current to flow around the brain and down through the body, and then it can spread through other parts of the body. Nobody knows for sure what course the electricity takes or how much damage it's going to do in advance because every human body is different and each one reacts differently to the electrical current. And that's why this doctor, after telling them do it my way, can say in case of fire have the fire extinguisher and then turn off the juice, put out the fire, and then start all over again. That's the expert? That's what Nebraska is going to go for? [LB373]

SENATOR LANGEMEIER: Time. [LB373]

SENATOR CHAMBERS: Thank you, Mr. President. [LB373]

SENATOR LANGEMEIER: Thank you, Senator Chambers. You have heard the closing on FA89. The question is, shall FA89 be adopted to LB373? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB373]

ASSISTANT CLERK: 1 aye, 20 nays, on the adoption of Senator Chambers' amendment, Mr. President. [LB373]

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SENATOR LANGEMEIER: Thank you, Mr. Clerk. FA89 is not adopted. (Visitors introduced.) We return now to discussion on LB373. The floor is now open for discussion. Senator Chambers, you are recognized. [LB373]

SENATOR CHAMBERS: Mr. President, the vote on that amendment did not surprise me, but there was an indication that people wanted to know what apology meant and I made an effort to give some guidance in that regard. This expert had told them...and this is the part of the protocol they will use, that after you have subjected this person to this 2,450 volts for 20 seconds now, instead of 15...sometime you ought to get a digital clock and just mark off 20 seconds and realize that during that period of time this voltage is passing through this individual, doing nobody knows what. This process has never been used before. It has never been tested. Even the 15-second continuous flow had never been tested. They don't know. So the doctor had said, after 15 minutes let the people come in who are going to determine if there are any heart sounds. And he was somewhat miffed, being the kind of doctor that he is, that...he's a pathologist...that Nebraska is interested in heart sounds before determining, declaring death. He said you should go by brain death. So a person can be brain dead but there can still be respiration or breathing; the heart is still beating; blood is still flowing. And if you did it his way,...I don't know if he trained under the Nazis...then you take that person who is still breathing out of the chair and you give him over to the mortuary. And I guess the mortician is supposed to finish the job that the electrocution did not complete. But at any rate, you're hoping that the 20 seconds will result in death. But if it doesn't, you will find out from 15-20 minutes later. After 15 minutes, the people who are going to determine whether the individual is dead will be allowed to enter the execution chamber. They should then remove all restraints before making this test, so that's the straps taken off the wrists, the biceps, the torso, the chest, the legs, the ankles, the face mask, the strap holding the head to the chair; remove the electrodes; and then take the test. They don't say whether you should do it with your finger, looking for a pulse, or a stethoscope, or exactly how, but somehow you make a determination that somebody is dead. You hear what I'm telling you? And this is what they're going to do and you all are satisfied, not troubled by it? What kind of place is this? What kind of place is this? What kind of people am I talking to? What kind of people are you? Are you human? But if he's not dead, then you know what you've got to do, don't you? You've got to complete it, so you pick him up and you set him back in the chair and you refasten all of these straps. And remember, there are the witnesses; witnesses. Your Christian brother and sisters are watching this. And you get him all strapped up again, and let's say that there is no malfunction, and then you start the whole thing again. And having been subjected to that much heat, you know the fire is going to start the second time. Then what? That doesn't bother you all? Or did you think it was just clean, sanitized? [LB373]

SENATOR LANGEMEIER: One minute. [LB373]

SENATOR CHAMBERS: Why do you think every other state has gotten rid of the

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electric chair? I'm going to tell you why Nebraska has kept it. Because I feel that at some point...and I fought against lethal injection, and there's an article in today's paper about a medical report telling you some things about lethal injection, so that is not an acceptable method and it may be struck down as cruel and unusual before Nebraska's electric chair. It's hard to kill somebody when you are a state, and you ought not do it if you're a state. But this is a bizarre, it's a macabre, it is a vicious, inhumane, immoral activity, ceremonially and ritualistically carried out like any burnt offering or burnt sacrifice in the history of humankind. Is that my third time, Mr. President, on the bill? [LB373]

SENATOR LANGEMEIER: It's your first. [LB373]

SENATOR CHAMBERS: Oh. [LB373]

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SENATOR LANGEMEIER: Time. Thank you, Senator Chambers. Senator White, you are recognized. [LB373]

SENATOR WHITE: Thank you, Mr. President. A handout was given to all of the members of the Unicameral--Americans for Insurance Reform--and it reflects something that I had discussed with Senator Carlson and it is important when we start talking about these kinds of issues because one of the questions driving this bill is whether or not there are, in fact, large numbers of meritless lawsuits and whether we need to take action to protect them; to entitle physicians, in this case, to rights not afforded to engineers or insurance salesmen or drivers of automobile or cattle salesmen or any other profession. And this handout will point out to you...and it's dated as of 2002, and I have no information indicating these numbers haven't continued to be true. And if you look at the bottom pie chart on the bottom right it states, in 2002, premiums were less than 1 percent, and they were actually .58 percent, so one-half of 1 percent or six-tenths of 1 percent, of the U.S. healthcare costs. And the payouts, the amount of money actually paid out to attorneys, settlements, legal fees, verdicts, were .38 percent, so they were actually four-tenths of 1 percent. We can talk about what's right or wrong, and we certainly should, and we can reasonably disagree about what we should do with respect to this bill. But what we cannot claim, in truth, is that there is an explosion of meritless lawsuits. It's simply not true and it's particularly not true in this area. I appreciate it. Thank you, Mr. President. [LB373]

SENATOR LANGEMEIER: Thank you, Senator White. Senator Chambers, you are recognized. [LB373]

SENATOR CHAMBERS: Mr. President, members of the Legislature, what I'm saying may not be pleasant to hear, but I'm just using words; and I'm not going to kill anybody, but the state is and the state ought not do it. When there is this much doubt as you will

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see expressed in the Attorney General's letter, where he's putting himself in a position where he doesn't have to make a decision or get involved, when there is this much doubt surrounding the killing of a person by the state, the state ought not to do it. Under the ordinary criminal law, Supreme Courts throughout this country have said that a criminal statute must be strictly construed. That means no wiggle room. Nothing can be added to the words that are in it. Nothing can be taken away from those words if, by doing so, you're going to try to make it constitutional. Strictly construed: The Attorney General should use that as his moral guidepost. If you strictly apply the law, the Department of Corrections, in adopting that protocol, ought to be made to do so because they violated the law, and the Attorney General knows it. I think he may have kind of sloughed over issues and expressed doubt so that if the botched execution does occur he can say, well, I made it clear that I wasn't sure; I didn't say they ought to do it; I said if they do it we'll defend them, but we didn't tell them to do it; we left it up to them and the Governor. And everybody will be pointing the finger at everybody else, but it doesn't have to come to that. What is the rush? Carey Dean Moore is not going anywhere. Why did they decide to set an execution date, an execution date in the heart of this legislative session? What is the Legislature going to do on that day if the execution occurs, and what is the Legislature going to be doing subsequent to that day? We don't have to sit here, saying I wish it hadn't happened. It has not happened. It can be prevented. There are good legal minds in this state. There are some good people with good legal minds, but they don't have the backbone; they don't have the drive; they don't have the sense of civic responsibility to make sure that when the state kills, if it insists on killing, that it ought to do it in a way that comports with the law and human decency. You can burn somebody alive and say he deserved it...I don't think anybody deserves to be burned alive...but even if you say that, you are not just destroying and doing away with the humanity and human dignity of that condemned person. You are doing something to your own humanity, to your own human dignity, to your own sense of decency. That's what you are doing. And you are going to sit and watch it happen and wash your hands like Pilate, and say you had nothing to do with it; it's not your responsibility? You're lawmakers; it is your responsibility. But it should touch you somewhere deeper than that so you might want to fall back on that old saw that if you kill, you should die. And if the state...some people say that the state cannot teach that killing is wrong, by killing. Well, as I told a person,... [LB373]

