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Floor Debate  
May 17, 2007

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[LB142 LB171A LB209 LB247 LB265 LB286 LB299 LB342 LB342A LB351A LB351  
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LB542 LB554A LB570 LB603A LB603 LB615 LB641 LB653 LR1CA LR73 LR209  
LR210]

SENATOR FRIEND PRESIDING []

SENATOR FRIEND: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for this, the eighty-second day of the One Hundredth Legislature, First Session. Our chaplain today is Senator Norman Wallman. Please rise.  
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SENATOR WALLMAN: (Prayer offered.) []

SENATOR FRIEND: Thank you, Senator Wallman. I call to order the eighty-second day of the One Hundredth Legislature, First Session. Senators, please record your presence. Senators, please record your presence. Senators, please check in. Record please, Mr. Clerk. []

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

SENATOR FRIEND: Thank you, Mr. Clerk. Any items? []

ASSISTANT CLERK: Not at this time, Mr. President. []

SENATOR FRIEND: On to General File. []

ASSISTANT CLERK: Mr. President, first bill on General File this morning is LB570. The legislation was introduced by Senator Louden and others. (Read title.) The bill was read for the first time on January 17, referred to the Transportation and Telecommunications Committee. They report the bill to General File with committee amendments attached. (AM690, Legislative Journal page 871.) [LB570]

SENATOR FRIEND: Thank you, Mr. Clerk. Senator Louden, as sponsor of LB570, you are recognized to open on the bill. [LB570]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. LB570 is called the Gold Star family license plate bill. And it would allow the state Department of Motor Vehicles to issue Gold Star motor vehicle license plates. The bill requires the Department of Motor Vehicles to design Gold Star plates in consultation with the state Department of the Military and state Department of Veterans Affairs. The two types of plates would be authorized: an alphanumeric plate, and a message plate. A portion of the fees for the plate would go to the operations fund of the Nebraska veterans

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cemetery system. I introduced LB570 at the request of constituents who have lost children in the war in Iraq. They learned of the Gold Star plate being offered in other states. As far as I know, the plates are offered in eight other states at this time, and there is legislation on the plates pending in seven states. Some of you probably know the history of the term Gold Star. But for those of you who do not know, I would like to give you a little background on it. The custom of using a Gold Star to denote a military death goes back many years. It was used during World War I on service flags and on black arm bands. During World War II, the practice was continued. Families hung in their windows service flags with a blue star for every person serving in the military. If a serving family member died, the blue star was covered over with a Gold Star to show that the family had lost a loved one. Eventually, Congress directed the Department of Defense to design and distribute a lapel button to be known as a Gold Star lapel button to identify widows, parents, and next of kin of members of the armed forces of the United States who lost their lives during wartime. As far as I know, that lapel button is still issued today if a family member requests it from the Department of Defense. No matter how you personally feel about license plates and their relative importance to you, I would like you to think about LB570 from the perspective of the parents who have asked for this legislation. To those parents and to these families, having an option for a Gold Star license plate is important. The cost to the state is minimal. The age of digital technology, license plate design, and manufacture are not costly. The Department of Motor Vehicles director, Beverly Neth, has stated that designing and producing different styles of plates is no longer the expensive undertaking that it once was. Therefore, I believe we can put aside concerns about the cost to the state to provide Gold Star plates. The bill provides that a portion of the fee will go to the Department of Motor Vehicles Cash Fund to cover the cost of the plates and the remainder will go to the Nebraska Veteran Cemetery System Operation Fund. Those of you who were here last year may remember that the first of the veterans cemeteries is scheduled to be built relatively soon near Alliance. It's scheduled to be opened in November of 2009. Though the fees would help support the cemetery operations, I did not introduce LB570 in order to generate funds for the cemetery. I do not think we should look upon the loss of members of the military as a way to put money into a fund. However, the parents who asked me for the legislation suggested themselves that some of the proceeds go toward the veterans cemetery. And I felt that if those who want the plates also wish to send the funds to this cemetery, then I have no objection to that. As I said earlier, the bill directs the Department of Motor Vehicles to consult with the Military Department and the Department of Veterans Affairs to design a Gold Star license plate. The Department of Motor Vehicles would have rules and regulations authority to carry out the provisions of the bill. Persons eligible for a plate would be the surviving spouse, parents, grandparents, siblings, and children of people who died while on active duty in the military service of the United States. The bill provides that the plates will be issued upon presentation to the Department of Motor Vehicles of proof satisfactory to the DMV that the applicant is an eligible person. Satisfactory proof may be provided by a number of different documents. With that, I will close and ask you to support LB570. It is a small

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change in Nebraska law that would make a big difference to families who have lost a loved one in the military service of our country. At the present time, we have other license plates that we have that are used as special plates. We have our Husker Spirit plates. There is also the Disabled American Veterans plates, Pearl Harbor Survivor plates, Former Prisoner of War plates, and the Purple Heart plates. All of these are used, other than the Husker Spirit plates, to designate people that have served in our country, served for our country and also veterans of various wars. With that, I ask you to vote for LB570 to advance it to Select File. Thank you. [LB570]

SENATOR FRIEND: Thank you, Senator Louden. Members, you have heard the opening on LB570. As the Clerk mentioned, there are committee amendments. Senator Fischer, as Chairperson of the Transportation and Telecommunications Committee, you are recognized to open on AM690. [LB570]

SENATOR FISCHER: Thank you, Mr. President and members of the body. The committee amendment, AM690, makes three minor changes to the bill. First, the word "Family" is inserted after "Gold Star" throughout the bill so that the license plates will be Gold Star Family license plates. This change clarifies that the plate is available to a variety of family members of fallen servicemen and women. Second, the language requiring the plates to be designed to enhance the marketability of the plates is stricken. Gold Star Family plates are available only to eligible persons and it is not necessary to enhance this marketability. Finally, the amendment corrects a drafting error and inserts the correct referencing section. Thank you, Mr. President. [LB570]

SENATOR FRIEND: Thank you, Senator Fischer. Members of the Legislature, you have heard the opening on AM690, the Transportation and Telecommunications Committee amendments. Mr. Clerk. [LB570]

ASSISTANT CLERK: Mr. President, I do have a priority motion. Senator Chambers would move to bracket LB570 until May 25. [LB570]

SENATOR FRIEND: Senator Chambers, you are recognized to open on your motion to bracket until May 25, 2007. [LB570]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I am pleased to serve the role and function of the Grinch this morning. I have always been against using license plates for billboards, propaganda devices, or things that will massage egos when the only purpose it should serve is to establish that a person may legally drive a vehicle on the streets and highways of this state. Several years ago there was a practice of putting slogans on the license plate such as "Beef State." They may have even had "The Good Life," things such as that. I managed to get that taken off. And one year I got a style of plate which was called "Nebraska Light." All it had was the state of Nebraska, the digits that will make your license plate unique to you, and it may

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have had either the date or a place to put a sticker for the date. That's all. There have been attempts always to play on people's emotions to get away from the real issue of the role and function of license plates. Senator Loudon has been informed by me, and I didn't need to inform him because he knew, I will do all I can to kill this bill. This bill talks about families of these individuals. But they don't include cousins, nieces, aunts, uncles, great-grandparents. They don't talk about a child or a descendant. These people who are being honored supposedly do not have to have died in combat. It could have been somebody in a quasi-civilian position. It could have been a warrant officer. It could have been a supply sergeant. He could have fallen down the stairs, or she, fractured a skull, died and gets these license plates. Many things that are brought to us at first blush seem to be appropriate and why would anybody oppose it? People like me are put here in the Legislature for that purpose--to oppose these things that need to be opposed which others may be reluctant to do, but they're happy inside that somebody will undertake that task. And I don't consider it onerous at all. I think it's an honor for me to serve in the Legislature and discharge my duties honorably. Should you get a license plate for the people who died in Vietnam? How about Lebanon? What about Somalia? What about any of the places where America was shooting at other people, whether America came away honored or dishonored? A little bitty country called Grenada, how about those places, if anybody died under those circumstances? If I were going to draft such a bill as this, I would have done it differently. But I would never draft a bill such as this. For example, on page 3, in line 21 after listing various individuals who will qualify as a family member, these words follow: "of a person who died while on active duty in the military service of the United States." It doesn't say that the person died in combat. If you're honoring those who were in harm's way and died because of that, you should have tightened the language. Senator Loudon acknowledged that a constituent asked him to do this. Many senators offer bills presented to them by their constituents, and it becomes my responsibility to say no because senators lack that ability. But because others cannot say no does not mean that I will go along with that. If somebody wants to say I have a relative who died during the Vietnam War, get a bumper sticker. If somebody wants to say, I choose to honor everybody who served honorably in the military during wartime, regardless of the capacity in which that person served, regardless of the circumstances under which that person died, put a banner on your car and do that. Put a Gold Star in your window. Put a pin in your lapel. Do anything you want to, to express your view, your support for the armed forces, even support for the Iraqi War, which I consider a war of aggression, an illegal, immoral war which is being conducted only because a gigantic, bullying country is flexing its muscles. America is really in Iraq for two reasons: One, so that Halliburton and the oil industry and interests, of which George Bush's family is an integral part, can get at Iraqi oil. The other is because the Bush family had a vendetta against Saddam Hussein because he at one point indicated he'd like to bump off George Bush, Sr. So Junior had to get even. Senator Friend will remember that on this floor on several occasions I angered him, and I put that in quotation marks because he wasn't angry at me personally, because I condemned what America was doing in Vietnam, I meant in Iraq. I said it was going to

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be another Vietnam and I said it when it wasn't popular, when everybody was on the bandwagon, except me. And I said Bush is the greatest, the largest terrorist in the world and I still mean it today. America has made the whole world unsafe for everybody. The Mormon Tabernacle Choir used to could travel all over the world and sing. They were going to go to some Scandinavian countries and sing but they said they were cancelling it because of the possibility of terrorist attacks. That didn't happened before America blundered into Iraq. And why did they blunder into Iraq? They claimed that what happened September 11, 2001, had something to do with it. But all the ones who were involved, most of them, were Saudis, but they didn't attack Saudi Arabia. The training took place, supposedly, in Afghanistan, but America was already bogged down there. Intelligence provided by Americans said that Saddam Hussein and Iraq had nothing to do with the twin towers being attacked. Saddam had nothing to do with Osama bin Laden and Saddam's presence in Iraq restricted the operational area of Osama bin Laden because they were enemies. Saddam was not a friend of Osama bin Laden. So the whole thing was built on a lie. And I had said that what they ought to do is bring those young men and women back to this country because they were there for nothing honorable. They went because they were sent, sent by people who would not have their own children or relatives in that fiasco. I mentioned the chubby-cheeked, white, so-called neoconservative "Repelicans" who were pushing Bush and the administration into this kind of activity, but they were not going. They were the ones who when Colin Powell said, you're going to need massive numbers of troops, and he was a general. [LB570]

SENATOR FRIEND: One minute. [LB570]

SENATOR CHAMBERS: He had been the Chief of Staff. These white, neoconservative youngsters said, no, we don't need that many people--30,000 to 60,000 men will wipe out Saddam and the army and America will be home in three months at the longest. And you see what happened. The generals were not listened to because this was not a war being fought because America was menaced. It was a political action throughout, and young people are still dying. Thank you, Mr. President. [LB570]

SENATOR FRIEND: Thank you, Senator Chambers. Senator Chambers, your light is next and you're recognized to continue. [LB570]

SENATOR CHAMBERS: Thank you and I shall, all morning, all afternoon, all night and tomorrow and tomorrow and tomorrow. I'm going to tell you where black people finally woke up. I have always condemned the fact that as much as 33 percent of the combat force is composed of African-Americans. And these young guys were going there because of the racism and discrimination in this country which made it impossible for us to get a decent education to get a job. So the military offered a way out and white people were happy to have us there because the more of us who went, the fewer of their young men who had to go. During the Civil War, you know what the...and the

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Revolutionary War, you know what these rich white people were able to do? They were able to take my people, who were slaves, and put us in the front lines fighting for the Confederacy so that their children would not have to fight in the war. That's the way we've been used--fighting in every war this country ever had, from the Revolution right on up to Iraq. And we never have been treated fairly in this country, in the military, or in combat zones. During the Revolutionary War, Britain was kicking the U.S.'s haunches. George Washington was not a great general. Practically every direct conflict he had with the British he lost. And as a matter of fact, when a very famous statement was made, George Washington was in full flight across the Jerseys, running from the British. And the British didn't know what George Washington's face looked like till they saw a quarter because they were used to seeing his coattail flapping and the heels and soles of his shoes as he ran. And it was during this fiasco that Tom Paine made the famous statement: These are the times that try men's souls. American history is not taught based on what happened. It is as a tale told by an idiot. It is as Napoleon said: a fable agreed upon. And one of the Adamses said that the history has to be fabricated and behind a false face because the truth behind it is shameful, and I'm paraphrasing. The British told the slaves that if you can get away from those slaveholders and fight for us, we will free you. And George Washington said, when the white people said, well, let's use black people, he said, no, that would be inconsistent. George Washington was a slaveholder. He said it would be inconsistent for America to say we're fighting Britain for our freedom and then let slaves fight for America. But then as the voracity with which these slaves, these black men, fought sank into the minds of George Washington and the rest of them, then they decided all of a sudden that black men should be allowed to fight and they were promised their freedom if they would fight for this country. And when the Revolutionary War was won, it was right back to slavery. Some of you have heard of the War of 1812. That's when the White House was burned and they painted it all white. In 1814 there was a battle at New Orleans and they had pirates, Indians, black people, slaves, Haitians fighting against the British. And the leader of the British forces was General Pakenham. And according to eye witness accounts... [LB570]

SENATOR FRIEND: One minute. [LB570]

SENATOR CHAMBERS: ...he was going to give the signal to charge and he was on a horse. And when he stood up in his stirrups and raised his saber, a shot rang out from about 200 yards away, a bullet struck him in his chest, he fell out of the saddle, and the British troops were put to flight. And based on the eye witness accounts, a man named Major Savory (phonetic) from Haiti is the one who shot him and killed Pakenham and made it possible for America to win the War of 1812. And Andrew Jackson had promised us freedom if we fought for America then; and when America won the war, right back into slavery. But now young black men are waking up, finally. Even though Truman said in 1948, we're not going to have official segregation in the Army anymore, in the military, there still was segregation and discrimination and they exist today. [LB570]

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SENATOR FRIEND: Time. [LB570]

SENATOR CHAMBERS: Thank you, Mr. President. [LB570]

SENATOR FRIEND: Thank you, Senator Chambers. (Doctor of the day introduced.) On with discussion of the bracket motion. Senators Avery, Langemeier, White, Loudon, Fulton, Engel, and Chambers. Senator Avery, you're recognized. [LB570]

SENATOR AVERY: Thank you, Mr. President. I really think this bill is a modest bill. It's really a modest means for recognizing the sacrifices of some of our families, sacrifices they've made to the country. It's not really an endorsement of any particular war. I think it's an endorsement of families whose loved ones have died in service to the country. And I can tell you that it can be a painful experience. I'm a veteran. I'm convinced that the war in Iraq is wrong, and I've said so publicly. I believe that war runs counter to many of the most cherished principles of our foreign policy dating back to the end of World War II, and I can spend an hour talking about that. But this legislation is not about that. This is about the families of the soldiers. It's important to recognize that we are all at war. Like it or not, we're in this together. Our friends and our neighbors are suffering. They have to endure the unspeakable agony of losing a child, a father or a mother in war. And we can't know what that is like unless we've experienced it. Let me point out something to you. The U.S. government has gone to extraordinary efforts to blunt the emotional impact of the sacrifices families are making in wars today, both Afghanistan and Iraq. For example, unlike past wars, no photographs or video footage are permitted at Dover Air Force Base where the caskets of the returning dead soldiers are brought home--none. The President very carefully avoids attending the funerals of the dead soldiers, apparently in order not to draw attention to the human cost of that war. This legislation is a small, small way for us in this body to bring some attention to these families. It says we care, we share your grief, and we honor your sacrifice. It need not be any more than that. We fly our flags at half-staff to honor the students and faculty who died in the carnage at Virginia Tech University. The House of Representatives recently approved legislation allowing governors to lower flags for troops that die in war. We already have special group license plates for Purple Heart recipients, former prisoners of war, and others. So I am not asking for anything other than that you look at this in the broader context of what it means to these families, the unspeakable agony. And we're not asking a lot with this legislation. Perhaps there's some amendments that might be needed. Senator Chambers pointed out that it doesn't refer to dead soldiers who die in war. And I think that probably might need to be corrected. But I like this legislation. Again, it doesn't endorse any war. It simply says to the families, we care, and I intend to support it. Thank you. [LB570]

SENATOR FRIEND: Thank you, Senator Avery. Senator Langemeier, you're recognized. [LB570]

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SENATOR LANGEMEIER: Mr. President, members of the body, LB570 is about recognizing our fallen soldiers. And as Senator Chambers has indicated, it doesn't really specify where they have fallen. But with that said, our job here today is to talk about policy. There's going to be a lot of emotion offered, but I refer us back to this is policy that we're setting in the state of Nebraska. And to support or not to support LB570 should have no reference to whether we support or don't support our troops. I think it's clear that we all support what our troops have done for us and what they're currently doing. We may disagree on why they're where they are today, but I think everybody in this body supports each and every individual officer serving and that has served in the past. And so I don't want us to lose sight of that in this discussion today. I think it's very crucial that that support is there and for the families. However, I've never served so I cannot say that I can even come close to having that feeling that they have with the loss of a loved one. I was not quite expecting this bracket motion. I have written kind of an introduction. As you'll see, as I have a number of amendments filed and I'll go through those at a later time when we get to them, all three of them kind of fit together like a puzzle and we'll discuss that more when we get there. But I think we need to focus on to support or not support this bill is not a reflection on our support for our troops. I think we all support our troops, where they are, where they've been, here now or not. This is a policy decision, whether it's good or bad. And with that, thank you, Mr. President. [LB570]

SENATOR FRIEND: Thank you, Senator Langemeier. Senator White, you are next and you're recognized. [LB570]

SENATOR WHITE: Thank you. I support LB570 and I oppose the bracket amendment. With all due respect to Senator Chambers and those who feel that the purpose of license plates are solely to identify vehicles and that we should limit government to that level, I disagree. Many states have many, many, many different types of license plates. To the extent that there's additional expense in administering them or in getting the necessary information to law enforcement, I believe the bill should recognize that and that these should, in fact, render a profit to the state. If our citizens want to, through state-issued plates, identify themselves with a group or groups, I see no problem with it. We allow vanity plates now. There's nothing in the world that is really wrong with that. I would not limit it just to Gold Star parents. If people want to identify themselves with different plates, as long as the costs are borne by the people who want to do it, seems to me that it is a simple matter for the state to accommodate the wishes of their citizens. Thomas Jefferson called the lottery a tax upon the willing. In this case, to the extent that the citizens or groups are willing to pay costs and perhaps even allow additional revenue to the state, I look at it as a service we can provide at minimum disruption to the rest of the community and to allow them to distinguish themselves as they see fit. Therefore, I oppose the bracket amendment and I do support the bill. Thank you, Mr. President. [LB570]

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SENATOR FRIEND: Thank you, Senator White. Senator Louden, you are next and you're recognized. [LB570]

SENATOR LOUDEN: Thank you, Mr. President. And as Senator White has just mentioned that Nebraska already has many plates and we...also the license plate that we have on our cars at the present time promote Nebraska. We have a picture, I think, of the Chimney Rock and that sort of thing. And over the years there's always been questions about what our plates should look like because the ones we had before this everybody thought we were from New Mexico because we had bright colors on there. The reason that this is set up in this bill here as a list of some of the recipients that can use these license plates is because that would probably be the easiest way to discern who would get the plates rather than putting it wide open for anyone. And the reason it doesn't necessarily have to be died in combat because it always...different services have different ways of declaring what is combat and what isn't. And the next thing is any mother or wife, what difference does it make to her whether they died in combat or whether they got run over by a truck or something when they were serving overseas? Those people went over there to serve, not because they probably wanted to, although it is a volunteer army. But they were over there doing their duty and whatever happened to them should be beside the point. The point is that they lost their lives in the service and the surviving spouses or mothers or siblings would like to have some recognition for what those people have done and a memorial type designation for these people. I think when you talk about bumper stickers or something like that, I think that's quite impersonal to try and compare the license plate like this to having these people go ahead and buy a bumper sticker or something like that. That's altogether a different deal. This is something that we're probably trying to do from the state of Nebraska to help with our troops that have sacrificed their lives for the protection that we enjoy. When you talk...I was hoping we didn't get into a discussion about the war, whether it was good, bad, or otherwise. Everyone has their own opinions of that. The one thing you want to remember when you talk about terrorism, that there were terrorists in Scottsbluff, Nebraska, looking at the airfield before 9-11 happened. They were there trying to find out how big of planes they could take off from Scottsbluff. And so we could have been as vulnerable as anybody else. You might stop and think that if it wasn't for the grace of God you might have had an airplane fly into the Capitol here in the state of Nebraska because of the way the situation set up. So I have no problem with what the government does. We have to support our government, whether they make mistakes or not. We are into this. The question today is, is what we were going to do to honor those people that serve and have lost their lives in this war. It isn't a question of whether it's good, bad, or otherwise. It's a question of what we're going to do to help alleviate some of the pain and suffering that the loved ones have when they receive the word on the fate of their loved ones in the military. Thank you, Mr. President. [LB570]

SENATOR FRIEND: Thank you, Senator Louden. Senator Fulton, you are recognized.

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[LB570]

SENATOR FULTON: Thank you, Mr. President, members of the body. When this bill first came forward, I read through it and immediately I could see it's something I support. I'm going to study what happens with the amendments and I will, as Senator Langemeier said, he's going to explain a little bit more how these amendments work as far as the puzzle overall. But certainly I think LB570 is something worthy of support. There aren't a whole lot of things that we in the Legislature are able to express or to do by way of appreciation for what our troops do in defending our freedoms, defending...volunteering to defend our nation. This is just a small thing that we can do I think. Senator Chambers has raised some points and so those points should...I'd like to understand them and address them a little bit. Would Senator Chambers yield to a question? [LB570]

SENATOR FRIEND: Senator Chambers, will you yield to a question? [LB570]

SENATOR CHAMBERS: Certainly. [LB570]

SENATOR FULTON: Your main objection to this bill has to do with your belief that license plates ought to be identifiers for legal driving on the roads of Nebraska. Is that true or is there some more to that? [LB570]

SENATOR CHAMBERS: Yes, that's true and I've resisted all of the types of plates that were alluded to earlier when they were presented to us. [LB570]

SENATOR FULTON: Is the reason then that you would resist adding anything other than...utilizing a license plate for anything other than or in addition to an identifier is that just off of principle or is that based on some experiential knowledge you've had of other places doing this? [LB570]

SENATOR CHAMBERS: No, it's just that I don't believe the plate ought to be used for any purpose other than the one we've discussed. And regardless of the group, the idea, or the concept that was to be put on the plate in addition to what I've said, I would oppose it as strenuously as I'm opposing this. [LB570]

SENATOR FULTON: The...if the plate were to be used as an identifier and, so both, and, an identifier and some other expression of state of Nebraska, say the logo of the state of Nebraska if we had one, would you be opposed to that? [LB570]

SENATOR CHAMBERS: They used to put "The Beef State" and I was opposed to that--any slogan, any words other than the state itself. And if they go back to stamping, the name of the state, the date of the plate, those things are all right. But anything else would be appropriate, in my opinion. [LB570]

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SENATOR FULTON: You almost sound like an engineer the way you want to have this--very straight lines and whatnot. So in a sense I suppose I can identify with you. I think I understand a little bit better your objection. Thank you, Senator Chambers. I'll listen to the debate, but I'm seriously inclined to supporting the bill. I think it's something that we can do on behalf of our families. And when...there's another point I want to make here. We, here in the Legislature, recognize the importance of being active in civics and in our government and in our society. And one of the depressing realities is that most in Nebraska, most in society really don't pay much attention to what's going on. So when there are those that step forward, we ought to be thankful that they're stepping forward to point out, you know, something they have a problem, a bill they have a problem with or an initiative they'd like to see us support or to vote against. Even those people who e-mail me who I probably will not satisfy their wishes in a vote, I'm sincerely thankful because they represent one of a small minority who actually pay attention and get involved in the mechanisms of our society. Here's a case, as I understand it, where families actually approached a senator, actually approached senators, plural, and asked if this is something that could be done. [LB570]

SENATOR FRIEND: One minute. [LB570]

SENATOR FULTON: So in that regard, even beyond support of this bill itself, we have individuals who are reaching out, becoming active in their civic duty, and engaging the senators. Granted, it's for a particular purpose but they're engaging nonetheless. And I think for us to say no in this particular case, given what is properly popular, and that is the support of our military, it ought to be that way. And for us to turn them away I think would be doubly heinous because not only would we be saying, no, this is not worthy of becoming law, these particular plates, but also you shouldn't have even come to ask us in the first place. So with that, thank you, Mr. President. [LB570]

SENATOR FRIEND: Thank you, Senator Fulton. Senator Engel, you are recognized. [LB570]

SENATOR ENGEL: Mr. President, members of the body, I, too, support LB570 and I'm looking forward to the amendments. But as far as I'm concerned, again, regardless of what Senator Chambers says, we are not honoring the President of the United States or the administration. We are honoring these brave, dedicated volunteer soldiers who have given up their lives for what they feel is a patriotic cause. And I think that's what we should keep upper mind in our minds. I also want to let Senator Chambers know that he's not the only one that can vent his spleen around here. I think it's very...his tirade of talking about how unpatriotic our country is, our country is...more or less he's blaming our country for all the terrorism in the world and defending the likes of Saddam Hussein and people like that. Like I told him before a few years ago we went through this, I said you are so lucky that you live in this country where you can say these things that you're

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saying, in this body where you can say these things that you're saying because we do have freedom of speech. And I honor that freedom of speech. But you're so fortunate you live in this country because if you lived in some of those countries you're more or less defending, you would probably not only lose your tongue but probably your head with it. And so again, that's another thing. And before when we did this a few years ago, I think it's so unpatriotic for anyone to get up and condemn our country the way you're condemning it and not standing up for these young people who are, again, I want to totally emphasize they're volunteers. They think they are doing something patriotic regardless of what the rest of us think. And I think we are honoring them and their families. We are not honoring those people that we think perhaps we shouldn't...got us into this war. And I know Senator Chambers is always quoting the Bible and we have "Parson" Carlson here now to correct him when he's wrong. And I mentioned this a few years ago and Senator Chambers said I had the quote wrong. As far as I'm concerned, I'll say it again. As far as I'm concerned, Senator Chambers, you're a noisy gong and a clanging cymbal. You are making a lot of noise, but again, and it doesn't make any difference if that's a correct quote or not. It's the message I want you to get and you've got that little smile on your face and you can keep smiling all you want. But I want you to know how I feel and I think several of us, if we just get up and say the same thing, they feel the same way I do. And with that, you have the ability in this Chamber to say what you want. We also have the ability not to listen to you and, as far as I'm concerned, I'm done listening to you. Thank you. [LB570]

SENATOR FRIEND: Thank you, Senator Engel. Senator Chambers, you are next and you're recognized. [LB570]

SENATOR CHAMBERS: Mr. President, I laughed when I heard him in spite of myself. Senator Engel is talking about patriotism, the famous statement is that patriotism is the last refuge of a scoundrel. There are many military people on active duty speaking out against this war. They don't see it as a patriotic activity. They are compelled to be there. Families are opposed to it. So what Senator Engel talked is based on his right to say whatever he wants to, and I will listen to him. I'm not adolescent. I'm not juvenile. And I will hear people with an opinion different from mine, and he will listen to me too. He is in rapt attention and I know that. But if he doesn't listen, it doesn't matter. I have opposed the Legislature being in the position of naming state flowers, state birds, state fish, state rocks. And when little kids would be encouraged by their teachers to bring something like that to the Legislature, I would oppose it. And when some of the senators would say at a committee, well, the kids are getting involved and you're going to turn them away. I said, they need to realize that it's all right to get involved, it's all right to ask, but when they ask something which cannot be granted, it's not going to be given to them just because their teacher organized them to come here or because they're young. A part of reality and a lesson that they must be taught is what goes on in the real world. And as a result of my resisting that, the Legislature doesn't do that anymore. The Governor is the one who named the sticks and stones and fish and birds. Talking about families, what

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about the families of those who were enslaved in Nebraska? You all didn't know there were slaves in Nebraska? We issue a plate to apologize to the descendants of those who were enslaved in Nebraska? Will you do that? Find out why Nebraska's application to join the Union was not at first accepted. It had to do with racism and discrimination against black people. And what I was going to indicate the last time I spoke, young black men are catching on. The Pentagon never thanked young black men for joining the military and being in combat out of all proportion to our numbers--10 percent of the population, 33 percent of those in combat. Well, now 50 percent of the enlistments from young black men are not taking place. And the Pentagon at last acknowledges the dependence it had on young black men. And they're acknowledging that young black men were the backbone of the military in this country because no other group enlisted in the numbers or percentages. The 25 percent, the 33 percent was in combat. Black men made up 25...and women, 25 percent of the entire military in this country, 25 percent. And there are places we still can't vote, we can't get jobs, our children can't get a decent education. A lot join the military because they're discriminated against when it comes to employment. Those are the realities and I'm going to present them. When you give me the opportunity and create it on this floor, I'm going to make the most of it. Senator Engel talks about you're not honoring the President or the administration, but these young men. When Ronald Reagan went to visit Bitburg prison, a prison in Bitburg, Germany, where SS, Schutzstaffel, troopers, the Waffen SS were buried, he was condemned. And he said, well, I'm not here to honor the Waffen SS; I'm here to honor all these other young soldiers. That's not the way it was viewed. And Reagan should not have gone there. But people are entitled to express their views, and you've had some foolish, empty-minded,... [LB570]

SENATOR FRIEND: One minute. [LB570]

SENATOR CHAMBERS: ...empty-headed people as presidents--Reagan among the leaders, Dwight D. Eisenhower another one, George Bush the older, and George Bush the junior, who revels in his ignorance. Should there be a KKK plate, since Senator White thinks people should be able to express what they want to on their plate? Buffalo Soldiers were in Nebraska, black soldiers, and they were segregated. That's why I will never set foot on the grounds of Fort Robinson. There were black troopers there, segregated, fighting for this country in the U.S. Army, wearing the uniform, the brass buttons, carrying the weapon, and shooting at America's enemies and they were segregated in the very army of which they were a part. Then Senator Engel is going to stand up there and think I'm going to be quiet because he gets upset with what I say? Let him leave. [LB570]

SENATOR FRIEND: Time. [LB570]

SENATOR CHAMBERS: He's got feet. Thank you, Mr. President. [LB570]

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SENATOR FRIEND: Thank you, Senator Chambers. And, Senator Chambers, I should have mentioned before that was your third time on this bracket motion. [LB570]

SENATOR CHAMBERS: (Inaudible). [LB570]

SENATOR FRIEND: Okay. (Visitors introduced.) On with discussion of the bracket motion, the bracket of LB570, Senator Wightman, you're next and you're recognized. [LB570]

SENATOR WIGHTMAN: Thank you, Mr. President and colleagues. As we approach Memorial Day, which we will do in a couple of weeks, almost on the eve of Memorial Day I think it would be sending a terrible message to not support LB570. I agree with Senator Avery that it would be a small price to pay, a small token really to those family members who have had a family member of theirs killed while serving in the United States military. I join Senator Chambers in decrying slavery and the continual racial discrimination that takes part in this country. I will always stand in resistance to discrimination on racial basis. But I see very little connection between that and what we are being asked here to do in supporting LB570. I think that any thought that there's a small inconvenience to the state or a cost to the state to provide some sort of recognition of those families who had a loved one fall while serving in the military is a small imposition on anybody in this state, and I think most people would favor it. And I know the veterans groups do. I realize that you can disagree with our action in any particular military involvement. Certainly there were many people who were good patriots who disagreed with our action in Vietnam and certainly many now do with regard to the Gulf conflict. But if we're going to have an orderly society in this country, I think people have to serve when called. And I thank God for the volunteers that we have in this country who will serve our country. And I think it's certainly appropriate that we recognize them in this small way and recognize their families in this small way. I see it has nothing to do with slavery. Certainly we could have some sort of recognition of people whose ancestors were slaves in the states. I might even support such a bill, probably would. But right now that's not what we're discussing. We're discussing whether or not it would be appropriate to have a special license plate designating someone as a family member of someone who has fallen while serving in the military. So I would urge your support of LB570 and resistance to the bracket motion. Thank you, Mr. President. [LB570]

SENATOR FRIEND: Thank you, Senator Wightman. Senators wishing to speak are Senators Wallman, Lathrop, Dierks, Mines, Schimek, Harms and others. Senator Wallman, you are recognized. [LB570]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. I, too, agree with Senator Chambers. It was a travesty what our country did in the past, but we did recognize it to some degree. We have a history month for Black History month. My wife

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taught that in the public schools. We have some...and my uncles fought in the Second World War with black troops and they did very well. And they sent this area right here, National Guard troops, in some of the worst areas in the Second World War, and you go to some of our churches and you'll see lots of windows with the names. And it's happening again. And I was on-call twice so I urge you to support this. And I know I don't have any trouble if we do have more license plates advertise our state. I'm proud to be from Nebraska and the Good Life or whatever. Iowa wants to put on, you know, Iowa has got birds on some plates and if you're Audubon Society you've got some plate or this and this. I have no problem with that because you still have that Iowa on there, and we still have Nebraska on there. So I urge you to vote against this bracket motion and for the bill. Thank you, Mr. President. [LB570]

SENATOR FRIEND: Thank you, Senator Wallman. Senator Lathrop, you are recognized. [LB570]

SENATOR LATHROP: Thank you, Mr. President, colleagues. I stand in support of LB570 and opposed to Senator Chambers' bracket motion. And frankly, I think this is a dark moment for the Legislature that we would debate this or take any more than 15 minutes to pass this bill. I have a nephew who is a lieutenant in the United States Marine Corps, and he's on his second tour right now in the Anbar Province. He will come home hopefully in June. The loss of life in war, the loss of young men and women who have given their life to our country is something that we read about occasionally in the paper here in Nebraska. Two months ago short...two or three months ago after we were sworn in, one of the first functions that we had was to go over to the Warner Chamber to honor those people, those Nebraskans who had been hurt, injured in the line of duty and those killed over in Iraq and in Afghanistan. I've never really had that come home to me, the loss a family experiences, until I went to that memorial. The Governor was there, Senator Aguilar. They honored the families and the senators entered into the Warner Chamber and we sat along the side. And the families of these young men and women were already seated at the desks in the Warner Chamber. And I sat down and I noticed there were two African-American boys sitting right in front of me. They were obviously brothers. And as they began to hand out awards for those who have been injured, the Medals of Valor and so forth, these two young men began to cry. And I looked up at the men and women being honored for their injuries in the line of duty and there were no black men waiting to receive this award. And what I realized while I watched this ceremony take place is that their brother was not going to receive a medal for his bravery. Their brother was going to be honored because he gave his life up in the line of duty. And after that ceremony, I went up to his parents, I think Senator Pankonin did as well, we were sitting there together, and I wanted to say something to them. I wanted to say, thank you for what your son did; you should be proud of him. I couldn't find the words for that family. And so today we have an opportunity to provide a small, small token of our appreciation for the sacrifice those families make. And I don't understand why we're talking about this as a policy matter. We give license plates to

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football fans in this state, and we're arguing over whether we can honor and pay tribute to the families who have given one of their sons or daughters in the line of duty. And I think it is disgraceful that we're arguing about it. [LB570]

SENATOR FRIEND: One minute. [LB570]

SENATOR LATHROP: The irony is that the only argument you can make against LB570 is that we want a consistent policy. Senator Chambers, you frequently tell us that consistency is the hobgoblin of a small mind. My mother used to call it the last refuge of the imagination. I think we can do better than that. I think we should pass LB570 and honor those families whose sons and daughters have served our country and died doing it. Thank you. [LB570]

SENATOR FRIEND: Thank you, Senator Lathrop. Senator Dierks, you are recognized. [LB570]

SENATOR DIERKS: Thank you, Mr. President, members of the Legislature. I do not support the bracket motion and I do support LB570. Thank you. [LB570]

SENATOR FRIEND: Thank you, Senator Dierks. Senator Mines, you are recognized. [LB570]

SENATOR MINES: Thank you, Mr. President. This discussion has gotten quite emotional, and this discussion, I think, is deserved. I am a veteran. My brother died in 1990 in the South China Sea, flew his airplane on a training mission on the way to the first Gulf War and was killed. I understand how families feel, and I understand the direction that Senator Loudon is going. We in the committee, the Transportation Committee, talked about this but it wasn't emotional like we're here on the floor. The discussion was practical. And some of the questions that I think you all are not asking, you're thinking with your heart, perhaps not with your head, this isn't necessarily about the Iraq War. This is public policy, as Senator Langemeier had begun to talk to you about. I told Senator Loudon that the bill was stuck in committee. There were those of us that didn't care for it. And I told him about the second time he came to me that if you prioritize this bill I'll give you a vote to get it out of committee and I did that. And I'm not going to stand on the floor and oppose it. I'm just going to suggest that you think of things that we talked about in committee. Those things are: once this is authorized, in fact, I might ask Senator Chambers. This is not to take a position on this. From a constitutional perspective, Senator Chambers, we had this discussion. Would Senator Chambers yield? [LB570]

SENATOR FRIEND: Senator Chambers, would you yield to a question? [LB570]

SENATOR CHAMBERS: Yes, I will. [LB570]

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SENATOR MINES: Senator Chambers, we do have today vanity plates that you can get your football...support the football and you can get veterans or Purple Heart and several others. But by allowing another plate does this also, in your opinion, open the opportunity for other organizations like motorcycle riders, Ku Klux Klan, Atheists Alliance International, other legitimate organizations to approach this state and ask for vanity plates and then the state be required to provide those? [LB570]

SENATOR CHAMBERS: They can ask. I don't know that anybody has brought a lawsuit to require the state to give them what they want. But there were some slogans put on license plates which people wanted to have taken off because they thought it was the state advocating a position. And I think a lower court, I don't know how far it went, said that the slogan could stay there. But it could at least raise the issue and somebody might want to seek legal action, but I don't know for sure what the outcome would be. [LB570]

SENATOR MINES: Thank you, Senator. I took just a few minutes here this morning and went to some other states' web sites. And some of those that are allowed right now, and there will be a proliferation of specialty plates. That's really the decision here. It's not about...it's a bit about honoring those that served and those that were killed in service. I understand that. Some of you do as well. But the public policy decision here today is shall we allow the proliferation of vanity plates? What does that do in terms of the Department of Motor Vehicles? What does that do...frankly, let me also back up. You know, every four or five or six years we get a new license plate design and everybody whines and moans how ugly it is? [LB570]

SENATOR FRIEND: One minute. [LB570]

SENATOR MINES: Frankly, I don't think you could tell driving down the road that Nebraska has a windmill and a covered wagon on it. Nobody pays attention to that. And I think maybe we're overemphasizing the importance of license plates. Again, members, the public policy decision here today is this further enables the proliferation of vanity license plates, all kinds that we may or may not intend, and I think that's what we need to think about as you're thinking about those that served in any war and died in any war and their families that are related. Thank you, Mr. President. [LB570]

SENATOR FRIEND: Thank you, Senator Mines. Senator Schimek, you are next and you're recognized. [LB570]

SENATOR SCHIMEK: Yes, thank you, Mr. President. Mr. President and members, I appreciate the fact that Senator Mines just opened the conversation in a direction that I wanted to take us and perhaps elaborate upon a little bit. I hope this conversation on the floor doesn't continue to talk about and question people's patriotism. There are lots

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of different ways of expressing patriotism. And I think that I would not want to try to talk about which of my colleagues is more patriotic than the other. I think we all have our own way of expressing our patriotism. First of all, my vote in committee was to not advance this bill from committee. And I want to explain that vote and then I want to offer an apology to some people who were very offended and hurt, probably more hurt than offended, by some remarks that were taken perhaps out of context and put in the paper. And they read about it clear out in western Nebraska. But the reason that I voted against advancing this bill from committee was that we were told in committee by the Department of Motor Vehicles that we had to be very, very careful about how far we went with expanding the numbers of groups who were getting license plates in our state. We could probably justify a license plate if it were government related. What we probably couldn't justify in a court where somebody was challenging the fact that we were telling them they couldn't have a license plate, what we couldn't justify is if we had given license plates to nongovernmental-related entities. So part of my remarks in the committee discussion were that if we continued to do this, I was afraid that we would be unable to say no to the Ku Klux Klan. We would be unable to say no to the Hare Krishnas. We would be unable to say no to any group that wanted a license plate. Historically, I have agreed with Senator Chambers and I have never, at least to my recollection, maybe when I was in here very early, but in recent years I have not voted for any additional license plates. I did not vote for the Husker plate, for instance. I haven't voted for any of them. Having said all of that, I apologize profusely to the family of veterans, of servicemen and women who were killed in Iraq or in any other war. I did not in any way, shape, or form in my mind see that then as equivalent to some of these other groups that I was concerned with. It's not related at all. I called one of the mothers and told her I didn't know how someone would cope with the loss of a son or daughter overseas. I didn't know. [LB570]

SENATOR FRIEND: One minute. [LB570]

SENATOR SCHIMEK: And I did not mean to provide any hurt to any of those families or any veteran for that matter. And I told her in that conversation that I could probably consider changing my mind this one time because of the situation that we were talking about and because of the people we were trying to honor. I also said that I thought there were other and better ways of honoring our fallen heroes. And I'm going to turn my light on again because I'd like to talk about an interim study resolution that I have proposed that would attempt to do that very kind of thing. So, Mr. President, thank you for the time. I will turn my light on again. [LB570]

SENATOR FRIEND: Thank you, Senator Schimek. Senator Harms, you are recognized. [LB570]

SENATOR HARMS: Mr. President and colleagues, I think we have every right to make this decision here and to honor our fallen soldiers. When my son was 18 years old, he

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came to me and said, Dad, you're going to be disappointed in me. And I said, why, son? He said, I joined the Army, and he said, I know you wanted me to go to college. And I said, son, I'm happy for you. If this is what you want, I'm happy for you and I'm proud of you. And he said in the same breath, he said, will you talk to Mom about this? And I said, no. That's your responsibility. And she supported him. Well, we didn't realize when he'd gone to the service...and his whole purpose was that he was not mature enough. He felt like he hadn't grown up and he thought the military would be a great place to grow up and to learn to become a man, and he did. But we didn't realize as a family and as a mother and father that he would be shipped to the first war with Iraq. And let me tell you we flew to Seattle, Washington, where he was shipped out. And I don't think I've ever gone through an experience of holding my son in my arms at that age and thinking I may never get to see him again. As a parent, you cannot believe how deeply that cuts into you. And after the war started, it was so highly televised that you could see everything that was occurring. My wife and I, we're so family-oriented, we had to go to a support group that was created by the National Guard to talk to other parents to be able to get our fears out. Anytime the doorbell would ring and we weren't expecting someone, I couldn't swallow. I thought someone was coming to tell me that my son was killed. We were one of the fortunate families because he came home. I can't even imagine what it must be like for a parent to get the notice that their son was killed or their daughter was killed. And I don't know why we're arguing this and debating this, folks. This is a wonderful way to honor the families and those who have given their lives for us. We're able to have this discussion today because other people had been willing to fight for our freedom. We have the freedom and the choices in this Legislature that some other countries don't have because we were willing to fight for what we believe in. Sure, we've made mistakes in this whole process. We've corrected as many of those as we can. We have a responsibility here today and, quite frankly, I'm disappointed that we're having this debate. It should have been quick and over with to simply say this is a wonderful way to honor our fallen soldiers and families. These cars are going to go all over the country from Nebraska and people will see that we're proud of the military, we're proud of the people who allows us to be free, allows us to have the choice, allows us to have the freedoms that we have today. So I oppose this bracketing. I support AM690 and LB570, and I'm honored to be able to vote on this because people lost their lives to give me that privilege. And I hope you'll look at it in the same way and I hope that you will support... [LB570]

SENATOR FRIEND: One minute. [LB570]

SENATOR HARMS: ...thank you, Mr. President. I hope you will support AM690 and LB570 because I believe we owe the respect to the families who have given up their son or daughter for our freedom. Thank you, Mr. President. [LB570]

SENATOR FRIEND: Thank you, Senator Harms. Senators wishing to speak are Loudon, White, Pirsch, Aguilar, Fulton, Pankonin, and four others. Senator Loudon,

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you're recognized. [LB570]

SENATOR LOUDEN: Thank you, Mr. President and members. As I think it was pointed out earlier that in this Chamber we were to go over our laws and do...and I forget the wording that Senator Chambers used anyway, to fine-comb our laws, I guess would be a better way to say it. But one thing you want to remember that as legislators here our job is to improve the life of the citizens of Nebraska. That is what our job is here for. It isn't to make things harder for people. It isn't to make things more expensive, but it's to improve the ordinary life of citizens of people, whether it's job trainings, try to get jobs for people in their urban areas, whether we do work on discrimination. All of that is our job and this is what we do. I think we have to look and see what we're trying to do here today. This is something that is a good thing to do. This is to help people that have lost children in the line of duty, been into the wars and haven't returned. This is a very serious matter. And I think it should be considered that way. This is what they're asking for. Sure, these people are honored now. The Mracek boy's name is chiseled in stone in front of the courthouse in Rushville. That's great. But again, there's other ways and the license plate was one way that these people would want to also recognize the sacrifice they made. This isn't a particular organization. There are organizations that are named after different things like that. But this, for this part, is not any kind of an organization per se. The reason we probably get by with this as far as the state is because they decided that some of the revenue would go to the veterans cemetery. The people did that themselves. This is a government entity. This will have to have some funding from the state from time to time if there isn't enough funding in there from the donations that are set up to take care of the maintenance fund. So this is all part of state government in a way. And this is something that I think that is the right thing to do. I would, of course, I am opposed to the bracket motion. And I would ask that we go ahead and move forwards with this and have this done by today. As Senator Wallman, I think, pointed out, that...or Senator Wightman maybe, that Memorial Day is coming up and that sort of thing. This is a very tough time of the year for those people like that. And to have this debate run on for hours for something like this is somewhat crude I think. So with that, thank you, Mr. President. [LB570]

SENATOR FRIEND: Thank you, Senator Louden. Members, we are discussing the bracket motion of LB570. Senator White, you are recognized. [LB570]

SENATOR WHITE: Thank you, Mr. President. I do rise because there is a First Amendment issue that is interesting. And I think this is a point that may be well worth making, not just in the context of this license plate but overall. Senator Chambers properly raises the question of if we go here do we have to allow Ku Klux Klan members have a plate that identifies them. And I'd like to make two observations for you. Certainly that is a risk that we'd open up the world or the possibility to offensive groups or groups I find offensive to have their own plates. There is a protection even if that does occur under First Amendment free speech language for fighting words. Fighting words are

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words that are so offensive that they are not protected because they cause serious risk of immediate breach of peace. Even if one is in a protected area, fighting words do not have protection under most analysis of the First Amendment so there would be ongoing protection there. But Senator Chambers raises an interesting point. His position is we shouldn't go here at all so that we don't have to tolerate such groups even having the possibility of having such plates and I respect that. However, unlike Senator Chambers, I come from an Irish tradition. And we have a very old prayer that goes along the lines of, Dear God, please bless our friends and protect them. And as to our enemies, please, God, if you are able, turn their hearts. But if you cannot turn their hearts, please turn their ankles so we may know them by their limping. And for myself, if someone is a racist and a KKK member, I'd just soon he have a license plate. Actually, I'd prefer a neon sign taped to his head that says, I am a racist buffoon, therefore, I would be able to know them by their limping. And that's when the First Amendment really truly works, is when people have to stand up and defend opinions that are not defensible. And if a person is truly ignorant enough to want a KKK plate, I want the opportunity to know them and confront them. And that is, I think, a devotion to the First Amendment that is different from Senator Chambers, not necessarily opposed to, just a different method of how we deal with opinions that we find offensive. Senator Chambers is absolutely right about the Buffalo Soldiers. And if you ever want to read of a compelling part of our history, it is watching one despised minority engaged in what was, in fact, genocide with another despised minority and the bravery of both sides was really beyond compare. Unlike Senator Chambers, I would not refuse to go to Fort Rob. I would go there and I would speak and remember about the Buffalo Soldiers. I would also tell Senator Chambers one of the plates I would seriously consider getting if it was wide open was, Nebraska, the birthplace of Malcolm X, the stick that made Martin Luther King's carrot credible. And with that, I again oppose the bracket motion and I support the bill. [LB570]

