

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
January 25, 2008

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LB1099 LB1148 LR5CA LR234]

PRESIDENT SHEEHY PRESIDING []

PRESIDENT SHEEHY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the twelfth day of the One Hundredth Legislature, Second Session. Our chaplain for today is Father Daniel Seiker from the Cathedral of the Risen Christ in Lincoln, Nebraska; Senator Fulton's district. Would you all please rise. []

FATHER SEIKER: (Prayer offered.) []

PRESIDENT SHEEHY: Thank you, Father Seiker. I call to order the twelfth day of the One Hundredth Legislature, Second Session. Senators, please record your presence by roll call. Please record, Mr. Clerk. []

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

PRESIDENT SHEEHY: Any corrections for the Journal? []

CLERK: I have no corrections. []

PRESIDENT SHEEHY: Messages, reports, or announcements? []

CLERK: Mr. President, a Reference report referring LB1091 through LB1176, as well as certain constitutional amendments. An appointment letter from the Governor, appointing certain...making certain appointments to the State Emergency Response Commission. Those will be referred to Reference for referral to standing committee for confirmation hearings. A report of registered lobbyists for this week to be inserted in the Journal. I have a series of reports received in the Clerk's Office, on file and available for member review. And finally, Mr. President, a notice of hearing from the Revenue Committee, signed by Senator Janssen, as Chair. That's all that I have. (Legislative Journal pages 367-372.) []

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Mr. Clerk, we will move to the first bill on Select File, which is LB706. [LB706]

CLERK: Mr. President, Senator McGill, LB706. I have no amendments to the bill, Senator. [LB706]

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PRESIDENT SHEEHY: Senator McGill. [LB706]

SENATOR MCGILL: Mr. President, I move LB706 to E&R for engrossing. [LB706]

PRESIDENT SHEEHY: You have heard the motion to advance LB706. All those in favor say aye. Opposed, nay. The bill does advance. Next item, Mr. Clerk. [LB706]

CLERK: LB707. Senator, I have no amendments to the bill. [LB707]

PRESIDENT SHEEHY: Senator McGill. [LB707]

SENATOR MCGILL: Mr. President, I move LB707 to E&R for engrossing. [LB707]

PRESIDENT SHEEHY: You have all heard the motion on the advancement of LB707. All those in favor say aye. Opposed, nay. LB707 does advance. [LB707]

CLERK: LB269, Senator. I have Enrollment and Review amendments, first of all. (ER8128, Legislative Journal page 273.) [LB269]

PRESIDENT SHEEHY: Senator McGill. [LB269]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB269]

PRESIDENT SHEEHY: You have heard the motion for the adoption of the E&R amendments. All those in favor say aye. Opposed, nay. Motion passes. [LB269]

CLERK: I have nothing further on LB269, Senator. [LB269]

PRESIDENT SHEEHY: Senator McGill. [LB269]

SENATOR MCGILL: Mr. President, I move LB269 to E&R for engrossing. [LB269]

PRESIDENT SHEEHY: You have heard the motion to advance LB269. All those in favor say aye. Opposed, nay. LB269 does advance. [LB269]

CLERK: Mr. President, Senator McGill, LB575. I have Enrollment and Review amendments first of all, Senator. (ER8138, Legislative Journal page 345.) [LB575]

PRESIDENT SHEEHY: Senator McGill. [LB575]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB575]

PRESIDENT SHEEHY: You have heard the motion on the adoption of E&R

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amendments. All those in favor say aye. Opposed, nay. Motion is adopted. [LB575]

CLERK: Senator, I have nothing further on LB575. [LB575]

PRESIDENT SHEEHY: Senator McGill. [LB575]

SENATOR MCGILL: Mr. President, I move LB575 to E&R for engrossing. [LB575]

PRESIDENT SHEEHY: You have heard the motion to advance LB575. All those in favor say aye. Opposed, nay. LB575 does advance. [LB575]

CLERK: Senator, LB205 is the next bill. I do have Enrollment and Review amendments pending. (ER8129, Legislative Journal page 298.) [LB205]

PRESIDENT SHEEHY: Senator McGill. [LB205]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB205]

PRESIDENT SHEEHY: You have heard the motion on the adoption of the amendments. All those in favor say aye. Opposed, nay. Motion passes. [LB205]

CLERK: I have nothing further on LB205, Senator. [LB205]

PRESIDENT SHEEHY: Senator McGill. [LB205]

SENATOR MCGILL: Mr. President, I move LB205 to E&R for engrossing. [LB205]

PRESIDENT SHEEHY: You have heard the motion to advance LB205. All those in favor say aye. Opposed, nay. LB205 advances. [LB205]

CLERK: LB210, Senator. I have no amendments to the bill at this time. [LB210]

PRESIDENT SHEEHY: Senator McGill. [LB210]

SENATOR MCGILL: Mr. President, I move LB210 to E&R for engrossing. [LB210]

PRESIDENT SHEEHY: You have heard the motion to advance LB210. All those in favor say aye. Opposed, nay. LB210 advances. [LB210]

CLERK: LB312, Senator. I have no amendments to the bill. [LB312]

PRESIDENT SHEEHY: Senator McGill. [LB312]

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SENATOR MCGILL: Mr. President, I move LB312 to E&R for engrossing. [LB312]

PRESIDENT SHEEHY: You have heard the motion to advance LB312. All those in favor say aye. Opposed, nay. LB312 does advance. [LB312]

CLERK: LB379, Senator. At this time, I have no amendments to the bill. [LB379]

PRESIDENT SHEEHY: Senator McGill. [LB379]

SENATOR MCGILL: Mr. President, I move LB379 to E&R for engrossing. [LB379]

PRESIDENT SHEEHY: You have heard the motion on the advancement of LB379. All those in favor say aye. Opposed, nay. LB379 does advance. [LB379]

CLERK: LB380, Senator. I have Enrollment and Review amendments pending. (ER8130, Legislative Journal page 308.) [LB380]

PRESIDENT SHEEHY: Senator McGill. [LB380]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB380]

PRESIDENT SHEEHY: You have heard the motion on the adoption of the amendments. All those in favor say aye. Opposed, nay. Amendments are adopted. [LB380]

CLERK: I have nothing further pending to LB380, Senator. [LB380]

PRESIDENT SHEEHY: Senator McGill. [LB380]

SENATOR MCGILL: Mr. President, I move LB380 to E&R for engrossing. [LB380]

PRESIDENT SHEEHY: You have heard the motion on the advancement of LB380. All those in favor say aye. Opposed, nay. LB380 does advance. [LB380]

CLERK: LB383, Senator. At this time, I have no...I have E&R amendments, excuse me. (ER8134, Legislative Journal page 310.) [LB383]

PRESIDENT SHEEHY: Senator McGill. [LB383]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB383]

PRESIDENT SHEEHY: You have heard the motion on the adoption of the amendments. All those in favor say aye. Opposed, nay. Motion is adopted. [LB383]

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CLERK: I have nothing further pending to LB383, Senator. [LB383]

PRESIDENT SHEEHY: Senator McGill. [LB383]

SENATOR MCGILL: Mr. President, I move LB383 to E&R for engrossing. [LB383]

PRESIDENT SHEEHY: You have heard the motion for advancement of LB383. All those in favor say aye. Opposed, nay. LB383 does advance. [LB383]

CLERK: LR5CA, Senator, a constitutional amendment. I have Enrollment and Review amendments pending. (ER8133, Legislative Journal page 312.) [LR5CA]

PRESIDENT SHEEHY: Senator McGill. [LR5CA]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LR5CA]

PRESIDENT SHEEHY: You have heard the motion on the adoption to...all those in favor say aye. Opposed, nay. Motion is adopted. [LR5CA]

CLERK: I have nothing further pending to LR5CA, Senator. [LR5CA]

PRESIDENT SHEEHY: Senator McGill. [LR5CA]

SENATOR MCGILL: Mr. President, I move LR5CA to E&R for engrossing. [LR5CA]

PRESIDENT SHEEHY: You have heard the motion to advance LR5CA. All those in favor say aye. Opposed, nay. LR5CA advances. [LR5CA]

CLERK: Senator, with respect to LB690, I have Enrollment and Review amendments pending. (ER8132, Legislative Journal page 312.) [LB690]

PRESIDENT SHEEHY: Senator McGill. [LB690]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB690]

PRESIDENT SHEEHY: You've heard the motion on the adoption of the amendments. All those in favor say aye. Opposed, nay. They are adopted. [LB690]

CLERK: I have nothing further pending to LB690, Senator. [LB690]

PRESIDENT SHEEHY: Senator McGill. [LB690]

SENATOR MCGILL: Mr. President, I move LB690 to E&R for engrossing. [LB690]

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PRESIDENT SHEEHY: You have heard the motion to advance LB690. All those in favor say aye. Opposed, nay. LB690 does advance. [LB690]

CLERK: LB92, Senator. I have Enrollment and Review amendments, first of all. (ER8135, Legislative Journal page 314.) [LB92]

PRESIDENT SHEEHY: Senator McGill. [LB92]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB92]

PRESIDENT SHEEHY: You have heard the motion for the adoption of the amendments. All those in favor say aye. Opposed, nay. Motion is adopted. [LB92]

CLERK: I have nothing further pending to LB92, Senator. [LB92]

PRESIDENT SHEEHY: Senator McGill. [LB92]

SENATOR MCGILL: Mr. President, I move LB92 to E&R for engrossing. [LB92]

PRESIDENT SHEEHY: You have heard the motion for the advancement of LB92. All those in favor say aye. Opposed, nay. LB92 does advance. [LB92]

CLERK: Senator, LB467 is the next bill. I have Enrollment and Review amendments. (ER8136, Legislative Journal page 343.) [LB467]

PRESIDENT SHEEHY: Senator McGill. [LB467]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB467]

PRESIDENT SHEEHY: You have heard the motion for the adoption of the amendments. All those in favor say aye. Opposed, nay. Motion is adopted. [LB467]

CLERK: Senator Flood would move to amend with AM1624. (Legislative Journal page 357.) [LB467]

PRESIDENT SHEEHY: Senator Flood, you are recognized to open on AM1624. [LB467]

SPEAKER FLOOD: Thank you, Mr. President, members. You remember on General File we adopted an amendment that would allow the state Ombudsman's Office and deputy public counsel for state institutions to investigate patients that were transferred from a state-owned and operated regional center within 12 months of the date of

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discharge and that's it. Those are the only ones that would be...the authority would be given to the state Ombudsman to investigate. Bill Drafters wanted to make some changes to conform the language in the rest of the bill. This is a technical amendment. You'll see in AM1624 that we're simply adding the language in page 1, line 15. This authorizes the legislative Ombudsman to have authority to investigate community-based behavioral health programs provided by regional behavioral health authorities or by providers contracting with a regional behavioral health authority for only those patients that were within the prior 12 months inpatient status at a state-owned and operated regional center. And this language is not meant to change the intent of the original amendment but simply to harmonize it with the rest of the language in the entire bill. I would ask for your adoption of AM1624. [LB467]

PRESIDENT SHEEHY: Thank you, Senator Flood. You have heard the opening to AM1624. The floor is now open for discussion. Seeing none, Senator Flood, you're recognized to close. Senator Flood waives closing. The question before the body is, shall AM1624 be adopted to LB467? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB467]

CLERK: 30 ayes, 1 nay, Mr. President, on adoption of the amendment. [LB467]

PRESIDENT SHEEHY: AM1624 is adopted. Further items, Mr. Clerk? [LB467]

CLERK: I have nothing further on the bill, Mr. President. [LB467]

PRESIDENT SHEEHY: Senator McGill. [LB467]

SENATOR MCGILL: Mr. President, I move LB467 to E&R for engrossing. [LB467]

PRESIDENT SHEEHY: You have heard the motion to advance LB467. All those in favor say aye. Opposed, nay. LB467 does advance. [LB467]

CLERK: Mr. President, LB467A. I do have Enrollment and Review amendments, Senator. (ER8137, Legislative Journal page 345.) [LB467A]

PRESIDENT SHEEHY: Senator McGill. [LB467A]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB467A]

PRESIDENT SHEEHY: You have heard the motion on the adoption of the amendments. All those in favor say aye. Opposed, nay. They are adopted. [LB467A]

CLERK: Senator Chambers would move to amend with AM650. (Legislative Journal page 315.) [LB467A]

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PRESIDENT SHEEHY: Senator Chambers, you're recognized to open on AM650. [LB467A]

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, this provides an appropriation to cover the individual who will be hired by the Ombudsman's Office to see to the activities that are contained in Senator Flood's amendment, which we adopted the other day and which he clarified just a few minutes ago. So I'm asking that you adopt this amendment to the A bill. Thank you, Mr. President. [LB467A]

PRESIDENT SHEEHY: Thank you, Senator Chambers. You have heard the opening to AM650. The floor is open for discussion. Seeing none, Senator Chambers, you're recognized to close. Senator Chambers waives closing. The question before the body is, shall AM650 be adopted to LB467A? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB467A]

CLERK: 28 ayes, 0 nays, Mr. President, on the adoption of Senator Chambers' amendment. [LB467A]

PRESIDENT SHEEHY: AM650 is adopted. Further items on this bill? [LB467A]

CLERK: I have nothing further on the bill, Mr. President. [LB467A]

PRESIDENT SHEEHY: Senator McGill. [LB467A]

SENATOR MCGILL: Mr. President, I move LB467A to E&R for engrossing. [LB467A]

