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Floor Debate  
May 16, 2007

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[LB5 LB8 LB69 LB132 LB144 LB147 LB152 LB188 LB199 LB208 LB214 LB218 LB219  
LB221 LB226 LB227 LB233 LB236 LB236A LB252 LB256 LB261 LB277 LB289 LB337  
LB342 LB342A LB343 LB358 LB364 LB367A LB367 LB368 LB368A LB377 LB377A  
LB382 LB388 LB396 LB424 LB435 LB445 LB449 LB456 LB463 LB471 LB481 LB482A  
LB482 LB496 LB508 LB542 LB551 LB554 LB561 LB564 LB573 LB580 LB596 LB603A  
LB603 LB610 LB615 LB617 LB641 LB653 LB664 LB682 LR1CA LR2CA LR6CA LR123  
LR125 LR131]

SENATOR ERDMAN PRESIDING []

SENATOR ERDMAN: Good morning. Welcome to the George W. Norris Legislative Chamber. The chaplain this morning is Reverend William Safranek from St. Peter's Church in Ewing, Nebraska. He is a guest of Senator Dierks this morning. Would you please stand? Reverend. []

PASTOR SAFRANEK: (Prayer offered.) []

SENATOR ERDMAN: Thank you, Reverend. I call the eighty-first day of the One Hundredth Legislature to session. Senators, please record your presence. Members, the legislative session is about to begin. Please record your presence. Members, the legislative session is about to begin. Please check in. Mr. Clerk, please record. []

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

SENATOR ERDMAN: Mr. Clerk, are there any corrections for the Journal? []

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

SENATOR ERDMAN: Are there any messages, reports, or announcements? []

CLERK: The Committee on Education, chaired by Senator Raikes, reports LB653 advanced to General File with committee amendments attached, and I have an explanation of votes from Senator Cornett (re LB5, LB8, LB69, LB132, LB147, LB152, LB199, LB214, LB226, LB227, LB233, LB252, LB256, LB277, LB364, LB382, LB388, LB396, LB424, LB445, LB449, LB481, LB508, LB561, LB580, LB664, LB218, LB596, LB144, LB188, LB208, LB219, LB289, LB471, LB368, LB368A, LB236, LB236A, LB463, LB564, LB435, LB610, and LR6CA). That's all that I have, Mr. President. (Legislative Journal pages 1617-1623.) [LB653 LB5 LB8 LB69 LB132 LB147 LB152 LB199 LB214 LB226 LB227 LB233 LB252 LB256 LB277 LB364 LB382 LB388 LB396 LB424 LB445 LB449 LB481 LB508 LB561 LB580 LB664 LB218 LB596 LB144 LB188 LB208 LB219 LB289 LB471 LB368 LB368A LB236 LB236A LB463 LB564 LB435 LB610 LR6CA]

SENATOR ERDMAN: Thank you, Mr. Clerk. We will now proceed to the first item on the

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agenda. []

CLERK: Mr. President, General File, the first bill, LB377A by Senator Ashford. He is excused. (Read title.) [LB377A]

SENATOR ERDMAN: Senator Chambers, for what purpose do you rise? [LB377A]

SENATOR CHAMBERS: I'll carry the bill. [LB377A]

SENATOR ERDMAN: Are you authorized to carry the bill for Senator Ashford, Senator Chambers? [LB377A]

SENATOR CHAMBERS: No, I'm not, but I don't see the Vice Chair of the committee either. [LB377A]

SENATOR ERDMAN: Senator Chambers, we'll recognized you to open on LB377A. [LB377A]

SENATOR CHAMBERS: Thank you. Members of the Legislature, this is the A bill for the judges' salary increase. As you know, there was some debate on that bill from me of a very bitter nature. I even had offered an amendment to remove reference of the Chief Justice from that bill but made no attempt to reduce the amount of the salary increase. That bill came up on May 8, which was the day of a scheduled execution that had been canceled. The Chief Justice had indicated that it should have gone forward anyway, so I used that opportunity to vent my spleen. When it comes to salaries, I feel toward the judges what I feel toward all public officials: When there are very awesome responsibilities associated with an office, the people who do that work, even when they may take a decision with which I disagree, are entitled to compensation commensurate with the responsibilities of that office. I have supported salary increases for constitutional officers; I support a salary increase for the senators; I support the salary increase for the judges. Although I voted against LB377, I made no attempt to stop the bill because the salary increase is justified and it ought to go forward. This is the A bill. Being unaware that we would be at this point, I don't note that there are any amendments to the bill, so if I may ask the Clerk...oh, there are no amendments. So what I'm asking my colleagues to do is to support the movement of this A bill so that it can catch up with LB377. If anybody should want to have any discussion further on the judges' salary or any other thing in the bill, we can do it on Select File when the A bill has caught up with the underlying bill, LB377. So I'm going to not only support the movement of this bill, I am taking the position of advocating it. And let me tell you one reason I'm kind of glad things worked out the way they did this morning: I have mentioned from time to time that there is a certain maturity that we ought to demonstrate when we're legislating, and that applies to me also. It would be inappropriate, in my opinion, even if I felt like trying to stop the A bill, to do so with

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people whose job it is to move the bill not being here. I will not take advantage of a situation like that. There will be plenty of opportunity on Select File. So my purpose in doing what I'm doing this morning is to show you how circumstances..."Parson" is looking at me...have humbled me this morning so that I've got to do something which initially I may not have done. So if you have any questions about this bill, hold them until Select File. In the meantime, I hope that you will vote to advance the bill. Thank you, Mr. President. [LB377A LB377]

SENATOR ERDMAN: Thank you, Senator Chambers. Members, you have heard the opening on LB377A. (Doctor of the day and visitors introduced.) Senator Chambers, there are no lights on. You are recognized to close on LB377A. [LB377A]

SENATOR CHAMBERS: Mr. President and members of the Legislature, I was not going to close, but I'm really being bludgeoned and battered this morning. They say there is no good deed which is not punished. Do you know where the Chairman and the Vice Chairman of the Judiciary Committee are right this minute? They are at a press conference where the execrable recreational liability bill is being signed. (Laughter) Can you think of anything more ironic than what is happening this morning? But I take my lumps in the way that I give them, so I hope that you will vote to advance this bill nevertheless, and I will deal with the Chair and the Vice Chair at another time. Thank you, Mr. President. [LB377A]

SENATOR ERDMAN: Thank you, Senator Chambers. Members, you've heard the closing on the advancement of LB377A to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have all members voted who wish to? Record please, Mr. Clerk. [LB377A]

CLERK: 32 ayes, 0 nays, Mr. President, on the advancement of LB377A. [LB377A]

SENATOR ERDMAN: LB377A does advance. Mr. Clerk, next item on the agenda. [LB377A]

CLERK: LB482A, Mr. President, by Senator Johnson. (Read title.) [LB482A]

SENATOR ERDMAN: Senator Johnson, you are recognized to open on LB482A. [LB482A]

SENATOR JOHNSON: Thank you, Mr. President. How do you follow an act like that? This is a similar situation to what Senator Chambers did just describe in that this is an A bill on General File trying to catch up with the bill itself that was advanced nearly unanimously to Select File. This A bill is just a little bit different and so I'll try and make the distinction for you. LB482A is the appropriations bill for LB482, which deals with autism. Now, with the bill, there was a Medicaid waiver for autism treatment. The bill is

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now on Select File and says that the money from the Nebraska Health Care Cash Fund will be used, first, to fund administrative costs for applying for and implementing the Medicaid waiver, and then secondly, for other medical costs for the autistic children would they otherwise qualify for the Medicaid except for the waiver. The A bill simply appropriates the Health Care Cash Funds as provided in the bill. The appropriation is \$62,509 for fiscal year '07-08, and \$27,509 for '08-09 for the administrative costs. There is a 50 percent match on these costs from the federal government. The cash funds for related medical costs are \$24,192 for fiscal year '07-08, and \$61,690 for fiscal year '08-09. There is roughly a 60 percent match of federal funds for these type of costs. The bill says the balance of the \$1 million that we talked about before in the Health Care Cash Funds goes to a special cash fund for the UNMC Center for Autism Spectrum Disorders. There are no General Funds in this A bill. Mr. President, with that I would conclude. [LB482A LB482]

SENATOR ERDMAN: Thank you, Senator Johnson. Members, you've heard the opening on LB482A. Senator Johnson, there are no lights on. You are recognized to close on the advancement of LB482A to E&R Initial. Senator Johnson waives his opportunity. Members, the question before you is, shall LB482A advance to E&R Initial? All those in favor vote aye; all those opposed vote nay. Have all members voted who wish to? Record please, Mr. Clerk. [LB482A]

CLERK: 34 ayes, 1 nay, Mr. President, on the advancement of LB482A. [LB482A]

SENATOR ERDMAN: LB482A does advance. Mr. Clerk, next item on the agenda. [LB482A]

CLERK: Mr. President, LR2CA proposes a constitutional amendment to Article VIII, Section 12. It was originally offered by Senator Rogert, introduced on January 4, referred to Urban Affairs, advanced to General File. There are committee amendments, Mr. President, however I do have a priority motion. Senator Rogert would like to bracket the bill until January 9, 2008. [LR2CA]

SENATOR ERDMAN: Senator Rogert, you are recognized to open on your motion to bracket LR2CA. [LR2CA]

SENATOR ROGERT: Thank you, Mr. President. Members of the body, LR2CA was on the ballot in November of 2006 as Amendment 6. It changes the tax increment financing law in a number of small ways. What it does is it allows counties to have the power that the cities have had for the past several years, and it takes out the qualification that property be labeled as substandard and blighted in order to be eligible for tax increment financing. This bill, in my mind, is responsible legislation and creates sound and consistent public policy. There are groups across the state, cities, counties, investment groups, etcetera, spending tens of thousands of dollars to skirt the intent of the law and

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create, for lack of a better term, reasons for labelling property as substandard and blighted for the purposes of gaining tax increment financing. Also, cities are skip-annexing property miles outside of the municipalities to exercise their powers of granting tax increment financing on those properties for redevelopment. To leave the TIF law like it is now, to me, does three things: It hinders rural economic development, it's irresponsible public policy, and it's offensive to the system, as we are obviously skirting the original intent of the law when it was put into place which was meant as a blight remediation-type of a tool for urban areas. Pulling property off the tax rolls at X value and returning it some years later at 100 X value, in my mind, is very good public policy and a good investment in our future and our communities. We've come up with some opposition and some questions to the way we've written this bill in the past few weeks, and in the interest of time for the body and the ease of moving this bill, I have asked to bracket it until January so we can study the effects and get those involved together to come up with a smooth transition to put this back in front of the body and get it moved on to the people for their vote. With that, I would like, Mr. President, for unanimous consent on this bracket motion. [LR2CA]

SENATOR ERDMAN: Senator Rogert has asked unanimous consent to bracket LR2CA until January 9, 2008. Are there any objections? Seeing none, so ordered. Mr. Clerk, next item on the agenda. [LR2CA]

CLERK: Mr. President, the next item is LB358 offered by Senator Hudkins. (Read title.) Introduced on January 12, referred to the Transportation Committee, advanced to General File. I do have committee amendments, Mr. President. (AM214, Legislative Journal page 516.) [LB358]

SENATOR ERDMAN: Senator Hudkins, as the introducer of LB358, you are recognized to open. [LB358]

SENATOR HUDKINS: Thank you, Mr. President and members of the body. LB358 repeals the single state insurance registration system for motor carriers and authorizes the director of the DMV to begin Nebraska's participation in the federal unified carrier registration plan and agreement, and designates dates to begin enforcement of such law in this state. The bill was introduced at the request of DMV because of federal changes in legislation which were effective January 1, 2007. On and after the date designated by the director, no foreign or domestic motor carrier, private carrier, leasing company, broker, or freight forwarder shall operate any motor vehicle on Nebraska highways without first registering with the unified carrier registration plan and paying all applicable fees. If the organization has its principal place of business in Nebraska, then it shall register in Nebraska. Any foreign or domestic motor carrier that maintains an office in Nebraska but has its principal place of business in another jurisdiction that does not participate in the UCR program can also register and pay the required fees in Nebraska. Fees are remitted to the General Fund and are to show proof of financial

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responsibility to the feds. There is a committee amendment, which I agree with, that Senator Fischer will cover and then I will have more comments later. Thank you, Mr. President. [LB358]

SENATOR ERDMAN: Thank you, Senator Hudkins. Members, you've heard the opening on LB358. As the Clerk stated, there are committee amendments. Senator Fischer, as the Chair of the Telecommunications and Transportation Committee, you are recognized on open on those amendments. [LB358]

SENATOR FISCHER: Thank you, Mr. President and members of the body. The committee amendment, AM214, repeals sections of law that require intrastate motor carriers of freight to file proof of insurance with the Public Service Commission. This current requirement only applies to vehicles with a gross weight rating that exceeds 10,000 pounds and which are not required to register with the commission. The intrastate carriers we are talking about are household goods movers, taxis, and limousines. The operators of these vehicles are already required by law to carry liability insurance and show proof of that insurance when they go to license their vehicles at the county level. To avoid duplicate requirements, the commission has not enforced these statutes for quite some time. In addition, the commission has no regulatory authority over the freight carriers in question. Requiring these intrastate carriers to submit to the commission's jurisdiction solely for the purpose of enforcing insurance requirements is not sensible. The requirement is obsolete and this amendment repeals the requirement and brings the law up to date with current practices. I wanted to withdraw this amendment because the amendment that Senator Hudkins has on file that she will be discussing next incorporates the committee amendment into her amendment. Because of our rules, though, a committee amendment cannot be withdrawn, but I would encourage you to vote no on this amendment and then support the next amendment, Senator Hudkins' amendment, that has this amendment incorporated into it. Thank you, Mr. President. [LB358]

SENATOR ERDMAN: Thank you, Senator Fischer. Members, you've heard the opening on the Transportation and Telecommunications Committee amendments to LB358. There are no lights on. Senator Fischer, you are recognized to close on those amendments. [LB358]

SENATOR FISCHER: Thank you, Mr. President. Once again I would encourage you to hit red on this amendment. Please don't do that on any other amendment that I or my committee may offer, and then on Senator Hudkins' amendment, please support that. Thank you, Mr. President. [LB358]

SENATOR ERDMAN: Thank you, Senator Fischer. Members, you've heard the closing on AM214. All those in favor vote aye; all those opposed vote nay. Have all members voted who wish to? Record please, Mr. Clerk. [LB358]

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CLERK: 0 ayes, 25 nays on the committee amendments, Mr. President. [LB358]

SENATOR ERDMAN: The committee amendments are not adopted. Mr. Clerk, next motion. [LB358]

CLERK: Senator Hudkins would move to amend with AM1034. (Legislative Journal page 1298.) [LB358]

SENATOR ERDMAN: Senator Hudkins, you are recognized to open on AM1034. [LB358]

SENATOR HUDKINS: Thank you, Mr. President and members. As Senator Fischer said, this amendment, AM1034, incorporates the committee amendments that she just explained. And then it also provides for the Department of Motor Vehicles to continue to use the state carrier registration program until such time as the federal government finalizes the federal act which is entitled the Unified Carrier Registration Act of 2005. This is a reenactment of prior federal legislation. This act contained the January 1 effective date and repealed the SSRS and state programs for private and exempt carriers. In Nebraska, our private and exempt carrier program is referred to as bingo stamp. The federal program was extended to January 1, 2008, in the federal legislation, and may still be alive but no sign when it will pass. The act establishes the unified carrier registration system. And as I said before, this requires all covered carriers to pay filing fees to show proof of financial responsibility. With the adoption of this amendment, AM1034, DMV will be capable of making the change to the new system whenever that is adopted, or they may retain the current system for as long as it takes the federal government to come to some sort of conclusion. So this amendment does incorporate all of the committee amendments, plus it allows the DMV to use the current system or go to the new system whenever the federal government decides when they are going to pass it. Thank you, Mr. President. [LB358]

SENATOR ERDMAN: Thank you, Senator Hudkins. Members, you've heard the opening on AM1034. We will now proceed to discussion. Senator Hudkins, there are no lights on. You are recognized to close on AM1034. Senator Hudkins waives her opportunity to close. Members, the question before you is the adoption of AM1034. All those in favor vote aye; all those opposed vote nay. Have all members voted who wish to? Record please, Mr. Clerk. [LB358]

CLERK: 29 ayes, 0 nays, Mr. President, on the adoption of Senator Hudkins' amendment. [LB358]

SENATOR ERDMAN: The amendment is adopted. [LB358]

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CLERK: I have nothing further on the bill, Mr. President. [LB358]

SENATOR ERDMAN: We will now return to discussion of LB358 as amended. Senator Hudkins, there are no lights on. You are recognized to close. Senator Hudkins waives her opportunity to close on LB358. Members, the question is, shall LB358 be advanced to E&R Initial? All those in favor vote aye; all those opposed vote nay. Record please, Mr. Clerk. [LB358]

CLERK: 32 ayes, 0 nays, Mr. President, on the advancement of LB358. [LB358]

SENATOR ERDMAN: LB358 does advance. Mr. Clerk, we will now move to Final Reading. Members should return to their seats in preparation for Final Reading. Members, please return to your seat in preparations for Final Reading. Mr. Clerk. [LB358]

CLERK: Mr. President, with respect to LB343, Senator Preister would move to return the bill to Select File for a specific amendment, AM1147. (Legislative Journal page 1345.) [LB343]

SENATOR ERDMAN: Senator Preister, you are recognized to open on your motion to return LB343 to Select File for a specific amendment. [LB343]

SENATOR PREISTER: Thank you, Honorable President, friends all. Mr. Clerk, AM1143 (sic) is the E clause and I'm sorry I neglected to ask you to pull that. I would like to skip over that one and go to AM1146. I'm sorry, AM1147 is the one we can withdraw. [LB343]

SENATOR ERDMAN: AM1147 is withdrawn. Mr. Clerk, next motion. [LB343]

CLERK: Mr. President, Senator Preister would move to return the bill for a specific amendment, AM1146. (Legislative Journal page 1390.) [LB343]

SENATOR ERDMAN: Senator Preister, you are recognized to open on your motion to return the bill for AM1146. [LB343]

SENATOR PREISTER: Thank you again, Honorable President. Thank you, Mr. Clerk. Members of the body, LB343 is a bill that I certainly support, and AM1146 is, in its former life, LB496, if you wanted to track that. It was unanimously advanced from the Revenue Committee with all of the members present. It amends the special capital gains exclusion, Section 77-2715.08 and 77-2715.09 to expand the exclusion of capital gains from the sale of the stock of an employer of the taxpayer to exclude extraordinary dividends. Extraordinary dividends would be defined as a dividend exceeding 20 percent of the value of the stock at the time the dividend is declared. The exclusion from

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income tax would be operative for taxable years beginning on or after January 1, 2007. Doug Ewald, the State Tax Commissioner, sent a letter to the committee members stating that the department would like to go on record in support of the legislation. He goes on to state that LB496 will encourage employers to distribute material amounts now which would otherwise not become available to the stockholder employees until they retire or otherwise terminate their employment. Without this legislation, the income would still be tax-exempt to those employee stockholders, but at a later date. The state will experience an increase in economic activity sooner due to the acceleration of these extraordinary dividends. Since the difference is an issue of timing and not the amount exempt from taxation, there is no material impact to the General Fund. And that I would underscore to the body and particularly to Senator Heidemann. If you look at the fiscal note, there is no fiscal note. We're taking nothing out of the General Fund to pay for this. There are supporters, including the business community, but certainly the labor community because it is an advantage to the workers, and that's a big part of the reason why I'm introducing it. Senator White, who originally introduced the bill, supports it, and Senator Heidemann, whose bill, LB343, supports it...I'm sorry, Senator Langemeier, whose bill, LB343, I'm amending it to, supports it, and I would yield some time to Senator Langemeier if he would so desire, Mr. President. [LB343 LB496]

SENATOR ERDMAN: Senator Preister, would you like to yield him the remainder of your time? [LB343]

SENATOR PREISTER: No, but whatever amount of it that he would like. [LB343]

SENATOR ERDMAN: Okay. Senator Langemeier, you're recognized. [LB343]

SENATOR LANGEMEIER: Mr. President and members of the body, I rise in support of AM1146 to LB343. I think Senator Preister has given a good explanation of what it is about. I think we've educated everybody here. The one thing I do want to talk about is the underlying bill, LB343. Fiscal Office came out with a new fiscal note on it itself which you can all pull up. The previous fiscal note, in the first year was \$1.1 million, and the second year was \$2.2 million. The new fiscal note, in the first year is \$550,000, and \$1.1 million in the second year. So it cuts the fiscal note exactly in half when we adopted the amendment that Senator Chambers and I had worked on, on Select File. So I think it's important to note that this bill is going the right direction in regards to the fiscal note. And I do support AM1146; it's got a wide, diverse realm of support. And with that, I would give Senator Preister his time back. Thank you. [LB343]

SENATOR ERDMAN: Senator Preister, you have 6 minutes. [LB343]

SENATOR PREISTER: Thank you, Senator Langemeier. I think we've covered what we would like to do. We need to bring the bill back from Final Reading in order to attach the amendment, so the vote will be to return to Select File and I would request my

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colleagues please vote green to do so. Thank you. [LB343]

SENATOR ERDMAN: Thank you, Senator Preister and Senator Langemeier. Members, you've heard the opening on the motion to return LB343 to Select File for a specific amendment. Those senators wishing to speak on the motion...excuse me, the senator that wishes to speak at this point, Senator Harms, you're recognized. [LB343]

SENATOR HARMS: Thank you, Mr. President and colleagues. I rise to support AM1146 and LB343. First of all, as previously stated, there is no fiscal note on this amendment. Secondly, it was unanimously supported by the Revenue Committee and it's about employees and it will keep people here, divisions here. It will eliminate inconsistencies that we now have between publicly traded and privately traded companies due to changes in our federal law, and I would urge you to support this so that we can have this moved to actually LB343. Thank you, Mr. President. [LB343]

SENATOR ERDMAN: Thank you, Senator Harms. Senator Preister, there are no lights on. You're recognized to close on your motion to return to Select File. Senator Preister waives that opportunity. Members, the question before you is, shall LB343 be returned to Select File for a specific amendment? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB343]

CLERK: 44 ayes, 0 nays, Mr. President, on the motion to return the bill. [LB343]

SENATOR ERDMAN: The motion is successful. LB343 has been returned to Select File for a specific amendment. Mr. Clerk, that amendment. [LB343]

CLERK: Mr. President, Senator Preister would offer AM1146. [LB343]

SENATOR ERDMAN: Senator Preister, you are recognized to open on AM1146. [LB343]

SENATOR PREISTER: Thank you, Honorable President, friends all. Thank you for bringing LB343 back. I thank everyone for their support in doing so. The amendment is as I stated; it would allow for extraordinary dividends to be paid to employees and it would not be a drain on the General Fund. I would ask your consent to advance it and adopt it on LB343. Thank you. [LB343]

SENATOR ERDMAN: Thank you, Senator Preister. Members, you've heard the opening on AM1146. We will now proceed to discussion of that amendment. Senator Preister, there are no lights on. You are recognized to close. Senator Preister waives his opportunity to close on AM1146. Members, the question is, shall the amendment be adopted? All those in favor vote aye; all those opposed vote nay. Have all members voted who wish to? Record please, Mr. Clerk. [LB343]

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CLERK: 44 ayes, 0 nays, Mr. President, on the adoption of the Select File amendment. [LB343]

SENATOR ERDMAN: The amendment is adopted. Senator McGill, for a motion. [LB343]

SENATOR MCGILL: Mr. President, I move LB343 to E&R for engrossing. [LB343]

SENATOR ERDMAN: Members, you've heard the motion. All those in favor say aye. All those opposed say nay. The bill is advanced. Mr. Clerk, the next item on the agenda. [LB343]

CLERK: Mr. President, Select File, LB603. Senator McGill, I have Enrollment and Review amendments first of all. (ER8090, Legislative Journal page 1327.) [LB603]

SENATOR ERDMAN: Senator McGill. [LB603]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB603]

SENATOR ERDMAN: Members, the question is, shall the E&R amendments be adopted? All those in favor vote aye. All those opposed vote nay. The amendments are adopted. [LB603]

CLERK: Senator Raikes would move to amend with AM1171. (Legislative Journal page 1392.) [LB603]

SENATOR ERDMAN: Senator Raikes, you are recognized to open on AM1171. [LB603]

SENATOR RAIKES: Thank you, Mr. President and members of the Legislature. This amendment includes a substantive element and also some that could be described as more technical. The substantive part of it deals with a couple of school districts and their involvement in our early childhood grant program. With the changes that we made in our early childhood effort by including four-year-olds in the aid formula, there are a couple school districts that lose grant funding because of that transfer, but because they are nonequalized they don't get any aid immediately in the aid formula. So what this amendment would propose is that for one year we allow, one year and one year only, we allow them to continue to receive the grant funding. This is intended to be a transitional provision. I certainly am not giving up my thoughts about equalization and its importance as a cornerstone of state policy, but in the interests of a smooth transition and to avoid discouraging these school districts from participating in this very appropriate and desirable effort, I am recommending to you that we do make this one-time adjustment. The rest of the amendment, the other parts of the amendment

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deal with some provisions of the basic bill, correcting cross-references, and making some inclusions about the election districts that would be formed under the bill, that they be compact and contiguous and also that they be substantially equal in population. So again, the substantive element involves continuation of grants for one year for those school districts that are nonequalized as a transition, and also the technical issues that I mentioned. So any questions, I'll attempt to answer, and I would urge your support. Thank you. [LB603]

SENATOR LANGEMEIER PRESIDING [LB603]

SENATOR LANGEMEIER: Thank you, Senator Raikes. You've heard the opening on AM1171. The floor is now open for discussion. Senator Janssen, you are recognized. [LB603]

SENATOR JANSSEN: Thank you, Senator Langemeier, members of the Legislature. If I could ask Senator Raikes a couple of questions, please? [LB603]

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

SENATOR RAIKES: Yes. [LB603]

SENATOR JANSSEN: Senator Raikes, is there a specific group of schools that this involves or is it statewide? Give me a little rundown on that if you could, please. [LB603]

SENATOR RAIKES: I'll try, Senator. It is a statewide provision; it's not dealing with only a specific school district. It's dealing with school districts rather in a particular situation that if they continue to receive...or if they would receive equalization aid to support their early child effort, this would not affect them, but if they wouldn't they would have a one-year extension of the grant program. So any school district in that situation would be affected by this. [LB603]

SENATOR JANSSEN: And, Senator Raikes, how many do you anticipate this will be? How many districts? [LB603]

SENATOR RAIKES: There are a couple that I know of, Senator, and I'm not sure that I know of all of them. [LB603]

SENATOR JANSSEN: Okay. So it could be more than just a few, but it's not directed at any one group of schools or any one city. I did have these questions. Thank you, Senator Raikes, and I believe I can support the amendment. Thank you. [LB603]

SENATOR LANGEMEIER: Thank you, Senator Janssen. Senator Pirsch, you are

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recognized. [LB603]

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

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

SENATOR RAIKES: Yes. [LB603]

SENATOR PIRSCH: Could you just kind of give a general one-liner as to the purpose of the amendment? [LB603]

SENATOR RAIKES: Again, Senator, it does have a substantive...what I would consider a substantive change regarding funding of early childhood grant programs. It's a one-year transition fund basically for nonequalized school districts whose early childhood grant program is being transferred over to the state aid formula. And just to remind a little bit about that, in our early childhood program the grant program is basically the gatekeeper. And if a school district, or not just a school district but if there is an early childhood program, a collaborative grant program that is successfully operated for three years, then after three years they are eligible to include the four-year-olds in that program in their aid calculations as far as state aid. In a couple of cases I know of, that happened that there were early childhood grant programs. When the four-year-olds become eligible in the aid formula the grant funding ends, is the way it is right now. Well, if those school districts are nonequalized, then basically they suffer a reduction by the amount of the grant program. In the future, I expect that that's the way it will happen but what I'm proposing is, as a one-year transition we allow that grant funding to continue for one year. [LB603]

SENATOR PIRSCH: Is there an extra, then, state allocation, appropriation, involved here with the amendment? [LB603]

SENATOR RAIKES: No, there wouldn't. There is actually a potential impact on the division because there is only a certain amount of money available to offer early childhood grants, so to the extent these school districts are eligible, then others would not be. [LB603]

SENATOR PIRSCH: Okay. I would yield the balance of my time to Senator Raikes, if he would like that. [LB603]

SENATOR LANGEMEIER: Senator Raikes, 2 minutes, 20 seconds. [LB603]

SENATOR RAIKES: Thank you, Senator Pirsch. I appreciate the offer. I do hope that it is clear what it is we're doing here. Again, the technical parts, I think, are defensible and

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I believe this substantive provision also is in the interest of a transition, so thank you. [LB603]

SENATOR LANGEMEIER: Thank you, Senator Raikes and Senator Pirsch. There are no other lights on. Senator Raikes, you are recognized to close on AM1171. [LB603]

SENATOR RAIKES: Thank you, Mr. President and members. I urge your support of this amendment. Thank you. [LB603]

SENATOR LANGEMEIER: Thank you, Senator Raikes. You have heard the closing on AM1171. The question is, shall AM1171 be adopted to LB603? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB603]

CLERK: 30 ayes, 0 nays, Mr. President, on the adoption of Senator Raikes's amendment. [LB603]

SENATOR LANGEMEIER: AM1171 is adopted. Mr. Clerk. [LB603]

CLERK: Mr. President, Senator Raikes would move to amend with AM1318. (Legislative Journal page 1624.) [LB603]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Raikes, you are recognized to open on AM1318. [LB603]

SENATOR RAIKES: Thank you, Mr. President and members. This is a significant amendment to this bill, one that I need to carefully call your attention to and hopefully get your input and discussion on. This deals with the Nebraska system for assessing students in K-12 schools. The acronym is STARS. A little background on this issue: First off, this was introduced or actually the underlying bill, the green copy, was introduced as LB653. We had hearings on it and the normal process. We amended it and advanced the bill out of committee, as amended, yesterday. So it is a bill that is on General File and I am proposing to you that we amend this onto LB603. I should also mention that this subject area, if not the bill, certainly represents a great deal of effort by the Legislature's Performance Audit Committee. In fact, LB653 was named by that committee as its committee priority measure. Their involvement came at my request, actually, for an audit of the STARS program. They did that audit. I think they did a very credible job; came up with a number of findings that propelled us forward on this particular issue. The amendment includes several significant...or LB653, as amended, and now AM1318 includes a number of significant changes in the way we are going about STARS or the assessment process in Nebraska. If you look at the amendment, it begins with some definitions as to what we're talking about with the specific terms. We currently have a statewide writing assessment. The other subject area assessments are

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not on a statewide basis. They are locally adopted. What this proposed, and I'll just try to give you a quick summary, it proposes that we, in addition to a statewide writing assessment, move also to a statewide reading assessment and a statewide math assessment. It also very significantly, and this is the reason for its consideration on LB603, involves a greater involvement of ESUs in the whole process of developing tests and all of the considerable technical important work that goes along with that. And I'll mention at this point that I'm going to rely on Senator Adams, who is on our committee, to talk more about what exactly is involved. One of the difficulties or at least what the committee perceived as a difficulty on the current STARS arrangement is that there are no common proficiency levels established, so that with the local assessment system that we have now, proficiency levels between schools can be different and so that there is a very...it's a challenging task to do any comparability. We are requiring in this bill that there be technical quality and comparability studies. We also have...continue the requirement of national assessments being a part of the portfolio. There is a significant...I should say we are including also a provision that would allow state and local standards, the basis for the assessment process, to be reviewed and updated periodically, and that would also be on a bottom-up basis where the revision and review begins at the school ESU level and moves up, eventually to be finalized, if you will, by an ESU coordinating group. There is the addition in this amendment of standards and assessments for K-3. This is a very significant addition. Right now, 4th grade is the earliest that there is assessment. There is also at 8th and 11th. This would propose that we begin assessment at kindergarten and do those assessments through 3rd grade, as well. Finally, a significant component of this is the student data system. This is a project that's already underway, I think being handled very competently in the department, but there are some provisions in here that direct the department in its work on that student data system. The effort here began in LB615. This was a bill that was introduced and heard. In particular, the provisions in here are to make that database as useful as possible for policymakers dealing with educational issues. The student data system includes time series, cross-section data, in other words, every student, every year, named by an identifier so that confidentiality is kept, but there is a wealth of information provided about demographic characteristics of students and their performance on various assessments throughout their career so that we can get a handle on what works well for us educationally and what does not. I'm going to stop there and actually yield some time to Senator Adams so that he can share with you his expertise in this area. [LB603 LB653 LB615]

SENATOR LANGEMEIER: Senator Adams, 3 minutes. [LB603]

SENATOR ADAMS: Thank you, Mr. President. Expertise: that's a scary word when it comes to testing, and I don't know that I have any more than any of the rest of us. You know, there is a balancing act that we play in education just like so many of the balancing acts that we play in here. Sometimes we operate under an assumption that when a student rolls out the door on graduation day, like a widget on the assembly line,

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we ought to be able to look to make sure every part is there, and if they're not, send the kid back and make sure the parts are there. Now, to some degree that's reasonable. Schools need to be accountable, teachers need to be accountable, and there are certain things kids need. But kids are not widgets; they're not. Not every kid is the same. They don't all come from the same environment. They don't all have the same resources. They don't all have the same family backgrounds. So when you get ready to test a kid to find out if they understand what a complete sentence is or if they know how to multiply, you have to be able to tailor the question, to tailor the assessment measurement methodology in such a way that you get out what you want, and you account for the fact that not every kid is a look-alike widget that falls off the end of the line. Nebraska's existing STARS system has been one that has been unique nationwide, unique because it has tried to account for the differences that school districts have, for the differences that kids have, and they have been locally developed assessments. This amendment is certainly, and I emphasize certainly, not an attempt to throw the baby out with the bathwater. Teachers developed the measurements. Teachers understand what's going on in the classroom; they understand the uniqueness of kids; they understand the uniqueness of what they're trying to teach. Let the teacher develop those local assessments. However, on the other side of it, there is still demand for accountability. [LB603]

SENATOR LANGEMEIER: One minute. [LB603]

SENATOR ADAMS: What does a kid in York know about reading compared to the kid down the road at Aurora or Seward or Lincoln or Omaha? What does a kid in Millard know about multiplication compared to the kid at Omaha Westside? So the balancing act is between letting teachers do their own thing and measure kids accordingly, and at the same time having some kind of standardization or a little bit of accountability, some benchmarking. This amendment is an attempt to try to synthesize those two worlds. We already have a statewide writing test. Now, I would tell you, when you think of statewide tests, I don't want you to think of every kid sitting down at their desk at the same time, answering the same questions. It's not what it is. What the amendment does is to move towards doing the same conceptual things in mathematics and in reading,... [LB603]

SENATOR LANGEMEIER: Time. [LB603]

SENATOR ADAMS: ...establishing some benchmarking. Thank you, Mr. President. [LB603]

SENATOR LANGEMEIER: Thank you, Senator Adams and Senator Raikes. You have heard the opening on AM1318 to LB603. The floor is now open for discussion. Those wishing to speak, we have Erdman, Adams, Kopplin, Ashford, Pahls, Schimek, Wallman, and others. Senator Erdman, you are recognized. [LB603]

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SENATOR ERDMAN: Mr. President, I rise with a little bit of concern about the process, and I will...(laugh). Pay no attention. I will yield some time to Senator Raikes, I guess. [LB603]

SENATOR LANGEMEIER: Senator Raikes, you are recognized. [LB603]

SENATOR RAIKES: Thank you, Senator Erdman, I guess. Let me suggest to you, I understand your concern because, as I tried to point out and I think Senator Adams did very effectively, this is a significant policy issue and one that I hope we are making some significant and important changes to. I do it at this point to call your attention to it. I hope that you will take advantage of this introduction to it and consider it very carefully. I'm going to withdraw the amendment now, but we will come back to this possibly in a couple of, a couple different alternatives for doing that. But I do want to advise you that I'm not going to require you to work your way through it in such a sudden fashion. You do need some time, I understand, to look at this. I hope you will do this. But I also want to encourage you to consider it very, very carefully because it is an important policy matter. So with that I'll turn the time back to... [LB603]

SENATOR LANGEMEIER: Senator Raikes, are you at this time withdrawing AM1318? [LB603]

SENATOR RAIKES: Yes, I will. [LB603]

SENATOR LANGEMEIER: AM1318 is withdrawn. Mr. Clerk. [LB603]

CLERK: I have nothing further on the bill at this time, Mr. President. [LB603]

SENATOR LANGEMEIER: Senator, the floor is now open for discussion on LB603. There were a number of lights on. We'll go through those. They were to the amendment. We'll go through them anyway. Senator Kopplin, you are recognized. Senator Kopplin waives. Senator Pahls, you are recognized. Senator Pahls waives. Senator Schimek waives her time. Senator Wallman waives his time. Senator Christensen. Senator Christensen, you are recognized. Your light was on for the amendment. [LB603]

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

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

SENATOR RAIKES: Yes. [LB603]

SENATOR CHRISTENSEN: I haven't reread this bill again here recently. Does this still deal with additional testing like your amendment did or where is this bill right now? [LB603]

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SENATOR RAIKES: There are...well, the amendment is no longer part of the bill so let me make that clear. [LB603]

SENATOR CHRISTENSEN: Right. [LB603]

SENATOR RAIKES: The amendment, as offered, would replace locally developed tests with statewide tests in two subject areas: reading and math. It would also move a lot of the technical development of the local assessments from the school districts to the ESUs. That is actually a recognition of current practices. In many instances, the locally developed assessments are actually done at the ESU level rather than the individual school level. And I think Senator Adams made the point that it, at times, at least, has become burdensome for teachers to be involved in the total development and...refinement, I should say, of these tests. So it involves those elements. It involves a procedure whereby state standards can be continually reviewed, again based at the ESU level. It involves expanding testing to the early years, K through 3. And a lot of the impetus there is to try to get a better handle on what the differences are around the state or within an area in terms of how well prepared students are when they enter kindergarten and also how well they're progressing once they do enter. And then finally there is some guidelines established in the statute for the statewide student information database, again intended to make it a better policy instrument. [LB603]

SENATOR CHRISTENSEN: I guess I'll come back. My concern wasn't on the amendment but was on the bill as it states right now, because I guess I'll just speak a little here. I guess my concern comes on, anytime we do testing, what I have seen and heard from people is I...and I think the Governor got woke up quite a little here at his mansion one day. There was a very bold student. They was talking about STARS and things. Spoke up and said, my teachers teach to the test. That bothers me. And thinking it was a nice laid case, just kind of put it down, and seven other students from seven other schools said our teachers do the same. That bothers me. The teacher needs to feel the peace to teach what needs to be taught and the freedom to go, and that's always been my concerns on tests. I understand evaluations. I do evaluations in my own business. But I also get concerned when people start attaching funding based off of scores, and that's what has happened at times. So I get real concerned about putting more tests on younger kids, and national tests, just from the standpoint of we could end up with not teaching the direction we need to do. [LB603]

SENATOR LANGEMEIER: One minute. [LB603]

SENATOR CHRISTENSEN: There, you know, there are so many kids can't even balance their checkbooks. You know, we get some sophisticate..oh well, forget that word, get into detailed things instead of going on to some of the basics sometimes. So I just, you know, get concerned about the direction we go sometimes when we're trying to

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evaluate too closely and not let the teachers have the freedom to teach. Thank you. [LB603]

SENATOR LANGEMEIER: Thank you, Senator Christensen. (Visitors introduced.) Continuing discussion on LB603, Senator Erdman, you are recognized. [LB603]

SENATOR ERDMAN: Mr. President, thank you. I willingly let my time be hijacked by Senator Raikes so he could withdraw his amendment. I do want to share...actually I didn't get to share what my concerns were, and Senator Raikes was evidently reading my mind, but maybe my concern was that we didn't print the amendment on colored paper as former members used to do. I think the concern universally, from what I hear from my district is, is that if we're going to make the change that LB653 would envision, that there is proper notice, that there is a proper procedure. And I would argue to the body that having LB653 being the first committee priority bill of the Legislative Performance Audit Committee, that that is an appropriate vehicle to proceed with given the fact that that would give us three rounds of debate to advance the bill, allow the public to see what amendments may have been adopted, especially those affected, and then have the Select File debate. If you amend it into a bill that's already on Select File, whether it's this bill or another bill, or if you move a bill back from Final Reading, unless you have done your due diligence to make sure that there is proper notice to those that would be affected, I think it's somewhat of a problem to the process. I'm interested in what the committee has put forward. Again, I hope that this can be done. I appreciate Senator Adams and those not only on the Education Committee, not only in this area but on LB641 and the meetings that we continually have there and the work that they're doing, I think they're doing a lot of heavy lifting and I think it's important for us to understand in a thoughtful process what they would propose in all areas of education law, not just those. So I would hope that we can have that opportunity, hopefully, LB653 alone, but I would think that at least now we've given the public the opportunity, because prior to the morning's debate the bill hadn't even been read by the Clerk or the amendment been pointed out or filed. So we're going along more appropriately. I thank Senator Raikes for his accommodation to the body and look forward to the future discussion. Senator Schimek, did you wish to comment or...? [LB603 LB641 LB653]

SENATOR SCHIMEK: No. [LB603]

SENATOR ERDMAN: Okay. Mr. President, I'm finished. Thank you. [LB603]

SENATOR LANGEMEIER: Thank you, Senator Erdman. Those wishing to speak, we have Senators Carlson, Pirsch, Wallman, Chambers, Harms, and Pedersen. Senator Carlson, you are recognized. [LB603]

SENATOR CARLSON: Mr. President and members of the Legislature, I would like to address a question to Senator Raikes, if I could. [LB603]

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

SENATOR RAIKES: Yes. [LB603]

SENATOR CARLSON: Senator Raikes, I just need clarification because I look at the fiscal note on LB603 and on two columns, and I have to look over here: We've got 2006-07 state aid and then we've got the model. And I know, thinking back, that's where I was looking at the total figures of \$10 million and \$15 million, and now I'm looking on the green sheet and I'm not seeing that. Just help me come up to date here. Have we had any significant change in the fiscal note? And if not, in that \$10 million to \$15 million, where are we ending up on LB603? [LB603]

SENATOR RAIKES: Okay, I'll try to work on that for you, Senator. This bill, LB603, would...the first fiscal impact would show up in the second year of the upcoming biennium. The green sheet, as you pointed out, includes the following years, as well. What has happened with ESUs over the last several years is that they've been pretty much flatlined in terms of a state appropriation. This is in contrast to the intent language that...actually they have been reduced in funding since about 2000 or 2001. This is in contrast to the intent language in the legislation that core funding for ESUs would be increased by a combination of student growth and inflation. And even considering the zero growth years we had in the early 2000s, I think 2003 and 2004, this amount of funding, the \$4,700,000 in the second year of the upcoming biennium, would just put ESUs back on track with that intent language in the funding. [LB603]

SENATOR CARLSON: All right. Putting it back on track, where does...can you relate that for me to the \$10 million figure? [LB603]

SENATOR RAIKES: Okay. The \$10 million...this would be in addition to the \$10,800,000, I believe it is, that is in the budget bill that we have advanced. [LB603]

SENATOR CARLSON: Okay. So that ends up bringing it closer to the \$15 million figure. [LB603]

SENATOR RAIKES: Right. The total, when you count the base budget, which is basically flatline funding in the budget bill, plus this A bill amount, it would be about \$15,473,000. [LB603]

SENATOR CARLSON: So in the fiscal note, looking down there, the last column then, change in aid, that's...what we see there is still fairly close to what we're aiming at. [LB603]

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SENATOR RAIKES: Yes. [LB603]

SENATOR CARLSON: Okay,... [LB603]

SENATOR RAIKES: Yes. [LB603]

SENATOR CARLSON: ...thank you, Senator Raikes. [LB603]

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

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

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

SENATOR RAIKES: Yes. [LB603]

SENATOR PIRSCH: Thank you, Senator. With respect to the underlying bill, then the appropriation from the General Fund would be, I think the fiscal note says, somewhere around \$4.5 million or \$4.6 million. Is that...? [LB603]

SENATOR RAIKES: \$4.7 million in the second year of the upcoming biennium, Senator. [LB603]

SENATOR PIRSCH: \$4.7 million. Okay. And that seems to be, based on where we are now, probably a pretty accurate, as far as we know at this point in time, number? [LB603]

SENATOR RAIKES: Yes, that would be an amount appropriated, so that would be the amount that would drive the funding of the ESUs. [LB603]

SENATOR PIRSCH: And the underlying intent of the bill or policy reason for, it's a change in formula that results in this increased funding, correct? [LB603]

SENATOR RAIKES: Actually, Senator, it's a good question. The change in the formula itself does not require additional funding. The formula, as changed...and you're right, it's changed to reflect more accurately to the costs associated with providing ESU services, sparsity, and some other considerations, but the change in the formula itself will work with whatever level of appropriation there is. [LB603]

SENATOR PIRSCH: I see. So the change in the formula alone was...well, let me ask you that. What was the under...the funding issue aside or finance issue aside, what the

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underlying rationale for the change in the formula, I assume, was to help those ESUs achieve, I would...I guess my question to you is, achieve a bigger slice of the pie, those ESUs that tend to be outstate dealing with sparsity issues. Is that correct? [LB603]

SENATOR RAIKES: Sparsity was certainly one factor, but also equalization and taking into account the...because, as you know, ESUs are funded both by core services and by a property tax levy, so the valuation per student served is important in the funding for an ESU. So the formula change does equalization plus it also, hopefully, and I believe does, capture a more realistic description of the costs of providing ESU services in various parts of the state. [LB603]

SENATOR PIRSCH: Very good. And that's the first part of the bill which deals with reformulating the distribution of finances. The second part then deals with increasing, I guess as a second element then, increasing the total amount that the state allocates to finance, then, all ESUs in the state? [LB603]

SENATOR RAIKES: Yes, that's true. The state, it's referred to as core funding, core services funding. [LB603]

SENATOR PIRSCH: Okay. And what was the underlying rationale then of increasing the size of the pie, so to speak, the size of the funding? Was that just so that there were not some winners and some losers as far as the ESUs were concerned;... [LB603]

SENATOR LANGEMEIER: One minute. [LB603]

SENATOR PIRSCH: ...that it wouldn't have a negative, adverse impact on any one particular ESU, in particular? [LB603]

SENATOR RAIKES: Certainly that element is there, Senator, and I think even with this level of funding and the way the bill is drafted there is one ESU that incurs a small loss. But there are really two drivers in the increased appropriation. One of them was to make it consistent with intent language and to recognize the importance and efficiency of providing services through ESUs rather than trying to do it by each individual school district, particularly in smaller school districts. The other thing I would mention is that we did this in anticipation of the fact that we're going to count on ESUs more heavily in testing and development of tests and our statewide assessment system. They are already heavily involved, but they would be even more so under the arrangement proposed in LB653. [LB603 LB653]

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

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

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SENATOR WALLMAN: Thank you, Mr. President and members of the body. I would like to ask Senator Raikes a question. [LB603]

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

SENATOR RAIKES: Yes. [LB603]

SENATOR WALLMAN: Would this include extra staff for the ESUs? [LB603]

SENATOR RAIKES: Senator, I would assume that additional services that they may perform may require additional staff. There is no specification in here as to exactly how this money would be used, but certainly if...and you're probably at least as familiar or more so than I am with ESU services. They are heavily personnel related. [LB603]