SENATOR LANGEMEIER: One minute. [LB373]

SENATOR CHAMBERS: ...you're just like that killer; it just took something else to bring your barbarism out, that's all, but you're just like him. You believe the same way. You're hiding behind the state. You're making it all right but you're letting other people do your dirt for you. You've got these people working at the Department of Corrections. They're doing the dirty work. They're the ones who will do the death watch. They're the ones who will escort the person to the chair. They're the ones who will strap him in. They're the ones who will unstrap him and then strap him back in if they have to. Nobody on this

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floor is going to do it. The Governor is not going to do it. The Attorney General is not going to do it. Have somebody else do it. And I think that is wrong and inexcusable. Thank you, Mr. President. [LB373]

SENATOR LANGEMEIER: Thank you, Senator Chambers. (Visitors introduced.) We return to discussion on LB373. Senator Chambers, you are recognized. [LB373]

SENATOR CHAMBERS Mr. President and members of the Legislature, this isn't the last time I'm going to talk about this matter. I'm not going to talk about it on every bill, although maybe I should. How many times have people said on this floor, if you save one life? I realize, however, there are those of us who think some people don't deserve to live; that they are no longer human beings. But there are some people, such as myself, who believe that that point never is reached; that a person born of a woman remains a human being until the day he or she dies. I don't care what that person may have done. And before we become so self-righteous and announce these moral judgments that this person ought not live, would our life withstand scrutiny? Do you think everybody who got up of a morning knew that by the time the sun set that day he or she would be a murderer? Do you think nobody on this floor could be in a set of circumstances where he or she would not do that? You can judge the level of civilization of a society by the way it treats the people who are considered to be the worst. No government should kill its own citizens for any reason. All of the developed countries except this one have done away with the death penalty, and not one of them has the level of crime and murder rate of the United States. And some people might say, well, it would be even worse if you didn't have the death penalty. That doesn't pan out. People are influenced by what those who are supposed to be the opinion makers and trendsetters are doing and saying. And when they are rendered insensitive to people dying because the state kills, when they hear preachers justifying state killing, they hear politicians building their careers on state killings, they have a man like Attorney General Jon Bruning who wants to ride an execution into a seat in the U.S. Senate, what are they to be expected to do? You kill. You say, under the circumstances where you think it's all right, it's all right. Well, I think it's all right too. I just have a different set of circumstances. But the barbarism is there in all of you. You know it and I know it. But you're afraid to do what you know you ought to do, so why are you even here? When you all are saying those prayers, are there ever any conflicting thoughts in your mind while you're uttering those prayers or listening to them, or are they just rote words? You just say them because you know them? None of those things you profess to believe have any part to play in how you conduct your affairs? When it comes to the state killing, you're comfortable with that and you're comfortable with it being done as they intend to do it on May 8? The ones out there at the department don't know what to do. They keep checking with this Dr. Wright down in Florida, whoever he is. His credentials are never given. If Senator Fulton, as an engineer, worked out a formula or he was going to construct an edifice, and he had laid everything out, did all of his mathematical calculations, was going to use a building material which was not flawed,... [LB373]

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SENATOR LANGEMEIER: One minute. [LB373]

SENATOR CHAMBERS: ...and he's calling on his experience and knowledge as an engineer, and he says this is what I'm going to do, then somebody, not an engineer, says, well, that's not going to work, that building is going to collapse. Then he immediately says, oh, then we're going to have to add another pillar on the north side, a pillar on the west side, a pillar on the east side, a pillar on the south side. Somebody would ask him, Fulton, you say you're an engineer and somebody criticizing you said this building was going to be sound, and because somebody criticized, you're changing it on the spur of the moment? That's what they did out at the Department of Corrections. They changed it on the spur of the moment and still don't know whether it will work, and you all are ease with that. That's compatible with your sense of self? Well, it's not compatible with mine, so as long as I'm here I will find my occasions to try to reach something in you which nothing so far has been able to reach. [LB373]

SENATOR LANGEMEIER: Time. [LB373]

SENATOR CHAMBERS: Thank you, Mr. President. [LB373]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Seeing no other lights on, Senator Schimek you are recognized to close on LB373. [LB373]

SENATOR SCHIMEK: Thank you, Mr. President and members. And as usual, Senator Chambers, you said a lot of provocative things today and I appreciate it and I appreciate your hard work on this issue. There is one thing I would like to say to you, however. You know, you've said something about that none of these men are worth their salt. You were talking about elected officials. Well, you know how to cure that, don't you? [LB373]

SENATOR CHAMBERS: Yes. (Inaudible) [LB373]

SENATOR SCHIMEK: Yes. Have all women in elected office. (Laugh) Anyway, thank you, Senator Chambers. Thank you, Senator Ashford, for prioritizing this bill. Thank you, members, for sitting patiently all afternoon and participating in and listening to the debate on the bill. I think it's a good bill. I think it will bring a more compassionate human aspect to this doctor-patient relationship. And there is one thing that several of you have asked me and I honestly didn't know the answer, but I have found out. It would apply to pharmacists. It applies to any healthcare professional who is licensed. So I wanted to put that into the record. And with that, I would simply ask for your vote on advancing LB373 to E&R Initial. [LB373]

SENATOR LANGEMEIER: Thank you, Senator Schimek. You have heard the closing on the advancement of LB373 to E&R Initial. All those in favor vote yea; all those

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opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB373]

ASSISTANT CLERK: 29 ayes, 5 nays on the motion to advance, Mr. President. [LB373]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. LB373 does advance. Mr. Clerk. [LB373]

ASSISTANT CLERK: Mr. President, some items for the record: Your Committee on Judiciary reports LB682 to General File with amendments; amendments to be printed by Senator White to LB157; and by Senator Loudon to LB530; a motion to be printed from Senator Flood relative to LB701 and LB701A. (Legislative Journal page 1270.) [LB682 LB157 LB530 LB701 LB701A]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. The next item on the agenda, LR1CA. [LR1CA]

ASSISTANT CLERK: Mr. President, LR1CA was introduced by Senator Preister. It is a proposed constitutional amendment relating to the salary of members of the Legislature. The resolution had been introduced on January 4, referred to the Executive Board. It's been reported to General File with no committee amendments. [LR1CA]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Preister, you are recognized to open on LR1CA. [LR1CA]