PRESIDENT SHEEHY: You have heard the motion to advance LB467A. All those in favor say aye. Opposed, nay. LB467A does advance. [LB467A]

CLERK: LB202, Mr. President. Senator McGill, I have Enrollment and Review amendments. (ER8139, Legislative Journal page 348.) [LB202]

PRESIDENT SHEEHY: Senator McGill. [LB202]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB202]

PRESIDENT SHEEHY: You have heard the motion on the adoption of the amendments. All those in favor say aye. Opposed, nay. Motion is adopted. [LB202]

CLERK: I have nothing further on the bill, Senator. [LB202]

PRESIDENT SHEEHY: Senator McGill. [LB202]

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SENATOR MCGILL: Mr. President, I move LB202 to E&R for engrossing. [LB202]

PRESIDENT SHEEHY: You have heard the motion for advancement of LB202. All those in favor say aye. Opposed, nay. LB202 does advance. First item under General File, Mr. Clerk. [LB202]

CLERK: Mr. President, LB352. (Read title.) The bill was discussed yesterday, Mr. President. At that time the bill was presented by Senator Langemeier, as primary introducer. Senator Aguilar offered Government, Military and Veterans Affairs Committee amendments. Senator Chambers offered an amendment that was adopted to those committee amendments. At this time, Mr. President, the committee amendments are pending to LB352. (AM665, Legislative Journal page 841, First Session, 2007.) [LB352]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. The floor is open for discussion on committee amendment, AM665. Senator Aguilar, did you want to add anything additional on your committee amendment? [LB352]

SENATOR AGUILAR: No, I'll wait until all the additional amendments are put on and we'll go from there. [LB352]

PRESIDENT SHEEHY: Thank you, Senator Aguilar. Senator Chambers. [LB352]

SENATOR CHAMBERS: I have an amendment I'm offering so my light is on in case I need it after I present that amendment. [LB352]

PRESIDENT SHEEHY: You're currently the only one in the queue. [LB352]

SENATOR CHAMBERS: Then I think I better put an I in front of that so we have IQ. And I will make a comment on the committee amendments because my amendments go to these committee amendments. Yesterday I tried to make it as clear as I possibly could that I'm opposed to what this bill does. I'm opposed to anything that we put in statute which favors a narrow, extremely narrow special interest group whose activities are not beneficial to society as a whole. What this bill would do is to give a kind of shield and protection to gun ranges, which I do not believe is available to any other entity. In addition to saying that if a gun range is in existence and a city, village, county expands and would engulf that gun range, that gun range cannot be obliterated. It cannot be shut down. It cannot be taken out of operation. In Lincoln, there is a set of circumstances which creates the necessity, in the minds of some people, for legislation. Those circumstances involve a relatively significant chunk of land dedicated and used by the State Fair. It impedes development of a more productive and useful kind for a city. So there is bickering back and forth, arguing back and forth, the Governor is involved, the

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board of the State Fair is involved, members of the Legislature are involved, and a battle royal being carried out by peasants is taking place. What is attempted by this bill is to generate such conditions in the future for gun ranges with a protective shell that cannot be breached or penetrated by the village, city, or county which has engulfed that gun range. To make a visualization possible, view the gun range as the hole in a doughnut. That's what it would be. In addition to protecting that gun range, there is the creation of a 700-plus foot buffer, as it's called, around the gun range. It's like a cell which has been encased in a protective cloak of immunity so that it cannot be affected by anything in the body of which the cell is a part. So after encasing this gun range in this protective shell and the additional buffer, any abutting landowner who may own land within that buffer segment is prohibited from using... [LB352]

PRESIDENT SHEEHY: One minute. [LB352]

SENATOR CHAMBERS: ...his or her land in any fashion which might put that gun range out of compliance. The introducer of this bill acknowledged frankly yesterday that the rights of a gun range should be elevated above the rights of the people. In other words, the common good must take a backseat to a narrow special interest. And with that, I cannot agree. Thank you, Mr. President. [LB352]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Mr. Clerk, do you have amendments filed at your desk? [LB352]

CLERK: I do, Mr. President. Senator Chambers would move to amend the committee amendment. First amendment, Senator, FA162 would strike lines 16 through 18 of the committee amendment. Senator, may I ask, is that...I assume we're talking on page 1. Is that...(Legislative Journal page 373.) [LB352]

SENATOR CHAMBERS: Yes. [LB352]

CLERK: Okay, very good. [LB352]

SENATOR CHAMBERS: Yes, I'm sorry I didn't mention that. [LB352]

CLERK: Thank you. [LB352]

PRESIDENT SHEEHY: Senator Chambers, you're recognized to open on your floor amendment, amendment to the committee amendment. [LB352]

SENATOR CHAMBERS: Mr. President, members of the Legislature, I am very pleased to be with all of you this morning because that means I am yet in the land of the living. It doesn't take much to please me. I have lived a life of such deprivation, Senator Carlson, that if you compare the life that I have lived on this Earth with the life of a Spartan, we

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would say that Spartans live lavishly and can be found guilty of ostentatious shows of wealth. That having been said, why would I be pleased to be with my colleagues this morning? Because we're going to do the people's work in the way it ought to be done and I'm confident my colleagues will see it the way that I do. The common good, it has been stated in varying ways on this floor, trumps the good of an individual. Land ownership, we all know, is never absolute. Not only can the use of that land be regulated, but as a beginning principle, Mr. A cannot use his land in such a way as to infringe on, inappropriately, the usage and enjoyment of her land by Ms. B. In other words, Mr. Coffee cannot mess over Ms. Tea. Tea and Coffee are on an equal basis when it comes to ownership of land, the appreciation of it, the utilization, and enjoyment. That reminds me, Senator Wightman, of something that happened with Abraham Lincoln. He was a man known for his diplomacy; his reluctance to hurt anybody's feelings; his attempt to bring everybody out of a situation as a winner, if possible; and if not, everybody as a winner, at least nobody is a loser. He was sitting at a table in a restaurant and a liquid was brought to him in a cup, steaming, and it was placed by Lincoln's right hand. And Lincoln took a sip of it and he said to the waiter: waiter, if this is coffee, would you please bring me tea; if it's tea, would you please bring me coffee? Well, what I'm offering here this morning is something that everybody ought to be able to consume with no problem whatsoever. The issue here is not my objection to gun ranges and the love of the gun and the creation of what I call a cathedral of the gun by virtue of this bill. There is a broader issue here. What does the right to own land mean in Nebraska? And as I started to point out, ownership of land is not absolute. Land can be taken for the public good. Appropriate compensation must be given. What is being done here is to allow these gun ranges, by operation of law, to prohibit the utilization of a landowner's property in the way that landowner chooses. The use is not illegal but it is made illegal by this bill. Utilization of that land for a purpose which hurts no one and benefits the landowner is made illegal as a matter of law by this bill. You all can sit comfortably in the presence of such an action because you bow down to the gun. And I don't. You cannot see clearly this issue. The one you all pray to in the morning--some of you, one you play like you respect but which your conduct shows that you don't--said, take the beam, or the large object, out of your eye before you try to remove the mote, or the small object, from your brother's eye. The gun is a beam in the eye of my colleagues. They are prevented from seeing clearly what we are doing with this bill, should it be enacted into law. And if it is seen clearly, there is a fear to do the right thing. What is it that inspires such fear? The National Rifle Association. That's where the fear originates. As I stated yesterday, old Franklin Roosevelt said, you have nothing to fear but fear itself. "Parson" Carlson can tell you that the Bible says--and I'm pronouncing it the way he likes--the Bible says, God is love. But then it also says, perfect love casteth out all fear. So why do you have fear of a scalawag organization like the National Rifle Association? Because they can hurt you politically and you fear that. But the Rifle Association does not have that many votes. If you conduct yourself in a way that will provide you with respect from your colleagues, they and you can tell the Rifle Association, the National Rifle Association, where to go. And you will continue to be

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elected to the Legislature for the next time that you're allowed under the Chambers provision in the Nebraska Constitution. I'm going to fight this bill because of what it does in addition to providing inappropriate sanctification for gun ranges and the National Rifle Association. In the bill itself, and I'm going to draft an amendment to strike that reference, is a notation that these gun ranges are to be built in accord with the standards set by the National Rifle Association in a 1999 manual. I don't know if military gun ranges are built in compliance with the regulations or the standards set by the National Rifle Association. Maybe they are, but I doubt it. I'd like to ask Senator...maybe I shouldn't bother him. How much time do I have, Mr. President? [LB352]

PRESIDENT SHEEHY: One minute, thirty seconds. [LB352]

SENATOR CHAMBERS: I'm going to ask Senator Langemeier a question. [LB352]

PRESIDENT SHEEHY: Senator Langemeier, would you yield? [LB352]

SENATOR LANGEMEIER: I would. [LB352]

SENATOR CHAMBERS: Senator Langemeier, you are aware of what I'm striking with this amendment, because I haven't discussed it at any length? [LB352]

SENATOR LANGEMEIER: I've read your amendment, yes. [LB352]

SENATOR CHAMBERS: And what is your reaction to it, without me having discussed it specifically in detail? [LB352]

SENATOR LANGEMEIER: Initial reaction is I don't think it, as far as where I stand, I don't think it makes an issue. [LB352]

SENATOR CHAMBERS: Oh, you'd be...it wouldn't bother you to... [LB352]

PRESIDENT SHEEHY: One minute. [LB352]

SENATOR CHAMBERS: ...strike this language? [LB352]

SENATOR LANGEMEIER: No. It's the committee amendment, it's not my bill. [LB352]

SENATOR CHAMBERS: That's all I will ask and I will stop at this point, Mr. President. Thank you. [LB352]

PRESIDENT SHEEHY: Thank you, Senator Chambers. You have heard the opening to the amendment to the committee amendment, FA162. Members wishing to speak, Senator Chambers. [LB352]

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SENATOR CHAMBERS: Thank you. Mr. President, I must ask Senator Aguilar a question. [LB352]

PRESIDENT SHEEHY: Senator Aguilar, would you yield? [LB352]

SENATOR AGUILAR: Yes, I will. [LB352]

SENATOR CHAMBERS: Senator Aguilar, even though we get along pretty well, I don't like to see any of my colleagues enjoying themselves too much this morning. And any time you get a chance to speak with Senator Schimek, you'll enjoy yourself. So I just had to interrupt. But I have another reason for asking you a question. Can you look at a copy of the committee amendment so you will know what I'm going to call your attention to? [LB352]

SENATOR AGUILAR: Yes, I have it, Senator. [LB352]

SENATOR CHAMBERS: On page 1, this is the language that my pending amendment would strike from the bill, and these are things that this gun range can do: acquire additional lands to be used for buffer zones or noise mitigation efforts or to otherwise comply with the Nebraska Shooting Range Protection Act. Why was that put into the committee amendment? Who requested it, in other words, and what was the rationale for it, if you recall? [LB352]

SENATOR AGUILAR: I'm afraid I don't recall. We heard that last year and those details... [LB352]

SENATOR CHAMBERS: So the shot was fired last year, it may have been heard around the world, but the reverberations are not being heard right now on the floor of the Legislature. [LB352]

SENATOR AGUILAR: That's exactly right, Senator. [LB352]

SENATOR CHAMBERS: So if we struck that about acquiring this additional land, especially for the buffer zone, Senator... [LB352]

SENATOR AGUILAR: Langemeier. [LB352]

SENATOR CHAMBERS: ...Langemeier. (Laugh) He is long, his name is not, but it escaped me because sometimes my mind is short--as our...Senator Stuthman and I, as far as our natural stature. If this language were stricken, what harm would it do to whatever the committee was trying to do? [LB352]

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SENATOR AGUILAR: Well, I certainly don't think it would devastate what we're trying to do. [LB352]

SENATOR CHAMBERS: Okay. And since Senator Langemeier sees no problem with it, you would not have a problem with it? [LB352]

SENATOR AGUILAR: I would not. [LB352]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, what Senator Langemeier may allow me to do is dismantle the parts of this amendment with which I object. Are there any other lights on to address this amendment? [LB352]

PRESIDENT SHEEHY: Just one, Senator. [LB352]

SENATOR CHAMBERS: I will stop and see what that one person may have to say. Thank you, Mr. President. [LB352]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Wightman. [LB352]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the Legislature. I would like to ask a question or two of doctor--or Doctor, yeah, "Doctor" Chambers--Senator Chambers. (Laugh) [LB352]

PRESIDENT SHEEHY: Senator Chambers, would you yield to some questions? [LB352]

SENATOR CHAMBERS: Yes, I will. [LB352]

SENATOR WIGHTMAN: I don't know if I've elevated you by that title or not. [LB352]

SENATOR CHAMBERS: Senator Wightman, anything you say I take as a compliment, anything. [LB352]

SENATOR WIGHTMAN: Thank you. [LB352]

SENATOR CHAMBERS: Because the mere fact that you take note of my existence means something to me. (Laughter) [LB352]

SENATOR WIGHTMAN: Looking at your amendment, first of all, I'm not sure that the language in the committee amendment has any effect at all because I assume we're not talking about the right of eminent domain. There's certainly...I don't think that this Legislature could give the shooting range the right of eminent domain. We assume it would be incorporated. Would that be your assumption? [LB352]

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SENATOR CHAMBERS: It would be my hope that we're not talking about eminent domain, but I can't be sure. [LB352]

SENATOR WIGHTMAN: If that's true, most corporations would probably have the right to acquire voluntarily additional real estate, whether that amendment is stricken or not, would it not? [LB352]