SENATOR WALLMAN: Thank you. I appreciate what ESUs do; I think they are needed. But on this testing issue I agree with Senator Christensen. My wife is a retired teacher and some teachers do test for the test. I mean, you know, they prepare the kids for the test, which they are told to do, and that's how you get good grades for your school. But I'm also concerned in those schools that have multicultural issues, non-English speaking students. And you throw them all in the mix and you throw a whole bunch of kids in the mix, and you cannot get a true grading picture. And it's really tough to do and my wife was upset with that because she taught earth sciences and she has taught a lot of different things, but then all of a sudden we're actually narrowing our educational field down instead of widening it. And I think as we prepare our young kids for the world, that's a mistake. So if we have to give more guidance here, if...or we set up our own plan in this state for testing and we still have to adhere to the national people, what they tell us. So I have severe doubts about more testing. But that's all I have. Thanks, Mr. President. [LB603]

SENATOR LANGEMEIER: Thank you, Senator Wallman. Senator Chambers, you are recognized, followed by Harms. [LB603]

SENATOR CHAMBERS: Mr. President, members of the Legislature, they say experience is the best teacher and some will have no other. I'm an expert on testing because I've taken numerous tests, in fact, innumerable tests from the time I was in elementary school at Lothrop, through Tech High School, through Creighton undergraduate school, through Creighton Law School. And testing is essential. I was going home the other evening and a song was playing on the radio, "Baby I'm Yours." And this individual was telling how long she was going to be this person's baby, and among other things, until the sun falls from the sky. And I was really getting into it. Then I was brought back to earth when she said, till two and two are three. And I looked at Cindy, whom I drive everyday, I said, Cindy, she's not going to be his very long because

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that's what they do at OPS right now. Two plus two are three. Members of the Legislature, if we're going to let individual schools and teachers and school districts devise tests to make what they're doing look good, that is the biggest wrong we can commit against these children. If that child was going to spend his or her life in the confines of that classroom, then let that test be over what is improperly taught or inadequately taught. If that child is going to spend his or her life among the people who are similarly tested and cheated, fine, but they're going to leave those small communities, they're going to leave those small schools, they're going to leave OPS, and they're going to be competing against children who were educated not only in this country but globally. And for us to let this notion of fearing tests take root is going to mark Nebraska as the backward state that many people see it as being now. I even think teachers ought to be tested, but they're the ones who would holler the loudest. And the only thing you would have to say is we're going to give you a test over your subject matter at the 12th grade level, and they will scream like pigs with their noses stuck under a gate because they're not held accountable. I don't think bearing the title "teacher" makes you something special; it ought to. But that special consideration ought to come based on how well you do the job, and how well you do the job is reflected by how well your students master what you teach. Here is how I define or describe teaching. You have the children down here, the teacher up here. The job is not to reduce the teacher down to the level of the students where they say ain't...well, I'm trying to make ain't respectable but in the classroom we're not going to do that. We don't want the teacher saying ain't. We don't want the teacher using double negatives. What we want the teacher to do is move that student closer to the level where the teacher is. And to the extent that that disparity is removed, teaching has occurred and learning has taken place. When I was in law school, when I was at Creighton undergraduate school, we were given blue books in which we wrote our answers. And when you finished your examination, you could leave. I did not have a single class at Creighton University or Creighton Law School at which I was not the first one to leave the examination room. Do you know why? Because I knew what I knew and I wrote answers based on what I knew, and I didn't try to trick anybody. [LB603]

SENATOR LANGEMEIER: One minute. [LB603]

SENATOR CHAMBERS: I would read the question to see what I was being asked before I started writing an answer, and I never flunked a test and never flunked a class, and I was educated or miseducated at OPS, but I did a lot of reading on my own. And I'm going to have a few more things to say about testing because whenever I hear people say we don't want to test, something is wrong with that system and something is wrong with those people, and they want to keep these children as dumb as a post so that these teachers and administrators are not held to a level of accountability which they ought to be. They are paid to do a job and we should hold their feet to the fire and make them do it. Thank you, Mr. President. [LB603]

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SENATOR LANGEMEIER: Thank you, Senator Chambers. Wishing to speak we have Harms, Pedersen, Pahls, Chambers, and Kopplin. Senator Harms, you are recognized. [LB603]

SENATOR HARMS: Thank you, Mr. Chairman and colleagues. I rise to support LB603. I think the core services, particularly for rural America, are extremely important. What people need to understand is that when these smaller schools actually contract out services, if they didn't have the ESU units, we would have to hire, in many cases, our own speech pathologist, our own special ed specialist. We would have to also deal with the changing of technology and our own staff development. This...ESU units provide a very important service and I don't want us to lose sight of what it's about, what its purpose is, and it does help children. That's what it's about. Now let me move my conversation a little bit to the statement that Senator Christensen says. We're making a judgment that all of our teachers in this state are teaching towards a test, by one statement by one senator. I don't believe that. Our teaching staff in this state are professional. I think assessment is critical. The earlier you can intervene for a child to get them on the right course, it's important, and I object to people saying that we are all teaching towards the test or that this is faulty. Senator Chambers, Senator Chambers, that's not right, and until I can have something that's valid, something that proves that this is correct, I'm not going to make those statements. I believe strongly in the educational system we have. I believe strongly in what is taking place. I can tell now, with the STARS assessment, even though it's independent from the nation, we've had people from other parts of the country come to the state of Nebraska to say, what are you doing different than we are? Why are your kids improving so much more than what ours are? There is something to say about that, folks. There is something to look at that. And when you look at our test scores nationally, we do better than most other states. Our kids do well. We have more kids going to college than a lot of states. Yeah, do you think we can fix our system and make it better? Absolutely. I think we can fix our system and we can make it better. But I strongly support this LB603 because I think it's critical, and if we would lose these core fundings, I think the ones that get hurt will be the smaller schools in rural America. And I would urge you not to lose focus on the purpose of this and not get sidetracked on this assessment issue and teachers teaching, until you have the facts and we have the research that shows that's correct. Thank you, Mr. President. [LB603]

SENATOR LANGEMEIER: Thank you, Senator Harms. Senator Pedersen, you are recognized. [LB603]

SENATOR PEDERSEN: Thank you, Mr. President, members of the Legislature. I wasn't going to talk on this issue, but listening to a couple of you made me think that I need to stand up and visit with you about where I am with working with children. Two of my brothers, of three brothers, are teachers. My mother was a teacher all her life, taught on the reservation, one-room country schoolhouse. I taught for two years myself in a

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one-room country schoolhouse many years ago. Kids have not changed. Kids still want to be important, they want to be part of something, and they want to feel worth something. And as Senator Chambers said, being a teacher does not mean you're important, even though it should. I work with children today, people, who have been kicked out of most schools. These kids do not get what we consider in this room a typical high school education. But when these kids go to do their GEDs, most of them write very high scores. They're not dumb. Testing is not something necessarily I know a whole lot about, so I'm listening, but I do know that a teacher who is fair, consistent, compassionate, and firm, without taking any one of them away, does a good job. And some of the times that might not be reading, writing and arithmetic, but it'd be working through some of the other problems that a person has coming from home, society, not feeling important. You know what makes some of my kids feel important? Carrying a gun and knowing how to use it, being part of a gang because they don't feel part of something else. Them are the basics, people, that we need to look at: to feel important, to be part of something, to be worth something, and teach them what the good parts instead of the bad parts of that is. Testing doesn't show you that, but fairness and compassion and the people that work with them does. I don't know if this fits into what we're talking about, but I believe it does and I hope you do too. Thank you. [LB603]

SENATOR LANGEMEIER: Thank you, Senator Pedersen. Senator Pahls, you're recognized. [LB603]

SENATOR PAHLS: Mr. President, members of the body, I'm glad we are not talking about testing, although I was surprised a little bit earlier on this amendment. The only thing, I just want to reaffirm what Senator Harms has said. Let's take a little break here. We have an awful lot of good, hardworking teachers out there who are working themselves to death, in many cases. And testing is significant. I believe in testing. I believe in accountability, so I do have some strong feelings on this and I do think we need to have accountability. But at the moment, I do not want to talk about that. The only reason why this surprised me initially is I'm looking at the cost of this bill and I have a feeling, after the Governor sees some of this, this may be a bill that he may say, hmm, the money may be too high. I don't know. But I also know that he is concerned about the testing program so I thought to myself, what are we doing putting both of these together to put somebody in a quandary of how to take a look at this bill? But a couple questions I do have: earlier when we talked about this bill I was concerned about the...the way the formula came about and really did not create too much interest on the floor. I am very concerned about all these formulas. I think...I'm not involved with them and I know there are people in the background who really work hard on these formulas, but I thought this was an interesting comment made in the World-Herald, on their editorial page. I'm just going to read a couple sentences: Nebraska's state aid formula deserves no particular praise, not least since the formula is the unimpressive results of opportunistic legislative compromises. And that's how I see what goes on, on a lot of these formulas. I compare it to something like a Likert scale. Remember how you can vote on something from one

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to five, you really like, or to the point where you dislike. And I'm having...this is a little humor here, not meant to be negative towards anybody, but I just want to say let's use...say we use the word "spare"...or "sparse," I'm sorry, "sparse." We start with less sparse; not so less sparse; sparse; really sparse; or really, really sparse. That's how sometimes I think these formulas come about. All these compromises that we are dealing sort of messes up the formula. Again, like I say, I am not involved with them so I do not have that background, but I am concerned that with this bill, if we do not get the additional money, the ESUs in one of the areas I represent, they will lose over \$100,000. They will come out okay if we do get the additional monies. That does...I think we need to take a look at the fiscal note just to make sure we understand the economic aspect of this bill. Thank you. [LB603]

SENATOR ERDMAN PRESIDING [LB603]

SENATOR ERDMAN: Thank you, Senator Pahls. Senator Chambers, you're next to speak on LB603, followed by Senator Kopplin. [LB603]

SENATOR CHAMBERS: Mr. President, members of the Legislature, Senator Harms and I see so many things eye to eye that there might have been a misperception, at least there was on my part when I was under the balcony. I thought he was disagreeing with the point I was trying to get across. Here's the point that I want to make. If our children are achieving at the 3rd grade level but have been passed on through school until they get to the 6th grade and a test is administered, I don't want that child to be given a 3rd grade test. I want that child to be given a 6th grade test so we can see how the system has failed that child and know what is needed to be sure that when that child leaves kindergarten he or she knows what a kindergartner should know, 1st grade the same thing, 2nd, 3rd, and so forth. When I say quality education what I mean as a start is that a child leaves a certain grade level knowing what that child should know and then the child is taking a step at the time until the entire staircase is surmounted. If we can engage the minds and imaginations of these children and school does not become a chore and a bore, it does not become a place they dread going, they will develop a love of learning. The human mind is engineered to know, and people are going to apply their mind and know something. Our responsibility as adults is to encourage them to know what that proper something is as they pass through life, and we need to teach them to read, we need to teach them to figure, which means do math, they need to know what science is and something about a scientific method of thought, which means logic. Two follows one, three follows two, four follows three and so forth, and take them at the level we find them and move them from that point. And the testing lets us know whether that child is mastering at that grade level what he or she should know. These children are going to have to compete against children who are being taught in a better way than I think in general is happening in Nebraska, and that's why there is so much fear on the parts of teachers, teachers' unions, administrators, and superintendents. They've had an easy go of it and they don't want anybody to rock their boat or disturb the flowery bed

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of ease on which they've been allowed to recline without being accountable to anybody for all of these generations, and my children are the ones who are the walking, living examples of the failure of this system. And as long as I'm in this Legislature, I'm going to do what I can to ensure that that failure is mitigated, that it does not continue, and that programs are put in place that realistically address these problems. I don't want a child to pass on through a grade just for his or her psyche. I want some heat to be put on these teachers and let them know that in the same way if I'm a surgeon and every patient who goes under my knife comes out on the other side a client for the undertaker, I'm not going to be allowed to have hospital privileges at that location unless it happens to be a packing plant. [LB603]

SENATOR ERDMAN: One minute. [LB603]

SENATOR CHAMBERS: So if these teachers are not doing the job, out of here. Don't pay them extra money to do their job. But if they're doing their job, pay them well. If they are doing their job, elevate the status of a teacher. These are the ones who are assigned the responsibility of shaping the minds of our children, but don't let them translate that responsibility that is reposed on them into a notion that they're already discharging it, therefore, they should get more money and extra benefits to do what they're paid to do. No, if they don't do the job, fire them. That's the best sensitivity training in the world--do your job and if you don't you're out of here. Is that my third time, Mr. President? [LB603]

SENATOR ERDMAN: That's your second time, Senator. [LB603]

SENATOR CHAMBERS: Thank you. [LB603]

SENATOR ERDMAN: Thank you, Senator Chambers. Senator Kopplin, you're recognized to speak, followed by Senator Dubas. [LB603]

SENATOR KOPPLIN: Thank you, Mr. President. Members of the body, poppycock! (Laughter) The teachers that I know in this state are wonderful, hardworking people. To indicate that it is their fault that some child comes to school way behind someone else is just unthinkable. Of course we have to move them along from where they are, just exactly what was said, to where they need to be, and teachers are working hard to do that, administrators are working hard to do that. Nebraska schools are not failing. Children are not failing. To indicate so is insulting to the great teachers that we have in this state. Testing is important, absolutely, and it should be used just the way Senator Chambers said. Give these children a test, find out where they are and move them along. But that is not what many people in this body want. They want a big long list of scores so they can say, aha, my school is better than they are. You can't tell anything that way, absolutely nothing. You don't know the background of the kids that came, you don't know where they started from, you don't know how far they've come. Some of

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these classrooms that you say are failing may be the best classrooms we have because they took a child and moved him far beyond what would normally be expected. Or you may have a school classroom that has scores very, very high and that teacher may be failing because they should have gone so much higher. I do not support any insulting of teachers, the principals in this state. You can pick on us superintendents. I don't care about that. But, by golly, they work hard, they dig in their own pockets for everything, they listen to the kids' problems. They are counselors, they are nurses, they are loving parents in some times, and sometimes they are the provider of what that child needs. And if they have time in-between there, they will get to teaching these children, and they are doing that well. I respect them. I applaud them. Thank you. [LB603]

SENATOR ERDMAN: Thank you, Senator Kopplin. Senator Dubas, you're next to speak, followed by Senator Wallman. [LB603]

SENATOR DUBAS: Thank you, Mr. President, members of the body. I rise in support of this bill. As a former school board member, I knew, and continue to know, what the ESUs provide for my school district and the districts...and the school districts in my district and across the state. Especially in rural areas, they provide an invaluable service. They provide support staff. They provide in-service teachings. They just...things that individual school districts would not be able to go out and do for themselves, they're there. They help school districts save money. Just...you could just go down the list of what ESUs provide for this state and for the students of our state. They allow our teachers to do a much better job. They allow...they provide services for our teachers, to build them up and support them. So I just think the ESUs have done an outstanding job in serving the students of our state and giving us...we don't always get to see what our state tax dollars provide for us in very tangible ways, but ESUs allow us that opportunity to see what they do for our students and for our teachers and for our schools. And so I am truly in support of this bill, what this bill has to offer for ESUs and, in turn, what ESUs have to offer to our school districts across the state. Thank you very much. [LB603]

SENATOR ERDMAN: Thank you, Senator Dubas. Those senators wishing to speak are Senators Wallman, Pahls, Gay, Chambers, and Carlson. Senator Wallman, you're recognized to speak. [LB603]

SENATOR WALLMAN: Senator Chambers, you picked on the teachers. They do hard work; I agree with Senator Kopplin. And I've always been in the...tried to get longer school days. You know, the schools are literally mom and dad to a lot of kids, and they can't wait to eat breakfast in the morning. As a society, we have to take care of the kids and we do have a lot of good kids. If we have some bad elementary schools we shouldn't be putting more money into ESUs. We should be putting more money into the teachers there so they have more teachers per student. And I think that's important, when you have different classes of children thrown together, to try to get them to work

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together. And I went to school when reading and writing and arithmetic was taught to what? The tune of a hickory stick. Can we use a hickory stick? No. But I think discipline, principals, teachers, we need the teachers. If I'm going to spend more money, I guess I'd rather spend it on the elementary side. If OPS needs more teachers in elementary then I'm all for it. And I yield the rest of my time to Senator Chambers. [LB603]

SENATOR ERDMAN: Senator Chambers, you have 3 minutes and 45 seconds. [LB603]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Wallman. And for Senator Kopplin, hey, oh papa, treetop tall, won't you kindly turn your damper down? That's from a song. Cool down. I want you to stay around here. I don't want you to have a heart attack. I like that passion, we need it, and this is the discussion where it's appropriate. Now me thinketh Senator Kopplin protesteth too much. If teachers are doing their job, they would not want a parent to have to get...give prior notice before visiting the school and the classroom. They would be delighted to have a parent visit the classroom any time. Any patron of the schools is welcome to watch what is happening. You don't have to give them time to prep themselves, to prep the students, and all of these things that will happen when somebody who is going to be called to account knows that the one who will call him or her to account is coming. You know what those Chinese plants did where the accusation was leveled about contaminating this pet food? By the time the American investigators got there, every one of the plants had been closed down, they had all been cleaned, and nothing of anything was found. Inmates used to tell me they liked it when I would notify the administration of the prison that I was coming, especially around mealtime, because they would go out of their way to prepare better food and a better selection. But if I want to find out what they're really doing, I don't announce that I'm coming. And regardless of how upset it makes Senator Kopplin, I do know there are teachers who are failing. When my child was in the 1st grade, this teacher didn't know the meaning of agreement when it came to grammar. My daughter's name is Gayla. She, the teacher, would write, Gayla are doing good work. Gayla are doing good work, Senator Kopplin? I'm talking about what I have experienced and reports and letters sent home to parents by the teachers. I have received letters, Senator Kopplin, from 4th grade children in my district where they can't spell the words, they run up the page, down the page, they cannot properly form letters when they're printing those letters. And these are not retarded children. If you go into these classrooms and these schools, you will hear people...teachers talk about how discouraged they are because they don't have adequate textbooks and supplies. [LB603]

SENATOR ERDMAN: One minute. [LB603]

SENATOR CHAMBERS: That is not the problem of the parents and of the children. It falls squarely on the school administration and that's where I'm going to continue to place it. And Senator Kopplin shouldn't be the one who has to stand here and get

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irritated and upset. What the administrators and the principals ought to do is say we want the senators to visit us, and the parents, whenever they want to, without getting prior notice, and they don't need an invitation or permission to visit the schools where their children attend. And if a parent shows great concern and asks too many questions in Omaha, in black schools, that parent can be banned and barred from the school, and I wish they'd a tried to do that to me when my children were in school. Senator Kopplin has taught in a white district where they had white children and they had concern for white people and white children. I'm black and I would match my mind against that of anybody in this Chamber, and I admit... [LB603]

SENATOR ERDMAN: Time. [LB603]

SENATOR CHAMBERS: ...that I'm retarded because of lead. But even in my lead retarded condition,... [LB603]

SENATOR ERDMAN: Time, Senator Chambers. [LB603]

SENATOR CHAMBERS: ...my mind is on a par with anybody here. Thank you, Mr. President. [LB603]

SENATOR ERDMAN: Thank you, Senator Chambers and Senator Wallman. (Visitors introduced.) Thank you for visiting the Nebraska Legislature. On with discussion of LB603. Senator Pahls, you're recognized, followed by Senator Chambers. [LB603]

SENATOR PAHLS: Mr. President, members of the body, really did not anticipate this discussion going on this morning, but so be it. I think we hopefully can clear the air. I want to thank the superintendent, the retired superintendent, who spoke eloquently. Yes, we have issues in education. Do we need to correct ourselves, do a better job? Yes. But I hate the idea, when we're starting to lump everyone in a negative, I call it negative, pile. There are many good things going on. In the experiences, and I will go along with you on this Senator Chambers, because I have not been in the schools that you have been in, but in the schools that I have been associated with, you didn't have to call ahead of time. You walked in. And I understand we're difference...you could walk in. In fact, this is the practice. I happened to be in a very nice school and the parents had come in to make a visit and they wanted to see if they wanted to buy in that neighborhood. I'd say, go take a tour of the school, not with me, not with anybody else, you just walk around, because I felt secure things were...good things were going on. That's what I...another thing that, say, you're talk...you're listening to parents. And the teachers did this with me, they helped me out. Two weeks before school we had what we called an FYI conference. The parent and the child would come to this conference with the teacher. The teacher would listen. So there are avenues of trying to make things happen. And I do know that this does happen in all schools, but there are many good schools where things are happening to benefit children. I think what Senator

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Chambers is talking about today, I'm sure there are many, I'm going to say, elements of validity to his words. I think he is standing up and says, hey, I think we ought to audit these schools, we ought to take a look at achievement. But there are seven or eight other criteria that I've spoken a number of times on the floor that we could take a look and see what a good school looks like. There are a number of qualities; wouldn't be hard to take a look at that, have a team come in, take a look at the schools, says, hey, these are the good things, these are things we need to take a look at, then you work towards those. Achievement is one segment and hopefully later on when we talk about testing, I have some ideas about that. But we ought to take a look at each individual school and districts, because there are some districts perhaps that need...they need to reflect on what's going on in that district, teachers do, administrators do. But in my 30-some years of experience, I did not see a number of teachers who I thought worked against the system. I did see them trying to make things better for children. But I'm willing to visit schools myself and say, hey, this is what we need to be taking a look at. Again, what is your...I'd just like to have you, in your own mind, what do you picture a good school would look like, just as maybe some of your own children have gone to, or your grandchildren? Say these are the things I like about the school. Wouldn't be...take very long. We all know what the good...those in education, we know what a good school looks like. To make a map or a portrait of a school would not be a very difficult thing. See, that's the thing that upsets me a lot when we talk about these big megaboards and things like that. And I do know that they will eventually go down to the individual schools, but I'm looking at a much simpler way of taking a look at the individual schools now because probably most students want to go to their neighborhood school, believe it or not. I mean I don't know if I necessarily want to travel six...or I shouldn't say six miles,... [LB603]

SENATOR ERDMAN: One minute. [LB603]

SENATOR PAHLS: ...a mile to go to another school that may be relatively unique. Hmm, wonder why I could not make that neighborhood school sort of unique? Because I do probably want to be around my peers, the guys and gals I play with after school. So the idea is make those individual schools, schools of learning, schools where children want to go. So I think sometimes we get hung up in all this stuff up here and may not work. Thank you. [LB603]

SENATOR ERDMAN: Thank you, Senator Pahls. Senator Chambers, you're recognized to speak, and this will be your third time. [LB603]

SENATOR CHAMBERS: Mr. President, members of the Legislature, Senator Carlson and I are going to do a flip-flop, so I yield my time to Senator Carlson. [LB603]

SENATOR ERDMAN: Senator Carlson, you have 4 minutes and 50 seconds. [LB603]

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SENATOR CARLSON: Thank you, Mr. President. Thank you, Senator Chambers. I want to address a little bit some of the things Senator Chambers has said, as well as some of the things that Senator Kopplin has said. Both of them are passionate. Both of them have made some very good points and I think, in terms of where we end up with legislation that hopefully is helpful to our education system in the state, this is a profitable debate. Children shouldn't automatically be passed on until they've mastered a certain level. Senator Chambers said that this morning. I agree completely with him. But the next statement had the message in it, if they don't master that level, fire the teacher. Now if the teacher has done all that he or she can do, and they're qualified professionals, why would we fire them? And it's not always their fault, but most of the time they get blamed. That's what Senator Kopplin reacted to. And why does this happen? The reality is that many times, many times parents don't prepare their children for school, and they don't want to accept blame and they don't want to accept responsibility for their child not being ready. So the natural thing to do is become defensive, become disruptive, and even become threatening, and forces schools to make rules about prenotification and when they can visit and when they can't visit. I wish parents could come any time they want to and observe what the teacher is doing and observe what their child is doing. I would agree that poor teachers need to be weeded out. This would never happen, but if we did away with tenure we could call out the weak and reward the strong. Senator Chambers said he liked to see good teachers paid better. I would like to see good teachers paid better. But I believe most of our teachers are good, competent, professional educators who are trying to do their job, and they deserve our support and our praise. I believe, in many cases, the teachers' union has worked to protect weak teachers, and that adds to part of the problem. But responsibility goes two ways. I have got to be responsible as a parent. I've been a teacher. I need to be responsible as a teacher. And both sides need to be heard, both sides need to be considered. And I do appreciate Senator Kopplin's passion. I always appreciate Senator Chambers' passion. And I think this debate is good. Thank you, Mr. President. [LB603]

SENATOR ERDMAN: Thank you, Senator Carlson and Senator Chambers. Senator Carlson, your light is next. [LB603]

SENATOR CARLSON: Mr. President, thank you, and I will yield my time to Senator Chambers. [LB603]

SENATOR ERDMAN: Senator Chambers, 4 minutes and 55 seconds. [LB603]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Carlson. When I laid out an analogy, people didn't listen. I said if I were a surgeon and every patient that went under my knife died, every patient. I'm not talking about a classroom where there is an occasional child who doesn't cut the mustard. I mean when the whole class is not doing well; that you can observe the teacher and see that he or she is not doing

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the job that ought to be done. You all are too defensive and I'm not going to let you get away with it. I have stated that there are teachers in the community where I live who could do a better job if they felt they had to, but the administration does not require them to do it so they, like water and electricity, follow the path of least resistance and they don't do the job. You talk about parental involvement and parents not preparing their children. I'm not going to give the name of the school or the administrator right now because I'm working on it. A woman and her husband delivered their black child in Omaha to a white school. The administrator told them, go park your car down there, and what are you doing here anyway, because they're black. We're bringing our child to school and there's a parking stall here near the door and that's where we're going to park. And the administrator was standing, blocking their car. When he became aware that they were going to park, then he moved aside, and they pulled in. Then he's interrogating these grown people. Teachers treating adults like they're children? They picked the right ones. So the child got out and is walking to the school, and the administrator--what are you still sitting here for? Because we want to make sure that our child gets into the school safely because a child here was abused by a principal, a black child, and nothing was done, and it's not going to happen to our child. So they got home and a call was made to the school to talk to the principal. He was very rude and he began to say, you're cursing, you're swearing, you're swearing. I guess that's for the benefit of whoever was in the office with him. She said, I'm not swearing. Why are you saying that? I hear you swearing. So she said, no, I'm not, and I have a tape which will prove that I'm not swearing. He hung up immediately. Then he called back and he's conciliatory. And then it's, oh, I mistook you for somebody else. Without the tape, the person the office with the principal would have sworn that the one on the other end of the line was swearing and cursing because that's what this rotten, no-good principal said. And if it was my child, I would hit him in his mouth. I'm letting you all know the way I feel about my children. I would not let a white adult abuse my child. I'd be sitting in the penitentiary to this day. That's what I feel about my child. You all don't care because you don't care about black children, and these things don't happen in your schools so you say, well, we have teachers who do this, we have teachers who do that and principals who do that. And I see our children being cheated. I've handed you articles, which go right through your mind and don't leave an impression, where the teachers with the least experience are sent to the areas where our children go to school. And if experience means nothing, as they want to tell us, why does it just happen by coincidence that the teachers with the experience are always in the white schools... [LB603]

SENATOR ERDMAN: One minute. [LB603]

SENATOR CHAMBERS: ...and the teachers with the lesser experience are always in our schools? Why is that? If I don't speak up for our children, nobody will. And even with me speaking up, there are people on this floor and out in that lobby who want to protect the white system. When other people take care of the needs of your children, your

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children are going to be cheated. Others don't care about the education of our children and that's why we need control of the schools where our children attend. Don't let those people who have no concern for our children be in charge of them. Then we will bear the responsibility and we will demonstrate that our children can learn. We will demonstrate that they can be taught. But when you have people coming from other areas and they have no respect for us, you have the results that are taking place in OPS and the test scores demonstrate it. [LB603]

SENATOR ERDMAN: Time. [LB603]

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

SENATOR ERDMAN: Thank you, Senator Chambers and Senator Carlson. Senator Howard, you're next to speak, followed by Senator Adams, Harms, and Aguilar. [LB603]

SENATOR HOWARD: Thank you, Mr. President and members of the body. Thank you, Senator Kopplin. I haven't heard it put better. I have worked with many teachers and have seen the quality of work and the dedication these individuals give to their students. I've also worked with countless numbers of foster and adoptive parents throughout Omaha and have been told over and over that their child's success was due to the relationship the child had with their teacher. And mind you, these were children that came in to the foster care system with the worst of problems, the worst you can imagine. I have been in schools in north Omaha, probably in all of them, and have never had to call ahead to be admitted. Yes, I was required to check in at the office, but this was based on security reasons, which everyone can understand. I support my schools in inner city Omaha. I have been there. I've seen the commitment. I've seen the successes. I've seen what's happened to children despite the odds, the things that they've overcome, the things that the teachers have been there to help them overcome. Teachers deserve our thanks and our respect and our support. It's much easier to sit on this side of the issue and to give advice than it is to be in the classroom doing the actual work. I offer the balance of my time to Senator Kopplin, if he would care to have that. [LB603]

SENATOR ERDMAN: Senator Kopplin, you have 3 minutes and 20 seconds. [LB603]

SENATOR KOPPLIN: Thank you, Senator Howard. I'm calm now. And, Senator Chambers, I do believe in much of what you say. It is the kids that count in school and if we as the Legislature can somehow get down to that level, I will be supporting you. Thank you. [LB603]

SENATOR ERDMAN: Thank you, Senator Kopplin and Senator Howard. Senator Adams, you're next to speak, followed by Senator Harms. [LB603]

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SENATOR ADAMS: Thank you, Mr. President and body. You know, I hear all of this passion and I get a big smile on my face because it's passion about kids and it's passion about achievement. While we may see different directions on how to get there, let me neutralize it for just a moment. The amendment that Senator Raikes put up about testing stirred the fires, and that's good. Let me ask all of you to do this. The amendment was withdrawn. Study it. If you have questions, ask away. But you know what that amendment is designed to do? It's designed to do all of the things that I'm hearing. It's designed to make schools and teachers accountable, and I've never met a teacher yet that was afraid of accountability unless they were a weak teacher. They're not afraid of it. I've never met a school that was afraid of accountability unless they're a weak school. But you know what? At the same time we've got to get teachers back in the classroom doing the business that they are cut out to do, whether it's working with kindergartners or 12th graders, and that's teaching school and being creative and spending time with every kid, but particularly those who most need the help. This amendment on testing, I think I was cut off on time when I said it's not designed to throw away what teachers have been doing for the last eight years. What it is designed to do, rather, is to appreciate what they have done, but to move some of the responsibility over to the ESUs so the teachers can get back into the classroom using the assessments that they have already developed and give the assessments, monitor achievement, and then have time to respond with different teaching methodology to get at achievement. Study the amendment between now and when it comes up again, and again, if you have questions, don't hesitate to ask, and any of us will try to answer them on the Education Committee. Thank you, Mr. President. [LB603]

SENATOR ERDMAN: Thank you, Senator Adams. Senator Harms, you're recognized to speak, followed by Senator Aguilar. [LB603]

SENATOR HARMS: Thank you, Mr. President and colleagues. Senator Chambers, the only thing I would like to say is that I do care. I care about children. So when you talk about me being white and that I don't care, cuts right into my heart, because I care about your children. I care about other people's children. I have mentored, as a college president, children who come from low-income families. I have volunteered to work in environments that, in some cases, people would not say were safe, because I cared about children. So when you make that statement, I want you to know that in your hearts you should understand that do not include me. Now let me talk a little bit about what I see of the school system and what I think some of the issues are. First, a lot of people say our schools are failing. They're not failing. In fact, they're falling behind, and let me tell you what's happened. The characteristics of the classroom have changed. In some classrooms we have...in some schools we have anywhere from 10 to 15 and maybe 20 different languages being spoken. Secondly, we have found that we no longer can keep up with the technology that's coming so rapid into our public schools, and probably the most important thing we have here is that the new world global economy is asking for a whole new skill set that our schools in America are not

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prepared to teach, and that's what we have to focus on. Because, Senator Chambers, if we start to focus on these new skill sets, we're going to start to reach what you're after, and that's critical to us. I have already spoken, when I first came here as a senator, to the Commissioner of Education and I began to address this concern that I have about the new global skill sets that we're going to have to produce if we're going to be competitive in America, and that our kids in Nebraska must have those skill sets if they want to compete and the state wants to compete in the future. We cannot ignore that any longer. And he has indicated they are starting in this process. Well, I want to make sure that that does happen and that it does occur, but then we have the issue, once that starts to change, is we must then address the higher education system in regard to their teaching on what those new skill sets are, and the teachers that are already in the field about how to integrate those new skill sets. Because all of this is about our future of America, and our future of America is based upon our educational system, the end product. It's these young people sitting up here that have been helping us all year. It's about them. It's about giving them the opportunity to grow and to develop and to know that they'll be competitive by the education they're getting with other kids their age from China or Japan or from other fields, other countries. That's what this is about. And the most important thing we can do is start to focus on how we make those changes. And I think the Omaha school system, even though I don't completely understand it and I'm working to try to understand it, is the beginning of that process. It's the beginning of making some changes that probably need to be made. But it's not the fault of all of our teachers. We have good teachers. [LB603]

SENATOR ERDMAN: One minute. [LB603]

SENATOR HARMS: Thank you, Mr. President. We just have not given them the tools to use, and that's what this is about, getting the tools to our teachers so that we can honestly give a quality education to our children. Assessment fits into that, and getting our children started early in the assessment process so that we can get them on course, working with the parents that come from disadvantaged families so they understand how to interface with our system in the public schools. Our public school system, in many cases in large cities, and even in Scottsbluff, Nebraska, frighten parents who are not familiar with the educational process. I don't know how many parents I've helped get themselves integrated into the school system because they didn't understand it, they didn't know how to go through it, and it was intimidating for them. We forget about that. They don't come from a formal educational background. They don't know how to do the process. And that's what we got to start to concentrate on, because once we reach the parent and the child then I think we have a much brighter future. And, Mr. President, that's what I...thank you... [LB603]

SENATOR ERDMAN: Time. [LB603]

SENATOR HARMS: ...very much, Mr. President. [LB603]

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SENATOR ERDMAN: Thank you, Senator Harms. Senator Aguilar, you're next to speak, followed by Senator Pedersen. [LB603]

SENATOR PEDERSEN: Thank you, Mr. President, members. I'd yield my time to Senator Chambers. [LB603]

SENATOR ERDMAN: Senator Chambers, you have 4 minutes, 55 seconds. [LB603]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Aguilar. Senator Howard is one of those missionary type people who's going to talk about how she's been through her schools in north Omaha and they're all doing a great job. She's the one who is in league with OPS and probably is the only one that school board would allow to convert a school board meeting into a political rally for Tom Osborne, when he was running for Governor. And it was carried on the news, and they were cheering and clapping for Osborne, and she was suggesting that people alter their political affiliation so they could vote for Osborne against Heineman. Now if a black person, a poor white person, or a Latino person went to the school board and had supporters in the audience and they would clap when something was said, the gavel would strike the table and there would be call to order. But because she and Osborne were speaking against the partition of OPS, the school board went along with it, and that's what we see happening. So she lacks credibility. She also doesn't know and doesn't care that when they ended bussing there were three grade levels of black children who were bussed to white schools, one grade level of white children. When Mackiel ended bussing, those three grade levels of black children came back to their neighborhood schools and they were assigned to teachers who said in the newspaper, we have no experience in teaching these children; we don't even know what we're supposed to teach; we don't have textbooks for them, we don't have supplies. And I can show you all the articles because you want to play like you don't believe me. You think I'm going to lie on the floor? Let Mackiel say that I'm lying. Let Senator Howard show that what I'm saying is untrue. So what happens to those children in those three grades who are being taught, supposedly, by teachers who admit they don't know how to teach them? They're lost. They're cheated. They're black like me. And I'm supposed to let some white woman come here and tell you all that these schools are doing a great job, and the facts are right there. I'm not going to do it. What I told those teachers when my children were in school, you all like to put your hands on children, don't put your hands on my children because you will not be fighting a child, you'll be fighting the child's father. If you put your hand on my child, expect me to be up there, and there's far less disparity between your size and my size than there is between yours and this child. And not only do I want you to not put your hands on my children, don't put your hands on the child of anybody in a classroom where my children are because it makes them nervous. So I was a protector for my children and other people's children. When I talked about the need for local control in the schools where people's children attend, this is after LB1024 had

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been adopted last session, I spent some of my weekly television programs talking about the things our children needed to be taught in school and were not being taught. I pointed out what Senator Harms is talking about--the global nature of the economy--and the economy drives so much in this world, and that China is becoming a world player and our children should be taught Chinese. And you know what? I was ridiculed. I was mocked. And then about two weeks after I had mentioned that on my program it was announced that Central High in Omaha was going to begin teaching Chinese and they were getting cooperation from the State Department of Education, school board administrators. They were going to send... [LB603]

SENATOR ERDMAN: One minute. [LB603]

SENATOR CHAMBERS: ...some person to China to learn some techniques on how to teach Chinese. All of a sudden I wasn't ridiculed anymore. It was not even mentioned anymore. But when I talk about the things that black children need, it's a subject of ridicule. When white children are to be taught that, it's a great innovation. That's what I'm dealing with. There are two education systems in Omaha, one white, one black, and I include the Latinos in the black part, and we are not getting in those schools what we ought to have. And I'll document it for you, but why should I? It doesn't mean anything to you. Some of you it might, but to the vast majority it won't. And these superintendents do not care about these children. They are territorial. They want to be accountable to nobody. And I have said, and I'll say it again, there are some good teachers in OPS,... [LB603]

SENATOR ERDMAN: Time. [LB603]

SENATOR CHAMBERS: ...but they don't teach well because they're not required to. Thank you, Mr. President. [LB603]

SENATOR ERDMAN: Thank you, Senator Chambers and Senator Aguilar. Senator Pedersen, you're next to speak, followed by Senator Pahls, Gay, and Aguilar. Senator Pedersen. [LB603]

SENATOR PEDERSEN: Thank you, Mr. President, members of the Legislature. Senator Chambers just ended his last few words in saying there are some of you that are, but the vast majority of you are not. The reason I stand this time is I was taken back when Senator Chambers said you do not care, you people do not care about the children. I say taken back instead of offended because my skin is thick enough not to be offended. And not speaking for myself but speaking for a lot of the people that I have worked with throughout the years and continue to work with, there are a lot of people who do care, Senator Chambers. I work with Latino, Afro-Americans, Asian, white children. Some of them have murdered--yes, children who have murdered; some of them have committed sex offenses; and some of them have only been status offenders,

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and for those of you who do not know what status offenders are, it's those who plainly didn't listen to what we're told. And I truly care for each and every one of them. There's been two children in my life that I did not care for, and remember their names clearly because I had a personality conflict that I could not get along with them and it bothered me immensely. And I went to my superior, the two different places I worked at them times, and said, please, get somebody else to work with them because I cannot do the job with these children. I'm not saying that to pat myself on the back. I'm saying that because there's lots of people that I've met who do the same, and most of them have been educators. That's not to say there's some that have not done their job, and it's not to say that I don't agree with a lot of what Senator Chambers is saying what he's experienced. But there are people who care. There are people who continue to care, and there's lots of people who did care. But that doesn't mean we don't have one heck of a lot of work to do. With that, if I have any time left, I'd give it to Senator Chambers to respond or use whatever way he wants. Thank you. [LB603]

SENATOR ERDMAN: Senator Chambers, you have 2 minutes and 20 seconds. [LB603]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Pedersen. For those delicate people who need to have me say it, I'll say it. Not all white people are bad. Feel better? There are some white people who care. But I say a tree is known by the fruit it bears and I'm not going to spend all my time talking about the white person here and there who might care when the majority of those that our children have to deal with don't care and they demonstrate it. I get calls in my office from teachers in OPS who give me information about problems going on in their school with their principal. And I say, are you willing to say something? No, because I'll lose my job. There have been groups of teachers who wanted to talk to me, and we would have it set up. Then I guess word would leak out and they said they wouldn't. Now if Mackiel will tell the truth he will acknowledge to you all that I called him and told him that these teachers have a right to talk to whomever they want to. They can talk to any public official they choose, and when they do it on their own time you and nobody else can take negative action against them and you cannot coerce them. He hastened to tell me, no, I wouldn't do that; no, we don't do that. But the teachers are afraid. They're afraid to talk to a media...the media. [LB603]

SENATOR ERDMAN: One minute. [LB603]

SENATOR CHAMBERS: If there's a principal with a great record of helping children, that principal is afraid to talk to the media because they've had the clamps put on them and they're not to say anything. Now when you have an oppressive environment like that where even teachers are fearful, you know the parents and the children are not going to be properly respected. Senators are finding here how some of these superintendents and others disrespect them and treat them with contempt, and some of them have told me it's not as hard for them to believe me now when I tell them how

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black and poor parents are treated dismissively. But it had to happen to them, and it's going to continue happening. The insults that Senator Kopplin should be about...worried about are those paid to the members of the Legislature when it comes to trying to deal with administrators and some of these others who are working with and for the superintendents. Thank you, Mr. President. [LB603]

SENATOR ERDMAN: Thank you, Senator Chambers. Senator Pahls, you're recognized to speak, followed by Senator Gay. [LB603]

SENATOR PAHLS: Mr. President, members of the body, would Senator Chambers yield? [LB603]

SENATOR ERDMAN: Senator Chambers, will you yield to a question from Senator Pahls? [LB603]

SENATOR CHAMBERS: Yes, I will. [LB603]

SENATOR PAHLS: Senator, just...I'm not asking for names of schools, but...and I'm just going to the elementary, approximately how many elementary schools are there in your district, approximately? [LB603]

SENATOR CHAMBERS: You know, it just slips my mind, but there are many. [LB603]

SENATOR PAHLS: Okay, so let's say at least seven or eight. [LB603]

SENATOR CHAMBERS: Oh, there are more than that. [LB603]

SENATOR PAHLS: Okay, but okay, let's say... [LB603]

SENATOR CHAMBERS: Yeah. [LB603]

SENATOR PAHLS: Okay, ten. And I'm not... [LB603]

SENATOR CHAMBERS: More than ten. [LB603]

SENATOR PAHLS: Okay. [LB603]

SENATOR CHAMBERS: You mean in my specific district? [LB603]

SENATOR PAHLS: In your district,... [LB603]

SENATOR CHAMBERS: Oh. [LB603]

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SENATOR PAHLS: ...your legislative... [LB603]

SENATOR CHAMBERS: Well, I've never checked that because I always see not the boundaries of my district. [LB603]

SENATOR PAHLS: Right, and I appreciate that. Well, the only...the reason why I'm trying to go this direction is we can have all of these grand plans out here but, I'm going to keep hitting this continuously, it depends on that...what happens in that individual school. That's where it's at. Now you can create some of these new schools and try to attract children to those, and I know the purpose of that, but what about that...or those children who are going to be, quote, left in their home school? That's where...that's what we need to be getting to. That's where the action is. If there are issues in those schools, it's not like we're dealing with, like, 1,000 schools. We could probably find out pretty easily what schools and which ones do need help. All the information is there. It's in the central office. They can tell you how many textbooks. They can tell you the exact dollar that they give to that school for every...all of its needs. They know the experience of the teachers. They know the mobility. They should know. If they don't, they're making a mistake. They should know how many parents attend conferences and, if they don't, what does the school do to help alleviate that, to look, see how they can make that work? By a push of a button they should know the daily attendance. Right now everything is so computerized they have the information there. That is why I am very persistent we need to show this information to everyone, and particularly now in the metropolitan area we ought to know this. This ought to be very transparent. You would be surprised, perhaps, the budgets in some schools as compared to others. You might be surprised in OPS when they build an elementary school, as a person in Millard, probably could build one maybe \$2 million cheaper. That information is there. We need to make sure every school is transparent. We need to get away from just an achievement test. That is one way of, I'm going to use the word, evaluating a school, if that's what we need to do. There are lots of ways to do that. I'd ask the question, do the parents get to evaluate the administrator in that building? Well, in the system I was, it was there, public knowledge. Do the parents get to give their school a grade, A, B, C, D, whatever? Why not? Phi Delta Kappa does that nationwide. They tell you how people...what they believe in what's going on in education. There are so many ways that we can open up what goes on into these schools because, to be honest, sometimes I may be suspect of some of the information that Senator Chambers is giving me because it's really...I mean, I listen to some of this and I can't believe it. And if I wanted to, I couldn't even come close to pulling some of this stuff. I would be, pardon the expression, I'd be nailed to the wall. That's why I'm amazed... [LB603]

SENATOR ERDMAN: One minute. [LB603]

SENATOR PAHLS: Thank you. That's why I'm amazed when I hear. And sometimes people say, well, that's Senator Chambers, he's at it again. Well, that's why I'm saying

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as we need to take a look at each individual school and get that portrait so we know, so if some of the issues that he's talking about need to be dispelled, they can be. And if he truly...and as he's indicated to us these things are happening, we can find out, and we'd say, my goodness, I can't believe that's happening. Come on, guys. Those all the way up the line, that's where I'm concerned about the bureaucracy, because things can happen there. Always been a person at the building level and then a person at the top. Sometimes we get sort of meshed up in the middle, so that's why I constantly fight that. It's there. There are people who know. And the nice thing about it is let's say if somebody works for a school district, then they leave, they no longer have ownership to that district so maybe they'd be willing to sit down and say, these are the things that need to be changed. [LB603]

SENATOR ERDMAN: Time. [LB603]

SENATOR PAHLS: Thank you. [LB603]

SENATOR ERDMAN: Thank you, Senator Pahls. That was your third time to speak on the advancement. Senator Gay, you're recognized to speak, followed by Senator Aguilar. [LB603]

SENATOR GAY: Thank you, Mr. President. Mr. President, would Senator Raikes yield to a few questions? [LB603]

SENATOR ERDMAN: Senator Raikes, would you yield to questions from Senator Gay? [LB603]

SENATOR RAIKES: Yes. [LB603]

SENATOR GAY: Thank you, Senator Raikes. Senator Raikes, I was looking at the fiscal note of this...of the bill, and I had a couple questions that when I look at the...and I just handed you the copy to look at. If you look down at the chart, where it shows ESU, the ESUs and the amount of the change in state aid, there's several significant increases. And then I look at ESU 3, which is, you know, comprises four counties and 18 school districts, they're only getting like a 4 percent increase in aid. Others have 100 percent increase, and Lincoln actually is losing money in this. Can you explain again, just roughly, how the formula is working where you're taking the students? Just explain the formula one time again for me. [LB603]

SENATOR RAIKES: Senator, I'll make a stab at it. One of the key features in the redistribution is taking into account sparsity in the area served, and that accounts for quite a bit of the difference. ESU 3, for example, although it serves a lot of students, they're not scattered over big spaces so that would be an impact. There is a...or basically the way the formula works there is a per ESU amount of funding. There's also

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a per student amount of funding, and there's a weighting based on sparsity. There's also provision in there that takes into account how far they are away from the source of the trunk line, if you will, on telecommunications expenses. And it is equalized so that you have a valuation-per-student factor that comes in. And keep in mind now this number that you're looking at is a change in aid. In terms of the total resources available to this...to the ESU, this is only part of the picture. [LB603]