SENATOR FRIEND: Thank you, Senator White. Senator Pirsch, you are recognized. [LB570]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I'm calling the question. [LB570]

SENATOR FRIEND: Members, the question has been called. Do I see five hands? I do see five hands. The question is, shall debate cease? All those in favor please signify by voting aye; all those opposed vote nay. Senator Pirsch, for what purpose do you rise? [LB570]

SENATOR PIRSCH: Yeah, I'm sorry, Mr. President, I'm going to ask for a call of the house. [LB570]

SENATOR FRIEND: Members of the Legislature, there's been a request to place the house under call. The question is, shall the house go under call? All those in favor

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please vote aye; all those opposed vote nay. Record please, Mr. Clerk. [LB570]

ASSISTANT CLERK: 29 ayes, 0 nays to go under call, Mr. President. [LB570]

SENATOR FRIEND: Members of the Legislature, the house is under call. Senators, please record your presence. Those senators outside the Chamber please report to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Pirsch, for what purpose do you rise? [LB570]

SENATOR PIRSCH: I would accept call-in. [LB570]

SENATOR FRIEND: Thank you. Senator Preister, Senator Kruse, please report to the Chamber. The house is under call. Senator Preister, the house is under call. Senator Pirsch, would you like to proceed? [LB570]

SENATOR PIRSCH: I would. Thank you, Mr. President. [LB570]

SENATOR FRIEND: Mr. Clerk. [LB570]

ASSISTANT CLERK: Senator Erdman voting yes. Senator Janssen voting yes. Senator Johnson voting yes. Senator Pankonin voting yes. Senator Christensen voting yes. Senator Schimek voting no. Senator Loudon voting yes. Senator Cornett voting yes. Senator Gay voting yes. Senator Dubas voting yes. Senator Kruse voting yes. [LB570]

SENATOR FRIEND: Record please, Mr. Clerk. [LB570]

ASSISTANT CLERK: 25 ayes, 7 nays to cease debate, Mr. President. [LB570]

SENATOR FRIEND: Members, debate does cease. Senator Chambers, you are recognized to close on your bracket motion. [LB570]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, for some of those who might suggest black people don't have a right to be in this country, we're the only people who were dragged to this country against our will. Others came here, having been run out of other countries--having been run out of other countries. We were, at one and the same time, labor and capital. And Senator Lathrop is mistaken if he thinks he's the only one who's got family members who died in wartime. And for those who say it's shameful to discuss this, let it be! I'm going to discuss anything that is brought to this floor that I think I ought to talk, and if you all think you're stand up here and say, well, it's shameful for you to talk, then you are insane. You're not going to play that card with me, like you play it with each other. The issue is serious, I have serious points to make, and I'm going to put them in the record; and I'm going to demonstrate what free speech means, because I have people who fought so there would be free

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speech, so white people could enslave us and discriminate against us and segregate us in the military. When black men were guarding white prisoners of war, and they took them down South, the white prisoners of war were allowed in restaurants and the local white police and the United States Army went along with it--would not let those black guards in military uniforms of America go in the restaurant. And on the trains the white prisoners of war, whose countries were trying to destroy this one and were killing Americans, were allowed to ride in the white parts of the coaches; the black guards of these people were made to sit in the segregated coaches. And you all think I'm going to be quiet because your little feelings are hurt? You're out of your mind. In Wyuka Cemetery in Lincoln...they had a military base here, and a black military family had an infant who died, and the infant mistakenly was buried in the white section of Wyuka Cemetery, and those Christian, patriotic white Americans dug that baby up and took the body and buried in the segregated part of Wyuka Cemetery. You all don't confront those things. You have no concept of what it is. Then you jump up here and call the question and think you're going to shut me up. You got another thing coming. American farmers gouged George Washington and the Continental Army during the Revolutionary War. Did you all know that? They stuck up the military. That's a part of your history. Then you teach children that there was all this patriotism in America. Jesus said, let the dead bury their dead. I'm interesting in the living. I don't go to cemeteries, I don't go to funerals. I've got relatives buried in the ground. Honor the living! Help the living! That's what counts. But you find cemeteries better tended than the places where poor people live, because they honor supposedly dead bodies. You can show honor by doing something for those who are still alive. And as for those who say I'm lucky I'm not in a country where I can't say these things, that's preposterous. That has nothing to do with anything. I'm in this country and there are people here who would shut me up, if they could--who would; who think that on this floor, where we do nothing but debate, that I should be quiet and let this go in 15 minutes, because that's the way they want it; that I ought to be ashamed for expressing my view, when my people have suffered a shameful,... [LB570]

SENATOR FRIEND: One minute. [LB570]

SENATOR CHAMBERS: ...unjust experience throughout our time in this history. If I don't say it, who will? Ken Burns was doing a documentary on those who served in the wars, and he left the Hispanics out. They're invisible to him. A protest was made, now they're redoing it. White people don't think about those things, and they're probably mad at the Hispanics for saying anything about it. You won't find Senator Lathrop objecting to that, Senator Harms objecting to it, Senator Engel. They don't even know about it, because those things they don't read, because it doesn't affect them. But I'm not through with this issue yet, and I'm going to debate it some more this morning. I don't care if I'm the only one expressing a point of view. I'm the only one who's got it! So I'm the only one to do it, and I shall. I don't have to be a member of the mob or have a lot of people backing me up. And by the way, if a license plate were offered to honor Malcolm

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X or Martin Luther King or anybody else, I would oppose it... [LB570]

SENATOR FRIEND: Time. [LB570]

SENATOR CHAMBERS: ...as strenuously as I am this one. Thank you, Mr. President, and I would ask for a roll call vote. [LB570]

SENATOR FRIEND: Thank you, Senator Chambers. A roll call vote has been requested. Mr. Clerk, call the roll. [LB570]

ASSISTANT CLERK: (Roll call vote taken, Legislative Journal pages 1645-1646.) Vote is 0 ayes, 40 nays, Mr. President, on the motion to bracket. [LB570]

SENATOR FRIEND: The motion to bracket LB570 is not successful. I do raise the call. [LB570]

ASSISTANT CLERK: Mr. President, Senator Chambers would move to reconsider the vote just taken. [LB570]

SENATOR FRIEND: Senator Chambers, you are recognized to open on your motion to reconsider. [LB570]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, if Senator Pirsch had let this debate go forward, you wouldn't have seen this motion, but I'm not going to be cut off. And I'm going to tell you all something from you-all's white history. Virginia had a legislative assembly known as the House of Burgesses. Patrick Henry was addressing them. There was a lot of agitation to break ties with England, and Patrick Henry was giving a fiery speech, and he talked about individuals throughout history who had done things that were not very good--things that were oppressive. And has he wound his way to the end of his speech, he said, Caesar had his Brutus, George VIII had...and somebody hollered, treason! And Patrick Henry said, if this be treason, make the most of it. Then supposedly he said, I know not what course others may take, but give me liberty or give me death. Patrick Henry was a slaveholder. Patrick Henry talked about what a terrible thing it was for there to be slaves. He said that he was going to keep his slaves, but he would pay his devoir to virtue and acknowledge that slavery was wrong; that the worst injustices created and committed by those on one side, and the most demeaning, inappropriate treatment--and I'm paraphrasing--suffered by those on the other, and that it demoralizes everybody in society. But he would not give up his slaves, because he did not want to deal with the inconvenience of living without them. Thomas Jefferson, reputedly the author of the Declaration of Independence, stated that he thought slavery was wrong, and he said, I tremble--talking about slavery--for my country when I remember that God is just and that His justice cannot sleep forever. But he didn't tremble enough to free his slaves. This country was born in slavery, birthed

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from slavery. Those who wrote the Constitution, the majority of them, were slave owners. Members of the U.S. Supreme Court were slave owners. Presidents were slave owners. And this is a part of my history, and white people don't even want to hear it uttered, but I'm going to utter it, and you might begin to get an understanding of how this country is viewed from our side and how people such as me are going to take advantage of every opportunity to present it. There are states in the South now whose legislatures are issuing formal apologies to black people for the fact that they were enslaved in those states. But there is not a concomitant enactment of laws or enforcement of laws to do with the ongoing Jim Crowism, segregation and discrimination that continues to exist in those states, and that's what happens when you deal with dead people. Senator Lathrop wants to honor dead people. Others are talking about Memorial Day is coming, when you go out to the cemeteries and you worship bones and remains. And your religion teaches you that nobody, as far as the human element, is there. They're long gone to wherever they're going to wind up. But you'll go out there to honor the dead. You will not put forth that effort to take care of the living. So all of those ceremonies, I think, are hypocritical, they mean nothing, and to show how your people think of them, you pick up a newspaper when it comes time to have Memorial Day and look at all of the advertising of Memorial Day specials. It has been commercialized. You're angry at me for speaking very seriously about a serious issue, then you invoke patriotism and Memorial Day. But you don't condemn these newspapers for running advertisements to commercialize Memorial Day. Buy a television set by Memorial Day and you don't have to make a payment before next Memorial Day. Flags, sales, hamburger, ketchup, oranges, apples, biscuits, barbecue, barbecue sauce--that's what you all do, put in your newspaper, and you've got the nerve to stand on this floor and act like Memorial Day means something to you. You can't tell me I'm lying, because you read them and you probably take advantage of some of those sales. How many stores close down on Memorial Day? Does Warren Buffett's store, the Nebraska Furniture Mart? Does that close down on Memorial Day? You going to attack Warren Buffett? No, because you're cowards. You all clump together and attack one man--48 against 1--and you feel brave, and you feel like you're doing a great thing, and you are patriots. If that's patriotism, take it and lump it. I've never claimed to be a patriot, but I've always claimed that I have more right to be in this country than anybody else, other than the native people, because our blood, sweat, and labor built this country. We died working for nothing for white people--mutilated, brutalized, raped, murdered by a so-called Christian country. And I'm supposed to go along with something like this and be ashamed for discussing it. That is shameful! And a lawyer, of all people, standing up here talking about it's a dark day in Nebraska because it's being discussed; it should have been done right away. I don't know where he got his education. I don't know what's going on in his mind. But I'll tell you what--I see him a lot differently from the way I did before, and I'm talking about Senator Lathrop. People who speak and do things have names, and for him to show so little understanding, so little grasp, and have the nerve to stand on this floor and suggest that I should be ashamed, and this should have been allowed to just go through, why, that's preposterous! And

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when Senator White, who made one of the best statements about Malcolm X I've heard, that he was the stick that made Martin Luther King's carrot creditable, mentioned First Amendment rights being implicated, I thought he was going to talk about the right of a member of the Legislature to raise any issue and debate it. But instead...and he did pick an issue that I had raised, that others who may be considered unsavory would want the opportunity to put on the license plate something of their choosing. I've heard people stand on this floor and defend what they call political speech. But what do I get? Poor, poor, pitiful me--what do I get? He ought to be ashamed of himself. He ain't patriotic. He shouldn't say that. Political speech, and I'm in the midst of a political body, elected to express my views, and I have people on the floor suggesting I should not express my views, but they'll stand up and defend the right of political parties and others to invade your house with all these robo calls, as they're called. Don't that beat all? That's the way white people do, though, and why we look at you all and wonder what's going on in your head. These relatively inconsequential things get you all in a tizzy. Then I'm talking about not only the history, but what is happening to people of my complexion right now, and you all think I shouldn't even talk about it. You all don't have to sit here. You can leave. You're free to walk. Go! I release you. You may as well. If this is a shameful exercise, why are you participating--aiding and abetting it--by sitting here? [LB570]

SENATOR FRIEND: One minute. [LB570]

SENATOR CHAMBERS: If anything you need to know, it's this: Your opinion is not going to mean (snaps fingers) a pop of the finger to me, when it comes to me expressing my view. All the talk we did about whether there ought to be a sign warning people that the state or political subdivision is not responsible if you get injured--we went on and on and on. I'm talking about reality, and people are ashamed and think I ought to be quiet. It won't work, brothers and sisters. I'm going to talk. Thank you, Mr. President. [LB570]

SENATOR FRIEND: Thank you, Senator Chambers. Members of the Legislature, you've heard the opening on the reconsider motion. (Visitors introduced.) On with discussion of the reconsider motion. Senator Aguilar, you are recognized. [LB570]

SENATOR AGUILAR: Thank you, Mr. President and members. I was going to be quiet on this motion, just listen. But a couple points come up that I wanted to touch on. I've served on the Transportation Committee now for a number of years, and with members that have always stuck by their guns and said, you know, I'm not going to support anything like this; it expands the scope of things, and all these other groups are going to come in and we'll have to support them. Well, I've taken the other side of that argument. I disagree. I don't think we have to support Ku Klux Klan. I don't think we have to support Minutemen. We don't. It's just a simple a vote of no. That's all you have to do. You vote no. You use common sense on the issue. That's how I feel about it. And another point that I think needs to be made here, and someone else touched on it, and

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that is, KKK, Minutemen, hate groups, they're not going to request their own license plates. And I'll tell you why. They don't want to be identified. They're cowards. Senator Chambers will tell you that. They're nothing but cowards. They speak from the...in the newspaper possibly they'll do articles, they'll come...I had a member of the Minutemen come in front of one of my committees one time, and she identified herself as a member. Later on, she turned up in another committee, and she didn't identify herself as a member, so I asked her the question: Aren't you a representative of a specific group? She answered no. That's cowardice. If you're going to take a stand like that and be a member of a hateful group like that, be man or woman enough to admit it. That's nothing but pure cowardice. I don't support any of that. I want to take it another step further and do my share of education, for some of the new members here. Senator Chambers speaks on issues nobody else will speak of--he said that. He's expressed that to you very eloquently many times, and when he's making a point on something he feels passionate about, he will make that point, and it's not necessary to call the question on Senator Chambers. That's why I give him time when he requests it. He's going to make his point. There's nothing you can do to stop it. He's touching on issues nobody else will. Figure it out. It's going to happen. If I have any time left, I'd give it to Senator Chambers. [LB570]

SENATOR FRIEND: Senator Chambers, about 2 minutes and 30 seconds. [LB570]

SENATOR CHAMBERS: Thank you, Senator Aguilar. Thank you, Mr. President. I'd like to ask Senator Harms a question, because he did involve himself in the discussion. [LB570]

SENATOR FRIEND: Senator Harms, will you yield to a question? [LB570]

SENATOR HARMS: Yes, I will. [LB570]

SENATOR CHAMBERS: Senator Harms, based on your understanding, for whose purpose are these license plates to be issued? [LB570]

SENATOR HARMS: For the families, in the honor of their fallen one. [LB570]

SENATOR CHAMBERS: Then why do we have language that these designs that are to be selected will reflect support for the United States armed forces? [LB570]

SENATOR HARMS: I don't know. I didn't write the bill. [LB570]

SENATOR CHAMBERS: I had...that's all I will ask you,... [LB570]

SENATOR HARMS: Thank you. [LB570]

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SENATOR CHAMBERS: ...because I know...I understood what you said. That's why I asked you that question. You made it clear. How many of you read the bill? If it's for the families and the fallen, why didn't Senator Lathrop stand up here and say, therefore, we don't need to say that the plates have to reflect support for the United States armed forces? Senator Pirsch didn't say it. He hasn't read the bill. I read the bills that you all write and put out here, and I take seriously my work as a member of this body. And I have an amendment...I wasn't putting them all up there at once. I was going to strike that language. How are you going to reflect support for the United States armed forces? These plates are issued in honor of the United States armed forces? That's what you're going to put on it? How are you going to reflect support? Why should you even inject that into this, if you mean the families? Because it's hypocritically done, and it wasn't well thought out, and the ones who fell had nothing to do with it,... [LB570]

SENATOR FRIEND: One minute. [LB570]

SENATOR CHAMBERS: ...but rather this sham patriotism of supporting the armed forces. Are you supporting the rapes that they're committing in Iraq, the murders they're committing in Iraq? And if you're going to...it's for the families of those who died while on active duty, there's a general who is kept on active duty right now because he may have some criminal responsibility for the murder of civilians, and if he dies while he's on active duty under those charges, his family is entitled to these license plates, because he is to be honored as one who fell, even though he died while under charges of possibly being derelict in his duty. You all are the ones who say you believe in this stuff. You don't even know what it says. Thank you, Mr. President. [LB570]

SENATOR FRIEND: Thank you, Senator Chambers. Senator Fulton, you are recognized. [LB570]

SENATOR FULTON: Thank you, Mr. President. The decision not to cease debate, I'm glad the debate is going to continue. A point was brought up earlier about the KKK, if they requested a plate. Of course, I would despise that. I would hate that. If they want to request a plate, it's completely within their right, and as Senator Chambers has pointed out, we are the Legislature, very powerful branch of government. They come to the Legislature; we tell them no, for whatever reason that we put forward. But we can consider the request. These Gold Star families have come to us requesting a plate. There are those who want to tell them no. I am not one of them. We should tell them yes. The...now earlier I was...during this debate I wanted to get to the principal argument that Senator Chambers is raising, and I wonder if he would yield to another question or two. [LB570]

SENATOR FRIEND: Senator Chambers, will you yield to a question from Senator Fulton? [LB570]

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SENATOR CHAMBERS: Yes, I will. [LB570]

SENATOR FULTON: A question or two. [LB570]

SENATOR CHAMBERS: Yes. [LB570]

SENATOR FULTON: The...again, the reason you don't want to adorn license plates, you'd rather have them be identifiers and identifiers alone. You don't want to adorn them with anything more than their identifying marks. [LB570]

SENATOR CHAMBERS: Correct. [LB570]

SENATOR FULTON: Okay. Would you...I'm going to probe a little bit and see how far that principle will stand with you, and maybe it's a principle I'd stand by. I'll let you know up front that I'm probably inclined to disagree with you, but at least I want to see this principle through debate. Would you say this building, the Capitol Building, represents an identifying mark? Would that...would you go that far? Is this an identifying mark as the Capitol of the state of Nebraska? [LB570]

SENATOR CHAMBERS: I don't...it symbolizes the place where the government is going to be conducting its business. I don't know what you mean by "identifying mark." [LB570]

SENATOR FULTON: Okay. [LB570]

SENATOR CHAMBERS: I don't see it as a license plate, if that's what you're asking me. [LB570]

SENATOR FULTON: No, not quite, and there's a little bit of a stretch here, but again, I want to see how far this principle runs. This represents the Capitol of the state of Nebraska then. I assume, then, you are fine with adorning the Capitol with something more than just its representation as our Capitol. [LB570]

SENATOR CHAMBERS: Sure, I've spoken out in favor of... [LB570]

SENATOR FULTON: I remember. [LB570]

SENATOR CHAMBERS: ...of beautifying buildings and putting symbols in those buildings. But I don't agree with every symbol that is used. [LB570]

SENATOR FULTON: Well, I guess...and that's where...I remember, when were having this discussion on the budget debate, about the need for beauty. [LB570]

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SENATOR CHAMBERS: Yes. [LB570]

SENATOR FULTON: And we had a little discussion off the mike. Why do you support adorning this building? [LB570]

SENATOR CHAMBERS: Because a building is a place where human beings occupy. It symbolizes a lot of things other than just the walls, the ceiling, and the floor. There is heritage, there is history, there are bad things, and some good things included. There is art work which I was responsible for having the Legislature pay for. I didn't do it, but I've worked while I've been here to try to put things into this building that I thought were appropriate. And it has nothing to do with license plates or the function of a license plate. [LB570]

SENATOR FULTON: Would you say that in today's society a car is a place that people occupy and express themselves with? And... [LB570]

SENATOR CHAMBERS: A car is whatever a person wants to use it for. Some people are forced to live in them, some people use them as headquarters for conducting illegal activity, some such as myself use them to get from point A to point B as cheaply as possible. [LB570]

SENATOR FRIEND: One minute. [LB570]

SENATOR FULTON: Senator, couldn't the same be said for a building, though? Not the latter point--point A to point B--but we humans we inhabit buildings, we use them as headquarters,... [LB570]

SENATOR CHAMBERS: Senator Fulton, if you have to go this far to try to show that these Gold Star license plates ought to be approved, I'm...you've lost me. [LB570]

SENATOR FULTON: Well, I'm looking at this just from the function. A building--an engineer designs a building and he puts the heating, ventilation, air conditioning systems in a certain way, the duct works in a certain place, and then an architect comes along and says, no, it's more than just function. The building represents also an expression of the people who inhabit them. The same, I would say, can be said for a car. The car, it's functional. If you put wheels and a box, it can get you from point A to point B, and maybe if engineers were the only ones designing cars, that's what they'd look like. But there's something other. There's something more than just the function. There's also an expression of who's in the car, and I guess that's why I can see a license plate being something more than... [LB570]

SENATOR FRIEND: Time. [LB570]

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SENATOR FULTON: Thank you, Mr. President. [LB570]

SENATOR FRIEND: Thank you, Senator Fulton and Senator Chambers. Senator Pankonin, you are recognized. [LB570]

SENATOR PANKONIN: Thank you, Mr. President, members of the body. Another interesting debate this morning, and I want to start off by talking about the history a little bit. I want to first acknowledge Senator Chambers' history lessons today. African-Americans' and Hispanics' contributions to all of our history has been marginalized. I feel that is true, and we have not properly honored them. And since the George S. Patton fan is presiding today, I want to give you another example. The glory that he received with the Third Army in the post D-day drive to the Rhine was made possible, in my opinion, because of something called the Red Ball Express. The Red Ball Express was a trucking outfit because the line was moving so fast that they needed to be...the army needed to be supported, and black soldiers and drivers and the people that loaded and unloaded those trucks, and a lot of what they carried was the fuel for the Third Army tanks. That drive would not have been possible, and the victory in Europe not possible, without the contributions of the Red Ball Express. And those folks need to be honored as much as any front-line soldier, because that wouldn't have happened. And when Patton, in his exuberance, sometimes outran his supply line--and that was even featured in the movie--was disastrous results because he wouldn't wait for the supply to catch up, despite the heroic effort. So I think we need to acknowledge that...and I enjoy history, as you know, and Senator Chambers' comments today that we have done a disservice to many citizens in our country by not acknowledging their contributions. Secondly, on the issue on the plates, that was a policy that was started, whether Senator Chambers, Senator Schimek was against it in the past, but we have established that, that we have issued some plates for different groups and different ideas over the years. And I think this one does probably fit that definition of being a valid notion. And as Senator Lathrop probably so well described the events of several months ago, as we did sit side by side, as that family before us, as we figured out that they were going to be honored for losing a son in Iraq, and trying to think that day of what to say. Do you say you're sorry? Do you say thank you? And as I tried to search for the words to tell the brothers and the parents, the only thing I could come up with, that I respect you, as your family, and what you've done through, and we do thank you and respect the sacrifice that your family has made. And that's all I could think of as that ceremony ended. And what I think of today is that if these plates would offer those folks or other folks in that situation some comfort and some thankfulness, on the part of our state and us as individual citizens, to what sacrifice they've made, then to me it's valid. But I appreciate all the comments this morning, and history is written by the victors and those in power, and we need to always remember that, because there's tremendous contributions that are made by a lot of folks, and we need to think about that and honor all of them. Thank you. [LB570]

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SENATOR FRIEND: Thank you, Senator Pankonin. Senator Hudkins, you are recognized. [LB570]

SENATOR HUDKINS: Thank you, Mr. President and members of the body. I don't know about the rest of you, but I appreciate the history lessons that we get on a periodic basis. But I'm having trouble seeing how Patrick Henry and Gold Star license plates relate. I guess we'll find that out eventually as we talk. We were told that white people are here because they got ran out of their own countries. You know, that's not...well, partially, it could be true. Some people could be here because they got ran out, but mostly not; well, except maybe my own family, because the Hudkinses were in West Virginia, and that was a penal colony for a while. So perhaps Ernie was right in that instance. But most people, Senator Chambers, came here to make a better life for their families. They didn't come here because they had to be run out of their countries. They found a country that was going to make it better for their families. My grandfather left Denmark when he was 17. He came over here with a carpetbag satchel. He had a change of clothes, a shotgun, a pocket watch, and \$37, and he had no future in Denmark. He worked on a hog farm, and he wanted to own his own farm. He could see that he would never, ever have that opportunity in Denmark, and when he came to this country he did have the opportunity, and he did make good on his wishes. But back to the issue at hand. I have been on the Transportation and Telecommunications Committee for a number of years, and we have had requests every year. We want specialized license plates for this group or that group. This year was no exception. We had requests from environmental groups and they said, well, we'll put part of our license plate fee into an environmental cause. And we had children's rights groups where they said, well, they would put their money some place. We had other veterans' groups that wanted their own branch of service stickers. We had the Shriners who, as most of you know, do a wonderful job with their burned and crippled children's hospitals throughout the country. We had fire and rescue groups, and we know what a good job that they do in our rural communities. We had education groups. We had all of these people that wanted to have their own license plates, along with Senator Louden's Gold Star plates. If you've been reading your committee statement, you'll see that I was the other no vote. It wasn't because I didn't think that Gold Star plates were appropriate. I felt that these other groups are just as important. The environment people, they do a lot of good for our state. The children's rights groups--they're protecting our little guys and gals. Education groups, the Shriners--they're all very worthy. But if we weren't going to accept those groups, then I thought it was only fair that we did not accept this group, as well. As far as patriotism is concerned, I had a grandfather, the one that came over here, was in World War I. My father was in World War II. I had two brothers, both in Vietnam. So I don't think that you can say that my family is not patriotic. I have been the speaker at a number of Memorial Day services at various cemeteries in my district. [LB570]

SENATOR FRIEND: One minute. [LB570]

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SENATOR HUDKINS: We have our opinions as to what we think is right, and other senators have their opinions. Everyone is entitled to their own opinion, but I would hope that this group could say, you're entitled to your opinion, as I am. And that's where I'm at. If the Gold Star people want their plates, that's fine. I just voted no because I think all these other groups had an equal right. But my opinion is that; your opinion is yours. If you don't criticize my opinion, I don't have the right to criticize yours. Thank you, Mr. President. [LB570]

SENATOR FRIEND: Thank you, Senator Hudkins. Senator Lathrop, you are recognized. [LB570]

SENATOR LATHROP: Thank you very much, Mr. President and colleagues. It's probably pretty obvious to you that I feel strongly about this. The fact that I feel strongly about it does not suggest that I think it's shameful for anyone to speak as they're allowed to on the floor. In fact, I've not suggested that it's shameful, nor have I suggested that anyone who sees this issue differently than I do is somehow unpatriotic. I wouldn't use that approach on any person who disagrees with me. I've seen enough of that on a national level. I certainly wouldn't use it in this Chamber. I have not suggested that it's shameful to have a different point of view, to speak on this issue. Nor is it unpatriotic to have a different point of view. The question today is what policy are we going to have with respect to license plates. Where do we draw the line? Is there a constitutional issue that we are about to trip into if we allow Gold Star plates to identify families whose loved ones have been killed serving our country? I would suggest to you that if we are going to cross a line, we crossed that line when we authorized the Husker plates. That horse has left the barn. If you want to know where I'd draw the line, I would draw the line at veterans, those who have served our country, those who have been injured, and the families of those who have lost someone in the service of our country. What I don't understand is why we are talking about where the line should be drawn, or suggesting that a Gold Star plate for the families of those who have lost someone in the service of our country is crossing the line, when we allow people to have license plates that honor a football team. I don't know where the line should be, but I think if it is logical to allow our plates to honor veterans and their families, I think this is a good measure. I appreciate Senator Loudon for bringing it. Could it be made better? It might--won't happen in the course of discussing a motion to bracket. But amendments that would improve this bill I would support. Certainly, Senator Chambers, you make a good point. The purpose of the Gold Star plate is to honor those who have a family member that has been killed in the service to our country, and not necessarily to independently honor our armed forces. An amendment that makes that clear is fine with me. I still support LB570, and I ask you to support it as well. Thank you. [LB570]

SENATOR FRIEND: Thank you, Senator Lathrop. (Visitors introduced.) On with discussion of the reconsider motion to bracket LB570. Senator Schimek, you are recognized. [LB570]

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SENATOR SCHIMEK: Thank you, Mr. President and members. First of all, I am not going to vote to reconsider, but I appreciate the motion, because I think it gives those who wanted time to talk about the issue the time to talk about the issue. One thing that I learned early on is not to vote to cease debate if there were a number of red lights up there on the board. And so I rarely ever even vote on ceasing debate, unless I see that there are a number of red lights, and then I will cast my red light, too, because that's really what we're all about. And I think that we have to be very careful about protecting the rights of minorities, not only in statute, but in this body. And when I say minorities, I don't mean any group or person, I mean someone with a point of view that doesn't necessarily jive with the rest of the body. And, Senator Pankonin, I appreciated your remarks about protecting groups, but as Abigail would have said, don't forget the ladies, because we've often been left out of history as well. I turned my light on to talk about what was just talked about a minute ago, and that is about the policy that's involved here. And I just asked the committee counsel to the Transportation Committee how many bills we had on license plates this year. We had eight--we had eight bills on license plate requests. I don't think that's unusual. I think we have...this is my first year on Transportation Committee, but Senator Hudkins did mention that we have a number. So we're talking about a policy here, too. We need to know what that policy should be, and I think Senator Lathrop hit on something. We have quite a few veterans' plates out there already. We have the DAV plates, we have the Purple Heart plates. If that was going to trip a constitutional issue, we would have already tripped it. But as I said before, Bev Neth with the Department of Motor Vehicles said to the committee that if it's related to government in some way--and I think you could say that veterans are connected to government in some way--you're not going to trip that trigger. And even with the Huskers, I suppose you could make the argument that that's about a state institution's football team, and maybe not trip it. But if you just start indiscriminately issuing license plates to whomever wants, then you're in the quagmire, and you may not be able to get out, and you have to probably issue to whomever would like to have a license plate. If that's what you want to do, that's a policy decision that you need to make. But I tend to agree with Senator Chambers that that's not what license plates are for. License plates are for identification purposes, for law enforcement purposes, and we need to be careful not to jeopardize that. The other thing that I wanted to talk about just briefly is that I really do think that we should find a way... [LB570]

SENATOR FRIEND: One minute. [LB570]

SENATOR SCHIMEK: ...to honor our fallen heroes, and I want you to know that I have done some initial checking on this, and...to find out if the Department of the Veterans Administration here in the state, if they have a list of all the men and women who have died in the service of their country who were from Nebraska. I'm told there is no such list. I am told that everything that is kept in the Veterans Department is kept on an index card, so you can't even get an electronic list of all the veterans in this state, or all the

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veterans who have died. We're not doing that. So part of the interim study resolution that I introduced would have us think about how we keep track of this information. It's in Washington,... [LB570]

SENATOR FRIEND: Time. [LB570]

SENATOR SCHIMEK: ...but you cannot get into those records. Thank you, Mr. President. [LB570]

SENATOR FRIEND: Thank you, Senator Schimek. Senator Chambers, you are recognized. [LB570]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I was discussing several things at the same time, and when I was talking about Senator Lathrop, I mentioned that he had said it's a very dark day in the Legislature, and he had thought it was a shame that we're continuing to discuss this, and it should have been done. As far as the patriotism, I was responding to patriot Engel back there, who's in his office listening and pretending that he's not. And when Senator Hudkins said what would be the connection between Patrick Henry and these plates, and she'd probably find out, well, a lot of times people don't hear everything that I said, but at that point I was discussing the fact that some people on the floor seem to think that I should not be speaking as I am, or have the opportunity to speak. And I was mentioning how Patrick Henry was speaking before the House of Burgesses and was accused of treason for what he was saying, but he spoke anyway. So it wasn't to say that he supported the license plates. But if they were trying to put a license plate out there, I'm sure he would not have supported it, because it would have had something about the British, and he was not very happy with the British. And, in fact, when he spoke against the king, he was committing treason. And when George Washington and the others fought against Britain, they committed treason against their king. This country was born in treason. And when I was talking about other people being run out of countries, I was talking about the time when this country was originated, the early days. We were dragged over here, and Senator Hudkins is right about the penal colonies, and West Virginia wasn't the only one--Maryland, Georgia. All of Australia was a penal colony, and the people they didn't want in England, they sent them over here. And they were given a choice--either hang or go to the colonies. And some chose literally to hang rather than come to America. These people who were convicts were sent here. They emptied prisons, especially Newgate Prison. There's what is known as the Newgate calendar, and they list the names of the people who were taken out of Newgate and sent to America, and that practice went on and on. Benjamin Franklin and others in this country became very offended because just about the time they would incorporate one of these groups of thugs and cutthroats and criminals into the population, here comes another boatload. They dumped their criminals on the colonies, and Benjamin Franklin said, it is a poor mother who treats her children thus, meaning England, the mother country; the

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colonies, her children. So to reciprocate, Ben Franklin said they should send England and the king a crate of rattlesnakes, to show what they felt about the people being sent. Now that's in history. You can read what they wrote. And you all get mad when I talk about what your history says. Don't get mad at me. Your people are the ones who did these things. And when I talk about how black people were abused, white people did the abusing, and I'm going to talk about it. You're not going to hear it anywhere else. And while I'm on it I may as well mention again how important education is and why we as black people need to have control over our schools, so that our children are taught what happened to us in this country. And more things have black people been involved in than clanking around in chains and being chased down by somebody's dogs in a swamp. That is not our history solely. And our history as a people did not start with slavery. It did not even start in 1619, when the first slaves disembarked at Jamestown. There were black people with the earliest explorers. Black people have not always been held... [LB570]

SENATOR FRIEND: One minute. [LB570]

SENATOR CHAMBERS: ...in such low esteem as white Christian Americans, white Christian British people, the Spanish and the Portuguese entertained toward us. But we still suffer the ravages of what was done to us, and I would be less than true to what I am, to be in this assembly and have something brought here by a white person to honor white people, to not take advantage of that opportunity to present some things that are not going to be presented, and I'm going to continue doing it. Bring the stuff here and I'm going to talk about it. If you don't want me to talk about it, don't bring it. I've said over and over, you all are the ones who invite religion in here by praying every morning, so don't upset when I talk about what you all bring here. You think you've got the right to bring anything here you want, but you think I don't have the right to talk about it. Oh, but I'm going to talk. I will speak, and I will be heard. [LB570]

SENATOR FRIEND: Time. [LB570]

SENATOR CHAMBERS: Thank you, Mr. President. [LB570]

SENATOR FRIEND: Thank you, Senator Chambers. Senator Louden, you are recognized. [LB570]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. As I would kind of get back to the debate before us about...on LB570, I would like to mention that Nebraska isn't the only state that is doing something like this. At the present time there are at least eight other states that have already authorized license plates of a Gold Star type license plates. Also, there are seven others in the process of legislation at the present time, and one of those, Iowa, as the paper that I passed around earlier on, on the back side of it showed that Iowa had already authorized Gold Star plates for the

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people in Iowa. So this is nothing new that we do for license plates. It's done in different areas. I also might point out it isn't nothing new, that we've already done this year. We passed legislation that people with Purple Heart plates could purchase an additional Purple Heart plate. That was passed here a while back, and I think Senator Chambers voted for that bill, and he also voted for the amendment to advance it on there. So...and that was in LB286. That's already been passed, and that was done with everyone, without a lot of debate. Also, over the years as you look back, I think somewhere pretty near clear back in 1993 or so, I think there was a...when they started collegiate license plates bill. I think probably Senator Chambers was one of the cosigners on a collegiate college license plate bill. So this isn't nothing new, and it's come about over the years, so I don't see where all of a sudden we have a problem with this LB570. I think it's something that needs to be done, and it's something that can really do well for people, something that shows that Nebraska does care for their people that have served in the armed forces and those that have lost their lives. Also, Senator Chambers talks about slavery and the history on where they came from, and I agree with him that this was probably a dark time in American history and a dark time in mankind. Some of that is still going on today. But I also kind of have to remind him that my relatives were the ones that got loaded up in Scotland. They got hauled to Ireland so that they pushed the Irish out, and from there they got starved to death and they had to come to the United States after the potato famine. So it isn't just the black people that were loaded up and hauled around and dumped some place against their wishes. So as time went on, everybody made the best of it at that time, and the same way that Senator Chambers and his people have probably made the best of it as they went along. I agree that it's been an uphill battle for Senator Chambers, and that part I have...I agree that things need to be done, such as the safety of citizens in areas where those people are still persecuted, and these drive-by shootings and that sort of thing. So I agree with Senator Chambers on that. But getting back to the LB570, this isn't anything that we haven't already done this year. As I mentioned, we passed legislation already this year that would allow people to have more than one Purple Heart plate. So it's...it isn't that we're setting a precedent, because we've been doing this over a period of years. So thank you, Mr. President. [LB570 LB286]

SENATOR FRIEND: Thank you, Senator Louden. Senator Schimek...Senator Schimek, you are next and you're recognized. [LB570]

SENATOR SCHIMEK: Thank you, Mr. President. I would like to continue a little bit with the thought about honoring our fallen heroes, and I'd like to reference page 1413 in the Legislative Journal. It is the interim study resolution that I introduced, and what I found out when I started looking into this is that we don't have the records. So what the interim study resolution would ask for is an examination of the systems that we currently employ in managing records, the devising, if necessary, of an electronic system that would enable the state to collect and maintain a list of the names and service dates of all the state's men and women who have served, or who have died during times of war,

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and the feasibility of the creation and implementation of a monument or a memorial to be located within the State Capitol or its environs, dedicated to the memory of all those Nebraskans who have died in combat. It seems to me that there ought to be a state recognition of those who have died in the service of their country. I know that all of our communities or a lot of our communities have such monuments. I know that there are some here in Lincoln. I just think maybe it's appropriate that we consider the Capitol. And maybe there are reasons why we can't do something like that in the Capitol, but I'd love to have the Government, Military and Veterans Affairs Committee take this interim study resolution seriously and see if we could do something about improving the recordkeeping of all of our veterans. I think...and I actually had a conversation with Senator Loudon's staff about this, and they had already found out in their inquiries that some of this information is not available, but there is...there are some web sites. There is some information out there, if it could all be collected. And probably, the local American Legion posts and others would have the information for their communities, the records. So I'd like to see some kind of effort. I was involved in the Veterans Service Project on a voluntary basis for a year, and that was a collection of stories of veterans. But I think even more basic is the data that tells us who those veterans are, who they have been, and who have made that ultimate sacrifice. As I told you in the beginning, I am going to vote for this bill. I am going to change my mind about my vote in committee, and I'm doing it as a way of an apology to those families who have lost sons or daughters. But I would like to say that I think that this Legislature needs to seriously think about the policy that we have regarding license plates. And the Transportation Committee tries very hard to keep all those bills from coming to the floor. [LB570]

SENATOR FRIEND: One minute. [LB570]

SENATOR SCHIMEK: But there are always supporters of every organization who sit on this floor and who would probably vote for any license plate that comes along that honors that organization. So give it some thought. This is an issue about policy as well as, perhaps, patriotism. Thank you. [LB570]

SENATOR FRIEND: Thank you, Senator Schimek. Senator Chambers, you are next and you're recognized. [LB570]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I didn't get to hear everything Senator Schimek said, but I'm sure I would agree with all of it. And if mention was made as to how women have not been treated fairly, I would certainly agree with that, and she can confirm, as can anybody who's been here for a while, the maybe two- to three-year unrelenting battle I waged against the fact that the Governor would not make appointments of females and nonwhite people to these boards and commissions. It reached the point where chairpersons would feel defensive and tell me, well, I'm just bringing what was brought to the committee. But when there would happen to be a member of one of the groups that I had been lobbying for,

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advocating for, the chairperson would smile and say, I'm pleased to tell Senator Chambers that today we have...and then they'd mention the person. I think we have to be an example of what it is we say we believe in. But I'm going to go back to this bill, the language of it. First of all, I do agree, and I made it clear, that a license plate should not be a billboard. I don't care what the issue is. But I kind of scurried through this idea of saying that the families of any person who died while on active duty in the military service of the United States. I'd like to ask Senator--he's here--Senator Preister a question. If he were not here, I wouldn't want to seem like I was trying to embarrass him. [LB570]

SENATOR FRIEND: Senator Preister, will you yield to a question? [LB570]

SENATOR PREISTER: I would, and hopefully in doing so I can clear something up. [LB570]

SENATOR CHAMBERS: Senator...oh, Senator Preister, and maybe I had asked you this before, when a person is in the brig, has been sentenced to a military prison, and that person was on active duty at the time, doesn't that person remain on active duty, even without benefits and certain privileges, during the time that he or she is serving in that military prison? [LB570]

SENATOR PREISTER: Even though their liberty may be taken away and other rights and privileges may be taken away, they are still considered serving on active duty. [LB570]

SENATOR CHAMBERS: And if this bill says that a family can get these plates if a person died while on active duty in the military of the United States, suppose that person were executed by the military? He or she would have been on active duty if that occurred; is that true? [LB570]

SENATOR PREISTER: That's true. [LB570]

SENATOR CHAMBERS: And that would entitle this family to get those Gold Star plates to honor that person; isn't that true, based on the language of the bill? [LB570]

SENATOR PREISTER: Based on the language of the bill, even if that person was killed for treason, they would qualify, or their family would. [LB570]

SENATOR CHAMBERS: Thank you. I'd like to ask Senator Fulton a question. [LB570]

SENATOR FRIEND: Senator Fulton, will you yield to a question? [LB570]

SENATOR FULTON: I will. [LB570]

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SENATOR CHAMBERS: Senator Fulton, did you hear that exchange? [LB570]

SENATOR FULTON: I did, yes. [LB570]

SENATOR CHAMBERS: Do you think that if a person were executed for treason, that person's family should get these Gold Star plates, because the person died while on active duty in the military service of the United States? [LB570]

SENATOR FULTON: If the person were executed for treason? [LB570]

SENATOR CHAMBERS: Yes. [LB570]

SENATOR FULTON: I do not, no. [LB570]

SENATOR CHAMBERS: Well, he could...that would be allowed under this bill. If the person were sentenced for dereliction of duty and perhaps manslaughter for killing civilians and died in prison, that person's family would be entitled to these plates, because of those circumstances. Do you agree with that? [LB570]

SENATOR FULTON: Well, I don't know for certain what the law says. You asked Senator Preister whether those individuals would be included within the provisions of this bill, if it were to become law. I don't know that for certain. I'm not saying I don't trust Senator Preister. [LB570]

SENATOR CHAMBERS: Well, here's what I was asking him to establish: that a person who's in prison or...you know, you're put there while you're in the military. You're still on active duty. That was the point I wanted from him. [LB570]

SENATOR FRIEND: One minute. [LB570]

SENATOR CHAMBERS: And then when you look at the language of this bill, the family of a person who died while on active duty in the military service of the United States is entitled to these plates. That's in the bill here. They didn't think about it, because maybe they don't understand how military...how the military operates. But that's all that I will ask you. And that was my third time, Mr. President? [LB570]

SENATOR FRIEND: Yes, it was. [LB570]

SENATOR CHAMBERS: Thank you. [LB570]

SENATOR FRIEND: Thank you, Senator Chambers. (Visitors introduced.) On with discussion of the reconsider motion to bracket LB570. Senator Mines. [LB570]

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SENATOR MINES: Thank you, Mr. President, colleagues. I won't vote in favor of the reconsideration motion. I'd like to go a little bit further in what I spoke about earlier, and that is the public policy that we'll decide here. And again, I believe that in a very short time we'll have a number of more groups come before the Transportation Committee asking for specialty plates. And Senator Hudkins correctly identified that the Shriners and, heck, I think over time we've had literally dozens and dozens and dozens of requests for vanity plates or specialty plates. A concern that I think we also need to think about, this LB570 also allows--and I'm sorry I don't have it handy, Senator Louden--it allows, I think, the Veterans Administration, in concert with maybe the Motor Vehicles Department, to design their specialty plate. Something we as a body need to be concerned about is...and I'll say proliferation one more time. As an example, I've done just a little bit of on-line stuff, find that several states, including...Arkansas has 76 different license plates, and there is a standard format by which you apply, and then the plate looks very similar in almost all cases, where you have an emblem identifying whatever group it is on one side of the plate or the other, and then the number of digits...I think in Nebraska we have seven. You'd have to restrict that to something like five, I think is what they do. And I hit on the state of Delaware, and they have 79 different specialty plates, and let me go through a few of them that caught my eye. Now this is the state of Delaware. You can get a specialty plate for Pennsylvania State University, Purdue University, Notre Dame University, Ohio State University--these are Delaware tags. They have tags for high schools--Newark High School, I won't go...belabor all of these; the Environmental Duck; Felton High School, another high school; the Environmental Lighthouse; Ducks Unlimited; Delta Sigma Theta; Black Tag; Call Tags; credit unions have a license plate; Conrad High School; oh, the Delaware Association of Realtors; the Delaware Mobile Surf Fishermen, I thought was interesting. My point in this is we need to...whatever we decide with Senator Louden's bill, I think it's in Nebraska's best interest if we also identify a format and a procedure and a process whereby our tags look somewhat similar, and each worthy organization that comes before us doesn't have the free hand to design whatever plate they might like to have. And I'm sure that whatever the body decides, Beverly Neth over at the Department of Motor Vehicles will do whatever we direct, but we also need to be aware that as we create more tags, more plates, we also create more volume for that department to work through. So again, just beware that through this process we need to have some uniformity... [LB570]

SENATOR FRIEND: One minute. [LB570]

SENATOR MINES: ...for all of our good. Mr. President, thank you. [LB570]

SENATOR FRIEND: Thank you, Senator Mines. (Visitors introduced.) Senator Chambers, there are no other senators wishing to speak on the reconsider motion. You are recognized to close. [LB570]

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SENATOR CHAMBERS: Mr. President, members of the Legislature, I will say again, any time an issue is brought before this Legislature that makes it relevant for me to speak about the history of black people in this country, I'm going to do it. Any time I get a bill about which people speak so emotionally on and suggest that something is wrong with me for opposing it, I'm going to analyze it for them and let them know they didn't even read it. Senator Louden, I'm sure, didn't know that if you have a person who committed murder on active duty and was executive in a federal prison, that person, under this bill, has family members who'd be entitled to these plates that are honoring him, because he was a person who died on active duty in the service of the United States. You all don't know what "in the service of the United States" means, or "active duty," do you? And you don't even care. Senator Pirsch called the question so that I couldn't debate it any further, and he doesn't know what is in the bill. I'm sure even he wouldn't support that. Maybe he would, though. Let me not put words into his mouth and thoughts into his head. I had suggested that if you're going to write a bill like this and you talk about a person who died, then insert the words, after "died," put "in combat." Then you do away with what I have said, and it would even cover that young trooper named Tillman who was formerly a member of the National Football League and went to Iraq, and he was killed by friendly fire, and it was known he was killed by friendly fire, and the government, all the way up to President Bush, lied about it and created a hero situation for him, gave an award, and they were counseled not to talk about the actual circumstances of his death because it would be embarrassing to the administration. They lied. Tillman's own brother talked about what a lie it was and how wrong it was, and you all want to put him in this category of a hero? You're not a hero just because you die. Is he a hero because Americans killed him? You all don't use language carefully. As a result, the word "hero" doesn't mean anything at all. And somebody who might do something genuinely heroic has what he or she did diminished, because anybody who dies under any circumstances is a hero. This is a bad bill, it's poorly crafted, and you all don't even know what it says. You don't know what it means, because you don't have to. You're carried away with your emotions. Senator Louden, who brought the bill, didn't even know what was in it. And I'm doing the work that each one of you ought to do, and you get angry at me when I speak facts that you don't want to hear. Do like Senator Engel--run down into your office and play like you didn't even hear it. But I'm going to read some of these bad bills--I don't have time to read every one of them--and I'm going to point out how incompetently the job of drafting bills is; how people who support this lock, stock, and barrel haven't read it and don't even know what's in it. You wave the flag in front of them, and they say, well, I want to be patriotic, and Memorial Day is coming. What in the world does Memorial Day have to do with a bad bill like this being enacted? But I'm going to save you from yourself. That's what I'm going to do. I should have asked Senator Nelson some questions, because Senator Nelson is intelligent, and he would admit that he hadn't read the bill, and he's also admit that if he had read it and understood what it said, he would have had some similar comments to mine, at least insofar as pointing out that the bill undoubtedly reaches