SENATOR PREISTER: Thank you, Honorable President, friends all. The state Legislature does not get paid \$165,000 per year. We do not have state paid healthcare or insurance. We do not have a retirement program, aside from term limits. We are not the U.S. Congress. We are the State Legislature of Nebraska. Our pay stubs say we get paid \$5.76 per hour. Unlike city councils, county boards, and Congress, the Nebraska Legislature cannot raise its own salary. Since the Unicameral was established in 1934, only four salary increases have been approved by the voters. Three of these increases were approved prior to 1970. The fourth increase was approved almost 20 years ago in 1988. The most recent salary proposal passed by the Legislature in 2005 and voted on in 2006 was rejected by the voters. It would have increased legislators' current annual salary from \$12,000 to \$21,000, and allowed an annual cost-of-living increase, not to exceed 4 percent. LR1CA would increase salaries to \$22,000. There is no cost-of-living increase in this legislation. The relationship of LR1CA proposed salary in 2009, when it would go into effect, to inflation is outlined on a handout that I gave you through the pages. If you look at that chart on one of those handouts, you'll see that our current \$12,000 salary established in 1988 was indexed for actual inflation from 1988 to 2009; the salaries in 2009 would be just over \$22,000, and that's where the figure comes from. Essentially we're staying flat, probably not even the buying power of 1988. So in the past 20 years, how has inflation affected the cost of living for all Nebraskans? In 1988,

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the average price for a new car was \$12,000. Today it's \$28,000. A gallon of gasoline was \$1.08. A gallon of gasoline today is approaching \$3.00--nearly three times as much. As another measure, in 1988 I had a filling put in my tooth and the dentist charged me \$58. Two weeks ago I went in, the same dentist, the same tooth. That filling finally fell out 20 years later; it was a pretty good filling. It cost me \$213--well over three times as much. Many of our goods and services have more than doubled in that time. Public servants do not expect to receive salaries that are competitive with the private sector. We willingly make economic sacrifices in order to serve our communities and our state. However, our state legislators' salaries are not even competitive with many county board salaries. County board salaries are listed on another handout that I provided to you. Sixty-three Nebraska counties pay their board members more than \$12,000 a year; 72 counties pay annual cost-of-living increases; and 13 counties pay their county board members over \$20,000 annually. Some city councils' salaries are greater than ours. Omaha City Council members are paid \$31,000 per year. Lincoln Council members are paid \$24,000 per year. Grand Island City Council receives \$12,000 a year. On a handout you can see a comparison of all 50 state legislative salaries. A few of those, our neighbors, I'll highlight. Colorado legislators receives \$30,000 a year; Iowa, over \$21,000 a year; Kansas, over \$30,000 a year; Missouri, over \$31,000 a year; and Oklahoma, over \$38,000 per year. There is another handout that's an editorial by the World-Herald. In that recent editorial they pointed out that the full-time nature of being in the Legislature is essentially that--full-time. Constituents don't ask for help on a part-time basis. They ask in grocery stores, churches, and wherever they see us. They expect us to attend their neighborhood association meetings at night and on weekends. Constituents expect us to support and attend their church festivals, fish fries, school, and other events all year round. That is expected of a representative and what we regularly do. We're not just here working 60 or 90 days a year. Those are just the days we're actually meeting in session. During the Easter weekend, Senator Wallman was out driving along the Republican River while many of us were discussing LB701 with constituents. Constituents expect us to attend 4-H events; fairs; dinners; parades; fund-raisers; community meetings; school and school board meetings; Grange; service clubs; business and labor organization events; interest groups of all kinds, both in and outside of our districts; city council and county board meetings. The list goes on and on and each of you could certainly add to that list. Outside of the actual legislative days that we go, until June this year, we are expected to attend hearings and briefings on all of the committees that we serve in. During the second half of the year we work in committees and individually on the issues and legislation for the next January session. The workload and doing it as constituents demand is essentially year round and averages out to be a full-time job. We could put in far more than that if we chose to. In the off season some of us are even down here on Saturdays and Sundays, working. I don't want our process to only allow the rich or the elderly and retired to have access to the representation position. We need the working everyday citizens, the blue-collar workers of Nebraska, the young people of Nebraska to have the opportunity to serve in our citizen Legislature; to have their issues and perspectives represented.

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Currently, nearly half of our membership is over 60 years old. We have a few young people. That is obviously not representative of our citizenry in the state of Nebraska, even though we are certainly a graying state. I think we need to pass LR1CA. It's not an increase that we are approving as a body. This is an opportunity--an opportunity for the citizens to make that decision. And on another handout that I provided to you, it shows clearly for those who may have heard that this is a slap in the face to the citizens because they just voted this down,... [LR1CA LB701]

SENATOR LANGEMEIER: One minute. [LR1CA]

SENATOR PREISTER: ...in prior times the citizens voted six times in 20 years before the Legislature was given a raise. Six times, from 1968 to 1988, before on the sixth try the citizens approved that increase to \$12,000. That was done in a primary election, which I hope to get this proposal on the ballot for in the next year. This will only be the second time in 20 years that the voters have had an opportunity to vote on this salary. It has only been before the voters once in 19 years. I hardly would say that that's a slap in the face to the voters. And for those voters who choose to vote it down, for those voters who we're never going to convince, who only think that we are the people that control every aspect of their lives and we just generate joy in... [LR1CA]

SENATOR LANGEMEIER: Time. Time. [LR1CA]

SENATOR PREISTER: ...making their lives miserable, they aren't going to change their mind. Thank you. [LR1CA]

SENATOR LANGEMEIER: Thank you. Thank you, Senator Preister. You have heard the opening on LR1CA. The floor is now open for discussion. Those wishing to speak, we have Friend, Kruse, Mines, Christensen, Wightman, and Schimek. Senator Friend, you are recognized. [LR1CA]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. Senator Preister and I have a bit...we have some things in common, but in particular, on the day that he brought this resolution into Executive Board, I was there too. I brought a little different subject matter and a little different measure. You all know it well as that bicameral coup. So we have a little bit in common. I listened to the dialogue on this issue. I thought about it for the last five, six years. I mean, I thought about the legislative pay. The reason I'm up so abruptly and so quickly to discuss this today is because that's about...that's not the only thing that we had in common, that we were there that day and we were talking about legislative resolutions. There is one other thing that my initiative and Senator Preister's have in common and that is if both of them got out to the ballot, they'd both fail. Mine would fail because it...I don't know, whatever; it's my idea and so it would fail. Senator Preister's, while a better idea overall many people would argue, not only has been out there before, and that's irrelevant to me, but I had a revelation, and

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the revelation was that I think some things the people have to take care of on their own. George Norris didn't run around the state...U.S. Senator George Norris didn't run around the state of Nebraska for nothing. He ran to get the people to drive the idea of a Unicameral Legislature, and it worked. He didn't come to the Legislature and try to convince them. Well, no. Senator Schimek goes, well, of course not. The people needed to take care of that and they did. Let's look to our neighbors in Colorado for a second. A lot of people complain, bemoan, some praise the TABOR amendment out there and the spending lids. That was a people initiative. That was an initiative based on the people's ability to step up and say, you know what, that's it; this is what's going to happen right now. Let's talk about Class I's for a minute. What did the people do before the last election? Whether we like what happened in the Legislature or whether we don't, whether we agree...whether the...statewide, the people agreed with the idea of what the Education Committee and what this Legislature ended up doing, the people spoke up on that issue again. They got enough signatures on the ballot to do what they feel like they needed to do. Stay tuned. Term limits: Legislature didn't drive that. How did it happen? How could that happen? How could people term 40...how could people put term limits on the 49 people in this body? We all want to do the right thing, right? We all have noble goals and objectives. [LR1CA]

SENATOR ERDMAN PRESIDING [LR1CA]

SENATOR ERDMAN: One minute. [LR1CA]