SENATOR GAY: Okay, where did those...well, the...I'm looking in further. I guess I don't understand this. In '08-09 there's a \$4.7 million total funds that need to be appropriated, or is that in the funding currently that is just going to be redistributed? [LB603]

SENATOR RAIKES: That amount of state funding yields the results that you see here. If you fund less than that at the state level, the formula still works. The distribution still occurs according to the formula, but you would, as you might expect, notice that there would be certainly less of an increase for many of the ESUs, and more of them that would experience a decrease. There is a 95 percent hold harmless built into the formula now, so that would eliminate any significant drop in the case funding was reduced substantially. [LB603]

SENATOR GAY: Okay. So if the funding wasn't there, let's say somewhere along the line the appropriations weren't made to get the funding, then what you're saying, so the ESU 3 would...couldn't lose more than...they wouldn't get less than 95 percent of what they had last year? [LB603]

SENATOR RAIKES: Yes, that's true. [LB603]

SENATOR GAY: And that goes for any district. [LB603]

SENATOR RAIKES: Right. [LB603]

SENATOR GAY: So what I'm worried about is let's say...we were talking earlier and, you know, the funding isn't there; we're trying to hold the line and here's another \$5 million that may or may not be funded. So none of these changes in aid would happen then if the funding isn't there. If the... [LB603]

SENATOR FRIEND PRESIDING [LB603]

SENATOR FRIEND: One minute. [LB603]

SENATOR GAY: Is that correct? [LB603]

SENATOR RAIKES: No. [LB603]

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SENATOR GAY: If the funding isn't there none of this happens. Or does the formula kick into effect and then we may lose 5 percent of current funding? [LB603]

SENATOR RAIKES: Yeah, the latter. The formula would...if the mainline bill, LB603, becomes law, the formula is in place and, as a part of that formula, there is a 5 percent hold harmless so...with an equalization, so that the distribution of the aid would occur. I think actually that if you get below the current flatlined amount then the provisions change a little bit, but assume we stay above...well, in fact, depending on what might happen, we're at 10.8 or whatever the number is in the budget that we've already passed. If you're at that level or anything above, the formula, the distribution formula, does in fact work and the hold harmless provision is in place. [LB603]

SENATOR FRIEND: Time. [LB603]

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

SENATOR FRIEND: Thank you, Senator Gay. Thank you, Senator Raikes. Senator Aguilar, you are recognized. [LB603]

SENATOR AGUILAR: Thank you, Mr. President. My time to Senator Chambers, please. [LB603]

SENATOR FRIEND: Senator Chambers, almost 5 minutes. [LB603]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Aguilar. What Senator Pahls said encapsulates the problem I confront. See, these white people in here who speak for OPS know you're not going to believe that what I'm saying is true. Let Mackiel say it's not true. Don't let their flunkies come here and say it. Let Mackiel stand up and say that I'm not telling the truth. Let Mackiel say that at North High they had textbooks at the beginning of the semester in the fall. Let him say it. But I was continuing to raise that issue. This is a week into the semester. Some of these classrooms have no textbook. A month into the semester, then I began getting calls and letters from parents asking what could they do. That should not be the case. There should not be an adversarial relationship between the school and the community where it's located. Ninety-two percent of the teachers in OPS are white. Fifty-six percent of the student body is nonwhite. The majority of people who live in OPS are white. So why would a majority of the student body be white? Because the white parents pull their kids out of those schools and send them to the white suburban districts, that's why. That's what's going on. You don't hear Senator Howard talk about that. You don't hear Mackiel talk about that. You don't hear her point out that the schools in Omaha are segregated more now than they ever have been before. And as the white flight is subsidized by state money, the percentage of nonwhite students rises in OPS as the percentage of white students diminishes. And in absolute numbers you have more nonwhite children

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than white children in OPS. The number of majority minority student schools is increasing in OPS. What I'm going to do, and most of you all will not even read it, is share with you the transcript of a conversation I had on tape with an 18-year-old girl who was held down on the floor at Sunny Slope, which is a white school, by the principal and a security guard. She talked about how they pushed her face into the floor, how they bumped her head, how the security guard laughed. And as you read it, you can get an idea of whether you think I prepped that child and told her what to say. And what Mackiel said is that everything they did was appropriate. How would I find out about this if I was not there? An employee of OPS told me. He saw it happening. And it's the same school where this principal was on the phone implying that the woman talking to him was cursing. I may as well tell you, his name is Estee. They get away with it, so they continue to do it, and Mackiel covers for them. Senator Pahls says--I'll use a play on his words, on his name--that's appalling. But it's going to continue happening, and that's why I had to let these teachers know. You all can praise them, Senator Howard, if you want to, and I have a granddaughter in school still and my grandson, who's in high school, is bigger than I am so he should be able to take care of himself, but if he can't they have a grandfather. At my advanced age, if somebody puts their hands on my child, that means they want to whip me, too, and I mean it. You all are the ones who have the luxury of saying we're going to discuss this, we're going to talk about it, we're going to have conference. They're not putting violent hands on your children. These children can watch and see how, when we go to visit these schools, nothing happens. Suppose they'd blow up a school. You'd say, worst thing in the world. [LB603]

SENATOR FRIEND: One minute. [LB603]

SENATOR CHAMBERS: Then you show where this teacher and the security guard held this little girl on the floor. She talked about how her arms were continuing to hurt her and nothing was done about it. I shared it with a prosecutor. Nothing could be done because it would be her word against the principal's word. But if it was a little white girl held on the floor by two black men, what do you think would happen? You know what would happen. Sometimes I just wish I knew profanity like I knew as a child and would use it here, because that would catch your attention because that's what you understand. But when somebody uses your idiomatic English, you don't take it seriously. But if I'd use a few bad words and use the B word with reference to some of these teachers, and SOB with reference to some of these principals, and the F word, then you'd all be listening and you'd say, uh-oh, he's serious. Well, if that's your attitude, why should I think I can come here and get you to do anything? And yet you want me to say, well, these white people really care. [LB603]

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

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

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SENATOR FRIEND: Thank you, Senator Chambers. Members, we are discussing the advancement of LB603. Senator Ashford, you are next and recognized. [LB603]

SENATOR ASHFORD: Thank you, Mr. President. I just want to reflect very briefly on comments that were made by Senator Pahls, Senator Harms, and Senator Adams, and I hope we listened to those comments because I don't know of anything more critical in the last two weeks of this body than as to listen to what those senators are talking about. If we...we've got to...the comment I guess I would make and the lesson that I've learned from my years here is we are now at the time in this session when we must think about and bring the issue of these children within the body. We must do it. We must tell those outside of the body that it's time now for us to make a decision on how we're going to address this issue. And if we're not aware of the problems that exist out there in the learning gap, whether it's the poverty issue, and I'm not going to go back over that, we all know it's horrendous. It doesn't mean it can't be fixed. But we have to listen to people, like Senator Harms and Senator Pahls and Senator Adams. They're extremely thoughtful and they're sending us a message and we need to listen to them and others in this body and not to the hundreds and hundreds of people outside of this body that have different opinions on everything. And so, with that, I would just not beg, because that's unseemly, but I would plead with you all to almost shut your ears. As Senator Flood was saying...Speaker Flood was saying earlier as he walked in, he can't even walk through the corridor anymore without being attacked by hundreds of these people. It's time now to bring this inside and to make the decisions in the best interest, in this case, of children. And with that, Senator Friend, Mr. President, I would relinquish my time to Senator Chambers, if he wishes to have it. [LB603]

SENATOR FRIEND: Senator Chambers, he has relinquished about 2 minutes and 55 seconds. [LB603]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Ashford. Members of the Legislature, before Senator Raikes and I collaborated on LB1024 last session I said on this floor, and I said it other places, if OPS would show me a plan they're putting in place that would bring fair treatment to the children I'm concerned about and start addressing the achievement gap, I will support OPS, I will be their biggest cheerleader. Well, their lobbyists and other people told them they don't even have to talk to me, and at that time I was willing and I said it publicly, and they turned their back. I'm not going to keep crawling to them, saying please talk to me. No. I'm going to use what tools are at my disposal to bring about a change. Senator Howard doesn't know about this. Senator Kopplin doesn't know. You all don't know how much time I've spent trying to get OPS to listen, but because they have people like Senator Howard, they feel like they don't have to; well-intentioned people like Senator Pahls, who says I just can't believe what Ernie is saying, and others who don't believe it because you don't want to and it doesn't happen to your children. Why do you think I stand up here and rail day after day, saying the same thing over and over, if I'm lying?

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Why would I lie? What would I gain by lying? But whether you believe it or not, I'm going to speak for these children and I'm going to do everything I can to help them and I'm going to have to start getting in the way of you all doing what you want to show you what it might feel like when you're frustrated and trying to do something for those who you think are entitled to something. This body... [LB603]

SENATOR FRIEND: One minute. [LB603]

SENATOR CHAMBERS: ...is never going to be truly reflective of the society of which it is a part because those who are of my complexion, those who speak a different language are not included in the equation, unless, like OPS and these schools where they get additional money because of poverty, English as a second language and some of these things, and the money when it comes from the state is not earmarked so it comes into OPS and it's not spent in the classrooms where the children are located for whom that money is sent. It's sent to other places where people of your complexion are because they're worried about you all. They have to please you all. But they have contempt for people such as me and the children of my complexion. But I'm not going to let them get away with it and I'm not going to come on this floor and swallow my tongue and be quiet because you all don't believe what I'm saying. But a day is going to come when you are sewing the whirlwind. Now you're going to reap the whirlwind. You're sewing the wind; you'll reap the whirlwind. And you don't need to ask why are these kids like this, why are they like that. You hear America saying now... [LB603]

SPEAKER FLOOD PRESIDING [LB603]

SPEAKER FLOOD: Time. [LB603]

SENATOR CHAMBERS: ...why do people all over the world hate America? Thank you, Mr. President. [LB603]

SPEAKER FLOOD: Thank you, Senator Chambers. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR123, LR125, and LR131. Continuing with discussion on LB603, Senator Mines, you are recognized. [LR123 LR125 LR131 LB603]

SENATOR MINES: Thank you, Mr. President. I call the question. [LB603]

SENATOR FRIEND PRESIDING [LB603]

SENATOR FRIEND: Members of the Legislature, the question has been called. Do I see five hands? I do see five hands. Members, the question is, shall debate cease? All those in favor please signify by voting aye; all those opposed vote nay. Senator Mines, for what purpose do you rise? [LB603]

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SENATOR MINES: I call the house, Mr. President. [LB603]

SENATOR FRIEND: Members, there has been a request for a call of the house. All those in favor of the house going under call please vote aye; all those opposed vote nay. Record please, Mr. Clerk. [LB603]

CLERK: 28 ayes, 0 nays, Mr. President, to place the house under call. [LB603]

SENATOR FRIEND: Members, the house is under call. All unauthorized personnel please leave the floor. All unexcused senators please report to the Chamber. The house is under call. Senator Nelson, please check in. Senator Dubas, Senator Kruse, Senator Avery, Senator Erdman. Senator White, could you please check in? Thank you. Senator Synowiecki. Senator Flood, will you please check in? Thank you. Senator Mines, how would you like to proceed? [LB603]

SENATOR MINES: Roll call vote, reverse order, please. [LB603]

SENATOR FRIEND: Senator Mines, Senator Erdman, shall we proceed without him? Senator Mines has indicated that we will proceed with a roll call vote in reverse order. Mr. Clerk. [LB603]

CLERK: (Roll call vote taken, Legislative Journal page 1625.) 22 ayes, 14 nays...15 nays, excuse me, to cease debate. [LB603]

SENATOR FRIEND: Debate does not cease. I do raise the call. We continue with discussion of LB603. There are senators wishing to speak. Senator Gay, you are next and you are recognized. [LB603]

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

SENATOR FRIEND: Senator Raikes, will you yield to a question from Senator Gay? [LB603]

SENATOR RAIKES: Yes. [LB603]

SENATOR GAY: Senator Raikes, on the weighting system of the square miles, what...is there a percentage that you're using for square miles? If you have more square miles you get more dollars? [LB603]

SENATOR RAIKES: Yes. I don't remember that exactly, but that is the way that we capture the diverse...or the sparsity, and actually it ends up in the formula as a

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weighting for the students, depending upon how much area there is per student in the ESU. [LB603]

SENATOR GAY: Okay. And the purpose of that, I assume, is...are you...the ESUs, it's for technology training and some of those things. What is the purpose of that? Just roughly it'd be so... [LB603]

SENATOR RAIKES: Well, it's... [LB603]

SENATOR GAY: ...they can help coordinate bringing the districts together, or is this to change the way they're delivering services in general? Is that why the extra money should be distributed this way? [LB603]

SENATOR RAIKES: Actually, the intent is to reflect costs incurred, and quite often, particularly with smaller schools, ESU personnel need to actually visit the school or travel to the school or, the other way around, students need to go to an ESU facility. So the greater the distances you have to travel the more expense that's involved. [LB603]

SENATOR GAY: Okay. So I guess what...that's why we're looking at the whole thing. What concerns me a little bit, and I can see some of that, but you look at Ainsworth, let's say, receiving...their budget last year was \$270,808 and now they'll receive...they're going to get an additional \$308,965. That's a 114 percent increase. So...and they have 6,972 square miles, whereas...and then also Ogallala, with 11,018 miles, they're getting an increase of \$452,545 and their current budget is \$314,551. So the \$140... [LB603]

SENATOR RAIKES: That's not their budget, Senator. That's the state aid amount. [LB603]

SENATOR GAY: State aid. [LB603]

SENATOR RAIKES: Yeah. [LB603]

SENATOR GAY: Okay. So what you're saying is to take the state aid and help with a realistic budget? Is that what this is to do? They weren't receiving enough? [LB603]

SENATOR RAIKES: The total...the total funding available to the ESU includes state aid and their property tax levy. [LB603]

SENATOR GAY: Okay. So the \$10,832,000 total was, in '06-07, to go to \$15,403,000, is just state aid dollars? [LB603]

SENATOR RAIKES: Right. That would be state funding to ESUs. [LB603]

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SENATOR GAY: Okay. And bear with me because I'm new and learning the education formula. That comes in from the General Fund... [LB603]

SENATOR RAIKES: Yes. [LB603]

SENATOR GAY: ...into the state aid...into the state aid. They won't be offset or...and it's just pretty much you're taking 2.5 percent. Are you taking 2.5 percent of the total state education funds or where is this... [LB603]

SENATOR RAIKES: No. I think what you're... [LB603]

SENATOR GAY: When you say 2.5 percent, where does the 2.5 percent come from? [LB603]

SENATOR RAIKES: That is the base allocation for each ESU. That's a phenomena that actually has been in the formula in the past where you sort of give credit in terms of recognizing a cost, or the cost involved, both for having an ESU and then also for the number of students served by the ESU. [LB603]

SENATOR GAY: Okay. I guess what concerns me is let's say this LB603 passes, the A bill gets...it doesn't or we can't fund it down the road. Once we fund this we're not probably going to cut, but that 95 percent would mean that... [LB603]

SENATOR FRIEND: One minute. [LB603]

SENATOR GAY: ...my ESU, if it weren't funded, would lose \$111,000, is what ESU 3 would lose then. Because what you're saying, they'd take that \$2,228,000 and they'd get 95 percent of that. [LB603]

SENATOR RAIKES: That...yes, that would be the hold harmless level on state aid. And keep in mind, though, again, that their budget includes property tax receipts and, in addition, quite a lot of grant funding I believe typically...is typical, rather, of ESUs. So you have in the property tax part, you have levy authority. The cap is a cent and a half. They can go up to that amount and they can levy on their assessed valuation, which, for example, in ESU 3, may increase one year to the next and probably will substantially increase. So they get the benefit of that. So all I'm saying with that is to say for sure... [LB603]

SENATOR FRIEND: Time. [LB603]

SENATOR RAIKES: Sorry. [LB603]

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

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SENATOR FRIEND: Thank you, Senator Raikes and Senator Gay. (Visitors introduced.) On with discussion. Senator Aguilar, you are recognized. [LB603]

SENATOR AGUILAR: Thank you, Mr. President. I realize it's my third time. I'd yield my time to Senator Chambers. [LB603]

SENATOR FRIEND: Senator Chambers, you are recognized. [LB603]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Aguilar. And I appreciate the fact that debate was not cut off. This is an important bill, but we've discussed issues other than those directly implicated in the bill. Senator Gay has asked some focused questions on the content of the bill, but I think this is just the opening salvo in the discussions we're going to have about education here during the rest of the session, and every opportunity I have to address that issue, I intend to do it. See, my concerns don't end when the session adjourns. You all can go home. You may have had some difficult days, but it's over for you. The children I'm concerned about are still being messed over. The schools are not improved. They're not accountable. There's an administration which is totally unresponsive. Beneath Superintendent Mackiel is a very thick overlay of assistant superintendents doing nobody knows what, but they're his lieutenants or flunkies who go out to put out the grass fires. They're the ones who will speak on television, say that everything is fine with OPS, and they have black administrators who are assigned to handle the black complaints that are made, and the white community is supposed to get the impression that if a black person says everything is okay then it's okay. When people have talked, as has been the case, about the cost associated with this board that will be elected to govern the learning community council, the learning community, all of them together probably don't make one-tenth of what Mackiel makes in salary per year. And when you add in his benefits, it could come close to a half million dollars. I'd like to ask Senator Gay a question, because he's worried about dollars and nickels, as he should be. Senator Gay. [LB603]

SENATOR FRIEND: Senator, Senator Gay, will you yield to a question from Senator Chambers? [LB603]

SENATOR GAY: Yes, I will. [LB603]

SENATOR CHAMBERS: Senator Gay, would it shock you to know that the salary...not even talking about fringe benefits, for the superintendent of OPS is several times more than the total amount of the salary proposed for those 18 people who would govern the learning community? Would that surprise you? [LB603]

SENATOR GAY: No. [LB603]

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SENATOR CHAMBERS: You know that he...would it surprise you to know that when you factor in all of his benefits it could come close to a half million dollars, over \$400,000? Would that shock you? [LB603]

SENATOR GAY: I would say that's a sum, yeah. It wouldn't shock me, but I don't know, I don't know what his salary is. [LB603]

SENATOR CHAMBERS: So you know that these...you know these people make a lot of money. [LB603]

SENATOR GAY: Yes. [LB603]

SENATOR CHAMBERS: But that other amount does shock you that the ones who would govern the learning community, that does shock you, the amount those 18 people would get. [LB603]

SENATOR GAY: I think that's unnecessary, is what I said. [LB603]

SENATOR CHAMBERS: But it wouldn't shock you. [LB603]

SENATOR GAY: It would shock me, too; shocks me and it's unnecessary is what I thought, Senator Chambers, on that. [LB603]

SENATOR CHAMBERS: That's all I'll ask you at this point,... [LB603]

SENATOR GAY: Thank you. [LB603]

SENATOR CHAMBERS: ...because we'll get a chance to deal with that directly. But it gives me a chance to point out the huge salaries that some of these superintendents get. There are assistants who get more than \$100,000 a year in OPS. So if you're worried about money going into the classroom or not going into the classroom, why is there no concern in that area? Not enough money to get textbooks, but money to give these exorbitant salaries to these assistant superintendents who will do nobody knows what for sure. There are serious problems in OPS. Without... [LB603]

SENATOR FRIEND: One minute. [LB603]

SENATOR CHAMBERS: ...some level of local control, the communities I'm concerned about will always be left, always. So there are going to be some rough days probably, but if everybody is a person of good will and if the children are our priority, there should be some point at which we can reach an accord and the best interests of the children will be served. And if that is done, I don't care if you do it by having one school district for all of Douglas County, or all of Douglas and Sarpy County put together, I want a

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result and so far I haven't seen anything that will produce that result. LB641 offers a chance and I'm looking at that. I'm watching and waiting. Thank you, Mr. President. [LB603 LB641]

SENATOR FRIEND: Thank you, Senator Chambers. Senator Pirsch, you're recognized. [LB603]

SENATOR PIRSCH: Thank you very much, Mr. President, members of the body. I'm going to yield the balance of my time to Senator...I'm sorry, to Senator Pahls. [LB603]

SENATOR FRIEND: Senator Pahls, about 4 minutes, 50 seconds. [LB603]

SENATOR PAHLS: Mr. President, thank you, Senator Pirsch. I would like just to address a couple of the issues that Senator Chambers had discussed a little bit earlier. He was concerned about the money coming from the state department or from, I should say, from us and not getting into the programs that it should in the OPS system. It's simple. If you know what is happening at the individual building you will know if that money is getting there. He also brought up about at North High they did not have textbooks. By a push of the button the principal or the superintendent or his office should be able to tell you how many textbooks there are in each building, at each grade level. They should be able to push a button and tell you how many chairs they have. If they don't then they are not doing their job. Every penny should be accounted for. We should know where that is going in almost any instance. Textbooks, paper, there are budgets for that. Ought to be able to push a button and see how much paper a school is using. It is that simple. Everything is computerized. So we're not asking for a district to spend hours and hours and hours and pages and pages to give it. It could be on a couple pages they could give you an outline of what's going on in the school. It's there. Now maybe the system doesn't want to do it because, as Senator Chambers says, maybe they want to hide this from us. Well, I'm totally against hiding. I believe that if the parents or the voters or the constituents out there see that schools are making legitimate use of the time and their resources, they would be willing to say, hey, I understand that you do need money, or you may need additional money. Another thing that people put...is on this little gadget we have on our desk. I wonder how many schools...I mean how many, excuse me, how many computers are there, let's say, in Lothrop. Push a button and I should be able to tell you. If I don't, then something is wrong. I should be able to tell you in a library or a media center how many books you have on a certain author. It is there. We're not...this is not brain surgery. I know. I can do it myself, at one time. (Laugh) Brain surgery. Good one. We do need the audience here at times. You know another thing you take a look at is the vandalism that occurs in the school. We know how much because we have to make...take notes and we report it. Should be able to tell you if one school has a lot of vandalism as compared to another. Now if it's inside vandalism, that should tell me something, what's going on in that school. The teachers, the parents, and the students are dissatisfied, because a lot of

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times that happens--simple, push a button. You know, another thing that I would take a look at is I would see, because we say some schools do not...are not kept up as well as others; huh, push a button. How many dollars, maintenance dollars, are sent to that school? This is a thing that really irritates me. If we happen to have a school system or systems that are messing it up so the rest of us have to jump hurdles, then something is wrong. You go to the state school board or the state web site, you can see how many dollars go to each building or, excuse me, in each district how many dollars go to the task of educating children. [LB603]

SENATOR FRIEND: One minute. [LB603]

SENATOR PAHLS: In some school districts it's 50 cents to the \$1 gets to the classroom, where other schools it's 60 cents gets in the classroom. Oh, I'd ask the question why. Now that school district, that 50 cents gets to the classroom, they may have legitimate reasons. I'm not saying they're wrong. They may have expenses that we do not know about. But it seems like last year and this year we have jumped a lot of hoops and we do not have to. The carelessness of some administrations or administrators is causing a lot of us to have, I should say, anxiety. Let's get down to the nitty-gritty. Why do we have to change everything? Find out what the issues are, what needs to be corrected, and not spend additional money that we could be spending other ways. But we may find out we do need to spend that money. [LB603]

SENATOR FRIEND: Time. [LB603]

SENATOR PAHLS: Thank you. [LB603]

SENATOR FRIEND: Thank you, Senator Pahls. Senator Raikes, there are no other lights on. You are recognized to close on LB603. [LB603]

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. I've appreciated the discussion. Again, this bill involves ESU election districts, a council of ESU administrators, a change in the funding formula, boundaries, and also does a couple of more technical changes as far as distance education. I urge your support. This is an important measure. Thank you. [LB603]

SENATOR FRIEND: Thank you, Senator Raikes. Members of the Legislature, you have heard the closing on LB603. The question is, shall LB603 advance to E&R engrossing? All those in...Senator Chambers, for what purpose did...I apologize. Senator McGill, for a motion. [LB603]

SENATOR MCGILL: Mr. President, I move LB603 to E&R for engrossing. [LB603]

SENATOR FRIEND: All those in favor please signify by saying aye. All those opposed

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say nay. The bill does advance. Mr. Clerk, items for the record? [LB603]

CLERK: Mr. President, a communication from the Governor to the Clerk. (Read re LB5, LB8, LB69, LB132, LB144, LB147, LB152, LB188, LB199, LB208, LB214, LB218, LB219, LB226, LB227, LB233, LB236, LB236A, LB252, LB256, LB277, LB289, LB364, LB368, LB368A, LB382, LB388, LB396, LB424, LB435, LB445, LB449, LB463, LB471, LB481, LB508, LB561, LB564, LB580, LB596, LB610, and LB664.) Amendments to be printed: Senator Lathrop to LB221, Senator Cornett to LB641; Senator Preister to LR1CA. (Legislative Journal pages 1626-1627.) [LB5 LB8 LB69 LB132 LB144 LB147 LB152 LB188 LB199 LB208 LB214 LB218 LB219 LB226 LB227 LB233 LB236 LB236A LB252 LB256 LB277 LB289 LB364 LB368 LB368A LB382 LB388 LB396 LB424 LB435 LB445 LB449 LB463 LB471 LB481 LB508 LB561 LB564 LB580 LB596 LB610 LB664 LB221 LB641 LR1CA]

And I do have a priority motion, Mr. President. Senator Dierks would move to recess until 1:30 p.m. []

SENATOR FRIEND: Members, you have heard the motion to recess until 1:30 p.m. All those in favor please signify by saying aye. All those opposed say nay. We are in recess. []

RECESS []

SENATOR LANGEMEIER PRESIDING []

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

SENATOR FRIEND PRESIDING []

SENATOR FRIEND: Record please, Mr. Clerk. []

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

SENATOR FRIEND: Thank you, Mr. Clerk. First item? []

ASSISTANT CLERK: Mr. President, the first item is LB603A. There are no E&R amendments. [LB603A]

SENATOR FRIEND: Senator McGill, you are recognized for a motion. [LB603A]

SENATOR MCGILL: Mr. President, I move LB603A to E&R for engrossing. [LB603A]

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SENATOR FRIEND: Members, all in favor of advancing LB603A to E&R for engrossing please say aye. All those opposed please say nay. The bill is advanced. [LB603A]

ASSISTANT CLERK: Mr. President, next bill, LB456. I do have E&R amendments, Senator. (ER8105, Legislative Journal page 1433.) [LB456]

SENATOR FRIEND: Senator White, you are recognized to open on...oh, forgive me. Senator McGill, for a motion, please. [LB456]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB456]

SENATOR FRIEND: The motion is to move ER8105. All those in favor please signify by saying aye. All those opposed say nay. The amendments are adopted. [LB456]

ASSISTANT CLERK: Mr. President, Senator Raikes would offer AM1312. (Legislative Journal page 1608.) [LB456]

SENATOR FRIEND: Senator Raikes, you are recognized to open on AM1312. [LB456]

SENATOR RAIKES: Thank you, Mr. President and members. AM1312 would extend the phase-in of the income tax credit proposed in LB456 to tax year 2009. The current bill calls for the credit in tax year 2007 to equal 50 percent of the franchise tax paid to the state. The credit then grows the following year to the full amount of franchise tax paid and would continue as such for succeeding years. This amendment would simply add another year of credit at the 50 percent level before moving to the full phase-in. Thus, in tax years 2007 and 2008, the credit would be 50 percent of the franchise tax paid and with the full credit coming on in 2009. I believe this amendment should help with the budget picture and, therefore, I bring it to you and ask for your consideration. Thank you. [LB456]

SENATOR FRIEND: Members, you have heard the opening on AM1312. Senator White, you are recognized. [LB456]

SENATOR WHITE: Thank you, Mr. President. I think this is a good amendment. It helps us with the pinch we find ourselves in on the green sheet and I fully accept it, as do the institutions who are concerned with this bill. I would appreciate your support for the amendment and then also for moving LB456 forward. Thank you, Mr. President. [LB456]

SENATOR FRIEND: Thank you, Senator White. Senator Raikes, there are no further...there are no other senators wishing to speak. You are recognized to close on AM1312. [LB456]

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SENATOR RAIKES: Thank you, Mr. President, members. I appreciate Senator White's support on this bill. I think his bill is a good one. It addresses an equity issue we have in our tax structure. This amendment does make it a little bit more palatable in terms of budget. So again, I urge your support. Thank you. [LB456]

SENATOR FRIEND: Thank you, Senator Raikes. Members of the Legislature, you have heard the closing on AM1312. The question is, shall AM1312 be adopted to LB456? All those in favor please signify by voting aye; all those opposed vote nay. Have you all voted who wish to? Record please, Mr. Clerk. [LB456]

ASSISTANT CLERK: 34 ayes, 0 nays on the adoption of Senator Raikes's amendment. [LB456]

SENATOR FRIEND: The amendment is adopted. [LB456]

ASSISTANT CLERK: Mr. President, I have nothing further pending on the bill. [LB456]

SENATOR FRIEND: Senator McGill, for a motion. [LB456]

SENATOR MCGILL: Mr. President, I move LB456 to E&R for engrossing. [LB456]

SENATOR FRIEND: Members, the question is, shall LB456 advance to E&R for engrossing? All those in favor please say aye. All those opposed say nay. LB456 does advance. Next item, Mr. Clerk. [LB456]

ASSISTANT CLERK: Mr. President, with respect to LB342 there are E&R amendments. (ER8110, Legislative Journal page 1549.) [LB342]

SENATOR FRIEND: Senator McGill, for a motion. [LB342]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB342]

SENATOR FRIEND: Members, the motion is, shall the E&R amendments, ER8110, be adopted? All those in favor please signify by saying aye. All those opposed say nay. The amendments are adopted. [LB342]

ASSISTANT CLERK: Mr. President, Senator Raikes would offer AM1320. (Legislative Journal page 1607.) [LB342]

SENATOR FRIEND: Thank you, Mr. Clerk. Senator Raikes, you are recognized to open on AM1320. [LB342]

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SENATOR RAIKES: Thank you, Mr. President, members. This is an amendment which involves mainly technical clarifications and I will run through them very quickly. It makes clear that the operative date for the act would be July 1, 2007. There's clarification that property taxes used in the calculations are General Fund property taxes. There's language to clarify the calculation of the average need adjustment as it was modeled in the bill. There's clarification that the value used in that calculation would be current year valuation, not a projected valuation. Tuition and fees would be changed to established prior year fiscal figures. Total aid calculated would be based on an equalized level and to assure that the appropriated amount would equal total aid. And finally, the minimum levy would be 80 percent of the local effort rate. This first reference was adopted on General File. This would change a second reference that we missed previously. So again, these are clarifying and at least somewhat technical amendments to the bill. I urge your support. [LB342]

SENATOR FRIEND: Thank you, Senator Raikes. Members of the Legislature, you have heard the opening on AM1320. There are senators wishing to speak. Senator Kruse, you are recognized. [LB342]

SENATOR KRUSE: Thank you, Mr. President and colleagues. Would Senator Raikes yield to a question? [LB342]

SENATOR FRIEND: Senator Raikes, will you yield to a question? [LB342]

SENATOR KRUSE: Senator, will a sports program in a community college change the needs base? [LB342]

SENATOR RAIKES: No, it wouldn't, Senator. I'm glad you asked that question. We...the needs calculation is based on revenues received by the community colleges. Expenses don't come into that at all. [LB342]

SENATOR KRUSE: Thank you. [LB342]

SENATOR FRIEND: Thank you, Senator Kruse and Senator Raikes. Senator Raikes, there are no other senators wishing to speak on this amendment. You are recognized to close on AM1320. [LB342]

SENATOR RAIKES: Thank you, Mr. President. Again, this is a technical amendment. I urge you adopt it. Thank you. [LB342]

SENATOR FRIEND: Thank you, Senator Raikes. Members of the Legislature, you have heard the closing on AM1320. The question is, shall AM1320 be adopted to LB342? All those in favor please vote aye; all those opposed vote nay. Have you all voted who wish to? Record please, Mr. Clerk. [LB342]

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ASSISTANT CLERK: 34 ayes, 0 nays on the adoption of the amendment, Mr. President. [LB342]

SENATOR FRIEND: AM1320 is adopted. [LB342]

ASSISTANT CLERK: I have nothing further pending on the bill. [LB342]

SENATOR FRIEND: Senator McGill, you are recognized for a motion. [LB342]

SENATOR MCGILL: Mr. President, I move LB342 to E&R for engrossing. [LB342]

SENATOR FRIEND: Members, the question is, shall LB342 advance to E&R for engrossing? All those in favor please say aye. All those opposed say nay. LB342 is advanced. LB342A, Mr. Clerk. [LB342 LB342A]

ASSISTANT CLERK: Mr. President, on LB342A there are no E&R amendments. I do have an amendment from Senator Raikes, AM1339. (Legislative Journal page 1628.) [LB342A]

SENATOR FRIEND: Senator Raikes, you are recognized to open on AM1339. [LB342A]

SENATOR RAIKES: Thank you, Mr. President and members. We do need to have a discussion on this. This is the A bill for community colleges, LB342, the community college reformulation. Let me remind you that this is a restructuring of the community college funding formula. It's a restructuring that involves a couple of significant changes. One of them is that it equalizes the property tax burden across the state. Another one, it changes the base from which the state aid amounts are calculated, moving from a revenue base, which I think started in 1998 or '99, to one that is based on more recent previous year figures. The bill as introduced, or as amended I should say, called for a \$12 million increase in state appropriation. The way the bill works is that the community college areas, there are six of them, are funded. The calculations are such that the amount of needs called for by each community college area is provided, either by state aid or by property taxes. One of the main features of this bill is to basically put the Legislature in the position to make the decision: Do you want to provide more state aid and, thus, have lower property taxes, property tax burdens; or do you want to go the other way, less state aid, in which case the realization is there would be higher property taxes? As I look at the green sheet and what we need to do in order to keep that in balance as we move through the remainder of the session, it appears to me that \$8 million rather than \$12 million per year is what we can afford. It will, in fact, involve some less state aid certainly for community colleges, but it will not short any community college area in terms of its needs calculation. The resources to that community college will be available. You might suggest, well, gosh, isn't there something else we could do,

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isn't there another way we could make up what I think is a needed \$4 million a year? Yes, there probably is. You will recall that a bill that we're going to deal with very shortly, the revenue package, LB367, has in it a property tax relief package. In a sense, the community college bill, the funding change that we're talking about here is a property tax relief package. We could say that we want to do some less in that package so that we can do more, namely the full \$12 million, in this package. What I'm proposing to you is, instead of that, let's cut back on the amount of community college funding to \$8 million so that it does fit into the green sheet and our requirement to balance the budget. I would be happy to entertain your questions and comments. Thank you. [LB342A LB342 LB367]

SENATOR FRIEND: Thank you, Senator Raikes. Members of the Legislature, you've heard the opening on AM1339, an amendment to LB342A. There are senators wishing to speak. Senator Synowiecki, you are first and you're recognized. [LB342A]

SENATOR SYNOWIECKI: Thank you, Senator Friend, members of the Legislature. Would Senator Raikes yield? [LB342A]

SENATOR FRIEND: I'm sorry, Senator Synowiecki. You wanted Senator Raikes, is that correct? [LB342A]

SENATOR SYNOWIECKI: Would Senator Raikes yield for a question? [LB342A]

SENATOR FRIEND: Thank you. Senator Raikes, will you yield? [LB342A]

SENATOR RAIKES: Yes. [LB342A]

SENATOR SYNOWIECKI: Senator Raikes, it was presented to us on General File, I believe, that all six community college areas were in support of the underlying bill, LB342, with the full complement of funding under LB342A. With this reduction that you speak of today that is just introduced, can we still be assured of the six community colleges' support at the reduced funding level? [LB342A LB342]

SENATOR RAIKES: I can't speak for them, Senator. And I suspect there's at least one that would be at least less enthusiastic about their support. What I would tell you is that certainly this is an amendment the body could decide not to adopt. If that's the case, then the funding balance needs, in my opinion at least, to be picked up someplace else. Because my feeling is we do need to be responsible in trying the best we can to make sure that that bottom line balances. Metro Area is, I think, one of the...Metro Area Community College is one of the areas that has been most--I'll use the word, may be inappropriate--nervous about the funding level. It certainly is the case that access to resources by Metro Area Community College would not be impaired if this amendment were adopted. They would, in fact, receive some less state aid, about \$1 million

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according to calculations that we have, than if we had the \$12 million funding. But they could, their property tax authority would be adjusted upward by four-tenths of one cent so as to make up whatever they would lose in the state aid distribution. So I don't know if that answers your question... [LB342A]

SENATOR SYNOWIECKI: Well, there's a couple components, as I understand it, to the new formula. One is an equalization component, and there's also a component in it that allows for a student growth factor. Under the reduced scenario now, under this amendment, AM1339, how is the reduction distributed amongst the...in other words, is the equalization component fully funded, the property tax equalization component? [LB342A]

SENATOR RAIKES: Yes. [LB342A]

SENATOR SYNOWIECKI: Even at the reduced level? [LB342A]

SENATOR RAIKES: Yes. The needs... [LB342A]

SENATOR SYNOWIECKI: So then is the student growth component then the one that faces the reduction? [LB342A]

SENATOR RAIKES: No, the needs calculation for each community college area remains exactly the same, regardless of the level of funding. The question is, does that funding come a little more from property taxes and a little less from state aid, or the other way around? [LB342A]

SENATOR SYNOWIECKI: Part of the funding under the A bill equalizes property tax throughout the six community college levels. That part of the funding mechanism remains at 100 percent level. Is that a fair assumption, Senator Raikes? [LB342A]

SENATOR RAIKES: Yeah. The formula does equalize property taxes and it does use... [LB342A]

SENATOR FRIEND: One minute. [LB342A]

SENATOR RAIKES: ...the same mechanism for the needs calculation for each community college area, yes. [LB342A]

SENATOR SYNOWIECKI: Yeah. And, Senator Raikes, while the original version of the bill, and particularly the funding mechanism, was supported by all six community colleges, there was a certain level of, as you described, nervousness even at the fully funded level. And the nervousness rested with the, and there was some talk about this on General File debate, on the equalization provision that is spread out through all six

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community college areas. And then now, and there was a concern, I believe, perhaps with the level of accountability of the local boards relative to the taxpayers within their community and relative to the spending level that the community colleges would undertake with that guaranteed equalization from the state. And now as we're looking at a reduced version of the appropriations bills for community colleges, I think... [LB342A]

SENATOR FRIEND: Time. [LB342A]

SENATOR SYNOWIECKI: ...it's increased concern relative to that equalization package. Thank you, Senator Friend. [LB342A]

SENATOR FRIEND: Thank you, Senator Synowiecki and Senator Raikes. (Visitors introduced.) On with discussion of AM1339, senators wishing to speak are Harms, Preister, Gay, Stuthman, Kopplin, Pahls, Erdman, and Raikes. Senator Harms, you are recognized. [LB342A]

SENATOR HARMS: Thank you, Mr. President and colleagues. Senator Langemeier, would you yield for a minute? [LB342A]

SENATOR FRIEND: Senator Langemeier, will you yield? [LB342A]

SENATOR LANGEMEIER: Yes. [LB342A]

SENATOR HARMS: Do I...I remember when we were talking about the extra money that was taken in by extra revenue, the economy had done better than we had anticipated. And you stood up on the floor and said we had set some money aside. And if I remember, you said we set \$10 million aside for the community colleges from the revenue side. Is that correct? [LB342A]

SENATOR LANGEMEIER: We don't technically set it aside... [LB342A]

SENATOR HARMS: I understand that. [LB342A]

SENATOR LANGEMEIER: ...but when we designed that package, we accounted for the fact that if this bill passed, it would require the \$10 million, yes. [LB342A]

SENATOR HARMS: Thank you. Senator Raikes, would you yield? [LB342A]

SENATOR FRIEND: Senator Raikes, will you yield to a question from Senator Harms? [LB342A]

SENATOR RAIKES: Yes. [LB342A]

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SENATOR HARMS: Senator Raikes, I guess I'm going to have to oppose this amendment. And the reason that I'm going to have to do that, because when we worked this out and we watched the presidents go through this whole process, it was an agreement among those CEOs that they needed the \$12 million in order to make this funding formula work. And now all of sudden, at the very last minute, this amendment comes forward with no opportunity to have any discussion with the CEOs. I don't think this is appropriate. And I think in order to make the community college funding formula work, we need to fund it appropriately, we need to fund it what we agreed upon, and then let the rest of it shake out as it should. I have concerns that what we're going to do is just simply shift now, even though this funding formula, if it's funded fully, has done what needed to be done for 30 years. Now after all of the discussion, all of the debate, we come to the very end of it, we're now going to cut it short. And I'm here to tell you, it's not going to work well. We're just going to transfer this over to the property tax side of things. And I'd like to know, Senator Raikes, who's the winner and who's the loser here? Western Nebraska Community College, as I told you before--I admitted that I might be a little biased, I try not to be--has a great deal to lose here, along with some of the other colleges. And to get this far along and to change this at the last minute I don't think is really appropriate here. I think it's wrong, particularly when you've got agreement among the college presidents, which I'm here to tell you in that group, that's pretty tough to do, and they agreed to it and they want to move along this direction. In order for us to get this system straightened up and begin to get it on course, we need to fund it appropriately. And this is not appropriate. And I think to take that money away at the last minute is just not appropriate. We knew this was coming. The Revenue Committee knew that it was coming and they were willing to at least set \$10 million...I mean, they don't set it, but at least identify \$10 million for this, it's not right. And so I guess I just have some disagreement here and most likely...well, I'm not going to support this amendment. I can't. It does hurt the community college that I represent and the other community colleges and I think it's...we need to get it back to where it is and have the debate on the \$12 million. And then as a body, you don't want to do that, then we'll just have to see where we want to shake out. But I would like to see, Senator Raikes, from you the list of how each of the colleges come out because I don't know that. I saw it when we did it on General File, but I have not seen that now and I want to see what that change makes and whether we have to convert this to the property tax and how that difference is made up. Thank you, Mr. President. [LB342A]

SENATOR FRIEND: Thank you, Senator Harms and Senator Raikes. Senator Preister, you are recognized. [LB342A]

SENATOR PREISTER: Thank you, Honorable President, friends all. Senator Synowiecki sang the first verse, Senator Harms sang the second, and I guess I'm the third verse of opposition. And I do that in respect of what Senator Raikes is trying to do, as he's attempting to reduce these funds, but it is going to harm the community colleges. He says that the resources are not harmed and he's accurate when he says

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that. But those resources are either increased tuition from the students or increased property tax to pay. I don't want to shift to the students. We're seeing a lot of struggling students trying to improve themselves by going to school and we've seen steady increases to the tuition rates now. I don't want to further burden those students. And I, like all of you, know what property tax does to incite people. I don't want to see, even if it's a fraction of a penny, increase in property tax. All of those things add up. Senator Harms was right when he asked Senator Langemeier if the Revenue Committee had looked at this issue. And we didn't accurately describe "set it aside" but it was factored into the equation that \$10 million would be the figure, the rough figure, that we would look at for the community colleges. It turned out in the A bill to be \$12 million which balanced out, worked for all six of the community colleges, and was agreed to. And Senator Harms was, and Senator Synowiecki, right; when you get all of those college representatives to agree and to come together, it's kind of catching them off-guard, as well as some of us being surprised, as we are faced with a \$4 million reduction. That \$4 million is going to be shifted to somebody, somewhere, and I think our goal has been to try to reduce property tax. I don't want to shift back and be a part of any increase. The simple solution is to vote down AM1339 and leave the A bill where it is. It is a simple solution. We may have to factor or adjust in other areas. But Senator Harms is right, I don't want to do something that's going to further harm the community colleges or further harm the students or the property taxpayers who will then receive the consequences. I support the component and the equalization component in LB342 itself. And we passed the bill. Now I think we need to fully fund the mechanism to implement all of that and LB342A, as it stands, will do that and do it adequately. But AM1339 will reduce that by fully a third, by \$4 million, and that's a big concern, particularly to Metro Community College. And Metro, as the largest and fastest growing college, is impacted directly. One of their sites is in my district and I see the students, I see the impact that the college has. It's growing. They can't keep up with growth because they're trying to serve the student and the community population. I don't want to see the increase in tuition hurt that growth. I don't want to see the increase in property tax that's likely to result. So I do support LB342A in its current form but not the amendment which would reduce it. And I continue to support LB342, the bill that changes and helps to equalize... [LB342A LB342]

SENATOR FRIEND: One minute. [LB342A]

SENATOR PREISTER: ...the formula across the state. Thank you, Mr. President. [LB342A]

SENATOR FRIEND: Thank you, Senator Preister. Members, we are discussing AM1339, a potential amendment to LB342A. Senator Stuthman, you are recognized. [LB342A]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I would

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like to engage in a little conversation with Senator Raikes, if he'd be willing. [LB342A]

SENATOR FRIEND: Senator Raikes, will you engage in discussion with Senator Stuthman? [LB342A]

SENATOR RAIKES: Yes. [LB342A]

SENATOR STUTHMAN: It seems he was very hesitant. (Laughter) But, Senator Raikes, you had stated that Metro College would probably be the one that would have additional property tax on and they would be the losers in this. How will...have you got any figures on the other community colleges? How did they stack up, taking this \$4 million away? [LB342A]

SENATOR RAIKES: There's several moving parts here, Senator. Right now the funding formula is not equalized. And you remember from our earlier discussion that in order for the community colleges to be supported in Western Community College Area, the operating levy is about 10.8 cents or something like that, whereas in Metro it's about 5.3, in Lincoln it's in that same range, I can't remember exactly where. What this formula change does is equalizes that burden for the provision of community college services across the state. So if you look at an \$8 million funding level versus a \$12 million funding level for any given community college, it depends on what the equalization change is, in addition to whatever other funding change occurs. So most of...certainly Western, even with an \$8 million appropriation, would have a levy reduction because of the equalization component and that's what Senator Synowiecki was talking about. I think that's also the case for Northeastern Community College. The others, I can't tell you exactly. But all I'm trying to point out is you've got sort of both elements at play. The big thing is that we get the formula restructured so that we do have a needs calculation and we have equalization so we're not bouncing this revenue base around every year. That is done with LB342. Once you've got that formula in place, then state funding versus property tax is just that. If you provide less state funding, you allow community colleges to have more access to property taxes. They still get their needs met. The other thing that I didn't mention that I should have is that you're not requiring any community college to levy at any particular level. They have flexibility and they might decide, for example, one community college area to the next, that this one wants to put more burden on tuition and less on property tax and another one wants to do it the other way around. And all of that would be allowed within this mechanism. [LB342A LB342]

SENATOR STUTHMAN: Okay. Thank you, Senator Raikes. So then what you stated early on was that if one was at ten and one was at five, the intent was to make them both at seven and a half on the levying portion of it from property taxes as far as... [LB342A]

SENATOR RAIKES: That's roughly the idea. [LB342A]

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SENATOR STUTHMAN: ...the formulation is concerned. [LB342A]

SENATOR RAIKES: Yes. [LB342A]

SENATOR STUTHMAN: So that equalizes that. That does not change with this portion of it, does it? That's already... [LB342A]

SENATOR RAIKES: No, it would still be equalized but the property tax, if there's less state funding, the equalized property tax levy would be a little bit higher everywhere but the same amount higher everywhere. [LB342A]

SENATOR STUTHMAN: Okay. That...I understand that a lot better right now so I'll...those are all my comments. Thank you, Mr. President. [LB342A]

SENATOR FRIEND: Thank you, Senator Stuthman. Senator Kopplin, you are recognized. [LB342A]

SENATOR KOPPLIN: Thank you, Mr. President, colleagues. This is not what we talked about. We spent a lot of time talking about community colleges and how to fund them and equalization and so on, and we reached many times some kind of a compromise, only to see it changed the next day when somebody else couldn't live with that. We finally reached some agreement but we had to put some money into it. So now we've moved on LB342, but now we're going to take the funding away and you know what that does. It shifts, shifts money from Metro. And when we say, but they won't be hurt because they can raise taxes, that isn't what we talked about. I object strongly to the reduction of this A bill. If we're not going to fund it, then I'm certainly not going to continue to support LB342. This simply isn't what we talked about. We need to get back to the original amount in this A bill. Thank you. [LB342A LB342]

SENATOR FRIEND: Thank you, Senator Kopplin. Senators wishing to speak: Senator Pahls, Erdman, Raikes, McDonald, Synowiecki, Howard, and others. Senator Pahls, you're recognized. [LB342A]

SENATOR PAHLS: Mr. President, members of the body, Education Committee, you did it to me again. This morning you talked about testing and you got me all surprised. This afternoon we're doing some major changing. It makes me think that maybe we ought to have a, let me see, a super board over the Education Committee and we might even pay them. (Laughter) You get my message? For the most part, I know you're serious about making these things work. But I do see some comparison, if we're concerned about school systems not doing it; we need a super board to double check on them. Maybe we don't because we do trust you. We know you're working hard. And I hope my humor is strictly humor, it's not meant to inflict pain. Senator Kopplin, would you yield?