SENATOR CHAMBERS: That's true. Yes, if all it...if it does not purport to give anything in the nature of eminent domain, it has no meaning whatsoever. [LB352]

SENATOR WIGHTMAN: I would agree with that and think that probably whether it's in or whether it's out makes little difference. But I guess if there...I don't know how we could be conferring the right of eminent domain because I think that is prescribed by the constitution, at any rate. With that, I have no further questions. That answered my question. Thank you, Mr. President. [LB352]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Are there additional requests to speak on FA162? Seeing none, Senator Chambers, you're recognized to close. [LB352]

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, I make \$12,000 a year on this job. Each one of you makes \$12,000 a year on this job. That broken down to an hourly wage is probably below the minimum wage at \$7 and some pennies. And for the amount of time I spend here, I wouldn't even make \$7 an hour. But it seems that it has become my lot to work harder and work on bills that I don't even agree with. There are issues that arise in these bills which we should all be taking note of. But because we're dealing with the gun, which people on this floor worship, the gun can do no wrong. Anything that is going to elevate the gun cannot be wrong, except from my point of view. I'm not going to say forget that we're dealing with the gun, because you can't. But if you could find a little spot in your brain which is not totally coopted by love of the gun and you could do some thinking. These types of provisions are the kind we ought to at least explore even if you're not going to agree with me that it should be stricken. When you have something in a bill which really does nothing, somebody may ask me what harm is there in leaving it in the bill. The harm is that we should be trying to craft legislation of a high quality. Superfluous or redundant language does not measure up to that standard. Although I won't be here much longer, while I am here I'm going to try to hold us to that standard if I can. If I'm unable to persuade enough of my colleagues to agree with me, I will at least have gone on record. And by the way, it is a record which I recognize, probably better than anybody else, will not be read or taken note of by anyone. But when I was a wee lad, Senator Carlson, a rhyme was taught to me in school which made no sense. If a task is once begun, never leave it until it is done; for be the labor great or small, do it well or not at all. Well, if I'm not going to do it...if it's once begun, they say do it well or not at all. Well, if I'm not going to do it

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well then I shouldn't do it at all. But at the same time, they say if it's once begun, don't stop. So how are they, on the one hand, going to say if you start and you're not going to do it well, don't stop; but on the other hand, if you're not going to do it well, don't even start? That's the kind of stuff they put in children's heads because it sounds good, there is an allure to it, but it will not withstand analysis. And you're put in the position of that old Mayor Daley of Chicago, when he would use more bunglesome language than some of my colleagues. Then when reporters tried to get him to explain it, he would bungle it even more and say, well, write what I mean, not what I said. And they said, well, Mayor, we don't know what you mean unless you say it. Well, I can't say it any better but I think you know what I mean. That's not the way legislation should be written. I'm pleased that Senator Langemeier has not shown just a rock-ribbed feeling that everything in the bill or in the committee amendment has to stay there simply because it is there. So he has... [LB352]

PRESIDENT SHEEHY: One minute. [LB352]

SENATOR CHAMBERS: ...no problem with removing this language. Senator Aguilar has no problem with removing this language. Senator Wightman's questioning pointed out that it cannot be a dodge for hiding a power of eminent domain. So it serves no purpose because any person--and corporations under the law are deemed to be persons--any person can procure, through purchase, trade or however, property that is on the market if the one whose property it is, is willing to part with it for the value that the buyer is willing to put up. So we don't even need this language. I'm going to see how my colleagues will vote and I'm waiting with bated breath. However, I will not wait to exhale. Thank you, Mr. President. [LB352]

PRESIDENT SHEEHY: Thank you, Senator Chambers. You have heard the closing to the amendment to the committee amendment, FA162. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB352]

ASSISTANT CLERK: 26 ayes, 1 nay on the adoption of Senator Chambers' amendment, Mr. President. [LB352]

PRESIDENT SHEEHY: FA162 is adopted. Mr. Clerk, next amendment? [LB352]

CLERK: Mr. President, Senator Chambers would move to amend with FA163. (Legislative Journal page 374.) [LB352]

PRESIDENT SHEEHY: Senator Chambers, you're recognized to open on FA163, amendment to committee amendment. [LB352]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, for the life of me, I cannot understand what this language means. I'm going to read it, and it's

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on page 1 of the committee amendment: "A shooting range that is a nonconforming use shall be allowed to conduct shooting activities within the range's lawful property boundaries as of the date the range became a nonconforming use, if the shooting range remains in compliance with noise and shooting range performance standards under the act." If it's a nonconforming use, if it's out of compliance, based on what we read before we get to these last words, how can it be said that these things can happen if the range remains in compliance? If the nonconforming use creates noncompliance, how can the range be in compliance, which would allow you to conduct a nonconforming use, which takes the range out of compliance? Now are they saying this, that if old, crusty Senator Carlson--who voted against my amendment because either he's contrary, didn't understand, or wasn't paying attention and just automatically reacts in a negative way to Senator Chambers--if this is for the purpose of saying that the shooting range is going to be given more rights to not comply with this law then, Senator Carlson, something is wrong. You're going to make everybody else comply but the shooting range itself need not comply. What in the world are you all doing? Exactly what I said: not paying attention, not caring, and we'll make the Legislature look foolish. But here is what I'm willing to grant, that I could be misreading or misunderstanding what this language is intended to do. But by reading what it says, I can make no sense of it. In philosophy, they will say that a principle is unintelligible if it does not make sense. This inability on my part to understand what is being done here could be a shortcoming on my part. Perhaps it's intelligible to everybody else. Everybody understands it except me. But since I don't understand it, I do not believe it ought to be in this bill, should it become law, and I hope it doesn't. But if it makes sense, I want somebody to stand on this floor and explain it to me, correct my ignorance, and improve my education this morning. I'm going to read it again, and maybe I will have an epiphany, Senator Carlson; as in the comic strips, the little light bulb will go on. "A shooting range that is a nonconforming use...." How can a shooting range itself be a nonconforming use? Not conforming to what? But anyway, "A shooting range that is a nonconforming use shall be allowed to conduct shooting activities within the range's lawful property boundaries as of the date the range became a nonconforming use...." You can now do the nonconforming the day the range became nonconforming, but here's the condition: "if the shooting range remains in compliance." Well, if that which is nonconforming is going to be allowed, how can the range be in compliance? Thank you, Mr. President. [LB352]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Mr. Clerk, you have items for the record? [LB352]

CLERK: I do, Mr. President. Amendments to be printed: Senator Cornett to LB210; Senator Loudon, LB801; Senator Erdman, a motion, LB1148; Senator Nantkes, LB235A, an amendment, an amendment to LB235. I have two motions, Mr. President, to withdraw: Senator Hudkins would like to withdraw LB1099; Senator Schimek, LB1148. And I have hearing notices: Natural Resources Committee offers three separate notices, and Business and Labor Committee offers three separate notices,

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those signed by their respective Chairs. That's all that I had, Mr. President. (Legislative Journal pages 374-381.) [LB210 LB801 LB1148 LB235A LB235 LB1099]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Flood, you are recognized for a motion. []

SPEAKER FLOOD: Mr. President, members, I move that a committee of eight be appointed to escort the Chief Justice for the purpose of delivering the State of the Judiciary Address. []

PRESIDENT SHEEHY: Thank you, Senator Flood. You have all heard the motion. All those in favor say aye. Opposed, nay. The motion is adopted. I would appoint the following committee: Senator Ashford, Senator Lathrop, Senator Lautenbaugh, Senator Nantkes, Senator Nelson, Senator Pirsch, Senator White, and Senator Wightman. Would the Escort Committee retire to the rear of the Chamber to escort the Chief Justice and members of the Nebraska Supreme Court to the Chambers. The Chair recognizes the Sergeant at Arms. (Gavel) []

SERGEANT AT ARMS WITKOWSKI: Mr. President, your committee now escorting Chief Justice Mike Heavican and members of the Nebraska Supreme Court. []

PRESIDENT SHEEHY: Ladies and gentlemen, Senators, I present to you Chief Justice Mike Heavican of the Nebraska Supreme Court. (Applause) []

CHIEF JUSTICE HEAVICAN: Thank you very much. Mr. President, Mr. Speaker, esteemed members of the Legislature, fellow justices of the Supreme Court, and distinguished visitors, it is indeed a great honor for me to speak with you today. I would like to thank you very much for inviting me. I must especially thank Speaker Flood for this opportunity to showcase the judiciary, the third--and often least understood--branch of government. Let me begin by introducing the other members of the Supreme Court. To my immediate right is Justice John Wright; to his right is Justice John Gerrard. To the right of Justice Gerrard is Justice Michael McCormack. To my immediate left is Justice William Connolly. To Justice Connolly's left is Justice Kenneth Stephan. Justice Lindsey Miller-Lerman regrets that she cannot be with us today because of a prior commitment. Each of you received a packet for this occasion. The packets have preliminary statistics and charts showing the number of cases filed in 2007, caseload distributions, flow charts, and other statistical information for the court system. While you are certainly capable of reviewing these documents on your own, I want to bring a few of the more notable figures to your attention. More than 41,000 cases were filed in our district courts in 2007 and a staggering 233,555 cases were filed in our county courts last year. Notably, that figure does not include 162,855 traffic-related statistics. The sheer number of cases our court system handles each year is astonishing considering the judicial branch uses just 2 percent of the state's entire budget. In fact,

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the judicial branch essentially pays for itself, as fees and fines collected by courts are distributed to local school systems, Nebraska Legal Services, the Law Enforcement Improvement Fund, the state's General Fund, and other state and local services. But rather than dwell on statistics, I would like to focus on some of the special initiatives of the court and the judicial branch. The first initiative involves abused and neglected children whose cases are in the juvenile court system. Many of these children are wards of the state and are in foster care. As you are aware, Nebraska has an inordinate number of such children. Those children have been a special focus of the courts in 2007. Former Chief Justice John Hendry, my predecessor, convened the Supreme Court Commission on Children in the Courts in January 2005. Chief Justice Hendry's vision and leadership resulted in the first ever Nebraska Children's Summit in September of 2006. Participants included most of the state's juvenile court judges, many child welfare workers from the Department of Health and Human Services, members of the Foster Care Review Board, prosecuting attorneys, defense attorneys, and other parties interested in Nebraska's juvenile court system. I had the privilege of attending that summit after I was appointed Chief Justice but before I was sworn in. The summit launched the Through the Eyes of the Child Initiative. Summit participants voted to name the project Through the Eyes of the Child so that all participants in abuse and neglect cases would be mindful of the child's perspective throughout such proceedings. The Through the Eyes of the Child Initiative established 25 community-based court teams around the state of Nebraska. Each team is led by a judge of either a county or juvenile court. The goal of each team is to develop the best way to handle abuse and neglect cases, including cases involving the termination of parental rights, in their particular courts. All of the teams are working hard to place abused and neglected children in permanent, safe, and stable homes as quickly as possible. At the same time, the teams strive to preserve fairness and the rights of all parties to these proceedings. The Supreme Court Commission on Children in the Courts also drafted guidelines that were approved this year by the Supreme Court. These guidelines are for use by guardians ad litem in juvenile proceedings, they are supplemented by training for guardians ad litem, judges, defense attorneys, prosecutors, and other participants in the juvenile court process. The Supreme Court has also placed an emphasis on meeting national and state guidelines for case progression. Almost all of the local committees have come to the conclusion that one of the most important ways to quickly address permanency in these cases is by front-loading the system. By "front-loading the system," we mean making use of informal preconference hearings. Front-loading has given us the ability early in the litigation process to appoint counsel for all parties involved and to obtain assistance for parents suffering from mental illness or substance abuse problems. This front-loading feature appears to be paying great dividends. Dodge County provides a good illustration of the initiative's effectiveness. Since the initiative began, the number of children in foster care in Dodge County has dropped 50 percent--that is 50, 5-0, percent. This drop is a direct result of collaboration by judges in Dodge County, with workers from the Department of Health and Human Services and members of the local bar. I should also note the work of our Court of Appeals regarding

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abuse and neglect cases. By prioritizing cases involving potential termination of parental rights, the Court of Appeals reduced the average length of time needed to process an appeal in such cases by three months. Although three months may not seem much to you or me, three months is a long time in the eyes of a child. I would next like to speak to you about drug courts. Drug courts handle cases related to use or possession of narcotics, but do so in a somewhat unique fashion. Drug courts are community-based and therefore seek to treat and rehabilitate offenders in local communities rather than simply punish those offenders. Drug courts require an intensive use of judicial resources in the rehabilitative process. Nonetheless, the strain on judicial resources results in economic savings. It is estimated that it costs \$31,000 to incarcerate an offender for one year, while it costs a mere \$3,500 to handle such a case in a drug court. Proponents also feel the recidivism rate for drug court participants will show significant decline. Presently, Nebraska has 20 drug courts, most designed to work with adult offenders. However, several of the drug courts are designed specifically for juveniles. Currently, drug courts are available in 10 of the 12 judicial districts in the state, with interest in establishing programs in the remaining 2 districts. As part of our juvenile court system, family drug courts located in Omaha, Lincoln, Scottsbluff, and central Nebraska emphasize treatment for parents. The overarching goal of family drug courts is helping these parents keep their families together. The judges who preside over Nebraska's drug courts volunteer for this tough assignment. Drug court cases are more time-consuming than most conventional cases. They require a unique balance of perseverance and resolve. I want to personally thank those judges for their leadership and their dedication. Of the court system's 1,118 employees located around the state, 464 are probation officers or probation support staff. Probation officers are the backbone of our drug courts and other community corrections efforts. They deserve our appreciation as well. I also want to discuss recent efforts by the Nebraska Minority Justice Committee. This committee strives to develop and implement sustainable policy reforms which will not only improve the system of justice, but also strengthen public trust and confidence in our laws and the court system. The court's newest project was just announced a few weeks ago. The committee received a grant to improve the justice system's capacity to serve non-English-speaking persons. To that end, the committee coordinated the translation of court forms into Spanish, Vietnamese, and Arabic, the three languages for which interpretive services are most commonly requested. The practical importance of bilingual forms cannot be overstated: noncompliance with court terms can of course result in detention, loss of child custody, or other consequences. The judicial branch has identified particular forms that, once translated, will help non-English speakers understand both their rights and their responsibilities under the law. Bilingual forms are part of a larger challenge facing our courts. That challenge is how to effectively deal with non-English-speaking parties. Although, as noted, the greatest number of such litigants is Spanish-, Vietnamese-, or Arabic-speaking, a variety of other languages require use of interpreters in our courts. Last year, the use of interpretive assistance in the court system was required in 16 different foreign languages, as well as American Sign Language. Nebraska is 1 of 40 states working