SENATOR FRIEND: This is an issue the people are going to have to drive. It's an issue of emotion; it's an issue of creativity; it's an issue of aggressive, assertive behavioral ideals. And it's an issue that may have to come from a different angle. How many of us were told that I can't believe they didn't give the Legislature a raise; I voted for that? Yeah, okay. It lost by 10 percent. Somebody didn't vote for it. We walk into our boss and we say we want a raise, and our boss says, you know what, no, and if you come back a week from now and ask me again, the answer is going to be no again, and if you come back two weeks from now the answer is going to be no; show me something; show me. [LR1CA]

SENATOR ERDMAN: Time. [LR1CA]

SENATOR FRIEND: Thank you, Mr. President. [LR1CA]

SENATOR ERDMAN: Thank you, Senator Friend. Senator Kruse, you are recognized to speak, followed by Senator Mines. [LR1CA]

SENATOR KRUSE: Thank you, Mr. President and colleagues. I stand in support of the resolution and the constitutional amendment. I would disagree with Senator Friend on one of his points. I think it will pass if we make it simpler than the last time. There is

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clear evidence of why it did not pass last time, one of them being that we were so sure it was going to pass that we could kind of let it go. This is a good opportunity. Folks want us to do this. As I've heard, you know, the reference that maybe they don't want to do this or this is coming up too fast, that's not been our history. We have this every once in awhile. I have had no comment except why don't you do it; please do it again. It's very expensive for the public to do this so don't be excusing us by going to the back of the line and saying, well, let's wait for the public to do it. That's a hard thing to do. It's very expensive. Now in terms of making it simpler, I would direct your attention to the last sentence which is the ballot box information, the voting booth information. That's what we need to focus on and that, I'm convinced, is why we lost last time. Senator Preister has given you the statement that was in there. It had a lot of sticker shock to it. It was hard to understand by somebody who hadn't thought about it. We didn't lose it by people who had thought about this. It was in the papers and people were studying it and so on. The polls were very clear on this that anybody who looked at this and knew it was coming was voting for it. It lost in the voting booth. So I would ask you to look at that language. I will read it now to you. This is what they would look at: A constitutional amendment to change the salary of the members of the Legislature to \$22,000 per year, period. Now that seems, to me, pretty direct and simple. If we can figure out another way to make it simpler, we should. I came up with my proposal as an alternative, a very superior proposal, do understand, (laugh) and passed it out to you in a letter form and I got your responses. I thank you. I got a lot of responses. Don got some, too, and it was clear that you prefer his language to mine. Mine would have had them vote not on the salary but on the CPI: Should the legislators' salary be set by CPI? It was just that simple and direct. Please note what we are offering in these. We are dividing the ballot issue from last time, which had both of these items in there, and I'm saying let's take one of them out. You've said you want to take mine out and that's fine. There is no pride of authorship in this. What we need to focus on in this debate and vote is what will be understood by the person who walks into the booth, has never seen this before, and reads it one time and marks the ballot. We have...I agree with much of the other basis that Senator Preister has given, and don't really need to have at it, but I will affirm this is not a citizen Legislature we keep talking about. You have to be financially independent to come here. If you don't...if you're not that, please don't apply. We know that. Most of the people of our state can't come here, so it's not a citizen Legislature. But if we went to \$22,000 a year,... [LR1CA]

SENATOR ERDMAN: One minute. [LR1CA]

SENATOR KRUSE: ...there are persons that could make it on that and I would really welcome that dedicated, idealistic person who would seek to do that. We've had several in our new group that have come with that kind of an attitude. We need a lot more of it. The independent commission was tried one time. That would be the third alternative of ballot language. I support the language that is here before us. Let's have them look at that one simple sentence that says let's change the salary to \$22,000 per year, period. I

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support that. Thank you. [LR1CA]

SENATOR ERDMAN: Thank you, Senator Kruse. Senator Mines, you are recognized to speak, followed by Senator Christensen. [LR1CA]

SENATOR MINES: Thank you, Mr. President. Colleagues, I couldn't disagree with Senator Kruse more. There are a host of us in this body that are not independently capable of doing this on our own. We have jobs, we are citizen legislators, we're not retired, and I think the general public understands that. And don't believe for a second that the voters didn't know what they were doing. Don't believe that the amendment was something so confusing that they didn't know what they were voting on. I give voters a lot of credit on what they believe and what they knew last year. I stood on this floor last year and I supported the amendment. I spoke to it in public because I believed that, as the exodus of legislators was upon us, that we needed to increase the salary to attract new and bright and committed legislators. Without that money we aren't going to get the right people. I was wrong. Every 1 of the new 22 here, you didn't come here because of the salary. You knew it was \$12,000 a year. You knew what the routine was. Now, would you like an increase in pay? Absolutely. Who wouldn't like to get \$10,000 more a year? But that's not the reason you came, was the money. And Senator Preister listed all the folks that get paid more than we do, and I don't dispute any one of those. If you want those jobs, go get those jobs. I'd like more than \$12,000 a year, but this is the wrong time. Let me just refresh everyone's memory. The amendment went on the ballot last year. By the way, there was an educational process that went on that hasn't been brought up yet. Certainly the media picked up on it. The media explained what was involved, how much money was involved. There was also a group put together by...they were called Yes on Amendment One. The group was headed up by...well, actually the treasurer was former Senator and Chancellor of UNK, Doug Kristensen. Contributors were all the folks and organizations you would expect. They spent \$136,000 in an effort to educate and promote the idea that we need a raise. I think they did a great job. I think they did what they could...about all they could do. Then in May, 376,000 voters cast their votes and the idea got beaten like a drum. Forty-five percent of the people believed that we deserve a salary. Every county in Nebraska, but for Douglas, Lancaster, Buffalo, and Sarpy, voted against it by bigger margins than the 45/55. There's an old...and don't get me wrong. At some point I believe that we'll have and deserve a pay raise. The timing right now is awful. Well, there's an old proverb, Senator Louden would know all about an old cowboy proverb, that timing has everything to do with the outcome of a rain dance. And it's too soon for this rain dance. Voters remember; they understand why they voted in opposition. And to come back in less than a year and propose virtually the same concept to increase our salaries, frankly, I think it's awkward, it's ill-timed, and I think it's detrimental long term. We're hitting this too soon. Let me just suggest to the new senators, again, you knew this was a \$12,000 a year job. [LR1CA]

SENATOR ERDMAN: One minute. [LR1CA]

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SENATOR MINES: You are much better at your job than anyone was going to give you credit for. And I submit that your constituents will strongly disagree with you if you vote in support of a pay increase that will go on the ballot in less than a year from the time that your voters said no. Thank you, Mr. President. [LR1CA]

SENATOR ERDMAN: Thank you, Senator Mines. Senator Christensen, followed by Senator Wightman. [LR1CA]