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beyond what those who present it intended it to reach. You all want to honor Jack the Ripper as a hero, just like you would "Momma" Teresa? Why? Because both of them died. [LB570]

SENATOR FRIEND: One minute. [LB570]

SENATOR CHAMBERS: Well, there should be a little more than that. That does make them have something in common. I should just let you pass these idiotic bills and then ridicule you before the Governor signs it, and then let the Governor know what a jackass he'll be making out of himself, because he's following a bunch of thoughtless people who didn't read a bill. And then if he signs it, he's clear that he knew what he was signing, that a murderer, the family of a murderer, is entitled to honor. And that's what you want? Suppose somebody had served on active duty for 20 years, was now out of the military, was invited to the base for a tour and got killed. His family wouldn't...or her family wouldn't be entitled to it, because the death did not occur on active duty, although he or she served with honor and maybe distinction--could have been a Congressional Medal of Honor winner. But the family of the murderer would be entitled to them. [LB570]

SENATOR FRIEND: Time. [LB570]

SENATOR CHAMBERS: Thank you, Mr. President. I'll ask for a call of the house and a roll call vote. [LB570]

SENATOR FRIEND: Thank you, Senator Chambers. Members of the Legislature, there has been a request to place the house under call. The question is, shall the house go under call? All those in favor please vote aye; all those opposed vote nay. Record please, Mr. Clerk. [LB570]

ASSISTANT CLERK: 28 ayes, 0 nays to go under call, Mr. President. [LB570]

SENATOR FRIEND: Members of the Legislature, the house is under call. Senators, please record your presence. Those senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. (Visitors introduced.) Senator Heidemann, Senator Kruse, Senator Avery, the house is under call. Senator Chambers, all senators have been accounted for, and you wanted to proceed with a roll call vote, correct? [LB570]

SENATOR CHAMBERS: Correct. [LB570]

SENATOR FRIEND: In regular order? [LB570]

SENATOR CHAMBERS: Yes. [LB570]

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SENATOR FRIEND: Mr. Clerk, call the roll. [LB570]

ASSISTANT CLERK: (Roll call vote taken, Legislative Journal pages 1646-1647.) Vote is 1 aye, 43 nays, Mr. President. [LB570]

SENATOR FRIEND: The motion to reconsider the bracket motion is unsuccessful. I do raise the call. Mr. Clerk, items? Pardon me, members, we do have business on the bill to take care of. Mr. Clerk. [LB570]

ASSISTANT CLERK: Mr. President, two items to be withdrawn from Senator Langemeier, FA101 and FA102. [LB570]

SENATOR FRIEND: Without objection? Senator Langemeier. [LB570]

SENATOR LANGEMEIER: Mr. President, I would like to withdraw FA101, FA102, and FA103, which is a Select File amendment. [LB570]

SENATOR FRIEND: They are withdrawn. Now items, Mr. Clerk. [LB570]

ASSISTANT CLERK: Thank you, Mr. President. Amendments to be printed...first, a resolution, LR209 by Senator Pankonin; explanation of vote offered by Senator Pedersen (re LB367 and LB367A); an announcement that the Education Committee will meet in Executive Session in Room 2022 upon recess; and an amendment to LB247 from Senator Schimek to be printed. (Legislative Journal pages 1647-1648.) [LB247 LB367 LB367A LB570 LR209]

Mr. President, priority motion: Senator Lathrop would move to recess until 1:30 p.m. [LB570]

SENATOR FRIEND: Thank you, Mr. Clerk. Members, you have heard the motion. The motion is to recess until 1:30 p.m. All those in favor please signify by saying aye. All those opposed say nay. The Legislature is in recess. [LB570]

RECESS

SENATOR LANGEMEIER PRESIDING []

SENATOR LANGEMEIER: Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. Senators, please return to the Chamber and record your presence. Senators, we are about to reconvene for the afternoon session. If you are watching your television, we are not being broadcast at this time but the session is about to reconvene even though

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it says we are at recess. Please disregard what you are seeing on your screens and return to the Chamber and check in. Thank you. Mr. Clerk, please record. []

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

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

ASSISTANT CLERK: Mr. President, I do: An amendment to be printed to LB351 from Senator Harms, a communication from the Governor regarding an appointment to the State Personnel Board, and a motion from Senator Chambers related to LB570. That will be printed in the Journal. That's all I have. (Legislative Journal pages 1649-1650.) [LB351 LB570]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We will now proceed to the first item on this afternoon's agenda, Select File, LB482A. Mr. Clerk. [LB482A]

ASSISTANT CLERK: Mr. President, with respect to LB482A, there are no E&R amendments. [LB482A]

SENATOR LANGEMEIER: Senator McGill, for a motion. [LB482A]

SENATOR MCGILL: Mr. President, I move LB482A to E&R for engrossing. [LB482A]

SENATOR LANGEMEIER: You have heard the motion to advance LB482A to E&R for engrossing. All those in favor say aye. All those opposed say nay. LB482A does advance. Mr. Clerk, LB377. [LB482A LB377]

ASSISTANT CLERK: There are E&R amendments to LB377. (ER8109, Legislative Journal page 1552.) [LB377]

SENATOR LANGEMEIER: Senator McGill, for a motion. [LB377]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB377]

SENATOR LANGEMEIER: You have heard the motion on the adoption of the E&R amendments to LB377. All those in favor say aye. All those opposed say nay. They are adopted. [LB377]

ASSISTANT CLERK: Nothing further on the bill. [LB377]

SENATOR LANGEMEIER: Senator McGill, for a motion. [LB377]

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SENATOR MCGILL: Mr. President, I move LB377 to E&R for engrossing. [LB377]

SENATOR LANGEMEIER: You have heard the motion. All those in favor say aye. All those opposed say nay. LB377 does advance. Mr. Clerk, LB377A. [LB377 LB377A]

ASSISTANT CLERK: I have nothing pending on the bill, Mr. President. [LB377A]

SENATOR LANGEMEIER: Senator McGill, for a motion. [LB377A]

SENATOR MCGILL: Mr. President, I move LB377A to E&R for engrossing. [LB377A]

SENATOR LANGEMEIER: You have heard the motion. All those in favor say aye. All those opposed say nay. LB377A does advance. Mr. Clerk, LB516. [LB377A LB516]

ASSISTANT CLERK: There are E&R amendments. (ER8106, Legislative Journal page 1555.) [LB516]

SENATOR LANGEMEIER: Senator McGill, for a motion. [LB516]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB516]

SENATOR LANGEMEIER: You have heard the motion to adopt the E&R amendments to LB516. All those in favor say aye. All those opposed say nay. They are adopted. [LB516]

ASSISTANT CLERK: Nothing further on the bill. [LB516]

SENATOR LANGEMEIER: Senator McGill, for a motion. [LB516]

SENATOR MCGILL: Mr. President, I move LB516 to E&R for engrossing. [LB516]

SENATOR LANGEMEIER: You have heard the motion. All those in favor say aye. All those opposed say nay. LB516 does advance. Mr. Clerk, LB516A. [LB516 LB516A]

ASSISTANT CLERK: Nothing pending on the bill. [LB516A]

SENATOR LANGEMEIER: Senator McGill, for a motion. [LB516A]

SENATOR MCGILL: Mr. President, I move LB516A to E&R for engrossing. [LB516A]

SENATOR LANGEMEIER: You have heard the motion. All those in favor say aye. All those opposed say nay. LB516A does advance. Mr. Clerk, LB299. [LB516A LB299]

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ASSISTANT CLERK: There are E&R amendments. (ER8032, Legislative Journal page 702.) [LB299]

SENATOR LANGEMEIER: Senator McGill, for a motion. [LB299]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB299]

SENATOR LANGEMEIER: You have heard the motion on the adoption of the E&R amendments to LB299. All those in favor say aye. All those opposed say nay. They are adopted. Mr. Clerk. [LB299]

ASSISTANT CLERK: Mr. President, there are several amendments to LB299. The first is offered by Senator Stuthman, AM342. Senator Stuthman, I have a note to withdraw that. [LB299]

SENATOR LANGEMEIER: It is withdrawn. Mr. Clerk. [LB299]

ASSISTANT CLERK: The next amendment is offered by Senator Louden, AM719. [LB299]

SENATOR LANGEMEIER: Senator Louden, you are recognized to open on AM719. [LB299]

SENATOR LOUDEN: Mr. President, I would like to withdraw that amendment, AM719. [LB299]

SENATOR LANGEMEIER: It is withdrawn. Mr. Clerk. [LB299]

ASSISTANT CLERK: Mr. President, Senator Chambers would offer AM1241. [LB299]

SENATOR LANGEMEIER: Senator Chambers, you are recognized to open on AM1241. [LB299]

SENATOR CHAMBERS: Mr. President, I am withdrawing that amendment. [LB299]

SENATOR LANGEMEIER: It is withdrawn. Mr. Clerk. [LB299]

ASSISTANT CLERK: Mr. President, Senator Hudkins and Chambers would offer AM1351. (Legislative Journal pages 1651-1652.) [LB299]

SENATOR LANGEMEIER: Senator Hudkins, you are recognized to open on AM1351. [LB299]

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SENATOR HUDKINS: Thank you, Mr. President and members of the body. Just a quick update: LB299 was brought to me by the Nebraska Game and Parks Commission. This is their cleanup bill for the year, and among many things that it does, is allows the commission to sell multiple-year permits or combination permits, establishes a lifetime Nebraska waterfowl stamp, changes the name of the Nongame and Endangered Species Conservation Fund to the Wildlife Conservation Fund. So it is just an attempt to clean up the language, make it easier for people to understand. And if you remember the discussion that we had on this bill when it was on General File, there was a problem with some roadside trapping. There was a woman from Saunders County who was out with her dogs. One of them got caught in a trap that was in the road right-of-way, and the dog was killed. She brought that to me, and so we have been working with the counties, with NACO, and with Game and Parks Commission, and Senator Chambers and I have been working. And we thought at first that, okay, this would be allowed, the roadside trapping, if the counties had a request that it be done by the trapper and they promulgated the rules and regs. And then we talked about having Game and Parks promulgate the rules and regs. Well, when we talked about the county doing it, it was just feared that there could be 93 different sets of rules and regulations. All kinds of things could be different. And if you were a trapper and you were trapping in more than one county, you would not necessarily know all the rules and regulations. I have a letter from the Lancaster County Engineer and I'll just paraphrase part of this. He thought or he says, I believe that most of us thought that it was illegal to trap on county road right-of-ways now. And they want to protect their employees because, as you know, there are county employees out mowing the ditches, cutting trees, and so forth. And they want to further protect the public that use the public roads for casual exercise and, more particularly, the people that clean the rights-of-way under the Adopt-a-Road program, and so he said that we would propose an amendment that bans all trapping on any county road right-of-way, and then he goes on. But so what we have done in AM1351 is just that. We want to make it unlawful to trap any wildlife in the county road right-of-way, period. And for purposes of this section, there is a definition of what a county road right-of-way is, and then later in the bill, it's only a three...or amendment, only on the third page, and it says trapping wildlife in the county right-of-way is a violation of Section 37-513. So very simply that's what this amendment does, is adds to everything else that the Game and Parks wanted to do in their cleanup bill, the prohibition against trapping in the road right-of-ways. If you want to trap, you can have your trap--and I know the transcribers aren't going to be able to see this--but if you have your trap here, it's legal; if you move it 12 inches, it's going to be illegal. So just move it 12 inches and be behind the right-of-way markers, and then everything will be fine. So, Mr. President, thank you, and I would urge everyone to support this amendment. [LB299]

SENATOR LANGEMEIER: Thank you, Senator Hudkins. You have heard the opening on AM1351 offered to LB299. The floor is now open for discussion. Senator Fulton, you are recognized. [LB299]

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SENATOR FULTON: Thank you, Mr. President. This isn't something that I'd read through the bill and I didn't have a burning desire against the bill, and I still don't. I'm going to vote for the amendment. I just want to get some clarification if I could. I had an e-mail from someone who was upset that he wouldn't be able to do trapping in county right-of-ways, and his argument was that he's not able to...we have a coon population and that his trapping helps to keep the coon population down and he should be able to do this. I didn't realize it was even a point of contention. So would Senator Hudkins yield to a question? [LB299]

SENATOR LANGEMEIER: Senator Hudkins, would you yield to a question? [LB299]

SENATOR HUDKINS: Yes. [LB299]

SENATOR FULTON: I guess, is that a warranted concern that this is going to put the kibosh on trappers and they're not going to be able to trap and we'll have to worry about the coon population? Is that even a warranted concern here? How prevalent is this practice, I guess? [LB299]

SENATOR HUDKINS: I don't know how many people are trapping coons, raccoons, in the county road right-of-ways. But as I said before, you put your trap here and it's in the ditch--that's illegal; you move it over here and it's on private property--that is legal. So just move your traps a foot away. And obviously, if you're on private property you're going to have to get permission of the owner. But shouldn't that be done anyway? Because the property owner does pay taxes to the center of the road, and so if your down there walking your dogs or you're looking for beer cans or whatever litter is along the road, or you're just doing a casual walk, and some ditches are more flat than others, you could be in danger if you don't see those traps. And I'm sure that they don't have neon signs, you know, and everything else, saying that here's the trap, come on raccoons, I'm going to get you. So I don't think it's a problem. If people want to trap, there are legal ways to do it that are only a few inches away from where they're doing it now. [LB299]

SENATOR FULTON: Okay. So this isn't saying that one can't trap along the roads; it's just that not in the county right-of-way. If you're going to trap near the roads, then you ought to be on private property and get the landowner's permission, because we're not eliminating the ability for trappers to continue their trade, correct? [LB299]

SENATOR HUDKINS: Correct. [LB299]

SENATOR FULTON: Okay. Okay, thank you, Mr. President. [LB299]

SENATOR LANGEMEIER: Thank you, Senator Fulton. Those wishing to speak are

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Fischer, Christensen, and Carlson. Senator Fischer, you are recognized. [LB299]

SENATOR FISCHER: Thank you, Mr. President. Would Senator Stuthman yield to some questions, please? [LB299]

SENATOR LANGEMEIER: Senator Stuthman, would you yield to a question from Senator Fischer? [LB299]

SENATOR STUTHMAN: Yes. [LB299]

SENATOR FISCHER: Thank you. Senator Stuthman, you are a former county supervisor, is that correct? [LB299]

SENATOR STUTHMAN: Yes. [LB299]

SENATOR FISCHER: Maybe you can help me out here; I have a question on this. When you have county roads, who owns the land in the borrow pit that this amendment would affect? [LB299]

SENATOR STUTHMAN: In the county road system, the property owner owns the ground until the center of the road. Then the right-of-way, which the county has the right-of-way for, which sometimes it's 66 feet--33 feet in your property. That property is owned by the individual and no taxes are paid on that 33 feet. On your tax statement it will be county road right-of-way, value zero. [LB299]

SENATOR FISCHER: Do you see maybe a problem or a conflict with this amendment, that we're going to be saying that, you know, no trapping is allowed on there when...is it private property or who has control over it? I'm just unsure on what we're trying to do here. [LB299]

SENATOR STUTHMAN: Okay. Senator Fischer, on this property, the county right-of-way, the county has the jurisdiction over that. If you want to run a water line down it, if you want to run...if you want to do anything in that 33 feet of that property, you must get permission from the county board of supervisors--anything that you want to do there. If you want to run an irrigation pipe, lay it in the road ditch, you have to get permission from the county to do that. So anything done in those 33 feet of property of the county right-of-way needs to be approved by the county board. [LB299]

SENATOR FISCHER: And that's whether there is a fence or not a fence in that area. [LB299]

SENATOR STUTHMAN: It's immaterial if there is a fence there or not; that's true. [LB299]

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SENATOR FISCHER: Okay, thank you, Senator Stuthman; thank you, Mr. President. [LB299]

SENATOR LANGEMEIER: Thank you, Senator Fischer. (Visitors introduced.) Returning to discussion on AM1351, Senator Christensen, you are recognized. [LB299]

SENATOR CHRISTENSEN: Thank you, Mr. President. I just want to say on this bill, I supported it out of committee, and I've kind of changed my mind. I want to visit a little bit on this bill is the fact that, you know, this was an illegal trap. The person that's had the trap there has been caught and been levied some fines, but I'm not sure we've went about this the right way. We're prohibiting going out there on the county right-of-way, and if we don't let people go in there and get badgers out of these roads and we don't let people come in there and hunt these animals, we left the exemption for the county to do it, but does the county want the responsibility going in there and doing that? And clearly this was an unlawful trap, not only because it was too big, but it was also unmarked. You know, once you start breaking the law, if you're going to break the law and do it, it doesn't matter if you've got the law that can be on the ditch or not. If they're illegal, they're illegal; they're going to do it anyway. And I'm not sure that I favor anymore what I did before, of coming in and prohibiting people from being able to hunt there and take these animals that damage our roads, that harm our roads and make them wash out and put holes in them and things this way. I've done a lot of thinking about this in the last couple of weeks here, and I'm wondering if we're taking the right approach now. Because, like I said, it was an illegal trap. It was oversized, plus it was unmarked. Thank goodness they've been caught, but if we was going after heavier fines and make it less desirable to get caught doing that, then that would make more sense to me. I realize I don't have an amendment for this here right now, but I've struggled with the part that it was an illegal to begin with. And I just wanted to bring you up-to-date a little bit of information on this, the fact they have been caught. They had an oversized trap, it was an unmarked trap, and them type of people are going to be there anyway. And we could limit the fact of being able to trap certain animals. Because let's say you move that over a foot onto property. If the landowner knows it, fine; but if it's trapping when most trapping is done, during the winter, that's going to eliminate trapping on my ground. Because if it's on my property, my cattle are running there and I don't want the traps there. But if they're on the outside the fence on the ditch and catching them animals, then it's benefitting the county as well as myself. So, like I said, I supported it out of committee. You know, I feel like I got caught in a little bit of emotion of an illegal trap and what would happen if it was my kid in that ditch. And there is inherent risks on both sides of this and I won't point both sides out. You know, there is risk of having a trap on a ditch, whether it's marked or unmarked, whether it's on my property or on the county right-of-way. So I just wanted to bring this additional information up. I apologize to Senator Hudkins for not getting her talked to ahead of time. I kind of let the bill sneak up here and didn't realize it was on the agenda and didn't get it done. But I just wanted

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to bring some more additional information here to you. Thank you. [LB299]

SENATOR LANGEMEIER: Thank you, Senator Christensen. Senator Carlson, you are recognized. [LB299]

SENATOR CARLSON: Mr. President and members of the Legislature, I would like to address a question or two to Senator Hudkins. [LB299]

SENATOR LANGEMEIER: Senator Hudkins, would you yield to a question from Senator Carlson? [LB299]

SENATOR HUDKINS: Yes. [LB299]

SENATOR CARLSON: Senator Hudkins, this amendment, if I remember hearing what you said, these are some suggestions, kind of cleanup, there are several items in here that have come over from Game and Parks...or Fish and Wildlife. There is more than one item in here; trapping is one of those. [LB299]

SENATOR HUDKINS: Well, yeah. They wanted to have...you mean the multiple years of licensing and all the...? [LB299]

SENATOR CARLSON: Yeah. [LB299]

SENATOR HUDKINS: Yeah, okay. Yes. [LB299]

SENATOR CARLSON: Okay. And I got confused a little bit, but I look in there, the penalty for this on, we'll call it, illegal trapping, because if they're in the right-of-way, is suspension of license for one to three years, and there's not a fine associated with that, at least not in the bill? [LB299]

SENATOR HUDKINS: We're looking but I don't believe there was. Well, in the amendment it says: When a person pleads guilty or is convicted of any violation of the Game Law not listed in subsection (1) or (2) of this section, the court may, in addition to any other penalty, revoke and require the immediate surrender of all permits to hunt, fish, and harvest fur. So no fine, no jail time, if that's what you were getting at. [LB299]

SENATOR CARLSON: Okay. Well, I have a little concern that's a bit similar to Senator Christensen's, I guess, as I was thinking about this, and you talked to me about it, but whether it's in the road ditch or in the right-of-way or whether it's on private property, I think the problem, the bad problem, are those illegal traps that aren't flagged. Now, I may be putting you on the spot because I don't know. Do you know what the penalty is for not flagging... [LB299]

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SENATOR HUDKINS: I do not. [LB299]

SENATOR CARLSON: ...and calling that an illegal trap? [LB299]

SENATOR HUDKINS: I do not. [LB299]

SENATOR CARLSON: Okay. [LB299]

SENATOR HUDKINS: But I think the rules say that they have to be marked conspicuously. They must have a name and/or address of the person who owns them so there is some identifying way to tell whose traps they are. Now the situation that brought this up, you're right, and I think Senator Christensen commented on it, too, this trap that was placed up by Colon was an illegal trap. It wasn't marked; it didn't have a name on it, and already that's a violation. Another senator just told me that he had had a phone call from a gentleman who is in a wheelchair. He traps from his wheelchair, he and another friend, and they trap in the right-of-ways. I think that they would have some concern for other people who would be using those areas as well. Now, I am assuming that these two gentlemen would do the rest of it legally, as far as the identification of the traps and all of that, but when you look at...I mean, if they're trapping in the road right-of-way and there is a fence right there, is it that much more difficult to move that trap 6, 8, 12 inches? Yes, you need to get permission. And not every trapper is going to be trapping in a field or pasture or stock field that has livestock in it. [LB299]

SENATOR LANGEMEIER: One minute. [LB299]

SENATOR HUDKINS: So, yes, that could be a problem, but you've got to think about the safety of everyone involved. And that's why we have decided to go this route rather than the process of having every county in the state decide whether Senator Pirsch can trap or somebody else can trap, and every county having their own rules and regulations. That would be a nightmare. [LB299]

SENATOR CARLSON: Okay, thank you, Senator Hudkins. [LB299]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Chambers, you are recognized. [LB299]

SENATOR CHAMBERS: Mr. President and members of the Legislature, Senator Hudkins gave a very good explanation of the background behind this bill and why we all agreed on the language that is being presented. I have talked to a representative of the Game and Parks Commission, and this was one of the alternatives they said would be acceptable. Senator Hudkins pointed out that if you had left it to each county there could be 93 different sets of rules and regulations. But in addition to that, when you were talking about two jurisdictions having what you might call concurrent control over an

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area and you're going to allow one to do certain things and prohibit another from doing certain things, it becomes very complicated, and really for what is being attempted, the effort, it's not worth that effort. By cleanly prohibiting this trapping in these rights-of-way, as is the case with the interstate, based on everything I've heard from everybody, this is clean, straightforward, no conflict between the county boards and the Game and Parks Commission. So I'm in support of this and I hope others will support it also. Senator Hudkins read the letter to you from the Lancaster County Engineer who mentioned the hazard to workers, other people who are casually in these rights-of-way, and I do not believe the ordinary citizen expects that he or she might step into a trap which could cause grievous injury on public property. So you can look at the expectation that the public would have, the responsibility that the government has to protect citizens and the intent to prohibit trapping in these areas, and you will see, I believe, that the approach being adopted here is the best one. That's all I would have, Mr. President. Thank you. [LB299]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Hudkins, you are recognized. [LB299]

SENATOR HUDKINS: Thank you, Mr. President. I misspoke earlier and I would like to correct that. I said that there is no fine, no jail time. Actually there could be. If you would look under 37-504(4), it says, "Any person who unlawfully takes any game or unlawfully has in his or her possession any such game shall be guilty of a Class III misdemeanor." Class III misdemeanor penalties are three months in jail, \$500 fine, or both. Now, is this going to be automatic? No, of course not. You probably will get a slap on the wrist the first time; the second time your gun might be taken...or your gun...your traps might be taken away from you, whatever. But there is a penalty and it is a Class III misdemeanor. There are various penalties in the game law. There is a Class II misdemeanor for unlawfully hunting/trapping any mountain sheep, that's a Class II; Class III misdemeanor is unlawfully hunts, traps, or has in possession quail, pheasant, partridge, wood duck, so on and so forth. So there are various laws. So the one that we're talking about today is unlawfully takes any game or unlawfully has in his possession that game, it's a Class III misdemeanor. And as far as Senator Christensen's comment about private persons being able to take care of the varmints and the critters that are causing holes and problems, burrowing animals along the roadside, the county does have other methods at its disposal to take care of those animals. If you have problems with animals, beavers, for example, you can go to the Game and Parks Commission and they will send someone out who is a licensed Game and Parks trapper. If you have woodchucks or if you have whatever other animals, there are people that the counties can go to, to take care of these animals. The county does not depend upon private citizens to take care of these critters. Thank you, Mr. President. [LB299]

SENATOR LANGEMEIER: Thank you, Senator Hudkins. (Visitors introduced.)  
Returning to discussion, Senator Stuthman, you are recognized. [LB299]

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SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I think what we're doing is something that we're going in the right direction as far as what will be allowed in the road right-of-way. One thing that I am concerned with, it's unlawful to trap, is what it is, but I think we should go a little bit further with this sometime in the near future, and maybe next year. But I think, you know, there is many times when there is wild game animals that are on the county road, not necessarily the road right-of-way but it is the road right-of-way, they're on the road--raccoons, deer, skunks, rabbits, pheasants. I would like to see something happen in...something to take place in the near future so that these animals are removed off of the highways, off of the roadways, and either placed in the ditch or placed out further from it. The thing that really concerns me is that a raccoon will be hit on the road and it stays there until turkey vultures either eat them or they are so thin that they're unable to be seen on the road. I think we should think about that for the next year, that maybe the Department of Roads, that should be something for them to do to remove that off of the road--off of the road, not necessarily all the right-of-way but off of the road, because they could be a hazard. I have seen many, many deer that were hit on the road and they remain there until they are just disintegrated. So with that, I think we should look at that in the near future. I think we're going...we're doing the right thing with this, so with that, those are my comments. Thank you. [LB299]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. Senator Christensen, you are recognized. [LB299]

SENATOR CHRISTENSEN: Thank you, Mr. President. I've got to think here what I was even going to bring up now, but something I would also throw out here and mention though, the number of trappers, if you look at the numbers we have, been going down the past few years. And by taking away these dominant trails and things that animals make on roadways, is taking another area away from them guys which is making it tougher on them, which is giving me concern because we have a lot of badger problem, we have a lot of coon trouble, we have a number of things that we get people to come out, trap, shoot, come after. And if we take some of these options away from them, I am afraid we could totally discourage them and have less around. And so I just, again, I told Senator Hudkins I didn't know that I was trying to kill it, but at the same time I wanted to bring up some other facts on this issue that I felt like that I voted this out of committee because this dog was killed. It was on a county right-of-way and it was mentioned there that, you know, could be a kid playing in that ditch, and that plays on the emotions with me, having a number of kids. So I just wonder if I had totally thought through it. I just wanted to bring some of the additional facts up and of the risks that we have of reducing the number of people that may hunt. And I know I go out looking for people that are willing to go after the badgers for me, go after coyotes and different things that you trap, and things this way. So I've sat back and thought about it quite a little, and I don't want to discourage another industry, another group of people that go out to help us in the

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hole just because the emotions of one dog getting killed and the emotion that it's in a public right-of-way that could possibly harm kids too. So that's the end of what I wanted to bring up and I thank you for your time. [LB299]

SENATOR LANGEMEIER: Thank you, Senator Christensen. Senator Wallman, you are recognized. [LB299]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. Senator Chambers, I cannot believe you condone trapping. In lots of areas of the country now, my friend included, he traps every day, 360, almost, days of the year. He uses what they call live traps and then shoots them in the cage. And I think you could use that on right-of-ways, like Senator Christensen was mentioning, because some of these areas, you have to almost do it...they trap underneath the roadsides where I live. You know, we live in like they call the three rivers area, so we've got about every kind of animal imaginable. And so he traps. He makes some decent money off of it, I think. But these live traps really do work. And I've lost a dog to one of them kind of bear traps, too, and it's not nice to have your dog gone, so...but I'm going to support this bill, but I think we have options in here that trappers who really love to trap can use. Thank you, Mr. President. [LB299]

SENATOR LANGEMEIER: Thank you, Senator Wallman. Senator Hudkins, you are recognized. [LB299]

SENATOR HUDKINS: Thank you, Mr. President and members. I appreciate Senator Christensen's comments about not allowing trapping in his stock fields because of the livestock. (Laugh) It's just exactly what we're getting at. We don't want trapping in roadside ditches because of people. So, yes, it's going to be an inconvenience for those who trap where it's really, really easy--in the roadsides. But we have to think of safety of people and that's what we are doing with this bill, or this amendment. Now, if there is just a land swell of people who are wanting to trap in the ditches, perhaps something can be worked out in a bill next year and, you know, give the counties some authority. But in the time that we had left, it was just felt that we could not get all of this done and get it done correctly. So rather than do something that was not what we wanted, we just thought it's best just to prohibit it altogether. And if you remember from the comments of Mr. Thomas, most people thought it was illegal to trap in the roadsides in the first place. So if this is going to interfere with a trapper's daily trapping, I'm sorry. Most trappers are very good sports. They are law-abiding citizens. And, yes, this bill came about...this amendment came about because of one illegal trap. A lot of bills find their beginnings that way--because of one particular instance. But when you look at the supposedly hundreds of trappers in Nebraska, I'm sure they want to do it right and I'm sure they would not want to be the cause of someone getting caught in a trap that has nasty teeth in it that had been catching dead animals and are probably full of germs and infection and tetanus--and this is really a nice conversation after lunch. But it's a safety issue for

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people and that's what we're trying to do, is protect people. Yes, we want to get rid of the critters but there are other ways of doing it legally. Thank you, Mr. President. [LB299]

SENATOR LANGEMEIER: Thank you, Senator Hudkins. Senator Chambers, you are recognized. [LB299]

SENATOR CHAMBERS: Mr. President and members of the Legislature, I'm dealing with what is being addressed in the bill. Senator Wallman said he is surprised that I would approve of trapping. I would be shocked to find out that I approve of trapping; I don't. But the purpose of this is not to ban trapping. It's to regulate an area of ground where citizens are entitled to believe that they would be safe from traps. That's the extent of the scope and I'm staying within that scope. So, Senator Wallman, if it would disappoint you to know that I am in favor of trapping, your disappointment can be removed because I'm not in favor of trapping. As a matter of fact, I would like to ask Senator Wallman a question. [LB299]

SENATOR LANGEMEIER: Senator Wallman, would you yield to a question? [LB299]

SENATOR WALLMAN: Yes, I will. [LB299]

SENATOR CHAMBERS: Senator Wallman, do you fish? [LB299]

SENATOR WALLMAN: No. [LB299]

SENATOR CHAMBERS: Do you think people ought to be able to fish? [LB299]

SENATOR WALLMAN: Yes. [LB299]

SENATOR CHAMBERS: Why? [LB299]

SENATOR WALLMAN: I think all animals are made to be harvested. [LB299]

SENATOR CHAMBERS: And do you think that having a hook that's barbed on the end to penetrate a living, sentient or feeling creature is humane? [LB299]

SENATOR WALLMAN: I don't know how to answer that. I don't know the fish feels. [LB299]

SENATOR CHAMBERS: If a hook were to pass through your flesh and snag you, and that hook were on the end of a line attached to a pole which was held between two flippers of a very large fish, do you think you would feel any pain? [LB299]

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SENATOR WALLMAN: Ouch. [LB299]

SENATOR CHAMBERS: Ouch. Okay. Do you think that large fish, if they exist and have that ability, should be able to have licenses to catch you, to fish for you; well, to...since it's a fish doing it, to "man" for you? [LB299]

SENATOR WALLMAN: I suppose to be perfectly fair, it would be so. [LB299]

SENATOR CHAMBERS: But you think the fish should be allowed to "man," to go "manning,"... [LB299]

SENATOR WALLMAN: No. [LB299]

SENATOR CHAMBERS: ...as men can go fishing. [LB299]

SENATOR WALLMAN: No. [LB299]

SENATOR CHAMBERS: Okay. That's all I would ask. Thank you. [LB299]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Fulton, you are recognized. [LB299]

SENATOR FULTON: Thank you, Mr. President. I can't resist. Senator Chambers, there are times when you would have us believe that you were making us fishers of men, quoting the scripture and whatnot, so I guess I could honestly say, after hearing this, that you would like us...you would rather us be "manners" of fish...(laugh)...but I won't do that. Anyway, I have some...there is some familiarity here with this and so I'm curious as to how this is going to play out in the future. On my drive back home, I can't help but dodging deer, and it's remarkable because when we're out to hunt deer we don't see as many as we do when we're driving back home. But I'm curious because I'm reading in this amendment, "It shall be unlawful to shoot at any wildlife from any highway or roadway, which includes that area of land from," so basically you can't sit on the roadway with your gun in hand and shoot at wildlife from your car. That's illegal, and I was always taught it was illegal, growing up. But I knew a lot of people who did, a lot of guys who would do that. Somehow or another they were able to get away with it. Within that same part of the law, we'll make trapping along the county right-of-way illegal, and so I guess what is the mechanism by which this is enforced? Would Senator Hudkins yield to a question? [LB299]

SENATOR LANGEMEIER: Senator Hudkins, would you yield to a question from Senator Fulton? [LB299]

SENATOR HUDKINS: Yes. [LB299]

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SENATOR FULTON: Senator Hudkins, I...did you hear the point I was making about hunting from one's truck? When I was growing up, we were always taught that you don't shoot wildlife from your truck; you can't be doing that from the road. And here's...I figured out why I was told that. It's actually illegal. But I knew a lot of guys who did do that, and a lot of them, and they got away with it. In fact, that's how some of them got their deer in the year. Within that same part of the statute, we will also say that trapping in the county right-of-way is illegal, so my question is, what's the enforcement mechanism for this? Is this Game and Parks or is the county sheriff or how will this be enforced? [LB299]

SENATOR HUDKINS: I would assume that's it whoever sees them. If there is game warden going by, if there is a county sheriff going by. Just like when Senator Chambers asked Senator Wallman if he went fishing, a patrol friend of mine stopped a guy and the fellow says, well, there were a whole bunch of us and you caught me. And the patrolman asked him, do you ever go fishing? And he said, well, yeah. And the patrolman said, did you ever catch them all? Well, obviously not. So my point...(laugh)...my point is that we all do things that are illegal. I jaywalk, against the light anyway; I don't go in the middle of the street, but I go against the light--except on O Street; don't do that. But we do things all the time that are illegal. How many of us...and I won't name any names, but they said, I drank all the time when I was 16 years old. Well, who is enforcing that? So it's just a case of it's illegal, is there enforcement? Not...well, yes, technically there is, but theoretically probably not. But it's the idea that if you're out there doing something that's illegal, even if your traps are marked and flagged, it's illegal. It's illegal to speed. It's illegal to do drugs. It's...so many things are illegal. Does that answer your question? [LB299]

SENATOR FULTON: Yeah, I think so. The...whatever it was when I was...thank you, Senator Hudkins. I guess I bring that out just for my own learning here. This is something that I experienced when I was a kid, and anytime a city guy gets a chance to comment on something... [LB299]

SENATOR LANGEMEIER: One minute. [LB299]

SENATOR CARLSON: ...that seems to be a rural issue, I guess I can't help myself. But the same things that I was taught, as a boy growing up, about hunting, hopefully this is taught to people that are growing up trapping, that we shouldn't be doing this in county right-of-way because it's dangerous and people can get killed. So I will support the amendment, Senator Hudkins. Thank you, Mr. President. [LB299]

SENATOR LANGEMEIER: Thank you, Senator Fulton. Senator Loudon, you are recognized. [LB299]

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SENATOR LOUDEN: Thank you, Mr. President and members of the body. When it comes to trapping, I've probably caught as many or more coyotes as anybody else in the Chamber here because I've done a lot of that in my lifetime, and also muskrats and that sort of thing. Now, trapping is a dangerous business, and as we have more urban population moving out into the rural areas and you have more people on acreages, then there will have to be some control on trapping because they shouldn't be just set out there because not only children, but dogs, pets, and especially children can get caught in these traps. As was spoke before, these traps were illegal. They were not marked. They are supposed to be marked; supposed to have a name on them. And not only that, my understanding was that there was bait next to them. When you trap with jaw traps or conibear traps, then you're not supposed to be trapping near bait. The problem I see with this bill, if anything, is it just says trapping. It doesn't mention anything about live traps. And usually around your homesteads and your farmsteads, this is what we use around there to trap coon or anything that are getting in around the barns and buildings, is the live traps. And you have a kind of a cage there and they are quite successful. You can bait those. You can put some of your peanut butter and honey in one of those, and you'll probably catch a coon or you can catch your neighbor's tomcat--either one likes peanut butter and honey. So there are things...that would be one of the things that I could see, but I don't see but what that couldn't be taken care of in another session. It probably wasn't thought about this time but I think as we have the more population growth in there we will have to have some controls on trapping in your county roads so that people don't get injured or their dogs don't get out there or their pets, cats, or whatever, that get out there and get tangled up in some of the traps. As I've said before, it's a very dangerous business, and if you want to set a coyote trap and still have your thumbs, you better know what you're doing. And with that, I thank you, Mr. President. [LB299]

SENATOR LANGEMEIER: Thank you, Senator Louden. Seeing no lights on, Senator Hudkins, you are recognized to close on AM1351. [LB299]

SENATOR HUDKINS: Thank you, Mr. President. I just hope that you all have been listening to the discussion that we have had. Yes, it's going to be a minor inconvenience for some people who trap in the rights-of-way now. We want them to do it legally; we want them to do it safely. And frankly, having traps in the rights-of-way is not safe. Senator Louden commented about live traps. That is something that we can address next year--not a problem. So I'm just hoping that you think about the safety of the people who are out and about. People are out there picking up roadsides for litter. County employees are out there mowing, cutting trees, whatever they need to do in their daily employment, and we want to keep it safe for them. So even though it is going to be a minor inconvenience for some people, it is not a total ban of trapping. It's just a ban of trapping in the roadside ditches. Thank you, Mr. President. [LB299]

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

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AM1351. The question is, shall AM1351 be adopted to LB299? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Have all those voted that wish to? Senator Hudkins, for what purpose do you rise? [LB299]

SENATOR HUDKINS: If we could get two more people to vote, we wouldn't have to have a call of the house. (Laughter) Otherwise, I'm afraid I'm going to have to ask for one. [LB299]

SENATOR LANGEMEIER: Thank you, Senator Hudkins. Mr. Clerk, please record. [LB299]

ASSISTANT CLERK: 27 ayes, 4 nays on the adoption of Senator Hudkins' amendment. [LB299]

SENATOR LANGEMEIER: AM1351 is adopted. Mr. Clerk. [LB299]

ASSISTANT CLERK: Mr. President, I have nothing further on the bill [LB299]

SENATOR LANGEMEIER: Thank you. Senator McGill, for a motion. [LB299]

SENATOR MCGILL: Mr. President, I move LB299 to E&R for engrossing. [LB299]

SENATOR LANGEMEIER: You have heard the motion on the advancement of LB299. All those in favor say aye. All those opposed say nay. It does advance. (Visitors introduced.) Mr. Clerk, proceeding now to General File, LB142. [LB299 LB142]

ASSISTANT CLERK: Mr. President, LB142 was introduced by Senator Friend and others. (Read title.) The bill was read for the first time on January 8, referred to the Judiciary Committee. That committee reports the bill to General File with committee amendments attached. (AM579, Legislative Journal page 865.) [LB142]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Friend, you are recognized to open on LB142. [LB142]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. Some of you have heard this before but we'll go through it again because it was, I think, a sparse crowd at the end of a week. I wanted to thank, first of all, I guess, Senator Pirsch for making this...designating this as a priority. Obviously, if it wasn't, we wouldn't be...probably wouldn't be dealing with it right now. LB142 is intended to give children and the adult victims of abuse and domestic violence the weapons that they need to fight harassment. And the bill would bring our intimidation laws into the twenty-first century by adding computers and electronic communication devices to the list of punishable harassing methods. Currently, our laws only refer to telephone contacts.

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LB142 increases the penalties for all crimes of intimidation from a Class III misdemeanor up to three months in jail and a \$500 fine, to a Class I misdemeanor which would mean up to a possible one year in jail and a \$1,000 fine. And most importantly, I think that what the bills does is it makes it a felony for an adult, someone 18 years of age or older, to send sexually explicit material to a child under 16, to a minor under 16. A Class IV felony is what it would be and it could bring anywhere from zero to five years in prison and a \$10,000 fine. Why do we need this legislation? In 2006, the National Center for Missing and Exploited Children released some eye-opening statistics. One in seven children who regularly use the Internet is sexually solicited. According to the United States Department of Justice, that number is approximately one in five. Now, I know a lot of kids with adult supervision who are using the Internet for a lot of things: studying, going out to their school web site and doing things of that nature. But in the world that we live in now, there is a lot of entertainment value, and even when it's monitored by the adults, it's a scary environment and a scary place. By the way, 1 in 11 of those children is harassed or threatened by the Internet. Thirty-one percent receive an aggressive, sexual solicitation or are asked to meet the person. Let me repeat that: 31 percent who might be in this environment receive that aggressive, sexual solicitation or are asked to meet that predator or that potential predator. Currently, there are no provisions in Nebraska law for cyber intimidation offenses. I believe that we have to do a little bit more and I believe that we have to bring those statutes up to date. In my two years on Judiciary, if I didn't learn anything else I learned this: The criminal code, and I think we're going to deal with some of that this afternoon, it's not an art; it's a science. You have to be very precise and you have to be very efficient and effective. I think we're trying to do that here and I'm ready to talk about some of that, if that's necessary. But the fact of the matter is I think what we're dealing with is language in our criminal code that already deals with a telephone call. I cannot call Senator Karpisek at his place of business or at home, threaten to come over and kill him or do something of that nature, and not expect that there won't be ramifications for that. There can be and we've got county attorneys out there that are ready to exact the type of punishment that's necessary to handle a person like me that does something like that to Senator Karpisek. Now, I could do it with a text message, the very same thing, or I could go load some spyware on his computer or something of that nature, and good luck. These county attorneys are in a little bit of a bind because the statutes don't cover that. I want to thank Attorney General Jon Bruning. I'm not trying to hide the ball here. This is part of his 2007 crime package. I thought it was a good idea when I talked to him this summer about it. I think it's a good idea now. And again want to thank Senator Pirsch for his personal...for making it his personal priority for this session. I would ask for the advancement. There are some committee amendments. We do need those committee amendments adopted. But after that happens I guess I would ask for the advancement of LB142, along with the committee amendments. Senator Pirsch, if you would like the remainder of my time, I would be happy to yield to Senator Pirsch. [LB142]

SENATOR ERDMAN PRESIDING [LB142]

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SENATOR ERDMAN: Thank you, Senator Friend. Senator Pirsch, you have 3 minutes and 45 seconds. [LB142]

SENATOR PIRSCH: Thank you, Mr. President and members of the body. Thank you, Senator Friend, for bringing this bill. I'd tell you a few important things. This is my priority bill for the session. There is no fiscal impact at all from this bill. No one testified in opposition to the bill during the Judiciary Committee meeting. Two things are happening with this bill as amended, and I'll kind of give you the "CliffsNotes" version. First, with respect to the first part of the bill, which is page 1 through page 3, line 4, we're updating the current law with respect to the offense of intimidation by electronic communication device. That particular statute previously is intimidation by telephone call. Well, we live in a new day and age, a day and age in which we don't just use the telephone to communicate with other people in their homes anymore; a day and age that we have a multiplicity of different types of electronic communication devices. And so this law is necessary just to update what we formerly had just with the telephone. We now have e-mails that are a part of people's daily lives, cell phones, other, BlackBerrys, and other methods of communicating. And so it really isn't that profound of a change. We're merely updating language that would recognize that we do use these new modes of communication, so. The second part of the statute addresses the, as Senator Friend mentioned, very potentially serious situations where we have adults, and that's...and soliciting children and grooming them over the Internet. Now, this particular statute, as written, addresses, plays a very valuable role, in my estimation as a criminal prosecutor for nearly ten years, in filing a gap that does exist, a gap that would...is directed at stopping grooming behavior of perpetrators on-line. And I think Senator Friend mentioned the...really, the breadth of the danger that exists... [LB142]

SENATOR ERDMAN: One minute. [LB142]

SENATOR PIRSCH: ...thank you, Mr. President...on-line, that we have Nebraska's State Patrol sergeant who operates in this area of enforcing of stopping child pedophilia, who is indicating that, you know, web sites like MySpace, Xanga, Facebook, and this he describes as the "Sears catalog" for pedophiles. And you've all seen the Dateline series on television that shows you that you have individuals who do engage, on a repetitive basis, who do prey on these young individuals. And I think that based on...it bears mentioning, based on a study of 1,500 Internet users ages 10 to 17, approximately 1 in 7 received an unwanted sexual solicitation. [LB142]

SENATOR ERDMAN: Time. [LB142]

SENATOR PIRSCH: Thank you. [LB142]

SENATOR ERDMAN: Thank you, Senator Pirsch, Senator Friend. Members, you've

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heard the opening on LB142. As the Clerk stated, there are committee amendments. Senator Ashford, as the Chair of the Judiciary Committee, you're recognized to open. [LB142]

SENATOR ASHFORD: Thank you, Mr. President and members. Thank you, Senator Pirsch, for your description of the bill, and Senator Friend. And Senator Pirsch is on the Judiciary Committee and worked on this bill and prioritized it, so we appreciate his work. The committee amendments are in the record and for the most part Senator Pirsch and Senator Friend have ably described the bill. The committee amendments do create the crime of enticement by electronic communication device, and that crime and the elements of that crime, which is what would be a Class IV felony, have been described already. Secondly, it strikes references in existing statutes to annoy or offend, to limit the offense of intimidation by electronic communication device to include only conduct intended to terrify, intimidate, threaten, or harass, obviously to narrow...the committee felt that a narrowing of the definition of "enticement" was appropriate and that is in the committee amendments, that narrowing. It amends the offense of intimidation by telephone, and another offense in addition to enticement, to prohibit the transmission of indecent or obscene writings or sound of any sexual depiction...or any visual depiction of sexual conduct. It replaces references to telephone with updated terminology referencing the cell phones, wireless, wire-based telephones, text messaging, computers and PDAs as being devices that transmit this sort of material would be included in the bill. And it also the committee felt that it was appropriate to change from "shall" to "may" the requirement that a court find that the use of indecent or obscene language or the making of a threat or a lewd suggestion is prima facie evidence of the intent to terrify, intimidate, threaten, or harass. Again, this is giving the court, we felt, appropriate discretion to make the finding that the...or to make the finding that is necessary for the crime, as an element of the crime, again giving, I think, deference to some of the opposition testimony and to make the bill, we felt, more appropriately...to make the bill address more appropriately the crime itself. With that, I believe that covers the committee amendments, Mr. President, and I would urge the adoption of AM579. [LB142]

SENATOR ERDMAN: Thank you, Senator Ashford. Members, you've heard the opening on the Judiciary Committee amendments. Mr. Clerk, motion on the desk. [LB142]

ASSISTANT CLERK: Mr. President, I do have an amendment to the committee amendments. Senator Chambers would offer FA109. (Legislative Journal page 1652.) [LB142]

SENATOR ERDMAN: Senator Chambers, you are recognized to open on FA109. [LB142]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, this is

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one of those amendments which would be similar to a screwball being thrown in baseball. Pay attention, watch, keep your eye on the ball. The amendment says exactly what I mean. On page 1, in line 1, after the word "sections" place a period. Then strike all remaining language through the word "repealed" in line 7 on page 4. If you adopt this amendment, we'll be off this bill lickety-split. That will constitute my opening, Mr. President. I will answer any questions that anybody would like to put to me and I'm emphasizing the amendment is very straightforward and says precisely what it will do, and that is precisely what I intend it to do. Thank you, Mr. President. [LB142]