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[LB342A]

SENATOR FRIEND: Senator Kopplin, will you yield to a question from Senator Pahls?  
[LB342A]

SENATOR KOPPLIN: I will try. [LB342A]

SENATOR PAHLS: Thank you. It's my understanding you are proposing some study dealing with formulas. Is that true? [LB342A]

SENATOR KOPPLIN: I have proposed an interim study to study the school aid formula, yes. [LB342A]

SENATOR PAHLS: Okay. And I know it just deals with the K-12 system. Is that what I'm to understand? [LB342A]

SENATOR KOPPLIN: K-12, correct. [LB342A]

SENATOR PAHLS: Okay. Do you have very much support for that, that you know of?  
[LB342A]

SENATOR KOPPLIN: I think we had nine or ten people sign on with me. [LB342A]

SENATOR PAHLS: Okay. But your intent is to work with this hopefully over the summer. [LB342A]

SENATOR KOPPLIN: Correct. [LB342A]

SENATOR PAHLS: Okay, thank you. And I just want to...I read this, this morning. I'm going to reread it because I think it is important. This is from the World-Herald under one of the articles. It says Nebraska is well-served by court's refusal to dictate on school aid. I want to read this sentence: Nebraska's state aid formula deserves no particular praise, not least since the formula is the unimpressive results of opportunistic legislative compromises. I think that says a lot. It seems like I hear the word "moving target," I hear that quite often. And I know that's part of the process up here. I've been part of that process on some of the bills that I've dealt with. It's always moving until you get it nailed down. But I am concerned because people have major issues with the amount of monies that are going for K-12 or K-16 education. We need to be fair about this, make sure again it's transparent, that people do understand it. And, Senator Kopplin, I do hope that your study does come about because I think with all these senators, including myself, for us to be refreshed on this so we have maybe a better understanding, because I do believe that people are trying to make this work. But I do think so many times, so many compromises in the past have been made because we go from, as I

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said earlier this morning, on that Likert scale from one to five. If one doesn't work then it's sparse, then it's least sparse, then it's sparser than sparse. And pretty soon the money is going to be sparse. Thank you. [LB342A]

SENATOR FRIEND: Thank you, Senator Pahls. Senator Erdman, you're next and you're recognized. [LB342A]

SENATOR ERDMAN: Mr. President, in fairness to Senator Raikes, I would yield him my time. [LB342A]

SENATOR FRIEND: Senator Raikes, almost 5 minutes. [LB342A]

SENATOR RAIKES: Thank you, Mr. President and members. Senator Erdman, thank you. This is a conversation we need to have. We do have a responsibility to make sure that what we're doing is consistent with good fiscal practice and that was my intent here. But in spite of near unanimous support, I'm going to withdraw this amendment. Thank you. [LB342A]

SENATOR FRIEND: Thank you, Senator Raikes. The amendment...without objection the amendment is withdrawn. [LB342A]

ASSISTANT CLERK: Mr. President, I have nothing further to the bill. [LB342A]

SENATOR FRIEND: Senator Lathrop, will you be able to make the motion? [LB342A]

SENATOR LATHROP: I think so. (Laughter) [LB342A]

SENATOR FRIEND: You may continue. [LB342A]

SENATOR LATHROP: Thank you. Mr. President, I move LB342A to E&R for engrossing. [LB342A]

SENATOR FRIEND: Very good. You've heard the motion. The question is, shall LB342A advance to E&R for engrossing? All those in favor please say aye. All those opposed say nay. LB342A does advance. Mr. Clerk, next item. [LB342A]

ASSISTANT CLERK: Mr. President, with respect to LB542, there are E&R amendments. (ER8108, Legislative Journal page 1549.) [LB542]

SENATOR FRIEND: Senator McGill, for a motion. [LB542]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB542]

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SENATOR FRIEND: Very good. The question is, shall the E&R amendments, ER8108, be adopted to LB542? All those in favor please say aye. All those opposed say nay. The amendments are adopted. [LB542]

ASSISTANT CLERK: Senator Synowiecki would offer AM1295. (Legislative Journal page 1607.) [LB542]

SENATOR FRIEND: Senator Synowiecki, you are recognized to open on AM1295. [LB542]

SENATOR SYNOWIECKI: Thank you, Senator Friend. If you recall, the underlying bill establishes the Children's Behavioral Health Task Force and initiates a new assessment protocol and procedure by the department for juveniles that are being discharged from the Kearney Youth Development Center or the Geneva Youth Development Center. And they will now be evaluated and assessed for the appropriate level of treatment venue, including the community-based private network. What that did though, the amendment brought on a rather significant fiscal note. And what AM1295 does is tighten up the language relative to the assessment so much that Director Peterson, Todd Reckling, as well as the Fiscal Office, those that deal in Health and Human Services matter, have assured me that adoption of AM1295 diminishes entirely the fiscal note for the underlying bill. So I would encourage its adoption. Thank you, Senator Friend. [LB542]

SENATOR FRIEND: Thank you, Senator Synowiecki. Members, you have heard the opening on AM1295. There are senators wishing to speak. Senator Erdman. Senator Erdman waives his opportunity at this moment to speak. Senator Burling, you are next and you are recognized. [LB542]

SENATOR BURLING: Thank you, Mr. President and members of the body. I want to thank Senator Synowiecki for bringing this amendment to us and for his cooperation throughout the development of LB542 and I support this amendment. Thank you. [LB542]

SENATOR FRIEND: Thank you, Senator Burling. Senator Schimek, you are recognized. [LB542]

SENATOR SCHIMEK: Thank you, Mr. President and members. If I could ask Senator Synowiecki a question or two. [LB542]

SENATOR FRIEND: Senator Synowiecki, will you yield to a question from Senator Schimek? [LB542]

SENATOR SYNOWIECKI: Yes. [LB542]

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SENATOR SCHIMEK: Senator Synowiecki, I, too, thank you for trying to look out for our fiscal affairs. But I'm very curious. The original fiscal note was about \$1.6 million for a year and most of that was in General Funds. How could the department...what is it about this amendment that makes that go away? Do you know? [LB542]

SENATOR SYNOWIECKI: Yeah, that's a great question. And I believe it is Section 4 of the amendment we adopted, Senator Schimek. [LB542]

SENATOR SCHIMEK: Okay. [LB542]

SENATOR SYNOWIECKI: There was language in there about all juveniles are to be assessed by the Office of Juvenile Services. And the new language makes it explicitly clear that it's those kids at the youth development center in either Geneva or Kearney and not all kids under the jurisdiction of the Office of Juvenile Services. [LB542]

SENATOR SCHIMEK: Okay. [LB542]

SENATOR SYNOWIECKI: It was actually language that was struck through the amendment that...I honestly can't tell you why the original language was struck but what it does, Senator Schimek, it significantly narrows the scope of the assessment process to what, in fact, they're doing now. And so there will not be additional costs borne to provide for an assessment for those youngsters that are either at Kearney or Geneva. [LB542]

SENATOR SCHIMEK: Okay. And maybe you covered that in your explanation but I just missed it and I want it clarified a little bit because we're talking about a huge amount of costs going away there. [LB542]

SENATOR SYNOWIECKI: Right. [LB542]

SENATOR SCHIMEK: So thank you very much, Senator Synowiecki. [LB542]

SENATOR SYNOWIECKI: I appreciate the opportunity. Thank you. [LB542]

SENATOR FRIEND: Thank you, Senator Schimek and Senator Synowiecki. Senator Erdman, you're next and you're recognized. [LB542]

SENATOR ERDMAN: Thank you, Mr. President. Would Senator Synowiecki yield to a couple questions, please? [LB542]

SENATOR FRIEND: Senator Synowiecki, will you yield to some questions? [LB542]

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SENATOR SYNOWIECKI: Yes. [LB542]

SENATOR ERDMAN: Senator Synowiecki, I'm trying to put the pieces from General File into where we are now. And we have a bill in the Health Committee, I believe it's LB617, that does a study of behavioral health for children. And then we also have the Behavioral Health Oversight Commission, as well as a grant that funds another commission, that's looking at similar areas but may not have the exact same scope. Do you envision that under LB542, that those groups will have some type of a working relationship? I know it's not formal in your bill, but given the fact that we have a number of groups, either state sanctioned or quasi-sanctioned, doing similar activities, do you envision that all of these have some say in this process to make sure that there is coordination, or is this designed to be independent of those existing efforts? [LB542 LB617]

SENATOR SYNOWIECKI: Senator Erdman, that's a great question. They may or may not. I think the Behavioral Health Oversight Commission's primary focus is adults. But yet, at the same time, there is a connection in that the chairman of that group will serve on this task force with children's behavioral health. So there is a connection but I think the scope of what they're looking at is dramatically different. And there is a grant, I'm somewhat familiar with what you're speaking relative to that grant and I think there might be more linkages with that study more so than the Oversight Commission. [LB542]

SENATOR ERDMAN: And I think that's accurate. I had some concerns when LB617 came before the Health Committee because what we had were individuals that were a part of this--I believe it was called the SIG grant, I don't know if I'm saying that right--but they're part of the SIG grant and they're broken down into different groups, subgroups that are meeting on different topics and trying to work through some of the behavioral health issues that they see. I believe it's done through the department and they invite members to be a part of that, as well as the staff members of the department. And then we're creating this group. And I don't want the right hand to be ignorant of what's going on in the left hand. I want to make sure, as we need to do, and there's a number of dominoes, if you will, that have to fall into place to make this behavioral health reform that we've embarked upon, I think some people think we've completed, we've begun to actually get to the finish line and to be able to put the things in place that need to be there that all of these groups that have similar goals are working together, either on their own accord or in some formal way. And I understand what you're saying, that there will be some overlap. But I just want to make sure that it's clear that all of these people who are doing this work need to be talking to one another, making the policy as good it can be when it comes back to the Legislature at the end of this year. Because that will give us the next step that we can analyze whether we've done the right things on the adult side and, as I understand your proposal, what needs to be done on the children side. And I understand that your proposal may be even broader than what's currently

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covered. And so I just bring that up as an observation, that I'd like to see that being coordinated. I don't know that it needs to be written in your bill. And if I have any time, you can feel free to respond to that if you have any observations. [LB542 LB617]

SENATOR SYNOWIECKI: I appreciate that, Senator Erdman. I think you capsulized it quite well. I think in the adult sector, I think we're getting close to the wrapping-up stages in terms of the reform. On the kid...I see this as one of the first steps in collaboration with those other groups that you spoke of on the children side. I think we have to look at some tough questions relative to how we provide a residential level of services for youngsters in our state. You know, is the Hastings Regional Center the primary venue for that treatment from the state side? Do we need to continue the resource at Hastings? Do we not? Do we need to expand it or do we need to diminish it? We need to have a lot of these questions answered. And while the adult side is kind of creeping towards perhaps... [LB542]

PRESIDENT SHEEHY PRESIDING []

PRESIDENT SHEEHY: One minute. [LB542]

SENATOR SYNOWIECKI: ...a finish line, the children's behavioral health reform efforts, I think, are beginning with LB542 and the other grant group that you spoke of. And it's explicitly my intent that where collaboration should be going on, that they ought to be. And that I have full faith in the members that are set out, that we know that are going to be on there, and then plus there are members from the community-based sector, members from the department, a combination of government folks, private sector folks. And I hope that they genuinely take a look at this issue and take a look at all the parameters of what is to be studied under LB542 and that we'd have some findings as we move into the next legislative session. Thank you. [LB542]

PRESIDENT SHEEHY: About 10 seconds, Senator Erdman. Senator Pirsch, followed by Senator Howard. Senator Pirsch. Senator Pirsch waives. Senator Howard. [LB542]

SENATOR HOWARD: Thank you, Mr. President and members. I want to thank Senator Synowiecki for all the work he's done on this bill. There's no question in my mind that attention is long overdue on this issue. For too long we've ignored the behavioral health issues facing our youth who are in juvenile justice system. Having seen the system close-up, I've seen a lack of cooperation between the various departments and agencies that are involved in our juvenile justice system. We need to be looking at alternatives to making juveniles wards of the state in order for them to access needed mental and behavioral health services. The task force created by LB542 is an important first step toward making the system better. While I do like the idea of a task force, I have some concerns about its makeup. Currently, there is no requirement that Medicaid be a part of the task force. And since Medicaid is one of the major funding sources for these

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services, I believe they need to be an active participant in the discussions. I also feel that we need to have representation from the legal community on the task force. County attorneys, defense attorneys, and guardian ad litem play a very important role in the juvenile justice system and they need to be included in the discussions that take place because there is a need to look at interrelationships between the legal system and the mental behavioral health system. Finally, I would like to see the task force look at whether a youth needs mental/behavioral health services no matter what stage in the legal system they are in, rather than only addressing the issue upon release. We could be avoiding more serious problems down the road by making sure that these behavioral and mental health services are available when they are needed. Again, I want to thank Senator Synowiecki for bringing this very important issue to us. It's not an easy issue but it deserves our attention if we are going to do what's best for our youth. Thank you. [LB542]

PRESIDENT SHEEHY: Thank you, Senator Howard. Further discussion on AM1295? Seeing none, Senator Synowiecki, you're recognized to close. [LB542]

SENATOR SYNOWIECKI: Thank you, Mr. President. I would strongly encourage adoption of this amendment. This would essentially, I've been assured by the department and by the fiscal analysis people that reviewed this amendment, that this essentially does away with the fiscal note. And again, I would remind you that this is...at this point this bill is a study, a task force, and also to develop an assessment and evaluation process for the youngsters that we have at Kearney and Geneva so that we can deliver competent services to them in a timely manner and efficient manner and so that we can get them to the treatment venue that would best serve their interests. Thank you. [LB542]

PRESIDENT SHEEHY: Thank you, Senator Synowiecki. You have heard the closing on AM1295. The question is, shall the amendment to LB542 be adopted? All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB542]

ASSISTANT CLERK: 35 ayes, 0 nays on the adoption of Senator Synowiecki's amendment. [LB542]

PRESIDENT SHEEHY: AM1295 is adopted. Next item under Select File? [LB542]

ASSISTANT CLERK: Mr. President, Senator Stuthman would move to amend with AM1357. (Legislative Journal pages 1628-1629.) [LB542]

PRESIDENT SHEEHY: Senator Stuthman. [LB542]

SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. This amendment on page 3, in line 27, it strikes "division" and all amendments

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thereafter, and inserts "department." And the reason for this is because of the reform that we're going through with the behavioral health services. The three departments that are included in this are the Medicaid, Children and Family Services, and the Behavioral Health portion of it. What we're doing for the children's behavioral health plan to the Governor and the committee by...there's supposed to be a plan submitted to the Governor by January 4 of 2008. The Chairperson of the Health and Human Services Committee of the Legislature shall prepare legislation and amendments to the legislation to implement this subdivision for introduction in the 2008 Legislative Session. And I will give the balance of my time to Senator Johnson, the Chair of this committee. [LB542]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Johnson, about 8:50. [LB542]

SENATOR JOHNSON: Mr. President. Mr. President, I guess we're on now, yes, I just rise to support this amendment. We're working with HHS people to make sure, as best we can, that there be coordination with all of these efforts to look into these situations and prepare legislation as needed for next year in a coordinated manner. I might say that this last Friday, I spent a considerable portion of the day with the oversight commission on mental health, chaired by former Senator Jim Jensen, and we talked with that group at that time with our intention of working with, particularly Senator Synowiecki, to make a coordinated effort and include this group, or at least members of that group, so that we do get a coordinated effort on mental health for all of our citizens, regardless of age. So I'd ask you to support Senator Stuthman's amendment, AM1357. [LB542]

PRESIDENT SHEEHY: Thank you, Senator Johnson. You've heard the opening to AM1357. The floor is open for discussion. We have Senator Erdman, followed by Senator Synowiecki. Senator Erdman. [LB542]

SENATOR ERDMAN: Thank you, Mr. President. I would think that this amendment is appropriate. I haven't heard...obviously, Senator Synowiecki will follow. But kind of in lines with the previous comment that I made, and as I understand the amendment, it would put in this bill a little better coordination as far as how we would proceed after the study of the results are come back. And I would tend to think that that would be positive. But I would, I guess, like to hear Senator Synowiecki's comments as to whether he would support this amendment. I don't know that any of us knew that this was really coming, but I would yield my time to Senator Synowiecki, if he would like to use it to respond to this amendment since he hasn't had a chance yet, Mr. President. [LB542]

PRESIDENT SHEEHY: Thank you. Senator Synowiecki, about 4 minutes, 15 seconds. [LB542]

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SENATOR SYNOWIECKI: Thank you, Mr. President. Thank you, Senator Erdman. I support the amendment. I think any time we can collaborate and coordinate our efforts and any time that we look at what genuinely is in the best interests of the youngsters of the state of Nebraska, we ought to do. This simply, the amendment, simply says that should the plan entail some needed legislative action, which I would suspect it will, ultimately, that the Chairperson of the Health and Human Services Committee shall prepare the legislation and shall introduce the legislation into the Legislature next legislative session in 2008. I think the bottom line here is, what everyone wants to get at is, that is that we provide the best possible services to our youngsters that we can provide, the highest quality of services on an individualized case planning method and that we deliver relevant services to children and that we get them to the best venue possible for delivery of them services. And that's the bottom line. I think everyone, if they have at the paramount interest being the best interests of the child and of the children of the state of Nebraska in mind, and if we endeavor in the task force with this in mind and if we...if the Department of Health and Human Services works cooperatively and corroboratively with the private providers, the community-based providers, in the development of the assessment plans, the individualized case planning of kids, of youngsters, particularly those coming out of Kearney, if we work cooperatively together with the community-based providers and get those kids to what is in their best interest, the best treatment venue possible for each individualized youngster, take into account security concerns and those sort of things, public safety concerns, but at the utmost, the paramount interest has got to be what is the best interest of each individual child. I want to thank Senator Stuthman for bringing the amendment. And I look forward to working and helping and assisting with the task force during the interim and bringing back some legislation next year so we can make some substantive and dramatic changes to our delivery system in the area of behavioral health for the youngsters of the state of Nebraska. Thank you. [LB542]

PRESIDENT SHEEHY: Thank you, Senator Synowiecki. Senator Synowiecki, you're also next in the queue. Senator Synowiecki waives. Further discussion on AM1357? Seeing none, Senator Stuthman, you're recognized to close. [LB542]

SENATOR STUTHMAN: Thank you, Lieutenant Governor, members of the body. I would just encourage the support for this amendment. What I think we're trying to do is establish a plan for next year so that if there is legislation needed, we've got this on the books already and that the Chairperson of the Health and Human Services Committee, you know, will be working on legislation to hopefully provide for the needs, depending upon the results of this study of that. So I think this is the right thing to do. We're trying to get something in place so that we know what direction to take next year. If there is money needed for support of this next year, there's a possibility that this committee will put forth that effort. So with that, I'd ask for your support. Thank you. [LB542]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. You've heard the closing to

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AM1357. The question is, shall AM1357 be adopted to LB542? All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB542]

ASSISTANT CLERK: 33 ayes, 0 nays on the adoption of Senator Stuthman's amendment. [LB542]

PRESIDENT SHEEHY: AM1357 is adopted. Further discussion from the floor on LB542? Seeing none, Senator McGill. [LB542]

SENATOR MCGILL: Mr. President, I move LB542 to E&R for engrossing. [LB542]

PRESIDENT SHEEHY: You've heard the question, is the adoption of E&R amendments to LB542. The question is the advancement of LB542 for E&R Engrossing. All those in favor say aye. Opposed, nay. LB542 does advance. Next item under Select File, Mr. Clerk? [LB542]

ASSISTANT CLERK: Mr. President, LB482. There are E&R amendments, Senator McGill. (ER8107, Legislative Journal page 1550.) [LB482]

PRESIDENT SHEEHY: Senator McGill. [LB482]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB482]

PRESIDENT SHEEHY: The question is for the movement of E&R amendments. All those in favor say aye. Opposed, nay. They are adopted. [LB482]

ASSISTANT CLERK: Mr. President, Senator Erdman would offer AM1275. (Legislative Journal page 1472.) [LB482]

PRESIDENT SHEEHY: Senator Erdman, you're recognized to open on AM1275. [LB482]

SENATOR ERDMAN: Mr. President, AM1275 would do three things. It would strike the waiver provision out of LB482. It would require reporting back to the Legislature as to the objective outcomes with regards to the services that would be provided and the impact that those services have had to the positive of special ed funds or other funds on behalf of children receiving services. And it would restore the cap of the Health Care Cash Fund to \$54 million. Not that you need to pay attention, but I recognize that after I say what I'm about to say, you'll probably stop paying attention. But I plan to withdraw this amendment. But I do plan to speak a couple times on this bill. I've just seen that Senator Johnson has an amendment that he will be offering to the body and I will go through some of the reasons why I still have concerns with LB482. It's clear to me, after my conversations with the proponents of LB482, that they're not interested in my offers.

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And given that fact, I will resign myself to the situation I find myself in. I will be voting red on LB482. I plan to offer you some information that I think is important for you to consider and ultimately you will probably do what you did on General File, and that's advance the bill, and we can move on. One thing that I did want to correct, I was reading one of the reports that came out after our debate in the Unicameral Update after the bill was debated on General File, and it led you to believe that my goal was that we should have the top Medicaid program in the country. That's not necessarily my goal. I don't know that that's necessarily anyone's goal. I think the goal for every state in the union regarding Medicaid program is that the program that we have in place meets the needs of the citizens in which we're trying to serve. And my observation on General File was that we're second only to Massachusetts. It wasn't necessarily designed to be something that I think we should be overly proud of. I think it's just a reflection of how we are graded against other states and the fact that our program is quite generous and successful when you compare it to other states. We will only be able to maintain that program, and I think this is the area that needs to be clarified, if we continue to be efficient and effective in how we manage the plan. I've distributed to you a front and back sheet which was presented to the Medicaid Reform Council, and I believe the Legislature, at the end of last year from the Nebraska Medicaid Reform biennial report. The side that has my initials on it shows you the gap that we have in Medicaid. If we continue business as usual, even at the success that we have seen recently to control the costs of the program and growth while still providing the services, we still have a \$713 million shortfall by the year 2025. That's three quarters of a billion dollars. That's a lot of money. And so I bring that up just as a point of reference as to where we're going with LB482. I see great value in what Senator Johnson and Senator Pahls, as the priority designee of this bill, are attempting to accomplish. I have drafted amendments. I've got amendments that would require coordination between the Department of Health and Human Services and the Department of Ed, because there should be coordination because this will benefit the special ed program. I've got amendments drafted that would also require that there be reporting as to the success of this program, so that we're not basing it simply on an expansion to expand it, but we're basing it on what I perceive the goals of those that testified in front of the Health Committee to be, and that is results. The other side of this discussion that I think has been lost upon you is that there are two distinct components to LB482. They are separate. One of the components is that we are going to fund directly a program at the University of Nebraska Medical Center for autism treatment. That's where the private funds end up. Those private funds don't end up matching the Medicaid waiver. The private funds go to the University of Nebraska Med Center. And from what I'm told, they probably need the money and I'm sure they're going to be successful because I believe that they have shown the success. But the money that's being proposed--and as I understand Senator Johnson's amendment, it may change the Health Care Cash Fund provisions--but we're not going to be able to use those private funds to match the federal dollars. And if I recall, I go back to the committee hearing on LB482, and as a member of the Health Committee who's been interested in Medicaid and how the process works--and by no means, I'm

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not an expert--but the idea was that we were going to expand Medicaid because we were going to have a private match. That's not it. The private money goes to the Med Center. Part of the Health Care Cash Funds are going to go to help the Department of Health and Human Services administer the waiver. And then, I'm still a little fuzzy on Senator Johnson's amendment, but then I believe he's going to offer an amendment that additional funds that would have gone to the University Med Center will go to help match some of those waiver funds. So again, we're not talking about the private dollars. We're talking about the dollars that we already have in the state treasury and we're expanding Medicaid. Now expanding Medicaid is, in itself, not a bad problem as long as it fits within the goals that we have outlined in our process. And our process shows us, within the next 18 years we're going to be short \$713 million. Those are conservative numbers. Those are based on some assumptions. And depending upon how well those assumptions go, that may be less or more. We were projected to save \$30 million over this biennium in Medicaid and I believe that actual number is close to \$19 million. So you have to factor all of this in. By voting for LB482, you're giving a great opportunity for people in the state of Nebraska to show their benevolence to assist young people and families that desperately need help. And I'm not opposed to what's in LB482 and the goal. I'm opposed to the way that we're doing it. I think it's problematic. The amendment that I also have drafted here would state that the program in its entirety would sunset in five years. When you apply for a Medicaid waiver, the Center for Medicaid, Medicare will review that waiver and they will give you a determination on whether they're going to approve that or not. And once they approve it, it's my understand that after three years they'll review that. And so there is somewhat of a check and balance. But the concern is, well, if we adopt an amendment that says this is going to sunset in five years, they may not approve it in the first place. They may not approve it in the first place anyways. But once they do approve it...and I may be wrong, but I can't recall us repealing a waiver recently because of poor performance. It's been because of other reasons, if we've done it, or asking a waiver not to be reapproved or not funding a provision or changing our Medicaid system because of that. So what I was told that LB482 was going to accomplish was a result-based program that was going to target young people in a limited class with a limited number of slots and that we would have additional funding for the experts at the University of Nebraska Medical Center to be able to train people to go out in places all over the state and to assist people to understand the types of intensive behavioral treatment that they need to be successful at an early age in dealing with the autism disorder. But it was always going to be based on results. I hate to say this, but I'm not sure that that is actually what the goal is. I think firmly that the people that support this bill want results. I think they deserve results if we're going to put the money in. But I think there's a way to do it to ensure that we have the opportunity to have a check before we make this a program that lasts forever. And that opportunity is not being afforded to us. The other thing that I have heard is that if we take away a waiver, the private funds go away. And it's not because the private funds again are tied to the waiver. It's because we're able as a state to treat more students or more young people. I think that's a fair request. I think the extent it's problematic is the fact that we

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don't make it truly a pilot program. If you adopt or you vote for LB482, what you're doing is you're authorizing a program to be created specifically at the Med Center and you're requiring the Department of Health and Human Services to apply for a waiver which will cost us General Funds in the excess of the Health Care Cash Funds that may be distributed depending upon how the waiver is drafted. I think it's problematic; 38 of you don't. Go for it. I want to help these young people and I've tried tirelessly to work with Senator Johnson, the people that are supporting this bill. [LB482]

PRESIDENT SHEEHY: One minute. [LB482]

SENATOR ERDMAN: It has become clear to me that we're not going to agree. And so I will be withdrawing AM1275. I also recognize the agenda changes at 3:30. It's not my intent to delay this. I want Senator Johnson to have his opportunity. I think he has the bill in the form that he supports. I think he's going to offer us an amendment that he thinks makes it a little better. I'll give him that shot. So while I agree with the goal here, I think the process and the procedure is inappropriate. I ultimately hope that it is successful. But I also fully recognize that at some point you're going to have to come back, and it will be after I'm gone, and trying to figure out how you plug that \$713 million gap that's Medicaid-based. Because the savings you're going to see are probably going to show up in the special ed program, not in the Medicaid program. Mr. President, I would ask that AM1275 be withdrawn. [LB482]

PRESIDENT SHEEHY: Thank you, Senator Erdman. The request for...AM1275 is withdrawn. Next item, Mr. Clerk? [LB482]

ASSISTANT CLERK: Mr. President, Senator Johnson would offer AM1343. (Legislative Journal page 1629.) [LB482]

PRESIDENT SHEEHY: Senator Johnson, you're recognized to open on AM1343. [LB482]

SENATOR JOHNSON: Thank you, Mr. President, members of the body. AM1343 is a technical amendment. It addresses some of the concerns that were just mentioned. What it does is it simply clarifies that the money from the Nebraska Health Care Cash Fund for autism treatment will be used as the state match to leverage federal dollars under the Medicaid waiver. Private funds cannot be used as a state match under the Medicaid program. So this amendment makes that clear. The amendment also clarifies that the allocation of the cash funds is \$1 million each year and it makes grammatical changes. Again, as we did on General File, is that the million dollars each year will also cover the expenses for administration and that type of expense. So it is at \$1 million, not \$1 million plus administrative expenses. With that, I would ask the adoption of this amendment. [LB482]

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PRESIDENT SHEEHY: Thank you, Senator Johnson. You've heard the opening to AM1343. We have Senator Erdman, followed by Senator Hudkins and Senator Pahls. Senator Erdman. Senator Hudkins. [LB482]

SENATOR HUDKINS: Thank you, Mr. President and members. I appreciate Senator Johnson's introducing this bill because we do need to fund the healthcare needs of those children with autism. And for Senator Erdman's benefit, I'm going to flap my gums a little bit. I, after this bill was introduced last year, I had a bill that would take care of part of the problem. I called my daughters, they both have very young children, and I asked them, have you had Lucas get his vaccinations yet? And the daughter in Denmark said, yes, I have. And I asked her, are you aware that there is in the United States, at least in Nebraska, mercury which is under the brand name of thimerosal in vaccinations? And she said not to worry, she said that has been outlawed in Denmark for years. Called the other daughter, I said, have you had Gage vaccinated? And she says, yes, and I know where you're going with this, California has outlawed mercury in their vaccinations used as a preservative. Senator Johnson, I will be supporting this bill but I wanted to remind everyone that there still is a cause of autism. Whether the presence of mercury in babies' vaccinations is one of those causes, you and I are going to disagree on. However, we have outlawed the use of mercury thermometers. We have outlawed the use of Merthiolate and Mercurochrome. And, oh, a couple of months ago I took a tumble on the ice and had occasion to have my knee doctored up by the doctor of the day here. He went through the first aid kit, and what did he find but a bottle of Mercurochrome. I asked if I might borrow that and he says, well, get it out of here, we don't even use it anymore. So whether thimerosal and mercury is a cause or a potential cause of autism, it still should be looked at. There's a reason why other states have not allowed this to be used as a preservative. If we have outlawed thermometers and these other two disinfectants that I talked about, why would we then inject this poison into our babies? And as I said, Senator Johnson, I will be supporting this bill, I think it's necessary that we save those children or treat those children. And with intensive training, it has been shown to be able to be done. Do you know, Senator Johnson, if there is ongoing research and ongoing funding on causes of autism? [LB482]

PRESIDENT SHEEHY: Senator Johnson, would you yield? [LB482]

SENATOR JOHNSON: Certainly, thank you. And, Senator Hudkins, thank you for your support of this bill. I don't think there's any question that what you have...your concern about autism has been one of the things that has spurred me to take on this challenge. So I want to thank you from that. Now as far as your question is concerned, the last literature that I saw on this, it was, the question now is that most... [LB482]

PRESIDENT SHEEHY: One minute. [LB482]

SENATOR JOHNSON: ...likely it's a genetic cause but it is undetermined for sure at this

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time. [LB482]

SENATOR HUDKINS: Thank you. And I would hope that the research continues to be done and that we do find a, not necessarily a cause, but we find a treatment for this horrible disease of our young people. Thank you, Mr. President. [LB482]

PRESIDENT SHEEHY: Thank you, Senator Hudkins. Senator Pahls, followed by Senator Erdman. Senator Pahls. [LB482]

SENATOR PAHLS: Mr. President, members of the body, I'm not going to have the long dialogue I had on the first time of mentioning the number of the children who are out throughout the state. I just wanted to make a couple of comments. With early intervention, we can keep these children and their families off Medicaid for the rest of their lives. That's one of the things that strikes me. With this therapy based on research (inaudible) approximately 50 percent of the children end up needing no additional help. So that would be great for the schools. Another 20 to 30 percent can end up needing limited help. We can automatically help these children at a young age. We will keep them off of Medicaid because if they, if this issue persists, research has shown they end up on Medicaid. And if you look at the information, about \$3 million, that's what a person spends over their lifetime. And in the state of Nebraska, if we have at least 1,200 and more, if we can just use the numbers, if you have 100 children are not on Medicaid the rest of their lives, that mounts up. So I know the figures that Senator Erdman has shown us, how it is rising. Our intent is to help that not move up the scale. And I think when we have the private sector involved in anything, their eyes are going to be on this. They're going to be watching. They're going to be looking because it's a significant amount of their own dollar is going into this. Very few people, as I see it, will walk away. And I said, this to me is a model that perhaps, if it does work, can be applied in other cases if at all possible. I think this is important. Thank you. [LB482]

PRESIDENT SHEEHY: Thank you, Senator Pahls. Senator Erdman, followed by Senator Preister, Senator Stuthman, Senator Harms. Senator Erdman. [LB482]

SENATOR ERDMAN: Mr. President, every time I speak, this may be my last time, but every time I speak I want to make it clear that I'm not opposed to finding a remedy. Senator Hudkins has a remedy that's still stuck in committee, or was still stuck in committee. And had she worked with the committee, it probably wouldn't be dead today because there was enough members of the committee that didn't vote to kill her bill. And so we can talk all you want. I didn't vote to kill her bill. I think there is an opportunity for us to work that out. I have a young daughter. There's no thimerosal in any of the vaccines she has received in the state of Nebraska. I know that because I've checked. There are some in flu shots, Senator Schimek, because they come in multidose vials. So from the standpoint of the public policy decisions that we need to make, we can make them. And there's an opportunity, I think, with this committee, maybe more so

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than any other committee, to deal with her bill. But she abandoned that opportunity by the path that she chose, and that's her decision. Senator Pahls would have you believe that by passing this bill, we're somehow going to shorten the gap of \$713 million over the course of the next 18 years in Medicaid. The beneficiaries largely are going to be the school districts who receive special ed funding, which he is most familiar with, and he read off the school districts that would benefit. I'm not arguing with that. What I am telling you is that that \$713 million is as it stands today without the expansion under LB482. Will there be potential savings if you adopt this and move a limited number of people out? Yeah, but you're not going to dent that number by simply saying we're going to invest in prevention. There's a lot of things you have to do, Senator Pahls. This may be one of them. The numbers are compelling for those that are successful but recognize you're not going to be able to help all those kids. So to an extent, it is limited. But you're not going to keep them off Medicaid simply because of the fact that you've adopted this bill. You have to do other things as well. And I think that's where the amendment that I tried to approach would have been more successful and it would have required coordination. It would have required coordination between the professionals, like Senator Pahls, who spends their day or did spend their professional life in the schools, and the Department of Education and those that are directly providing this service. That makes sense to me. It doesn't make sense to others, I understand that. But if we're going to do this, let's do it right. This amendment, I believe, is appropriate. Senator Johnson is offering us an opportunity to put the bill in the form that he would like it to be in to make it more functional pursuant to the fiscal constraints and requirements. I think it's fine. I'll vote for Senator Johnson's amendment. I think that's appropriate. I think it is appropriate for us to examine the issues relating to autism to try to determine the appropriate remedy. But in determining the appropriate remedy, you can't leave out some of the key players in the discussion, and we're doing that candidly with LB482. That's all that I have, Mr. President. [LB482]

PRESIDENT SHEEHY: Thank you, Senator Erdman. Senator Preister. [LB482]

SENATOR PREISTER: Thank you, Honorable President, friends all. I support the bill. I support what the committee is attempting to do. I appreciate and respect Senator Erdman and his comments, as well, as we look at the funding. I think my support is largely because, in everything that I do, prevention is the first line of defense and early detection soon follows that. If we can get the detection early on, we can prevent a lot of grief and aggravation in families and we can save a whole lot of heartache and we can make these children more complete and more whole by practices that we have identified are beneficial. That's important, that can turn a whole life around. All of us likely know somebody who has a child or more with autism. If we can intervene and help and do something about that, I think we should do it. I feel a responsibility to do it. That's why I'm supporting it. I also want to continue sending the message that I want to support Senator Hudkins in what she is attempting to do with her attempts at banning autism in vaccinations...I'm sorry (laugh), banning thimerosal and mercury in the vaccinations.

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Maybe in some folks' minds we haven't drawn the direct link between autism and mercury. But we know that mercury is a neurotoxin. It bioaccumulates in the body. It isn't easily eliminated. And even in miniscule amounts, it is toxic. So if we prevent it from getting into children, it isn't going to do any harm and we can provide vaccinations that we think are essential without having mercury in those vaccinations. So I appreciate what Senator Hudkins has done, and continue to champion the cause of, in removing mercury under whatever trade name it may go by, thimerosal just being the most commonly known. Whatever form it takes, that's prevention. Prevention is the first line of defense and I think we should do that. I support the bill, I support the amendment, and I support the cause of prevention and early detection in all areas. And I support Senator Hudkins in her continued effort. Thank you very much. [LB482]

PRESIDENT SHEEHY: Thank you, Senator Preister. Senator Stuthman, followed by Senator Harms. Senator Stuthman. [LB482]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I'm in total support of this bill and the amendment. And I think what we're doing here today, hopefully what we'll accomplish today, is taking a big step, a big step in the treatment of autism. I think that's very, very important. This is a situation that we've been dealing with for the last several years and we finally are moving in the right direction. But I think after we move in this right direction, I think there's one thing that we got to keep in mind, is the thing that we have to prevent this from happening and try to do everything possible in the prevention. I continually am reminded of a situation that we don't want to continue treating a problem, we've got to find the solution and prevent the problem. And I think that's only a few years away but we've got to take every measure possible, you know, in the prevention of this so that these people don't have to go through this situation. So I think we're taking a big step forward and I appreciate this. And I hope and I ask for your support. Thank you. [LB482]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Harms, followed by Senator Hudkins. Senator Harms. [LB482]

SENATOR HARMS: Mr. President and colleagues, I call the question. [LB482]

PRESIDENT SHEEHY: There has been a call for the question. Do I see five hands for the demand debate cease? I do see five hands. The question before the body is, shall debate cease on AM1343? All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB482]

ASSISTANT CLERK: 25 ayes, 0 nays to cease debate, Mr. President. [LB482]

PRESIDENT SHEEHY: Debate is ceased. Senator Johnson, you're recognized to close. [LB482]

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SENATOR JOHNSON: Thank you, Mr. President. This, what we're voting on here, is AM1343, which is a technical amendment that clarifies the workings and transfer of the monies. And I would ask your support for not only this amendment, but your continued support for the main bill itself, LB482. Thank you. [LB482]

PRESIDENT SHEEHY: Thank you, Senator Johnson. You've heard the closing on AM1343. The question before the body is, shall AM1343 be adopted to LB482? All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB482]

ASSISTANT CLERK: 36 ayes, 0 nays on the adoption of Senator Johnson's amendment. [LB482]

PRESIDENT SHEEHY: AM1343 is adopted. We'll move to discussion on LB482. Senator Hudkins, followed by Senator Synowiecki. [LB482]

SENATOR HUDKINS: Thank you, Mr. President. I would just like to share with you some information. We have a family who has adopted a child with autism. The little boy...well, the family lived in another state and then moved here. But in the state that they were in, they were receiving respite care, supported community living, case management, a home health aide, speech therapy, occupational therapy, physical therapy, and diapers. The cost of this very intensive treatment total for a month is over \$8,500; for the total year, it was over \$102,000. When this family moved from where they were to Nebraska, they worked through Health and Human Services for these same services. And they were told, no, you don't qualify. Well, if you've tried to take care of an \$8,500 a month bill, that's pretty tough. So they called my office. My office made some calls to Health and Human Services. And I think, in this case, it was simply because of a caseworker, and I'm not blaming the particular caseworker, but I don't think they understood the problem. Anyway, after a few phone calls, this family is now getting some of the treatment and some of the care that they so desperately need. So I am very indebted to Senator Johnson for introducing this bill and to ask for these funds in supporting these children. Hopefully this youngster will benefit also from those services. But our own Health and Human Services in Nebraska is not doing what they could or what they should as compared to a neighboring state. Thank you, Mr. President. [LB482]

PRESIDENT SHEEHY: Thank you, Senator Hudkins. Senator Synowiecki. [LB482]

SENATOR SYNOWIECKI: Thank you, Mr. Lieutenant Governor, members of the Legislature. I just kind of felt compelled to stand up and voice my support for LB482. I want to thank Senator Johnson for his leadership, his demonstrated leadership on this bill. He's done a marvelous job. We had a hearing in the Appropriations Committee on a

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funding mechanism for the program I just wanted to comment about. It was a compelling hearing. There is remarkable evidence that these treatments work, they're productive, and these youngsters evolve into quite productive citizens if we can involve themselves in the treatments early on and have proper intervention. I just wanted to thank you, Senator Johnson, for your leadership, your statesmanship on this bill, for putting this all together. And I just wanted to publicly express my deep heartfelt appreciation for your work. Job well done. Thank you. [LB482]

PRESIDENT SHEEHY: Thank you, Senator Synowiecki. Further discussion on the floor on LB482? Mr. Clerk, do you have anything further for this bill? [LB482]

CLERK: Nothing further, Mr. President. [LB482]

PRESIDENT SHEEHY: Senator McGill. [LB482]

SENATOR MCGILL: Mr. President, I move LB482 to E&R for engrossing. [LB482]

PRESIDENT SHEEHY: You've heard the motion to move LB482 to advance to E&R Engrossing. All those in favor say yea. Opposed, nay. LB482 does advance. Items for the record, Mr. Clerk? [LB482]

CLERK: Mr. President, thank you. Enrollment and Review reports LB551, LB377A, and LB482A to Select File. That's all that I had, Mr. President. (Legislative Journal pages 1629-1635.) [LB551 LB377A LB482A]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We will now move to Final Reading. Members should return to their seats in preparation for Final Reading. Mr. Clerk, we'll move to the first item under Final Reading. []

CLERK: Mr. President, LB367. I do have a series of amendments. Senator Friend would offer, move to return LB367 for purposes of a Select File amendment, AM1027. Senator Friend, I do have a note that you'd like to withdraw AM1027. [LB367]

SENATOR FRIEND: That's correct. [LB367]

PRESIDENT SHEEHY: AM1027 is withdrawn. [LB367]

CLERK: Senator Dubas, AM1054. Again, Mr. President, I had a note that Senator Dubas wished to withdraw. [LB367]

PRESIDENT SHEEHY: AM1054 is withdrawn. [LB367]

CLERK: Senator White, AM1050...excuse me, AM1049 is the first one, Senator, and I

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have a note that you'd like to withdrawn. [LB367]

SENATOR WHITE: That is correct. [LB367]

CLERK: Likewise with AM1050, Senator? [LB367]

SENATOR WHITE: Yes, sir. [LB367]

CLERK: Thank you. [LB367]

PRESIDENT SHEEHY: AM1049 and AM1050 are withdrawn. [LB367]

CLERK: Senator Mines, AM1062. Senator, I have a note that you'd like to withdraw that particular amendment. [LB367]

SENATOR MINES: I would, Mr. Clerk. [LB367]

PRESIDENT SHEEHY: AM1062 is withdrawn. [LB367]

CLERK: Senator Mines, likewise with AM1068? [LB367]

SENATOR MINES: That's correct, Mr. Clerk. [LB367]

PRESIDENT SHEEHY: AM1068 is withdrawn. [LB367]

CLERK: Senator Kruse would move to return the bill for a specific amendment, Mr. President, AM1033. (Legislative Journal pages 1635-1637.) [LB367]

PRESIDENT SHEEHY: Senator Kruse, you're recognized to open on AM1033. [LB367]

SENATOR KRUSE: I would like to ask the body's consideration for this. If it gets complicated, I don't want to do it because it's a very small item. On the amendment, you will find the addition of assisted living in line 18. That's the total piece. If you look through the rest of the amendment of the section, you will see that sales tax is removed for medically underserved, skilled nursing facility, intermediate care, assisted-living, nursing facility, home health agency, hospice, respite care, and so on. The only reason that assisted living is not including in that list is because it wasn't there when the list was created. It fits with that. It should be taken care of, it would seem to me. And if the body agrees, I would urge that we clean up this item. I do not want to talk about it any further. Thank you. [LB367]

PRESIDENT SHEEHY: Thank you, Senator Kruse. You've heard the opening to AM1033. The floor is now open for discussion to return to Select File. Senator Carlson.