SENATOR CHRISTENSEN: Thank you, Mr. President. You know, I campaigned through this after the defeat of the salary increase a year ago, and I educated a number of people. I said, you know, it's not as you perceive it. I said, a number of people said, well, I voted for you but I didn't vote for the raise increase. And I said, why? And they'd go through, well, I'm not getting a double in pay and why should you get a double in pay? And, you know, then I would sit down and explain. I said, you know, when was the last time this was raised? I said, have you had a raise since the seventies? And they'd have to say, yes. And I would go through and I'd talk to them and I'd say, would you want to do the job for \$12,000? And they would say, no. And I said, why would you expect anybody else to? I said, you're either going to get the rich and wealthy only, or you're going to get somebody that's got a very flexible job or they're not going to run. I said, you should want to get the best people in there, and if there's somebody better than me, you should want them there. And I stated it when I campaigned and I'll state it again: If there is a better candidate out there then they need to run. The people can put them in and they should be here. But they should be able to be compensated for it. You know, I have different interns in my office. I've got a college gal that read this and I just thought it was very good. You know, I'll go through it. Says what's the bill do? Increase the salaries. Suggested, don't vote for it. And then they put down their impressions. Said, this is the way I see it. Being a senator requires much more than I ever really imagined, and especially for those who do not live in Lincoln or surrounding areas. As is, the salary is so low that it does not really compensate for all the other expenses involved. I know travel is covered, but that is only a small portion of all that is required. Housing alone is almost the entire monthly salary. Besides being a bad deal for current senators, this has other implications as well. With the salary as it is, the spectrum for candidates is greatly narrowed. Only those who can afford time away from their jobs and for those who do not live close, a home in Lincoln, running for the position is not even an option. And that's exactly like it is. You know, it doesn't bother me to stand up and say I'm for an increase. I told them after the primary vote I was still for an increase, and I said if I got defeated I would be for an increase. It wasn't tied to me getting down here and it would never be tied. I don't care. I was always one of the biggest pushes on the church board trying to increase the pastor's wages. Why? Because they was always underpaid in a lot of churches. You know, if somebody is underpaid I'll fight for them. It's just right. And so I encourage people to let the people get to vote on it again, but it's going to take more than just us presenting the opportunity. It's going to take education

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from the press. It is going to take education from every senator going out and educating their people. It's going to...go out explaining what everybody does. A lot of people don't realize what goes on down here. I was not a very politically active individual before I decided to run. I had people in my campaign said, you've never been on the city council, you've never been on a school board, you've never been on anything but a church board or a church organization? I said no. [LR1CA]

SENATOR ERDMAN: One minute. [LR1CA]

SENATOR CHRISTENSEN: I decided it was time for a change so I run. I run against seven other candidates. One withdrew because of a heart attack. We had a great choice of people. A number of them could have done the job and done it well. So I stand up and say, hey, vote for it because if the people are educated and we do our job, the press does their job, we will have the increase because it is very needed. And it's representation that is needed, and if you want good representation you're going to have to increase the salary. It is very needed. I think partly the reason it got voted down a year ago was the CPI on there and I think this is a better form to have it in. And it doesn't bother me to stand up and say so because I believe the people need the choice. Thank you. [LR1CA]

SENATOR ERDMAN: Thank you, Senator Christensen. Senator Wightman, you're recognized to speak, followed by Senator Schimek. [LR1CA]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I applaud Senator Preister for bringing the bill...or the resolution. I think that it is in order. In some ways, in my own mind, I probably would suggest that maybe we be under where we were on the election a year ago, which was at \$21,000. I agree, however, with Senator Christensen that it did not have the automatic pay increase of the consumer price index adjuster, and to me that makes a difference. But I think there are a lot of facts that the voter does not realize. At the risk of sounding like a broken record, and I know all of my fellow members of the Appropriations Committee will snort, but I mentioned it yesterday and I'm going to mention it again today. And our office has been doing a study on health insurance benefits, and I'd like to point out a couple of facts. Number one is that any employee of the state of Nebraska who takes family health coverage...and obviously some of them don't qualify...today the average is \$13,700 for that health insurance benefit. There are some that have even a little higher than that. There are some that are in the \$14,000. That represents 80 percent of the health insurance costs for a family...79 percent. So that alone will exceed the salary that we will be receiving. Of course, we receive no benefits, as I'm sure all of you are aware. Also a study that came from the Employees Almanac, I think it's called, that is published, I've never seen it before yesterday, but I have seen it now. It's a multipage, maybe a 200 or 300 page, document that lists benefits as a percentage of wages. And for a \$35,000 employee...now, this does include some vacation pay and sick leave that's calculated at

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the regular rate...for a \$35,000 employee, the benefits represent 80 percent addition to their salary. So you can do the math on that but it's going to be right at \$30,000 additional. So if a \$35,000 employee is hired by this state, the benefits alone are another approximately \$30,000. I think it is a big difference that we are not including a cost-of-living increase, as was the case with the 2006 proposed constitutional amendment. Senator Mines says the timing is wrong. At least somebody said that; I think it was Senator Mines. I don't know when the timing is going to be right. The timing is probably always wrong. This Legislature will have taken some action that is going to have upset 45 percent of the people, and in some instances 70 percent of the people, and that's going to be true at the end of every legislative session that we have, so maybe the timing will always be wrong. Quite frankly, I probably would vote in favor of an amendment that might amend this to \$20,000, as opposed to \$22,000, so at least the argument could be made that we're not higher than we were the time before, and maybe that would be some justification to the voters for bringing again so soon. But I think also taking the cost-of-living adjuster out of there probably does the same thing. So I agree with Senator Christensen that if we're going to have much of a choice, if the voters are going to have much of a choice between younger people who aren't in a financial situation where they can run at \$12,000, they need to open the field a little more. I'm going to continue to serve at \$12,000 as long the voter will elect me and I don't run into the term limits. But I am sure there are other people in the district that, if it was \$22,000, probably would consider running for the seat. [LR1CA]

SENATOR ERDMAN: One minute. [LR1CA]

SENATOR WIGHTMAN: So at this time I'll give back the rest of my time to the Chair and say that I will support the bill. Thank you, Mr. President. [LR1CA]

SENATOR ERDMAN: Thank you, Senator Wightman. I'll use the next 45 seconds. Senator Schimek, you're recognized to speak, followed by Senator Friend. [LR1CA]

SENATOR SCHIMEK: Thank you, Mr. President. Members of the body, I stand in support of LR1CA and I support it the way it is. And thank you, Senator Preister, for bringing the bill. And let me tell you why I support it the way it is. I agree with Senator Christensen and Senator Wightman. I think probably that CPI really did kill it last time. Too bad, because that would have allowed us to keep current after a salary increase finally did pass. But it didn't and I think that if we go back to the voters with the straight salary that they will be more receptive. Now, Senator Mines thought it was too early to put it back on. I disagree strongly because that's what it really takes, is going back to the voter and continuing to talk about it and continuing to educate the voter. Somebody mentioned, I think earlier, that it took six or seven times the last time we got the increase, and that incidentally was in 1988. That was the same year that I was elected to the Legislature, and, yes, I knew what the salary was coming in but never did I dream that it would never ever, ever, change. It didn't influence me on whether I ran or not,

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obviously. But the voters haven't been asked enough, in my opinion. Maybe, and this is just a thought, there should be a salary bill every two years or every four years, just like clockwork, so you didn't have to ask for such a large increment or such a large jump in salary when you did put it on. Maybe if...let's say if this would pass in 2008, then maybe you could ask the voters in another two years or another four years for an additional \$2,000 or whatever, so that it didn't seem so large. But we're way, way, way behind at this point. And I would like to say that, Senator Mines, yes, it did not pass because of a 45/55 vote, but you have to consider that those counties where it did pass must have passed by a fairly significant number in order to even get it to that. I don't know the reason why the urban counties would have passed it and the rural counties didn't. I don't get that. I don't think there is any strong reason for that. It might be that there was more coverage for the salary increase here in the urban areas because of some of the commercials. Now, we didn't raise enough money. We didn't have a good enough campaign and I think that's something that has to happen. But the last time it was on the ballot was actually...and Senator Kruse and I just asked about that; Senator Kruse did...it was May of 2006. So if this would go on the ballot in November 2008, it would actually be a little over two years when you come back to ask again. But the reason I say that I support this the way it is, I want you to know some of the contortions we went through on the floor the last time we did a salary increase. We had...actually it was my bill, it was for \$24,000; we had a Friend amendment for \$18,000, to lower it to \$18,000; a Smith amendment to change it to a monthly salary; a Redfield amendment to have it based on Lancaster County Commissioners' salary; a Redfield amendment to have it based on the percentage of the Chief Justice's salary;... [LR1CA]