SENATOR ERDMAN: Thank you, Senator Chambers. Members, you've heard the opening on FA109. There are two senators wishing to speak at this point, Senator Friend and Senator Carlson. Senator Friend, you are recognized. [LB142]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. Yeah, I don't know if...I wouldn't consider it a screwball. I would call it a fastball right...a very, very hard fastball right down the middle of the plate, going so fast that I don't even know that I could hit it. I can tell you that I'm not going to swing at it because we just can't do it. So he is right: it is pretty self-explanatory. Look, it's probably pretty clear and I have had a couple discussions, various discussions, I think, in passing with Senator Chambers about...not just about this bill from a general high-level standpoint, but also, you know, kind of getting down into a little bit of nitty-gritty, some of the minutia. And it's my assumption that he's got some problems with the language. But this is just a way to maybe help him guide himself through some of the other particular problems. I would say this, that FA109, you know, is obviously not needed, but AM579 is. So with that, I am finished, Mr. President, at this point. [LB142]

SENATOR ERDMAN: Thank you, Senator Friend. Senator Carlson, you are recognized to speak, followed by Senator Christensen. [LB142]

SENATOR CARLSON: Mr. President and members of the Legislature, I would like to address a question to Senator Pirsch. [LB142]

SENATOR ERDMAN: Senator Pirsch, would you yield to a question from Senator Carlson? [LB142]

SENATOR PIRSCH: Yes, I would. [LB142]

SENATOR CARLSON: Senator Pirsch, on this bill, what kind of evidence would it take to convict and how would you get that? [LB142]

SENATOR PIRSCH: Are you referring to as amended by the committee... [LB142]

SENATOR CARLSON: Yes. [LB142]

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SENATOR PIRSCH: ...under AM579? [LB142]

SENATOR CARLSON: Yes, I am. [LB142]

SENATOR PIRSCH: Well, as amended, there are the two parts. Are you referring to the first part, intimidation by electronic communication device? [LB142]

SENATOR CARLSON: Yes. [LB142]

SENATOR PIRSCH: Commits...well, in relevant part, the statute...I'm sorry, the amendment would speak to contact another using an electronic communication device, disturbs the peace, quiet, right of privacy of any person at the place where the communications are received. So there is just above that, line 9, also an important passage: A person commits the offense of intimidation by electronic communication device if...with the intent to terrify, intimidate, threaten, or harass the person. So that's the qualifier that comes to the act that I spoke of first. So you have to prove it is a specific intent crime. You do have to prove the action and the intent by it, and you can prove that from inference, the nature of the words, that sort of... [LB142]

SENATOR CARLSON: Okay, and this isn't meant to trip anybody but I understand that what it says, but how do you get evidence? [LB142]

SENATOR PIRSCH: Typically,...you're asking of how a trial might, if there are threatening statements that are made, for instance, a hypothetical, perhaps repetitively over the course...my experience would be over the course of a weekend there may have been, say, a relationship that went bad, something of that sort, an individual may contact the former girlfriend/boyfriend and make a series of threatening phone calls over the course of a day, giving specific threats. And so you could bring in the victim, for instance, who would testify that she recognizes the voice; the nature of her relationship or his relationship with the perpetrator so that...get background how she would come to recognize the voice of that individual; the nature of the statements; the threatening, alleged threatening statements that were made; testify as to her reaction to those statements. Perhaps there are, you know, depending upon the nature of the case, corroborating other types of evidence from the phone company or caller ID, that sort of thing, to again support the contention that this call did occur. Perhaps other individuals heard it; perhaps there is a voice recording of the actual statements; perhaps it was left on a voice mail. So those are not unusual types of facts to occur around a given case. [LB142]

SENATOR CARLSON: Well, some type of recording would be the best evidence, wouldn't it? [LB142]

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SENATOR PIRSCH: Certainly there are easier cases to prove and in some instances that's correct, and sometimes an investigator,... [LB142]

SENATOR ERDMAN: One minute. [LB142]

SENATOR PIRSCH: ...a police officer actually goes, responds to the call, and actually is present and hears the statements as they are being made to the victim, as well. So it just depends. There is no one fact pattern that can occur. There is an infinite number of fact patterns, and it's the prosecutor's responsibility to prove any criminal case beyond a reasonable doubt--a very high level of proof that's required, more than in civil cases, for instance. [LB142]

SENATOR CARLSON: Well, I think it's a good idea but part of my point is it's not easy to get that convincing evidence, is it? [LB142]

SENATOR PIRSCH: Not in all cases, which there are some cases that, while you in your personal capacity feel that you believe it happened, you as a prosecutor don't feel that you can, in court, provide that proof beyond a reasonable doubt. [LB142]

SENATOR CARLSON: Okay. Thank you, Senator Pirsch. [LB142]

SENATOR ERDMAN: Thank you, Senator Carlson and Senator Pirsch. Senator Wallman, you are recognized to speak, followed by Senator Chambers. [LB142]

SENATOR WALLMAN: Thank you, Mr. President and members of the body. As you realize, I usually do not like to vote for more rules and regulations. But this is one I think we need. This can damage young people's lives and it's terrible what's out there, having watched some of that myself on blogs. And I know it's not going to be easy to prosecute people, but let's have a venue here where we can help the prosecutors and send a little message out there that we do care what goes out on the Internet. And freedom of speech should have some kind of a freedom to control it a little bit, too, as far as lewd behavior. And we cannot keep doing that to our younger and younger and younger children. So I would encourage adoption of this bill, this amendment. Thank you, Mr. President. [LB142]

SENATOR ERDMAN: Thank you, Senator Wallman. Senator Chambers, you are recognized to speak. [LB142]

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, I see a large number of problems with this bill the way it's drafted. Senator Friend stated a cardinal principle of criminal law. The statute must be drawn using language that is clear, unambiguous, not vague, not overly broad. This proposal is loaded with redundancy, surplusage, overbreadth, and vagueness. I would like to ask Senator

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Ashford, since we're on the committee amendments, a question or two. [LB142]

SENATOR ERDMAN: Senator Ashford, would you yield to questions from Senator Chambers? [LB142]

SENATOR ASHFORD: Yes. [LB142]

SENATOR CHAMBERS: Senator Ashford, on page 1 of the committee amendment, beginning in line 9, it says, "A person commits the offense of intimidation by electronic communication device if, with the intent to terrify, intimidate, threaten, or harass the person." Now, the three words, "terrify, intimidate, threaten," can be shown to bear a relationship to each other, wouldn't you agree? [LB142]

SENATOR ASHFORD: Yes. [LB142]

SENATOR CHAMBERS: "Harass" would not fit in that category because harassment may neither terrify, intimidate, or threaten. Isn't that true? [LB142]

SENATOR ASHFORD: It can be viewed as a separate...yes, it can be... [LB142]

SENATOR CHAMBERS: I could harass you if I called you and just talked at the top of my lungs and blew a whistle in the phone, couldn't I? [LB142]

SENATOR ASHFORD: It could be a...it could intimidate you, as well, at the same time, of course. It says or. [LB142]

SENATOR CHAMBERS: But it may not do any of those things, isn't it true? [LB142]

SENATOR ASHFORD: It may not; that's why it says or, but I... [LB142]

SENATOR CHAMBERS: If I called you on the phone and I was very angry and I said, Brad, I don't like what you've done, I can't stand what you've done, and if you had two brain cells working you wouldn't have done it, and I hang up, then I call back and I hang up, have I said anything that threatens you? [LB142]

SENATOR ASHFORD: No, and you have said those sorts of things in the past to me but you never hung up. (Laugh) [LB142]

SENATOR CHAMBERS: And you were not intimidated, were you, in the sense of expecting to be harmed? [LB142]

SENATOR ASHFORD: I was not...I didn't believe I would be harmed. There maybe was a little bit of intimidation there. [LB142]

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SENATOR CHAMBERS: Let's go to that word then that we're discussing. What is the definition of intimidation? This is a criminal statute. [LB142]

SENATOR ASHFORD: An intimidation is a...to intimidate is to, by word or action, to place the person who you are aiming your words at in some degree of emotional...it would be some sort of distraught...if you are distraught or reacting negatively. I think it would depend on the words that are used or the actions that are taken. In this case, it's words, and it would just depend on the circumstances. I mean, I can't think of all the various circumstances but it would be based on the facts of each case. [LB142]

SENATOR CHAMBERS: Do you think "harass" could be put in a separate category, and if you're talking about intimidation? [LB142]

SENATOR ASHFORD: Harass, to me, means a succession of words or phrases over, in succession, or even with a break, that would be directed towards a person and cause them... [LB142]

SENATOR ERDMAN: One minute. [LB142]

SENATOR CHAMBERS: Now we are increasing the penalty for... [LB142]

SENATOR ASHFORD: ...intimidation. [LB142]

SENATOR CHAMBERS: ...intimidation by electronic communication device, aren't we? [LB142]

SENATOR ASHFORD: Correct. [LB142]

SENATOR CHAMBERS: So if we're going to increase the punishment to a period of jail time being possible,... [LB142]

SENATOR ASHFORD: Correct. [LB142]

SENATOR CHAMBERS: ...why are we going to equate harassing somebody with intimidating somebody? [LB142]

SENATOR ASHFORD: Senator Chambers, just to answer your question, I think there are degrees of difference. Harassing someone and intimidating someone I think are, as far as the level of severity, I think they are substantially similar though they are different, they are different in nature. So I think that's why they are included in the same statute. [LB142]

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SENATOR CHAMBERS: But "annoy or offend" were a part of the original statute. [LB142]

SENATOR ASHFORD: They were deleted by the committee; that's correct. [LB142]

SENATOR CHAMBERS: But they had nothing to do with intimidation, did they? [LB142]

SENATOR ERDMAN: Time. [LB142]

SENATOR CHAMBERS: Thank you, Mr. President. [LB142]

SENATOR ERDMAN: Thank you, Senator Chambers and Senator Ashford. Senator Pirsch, you are recognized to speak, followed by Senator Chambers. [LB142]

SENATOR PIRSCH: Thank you, Mr. President and members of the body, and I appreciate Senator Chambers' questions with respect to those particular words. I think perhaps useful and instructive would be a Nebraska Supreme Court case, State v. Kipf, K-i-p-f. It's cited at 234 Neb. 227 and I can provide him a copy which does address those very same words. And along the lines in Kipf that the plaintiff in that...or the defendant in that case did bring about, which is saying that these particular words were ambiguous, vague, overbroad. And the Supreme Court addressed those very words and found that the words "terrify, intimidate, threaten, harass, annoy, and offend" all describe the same species of behavior. Generally, to terrify is to fill with terror...I won't get into the case too much, but it has been reviewed by the highest court in the land. And actually we're...the committee, I think, bent over backwards to eliminate perfectly good verbiage in taking out the words "annoy or offend." I think from a legalistic perspective, they have been addressed and tested in the courts and have been also found as not constitutionally suspect, not overbroad, and not vague. And so I do appreciate the questions with regard to that. But this is from the original statute, by the way. This is not language that Senator Friend came up with this year or that the committee came up with. These are words that have been in the same statute, the intimidation by telephone call statute, for decades and decades, and have been used in thousands and thousands of cases which have been appealed. And so I don't think there is any significant risk of any of this language being declared by a court to be unconstitutional. Thank you. [LB142]

SENATOR ERDMAN: Thank you, Senator Pirsch. Senator Chambers, you are recognized to speak and this will be your third time. [LB142]

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, I would like to engage Senator Pirsch in a bit of discussion. [LB142]

SENATOR ERDMAN: Senator Pirsch, would you yield? [LB142]

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SENATOR PIRSCH: Yes, I would. [LB142]

SENATOR CHAMBERS: Senator Pirsch, I agree with you that this is existing language, but we are raising it to the level of a higher offense, are we not? [LB142]

SENATOR PIRSCH: That is correct. [LB142]

SENATOR CHAMBERS: So I could have more concern about including "harass" in a list of terms which are defining the word "intimidate" because the offense now is far more serious. [LB142]

SENATOR PIRSCH: That is correct: the offense is more serious...a higher class of penalty. [LB142]

SENATOR CHAMBERS: If the word "harass" were eliminated, what would be lost? [LB142]

SENATOR PIRSCH: Well, I think "harass," within the context of the electronic communication device, intimidation by electronic communication device, is that the context, Senator? I guess the question...is that within the first offense? [LB142]

SENATOR CHAMBERS: Oh, yes. Yes, with what we're discussing here: intimidation. [LB142]

SENATOR PIRSCH: I would be hesitant to say that it would have, that that would be okay. Actually I'm hesitant to remove the "annoy or offend" language. But with respect to "harass," I think that that aptly...you know, as I described with respect to Senator Carlson's earlier question, within, just as an example, the context of a relationship that didn't work out or never existed, and oftentimes, as a prosecutor, you have a series perhaps...I have seen 60, 100 phone calls per day over the course of an extended duration. Clearly, oftentimes that...sometimes it reaches the intended target; sometimes it doesn't. But nonetheless, without that language, I guess the risk is that that type of behavior, which is clearly intended to disrupt...especially within a work context, if you're working at your work and you receive...your work receives over the course of a number of days 100 phone calls, all intended. Now, again, you have to...the state has the burden of proof to prove that the individual intended to harass the target. And in those kind of contexts, I think it's highly disruptive to the life and it does justify this type of legislative reaction. [LB142]

SENATOR CHAMBERS: Senator Pirsch, could the mere number of calls placed be considered harassing, even if nothing uttered creates a threat, terror, or intimidation? Just the sheer number of calls placed could be considered harassing, isn't that true?

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[LB142]

SENATOR PIRSCH: Well, I don't know. It would depend, I think, upon the context of it. You know, obviously, I think the situation...each case is unique and different so I don't know if I can give generalized statements about it without having some time to think about it. But it...you know, obviously, I can think of situations where I was a prosecutor, would not want to charge a case just because someone was to repeatedly call someone. Obviously, in a case where it's a family member who is calling you because something horrible has occurred, in that context obviously just the sheer number of calls would not be... [LB142]

SENATOR ERDMAN: One minute. [LB142]

SENATOR PIRSCH: ...predictive or dispositive of a violation of this particular statute. [LB142]

SENATOR CHAMBERS: Well, Senator Pirsch, we could then add words such as "upset, disrupt, disturb one's peace, anger one." We could put all those kind of words in, too; couldn't we? [LB142]

SENATOR PIRSCH: Well, I suppose you could change the statute from the words that have been used. I guess my... [LB142]

SENATOR CHAMBERS: No, leave those in and add additional words. [LB142]

SENATOR PIRSCH: Well, it may well be, but, you know, I couldn't really comment on that. But these particular words, in my experience as a prosecutor, have been court-tested and utilized by the criminal justice system for decades. And so when you get off the beaten path and tread down new paths, what is and what is not constitutionally acceptable would have to, I guess, be tested. [LB142]

SENATOR ERDMAN: Time. [LB142]

SENATOR PIRSCH: Thank you. [LB142]

SENATOR CHAMBERS: Thank you, Mr. President. [LB142]

SENATOR ERDMAN: Thank you, Senator Chambers and Senator Pirsch. Senator Mines, you're recognized to speak on the Chambers amendment. [LB142]

SENATOR MINES: Thank you, Mr. President, colleagues. Would Senator Friend yield, please? [LB142]

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SENATOR ERDMAN: Senator Friend, would you yield to a question from Senator Mines? [LB142]

SENATOR FRIEND: Yes. [LB142]

SENATOR MINES: Senator, thanks for bringing the bill. I have but one question. Other states, are we in a similar pattern to what other states are doing? [LB142]

SENATOR FRIEND: Actually, yeah. And I'm serious about this, thanks for asking, because it was going to be something that came up later on, Senator Mines. New Jersey I can think of right off the top of my head. As a matter of fact, some of the language in here in regard to electronic communication device, for lack of a better way to describe it, is modeled after New Jersey language that's in existence right now. Also, we have federal statutes that...there are definitions out there in the federal statutes dealing, you know, with this, and it's being used, and it's, matter of fact, been used since 1986. [LB142]

SENATOR MINES: Okay. Well, thank you. Thank you for that. Appreciate that. And, Mr. President, thank you. [LB142]

SENATOR ERDMAN: Thank you, Senator Mines and Senator Friend. Senator Chambers, there are no lights on. You're recognized to close on FA109. [LB142]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I'd like to ask Senator Friend a question. [LB142]

SENATOR ERDMAN: Senator Friend, would you yield to a question from Senator Chambers? [LB142]

SENATOR FRIEND: Yes, I will. [LB142]

SENATOR CHAMBERS: Senator Friend, you said you are opposed to the amendment that we're discussing. Is that true? [LB142]

SENATOR FRIEND: That's true. [LB142]

SENATOR CHAMBERS: Why are you opposed to it? [LB142]

SENATOR FRIEND: Well, because that fastball right down the middle of the plate, you called it a screwball, would, in my determination, in my reading, actually get rid of existing language in the law, too, not just my own...not just the new language that we're trying to create. [LB142]

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SENATOR CHAMBERS: Right. It would eliminate everything in the bill. [LB142]

SENATOR FRIEND: (Laugh) Yes, it would. [LB142]

SENATOR CHAMBERS: And you don't want to do that? [LB142]

SENATOR FRIEND: Well, if you don't mind, yeah, I'd rather not. [LB142]

SENATOR CHAMBERS: (Laugh) Okay. Members of the Legislature,...thank you, Senator Friend. [LB142]

SENATOR FRIEND: Sure. [LB142]

SENATOR CHAMBERS: There are many aspects to this bill that I'm going to discuss, step by step, in detail. But I wanted to see if Senator Friend was paying attention. And perhaps I should not have underscored with such emphasis what this amendment might do, because on its face it does look relatively harmless, but it would, in effect, wipe out the bill. I'd like to ask Senator Friend...let me ask Senator Pirsch, because he was a prosecutor. And, Senator Pirsch,... [LB142]

SENATOR ERDMAN: Senator Pirsch, would you yield to a question? [LB142]

SENATOR PIRSCH: I would. [LB142]

SENATOR CHAMBERS: ...do you have a copy of the amendment before you? [LB142]

SENATOR PIRSCH: Somewhere. Yes. [LB142]

SENATOR CHAMBERS: Okay. This is existing language, beginning in line 10 on page 1. [LB142]

SENATOR PIRSCH: Okay. [LB142]

SENATOR CHAMBERS: Well, line 9: A person commits the offense of intimidation by telephone...I meant, by electronic communication device if, with the intent to terrify, intimidate, threaten, or harass, the person. "The" is a definite article. Then we go to line 13: Contacts another, using an electronic communication device, whether or not any communication ensues--I'll deal with that later--and disturbs the peace, quiet, and right of privacy of any person at the place where the communications are received. When we're defining intimidation, it has to be directed to "the" person. When we get down here to this next subdivision about contacting, it says "any" person. So how do you square those two? And tell me why you say "the" in one place and "any" in another, because I'm sure you'd agree that the word "any" is broader in scope than the word "the."

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[LB142]

SENATOR PIRSCH: I guess just my common reaction, I don't think that they're in discord. I think that they're...when you charge a crime which specifically requires, as this case, that you name the victim here in the complaint,...I guess what maybe this is a nod to is there could be multiple victims. And so to the extent that it's "any" person, you could have multiple persons. But then it wants to specify that you can't...that terrify, intimidate, threaten, harass applies to each one of those specific. So I don't read that disharmoniously. I... [LB142]

SENATOR CHAMBERS: Then why don't we substitute for... [LB142]

SENATOR ERDMAN: One minute. [LB142]

SENATOR CHAMBERS: ...the word "the" the word "any"? See, you've got two different standards here. One relates to a specific individual; then you broaden it. Why don't you make them both the same? Why don't you strike the word "the" and insert "any" when we're talking about intimidation? [LB142]

SENATOR PIRSCH: Well, I mean, based...I can only speculate on behalf of what was in the other member of the committee's mind. My personal preference for leaving the verbiage in there is, this was, again, not language that was written by...or drafted by Senator Friend and submitted, nor was it language that was drafted or submitted by the committee, but rather was language that has been in the statute and court tested for decades. And so if there was a problem with the...from a legalistic perspective,... [LB142]

SENATOR ERDMAN: Time. [LB142]

SENATOR PIRSCH: Thank you. [LB142]

SENATOR ERDMAN: Senator Chambers, for what purpose do you rise? [LB142]

SENATOR CHAMBERS: I will withdraw the pending amendment that we're discussing. [LB142]

SENATOR ERDMAN: FA109 is withdrawn. (Visitors introduced.) Mr. Clerk, items for the record? [LB142]

ASSISTANT CLERK: Mr. President, thank you. Your Committee on Business and Labor reports LB209 and LB432 to General File. Health and Human Services reports LR73 to General File. Committee on Business and Labor reports favorably on several appointments to the Boiler Safety Code Advisory Board. Amendments to be printed:

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Senator Gay to LB641; Senator Stuthman, LB247. Notice of committee hearings offered by General Affairs Committee, and by Health and Human Services. And I have a Reference report of a gubernatorial appointment. And a new resolution, LR210, by the Natural Resources Committee. That will be referred to the Executive Board, Mr. President. That's all I have. (Legislative Journal pages 1653-1655.) [LB209 LB432 LR73 LB641 LB247 LR210]

SENATOR ERDMAN: Mr. Clerk, next motion. [LB142]

ASSISTANT CLERK: Mr. President, Senator Chambers would move to amend. (FA110, Legislative Journal page 1655.) [LB142]

SENATOR ERDMAN: Senator Chambers, you're recognized to open on FA110. [LB142]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, Senator Pirsch is going to hang his hat, I can see, on existing language and presume that it's all okay. But I often find fault with existing language. This is what my amendment that I'm proposing now would do. In...I'm on page 1 of the committee amendment. In line 12, after the word "person," I would insert the word "contacted." And it would read: A person commits the offense of intimidation, and so forth, with the intent to terrify, intimidate, threaten, or harass the person contacted. To say to harass "the" person is not precise. Since Senator Pirsch is the resident prosecutor, I want to ask him a question. [LB142]

SENATOR ERDMAN: Senator Pirsch, would you yield to a question from Senator Chambers? [LB142]

SENATOR PIRSCH: I would. [LB142]

SENATOR CHAMBERS: Senator Pirsch, in this language that we're discussing, are we talking about the person who is contacted being the recipient of this communication that is intended to terrify, intimidate, threaten, or harass? [LB142]

SENATOR PIRSCH: Well, actually, the words "terrify, intimidate, threaten" relate to intent, and that relates to actually the state of mind of the person... [LB142]

SENATOR CHAMBERS: But I'm not dealing with that. [LB142]

SENATOR PIRSCH: Oh, okay. [LB142]

SENATOR CHAMBERS: We get...that's what is transmitted. And it said it's being transmitted to "the person." And I want to add, after the word "person," the word

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"contacted." [LB142]

SENATOR PIRSCH: Okay. [LB142]

SENATOR CHAMBERS: What problem would you see with that, if any? [LB142]

SENATOR PIRSCH: Well, I can only, again, speak for myself. The way I would...insofar as the word "contacts" is used in line 13, and that particular word was not used before,...I...to be quite honest, my personal preference is not to use the word "contacts"...well, I guess, to establish a legislative...I think it's important to establish a legislative history or statements that clearly express the fact that "contacts" is not intended to only make illegal those acts which actually reach the ears of the listener, in other words, attempts, as well. So to that extent,... [LB142]

SENATOR CHAMBERS: Well, is it your understanding that this bill is designed to say that you intend to do this but you don't intend...you don't have a target in mind? Why does the law say "the person" if it doesn't mean the person? And if the person contacted is not the one intended to be intimidated, what sense does it make? [LB142]

SENATOR PIRSCH: I think we're dealing with just semantics at this point. So long as it's clear that the use of the term "contacts" does not...later on, in lines...I guess the...my concern, and this was not the verbiage that I would...and you're asking me in my personal capacity. I'd prefer to be careful about using the term "contact," insofar, I don't think the statute envisions that you have to have a completed communication, interplay, with the intended target. But the word...the use of the word "contacts" is used in line 13. And you know, I guess I would want to look at those two before I form a final type of conclusion that it would not harm the overall intent of the statute before... [LB142]

SENATOR CHAMBERS: Okay. Thank you. I wish Senator Ashford were here. If Senator Ashford is someplace,... [LB142]

SENATOR ERDMAN: Senator Ashford, are you available for a question from Senator Chambers? [LB142]

SENATOR CHAMBERS: I can ask him later. He may be occupied. But I think I'll ask him some of these questions because, as Chair of the Judiciary Committee, he may have a clearer understanding of what the intent of this language is. Members of the Legislature, if, as what Senator Pirsch is suggesting is the case, you can...you don't have to contact anybody, you don't have to intend to contact anybody, so who is to be intimidated? And if there's problem with other language further down, we'll get to that. But remember, they are changing the law from using a telephone to every other kind of imaginable electronic means of contacting somebody. So even though Senator Pirsch keeps saying that is the existing law, there's a tremendous expansion of what is

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involved here. They're talking about the word "communication." They are changing and eliminating words that apply to the telephone. When they're talking about the telephone, they use the word "conversation." Conversation consists of words exchanged between people. They're eliminating "conversation." They are substituting the term "communication." But Senator Pirsch wants to say, although you are completely changing the standard and basis for committing...having this crime committed, you want to leave what exists of the existing law exactly as it is, because that's been tested by the court. It hasn't been tested by the court in the context of using the term "communication" rather than conversation. He's talking about what the court was doing when they were talking about the use of a telephone only, not something that can occur simply through a visual depiction. That changes the impact of the existing law. But if Senator Friend and the Attorney General, in all his brilliance, wants to keep all of this language in here, this bill should not pass. It's not good enough to have poor drafting, as has occurred with this bill. And I'm going to demonstrate it as we go further. Let's move into this area that Senator Pirsch brought up. Starting in line 13 on page 1: Contacts another...and I say, another person. I would insert "person." But Senator Pirsch would say, well, you're not necessarily contacting a person, so we'll just leave the word "another" and not put person. There has to be better drafting. That's why you need to have been here awhile and be a lawmaker rather than a prosecutor. We are writing the law, not interpreting it. We are creating crimes. And there is vagueness here. But I'm going to read this: Contacts another using an electronic communication device, whether or not any communication ensues. How are you going to contact a person if no communication ensues? See, when you say "conversation," that could be you have contacted an individual. But when you say "no communication," that means nothing has happened, nothing. But let me continue: whether or not any communication ensues, and disturbs the peace, quiet, and right of privacy of any person at the place where the communications are received. If no communication ensues, how can it be received? If there is no communication, what is there to be received? Nothing. There's a contradiction in this language because they incorporate new verbiage with the existing law, and the existing law dealt with telephone conversation. And now they're using a broader term, "communication," and the offense is committed whether any communication occurs or not. Yet, when you get to the end of this it says, "at the place where the communications are received." If no communication ensues, then there's no communication that can be received. But if this can be committed, this offense, only if communications are received, which is what it says, where they initiate or where they are received,... [LB142]

SENATOR ERDMAN: One minute. [LB142]

SENATOR CHAMBERS: ...if none is received, then there can't be the offense, and if none ensues, none can be received. This makes no sense. But that's what they want, and that's what you have when you have a prosecutor trying to write laws. I'm going to repeat that again, and I'm going to go over it again and again for the sake of the record.

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I'm playing football. I'm the quarterback. Senator Carlson is my top wide receiver. He runs crisp patterns. He'll run down the field and make a right-angle turn and leave the defensive back sprawled on the ground. So I'm going to throw a pass to Senator Carlson. Well, I throw a pass, and whether he catches it or not,... [LB142]

SENATOR ERDMAN: Time. [LB142]

SENATOR CHAMBERS: ...it's a pass. [LB142]

SENATOR ERDMAN: Thank you, Senator Chambers. Members, you've heard the opening on FA110. Those senators wishing to speak are Friend, Carlson, Pirsch, and Chambers. Senator Friend, you're recognized. [LB142]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. I think I see and have briefly touched on what Senator Chambers is talking about with his second concern about the legislation in this area and what he's trying to deal with, with FA110. Really quickly, and with all due respect, I don't know that Senator Chambers is interpreting this particular piece of the statute properly, or correctly. Here's why I say that. I'm going to read this, too, just like he did, but it needs to be read in this manner, I think, with the emphasis on "person,"...on the person at the end of line 12: A person commits the offense of...let's go back to the regular statute, the statute that exists right now. A person commits the offense of intimidation by telephone call if, with--I don't think "the" was in there; there was a different word--with intent to terrify, intimidate, threaten, harass, annoy, or offend, the person. That's the way we're reading it right now, right? It shouldn't be. A person commits the offense of intimidation by telephone call if, with the intent to terrify, intimidate, threaten, or harass, annoy, or offend, the person...maybe "that" would be better in there than "the." I'm not really sure. We're still talking about the person who is instigating that offense. And then when you go into subsections (a), (b), (c), (d), and (e) in the original statute, you're talking about that particular person, the perpetrator. So I don't think you can change that. But what I would say is, he may have a point here in regard...regarding "the person." Maybe it needs to be "that particular person." So we can talk about that. But the point is, just because we change it from "telephone" to "contact," I don't think it changes that specific aspect of this argument, in regard to what he was talking about in his first point. The second point that he's making in regard to contacts, let's read this now. This is changed language, the new language. When that person, when that person contacts another, using an electronic communication device, whether or not any communication ensues, and disturbs the peace, quiet, and right of the privacy of the person at the place where the communications are received. Look, Senator Chambers doesn't really know this. I get five text messages a day. That's communication that I'm not having with that particular person at that point. This world is changing rapidly in regard to communication, and what we have to do is talk about what "communication" means, what the definition is. Look, I'm not absolutely sure that I'm on the right track with his second point. But what I

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would tell you is this. You can have communication with somebody in today's world--and we should all know this--without talking to them. The communication can exist. That's where this gets fuzzy and that's where this gets really complicated. I admitted from the outset that what we need to do is be as scientific and as efficient and effective as we possibly can. Quite frankly, this is just about as scientific and efficient, as effective, as the federal government and other states have been able to become with this type of technology. So the first piece of it is,... [LB142]

SENATOR ERDMAN: One minute. [LB142]

SENATOR FRIEND: ...we're not reinventing the wheel. The second piece of it is, I think it's open for discussion, but frankly, this world is changing so much that communication takes a totally different context than it did when a statute was out here dealing with a telephone without an answering machine on the other end. I don't want to convolute things. I think they're already convoluted. What I'm saying is, I don't see any specific information, based on this discussion, that tells me that the language on page 1 of AM579, from lines 13 to 17, are functionally incorrect. Nobody has made a good argument to me about that yet, including Senator Chambers. So what I would say is, I'm more than willing to go down this road, but I'm not convinced. The first piece, I think, is, we were misreading it. Thank you, Mr. President. [LB142]

SENATOR ERDMAN: Thank you, Senator Friend. Senator Carlson, you're recognized to speak on FA110, followed by Senator Pirsch. [LB142]

SENATOR CARLSON: Mr. President and members of the Legislature, I would like to address a question to Senator Chambers. [LB142]

SENATOR ERDMAN: Senator Chambers, would you yield to a question? [LB142]

SENATOR CHAMBERS: Yes, I will. [LB142]

SENATOR CARLSON: Now, I'm going to ask you to track with me on your amendment, because I really think you change the individual and what little I understand about legal terms. If we...let's say that I'm trying to intimidate you. [LB142]

SENATOR CHAMBERS: Yes, I'm with you. [LB142]

SENATOR CARLSON: Okay. So if we start reading there: Tom Carlson commits the offense of intimidation, and so forth. And then we get down to where you made the change. It's Tom Carlson. [LB142]

SENATOR CHAMBERS: If you're using Tom Carlson in both instances, then that's crystal-clear, because you've named the individual. But in the first mention here, it is "a,"

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an indefinite article; when you get down here, it's "the," a definite article. So if the second mention of person is referring back to the one that you first mentioned, you should say "such person." Then it's clear you're still talking about the individual that you had mentioned previously. [LB142]

SENATOR CARLSON: Okay, you agree that the intent of the bill is...it's Tom Carlson at the front, and it's Tom Carlson at the end of that statement? And if I was intimidating you, we get into the next sentence, that Tom contacts Senator Chambers. That's when it becomes another person. [LB142]

SENATOR CHAMBERS: Based on what you're saying. Well, that's not necessarily the way I read it, because this could be a discrete position, the first one we're talking about. And if you look at it the way that I'm saying, that you're going to address these to "the person contacted," then you continue: contacts another. [LB142]

SENATOR CARLSON: You put that in there, "the person contacted." You changed the meaning when you... [LB142]

SENATOR CHAMBERS: Right, I'm putting the word "contacted." [LB142]

SENATOR CARLSON: You changed the meaning when you did that. [LB142]

SENATOR CHAMBERS: Because we're reading it differently. You're saying that the reference to "person" in line 9 and the reference to "person" in line 12 refer to one and the same individual. I'm saying if, when you use the term "person" in line 12, it's designed to mean or refer back to "person" in line 9, you should have "such" in front of that person, rather than "the" person. [LB142]

SENATOR CARLSON: Okay. [LB142]

SENATOR CHAMBERS: It should be "such person." Then it lets you know you're referring back. [LB142]

SENATOR CARLSON: And I wouldn't argue that, because that, I believe, keeps the meaning as intended, where your amendment changes it. [LB142]

SENATOR CHAMBERS: Then if they wanted to be referring back, why don't they put "such" in place of "the"? [LB142]

SENATOR CARLSON: Okay, I don't know that, but I think that was the intent. Thank you. [LB142]

SENATOR ERDMAN: Thank you, Senator Carlson and Senator Chambers. Senator

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Pirsch, you're recognized to speak, followed by Senator Chambers. [LB142]

SENATOR PIRSCH: Mr. President, members of the body, well, thanks. I think that's why we weren't kind of operating on the same track. I don't think I had an understanding of what the particular question...I thank Senator Carlson and Friend for kind of defining what...where the issue...I guess, to put it succinctly, I think Senator Chambers--and I'll ask for his clarification in a second here--believes that it is incorrect, or less correct, to make the...essentially, an analogous statement would be, a legislator is not a good legislator when "the" legislator doesn't go to work, using the word "a" legislator at the front end, and then "the" legislator...using "a" and "the" I think he's positing is confusing or less clear. I think he's suggesting that we say, "a" legislator is a bad legislator when "such" legislator doesn't go to work, instead of, when "the" legislator doesn't go to work. You know, I think it's a semantic difference, in my opinion. I don't know of any instances in which this has been confusing to a court. You know, I think that the use of the word "the" in the second part of the statement...of the sentence, that's the original language, which has been on the book for decades. So I guess I'll yield the balance of my time to Senator Chambers, to ask if that is, in fact, his concern, is using "a" and then "the" instead of "such." [LB142]

SENATOR ERDMAN: Senator Chambers, you have 3 minutes. [LB142]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Pirsch. And ambiguity is created here. When we get to line 12, we could be talking about the individual who is the recipient of the communication, or, if we want to interpret the way you and Senator Carlson are interpreting it, you can say that the intent is to refer back to the person in line 9. But you are using descriptors that make it clear to me that you're talking about two people. But let me ask you this question. Senator Pirsch, since it's your time, see how this sits with you, if, instead of, in line 12, you had the word "the person," those two words, you eliminate those two words and put "he or she." [LB142]

SENATOR ERDMAN: Senator Pirsch. [LB142]

SENATOR PIRSCH: Again, thank you very much, Senator, for the question. I guess my preference, again, would be to stick to the tried-and-true path, the language that's been existing without problems for decades and decades. And it's when you try to use novel or unique type of language that the law of unintended consequences kicks in. And even though you think it's okay, it very rarely, or occasionally, may not be okay. And so rather than reinvent the wheel, I think it's safer to stick with that which has been working for a long period of time. [LB142]

SENATOR CHAMBERS: Senator Pirsch, have you read numerous statutes where the bill drafter, rather than using--we might be talking about a judge--instead of using... [LB142]

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SENATOR ERDMAN: One minute. [LB142]

SENATOR CHAMBERS: ..."judge," they'll strike the word "judge" and put "he or she," when you've used the term "judge" above? If you're talking about an individual doing such and such, and then you're going to refer to that individual again, you don't say "the individual" again; you say "he or she." [LB142]

SENATOR PIRSCH: You know, I don't doubt that... [LB142]

SENATOR CHAMBERS: If a person...let me give you an example. [LB142]

SENATOR PIRSCH: Yeah. [LB142]

SENATOR CHAMBERS: If a person is struck by an automobile and is injured, the person may sue. Instead of putting "the person," you say, if a person is struck by an automobile, he or she may sue. In other words, we use now both genders, and that is done automatically in statute by the bill drafter, because it's a common construction in the law now. But I won't pursue that with you, because your time is about to run out and you have the right to the last word, so I'm... [LB142]

SENATOR ERDMAN: Time. (Laughter) Thank you, Senator Pirsch and Senator Chambers. Senator Chambers, your light is next. You may continue, followed by Senator Fulton. [LB142]

SENATOR CHAMBERS: Mr. President, members of the Legislature, anything that's in the law will remain the law unless it's challenged. There have been interpretations of statutes by the highest court of a state; then, years later, the state...the court will reverse itself. I'd like to ask Senator Lathrop a question or two. [LB142]

SENATOR ERDMAN: Senator Lathrop, would you yield to a question or two? [LB142]

SENATOR LATHROP: Yes, I would. [LB142]

SENATOR CHAMBERS: Senator Lathrop, was the issue surrounding second-degree murder when the Supreme Court gave a different definition that created a lot of confusion, and then a subsequent Supreme Court came and set the definition back to where it had been originally? [LB142]

SENATOR LATHROP: I believe that's right. [LB142]

SENATOR CHAMBERS: Okay. And prior to that first change, there had been one interpretation or definition of second-degree murder accepted by the court all the way

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down the line, and when this change came, everybody was kind of put into a quandary and was left scratching the head as to why the change occurred and exactly whether or not anything of substance had happened. Am I reflecting a situation that did occur? [LB142]

SENATOR LATHROP: I think that's right. [LB142]

SENATOR CHAMBERS: Okay. Then when a subsequent Supreme Court ruled, it simply went back to the way it was before that change had occurred. Is that accurate? [LB142]

SENATOR LATHROP: I'm going to say...I know that was a long time ago. That sounds right to me, though. [LB142]

SENATOR CHAMBERS: Okay. Now I'm going to go to what we're talking about here, unless you've been working on something else? [LB142]

SENATOR LATHROP: No. No. [LB142]

SENATOR CHAMBERS: Okay. If you will look on page 1, starting in line 9, I'm going to read: A person commits the offense of intimidation by electronic communication device if, with the intent to terrify, intimidate, threaten, or harass, he or she contacts another. Instead of using the two words "the person," if we say "he or she," it's clear then that we're referring to the individual that we mentioned in line 9. [LB142]

SENATOR LATHROP: I think that's true. I was looking at this, and I would...I think you can drop "the person" and just put a colon after "harass" and take care of the problem. "The person" doesn't add anything to it. [LB142]

SENATOR CHAMBERS: That's the main point. If there is an ambiguity, getting rid of those two words would take care of any of the things that we're discussing now, and we wouldn't really lose anything in terms of the flow of this language. [LB142]

SENATOR LATHROP: I think it would improve the flow. [LB142]

SENATOR CHAMBERS: What I'm going to do then, while we discuss this, is draft an alternative, and I will substitute it. But it's not up there now. So...how much time do I have, Mr. President? [LB142]

SENATOR ERDMAN: Two minutes. [LB142]

SENATOR CHAMBERS: Well,...oh, may I ask Senator Friend a question? [LB142]

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SENATOR ERDMAN: Senator Friend, would you yield to a question? [LB142]

SENATOR FRIEND: Yes. [LB142]

SENATOR CHAMBERS: Senator Friend, did you already file an amendment dealing with this issue? [LB142]

SENATOR FRIEND: I filed an amendment, and I hope that I filed it correctly, but yes, I did. [LB142]

SENATOR CHAMBERS: Then what I'm going to do, Mr. President, relying on that, because we can work with Senator Friend's amendment, whatever it is, I will withdraw the amendment that I have, because it would insert that word "contacted," and that seems to be what brought us into this other discussion. So that's the amendment I want to withdraw. [LB142]

SENATOR ERDMAN: FA110 is withdrawn. Mr. Clerk, next motion. [LB142]

ASSISTANT CLERK: Mr. President, Senator Friend would offer an amendment to the committee amendment, FA111. (Legislative Journal page 1655.) [LB142]

SENATOR ERDMAN: Senator Friend you're recognized to open on FA111. [LB142]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. This is the amendment and...that I think clarifies some of the discussion in the first part, when Senator Chambers brought it up on FA110, the concerns that he had. This amendment reads, on AM579, on page 1, line 12, we're simply striking the two words "the person," and inserting "he or she." Now, as I mentioned before when we were going through this, I think that sounds better, and I think, actually, legal counsel, Judiciary Committee, thought it did. It's actually his idea; I'm not trying to take credit for it. (Laugh) But I will. No, clearly we knew that something had to be changed, right? And Senator Chambers is probably right there, because of the confusion that that paragraph caused. I think this clears it up. I guess I'd ask you if you folks think that that clears up the confusion, as well. I would ask for the adoption of this amendment, and then we can go on to other language or other concerns. Or, more importantly, what I'd like to go on to is really the nature of the bill. I know that there may be some language concerns, but this bill really accomplishes, or could accomplish, some really significant things. Let me touch on one of those things right now. We have a slew of people in our society who now utilize the Internet as a...more or less, for their predatory practices. And I think some of you in this Legislature, and a lot of other folks outside, have seen, not only law enforcement officials, but prosecutors throughout the state and also from the Attorney General's Office, what some of these individuals are doing. They're very creative, they're quite sick, and they know where to go to try to find kids, young children, on the Internet. I'm

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not trying to force this discussion in a different direction. I'd be happy to go on talking about what would make it more efficient, if that's what we're going to do. But I do not think that we want to lose sight of the reason that this bill is out here. And so I think we can carry on with both pieces of discussion, both the efficiency of the bill and the language in regard to the bill, and also what the bill is meant to do and the type of individuals we're trying to address with this legislation. So I would hope to be able to accomplish both of those things. I would like your input on FA111. Thank you, Mr. President. [LB142]

SENATOR ERDMAN: Thank you, Senator Friend. Members, you've heard the opening on FA111. Those senators wishing to speak are Fulton, Friend, Lathrop, and Chambers. Senator Fulton, you're recognized. [LB142]

SENATOR FULTON: Thank you, Mr. President, members of the body. The...I understand what Senator Chambers' point was, and I think I agree. I think what we're doing here with FA111 is to improve upon the language in such a way as to make clear and remove any potential for ambiguity. I had my light on before, when we were actually debating the floor amendment before, so I wonder if Senator Chambers would yield to a question. [LB142]

SENATOR ERDMAN: Senator Chambers, would you yield to a question? [LB142]

SENATOR CHAMBERS: Yes. [LB142]

SENATOR FULTON: If we were not to adopt "he or she," if we were not to adopt FA111, would that render this particular lines 9 through 12, would that render the bill ununderstandable, or suspect to misinterpretation in the future, or misunderstanding? [LB142]

SENATOR CHAMBERS: Here's what I will say, Senator Fulton, not trying to be evasive, but a person could raise the question, as I did, and say, must this that you're talking about, whatever form it takes, intimidation and so forth, be received by the person on the other end of the line, in other words, the person in possession of the electronic device which receives the communication? If that is the individual, then...I think the more I say, the more confusing it becomes. Let me put it like this. It could be argued that you're talking about two different individuals in this language; that the one you're mentioning in line 9 is different from the one you're mentioning in line 12; in line 12, you're talking about the one contacted by the individual mentioned in line 9, and then when you take it up in line 13, you're mentioning other things that take place in that contact with the person mentioned in line 12. [LB142]

SENATOR FULTON: I think that that could be the case, but even if the argument ensued, if one were to raise a point of contention that he's confused about who the first

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and second persons are, basically, the way I see this, there are two possibilities: either that second person in line 12 mentioned, either that is the one committing the offense; or, B, that is the one who is receiving the offense or who is being offended. If it were the latter, the person who is offended, then the fact that there's a colon following the word "person," which means...the colon means "these things that follow," then in line 13, it would become clear that it couldn't be the latter; therefore, it would have to be the former. And so while there would be confusion--I think this language would eliminate that potential for confusion--I don't know that one could ever conclude that the second person in line 12 is the person who was being offended against. Is that...do you follow my reasoning there? [LB142]

SENATOR CHAMBERS: Senator Fulton, you have been crystal-clear in your reasoning. [LB142]

SENATOR FULTON: Oh. Okay. Well, I still support FA111. I think, hopefully, Senator Chambers does, too. I think what we're doing here, legitimately, I think we're improving upon language and eliminating the potential in the future for any time within the courts to pass with any confusion. So for that, I'm supportive of FA111. Thank you, Mr. President. [LB142]

SENATOR ERDMAN: Thank you, Senator Fulton, Senator Chambers. Senator Lathrop, you're recognized to speak, followed by Senator Chambers. [LB142]

SENATOR LATHROP: Thank you, Mr. President. I rise in support of FA111. While I think we could probably solve this by putting a colon after the word "harass" and not having "the person" in there at all, "he or she" makes it better than "the person." Having said that, I do have some concerns--and perhaps Senator Friend can address these when he has the time, or maybe I'll yield the balance of my time to him and he can address my concerns--and they would be on page 2, line 9 through 12. Paragraph (b) says: The use of indecent, lewd, and obscene language or the making of or a threat of lewd suggestion may be prima facie evidence of intent to terrify, intimidate, threaten, or harass. And I'm wondering what the point of that is. In the criminal law, prima facie evidence may get you past a directed verdict, but I don't know what it does to this bill to improve it or to aid a prosecutor in proving that a violation has occurred. If Senator Friend would yield, I'll... [LB142]

SENATOR ERDMAN: Senator Friend, would you yield... [LB142]

SENATOR LATHROP: ...yield the balance of my time to him to answer that concern. [LB142]

SENATOR ERDMAN: Very well. Senator Friend, you have 3 minutes and 35 seconds. [LB142]

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SENATOR FRIEND: Well, thanks. Thank you, Senator Lathrop and Mr. President, members of the Legislature. You know, Senator Lathrop, I don't know that I'll need three minutes, because I'm not sure that...well, I have two answers for you. One of them you're probably not going to like, the other one you could probably predict. This language, what you...from lines 9 through 12 on page 2, is all out there now, so there are prosecutors using that. And frankly, I don't know...quite frankly, Senator Lathrop, I don't why. I know that when it was handed to me, they felt strongly enough, the AG's Office, felt strongly enough that they didn't want to strike it all. And I think that...I don't know if you had conversations in the Judiciary Committee in Executive Session in regard to that language, but I think that it's being used, Senator; I just don't know why. And I'd yield time back to you, and I hope that that's been responsive. I just don't know, Senator. And I could find out specifically what they're using that for and what the prosecutors are trying to do with it. [LB142]

SENATOR ERDMAN: Senator Lathrop. [LB142]

SENATOR LATHROP: Yeah. Thank you. I appreciate that explanation. In its current form, the statute uses the word "shall" be prima facie evidence; this says "may." And it doesn't really tell us when the court is supposed to use it or not supposed to use it. So if you're going to visit with somebody from the Attorney General's Office in response to this concern you might find out why we've gone from "shall" to "may," and what the point of it is in the first place. [LB142]

SENATOR FRIEND: Well, Senator, if I could quickly respond, I don't think, originally,...I could go find out, but I think you guys changed it in Executive Session, if I'm not...I think the Judiciary Committee changed that, but I'm not positive about that. But we'll find out. We'll sort that out. Thank you, Mr. President. [LB142]

SENATOR ERDMAN: Thank you, Senator Lathrop and Senator Friend. Senator Chambers, you're recognized to speak, followed by Senator Pirsch. [LB142]