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together in a consortium to provide uniform testing to ensure the quality of interpreters used in the courts. Certification, through the consortium and otherwise, is currently available in 13 of those foreign languages and American Sign Language. The demand for certified interpreters, however, continues to exceed the supply of those certified interpreters. The cost for certification and utilization of interpreters is rapidly increasing. These costs have begun to consume funds anticipated for other court projects. Another major challenge confronting our courts is the growing number of self-represented litigants in civil cases. Currently, 42 percent of civil litigants in district court and over 50 percent of civil litigants in county court appear without legal representation. These cases are time-consuming and try the patience of judges and litigants alike. The Supreme Court Implementation Committee on Pro Se Litigation is working on solutions to this problem. The programs I have discussed--drug courts, interpretive services, and responses to pro se litigation--tax already thin judicial resources. As a result, the Supreme Court will grapple, as will this body, with efficient allocation of those resources. I would like to thank the Nebraska State Bar Association for its work in this area. Last year, the bar association's judicial and administration task force worked to find solutions to allocation issues. The Supreme Court will continue to support ways to increase flexibility in apportionment of those resources. I would like to spend the remainder of my time by discussing the future of the courts. It is a future that will present a number of challenges, some already noted. Many of these challenges will be affected by technology. Through technology, we can enhance citizen access to the courts, while simultaneously increasing the efficiency of the court system itself. For example, the judicial branch recently launched an on-line payment program for traffic tickets in many counties. The new e-payment system offers drivers a secure on-line way to pay traffic citations. This option will save time for motorists and relieve judges and court staff of many of the administrative tasks involved in prosecuting citations. There are presently 25 counties offering the option of e-payments for traffic tickets, with another 55 counties in the final stages of doing so. We anticipate that all counties will have e-payment available by the end of the year. You can learn more about this project at the court's Web site, supremecourt.ne.gov. Another large-scale project undergoing expansion and development in the courts is electronic filing. While still in the developmental phase, more than 3,000 court documents have been electronically filed in two pilot projects. E-filing will offer every court in every county the potential of 24-hour-a-day filing. Likewise, court filings, subject to court rules protecting individual privacy, will be available for on-line viewing by litigants and citizens 24 hours a day. We hope that e-filing will be available statewide within 18 months. A special thanks goes to the Supreme Court Technology Committee. The committee has successfully and rapidly moved the court system's technology projects forward. I began this presentation by noting that the judiciary is often the least understood branch of government. The Supreme Court and Court of Appeals are participants in a proposal of the Nebraska Educational Telecommunications Commission to place permanent cameras in our two courtrooms. There is no better way to showcase the appellate process than by offering live coverage of our proceedings. We very much appreciate this opportunity to work with

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NETV in allowing the public to see and hear our judicial system in action. Several trial courts are also experimenting with increased media coverage. Courts in Beatrice, Tecumseh, and Falls City have some audio coverage in their district courts now. Courts in Lancaster and Sarpy Counties are considering limited audio and visual coverage in their courtrooms as well. We believe Nebraska's courts have a great story to tell. Audio and visual coverage in the courts enhance our ability to tell that story. Again, I thank you for the opportunity to present this State of the Judiciary Address. My comments focused on the efforts of the judicial branch to improve the future of Nebraska's children, to address the unique problems of drug abuse, and to meet the challenges that our courts will face in the future. I would like to close by commenting on the quality of people that comprise the judicial branch in this state. Since taking the oath as Chief Justice in October 2006, I have had many opportunities to meet with judges, court staff, and probation officers. From these visits, I can say with confidence that Nebraska has exceptional court officers and, consequently, one of the finest court systems in the country. Some other court systems have suffered from significant ethical and criminal scandals. Nebraska's judiciary has never been plagued by such problems. We take for granted the honesty, integrity, and impartiality of our judges and court employees. Those judges and employees deserve great respect. I want to express my appreciation for your past support and your past respect and ask for your continued support and respect for Nebraska's judicial branch. Thank you very much. (Applause) []

PRESIDENT SHEEHY: Thank you, Chief Justice Heavican. Would the committee escort the Chief Justice Heavican and the members of the Nebraska Supreme Court from the Chamber. Mr. Clerk, do you have items for the record? []

CLERK: I do, Mr. President. Your Committee on Enrollment and Review reports they have examined and reviewed LB632 and recommend that it be placed on Select File; LB621, LB480, LB386, all on Select File, some of which have Enrollment and Review amendments attached. That's all that I have at this time, Mr. President. (Legislative Journal pages 386-390.) [LB632 LB621 LB480 LB386]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. The body did hear the opening of the amendment to the committee amendment, FA163. Members wishing to speak are Senator Carlson, followed by Senator Langemeier. Senator Carlson. [LB352]

SENATOR CARLSON: Mr. President and members of the Legislature, I'd like to address Senator Chambers but I can't find him. But he'll be here. Thank you. Seek and you shall find. [LB352]

PRESIDENT SHEEHY: Senator Chambers, would you yield to some questions? [LB352]

SENATOR CHAMBERS: Yes. [LB352]

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SENATOR CARLSON: Senator Chambers, you surprised me this morning, probably more so than anything I've seen you do in the full session and partial session that I've been in the Legislature. Perhaps the only thing that could surprise me more would be if I came in Monday and you were wearing a tie. But I'd like to ask you a question, and I think by your actions this morning you may be receiving a commendation from the NRA, which would be something very, very unusual. If you look at...would you look at the amendment, Section 4? [LB352]

SENATOR CHAMBERS: Yes. [LB352]

SENATOR CARLSON: And in that first paragraph it says that a shooting range that operates in compliance with shooting range performance standards is permitted to do all the following, if done in accordance with shooting range performance standards. Do you agree with that, that's what it says? [LB352]

SENATOR CHAMBERS: That's what it says, yes. [LB352]

SENATOR CARLSON: Your amendment, I voted against it, dropped out section (e) altogether. That's correct, isn't it? [LB352]

SENATOR CHAMBERS: That's correct. [LB352]

SENATOR CARLSON: So now a shooting range can acquire additional lands to be used for buffer zones or noise mitigation efforts without paying attention if done in accordance with shooting range performance standards. You've liberalized the policy. [LB352]

SENATOR CHAMBERS: Actually not. All the language that we took out says is that this shooting range can acquire property. And if they use it in a way that puts the range out of compliance, then they have in effect signed their own death warrant. This language that we took out does not give them the authority to do anything other than what they're authorized to do now. Without this language, they are not authorized to be in violation of the standards and regulations that govern shooting ranges. [LB352]

SENATOR CARLSON: Okay. I appreciate your response. But I think it liberalized the policy and that is why I voted against it. And thank you for listening to me. [LB352]

SENATOR CHAMBERS: And I expect you to have that award put together by the NRA to give it to me if they see it the same way you do. (Laughter) [LB352]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Langemeier. [LB352]

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SENATOR LANGEMEIER: Thank you, Mr. President and members of the body. I would oppose FA163. And I think a little discussion is, is that the section which FA163 is attempting to amend is part of the green copy, so I'm going to address that. A shooting range that is a nonconforming use, that was designed...that's in there because a lot of these gun ranges, Izaak Walton Leagues were formed clear out in the country back when they were formed. There was no county zoning, there was no city jurisdiction. They were just put out in the country. And so as counties have started to zone, as cities have come out and their jurisdiction has gone from one mile to two miles and so on and so forth, these particular gun ranges come into this nonconforming class. We would call it grandfathering on some terms here as we discuss it. So this would then protect those that are in that nonconforming use, that are not...were not zoned to be gun ranges on their initial construction. So I think it's an important section to leave in and I would oppose taking it out. And I would yield the rest of my time to Senator Chambers. [LB352]

PRESIDENT SHEEHY: Senator Chambers, about 3 minutes, 50 seconds. [LB352]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Langemeier. And I'd like to explore this with you a bit further. When the two words in the first line of the language I'm trying to strike says "nonconforming use," you're telling me that that has no reference to the bill itself but rather to existing standards determined by a zoning authority as to what kind of facility or activity is allowed, correct? [LB352]

SENATOR LANGEMEIER: That would be my interpretation, yes. [LB352]

SENATOR CHAMBERS: So if that is true, then by statute we are overruling the authority of that zoning power or entity to do anything that would affect the continued existence of this gun range. Is that true? [LB352]

SENATOR LANGEMEIER: We would be overruling the nonconforming use designation given by whoever gave it, yes, for that facility, yes. [LB352]

SENATOR CHAMBERS: And so local control is being destroyed as a matter of law by the Legislature if this becomes law. Isn't that correct? [LB352]

SENATOR LANGEMEIER: That would be my interpretation. [LB352]

SENATOR CHAMBERS: Now do any of the people who run this gun range hold the position on that gun range of an elected official? In other words, are these gun ranges run by elected officials? [LB352]

SENATOR LANGEMEIER: No, they're usually run by voluntary members/owners. [LB352]

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SENATOR CHAMBERS: Are the zoning entities run by elected or appointed officials? [LB352]

SENATOR LANGEMEIER: Elected. [LB352]

SENATOR CHAMBERS: Who elects these people? [LB352]

SENATOR LANGEMEIER: I should...let me take that back. Typically, a county zoning board is appointed by the elected officials. [LB352]

SENATOR CHAMBERS: But we do have elected officials implicated in the zoning procedure or process. Is that correct? [LB352]

SENATOR LANGEMEIER: Yes. [LB352]

SENATOR CHAMBERS: This would ignore the desire of elected officials, wouldn't it? If they had determined that a gun range is a nonconforming use, their determination is going to be disregarded by the Legislature, which in effect overrules those who were elected by the people, correct? [LB352]

SENATOR LANGEMEIER: Those gun ranges are already grandfathered in, so that technically is already happening. That grandfathering would continue with this bill, yes. [LB352]

SENATOR CHAMBERS: Why do we need this if that has already been done? [LB352]

PRESIDENT SHEEHY: One minute. [LB352]

SENATOR LANGEMEIER: I think clarity of making sure that we send a clear message to the intent of the legislation. [LB352]

SENATOR CHAMBERS: Where is there--and you don't have to cite a statute by number...I'll ask it this way. Are you telling me there is statutory protection already for existing gun ranges so that they can do what this bill allows? [LB352]

SENATOR LANGEMEIER: No, I don't believe so. But I think the term "nonconforming use" and everything that falls under nonconforming use...we have a lot of things out there across the state of Nebraska that would be considered nonconforming that aren't just gun ranges. [LB352]

SENATOR CHAMBERS: Have we overruled those zoning decisions by statute? [LB352]

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SENATOR LANGEMEIER: Not yet. [LB352]

SENATOR CHAMBERS: But this is going to say they cannot declare that of nonconforming use. Isn't that what we're doing? [LB352]

SENATOR LANGEMEIER: I would believe so. [LB352]

SENATOR CHAMBERS: Okay. And because my time is up, I won't ask another question at this point. And thank you for that time. [LB352]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Chambers, you are the next in the queue. [LB352]

SENATOR CHAMBERS: Thank you, Mr. President, members of the Legislature. Here's what I'm getting at. The boards...the entity that does the zoning comprises elected officials, elected by the people. The Legislature is nullifying the legitimate lawful acts undertaken by that zoning authority. The Legislature, by statute, is saying local control is abrogated, abolished, is null and void because gun ranges are so important that they take priority over the prerogatives of an elected body. Do you see what you're doing? But if you do, it doesn't matter, so I'm going to continue my discussion with Senator Langemeier, if he's willing to continue with me. [LB352]

PRESIDENT SHEEHY: Senator Langemeier, would you yield? [LB352]

SENATOR LANGEMEIER: Yes. [LB352]

SENATOR CHAMBERS: Now when we get to this other language, the gun range within its lawful property boundaries at the date it became nonconforming, let me stop there. This would seem to mean to me that the gun range at one point was a conforming use of that land. Would you agree, Senator Langemeier? [LB352]

SENATOR LANGEMEIER: I'm thinking about your question there. [LB352]

SENATOR CHAMBERS: Okay, here's what... [LB352]

SENATOR LANGEMEIER: I don't know that they were ever, in this regard, would ever be conforming. I think they were just not considered nonconforming because there was nothing to conform to. [LB352]