SENATOR ERDMAN: One minute. [LR1CA]

SENATOR SCHIMEK: ...I guess my amendment to put it on the primary election ballot, which we could do to this bill, too; the Stuhr amendment which said keep the \$12,000 salary and allow for benefits; the Stuhr amendment which said \$24,000 salary plus increase based on CPI; and the Jensen amendment said keep the \$12,000 salary, Legislature changes salary not to exceed average wage paid to Nebraskans. So we were all over the map. And I think that Senator Preister has come up with a reasonable number here; we could maybe argue about that. But I also agree with Senator Kruse: the simpler the better. Let's not make it complicated. Let's not make it the kind of a bill where the voters don't know what they're voting for or what they're getting. I think this would have a chance of passage. Thank you, Mr. President. [LR1CA]

SENATOR ERDMAN: Thank you, Senator Schimek. Senator Friend, you're recognized to speak, followed by Senator Loudon. [LR1CA]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. It's almost like Senator Mines and I are...we're not trying to be the Grinch, I don't think. You know, I like Senator Preister's idea too. Members of the Legislature, I think it's a

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mistake. That's all. Not necessarily too early, back on the ballot too early, I don't necessarily agree with Senator Mines on that. I just think it's a mistake. Because of what I've tried to...because of my experience and the information I believe that I've gathered over the last four or five years, I think the people feel like they have control over something. And what they have...and it's not perceived, I think it's real, the people have control over our salaries. They like that. I made the analogy earlier, I walk into my boss's office, I say I need a raise, I want a raise. My...boy, you know what? You know, it's odd. I didn't know I was independently wealthy. Hey, guess what, Honey? I'm retired and I'm independently wealthy. That's great because I got to tell you, I'm hurting at times. I've got my health, if not my eyesight. (Laugh) I don't...where was I? I walk into my boss's office and say, I need a raise. You owe me a raise; I'm doing a good job. Maybe we all are. He or she says, no, get out, nicely, nicer than that. I come back a week later, because to me that's what the analogy almost is, and say, I would like that raise now. Well, didn't we have this conversation last week? That's Senator Mines's point. The people understood it. They knew what they were voting for and they said, no. Now I just think it's a mistake because I don't know that they're going to think it's vibrant enough, I don't think that they're going to think it's their idea, and I think that they're going to look at it as fairly self-serving, whether any of us sees the fruits of the labor that we push out of this Legislature. None of us has to see that raise. It doesn't matter. The people are going to say, look, that's self-serving. We all know that. And when we look in the mirror when we go home tonight, we know that's what they're going to think because that's the way they feel about it. We're asking for a raise, folks, again. And they're going to say, no, again. I don't mean to be a defeatist and I certainly don't mean to sound like the Grinch. I'm just saying I think it's a mistake because I think it has to be driven from a grass-roots standpoint. The Yes on One campaign that we saw last year, why can't that same effort be done from a grass-roots standpoint to get enough signatures on petitions to get this issue on the ballot? We are not a Legislature that is on the low end of the totem pole here. We're not on the high end, but we're not on the low end. Kentucky, South Carolina, Texas, they all make less than us. Those are the people that fall into our category, states where representatives spend more than two-thirds of a full-time job being legislators or have another full-time job too. [LR1CA]

SENATOR ERDMAN: One minute. [LR1CA]

SENATOR FRIEND: Iowa is 21, Florida is 29, they're in our category. Arkansas is at about 14. Look, the median I think is 9. We're above the median. That's not great. Members of the Legislature, I will not vote for this. And it's not going to affect any of your decisions on this issue. I understand that. I won't vote for it. It has nothing to do with my political future or any ideas I have about future offices or how I'm going to look to my voters--nothing to do with that because I'm not going to run...I don't have any plans to run for any office. People say never say never, but I like it here. When I'm kicked out, I'm gone. It's not a modus operandi here. Members, I just think it's a mistake. That's all. It's as simple as that. I like what Senator Preister is doing. I like what the Legislature's

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thought is. I just think we are... [LR1CA]

SENATOR ERDMAN: Time. [LR1CA]

SENATOR FRIEND: ...the Titanic, rearranging deck chairs. Thank you, Mr. President. [LR1CA]

SENATOR ERDMAN: Thank you, Senator Friend. There are six senators wishing to speak. They are Senator Louden, Hansen, Wallman, Kruse, Mines and Stuthman. Senator Louden, you're recognized to speak and you'll be followed by Senator Hansen. [LR1CA]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. I support Senator Preister's amendment. I think this is something that is worthy of the timetable. It will be about two years before this is put back on the ballot again. But what I've noticed with the last time that this thing was brought up to a vote--and as Senator Mines says, timing is everything, and that certainly was--and that was the credibility that we had during that session that we were working on. You want to remember right as soon as the session started we had, what, three or four senators that took it clear to the Supreme Court to challenge their term limits. And right then everybody said, well, that took care of any pay raise because people were wondering what these people were grouching about. We had that a going for us. So that took care of some of our credibility that we'd worked so hard to do when we didn't have any money around here and was trying to finance the state's business at that time. We had great credibility, I felt, afterwards. With that come along, the next thing that we had was the bull hook bill. And this is where you lost your rural senators when...your rural vote was people that when that bull hook bill came through, everybody wondered, well, what are we doing talking about elephants in Nebraska? Come to find out, that bill also affected some of your livestock business on how you could handle your livestock with your canes or your sticks or your prods or something else like that. And that filled the Capitol Building up one day there when we had a session on...the hearing on this bull hook bill, for gosh sakes. So that took care of a little bit more credibility. Then about the time that all got settled down we had Lake "Brown" and that took care of...Ashland people were certainly upset over that, and for what? You knew there was no way they'd ever build a lake there. They been looked at for 75 years and there you'd flood half the country of...Ashland was going under and there was people that were quite upset. They were having town hall meetings over that deal. So there was some more credibility that you got shot in the foot. I think with all of that brought forwards, as that came forwards, then we had some newspapers, especially some out in the western end of the state, their editorials were against any kind of a pay raise, mostly because they wondered what we were doing down here. They hadn't seen a lot of stuff taken care of that should have been taken care of during that session until later on in the session. So we had to work our way through that. The next thing we needed...or didn't need was a complicated

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issue on the ballot. When people go into the booth, they don't sit there and read something for 20 minutes. They usually look at the last part and they go down through there and all they could see was a pay raise of 3.5 percent or your taxes was going to go up. It was worded very poorly. So I think the way Senator Preister has worded this, up or down, and I don't have any problem with that. The people can vote it up or down I'm satisfied either way. I knew how much the salary was when I came into this thing and I'll know how much it is when I'm going out. So I have no problem with how they do it. I do think that compensation could be increased. It is expensive, especially for senators from out west or anyone that's living probably from about 100 miles away. They can't drive in and out every day. They are at a disadvantage. So I have no problem with asking for an increase in salary on the thing. It won't go into effect till 2009 and there will be a lot of us probably won't be here at that time anyway. [LR1CA]