SENATOR CHAMBERS: Mr. President, members of the Legislature. Senator Lathrop, you mess with me. You stole one of my main thunderbolts with that discussion. We're talking about a criminal statute here. As Senator Lathrop pointed out, the law right now says "shall." Judges have a standard established in statute as to when prima facie evidence is going to exist, for whatever purpose, and I'm not going into that right now. When you say "may," judge A can say, yes, it is; judge B says, no, it isn't. And we create an ambiguity or vagueness right here. But one thing even the Attorney General knows, and I think Senator Pirsch, for all his sympathy with prosecutors, will acknowledge, every element of an offense in a crime must be proved beyond a reasonable doubt by probative, admissible evidence. Let me ask Senator Pirsch a question or two, because he may disagree with this, having a different theory and

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standard. If... [LB142]

SENATOR ERDMAN: Senator Pirsch. [LB142]

SENATOR PIRSCH: Thank you. [LB142]

SENATOR CHAMBERS: Senator Pirsch, I'm not going to use all of those words, because I've said them, but is it necessary that every element of a criminal offense be proved beyond a reasonable doubt? [LB142]

SENATOR PIRSCH: Yes. [LB142]

SENATOR CHAMBERS: A defendant or accused need not say a word in his or her behalf, is that true? [LB142]

SENATOR PIRSCH: That, you're saying, and still be held to be not guilty, need not testify on his or her behalf. That's... [LB142]

SENATOR CHAMBERS: Right. You don't have to say anything; the state, without any assistance from the accused, must... [LB142]

SENATOR PIRSCH: Absolutely. The...you don't have to present any evidence, and you can still be found not guilty. [LB142]

SENATOR CHAMBERS: And the prosecutor can be found guilty of misconduct, or there can be a mistrial, if reference is made to the fact that the person did not testify and, therefore, there is a suggestion of guilt by the refusal to testify or by invocation of a constitutional right. Do you agree with that? [LB142]

SENATOR PIRSCH: That is a very true statement, that it would...that that...a judge would not let that trial continue. [LB142]

SENATOR CHAMBERS: Now, is prima facie evidence proof? [LB142]

SENATOR PIRSCH: Is it proof? [LB142]

SENATOR CHAMBERS: Yes. [LB142]

SENATOR PIRSCH: There's a... [LB142]

SENATOR CHAMBERS: When we're proving one of the elements. [LB142]

SENATOR PIRSCH: Uh-huh. Prima facie...you're right, there's a certain...to prove the

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element...you have to prove the elements of each particular crime, and so there is a...to do that, you have to meet that element. And I think what the statute is getting at is that to prove...it later says, evidence that's required to convict, that intent to terrify, intimidate, threaten or harass. I think what it's getting at is, when this occurs, it is hardly ever...I'm not aware of any case where the person calls up and uses those words: I'm calling to terrify you, I'm calling to intimidate,... [LB142]

SENATOR CHAMBERS: No, no, that's not what I'm getting to. [LB142]

SENATOR PIRSCH: Yeah. Yeah. [LB142]

SENATOR CHAMBERS: Prima facie evidence is not positive proof of the offense. [LB142]

SENATOR PIRSCH: Oh. Yeah. Yeah. [LB142]

SENATOR CHAMBERS: Otherwise, it would be evidence of the crime. [LB142]

SENATOR PIRSCH: It's rebuttable. Yeah, it does. That's correct. [LB142]

SENATOR CHAMBERS: So whether you have this language or not, the burden of the prosecutor remains the same, as far as proving guilt. [LB142]

SENATOR PIRSCH: The...that is correct. The overall burden to sustain a conviction remains upon the prosecutor beyond a reasonable doubt. [LB142]

SENATOR CHAMBERS: Now, let's go to the change that is being proposed in this amendment from "shall" to "may." [LB142]

SENATOR PIRSCH: Okay. [LB142]

SENATOR CHAMBERS: If you say, it "shall" be, that standard applies across the board to every judge in one of these prosecutions. And we both know that a judge might feel a different way about something, but at least the standard is set. [LB142]

SENATOR ERDMAN: One minute. [LB142]

SENATOR CHAMBERS: If you switch that from "shall" to "may," you no longer have a genuine standard, do you? It's as any judge feels like calling it. [LB142]

SENATOR PIRSCH: They may. Yes, that's correct. It's not then required to be prima facie evidence then. [LB142]

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SENATOR CHAMBERS: And if we're dealing with a criminal statute, it either should or should not be. Would you agree with that? [LB142]

SENATOR PIRSCH: Well, I think there's a lot of things that a judge can consider as far as probative evidence. I don't know that by putting it "may"...taking it from "may" to "shall," if "may"...if that passage then--and I'd have to consider that more fully--but if it lends any value then in its existence, the...if the judge...it may not... [LB142]

SENATOR ERDMAN: Time. [LB142]

SENATOR PIRSCH: ...change anything... [LB142]

SENATOR ERDMAN: Senator Pirsch, your light is next. You may continue. And if you would like, we can have Senator Chambers yield. [LB142]

SENATOR PIRSCH: Very good. Thank you very much, Mr. President, members of the body. And just to follow up my...it may not change the...well, I think what it's essentially in there to do is to give direction to the judge to look at use of...that the use of indecent, lewd, or obscene language, I think, is a...could be an indicator of intent to terrify, intimidate, threaten, or harass. So I think it's just there to hint that those type of factors would suggest...may suggest that there's sufficient evidence to prove intent. And I'll yield... [LB142]

SENATOR ERDMAN: Senator Chambers. [LB142]

SENATOR CHAMBERS: Mr. President, thank you. I forgot it's Senator Pirsch's time. Senator Pirsch, if we have probative evidence and it's admissible, then you're moving toward proving the elements. Prima facie evidence is not proof. You have to prove every element beyond a reasonable doubt, and you must use admissible evidence. That is different from this prima facie evidence that is mentioned here. But if you're going to allow that to be utilized by the court in that way, it should be a standard, and the word should be "shall." Otherwise, it's like dealing with anything that we're talking about involved in a prosecution. You could say, the prosecution "shall" reveal to the accused any exculpatory evidence. That's required. If you change that "shall" to "may," then that means the prosecutor can if he or she wants to, or doesn't have to. But it's set, and it's required. If you're setting a standard for the judge to employ, then that standard should be applied to every judge in every criminal prosecution dealing with this issue, not leave it where the judge may or the judge may not. It then is not a standard; it's left to the whim of the judge. Judge doesn't have to consider it anything if he chooses, he or she chooses, based on the word "may." Isn't that true? [LB142]

SENATOR PIRSCH: Well, I think the word "may," right, infers "not required to," and so the judge...a certain judge may or a certain judge may not, depending upon the facts of

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the particular case. I think that's true to say. [LB142]

SENATOR CHAMBERS: And if a prosecutor...if somebody made a motion to dismiss and the prosecutor said, but judge, we presented prima facie evidence; therefore, you cannot dismiss this on that motion, because we have put something before you that shows the case ought to go forward. And the judge says, well, I don't consider prima facie evidence in my courtroom. And the judge can say that, with "may," can't he or she? [LB142]

SENATOR PIRSCH: He could. And I guess that's what I'm wondering. Is that what your preference, or you think more...it leads to a better bill, is to install the original language, then, of "shall"? [LB142]

SENATOR CHAMBERS: I think if you're going to have prima facie evidence at all, then it should be "shall" so that it's a standard that is going to be applied and everybody knows what the rules of this game are. But since we're dealing with a criminal matter, I think it has to be "shall." I don't think you can leave something like this to the discretion of the judge, any more than a judge can say, well, I don't want to give the jury any instructions, so I'm not going to give any jury instructions. And if no instructions are given and I'm the accused, I can get whatever they come back with thrown out, because they were given no guidance... [LB142]

SENATOR ERDMAN: One minute. [LB142]

SENATOR CHAMBERS: ...whatsoever by the judge, which the judge is required to give. So judges are required to give jury instructions, and they'd be based on the facts. Naturally, if I asked for an instruction, I don't necessarily get the one that I want. But the judge is going to have to give some kind of jury instructions. Here, you've got no standard at all. So if you're going to make it "may," then I think you ought to strike all of lines 9 through 12, because they mean nothing if the word is "may." [LB142]

SENATOR PIRSCH: I think your point is well made. This is the original language. And staying true to that which I've been saying here earlier today, that is my preference, is to stay to the tried-and-true path. I...you know, I can't speak on behalf of the committee, but only in my behalf. And insofar as this...you're right, the word "shall" has been used historically without problems to establish that prima facie case. I personally wouldn't have... [LB142]

SENATOR ERDMAN: Time. [LB142]

SENATOR PIRSCH: ...any problem. Thank you, Mr. President. [LB142]

SENATOR ERDMAN: Thank you, Senator Pirsch and Senator Chambers. Senator

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Friend, you're recognized to speak, followed by Senator Chambers. [LB142]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. A couple quick things: I don't want to get the cart...you know, right now, the cart...right now, the horse, actually, is FA111, and we've got the cart, like, running out ahead of it. I mean, we...(laugh) you know, I don't think that Senator Chambers is necessarily wrong here. And I don't have a problem...I really don't have an inherent problem with going back to "shall." So let's try to nip this, you know, thing right now. The original language says "shall." It's my understanding that the Judiciary Committee did...you know, changed it. And that's okay, but if we all, you know, look at this and say that there's some functional issues or problems with that, you know, what Senator Pirsch is saying, the tried-and-true language has got to be the stuff before the Judiciary Committee changed it. So I don't have a problem with that. But again, that's the cart before the horse. FA111, I believe, should be adopted. I wouldn't have any problem at all, I guess, when we get to it, in changing that language to "shall." So look, I'm not trying to bend over backwards for Senator Chambers. Matter of fact, I'm trying to look for a reason, you know, to whack him on the back of the head and make him turn around and get mad at me. I can't do that. I don't know that what he's saying is a bad idea. Actually, Senator Lathrop brought it up. I don't think we're going down the wrong path here. I don't have a problem going back with the original language. So if somebody has that amendment, or if they'd like me to offer it, please let me know. I think it would make a decent change and a change that is not going to affect this bill in the long run adversely. So thank you, Mr. President. [LB142]

SENATOR ERDMAN: Thank you, Senator Friend. Senator Chambers, you're recognized to speak. [LB142]

SENATOR CHAMBERS: Mr. President, members of the Legislature, I'm going to get back to the amendment that is before us, so we won't lose track of that. And this is Senator Friend's amendment to put the words "he or she" in place of the two words "the person" in line 12 on page 1. It will do away with the need for any discussion or debate. And I can see the side that is being presented by the others who don't agree with me. But I am looking at this bill line by line, page by page, issue by issue. Remember this--we are creating new crimes, and we're enhance...or, we're toughening the penalties for existing crimes. And in one instance, we're calling one crime by a different name and putting a heavier penalty on it. As we move forward, there is surplusage that I think can be removed from this bill. Part of the problem could be that some of it was lifted from the language of a statute in another state, and other state legislatures are very careless about the language they employ. I think it's all right to look at what has been done in other states, and I don't see anything wrong with borrowing language when it is clear and not bunglesome. But when the language is a heaping up of words that don't really mean anything or add to what you're trying to do or bring you closer to where you want to be, then it's a waste. We're drawing up statutes. I think every statute,

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as that person in Shakespeare was described, Senator White, it...statutes should have a lean and hungry look. Why put a lot of words that we don't need? The fewer words we use to actually say what we have in mind, the better it is for everybody. The first purpose of a criminal statute is to make conduct of a described or designated type against the law so that the state can impose a sanction or a punishment if you engage in that conduct. So the first thing you're going to do is criminalize conduct. It used to be okay; it's not anymore. The next thing you have to do is give notice to the people who will be affected by that statute what it is they're no longer allowed to do and make it clear what remains allowable. So if you have a statute and it's written in such a way that people of ordinary intelligence can read it and come up with a different conclusion as to what it means, it is either ambiguous, meaning it can have two...either of two meanings; or it can be too vague, you can't determine what the meaning is--not one of two, but what the meaning is at all. If it's overly broad, it's going to go beyond what a criminal statute is allowed to do. And some of these terms might seem like they overlap, and perhaps they do in some instances. But the idea in all of this is that the statute must be clear. [LB142]

SENATOR ERDMAN: One minute. [LB142]

SENATOR CHAMBERS: And if it's a criminal statute and it is unclear, the Supreme Court in Nebraska and other states have said that any ambiguity, if it doesn't reach the point of requiring the statute to be struck down, will be resolved in behalf...or on behalf of the accused. And that is the interpretation the court will place on that statute, rescuing it from unconstitutionality. And whenever it is to be applied, it will be applied based on the way the court has construed it, and not on the basis of the words, which may be somewhat misleading but not so misleading as to require it to be struck down. What Senator Friend's amendment will do is take away any ambiguity or confusion, and I support his amendment. Thank you, Mr. President. [LB142]

SENATOR ERDMAN: Thank you, Senator Chambers. Senator Pirsch, you're recognized to speak. [LB142]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. With respect to this specific floor amendment, FA111 to AM579 that was filed by Senator Friend in response to Senator Chambers' concerns, I would...you know, I guess my feelings on that is, you know, if we were writing the statute originally for the first time, perhaps, in this day and age, it would be preferable, for clarity's sake, to use the words that Senator Chambers has suggested, "he or she." I guess my...in light of the fact that the statute has been used and interpreted for quite a while, I generally like staying to the tried-and-true path. In this instance, however, I don't think it would--I will yield to Senator Chambers--I don't think that it detracts from the clarity or meaning of the bill. And I would yield the balance of my time to Senator Chambers, should he desire to use it. [LB142]

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SENATOR AGUILAR PRESIDING [LB142]

SENATOR AGUILAR: Senator Chambers, you have 3 minutes and 50 seconds. [LB142]

SENATOR CHAMBERS: Thank you, Mr. President, and I will be very brief. In anticipation of something I believe that Senator...a senator will offer--not just "any" senator, but "the" senator,...and you all don't know who I'm talking about, do you? I said "a" senator, "the" senator, not just "any" senator. So by saying "not just any senator," it could actually still be "any senator." But you'll have all that made plain to you in time. Remember when Senator Lathrop began to speak I said he took from me one of my biggest thunderbolts? Well, I think that he is on a similar page, and we will deal with something that is perhaps more substantive from what I was dealing with. But it is something very important, it needs to be discussed, and I hope people will pay attention. But the amendment, again, that Senator Friend is offering does clarify, and I think it would be good to adopt it, and that's why I'm going to support it. I would even suggest that the person in the Chair support it, that Senator Stuthman support it, Senator Synowiecki, Senator Carlson, Senator Dubas, Senator Nelson, Senator Lavon Heidemann, Senator Adams, Senator Preister. And by doing that, I let people know just about who's here and who's not. And we know that Senator Pirsch is going to support it, and Senator Vickie McDonald. And I notice...I thought I saw...oh yeah, I see Senator Lowen Kruse coming in. This is an amendment you don't have to worry about at all. But do pay attention to what's coming later. Thank you, Mr. President. [LB142]

SENATOR AGUILAR: Thank you, Senator Chambers and Senator Pirsch. Senator Friend, there are no other lights on. You're recognized to close on FA111. [LB142]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. Look, I mean, I think people get a little bit either disengaged or often wound up. We're late in the session, and everybody is saying, well, why do you take so much time on a bill like this, and why do you have to go through it with a fine-tooth comb? Ernie is not picking on Mike, okay? I mean, if he wanted to pick on me, he'd tell me beforehand, and he'd say, it's going to require 33 votes, or whatever, and then set the tone that way. We've mentioned already that this is criminal code. And Senator Lathrop is right to get involved. Senator Pirsch is heavily involved. Senator Chambers is involved. And quite frankly, I need that involvement, because when we change...as I mentioned from the very outset, when we change criminal code, the last thing we want is to misstep. It happens. But the last thing we want is to misstep. This is only a three-and-a-half-page bill. And I...and the thing is, I don't think it's a situation that this thing came out of Judiciary and it wasn't ready for prime time. You know, I'm not going to be culpable for that, and I don't think the Judiciary Committee should be culpable for it either. This is about as ready as criminal code is going to get without borderline professors, like

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Senator Chambers, to analyze it for you on a consistent basis. So I guess that's what's happening now, and I can deal with that. I guess the problem is, you're all in that with me. I would ask you, because I think this is part of the process and I think it's part of making criminal code more efficient, to vote for the adoption of FA111 and quite possibly move forward to trying to create, hopefully, a significantly effective bill. Thank you, Mr. President. [LB142]

SENATOR AGUILAR: Thank you, Senator Friend. You've all heard the closing on FA111. All those in favor vote aye; those opposed, vote nay. Have you all voted that care to? Record, Mr. Clerk. [LB142]

ASSISTANT CLERK: 27 ayes, 0 nays on the adoption of the amendment, Mr. President. [LB142]

SENATOR AGUILAR: The amendment is adopted. Messages, Mr. Clerk? [LB142]

ASSISTANT CLERK: Mr. President, Senator Lathrop would offer FA112. (Legislative Journal page 1655.) [LB142]

SENATOR AGUILAR: Senator Lathrop, you're recognized to open on your amendment, FA112. [LB142]

SENATOR LATHROP: Thank you, Mr. President, colleagues. This floor amendment, very simply, strikes lines 9 through 12 on page 2. That's paragraph (b) in Section 2. That would be...yes, Section 2, paragraph (b). And let me explain this. In...first of all, I think it's a good bill, and I apologize to Senator Friend, as a member of the Judiciary Committee, for not having caught this when it was before the committee. But let me explain what this does, and to do that, let me explain the type of crime and the elements of that crime that Senator Friend's bill would create. We are talking about a crime that requires two elements. The first element is, you have to do something with intent. That means that you have to intend to terrify, intimidate, threaten, or harass. If you send lewd material to somebody without the intent to terrify, intimidate, threaten, or harass, you haven't committed a crime under this bill. The first element is the intent. The second element is the actual material that is sent. So element one, with the intent to harass, you send, element two, lewd or indecent, obscene material. Paragraph (b), what paragraph (b) does is it essentially says to the prosecutor, all you have to do is show the indecent, lewd, or obscene material, and we'll presume or infer from that that there was an intent to terrify, intimidate, threaten, or harass. And I think that we've essentially, in paragraph (b), taken away one of the elements of this offense, and perhaps, presumably, without intending to. Striking lines 9 through 12 will restore the element of intent and not allow it to be inferred simply by the materials sent. I think it's important in the criminal law that we define what the crime is and that we not create a shortcut which essentially allows the prosecutor to prove this offense by simply showing the transmission of lewd material

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without ever showing the intent, which is what paragraph (b) would allow them to do. I think that Senator Friend agrees with this amendment. I'll let him speak for himself. But I think it will make it a better bill, and it will leave to the prosecutor, correctly, the burden of proving intent to terrify, intimidate, threaten, or harass, and not let them do it simply by offering evidence of indecent, lewd, or obscene language used in a transmission. And with that, I would urge your adoption of FA112. Thank you. [LB142]

SENATOR AGUILAR: Thank you, Senator Lathrop. You've heard the opening on FA112. Those wishing to speak are Senator Friend, and Senator Chambers. Senator Friend, you are recognized. [LB142]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. And thank you, Senator Lathrop, for the amendment. I take no offense. I mean, you certainly don't have to apologize for going in, as I mentioned earlier, to the criminal code and doing what you think is right and is going to create efficiencies. Let me comment, I don't have a problem at all with this amendment. I know why...I think I know why this language is here. And let's assume for a second that we're not dealing with a redundancy. I think we are, but let's say that we aren't. It's been...I've been told and it's my understanding that that language in there--and I think that the reason that it exists--with "shall" as the operating, you know, language, instead of "may be," the use of indecent, lewd, or obscene language or making of a threat or lewd suggestion "shall" be prima facie evidence of intent to terrify, intimidate, threaten, or harass, gives the judge direction to know that there's...or gives them the idea to know that there's sufficient evidence to prove that intent. What Senator Lathrop is saying, and the explanation he gave me, that's already done with new language and...or, not new...not all new language, but with language that's being enhanced earlier in the bill on page 1 at the bottom of the page, subsection (b): Contacts another using an electronic communication device and uses or transmits any indecent, lewd, lascivious, or obscene language, etcetera, etcetera. And I would agree with him. (Laugh) And I'm probably not quite sharp enough to disagree even if I wanted to vehemently disagree. No, I...all kidding aside, the bottom line is, if the folks that are bringing this to our attention, Senator...in this particular instance, Senator Lathrop and Senator Chambers, are sincere about making this particular section of law better law, then I'm with them. And I think that this does. So I would say, adopt FA112. And I'd be happy to, you know, try to answer any questions. I think that it does eliminate...going back to the point that I brought up earlier, I think it does eliminate some redundancy, by the way, so I don't think that's irrelevant. I agree with FA112. Thank you, Mr. President. [LB142]

SENATOR AGUILAR: Thank you, Senator Friend. Senator Chambers, you are next and recognized. [LB142]

SENATOR CHAMBERS: Mr. President, members of the Legislature, just to express my agreement with Senator Lathrop's amendment, his explanation of it. And I'm not

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resentful, too much, that he stole from me one of my biggest thunderbolts, but I don't think I could have thrown it with more accuracy and effect than he has done. So I learn. Thank you, Mr. President. [LB142]

SENATOR AGUILAR: Thank you, Senator Chambers. Senator Pirsch, you are next, and you are recognized. [LB142]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I guess in looking at that particular...the lines 9 through 12, those that are in question here, I think that the purpose of this is...as amended by the committee, is to give direction to the judge as to the types of evidence that might be used to establish that intent. However, in light of the Kipf case, I don't think I would have any objection to supporting this amendment. I think that, you know, maybe by way of explanation, a senator asked me exactly what the legal terminology of prima facie is, a Latin term--on its first appearance. The burden is on the prosecutor to prove a case. He has to prove all the elements of the case. And so really, this, by using evidence of indecent, lewd, or obscene language, the state would be presenting then, by this, prima facie evidence or the necessary elements so that the judge would not stop the case after the prosecutor was done with his case and say that the necessary elements were not present, so that the case would then switch to the defendant, who could present...it's a rebuttable presumption, is what it amounts to, a prima facie case is. And it doesn't necessarily mean that when you present that, that the case is proved. It just means that a rebuttable presumption is made that would allow the case to proceed. And so being that that's the case, I don't have any objection to this floor amendment in the context it's presented. Thank you. [LB142]

SENATOR AGUILAR: Thank you, Senator Pirsch. Senator Nelson, you're next and recognized. [LB142]

SENATOR NELSON: Thank you, Mr. President, members of the body. Let me preface this by saying that I don't practice criminal law. I've never been a prosecutor. But since Senator Pirsch has been, will he entertain some questions about this? [LB142]

SENATOR AGUILAR: Senator Pirsch, would you yield to some questions? [LB142]

SENATOR PIRSCH: Yes, I will. I'll answer as best I can. [LB142]

SENATOR NELSON: I understand what you're saying about prima facie evidence here, but I pose the following question: How do you prove intent in cases of this nature? [LB142]

SENATOR PIRSCH: Generally, contextually. Intent can be inferred. Again, getting back to some...the conversation that I had with Senator Carlson, it would...a totality of the circumstances. The factual background could be presented, the history, my history with

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this particular individual. Was there bad blood between us? You know, sometimes the same sentence made between enemies can...does not carry the same relevance as it does made jokingly between friends. But it's the context of the relationship. And so it is the totality of all the factors and...that would be presented to, ultimately, the trier of fact, either the jury or the judge, who would then, based upon hearing that evidence, decide the intent of the...that person charged with a crime. [LB142]

SENATOR NELSON: Thank you. Now, the Judiciary Committee changed the word...struck "shall" and substituted "may" in place thereof. I guess my question is this. Wouldn't, with that...use of that change there, wouldn't this be...wouldn't these lines or, rather, this section, section (b), wouldn't it be of some assistance to the prosecutor in helping them establish their case? [LB142]

SENATOR PIRSCH: Under the...using the new word "may," is that correct? [LB142]

SENATOR NELSON: Yes. [LB142]

SENATOR PIRSCH: Well, I think it would be...it might be helpful in giving direction to a judge that...what types of evidence help...might help go to improve that intent. It might be suggestive to the judge and, in that sense, helpful, so that you have perhaps more correct opinions. Again, there is an incredible amount of a body of law, and so oftentimes, though the law is established in case law or whatnot, oftentimes, having something more explicitly or expressly put in statute makes it easier for a judge to see what we as the Legislature intended or didn't intend, as the case may be. [LB142]

SENATOR NELSON: Well, thank you. In your opinion, then, as a professional, as a prosecutor, you can establish a case and build your case without the use of this section? [LB142]

SENATOR PIRSCH: If you're asking me what I would prefer, I would probably prefer to leave it in as instructional and helpful to give direction. If I...if you're asking me if it's absolutely necessary, I don't think that it is absolutely necessary to sustain convictions under this statute. [LB142]

SENATOR NELSON: Thank you, Senator Pirsch. In light of the fact, I think, that we ought to give prosecutors all the help that we possibly can, I'd like to direct a question to Senator Lathrop. [LB142]

SENATOR AGUILAR: Senator Lathrop, would you yield? [LB142]

SENATOR LATHROP: Yes, I would. [LB142]

SENATOR NELSON: Is there some over...abiding reason that you think this should be

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deleted? Is it going to complicate the case or cause... [LB142]

SENATOR AGUILAR: One minute. [LB142]

SENATOR NELSON: ...the prosecution's case to be thrown out? [LB142]

SENATOR LATHROP: No, I don't think this is...I think this is a good amendment, and I'll tell you why, and it will answer your question. First of all, you can establish the intent by showing that, for example, that somebody...maybe they're an ex-boyfriend/ex-girlfriend relationship. Somebody who has repeatedly sent these things after being asked not to, that would show the intent to harass. What this does...if that's left in there, let me explain what can happen and why I think it's a concern. If you know somebody that's ever sent a dirty joke or a lewd picture to...from one person to the next over the Internet, they...without the intent to harass, this just allowed them to, by showing the lewd material being transmitted, it allows for the inference that they intended to do it to harass. [LB142]

SENATOR AGUILAR: Time. [LB142]

SENATOR LATHROP: It could be between two friends. [LB142]

SENATOR AGUILAR: Thank you, Senator Nelson, Senator Lathrop. Senator Fulton, you are next and you are recognized. [LB142]

SENATOR FULTON: Thank you, Mr. President. Would Senator Lathrop yield to a question? [LB142]

SENATOR AGUILAR: Senator Lathrop, would you yield? [LB142]

SENATOR LATHROP: Yes. [LB142]

SENATOR FULTON: I'm going to have maybe a follow-up question, so I'm going to keep control of the time, but I'd like to have you continue you thought, if you would, please, the exchange between friends. [LB142]

SENATOR LATHROP: Well, what the section is that this amendment intends to take out, basically, it's the section that would allow you as a prosecutor to simply prove the transmission of something lewd, and this would create the inference that you send it with the intention to harass. So if you are just two friends sending it to one another--and a lot of that goes on without the intent to harass--then this allows for an inference that you did it with the intention to harass, threaten, or intimidate. And so taking that out, it doesn't change the elements of the case, it doesn't change one thing. It just leaves the prosecutor the burden to prove, one, that you sent lewd material; and two, you did it

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with the intention or the intent to harass or terrify. [LB142]

SENATOR FULTON: Okay. The fact that the word "shall" is stricken and changed to "may" in the committee amendment, does that assuage any of your concern? Or do you still hold that even with this language it's unnecessary? [LB142]

SENATOR LATHROP: No. You know, this is a...I'm trying to look to see if this is a felony or a misdemeanor. But we have different judges all over the state. I mean, we have 14 county court judges up in Omaha. One of them may look at that and say, yes, and the other one may say, no. So having "may" in there really isn't instructive, and it doesn't set aside my concerns. [LB142]

SENATOR FULTON: Here I may betray some ignorance with terminology, legal terminology. But if the term "prima facie" were removed, would that assuage any concern? Or would that actually...does the removal of that term present a technical irregularity such that this becomes an egregious bill...or an egregious line within the bill? [LB142]

SENATOR LATHROP: This is...it doesn't help it at all. What's happened is, you have two elements to prove this crime, and what this paragraph says is, as soon as you prove the first element, you're going to get to the jury and you'll go the fact finder on whether the crime has been committed, because we're going to infer the second element just by virtue of the fact that you've proven the first. Does that make sense? [LB142]

SENATOR FULTON: Yeah, I think so. So this does exist as a means to, I guess, help prosecutors, but it's probably...if there is an act that's committed in violation of this law, were it to become law, your contention is that it would be provable because of Section 3 and what follows, and that the establishment of intent to terrify, because, on its face, of an indecent, lewd, or obscene language, is unnecessarily provided? [LB142]

SENATOR LATHROP: That information is unnecessary, yes. [LB142]

SENATOR FULTON: Okay. All right. [LB142]

SENATOR LATHROP: Did I answer your question? [LB142]

SENATOR FULTON: I think so. [LB142]

SENATOR LATHROP: Okay. [LB142]

SENATOR FULTON: Yeah. Thank you, Mr. President. [LB142]

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SENATOR AGUILAR: Thank you, Senator Fulton, Senator Lathrop. Senator Lathrop, there are no lights on. You're recognized to close. [LB142]

SENATOR LATHROP: Thank you, Mr. President, colleagues. Just briefly, the purpose of this amendment is to strike paragraph (b). Paragraph (b) essentially obviates the need to prove one of the elements of this crime. Both elements need to be proven by the prosecutor beyond a reasonable doubt. Proving the intent to terrify, intimidate, threaten, or harass is not going to be difficult if these are unwelcomed. The recipient, in most of the instances, is going to have told the sender, don't send me this stuff anymore, and you have proven the necessary intent. So we are not handcuffing the prosecutors and simply requiring that they prove their case and both elements beyond a reasonable doubt. So I'd urge your adoption of FA112. [LB142]

SENATOR AGUILAR: Thank you, Senator Lathrop. You've heard the closing on FA112. All those in favor vote aye; those opposed vote nay. Have you all voted that care to? Record, Mr. Clerk. [LB142]

ASSISTANT CLERK: 29 ayes, 0 nays on the adoption of Senator Lathrop's amendment. [LB142]

SENATOR AGUILAR: The amendment is adopted. Next item, Mr. Clerk. [LB142]

ASSISTANT CLERK: Mr. President, Senator Chambers would move to amend the committee amendments. (FA113, Legislative Journal page 1655.) [LB142]

SENATOR AGUILAR: Senator Chambers, you are recognized to open on your amendment. [LB142]

SENATOR CHAMBER: What number is this one, Mr. President...I meant, Mr. Clerk? It would be FA what? [LB142]

ASSISTANT CLERK: Senator, we're in the process of putting it in. I don't know the number yet. [LB142]

SENATOR CHAMBERS: Oh, all right. If it's the one that is up there, I will tell you all what it's going to do. If you look at page 1 on the committee amendment, in lines 13 through 17, you will have a collection of words which to me contain an internal contradiction. Looking at the way this language would read, as proposed to be amended by the committee amendment, it says the following--we're talking about the person who is the perpetrator. The perpetrator...then we pick it up, contacts another using an electronic communication device, whether or not any communication ensues, and disturbs the peace, quiet, and right of privacy of any person at the place where the communications are received. You cannot have a communication where no

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communication ensues. You further complicate it by saying that this happens at the place where the communications are received. But if no communications ensue, no communications can be received. So I am rewriting that. The main thing I'm trying to do is get rid of this phraseology that says whether or not any communication ensues. I don't see the need for that and maybe I can be shown, but I'm simply getting rid of that original group of lines, 13 through 17, and any amendments to them, because it would be too difficult to try to write an amendment that would not be confusing, by striking some of the new language, striking original language, reinstating and so forth. So here is what would be put in place of lines 13 and 17, as you see them. This perpetrator contacts another person utilizing an electronic communication device and disturbs the peace, quiet, and right of privacy of any person at the place where the communications are received. I don't see any purpose in keeping the language "whether or not any communication ensues." This bill is broadening the means by which a person is contacted. The original law deals with communication or conversations on the telephone. The only thing that's going to be transmitted over the telephone is a sound. When you speak into this mouthpiece, your voice is converted into electronic impulses, and when they get across that line and come to the receiver, they are reconfigured, those impulses, or reconstructed as words and you hear the words or the sound that was made by the sender. If no communication ensues, I don't even see how you can have a contact. Let's say, for the sake of an argument, to at least get to the point of what they're trying to tell us, you have a telephone and I have a telephone. And I dial your number and your phone rings. If the mere ringing of your phone constitutes contact, that cannot also be communication. Something must be transmitted. But this says you contact the person, and let's say that means the ringing of the phone, and then nothing is transmitted. That constitutes, under this new language, a communication. But if no communication ensues, as this language also says, how can you get to the end of this statement and refer to the place where communications are received? If no communication ensues, how can communications be received? So I want to get rid of that language which says "whether or not any communication ensues." And I want to simply say that the perpetrator contacts another person, utilizing an electronic communication device, and disturbs the peace, quiet, and right of privacy of any person at the place where the communications are received. Now if they want to say that merely contacting the person constitutes communication, you cannot follow that by saying whether or not any communication ensues because the contact itself constitutes the communication. They are trying to incorporate language in the existing law that relates to a telephone contact and conversation, and apply it to what they're calling this cyberspace communication, and I think it creates a contradiction. And I'm willing to listen to what Senator Friend might tell me to show why what I'm suggesting ought not to be done, and at the same time, explain how communications can be received, if no communication ensues. But to get back to my analogy, because we have stopped action on television, and in my analogy I'm the quarterback, Senator Carlson is my wide receiver. He has been placed in stop action. He ran a crisp pattern and he's open, and I was prepared to throw when they stopped the action. So now I'll restart it. I throw the

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ball, and that constitutes a pass. Throwing the ball constitutes a pass. But it is not completed unless he catches it. If it hits him and bounces off, it's not completed. It's still a pass. If he bobbles it and drops it, it's not a pass. If he hits it up in the air and somebody intercepts it, it's not a completed pass. That's an interception. If he is on the sideline and he catches the ball with his hands but he comes down with only one foot in bounds and one foot out of bounds--we're in the NFL--that is not a completed pass. The only way we can have a completed pass is if I throw the ball to him, and he catches the ball on the playing field. Then it's a completed pass. In this language they apparently are saying communication occurs, even if no communication occurs. How can you say that the contact is made with this electronic communication device, whether or not any communication ensues, and then you go on to say that it happens at the place where the communications are received. If they didn't ensue, how can they be received anywhere? So I'm saying get rid of that language which says "whether or not any communication ensues." [LB142]

SENATOR AGUILAR: One minute. [LB142]

SENATOR CHAMBERS: We should be requiring, since we're creating crimes, that something in the way of a message is transmitted. We're going to say it can be spoken, it can be visual images. Then they got a lot of other stuff in here that I'm going to get Senator Friend to explain for us. But there should have to be the transmission of a message of some kind before this crime is committed. I've offered the amendment, it might be on your gadget by now. You can read it and then tell me if you have questions about it, and I will explain again. That failing, I am through with this point. Thank you, Mr. President. [LB142]

SENATOR AGUILAR: Thank you, Senator Chambers. That was the opening on FA113. Items, Mr. Clerk? [LB142]

ASSISTANT CLERK: Thank you, Mr. President. New A bill. (Read LB554A by title for the first time.) Amendments to be printed to LB247 from Senator Johnson. Your Committee on Enrollment and Review reports LB342, LB342A, LB456, LB482, LB482A, LB542, LB603, and LB603A, all as correctly engrossed. (Legislative Journal pages 1656-1661.) [LB142 LB247 LB342 LB342A LB456 LB482 LB482A LB542 LB554A LB603 LB603A]

SENATOR AGUILAR: Thank you, Mr. Clerk. Those wishing to speak on FA113 are Senators Friend, Nelson, and Mines. Senator Friend, you are recognized. [LB142]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. I don't think that I have any problem with this amendment and I'll tell you why. Let's go back...let's again go back to the law as it exists now. LB142 hasn't passed, LB142 hasn't been signed by the Governor or anybody else. Here's the way this reads: A

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person commits the offense of intimidation by telephone call if, with the intent to terrify, intimidate, threaten, or harass, annoy, or offend, the person telephones another anonymously, whether or not conversation ensues, and disturbs the peace, quiet, and right of privacy of any person at the place where the calls are received. So we're talking about that telephone. Now the reason the language is the way it is here is because a lot of this was probably created pre-caller ID, and you're trying to deal with hang-ups--the harassing boyfriend, the harassing whatever, ex-husband. I mean, I don't know...I can't give you, you know, great detail about what type of situations would cause a prosecutor to look to language like this. But the reason that I don't think that this language is a problem is this--this is the reason: reading Senator Chambers' language, a person commits the offense of intimidation by electronic communication device if, with the intent to terrify, intimidate, threaten, etcetera, etcetera, he or she contacts another person utilizing an electronic communication device and disturbs the peace, quiet, and right of privacy of any person at the place where the communications are received. You...I was talking to Senator Lathrop about this, but I still don't think that that precludes you from going after the person who grabs a telephone, says (inaudible), hangs up, and does it 40 times. The person making that call is still making contact. The person on the other end has to answer, right? The contact is made, whether there's any communication or not. Then the disturbing of the peace and the quiet and everything else occurred, and the communication is received. The person picked the phone up, the other person on the other end hung up. The phone call was still received. I don't see any problem with this amendment--none. Now (laugh) there are, you know, other entities involved in this. I understand that. But I don't see any problem with it. I think it makes it clear. I know there are others that want to talk about this, but unless somebody can convince me that Senator Chambers' amendment still will not allow prosecutors and people who are out there doing their job with the old amendment...if this is going to change their situation and put them at a disadvantage, somebody can show me that, please do. But I'm not reading it that way. I don't think that this is going to be a problem. So with that, let me make it clear: I think FA...right now--and we can have this discussion--right now, I think FA113 is fine. [LB142]

SENATOR AGUILAR: One minute. [LB142]

SENATOR FRIEND: With that, I think I will just listen to the rest of the discussion, Mr. President. [LB142]

SENATOR AGUILAR: Thank you, Senator Friend. Senator Nelson, you are next and recognized. [LB142]

SENATOR NELSON: Thank you, Mr. President, members of the body. I think Senator Friend has covered one aspect of the comment that I wanted to make. I, too, think that Senator Chambers' proposed amendment, FA113, probably...or it does cover things adequately. I just wanted to point out: I think the way the present language is presented

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there, was intended to cover the situation of someone calling and not saying anything, but just breathing heavily, and that has happened in the past, I'm aware of that, and that can be very disconcerting. There's really no communication, nothing is said, just the breathing. And therefore, that's my impression as to why they inserted that language there, "whether or not any communication ensues." And the other situation would be, as Senator Friend suggested, just numerous telephone calls, saying nothing and just hanging up. From those two standpoints, I think probably the language that we have is okay. But I would also...and it makes sense, other than the last word there, "where the communications are received." Perhaps "transmission" might be a better word. But those are the only comments I intended to make as to why this is worded the way it is, and looking at Senator Chambers' amendment, it appears to me that it would not be any handicap to a prosecutor and probably covers the situation in a better manner. Thank you, Mr. President. [LB142]

SENATOR AGUILAR: Thank you, Senator Nelson. Senator Mines, you are next and recognized. [LB142]

SENATOR MINES: Thank you, Mr. President. From a layperson's perspective and with a background in communications, there are some literal questions that I do have to ask. And, Senator Chambers, since it's your amendment, if you would yield, please. [LB142]

SENATOR AGUILAR: Senator Chambers, would you yield? [LB142]

SENATOR CHAMBERS: Yes, I will. [LB142]

SENATOR MINES: Thank you. Senator Chambers, this is very easy to read, "contacts another person utilizing an electronic communication device." Purely stated, "electronic" is an old method of transmission. "Digital" more accurately reflects what today's world uses--digital in telephony, digital in computers, digital in personal data devices. From your perspective, does "electronic" clearly define, from a prosecutor's perspective, what we're trying to do here? [LB142]

SENATOR CHAMBERS: Yes, Mr. President and Senator Mines. I distinguish electronic from mechanical. [LB142]

SENATOR MINES: I see. [LB142]

SENATOR CHAMBERS: Anything that utilizes electrical impulses, electricity, whether generated by a battery, being plugged into a socket and getting the power from the power company... [LB142]

SENATOR MINES: Okay. [LB142]

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SENATOR CHAMBERS: ...would cover all of those instrumentalities you're mentioning, and that's why I'm going to discuss them in more detail when we get to the definition of "electronic communication device." [LB142]

SENATOR MINES: Okay, well described. Then secondly--and it feels to me like we're trying to blend telephony with communicating through computers and personal data assistants--when we talk about "disturbs the peace, quiet, and right of privacy," that's easy to understand from a telephony perspective. I'm going to disturb the peace and quiet. As an example, I call you, I'm sitting on a donkey, banging chairs and things together, and I disturb your peace, quiet, and privacy. With a computer or with a personal data assistant, my transmission or communication to you doesn't involve sound necessarily, usually doesn't. How can we...I don't see a nexus between disturbs the peace, quiet, and privacy of those two forms of communications. [LB142]

SENATOR CHAMBERS: Senator Mines, you have touched on what I have been repeatedly discussing here. They're trying to blend language that dealt strictly with the telephone... [LB142]

SENATOR MINES: Um-hum. [LB142]

SENATOR CHAMBERS: ...and telephonic communications with what they call cyberspace communication. They've even gotten away from telephone calls, which was used in the original statute, and substituted the term "communications," or "communication by means of electronic communication device." [LB142]

SENATOR MINES: Right. [LB142]

SENATOR CHAMBERS: So this is like trying to take, as the "Bible" said, you're going to take new...you're going to mend old garments with new cloth. And when the new cloth is washed, it will draw up and tear that old garment even more. So I think it would have been better for them to not try to blend what they're doing here with the language that dealt with telephonic communication. They could have just gotten rid of all of that and rewritten it, and that's why it's hard for me to even write amendments. [LB142]

SENATOR MINES: Yeah, and I understand, and I'm not trying to stand in the way or in favor. I'm just...these two technologies are completely different, and it appears as though we're trying to make current statute accommodate both, and I think we have a problem with that particular portion. And then finally--I won't put you on the spot any more--at the end it says "at the place where the communications are received." Again, communications with telephone is... [LB142]

SENATOR AGUILAR: One minute. [LB142]

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SENATOR MINES: ...a voice communication between two people. Communication with a computer, PDA, or whatever other digital device isn't tied to a location. With Wi-Fi, wireless Internet, communication is a one-way...many times one way. E-mail is one way. So the communication is not...is a different form of communication, not a two-way communication, but one way. And I just...I'll be paying attention and, Senator Chambers, I appreciate your feedback. Thank you, Mr. President. [LB142]

SENATOR AGUILAR: Thank you, Senator Mines and Senator Chambers. We're discussing FA113. Those wishing to speak are Senators Fulton, Chambers, Pirsch, Friend, and Dubas. Senator Fulton waives his opportunity to speak. Senator Chambers, you are next. [LB142]

SENATOR CHAMBERS: Mr. President, this is not my bill. While trying to rewrite it, it's difficult. But I'm going to show you a problem that exists with my rewrite of these lines, as I'm doing them, and I hope Senator Nelson will read along, because he'll see this immediately. And I mention Senator Nelson because he hasn't really been in the discussion that much. I know Senator Lathrop is watching me like a hawk. But in this language--and Senator Mines brought it up--we say what has to happen is a disturbance of the peace, quiet, and right of privacy. By using the conjunction "and," we create a package. All of these things must be present. There must be a disturbance of the peace, a disturbance of the quiet and the right of privacy. Can we say that each of those...all three of those are going to be present in the offense that is attempting to be created by this law? And I'm not sure. But Senator Mines didn't really put me on the spot with his question; it was a perfectly valid question. And by the way, Senator Carlson, "Parson," I got that analogy from something I read in one of Jesus' parables, where if you try to mend something old with new cloth, then the new cloth, you wash it, it shrinks, and it makes the rent worse than it was before. So we're trying to graft something onto that which perhaps it should not be grafted. And maybe it will look like it's going to take, but maybe it won't. Some things that are appropriate when we're talking about telephonic...Senator Mines uses that highly sophisticated, esoteric word "telephony." The reason I won't use it, because somebody will think I'm talking about ESP, telepathy, which I wouldn't be talking about, and they might think I just don't know how to pronounce it, since I was educated in OPS. But when you're talking about the telephone, what Senator Nelson said is absolutely correct. You could dial a number and keep that line open and not say a word. That's with the telephone. But that is not going to be the case with all these other electronic devices. So language which is appropriate to telephonic communication and transmissions will not fit what this bill is talking about. This bill...when language was taken from other states and put into this bill, we wind up with this kind of a problem. I say it's a hodgepodge now, not saying that the bill ought to be killed. I'm saying that a brand-new approach ought to be taken. And nobody connected with this bill would have accepted what I said, but our having gone through this discussion...and Senator Lathrop has contributed, Senator Pirsch has contributed, so it's not like me launching an assault against a bill I don't like. What I don't like about

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the bill is the way that it's drafted, and it's not going to be a good and enforceable and clear law. Senator Nelson is concerned about helping the prosecutor. I'm concerned about justice, and if prosecutors are going to follow their ethics, they are going to seek justice and not merely a conviction, because that's what their ethics specifically require of them. [LB142]

SENATOR AGUILAR: One minute. [LB142]

SENATOR CHAMBERS: What I've tried to do is to get rid of a contradiction, and it exists because they wanted to use language that might apply where you're dealing with a telephone, but it doesn't apply when dealing with all these other activities. There cannot be a set of circumstances where no communication ensues, yet communications are received. As good a receiver as Senator Carlson is, he can't catch a pass if I don't throw it. So if I cock my arm and even make a throwing motion but I stop it, no pass has been thrown, and he can't catch it, as good a receiver as he is. He told me that if Carlson touches the ball, that's going to be a completed pass. But if I don't throw it, he can't touch it. So this bill... [LB142]

SENATOR AGUILAR: Time. [LB142]

SENATOR CHAMBERS: That's what it takes, Mr. President. (Laugh) Thank you. [LB142]

SENATOR AGUILAR: Senator Pirsch, you are next and you are recognized. Thank you, Senator Chambers. [LB142]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I yield the balance of my time to Senator Chambers, so that he can finish his thoughts. [LB142]

SENATOR AGUILAR: Senator Chambers, you have 4 minutes and 50 seconds. [LB142]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Pirsch. Members of the Legislature, if people were not so suspicious of what I'm doing, I would have tried to rewrite great chunks of this, I would have eliminated some parts of it altogether, in the way that Senator Lathrop eliminated that paragraph. Much in this bill is not needed for what they say they're after. We don't have to take what is in existing statute and try to graft things onto what's there. We could just, if we want to, repeal all these sections--these original sections--repeal all of them outright, and then start all over. And we could define an electronic communication device without naming every one of them that we can think of specifically, and then come up with something that is vague. On page 3 they mention cellular, wireless--they may as well as Blackberry, strawberry, blueberry, grape, vanilla--everything you can think of, and then, because

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you don't want to miss anything, you say, "and personal data assistants that operate in a manner consistent with this definition." How are you going to put that in a criminal statute? Because you could be making something a crime that is not a crime now, something that hasn't even come into being. But when it comes into being, it's going to be a crime. I mean, it's not well done. We can define a device that operates on electronic principles, and we could even say that transmits words, sound, or visual, or communicates by means of the visual, the audible. We can do it without putting such things as "electromagnetic," "photoelectric," "photooptical system." Who can tell us what those are? And you can find that on page 2, in lines 21 through 27, where they're mentioning the kinds of things that are involved here. We're dealing with an electronic communication device, which means any device which, in its ordinary and intended use, transmits signs. I'd like to ask Senator Mines a question. [LB142]

SENATOR AGUILAR: Senator Mines, would you yield to a question? [LB142]

SENATOR MINES: Yes, I will. [LB142]

SENATOR CHAMBERS: Senator Mines, of the devices you're familiar with, which one transmits signs? [LB142]

SENATOR MINES: Senator, it could be a fax machine, but that's photoelectric. [LB142]

SENATOR CHAMBERS: But what are signs? What does that word mean? [LB142]

SENATOR MINES: I can't answer that. I'm sorry. [LB142]

SENATOR CHAMBERS: I can't either. Now signals, does that mean like hand signals, or dot, dot, dot, dash, dash, dash, dot, dot, dot? What's... [LB142]