SENATOR CHAMBERS: Okay, I'll buy that. But there would be a reason or something done by the zoning authority regarding the use that can be made of such land, which decision by the zoning authority would render the gun range a nonconforming use, correct? [LB352]

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SENATOR LANGEMEIER: Correct. The county at some point adopted county zoning. [LB352]

SENATOR CHAMBERS: And it would be their desire to no longer have that gun range there, correct? [LB352]

SENATOR LANGEMEIER: No, no... [LB352]

SENATOR CHAMBERS: Because if they wanted it to be there, they could exempt it, couldn't they, on their own without a statute, couldn't they? [LB352]

SENATOR LANGEMEIER: They have. They've called it unconforming. When they adopted zoning, instead of doing, per se, a spot zoning, which we don't approve of--we don't legislative give authority to do spot zoning--what we have done is we call it nonconforming use because we don't want to spot zone a spot and say this is a gun range zone. So we call it nonconforming and we've done that for a number of things. [LB352]

SENATOR CHAMBERS: And the zoning authority can do that now. Is that right? [LB352]

SENATOR LANGEMEIER: They could. We don't see it as much because the counties now pretty much in the state, other than two, are zoned. So now they can start to go...and then we don't permit them to do a spot zone. [LB352]

SENATOR CHAMBERS: So then if they zone this area of which the gun range is a part, there is no authority they have to allow that gun range to remain there despite the overall zoning. Is that what you're telling me? [LB352]

SENATOR LANGEMEIER: They designated those areas as nonconforming when they went to a zoning policy. [LB352]

SENATOR CHAMBERS: And what does that mean? [LB352]

SENATOR LANGEMEIER: So they have designated, as I said, they have designated those spots nonconforming use when they went to a zoning policy. [LB352]

PRESIDENT SHEEHY: One minute. [LB352]

SENATOR LANGEMEIER: If you were going to, I think you would have challenges, and I would have to do some more research on that, to go out and just...we call it a special use permit. So now if you go and want to change the use of something, you would apply

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for a special use permit under zoning to change the use. [LB352]

SENATOR CHAMBERS: And that can be granted now, can't it? That can be done right now without this language, can't it? [LB352]

SENATOR LANGEMEIER: It can, but that opportunity could be denied, yes. [LB352]

SENATOR CHAMBERS: What I want to get to is what can be done right now so that we are clear on the deviation we are making to the existing law and that which is currently allowed. Thank you, Mr. President. [LB352]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator, you may continue for your third time. [LB352]

SENATOR CHAMBERS: Thank you. Members of the Legislature, Senator Langemeier is going out of his way to give special status to these gun ranges. He doesn't want a county or any other zoning authority, no matter what its rationale may be, to have the power to say these gun ranges are no longer going to be allowed to function here as gun ranges. He wants to take away that authority completely. That's what this bill is designed to do. To make it certain, from what I hear him saying, is that language will be put in the law by way of this bill which doesn't add anything to what is possible now. But his fear is that the wishes of the people affected will be to not have a gun range at that location. And he wants to take away, in advance, their right to object to that gun range being there and the duly elected and constituted officials to respond responsibly in a representative manner to the wishes of the people and what may be in the best interest of that entity, whether it be city, village, county, or whatever, no matter what is at stake. Senator Langemeier and his gun lovers want to make sure that what is wanted by that gun range takes priority, is given paramountcy over any and every consideration of society and the individuals who comprise that society. That, to me, is crazy, but it is very cagey on the part of the NRA and their minions because it shows once again the power they have to control legislatures, the power to get a legislature to say that property ownership means nothing when it comes to what the NRA wants, but I'll continue to fight it. I'm not going to quote Winston Churchill because we don't have any hedge rows, we don't have any corners, we don't have any alleyways, but I will say that wherever and however and whenever an opportunity presents itself for me to fight against these things, I intend to do so. And if I must do it alone, I will. And do you know why I'm the garbage man? Because there are people who understand what I'm talking about and there are people who know that what this bill is doing is wrong. They are just sitting there silently hoping and praying to whatever God or power they believe in that I'll be successful so they don't have to run afoul of the NRA. But at the same time, these values and these principles I'm talking about that will be violated by this bill will be vindicated and preserved. And I'm fighting against this bill because we're dealing with more than just a gun range. This gun range is an assault on certain fundamental

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principles that undergird a supposed democracy. You're making a mockery of local control. [LB352]

PRESIDENT SHEEHY: One minute. [LB352]

SENATOR CHAMBERS: You tell people, vote into office those who you think will do the right thing, even if you happen to disagree with what they do from time to time, but do what they think is right, not because they're fearful or bludgeoned into it. Senator Langemeier and his minions are afraid that there might be a board responsive to the citizens' wishes and would do the right thing, so he wants to take away their authority to respond to their constituents, take away their authority to do what is best for that community for a gun range, for a gun range. Thank you, Mr. President. [LB352]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Langemeier. [LB352]

SENATOR LANGEMEIER: Mr. President, members of the body, and I have to apologize here, I have to redirect our ship here. If we look at Section 4, it's talking about shooting range in operation with compliance. And I was on zoning issues and I was incorrect. If you take it back in the context of Section 4, subparagraph (2), line 19, a shooting range that is in nonconforming use, a shooting range can have multiple uses. We can have a pistol range, we can have a rifle range, and we can have a trap shoot, trap range, yeah, particularly all on the same acres. Is...what we're saying there is each one is considered a range. If one falls out of compliance with the big book we talked about earlier, the 1999 manual, it's nonconforming. We can't shut the other two ranges down on that property. So it would allow the other ranges to continue to operate, even if one particular range wasn't certified under the safety standard. So if it falls out of safety standard, so we're talking about nonconforming of each individual range within a particular property. And so I...so we're not trampling on zoning rights and we need to back up there. And that is my misunderstanding, and so I want to get that corrected to the nonconforming is directed to the use within a property. When I talk about a range, I meant the whole complex, but each one can have multiple type of ranges within it. And with that, I would yield my time to Senator Chambers, because I'm sure he'll have questions. [LB352]

PRESIDENT SHEEHY: Senator Chambers, about 3 minutes, 20 seconds. [LB352]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Langemeier. And I appreciate you making that clarification, but you've complicated your job even more. There is nothing in this language that says what you said. In the first sentence, in line 19, the first line, it says, "A shooting range that is a nonconforming use." There is nothing in here which talks about a portion of the range being nonconforming, multiple uses within that range. And then when we come to line 22 we refer back to that range that was in line 19 by saying, "the shooting range." We're not talking about different

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parts. The language is not clear. [LB352]

SENATOR LANGEMEIER: I agree. [LB352]

SENATOR CHAMBERS: It doesn't say...so why don't we strike it? [LB352]

SENATOR LANGEMEIER: Well, I...I think it needs to be there, but I think it does need some clarification. I will work to come up with some more understandable language, because I, too, did not...on initial glance, I didn't go that direction either. So it definitely needs to be cleared up. [LB352]

SENATOR CHAMBERS: Senator Langemeier, whose bill is this? Mine or yours? [LB352]

SENATOR LANGEMEIER: It is mine. [LB352]

SENATOR CHAMBERS: Senator Langemeier, I have as much responsibility, though, as a member of this Legislature, as you have to try to make...to make language say what it should say. Wouldn't you agree with that? [LB352]

SENATOR LANGEMEIER: I appreciate your efforts, yes. [LB352]

SENATOR CHAMBERS: But what I'm saying, we can't just sit here and let something happen. We have an obligation, don't all of us? [LB352]

SENATOR LANGEMEIER: We do, and I apologize for that. That is not typical. And we will make sure that's clear. [LB352]

SENATOR CHAMBERS: No, I'm not...Senator Langemeier, you've been working with me on this to try to get to what I'm talking about. You've agreed to an amendment. I'm talking about our colleagues sitting around here like knots on logs. Pardon me, logs, pardon me, knots; neither of you has done anything to deserve that unfavorable comparison to legislators that I just did. And if there is a God of knots and logs, I humbly apologize and hope as I leave this place you will not make a tree fall on me or my car. [LB352]

PRESIDENT SHEEHY: One minute. [LB352]

SENATOR CHAMBERS: Now that I've come to terms with the deity of the logs and the knots, I'm going to talk again, not just about this language, but what our responsibility is as legislators. There are many bills which may be complex, which may have many parts. And just because somebody offers a bill...when we're being realistic, we know that a person might miss something in that bill and that's why we debate. But do you

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see how long it takes me to get to issues with which people will ultimately agree, not because they just want to agree with me, but it takes me this long to break through and make you all pay attention? Senator Langemeier has been working with me on his bill throughout, even though he knows I don't like the bill and I would like to kill it. That, though, has not closed his mind. I believe he and I both are behaving in the way that... [LB352]

PRESIDENT SHEEHY: Time, Senator. [LB352]

SENATOR CHAMBERS: ...legislators should. Thank you, Mr. President. [LB352]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator White. [LB352]

SENATOR WHITE: Thank you. Having been stung by Senator Chambers' observation of being a bump on a log, I do stand to ask a series of questions, if Senator Langemeier would be courteous enough to respond to the same. [LB352]

PRESIDENT SHEEHY: Senator Langemeier, would you yield for some questions? [LB352]

SENATOR LANGEMEIER: Yes. [LB352]

SENATOR WHITE: Senator Langemeier, one of the concerns I raised yesterday regarding this bill is the impact it has on people who currently own property adjacent to property being used as gun ranges. Do I understand it correctly that it would restrict the use of that property of adjoining landowners in a manner that would otherwise be consistent with their existing zoning? [LB352]

SENATOR LANGEMEIER: It would add an additional burden, within 750 feet surrounding a gun range facility, to the possibility of mitigation requirements of that area or that use within that area, if it put a gun range out of safety standards. [LB352]

SENATOR WHITE: And that gives me a lot of concern. It is, in effect, a condemnation of certain developmental rights of the adjoining landowner, is it not? [LB352]

SENATOR LANGEMEIER: Yes. [LB352]

SENATOR WHITE: Now you have heard of the concept, I'm sure, of coming to the nuisance? It's a legal concept regarding the use of land and new neighbors. [LB352]

SENATOR LANGEMEIER: I have to apologize, I have not heard of that. [LB352]

SENATOR WHITE: Let me review it for those of you who might not had it. Coming to a

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nuisance is a very, very old, centuries old concept in the law that said, look, if I'm using my property in one way and a new neighbor comes in and starts using the property, buys it, and then complains, for example, gee, they're making noise, because guns are going off, the neighbor does not have any standing to complain because they're coming to a nuisance. In other words, they knowingly bought that property next to a gun range, you can't beef about the sound. But this bill acts differently than that. It would, in fact, restrict the rights of somebody who already owns land next to a gun range of what their legal rights were. They knew that, for example, if it was ag land, they could put up a machine shed, they could move a house, they could do all kinds of actions inside the land, anywhere within the borders. This is very different than what would be, I think, a classic legal protection of coming to a nuisance. It's much broader and much more aggressive. And that is a real serious concern I have, because I'm not so much interested in protecting people who buy land next to a gun range and then beef about the noise. They knew what they were getting into. This isn't that though. This is something much more. With that, I'd yield the remainder of my time to Senator Chambers. [LB352]

PRESIDENT SHEEHY: Senator Chambers, 2 minutes, 10 seconds. [LB352]

SENATOR CHAMBERS: Thank you, Mr. President, members of the Legislature, Senator White has made a profound point. I have to visualize things. So if you work with me, visualize a circle. That circle is the gun range. Draw another circle around it. Then imagine, if you can, that before that second circle is drawn you have property that abuts that first circle that is the gun range. When this law takes effect it, by law, is going to create that outer circle, 750 feet from the gun range. Your property, which is already within that circle, can no longer be used by you in the way that you want to use it. That is depriving you of the use of your land. In effect, the law has allowed the gun range to condemn your property without any compensation. The gun range will be allowed, if this bill takes effect and becomes law,... [LB352]

PRESIDENT SHEEHY: One minute. [LB352]

SENATOR CHAMBERS: ...to deprive you of the land you already have and keep you from using it in any way that conflicts with what the gun range needs. That's what I've been trying to say. And Senator White has said it in a way that I think everybody can grasp. Isn't that an important issue? Doesn't that mean anything? Is the gun range doing so much good for society as a whole that it should be given the power to do, by operation of law, what the city cannot do, what the state cannot do? That's why I say you all love the gun. What you ought to do is kill this bill. But let me mention something, going back to what Senator Langemeier had said about the language I'm trying to strike. If it needs work, wouldn't it better, as they say in Latin, to start with a tabula rasa,... [LB352]

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PRESIDENT SHEEHY: Time, Senator. [LB352]

SENATOR CHAMBERS: ...a clean slate? Thank you, Mr. President. [LB352]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Langemeier. [LB352]

SENATOR LANGEMEIER: Mr. President, members of the body, and I want to tell Senator White I appreciate his comments. I want to give you some examples out there of where the example he gave doesn't work. We have a number of livestock facilities out across the state that have people that move in next to them. And with the quote he gave us, you would think that they would have nothing to affect their ability to operate, which they don't. They file complaints with the county zoning, they file the complaints with DEQ, they file complaint after complaint after complaint after complaint, until those facilities are shut down. I think you...the practicality of that does not exist in operation. You find loopholes to get around it, maybe not within the zoning, and zoning would give them precedence, but they do find ways around that. And so...and I agree with Senator Chambers. This could be cleared up a little bit and I'm more than happy to work on that. And I would yield the balance of my time to Senator Chambers. [LB352]