SENATOR ERDMAN: One minute. [LR1CA]

SENATOR LOUDEN: But for the future Legislatures, I think this is something that we need to do. I think it needs to be put on the ballot, give it a try, vote it up or down. Whatever the voters decide, as far as I'm concerned, I'm satisfied with, but I certainly support what Senator Preister is doing. Thank you, Mr. President. [LR1CA]

SENATOR ERDMAN: Thank you, Senator Louden. Senator Hansen, you're recognized to speak, followed by Senator Wallman. [LR1CA]

SENATOR HANSEN: Thank you, Mr. President, members of the body. I think that when we come to speak about salaries, our salaries, not other state employees' salaries, I think we need to maybe look for some solutions to our own problems that we make. We're being paid \$12,000 a year, or \$12,000 for a 90-day session in the odd-numbered years and 60 days in the even-numbered years. I met a great man last week. Name is Senator Tom Hansen from South Dakota. And Tom and I had a little problem with a room reservation. We had problems with name badge selections. But anyway, we had a chance to talk and visit, and I met him and asked him a few things about South Dakota. When we come to the Legislature, I think we should come with some solutions and not just our own problems and certainly not our own personal problems. But we could change how we operate in this state. The constitution says that we have to have a 90-day session that we're in now and next year we'll have a 60-day session. Well, when South Dakota has a 60-day session, it's 60 calendar days. They work Monday through Saturday. They take Sunday off unless it's a necessary day to work. They went into session January 10 and dismissed on March 1, and they worked 60 days, had a 60-day calendar session, probably about 40 days of actual work. So if the Speaker is inclined to do that, we could work next year in 2008, we can work for 60 days, get our work done in 2 months, go home and have the rest of the year to make our living. And for \$12,000 a year, that's not bad per month. There are alternatives to this, Mr. President, and that's what I want to...that was the point I want to make, is that when I ran I knew what the

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salary was. I didn't know what the time commitment was because the Speaker changes it from year to year. So let's get on the Speaker next year and get this down to a 60-day session and we'll adjourn the first of March and we can go home, calve out cows, get ready to plow, get ready to plant corn and everything else we have to do, like the other rural states do. Thank you, Mr. President. [LR1CA]

SENATOR ERDMAN: Thank you, Senator Hansen. Senator Wallman, you're recognized to speak, followed by Senator Kruse. [LR1CA]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. I was interested in Senator Hansen's comment. Kansas has 90-day sessions, 90 days total, you know, like 3 months every year. And where are we going with that? But I'm for Senator Preister's amendment and I'll tell you why. It is a lot more than 90 days. Where so I visit my constituents. I go from north to south. In the mornings I go to, like, hunters' breakfast and Saturday I had a committee meeting with people from a institution of the state, and they had concerns they wanted addressed. And I thought they had very good concerns and honest concerns. And I appreciate Senator Preister here bringing this forth. It's not easy to ask for a pay raise. It's not easy for farmers to beg for money to campaign. But I want to say one thing. When I went to the coffee shops and the bars and the restaurants at night and early morning, everybody told me they weren't going to vote for a double pay increase. This cost of living thing, they figured you was going to get a pay increase and right away increase it 4 percent or whatever, 3 percent, and they said that's why they voted against it. And so if we bring it forth again, I don't know where they're going to go. And I, myself, can support this and for my fellow senators that may get here after I do. They might vote me out after this. But one reason it didn't pass last year, folks, was on account of the property tax. And let's just pay attention here. If we add property tax to anybody's property in anybody's district, we're at risk and the whole body is at risk because we are putting something out there that people told us they didn't want any more property tax. And so when they don't feel good about what we do in here, and I agree with Senator Loudon, they take it to the polls. And if that happens a couple of weeks or five or six months ahead of the election, they're not going to vote us a raise because they don't think we have it coming, and sometimes we probably don't. We're human. We make bad mistakes. We cost people money. And it bothers me when we pick on a certain segment of society sometimes and that happens. But I would urge the body to vote for this bill and thank Senator Preister and thank you, Mr. President. [LR1CA]

SENATOR ERDMAN: Thank you, Senator Wallman. Senator Kruse, you're recognized to speak, followed by Senator Mines. [LR1CA]

SENATOR KRUSE: Mr. President and colleagues, thank you. A few responses to what is being said. Quite a few comments about timing--I would consider now better than later. If we put this thing off for a while, we are creating more trouble than we are

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getting away from. The '06 election, our vote on this, was after a stormy session, as somebody has mentioned, and it was not a good time to be taking the vote. As already been noted, this will be over two years later; it's not a year later. I'd also respond to Senator Mines challenged me that we're not financially independent because some are employed. Yes, those who are employed are financially independent. I'm not taking any of my pay home. This isn't the way I pay my light bill and that's true of everybody here. We've got to figure out a way to get our light bill paid. Some do it through employment, some through pension, whatever, but that's the way it is. I'd also defend that this is a full-time job. My first two years here I kept an exact count of hours every day for the two years and it was 2,000 hours for each of those first two years. I think actually that this subject ought to be brought up every two years. Someone asked the question or raised the thought that the public wants to have absolute control over our salaries. Well, that is absolute control. Hey, folks, we got it. Bring this motion, this vote before the people every two years and they will have absolute control over it. But if we put it off for four years or six, then we are in trouble again and get all the sticker shock. And finally, I would note that we're sensitive to the issue of people trying to raise their salaries. That's why Senator Preister and I brought this issue. We are the ones that brought it, because we're out of here. There's no possibility of us having any advantage from this except to recognize that it's the right thing to do. Thank you, Mr. President. [LR1CA]

SENATOR ERDMAN: Thank you, Senator Kruse. Senator Mines, you're recognized to speak, followed by Senator Stuthman. [LR1CA]

SENATOR MINES: Thank you, Mr. President. I am a marketing guy by trade, and there's a marketing professional, I think he's in Atlanta, his name is Al Ries. And Al wrote a book and he's invented the word "positioning" in the marketing world. And the book is called Positioning: The Battle for Your Mind, and it kind of set the industry standard for positioning. And Al says that strategy and timing are the Himalayas of marketing. Everything else is the Catskills. I don't oppose asking the public for an increase in pay. I oppose talking about it and recommending that we go back to people and ask for another increase within 12 months, actually 11 months, of when they said, no. They told us, no, exclamation point. I wonder if what we'll hear from our constituents is, what part of no don't you understand? We said no by a vote of 55 percent. The timing on this thing is awful. Maybe there isn't a good time for this, senators, and maybe we do need to ask now, but I don't believe we do. I think we need more time. And specifically...now we keep talking about \$12,000. Never forget, and those of you in TV land never forget, that we also get per diem and we get expenses, which amounts to, depending on where you live, from \$8,500 to \$9,500 a year. We also have campaign contributions that, yes, we have to raise those ourselves; and, yes, groveling is hard sometimes. But I'll tell you what. I'll guarantee everyone in this place uses their campaign contributions for other things involved with representing the public. So to say that we receive only \$12,000 a year and, oh, poor me, that's absolutely incorrect. We're more in the neighborhood of \$20,000, plus we have campaign funds that we expend on