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[LB367]

SENATOR CARLSON: Mr. President and members of the Legislature, I simply rise to support AM1033 and I believe it's the right thing to do. Thank you. [LB367]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Fulton, followed by Senator Louden. [LB367]

SENATOR FULTON: Thank you, Mr. President. Would Senator Kruse yield to a quick question, please? [LB367]

PRESIDENT SHEEHY: Senator Kruse, would you yield? [LB367]

SENATOR KRUSE: Yes, I will. [LB367]

SENATOR FULTON: Can you give an idea how much this is...I mean, I agree with the intention, what you're trying to do here. I'd just like to put a number to this. Do you have an idea of what numerically this would represent by way of fiscal note? [LB367]

SENATOR KRUSE: That's a very good question. I should have touched on it. Originally, there was a high fiscal note on it. Now they're saying a couple hundred thousand the first year and \$400,000 maybe the next. It's very hard to estimate because a number of these facilities are a part of a nursing facility and I'm sure they already are escaping the sales tax. So we really don't know what that would be. [LB367]

SENATOR FULTON: Okay, this would apply... [LB367]

SENATOR KRUSE: This was a bill and it had a hearing and it was passed out of committee. [LB367]

SENATOR FULTON: Okay. This would apply, if there are any facilities out there that are both assisted-living and nursing facilities, they would have already taken advantage of this tax break. So this would apply specifically to assisted-living facilities. Is that correct? [LB367]

SENATOR KRUSE: Well, that's...yes, that's what it would. But we're not sure that the assisted-living facilities, as a part of another thing, are really in the clear, so it kind of clears that up. [LB367]

SENATOR FULTON: Okay, thank you, Senator Kruse. I'm familiar with the work of the assisted-living facilities. And certainly by way of intention in this bill, this listing that already presently exists in statute, this listing of facilities, assisted-living facilities fall under the same category, perhaps even more so. I would feel a little bit better with

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having a firm number. I understand that may be more difficult to do. But I am willing to bring this back to Select File to discuss. So thank you, Senator Kruse. Thank you, Mr. President. [LB367]

SENATOR ERDMAN PRESIDING []

SENATOR ERDMAN: Thank you, Senator Erdman, Senator Kruse. Those senators wishing to speak are Senators Louden, Wightman, Janssen, Flood, and Cornett. Senator Louden, you're recognized. [LB367]

SENATOR LOUDEN: Yes, thank you, Mr. President, members of the body. I also rise to support this amendment. I think anything we can do to cut down the cost of operation for assisted living is probably something that would do us well in our healthcare budgets. Whenever we can cut down the cost of these assisted living, these people that can stay in there on their own money, and for most of the part in assisted living these are people that are living there, paying their own ways. But there will be times when they do come under the Medicaid project. So whatever we can do to make this cost somewhat lighter for these assisted-living facilities, I'm certainly in favor of. Thank you, Mr. President. [LB367]

SENATOR ERDMAN: Thank you, Senator Louden. Senator Wightman, you're recognized to speak, followed by Senator Janssen. [LB367]

SENATOR WIGHTMAN: Thank you, Mr. President, colleagues. I, too, would support including assisted-living facilities in the exemption from the sales tax. It does seem to me it levels the playing field, and particularly that's true if the ones that are associated with the nursing home, which are a lot of them across the state, are not paying that sales tax on the assisted living portion at the present time. However, it concerns me that if that's been the law and they weren't exempted, that those facilities would have been taking advantage of this act when they may not have been entitled to it. In that light, I'd like to ask if Senator Kruse would yield for a question. [LB367]

SENATOR ERDMAN: Senator Kruse, would you yield to a question from Senator Wightman? [LB367]

SENATOR KRUSE: Yes, I would. [LB367]

SENATOR WIGHTMAN: Senator Kruse, do we know this is the case, that on assisted living that are combined with nursing homes, that they have not been charging the tax? [LB367]

SENATOR KRUSE: No, we don't. And, Senator, a little out of order, but would you yield me some time and I'll withdraw the amendment? [LB367]

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SENATOR WIGHTMAN: I'm not suggesting you do that, but that's up to you. [LB367]

SENATOR KRUSE: I'm willing to do that if I get some time. [LB367]

SENATOR WIGHTMAN: Well, I will yield the time, it's your amendment. [LB367]

SENATOR ERDMAN: Senator Kruse, you have 3 minutes and 35 seconds. [LB367]

SENATOR KRUSE: That's more than enough time to ask to withdraw this amendment and we'll try to work it in some other way. Thank you. [LB367]

SENATOR ERDMAN: Thank you, Senator Kruse. The amendment, AM1033, and the motion to return is withdrawn. Mr. Clerk, next item? [LB367]

CLERK: Mr. President, the next amendment I have, Senator Chambers, I had AM1179 but I had an earlier note from you, Senator, you wanted to withdraw AM1179. [LB367]

SENATOR ERDMAN: Senator Chambers. [LB367]

SENATOR CHAMBERS: True, that's true. [LB367]

SENATOR ERDMAN: AM1179 is withdrawn. Mr. Clerk. [LB367]

CLERK: Mr. President, then the next motion I have is from Senator Chambers. Senator, this is FA95. (Legislative Journal page 1637.) [LB367]

SENATOR ERDMAN: Senator Chambers, you're recognized to open on the motion to return. [LB367]

CLERK: This would strike Sections 10, 11, 12, 13, 14, 15, 16. [LB367]

SENATOR CHAMBERS: Yes, thank you. Mr. President, members of the Legislature, this is a motion to return the bill to Select File for a specific amendment. I cannot get out of my craw the unwillingness of the Legislature to reduce that sales tax by a half percent. So what this amendment is going to attempt to do, once again, is to reduce the sales tax, I almost said to 4.5 percent. Then people would have thought that I was really being good by saying, well, we'll make it 5 percent. That's the way they do in jewelry stores. They have a bracelet that's worth a quarter, they put the price up to \$5, then they put it on sale for \$4 and people buy happily a 25-cent bracelet for \$4. And they think the jeweler is really a nice, generous person. I will not do that because I think when it comes to the sales tax, most people are aware of what the rate is right now. We are always asked, if you attempt to do this, where will money come from to offset? You

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will notice that in the first line, several sections will be stricken. So that you will know what will happen, the estate tax will be reimposed and the construction labor sales tax will be reimposed. There is no justification whatsoever that is valid which would take the sales tax off construction labor on commercial structures. The estate tax, as was discussed previously, is designed to avoid the accumulation of wealth in one locus and be passed--not locust, locus, l-o-c-u-s, I think I better make that as clear as I can--and pass it through inheritance unscathed. The inheritance...the estate tax does not deprive anybody of anything that he or she earned through his or her labor. It's a windfall. I'd like to ask Senator White a question or two, if I may, because he is a very competent attorney, although on some issues he does not demonstrate it as much as he does on others. (Laughter) [LB367]

SENATOR ERDMAN: Senator White, would you yield to a question from Senator Chambers? [LB367]

SENATOR WHITE: With great trepidation. [LB367]

SENATOR CHAMBERS: Senator White, what is taxed under an estate tax? If I would reimpose it, what would actually be taxed? [LB367]

SENATOR WHITE: Under...the estate, under our law, it would be nonexempt property passing from a generation to another. I'd have to double check, but I think most, for example, spousal, from husband to wife, wife to husband is not taxed. [LB367]

SENATOR CHAMBERS: And, Senator White, there was a theory which led to taxing this kind of nonexempt property. Is that correct? [LB367]

SENATOR WHITE: Yeah, absolutely. It's a very old theory: de Tocqueville, who was one of the great commentators on democracy, articulated it and there were two rules of law, said that accumulated wealth passed from generation to generation was a profound threat to democracy. And the laws that arose out of that were the, well, three, was a rule against primogenitor, was a rule against perpetuities, and then it was estate tax. And that was to break up huge generational fortunes. [LB367]

SENATOR CHAMBERS: Senator White, the last time you checked it, is America characterized as a democracy? [LB367]

SENATOR WHITE: Well, I hope so, yes. [LB367]

SENATOR CHAMBERS: It's characterized... [LB367]

SENATOR WHITE: Yes, it is. [LB367]

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SENATOR CHAMBERS: Okay. Is Nebraska a part of the United States, more or less? [LB367]

SENATOR WHITE: Yes. [LB367]

SENATOR CHAMBERS: So Nebraska would be a part of a democracy. [LB367]

SENATOR WHITE: Yes, sir. [LB367]

SENATOR CHAMBERS: So what's good for democracy as a whole would be good for Nebraska? [LB367]

SENATOR WHITE: One would hope. The logic is impeccable. [LB367]

SENATOR CHAMBERS: If the problems could develop by not taxing this property and allowing it to pass down from generation to generation unscathed, if that would not be a good thing to happen in mother England and it would not be a good thing to happen in a democracy, Nebraska, being a part of the democracy, could suffer some of the same negatives if, in fact, those negatives could come into play. [LB367]

SENATOR WHITE: That's true, Senator, except that Nebraska's level of the estate tax has never been high enough to functionally interrupt the passage of great wealth. [LB367]

SENATOR CHAMBERS: Aha! So we're not really harming anybody who's going to receive this property to any great extent if the estate tax, as envisioned by Nebraska law, were to be reimposed. [LB367]

SENATOR WHITE: To the extent there are barriers to the accumulation of intergenerational wealth, they're found in the federal tax code, not in the state tax code. Nebraska, and the history of the estate tax, some people argue we just stumbled into it through a fluke of our drafting. But the history of the tax in Nebraska has been strictly that of a revenue raiser, not been a social policy. [LB367]

SENATOR CHAMBERS: Senator White, would you support my amendment? [LB367]

SENATOR WHITE: I support reducing sales tax. Unfortunately, I also support getting rid of the estate tax because the cost of revenue we raise from it is not worth the business we lose in terms of loss of employment and loss of people who would otherwise keep their citizenship here and pay income taxes. I, Senator, am a pragmatist on these things. I would like to see a more progressive tax code. As you know, I support reducing the sales tax by a half cent strongly. But I also recognize that, for prosperity sake, we need to make accommodations to people who are wealthy. And on this one, I'm willing

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to make that accommodation. [LB367]

SENATOR CHAMBERS: If this amendment were to be modified by removing line 1 and line 2 so that we would not reimpose the estate tax...let me stop there and ask you another question. Are you opposed to reimposing the sales tax on construction labor? [LB367]

SENATOR WHITE: If we had to trade that for a half cent across the board, I would accept a half cent across the board... [LB367]

SENATOR CHAMBERS: Thank you. [LB367]

SENATOR WHITE: ...as opposed to that. [LB367]

SENATOR CHAMBERS: And you've been very, very helpful, Senator White. And your explanation of these issues, I think, were worthy of the best of law schools, which would not include Creighton or Nebraska, by the way. (Laughter) Because if somebody had gone to one of those schools and attempted to learn in a semester what you taught to those of us who are laypeople in fewer than five minutes, they would be fortunate. Mr. President, members of the Legislature, being realistic, I don't believe there is any way I could craft an amendment which would reduce the sales tax by a half cent and persuade this body to adopt it. And this gives me an opportunity to talk about something else. We've got all these new senators who were praised to the highest. They were going to bring us nirvana. They were going to take us to nirvana and they were going to bring us the millennium. Oh, they have such high principles. Oh, they are so smart. [LB367]

SENATOR ERDMAN: One minute. [LB367]

SENATOR CHAMBERS: Oh, they are so this and they are so that. But people fail to point out that they also are sheep. Some of them don't realize that I was aware of what they were in another life and they have strayed from those teachings. And I'm inclined to believe that whatever the surrounding terrain is, is what they become. In the kingdom of lower creatures, those who do that are called chameleons. But my time is up for my opening. Thank you, Mr. President. [LB367]

SENATOR ERDMAN: Thank you, Senator Chambers. Members, you've heard the motion, the opening on the motion to return LB367E to Select File for a specific amendment, that amendment being FA95. Those senators wishing to speak are Senators Janssen and Chambers. Senator Janssen. [LB367]

SENATOR JANSSEN: Thank you, Senator Erdman, members of the Legislature. I'm afraid I will have to stand in opposition to FA95. You know, we've had a lot of time and

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some very serious discussion on the bill that's before us. And in my opinion, I think we have a pretty good tax reduction plan right now. That's apparent because of the hours we've spent on it and the last two rounds of debate. And we've compromised on quite a few things. And, Senator Chambers, I have often fought for a reduction in the sales tax rate. I remember several years ago, I don't remember the year, but that's when Senator Warner was here and Senator Kristensen stood right behind him and we were doing some tax reduction at that time. And I was fairly new and I thought, well, you know, we were doing some work on income tax. I said, what about some sales tax? So I offered an amendment. And much to my surprise--I think it was a half a cent at that time, wasn't nearly the money that it is now--but that was passed. And if we are fortunate enough in this state in the next few years to see our economy keep growing, which I hope it does, I do believe that that would be one area that I would like to see taken care of at that time. But right now, I have to stick with what we have and I do stand in opposition of FA95. Thank you. [LB367]

SENATOR ERDMAN: Thank you, Senator Janssen. Senator Chambers, you're recognized to speak on the motion to return to Select File. [LB367]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, you have the opportunity to see me admit to an error. The amendment that is actually on the gadget that I did not withdraw simply strikes the language relative to the construction labor. It would do away with what you did on construction labor. The amendment that follows that would be the one we're talking about here. So to simplify things, Mr. Clerk, I would like to withdraw that FA whatever it is that would simply deal with construction labor. [LB367]

SENATOR ERDMAN: Senator Chambers, you request to withdraw FA95? [LB367]

SENATOR CHAMBERS: Yes. [LB367]

SENATOR ERDMAN: That is accepted. The motion is withdrawn. [LB367]

SENATOR CHAMBERS: Thank you, because I was under the impression, as I was looking on here, that I had withdrawn it. So now we are on the amendment that I had been discussing. [LB367]

CLERK: And, Senator, this is going to be referred to as AM1225, which I think is consistent with the one you have in front of you, right? (Legislative Journal page 1637.) [LB367]

SENATOR CHAMBERS: Yes, that is it, AM1225. [LB367]

CLERK: Yes, sir. [LB367]

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SENATOR ERDMAN: Senator Chambers, as it is a new amendment, you'll have the opportunity to open again on the motion to return because it is a different amendment. So you're recognized to open on the motion to return for a specific amendment, AM1225. [LB367]

SENATOR CHAMBERS: Thank you, Mr. President. This is one of the reasons, I think, that the Clerk is entitled to a salary increase and it's within our power to grant it. But at any rate, this amendment now is the one before us and is consistent with what the gadget will show. I will not take Senator White through his explanation again. I will not repeat everything that I had said. And I will resume where I had left off about all the praise and puffing up given to these new senators. Some have merited it. But overall, uh-uh, pretty poor stuff; sheep, s-h-e-e-p. The first thing that everybody needs to understand, in fairness to these new people, is that a group is not going to come into a political system and change it. You saw when the "Demagogues" took over from the "Repelicans" at the federal level that some of the discussion of being too close to lobbyists and other things that the "Repelicans" were guilty of had now just been passed on over to the "Demagogues" and you can't really tell any difference. I wouldn't belong to either party. One thing old George Corley Wallace said that turns out to be true, ain't a dime's worth of difference between the two of them. He probably said, twixt the both of them. And there ain't, especially in Nebraska. And before these new people get the big head too much, they need to start looking at what this session has become as a result of their sheeplike activities. First of all, you're too quick to vote for cloture. You will unanimously vote for cloture because you think that's what you're supposed to do. And it makes me no difference whether you do it or not. But when you have everybody in lockstep on something like that, they're not thinking at all and have no appreciation of what you do when you vote cloture. You cut off your right to discuss or amend an issue. These people in the lobby will tell you, well, you're tired of it, it's been going on long enough, vote cloture. That's not a reason to vote cloture. But you think you're smarter than you are so keep doing it. You don't even know what it's for. You think because a certain amount of time has passed, everything ought to cut off, just like some people who are virtually illiterate when it comes to grammar think that if you got from eight words or more, that's a sentence. So when you get to eight words, you put a dot after the eighth word and you've got a sentence. You say, what about the subject and the predicate? They say, I don't even know what you're talking about. I say, well, how can you have a sentence without knowing what the subject is or the predicate is? They say, look, count them there words. So I count them. I say, there are eight words. They say, and what do you see at the end of it? I say, well, you call it a dot. They said, okay, that's a sentence. That's my colleagues who are new. We've talked about it a certain amount of time, there's nothing else to discuss, no need to discuss it. But if certain people are pushing a bill, you're not going to do it because you're under their sway and you don't think and you can't think because they're the ones who let you know what is all right to do and what is not all right to do. And that's how you behave. When I'm out of here, if

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term limits are not overturned, we're going to have a bunch of people who are nonthinkers, who are sheep, and cannot set a tone for those who are going to come after you. You'll be out of here six years later. You will not have done anything to maintain the integrity of the Legislature as a body where rigorous, full, and sometimes extensive debate of issues will occur. These others are going to know less than you do. That's why society is continuing to become dumber and dumber. Few people learn everything that somebody attempts to teach them. So the teachers of teachers will teach four fingers. Those who are learning will learn three. So they teach three fingers. And those who are being taught by them learn two. That person teaches two fingers and the one being taught learns one. That one, to the extent that he or she can, will teach one finger and the one being taught says, what's the use, that doesn't mean anything, I don't have to pay attention to that. And if somebody as dumb as this person can get a job, I can get a job, too, because that's all that's important. Get me a job and make me some money. And society is dumbed down in the way that this Legislature is being dumbed down now and will be dumbed down even more. You all don't read these bills. You don't inform yourself on the rules. You follow what the lobbyists tell you to do. You follow what your political party tells you to do. And the parties are going to take over and they're going to run this Legislature and it will be ruined and it can never recover. You know why it won't? The maximum amount of time anybody will be here is eight years. That's not enough time to develop anything in the way of a tradition, anything in the way of institutional memory. You don't even take the time to find out why things that are going on now are the way they are. Some lobbyists will tell you, well, that's not important, just get rid of that. And you come running in here with a bill getting rid of it. Then you're offended if somebody asks you questions or you tell us, well, somebody in my district told me to offer this bill. And you think that means everybody here ought to go along with it and be dumb because you are. You brought it in here and so everybody is supposed to go for it. Well, many of them will, but I won't because I don't care what you think. The Legislature as an institution is more important to me than any of you or all of you put together when it comes to whether or not we function in the way a legislature should. You all are supposed to be tough-minded; not thickheaded, tough-minded. You should be able to deal with these issues and focus on them and work them as long as we need to, to come up with worthwhile legislation. Why do I think I'll offer amendments to bills I don't even like? I'm looking at one of our young sisters over there, "Red" over there. "Scarlet" had a bill to do something about breakfasts for little children, reimbursement, and the bill went so far and she was satisfied because she got something. But I was not satisfied. And I didn't want them to even have in the statute language that would allow them to prorate that amount of money. It's so small anyway. I didn't want that suggestion to be there, that when a cut has to come, we're going to look directly at this proration that's allowed on this piddling amount in the way of reimbursement for school lunches. So I went beyond what she was going to do because I feel a responsibility and an obligation, whether my name is on a bill or not. There are some things that ought to be done and some things that ought not to be done. What are you going to do when I'm not here? You'll be comfortable. You know

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why? Because nobody is going to raise these issues. You'll be comfortable running around, bumping into this wall, bumping into that wall. You'll be just like that little round disc with the wheels on it that is a vacuum cleaner and doesn't need a human being to operate it. You just wind it up or turn it on or whatever you do and it runs under the table. If it hits a leg, it goes that way. Follows the path of least resistance and no resistance, and that's what you all will do. You'll run over here and bump into the wall, you run over there, bump into the wall, you run this way and that way with no apparent plan, no apparent plan. If you watch ants, they look like they're going every which way. But if you study ants, you see that there is method. There is so much cohesion and organization that some naturalists... [LB367]

SENATOR ERDMAN: One minute. [LB367]

SENATOR CHAMBERS: ...refer to them as an organism, not each ant, but functioning all together, so cooperatively, each carrying out its role and function, that that entire colony is referred to as an organism. And those without the eye to appreciate and understand what is before them when they look will just see confusion and chaos. But whereas there was nothing here before, now they have a mound of earth here, a mound of earth there, and there are tunnels. They actually create a system that air conditions and ventilates that underground city that they constructed. That's why Solomon said, go to the ant, thou sluggard; consider her ways and be wise. You all are running hither, thither, and yonder, but not like the ants. You don't have a plan. You wait for somebody to tell you something. [LB367]

SENATOR ERDMAN: Time. [LB367]

SENATOR CHAMBERS: Thank you, Mr. President. [LB367]

SENATOR ERDMAN: Thank you, Senator Chambers. Members, you've heard the opening on the motion to return LB367E to Select File for a specific amendment. That amendment is AM1225. (Visitors introduced.) Senator Chambers, you're recognized to speak on the motion to return to Select File. [LB367]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, a lot of things, these next few months that I have to be with you all, would be so much easier for me if I cared no more about the Legislature than most of you all. It wouldn't matter to me. Let it fall apart. There are three branches of government; the executive, the legislative, the judicial. The executive is getting his way. The Governor, he's getting his way and having his way with this Legislature, because you all do whatever he tells you to do. You're afraid to challenge him. I listen to people when they talk and I'd probably be better off if I didn't. But since I cannot persuade my colleagues to lower the sales tax by half percent, I'm going to exact a tax in the form of some time. And I'm going to take the time. Here's what you need to think about. You've only got ten more legislative days

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to be here. The first day after the last day, you're going to forget everything that happened. But while you're here, this is all of life to you and you're moved and motivated by fear. You want to impress people and gain the approval of people who don't even like you, who don't respect you. If they respected the Legislature, they wouldn't treat you like they do. These superintendents wouldn't be running over you. Do you think if there were 49 people in the Legislature like me that these superintendents and the Governor would be treating that Legislature with such disdain, such disrespect, hurling insults in the newspaper day after day after day? They don't do that to me, but they do it to all of you collectively and you buy it and you swallow it. And they're going to keep treating you like that because they can do it. You don't realize the power that you've got. You are the most powerful branch of the government. If there were only two of you, I'd say you're the more powerful, but there are three. You are the most powerful. You determine the budget of the state court system. You determine the budget of every executive branch office, officer, department, agency. And you let them run you. You're the boss and they run you. They tell you, I'm not going to do that and you get out of my face. And you tuck your little tail between your legs, your little ears droop, and you go paddling off someplace and hiding in a corner and sulk. Can you imagine what would happen in this state if one time, just one time, a flock of sheep behaved like a pride of lions? Just one time, that's all you would have to do. Even if you're shaking in your boots, put on that act one time and you'll like it. (Singing) Make believe you're brave and the trick will take you far. You may be as brave as you make believe you are. [LB367]

SENATOR ERDMAN: One minute. [LB367]

SENATOR CHAMBERS: Act the part and it will become real. But on the other hand, if you're a coward, if you perceive the thing that you fear as being real, then it is real to you in its consequences. And that's what the Governor knows, so he threatens you and scares you. And the superintendents treat you as though you're worthy of no respect and you accept that characterization and feel that you're worthy of no respect and they run all over you. Why are you trying to placate them, when you put in a lot of work on an education issue? Then they're going to say, we don't like it. Well, so what? Kids didn't like castor oil but it was best for them. Is this my second time speaking, Mr. President? [LB367]

SENATOR ERDMAN: It is, Senator Chambers. [LB367]

SENATOR CHAMBERS: Thank you. [LB367]

SENATOR ERDMAN: Thank you, Senator Chambers. Your light is next, you may continue. [LB367]

SENATOR CHAMBERS: Thank you, Mr. President, brothers, sisters, friends, enemies, and neutrals. This is my last time to speak on this bill. To give you a surge of pleasure,

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a point will be reached in a few months when I will tell you, this is the last time I will speak on the floor of this Legislature. You won't even have to restrain your mirth and your delight because I won't be able to get back at you. And you will like that day. There will be such a shout of joy in Nebraska, it will register on the Richter scale as an eight. And people in California will say, we didn't know they had earthquakes in Nebraska. And somebody will say, well, they don't. They say, well, what is all this activity on this seismograph? And they'll say, oh, well, they got rid of a guy that they didn't like. And they'll say, who, the reincarnation of Jack the Ripper? And the answer will come back, no, compared to him, Jack the Ripper was a saint who was so good he could go to heaven without dying. And they'll say, well, who was this terrible fellow? Then they would be asked, have you ever read any of the Harry Potter books? And the person would say, yeah, I read one or two and I've seen one or two movies. Do you remember a character in there whose name could not be uttered? They say--because when you whisper, other people whisper--they say, um-hum (whispers) yeah. And then the Nebraskan would say, (whispers) we dare not utter his name. Isn't that foolish? Nebraska changed their constitution to get rid of this gray-haired, short gentleman; changed the constitution. Whom can I harm? Whose home in this Chamber or anywhere in this state can I take? Whose job can I take? Whose children can I take? Whose life am I going to take? So then why is there the hatred? That's Nebraska, and they demonstrated it. I not only own this Legislature, I own this state. When I can get people to vote against their best interests, I own them. How can it be in the interest of people in a state to cripple the only branch that represents the people directly? But I caused them to do that. There was a fellow on the radio who learned this eastern secret--that's where all the secrets came from--he could cloud men's minds, it didn't say women, cloud men's minds so they could not see him. So these people are so blinded by their hatred and their ignorance that they will change their constitution to get rid of one man who, contrary to what I've suggested, is not going to live forever unless the world comes to an end during my lifetime. Then we all check out at the same time. Think about some of these things, but you won't. And when I'm not here, you don't even have to hear these things anymore. You can finish a 60-day session in 30 days and you'll pass ten times as many bills; a 90-day session in 45 days and you'll pass 20 times as many bills. The thickness... [LB367]

SENATOR ERDMAN: One minute. [LB367]

SENATOR CHAMBERS: ...of your law books will increase exponentially each session of the Legislature. And nobody will know what's in them, including you all who will introduce the bills and vote to pass them into law, because...just because. (Laugh) Mr. President, I want to withdraw that pending motion. [LB367]

SENATOR ERDMAN: The motion is withdrawn. Mr. Clerk, next item on the desk? [LB367]

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CLERK: Mr. President, the next motion I have, Senator Friend, FA96. [LB367]

SENATOR ERDMAN: Senator Friend, you're recognized to open on the motion to return LB367E to Select File. [LB367]

SENATOR FRIEND: I'd like to withdraw that amendment, Mr. President. [LB367]

SENATOR ERDMAN: FA96 is withdrawn. Mr. Clerk, next motion? [LB367]

CLERK: Mr. President, Senator Janssen, AM1238. Senator, you wanted to withdraw that, is that right? [LB367]

SENATOR ERDMAN: AM1238 is withdrawn. [LB367]

CLERK: Mr. President, I have nothing further on the bill. [LB367]

SENATOR ERDMAN: Thank you, Mr. Clerk. Members, we are on Final Reading. If you would please take your seats. Mr. Clerk, the first vote will be to dispense with the at-large reading. All those in favor vote aye; all those...Senator Janssen, for what purpose do you rise? [LB367]

SENATOR JANSSEN: (Microphone malfunction) I'd like to ask for a call of the house, please. [LB367]

SENATOR ERDMAN: Members, we are on Final Reading. Senator Janssen has requested that we check in. Members, please check in. Senator Raikes, Senator Burling, Senator Wallman, Senator Ashford, Senator Preister, please report to the Chamber and record your presence. Senator Burling, please report to the Legislative Chamber. All members are present or accounted for. Members, the first vote is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Members, you may vote now. Mr. Clerk, please record. [LB367]

CLERK: 40 ayes, 3 nays, Mr. President, to dispense with the at-large reading. [LB367]

SENATOR ERDMAN: The at-large reading is dispensed with. Mr. Clerk, please read the title. [LB367]

CLERK: Mr. President. (Read title of LB367.) [LB367]

SENATOR ERDMAN: All provisions of law relative to procedure having been complied with, the question is, shall LB367 pass with the emergency clause attached? Senator Chambers, for what purpose do you rise? [LB367]

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SENATOR CHAMBERS: I would ask for roll call vote. [LB367]

SENATOR ERDMAN: Roll call vote in regular order has been requested. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please call the roll. [LB367]

CLERK: (Roll call vote taken, Legislative Journal pages 1638-1639.) 46 ayes, 2 nays, 1 excused and not voting, Mr. President. [LB367]

SENATOR ERDMAN: Members, we will wait the required time required for the, since the motion to dispense with the at-large reading was adopted, we will wait the two minutes remaining until the vote is closed, so we will wait that time line. Thank you. Record please, Mr. Clerk. [LB367]

CLERK: (Record vote read, Legislative Journal pages 1638-1639.) 46 ayes, 2 nays, 1 excused and not voting, Mr. President. [LB367]

SENATOR ERDMAN: LB367 passes with the emergency clause attached. We will now proceed to LB367A. [LB367 LB367A]

CLERK: Mr. President, with respect to LB367A, Senator Chambers has a motion with respect to the bill. Senator Chambers would move to return the bill to Select File for a specific amendment, specifically FA99. (Legislative Journal page 1639.) [LB367A]

SENATOR ERDMAN: Senator Chambers, you're recognized to open on your motion to return LB367A to Select File for a specific amendment. [LB367A]

SENATOR CHAMBERS: Mr. President, members of the Legislature, I'm back. (Laughter) Now let me tell you all what just happened. You see something a great way off and you plot and you scheme and you say, how can I make a point for my colleagues which they may not think to make? I and Senator Schimek, and sometimes one or two others on occasion, will always vote against suspending the rules so as not to read a bill. When that motion is successful, the board stays open for a specified number of minutes. By asking for a roll call vote, the vote was taken immediately. And although the vote had been taken, the board had to be kept open for that amount of time. So see? I've taught you another lesson today, didn't I? Had any of you all thought of that? You don't have to because when you've got old people running around here, they're supposed to show you something, aren't they? When I had children who were small, my job was to try to put things in front of them so they'd know more after that than they knew before. It didn't mean anything that I knew more than my children. I ought to know. Human beings require a large number of years, Senator Stuthman, to mature and reach adulthood because they learn slowly. And I suppose there are many things that they need to learn. But they need a teacher. And as some people will say, their children's first teachers were the parents. They have an obligation to teach their children

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the best they know how so that those children can make it through the world. Your world is this Legislative Chamber. There are rules that govern what you do. You can read a rule and see the words but not get their full impact. And when things are done by rote routinely, you don't think beyond what is done to consider what may be done, what is possible to be done under these rules, and then what must be done under these rules. Our Rule Book is not a quarter of an inch thick, maybe a quarter of an inch thick, but there is a lot in those rules. And when you're outnumbered, if you know the rules, they can come to your aid. And you will not always prevail. If you're situated as I am, you hardly ever will prevail. But you don't quit. And as you are taking and absorbing your periodic but regular thrashings, you make them work to do it. They know, because they've got the numbers and they're sheep and they're going to clump together because they're angry, that ultimately what they want will happen. But they dread having to run that gauntlet and I will make you all run the gauntlet. And I won't get tired before you do. My role is entirely different here from yours. Mine is to survive and mine is to survive in a hostile environment. And since I know that is what I'm faced with, I'm prepared to do what is necessary to survive. You're here to please people. You're here to win the election next time. You're here to get along with your party and carry out the dictates of those you fear or those you like or those who feed you when you stay here late. But you're hardheaded. "Wonder Woman," as I call her, handed out one of the best memos that I had seen in a long time, which explained why the term or the expression "I yield time to the Chair" is utilized not in a body such as this. We don't yield time back to the Chair. There is not time accumulating in the Chair into which people tap into. When you get through talking, you just let the Chair know you're through, like I do. Thank you, Mr. President. [LB367A]

SENATOR ERDMAN: Thank you, Senator Chambers. [LB367A]

SENATOR CHAMBERS: But I'm not through yet. (Laughter) And then you all sit down, but I stand up. The quickness of the Chair in that instance is some of the lubricant that makes this system flow smoothly. You need that. A sense of humor is something that they pointed out that the Pope had. I don't know if Benedict XVI, Joseph Ratzinger, Cardinal, has a sense of humor. I haven't satisfied myself yet as to whether he's got sense, but I'm going to give him time. Abraham Lincoln had a sense of humor. I was telling somebody something he wrote that I really treasure. And if I've told you this before, it will bear repeating and this time you might remember it. "Parson," in Abraham Lincoln's day they had these nutty people who could tell you when the end of the world was coming, how long human beings had been here, when the millennium was coming, who the Antichrist is, and all such things, all this crazy stuff. So one of them wrote a book like that and gave it to Abraham Lincoln. One of us would take the book and wait until the person is gone and then throw it in the trash. But Abraham Lincoln didn't want to offend anybody and he was very gracious. He once said he wished that he had maybe diphtheria or scarlet fever or something, then he'd have something to give to everybody because everybody who approached him asked him for something. Hello,

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Mr. President, give me a nickel. Hey, Honest Abe, give me a job. So Abraham Lincoln got this book and his Cabinet members wondered how he was going to get out of this. So he wrote in the book, for all of those who like this kind of book, this is certainly the kind of book that they will like, Abraham Lincoln. And that guy went home walking on a cloud. One time a man came to him and wanted a job as the doorkeeper and Abraham Lincoln did not want to embarrass the man. He said, have you any experience in door keeping? And the fellow said, well, no. Do you know anybody who has had experience in door keeping who has shared that experience with you? Well, no, Mr. Lincoln. Have you read any books on door keeping? No, again, Mr. Lincoln. Well, my good man, said Lincoln, can't you see that you're really not qualified for the job? And the man went away, not offended but agreeing. He was not qualified after all to be the doorkeeper. Now there are some times we will have to engage in lengthy debate, disquisition, some people might call it ranting and raving to make a point. But there are other times when a pithy statement will go much further than an argument. Abraham Lincoln was on this train campaigning and white people hated him. Even though Lincoln was a racist and a white supremacist, he didn't think black people should vote, should hold office. He said, I'm like any other person. If one race is to be above the other one, then I want my race to be on top. But they hated him anyway because he wasn't quite the dyed-in-the-wool-hat racist that they were. So this white woman came up to him with what was known as a pickaninny doll. That's a black representation of a black person which is very demeaning and insulting. [LB367A]

SENATOR ERDMAN: One minute. [LB367A]

SENATOR CHAMBERS: And she walked up to Abraham Lincoln with this doll. And before she could say anything, he said, oh, Madam, is that your baby? And the woman turned as red as a beet and slunk away. He could have argued, but he didn't. There are times when I can make a point to you all with a statement. There are other times I have to bludgeon you. There are others times I'll use a meat axe, sometimes a meat cleaver, sometimes a butcher knife, sometimes a paring knife, sometimes a scalpel, sometimes a razor blade. It depends on what the circumstances call for. You all don't have to worry about that. You can just be one way because you're always in the majority. You don't have to think, you don't have to plan, you don't have to do anything. Just be a part of the majority and life is easy for you. But when you're in a situation where you have to think on your feet... [LB367A]

SENATOR ERDMAN: Time. [LB367A]

SENATOR CHAMBERS: Thank you, Mr. President. [LB367A]

SENATOR ERDMAN: Thank you, Senator Chambers. Members, you've heard the opening on the motion to return LB367A to Select File for a specific amendment, that amendment being FA99. Senator Chambers, your light is first. You're recognized to

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speak. [LB367A]

SENATOR CHAMBERS: Thank you, Mr. President. By saying that my light is first, that suggests that somebody else is up there, but not necessarily because somebody might be in the wings waiting. I'm exacting my time tax from the body today. As we get deeper into this session, you all are going to begin to understand what I warned you about earlier. All this camaraderie is going to go away because the special interest groups are going to become more insistent that they get what they want and they're going to pressure you. That being nice to you is over. There's not time for that. Now they give you orders and you better jump, and you will. The Governor will threaten you and you will respond. And the Legislature is not going to get the respect that it should because you don't demand it. How can these people predict with such certitude that the Legislature is going to roll over? Reporters speculate about what kind of vetoes the Governor is going to impose. How is it that when something is sent over to the Governor, it has many more votes than necessary to override a veto? But when he vetoes it, he calls some of you all over there and tells you, you better uphold my veto, then you come scampering back here. And if we compare the vote that you gave to send the bill over there with the vote you gave on whether or not you should override, you didn't stick by what you claimed to have believed, not only on Final Reading but maybe all the way across the board, and you may even have spoken for that. So a red pen in the hand of the Governor overcomes all the arguments that you made yourself, all the things you believed in when you voted to send the bill over there. He didn't even propound an argument. He just said, I don't like this, and throws it back in your face. And you buy it. If there were 49 people like me in the Legislature and we sent something over there, he wouldn't dare veto it because we would love to have him veto it. And in overriding his veto, we would excoriate him to such an extent that he'd say, it ain't worth it, the Legislature did it, let them live with it. You all aren't going to stand up to him. So he treats you like children and he dismisses you like children. Go sit in the corner. I forbid any of you to wear those WWED shirts--what would Ernie do. I forbid you to wear one of those shirts. (Laughter) You're not worthy. But if you're nice and come to me, you might can persuade me to grant you a dispensation. How many of you are going to have a shirt like that put out for you? (Laughter) He spoke to soon, his hand went right up. But then when I finished the statement, it came down. You got to wait until the statement is over. And Senator Stuthman has his Ernie and Arnie shirt, and he did that long before this WWED. I've told you all this before, too. It's in line with you have to know when to hold them and know when to fold them. A guy was accused of having bitten a man's ear off. So the guy's defense attorney was grilling the only supposed eye witness. And the lawyer said, what's your name? And he told him. [LB367A]

SENATOR ERDMAN: One minute. [LB367A]

SENATOR CHAMBERS: What do you do for a living? He told him. You said that you're

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in possession of knowledge that would justify you in speaking in this trial. The guy said, yes. He said, did you see my client bite the man's ear off? The witness said, no. The lawyer should have stopped. He said, then how can you testify that my client bit the man's ear off? He said, because I saw him spit it out. (Laughter) (Singing) You got to know when to hold them, know when to fold them. Is that right? And every gambler knows the secret to surviving, knowing what to throw away and knowing what to keep. You never count your money while you're sitting at the table. There's time enough for counting when the dealing is done. This session is not done yet. Some of you all have had the opportunity to laugh and mock and scoff and think that you won. But the game is not over. [LB367A]

SENATOR ERDMAN: Time. [LB367A]

SENATOR CHAMBERS: You're still sitting at the table. [LB367A]

SENATOR ERDMAN: Senator Chambers, your light is on. It is the only light and you may continue. [LB367A]

SENATOR CHAMBERS: Thank you, Mr. President. I'm giving you all what you won't get if you go take a course because I'm not looking for money from you and I wouldn't accept any money from you. And the only reason I'm doing this--not the only reason, but the main reason is that I do see potential in this new crop of would-be politicians. You engaged in a political process when you ran for the office, but you're not a politician yet. Being a politician involves mastering an art. Being a politician, as I view it, means more than just a member of a political party or running for office. You mastered the art of politics. You are a practitioner of the art of politics, and it is an art. If you learn that art and learn it well, you are better equipped to make it in this world than any other person, I don't care what they've studied. I studied law and law can prepare you to do a lot of things and make it in a lot of places. But you don't have to do like a politician where you're dealing on a daily basis with people who, half the time, don't know what they're talking about, but you still have to work with them; who don't understand anything, but you still have to convince and persuade them; who get tired; who don't like you; who don't like themselves. But you cannot let that get the better of you. You cannot lose heart and be whipped before you start. You have to keep in mind those of you who are not like me. I don't get tired. But those of you who get tired, look around and you'll see that the ones you are contesting against are as tired as you, if not more so. And if you've ever been in a long foot race and you get toward the end and you get that stitch in your side, the person has got that stitch in his side, too, because you're running basically side by side. If you can, in your mind, make your body come to your aid and put on what they call a kick and run a little faster, you will usually take the heart out of whoever you're running against. And that ends the race right there. That person will finish the race but will not overtake you and will not even attempt to because he's convinced that you have a lot more in your tank than what he's got and he knows he

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cannot do what you're doing. Around here, you can tell when people are losing it, when they can't focus anymore, and that's when you do what you want to do, whatever it happens to be. And as time goes on, you're going to figure these things out and you'll see when these situations arise. And some of you are going to become, as much as you can in eight years, masterful at politicking, but you won't be a master politician. You won't come here like I did. I hit the ground running when I came here and I took on who was supposed to be the most feared member of the Legislature. His name was Terry Carpenter and I clashed with him the very first day that I was here. And he and I became very, very fond of each other, some people would even call it friends. I was one of those he left the request to serve as a pallbearer. Terry Carpenter had a sense of humor. In death, Terry Carpenter did what all the Christian preachers, all the Jewish rabbis, all of the nonbelievers couldn't do. He had a man named Dick Fellman, a Jew; a man named Chuck Davey, a Presbyterian or... [LB367A]

SENATOR ERDMAN: One minute. [LB367A]

SENATOR CHAMBERS: ...a Methodist--I meant, a Protestant--Bernice Labeledz, a Catholic; and Ernie Chambers, a black man who believed none of the white people's religion. And he had all four of us in that small space around a coffin cooperating to achieve a common goal. Nobody could bring those four elements together like that and Terry did it as a dead man. Now that lets you know the kind of fellow that he was and why I regretted to see him leave here. You all will never meet Terry Carpenter because wherever Terry Carpenter went, you all won't go there. You all are not made of what Terry Carpenter was made. If he's going up there, you all are going down. If he went down, you all...well, I don't know where you'll go. But I'm not going to take this motion to a vote either. I am exacting my tax time, just to remind you all that if I promise you something... [LB367A]

SENATOR ERDMAN: Time. [LB367A]

SENATOR CHAMBERS: ...I will deliver on it. Thank you, Mr. President. [LB367A]

SENATOR ERDMAN: Thank you, Senator Chambers. Senator Chambers, there are no lights on. You're recognized to close on the motion to return LB367A to Select File. [LB367A]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I do not expect to carry this to a vote, as I stated. Look how much time I've taken. Examine yourself, how tired are you? How much would you like being someplace else? I talked to you all about a song by Billy Joel, the "Piano Man": John at the bar is a friend of mine, he'll serve up drinks for free; he's quick with a joke, he'll light up your smoke, but there's someplace he'd rather be. I change that a little bit to say there's someplace else he'd rather be. And that's you all right now, you'd rather be someplace else but you can't be.

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You're seated because you have to be. You're a captive audience. I see some of you all shifting your position. You know why I recognize that? Because when I was a small lad in church...Senator Carlson, "Parson," I went to church more in my first 12 years than you will go in your whole life. (Laughter) I wore wool trousers of the kind that were prickly and sticky and made you itch. And I suffered on hot summer Sunday afternoons for the Lord, a kid who hadn't offended anybody enough to be subjected to that. And I sweated because there was no air conditioning, no fan. They would raise the windows and put these little window screens in that you could slide and then put the window back down to the top of that screen. And you got these cardboard fans with the wooden handle from the undertaker. And that's what you'd do, all you'd do is disturb the air a little bit. And if a fly came buzzing and you got enough energy, you just kind of take a swipe at the fly; not to hit him but just to let him know that something is living here and if you get too close and stay too long, it will get you, even as lethargic as it is. I suffered so much that if there were a heaven, I could go. But there is no heaven, "Parson," there is no heaven. But you all think there is. But I don't think you believe that because if you believed it, you would conduct yourself in such a way that you'd go there. If you thought there were a hell to which you would go for disobeying your Lord, why would you disobey him like you do? If you knew there was somebody outside that Chamber with a pistol and he'd blow away the first person who went out there, you'd either tell the state troopers to do something or you certainly wouldn't be the first one to go out there. Yet you worship somebody who you say and you believe, some of you, will put you in fire and burn you there forever. You fear this person with a gun more than you fear that one? How much easier would it be to score some points with that one? What could be easier than ministering to the needs of a child, to an elderly person, to a sick person, to somebody who is homeless, to somebody who is poor? That's all you have to do and you won't do it. Then you're going to tell me that I should believe in what you believe in? And without believing in what you claim to believe in, those are automatic things for me to do. I would have to become a worse person to join your religion. So why would I want something that's going to make me worse than what I am already, where I have to lie to myself and lie to others, pretend to be something that I'm not? It would be easier to just be what I am because the one who is in charge... [LB367A]

SENATOR ERDMAN: One minute. [LB367A]

SENATOR CHAMBERS: ...of everything knows exactly what I am no matter what kind of front I can put on for anybody out here. That's the story that is told. I went to Sunday school and they taught us all such things as that. But as a child, I was able to make judgments. And if those people teaching me that believe what they said, they wouldn't have been so mean to the little children, myself included, as they were in Sunday school where they're teaching us the love of Christ. Bah! The love of God. Humbug! And people don't like that. Well, what can they do about it? Show me, by your life, what you are. Be the city set on a hill. But you're not going to be that because it's easier to do like you do, pray every morning and then forget it. Mr. President, I will withdraw that motion.