PRESIDENT SHEEHY: Senator Chambers, about 3 minutes, 50 seconds. [LB352]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Langemeier. Let me go back to the language I'm trying to strike, because whatever happens to the committee amendment, the bill is still there, the monster created by Dr. Frankenstein is still there. I'm merely trying to sew up his britches a little bit so that there will not be any portions exposed to view that can be embarrassing. The reason I say we should strike this language in the way that I'm suggesting is that no way, practically speaking, exists for us to reconfigure this language to say what Senator Langemeier said is intended; that the language, if I understood him correctly, and I believe I did, is to suggest that there might be multiple uses on this range, there might be different types of weapons used, different types of configurations, but all within the legal boundaries of that range. And if one such portion is deemed to be nonconforming, I don't see how it could be but let's say that it is, then it doesn't affect the remaining portions. That's not in this language at all. There is nothing in this language that even hints at that. So if you're going to scratch a word here, add two words, scratch three words next to it, add more words, it's better to get rid of it all and start with a clean slate. Here is the example I sometimes give: when you have a bill and every time I raise an issue then there is going to be an attempt to deal with a part of that. It's like saying that every time a person who does not practice hygiene develops a scratch, then at the same time you develop a new arm and a new hand with fingers to reach that scratch to get rid of the itch. And my view is that you should take that nasty fellow and put his whole carcass in a tub of soapy water and cleanse him entirely. So instead of creating new arms and fingers to scratch each new itch that is exposed, we should just get rid of this language. Then Senator

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Langemeier can try to contrive language that will say what he told us. But if what he is telling us is essential, it adds another layer of complexity to what we're talking about. We don't take items of this kind and generate this much complexity and still feel that it must be maintained... [LB352]

PRESIDENT SHEEHY: One minute. [LB352]

SENATOR CHAMBERS: ...intact, taking away the rights of society at large. I just saw one of my colleagues, who shall remain nameless, make his way to the front of the Chamber. And he, on occasion, has talked about the common good. I think he was talking about motorcycle helmets and he said the rights of the individual must give place to the common good, even though the only one directly hurt would be the individual riding the motorcycle without a helmet. Here people seem willing to sacrifice the common good for an operation that does not even serve the common good. Mr. President, is my...does...is my time up? [LB352]

PRESIDENT SHEEHY: About 10 seconds. [LB352]

SENATOR CHAMBERS: Okay, I don't want to run over. Thank you. [LB352]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Mr. Clerk, do you have announcements on your desk? [LB352]

CLERK: I do, Mr. President. The Health Committee, Health and Human Services will have an Executive Session under the north balcony at 11:00; Health Committee, 11:00, over there where Senator Erdman and Senator Gay and Senator Howard are gathering. Mr. President, with respect to LB352, Senator Langemeier, as the primary introducer, would ask unanimous consent to bracket the bill until February 15, 2008. [LB352]

PRESIDENT SHEEHY: Without objection? So ordered. Next item under General File. [LB352]

CLERK: Mr. President, the next bill, LB123 is a bill by the Banking, Commerce and Insurance Committee; it's signed by its members. (Read title.) The bill was introduced on January 8 of last year, at that time referred to the Banking Committee for public hearing. The bill was advanced to General File. There are committee amendments pending, Mr. President. (AM626, Legislative Journal page 852, First Session, 2007.) [LB123]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Pahls, you're recognized to open on LB123. [LB123]

SENATOR PAHLS: Thank you, Lieutenant Governor, members of the body. LB123 was

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introduced by the Banking, Commerce and Insurance Committee at the request of the director of Banking and Finance. All eight members of the committee signed the bill and all eight members of the committee voted to advance it to the floor. LB123 proposes to adopt the Nebraska Foreclosure Protection Act. It is intended to protect Nebraska homeowners in foreclosure from deceptive and unconscionable business practices. LB123 is both preventable and proactive. The bill is preventable because it is aimed at providing Nebraska homeowners with the information necessary to make informed and intelligent decisions regarding transactions with persons and entities in the potentially growing business of foreclosure, rescue or bailout. The bill would set requirements for contracts between homeowners and foreclosure consultants, and contracts between homeowners and equity purchasers. The bill would prohibit certain acts by these foreclosure consultants and equity purchasers, and would provide for enforcement and penalties. Persons facing foreclosure find themselves in a very difficult situation and can be easy prey. Foreclosure fraud can involve draining equity in return for promised loans that do not materialize. Foreclosure fraud can involve the charging of fees for services never rendered. Fraud can also be involved by signing over a home with a lease buy-back arrangement that is impossible to meet. We do not really know how rampant these activities have been in Nebraska. We do know that these activities have become a problem in Colorado. This legislation enacted there was formed...is the basis for this bill. The focus of the bill is on foreclosure consultants and equity purchasers. A consultant is one who promises to assist the homeowner in delaying and stopping a foreclosure. A consultant does not take title to or any interest in the home. An equity purchaser, on the other hand, does assume title to homes in foreclosure. There are, of course, exceptions to these terms, such as financial institutions, insurance companies and persons who take title following court order or statutory authorized sales. Under the bill, both kinds of activities require written agreements with specifications set out in this bill, such as a cooling off period, consumer rescission, and cancellation rights. Deceptive, misleading and unconscionable acts are prohibited. Under the bill, consultants are prohibited from asking that titles to homes be transferred to them. They are prohibited from receiving any compensation until services have been performed. They are prohibited from excessive interest rates. They are prohibited from taking wage assignments or liens on any type of property. They are prohibited from obtaining power of attorney to do anything other than inspect documents. They are prohibited from engaging in deceptive or misleading practices. Under the bill, equity purchasers are required to adhere to the cancellation period. During that period they are prohibited from accepting any instrument conveying an interest in the property, recording any documents with the register of deeds, or transferring the property. These purchasers are prohibited from making untrue or misleading statements about the value of the property or proceeds. If an equity purchaser enters into a lease-back and/or an option-to-buyback arrangement, requirements are imposed regarding the consumer's ability to pay the amount of the buyback. The bill provides that any violation of it is a Class IV felony. Also, a violation of the bill would be a violation of the Uniform Deceptive Trade Practices Act, which is enforced by the Attorney General. LB123 does not

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regulate foreclosure consultants and equity purchases in a bureaucratic sense. They will not be licensed and examined like financial institutions or financial service business. This bill takes a different approach. LB123 imposes, by statute, requirements and restrictions on the contractual relationships between the consultant and a homeowner, and on the contractual relationship between a purchaser and a homeowner. The bill dictates the rights and obligations under the contract. Accordingly, there is a lot of detail in this bill. The bill spells out what these businesses may and may not do, in order to protect homeowners facing foreclosure. The director of Banking and Finance and staff should be commended in taking the initiative and putting this bill together and bringing it to the Legislature. Again, this bill will provide important protection for Nebraskans who face impending foreclosure on their homes. Thank you. [LB123]

PRESIDENT SHEEHY: Thank you, Senator Pahls. You've heard the opening to LB123. We will move to the committee amendment, AM626. Senator Pahls. [LB123]

SENATOR PAHLS: Thank you, Lieutenant Governor and members of the body. The committee amendments make technical adjustments in the bill. They were developed with the assistance of the Department of Banking following discussions of concerns raised by members of the industry. The committee amendments would amend Section 21 in the equity purchase portion of the bill to provide that a homeowner has the right to cancel an equity purchase contract until midnight of the third business day following the day on which a homeowner signs a contract or until noon on the last business day before the foreclosure sale, whichever comes first. The committee amendments would amend Sections 21 and 22 of the equity purchase portion of this bill to provide that the homeowner does not have the right to cancel an equity purchase contract executed on or after noon on the last business day before the sale if the homeowner would first agree to entry into an equity purchase contract with the equity purchaser on or after noon on the last business day before the sale. The committee amendments would amend Section 23 and the equity purchase portion of the bill to specify exact costs incurred by the equity purchaser in acquiring the residence in foreclosure, which may be included in the acquisition price paid by the equity purchaser. The costs may include repairs and capital improvements and also below-market rent discounts. The equity purchaser would be required to provide the homeowner with documentation proving such costs and below-market rent discounts prior to the homeowner's exercise of the option to purchase. Again, these amendments make a clarification to the bill. They were developed with the assistance of the Department of Banking. Thank you. [LB123]

PRESIDENT SHEEHY: Thank you, Senator Pahls. You have heard the opening of the Banking Committee amendment, AM626. Are there members wishing to speak? Seeing none, Senator Pahls, you're recognized to close. Senator Pahls waives closing. The question before the body is, shall AM626 be adopted to LB123? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB123]

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CLERK: 25 ayes, 0 nays, Mr. President, on adoption of the committee amendments. [LB123]

PRESIDENT SHEEHY: AM626 is adopted. [LB123]

CLERK: I have nothing further on the bill, Mr. President. [LB123]

PRESIDENT SHEEHY: We'll return to members wishing to speak on LB123. Seeing none, Senator Pahls, you're recognized to close. Senator Pahls waives closing. The question before the body is, shall LB123 advance? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB123]

CLERK: 28 ayes, 0 nays, Mr. President, on the advancement of LB123. [LB123]

PRESIDENT SHEEHY: LB123 does advance. (Visitors introduced.) Next item under General File. [LB123]

CLERK: Mr. President, LB692. (Read title.) The bill was introduced on January 17 of last year, referred to the Judiciary Committee. The bill was advanced to General File. At this time, Mr. President, I have no amendments to the bill. [LB692]

PRESIDENT SHEEHY: Senator Hudkins, you're recognized to open on LB692. [LB692]

SENATOR HUDKINS: Thank you, Mr. President and members of the body. This bill, LB692, is a bill that would remind certain individuals about two common firearm safety rules. Number one, don't shoot when you don't know what you're shooting at or what is directly behind it. And number two, don't shoot in close proximity to inhabited areas, unless you have permission or it's your own property. Both of these rules are for the protection of the public and are rules based upon common sense and common courtesy to your neighbors. However, there are certain people in our society that have lost both their common sense and their courtesy. Again safety and common sense are the driving forces behind this bill. We currently have laws that prohibit hunting within 200 yards of an inhabited dwelling, but nothing concerning shooting, and that's where the problem arises. We have...I have heard from individuals that say, we live in a suburban type development; we have neighbors that, although we live within five miles of a shooting range, they insist upon setting up a target in their backyard; we have horses, we have kids, we have dogs and cats, and it's not safe. I have received an e-mail saying that this bill infringes upon the recently passed legislation concerning concealed carry. There is nothing in this bill that prohibits the carrying of a weapon concealed. It just says that you cannot shoot within 200 yards of an inhabited dwelling without permission from your neighbors. Another e-mail indicated that I would be criminalizing self-defense. Again that is just not true. Self-defense is an affirmative defense. And the last time I had a conversation with a prosecutor, he said, if you're engaged in conduct to protect yourself

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from someone who is intent on harming you or others, you're not going to be charged. This bill is meant to balance the property interests and safety issues of some individuals with the rights to shoot firearms of other individuals. That, Mr. President, is it in a nutshell. As I said, we have the law that prohibits hunting within 200 yards, and the people that are doing this are saying, I'm not hunting, I'm shooting, and there's nothing you can do about it. That's what this bill proposes to correct. It's a safety issue. We have people that are concerned about their children and their animals. And as long as the person who is wanting to do this shooting, target shooting, trap, whatever they are doing, if it's their property or if they have permission from their neighbors there is no problem. Thank you, Mr. President. [LB692]

SENATOR LANGEMEIER PRESIDING [LB692]

SENATOR LANGEMEIER: Thank you, Senator Hudkins. You have heard the opening on LB692. The floor is now open for discussion. Wishing to speak, Senator Ashford, you're recognized. [LB692]

SENATOR ASHFORD: Thank you, Mr. President. Very briefly, Senator Hudkins brought this bill to our committee, the Judiciary Committee, and we had a good hearing, a number of testifiers. There were no "no" votes. Senator Hudkins has ably described the bill. There are existing laws in the books regarding with hunting, as Senator Hudkins suggested, within that 200 yards of a dwelling. This simply expands that in a very reasonable and responsible way. And I certainly would urge that we advance this bill to Select File. Thank you. [LB692]

SENATOR LANGEMEIER: Thank you, Senator Ashford. Senator Fulton, you're recognized. [LB692]

SENATOR FULTON: Thank you, Mr. President, members of the body. Would Senator Hudkins yield to a question? [LB692]

SENATOR LANGEMEIER: Senator Hudkins, would you yield? [LB692]

SENATOR HUDKINS: Yes, of course. [LB692]

SENATOR FULTON: Senator, I'm just putting my brain around the bill and I noticed that there was some opposition. Could you summarize what the opposition arguments were or what it was? [LB692]

SENATOR HUDKINS: Yes, yes, I can. There were three individuals that spoke in opposition. I don't have the transcript of the hearing in front of me, and perhaps Senator Ashford might remember, but what they were probably concerned about was that, well, you're going to criminalize self-defense, you're going to criminalize my enjoying my