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miscellaneous issues and items. I don't believe anyone in here didn't know what they were faced with coming in. If they didn't understand it coming in, shame on you. But I also have to say that, given the results of the last election, when those of us that were in the body so feared what might happen, we ended up with an incredible crop of candidates, and not just those of you that happened to make it through the final round; we ended up with competitive races all over the state, but for Senator Stuthman. He was the only unopposed senator that reran, but we had seven and eight people, as Senator Christensen suggested, running for the seats. And money wasn't the core of what they were talking about. Then all of a sudden we get here and we've got people suggesting that, well, yeah, we are underpaid. We're going to need more money. The people told us no. What part of no don't you understand? Thank you, Mr. President. [LR1CA]

SENATOR ERDMAN: Thank you, Senator Mines. Senator Stuthman, you're recognized to speak. [LR1CA]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. Most of the conversation that Senator Mines has just spoken of is what I was going to talk about. I think one of the things in my area, the reason that the people voted it down at that time was because of the cost of living on it and the perception was that, you know, what are they trying to pull over on us. They said, you know, it can go up to 4 percent increase. And they said, you know good and well you're going to have 4 percent increase every year. So I can't argue against that part of it. The thing that really impressed me, you know, with our salary that we do have, the amount of candidates that did run for the open positions, you know, and the quality of the candidates that we have. But I think that all of the candidates that did win their districts and are down here with us today possibly didn't realize how much time was involved in this job. Most people, the constituents, think it's 60 days one year, 90 days another year and that's it. But it really is a full-time job because of the commitment to the area. I also think that we have the situation that if we do put it out I am pleased that we're going with just the dollar figure. I'll agree with that. I did not vote to support it coming out of committee and I still don't support it. And the reason I don't support it is because of the timing. We're coming back and, like Senator Mines had said, the people have said no and we're coming right back to them again and asking them, would you please give us an increase. We all knew what the amount of dollars was when we come down here. I left a county commissioner job the day before I came down here five years ago which paid a lot more. But I realized what I was getting into. And maybe because of term limits I'll have the opportunity to go back to that job and get a lot more benefits and a larger amount of pay. So I'm really concerned about the fact that we're coming back to the people and asking them again, would you give us a raise. And I think they're going to say, as Senator Mines said, we just told you no just the other day and what is it about no that you don't understand? And I think that's the chance that we're going to take, and it wasn't really close. In my community, it was 60/40. Over the state it was 55/45. You

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know, and that's really not very close. So I think we need to be very cautious. I'm not going to support this, putting it back to the people yet. I may at a later time. In another two years I may do that, but at the present time I cannot support it. Thank you. [LR1CA]

SENATOR ERDMAN: Thank you, Senator Stuthman. Senator Preister, there are no senators wishing to speak. You're recognized to close on the advancement of LR1CA to E&R Initial. [LR1CA]

SENATOR PREISTER: Thank you, Honorable President, friends all. There are only five states--Alabama, Nebraska, New Hampshire, Rhode Island, and Texas--that have in their constitution the salaries of their legislators set. We are one of only five that has to have a vote of the entire public in order to get a salary increase. We are not raising our own salaries. We are simply allowing the public to have a vote. The public asks us regularly. They want to vote on gambling. They want to vote on other issues. This gives them an opportunity to vote. I think Senator Louden said correctly, prior to the last vote folks were upset. It wasn't long prior to that vote that we had raised taxes. That's certainly going to upset people. In this session, we're going to be reducing taxes, estimated \$200 million a year. That's a big offset. That's a big change. I think that, too, will influence the voters. The last time the pay increase was raised in '88 it had been on the ballot six times. It had been year after year. It was done in '72, then only two years later in '74, the very next election in '76, the very next in '78, then again in '82, and in '88 it finally passed. I think that with the tax cut that we will be doing, with a different mood, I think the timing is very good considering we only have 5 percent of those voters' minds to change. Six percent and it can go. I think that's doable without the cost of living. I think this is a most unselfish act to support putting this on the ballot. Nearly half of us won't get the increase due to term limits or not rerunning. This is a vote for the accessibility of the Legislature by the young and the blue collar, everyday Nebraskans who are in the majority of citizens but unquestionably in the minority here. We are the ones who can give the voters a chance to make access more available. Qualified candidates are now prevented from running due to a low salary. That's not fair, nor do I believe it's right. Both political parties have publicly stated that it is more difficult to recruit candidates due to the low salary. At least eight senators have said publicly since 1988 that they left office due to low salary. We cannot raise our own salary. We can only put it on the ballot for the voters to decide. In 20 years, the issue has only been on the ballot once. This will only be the second opportunity for that to happen. I ask you to please give the voters that opportunity to vote. For those who want to get back at us, they will enjoy the opportunity to vote no. For those who understand what it's really like and want to support us, they will vote yes. Other people will need to be influenced and I will be personally working on helping to organize a campaign to do that. I will welcome other support. It will take education, but I see it as doable. My goal is to get it on the primary ballot. That's when it passed last time. In order to do that on Final Reading, it will take 40 votes in this body. That's the highest mark of anything that we pass other than extending our legislative session, which also requires 40 votes. [LR1CA]

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SENATOR ERDMAN: One minute. [LR1CA]

SENATOR PREISTER: It's a high bar. I think it's attainable. It will take work. But I think the timing is good. I think what we will be doing in this session will help to influence that, and I think we can convince those people. With that, I thank you for your time and your attention. [LR1CA]

SENATOR ERDMAN: Thank you, Senator Preister. Members, you've heard the closing on the advancement of LR1CA to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have all members voted who care to? Senator Preister, for what purpose do you rise? [LR1CA]

SENATOR PREISTER: Mr. President, I would ask for a call of the house, please. [LR1CA]

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. [LR1CA]

CLERK: 31 ayes, 0 nays, Mr. President, to place the house under call. [LR1CA]

SENATOR ERDMAN: The house is under call. Would all unexcused senators please report to the Chamber. Unauthorized guests please leave the floor. All unexcused members please check in. The house is under call. Senator Friend, please check in. Senator Hansen, please check in. Senator Cornett, please check in. Senator Howard, please check in. Senator Raikes, Senator Chambers, the house is under call. Senator Preister, for what purpose do you rise? [LR1CA]

SENATOR PREISTER: Mr. President, I would ask for a roll call vote in regular order, please. [LR1CA]

SENATOR ERDMAN: Senator Preister, all members are present or accounted for. Mr. Clerk, please begin with the roll call vote on the advancement of LR1CA. [LR1CA]

CLERK: (Roll call vote taken, Legislative Journal page 1271.) 22 ayes, 20 nays, Mr. President, on the advancement of the constitutional amendment. [LR1CA]

SENATOR ERDMAN: The motion is not successful. LR1CA does not advance. Mr. Clerk, items for the record. And I do raise the call. [LR1CA]

CLERK: Mr. President, your Committee on Enrollment and Review reports they've examined and reviewed LB471 and recommend it be placed on Select File. LB289, LB144, LB188, LB208, LB274, LB367A, all on Select File, some having Enrollment and

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Review amendments. New A bill. (Read LB609A by title for the first time.) Amendments to be printed: Senator Johnson to LB247, to LB463, and to LB588. (Legislative Journal pages 1271-1275.) [LB471 LB289 LB144 LB188 LB208 LB274 LB367A LB609A LB247 LB463 LB588]

Mr. President, priority motion: Senator Flood would move to adjourn until Wednesday morning, April 25, at 9:00 a.m. []

SENATOR ERDMAN: Members, the motion before you is, shall we adjourn until Wednesday, April 25, at 9:00 a.m.? All those in favor say aye. All those opposed say nay. We are adjourned. []