SENATOR MINES: (Laugh) That's one form. Other form signals is...the method of communicating between one device and another is typically called signals. [LB142]

SENATOR CHAMBERS: Okay, so that has...that's a term of art. [LB142]

SENATOR MINES: Yes. [LB142]

SENATOR CHAMBERS: Okay, but it's not made clear here. When we say sounds, that does not say vocal, just sounds. [LB142]

SENATOR MINES: That's correct. [LB142]

SENATOR CHAMBERS: So would this qualify? (Breathing into microphone) [LB142]

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SENATOR MINES: It does in my book, Senator. [LB142]

SENATOR CHAMBERS: And that could be a crime on this bill, huh? [LB142]

SENATOR MINES: That's true. [LB142]

SENATOR CHAMBERS: Would you like that to be a crime, just the sound itself? [LB142]

SENATOR MINES: No, I would not. [LB142]

SENATOR AGUILAR: One minute. [LB142]

SENATOR CHAMBERS: Nor would I. And when we talk about visual images, something perhaps could be included that would make it evident that we mean these images must be distinguishable and clearly depict what they're alleged to depict, so that there might not be some blurry something or other, and a prosecutor says, well, we interpret this to mean such and such. When we're creating a crime, do you think it would be unreasonable if, when we used terms like "visual image," we put something more there? Because couldn't anything that shows up on a screen be considered a visual image? [LB142]

SENATOR MINES: It certainly could, Senator. [LB142]

SENATOR CHAMBERS: What is the meaning in line 24 of "intelligence"? Is that a term of art in... [LB142]

SENATOR MINES: That is not a communication...I have no communication definition for "intelligence." [LB142]

SENATOR CHAMBERS: And nobody else knew either, but they got it from someplace else. And that's kind of what I meant... [LB142]

SENATOR AGUILAR: Time. [LB142]

SENATOR CHAMBERS: ...oh, and it's transmitted... [LB142]

SENATOR AGUILAR: Time, Senator. [LB142]

SENATOR CHAMBERS: Oh, I'm sorry. Thank you, Mr. President. [LB142]

SENATOR AGUILAR: Thank you, Senator Chambers. Senator Friend, you are next and recognized. [LB142]

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SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. As I mentioned, FA113 is fine. I think right now, if we steer into electronic communication, I think what Senator Mines and Senator Chambers were saying in regard to the language on page 1, trying to intermingle telephone...ancient telephone statutes with updated electronic communication is pretty close. I mean, they're on to something here. Senator Chambers is right. FA113 solves that. But where these two gentlemen are way off...they're off track, right now, because they're assuming that this was somehow pulled out of a hat, like a magic rabbit or a magic hat. This language was borrowed from language that's already in...existing in statute, Section 86-276: Electronic communication means any transfer of signs, signals, writings, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system, but does not include the radio portion of a cordless telephone communication, etcetera, etcetera, any wire or oral communication, any communication made through a tone-only, mobile paging device, or any communication from a mobile tracking device, as defined in Section 86-2,103. In order to rectify that last piece of it, this is actually pulled from federal statutes, 18 U.S.C. 2510, subsection (12): Electronic communication means any transfer of signs, signals, writings, images, sounds, data, or intelligence of any nature, transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects interstate or foreign commerce, but does not include--and then it goes through some of the other stuff that I had mentioned earlier. Now we're not trying to intermingle anything now. What I mean by that is, Senator Mines thinks we're confusing the issue by trying to intermingle telecommunications devices and electronic devices. Federal statutes dictate and indicate that this is the way this stuff needs to be enhanced and brought together, not just for prosecutors to try to get an edge, but in order to maintain the justice that Senator Chambers seeks to find, to make things fair. Look, so here's the way it breaks for me. What we did with that particular...or what we were, you know, as a Legislature, what the Judiciary Committee did to maybe enhance it, what the AG's Office might have tried to do to, you know, draft this stuff,... [LB142]

SENATOR AGUILAR: One minute. [LB142]

SENATOR FRIEND: ...might have been a tad convoluted and confusing. I don't think Senator Chambers' amendment, FA113, is a bad amendment. I think it's an okay amendment that clears up some of that confusion. So we'll get into electronic communication and the definition later, but I think some of the conversation and some of the periphery that's been going around is a little unwarranted, and we're not reinventing the wheel here in regard to the definition of electronic communication. But that notwithstanding, FA113 is a fine amendment. I don't have any problem with it. I think it makes this bill better. Thank you, Mr. President. [LB142]

SENATOR AGUILAR: Thank you, Senator Friend. Senator Lathrop, are you next and

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you are recognized. [LB142]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I'm going to make a suggestion, I think. I've been here long enough to see when Senator Chambers is trying to tube a bill and when he's trying to make it better, and I think he's trying to make it better. It seems to me he's doing it section by section, which I understand. Perhaps if we could stay on the amendment we'll get through this a little quicker and not get ahead of ourselves. FA113 makes a necessary correction. Section A does have an internal inconsistency that Senator Chambers has pointed out. It talks about contacting another, and then in the same sentence suggests that it's whether or not a conversation or any communication ensues. Senator Chambers is essentially taking out that provision that says, "whether or not any conversation or communication ensues." I think it's appropriate. I think paragraph (a) will be better written if we adopt this amendment. I would urge the adoption of this amendment. Thank you. [LB142]

SENATOR AGUILAR: Thank you, Senator Lathrop. Senator Chambers, you are next and you are recognized. [LB142]

SENATOR CHAMBERS: Thank you. Mr. President, really, if I were trying to stop this bill, I wouldn't work this hard. Really, I know how to take time, if that's all that I'm doing. What is making our job difficult is the way the bill originally was drafted. I think the best way to have handled this would have been to just start all over again and rewrite it. Senator Pirsch even offered something as an alternative to what I'm presenting. We would get rid of everything in lines 13 through 17. That would go away. Then we would go up here, starting in line 9, and we would have: A person commits the offense of intimidation by electronic communication device if, with the intent to terrify, intimidate, threaten, or harass, he or she disturbs the peace, quiet, and right of privacy of any person by using an electronic communication device. Then we don't have to use some of this other language, but maybe to avoid confusing right now, we can adopt the amendment that I have. We would do whatever other tinkering and tweaking we can. Then when we get to Select File, we can refine it even further, perhaps even to the extent of some of us getting together and just rewriting this, without trying to retain anything of the telephonic language in the existing law. We don't have to write a bill by amending what is already there. We can repeal outright every one of these sections that is being amended. We can then rewrite everything. And when I say repeal, it might be done by the Bill Drafter, by striking this or that and leaving the original section numbers, and we go from there. But the point I'm getting at is, instead of trying to add on to what is here, subtracting parts of it, then come up with a section that tries to name every imaginable telecommunication device, electronic communication device, digital communication device, put them all into one pot and make a stew, it's not edible, it's not digestible, it is not nutritious. And this is a difficult, painstaking methodology to follow in doing something with a bill. The purpose of it, as Senator Friend wants to remind us, is straightforward. I even have some concerns about the possibility of entrapment with the

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way the statute is written, when you're talking about a police officer masquerading or posing as a juvenile. The child under 16 years of age is contacted by a person 19 years of age or over, and the person 19 years of age or older contacts a child under 16 years of age, or a police officer, who is believed by such person to be a child under 16 years of age. How are you going to tell what this person believes,... [LB142]

SENATOR AGUILAR: One minute. [LB142]

SENATOR CHAMBERS: ...if he or she denies it; says that, I thought somebody was messing around, and I was messing around too? I'm not sure if there's somewhere in this bill that says that the individual who's going to be accused as the perpetrator must attempt to make a contact with this young person. By that I meant a physical contact or a meeting with this young person. Everybody knows now that cops masquerade as these kids. Somebody could send a message out, have a cop respond, and because they are so unimaginative, know you're dealing with a cop and send them everything you think that will get him frothing at the mouth, and that in itself should be a crime? There should be something more than that, because cops might engage in entrapment. But we haven't gotten to that part of it yet. I'm trying to take it step by step,... [LB142]

SENATOR AGUILAR: Time. [LB142]

SENATOR CHAMBERS: ...but that doesn't mean I'm the only one who can offer amendments. Thank you, Mr. President. [LB142]

SENATOR AGUILAR: And that was your third time, Senator Chambers. Senator Pirsch, you are next and you are recognized. [LB142]

SENATOR PIRSCH: Just very briefly...thank you very much, Mr. President, members of the body. I think Senator Chambers is providing this body, once again, with an invaluable service, based upon his experience. Again, I think that we can, as Senator Chambers and Senator Lathrop point out, tighten the language, make it better, and I do appreciate his methodical thoroughness in approaching this point by point by point, as he goes down the bill. That's the most productive way, it obviously appears to me now. And so I do appreciate that. He is quite correct in saying that if he wanted to...if he, you know, coldly opposed the bill, that he would take different methods, and so this is a very helpful method, and I appreciate that. I guess my suggestion is, and I think Senator Chambers kind of struck on that, is maybe simplifying it at some point in time over the process, and striking lines 13 to 17 and inserting the language so it would be from earlier "he or she," and then in line 13, "disturbs the peace, quiet, and right of privacy of any person by using an electronic communication device." And that may go towards his desire to simplify and to not use potential confusing terms there. So thank you very much. I'll yield back the balance of my time. [LB142]

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SENATOR AGUILAR: Thank you, Senator Pirsch. There are no further lights on. Senator Chambers, you are recognized to close on FA113. [LB142]

SENATOR CHAMBERS: Thank you. And, Mr. President, the only reason I'm not incorporating Senator Pirsch's language right now, which I like, I don't want to add maybe to some confusion, because we've discussed what I'm offering and why. Since there seems to be a willingness to accept it, I'm going to ask that you accept it. Then by the time we get to Select File, those of us who want to work this bill can do so, and even though something that I offer by way of amendment is adopted, that can all be taken out, too, and get a brief statement of the kind that Senator Pirsch is offering. But again, there is so much suspicion about everything (laugh) that I do. I don't know if it was Elvis Presley; somebody sang a song about suspicious minds, suspicious minds, and they don't mean Senator Mines. But there's that suspicion about me and what I offer, so what I've tried to do in crafting an amendment is retain as much language that is already here, and then there's less suspicion. But having to do that does not bring about a total correction in the way that a correction needs to be made. So I'm proceeding a step at a time, and I'm going to ask you to adopt the amendment, which there seems to be agreement on. Then I'm going to discuss some other things, but I guess I ought to put an amendment up there, because I will run out of time discussing the bill itself. But right now, I will ask that you adopt this amendment. Thank you, Mr. President. [LB142]

SENATOR AGUILAR: Thank you, Senator Chambers. You've heard the closing on FA113. All those in favor vote aye; those opposed vote nay. Have you all voted that care to? Record, Mr. Clerk. [LB142]

CLERK: 31 ayes, 0 nays, Mr. President, on the adoption of Senator Chambers' amendment. [LB142]

SENATOR AGUILAR: The amendment is adopted. [LB142]

CLERK: Mr. President, Senator Chambers would move to amend the committee amendments. (FA114, Legislative Journal page 1661.) [LB142]

SENATOR AGUILAR: Senator Chambers, you are recognized to open on your amendment. [LB142]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, this is a clarifying amendment, and it will be very simple for me to present it and very easy for you to understand. No trickery, nothing. And since it will be so simple, it will give me an opportunity to touch on some other items that I don't know whether I want to try to prepare an amendment to deal with right now. But on page 1, in lines 13 and 18, after the word "another" I would insert the word "person." In the statute when we have constructions such as this, we don't just leave the word "another" standing alone. We

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say "another person." So in line 13, it would say "contacts another person," rather than "contacts another." In line 18, a similar construction, "contacts another person," and not just "contacts another." So that's what I will offer. But I would like, if you will, to have you turn to page 2. In line 1, I would also again insert the word "person" after "another," but that's not a part of my amendment. I'd like to ask Senator Friend a question. [LB142]

SENATOR AGUILAR: Senator Friend, would you yield to a question? [LB142]

SENATOR FRIEND: Yes. [LB142]

SENATOR CHAMBERS: Senator Friend, beginning in line 1 on page 2--remember, we're dealing with a criminal statute--the perpetrator "contacts another using an electronic communication device and threatens to inflict injury to any person or to the property of any person." If I threaten, if I call you and I'm dead serious, and I threaten to kill Osama bin Laden, then I'm in violation of this, am I not? [LB142]

SENATOR FRIEND: That could very...that could be true. [LB142]

SENATOR CHAMBERS: If I threaten to kill the king of Saudi Arabia and every member...the head of every state which is a member of OPEC, then I have called, I've used this device to threaten to inflict injury on other people. Now on property, suppose I say I'm going to find every facility of Halliburton and I'm going to blow it to smithereens. Then I've violated this statute, haven't I? [LB142]

SENATOR FRIEND: Well, theoretically, yes. I mean,... [LB142]

SENATOR CHAMBERS: Not theoretically. What does the language say? [LB142]

SENATOR FRIEND: Well, here's the way...here's the reason I say theoretically, Senator Chambers, because I don't think...I mean, the language is already out there. What you're saying is...there have been prosecutors for who know how long and defense attorneys dealing with this language, so are you telling me...the reason I say theoretically, are you telling me that there are a bunch of prosecutors out there that have been abusing it to that degree? I mean, most of them are saying, oh, we know what that means. That's what I'm saying. [LB142]

SENATOR CHAMBERS: Your Honor, strike that from the record. It's totally unresponsive. (Laughter) Senator Friend, I don't care what a prosecutor is doing or not doing. We have to look at the language we put into the law and see what it says constitutes a violation of the law. Now as Senator Hudkins pointed out earlier, you can be fishing, but you don't catch all the fish. The language says, "contacts another person"--it doesn't even say who that other person is; it can be a reporter--"using an electronic communication device and threatens to inflict injury to any person." Is Osama

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bin Laden a person? [LB142]

SENATOR FRIEND: Yes. [LB142]

SENATOR CHAMBERS: Okay, or the property, or injury to the property of any person. Does the Vatican belong to any person? Is there property in the Vatican that belongs to any person? If I say any property in the Vatican that belongs to the Pope, I'm going to burn it up, have I complied with what this statute says is necessary for me to violate it? [LB142]

SENATOR FRIEND: Yes, I believe so. [LB142]

SENATOR CHAMBERS: If I say, I'm going to go the White House and I'm going to bust out all the windows, then I've violated the law, haven't I? It doesn't say I have to be able to carry it out. [LB142]

SENATOR FRIEND: As long...if you made contact with somebody and told... [LB142]

SENATOR CHAMBERS: Yes, I called you and I told you. [LB142]

SENATOR FRIEND: Well, and what if I went to...and I'm not trying to be difficult here, but what if I went to Homeland Security and said, hey, Senator Chambers said that he was going to go to the White House and bust out a bunch of windows with some thermite grenades? Maybe they needed that statute in order to do the appropriate...either due diligence or the prosecution that they feel like they would need, under those circumstances. [LB142]

SENATOR CHAMBERS: No, they don't need that, because they would have to establish that I actually said it, and your saying I said it may have given them a lead so they'll check it out. But that doesn't prove that I said it, in and of itself. [LB142]

SENATOR FRIEND: Yeah, but you didn't contact the White House that you were going to do it. [LB142]

SENATOR CHAMBERS: I don't have to contact the White House. [LB142]

SENATOR FRIEND: You contacted me to tell me you were going to do it. [LB142]

SENATOR CHAMBERS: This says "contacts another." It doesn't say a person who I'm going to threaten. It doesn't say the person whose property I'm going to destroy or hurt; contacts another and threatens to inflict to any person--not the one that I contacted. But to that one that I contact, in talking to that person I threaten to inflict injury to any person or to the property of any person. This microphone is a part of an electronic

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communication system, isn't it? [LB142]

SENATOR FRIEND: Yes. [LB142]

SENATOR CHAMBERS: I'm going to commit the crime on this floor. [LB142]

SENATOR FRIEND: Well, you're immune. [LB142]

SENATOR CHAMBERS: What I'm going to do is go find the headquarters of Halliburton and I'm going to burn them to the ground. If I went by this, strictly speaking, that would violate this statute, wouldn't it, because I threaten harm to the property of another? [LB142]

SENATOR FRIEND: Strictly speaking, yes. [LB142]

SENATOR CHAMBERS: Okay. Do you think we need to change that, tighten it up, or even get rid of it? [LB142]

SENATOR FRIEND: Well, I'm not sure I have a...Senator, as directly as I can answer your question, I don't...I'm not sure I have a problem at all with your amendment. I'm worried about, as we all like to say, the unintended consequences. I'm not questioning your... [LB142]

SENATOR CHAMBERS: I'm not going to offer an amendment. [LB142]

SENATOR FRIEND: ...motive here at all, either. [LB142]

SENATOR CHAMBERS: I'm not offering amendments on this. I'm just mentioning some of the things that I said I'm raising. [LB142]

SENATOR FRIEND: No, I know. [LB142]

SENATOR CHAMBERS: But I'm not trying to draft amendments. Let's go to line 4, "intentionally fails to disengage the electronic communication device connection." If I have a computer, can I contact your computer? Because I don't know anything about this. [LB142]

SENATOR FRIEND: Yes, you can. [LB142]

SENATOR CHAMBERS: Suppose I don't disengage. Can you disengage me? [LB142]

SENATOR FRIEND: It depends on how you try to engage my computer. [LB142]

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SENATOR CHAMBERS: Is there some way I can engage your computer and you can cut me off when you don't want to be bothered by what I'm trying to transmit to you? [LB142]

SENATOR FRIEND: If...yes. Sometimes when I'm not in front of the computer, but most of the time when I'm in front of it, I can do that. [LB142]

SENATOR CHAMBERS: Okay. Well, suppose...but if I leave mine...if I intentionally fail to disengage mine, then I'm committing a crime, even though you can disengage from me. I'm not free to leave my computer on in that mode without violating this statute. See, they were talking about telephones, and they were talking about you calling somebody and you keep the line open so that they can't get calls in and they can't call out. [LB142]

SENATOR FRIEND: But can I be somewhat argumentative there? [LB142]

SENATOR CHAMBERS: I want you to be. [LB142]

SENATOR FRIEND: All right. If I contact you through my computer system, and you're on the other end, and I fail...and I threaten you or harass you or put you in a position where you unknowingly, you know, were going to have this happen to you, and I don't...and I fail to disengage, to me that's all that is saying. I mean, I'm going to...I can be held accountable better. I'm culpable for that. [LB142]

SENATOR CHAMBERS: Senator Friend, if you... [LB142]

SENATOR FRIEND: I'm not sure I see where you're going. [LB142]

SENATOR CHAMBERS: ...look in line 1, you'll see they struck the word "telephone." [LB142]

SENATOR FRIEND: Correct. [LB142]

SENATOR CHAMBERS: When you were talking about a telephone, some of these things might apply. I can call your number,... [LB142]

SENATOR AGUILAR: One minute. [LB142]

SENATOR CHAMBERS: ...and if I don't hang up, then the line stays open. That has happened to me before, by the way, not where the person intended to do it. They put down the phone and forgot to pick it up. But now they're making the things that were written specifically to apply to the telephone to apply to all these electronic communication devices. [LB142]

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SENATOR FRIEND: All right. I see what you're saying. [LB142]

SENATOR CHAMBERS: If I text message you, or...I don't know about these things. Maybe you can't do it. But if I don't disengage mine, then I'm committing a crime, even though you're not even receiving anything from me anymore. I just leave it in that mode, then I'm committing the crime. I cannot prevent you from using your device, as I could perhaps prevent you from using your telephone. So this is why I'm saying, we should have just repealed all of this that's talking about telephones and have rewritten, in simple terms, direct terms, what it is we're talking about. But that's all I will ask you. I wanted your help...oh, wait a minute. Let's go to line 6. [LB142]

SENATOR AGUILAR: Time. [LB142]

SENATOR CHAMBERS: Was that my first time? [LB142]

SENATOR AGUILAR: That was your opening, Senator. [LB142]

SENATOR CHAMBERS: Oh, okay. [LB142]

SENATOR AGUILAR: Thank you, Senator Chambers. Senator Friend, you are next and you are recognized. [LB142]

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. I said, very softly, he's right. I'll say it loud: He's right. Here's the thing, though. How else...I mean, we could have gone back and rewritten this. The question is, how are you going to rewrite it? I'm going to give some time to Senator Chambers, too, because I want him to continue with this dialogue. I hope that I can be as helpful...I'm trying to be as helpful as I can here, but some of it he's having to spoon-feed me. Here's the thing: We don't have any choice in certain circumstances to mesh the current technology we have with new language that's going to incorporate some of the new technology that we have. We could have...I think that...when I say "we," I think the people, the drafters of this legislation, could have rewritten it, but that's either a slippery slope or very difficult to deal with. Legislators, and I'm not trying to get philosophical here, but legislators are creatures of habit, except for him. Except for him, legislators are creatures of habit. So in other words, something works in a certain area or something works from a federal standpoint, you say, well, it's got to be done...I mean, we know that this has withstood the test of time, from 1986 till 1994. And now, from 1995, as technology has advanced, this is the language that has withstood the test of time. So what I'm saying is, we can continue to go down this road, but I could nitpick every time we try to do this. I could nitpick...I'm not saying it's inappropriate that we do, but I could nitpick any time to try to advance legislation with our technology. There are...it is fraught with pitfalls. What I would say is, I'm not sure that we're that far away. I think Senator Chambers might

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disagree. I would yield the time to Senator Chambers. He can ask me any questions that he wants, and I will respond as directly as I possibly can. [LB142]

SENATOR AGUILAR: Senator Chambers, you have 2 minutes and 30 seconds. [LB142]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Friend. I'm not saying that the new technology should not be taken into consideration and regulated when it can be used in a means that is hurtful, antisocial, and all the other things that we're trying to rectify. But I'm saying that when we draft legislation, we don't have to use existing language and try to build on that. When we go to line 6, the perpetrator...I'm going to wait until Senator Friend can listen, because he is helpful, believe it or not. Senator Friend, in line 6 on page 2, the perpetrator contacts another--and I would put "person," but anyway--"contacts another using an electronic communication device and attempts to extort money or other thing of value from any person." Although, Senator Friend, a kiss is just a kiss, a sigh is just a sigh, is a kiss a thing of value? [LB142]

SENATOR FRIEND: It depends. [LB142]

SENATOR CHAMBERS: Could it be a thing of value? [LB142]

SENATOR FRIEND: Yes. [LB142]

SENATOR CHAMBERS: So now if I picked out somebody and I said, I'm not going to leave you alone unless (singing) you give me a kiss to build a dream on, am I guilty of this if I say it on the telephone, if I say something like that and I'm trying to extort it? [LB142]

SENATOR FRIEND: Well, obviously not. [LB142]

SENATOR CHAMBERS: Oh? [LB142]

SENATOR AGUILAR: One minute. [LB142]

SENATOR FRIEND: Are you? [LB142]

SENATOR CHAMBERS: Well, if a kiss is a thing of value and I'm trying to make somebody give me one, then I could be in violation. And this might seem facetious. Now let's go to line 9, where it says, the use of indecent, lewd,...oh, this might be... [LB142]

SENATOR FRIEND: Well, we got rid of all that. [LB142]

SENATOR CHAMBERS: Yeah, we got rid of that. So since my time is just about over

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that Senator Friend was sharing, I'll stop at this point, Mr. President. And thank you, Senator Friend. [LB142]

SENATOR AGUILAR: Thank you, Senator Chambers and Senator Friend. Senator Fulton, you are next and you are recognized. [LB142]

SENATOR FULTON: Thank you, Mr. President. Would Senator Chambers yield to a question? [LB142]

SENATOR AGUILAR: Senator Chambers, would you yield to a question? [LB142]

SENATOR CHAMBERS: Yes, I will. [LB142]

SENATOR FULTON: I disengaged for just a few minutes, and boy, wow! What happened? Didn't, in FA113, did we not replace, on page 1 of AM579, did we not replace lines 13 through 17 with FA113? [LB142]

SENATOR CHAMBERS: Yes. Those lines have been rewritten. [LB142]

SENATOR FULTON: Okay. So your FA114 is an amendment to AM579, which provides a redundancy that already exists in FA113; isn't that true? [LB142]

SENATOR CHAMBERS: I'm lost. [LB142]

SENATOR FULTON: Well, FA113, I believe we already...you included the word "person," and we've adopted that. And so FA114 isn't amending anything. We already have the word "person," "another person," in FA113. [LB142]

SENATOR CHAMBERS: But not in line 18. That was an amendment that I had drafted earlier. [LB142]

SENATOR FULTON: Okay, so this is applicable only to line 18. [LB142]

SENATOR CHAMBERS: Yes, because it was drafted prior to our adoption of the rewrite that I made of lines 13 through 17. [LB142]

SENATOR FULTON: Okay. [LB142]

SENATOR CHAMBERS: But it still would apply to line 18, because it has "contacts another," and I would insert "person" there, and that would be taken care of. [LB142]

SENATOR FULTON: Okay. [LB142]

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SENATOR CHAMBERS: But you're right. It does provide a redundancy as far as line 13. [LB142]

SENATOR FULTON: Okay, and that's acceptable, though, because the same intention is meant. If FA114 were adopted and we employ the word "contacts another," employ the word "person" or insert the word "person," that doesn't address your concern, though. Because the example you gave was, here I am with a communication device, and I'm going to burn down Halliburton, and I've now just told another. If we insert the word "person," your concern has not been allayed. I mean, if you contact another person,... [LB142]

SENATOR CHAMBERS: Let me bring you up to date where we are, Senator Fulton. While you were disengaged I pointed out that that amendment that's up there is a very simple one to understand, so while it's up there, I will discuss some of these other matters for which I have not drafted amendments, but to show that they do need some additional consideration. And those are the things that I was discussing, not the specific amendment that's up there. [LB142]

SENATOR FULTON: So amendments to follow are the subject of what we're discussing right now on FA114. [LB142]

SENATOR CHAMBERS: Yes, and I'm not sure they'll be done on General File, but just pointing out that there are difficulties with this bill, because there are people in the lobby and other places who think all I'm trying to do is take time. But I pointed out earlier, if that's all I wanted to do, I wouldn't work this hard at it. [LB142]

SENATOR FULTON: Okay. Thank you, Senator Chambers. The...I'm hopeful that this bill is able to pass. I mean, the proliferation of technology has given us new communication devices such that I think this needs to move forward, and if we need to change language and such in order to do that, we ought to. But I understand that the substitution of "electronic communication device" for "telephone" may not be clean through here, but an electronic communication device does include telephones. So for instance, in line 4, "intentionally fails to disengage the electronic communication device connection," that would apply to a telephone. It could also apply to a computer, because a computer...one can engage another computer and then refuse to disengage, even when the owner of the engaged computer wants that person to disengage. It's a different technology, but it occurs in the same way that telephone lines engage one another. It's just applicable to the modem of a computer. So hopefully that's not the cause to shoot... [LB142]

SENATOR AGUILAR: One minute. [LB142]

SENATOR FULTON: ...this bill down, because the substitution of "electronic

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communication device" is not appropriate when substituting for the word "telephone." So I'll pay attention to the remainder of the amendments. Thank you, Mr. President. Yeah, I'll yield the rest of my time to Senator Chambers, if I could. [LB142]

SENATOR AGUILAR: Senator Chambers, you have 40 seconds. [LB142]

SENATOR CHAMBERS: Okay. Senator, what I conceded already is that this bill is going to move to Select File, and we'll do additional work between here and there, and not try to write all the amendments now, but just to point out the fact that there's a need for us to work on this bill. Thank you both. [LB142]

SENATOR AGUILAR: And you are next, Senator Chambers, and you may continue. [LB142]

SENATOR CHAMBERS: I didn't have to do that in a heat and a rush. Senator Fulton, what I had been saying is that rather than try to craft amendments on some of these issues that I'm raising, I will wait so that all those who have an interest--and Senator Lathrop has, Senator Pirsch, Senator Friend, naturally, Senator Mines may be of a mind, and you, too--so that when we craft something, we make sure that we are going to have it in language which is as simple and clear, and accomplish what we want, because we're creating crimes. And if we use language which is not going to apply in every situation where it might, then we can create a problem with a criminal statute. You're not making clear what is allowed and what is not allowed. So I think those in the Attorney General's Office who were doing this drafting forgot that we're drafting a criminal statute and not a campaign document. But I'm taking it very seriously, because there are some harmful things that can be done using the new technology. But that's not enough to make me forget and throw aside the care with which we ought to draft criminal laws. I wouldn't want something as vague as what we have in some of these provisions to be used against me. I would not want to be chargeable with an offense if I said, I am so sick of Dick Cheney! If I could get my hands around his chicken neck I would strangle him, and then I'd ring his neck! Well, on the basis of this, that's a crime, because I called and I made that threat to injure somebody to another person. Now, it's a crime if you threaten the President directly or make a threat concerning the President to another, even if you can't carry it out. A guy was in prison, he obviously couldn't get to the President. He said he'd kill him or something like that, and he was charged with threatening the President, and I don't know whether they'll carry through with the prosecution, but he was charged. So you can't make even a veiled threat toward the President. But under this language, you commit a crime if you contact another using an electronic communication device and threaten to inflict injury to any person, anywhere. You could even say the man in the moon--I'm going to melt his cheese. So there you are--intergalactic. The reason I'm doing this: I don't think we need everything that's in this bill to accomplish what we've been told is the intention. The language that I was looking at in the provision that Senator Lathrop was able to persuade us--and I'm glad

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he did--to eliminate can be found on page 3, in line 16--"Suggests any indecent, lewd, or lascivious act." Suggests it--not solicits it, not offers it. So suppose I'm talking to somebody and I say, kiss my you know what. That's the suggestion of an indecent, lewd, or lascivious act, but people use that expression all the time. You should have to either offer it or solicit it, and it should be made clear that it's more than a common expression. But this criminal statute that we're contriving does not do that. [LB142]

SENATOR ERDMAN PRESIDING [LB142]

SENATOR ERDMAN: One minute. [LB142]

SENATOR CHAMBERS: And where it uses the term "sound," let's say on page 3, beginning in line 11, "uses or transmits any indecent, lewd, lascivious, or obscene language, writing, or sound," language, obviously, is considered to be different from sound. And maybe it is heavy breathing. I don't know and it's not clear. I don't know that everything that is in here needs to be here. But that's what I'm looking at, and I'm not going to try to craft all those amendments while we're on General File. But I want to take a little more time to call attention to some of them, and I'm going to offer some very simple amendments that I think maybe can be considered in a short amount of time, because maybe the fear and suspicion that existed toward me has alleviated, to some extent. Thank you, Mr. President. [LB142]

SENATOR ERDMAN: Thank you, Senator Chambers. Senator Friend, you're recognized to speak, followed by Senator Lathrop. [LB142]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. I didn't ever have any of that fear or trepidation that Senator Chambers is talking about, mostly because if he was going to do a tap dance on me, he usually tells me ahead of time. He was very coy about this one, but I think he's been busy. So right now, he's able to focus some attention on it. Let me say this: I have talked to Senator Lathrop a little bit and I think, along with Senator Pirsch, Senator Chambers can be included as much as he would like. And Senator Mines has, like everybody said, has brought up some concerns. I'd be happy to go through this and try to make the things right that some of you folks might think, while not totally abhorrent, could be of a concern to you. I would be happy to try to make those things right, and here's the thing. I'm not one for rushing things from General File to Select and telling all of you that, hey, trust me, everything is going to be fine between here and Select File. I can tell you that things get crazy at the end of a session and sometimes we do that, but I'm not one to try to always promote that. But what I will tell you is that I don't...while Senator Chambers and others have raised this idea that there are major concerns with the language, I don't think they're major. I think that there are things that we can take care of pretty rapidly. So I'm no flat-out expert, but I think it's his job to promote the, you know, Armageddon that's upon us if this bill passes. It's my job to promote...I think it's my job to promote the idea that it's not quite

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the Armageddon, maybe, that Senator Chambers is promoting. Now, that being said, I will give you that assurance that I think this is enough folks involved in this process that I think we can work, between here and Select File, to get these concerns remedied. It's my assurance to you, on the record, that if those concerns aren't remedied, you know, you can go out and toss a bracket motion up on it, and we'll go away; might even do it myself. With that, I would ask for the adoption of FA114. I don't think I spoke specifically to that. I don't think I have an issue with this. That's all I had, Mr. President. [LB142]

SENATOR ERDMAN: Thank you, Senator Friend. Senator Chambers, there are no lights on. Senator Chambers waives his opportunity to close on FA114. Members, the question before you is the adoption of FA114 to the Judiciary Committee amendments. All those in favor vote aye; all those opposed vote nay. Have all members voted who wish to? Senator Chambers, for what purpose do you rise? [LB142]

SENATOR CHAMBERS: Mr. President, I will ask for a call of the house. [LB142]

SENATOR ERDMAN: Members, the question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record please, Mr. Clerk. [LB142]

CLERK: 18 ayes, 0 nays to place the house under call. [LB142]

SENATOR ERDMAN: The house is under call. Would all unexcused senators please report to the Chamber? All unauthorized guests, please leave the floor. Members, please check in. The house is under call. Senator Engel, Fischer, Howard, Janssen, Cornett, Dubas, Karpisek, White, Avery, Synowiecki, please report to the Chamber. The house is under call. Would Senators Engel, Howard, Dubas, Karpisek, White, Avery, and Synowiecki please report to the Chamber. The house is under call. Senator Howard, the house is under call. Senator Chambers, how do you wish to proceed on the vote? [LB142]

SENATOR CHAMBERS: I'll take call-ins. [LB142]

SENATOR ERDMAN: Senator Chambers has authorized call-in votes. All members are present or accounted for. Mr. Clerk, please continue with the vote. [LB142]

CLERK: Senator Langemeier voting yes. Senator Stuthman voting yes. Senator Aguilar voting yes. Senator Ashford voting yes. Senator Gay voting yes. Senator Kopplin voting yes. Senator Hansen voting yes. Senator Harms voting yes. Senator Flood voting yes. Senator Cornett voting yes. Senator Janssen voting yes. [LB142]

SENATOR ERDMAN: Record please, Mr. Clerk. [LB142]

CLERK: 26 ayes, 0 nays, Mr. President, on the adoption of FA114. [LB142]

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SENATOR ERDMAN: The amendment is adopted. Mr. Clerk, next amendment. I do raise the call. [LB142]

CLERK: Mr. President, Senator Chambers would move to amendment with FA115. (Legislative Journal page 1662.) [LB142]

SENATOR ERDMAN: Senator Chambers, you're recognized to open on FA115. [LB142]

SENATOR CHAMBERS: Thank you. And, Mr. President, this is the last amendment that I'm going to offer on General File, but I do have some other things I'm going to discuss. What this amendment gets at is language found where it's listed on your gadget. The first place you'll find it is on page 1, in line 22, where it says "suggests" any lewd, indecent, or lascivious act. I would strike the word "suggests" and insert "explicitly offers or solicits." Then it comes closer to putting this language in the posture of something which perhaps the state can prohibit. One of the difficulties with all of this is that we're dealing only with speech. We're not dealing with anything other than speech, and there are some very scurrilous and undesirable, unpleasant things that can be said. But we're criminalizing speech. It has already been criminalized, but we're increasing...we're making it a higher offense than it had been before. It's a Class I misdemeanor now, which can carry a fine and jail time, whereas before it was a Class III misdemeanor. I think you should have to do more than suggest an indecent act. What does "suggest an indecent act" mean? How do you suggest it in a way that makes it a crime? I don't know, and maybe all of us, if we didn't hear each other give a point view, were asked to write on a piece of paper how this suggestion is made, I don't know that some of us would not give the same answer, but I'm sure there would be different answers. So what I would do is strike the word "suggests" and insert in its place "explicitly offers or solicits" any indecent, lewd, or lascivious act. That's what the amendment aims at. I don't know whether you will feel comfortable adopting it or not, because we do intend to do additional work. We're running out of patience that people have, but since those who have an interest in the bill have agreed to work, I'm going to respect the fact that people don't have my stamina, they don't have my ability to exist on nothing except fresh air, sunshine, an occasional smile. But I thrive on frowns and anger from others. Since people are growing weary, I won't keep us on this bill much longer. But here's what I see as an interesting problem: Intimidation by electronic communication device is a Class I misdemeanor, and some of the things that are done in this offense would be the threat of using violence to inflict injury to any person or property, and through it all is the intent to do the harm, either to terrify, threaten, intimidate, or harass. That is a Class I misdemeanor. Let me read you something else that's interesting--28-311.01--Terroristic threats: "A person commits terroristic threats if he or she threatens to commit any crime of violence with the intent to terrorize another." That is a Class IV felony. So you have virtually identical conduct--in one instance it's a Class IV felony; in another, it's a Class I

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misdemeanor. How wise is it, I ask rhetorically, and how appropriate is it to make the same conduct both a Class I misdemeanor and a Class IV felony? Would a judge, if a prosecutor decides to charge somebody with a terroristic threat for having used an electronic communication device to threaten violence with the intent to terrify and these other things that are mentioned...if the prosecutor charged terroristic threat, which is a Class IV felony, would the judge be required to give a jury instruction and say that giving this threat, since it was done on the telephone, a lesser included offense is electronic...is intimidation by an electronic communication device? Would that jury instruction have to be given? I'll bet the Attorney General's Office doesn't even think about things like this, but I do, and if I could get past the point of having this compulsive--what's that other word--obsessive whatever it is that makes me read these bills and then recollect that I read something similar someplace else and find it, and then present it, and generate offense, why should I do it? I only get \$12,000 a year. Working like you all work, you don't make quite minimum wage, if they parcel it out by the hour. I come down here far more time...spend more time here than you all do, so if you pay me by the hour, you probably owe me. So I don't do this because I'm paid. And let me read you something interesting, when we talk about terroristic threats, which are a Class IV felony. In the case of State v. Saltzman, a Nebraska case from 1990, 235 Neb. 964, to violate the statute prohibiting the commission of terroristic threats does not require an intent to execute the threats made, or that the recipient of the threat be terrorized. I don't even have to intend to execute the threats, and I'm guilty of a Class IV felony, and the person that I threaten does not have to be terrorized, and I violate the statute and am convicted of a Class IV felony. With what we're dealing with here, virtually identical conduct, we require the intent, but it's a Class I misdemeanor. If I were charged with having committed a violation of the statute defining a terroristic threat, I would insist that I be charged with the misdemeanor offense, and I'd say I have a right to that, and I would argue this way: The Nebraska Supreme Court has said that the Legislature expresses how serious an offense it considers conduct to be, not by the maximum sentence, but by the minimum sentence. If you thought it was serious enough, you give a stiff minimum sentence. If there's virtually no minimum sentence, the Legislature says, this is a throwaway--1 to 50, 1 to 100. But here's the thing--I don't think that the same offense can be so mild that it merits only one year, or so vicious that it merits 50 years. I think you'll have different acts in that range to justify those different numbers of years that you can receive. So I would argue this way: The Legislature has shown how serious or not serious making these threats really would be, by declaring it a misdemeanor in Section 28-1310, which is a part of the criminal code, and I insist on being charged with that offense, rather than terroristic threats under 28-311.01. Why are we going to do that? Should we do something about reconciling what exists in statute now? [LB142]

SENATOR ERDMAN: One minute. [LB142]

SENATOR CHAMBERS: But before we came up with what we're being presented with

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by Senator Friend, this offense was a Class III misdemeanor. So I could be charged with a Class III misdemeanor or a Class IV felony; now, if we adopt the committee amendment, a Class I misdemeanor or a Class IV felony. Maybe I'm the only one that is bothered by that, but I at least want it in the record. This amendment that I'm discussing says that I would strike the word "suggests" where we're talking about lewd, indecent, or lascivious acts, and substitute the words "explicitly offers or solicits." That's what the amendment would do. Thank you, Mr. President. [LB142]

SENATOR ERDMAN: Thank you, Senator Chambers. Members, you've heard the opening on FA115. Senator Friend, you're recognized to speak, followed by Senator Pirsch. [LB142]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. Again, thank you for your patience through this process. I hope that I made myself clear earlier, that I've been through this with Senator Chambers before on criminal code. I think it's the nature of the beast, at least it is in my life. Maybe that tells you something. I don't know how exactly I feel about this amendment, and let me tell you why. The language on line 18, starting on line 18, that Senator Chambers is changing, let me read it real quick: "Contacts another using an electronic communication device and uses or transmits any indecent, lewd, lascivious, or obscene language, writing, or sound, or transmits any visual depiction of sexually explicit conduct as defined in Section 28-1463.02, or suggests any indecent, lewd, or lascivious act." That's what we're trying to change this to. Senator Chambers wants to replace "suggests" with "explicitly offers or solicits." My only fear is this. Why is the term... "suggests" is old language, again. And somebody is going to have to help me out with this. I know we're changing the penalty, so his concern is understood from this end. A higher standard is required? Maybe so. Maybe a clearer explanation about "explicitly offers or solicits" is what I would need, either that or somebody telling me why "suggests" is decent... why the term "suggests" is decent language to have in criminal code, whether you're trying to sock somebody with a misdemeanor or, you know, a Class IV felony or whatever. I hope you understand my reticence. It's not because I don't trust him. I'm trying to figure out why this language was there to begin with. I mean, there must be some reason. And we can come up with those answers. It's a matter of time, or trying to, you know, track the right person down to try to figure out what either prosecutors are using it for, or what Bill Drafting thinks is appropriate or consistent. But I was talking to Senator Pirsch about this. I didn't get a chance to talk to Senator Chambers. Here was a thought. If you go to that first line--contacts another using an electronic communication device and uses or transmits any indecent...etcetera, etcetera, etcetera; then you go down and you say, why couldn't you just pop the term "uses" in there again? So in other words, at the end, instead of having "explicitly offers or solicits," you say, or that person uses any indecent, lewd, or lascivious act. Can you "use" an act? Maybe not. I...maybe that's not appropriate. For lack of a better direction to go here, for me, right now, I would almost like to...I know I'm asking for a leap of faith here. I'd almost like to bypass FA115, or maybe even ask...and

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I can ask him off the record if it would be more appropriate. Maybe we can withdraw this and include this in a discussion matter and include it into an amendment that would be incorporated on Select File. I would like...I guess what I'm saying is, I would like more information to try to figure out, because we're changing in two spots terminology that may be used for reasons that I'm just not aware. I mean, we might have to have that for particular reasons that I'm not aware of. [LB142]

SENATOR ERDMAN: One minute. [LB142]

SENATOR FRIEND: Now, I guess, let me sum up by saying that I'd like to maybe include this in some of the things that we're going to be working on, if you will. So I guess I just won't vote on this if we're going to take it to a vote. I would also respectfully ask maybe that we pull this off, include this in, you know, maybe a small package, or (laugh) possibly a big package of things that need to be included before we move it off of Select File later on. Again, I'm not asking you, members of the Legislature, for a leap of faith here. It's a "trust but verify" type of thing. And if you can't verify when we're on Select File, you can trust me with the idea that I'll do what is right, and make sure that we either work this...through this on the interim,... [LB142]

SENATOR ERDMAN: Time. [LB142]

SENATOR FRIEND: ...or later on next year. Thank you, Mr. President. [LB142]

SENATOR ERDMAN: Thank you, Senator Friend. Senator Pirsch, you're recognized to speak on FA115, followed by Senator Chambers. [LB142]

SENATOR PIRSCH: Well, thank you, Mr. President, members of the body. And I, too, see valid points in both Senator Friend's and Senator Chambers' concerns. You know, I also wonder if maybe we can't...with the word "suggests," I see what...even though it is existing language, we're increasing the penalty, and I think that's a very astute observation. When that happens, you have to pay particular attention to the words that are utilized, in light of this new importance. And so use of the word "suggests" does...is, again,...you know, normally, I stick to the tried and true, but it does...it is kind of an interesting word choice, whoever eventually...or whoever originally wrote the word. And it would "connotate," as Senator Chambers points out, because of the normal meaning of the word, something that is less than engaging in the activity, but merely suggesting it. And so I understand his point. And I guess...and so I understand the need to look at alternative type of words to more aptly describe that. I think perhaps maybe just saying the word "engage," maybe, which would be...my concern with using "explicitly" is that that would...oftentimes, slang is employed, and it's clear to everyone what is actually occurring, and...but technically it would not be explicitly stated. And so finding the word that meets Senator Chambers' concerns and...while meeting the real-world realities, I think, maybe that is just using the word "engages" in any indecent, lewd, or lascivious

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act, that would require that act to be engaged in. So I do...I think this is probably...I would, I guess, make that similar request, something that could be, in good faith, looked at with the spirit of compromise and accommodation, perhaps on Select File. I'm going to yield the balance of my time to Senator Chambers. [LB142]

SENATOR ERDMAN: Senator Chambers, you have 2 minutes and 20 seconds. [LB142]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Pirsch. And the suggestion made by you and Senator Friend is not unreasonable, in my opinion. And when I began, I said, it won't bother me too much--I intended to, anyway--if this amendment is not adopted here, because we are going to work on this bill further. And I trust those who have said they're going to work on it, and I believe what Senator Friend assured us. But I don't think he'll pull any shenanigans, because he has never done that before. And if he did it before, he should get an Academy Award, because he pulled it off with such aplomb and skill that I wasn't even aware of it. That's some acting. But in reality, here's what we have to keep in mind. We're not dealing with conduct in any part of this bill. We're dealing with speech. Whether it takes the form of words, text material, visual imagery, we are dealing only with speech. When we talk about intimidating by means of these electronic devices, we're talking only about speech. When we talk about enticement, we're talking only about speech. [LB142]

SENATOR ERDMAN: One minute. [LB142]

SENATOR CHAMBERS: The person who is deemed the perpetrator does not do anything. No act is committed against any person. So with where I'm attempting to amend the bill, the word "engage" would not work, because we're getting away from speech and now talking about conduct, and that's not what the bill aims at. And it's why I want us to keep that in mind. We're not talking about somebody committing a crime against another person. There are other statutes that deal with actual crimes--assault, sexual assault, kidnapping, all of those. We're not talking about any of those here. Thank you, Mr. President. [LB142]

SENATOR ERDMAN: Thank you, Senator Chambers. Your light is next. You may continue. [LB142]

SENATOR CHAMBERS: Thank you. And the reason I stopped at that point, I knew my time was running out that Senator Pirsch gave me, but I'd be able to wrap it up. I'm willing to work towards something on what this bill is aiming at. And maybe it won't be a complete rewrite of the law, as I suggested. Maybe there will be a way to just pitch and patch and jerry-build a tight, constitutional, clear, easily understood statute. What we're doing here, remember, is serving notice to the public of what is going to be prohibited. And if we do not do that in clear language, the statute is going to fail. The Nebraska Supreme Court, and every court in this country, in all jurisdictions, have emphasized

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that criminal statutes are narrowly construed. They're going to be given the least amount of reach allowable under the words. No court is going to expand the reach of a criminal statute through interpretation. It may narrow what the words seem to create, as far as the scope, but no court is going to expand its reach. Courts have said they will not read into a statute what is not clearly there; they will not read out of the statute what is clearly there. While we're legislating, we have not only the obligation, but the opportunity to adopt language that clearly states what we're interested in achieving. And that is not being done by the bunglesome language in this current committee amendment which is before us. So I am willing to work with others who are interested in doing something in this area. But that doesn't mean I'm going to roll over and, just to get along with everybody, I say, well, whatever you guys come up with that's what I'll adopt. If anybody saw A Man for All Seasons, which was based on a play, I think Robert Bolt may have written the play, and it was about Sir Thomas More, everybody was trying to get him to agree that it was all right for the king to marry somebody or other for some reason. And these guys were sitting around, trying to tell Thomas More he ought to go along with it. And Thomas More said, well,...and they told him, Thomas, everybody has gone along with it, everybody. So he said, well, if everybody has gone along with it, why do you need me to go along with it? They said, well, Thomas, because people respect you. Thomas, do it for...and I forget whether he said fraternity or brotherhood or some such word. And Sir Thomas said, do you think you were wrong for going along with this? And they said, no, Sir Thomas. He said, very well; when we come before the bar of God to be judged and you are allowed to enter heaven because you did not violate your conscience, are you prepared to go with me to hell for having violated my conscience, and you accompany me to hell for the sake of brotherhood? He made the point. I'm willing to be collegial and cooperative, but I'm not prepared to violate the standards that I think... [LB142]