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property. Well, one person's enjoyment is another person's terror when firearms are concerned. There was one Mister...okay, the Izaak Walton League was opposed to this. But we do have various shooting ranges in the country, in the areas that these individuals can go there to shoot. There are safeguards built into those areas. There are buffer zones. We just want to say that you can't...if you're living in a suburban situation or an acreage situation, that you can't go out on your back porch and shoot your high-powered rifles--which can go how far, half a mile plus, a mile--when there are people that live behind your backyard who have kids or animals or windows or whatever. So we're just saying, if you want to shoot on your property and you're within 200 yards of another inhabited dwelling, just go get their permission, that's all you have to do. [LB692]

SENATOR FULTON: Okay. You started...thank you, Senator. A couple more questions, if I may. You started to touch a little bit on how this might be...how this might affect shooting ranges. And I noticed the Izaak Walton League testified in opposition. How does...so it would be on page 3 of the green copy, any person at a shooting range, line 8, any person at a shooting range or shooting gallery who is following the rules of such shooting range or shooting gallery, such people would be exempt under your bill, correct? [LB692]

SENATOR HUDKINS: Yes, if they are following the rules of that particular shooting range. And again, as we talked about this morning, we do have shooting ranges that are now being encroached upon by residential use. It is my hope that the people living next to that shooting range would realize that these are responsible shooters. But they still need to get permission if they are within 200 yards of someone's house. [LB692]

SENATOR FULTON: Okay. Okay, thank you, Senator Hudkins. Thank you, Mr. President. [LB692]

SENATOR LANGEMEIER: Thank you, Senator Fulton. Senator Lautenbaugh, you're recognized. [LB692]

SENATOR LAUTENBAUGH: Thank you, Mr. Speaker. I was wondering if Senator Hudkins would yield to a question? [LB692]

SENATOR LANGEMEIER: Senator Hudkins, would you yield? [LB692]

SENATOR HUDKINS: Yes. [LB692]

SENATOR LAUTENBAUGH: Senator, you initially or previously referenced the concerns about self-defense and you did point out that that is a defense someone charged would have available. Do you have a specific problem with setting forth that that defense would be available in this bill, meaning making it part of this law that it

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doesn't apply to someone who is exercising self-defense? [LB692]

SENATOR HUDKINS: I don't have a problem, but that is somewhere else the current law. But if you want to put it in here, I don't have a problem. [LB692]

SENATOR LAUTENBAUGH: Thank you, Senator. [LB692]

SENATOR LANGEMEIER: Thank you, Senator Lautenbaugh. Senator Louden, you're recognized. [LB692]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. I wondered if Senator Hudkins would yield for questions, please. [LB692]

SENATOR LANGEMEIER: Senator Hudkins, would you yield? [LB692]

SENATOR HUDKINS: Yes. [LB692]

SENATOR LOUDEN: When you were stating in your presentation there that you were talking about firing these high-powered rifles in these...in these areas where...populated areas. And I know what you're trying to do and I know where you're coming from. But in the bill, it just says, and discharges a firearm within 200 yards. Well, in my district we have a lot of small towns out there and people use firearms, shotguns, whatever, to...there will be skunks or other varmints that are inside the town and that's how they usually get rid of them. And same way as...you've been to where I live and you know how close to a small town I live and it's probably within 200 yards of that small town. And I suppose over the years, since I've been there for over 40 years, I've probably shot 25 or 30 coyotes off my porch, right out...right out...shooting out southwest there from them over the years. You know, it wasn't...I never shoot towards the town, because people live there. But nonetheless, I am discharging a high-powered rifle and I...Lord only knows how many rabbits and skunks and stuff I've shot around the house and around the place. And that's part of the deal, that's how I keep the rabbits off of the lawns in the wintertime. So the way this is, I have to tell you, I can't vote for it because (laugh) I'll be out of business where I live as far as protecting my property and protecting what I have because I've not only shot coyotes off my porch, I've shot them in the yard, I've shot them in the barn, I've shot them in the corrals. We've had...nowadays, since they have mange on them, we've had to use a hammer and kill the things by the hydrant, by the pump, by the house. So the way this is written, I know what you're trying to do, but I feel that I can't support this thing. And I have questions because as you talk about using high-powered rifles, but yet in the bill it talks about firearms. So I...I know that you have the hunting part in there and that I wonder if there's other ways that we could address that problem? [LB692]

SENATOR HUDKINS: Is that a question? [LB692]

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SENATOR LOUDEN: I'll return the rest of my time to you, Senator Hudkins, for a response. [LB692]

SENATOR HUDKINS: Thank you, Senator Louden. Well, as you know, if you are within the city limits of a city or village, you are already prohibited from shooting a weapon within that jurisdiction. You are going to be, as you're shooting these coyotes and rabbits and whatever other critters, you are going to be on your own property. All you have to do, and not immediately, I mean you've got a coyote running across your backyard. Prior to that, if you've got someone living within 200 yards of your dwelling and there is someone...well, between you and the next neighbor is less than 200 yards, just go over and say, I've got coyotes, I've got varmints, I've got whatever, are you going to have a problem with my getting rid of those animals? And if they say, go for it, they won't eat my garden that way either, then you don't have a problem. Now what I would suggest, I have had a couple of senators say, you know, I appreciate what you're doing, I understand what you're doing, and if there is a way that we can write the bill or write an amendment to it that would take care of those couple of concerns, I would be more than happy to do that. [LB692]

SENATOR LANGEMEIER: One minute. [LB692]

SENATOR HUDKINS: What I would like to see done today is advance this to Select File and then we can work together to get that fixed to your liking. [LB692]

SENATOR LOUDEN: Okay, thank you, Senator Hudkins. Promises, promises, but thank you anyway. (Laugh) [LB692]

SENATOR LANGEMEIER: Thank you, Senator Louden. Is there anyone else wishing to speak? Seeing no lights on, Senator Hudkins, you are recognized to close on LB692. [LB692]

SENATOR HUDKINS: Thank you, Mr. Speaker. And for Senator Louden's benefit, there is an amendment pad being written on as we speak. But this bill again is one that would look at common sense. You cannot currently hunt within 200 yards of an inhabited dwelling. What is the difference between hunting and shooting, other than when you're hunting the target is probably moving and when you're shooting it's probably a standing still item? So we are just trying to prevent a terrible tragedy from happening. A child is riding their horse in their backyard or across their 20 acres or whatever it is, someone to the neighboring...to the east is out in their backyard target practicing, and things happen. So we don't want things to happen. And this bill would be an attempt to prevent the terrible tragedies. Thank you, Mr. President. [LB692]

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

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closing on LB692. The question before the body is, shall LB692 advance? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Senator Hudkins, for what purpose do you rise? [LB692]

SENATOR HUDKINS: Yes, thank you, Mr. President. I think it's going to be necessary to have everyone on the floor, so I would ask for a call of the house. [LB692]

SENATOR LANGEMEIER: There has been a request to put the house under call. All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk. [LB692]

CLERK: 30 ayes, 0 nays, Mr. President, to place the house under call. [LB692]

SENATOR LANGEMEIER: The house is under call. All senators please record your presence. All 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. All senators are present or accounted for. Senator Hudkins, how do you wish to proceed? [LB692]

SENATOR HUDKINS: Call-in votes would be fine. [LB692]

SENATOR LANGEMEIER: Senator Hudkins has authorized call-in votes. [LB692]

CLERK: Senator Chambers voting yes. Senator Kruse voting yes. Senator Pahls voting yes. Senator Preister voting yes. Senator Dubas voting no. Senator Nelson voting no. Senator Heidemann voting no. Senator Erdman voting no. Senator Dierks voting no. Senator Nantkes voting yes. Senator Synowiecki voting yes. [LB692]

SENATOR LANGEMEIER: Senator Hudkins, for what purpose do you rise? [LB692]

SENATOR HUDKINS: In order to save some time, let's do a roll call vote. [LB692]

SENATOR LANGEMEIER: There's been a request to do a roll call vote. Question before the body is, shall LB692 advance? Mr. Clerk, please call the roll. [LB692]

CLERK: (Roll call vote taken, Legislative Journal pages 390-391.) 23 ayes, 16 nays, Mr. President, on the advancement of the bill. [LB692]

SENATOR LANGEMEIER: LB692 does not advance. With that, I raise the call. (Visitors introduced.) Continuing on General File, LB179. [LB692]

CLERK: Mr. President, LB179 is a bill introduced by Senator Lathrop. (Read title.) The bill was introduced on January 9 of last year, referred to the Judiciary Committee. The bill was advanced to General File. There are Judiciary Committee amendments

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pending, Mr. President. (AM583, Legislative Journal page 866, First Session, 2007.)
[LB179]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Lathrop, you're recognized to open on LB179. [LB179]

SENATOR LATHROP: Thank you, Mr. President and colleagues. LB179 comes to us through the Judiciary Committee. The amendments become the bill and so I will necessarily in my introduction talk about the committee amendments. The uncertainty of what was said at the time of a custodial interrogation is the source of a great deal of unnecessary litigation. That litigation includes pretrial motions to suppress in which the defendant's voluntary waiver of his Miranda rights is at issue, where the subject matter of the custodial interrogation is at issue, and it also unnecessarily involves trials where defendants refuse to acknowledge their previous confession. LB179 is an attempt to streamline the criminal process in this way: It will eliminate trials and hearings by requiring that custodial interrogations be recorded in limited circumstances. The bill in its amended form is limited by concerns of those who have sought to work with me to fashion a bill to improve the administration of justice in the criminal side. I've worked with the Fraternal Order of Police and the County Attorneys Association. This bill also has the support of the Nebraska State Bar Association. LB179 would require custodial interrogations for the serious crimes involving homicide, and felonies involving sexual assault, kidnapping, child abuse, and strangulation. The bill requires that the custodial interrogation take place only when...it mandates that a recording be done only when the custodial interrogation takes place in a place of detention, which is defined in the bill, basically a jailhouse, police station, facilities where you are likely to find the recording equipment. The bill provides excuses for not recording when it is not practical, when the equipment is not available, when the person or the accused refuses to give a recorded statement. It also excuses those situations in which the equipment malfunctions. And finally, it provides for an exception where law enforcement did not think it was investigating a crime found on the list, that is a homicide, a felony sexual assault and so on. The consequences of failing to record where it is mandated by this bill is a jury instruction. Even where law enforcement does not record an interrogation, the only consequence is a jury instruction in which the jury is instructed that law enforcement was required to record the interrogation but did not, and the jury is then given the opportunity to draw an inference from the failure to record. The bill will, I believe, avoid unnecessary...help us unclog the courts and the criminal proceedings by reducing the number of pretrial motions and reducing the number of trials. Many, many, many people who are accused of crimes that confess later recant their confessions and have trials. Having a recorded conversation of their custodial interrogation allows for an evaluation of what was said and the proper waiver of their Miranda rights. I would like to just read part of an opinion from the Massachusetts Supreme Court, and you should know that some courts have mandated this, other legislatures have passed laws requiring it. The Massachusetts Supreme Court indicated in one of its opinions, in a 2004 opinion, as

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follows...okay: As in all too often the case, the lack of any recordings has resulted in the expenditure of significant judicial resources, all in an attempt to reconstruct what transpired during several hours of interrogation conducted several years ago and to perform an analysis of the constitutional ramifications of that incomplete reconstruction. Given the fine line between proper and improper interrogation techniques and the ability to reproduce exact statements made during an interrogation is of the utmost benefit. The Nebraska...as I indicated, the Nebraska Supreme...or the Nebraska Bar Association, which is comprised of both defense lawyers and prosecutors, supports this bill. And I would ask you to move LB179 on to Select File. Thank you. [LB179]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. At this time I'd like to bring to the attention of the body that there will be LB179A inserted in your agenda, following LB179. It's not printed on the agenda. As the Clerk has stated, there are committee amendments offered by the Judiciary Committee. Senator Ashford, as Chairman of the committee, you are recognized to open on the committee amendments. [LB179]

SENATOR ASHFORD: Thank you, Mr. President. Quite frankly, Senator Lathrop has gone section by section through the committee amendments. The committee amendments are the bill. I don't believe we need to go over them again. But what I would say, in my experience on the Judiciary Committee over the years, to have both the defense attorneys and the prosecutors agree on something like this is a pretty darn good endorsement. This...the result of Senator Lathrop's bill will be a fairer system, juries will receive good evidence and not tainted evidence. And it's important that from time to time the Legislature revisit the issue of evidence presented in a criminal case to make sure that the state and the defendant are treated fairly and equitably in these cases. I would just urge the body to adopt the committee amendments and to advance LB179. It's an excellent piece of work and it should pass and advance. Thank you. [LB179]

PRESIDENT SHEEHY PRESIDING [LB179]

PRESIDENT SHEEHY: Thank you, Senator Ashford. You have heard the opening of the Judiciary Committee amendment, AM583. Senator Gay. [LB179]

SENATOR GAY: Thank you, Mr. President. I'd like to as if Senator Lathrop would answer a few questions. [LB179]

PRESIDENT SHEEHY: Senator Lathrop, would you yield? [LB179]

SENATOR GAY: Senator Lathrop, thank you. [LB179]

SENATOR LATHROP: I'd be happy to yield to a question. [LB179]

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SENATOR GAY: Thank you, Senator. Senator Lathrop, I'm going to just show my ignorance on this whole process of no lawyer. But when you talk about...can you explain a little bit the custodial, it says a custodial interrogation, what that is exactly? You know, give me a practical solution, how this works. So you come in and you have your clients and... [LB179]

SENATOR LATHROP: I'd be happy to. And the criteria is really twofold. One is the custodial, which is a well-recognized term in Supreme Court opinions, but it is basically at that point at which you're not free to leave. And in addition to being in custody, you have to be in a place of detention, which is described in the bill. [LB179]