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[LB367A]

SENATOR ERDMAN: The motion is withdrawn. Mr. Clerk, next motion? [LB367A]

CLERK: Mr. President, Senator Janssen had an amendment, AM1207. I have a note, Senator, you'd like to withdraw. I have nothing further, Mr. President. [LB367A]

SENATOR ERDMAN: AM1207 is withdrawn. Members, we are on Final Reading. Please return to your seats. Mr. Clerk, the bill is LB367A. Please read the bill. [LB367A]

CLERK: (Read LB367A on Final Reading.) [LB367A]

SENATOR ERDMAN: All provisions of law relative to procedure having been complied with, the question is, shall LB367A pass? All those in favor vote aye; all those opposed vote nay. [LB367A]

SPEAKER FLOOD PRESIDING [LB367A]

SPEAKER FLOOD: Mr. Clerk, please record. [LB367A]

CLERK: (Record vote read, Legislative Journal pages 1639-1640.) 44 ayes, 1 nay, 2 present and not voting, 2 excused and not voting, Mr. President. [LB367A]

SPEAKER FLOOD PRESIDING [LB367A]

SPEAKER FLOOD: LB367A passes. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LB367 and LB367A. Mr. Clerk. [LB367 LB367A]

CLERK: Mr. President, one item if I may. Your Committee on Enrollment and Review reports they examined and engrossed LB343 and find the same correctly engrossed. (Legislative Journal page 1640.) [LB343]

PRESIDENT SHEEHY PRESIDING []

PRESIDENT SHEEHY: Mr. Clerk, first item under General File, LB554. [LB554]

CLERK: Mr. President, LB554 was a bill introduced by Senator Flood. (Read title.) The bill was introduced on January 17, at that time referred to the Judiciary Committee. The bill was advanced to General File. There are Judiciary Committee amendments pending, Mr. President. (AM1140, Legislative Journal page 1349.) [LB554]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Flood, you are recognized to

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open on LB554. [LB554]

SPEAKER FLOOD: Thank you, Mr. President and members. This is my priority bill for the year, although Senator Schimek is the prioritizing sponsor. This was going to be my priority bill before I used mine to assist somebody else. This bill is very important. This bill is the most substantive rewrite of the Parenting Act in the state of Nebraska in 20 years, following the work that Senator Ashford did during his legislative career. I guess I would like to start it out with a story. This is probably the only bill I've had that I can talk about without having to look at notes or anything like that because it's so very personal on many levels. I'm not the product of a family that has had a divorce. I have, as a practicing lawyer, handled my fair share of divorces. And I went to court one day with a client that wanted his son to live with him, and it was one of those situations where I'm sure both parents had done certain things that you could use against the other, but we tried to force the parents, the other attorney and I, to talk about this and to mediate. We tried to use alternative dispute resolution options. We had settlement conferences. But at some point it began to be more about winning than about the children. And what surprised me as a young lawyer was I had no right to step in and say, don't you see what you're doing to your son; don't you see what you're putting him through; do you care that you're calling him into a courtroom and having his deposition taken? But that's not my job. As a practicing lawyer, your job is to zealously represent the interests of your client. And right now in the court system we have and the laws that we have, it's adversarial. It's about winning and losing, and children becomes the pawns. So I drove to court that day, and we had a hearing at a rural county courthouse, and there he was, a 12-year-old boy who had gotten out of school so that he could come down and testify so that his dad's lawyer could put him on the stand and he could sit there in front of Mom and in front of Dad and point at the one he wanted to live with. He begged his father and his mother not to testify. Can you blame him? Can you blame any kid for not wanting to go sit in a courtroom and have his mother and his father across the courtroom and have to pick one over the other as to where he's going to live? That's the adult's job; that's the parents' job, not the 12-year-old's job. That's not fair and it's not right and it makes no sense to me. But as a practicing lawyer, when you represent a client, you have to do what is within your means as a lawyer to accomplish the end result, and that is delivering under the law for your client, ethically and responsibly. This bill makes significant changes to our laws. You may not like everything and Fathers' Rights out there will tell you, this is okay but it doesn't go far enough. What do they want? Fathers' Rights of Nebraska wants a presumption that joint custody is automatically preferred in every situation unless you can show evidence that says it's not appropriate. That's the judge's job. And when I first got to the Legislature, I thought that's the ticket: preferred joint custody. That will solve all of our problems. That way everybody is equal as you walk into the courtroom. But it doesn't work that way. On paper it looks good, in a speech it looks good, but when you really get down to the middle of the facts, the judge has to look at the situation and determine how it should work. Dad works nights, Mom works days. Are they going to...is Junior going to go

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between the two homes every other day? Are we going to have one bedroom at Mom's house for Monday, Wednesday, and Friday, and Dad's house Tuesday and Thursday? There has to be some level of stability. What this bill does, and it's not mandatory mediation, it says that when those two people want to get a divorce and there's kids involved, or they have a modification and there's kids involved, they have to go to a parenting class to learn how to be parents after the separation and they have to sit down with a mediator. They don't have to stay, but they have to sit down with a mediator that will say, this is how it works, this is how mediation works: You tell me what your interests are; you tell me what your interests are. They don't have to stay; they can get up and walk away, but they have to sit down once, and if there is domestic violence involved, they sit down separately. The reason I like this, and I've seen this happen, Mom sits at one end of the table, Dad sits at the other. They've been fighting like cats and dogs for two years. They finally get up to go see a lawyer, and the lawyer for the mom and the lawyer for the dad are there, and Dad will say, at the beginning of the divorce or with a mediator present, you know what, I can't stand you but you're a good mother, and then Mom will look at him and say, you've been awful to live with but you've been good to our son. That goes a long way in a complicated, adversarial process toward making people still be parents even though they can't get along. And mediators draw that kind of discussion out of people. People come to me the first time and they say, him and I, we get along, we just need a divorce. He goes to his lawyer, same thing, he sees how much he's going to pay in child support, he says, wait a second, I want full custody; I'm not going to write her a check and she's going to live with her boyfriend, and now he's going to get all this money from me. I want Junior to live with me. So then he calls me back and says, all right, we're going to have to have a fight. And so then what do I do? I start digging up dirt on him to figure out what I can use to make sure I can show the court that he's not a fit parent, and the snowball rolls down the hill, and by the time you get to the end of the hill, guess who the loser is? It's the kid every single time. And mediation changes that if you can get people to sit down at least once, sit down. And if they can't afford a mediation, it's paid for them through the mediation centers. The bill here raises the cost to file for divorce or modification by \$50 bucks so that people that can't afford a mediator can get one. It's a lot better for those kids. And if you don't want to pay now in a divorce, you pay later, because when that youngster goes through this process and sits on that stand and plays one parent over the other and has to pick Dad over Mom or Mom over Dad, five years later they're back with a modification. Junior hasn't had much interaction with either because they're so busy fighting. And what do you think Mom has to say about Dad on Christmas Eve when they're fighting like this? It's not good stuff. It goes both ways. This bill is the work of 18 months of hard work. Voices for Children was involved, domestic violence groups were involved, Fathers' Rights groups were at the table. I don't want to give you the impression they support it because they don't. They want that presumption. Other groups were involved. There's a lot in this. What's so bad about making two parents be parents first and sit down with somebody? Now, if they don't want to participate, they can walk out. They can't be forced to mediate. I know that's important but there's got to

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be a system set up that encourages that, that says, you know what, you're going to be parents first, and you know, you work at Nucor and you work at the hospital, and let's get your schedule out, Dad, and let's get your schedule out, Mom. We don't have to do this every other weekend, every other holiday stuff. Dad, it looks like on Wednesdays, Thursdays, Fridays, and Saturdays, you're pretty good. What if Junior stayed with you Wednesday night after school until Saturday morning at 10:00, and then Mom could take you to soccer, and then Mom has got you from Saturday morning at 10:00 to Wednesday morning at school? That's a creative solution that you get parents to buy into. When courts say, this is how it's going to work, then you've got frustration and unhappiness and discontent and problems. When people work problems out on their own, they've got buy-in and ownership of the solution. This bill goes a long way. I started with what California had and looking at the Parenting Act, and I backed off; it was way too much. I backed off for good reason, but I backed into something I can be very proud of and I think we can all be very proud of as a state. Sure, there's going to be lawyers that say, I don't like this because it sends more people to a mediator. Well, I'd rather spend...see a parent spend \$500 bucks on a mediator if they don't qualify for the free one, because it starts them out at least talking about the issues. And all of it is protected from the courtroom. It's similar to a settlement discussion, so it can't be used later against somebody in court... [LB554]

PRESIDENT SHEEHY: One minute. [LB554]

SPEAKER FLOOD: ...but it's a lot better than paying your lawyer \$500... One minute? [LB554]

PRESIDENT SHEEHY: One minute. [LB554]

SPEAKER FLOOD: It's a lot better than paying your lawyer \$150 bucks an hour to dig up dirt on your spouse, the person you're going to raise a child with for the next up to 18 years. This is a very personal bill to me. I think it's a good start in what we want to accomplish in Nebraska. Senator Ashford is going to walk through the amendment which becomes the bill. Don't waste your time on the green copy. Look only at the amendment because everything in the committee amendment becomes the bill. I have an amendment later that increases that fee so we don't have to use General Funds. But I'm excited that we're going to have this discussion and I welcome your questions. Thank you, Mr. President. [LB554]

PRESIDENT SHEEHY: Thank you, Senator Flood. You've heard the opening to LB554. We will now move to the committee amendment, AM1140. Senator Ashford, you are recognized to open on the Judiciary Committee amendment. [LB554]

SENATOR ASHFORD: Thank you, Mr. President, and I will go through the various sections and I'm going to do it in a little detail just so we get the context, because the

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committee amendments is the bill now, and it is a complex bill and it has a number of provisions in here which are new and change fairly significantly the Parenting Act as it now exists. First of all, I'm going to go just section by section. First of all, AM1140 retains the best interests of the child standard as that by which child custody and parenting time issues will be resolved. This is the overarching standard that currently guides our family law courts in determining issues related to children, and this standard will remain. There is an elaboration in Section 4(1) which elaborates on what the best interests of the child actually means. Section 9 of AM1140 requires parents involved in custody and/or parenting time disputes to attend a parenting education course, and Speaker Flood alluded to this. Under current law, courts may require such courses. In many cases, these courses will be key in encouraging parents to put their kids first as they work through the process of coming up with a parenting plan. Section 9 of AM1140 also provides that the court may order parents to attend what is called a second-level parenting education course. These second-level courses will be designed for parents in high conflict cases. Section 10(5) requires parents to develop a separate financial plan early in the process, and this is a change from current law. The plan would set out who will pay certain expenses, such as those related to medical care, day care, and extracurricular activities. The financial plan will also include an initial calculation of child support obligations. Later sections of the bill will require Parenting Act mediators to be trained on guideline calculations. Currently, for the most part, mediators do not get involved in those...that type of mediation involving financial considerations. AM1140, in Section 10 of AM1140 in particular, requires parenting plans to include considerable detail as to what will happen to the life of children after a divorce. And Speaker Flood again alluded in graphic terms to what can occur in a dispute such as this. These details include a determination of physical and legal custody, a specific division of parenting time with respect to holidays and other important family events, and a method of resolving disputes that may come up, with a plan, in the future. Again, in those cases where abuse is not an issue, it is important that parents be thinking about these things up front and make their decisions in the best interest of their children. There is also various provisions on the development of the parenting plan, how it will be developed, the priorities of putting children first, as Speaker Flood suggested in his opening.

Mandatory mediation: There has been a number...a lot of discussions and there certainly was a lot of discussion when the Parenting Act was originally passed by this Legislature several years ago as to what is mandatory mediation. And in this bill it requires two things. First of all, the initial individual screening meeting where the mediator will screen for things like abuse, unresolved parental conflict, and other forms of intimidation or coercion or a party's liability to negotiate freely and make informed decisions is assessed. And secondly, parents would have to attend at least one session with a mediator. There is no requirement in mediation, as Speaker Flood indicated, that the parties agree, and the essence of mediation is that the parties make their own agreement. But in order to do so, it is required in this bill, and I think clearly appropriate policy, that they meet at least once. In addition, AM1140 clarifies what specifically is meant by mandatory mediation. And again I think I would just refer to the bill, but it

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clears up this confusion. The initial session with the mediator is required under the bill. LB554, as amended in AM1140, addresses a number of issues that are not tied directly to the Parenting Act or mediation. In Section 34 of AM1140, the amendment proposes to amend the section of law relating to the release or subordination of a support lien. This provision was added in response to a constituent issue. The constituent testified and explained how he tried to sell his house. He learned that there was a lien to secure his child support obligation. Although he was current on his child support, he still had to either get a release from his wife, who apparently would not sign one, or go back to court. Section 34 amends current law so that an individual who is currently late on his or her child support obligation...oh, I'm sorry, that is current on his or her child support obligation can release or subordinate that child support lien by obtaining and filing a current certified copy of a support order history. Such copies would be valid for a period of 30 days. And this is an issue that needs to be clarified and it is in this section. Section 40 of AM1140 was also proposed by a constituent, I believe, of Speaker Flood. It relates to a father's financial responsibilities with respect to his child's medical expenses and the expenses of the child's mother in connection with her pregnancy. And there have been...there were concerns raised with this section, and I believe there will be an amendment that addresses Section 40 of AM1140 on Select File, so I will leave it at that. Just in conclusion, and I know that was a rather tedious explanation, but I think Speaker Flood was very accurate in the appropriateness of mediation. It is necessary; it is appropriate. In Douglas County, where mediation in domestic relations cases is institutionalized in the system, there have been statistics that would indicate that the success of mediation is overwhelming and continues to grow. There was a concern, I believe, raised...well, certainly in the committee, raised by Senator Chambers regarding the filing of an additional fee or an additional filing fee to pay for mediation. And just for the record, the judges in the district courts across the state have the authority to make a finding that the individuals who are engaged in the divorce, in the domestic relations dispute, would be able to make a filing without paying a court filing fee, and nothing in this bill changes that. There would be an increased fee of \$50 for a normal domestic relations case to help defray the costs of the mediation process. Mr. President, that would conclude my presentation of the committee amendments. I appreciate Speaker Flood's work and the work of the committee and Senator Flood's staff on this particular amendment, AM1140, and I would urge its advancement. Thank you. [LB554]

PRESIDENT SHEEHY: Thank you, Senator Ashford. You've heard the Judiciary Committee amendment to LB554. Mr. Clerk, you have additional amendments. [LB554]

ASSISTANT CLERK: Mr. President, I do have amendments to the committee amendments. First, offered by Senator Wightman, AM1359. (Legislative Journal pages 1640-1641.) [LB554]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Wightman, you are recognized to open on the amendment to the committee amendment, AM1359. [LB554]

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SENATOR WIGHTMAN: Thank you, Mr. President, colleagues. AM1359 to LB554 is an amendment that is based upon LB682, which was separately introduced before the Judiciary Committee. It was advanced to General File and still sits on General File by the Judiciary Committee. It seemed like a proper bill, LB554, to attach an amendment to that would incorporate the provisions of LB682. The purpose of that bill, it would amend...it would add Section 40. It would amend Section 43-512.15 of the Nebraska Revised Statutes, and it would do that by inserting in subparagraph (1)(b) of that section this language, it already says "The variation from the guidelines," and this is dealing with the guidelines used by...adopted by the Supreme Court, and used by district courts who handle dissolution and divorce actions in determining what the child support should be. And right now it says that the guidelines provide a variation if there's a voluntary reduction...unless there is a voluntary reduction in net monthly income. And what we would be requesting here and the purpose of the amendment would provide that if a person was incarcerated for a period of six months or more in a county or a city jail or a federal or a state correctional facility, that would now be considered under this amendment an involuntary reduction of income and would entitle the defendant in the divorce action, the spouse, a reduction in child support. Now, it doesn't mean that he would be out of child support altogether. Anything that was accrued at that time would continue to be considered as accrued child support. So if he were \$2,000 behind in his child support, he would still be \$2,000 behind. If he were to have other income in the form of investment income, maybe farm rental income, whatever it might be, the judge would still take that into account in determining what his continuing child support would be. But it would provide that if he went to jail or to the penitentiary for ten years...or for six months or more...that that would be considered a reduction and that would not continue to accrue during the time of the incarceration. Now that, as I say, was advanced out of the Judiciary Committee, I think by a 5 to 1 vote with perhaps, I think, 1 not voting and 1 not present, and 1 voting opposed. And I think that sufficiently describes the amendment. LB682, when it was filed, was amended, and that amendment that the Judiciary made to LB682 is included in the amendment that we have filed. So this would be LB682 with the amendment, the Judiciary Committee amendment. So with that, I don't know at this point if Senator Bradford (sic) would want to, I'll yield some time to him if he would want to address the issue, as the Chair of the Judiciary Committee. [LB554 LB682]

PRESIDENT SHEEHY: Senator Ashford, you have about 5 minutes, 50 seconds. [LB554]

SENATOR ASHFORD: Yes, Senator Wightman, thank you. This bill was heard by the Judiciary Committee. It was advanced on a 5 to 1 to 1 vote. Senator Wightman has accurately explained the bill. It does address what is an obvious inequity in our modification statutes dealing with incarcerated individuals. And we heard testimony on this measure. It was fairly clear from the testimony that there were, I guess I hate to use

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the words "unintended consequences," but people that come out of prison with obligations that are obviously so large that they cannot be paid in any reasonable time or...and it becomes very much, very punitive. If the person does try to...is out of prison, tries to find work, and then is unable to maintain that work because their wages are garnished for child support and they lose their job, and there are other instances of this happening. There are instances of this happening quite often. It was...we certainly were persuaded on the committee of the rightness of this measure. It doesn't relieve persons who are in jail for a failure to pay child support. I believe that's correct, isn't it, Senator Wightman? And also persons who do have other means to pay a child support obligation are not relieved of their obligation by this provision. And let me ask...may I ask Senator Wightman a question, if I could? [LB554]

PRESIDENT SHEEHY: Senator Wightman, would you yield to a question? [LB554]

SENATOR WIGHTMAN: Yes, I would. [LB554]

SENATOR ASHFORD: I think I can do that under the rules. But, Senator Wightman, is that correct that if someone does have...this would not prevent a court from ordering a child support arrearage to be paid by someone who has other...an ex-prisoner or an inmate who has the ability to pay. Is that correct? [LB554]

SENATOR WIGHTMAN: It provides that, that unless the incarceration is a result of a conviction for criminal nonsupport pursuant to 28-706... [LB554]

SENATOR ASHFORD: Okay. [LB554]

SENATOR WIGHTMAN: ...or a conviction for a violation of any federal law or law of another state substantially similar to Section 28-706. [LB554]

SENATOR ASHFORD: All right. So again, would it...if there are other...I can't recall if there are other means available, is that...would that be available for execution on those (inaudible)? [LB554]

SENATOR WIGHTMAN: Right. And I addressed that. In the event there are other assets, in the event there is income other than what would have been earned income had he been out of the penal complex or jail, he would still be subject to paying, and I guess it could be a she. It could be either a man or a woman. [LB554]

SENATOR ASHFORD: Right. And then also, Senator Wightman, am I correct that when this inmate does enter the work force, that child support obligation would then commence again based on the income that that person (inaudible)? [LB554]

SENATOR WIGHTMAN: That is correct. Once he had income, he or she had income,

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after being released from incarceration at that point they would resume child support.  
[LB554]

SENATOR ASHFORD: Thank you, Senator Wightman. This is, I believe, a good amendment, Mr. President, and I would urge that it be advanced. Also, just for the record, I want to...I forgot to thank Senator Schimek for all her work on this mediation bill, as well. She did a lot of work that I know she cares deeply about. I am remiss in not mentioning that. But with that, Mr. President, I would urge the adoption of AM1359.  
[LB554]

PRESIDENT SHEEHY: Thank you, Senator Ashford and Senator Wightman. You've heard the opening to AM1359 to AM1140. The floor is now open for discussion. We have Senator Schimek, followed by Senator Flood, Senator Lathrop, Senator Chambers, and others. Senator Schimek. [LB554]

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. Senator Ashford, you gave me far too much credit. I did the easy part; I prioritized the bill. But I want to say that I think Senator Flood and his staff have done an extraordinary amount of work on this bill. I think that he has managed to bring so many disparate groups together to put a cohesive package together that I'm just very pleased to have been able to prioritize it and see that it did get consideration today. The hearing was held before the Judiciary Committee on which I sit, and I just want to let you know who came in, in support of this bill; it was quite a list of people. And one of my concerns about this bill from the very beginning would be from the standpoint of what about those situations in which domestic violence has occurred or is occurring. And on the list that came in to testify was the Nebraska Domestic Violence and Sexual Assault Coalition, which I considered to be a key member of this team. The Speaker mentioned Voices for Children. There was also the Nebraska Medical Center, the YWCA of Omaha, the National Association of Social Workers of Nebraska, the Nebraska Family Council, UNL Extension, The Mediation Center, and citizens and people who had been through the mediation process in Omaha. It was just a very, very excellent hearing and I became very interested in the bill at that point. One of the groups that came in to testify about LB554 really put a very significant study before us that made me realize even more why it was so important that we do something like this. This study that was introduced at this hearing revealed that 90 percent of children from divorced homes suffered from an acute sense of shock when the separation occurred, including profound grieving and irrational fears. Fifty percent reported feeling rejected and abandoned, and indeed half of the fathers never came to see their children three years after the divorce. One-third of the boys and girls feared abandonment by the remaining parent, and 66 percent experienced yearning for the absent parent with an intensity that researchers described as overwhelming. Most significant: 37 percent of the children were even more unhappy and dissatisfied five years after the divorce than they had been at 18 months. In other words, time did not heal their wounds. LB554 gives a better chance for children to travel

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through this process of divorce with less emotional trauma. I knew and I'm sure you've all known couples who have been so bitter and so unhappy in the process, that even after the divorce is granted the bitterness continues. The protection orders are filed. The children are used as pawns. And that bitterness doesn't cease unless there is some kind of a transformation... [LB554]

PRESIDENT SHEEHY: One minute. [LB554]

SENATOR SCHIMEK: ...in the relationship. And the one that I really remember the best, it actually took the father being on his deathbed, dying of cancer, before that couple sat down and had a reconciliation and tried to do what was right. I don't think that should be what happens to couples who are going through a divorce, and it shouldn't be what happens to the children of divorce. I am 100 percent behind this bill. I think the group that's worked on it has done a very credible job and I'm pleased to have been able to prioritize it. Thank you, Mr. President. [LB554]

PRESIDENT SHEEHY: Thank you, Senator Schimek. Senator Flood. [LB554]

SPEAKER FLOOD: I would like to thank Senator Schimek for her comments, for her support, and certainly her priority designation. With regard to Senator Wightman's amendment, I'm going to vote for it, but the minute these guys get out of jail or the inmates get out of jail, they better start paying child support again. And on Select File I may come back and say, you get out of there, the clock starts ticking again, because those kids are the ones that need the money. So I can understand where he's going with his amendment. I'm willing to support it, but I think we have to look at the way that it's reinstated following a release so that when the Department of Corrections or the county jail lets him out, that their obligation to pay child support continues. I guess what I want to go into for a second, I think Senator Lathrop is also going to focus on this, the benefits of mediation. When you don't have an agreement on child custody arrangement, physical or legal custody, you end up going to court and then a judge decides. Oftentimes it's the default. And the problems come when there is not flexibility. The problems come when the judge says, you're going to do this, you're going to do this, and you're going to do this, because the judge doesn't sit down and figure out, well, Junior likes to play soccer and that's in a town just 30 minutes away and he goes to this practice every day in the summer, so, Dad, if you're going to have him for six weeks, we're going to have to work out some arrangement that gets Junior to soccer. Now that sounds very detail-oriented; it is. The nice thing about a mediator is they sit down with the sides, they talk about their interests, they look at the schedules, they try and think ten years down the road when that 5-year-old is 15, they try to think about college, they try to think about summer camps. They go through all of the different pressures that moms and dads face in raising a kid, let alone being apart and divorced with child custody arrangements in place, and they try and put that together. I'm not going to continue talking on this bill unless there's questions. I just really feel this is the best

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direction to go. And I know Senator Chambers is going to ask you a question and we're going to talk about this idea of mandatory mediation. The only mandatory...the two mandatory events outside of that parenting class would be attending the screening session and then going to that first meeting with the mediator. You have the right to remain silent. You can get up and walk away. You can go there and say I'm not going to participate in any of this business. And that's fine. Your remedy still remains available to you in the court. You can go to court and you can have yourself a big trial and you can put your 12-year-old on the stand and you can have him pick between Mom and Dad. That's not the right way to go. The reason I'm so strong on having this first meeting is because I think it puts Mom and Dad under the same roof in the same room, not with their attorneys as much as having...I mean, attorneys can be present, but having a mediator there to say, you know what, I'm not here, Mom, to be on your side; and, Dad, I'm not on your side; I'm here to listen to you, Mom, to see if we can find areas that you could agree to, and Dad, the same thing. I'm here to find out if there are any shared interests. I'm here to see if there is a solution that I can facilitate between the two of you. And the other thing I say that mediators need to do in this state is they need to run the child support calculation when they've got the people at the table. Why do I say that? Because oftentimes I send my client and another attorney sends his client to a mediation. They come up with this great plan and then they come back to their attorneys and we plug the information into the child support calculator. Dad finds out he is going to write a check for \$475 bucks a month, and the deal is off. That has to be part of the discussion during the mediation--what type of child support would be paid from one party to the other. Thank you, Mr. President. [LB554]

PRESIDENT SHEEHY: Thank you, Senator Flood. Senator Lathrop. [LB554]

SENATOR LATHROP: Thank you very much, Mr. President and colleagues. I rise in support of LB554 and, in particular, the Judiciary Committee's amendment, AM1140. And just to give an overview, you've had Senator Ashford do an able job of describing the sections, but what Senator Flood's bill has done, I think, in principle, is the biggest change in the cornerstone of LB554 is introducing into the domestic relations process, that is the divorce process, mediation. And I have had an opportunity, probably for the first ten years of my practice I did quite a bit of divorce work, and more recently, maybe in the last 15 years, mediation has come into vogue in the civil litigation arena and I have had occasion to mediate an awful lot of cases. And I would like to visit about my thoughts with respect to mediation in the context of a divorce or when children are involved. Generally speaking, mediation involves bringing two parties together for the purpose of and with the benefit of a facilitator or a mediator to try to agree on issues. And in the context of a divorce, you will have issues that relate to splitting of property, you'll have issues that relate to child support, but probably the most contentious issues that you'll deal with in a divorce are those that relate to custody, those that relate to visitation. And it's important to understand that those issues are...they are resolved in the context of a divorce. And during the divorce, people come to you as an attorney,

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and they are in great pain, their marriage has failed, they have children, they feel guilt, they feel anger, mostly anger. They direct that anger at their soon-to-be ex-spouse, and you find yourself in a situation, as an attorney in these divorces, where the parties can't even speak to each other. They can't agree on anything. And historically, before the advent of mediation and its involvement in domestic relations, that meant that if they couldn't agree on something, it was going to be litigated. Mediation, first of all, provides us with an opportunity to reduce the congestion in the district courts by having parties resolve matters. And I would like to visit with you about how that's done so that you have a little understanding of Senator Flood's bill. When you mediate, generally a mediator will put the two parties in different rooms if they can't discuss these issues together, and the mediator will go back and forth and find the common ground and bring the parties to some resolution. And when we were in the Judiciary Committee and we talked and had testimony from a domestic relations mediator, probably the most important thing, the most important thing that we learned and that I've already appreciated as someone who has mediated cases, and that is when people come to an agreement on visitation, when they come to an agreement on custody, when they come to an agreement on the issues relating to a divorce, they are now invested in their agreement. And that's important because the alternative is to litigate and have a district court judge say, Mom, you will have custody, Dad, you'll get to see the kids every other weekend, and Tuesday night you can have dinner with them. Well, the dad is going to resent the order, may not see the kids after the order has been entered because he had no say in the matter. He feels violated in the court proceedings. But when you mediate to a conclusion, you not only can... [LB554]

PRESIDENT SHEEHY: One minute. [LB554]

SENATOR LATHROP: ...customize the solution, as Senator Flood suggested, but you have the parties invested in it. They are now living up to something they've agreed to instead of something they had imposed on them. I think the introduction and the requirement of mediation, as has been indicated, you can't force someone to mediate. This bill does not force you to mediate. It just forces you to show up one time to explore that process, and for the many people, the many couples who will be able to mediate, you will have parents invested in the solution. You will have better outcomes. You will save time and the resources of the district court, and I think LB554 is a very good idea for Nebraska and for the folks who will ultimately have to go through the divorce process and address these issues. Thank you. [LB554]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Chambers, followed by Senator Ashford, Senator Burling, Senator Wightman. Senator Chambers. [LB554]

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, I haven't read this bill yet. I was a member of the Judiciary Committee, and despite all that, I haven't mastered what is in this bill, but I never have liked mandatory mediation,

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so I'm going to ask the Speaker a question about that because I had said that I would. Senator Flood, why would there ever be any mandatory mediation even if it's just the initial set-to? [LB554]

PRESIDENT SHEEHY: Senator Flood, would you yield to question? [LB554]

SPEAKER FLOOD: Senator Chambers, the reason it's the way it is on page 35 in the amendment is in hope, in my hope, that the two parties will sit, when there is not domestic violence allegations or concerns involved, that the two parents will sit in the same room with the mediator whose only job is to see if she can find common ground in hopes that one or...well, both of them will say, you know what, I will go through this, I'll give this a shot. They have no obligation to talk and they have no obligation to actively participate. But the reason it says mandatory in here, it basically has them go to that first meeting and see if it's something that they can go forward with after the mediator, in the presence of both of them, describes the process she or he is going to employ in the mediation. [LB554]

SENATOR CHAMBERS: Now suppose this person refuses to attend that first session. [LB554]

SPEAKER FLOOD: There is no penalty. There is no sanction other than it is reported to the court that the party did not wish to participate in mediation. [LB554]

SENATOR CHAMBERS: So then the mediator becomes a tattletale: Yeah, you didn't come so I'm going to tell on you. And that's what it boils down to. In my mind that carries on the antagonistic relationship that exists. Let's get to this parenting plan now. Is it mandatory that people participate in that if they're contemplating a divorce? [LB554]

SPEAKER FLOOD: In which section are you looking at, specifically? [LB554]

SENATOR CHAMBERS: I don't know. There is something in here about parenting plan, and I thought Senator Ashford said that the only thing mandatory is the parenting plan. [LB554]

SPEAKER FLOOD: Well, the court, in the event that they can't find common ground between the two of them, will have to write a parenting plan. And basically the end result in the dissolution of a marriage with children involved is that there will be a parenting plan that goes beyond the Wilson v. Wilson guidelines that have every other weekend and every other holiday. The court has to look at the activities of the children, the health and welfare of the children. The court has the ability to get...well, it has it right now, but it's encouraged to get more creative in putting that together. And the idea is that during the mediation with a mediator present, the two sides can work on a parenting plan and answer those questions... [LB554]

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SENATOR CHAMBERS: But will the court... [LB554]

SPEAKER FLOOD: ...so that more of a... [LB554]

SENATOR CHAMBERS: Pardon me. Will the court deliberately try to make it punitive because one of the parties did not want to participate at that first session? Or maybe neither wanted and so the court is not going to punish them both by putting in a vindictive parenting plan? [LB554]

SPEAKER FLOOD: No, because they have...the court has to receive the evidence to figure out how to craft a parenting plan and still has to decide what is in the best interests of the children. I have no intention of having this be the parent gets punished because they wished not to participate in mediation. Rather, it's my hope that they sit down at the mediation the first time. They say, you know what, I'm going to go ahead and give this a shot; she seems or he seems like a fair person. And the mediator is trained and credentialed under the Mediation Act of Nebraska. I have a lot of faith that these people can bring people to the table. [LB554]

SENATOR CHAMBERS: You are in that zone that I sometimes describe as wishin'... [LB554]

PRESIDENT SHEEHY: One minute. [LB554]

SENATOR CHAMBERS: ...and hopin' and thinkin' and prayin'. We can talk at any time so I won't carry this out for an extended period, but I want to know what a domestic intimate partner is. [LB554]

SPEAKER FLOOD: A domestic intimate partner is anything from the boyfriend that's living with Mom who has three kids, to the new boyfriend, the ex-boyfriend that still lives in the house... [LB554]

SENATOR CHAMBERS: Can it be a boyfriend's boyfriend? [LB554]

SPEAKER FLOOD: This bill doesn't create any rights that aren't available...that are currently prohibited by the constitution. But I... [LB554]

SENATOR CHAMBERS: So if there are two people of the same sex and one of them has a child and one abuses the other, they are exempt from anything in this law, is that correct? From this law. This law would not apply to them, is that correct? [LB554]

SPEAKER FLOOD: Well, I think if you look at the definition,... [LB554]

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PRESIDENT SHEEHY: Time, Senator. [LB554]

SENATOR CHAMBERS: Saved by...I'm putting my light on again. This is too good. [LB554]

SPEAKER FLOOD: Well, I bet you are. [LB554]

PRESIDENT SHEEHY: Senator Burling. [LB554]

SENATOR BURLING: Thank you, Mr. President and members of the body. I stand to support the bill and the amendment, AM1359, which is what I'll speak on. Thank Senator Wightman for introducing the bill and then introducing the amendment on this bill today. This is a legal situation issue. I'm not an attorney, but as a layperson I've had some experience with incarcerated people, and I'll just share with you why I support AM1359. Most noncustodial parents are fathers--most of them. In most cases after a divorce, they are court-ordered to pay child support. If they don't pay child support on time, it collects and it's called arrears. So let's just say that you have a noncustodial father, he owes \$1,000 in child support, and he commits a crime. I'm not defending committing a crime, I'm not defending not paying child support. He goes to prison for ten years. I'm not defending his actions at all. But the way it is now, that money continues to accrue. So he gets out of prison and he owes, let's say, \$50,000. That's a pretty big mountain to climb. That seems impossible to this person. Under AM1359, the \$1,000 that he owed when he went in would still be what he owed when he got out, which is manageable. What I guess I'm saying is that it seems to me that the higher the arrears, the higher the amount that he owes when he gets out, the less likely we are to collect because it's just a bigger mountain to climb. I think when he gets out of prison, if he owes \$1,000, he is more likely to roll up his sleeves, go to work, and say I can do this, I can get out from under this debt, I can change my life, improve my life, pay my child support, and keep going. Senator Flood is absolutely right: As soon as they get out of prison they should immediately start paying again on the child support, and I understand that's the way it is, but if it isn't it should be that way. And so I just want to explain my position and my reason for supporting AM1359. Thank you, Mr. President. [LB554]

PRESIDENT SHEEHY: Thank you, Senator Burling. Senator Wightman, followed by Senator Pirsch, Senator Carlson, Senator Kruse. Senator Wightman. [LB554]

SENATOR WIGHTMAN: Thank you, Mr. President, colleagues. First of all, I want to thank Senator Flood and the Judiciary Committee for bringing us LB554. I think it is a much needed bill and it provides the tools in divorce actions that sometimes can, I think, take the rancor away from the parties and make it easier for them to come up with a better plan as far as parenting. I have represented a number of persons in divorces, not many in recent years, but I know that sometimes attorneys, who rely almost entirely upon fees in divorce cases, sometimes can drive a wedge between parties, and we've

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seen that happen and I think it probably happens in almost every community, because sometimes the attorney's pay depends upon the length of litigation. We would hope that isn't true and it wouldn't be true in a perfect world, but it is true from time to time. And I think if the parties have to go to mediation, it's a lot easier to make them sit down and discuss the welfare of the children. My experience in divorces is frequently that both parents will talk about wanting to do what is best for the children, but frequently it turns around--we want to do...I want to do what will hurt the other side more. And I think that through mediation perhaps that factor could be lessened and I do think it is important that mediation be there. I am relieved to know it's not mandatory. They may have to attend one meeting and that may be mandatory, as I understand it, but beyond that there probably would be no mandatory requirement, and certainly wouldn't necessarily have to arrive at an agreement. I know our district judge is a bit concerned that sometimes in mediation, and I think it might be less likely to happen in mediation than just negotiation between the parties, the one party to get custody will give away way too much in the way of property, and I think it's probably necessary that there be some provision that the judge can set aside the mediated result and look behind and see if there has been a fair division of property. So I do think that the mediation will provide a very useful tool to keep the parties on track, to provide primarily for the best interests of the children, and rather than just saying that they do that. I wanted to briefly address AM1359. What happens so often, and we certainly saw that, is that someone will go into...whether it's a jail or the penitentiary. That is considered at the present time a voluntary reduction of income, and he may already owe \$5,000 or \$10,000 of child support. He has no income. And that child support continues to accrue during the time he's in there. Well, by the time he gets out the chances of him paying any of that is virtually zero because of the fact that he's just so beaten down with this huge amount of child support that he doesn't know where to start. And so AM1359 would alleviate part of that situation and leave some hope intact for the person who was incarcerated, that when he gets out maybe he can resume those payments. And I agree with Senator Flood on this, that he should resume those payments immediately. [LB554]

PRESIDENT SHEEHY: One minute. [LB554]

SENATOR WIGHTMAN: I don't want to mislead the body that it may be necessary for the judgment creditor, the spouse who is entitled to the child support, to go back into court and show that there is income now available or at least that the defendant is capable of earning income. So I would urge your support of LB554 and AM1359 to the committee amendment. Thank you, Mr. President. [LB554]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Senator Pirsch. [LB554]

SENATOR PIRSCH: Well, thank you, Mr. President and members of the body. I wonder if Senator Wightman would yield for a quick question? [LB554]

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PRESIDENT SHEEHY: Senator Wightman, would you yield to a question? [LB554]

SENATOR WIGHTMAN: I will. [LB554]

SENATOR PIRSCH: Thank you, Senator. I was wondering, do you know how many states have a similar paradigm as Nebraska does which does not allow imprisonment as a basis to allow child support to be lowered, and how many states do allow that as a basis? [LB554]

SENATOR WIGHTMAN: Senator, I do not know the answer to that question. I could see if my staff could obtain such information and perhaps furnish it to us. [LB554]

SENATOR PIRSCH: Okay, very good. Thank you very much. I did not support this particular amendment in the committee. I did vote no. Just as a way of background, child support guidelines are promulgated by the Nebraska Supreme Court which dictate and set the amount that a parent pays in child support. The amount can only lawfully be changed when there is a so-called change in circumstances, and that's a legal term of art. It's not common lingo. That phrase, change in circumstances, does not currently encompass the situation where an individual willfully, knowingly breaks the law and goes to jail as a result of that. Actually I've...when I was in law school I actually dealt with one of these cases. It went up to the Supreme Court and so I'm pretty familiar with this exact scenario. I guess...and I certainly understand the rationale behind this and that rationale being we don't want to take an individual who has the...and who is charged with paying child support, putting them in jail and having the child support pile up on them to the extent that they, while they would normally pay for that child support while in prison, the child support piles up to the extent that they feel that it's so high that it is not an accomplishable task, and so they don't pay any child support. I certainly understand that. But I think we have to look at...and this is what kind of concerns me, is we haven't had the empirical...we have had kind of some anecdotal type of stories related. I would certainly like to know questions with respect to what is the average amount of prison time that people who do fault, who are ordered to pay child support and go to prison, how long are they, on average, sent to prison? What's the total amount of arrearages, on average, that pile up? I'm not at all sure that, on average, that this is not an accomplishable task for those individuals who have had children and then gone out and intentionally committed crimes. And I haven't had, you know other than anecdotally, we haven't been presented with any kind of empirical evidence that this is...would affect...that this is not accomplishable in even the majority of the cases. And so that is the type of evidence that I'm still waiting for... [LB554]

PRESIDENT SHEEHY: One minute. [LB554]

SENATOR PIRSCH: ...before I would let people off the hook, because that's what we're doing. The taxpayers are going to...the child's costs are not going to go down, but those

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costs are going to transfer then to the taxpayer, you and me and the people of Nebraska. And so before we would do that, I think it's important to have that kind of information to know what are we talking about. Is this, on average, truly making it impossible or is it just a challenge? And I think if it just a challenge but accomplishable, then we should leave that burden on the people, the parents who have committed crimes, because they are, in fact, the ones who chose to break the law. I had a couple of questions for Senator Flood, if he would yield to a quick question. [LB554]

PRESIDENT SHEEHY: Senator Flood, would you yield to a question? You have under 10 seconds, Senator. [LB554]

SPEAKER FLOOD: Yes. [LB554]

SENATOR PIRSCH: I will wait until my next time around. I just wanted to ask about the bill in general, as well. Thank you. [LB554]

PRESIDENT SHEEHY: Time, Senator. Senator Carlson. [LB554]

SENATOR CARLSON: Mr. President and members of the Legislature, again I am going to talk about mandatory mediation a little bit, but first I'm going to go back to some things Senator Chambers has said. And again, I appreciate the opportunity that he gives me once in awhile. Senator Chambers, you talked about whose home have you taken, whose job have you taken, whose child have you taken, and during your mandatory, fatherly lectures that we listened to a little bit earlier today, you made a believer out of me. You talked about the power that we have in the Legislature. And I believe we do have the power to come up with policies that hopefully help people perhaps to gain a home, perhaps to improve their job situation, and certainly for the protection of children. You also made a statement that you won't live forever. Well, Senator Chambers, yes, you will, and so will I, and you and I are able to choose where we will live forever and not where we will die forever. Senator Chambers, God is not my pal. He is not my chum. He is not my colleague. He is not my neighbor. He is not my security blanket. He is not my magic lamp. But He is, because of what Christ did for me, my savior and my Lord, and I have a healthy fear of Him. And you know it says that the fear of the Lord is the beginning of wisdom, and I believe that. Now in LB554, mandatory mediation and, as I said, you put us under mandatory listening. You use the rules. You said you want to teach us. You believe it's for our own good, whether we believe it or not. And when you aren't angry, I strongly believe it doesn't hurt us either, whether we like it or not. It becomes really what we make of it. We determine, by how we take it, whether it's valuable, but you make it mandatory. And that's okay. Now, I would like to ask a question of Senator Flood, if he would yield. [LB554]

PRESIDENT SHEEHY: Senator Flood, would you yield to a question? [LB554]

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SPEAKER FLOOD: Yes. [LB554]

SENATOR CARLSON: I often do this, but looking at the notes from the testimony, the hearing on the bill, there was some opposition. And sometimes this opposition is dealt with, and I know we have a new bill and it's not the same as the original. I don't know anything about the Children's Rights Council or the Fathers' Rights of Nebraska, but could you address what their concerns were? [LB554]

SPEAKER FLOOD: Sure. Their primary interest is that whatever bill that we do, that we pass, have a provision in there that says there is a presumption that both parents are equally qualified to have joint physical and legal custody of their son or daughter. And basically that's where I was when I started this... [LB554]

PRESIDENT SHEEHY: One minute. [LB554]

SPEAKER FLOOD: ...but the longer I get into it, the harder it is to do because you have to...the court has to receive evidence and determine what is in the best interests of the child before they're going to make a determination like that. And that's a very big point that the domestic violence groups in Nebraska strictly oppose, as well as others across Nebraska, so that's their contention. I don't know that they are necessarily opposed to the bill on all levels; they just want that in there. [LB554]

SENATOR CARLSON: Okay. Well, I'm going to quickly end here. This, like many problems in education, comes about because parents don't do what they're supposed to do, and we should try to help them for the benefit of the children. We do our best to make a silk purse out of sow's ear, and it won't work all the time but when it does work it's most worthwhile. This is an attempt at policy for the public good, and we are here to endorse good policy and I support the idea of LB554. Thank you, Mr. President. [LB554]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Kruse, followed by Senator Loudon, Senator Avery, and Senator Flood, and others. Senator Kruse. [LB554]

SENATOR KRUSE: Thank you, Mr. President and colleagues. I stand in strong support of the bill and the amendments. Almost never do I speak as a pastor, though I wear that hat in other parts of my life, but my comments at this moment are as a pastor, and they are, thank you, thank you, thank you, Senator Flood. This bill shows evidence of months of hard work by many persons. I have been there; I have lived it; and I have seen persons who were not able to deal with their own grief and thought and had no concept of how deep that malaise would be as they went in to it. And if it's not dealt with in the first two or three years, it doesn't go away. I just...I can tell you...I just verify that three years from now it's worse and it is less likely to come to reconciliation, and the kids are the ones that have to pay for that. So again I am most impressed with the work that's

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gone into this with the solidness of the total concept and with the preciseness of the language. Thank you. [LB554]

PRESIDENT SHEEHY: Thank you, Senator Kruse. Senator Louden. [LB554]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. As I listened to the debate on this bill, there are some of the questions that I have. I'm not that familiar with the laws on this, seeing as I have not read them, but I would like to ask Senator Flood a question, if he would yield. [LB554]

PRESIDENT SHEEHY: Senator Flood, would you yield to a question? [LB554]

SPEAKER FLOOD: Yes, I will. [LB554]

SENATOR LOUDEN: In this bill here then, is it clarified who is a mediator, and, you know, is this going to be especially trained people or certified individuals or professionals or who is going to be a mediator in this? [LB554]

SPEAKER FLOOD: Senator, that's a good question. Several years ago Senator Landis really championed the Mediation Act that set out standards and courses that mediators must take to become certified. The State Supreme Court has the Office of Dispute Resolution with offices across the state of Nebraska that have trained mediators that are ready to help and do this every day, basically for a living. We are well-situated as a state with trained, certified mediators that operate under a very strict code called in our statutes under the Uniform Mediation Act which has essentially been adopted and adhered to by members. So, for once, Senator, we actually have the entire structure in place. We're just taking advantage of it. As opposed to having to recreate the wheel to push a new state program, the wheels are in motion. They're doing the job and they're waiting for this bill to get passed. [LB554]

SENATOR LOUDEN: Okay. Thank you, Senator Flood. And my understanding is that it doesn't necessarily have to be in this bill but it's already in statute... [LB554]

SPEAKER FLOOD: Yes. [LB554]

SENATOR LOUDEN: ...to have mediators. Thank you. I would like to ask Senator Wightman a question, if he would yield, please. [LB554]

PRESIDENT SHEEHY: Senator Wightman, would you yield to a question? [LB554]

SENATOR WIGHTMAN: I will. [LB554]

SENATOR LOUDEN: Yeah, it's about your amendment here, Senator Wightman, and

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as I notice, the incarceration for a period of six months or more, it goes on to say they...would result in a lowering of income, reduction of income, and that sort of thing. Anyway, as we get down to this, will some of these people that...there can be wealthy people that get put in jail that have the means to continue paying child support that may be in for a, oh, a forgery or embezzlement or something like that. Would that allow them to get by without paying child support? [LB554]

SENATOR WIGHTMAN: It wouldn't allow them to get by without paying, Senator Louden, because of the fact that whatever other income they had would still result in a obligation to pay child support. It may allow a reduction, but it would not allow for elimination of child support during that period of time. And of course, any amount that accrued will continue to be accrued or in arrearage, as it was defined earlier. [LB554]

SENATOR LOUDEN: Would there be a period of time in there then that these children wouldn't be receiving support? [LB554]

SENATOR WIGHTMAN: They would if the person had other assets. Typically, and Senator Nelson and I just visited about that, typically what would happen in that situation is that the state probably will be in, in paying the child support, but they're going to be in and paying child support whether there is a reduction or not, on the books, because, in fact, the person, in most instances, is not going to be able to pay that support, Senator Louden. [LB554]

SENATOR LOUDEN: Well, at the present time, with laws, if a person is incarcerated it doesn't necessarily mean their children are going to be put on any kind of ADC or child support or anything like that, does it? [LB554]

SENATOR WIGHTMAN: The state, at the present time, if the person is in arrearage, will pick up that child support if the spouse meets the guidelines for obtaining ADC payments. So many times...there are many times that people are working and their spouses are drawing ADC... [LB554]

PRESIDENT SHEEHY: One minute. [LB554]

SENATOR WIGHTMAN: ...because either they're not paying the child support or they're not paying enough child support. [LB554]

SENATOR LOUDEN: Okay. That...because as I've been involved in a case here, came across my...through the office here awhile back, that people who were incarcerated and my understanding was the judge found other places for those children, and I don't...my...and I guess there wasn't any child support paid because the Health and Human Services wasn't responsible for any of them. And this is what I'm wondering, by putting this in here, if that more or less gives somebody a free card to get out of jail, so

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to speak. [LB554]

SENATOR WIGHTMAN: Well, I certainly don't think so because, first of all, he's going to had to have been sent to jail or incarcerated for a period of at least six months before he could even go in and ask for a reduction through his attorney. So he's going to have to be in for a fairly long term. [LB554]

SENATOR LOUDEN: Okay. Okay, thank you, Senator Wightman. I still have some concern about the amendment, AM1359, and if it's necessary... [LB554]

PRESIDENT SHEEHY: Time, Senator. [LB554]

SENATOR LOUDEN: ...or if we were getting into an area there that probably shouldn't really be... [LB554]

PRESIDENT SHEEHY: Time, Senator. [LB554]

SENATOR LOUDEN: ...worked over. Thank you, Mr. President. [LB554]

PRESIDENT SHEEHY: Senator Avery. [LB554]

SENATOR AVERY: Thank you, Mr. President. This bill and its amendments deal with very emotional and painful life circumstances. We all know that. When parents divorce, the marital relationship might end but the obligation to the children does not. It just becomes more difficult. This bill, I believe, will help protect the children by encouraging parents to focus on the interests of the kids. I have received a number of constituency contacts about this matter, and the vast majority of those contacts have come from distraught parents who want this bill to become law because they believe it will help them resolve the very painful disputes they have with their ex-spouse. Senator Flood and Senator Lathrop have each addressed the question of the benefits of mediation. I want to expand on that just a little bit and then I'm going to yield the rest of my time to Senator Erdman. Mediation can be very helpful because, first of all, it's less expensive than litigation. It also can lead to more rapid settlements. If you're trying to go to court, getting a court date can take a long time. Mediation, when it's done right by professionals, leads to mutually satisfactory outcomes. There is also a higher rate of compliance with mediated outcomes because both parties are likely to be satisfied, or at least both parties are likely to have a stake in the mediated results. Also you have comprehensive agreements that can be tailored to the needs of both parties and, therefore, likely to have better compliance. There is a greater amount of control in mediated outcomes and more predictability. There is, as well, a preservation of ongoing relationships of the parents, in some cases, and if not, frequently a more amicable termination of the relationship. And finally, more workable solutions that are likely to hold up over time. These are factors that I think contribute significantly to circumstances

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that benefit children, so I will vote to support AM1359. I do, however, want to hear what Senator Erdman has to say about that amendment. I certainly am going to support the committee amendment to the main bill. Thank you, Mr. President. [LB554]

PRESIDENT SHEEHY: Thank you, Senator Avery. Senator Erdman, you have about 2 minutes. [LB554]

SENATOR ERDMAN: Thank you, Mr. President. Thank you, Senator Avery. Would Senator Wightman yield to a question, please? [LB554]

PRESIDENT SHEEHY: Senator Wightman, would you yield? [LB554]

SENATOR WIGHTMAN: Yes, I will. [LB554]

SENATOR ERDMAN: Senator Wightman, in your amendment that's before us, you referenced some sections that I don't readily recognize or understand, but let me give you a scenario and maybe you can explain to me how it would be treated under your amendment and then maybe you could expound later whether or not you think it's an issue that needs to be addressed. How would your amendment treat somebody who would be incarcerated for a period of six months or more, say, under certain programs that we have? I'm familiar with some here in Lincoln where they have work release-type programs where they may be sentenced to an extended...they may have a sentence that's longer than six months; they have the opportunity for work release during the day where they're still literally making income where I believe that is collected or held for them to pay part of their fines and fees. Then, upon discharge, they take that money with them. Do you envision that being covered by this or am I not understanding what you're trying to accomplish with your amendment? [LB554]