SENATOR ERDMAN: One minute. [LB142]

SENATOR CHAMBERS: ...we ought to meet in legislating in order to be collegial, because nobody on this floor is going to support me in something they disagree with just to be collegial. So, Mr. President, I will withdraw that pending amendment. [LB142]

SENATOR ERDMAN: FA115 is withdrawn. We will now continue with the discussion on the Judiciary Committee amendments. Senator Friend, you're recognized. [LB142]

SENATOR FRIEND: Thank you again, Mr. President. And again, members of the Legislature, Senator Chambers summed it up well. I appreciate...I didn't get a chance to talk to him off the mike. I appreciate what he did. Let me toss out a plan of attack, and then we can move on. I know Senator Ashford may want to close on the Judiciary Committee amendments. I knew this was coming, but I also knew that we probably had to do it, and we had to go through this. (Laugh) I'm not going to equate it to...well, never mind. I knew that we were going to have to go through it. People kept asking me, wait a

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minute, Mike, how long is this bill going to take? You know what, I have no idea. But I know that there are some concerns, and I know where the concerns are coming from. I just don't have the specifics. Here's, I think, the plan or the approach, if you would bear with me, or come along with me--kind of like a Pied Piper approach to lawmaking. I can gather, maybe not in the Greg Adams way, where we have somebody off to the side and we're gathering all the, you know, things in a basket and we're going to start tossing them out or tossing them in, but there are some concerns, and I understand that. We can gather those concerns. I think we can make one amendment, I think we can make it pretty tight, and I think it can include the type of things that Senator...not only Senator Chambers brought up, Senator Lathrop, Senator Mines, others. We can get this done. And I think we'd all agree, and I think Senator Chambers would, too, that it's the right thing to do. We just want to make sure that we're not violating people's rights in the process. I remember last year when we went through the--I was sick, too; it was miserable--the protest...the funeral protesting bill, and Senator Chambers helped me with some things. Not really sure why. I don't even remember. I was pretty sick. I shouldn't even have been here. I think I made Senator Cornett sick, too. But Beutler made me sick. It was him. It was Senator Beutler, Mayor Beutler now. Anyway, the point is, there were some free speech concerns. Well, we took care of those. He...I can see it. He's got free speech concerns here. I don't share that view necessarily, but I do think that there's a way to get from point A to point Z between here and General (sic) File, based on the four hours that we've just spent dealing with this. I could be wrong. We're going to give it a crack, and we're going to see what transpires. Thanks for the time. Thank you, Mr. President. [LB142]

SENATOR ERDMAN: Thank you, Senator Friend. Senator Lathrop, as the Vice Chair of the Judiciary Committee, you're recognized to close on AM579. [LB142]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I would urge you to adopt the Judiciary Committee amendments. And as you can see...and first of all, I want to say thank you to Senator Chambers for his constructive input. I think he has brought to our attention a number of things that should be changed, even with these Judiciary Committee amendments. But at the same time, there are a number of us that have been engaged in this dialogue this afternoon that are committed to making changes. Before this bill comes up again on Select, we will have for you an amendment that will be pretty close, I think, to the finished form. And again, I would ask you on...with that assurance, to pass and to adopt the amendments. Thank you. [LB142]

SENATOR ERDMAN: Members, you've heard the closing on AM579, the Judiciary Committee amendments to LB142. All those in favor vote aye; all those opposed vote nay. Have all members voted who wish to? Record please, Mr. Clerk. [LB142]

ASSISTANT CLERK: 27 ayes, 0 nays on the adoption of committee amendments, Mr. President. [LB142]

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SENATOR ERDMAN: The amendment is adopted. We are now on discussion of LB142, as amended with the Judiciary Committee amendments. Senator Friend, there are no lights on. As the principal introducer of LB142, you're recognized to close. [LB142]

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. Thank you for your indulgence, and thank you for the four and a half hours of going through criminal code. I would ask for the advancement of LB142. And your input on LB142 between here and Select File, within the next three or four days, I guess, would be welcome. Thank you, Mr. President. [LB142]

SENATOR ERDMAN: Members, you've heard the closing on advancing LB142 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. [LB142]

ASSISTANT CLERK: 31 ayes, 0 nays on the motion to advance the bill, Mr. President. [LB142]

SENATOR ERDMAN: LB142 is advanced. Mr. Clerk, items for the record? [LB142]

ASSISTANT CLERK: Mr. President, one item, new bill. (Read LB171A by title for the first time, Legislative Journal page 1662.) [LB171A]

SENATOR ERDMAN: Thank you, Mr. Clerk. Next item on the agenda. []

ASSISTANT CLERK: Mr. President, LB653, introduced by Senator Raikes. (Read title.) The bill was read for the first time on January 17, referred to the Education Committee. They report the bill to General File with committee amendments attached. (AM1319, Legislative Journal page 1617.) [LB653]

SENATOR ERDMAN: Thank you, Mr. Clerk. Senator Raikes, you're recognized to open on LB653. [LB653]

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. LB653 deals with accountability testing assessment in our K-12 schools in Nebraska. I'm going to begin by giving you a little background on this issue, and reminding you that we did begin the discussion on this yesterday in the form of a Select File amendment. But now we are going to consider it here as a General File proposal. The background is this. In 1998, at that time, there was considerable interest in testing and accountability. The Legislature at that time decided to adopt or implement a statewide test. The Governor at that time vetoed the funding for that test, so it came back to the Legislature the next year to...for further consideration. At that time, there was still interest in a statewide test, and there was certainly interest in student accountability, or measurement of

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performance, but there was a different idea in addition to a statewide test, and that was classroom-based assessment. There was a considerable discussion at that time on the issue, on these two alternatives, and finally there was a compromise agreement. And the compromise involved, at least in my memory, the following: that there would be a single statewide test in writing, but in the other subject areas there would be locally developed tests, but the locally developed tests would be then evaluated by test experts and, in effect, sifted down or sorted, if you will, to arrive at the four best tests statewide, and those then would be used as tests or assessments in the other subject areas. I have a quote here from the floor discussion back at that time which I think describes this fairly well. Then-Chairperson of Education Committee, Senator Ardyce Bohlke, described how the process would work for the subject of reading. She said, every school district would be allowed to develop their own assessment in reading. At the end of the year, all those reading exams would be turned in to a national institute that does testing. They would review those and they would come back with the recommendation of the four tests in the state that would be the best tests. From thenceforward, schools would select one of those tests, so there would no longer be the possibility of 150 or 200 tests or exams; there would be the possibility of 4. Given that description, and also given the interest and newsworthiness, I guess I should say, of the STARS system--that's the acronym for this testing system--this past summer, regarding No Child Left Behind, I thought, as a member of the Legislature, it would be good idea for us to take a look at this system, this testing system that we had put in place, it had been six or seven years, as somewhat of a sort of a mid-course examination, simply to see how well it had done, or how well it was performing, both in the area of No Child Left Behind and also in the area of...in other areas. Is it working well for reporting for student accountability, so on? Is it not? If it isn't, what changes should be made? In that connection, I put in a request to the Legislature's Performance Audit Committee to do an examination. I thought that a good beginning point for discussion of STARS would be from this group, because they have good analysts, and they're also somewhat of an outside, objective view, at least as far as the Education Committee is concerned, that could do an in-depth look at this and recommend to us how it was doing and whether or not any changes were needed. So at this point, I'm going to turn the time over...or, yes, turn the rest of my time over to Senator Schimek, Chair of the Legislature's Performance Audit Committee, so that she can tell you a little bit about how their activities picked up at this point. [LB653]

SENATOR ERDMAN: Senator Schimek, you have 4 minutes and 40 seconds. [LB653]

SENATOR SCHIMEK: Thank you, Mr. President. Thank you, Senator Raikes. First of all, I would like to say that at the beginning of the session, before we knew what the committee recommendation was going to be on the performance audit, the committee did introduce a bill, LB353, that was sort of a placeholder that would go to the Education Committee and that could be used with any recommendations that the committee might have. At the same time, Senator Raikes introduced a bill that, as it happened, actually

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covered probably the main points that the committee was eventually going to recommend when it issued its report. What I want to share with you right now are just briefly the main recommendations of that, findings and recommendations of that report. Finding two of the report--and you all should have gotten this at some time, but I know it's probably in a stack in your files somewhere--but finding two, based upon the section's interpretation of the term "assessment," which reflects legislative intent, the department did not meet the statutory requirement that the consultants select four model assessments in each subject area. And finding three said that the term "assessment" is not defined in the act, and the section, meaning the Performance Audit section, and the department disagreed on how the term should be interpreted. So the recommendation was that the committee, the Performance Audit Committee, agreed with the section's interpretation of the term "assessment" and recommended that the department immediately begin the process of identifying four model tests as required by law, or, if the department believed that developing the model test was either impossible or undesirable, that it should pursue the introduction of legislation to amend the law accordingly. The other thing that we looked at was the dissemination of information about the testing. And so finding eight said that while the department has made available some descriptions of methodologies for making comparisons of student performances from the data reported, given the large amount of data, the section encouraged the department to provide as much assistance as possible to help the public understand the data available. And so our recommendation was that the committee would consider requesting or, if necessary, amending introduced bills to require the department to produce and distribute a guide that would outline legitimate methods for comparing performance results between schools in one district and among districts. So with that in mind, and those recommendations in the back of our mind, we went, I went, to the Education Committee hearing on LB353 and the bill that you have before you today, and we asked the committee essentially to kill the Performance Audit Committee bill and to advance the... [LB653 LB353]

SENATOR ERDMAN: One minute. [LB653]

SENATOR SCHIMEK: ...LB653. And my feeling on that was that the committee was in the best position to craft the final product, because on that committee are people who have dealt with the testing procedures, who have knowledge of some of the testing and assessment procedures. And I think what they have crafted has been excellent. I think it will retain some of the assessment work...most of the assessment work that has been done, but it will also add an ability for us to evaluate better as a state what our schools are doing. And so I would ask that you listen carefully, and that you work to... [LB653]

SENATOR ERDMAN: Time. [LB653]

SENATOR SCHIMEK: ...advance LB653. Thank you, Mr. President. [LB653]

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SENATOR ERDMAN: Thank you, Senator Raikes and Senator Schimek. Members, you've heard the opening on LB653. As the Clerk mentioned, there are committee amendments. Senator Raikes, as Chair of the Education Committee, you're recognized to open on AM1319. [LB653]

SENATOR RAIKES: Thank you, Mr. President, members. The committee amendment strikes the original sections and inserts new material, which I'll go through in just a second. But again, to background...or to follow a little bit what Senator Schimek said, my understanding, in listening to the conversation that we had back when I first got here, before the year 2000, was that there would be locally based assessments, but those would lead to the development of four model tests to be used by school districts in each subject area, in each of three grades--4th, 8th, and 11th. What has happened is, instead of that, the department has identified four...or rather, six guidelines for developing an assessment, and there are four...and they have interpreted the models as being four alternative ways to meet those six guidelines. So in effect, what they have is, rather than four model tests, they got 24 possible ways to develop a local assessment, and there is...well, there are, as near as I know, no locally...or no model tests that are currently available for use or having been used. Their argument is that that's the way they read the statute. And certainly, they have an argument to back that up with. What we tried to do as a committee in the committee amendment was as follows. First, given the difficulty caused by the lack of definitions, we made sure that we tried to carefully define the terms that we were using. For example, we defined "assessment," "assessment instrument," "assessment portfolio," and also "national assessment," to those ends. We continue the requirement that there would be a statewide system for assessment and reporting, and we also continue the requirement that there would be a statewide writing exam. And I would mention, in those connections and in several others, what we've tried to do is to continue the practices or recognize the procedures that have been developed, but to incorporate those and direct them a little bit differently in terms of what goes from here forward. For example, we are proposing that there be a statewide reading assessment, in addition to the statewide writing assessment, and that this statewide reading assessment would be developed through collaboration among educational service units. I'll stop for just a second and mention that educational service units in many places in the state have become key centers for the development of assessments through the current system. And this particular procedure that we're proposing for developing a statewide system, I will emphasize, is taking advantage of the considerable work that has already been done by teachers throughout the state in developing reading assessments through their locally based efforts. In addition to a statewide reading assessment, there would be a statewide math assessment that is also part of the proposal. There would be assessment portfolios developed--and again, those are defined--and they would be...could be done as they currently are, which may be in an individual school district, or they could be done collaboratively through an effort with the ESU. And Senator Adams will talk in just a moment, but this is a considerable part of the work that teachers have

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been putting in, in developing these locally based assessments, developing these portfolios which actually are a fairly thick manual to back up or verify the work they've done in developing an assessment. Another significant change, although I don't think it necessarily is counter to what the department has in mind, would be to establish statewide minimum proficiency levels and criteria for the standards. Currently, in the locally based assessments we have state standards, but...and we rate proficiency, but there is no proficiency level on a statewide basis for any given standard. So that's pretty much up to the individual school district, so that proficient in one school district, in one standard, or one building, even, in one standard, may be different than what it is in another. It makes, certainly, for difficulty in making comparisons which may be useful for policy purposes and other things. We're proposing technical quality and comparability studies, in a large part, again, similar to what's being done now on the writing exam, the statewide writing exam. We have included in the statutory requirement national assessment, nationally norm-referenced tests. These are now done, but they're not required in the statute. They're reporting results which are much the same as what they have been. We are also including a statewide...or a review, a procedure for reviewing state and local standards. Again, this is, I think, a very important point, because as we move through time, it's important that the standards be revised to reflect the appropriate level of rigor. So that's one of the reasons we did that. A couple other things. We've included early assessment, K through 3 standards and assessment. We have left a great deal of discretion to the department as to how these would be developed, but certainly this is an important issue as we look in...at the metro area early education programs, and also early education programs in other parts of the state. A final effort here is the student data system. This was introduced as LB615 and amended into this proposal. This is an effort that's currently underway at the department and is being, I think, very well managed there. But we've included some specific guidelines as to what should go into that student database, particularly keeping in mind our need as policymakers to be able to do analyses to support whatever policy we might look to implement. This is a student...a time-series cross-section. For every student there is an identifier, demographic information, and results and records about assessments and others things, tracking the student through their career in the K-12 system. So those are the main components of the committee amendment and now the bill. Senator Adams has done a great deal of work, in fact, led the effort on the committee in working on this. So I'll yield the rest of my time to Senator Adams. [LB653 LB615]

SENATOR LANGEMEIER PRESIDING [LB653]

SENATOR LANGEMEIER: Senator Adams, a minute, 40. [LB653]

SENATOR ADAMS: A minute, 40? (Laugh) Thank you, Mr. President. As I look about the faces of all of these people, you look like the faculty at York High School in the year 2000 when we first were told we were going to have to develop assessments, and they were talking about norm-reference and criterion-reference and portfolio assessments.

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We all had that deer-in-the-headlight look about us. It's going to take more time. But let me just say this. I want to put this disclaimer in right away. As a teacher that just walked out of the classroom and spent seven years...no, not quite that; I kept my head below the radar as much as I could on this. [LB653]

SENATOR LANGEMEIER: One minute. [LB653]

SENATOR ADAMS: I'm not prepared in anything that the committee did, I would not want to be part of it, if, number one, it would disrespect or throw out everything that teachers have done for the last seven years whether they like what they have done or not. We cannot cast it out. The other part of this is, this bill is not intended to create more work for teachers. If it was, I wouldn't be standing here in support of it. To the contrary, it's designed to create a bit of relief. Now, it's going to take more time to explain how that can occur, but it's designed to create a little bit of relief so teachers can get back into the classroom, use their assessments, and teach, and correct some of the inadequacies that have been... [LB653]

SENATOR LANGEMEIER: Time. [LB653]

SENATOR ADAMS: ...discovered. Thank you, Mr. President. [LB653]

SENATOR LANGEMEIER: Thank you, Senator Adams and Senator Raikes. Speaker Flood, you are recognized for an announcement. [LB653]

SPEAKER FLOOD: Good evening, members. Just a quick announcement. There will be no 7:30 a.m. meeting tomorrow morning to discuss LB641. I want to repeat, no meeting tomorrow at 7:30 in the morning in the Senators' Lounge. There will not be a meeting to discuss LB641, to give members of the Legislature a little bit more time to work on some of the proposals that are currently under discussion. If there is a meeting scheduled tomorrow, I'll certainly interrupt our morning discussion and share the time, location of such meeting at that time. But no meeting tomorrow at 7:30. Thank you. []

SENATOR LANGEMEIER: Thank you, Speaker Flood. Mr. Clerk, for an amendment. [LB653]

CLERK: Mr. President, Senator Raikes would move to amend the committee amendments with AM1379. (Legislative Journal pages 1662-1663.) [LB653]

SENATOR LANGEMEIER: Senator Raikes, you're recognized to open on AM1379. [LB653]

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. This is a clarifying amendment. It does three things: it delays dates one additional year; it clarifies

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the K-3 reporting provision; and it addresses concern about linking student teacher data and the anticipated cost. The latter provision deals with the student database. So these, I think, are clarifying. They're not particularly substantive except for putting the year one day back. So I certainly urge your support, and I would yield my remaining time to Senator Adams so he can continue his comments. Thank you. [LB653]

SENATOR LANGEMEIER: Thank you. Senator Adams, 9 minutes. [LB653]

SENATOR ADAMS: Thank you, Mr. President. Let me go, first of all, to the place where I think I see in this bill that we save some teacher time. What's been going on for the last seven years...and let me preface this statement by telling you it has been onerous, it has been, well, difficult, frustrating, but ultimately I think it has been valuable. Teachers have been put through the paces on how to develop good assessment devices. Whether we have liked it or not, we have gotten better at it. We've gotten better at it. And it's important, I think, that teachers retain control of those assessments. They're in the classroom every day with those students. There's a lot of variety, a lot of situations you have to deal with, and there's more than one way to assess. The teachers retain the control of that. But whenever you develop these assessments, if they're going to stand the course of the Department of Ed and No Child Left Behind or just simply good testing practices, you can't just throw together any old test and call it good. It must be valid, and it has to be reliable, and there are criterion that have to be met before you can say that your test is up to speed. So when teachers put together their local assessments, as they have been asked to do and they have gotten good at, the next step is to document, to document in an assessment portfolio all the work that they have done to justify that the assessment that they're using meets the reliability and the validity standards. Those portfolios, in addition to the assessment, take a tremendous amount of time. Now stop and think about it for a minute. The teachers who have spent time developing the assessment, in many cases, time away from class, time in the summer, as well, now they also have to take time out to develop the portfolio so that the Department of Ed and peer review...so that the assessment they're using stands the test itself. And then can you imagine getting told--and this happens; it's understandable--that your test doesn't meet the standards, it's not reliable, it's not valid, doesn't meet the criterion; fix it again, fix it again, fix it again? Some schools, some teachers, I suspect, have been very lucky, and right out of the chute they were able to put together those good assessments. Others have really struggled. And that struggle has not necessarily created better assessments. What it has done is pulled teachers out of classrooms and created a great deal of frustration. One of the key components of this amendment to LB653 is that school districts are going to be allowed, in the subject areas, to continue to develop local assessments the way that they have been for the last seven years and to continue to develop the assessment portfolio the way they have been to justify that the test is good; or, or they have an option. They can join with other teachers within their ESU, in conjunction with the professionals at the ESU, develop an assessment at the ESU. And the key component is that teachers are still involved in

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developing it. The ESU doesn't develop it; the teachers do. But now you have an assessment that schools within the ESU could say, we're going to use that one, or we're going to use the one that we've developed. Now, what's the advantage to that? The ESU then, the professionals there, would be developing that portfolio. The teachers have helped develop the assessment; the ESU then develops the portfolio. Teachers have just bought themselves some time back in the classroom. And if the portfolio has to be changed, the ESU can respond to that with teacher input. But you've just bought teachers some time with that, and you've eliminated some frustrations. They're not afraid of writing tests or developing assessments. They're not afraid of using them. They want to use them. We're just trying to eliminate some of the frustration. But an option is still there. Schools can continue to do business as usual. All the e-mails that you're getting, saying that the world is coming to an end, it's not. Schools can continue to use their local assessments and develop their portfolios if they want. We're just giving them another option. The other part of this that Senator Raikes pointed out is that we take what we have been doing in writing, and we take it one step further to reading and mathematics. Now, I think you'd be incorrect to picture the state of Nebraska developing a paper-pencil test that every 4th grader or every 8th grader or every 11th grader is going to take. That would be wrong. It's not what we're doing in writing. Instead, you pick out a standard in writing, one of the things you want kids to be able to do, and you test that. And then maybe down the road you pick out a different standard and you test that. It can be done in a lot of different ways. And the language of this amendment still allows the State Department of Education, ESUs, and teachers, I believe, latitude, latitude to develop these assessments. The kindergarten through 3rd grade, as we have been in LB641, the Education Committee, looking at trying to boost the achievement of those young kids, if we don't have them by the 4th grade, folks, we're on the path to losing them. So all we're saying is, we're going to allow the school districts to use their expertise, the ESU expertise, and develop some benchmarking methods... [LB653 LB641]

SENATOR LANGEMEIER: One minute. [LB653]

SENATOR ADAMS: ...for the kindergartner, the 1st grader, so we can see where they're at, see if we're making any progress. I think it would be in error to picture some little kid sitting at their desk plowing away through a test the same way that a junior in high school might, or an ACT exam. That's not what we're talking about, but developing some kind of a methodology so that we can see where the kid is at, track it, follow it. This assessment bill that you have in front of you, I repeat, is not throwing the baby out with the bathwater; it is respecting what teachers have done. It's complying with the statute that this body passed in 1999. It comes closer to that. And believe me, I honestly believe it's giving teachers some more time to get back in the classroom. Thank you, Mr. President. [LB653]

SENATOR LANGEMEIER: Thank you, Senator Adams and Senator Raikes. You have

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heard the opening on LB653, the committee amendments, and AM1379. We now open the floor for discussion. Those wishing to speak are Harms, Christensen, Stuthman, Pahls, Adams, and Carlson, and others. Senator Harms, you're recognized. [LB653]

SENATOR HARMS: Thank you, Mr. President and colleagues. I rise to support these amendments to LB653. I believe that assessment is critical to the future of our young people and our school systems. We need to make sure that they are accountable and that we're making the progress that we need to make, and to make sure that our young people are getting the kind of core education that I believe they deserve, so that we can compete in the new world global economy. When I went through my primary and general race, I spoke to a number of grade school teachers and high school teachers. I hadn't been in the public schools in years, coming out of the college side, and wanted to get back in tune with them to find out really what their thoughts were about assessment and some of the issues that they were having. And it didn't take me long to figure out that, in talking to them and their concerns about No Child Left Behind, wasn't working; that they were so bogged down with assessment they couldn't teach. And what they were saying is that their children, that they're going out of the grade school, particularly in the 4th grade, and they go on, are going to be deficient. And in some cases, some of the schools were...computerized their tests, and they only had several computers to use, so it was bogged down again. And so what I'm concerned about here is that--and I support this--that we make sure that when we go through this process, that we have all the right things in place to make it easier for these teachers, to make sure that we can evaluate and measure our children. Senator Adams, would you yield for several questions, please? [LB653]

SENATOR LANGEMEIER: Senator Adams, would you yield to questions? [LB653]

SENATOR ADAMS: Yes. [LB653]

SENATOR HARMS: Senator Adams, are you familiar with the issue about retake, the retake issue that the people and teachers are talking about? [LB653]

SENATOR ADAMS: Right, I am. [LB653]

SENATOR HARMS: Let's talk a little bit about that, and let's talk a little bit about the concern that probably we both would have, as previous educators, in regard to, some schools allow their children to take the test once, they record it, and that's it, correct? [LB653]

SENATOR ADAMS: Correct. [LB653]

SENATOR HARMS: There are some schools that take the test over and over and over again, so these kids become proficient. Is that correct? [LB653]

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SENATOR ADAMS: I cannot specify a school, but, given that there really is no protocol that I'm aware of, I would think that that would be a possibility. [LB653]

SENATOR HARMS: Well, that's kind of what some of the e-mail I've gotten and some of the conversations I've had. And I think as we look at this, Senator Raikes, that I think we need to make sure that we have everything into place, and that as we start to fine-tune this, we need to make sure that we have the right protocol established here, and to make sure that we have developed a protocol, or at least have the State Department of Education develop a protocol to make sure that we have the right security for these tests and the right procedures for these tests. The other concern that I have in what I heard and what I've received in e-mails in regard to testing is the fact that, because we have no real protocol, schools test at different times. Some will test in October, some will test in November, some will test in April, and some will test in May. Now, the teachers tell me that if you test in May, you've had those kids in your classroom for almost a year, academically, and that when you get down to it, when you don't have protocol, we're not comparing apples with apples or oranges with oranges. And so as we look at the testing process here, I think we got to go a little bit further and making sure that we require the State Department of Education to look at these issues, because I think in my discussion with the teachers on a one-on-one or in small groups,... [LB653]

SENATOR LANGEMEIER: One minute. [LB653]

SENATOR HARMS: Thank you, Mr. President. As we continue, when I visited with them, it was an issue, and I think we need to make sure that it is appropriate and that we have everything in place. Senator Adams, one other question I'd like to ask. Do you feel comfortable, with the ESU units and our teachers coming to agreement and making these tests, that we'll be able to compare within the state of Nebraska fairly and appropriately? Because in western Nebraska, we have ES Unit 13, and back here we may have another ESU unit, and they're not communicating with each other. They develop a different series of tests that they're going to use. Is that comparable? Can we actually take that to the bank and say, our children are getting a quality education and...? [LB653]

SENATOR LANGEMEIER: Time. [LB653]

SENATOR HARMS: Thank you, Mr. President. [LB653]

SENATOR LANGEMEIER: Thank you, Senator Harms. Senator Christensen, you're recognized. [LB653]

SENATOR CHRISTENSEN: Thank you, Mr. President. Would Senator Adams yield to a question? [LB653]

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SENATOR LANGEMEIER: Senator Adams, would you yield to a question? [LB653]

SENATOR ADAMS: Yes. [LB653]

SENATOR CHRISTENSEN: Did I hear you correctly? You said that this is just another test being set up; that they can still continue to use the ones they have if they choose? [LB653]

SENATOR ADAMS: Yes. Yes, they can continue to do what they're doing. And let me emphasize, too, for the record, we are not creating an additional new test. I know that there's been e-mails from teachers that say, oh my gosh, here comes another test. That's not that at all. [LB653]

SENATOR CHRISTENSEN: Okay. Thank you. I guess, you know, yesterday I brought up a number of concerns, and I've got a number of the concerns written here. That's why I asked Senator Adams that question first, because number of constituents, teachers, administrators have got a hold of me saying that, you know, we want to continue with what we have. Others, they want to abandon everything they got now and go to something that they would see to be better. I will say Senator Adams has put me at some ease with his questions. But I can go back and reemphasize again the number of responses I've had that...of...just like this one right here. It says, it makes it easy for teachers to tailor their instruction to tests. This is what I call teaching to the test. And, Senator Adams, would you yield to a question again? [LB653]

SENATOR ADAMS: Yes. [LB653]

SENATOR CHRISTENSEN: With this new structure, will they be able to see the tests ahead of time? Or will this be...because that was one of the complaints I got, is people could see the tests ahead of time, know what to teach towards it. Will this be more private? [LB653]

SENATOR ADAMS: You know, Senator, I don't know that really in this amendment we've addressed those kind of test protocol issues about giving the tests, the same kind of questions that Senator Harms asked about. And you know, there's...I don't mean to take up your time, but there's another way to look at that. Does the teacher know what standards they're going to be testing? Absolutely. That's the point of it. And I can remember many a time in class telling my students, here's what's coming; that's what we've been working on for three weeks. Here's what's coming. Did I tell them the test question? No. But the protocol of giving the test, I don't know...that's not addressed in this amendment, this bill. [LB653]

SENATOR CHRISTENSEN: Thank you. You know, I guess I realize that they're going

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to have general idea what the test should be on, and that they're going to want to be teaching towards that, and we should...we want to achieve that direction. But I guess one of my other concerns comes to...out, is the fact that...it's terrible when you've got a fleeting thought here. (Laugh) Well, I guess I'll go to another one. You know, just, here's some of the comments I'm getting: The best way to ensure and measure students' progress is to have a high-quality curriculum that matches the needs of local student population, and put a quality teacher in the classroom, and ensure that instruction time is not limited due to excessive interruptions, and then the access to the students on the materials and curriculum that they see each day. The further away from the classroom the test is created, the more time is taken away from the classroom with excessive testing, the less likely internal interests will get a true picture of the students' performance, and more likely the quality of education will diminish. You know, again, I just got all kinds of examples. I guess I'm...your comments that they don't have to use this probably has taken out a lot of my concerns here. [LB653]

SENATOR LANGEMEIER: One minute. [LB653]

SENATOR CHRISTENSEN: But you know, it's...I just want to make sure...you know, I want the best education for the kids. I want...I understand, to an extent, a certain amount of testing. But I want to make sure, as I said yesterday, that we get away from teaching to the test, but teaching a curriculum that should be beneficial for the test, beneficial for the kids' success. And I've probably had more responses saying, let's get rid of all the tests if we can, and then I got kind of split results whether we go...stay with the STARS or we go with a new program. So I'm going to be anxious to listen to the debate. And I may get up and share some more as it gets going here, but I'd kind of like to hear what others have to say here. And thank you. [LB653]

SENATOR LANGEMEIER: Thank you, Senator Christensen. Those wishing to speak, we have Stuthman, Pahls, Carlson, McDonald, Fulton, Wallman, Dierks, and others. Senator Stuthman, you're recognized. [LB653]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. First of all, I want to thank Senator Raikes and Senator Adams for explaining the bill very thoroughly. But I have one question for Senator Raikes, if he would respond. [LB653]

SENATOR LANGEMEIER: Senator Raikes, would you yield to a question? [LB653]

SENATOR RAIKES: Yes. [LB653]

SENATOR STUTHMAN: Senator Raikes, as far as...the state testing part of it is pretty well explained to me. On the amendment, on page 7, in line 3,...have you got that? The State Board of Education shall recommend national assessment instruments for the purpose of national comparisons. Is it going to be the practice, as it has been in the

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past, where they can...the schools can pick the instrument that they want to use as far as the national assessment is concerned? Or is that going to be defined as just a certain instrument that they all have to test for? [LB653]

SENATOR RAIKES: Senator, the requirement is what you read. So certainly, it would be acceptable, under this, for them to continue to use whatever national assessment measure they've used. And it currently, I believe, is in department reg that they do use national assessments. So these are typically the norm-referenced test, the MAT, the CAT, the ACT, those kinds of tests, and they are allowed, or they would be allowed under this, as they are now, to make a choice on that. [LB653]

SENATOR STUTHMAN: Okay. Thank you, Senator Raikes. That was the concern that I had from one of the school superintendents, was that they were concerned that the State Board of Education was possibly going to define which one of the instruments were going to have to be utilized as far as the national assessment would be. And they felt that if they could continue the way they have been in the past, they'd be very acceptable to them. So those are my comments. Thank you. [LB653]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. Senator Pahls, you're recognized. [LB653]

SENATOR PAHLS: Good evening, Mr. President, members of the body. Thank you. I'm really sort of curious about some of the comments that are being made tonight. The last time I stood up, somebody said, well, are you against testing? Of course not. I truly believe that if the public understands what we're doing in the schools, they'd be better, or feel freer on how the money is being spent. Just to give you an example, let's say a kindergartner comes to a school, good kindergarten teacher takes a look and has the child just draw a picture. That tells an awful lot about the child right there, tells about how detailed that picture is, that tells you the developmental level of that child. They're doing these assessments all the time. I'm amazed. It appears that in the state of Nebraska there are schools systems that are not testing. And I do understand the concept of being test-weary, because I've been around teachers, and we have developed our own tests, and we've used a Buros analysis, a professional group comes in. I've been there. I understand that. So these things that act like they're just so unbelievable have been happening in my life for several years. We follow those kindergarten teachers...or, not the teachers, we follow those kindergarten students and we know. That data is there. We look at it from grade level to grade level. I'm amazed that this is some unique thing that we're...the expectations. I must be in another world at times. There are schools that are doing some of the things that we are saying that should be required. Now, here's another interesting thing. You know, we're talking about...and I like this, this writing assessment over the state. Just to explain how it is, when I was a child, they told you to write a story. We don't do that anymore. We teach them six traits that they're supposed to look when they're writing. So these kids, they

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are taught these six traits, and one of them is--I'll just give you an example--is voice. In other words, does their message bring you in? Others on conventions--are you using periods, etcetera? The teachers know those are things they're supposed to teach. Kids write the...they're given a prompt at one time during the year. They don't know what that prompt is. The kids write it. Those tests are sent away, two people take a look at the tests, they evaluate it, they score the test. If one really scores it high, one scores it low, another person comes in and mediates that. This is happening. And I want people to know that there are schools doing this. Now, here's another thing. And I really wanted to talk about the budget, but since some of these things are...I feel I need to address. We're concerned about the achievement tests. Well, I'm going to tell you right now, it depends the year that it is normed. It also depends, because if it's given in May, that test is normed for May; if it's given in September, it's normed for September. Those are the types of things we should know. I can tell you right now, a lot of schools are moving to an achievement test called the TerraNova, because it's more updated. And just to give you an idea, Omaha was using a California Achievement Test normed in 1991. They are, right now, I think, piloting TerraNova, and then next year or so they're going to be using the TerraNova, which is updated. Their scores...you know what's going to happen? They're going to probably drop. Not because the teachers have done anything; because the tests are more currently normed. And the neat thing about it is, the Millard school district has been using the TerraNova for the last three or four years, and it's going to get the new normed test, so they're going to be doing it. So you're going to have Omaha, you're going to have Millard, and I also think you're going to have Lincoln being used...are going to be using the TerraNova. So you're going to have three of the largest school districts in the state of Nebraska, with... [LB653]

SENATOR LANGEMEIER: One minute. [LB653]

SENATOR PAHLS: ...how many children that they have, let's say 45...about 100,000 children...of course, they all will not be taking that test at the same time, but districts of that size, so we're going to have a good part of the state because of those three systems. So a lot of these things are happening. But I think we need to be very, very careful, because probably the best type of testing is that that happens in the daily classroom. We have to make sure teachers understand that and use that as a diagnostic tool. But we also need to have these other tests so we can prove to the public that we are doing a good job. And if we're not, then we need to take a look at that. That's why I'm saying, people, it happens at the building level. That's what we need to be talking about, that building level. We know that. At the building I was at, somebody pushed a button, they would give you the test following that child through kindergarten through 5th grade in that building, on up. So there...the stuff is there; we just need to make sure that we're all talking this together. And I think I'm going to close now... [LB653]

SENATOR LANGEMEIER: Time. [LB653]

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SENATOR PAHLS: ...because I'm about out of time. [LB653]

SENATOR LANGEMEIER: You are. Thank you, Senator Pahls. Senator Carlson, you're recognized. [LB653]

SENATOR CARLSON: Mr. President and members of the Legislature, I would like to address some questions to Senator Adams. [LB653]

SENATOR LANGEMEIER: Senator Adams, would you yield to a question? [LB653]

SENATOR ADAMS: Yes. [LB653]

SENATOR CARLSON: Senator Adams, LB653 is markedly different from AM1319. Would...is that fair to say, because I have...? [LB653]

SENATOR ADAMS: It's been so long since I've looked at LB653, I've been in the amendment, but, yes. [LB653]

SENATOR CARLSON: Okay. So then it's probably a meaningless question, but I'll just ask you to respond to it anyway, because on LB653, if we don't count Senator Raikes, there was one proponent and then a whole sheet full of opponents. And so were those things addressed as we get to AM1319? Or would you comment on that? [LB653]

SENATOR ADAMS: Oh, I'll comment on that. (Laugh) There was a committee room full of people that day, and most of them were opposed to what they suspected--and I want to underline the word "suspected"--we were going to do. I truly believe that if they see the language of the amendment, those same people would say, well, it's not that bad. But there were a lot of teachers from a cross-section of school districts and some curriculum coordinators who were there saying, don't change it, don't change the system. I don't think we have changed the system. [LB653]

SENATOR CARLSON: Okay. I appreciate that answer, but I think you're really saying that it may be a little up in the air how many of the people have crossed over to the other side, and we hope that they do. Correct? [LB653]

SENATOR ADAMS: Yes, from "the dark side." [LB653]

SENATOR CARLSON: Okay. (Laugh) Now, early in your testimony, you used two terms. And it's been a long time since I've worried about these terms, so I'm going to test myself a little bit. But you mentioned, tests need validity. As I remember, validity means, in simple language, it tests what a test is supposed to test? [LB653]

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SENATOR ADAMS: That's right. [LB653]

SENATOR CARLSON: Okay. And you mentioned reliability. And I think that means if you give the test over and over again under similar conditions, the results would be the same? [LB653]

SENATOR ADAMS: You got it. [LB653]

SENATOR CARLSON: Good. A term that you didn't use, directly, anyway, was comprehensive. And certainly I would think that...I know that you believe that a comprehensive test is very, very important. But I...clarify for me, as we go further into this idea of testing, you said that schools can continue to use their existing tests. And I think that most systems that are up to date and progressive in any sense are constantly monitoring and improving on the tests that they are using. But then how does that work when we get ESU involved and we say, well, then continue to use the same test, but part of the purpose of ESU involvement is to improve what they've got? So kind of put those two ideas together for me. [LB653]

SENATOR ADAMS: Well, teachers can go ahead and...or, let me say, individual school districts can go ahead and do what they're doing and continue to develop their assessments. I would also tell you, Senator Carlson--and you would have no way of knowing this--but most school districts have developed their assessments in conjunction or with the assistance of their ESUs. So all we're doing in this amendment is saying that if there are school districts out there that want to, teachers, in collaboration with the experts at their local ESU, could further develop an assessment... [LB653]

SENATOR LANGEMEIER: One minute. [LB653]

SENATOR ADAMS: ...in U.S. history, geography, and then the school would have a choice: You want to use the ones that we've already developed; or do you want to use the ones that we participated in along with the ESU? The difference, Senator, is that if the ESU does it, then the ESU is going to take on the documentation, the portfolio, the justification for the validity and the reliability part of it. [LB653]

SENATOR CARLSON: Okay. Thank you, Senator Adams. And I probably have about 30 seconds left. But in cases where school systems now are working with the ESUs in this system, then realistically, there probably isn't much change. [LB653]

SENATOR ADAMS: That's correct. [LB653]

SENATOR CARLSON: And the other thing that I think might be important as an idea would be that when a test is really comprehensive, it kind of takes away the fear of teachers teaching to the test, because if it's comprehensive and they teach to the test,

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fine, they've taught everything. Would you agree? [LB653]

SENATOR ADAMS: It can be that way. Um-hum. [LB653]

SENATOR CARLSON: Thank you. [LB653]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator McDonald, you're recognized. [LB653]

SENATOR McDONALD: Mr. President and members of the body, this bill didn't come with a direct response from the Performance Audit Committee of last year, but because Senator Raikes had the same idea the Performance Audit Committee last year did have, I appreciate him bringing that. And as you know, the Performance Audit Committee does audits, and it was recommended that they audit the STARS program, which they did, and they found the same findings that Senator Raikes has found. So I do appreciate him bringing this bill, because it is not only him that's concerned about that issue of the STARS program, but the whole Performance Audit Committee and staff last year had those same concerns. So I think that we're having a good, healthy debate on this. I think it's something that we need to discuss, and I think it's something that we need to move forward on. Thank you. [LB653]

SENATOR LANGEMEIER: Thank you, Senator McDonald. Senator Fulton, followed by Wallman. [LB653]

SENATOR FULTON: Thank you, Mr. President, members of the body. Would...I think, probably, Senator Adams it would be best if I could ask the question to. Would Senator Adams yield to a question? [LB653]

SENATOR LANGEMEIER: Senator Adams, would you yield to a question? [LB653]

SENATOR ADAMS: Yes. [LB653]

SENATOR FULTON: Okay, there's a general question that I have that hopefully puts this in some perspective. The performance audit, the handout that Senator Raikes put...gave to each of us, you know, we're not in compliance with No Child Left Behind, and we need to get in compliance. Can you give me an idea how many other states are not in compliance with No Child Left Behind with regard to testing? [LB653]

SENATOR ADAMS: No, I can't. And understand, Senator Fulton, that Nebraska has chosen to go a different route with our testing mechanism. And that I'm not saying is good or bad. What I am saying, though, it has...we cannot compare ourselves really with other states. I can't answer your question. And we've created for ourselves some extra obstacles. [LB653]

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SENATOR FULTON: Okay. The...I may...while I've got you here, I'm going to ask one question with some specificity. Page 3, line 24 in the amendment, subsection...section (2), subsection (d), "Provide for the comparison among Nebraska public schools," and then the stricken language, "to their peers and to school systems of other states and other countries." Now, is that picked up again later on in the bill? I assume that we're not just making comparison...well, we are making comparison with other schools in Nebraska, but we're not doing that exclusively. I assume, if we're trying to conform with No Child Left Behind, we're also making comparison to other states. Is that picked up later on in the bill? Or have we stricken that language purposefully? [LB653]

SENATOR ADAMS: Well, I...if we're looking at the same thing, page 3? [LB653]

SENATOR FULTON: Yes. [LB653]

SENATOR ADAMS: In line 24? [LB653]

SENATOR FULTON: Yes, 24 and 25. [LB653]

SENATOR ADAMS: Okay, then what I'm looking at, if I go down there further, to line 26 and 27, "and the comparison of Nebraska public schools to public schools in the nation and the world," I wonder if that answers your question. [LB653]

SENATOR FULTON: Probably does. I should have...how long have I had to read this amendment? (Laugh) [LB653]

SENATOR ADAMS: Weeks and weeks. [LB653]

SENATOR FULTON: Weeks and weeks. Okay. Well, that's one of the concerns I had. That's the stricken language. And I believe...okay. Okay. Thanks, Senator Adams. I look pretty foolish. Is Senator Raikes able to yield to a question? [LB653]

SENATOR LANGEMEIER: Senator Raikes, would you yield to a question? [LB653]

SENATOR RAIKES: Yes. [LB653]

SENATOR FULTON: Can you answer that question about No Child Left Behind and other states that are in a nonapproved status? [LB653]

SENATOR RAIKES: I think I can, or I can make a shot at it. Before I do that, I would just like to thank Senator Carlson for bringing up the proponent testimony at the hearing. That was actually one of my strongest proponent showings all year long. (Laughter) The question you asked about No Child Left Behind, I think, really, the performance audit

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result was that the STARS program was and is on track to be acceptable or approved for No Child Left Behind. They're not there yet, but I think they're on track to do that. The main recommendations and findings of interest here, at least, by the Performance Audit Committee, was in regards to compliance by this effort to state statute. [LB653]

SENATOR FULTON: Okay, then I guess, are there other states that are...other state legislatures that are going through the same exercise and the pain that we are in order to comply? I guess, if there's a sense of urgency attached to this bill, then it makes a difference as to how I vote on it. And we... [LB653]

SENATOR LANGEMEIER: One minute. [LB653]

SENATOR FULTON: ...and the urgency seems to be coming from the fact that we have to comply because we have been given a nonapproved status. So how many other states have a nonapproved status? [LB653]

SENATOR RAIKES: I can't answer that exactly. There are a handful, and Nebraska is not the only one. But I think...if I'm not mistaken, I believe that status has been upgraded to whatever the next level above nonapproved, so that at least it's on track for approval. So if your specific question is, do we need to be in a hurry on this because we're trying to beat a federal deadline on No Child Left Behind, I think the answer is no. I think our issues with this are really in other areas. [LB653]

SENATOR FULTON: Okay. Thank you, Senator Raikes. Thank you, Mr. President. [LB653]

SENATOR LANGEMEIER: Thank you, Senator Fulton. Senator Wallman, you're recognized. [LB653]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. I have a letter here from a curriculum director. I usually don't read stuff. But it says, one model assessments cannot fit the mold as this bill suggests, and we'd be better off to have a common vocabulary about what proficiency must look like on locally developed standards and assessments, instead of being forced into a round hole if we're the square peg. The recent amendments to the bill create further problems for our district, and will require excessive time and more money to fit into this plan. And I do notice we have a physical (sic--fiscal) cost on this plan. And so we have locally adopted standards, unlike every other school district does in our particular service unit, and the majority of those schools are small and work best together to pool resources and staff knowledge and expertise. Although working together with these folks would be a great professional learning experience, we operate much differently than they do as the large districts. In this essence, we must preserve the integrity of good assessments and not let comparison for the sake of comparison get in the way of student learning and

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student achievement. I think we all should agree that No Child Left Behind is not going to work. I don't have the same intelligence as a Senator Lathrop or a Senator White or as the Speaker. There's different levels. And when I was a kid, we had different levels and learning grades in school. And if we're going to have No Child Left Behind, it's not going to work. Assessments aren't going to work, because we're not all built with the same mental intelligence. And so we have to be very careful about assessments. And here's another mandate forced down on schools, and a lot of them are doing a good job. So...and I notice it's going to cost some more money. So money does not fix the problem: people, teachers, administrators. Thank you, Mr. President. [LB653]

SENATOR LANGEMEIER: Thank you, Senator Wallman. Senator Dierks, you're recognized, followed by Dubas. [LB653]

SENATOR DIERKS: Thank you, Mr. President. Members of the Legislature, I've just followed with a great deal of interest all the discussion this evening about testing and assessments. And it makes me wonder if Nebraska schools have lost something over the years. I felt like, when I was in grade school in Nebraska, in Ewing, Nebraska, that I got a very good education, and I think it held me all the way through veterinary school. I can very well remember my year...my first year in school in kindergarten. They had us sitting in a little circle in chairs, reading. If you made a mistake, you went to the bottom of the line and started over again. And you know, I suppose there were some members of my class that had difficulties, more so than others, but I thought we got a tremendous education. And I wonder why we have these difficulties today. How come...have we...have students changed? Have teachers changed? Have school administrations changed? Why are we having difficulties? I was here in 1999. And Senator Raikes talked about, when we did this legislation, Senator Bohlke was the Chairman of the Education Committee. And I had those same questions at that time. Doesn't seem like we've progressed much. When I went to school, we had about the same number of students in the school system as we have today, maybe a few less today. Kindergarten was in a classroom by itself, 1st and 2nd shared a classroom, 3rd and 4th shared a classroom, 5th and 6th shared a classroom, and so did 7th and 8th. And I remember when I was in 7th grade listening to the 8th graders reading and reciting "Evangeline." Well, by the time I got to the 8th grade, I knew what it was all about. Not sure that's all that important, but I'm just saying that there were some things that went on that I thought were valid, and that my education wasn't all that poor. Well, that was...I was in kindergarten in 1937. That's 70 years ago. Have we digressed? Senator Raikes...or, Senator Adams, would you respond to a question, please? [LB653]

SENATOR LANGEMEIER: Senator Adams, would you yield to a question? [LB653]

SENATOR ADAMS: Yes. [LB653]

SENATOR DIERKS: Do we demand too much of teachers today in the way of reports?

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Do they spend too much time doing reports and not have time to spend in the classroom? It looks to me...and I was on the school board, I had to resign when I got reelected to the Legislature, and at the same school that I attended. Every teacher in our school now has an aide because they can't take care of all their problems because they have too many reports to do. Has the Department of Education put that much work on our classroom teachers that they don't have time to teach, and have to have an aide to do their work? Can you answer me that a little bit? [LB653]

SENATOR ADAMS: I'll try. I think it's more complex than just reports, Senator Dierks. We could say, well, it has to do with testing and assessments. That is taking up a chunk of teacher time, particularly in the 4th grade, the 8th grade, and the 11th grade. Special ed reporting, that takes more time. There is more paperwork. But I think maybe a broader issue might be--and this is coming from a teacher--teachers are being asked... [LB653]

SENATOR LANGEMEIER: One minute. [LB653]

SENATOR ADAMS: ...every day to take on more and more of society's problems and try to solve them in a classroom. And every time we do that, we take a step further away from teaching multiplication or teaching about American government. [LB653]

SENATOR DIERKS: So we're talking about a loss of family values? Is that part of it? [LB653]

SENATOR ADAMS: It...that's part of it, a lot of different things that are associated with it. [LB653]

SENATOR DIERKS: We've become baby-sitters for parents? [LB653]

SENATOR ADAMS: Kids spend a lot of time in school, and there's not another place to go. And that, in some respects, we could say is a good thing. They have that place to go. [LB653]

SENATOR DIERKS: Thank you very much. Thank you, Mr. President. [LB653]

SENATOR LANGEMEIER: Thank you, Senator Dierks. Wishing to speak we have Dubas, Hansen, Harms, Schimek, Janssen, Pirsch, Pahls, Avery, and Kopplin. Senator Dubas, you're recognized. [LB653]

SENATOR DUBAS: Thank you, Mr. President, members of the body. Would Senator Adams yield to a question, please? [LB653]

SENATOR LANGEMEIER: Senator Adams, would you yield to a question? [LB653]

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SENATOR ADAMS: Yes. [LB653]

SENATOR DUBAS: Thank you, Senator Adams. Thank you for helping me kind of understand this issue in a much better manner. Some of my questions have been answered already, but I'm going to ask just to reclarify them in my mind. And I know Senator Carlson referred to the long list of opposition to this bill, but since then, these amendments have been drafted. And I guess one of the concerns is that, have these people who were so strongly opposed to this bill had the opportunity to go through these amendments and maybe have some of their fears or some of their concerns alleviated? Do you have a comment as far as getting these amendments out for people to look at? [LB653]

SENATOR ADAMS: I...you know, how much time they have spent on them I cannot say. [LB653]

SENATOR DUBAS: Okay. And I believe I caught something about the time line in this is being pushed back? [LB653]

SENATOR ADAMS: Right. [LB653]

SENATOR DUBAS: Okay. I think that's probably a good thing, in... [LB653]

SENATOR ADAMS: It is, yes. [LB653]

SENATOR DUBAS: It's going to give us time to maybe work out some of the concerns that have been brought up, or...okay. All right, that's something I was concerned about. And then how would you say that what this bill is trying to propose is different from what districts are currently doing with STARS? [LB653]

SENATOR ADAMS: Well, the key thing, in my mind,...actually, it's twofold. One of the key things is what I described earlier, and that is that school districts will now be given an option, where before they were told, you must develop a local assessment in social studies. That's still there, and that assessment has to be supported by an assessment portfolio that says that it meets all the quality criteria. That's still there. What we're seeing in this amendment is that it would be conceivable, possible for school districts to coordinate together at the ESU level to develop a social studies assessment. And if the social studies teachers in the schools within that ESU wanted to use that assessment, they could, and the ESU would be the one developing the portfolio. And that becomes an option which takes some of that portfolio work away from the teacher, which is more clerical and frustrating. [LB653]

SENATOR DUBAS: So you...would you say that this is a much more coordinated

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approach to the whole testing or assessment? [LB653]

SENATOR ADAMS: I would like to think the result would be. [LB653]

SENATOR DUBAS: Okay. All right, thank you very much. [LB653]

SENATOR LANGEMEIER: Thank you, Senator Dubas. Senator Hansen, you are recognized. [LB653]

SENATOR HANSEN: Mr. President, members of the body, could I ask Senator Pahls a question, please? [LB653]

SENATOR LANGEMEIER: Senator Pahls, would you yield to a question? [LB653]

SENATOR PAHLS: Yes. [LB653]

SENATOR HANSEN: Senator Pahls, you said...you gave an example of the writing test and that there's six points of the writing... [LB653]

SENATOR PAHLS: Right. [LB653]

SENATOR HANSEN: ...to take the test in a good manner. Are there more than six points to writing, that a teacher would teach more than six points? [LB653]

SENATOR PAHLS: Right. Any teacher will add things to a lesson or, what do I want to say, what they should be teaching. But what they want to make sure, that the students understand the six points. I mean, these are not just write your name. These are very important parts. Like, and I'll just say this one more time, like one of it is called conventions--whether this child in their writing, if they have dotted the I, crossed the T, that would be. Another one would be, as I said, the voice--does the letter or does it talk back to you? I mean, there are like six things that the children are...I'm going to use the word "trained." And then the people who review their test look for those. So in other words, if I write something, they're going to see, did I incorporate those six points? If not, I'm graded down in those areas and I'm told why. [LB653]

SENATOR HANSEN: Thank you, Senator Pahls. I think my point is that they test...they are teaching for the test. They're teaching for the test and not teaching the other seven to ten points or whatever, however many points there are in teaching good writing skills. Teachers in my district are leaving the school system. Young teachers that haven't reached the age of normal retirement, in the mid-fifties, they're leaving because they're tired of being...they're acting as a State Department of Education secretary. They've told me that, they're tired of that. An industrial arts teacher told me last fall that he says we do so much testing here and so much reporting and those industrial arts students sit

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there and do their homework while he's doing the reporting that sometimes he just sneaks away and teaches. And I didn't think that was a very good way. On page 6 we talk about the school district shall form a state assessment and an assessment portfolio. On page 7 we talk about national assessments. And then we also talk about building, the reports are going to come back on a building basis. So I assume that is comparing one school, even in a district, one school building against another school building. I have real questions about that. How do we compare a high school or a grade school that has an attendance rating of 80 compared to another one that has an attendance rating of, say, 94? What about one that has high disciplinary referrals or...what's another way to say that, problems in the classroom? How do you compare one school to another? I know a little bit about some country schools, even outside of my district, and I think that these rural schools have the best school that they can afford. And as long as they're working with volunteer school boards, that's going to continue. They're going to have the best school that they can afford. So how can we compare Hyannis, Nebraska, with Lincoln North Star? How can we do that? Can Hyannis afford the teachers, number one? Can they afford the lab accessories that a Lincoln school might? [LB653]

SENATOR LANGEMEIER: One minute. [LB653]

SENATOR HANSEN: I don't know how we're going to do that. Another thing on page 8, we're talking about assessments in reading, writing, math, science, and social studies. So that's a couple more than what Senator Adams said. We're talking about a fiscal note of somewhere between \$2 million and \$5 million. So if we can't afford to pay those ESU salaries, get that another level of bureaucracy there, that means the only other thing there is, is teacher time. So we're balancing either paying ESU people or using teacher time. On page 9, it starts at the very bottom, it says the Department of Ed shall implement statewide system of individual student achievement. I didn't think that we could keep track of individual student achievement. I thought that we had to use averages of schools and without going to individual...where's the... [LB653]

SENATOR LANGEMEIER: Time. [LB653]

SENATOR HANSEN: Thank you, Mr. President. [LB653]

SENATOR LANGEMEIER: Thank you, Senator Hansen. Just a reminder on the agenda, at 8:00 p.m. we move on to General File, 2007 senator priority bills, LR1CA. Returning back to discussion, we have Harms, Schimek, Janssen, Pirsch, Pahls, Avery, Kopplin, and Carlson. Senator Hansen...excuse me. Senator Harms, you're recognized. [LB653]

SENATOR HARMS: Thank you, Mr. President. That's, I've been never called anything better than that, so I appreciate that. And colleagues, I wanted to answer a little bit of what Senator Dierks had asked. What is different between now, when we both got our

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education early, compared to now? There's a lot that's different. Society has changed. We've asked the schools to be the father and the mother and the doctor and the nurse and the disciplinarian. Television, computers, technology have changed how we think and what we do. So there isn't any question that our society has changed, the family circle has broken down. So no wonder we have some issues and some problems. Now setting that aside, any changes to the current testing system should focus on improving what teachers can glean for improving how they teach in a particular subject. And that's what this is about. Throw everything else aside. That's what this is about. And, Senator Adams, I'd like to maybe, if you'd yield, I'd like to finish our conversation that we started earlier if I can. Senator Adams, and we were talking earlier, we were talking about... [LB653]

SENATOR LANGEMEIER: Senator Adams, would you yield? [LB653]

SENATOR ADAMS: I would. [LB653]

SENATOR HARMS: Thank you, Mr. President. When we were talking about assessment and we were talking about ESU units and teachers getting together and building these assessment tests, and they may be great tests and they all feel very comfortable. But we'll say that we have five or six different ESU units and they all develop different tests. My question is, how do I know, as a parent, that my child is receiving a quality education and that it's comparable to other ESU units or other schools in this state? And are we going to be comparing apples with apples and oranges with oranges? And do we have the right protocol in here and that we are assured that they're taking the test all at the same time, and that we have security of our tests and we have our teachers certified to give these tests? And I guess that's what I'm concerned about. And I don't want anybody to misunderstand, I support what Senator Raikes is doing here. But I just have these questions and could you help me a little bit better understand this? [LB653]

SENATOR ADAMS: (Laugh) Well, Senator Harms, you've left me with a load there. I don't know that I can. Comparing, comparing, comparing; that's a hot issue in the midst of all this. Senator Kopplin, he grins. You know, there's two ways to look at this. We could say, let's just give everybody, every kid, the same test with the same questions and then we can compare apples to apples. The other side of it is, is what Nebraska has been doing. Not every kid is the same. As Senator Hansen pointed out, not every school is the same, not all equipment is the same, and not all situations are the same. So we have said to teachers, develop local assessments and more than one. What this does, we think, by moving it to the ESU or creating that option, is to establish a bit of a comparison, if you will. I'm almost hesitant to use the word for fear that it strikes terror in the hearts of some. But it does create some of that. What we're really measuring is the progress of a kid, more so than how did York do up against Scottsbluff. We're measuring the progress of a kid. Did Johnny do better this year than he did last year?

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[LB653]

SENATOR HARMS: Thank you. What I'm really concerned about, Senator Adams, is when the World-Herald picks up all these test scores and they list you out, they're comparing your schools with other schools and you... [LB653]

SENATOR LANGEMEIER: One minute. [LB653]

SENATOR HARMS: Pardon me, one minute? [LB653]

SENATOR LANGEMEIER: One minute. [LB653]

SENATOR HARMS: You have...you don't do as well. And so they then begin to ask the question, what's wrong with our schools, what's wrong with Johnny? That's what I'm concerned about and we've got to find some source to get away from that. I want to quote something from the World-Herald that occurred, if I can get it in here, on April 15. It said--this is an editorial: Mincing no words, the Nebraska system of testing the academic achievement and progress of public school systems is more than broken. It's ineffective in the remediation of individual student shortcomings and poorly designed for all but skirting the federal guidelines for educational accountability. That's a powerful statement. I don't know if it's correct or not, but those are the kind of issues that I think we have to address. I think that what we're doing and the direction we're moving is correct, but we have a lot in there to fill in and to make sure that it is correct and that we can honestly say that we've assessed our children appropriately and they are making the appropriate advancement... [LB653]

SENATOR LANGEMEIER: Time. [LB653]

SENATOR HARMS: ...in their skills. Thank you, Mr. President. [LB653]

SENATOR LANGEMEIER: Thank you, Senator Harms. Senator Schimek, you're recognized. [LB653]

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. I wanted to speak to Senator Fulton's question for just a moment and then I want to give my time to Senator Carlson. The answer to your question about No Child Left Behind, Senator Fulton, is that there are five states that have been approved. There is one state that...one state that is in a state of nonapproval; that's Maine. And then all the others fall in between. And our status is, let me see if I can find it here, approval pending, I believe, is what our status is. And the department is actually expecting that to take place sometime in June. They were given two things that they had to accomplish in order for that to happen and one is to complete the on-site peer review for all the public school districts. And secondly, it had to demonstrate the ability to collect, disaggregate, and

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report student data to No Child Left Behind requirements. So that is the report on that. And with that, Mr. President, I'd like to give my time to Senator Carlson, if I might. [LB653]

SENATOR LANGEMEIER: Senator Carlson, 3 minutes, 40 seconds. [LB653]

SENATOR CARLSON: Mr. President. Thank you, Senator Schimek. I'm going to refer quickly to something Senator Harms said because it's so good. We ask our schools to be father, mother, dietician--I added that--disciplinarian, nurse, doctor. Then we blame the teacher if the students don't test well and we complain because they make too much money. I would like to address a question to Senator Raikes, if I could. [LB653]

SENATOR LANGEMEIER: Senator Raikes, would you yield to a question? [LB653]

SENATOR RAIKES: Yes. [LB653]

SENATOR CARLSON: Senator Raikes, one of the concerns that I've had registered with me by some administrators would be, under the present system a school may well be into using the STARS system and they are funded for that. Is that correct? [LB653]

SENATOR RAIKES: Senator, there are some grants that come from the Department of Education. I don't know if they go to individual schools or I don't know if they would be referring to money they use out of their general fund to support this effort. [LB653]

SENATOR CARLSON: Okay. But by your answer, you may have helped answer my concern because that's a little indefinite. But I would assume then the funding for LB653 would not affect current funding on STARS, if that's a little bit indefinite anyway. [LB653]

SENATOR RAIKES: Well, it's a good question, Senator. And what we're proposing here is that a bigger involvement with ESUs. And as you know, in LB603 we're proposing more funding for ESUs. Now ESUs have already taken a big role in assessment and that sort of a role certainly would continue and be enhanced. It's not a requirement that a school district use the ESU, but it certainly is available and hopefully will allow them to reduce costs through teacher time and other costs that they now incur with assessment by using that ESU service. [LB653 LB603]

SENATOR CARLSON: Okay. Well, I think it would be very, very important that those schools that now are funded somehow and into the STARS program, that that not be affected by LB653. And if that were the case, it would be very, very helpful for support. Thank you. [LB653]

SENATOR LANGEMEIER: Thank you, Senator Carlson and Senator Schimek. Senator Janssen, you're recognized. [LB653]

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SENATOR JANSSEN: Thank you, Senator Langemeier, members of the Legislature. The way I understand this right now, that we have to adopt this idea to be in compliance, am I correct there? Senator Adams, am I correct? Yes, he's shaking his head in the positive. Well, I'm glad to hear. But then why now is...is it mandatory but you can still use your old testing if it's a good program? That's a question, would... [LB653]

SENATOR LANGEMEIER: Senator Adams, would you yield to a question? [LB653]

SENATOR ADAMS: I would. And maybe we need to clear up what you meant by compliance. My first reaction was compliance with No Child Left Behind. That's, in essence, what has initiated this whole thing. So we have that level of compliance. The other part of compliance that we're talking about is taking this bill and its passage will bring the methodology of testing we're using now more in compliance with what the Legislature intended in 1999 when it passed the original statute. The Performance Audit Committee pointed out to us that the direction that we have been going is not the same direction that the Legislature intended for testing to go. So with this, we're trying to create that compliance as well. [LB653]

SENATOR JANSSEN: You mean when we first initiated this, this type... [LB653]

SENATOR ADAMS: Correct. [LB653]

SENATOR JANSSEN: ...of testing, the schools, the public schools did not do a good enough job or did we not set the guidelines correctly? [LB653]

SENATOR ADAMS: No, I think the public schools did what they were asked to do and they've gone overboard trying to do that. It was the misinterpretation, if you will, or whatever language you want to use, of that portion of the 1999 statute that said develop four model assessments. [LB653]

SENATOR JANSSEN: Okay. [LB653]

SENATOR ADAMS: Four model assessments have never been developed. [LB653]

SENATOR JANSSEN: All right, and I can also understand why there were a lot of testifiers there because no one likes to see changes, you know. They felt as though we're doing what we were told to do and now I guess that's not correct. But were they doing it? Were the schools following what the Legislature had put for them to do? [LB653]

SENATOR ADAMS: They were following what the Department of Education had put before them to do. [LB653]

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SENATOR JANSSEN: Okay, well, and was the Department of Education in compliance with statutes then? [LB653]

SENATOR ADAMS: Our interpretation and the Performance Audit interpretation was no. [LB653]

SENATOR JANSSEN: So they weren't doing what they were supposed to be doing to begin with. Is that correct? [LB653]

SENATOR ADAMS: Based on our interpretation and the Legislative Audit Committee's interpretation... [LB653]

SENATOR JANSSEN: Okay. All right. [LB653]

SENATOR ADAMS: ...the Department of Ed was not, yes. [LB653]

SENATOR JANSSEN: Okay. Now can we rely on the ESUs at the present time for some type of testing help, so on and so forth? Can we do that now? [LB653]

SENATOR ADAMS: Yes. They've been helping for the last seven years get us to where we're at. [LB653]

SENATOR JANSSEN: So then why do we need that portion in this bill if they can do that now? [LB653]

SENATOR ADAMS: Well, what we're simply doing is giving that testing methodology in statute as an option to school districts, where before they were developing their own tests, doing their own portfolio assessments. [LB653]

SENATOR JANSSEN: Okay, all right. Well, thank you... [LB653]

SENATOR ADAMS: I hope that helps. [LB653]

SENATOR JANSSEN: ...Senator Adams. But you know, it brings me back, some of you people that were here four or five years ago can relate to this. And I remember former Senator Vrtiska talking about his college entrance exam when he had it, what was on there. And I won't elaborate any further... [LB653]

SENATOR LANGEMEIER: One minute. [LB653]

SENATOR JANSSEN: ...Senator Schimek. But thank you, Senator Adams, and thank you for the time. [LB653]

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SENATOR LANGEMEIER: Senator Pirsch, you're recognized. [LB653]

SENATOR PIRSCH: Well, thank you, Mr. President, members of the body. I wonder if Senator Raikes would yield for a question or two. [LB653]

SENATOR LANGEMEIER: Senator Raikes? [LB653]

SENATOR RAIKES: Yes. [LB653]

SENATOR PIRSCH: Thank you, Senator. Now in looking at the fiscal note, the appropriation, what is that, has that been amended since the point in time in which that fiscal note first was issued? [LB653]

SENATOR RAIKES: No, it hasn't, Senator. And the way that would work, the fiscal note accompanied the green copy of the bill, and all the sections of the green copy have been removed by the committee amendment. So we're on the committee amendment now, which will inspire a new fiscal note should this bill pass over to Select File. We'll get that shortly after it would pass. [LB653]

SENATOR PIRSCH: Very good. Do we have, based upon the amendment, just kind of a general conceptual idea of, is this going to be in the ballpark of the original fiscal note or is it too hard to say at this point in time? [LB653]

SENATOR RAIKES: It's probably hard to say but I'll say anyway. I think a couple of things to point out, there was actually a useful memo that came from the Department of Education describing their thoughts about this proposal and they did include some cost information on statewide tests in math and reading. Annually, the expense would be \$580,000. And it is not required that these tests be offered every year, so that would be a ballpark number for that. Another number I'll mention is that we do have a student information component to this, information collected on individual students on norm-referenced, nationally referenced tests. And the cost for that, for the entire state for a year, is \$70,000. So the amounts are not certainly insignificant, but they seem reasonable given the amount of information that we would get from this. The other thing I would point out to you, that in LB603 we're providing additional funding to ESUs in the second year of the biennium, which is about the same time this effort would come on board. And our hope certainly is that, because ESUs are more heavily involved, that funding, that additional funding, would carry a big part of the load required here fundingwise. [LB653 LB603]

SENATOR PIRSCH: I see. Thank you very much. As envisioned by the original bill...well, why don't I just ask you a different way. What are the major differences between the original bill filed and, if you can put that in kind of a bullet point form, the

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original bill and the amended form? Is there an easy...well, I mean just general, conceptual... [LB653]

SENATOR RAIKES: I don't remember on the fiscal note, Senator, whether there was a call for a statewide test on that...excuse me, a purchase test, an amount for a purchase test on that initial fiscal note. I can try to find that for you but I don't have it right here. [LB653]

SENATOR PIRSCH: Well, that's fine, and I can speak with you about that. I will yield the balance of my time to Senator Raikes, if he'd like to kind of... [LB653]

SPEAKER FLOOD PRESIDING [LB653]

SPEAKER FLOOD: One minute. [LB653]

SENATOR PIRSCH: ...follow up on any of the questions that were asked. [LB653]

SPEAKER FLOOD: Senator Raikes, you have the balance of his time. [LB653]

SENATOR RAIKES: I will use it just quickly...thank you, Senator Pirsch. I will use it just quickly to point out that the expenditure on the original fiscal note, \$1.9 million to \$4.7 million, had mostly to do with funds required to include information about teachers that taught classes to students entered in the student information database. That requirement is not in the committee amendment so that lion's share of the cost would not show up in a revised fiscal note. Thank you. [LB653]

SPEAKER FLOOD: Thank you, Senators. It is 8:00. The Chair is considering modifying the agenda so as not to move to LR1CA, provided there are four lights on at this time. If additional lights of senators requesting to talk are indicated at the front desk, such as the one that just turned on, we shall move to the next bill. Mr. Clerk, we now move to LR1CA. [LB653 LR1CA]

CLERK: Mr. President, LR1CA proposes a constitutional amendment to Article III, Section 7 of the Nebraska Constitution. Introduced on January 4, referred to the Executive Board for public hearing. The resolution was advanced to General File; was considered on April 24, Mr. President, by the Legislature. I do have an amendment pending at this time. (AM1308, Legislative Journal page 1627.) [LR1CA]

SENATOR AGUILAR PRESIDING [LR1CA]

SENATOR AGUILAR: Senator Preister, you're recognized to open. [LR1CA]

SENATOR PREISTER: Thank you, Honorable President, friends all. I will open on the

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amendment, but first let me give you a little information. The Speaker and I agreed on putting this back on the agenda, giving the members a chance to look at it. It will be before us no later than 9:00 p.m. We have had some discussion initially on the bill. We had some additional discussion on General File on the budget for the salary. And we had some extended debate on Select File on the budget on this issue. So in visiting with the Speaker, we felt that we had had much of the discussion and that tonight, with your approval, this could even be a brief discussion of any last issues and we could vote on it. And if there were any remaining issues, we could do that between General and Select. And I would certainly be open to do that. I have visited with everyone. I know that this amendment takes into account the major concerns that members had. What the amendment would do, and I did file it so...in terms of finishing up, I guess, procedurally the Speaker put it here, we have an agreement. We will adjourn at 9:00 p.m. at the latest tonight. We could adjourn at 8:30 or even 8:15 if we vote on this and we move it, whenever we finish it up to 9:00, we adjourn, so we won't be here any later than that. Then procedurally in terms of the amendment, the amendment would change and it would actually replace language in the bill to say that we would have a special election held in conjunction with the statewide primary election in 2010. So the voters of the state of Nebraska would vote on this legislative proposal in 2010, which would be nearly 24 years since the last pay raise was approved by the voters. It would also be four years from the last time the voters voted on a pay raise for the Legislature. And I will emphasize, we cannot raise our own salary. And I hope that the public gets that message over and over again. We are not here after hours...you see we're here after hours working but we're not raising our own salary. We cannot do that and we're actually having this discussion at a time when most people are even through the dinner hour and could be watching and listening and observing how we're doing it. This only puts on the ballot in 2010 the opportunity for the public to vote on it. One of the main concerns in the body was it isn't enough time elapsed since the last election. The last election was just over a year ago right now. It will be three more years if this body advances this amendment and the approval. It would then not go into effect until a year later, which would be 2011. So for the concern of not allowing enough time between the last vote, which was only one in 20 years since this salary was approved for an increase, this would only be the second time the voters would have a chance to vote on it in 24 years. So the amendment extends the time that the voters would vote on it to 2010, the primary ballot. In order to do that, on Final Reading we need a four-fifths majority vote of the body or 40 votes. It's the highest bar of anything we do except extending our own session, which also requires 40 votes or four-fifths. So this is a very high bar to meet but I think it's possible. It gives plenty of notice to the public. It also gives plenty of opportunity for those of us concerned about this to raise money for educating the public, for putting a campaign together, which I think it will take, and for getting the support and educating the public to make it happen. So for all of those reasons, I submit this amendment to you. I would also say that there's justification for doing that. The constitution and this provision of the constitution reads, the Legislature may propose amendments to this constitution. If the same be agreed to by three-fifths of

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the members elected to the Legislature, such proposed amendments shall be published once each week for three consecutive weeks in at least one newspaper in each county where a newspaper is published immediately preceding the next election of members of the Legislature or at a special election called by the vote of four-fifths of the members elected to the Legislature for the purpose of submitting such proposed amendments to the electors. At such election, said amendment shall be submitted to the electors for approval or rejection. We have the authority in the constitution to do this in advance at this time. I have checked with the Secretary of State's Office, I have visited with legal counsel, I have visited with Senator Schimek, former Chair of the Government Committee, I have visited with the Clerk. There is no other legal opinion saying that we cannot do this. There is absolutely no provision in the constitution that says we can't do this. At this time, I only know of one old opinion that suggests--and I reiterate--suggests that a court might rule differently. However, our intent as I'm stating it would be what a court would look at. But it's very unlikely that anyone would ever bring this to a court in the first place. But the only opinion--and it is just an opinion, that I know of, even in regarding to this--states in its conclusion, in regarding to the questions that were posed, we were unable to find any--my emphasis--any Nebraska case law or Attorney General Opinion that would shed light on the issues involved. So barring anything to the contrary, barring anything in statute or constitution saying we cannot do this, I submit to you that we can do it. I propose that we do do it here on General File. If there are any additional questions or concerns, I would be happy to visit with anybody between now and Select. But this allows plenty of time for the public, plenty of time for us, plenty of time for those of us who choose to put a campaign together, to do the fund-raising, and I will be a part of doing that. With that, if you choose to continue the discussion for the next hour, we can do that. If you choose not to put your lights on and discuss it and we can go to a vote and do any other discussions later, I'm willing to do that. It's your pleasure, your time, and I will not be speaking again except a brief closing, if you choose to just have a closing. Mr. President, thank you for the time. [LR1CA]

SENATOR AGUILAR: Thank you, Senator Preister. And for the record, I'm going to construe that to have been your opening on AM1308. Thank you. Those to speak are Senator Schimek, Friend, Erdman, Wightman, Harms, Engel, and Kruse. Senator Schimek, you are recognized. [LR1CA]

SENATOR SCHIMEK: Thank you, Mr. President and members. I don't intend to speak long. We've had a lot of debate on this. I stand to, first of all, thank Senator Preister for all the work that he has done on this. I believe that he has come up with a reasonable and a good plan. One of the good things about it is that none of us old-timers will be here when it goes on the ballot. So maybe that will be a good omen for the voters, I don't know. (Laugh) But I would like to address the letter to the editor that I saw in the paper this morning from a woman who said she couldn't possibly support a pay raise because when she looks at us on TV, all she sees are people running around the room and talking to each other and not being in their places, having to have a call of the

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house to get us here. And I understand why she might think that's dereliction of duty on our part. But I just wanted to explain to her that when you see people who are talking to each other on the floor, they may be working on an amendment for a bill that's coming up or they may be the Education Committee huddled over in a corner talking about a bill they need to get out here on the floor. Or they, if they're not here, they may be in their offices working on some issues down there. I want her to know that everywhere you go in this Capitol, you can hear debate. We have television sets in every office in this building so that if you're off the floor, you still hear the debate. And if you're walking around the floor, as sometimes you need to do because you've been here at the Capitol virtually since 7:30 in the morning and you need to just get out of your chair a minute or two, you're still hearing the debate. You still know what's going on. So I want to assure this lady that it may appear kind of strange to you but it isn't. It's really working. And I think people on the floor of this Legislature are conscientious and they do like to know what's going on on the floor at all times. So with that, Mr. President, I would encourage us to move this forward and to...also I wanted to just thank Senator Preister for his work. Thank you very much. [LR1CA]

SENATOR AGUILAR: Thank you, Senator Schimek. Next up to speak is Senator Friend. You are recognized. [LR1CA]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. Good news, good news: Senator Preister has agreed that we should have a bicameral legislature, too, so we exchanged...I'm all for this, let's go. No, I'm just kidding. He did not do that. As a matter of fact, I was one of the ones, if you remember, I wouldn't say that I was a burr in the craw necessarily or a fly in the ointment. I'm still not sure where I'm at on this. I understand what's happening here. Let me try to sum it up real quick. My opposition to this bill has never been that strenuous. I don't believe it has. I mean, I think I can get a heck of a lot more strenuous on opposition to legislation. But...and it's just a gut feeling. I still think an incremental approach to asking taxpayers for a raise, and Senator Preister knows this, we've talked about it, \$18,000 is more palatable. I don't care if it's 2008, I don't care if it's 2009, I don't care if it's 2010. The next step we make is to ask them for another raise, right? I just think \$12,000 to \$18,000 might be more palatable. I could be wrong. Here's what I'm going to do and it's really simple. I'm promising Senator Preister, before we're done with this issue I'm going to vote up or down on it. (Laughter) All right? Oh, you think that's funny? Look, you know how many people don't vote on Final Reading? Really. Start counting them. I've been here five years, I've seen a lot. Here's my point. You think that this is just a slam dunk, we all deserve the money. We think, you think that they might not understand, it's just a matter of education. I just don't think it's that simple. I think the vote has already been out there. Senator Mines laid out some of his argument earlier on. I laid out my argument. I think that there's more of an art to this than a science. We have all kinds of polling data that says \$21,000 would work, \$24,000 would work. I've been saying \$18,000 for three years and nobody listened. We went for \$24,000, we went to CPI, all that stuff got shot

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down. So I could sit here and not vote until the very end and go through Final Reading and say, you know what, I don't want my fingerprints on this. But I will assure you, I will vote up or down. Right now I don't care because I think \$18,000 would be better. So on General File, I'll take a walk and I promised that to Senator Preister. Because quite frankly, it could come to the point where--and I think Senator Mines was at that point earlier on General File when we dealt with this already--where it was almost offensive. I'm here to tell you it's not that offensive to me. If it was, we wouldn't be dealing with this again. So I'm going to give Senator Preister the benefit of the doubt. My point is, I'm not voting right now on General File. Before we get done, I will vote up or down. Thank you, Mr. President. [LR1CA]

SENATOR AGUILAR: Thank you, Senator Friend. Senator Erdman, you are next. You are recognized. [LR1CA]

SENATOR ERDMAN: Thank you, Mr. President. Senator Friend, let your yes be yes, your no be no. I get an amen from Senator Kruse on that one. Members, here's where...I'm going to vote for Senator Preister's amendment. I supported LR1CA out of committee from the Executive Board. I think it's a responsible opportunity for us as a Legislature. I understand the work that Senator Preister has done. But if we step back--and Senator Schimek said the old-timers, term limited, whatever you want to call us--those of us who were here but won't be here, regardless of whether LR1CA goes on the ballot in '08 or regardless of whether it goes on the ballot in 2010, Senator Schimek, Senator Preister, myself will never see this benefit unless the good Lord brings us back to the Nebraska Legislature for another term at a later date. And I can hear screams across the state going up from some of us who are term limited out and people are either screaming "hallelujah" or "oh, no." But here's what I hope we think about. And if we adopt the amendment, we move the bill to Select, here's what I hope we think about. One of the problems that we ran into the last time we tried this was it was a clever idea that was demanded by certain members of this body and so we included in the constitutional amendment, not only the pay raise, but the cost-of-living adjustment. That was literally demanded by certain members, otherwise they wouldn't support it. So everybody kind of accommodated one another and said, okay, what if we did it this way. We ended up with something that I think, candidly, the voters said if you simply give us a dollar amount that you think you're worth, let us consider that. I think the facts will show you that the times when the Legislature has put it on the ballot with a specific number and recognize that it's the people who are our employer, they set our salary, that they will respect us and give us a straight up or down decision. And more times than not, if we're being responsible, they have said yes. But the other error that we made was that we put it on the primary ballot in 2006 and it had nothing to do with all the other issues that were on the ballot. It had everything to do with everybody who was running for anything was up for an election in a primary race. You had a three-way primary race in the Governor side on the Republican ticket. You had a very contested 3rd District race. You had the United States Senate race. I mean, you had a number of

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things going on in addition to it and this got shoved to the back and nobody even knew it was out there until they showed up to the ballot. We have to be conscious, not only of what is in here, but when we choose to offer it to the voters. And I hope we will consider that. Senator Preister is right. If we're going to do this, we need 40 votes. If we believe or if we think that we can predict three and half years from now that that's the right time, or three years from now, that that's the right time to put it on the ballot, then let's as a group decide that and move forward, recognizing that limitation. But I'm afraid that we don't get too creative and recognize the realities. And the realities are that we need to make sure that the salary is reflective of the work that's being done. And I will offer to you, if you live in Lincoln or Omaha or most counties in the state of Nebraska, those elected officials are making more than we are and that's fine. They're going to get multiple pay raises before this even goes on the ballot. That's fine. But the fact remains that in order for us to retain and recruit the best and the brightest, we have to have the right opportunities. And the salary doesn't totally reflect that but it's a factor. So let's not be overly creative. But in respect to Senator Preister and the hard work that he has done and those of you that are working with him, I'm going to vote for the amendment. Maybe there's an alternative idea that may even be more palatable that we would come up with between now and Select File. I think it's appropriate to leave this opportunity on the table for us. [LR1CA]

SENATOR AGUILAR: One minute. [LR1CA]

SENATOR ERDMAN: The Speaker has given us that opportunity. Let's do that. Let's be responsible but let's not try to outthink ourselves. And most importantly, let's learn from what we've done in the past and make that part of our process going forward. Thank you, Mr. President. [LR1CA]

SENATOR AGUILAR: Thank you, Senator Erdman. Next up is Senator Wightman. You are recognized. [LR1CA]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the Legislature. I'm going to support this amendment. But at the same time, I have some real questions about which would have been the better route. And I've discussed those with Senator Preister. Quite frankly, I am of the opinion...I think I agree with Senator Friend, if I can just figure out what it was that I'm agreeing with him on. (Laughter) I think there would be some case to be made for incrementalism in this instance. And quite frankly, I think we would do well if we drop it back to \$20,000 and that we did this at the primary of 2008. At the same time, I realize Senator Preister has gone out, based upon the 2010 ballot question, and I'm not willing to take a position contrary to that unless there's a lot of support for it. But a couple of things that I would bring up, number one is that if we have this take effect in 2010, there isn't any possibility that, for the first two years, the new class of senators in 2008 are going to have any advantage from this for at least two years and maybe four. The other thing is that we are right back to where we've

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increased the amount, even though we have taken out the cost-of-living adjustment. I think that's probably something that won't be looked upon in great favor by the electorate because of the fact that, even though we have reduced the COLA, we've gone up in amount. I realize it's going to be two more years and I agree that inflation would probably eat up that additional \$2,000. But by the same token, those who might be benefiting from this would have received \$8,000 two years in a row prior to the effective date of the resolution that we'll be voting on. I also think that the public is going to still look at it, no matter how many years it's been, and I think that was indicated at the last election, and say this is a \$10,000 increase based upon a \$12,000 base figure. That's an 83 percent increase. Whereas, if you were to look now and put it on the 2008 ballot, that you would have a 66 and two-thirds percent increase, which I still think would be more palatable to the public. That having been said, I still intend to vote to advance this to Select File. Thank you, Mr. President. [LR1CA]

SENATOR AGUILAR: Thank you, Senator Wightman. Next up is Senator Harms, and you are recognized. [LR1CA]

SENATOR HARMS: Thank you, Mr. President and colleagues. I rise to support LR1CA. In fact, when we talked about this the first time, I actually voted no. I actually stood up and opposed it. And then I went home and had an opportunity to talk to some people and I changed my views on that. And, Senator Preister, I came back and apologized to you because you are right. And the one thing that we have to think about is...and I'm not supporting this for me. I mean, I'm an old man and I have retirement dollars and it will not have an impact on me, but it has an impact on the people in the future of this body. And that's what we got to think about and that's what we have to sell. We're going to have a constant turnover here and we need to reflect, this body needs to reflect, the changing characteristics of Nebraska. And we're not. We're missing the young people because they can't afford to be here. We're missing different cultures because they cannot afford to be here. And we need to have that kind of input. We need to have that kind of character in this body so we make the right decisions in the future. We have very complex issues that we're going to be confronted with and we need to have every segment of our population here and to hear their input. And so what I say to you is that I support this and I apologize for taking the position that I did the last time. And I agree with Senator Erdman. And you know what, Senator Erdman? That frightens me because we don't agree on much, but I agree with you there. So thank you. Thank you very much, Mr. President. [LR1CA]

SENATOR AGUILAR: Thank you, Senator Harms. Next up would be Senator Engel, and you are recognized. [LR1CA]

SENATOR ENGEL: Mr. President, I'm enjoying the humor this evening. But as Senator Friend said he was going to vote up or down, it reminded me of the gentleman that said I have friends for this, they have friends against it, I'm going to go with my friends. But

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this particular situation, I would like to see a pay raise for the future legislators. Again, it won't affect any of us. And I will probably vote to advance this to Select File. But I am a little concerned about passing a constitutional ballot (sic) to be placed on the ballot in 2010. And I think there are some questions as far as the constitutionality of it. I know Senator Preister has done his research, but perhaps it might be a good idea to get an AG Opinion before we proceed with all the effort and everything we have to do. I'm also concerned of what type of precedent we're setting now to put an amendment on the ballot three years from now. And what is the limit? Is the limit how far in advance that we can obligate future Legislatures; three years, five years? And what if there's some circumstance that cause a future Legislature to want to change an amendment? Can they do it after it's already been passed? And there are too many questions I don't think any of us really have the answers to at the present time. Finally, another concern, assuming the amendment does pass, I wonder if there will be enough interest in 2010 because it will take a lot of work to get this passed, to have a successful campaign. And who's going to take the ownership of the amendment and the campaign? And those of us who...those of you who will be here, not us, those of you who will be here in 2010 will be running for reelection and the other half will only have two years in the Legislature. So I know a successful campaign will require a lot of hard work. It did the last time and it wasn't successful. But I do not really know how practical it is to expect this effort to succeed at a future date when apparently there's not enough interest to take on the challenge now by placing it on the ballot in 2008. And those are some of my concerns and I think that's something we should think about before we go too much further with this because there are a lot of unanswered questions, I believe. So with that, I return the rest of my time to the Chair. [LR1CA]

SENATOR AGUILAR: Thank you, Senator Engel. Senator Kruse, you are next and recognized. [LR1CA]

SENATOR KRUSE: Thank you, Mr. President and colleagues. I welcome this conversation. I appreciate Senator Preister bringing it back. I will be voting against the amendment and I'll vote for the bill in any form that the floor chooses to have it because I think it's essential. But I oppose the delay of two years on this. Frankly, friends, I think we're altogether too apologetic about this salary of ours. We assume that people standing in the booth know what it is when they see the new one. I don't buy that. I do not buy that. Those who are well-informed do but most of those, the ones who are making the decision, do not know that much about it. They don't know that much about the job. This is a full-time job for me. I'm in my seventh year, I've kept track of the hours. I just am not going to offer any apology for the money that I'm being paid. And because I'm still paying off campaign debts from eight years ago, I have nothing left to pay the light bill at home. Now that's my problem and people say you bought into that. But I just want to make it real clear, not only to the floor but to anybody listening, that I have nothing to benefit from this, nor does Senator Preister, nor do the good share of us here. I simply believe that we are going to do a better job of representing this state if we

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recognize that good pay is a part of a good job. The salary that I'm now getting is less than I got 30 years ago and I was not in a high-paying job. Every segment of our society should be represented, as Senator Harms indicated. That's the great problem. I'm looking for persons that would be willing to take my place. The first question they have is what does it take, how much money can we expect to take home? And I say, none, you have to be fiscally responsible when you go down there or your light bill is not going to be paid at home. I simply am not apologetic about it. Now I think we should look again at the 30 and 40 votes. I'm quite willing to take it to the General Election in '08 if we get 30 votes for that. I think we could succeed in that. In fact, there's--already been noted--less competition there and the general public, I think, will not find this thing surprising. It's not a high figure. If we are going to get all the people of our society the opportunity to come here, we ought not to back up on the amount at all. That amount can be adjusted for those of us who are here because we're financially independent. But we need some other kinds of people that could come here. And finally, I will work for this bill to pass it in any way I can because I believe in it. I think it is best for Nebraska and it's best for our own mental health. Thank you. [LR1CA]

SENATOR AGUILAR: Thank you, Senator Kruse. Next up is Senator Avery with Senator Erdman on deck. Senator Avery, you are recognized. [LR1CA]

SENATOR AVERY: Thank you, Mr. President. I'm not really sure how I'm going to vote on this, but I have been told that I should keep my remarks short because everybody is ready to get out of here. And I understand there's some kind of bingo game out in the lobby and people are wanting to leave as well and they're using that to entertain themselves. I do think, though, that this is needed. Obviously, we cannot have an institution in which the only people who can serve are those who don't need the money. I like the amendment because I had a number of conversations with Senator Preister in which I said that if he wanted to bring this back, he ought to have it structured in such a way that all of us in this body would have to face the voters again before it could take effect so that we could be held accountable for how we voted. I still will probably not vote on this round. I'm not yet ready to take the position that Senator Friend has taken. I'm uncomfortable, having just come into this body and one of the first things I do is to vote to raise my own salary. I'm a little uncomfortable with that. I will stop at that, Mr. President. Thank you very much. And I welcome the rest of your comments so that you can help me make up my mind. [LR1CA]

SENATOR AGUILAR: Thank you, Senator Avery. Senator Erdman, you are up and recognized. [LR1CA]

SENATOR ERDMAN: Mr. President, Senator Harms, you don't have to yield. You can just stay relaxing there, it's a late night. Some people are older in age, they need to relax late at night. (Laughter) What? Some people are young, they have to relax late at night, too. I'm in that category. But, Senator Harms, I wanted to welcome you to the right

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side of this issue. You know, it's been interesting this session to be here with you. And you're right and I appreciate that now that you've come to that side. Let me respond to something, probably a couple of things, and is actually something Senator Harms said, not that he agreed with me. But I want it to be clear. And I look around, I see other senators who are young. I think that's a fantastic addition. Senator Rogert will always look young. But we have people who are here now who are young. We have people here now from diverse backgrounds and diverse opinions. We have a good cross-section of Nebraska. There are people here who I would probably say are independently wealthy. I don't fit into that category. However, I still choose to serve in this body. And I still choose to serve in this body notwithstanding the fact that I'm now married, that I now have a young family, and that I'm still able to pay the bills. And I want it to be clear that this is not what some people perceive it to be or it's portrayed as or what some people thought it was at one time, and that was a place where people that didn't have anything else to do go or people who are independently wealthy can go and do the people's business. Most of us here work for a living. And so let's make sure, and I think Senator Kruse is right, let's make sure that we're not underappreciating ourselves but let's also be realistic. Young people want to serve this state. I welcome...and of course, I'm no longer in that demographic anymore unfortunately, but Senator McGill and Senator Nantkes are in the 20-something crowd. I was in that crowd by myself for a number of years and so I'm grateful that we have some more young people here. The average age of the Legislature is actually still about the same as it was prior to all the new people arriving. It's because the higher end went up. But the fact is, you have to have that cross-section. You have to have folks that have to get up in the morning and make a living to understand that the laws that we pass affect more than just a certain demographic that, what I'm hearing, can afford to be here. If we raise the salary to where you can afford to be here and those are the only people you want here, you're probably not going to want those people here either. You have to have a desire for public service, you have to have a passion for representing the people who elected you. But it also has to be based on a diversity of opinion and a diversity of experience. So let's not over stereotype ourselves again tonight. Senator Harms, whatever time I have left, you may respond in case I have said something that has spurred you on. I see your light is on and maybe in an effort to facilitate this process you can have my time.  
[LR1CA]

SENATOR AGUILAR: One minute, thirty seconds, Senator Harms. [LR1CA]

SENATOR HARMS: I'll really hurry because it's really quick for me. From an old man to a young man, it's an honor to serve with you. Thank you, Mr. President. [LR1CA]

SENATOR AGUILAR: Thank you, Senator Harms. Your light is on next, Senator Harms. Senator Preister, you are recognized to close. [LR1CA]

SENATOR PREISTER: Thank you, Honorable President, friends all. I appreciate the

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comments. I appreciate the concern. I understand Senator Wightman and Senator Friend's concern about making the best opportunity available to the public so they will approve it. I understand the concern about Senator Avery not wanting to just get here and then right away vote on his own salary. Senator Avery, none of us are voting on a salary increase for ourselves. I chose to introduce this legislation. It came at a time when no one else here could predict. I didn't consult with you, you didn't give your approval for it. It's here. The opportunity is to vote on it now only to give the voters the opportunity to choose. The voters frequently say, let me have the voice, let me have the vote on the issue. They want it on gambling, they want it on a host of things. This simply gives the voters the opportunity to make the choice. For those who don't like us and want to get revenge at us, they can vote no and they can enjoy doing that to us. For those who want and understand the process and want to help, they can vote yes. This simply gives the voters the chance to vote on it. We are one of only five states that require that. We are one of only five states that has our constitution where our salary is set. So this is unique. We are not giving ourselves a pay increase. In summation, I would simply say the coach for the University of Nebraska in 2003 received over a million dollars' compensation. Twelve games approximately were played. The voters can say that coach got \$100,000 a game. Is anybody worth \$100,000 for an afternoon? But of course, they would say, the coach does way more than just play the game. The coach's pay is stretched out for what they do in training and in preparation and in recruiting. And the list goes on and on and on. They understand that. What they don't understand is that we are in the same situation. We're not just receiving two months' pay or three months' pay at \$3,000 or \$4,000 a month. We, too, are only in session, like only being in a game, for a set number of days. But the discussions continue in between. The meetings continue. The hearings continue. When we go to church, when we go to grocery stores, wherever we go we're on duty. We can't say to the public that comes up to us, oh, excuse me, I punched out already, I'm not on duty, I'm not representing you right now. We are on duty and we have a full-time job. And we have the responsibility to help the public to understand that, just like they understand it with the coach. I think that we can do that. I think, with this amendment and by passing this legislation, we have some time to help to inform and educate the public on what and how we do and the commitment that I see in this body by every one of you on a daily basis. I think that can be done but we have the opportunity to educate. This will help us to do that. I hope that you vote yes on AM1308 and then on LR1CA. Thank you, Mr. President. Thank you, friends all. [LR1CA]

SENATOR AGUILAR: Thank you, Senator Preister. You've heard the closing on AM1308. All those in favor vote aye; those opposed vote nay. Have you all voted that care to vote? Record, Mr. Clerk. [LR1CA]

CLERK: 29 ayes, 5 nays on the amendment. [LR1CA]

SENATOR AGUILAR: The amendment is adopted. [LR1CA]

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CLERK: I have nothing further on the resolution, Mr. President. [LR1CA]

SENATOR AGUILAR: We're now back to LR1CA. Senator Preister. [LR1CA]

SENATOR PREISTER: Thank you, Honorable President, friends all. Thank you for that vote. I recognize there were some no votes there because people think that's too far off into the future. I would like to see it done sooner. I also recognize the time that it's going to take to raise the funds, to organize, to do the education, and several of us in here are willing to work on that and we're going to be doing some recruiting. For those of you that don't know, back before the '88 vote was taken, then-president of the university, Woody Varner, mortgaged his house to come up with the initial funding to fund a campaign. I don't intend to do that, but I will be working on the issue and I hope that others will be able to contribute and do that as well. But this is just the start. Anyone who has concerns, I'm more than willing to listen to them, and I appreciate your time tonight. Thank you very much. [LR1CA]

SENATOR AGUILAR: You've heard the closing on LR1CA. All those in favor vote aye; those opposed vote nay. Have you all voted that care to? Record, Mr. Clerk. [LR1CA]

CLERK: 32 ayes, 0 nays, Mr. President, on the advancement. [LR1CA]

SENATOR AGUILAR: LR1CA does advance. Mr. Clerk, items? [LR1CA]

CLERK: Mr. President, a new A bill. (Read LB351A by title for the first time.) Senator Cornett, amendments to be printed to LB265, and Senator Synowiecki to LB351. Enrollment and Review reports LB377, LB377A, LB516, LB516A. Those were reported correctly engrossed. (Legislative Journal pages 1663-1664.) [LB351A LB265 LB351 LB377 LB377A LB516 LB516A]

SENATOR AGUILAR: Mr. Clerk, do you have a motion? []

CLERK: Mr. President, Senator Kopplin would move to adjourn until Friday morning, May 18, at 9:00 a.m. []

SENATOR AGUILAR: You've heard the motion to adjourn. All in favor say aye. Opposed, nay. Motion carried, we are adjourned. []