SENATOR WIGHTMAN: My understanding, Senator Erdman, would be this; that while the person is out, his reduction of income is less. It doesn't say that it will be considered an elimination of income but it would be considered a reduction. And if he makes money while he's out on a work permit,... [LB554]

PRESIDENT SHEEHY: One minute. [LB554]

SENATOR WIGHTMAN: ...then my thought is that he's going to continue to be liable for child support but on a lesser basis. [LB554]

SENATOR ERDMAN: So your amendment doesn't give a direct exemption. It's simply tied to the availability of the income that they would be held to for the purposes of support. If they are out making income through a work release program, they would still be liable. If it's less than what they were eligible for, for which...less than what they were capable of earning, they would be at a lesser standard. But if the individual was not on a

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work release program, then that would be treated differently than those that were. It's tied to their ability to create income, not necessarily on the fact that they're incarcerated. Is that accurate? [LB554]

SENATOR WIGHTMAN: I believe that's how the bill would be interpreted, that it's not a blank exemption. It's strictly a reduction of income to the amount that he actually earns during that period of time. [LB554]

SENATOR ERDMAN: Okay. Thank you, Senator Wightman. Thank you, Senator Avery. [LB554]

PRESIDENT SHEEHY: Senator Flood, followed by Senator Chambers, Senator Fulton, Senator Wightman. Senator Flood. [LB554]

SPEAKER FLOOD: Thank you, Mr. President and members. I just want to touch on a few things here. I know that there are concerns from Fathers' Rights groups about wanting a presumption that both parents are automatically fit for joint physical and/or legal custody. I should point out that in Section 42-364, our current statute, and this is unaffected, does state, and I quote: In determining custody arrangements and the time to be spent with each parent, the court shall not give preference to either parent based on sex of the parent, and no presumption shall exist that either parent is more fit or suitable than the other. That is laying it out about as clearly as possible in the statute right now. With regard to domestic intimate partner, Senator Chambers had raised that issue, and I'd like to provide something on the record that I think should address what I believe a domestic intimate partner is, and that is...would only...domestic intimate partner would only apply where any two people with legal rights to the child are seeking a determination related to custody, parenting, visitation, or other access or support of the child. In Nebraska, obviously the constitution forbids same-sex marriage, same-sex adoption. In Nebraska we may have same-sex couples that are raising a child, but unless it's a guardianship or some legal tie from that parent or that adult to the child, I don't think domestic intimate partner applies. Now, two people that were married in the state of California, have a child, happen to be same-sex, maybe they both adopted the same child or they have joint rights to that child, they move to Nebraska, the full faith and credit clause of the constitution would apply, not so much...I mean, especially to their relationship between adult to child. That's where you may have a domestic intimate partner, if that's the concern, but you're not going to have two people getting married in Nebraska under this bill. It's prohibited by the constitution and I want to be very clear that was never the intent of LB554. Thank you, Mr. President. [LB554]

PRESIDENT SHEEHY: Thank you, Senator Flood. Senator Chambers. [LB554]

SENATOR CHAMBERS: Mr. President, members of the Legislature, is Senator Wightman anywhere near? He's approaching, so I will begin my comments. Senator

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Wightman, are we still on your amendment? [LB554]

PRESIDENT SHEEHY: Senator Wightman, would you yield to a question? [LB554]

SENATOR WIGHTMAN: I will. [LB554]

SENATOR CHAMBERS: Are we still on your amendment? [LB554]

SENATOR WIGHTMAN: Are we still on my amendment? [LB554]

SENATOR CHAMBERS: Yes. [LB554]

SENATOR WIGHTMAN: I think so. [LB554]

SENATOR CHAMBERS: Thank you. This amendment...that's all I have. This amendment should have been adopted a long time ago but I guess people want to discuss the bill too. But I was at the Judiciary Committee hearing. I don't want to repeat everything Senator Ashford said, but I want to reemphasize some of it. We had a couple; both had been in the joint. Both of them had to pay child support. Both of them got out after a number of years and owed a tremendous amount of money. They started a cabinetmaking business and they were very good at it. A client gave them money with which to purchase supplies, wood, and all the other materials, and they put it in a bank account and that's the worse thing they could have done because the state took it. So now not only do they not have the job, they don't have the money that the client gave them with which to purchase the supplies. The state is the one saying that we're going to squeeze every nickel we can out of these people. I think it's worse than trying to get blood out of a turnip. When you get out of prison, they give you \$100. I don't know if they give you any clothing or not, but you come out with virtually nothing. And to have this heavy debt hanging over you is all but totally overwhelming, and that is a situation where somebody is whipped before he or she even starts. And some do wind up going back to prison. If you are on a job and your wages are being garnished, the employer does not want to keep you there and go through that aggravation, so you lose the job, and it's hard enough to get one when you've been locked up anyway. So Senator Wightman is dealing with a very harsh, stark reality. I'm a divorced man. I will never get married again. They couldn't have forced me into mediation either, but by the same token they couldn't force anybody to take care of their children better than I took care of my children voluntarily. I do not want to see people, who have had problems that put them in the penitentiary, come out of that situation and not have a chance at life. The punishment should be deprivation of your liberty, which occurs when you are in prison. It should not carry on after that. The law does not require a person to commit a pointless act. It would be pointless for the state and the law of this state to continue those child support obligations at a level where they were before the person was locked up. When this woman got out of prison, they presumed that she had the same employability and

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would make the same amount of money she made before she went to prison, and her obligation was going to remain what it was before she went to prison, while she was in prison, and the assumption was that she would continue to make an income at the level prior to prison. That's how unreasonable, that's how illogical, that's how cruel this state behaves. I think what Senator Wightman is offering is eminently fair. [LB554]

PRESIDENT SHEEHY: One minute. [LB554]

SENATOR CHAMBERS: Nothing that we do is going to produce a perfect solution. But he is moving us away from something which I think is unconscionably reprehensible, and I support his amendment. Although there are problems that I have with Senator Flood's bill, and we're going to talk about them, I will be much more favorably inclined to support that bill with Senator Wightman's amendment than I would be without it. And I think that's all I'll say at this point. Thank you, Mr. President. [LB554]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Fulton. [LB554]

SENATOR FULTON: Thank you, Mr. President, members of the body. Would Senator...is Senator Wightman here? Yes, he is. Would he yield to a question? [LB554]

PRESIDENT SHEEHY: Senator Wightman, would you yield to a question? [LB554]

SENATOR WIGHTMAN: Yes. [LB554]

SENATOR FULTON: Okay. This amendment kind of caught me by surprise. I think I can articulate both sides of the argument, so I'm hopeful that you can sway me one way or the other here. The term "voluntary" or "voluntarily" or "involuntarily," can you explain the legal ramifications of making incarceration involuntary under this statute? I guess my point...let me lead you to where I'm going with this. You know, I would argue or I could argue that one who has children, who chooses to break the law, has voluntarily done so and, therefore, has voluntarily placed his responsibility to fund the livelihood of that child at risk. So that would be an argument I would put forth. But this is arguing otherwise. What is the legal ramification for "involuntarily" here? [LB554]

SENATOR WIGHTMAN: Well, first let me discuss, Senator, some of the items that might be considered a voluntary reduction, other than right now being incarcerated is also considered a voluntary reduction. For example, if you quit your job when you had a good job, and sometimes a husband or wife who is liable for child support will do that, they'll quit their job so they don't have to pay child support. Obviously, that's a voluntary reduction. There could be other things similar to that, that would constitute a voluntary reduction. If you got fired, unless the party that was entitled to the child support could show some good reason, that's probably an involuntary reduction. So here, what we're doing, and obviously you can go to jail or prison for a number of different reasons, some

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of which certainly weren't a willful intent to avoid child support. For example, you may, just in the normal course of your activities and because you don't have enough money, write a bad check for which you may be incarcerated. To me, that would be pretty clearly an involuntary reduction of income that might allow you to have a reduction of child support. [LB554]

SENATOR FULTON: So, Senator, would it be accurate to say that when I see the word "voluntary," I think personal volition: I have made a choice therefore it was voluntary, that which I've chosen. If it can be said that one's volition wasn't proximate to the paying of child support, then it would be involuntary for purposes of this amendment. [LB554]

SENATOR WIGHTMAN: Right. [LB554]

SENATOR FULTON: If he wasn't choosing not to pay the child support, then it's involuntary for this amendment. [LB554]

SENATOR WIGHTMAN: Yeah, if it wasn't something...I suppose if it was a voluntary action and he went to jail because...if he wasn't pay...went to jail because he wasn't paying child support, because he was guilty of criminal nonsupport, it specifically excepts that in the Judiciary amendment to LB682. [LB554 LB682]

SENATOR FULTON: So choosing to break the law is different and not proximate to choosing...or not the same as choosing to abrogate one's responsibility to his child. That's separate. And so that's how you're able to use the word "voluntary" here...or "involuntary" here. [LB554]

SENATOR WIGHTMAN: Well, that's correct. Obviously, incarceration can come from a number of reasons. Maybe it comes from a third offense drunk driving or whatever. It might be, I suppose you could make the argument, that he voluntarily broke the law, but it certainly wasn't likely to avoid the payment of child support. [LB554]

SENATOR FULTON: Okay. [LB554]

PRESIDENT SHEEHY: One minute. [LB554]

SENATOR FULTON: And secondly, I'm curious now, this...I'm curious now. What happens to those who are incarcerated who have debt--credit card debt, car payment debt, debt outstanding? What happens to that debt when they are incarcerated now? [LB554]

SENATOR WIGHTMAN: Well, the debt doesn't go away but it doesn't accrue, obviously, because aren't out that they can use a credit card anymore, if you're using a credit card as an example. But they are still liable, as they are here. The debt that has

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already accrued, the arrearages, do not go away. It's just the continuation of accrual of that child support that would go away. [LB554]

SENATOR FULTON: Okay. So if there were some debt that had been accrued prior to incarceration that had to do with child support, would that debt go away? [LB554]

SENATOR WIGHTMAN: Oh, no. No, none of the back child support would go away. [LB554]

SENATOR FULTON: Okay. Okay, thank you, Senator Wightman. Thank you, Mr. President. [LB554]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Senator Wightman, followed by Senator Erdman, Senator Synowiecki, Senator Pirsch, and others. Senator Wightman, this is also your third time. Senator Wightman waives. Senator Erdman. [LB554]

SENATOR ERDMAN: Question. [LB554]

PRESIDENT SHEEHY: I do have a call for the question. Do I see five hands to demand the cease of debate? I do see sufficient hands. The question before the body, shall cease debate on AM1359? All those in favor vote yea; opposed, nay. Senator Erdman, for what do you rise? [LB554]

SENATOR ERDMAN: Mr. President, I would ask for a call of the house, please. [LB554]

PRESIDENT SHEEHY: There is a motion to call for the house. The question before the body is, shall the house be placed under call? All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB554]

ASSISTANT CLERK: 29 ayes, 0 nays to go under call, Mr. President. [LB554]

PRESIDENT SHEEHY: The house is under call. All unexcused senators please return to the Chamber. All unauthorized personnel please step from the floor. The house is under call. Senator Cornett, would you please check in. Senator Raikes, would you please check in. Senator Erdman, how will you like to proceed? [LB554]

SENATOR ERDMAN: Mr. President, I'd accept call-in votes, please. [LB554]

PRESIDENT SHEEHY: Senator Preister, the house is under call. The Clerk is authorized to accept call-ins on the motion to cease debate on AM1359. Please proceed, Mr. Clerk. [LB554]

ASSISTANT CLERK: Senator Langemeier voting yes. Senator Engel voting yes.

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Senator Cornett voting yes. Senator Karpisek voting yes. Senator Hansen voting yes. Senator Dierks voting yes. Senator Nelson voting yes. [LB554]

PRESIDENT SHEEHY: Please record, Mr. Clerk. [LB554]

ASSISTANT CLERK: 25 ayes, 6 nays to cease debate, Mr. President. [LB554]

PRESIDENT SHEEHY: The motion to cease debate passes. Senator Wightman, you're recognized to close on AM1359. The call is raised. [LB554]

SENATOR WIGHTMAN: Thank you, Mr. President, colleagues. AM1359 would amend the Judiciary amendment, AM1140, by providing that a separate section would be added that would provide that in the event of incarceration of someone who is liable for child support, that while he was incarcerated that would be considered an involuntary reduction, which would entitle that person to a reduction of child support while he was incarcerated. This originally came about as a result of LB682, which we have sought to use and tie as an amendment to LB554. The reduction would not take place until the person had been incarcerated for a period of six months. He has to be sentenced for a period of six months. So what that means is that, during that period of time, the person can go into court and ask for a reduction of his child support, as being an involuntary reduction. This does not reduce any arrearages. If the person has other sources of income, the child support would continue to the extent that would be justified by those other sources of income or assets. I think this is fair and will result in probably more money to the estate, by the elimination of the futility of a great accumulation of child support, and I would ask your approval for AM1359. Thank you. [LB554 LB682]

PRESIDENT SHEEHY: Thank you, Senator Wightman. You've heard the closing to AM1359. The question before the body is, shall the amendment to the committee amendment, AM1359, be adopted? All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB554]

ASSISTANT CLERK: 37 ayes, 4 nays on the adoption of the amendment. [LB554]

PRESIDENT SHEEHY: AM1359 is adopted. The call is raised. [LB554]

ASSISTANT CLERK: Mr. President, the next amendment offered by Senator Flood, AM1362. (Legislative Journal pages 1641-1642.) [LB554]

PRESIDENT SHEEHY: Senator Flood, you're recognized to open on AM1362. [LB554]

SPEAKER FLOOD: Thank you, Mr. President and members. We have a lot of people in here that are very concerned about spending money this year, and I don't blame you. We are trying to keep the belt tight on the state budget, and I think you're probably

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wondering, how much money does this bill spend? I have a plan for you, one that you can buy into, one that you can feel good about tonight, because this bill requires mediation centers around the state of Nebraska to provide services to the indigent, so that when they get divorced there's a mediator that steps in to work with them on their problems. We have a system right now called the Office of Dispute Resolution. It has services in Fremont, Walthill, across the state. The plan that I'm proposing in AM1362 raises the filing fee for people that file for dissolution of marriage--divorce--and modifications of a child support or divorce decree order by \$50 bucks. That's a hefty increase. It's not coming out of General Funds. It's not coming from the general court fees, so everybody that gets a speeding ticket or gets charged with a crime, they pay those court costs. This comes from people that file for divorce, and if you can't afford, or you are indigent, to file for divorce, you can file with the court to have that filing fee waived, and it's at the court's discretion, the way it should be, after you verify your income and financial information to show that you are a pauper or an indigent. And the idea here is that people that can afford it pay it; the people that show the court they can't, don't. That's very important to me. The same token, I think that by tying this to the filing fee for divorce or modification, you're asking the people that are using our court system to decide these questions and to get the divorces to help fund the indigent's need for mediators. And let me just say this: A little money on mediation at the front helps a whole lot down the road. The system we have now is adversarial. I would suggest to you that those that don't go through mediation or have attorneys that simply want to fight, they end up paying a lot of money down the road, because that youngster lives in a conflicted relationship because two parents can't get along, won't get along, will never get along, and it only gets worse as the days go by. The idea is to bring parents together to get them to work together, to use this money so that those that cannot afford a mediator have one that will work with them to help to craft a parenting plan, to the extent that they can find common ground. You have no right to free counsel for the divorce. There is no right to an attorney. You have the right to remain silent, but not really, because it is a civil case and you can be called to have your deposition taken. Everybody says, well, don't I get an attorney? Isn't the court going to appoint me an attorney, now that my wife has filed for divorce? And I said, no, get out your checkbook; we're going to talk about that in about five minutes. In this case there is a mediator that steps in when we have a contested child custody situation and the individuals are indigent, or at least one is. So I think this is reasonable. I would ask for your support. The point of this, I might add, is that we not go out and create a big A bill that we've got to fund and have big problems with, and of course, General Funds are involved. I'm trying to use this court fee increase to solve the problem. I think there will be an A bill of \$50,000 in General Funds for the first two years of the biennium that will go away, and that's so that the Supreme Court, State Court Administrator's Office can set up this plan that goes into effect January 1, 2010. The court fee would start earlier than that. The reason it starts earlier than that is that we want to get the money in the fund so that when we roll out the mediation requirements in 2010, we're ready to go with the mediators, and everything has been set up. Thank you, Mr. President. [LB554]

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PRESIDENT SHEEHY: Thank you, Senator Flood. You've heard the opening on the amendment to committee amendment, AM1362. The floor is now open for discussion. Senator Flood, you are the next one in the queue. Senator Flood waives. Senator Schimek, followed by Senator Chambers, Senator Stuthman, and Senator Pirsch. Senator Schimek. [LB554]

SENATOR SCHIMEK: Thank you, Mr. President and members. I rise in support of the amendment and, to me, this is a logical kind of fee. If you're going to have fees, they should have some relationship with what you're trying to fund. A lot of fees are tacked onto things that are spent for totally unrelated issues. This has a direct relationship with what this bill is trying to do, and so I rise in support of it. I think that the people who have worked on this bill have come up with a lot of different ideas on how this could be funded, but this is the one that makes the most sense to me. And I think that those who cannot afford the fee are let off the hook, so to speak, by the courts. So I just wanted to echo my support for this amendment. Thank you. [LB554]

PRESIDENT SHEEHY: Thank you, Senator Schimek. Senator Chambers. [LB554]

SENATOR CHAMBERS: Mr. President, members of the Legislature, ordinarily I vote against any increases in fees or court costs, because I don't think there ought to be cash-register justice. Marriage and divorce are regulated by law. The constitution even says who can be married and who cannot be married. That is heavy state regulation. I think General Fund money ought to be used here. Either marriage is going to be regulated by the state or it's not. There are rights and privileges and responsibilities that accrue when a person enters the institution of matrimony. And I guess if somebody wants to leave that institution, maybe they ought to be happy to pay \$50 to get out of jail. But I still have some problem with this, so at this point, I'll be not voting, or I might vote no, because the more I think about this, why...let me put it a different way. I don't like the mediation aspect of it. If part of this is going to go to make mediation available, I'm not for it. I don't believe in mediation as a cure-all. If people want to talk, then something of value can happen. If they don't, then forcing them into a room together will only make matters worse. My good friend the "Parson" slightly misstated what the situation is, when I was giving my fatherly lecture. You were not mandated to stay in your chair. When we're on Final Reading, if a bill is being debated, if amendments are being discussed, the person does not have to stay in his or her chair. If I say you've got to stay there, and I'm just so persuasive or so dominant that you start shaking and say, I guess I got to stay here, that's still a matter of choice. So the "Parson" didn't have to stay here, but he was so enthralled--not appalled--he was so enthralled that there was an attraction between the seat of his britches and the seat of that chair, and he couldn't separate himself from the chair, and he stayed there and listened and was benefited thereby. In all seriousness, on this motion or this amendment, I do have mixed feelings about it. As Senator Flood pointed out, and Senator Schimek probably did, too, but I

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was kind of tied up in something when she was speaking, it is limited to the area that will be affected by this bill--divorces and dissolutions. I'd like to ask Senator Schimek a question. [LB554]

PRESIDENT SHEEHY: Senator Schimek, would you yield to a question? [LB554]

SENATOR SCHIMEK: Certainly. [LB554]

SENATOR CHAMBERS: Senator Schimek, what is a dissolution? And if you don't know, I'll ask one of the lawyers. [LB554]

SENATOR SCHIMEK: Ask one of the lawyers. I mean, I know, but I can't put it in legal terms. It means ending a marriage. [LB554]

SENATOR CHAMBERS: Okay. I'm going to ask Senator Lathrop a question. [LB554]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to a question? [LB554]

SENATOR CHAMBERS: Senator Lathrop, what is the difference between a dissolution and a divorce? [LB554]

SENATOR LATHROP: They're the same thing. [LB554]

SENATOR CHAMBERS: So...I wish Senator Flood was here, because I think he used both words. [LB554]

SENATOR LATHROP: You want me to speak for him? [LB554]

SENATOR CHAMBERS: Yes, yes. [LB554]

SENATOR LATHROP: I don't know. I don't know if it's in there twice. The two are synonymous terms, though, as it relates to an action to dissolve a marriage. You can call it a divorce action or you can call it a dissolution. [LB554]

SENATOR CHAMBERS: But all we're talking about, really, is divorce--a termination of the marriage relationship. [LB554]

SENATOR LATHROP: I think that the bill is broader than that. It can affect...if you have a paternity action and you need to sort out who's going to parent the child and who's going to have visitation. [LB554]

SENATOR CHAMBERS: But this fee that he's talking about wouldn't apply to those actions. [LB554]

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PRESIDENT SHEEHY: One minute. [LB554]

SENATOR CHAMBERS: If I understood him, this \$50 will apply only where a divorce is involved. Is that your understanding? [LB554]

SENATOR LATHROP: That's true. [LB554]

SENATOR CHAMBERS: Okay. Thank you. And that's why I have mixed emotions. I'm going to wait awhile before I decide for sure, but in general, I'm not in favor of anything in the court system being paid by fees. The courts are creations of the state and the constitution, in some cases. The Legislature can create others. But if you're going to make it a fee-based system of justice, then I'm not fully on board. But on this one, I'm thinking about it. Thank you, Mr. President. [LB554]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Stuthman, followed by Senator Pirsch, and Senator Flood. Senator Stuthman. [LB554]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I have been one that has been in opposition to raising fees, the majority of the time. But this divorce, the way I understand it, the cost is going to go up to \$154, and it only costs \$25, no, \$15 to get a marriage license. Now we could maybe make this thing a revenue neutral bill by raising the marriage...the cost to get married to \$150. Maybe that's what we should do. I had a constituent call me and tell me that if we want to raise money for the state, we ought to raise the cost to get married. Maybe people would think twice, then, about doing that. I don't know whether I'm totally in favor of that at all, but that was brought to my attention. But I think that's something that we need to consider, of possibly raising the fee of marriage, and I think we got to take a serious look at that, and I may, depending upon what I hear from my colleagues here, I may put that in an amendment on Select File, if this moves on further. But I'm in support of this bill as the way it is, but I really think we need to be very serious about the cost of getting a divorce as compared to the cost of getting married. Thank you. [LB554]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Pirsch. [LB554]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I was wondering if Senator Flood would yield to a question, a quick question. [LB554]

PRESIDENT SHEEHY: Senator Flood, would you yield to a question? [LB554]

SPEAKER FLOOD: Yes, I will. [LB554]

SENATOR PIRSCH: Senator Flood, from just kind of a cost-benefit perspective, you

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had mentioned there's a \$50,000 A bill that would be trailing this now. Could you just briefly comment upon the overall effect that the...from a financial aspect, that the bill would present to the courts, to the people? [LB554]

SPEAKER FLOOD: Well, the A bill would be for the State Court Administrator's Office to prepare the layout of how we're going to handle mandatory mediation in 2010, but the impact, I think, on the court systems--especially outside of Omaha where they right now have mandatory mediation, much different than this in Court Rule 4-3--I think you would find that it would free up district court time for those judges. Right now district court judges spend a lot of time with child custody matters, and in rural areas, we don't always have the most luck getting a judge to come in and assist the other judges in handling the family court load in district court. You can file in county court, but nobody ever does, it seems. So I think this would do a lot to free up the docket for a lot of district court judges that are really bogged down with family work. [LB554]

SENATOR PIRSCH: Yeah. [LB554]

SPEAKER FLOOD: So I would hope that that's a cost savings, so it makes our judges in our system more efficient. [LB554]

SENATOR PIRSCH: And are these type of actions...compose a substantial amount of the work, the body of work that a judge does encounter on his... [LB554]

SPEAKER FLOOD: Yes. District court judges are...the majority of their caseload are domestic relations cases, and the judges in Douglas County swear by their Court Rule 4-3 that requires mediation, and a conciliatory court system similar to what we have here. So I think we are going to make a lot of judges very happy, should this be rolled out and paid for by the court fees. So I hope you support the amendment, Senator Pirsch. [LB554]

SENATOR PIRSCH: Thank you very much. Just one other question I had, if... [LB554]

SPEAKER FLOOD: Sure. [LB554]

SENATOR PIRSCH: With respect to the bill as written, would envision using special mediators for certain purposes, is that...for certain types of these cases. Is that correct? [LB554]

SPEAKER FLOOD: That was contemplated by the Office of Dispute Resolution under the Supreme Court, when we decided how much to put the court fee at. It does take more time, and if we have a woman or a man that is a victim of domestic violence, there's automatically going to be separate meetings with the mediator so those two people aren't in the same room at the same time. So that's very important to the

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domestic violence community. I understand that, I support that, and that's been contemplated inside this \$50 increase. [LB554]

SENATOR PIRSCH: And with the type of cases that would include, say, allegations where sexual abuse is involved, would... [LB554]

SPEAKER FLOOD: Absolutely. [LB554]

SENATOR PIRSCH: Okay. [LB554]

SPEAKER FLOOD: Sexual abuse, verbal, emotional, there's all sorts of different types of abuse that are defined in the bill. It would all relate to that question. [LB554]

SENATOR PIRSCH: Yeah. Very good. Thank you very much for your answers, Senator. I would...that's all the questions I have. I'd yield back my time. [LB554]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. Senator Flood. Senator Flood waives. Senator Stuthman. [LB554]

SPEAKER STUTHMAN: Thank you, Lieutenant Governor. I'd like to engage in a little conversation with Senator Flood. [LB554]

PRESIDENT SHEEHY: Senator Flood, would you yield? [LB554]

SPEAKER FLOOD: Yes, I will. [LB554]

SENATOR STUTHMAN: Senator Flood, you had stated that you have dealt with quite a number of divorces in your law practice. Is that true? [LB554]

SPEAKER FLOOD: That is true. [LB554]

SENATOR STUTHMAN: In that process, is there some divorce counseling or anything? We're talking about a mediator. That would be the next step after that. But has there ever been anything brought to your attention that maybe there should be some counseling to try to hold the marriage together? Is there any situation or any legal part or anything that can be done on that issue first? [LB554]

SPEAKER FLOOD: Senator Stuthman, there's nothing in here...and this bill doesn't deal with that. It deals simply with the parents that have decided to get a divorce, and they dispute how the children should be raised or who should have custody. I don't attempt to get into the middle of the marriage. I only attempt to make a divorce a better situation for the kids. You're talking about an area that I don't think we have the jurisdiction over. We can't get into people's houses. We only get into their house when child custody

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situations become an issue in front of the court. So this has nothing to do with counseling or money for counseling, nor could I support that at this time, because I think we have to keep our focus on the kids and who's going to raise them. And if the two parents don't want a divorce at that time, I don't think it's the state's business. [LB554]

SENATOR STUTHMAN: Okay, so then...and I realize that this bill is concentrating on...for the betterment and the best situation for the child, is what we're trying to attempt to do with this bill. [LB554]

SPEAKER FLOOD: Yes. [LB554]

SENATOR STUTHMAN: And it doesn't have anything to do with trying to keep the marriage together or the divorce, or anything. This bill concentrates on the best interest of the child and how to make that workable between the two parents, and you're trying to have the advisement of the mediator, if that works; is that correct? [LB554]

SPEAKER FLOOD: Right. [LB554]

SENATOR STUTHMAN: Okay, thank you. That is all. Thank you. [LB554]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Lathrop. [LB554]

SENATOR LATHROP: Thank you, Mr. President. I was just going to respond to the question of Senator Stuthman. We actually in Douglas County have what they call a conciliation court, and the judges, if they see any hope of a reconciliation, can send the couple down to the conciliation court, which is actually somebody who is trained as a counselor, to try to talk to the folks about reconciling their marriage. But before you can get a divorce, one of the things you have to be able to prove to the court is that the parties have irreconcilable differences and that no further attempts at reconciliation would be of any use. So that's something the courts are concerned about. Lawyers do care about that, and when I was doing divorce work, that was the first question I'd ask is, is there anything we can do to get you guys back together again? But in Douglas County they do have the conciliation court. Probably beyond the scope of the...of Senator Flood's bill, but we do have it, and honestly, I don't know how successful it is, but I assume they've salvaged a few marriages down in the conciliation court. Thank you. [LB554]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Erdman. Senator Erdman waives. Further discussion on AM1362? Seeing none, Senator Flood, you're recognized to close on your amendment to committee amendment. [LB554]

SPEAKER FLOOD: Thank you, Mr. President. Divorce isn't fun for anybody. It's certainly not fun for those that go through it, and the idea of paying an additional \$50

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when you file I'm sure has somebody across the state raising their eyebrow. But at the end of the day, this money goes to find those mediators to hopefully make relationships work between parents who still have to be parents for up to 18 years for the kids that they have between them. And this money is in lieu of General Funds that, in my opinion, addresses the need for mediators for the indigent. I would urge your support. Thank you, Mr. President. [LB554]

PRESIDENT SHEEHY: Thank you, Senator Flood. You've heard the closing of the amendment to the committee amendment. The question before the body is, shall AM1362 be adopted to AM1140. All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB554]

CLERK: 28 ayes, 0 nays, Mr. President, on adoption of Senator Flood's amendment. [LB554]

PRESIDENT SHEEHY: AM1362 is adopted. [LB554]

CLERK: I have nothing further on the bill at this time, Mr. President. I'm sorry. I have committee amendments pending, I should say. Nothing further pending to the committee amendments, Mr. President. [LB554]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. The floor is now open on the amendment, AM1140, the committee amendment. Further discussion, Senator Fulton. [LB554]

SENATOR FULTON: Thank you, Mr. President. Would Senator Flood yield to a question? [LB554]

PRESIDENT SHEEHY: Senator Flood, would you yield to a question? [LB554]

SPEAKER FLOOD: One question. (Laughter) [LB554]

SENATOR FULTON: Una pregunta, just one. Page 62 in the...and you may not need to go to it, I'll just read it to you. Page 62 in this amendment, beginning in line 11, "The father of a child is liable for the reasonable and necessary medical expenses of," and here's the term I'm inquiring about, "the child associated with the birth of the child." And I don't know, maybe there's a... [LB554]

SPEAKER FLOOD: I will actually save you the pain here, Senator Fulton, because...or myself the pain. I am going to rewrite this entire section on Select File. I'm not committed to the language that's in there now. I've talked to Senator Ashford, Senator Lathrop, and others. I don't think that it's written right. I don't think it's something that we can support. It has to get modified and it will. That will happen on Select, so you raise a good point. Thank you. [LB554]

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SENATOR FULTON: Thank you, Mr. President. [LB554]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Further discussion on AM1140? Seeing none, Senator Ashford, you're recognized to close on AM1140. [LB554]

SENATOR ASHFORD: Thank you, Mr. President. This has been an excellent discussion. It's exhilarating to see how far the Parenting Act and mediation in dissolution cases has come since 1991, when we first addressed this issue and the Legislature passed it, and it has been law since that time. It's worked well in many of the counties in our state, and I think...I appreciate Speaker Flood's insistence that this be a statewide program. I think that's incredibly important. I need not say anything else. Thank you, Speaker Flood, Senator Schimek, and everyone else who have been involved in this, and I urge the adoption of AM1140. [LB554]

PRESIDENT SHEEHY: Thank you, Senator Ashford. You've heard the closing of the Judiciary Committee amendment, AM1140. The question before the body is, shall AM1140 be adopted to LB554? All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB554]

CLERK: 34 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB554]

PRESIDENT SHEEHY: Committee amendment, AM1140, is adopted. We'll now move back to discussion on LB554. Anyone wishing to speak on this item? Seeing none, Senator Flood, you're recognized to close on LB554. [LB554]

SPEAKER FLOOD: Thank you, Mr. President, members. Thank you for your attention today. This is not a fun topic to talk about, but it's something our courts deal with every day, and I think that we're on a path that we can be really proud of. In fact, it could be a national model. I want to thank the Judiciary Committee, Senator Ashford, his staff, Senator Lathrop, certainly Denise in my office, who has just worked tirelessly. But I also want to thank the people that have been at the table--Senator Schimek for her priority sponsorship and interest in children and her interest in getting in the middle of this bill. She's not a sponsor in name only. She's been through it, she understands the bill and has been a great contributor. And also all the groups that have come together and their tireless efforts, especially those mediators across the state that are paying close attention. This is the right step forward for Nebraska. It's something I think we can be proud of. We're going to do some work on it between General and Select and bring back an amendment, but I really would appreciate your vote to move this to the next round of debate. Thank you, Mr. President. [LB554]

PRESIDENT SHEEHY: Thank you, Senator Flood. You've heard the closing to LB554.

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The question before the body is, shall LB554 advance? All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB554]

CLERK: 36 ayes, 0 nays, Mr. President, on the advancement of LB554. [LB554]

PRESIDENT SHEEHY: LB554 does advance. Next item under General File. [LB554]

CLERK: Mr. President, if I may, two items for the record. Bills read earlier this afternoon were presented to the Governor at 4:43 p.m. (re LB367, LB367A), and Enrollment and Review reports LB358 to Select File with Enrollment and Review amendments attached. (Legislative Journal pages 1642-1643.) [LB367 LB367A LB358]

Mr. President, the next bill, LB573, a bill by Senator Kruse. (Read title.) The bill was introduced on January 17, referred to the Judiciary Committee. The bill was advanced to General File. I do have committee amendments, Mr. President. (AM1088, Legislative Journal page 1342.) [LB573]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Kruse, you're recognized to open on LB573. [LB573]

SENATOR KRUSE: Thank you, Mr. President and colleagues. It's kind of a relief to get to something that will be easier, after that massive piece, though I must say this still deals with our kids. This bill is about teens and alcohol. It does not change anything in terms of policy. Our public policy is very clear within statute--minors shall not drink alcohol. It is also very clear about adults buying alcohol for minors. They shall not do it. There is no exception to that. What this bill does is make more clear our stand and removes some, you could call them, loopholes, but corrects some impressions that come from it. Now I'm presenting the base by which you can be ready for what's coming. The amendment which Senator Ashford will present becomes the bill. And then following that, I will have an amendment which has two other bills that have been before Judiciary, and they will be a part of it. So those...package of three items becomes the bill. I would, for ease of description, and later in the evening, simply call it a kegger bill. That's the way you can stay focused on it. We are dealing with keggers and how to bring responsibility and how to shut them down. I must give credit to where all of these components come from--they come from teenagers and enforcement and educators, a coalition of them called Project Extra Mile. Everything that I'm presenting comes from them, and they have verified that this will make a difference. What I think and what I feel about people who procure alcohol for minors probably ought not to go in print any place, but that isn't really what counts. It's a question of making a difference. This bill targets persons who procure for minors, who procure alcohol especially for teenagers. That's what we're after, and so...and I know this floor is deeply concerned about this. I had a lot of comments on this. We've had almost no opposition. We've had questions about how to deal with this or that, but we're for it. But for the record let me state three clear

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items here. One, all that we're talking about in this bill is already illegal or against the regulations of the Liquor Control Commission. Number two, consumption of alcohol on a regular basis by teenagers causes permanent brain damage. We did not know that five years ago. We did not know that when these bills were written, but we know it now. And I recognize that there are good-hearted and sincere parents, for instance, who will say, well, what I do within my own home I do for the benefit of my kids and to teach them how to drink. We respect that where...as already been stated, we don't go into homes. But because the parent doesn't know that creates brain damage does not let me or you off the hook. We know that alcohol slows down the development of the frontal lobe, where decisions are made, and that when a person becomes 25 years of age, the development of the frontal lobe stops, however far it has gotten by that time. Now we can see this as a personal thing; we can also see it as economic development. What we're talking about here is protecting the brain power of the young people who are going to be our engine of economic production. And then the third item, we have studies that show that in Nebraska--this is just Nebraska--it costs \$447 million a year for underage drinking. That's one-seventh of our budget. We are struggling and pushing and pulling, trying to figure out what to do with one or two million dollars, trying to reach for it here. This afternoon we're working for \$4 million--\$447 million are at stake, and I tell you, friends, we can stop that. Other countries have stopped it. We can...we lose 35 teenagers every year. It's totally unnecessary, and so that's the intention of this bill, and again, the expertise comes from others beside myself. With that, I will close my comment now. [LB573]

SENATOR AGUILAR PRESIDING

SENATOR AGUILAR: Thank you, Senator Kruse. There are committee amendments. Senator Ashford, as Chair of Judiciary Committee, you're recognized to open on the committee amendments. [LB573]

SENATOR ASHFORD: Thank you, Mr. President. Thank you, Senator Kruse, and again, thank you to your staff and also to the staff of the Judiciary Committee and the members who have worked on this legislation for some time. And I know Senator Lathrop spent some time--considerable time--on the drafting, as well, so...and other committee members, so I appreciate their efforts. LB573, which is amended by AM1088, was advanced unanimously from the Judiciary Committee. There was substantial testimony. The opposition testimony focused primarily on the adult dramshop provisions of the bill and the enforcement provisions of that adult dramshop bill. And those, I'm sure you're aware, the dramshop legislation would have created civil liability for serving intoxicated adults who subsequently injure a third party, and I think Senator Kruse did allude to that. The committee amendment replaces the green copy of the bill and addresses the concerns which have been raised by Senator Kruse today, and raised very aptly by Senator Kruse at the hearing, in this bill and a number of other bills. And I understand Senator Kruse has two other amendments that he will be

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offering, also dealing with children, underaged individuals who obtain alcoholic beverages. The committee amendment replaces the green copy and addresses the concerns raised at the hearing and by committee members, by removing the provisions of the bill relating to serving intoxicated adults, and limiting the bill...quite frankly, "limiting" is the wrong word, but focusing the bill on liability for persons who sell or who procure alcohol for minors, and social hosts who allow minors to drink on their property. There was significant testimony by numbers of people about this issue, and obviously, common sense will tell us that minors do obtain alcohol from social hosts, from retailers and others, and the results are...can be, obviously, disastrous. As amended, the bill provides that social hosts who allow minors to drink on their property, adults who procure alcohol for a minor, and retailers who sell alcohol to a minor are liable for injuries or other damages caused by the negligence of the intoxicated minor. The amendment explicitly prohibits recovery by the intoxicated person, his or her estate, or any person whose claim is based upon injury or death of the intoxicated minor, so obviously, we're focusing on the damages or injuries to a third party who would be injured by the intoxicated minor. The amendment also provides a defense to liability under the act, if the intoxication did not contribute to the negligent conduct. Additionally, and we will, I'm sure, have some discussion about this, but that would be a finding of fact that would be made during the course of the proceedings, the court proceedings. Additionally, retailers are provided the defense currently found in 53-180.07, which protects retailers in situations where they acted in good faith and relied on false identification that a reasonable and prudent person would believe is a valid identification. The remaining provisions of the committee amendments establish a two-year statute of limitations for claims under the act, provide that defendants in an action under the act are jointly and severally liable, clarify that such defendant shall have a right of contribution and not a right of subrogation from each other, and removes the requirement that retailers provide proof of liability insurance coverage to the Liquor Control Commission. And these were somewhat cleanup measures, but are substantive. The main thrust of the bill is to address issues involving minors and their procurement...or procurement by third parties of alcoholic beverages, that result in injury or death to third parties. With that, Mr. President, I would urge adoption of AM1088. [LB573]

SENATOR AGUILAR: Thank you, Senator Ashford. That was...you've heard the opening on the committee amendments, AM1088. We have other amendments on the bill. [LB573]

ASSISTANT CLERK: Mr. President, Senator Kruse would offer AM1195 to the committee amendments. (Legislative Journal page 1371.) [LB573]

SENATOR AGUILAR: Senator Kruse, you're recognized to open on your amendment. [LB573]

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SENATOR KRUSE: Thank you, Mr. President and colleagues. There are two items in this--there's only one amendment, just to kind of clarify that. Both items have been a bill, both have had a hearing. Neither one has been voted on in the Judiciary. It came in, in recent weeks. But by common consent, we agreed that these are a package and fit together. Again, to emphasize that we're not changing law, present law says no person shall sell, give away, dispose of, exchange, deliver, or permit the sale, gift, or procuring of any alcoholic liquor to any minor. There are no exceptions in that. And the next part of that section says, no minor shall obtain or attempt to obtain alcoholic liquor by misrepresentation, and so on. And then another section says no parent or guardian shall knowingly permit a minor to misrepresent himself or herself, and so on. So the present policy, the present attitude toward this is very clear. Now, this amendment does two things. They seem rather simple, but do put yourself out on that kegger scene. The police have arrived out there, and they find a large number of youth who are...obviously been drinking and unable to function properly. None of them have a drink in their hand, because they saw them coming. There's two ways that the officers are prevented from doing anything in that scene. One is the keg registration. Under present law, every keg is to have a tag which says who sold that keg and who bought it. And unfortunately, when we put in that law, we said the only penalty is for removing the tag, and this little piece just says, for removing the tag or having a keg where the tag has been removed. (Laugh) It's a rather obvious addition. At present, it's easy to get around this thing because somebody in the back of the van, as they're going out to the kegger scene, scrapes off this tag registration, which is just a stick-on on the side of the keg, and when they get out there and the officers arrive, why, everybody looks helpless and looks to the heavens. They don't know where this came...where this keg came from. It just descended from above. Now, officers can trace that keg now, but it's not worth their while, because possessing that keg is not against the law. So that's what this does. Then, even with the tag removed, the officers can go back and find out who purchased it. Okay. That's item number one. And item number two is to remove an exemption of places where teenagers may consume alcohol. Kind of get in your mind places. What you'll note in the amendment is that they are saying minors may not sell, dispense, consume, have in possession in any public street, alley, road, highway, upon property owned by the state or subdivision, inside of a vehicle while in or on any other place, on highways, on public streets, alleys, roads--it's all places. And then the exception in there was, except in their own home or in a place of religious worship. We are taking out the exception of their own home, and this is not to try to control what happens in that house but to try to control what happens out in the kegger. When the officer notes that the youth have been drinking and, obviously, about everybody there has been drinking, the youth have trained each other to say, I was drunk when I left home, and there's not a thing they can do about it. A principal, school principal, came to the presentation of this bill and said they were using a little gadget to check out who had been drinking when they come to the prom and found a young man who had been drinking. And so they held him and they thought, well, let's call the sheriff, let the sheriff hold him. The sheriff came and said, ah, you as school principal can hold him, and you can prevent him from

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going into the prom. But I cannot hold him, because he's going to tell me that he was drunk when he left home. It's the perfect excuse. So we're simply removing that as a place, and we're taking the religious part of it out of the place and simply changing that to a bona fide religious rite, ritual, or ceremony, without any definition of location. And I really like that change, because that brings our Jewish citizens into the act, too. Their religious rite would be in their home, the Seder meal. At the time of Passover, a very small glass of wine is sometimes taken with the meal, though if there are younger children they do substitute grape juice. At any rate, that's kind of beside the point. Most states don't even recognize that because, frankly, folks, we've had a lot of talk about this, and people talk...people making all kinds of comments about me as a pastor. Frankly, folks, I would hope every person can tell the difference between serving a young person with a few drops of wine in a Eucharist and giving a teenager a drink. We are joined together, and I think we will be united in this. We are joined together in saying that teenagers ought not to drink, and no one should provide them with a drink. And if they do, it's going to be serious business for them. These three changes will make a tremendous difference, we are told by law enforcement officers, because they'll be able to do something about the keggers. I thank you. [LB573]

SENATOR AGUILAR: Thank you, Senator Kruse. You've heard the opening on AM1195. Mr. Clerk. Those waiting to speak on AM1195 are Senators Lathrop, Carlson, Janssen, Ashford, Pirsch, and Langemeier. Senator Lathrop, you are recognized. [LB573]

SENATOR LATHROP: Thank you very much, Mr. President and colleagues. I rise in support of Senator Kruse's LB573, the committee amendments, and Senator Kruse's AM1195. And maybe I can, with respect to AM1195, just say that as a member of the Judiciary Committee, we did hear evidence...or testimony in the committee hearings on the two issues that he's brought forth. It is true--they peel the stickers off these kegs and then we can't trace them or determine where they came from or who sold them to the minors, and likewise, we do have a problem with children who, when caught intoxicated simply say, I drank at home. And so Senator Kruse's amendment, AM1195, does close the door on that loophole or that defense. I don't think it's a particularly difficult invasion into the family home, and for that reason I'd support AM1195. With respect to the underlying committee amendment, which becomes LB573, I would like to address that. That is a matter of civil liability, and our concern and interest with this--and I'm sure Senator Kruse's as well--began with the unfortunate death of two students, two young people in Gretna. And in the last several months, last few months, we had an event which occurs all too frequently and is repeated all too frequently across the state of Nebraska, and that is minors who have been provided alcohol by an adult, then get behind the wheel of a car and somebody ends up badly injured or killed. We do have criminal statutes which address this, but they do not seem to discourage people from providing alcohol to minors. LB573 addresses that with a civil process, with a civil liability, and I frequently had occasion to talk about civil liability on the floor. Civil liability

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takes care of or works...does two things when it's present. The first thing it does is it provides compensation for the people that are hurt because of someone's deliberate or negligent conduct. The other thing it does, and what's important here, is that it provides an incentive, or a disincentive in this case, and the criminal statutes that are in place that discourage or make a crime out of providing alcohol to minors don't seem to be getting through to the adults that are providing alcohol to children. This bill will. Senator Kruse's bill will provide an incentive, a disincentive to adults, to do any one of three things: One is to have a beer party in the basement. So those adults--and you probably know them in your community--who say, I'd rather have the kids drinking in my basement, well, those kids have to get in their cars and go home, and this will put a stop to that. These people will know, soon after this is passed, that if they want to host a kegger or have the kids over to drink beer, that they will be subject to civil liability when those kids go out and hurt themselves or others. It will also provide civil liability in those instances where someone actually goes out and buys the beer. So if mom or dad or big brother or just some stranger says, yeah, sure, I'll buy you a 12-pack of beer, and then the kids drink the beer and then get in an automobile accident, that person will share in the liability for that collision. And the third instance is in that situation where a retailer sells alcohol to a minor. They do have a defense if the minor presents what looks to be a valid ID and the ID looks like the person who is represented, or who is before the retailer and buys the alcohol. So what we have here is a tool that will help... [LB573]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: One minute. [LB573]

SENATOR LATHROP: ...the state of Nebraska by discouraging adults from providing alcohol to minors. It will compensate the people that have been injured as a consequence, and hopefully, this measure will not only provide compensation but discourage adults from procuring alcohol for minors, or allowing them to drink it in their homes. And I think it's good policy and should be adopted by this body. Thank you. [LB573]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Carlson, followed by Senator Janssen, Senator Ashford, Senator Pirsch, and others. Senator Carlson. [LB573]

SENATOR CARLSON: Mr. President and members of the Legislature, I rise in support of LB573 and the amendments, unless something very surprising occurs in testimony before we take a vote on it. I do have a question, and I'd like to address this either to Senator Lathrop or Senator Ashford or Senator White. I'll start with Senator Lathrop, if he would yield. [LB573]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to a question? [LB573]

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SENATOR LATHROP: Yes, I'd be happy to. [LB573]

SENATOR CARLSON: If you look at the amendment, Section 3(7), page 2, line 4,... [LB573]

SENATOR LATHROP: You're on AM1088? [LB573]

SENATOR CARLSON: Yes. [LB573]

SENATOR LATHROP: Okay. [LB573]

SENATOR CARLSON: It's page 2, line 9. Do you see "social host"? [LB573]

SENATOR LATHROP: Yes, I certainly do. [LB573]

SENATOR CARLSON: Is that a legal term? [LB573]

SENATOR LATHROP: It is...we've defined it in here, so it becomes a legal term on adoption of this measure. [LB573]

SENATOR CARLSON: So it's no more legal term than what it's being made right here? [LB573]

SENATOR LATHROP: Yes. It doesn't have...as used in the context of this act, it will be as defined in paragraph (7). [LB573]

SENATOR CARLSON: Okay. Thank you. Senator Kruse, if I could... [LB573]

PRESIDENT SHEEHY: Senator Kruse, would you yield to a question? [LB573]

SENATOR KRUSE: Yes, I will. [LB573]

SENATOR CARLSON: And, Senator Kruse, you heard the question I just asked about social host, and this is a minor thing, but to me a social host is a positive person, and in your bill a social host is a crook, and I would encourage you to find another term. [LB573]

SENATOR KRUSE: (Laugh) Well, I appreciate that, Senator. We...I guess in early stages...we've been working on this for two or three years and thought about that in the beginning. This is a commonly accepted title, is used nationally and in other states in legislation. But there's...it's a way of defining a host of minors. It's limited to minors, and also it's limited to minors who are not your children. So it does have a national definition,

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but this is the only one in our statute. [LB573]

SENATOR CARLSON: Okay. Well, that won't cause me not to vote for it (laugh), but thank you. [LB573]

SENATOR KRUSE: Thank you. [LB573]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Janssen. [LB573]

SENATOR JANSSEN: Thank you, Mr. Lieutenant Governor, members of the Legislature. You know, I appreciate Senator Kruse bringing this. We do have to do something about underage drinking in this state, or not only in this state. It's all over the country. Other states have a problem with it, also. I do believe that we had...I can give you a for-instance. A retailer in one of the small towns in my district had a minor come into her establishment and tried to buy some alcohol. She checked the ID and that person was underage, so she confiscated the ID, and it was a sting operation. The person came back in and...the adult that was with them, and said, you know, you can't do that. Well, she said, I didn't know that this was a sting, and I believed that, you know, if that young person was going to try to procure some more alcohol, he would probably keep going to a place until he finally found someone who would sell it to him. And I think we should really look at that some time; whether this is the place to do it, I'm not sure. But if a legitimate businessman, whether it be a bar, restaurant, or a grocery store, or any retail outlet that does sell beer--by the way, I don't sell alcohol in my store, for that reason--I think we should put some restrictions on that young person that's trying to procure that alcohol, also. With that, I'd give the rest of my time to Senator Langemeier, if he's around here. There he is. [LB573]

PRESIDENT SHEEHY: Senator Langemeier, about 3 minutes. [LB573]

SENATOR LANGEMEIER: Thank you, Mr. President and Senator Janssen. Would Senator Ashford yield to a question? [LB573]

PRESIDENT SHEEHY: Senator Ashford, would you yield to a question? [LB573]

SENATOR ASHFORD: Yes. [LB573]

SENATOR LANGEMEIER: Senator Ashford and I had a little conversation earlier, and I just want to further that on the record. Currently, if a cashier comes across a pretty obvious fake ID, do they have the right to confiscate that? [LB573]

SENATOR ASHFORD: Not currently, Senator. Not under current law, they do not. [LB573]

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SENATOR LANGEMEIER: And you indicated that there's a bill in Judiciary Committee that would allow them to do that? Is that LB337? [LB573 LB337]

SENATOR ASHFORD: Senator Kruse had...yes. [LB573]

SENATOR LANGEMEIER: Okay. [LB573]

SENATOR ASHFORD: Senator Kruse's bill is in committee, and yes. [LB573]

SENATOR LANGEMEIER: Do you think that might be germane, to put that type of language and ability into this bill, maybe on Select File? [LB573]

SENATOR ASHFORD: Yes. [LB573]

SENATOR LANGEMEIER: Okay. That's what I...that's what we had had a conversation about. I think there's some merit to that. I think there's some...as we hold them more reliable, we could expect more from them, and I think that would be appropriate. [LB573]

SENATOR ASHFORD: Yes, I agree with you, Senator Langemeier. [LB573]

SENATOR LANGEMEIER: Sounds good. Thank you, Mr. President. [LB573]

PRESIDENT SHEEHY: Thank you, Senator Langemeier. Senator Ashford, followed by Senator Pirsch, Senator Langemeier, and Senator Gay, and others. Senator Ashford. [LB573]

SENATOR ASHFORD: Mr. President, I believe I've covered most of what I need to cover. I would just ask...Senator Lathrop,... [LB573]

PRESIDENT SHEEHY: Senator Lathrop, would you answer...yield to a question? [LB573]

SENATOR ASHFORD: ...could I ask you, just for the record, and I know Senator White has brought up an issue, and he can bring it up on his time, I guess, or we could do it now. But would you, just for the record, explain, and you touched on it, but the issue of joint and several liability in contribution, how that works for a particular defendant who has sold alcoholic beverages to minors? [LB573]

SENATOR LATHROP: I'd be happy to. The idea behind the joint and several liability is, typically, the minor who does the drinking is going to get...be negligent in the operation of a motor vehicle--that's the classic example. So if a minor drinks, crosses the center line, and hits another vehicle, the joint and several liability comes in, in this manner. It

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is...the minor that drank is going to have done something negligent, so he will be liable--perhaps his family will be liable, as well, under certain doctrines of family purpose. So there's liability for the minor for causing the accident, and then there is joint liability, the equal liability for the person that provided the alcohol, assuming the alcohol contributed to the accident. [LB573]

SENATOR ASHFORD: Thank you, Senator Lathrop, and with that, I would give the rest of my time to Senator Synowiecki, who I believe has a concern that he would like to raise. [LB573]

PRESIDENT SHEEHY: Senator Synowiecki, about 3:30. [LB573]

SENATOR SYNOWIECKI: Okay, thank you, Senator Ashford. While we're on the amendment, AM1195, Senator Lathrop, would you yield to a question? [LB573]

PRESIDENT SHEEHY: Senator Lathrop, would you yield? [LB573]

SENATOR LATHROP: Yes, I would. [LB573]

SENATOR SYNOWIECKI: So I understand now, if you're a youngster, you're not old enough to drink, you're a minor, the two exemptions that are currently in law are religious ceremonies and they can drink at home, in current law. [LB573]

SENATOR LATHROP: I...that's...under current law, that's true. [LB573]

SENATOR SYNOWIECKI: Now what AM1195 then does is to remove one of them exemptions, and that's the one that...at the place of permanent residence, they cannot consume alcohol. [LB573]

SENATOR LATHROP: That's my understanding of the amendment. [LB573]

SENATOR SYNOWIECKI: So, Senator Lathrop, I think there's...at times can be healthy introductions for young people to the consumption of alcoholic liquor, and there's unhealthy. And a lot of the deliberations so far have been on the unhealthy. You gave the example--and this happens, and I know it happens, and it's a problem--where parents will let the youngsters have a party in the basement and supply them with all kinds of liquor and so forth. But at the same time, Senator Lathrop, I think there's the Thanksgiving ceremony with the family, and you have a 19-year-old, a 20-year-old that has a glass of wine with the turkey dinner. We're essentially making that illegal now. [LB573]

SENATOR LATHROP: Yeah. Two things: AM1195 makes that illegal because of Senator Kruse's amendment to the committee amendments. That would make it illegal. I

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should tell you, though, that under AM1088 you can...you're not a social host if you provide your child with a glass of wine and they go out and get in a car accident. You don't have liability for that. So while Senator Kruse's amendment may be changing the criminal law, they're two entirely different things. This thing started out as a liability, civil liability bill, and Senator Kruse recently filed his amendment to change some criminal aspects to possession of alcohol by a minor. That's his AM1195. It does make that change. But in the civil liability section it does not. [LB573]

SENATOR SYNOWIECKI: Under AM1195, a lot of times, Senator Lathrop, we have questions about, how do you enforce this? How will we enforce AM1195 on the permanent residence exemption? [LB573]

PRESIDENT SHEEHY: One minute. [LB573]

SENATOR SYNOWIECKI: And is it any intent of the committee to disengage or disconnect? I talked a little bit about what I perceive to be healthy/unhealthy... [LB573]

SENATOR LATHROP: Sure. [LB573]

SENATOR SYNOWIECKI: ...instances--the glass of wine with Thanksgiving dinner with the family together. I mean, we're not going to have...is it the intent that we break down on that sort of activity? [LB573]

SENATOR LATHROP: No, we're not trying to... [LB573]

SENATOR SYNOWIECKI: I would hope not. I mean... [LB573]

SENATOR LATHROP: I don't think the intent of AM1195--and Senator Kruse would be in a better position to answer that--but I think his intention, as I understand him, is that when you find a minor showing up at prom and he's got alcohol on his breath or he's out in the public and they answer, I drank at home, you can't prosecute him for being in possession of alcohol. So I think... [LB573]

SENATOR SYNOWIECKI: But the... [LB573]

SENATOR LATHROP: ...he's not trying to go into the home to enforce this, but to close the defense when they're out on the streets. [LB573]

SENATOR SYNOWIECKI: Okay. But technically speaking, though, very technically speaking, an unintended consequence of it, though, would be to make illegal the sharing of a glass of wine at a dinner ceremony with family. [LB573]

PRESIDENT SHEEHY: Time, Senator. [LB573]

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SENATOR LATHROP: That's true. [LB573]

PRESIDENT SHEEHY: Senator Pirsch, followed by Senator Gay, Senator White, Senator Synowiecki. Senator Pirsch. [LB573]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I just wanted to make a comment on something Senator Kruse had spoke of earlier. This is just with respect to his amendment, AM1195, and the first facet of that deals with the loophole whereby, in the instances he gave with...there is a current existing law on the book that does make it illegal...requires a distributor of the kegs to have the kegs labeled, and it...another criminal law does make it illegal to actually tear off the label or deface it. And the problem I can attest to as a prosecutor over the last decade has been that I can't remember, in the hundreds, if not thousands, of cases of MIP and other type of alcohol-related crimes, I can't remember once prosecuting a case of removing the label on these kegs, and that's...it just doesn't happen. And it is hard to catch that particular crime in the act. Now often...a lot of times you find the kegs without the label on them, but that's not enough to prosecute under the act, and the problem with that is that once the identifier of the keg, which is the means by which you can trace it back to the liquor store or wherever it came from, that is the way that you can easily tell who procured the keg. And so upon finding the keg, you obviously don't, in those cases, have any identifying marks, so you can't pursue the procuring case. And you weren't there or no witnesses were there at the time that the actual tag was removed, and so you don't have this case for the removal, as well. So I think this does plug a hole, a loophole, if you will, and is valuable. It will allow us to make mere possession of this keg illegal, and so that is something that can be clearly established in these cases. So I think it is a valuable tool for prosecutors that will help in the arsenal and hopefully find a way to deter these underage keggers, and I can attest that there really is a lot of danger when you get a large number of underage individuals with these kegs, and I've seen it happen time and time again where it does lead to injury or death. And so I do applaud Senator Kruse for bringing this amendment with respect to this keg registration facet of it. Thank you very much. [LB573]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. Senator Gay. [LB573]

SENATOR GAY: Thank you, Mr. President. I rise in support of this amendment, AM1195. I do have some questions, though, if Senator Kruse would yield to a few questions. [LB573]

PRESIDENT SHEEHY: Senator Kruse, would you yield to some questions? [LB573]

SENATOR KRUSE: Yes, I will. [LB573]

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SENATOR GAY: Thank you, Senator Kruse. Senator, what is, again, a Class III misdemeanor? What is that, if somebody removes one of these keg IDs? [LB573]

SENATOR KRUSE: Someone else will have to define the Class III. Senator Pirsch could...has dealt with that all his life. [LB573]

SENATOR GAY: Okay, we'll get to that then. [LB573]

SENATOR KRUSE: Thank you. [LB573]

SENATOR GAY: Second question would be, many times...of course, a minor, I...if it's blatant, and a parent is having the kids drink in the basement and then they're...that's just wrong and I...100 percent in support of that. The question I have is the cases where a kid has a party, the parents are out of town. This is what happens if parents are out of town. The kid has a party. They get somebody to procure the beer or the keg, and first thing they're going to do probably is rip that seal off, I assume, or try. I don't know, maybe not. But the question would be this: If they're having the party and the police come and they break up the party, issue MIPs and do all this other stuff, who is...is the parent then responsible for the kid, then? If any of these other kids go out and create any liability, that parent is still responsible for what could be 100 kids out there getting into some kind of trouble? [LB573]

SENATOR KRUSE: Under present law, as I understand it, and there are others who can be more precise, under present law it is...the parent is liable for what happens within their home, even if they're not there. [LB573]

SENATOR GAY: Well, when they leave... [LB573]

SENATOR KRUSE: This would add a civil liability for what those kids do out on the road. [LB573]

SENATOR GAY: Okay, so there's 100 kids there, and these kids are driving home and they've been drinking, and again, the parents don't know the party was going on,... [LB573]

SENATOR KRUSE: Well, there... [LB573]

SENATOR GAY: ...and they get into an accident and kill somebody, let's say. [LB573]

SENATOR KRUSE: There's a little piece that you kind of slipped over there. There's a keg there. Who owned the keg? [LB573]

SENATOR GAY: I'm getting to the point... [LB573]

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SENATOR KRUSE: A minor did not buy that keg, so who bought the keg? [LB573]

SENATOR GAY: And here's my question, and thank you, you're defining this for me,... [LB573]

SENATOR KRUSE: We're after the procurer. [LB573]

SENATOR GAY: ...because what I'm saying, would the person be...the procurer be the one liable, not the parent, or are the parents still liable, too? If my kid has a party and I'm out of town, me and my wife are out of town. They're 17 and I have somebody checking on them. I don't know what the situation could be, but is the procurer of the keg the one liable, or are those parents where the party was held, because these kids are going to go where the parents aren't? [LB573]

SENATOR KRUSE: This bill is written to go after the procurer, the one who bought the alcohol and got it to the kids. [LB573]

SENATOR GAY: And the parents, then, or parent, because many times it may be a parent is working nights and they're having a party. So that parent, then, couldn't come home from work...oh, by the way, you're being sued because a kid got in an accident? [LB573]

SENATOR KRUSE: That would be possible now, as a third party. We don't get into that,... [LB573]

SENATOR GAY: Okay. [LB573]

SENATOR KRUSE: ...but a parent is responsible for what their minors do... [LB573]

SENATOR GAY: In their home. Okay, and I didn't know that from... [LB573]

SENATOR KRUSE: ...in or outside of their home. [LB573]

SENATOR GAY: Okay. Okay, that's what I wanted. Thank you, Senator Kruse. Thank you, Mr. President. [LB573]

PRESIDENT SHEEHY: Thank you, Senator Gay. Senator White, followed by Senator Loudon, Senator Langemeier, and others. Senator White. [LB573]

SENATOR WHITE: Thank you, Mr. President. Will Senator Lathrop yield to a question, please? [LB573]

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PRESIDENT SHEEHY: Senator Lathrop, would you yield to a question? [LB573]

SENATOR LATHROP: Yes, I would. [LB573]

SENATOR WHITE: Senator Lathrop, as currently drafted, if, for example, I was invited to my sister's home for Thanksgiving dinner, and my 16-year-old son, she asked me could he have a glass of wine in her home, under my supervision, with dinner, would she be considered a social host that would be exposed to liability, even though I was present and expressly authorized the consumption of the wine by my son? [LB573]

SENATOR LATHROP: Under the AM1088, which is the civil liability portion of this, she would be. You would not have any liability, of course, unless there was intoxication. [LB573]

SENATOR WHITE: Or he... [LB573]

SENATOR LATHROP: Well, yeah, your sister wouldn't have any liability unless your son became intoxicated at her house during dinner. [LB573]

SENATOR WHITE: Now if, however, the Thanksgiving dinner was in my home, then I would be immune? [LB573]

SENATOR LATHROP: You cannot be a social host of your own child in your own home. [LB573]

SENATOR WHITE: Now if I am in my sister's home and I hand the glass of wine to my son, am I a social host who can be held liable if there's intoxication and injury? [LB573]

SENATOR LATHROP: I don't think there's any principle that would allow your son or someone that was drinking...riding in the car with him, to sue you because you gave your son a glass of wine, not even under this. [LB573]

SENATOR WHITE: Well, Senator Lathrop, isn't it true that my protection as not being a social host is limited solely to alcohol supplied in my home? I don't have the right to be free from that if I authorize and allow my son to have a glass of wine in my father's home or my sister's home. In other words, I can...I am free from social liability for providing alcohol to my child in my own home, but nowhere else, even if it's a relative or any other situation. And does that make any rational sense? [LB573]

SENATOR LATHROP: Well, as it relates to your liability, if you want to give your son alcohol at your sister's home and get him intoxicated, and then he goes out and gets in an accident, the people in the car with him will be able to sue your son and you, under the family purpose doctrine, so this probably is superfluous. Now as it relates to your

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sister, if she is providing alcohol to your son to the point of intoxication, he gets in a car and hits somebody, she would have liability. And we've talked about that off mike. If you want an amendment that allows social host to be expanded to include someone...or to exclude alcohol provided to a minor at the direction of his parents, that can probably be done on Select File. [LB573]

SENATOR WHITE: Well then, would you object to such an amendment, Senator?  
[LB573]

SENATOR LATHROP: No. [LB573]

SENATOR WHITE: Okay, so in other words, you would agree. I mean, here's the point of this: It seems to me that if we're going to have a legitimate exclusion for a parent providing alcohol to a child under their supervision, that ought to be the definition, and it ought not be restricted to whether it happens in their home or otherwise. The point is, the parent was there, they supervised it and they allowed it. That ought to be the operative term; do you agree? [LB573]

SENATOR LATHROP: It's probably...it probably makes it consistent. [LB573]

SENATOR WHITE: Now where do you stand, sir, on criminalizing the provision of alcohol by a parent to a child under supervision in moderation? I mean, obviously, if it's abuse, it's abuse. [LB573]

SENATOR LATHROP: AM1195 would do just that. [LB573]

PRESIDENT SHEEHY: One minute. [LB573]

SENATOR LATHROP: I...my concern is with AM1088 primarily, the civil liability. The amendment, AM1195, is something Senator Kruse just offered, and I...the two are completely distinct. One is a criminal proceeding, and an amendment...you don't have to be...if you oppose AM1195, you can still get along with AM1088, in my judgment.  
[LB573]

SENATOR WHITE: I would like the body to know that with the exception of certain quirks, like the provision of alcohol at a relative's home, I generally support this because of a bitter experience as a young attorney, under handling some cases for some truly tragic situations. However, when we start walking into the relationship of parent to child, especially things like teaching responsible use of alcohol under supervision, we need to be extraordinarily careful. I also am deeply opposed to criminalizing that behavior, because alcohol, like many other things, can be used responsibly... [LB573]

PRESIDENT SHEEHY: Time, Senator. [LB573]

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SENATOR WHITE: ...if it's done with education and under supervision initially. Thank you, Mr. President. [LB573]

PRESIDENT SHEEHY: Senator Louden. [LB573]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. I'd like to ask Senator Lathrop a question, if he would, please. [LB573]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to a question? [LB573]

SENATOR LATHROP: I'd be happy to. [LB573]

SENATOR LOUDEN: At the present time, what is the age when people can start buying alcohol? Is it 21? [LB573]

SENATOR LATHROP: Yes. [LB573]

SENATOR LOUDEN: Now is that nationwide, or is that Nebraska, or do different states have different age groups? [LB573]

SENATOR LATHROP: I think the feds have twisted all the states' arms, and it's now 21 across the country. [LB573]

SENATOR LOUDEN: Okay. Now is the criminal code the same for all states? Because I mean, when you go to Wisconsin, why, they manufacture a lot of beer, and their rules are somewhat different on alcohol in Wisconsin, that it seems like to me, anyway, than it is other states. And I was wondering how that would affect people that were traveling through Nebraska in their campers and that sort of thing, and they had different age groups of children with them, and they were drinking beer or something like that. Would that criminalize them as soon as they cross the state line? [LB573]

SENATOR LATHROP: First of all, there's a distinction between AM1195, which is criminal, and AM1088, which deals with the civil liability. As it relates to the criminal liability, I believe that the feds have tied road money to making 21 the age for drinking across the country. So I don't know what your understanding is of the law in Wisconsin or any other state, but I think it's 21 across the country. [LB573]

SENATOR LOUDEN: Now what about on military bases? What age can they drink beer on a military base? My understanding is... [LB573]

SENATOR LATHROP: I got to think, if the feds make us all have 21, that it's 21 on a military base. [LB573]

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SENATOR LOUDEN: Okay, the last I talked to anybody, when you're in the army on a military base, you can drink beer if it's sold--that's it. And that's what I'm wondering, how that would interact with the law that you're trying to bring forward here. The next thing I would wonder is, what about these...you're talking about people 21 years old. Some of them have come back from the service and everything else, but if they're 20 years old, they wouldn't be allowed to drink any kind of alcohol, but yet you could have them out there working in a hay field or brandings or something like that, and you would...I guess it would be more or less some type of a misdemeanor or criminal negligence or something if you allowed them to drink beer out there, when some of these are actually young men and women that do a lot of heavy work out there. But yet you wouldn't allow them to drink the beer. How would you handle that? Would that...these laws would apply to everybody the same, correct? [LB573]

SENATOR LATHROP: Well, they currently do apply, and the law in Nebraska is that if you're under 21, you're not to be drinking. The two exceptions would be a religious service and the second would be drinking in your own home. AM1195 would eliminate the exception for drinking in your own home and leave someone under the age of 21 with only one opportunity to consume alcohol, and that's in the course of a bona fide religious service. [LB573]

SENATOR LOUDEN: Now as I've been listening to the discussion, it was usually about somebody getting in a car and it's more about accidents and people getting killed or seriously injured. So I guess, as we heard them talk about the school issues here the other day, think outside the box. Is the problem the alcohol or is it the automobiles? We already have laws that...against driving under the influence, so are there already laws actually that would cover this? Because the problem seems to be after they get in the automobile. It isn't the drinking, it's after they get in the automobile. [LB573]

PRESIDENT SHEEHY: One minute. [LB573]

SENATOR LOUDEN: Not too many people probably get hurt walking around with alcohol, but it seems like when they get in the car. So do you think perhaps that the DUI, driving under the influence, laws are adequate to cover some of these things? [LB573]

SENATOR LATHROP: The difficulty with the DWI law, or relying on the DWI law to fix this problem is it doesn't get to discouraging the people who are providing the alcohol, and this bill does. Now we're talking about the civil liability. It discourages people from providing the alcohol to minors. When a minor gets a DWI, there is no law that says, now we will similarly charge the person that gave them the alcohol. [LB573]

SENATOR LOUDEN: Okay, thank you, Senator Lathrop. My concern is, is that we're

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cranking out legislation here that's probably going to cause people more trouble than what it's helping them. And I agree with Senator Kruse that we have to do something about drinking and driving. I'm certainly against that. [LB573]

PRESIDENT SHEEHY: Time, Senator. [LB573]

SENATOR LOUDEN: But I don't know if this is the answer. Thank you, Mr. President. [LB573]

PRESIDENT SHEEHY: Thank you, Senator Louden. Senator Langemeier, followed by Senator Lathrop, Senator Pirsch, Senator Stuthman, and others. Senator Langemeier. [LB573]

SENATOR LANGEMEIER: Mr. President, members of the body, I've been listening very intriguingly now with the discussion between...with intrigue, but the discussion between Senators White and Lathrop kind of brought me into this. Would Senator Kruse yield to a question? [LB573]

PRESIDENT SHEEHY: Senator Kruse, would you yield? [LB573]

SENATOR KRUSE: Yes, I will. [LB573]

SENATOR LANGEMEIER: Senator Kruse, for the record, AM1195 was LB261, correct? [LB261 LB573]

SENATOR KRUSE: Yes, it was. [LB573]

SENATOR LANGEMEIER: And that's still in Judiciary Committee? [LB573]

SENATOR KRUSE: Yes, it is. [LB573]

SENATOR LANGEMEIER: Okay, thank you. Would Senator Lathrop yield to a question? [LB573]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to a question? [LB573]

SENATOR LATHROP: Yes, I would. [LB573]

SENATOR LANGEMEIER: Senator Lathrop, you had indicated to Senator White in your earlier conversation that you would favor an amendment to do some corrections for the discussion you had. Would it not be true that if we did not adopt AM1195, we would be halfway down the road to getting there? [LB573]

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SENATOR LATHROP: I think, from what I'm hearing, it sounds like AM1195 is what's causing people a great deal of concern. [LB573]

SENATOR LANGEMEIER: Okay, thank you. I guess I rise in support of LB573 and the committee amendment, AM1088. I do not support AM1195. I think that's taking us beyond a direction where the Judiciary Committee has not even gone, for the advancement of LB261, and so with that, I would ask that you oppose AM1195. And I would yield the balance of my time to Senator Lathrop, if he can use it. [LB261 LB573]

PRESIDENT SHEEHY: Senator Lathrop, about 3:25. [LB573]

SENATOR LATHROP: Thank you, Senator Langemeier. I appreciate the opportunity to address the concerns that I'm hearing. I should begin by pointing out the obvious, that this is not my bill. It is Senator Kruse's bill, and Senator Kruse's amendment. I'm on the Judiciary Committee, and this is a bill...the civil liability portion, which is AM1088, which I have worked on--I've crafted the language--so I'm happy to defend the civil liability portion of this. I have expressed my views on AM1195, but what I want to make clear to the body is this, that AM1088 deals with civil liability; AM1195 deals with the criminal law. Okay? If you don't like AM1195, that doesn't condemn AM1088. They are two completely different principles. You can disagree with AM1195 and still support AM1088. I will allow Senator Kruse, in due time, another opportunity, or he will be allowed another opportunity to tell you what his thoughts were with AM1195. But understand this: AM1088 and LB573 address a very serious problem in this state. Adults are providing alcohol to minors, minors are going out and hurting people. They're killing their friends, they're killing people that they run into out on the roads, and AM1088 does two things. It compensates the people that have been hurt, and it discourages the adults from providing alcohol to minors and them subsequently going out and getting in accidents and injuring themselves, their friends, and other people out on the streets. I would leave to your own judgment whether AM1195 should pass as an amendment to the committee amendment, but I can tell you that AM1088 is good policy. I would encourage your support for AM1088. [LB573]

PRESIDENT SHEEHY: One minute. [LB573]

SENATOR LATHROP: And to the extent we need to make some modifications to the definition of a social host so that we define it in terms of whether a parent has provided the alcohol to the child instead of whether it was consumed in the parent's homes, I think that's a concession I'd be prepared to make. I can't speak for Senator Kruse, but I think that would resolve a great deal of the concerns relative to AM1088. Senator Loudon has asked...or expressed some concern about whether we are making matters worse, whether we are going into an area that we unnecessarily or do not need to go into. And my answer to that would be, to Senator Loudon and those who have similar concerns, is this; that when you look at the criminal statutes for possessing alcohol by a

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minor, that is not stopping... [LB573]

PRESIDENT SHEEHY: Time, Senator. [LB573]

SENATOR LATHROP: Pardon me? [LB573]

PRESIDENT SHEEHY: Time. I would ask senators on the floor, for the courtesy of those speaking, please lower your voices a little bit. Thank you. Senator Lathrop. [LB573]

SENATOR LATHROP: Thank you again, Mr. President. To go back to some of the concerns that I've heard that I would like to address, in particular whether or not this legislation is necessary. The civil liability portion of this, which is AM1088, does address a problem that the criminal laws in the state are not getting to. The criminal laws on DWI are not stopping minors from drinking. There is no punishment for the adult who provides the alcohol. The misdemeanor of providing alcohol to a minor is not discouraging adults from providing alcohol to minors. What will get adults' attention is the prospect of a civil judgment for injuries that follow a minor who gets in an accident who they provided alcohol to. We are addressing a very real and serious problem in the state of Nebraska with this measure and it is an effective way to address the problem. The criminal statutes in the state simply will not stop the practice of providing alcohol to minors like the prospect of civil liability. For that reason, I would ask your support of AM1088 and LB573. Thank you. [LB573]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Pirsch. [LB573]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. Just as a point of clarification, a couple of questions were put forward and I think Senator Gay asked what the penalty for a Class III misdemeanor is. That would be 0 to 90 days in jail, \$0 to \$500 fine, or both. With respect to the question Senator Louden had talked about is on military bases, how does that interrelate with the states, and since, I believe, the 1980s, mid-1980s, U.S. law is deferred to state law. And so in the states, that would be 21 years of age. And so that would be adopted then by the military bases in those states. Interestingly enough, there is an exception, I believe, just for 50 miles, within 50 miles of the border to Mexico and Canada. But for the most part, that's...within the United States it would be 21 years of age; outside, 18. I'm going to defer the balance of my time to Senator Kruse. [LB573]

PRESIDENT SHEEHY: Senator Kruse, you have about 3:35. [LB573]

SENATOR KRUSE: Thank you. I'm going to withdraw the AM1195 amendment following my comments. By talking about these different pieces, we are confusing the issues hopelessly in some ways. And so I would withdraw and ask to have it on Select

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File. Senator Louden raised the question about age of 21. The age of 21, Senator Louden, is not in relation to military service or anything. It's in relation to brain damage. And it doesn't matter where they're working, they're going to have brain damage through this and it's our responsibility to take care of it. We are after, in this, the adults who are irresponsible with it. I have no objection at all to what Senator White has been talking about and allowing a parent to expand that one. In fact, I can see by adding three words to AM1088 that we can...it already allows a parent to serve in somebody else's home and we can expand that so that could be cared for. With that, I have other comments on the other one. But with that, Mr. President, I would withdraw and ask to have refiled on Select AM1195. [LB573]

PRESIDENT SHEEHY: Thank you, Senator Kruse. AM1195 is withdrawn and moved to Select. We'll now move back to the floor discussion on the Judiciary amendment, AM1088. Senator Karpisek, followed by Senator White, Senator Hansen, and Senator Wightman. Senator Karpisek. [LB573]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. Most of what I was going to address was AM1195. Senator Kruse, could I ask a question? [LB573]

PRESIDENT SHEEHY: Senator Kruse, would you yield? [LB573]

SENATOR KRUSE: Yes, I will. [LB573]

SENATOR KARPISEK: I know your main push is for the alcohol. What about illegal drugs? [LB573]

SENATOR KRUSE: We had that in there--this has been going on for two or three years--and we took that out because it really can't be handled with the same legislation. It is a serious problem, but it cannot be handled with the same legislation because the evidence of it is different. [LB573]

SENATOR KARPISEK: Okay. Well, my worry here is we're telling kids, well, so don't drink, why don't you go out and do drugs and then you can drive around and you'll be better off. [LB573]

SENATOR KRUSE: Well, alcohol is the gateway to other drugs and that's another piece, why we are targeting alcohol. Very few take other drugs without alcohol first. [LB573]

SENATOR KARPISEK: And many drink alcohol without taking other drugs. [LB573]

SENATOR KRUSE: They do. [LB573]

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SENATOR KARPISEK: Okay. Thank you, Senator Kruse. I also had a bill this year that, it goes back to AM1195, but if the minor was found intoxicated off their personal property, then they would be considered MIP. Again, I don't want to go back to that amendment because I think it was best it got pulled. My concern with this amendment is just that, that it is putting pressure on alcohol, which is fine, but it's not putting pressure on other drugs that kids are also doing. So with that, that's all I have on that for now. Thank you, Mr. President. [LB573]

PRESIDENT SHEEHY: Thank you, Senator Karpisek. Senator White. [LB573]

SENATOR WHITE: Thank you, Mr. President. I have several observations. First of all, generally I support this bill. I have deep reservations when the state starts interfering with parents' ability to control and direct their children, especially in areas like this, which is hopefully the responsible consumption of alcohol. I have been assured that we will adjust those issues. And with the withdrawal and the courtesy of Senator Kruse on that, I can support this bill. The first brief I ever wrote was for a young lady who was irreparably and nearly completely brain damaged because of the knowing delivery of alcohol for profit to a minor. We lost in the Supreme Court. Her family went bankrupt trying to pay for the medical bills. She's bedridden, she's a vegetable. And the tragedy, that was substantial and real. And so the bill is important but also balancing that kind of tragedy against the need of parents to be involved in their children's lives and to make decisions on how...important decisions like how and if you should consume alcohol and how to do that responsibly are very important. And I'm very uneasy when we cross that line. So I thank Senator Kruse for his courtesy, I thank Senator Lathrop. Generally, I can support this bill and I'm assured by Senator Ashford and others that we will make some changes between now and Select. And with that understanding, I will vote for it. Thank you, Mr. President. [LB573]

PRESIDENT SHEEHY: Thank you, Senator White. Senator Hansen. [LB573]

SENATOR HANSEN: Thank you, Mr. President. Senator Lathrop, could I ask you a couple questions? [LB573]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to some questions? [LB573]

SENATOR LATHROP: Yes. [LB573]

SENATOR HANSEN: It will be exactly two questions. [LB573]

SENATOR LATHROP: Okay. [LB573]

SENATOR HANSEN: On page 3, line 3, section (3), it says: Any retailer who sold alcoholic liquor to a minor, the absolute defenses found in the Section 53-180.07 shall

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be available to the retailer and any cause of action brought under this section. I don't know what that section says exactly. But my question is, a retailer sells to a legal buyer. That legal buyer resells that alcoholic product to a minor. The minor gets into an accident of some sort. Is the retailer liable? [LB573]

SENATOR LATHROP: No. [LB573]

SENATOR HANSEN: Second question, if a retail sells to a 35-year-old, considerably over the age of 21, 35-year-old has an accident. In this amendment, is the retailer liable? [LB573]

SENATOR LATHROP: No, this does not address adults. [LB573]

SENATOR HANSEN: Okay, thank you. Those are the only two questions I had. [LB573]

SENATOR LATHROP: I will... [LB573]

SENATOR HANSEN: Thank you, Mr. President. Go ahead. [LB573]

SENATOR LATHROP: I will tell you that that defense, and I have it in my hand, it says essentially the defense that's provided for in paragraph (3) of Section 4 is that if the minor presents an ID that appears to be a valid ID and shows them to be an adult and they match the ID, then there's no liability. [LB573]

SENATOR HANSEN: Okay, thank you. Thank you, Mr. President. [LB573]

PRESIDENT SHEEHY: Thank you, Senator Hansen. Senator Wightman, followed by Senator Langemeier, Senator Stuthman, Senator Kruse, and others. Senator Wightman. [LB573]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. Generally, I support the bill. I have some questions about the effect of the language and I would ask Senator Lathrop a question or two, if he would yield. [LB573]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to some questions? [LB573]

SENATOR LATHROP: Yes, I'd be happy to. [LB573]

SENATOR WIGHTMAN: Senator Lathrop, can you tell me what your opinion would be with regard to somebody who perhaps furnished one beer, which in and of itself would not be intoxicating to a minor, and then the minor goes to a kegger party and maybe three hours later, probably beyond what the effect of that single beer would be, does he still have liability under the act? And I realize there may be comparative negligence

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questions; there may be, if it was a parent, there may be family purpose doctrine. But what's your position on that? [LB573]

SENATOR LATHROP: I don't think there would be a liability in that instance. First of all, you have to provide alcohol that gets the person intoxicated. And the intoxication, that's another defense. The intoxication has to be causally related to the crash. So if you provided somebody with alcohol and didn't get them intoxicated, there wouldn't be a liability and...or if the intoxication didn't cause the wreck. In other words, they would have gotten in this accident anyway just because of some other act of carelessness unrelated to the alcohol, then there wouldn't be any liability for the provider under this act. [LB573]

SENATOR WIGHTMAN: As a practical matter, he's pretty likely to be a defendant in the action, though, isn't he? [LB573]

SENATOR LATHROP: If he went to a kegger, had a beer earlier in the day at somebody's home, three hours later he goes to a kegger, drinks a whole bunch of beer and gets intoxicated, I wouldn't make that person a defendant. I don't see liability under this act for that. [LB573]

SENATOR WIGHTMAN: Let me give you a different scenario then. Say that whoever it is, the parent or someone else, furnishes him one beer and he goes immediately to the kegger, and which the beer may still be a contributing cause to the intoxication at that point, do you see him as being, whoever furnished the alcohol, as being a likely defendant? [LB573]

SENATOR LATHROP: I still don't think that they participated in the intoxication. You probably find yourself dealing with a pharmacologist and a pharmacologist would tell you how fast that person would have wore off their first beer. And so causally, I don't see a person drinking one beer, going to a kegger, drinking a lot more, and still being affected by the first beer, because of the way we metabolize alcohol. [LB573]

SENATOR WIGHTMAN: I'll accept that. I'm not sure that I would read the subdivisions under Section 4 necessarily the result in that conclusion, particularly if the participation in the kegger was in a short enough period of time following the provision of one beer. But thank you. [LB573]

SENATOR LATHROP: You're welcome. [LB573]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Senator Langemeier. [LB573]

SENATOR LANGEMEIER: Question. [LB573]

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PRESIDENT SHEEHY: Do I see five hands demanding the cease in debate? I do see five. The question before the body is, shall debate cease on AM1088? All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB573]

CLERK: 26 ayes, 1 nay to cease debate, Mr. President. [LB573]

PRESIDENT SHEEHY: The question to cease debate does pass. Senator Lathrop, you're recognized to close on AM1088. [LB573]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I would like to thank Senator Kruse for bringing this measure to the Judiciary Committee. It is a timely measure. It is a timely bill, given the loss of two students in Gretna very recently. And it seems to be annual thing this time of year, when we get near prom season and when we get near graduation time, that we sacrifice children who have been provided alcohol. Current criminal statutes are not discouraging adults from providing alcohol to children. Minors take possession of alcohol, they drink alcohol, and they go out and get in car accidents. They injure themselves, they injure other motorists. They are a danger to people on the roads and our criminal law is not discouraging the adults from this activity. LB573 provides a modification to civil law in the state of Nebraska. This modification will do two things that are important in any civil law statute. One is it will provide compensation for the victims of this process of providing alcohol to minors who go out and cause injuries to others. It will, and perhaps more importantly, discourage adults from doing this. If the criminal statutes will not stop adults from providing alcohol to minors, civil liability will. AM1088 provides that civil liability. The law is tightly constructed. On Select File I will offer an amendment to change the definition of "social host" so that it is not dependent upon where the alcohol is consumed in a parent's home but consumed with the parent's permission or in the parent's company. That should resolve the concerns that I've heard this evening. I would encourage your support and ask you to support AM1088. Thank you. [LB573]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. You've heard the closing on the Judiciary amendment, AM1088. The question before the body is, shall AM1088 be adopted to LB573? All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB573]

CLERK: 34 ayes, 0 nays on adoption of committee amendments, Mr. President. [LB573]

PRESIDENT SHEEHY: Committee amendment AM1088 is adopted. [LB573]

CLERK: I have nothing further on the bill. [LB573]

PRESIDENT SHEEHY: We'll continue with floor discussion on LB573. Senator Stuthman, followed by Senator Fulton, and Senator Synowiecki. Senator Stuthman.

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[LB573]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I would hope that if this bill would get passed, that we would never see another innocent person's life be taken by someone that has been drinking, an underage drinker. But I don't know whether this is going to solve the complete problem. In my opinion, I think teaching our youth responsibility is of a lot more importance than making the laws. I really think that. I really think that we need to teach our youth responsibility of what they do and the reactions that can happen because of the decisions that they have made. I think that's very important. The thing that I did also want to talk a little bit about, and I had my light punched for quite awhile, but there was discussion about these keg parties and the removal of the sticker, the tag that was on them. And I do know that does happen. But in my area, when that tag is removed they will not get their deposit money back for the keg. And I was told that because of aluminum prices right now, they can take that keg to the recycle place and get more than what the deposit is on it, so they actually made money by taking the sticker off. And that's because the youth are thinking, they're thinking where they can get the most bucks. And I think that does happen. Matter of fact, I know that does happen. I don't know whether the passage of this bill is going to have a lot of effect. I wish we could pass something that could teach the responsibility of the actions of our youth. I want to have all of the youth around. I'm very sensitive about young children, babies, infants, and our youth, because our youth of today, and I see about eight or ten of them right in front of us, that will be leaders tomorrow. And I want them to be responsible people. I want them to make good decisions. I think that if we pass this bill, it's probably a step in the right direction but I don't think we're going to solve what we're really trying to do. That's my opinion. And I'll give the balance of my time to Senator McDonald. [LB573]

PRESIDENT SHEEHY: Senator McDonald, 2 minutes. [LB573]

SENATOR McDONALD: Thank you, Senator Stuthman. I haven't spoken on this bill yet but I'm very, very supportive of it. And if we just saved one child and one family from the anguish that they would have by losing a child, and even a community because it affects everyone. Everyone in that school is affected by an accident that's either alcohol-related or cell phone or whatever it is, it affects them all. So just saving one child is worth passing the bill. I think we need to understand that youth are youth and they don't understand the consequences. So it's our responsibility to take that responsibility and pass laws so that we protect our children. And I think this is one step in the right direction. Thank you. Thank you, Senator Stuthman. [LB573]

PRESIDENT SHEEHY: Thank you, Senator McDonald. Senator Synowiecki. [LB573]

SENATOR SYNOWIECKI: Thank you, Mr. Lieutenant Governor. Senator Lathrop, would you yield for a quick question? [LB573]

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PRESIDENT SHEEHY: Senator Lathrop, would you yield for a question? [LB573]

SENATOR LATHROP: Yes. [LB573]

SENATOR SYNOWIECKI: Senator Lathrop, I'm interested in the committee's undertaking to define intoxication. And you define it on page 1, subsection (2) under Section 3: Intoxication means an impairment of a person's mental or physical faculties as a result of his or her own (sic) use of alcoholic liquor so as to diminish the person's ability to think and act in the matter of a reasonably prudent person in full possession of his or her faculties using reasonable care under the same or similar circumstances. And then under Section 4, any person who sustains injury or property damage, or the estate of any person killed as a proximate result of the negligence of an intoxicated minor. Given that we have scientific measurements and given that I think we already defined intoxication in other places within the statute, I'd be interested to know why the committee saw to define intoxication and did not endeavor to include what the definition of intoxication is, say for instance, under our drunk driving statutes. [LB573]

SENATOR LATHROP: The answer to that is, I suppose we could have borrowed or simply said intoxication means it is as defined in the criminal DWI statute. I have had occasion to take testimony from pharmacologists on the subject of intoxication and I'm told that it happens at .075 or .08. So when does a person get intoxicated? I think our criminal statute corresponds with when that typically happens from a blood alcohol point of view. So I think that there's nothing inconsistent about that. But the difficulty with defining it in terms of simply the blood alcohol level found in a criminal statute is that the application of this could potentially apply to some situation outside of an automobile accident, if you can think of some negligent conduct a minor could engage in after they're intoxicated outside of driving. Driving would be the most common. But you could make it .08. If you make it .08, then the difficulty with that is you might have a minor that doesn't take a blood alcohol test and so you're left with someone who's intoxicated but you don't have the evidence of their intoxication because they refuse to take a blood alcohol test. His friends or her friends may say, well, he was stumbling before he got to the car. And so defining it in terms other than blood alcohol content seemed to make sense. [LB573]

SENATOR SYNOWIECKI: I appreciate that explanation. And then on the definition of intoxication, it doesn't include, like, a third party, like a second party, third party assessment of a person's state. Do you think there might be some difficulty in that? In other words, intoxication means a visible impairment. You know, so in other words, another individual observing a person would say he or she is intoxicated. I mean, a person can be intoxicated and not exhibit signs of such intoxication. [LB573]

SENATOR LATHROP: That's true. And that was important to us when were working on

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dramshop, which is the guy that sits at the end of the bar and you can't tell if he's intoxicated or not. This doesn't have anything to do with providing as an adult, nonrelative adult providing alcohol to somebody and then trying to make a judgment when they're intoxicated. [LB573]

PRESIDENT SHEEHY: One minute. [LB573]

SENATOR LATHROP: If you're providing them alcohol and they get intoxicated, there is no safe limit to providing alcohol to minors under this bill. [LB573]

SENATOR SYNOWIECKI: This might be a bizarre example, but a juvenile or minor could be intoxicated under the legal limit, be above .08 which I believe it is now, and not exhibit any signs of intoxication. So they go out and they get in a car wreck, they get a blood draw, and they're above the legal limit. But none of the testifiers for that civil case or none of the witnesses could provide testimony that indicated that the individual was intoxicated. [LB573]

SENATOR LATHROP: I've run into this before in cases that I've tried. You can't simply, in a civil case you can't simply offer the blood alcohol level and say he was at .08, that's the limit in Nebraska, he's intoxicated, find him negligent. In Nebraska, if you're going to have a civil case and you offer the blood alcohol level into evidence, it can't... [LB573]

PRESIDENT SHEEHY: Time, Senator. Senator Pirsch. [LB573]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I'm going to call the question. [LB573]

PRESIDENT SHEEHY: The question has been called. Do I see five hands demanding debate cease? I do see a sufficient number. The question before the body is, shall the question be called? All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB573]

CLERK: 28 ayes, 2 nays, Mr. President, to cease debate. [LB573]

PRESIDENT SHEEHY: Debate shall cease. The question...Senator Kruse, you're recognized to close on LB573. [LB573]

SENATOR KRUSE: Thank you, Mr. President and colleagues. Thanks to all for a very lively discussion on a subject that we have not discussed enough. I really appreciate it. I'll pick up on a couple of items and obviously we'll be back on some of this on Select, so save some comments for there. For instance, Senator Janssen is concerned about the fake ID bill. We got it, it's had a hearing and it's all ready to go. We just didn't want to add it to it here because we're trying to focus on adult behavior. But bars have said it's

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unfair for a kid to come in with that. And so we've got that and we can offer that. Senator Stuthman made a comment that's good but I sure want to add to it. He's talking about teaching the young people. What we have to teach are adults. And friends, that is the most important part of this discussion. I don't give a lot of credence to laws, only a law that the people believe in. Senator Stuthman's community, and this comes from them, Columbus lost 25 teenagers in five years. And the teenagers said it was because of an adult attitude that they picked up. We are the ones in charge. These kids, the fake ID picks up about 20 percent of the alcohol that they drink but the rest of it came from adults. So I urge that we continue to think about this and I hope that within it we can do that which will save lives. I'm confident that it will. Thank you. [LB573]

PRESIDENT SHEEHY: Thank you, Senator Kruse. You've heard the closing to LB573. The question before the body is, shall LB573 advance to E&R Initial? All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB573]

CLERK: 35 ayes, 0 nays, Mr. President, on the advancement of LB573. [LB573]

PRESIDENT SHEEHY: LB573 does advance. Mr. Clerk, do you have messages, reports, announcements, items for the record? [LB573]

CLERK: I do, Mr. President, just one item. Senator Pirsch would like to add his name to LB367 as cointroducer. (Legislative Journal page 1643.) [LB367]

And I do have a priority motion. Senator Langemeier would move to adjourn until Thursday morning, May 17, at 9:00 a.m. []

PRESIDENT SHEEHY: You do have a motion to adjourn until Thursday, May 17, 2007, at 9:00 a.m. All those in favor say aye. Opposed, nay. The Chair says the ayes have it. We are adjourned. []