SENATOR GAY: Okay. So...and I was...I was looking at supporters and opponents on the statement of intent there. So there is no Sheriffs Association, no one like that came down at all? How would this affect them if, let's say, a deputy picks somebody up, they have them in custody and they're questioning? The device would be rolling? Are some counties...do they do this now? [LB179]

SENATOR LATHROP: I'm glad you asked that question because I want to address the supporters and the opponents. This bill has previously been offered by Senator Pat Bourne, who was at that time the Chair of the Judiciary Committee. I offered it in the form that Senator Bourne last offered it in and then worked with all of the people who came to me, the county attorneys being the primary spokesmen for the people who had concerns, and modified it, met all their concerns. I've not heard from the Sheriffs Association. [LB179]

SENATOR GAY: Okay. So the county attorneys...hold...excuse me one minute. Did the county attorneys support this then or... [LB179]

SENATOR LATHROP: The county attorneys said that they were initially opposed to it, Senator Gay, as were the Fraternal Order of Police, the Omaha Police Union and others. And they have moved from a position of opposition to neutral. [LB179]

SENATOR GAY: Okay. So... [LB179]

SENATOR LATHROP: And the State Bar Association, which includes defense lawyers and prosecutors, are in favor of it. [LB179]

SENATOR GAY: Okay. Well, with technology happening, I can see both sides of this. And like I say, my ignorance, I won't... [LB179]

SENATOR LATHROP: Well,... [LB179]

SENATOR GAY: ...I'm not (inaudible) discuss that. But if we have a...they're constantly

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being trained. And when I say "they," I assume deputies and people that are doing it, they're constantly being trained on the proper way to interrogate and don't go beyond the limit and covering their tracks here. But...so this is just a better way, you think, to make sure that...you're putting it as this is a good mechanism for them to defend themselves in a way, too, during interrogation (inaudible). [LB179]

SENATOR LATHROP: Right. We had somebody named Tom Sullivan come before the committee. He is an expert on the subject. He came to us from Chicago, Illinois, and he indicated that every state where they have this as the rule, either by Supreme Court opinion or by legislative action, all the police officers have found it to be beneficial to them. And it actually is a law enforcement bill and an unclog-the-court bill, and not a defendant protection bill. [LB179]

SENATOR GAY: Okay. And how many states are currently doing this? [LB179]

SENATOR LATHROP: It's my understanding, I was reading through the testimony, I think there are about three or four states that have done this by decision and probably six or seven that have done it by statute. [LB179]

SENATOR GAY: Okay. Thank you, Senator Lathrop. Thank you, Mr. President. [LB179]

PRESIDENT SHEEHY: Thank you, Senator Gay. (Visitors introduced.) Senator Fulton. [LB179]

SENATOR FULTON: Thank you, Mr. President. Would Senator Lathrop yield to a question? [LB179]

PRESIDENT SHEEHY: Senator Lathrop, would you yield? [LB179]

SENATOR LATHROP: I'd be happy to. [LB179]

SENATOR FULTON: Senator, I would...I'll ask if you could articulate. I notice that the Lincoln Chief of Police, Chief Tom Casady, had come in opposition to the bill. And I'm not aware of his opposition. I'm curious of whether the amendatory language addresses his opposition. But I wonder if you could articulate his position or his questioning. [LB179]

SENATOR LATHROP: I will as best I recall. First, I recognize or ask you to recognize that when he came in, in opposition, it was in its original form. And in its original form this bill had what we call an exclusionary rule, which means if they didn't do the recording then the confession didn't come in. It will come in under the amendments and the changes. So whether he still has an objection to it or not, I don't know. He hasn't indicated that to me. What I do recall of Chief Casady's testimony was this; he had

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concern over whether the equipment was available at Lincoln in the Police Department. And originally this bill would have allowed or included in detention hospital rooms and some places. We've narrowed where detention occurs. It's covered under this bill so that it's places where you're likely to have the equipment to do the recording. And in that regard, I will say this. We did have a sheriff, I think from Wayne County, if remember right, who said: We've been doing this a long time; we got the equipment there to do it. And in my experience, and I've taken a number of statements, all you need is a \$30 tape recorder from RadioShack. I mean, we're not talking about the kinds of equipment we have here in the Legislature [LB179]

SENATOR FULTON: Okay, thank you, Senator. Another question, if I may. Then this electronic recording of admissions or statements has...I know that's occurred in the past. I'm assuming then those occurrences have been by someone's judgment; it's not by mandate. Or is there some procedure which had been in place previously? [LB179]

SENATOR LATHROP: Currently...very good question because this does change some...does change in the sense that it becomes mandatory in some situations. Law enforcement and certainly Chief Casady does this, the Lincoln police do, the Omaha police do, all law enforcement does. They can visit with somebody and go into court and testify about admissions and confessions or they can record them or they can have somebody write them out in longhand. All three of those occur right now. What this bill does is say in the most serious circumstances when a person is in custody and in a place of detention, you shall record the confession. [LB179]

SENATOR FULTON: Thank you, Senator Lathrop. Thank you, Mr. President. [LB179]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Senator Gay. [LB179]

SENATOR GAY: Thank you, Mr. President. I'd like to ask Senator Lathrop if he would answer a few questions. [LB179]

PRESIDENT SHEEHY: Senator Lathrop, would you yield? [LB179]

SENATOR LATHROP: Yes, I would. [LB179]

SENATOR GAY: Thank you, Senator. On Section 5, it says: If a defendant testifies contrary to his statement, made during a custodial interrogation at a place of detention, which was not electronically recorded, such statement may be used for the purposes of impeachment if it is shown that the statement was freely, knowingly, voluntarily, and intelligently made. So if a...let's say you do this, you pick somebody up and you have them in your cruiser or whatever and the defendant starts talking, just saying, you know, here's the deal. All of a sudden, you get to the recorded, and it's completely different from what he just told you in the cruiser. How does that work under this bill? [LB179]

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SENATOR LATHROP: Let me...let me address two things. First of all, Section 5 is a holdover and should have been dropped after I made the changes. [LB179]

SENATOR GAY: Okay. [LB179]

SENATOR LATHROP: So on Select File I want to...I didn't want to do it today without talking to the county attorneys and the Fraternal Order of Police. I want them to acknowledge or recognize that that section is now superfluous after we changed the consequences of not recording. So that's the first point I'd make in answer...in response to your concern. The second is if a defendant gets in the back of a police car and says, I killed that lady, and then goes to the police station and says something else, the police are still free...the back of a cruiser is not a place of detention so the police are still free to say, while I had him in the back of the cruiser, on the way down to the police station, he acknowledged that he killed that person. So that still comes in. This does not affect...this bill does not mandate a recording in the back of a police car. [LB179]

SENATOR GAY: Okay. Then on Section 6, "If a law enforcement officer fails to comply with Section 3 of this act, such failure shall not bar the use of any evidence derived from such statement if the court determines that the evidence is otherwise admissible." How do you go about that process? If the law enforcement officer doesn't do this or gets testimony that's not recorded, how does that process work then? That's such...so you could use that evidence derived from that statement if the court determines that the evidence is otherwise admissible. Do you go to a...how does that work in the judicial system? [LB179]

SENATOR LATHROP: Basically, what that is, is that's the consequence. That's the section that addresses the consequence of not recording under the circumstances required in this bill. And as originally drafted, what would happen is that statement would never get into court. The defense lawyer would show that the policeman should have recorded and didn't, and no exception applies. That was too harsh of a consequence and so what we agreed, with the county attorneys, is a better, fairer result. And just as effective of an incentive for law enforcement is that if they don't record when they should then what happens is the recording...the police officers can still testify about the confession. He would say, you know, the guy was in...at the police station and he told me he did it, after I gave him his Miranda rights. What happens then is the jury, at the very end of every lawsuit, every jury trial, is given jury instructions. And in this case they would be instructed something like this: You're instructed, ladies and gentlemen, that the officer involved who took this confession down and spoke to the defendant was required to record it and didn't, and you can draw whatever inference you like from the fact that he didn't record it. That's the consequence. [LB179]

SENATOR GAY: Okay. All right. Okay. Well, as Judge Heavican mentioned earlier

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about the lack of knowledge of the judicial system, this is a perfect example. So...
[LB179]

SENATOR LATHROP: I'm glad to... [LB179]

SENATOR GAY: ...forgive my ignorance, but I appreciate you bearing with me on this.
So that's all I have. Thank you, Mr. President. [LB179]

PRESIDENT SHEEHY: Thank you, Senator Gay. Additional members wishing to speak
are Senator Pirsch, followed by Senator Nelson. Senator Pirsch. [LB179]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I just, for
clarification sake, I thought I might ask either Senator Lathrop or Senator Ashford a
question about the bill or the amendments. It would just help to, I guess, further the
legislative intent with respect to certain passages in the amendments. [LB179]

PRESIDENT SHEEHY: Senator Lathrop, would you yield? [LB179]

SENATOR LATHROP: Yes, I would. [LB179]

SENATOR PIRSCH: Very good. Thank you very much, Senator Lathrop. With respect
to the...and I guess this is a committee amendment and so I'll ask you. But if you want
to defer to Senator Ashford, that's great. There was a limitation imposed that the...with
the requirement to record statements made during a custodial interrogation at a place of
detention to those statements made during the investigation of crimes involving death or
felonies involving sexual assault, kidnapping, child abuse, or strangulation, and offenses
being investigated as part of the same course of conduct of one of the above listed
offenses. I think that was what is listed on the committee amendment. Is that correct?
[LB179]

SENATOR LATHROP: That's...yes, that's what I think we did with the committee
amendment and requiring recordings in those circumstances is our intent. [LB179]

SENATOR PIRSCH: Okay. With respect to the following fact scenario, I just want to
clarify, in the case where there is perhaps a...take a beer party with underage drinkers
attending, and the parent is cited for contributing to the delinquency or procuring alcohol
for minors, both misdemeanors. Yet, as a result of that, say, one of the children, minors,
under age 18, becomes intoxicated and as they're driving commits an act where a
death...strikes another vehicle and a death is involved. Is that such a...is that such a fact
scenario where the...in the case involving the mother being prosecuted for contributing
to the delinquency or procuring alcohol for a minor, a misdemeanor, would the officers
or law enforcement in such a case be required, under this statute, to tape record that
admission? [LB179]

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SENATOR LATHROP: I get your question and what's behind it. And I appreciate it because it points out something kind of subtle in here, and that is crimes resulting in death, we're talking about felonious activity and not in the event somebody contributed. I think the exception that applies is that if the law enforcement goes in, takes a statement believing it to be a simple misdemeanor matter and it turns out to be something on the list of crimes that need to be recorded, on page 2 of the amendment, Section 2 (e) provides an exception to the requirement that you record it, which is if you don't know it's a crime that's on the list of things you need to record, you're forgiven for not recording it initially. [LB179]

SENATOR PIRSCH: So...but in the event that an officer knew that a death resulted from the child, was aware of that when talking with the mother about the...but looking at the mother in terms of whether she's culpable of procuring alcohol to a minor or contributing to the delinquency, which are both misdemeanors, would that officer then, knowing those fact scenarios have a duty to tape record that misdemeanor investigation? [LB179]

SENATOR LATHROP: I don't think we intended, when we talked about deaths, to have this broad enough to cover a misdemeanor. [LB179]

PRESIDENT SHEEHY: One minute. [LB179]

SENATOR LATHROP: You know what? I don't know how she could be charged with a misdemeanor in that situation. And so again, if the officer thinks he's investigating a misdemeanor, he doesn't have to record in any circumstance. [LB179]

SENATOR PIRSCH: Okay. [LB179]

SENATOR LATHROP: And if he thinks he's involved...a felonious death then he would, or she. [LB179]

SENATOR PIRSCH: Okay. That's all I wanted to clarify. This is designed to get at felonies, not so much misdemeanors. So in the event of there was a misdemeanor vehicular homicide where it's a Class I misdemeanor, is that the type of death which is involved to encompass? Most vehicular homicides, if reckless driving or willful reckless driving is involved or driving under the influence, those would be felony type of prosecutions. But if you simply go through a stop sign and unintendedly cause a death as a result, that... [LB179]

PRESIDENT SHEEHY: Time, Senator. [LB179]

SENATOR PIRSCH: Very good. Thank you. [LB179]

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PRESIDENT SHEEHY: Senator Nelson. [LB179]

SENATOR NELSON: Thank you, Mr. President. If I may, I would like to address a couple of questions to Senator Lathrop. [LB179]

PRESIDENT SHEEHY: Senator Lathrop, would you yield? [LB179]

SENATOR LATHROP: Yes, I would. [LB179]

SENATOR NELSON: Thank you, Senator. Thank you, Mr. President. First of all, let me state I have never really gotten involved in defense work or prosecution. But I'd like to refer you to page 3 there of the amendment. And if I understood, Section 5 is going to be removed. Is that correct? [LB179]

SENATOR LATHROP: With the consent of those who participated in the revisions. But I think it was...it was part of the exclusionary rule and I think it's become unnecessary with Section 5, paragraph (2). [LB179]

SENATOR NELSON: Will subsection (2) then, under Section 5, will that stand? [LB179]

SENATOR LATHROP: Yes, it will. That will become subsection (1) or the only language of Section 5. [LB179]

SENATOR NELSON: All right. That section, if I may read it, says, "A jury instruction shall not be required if the prosecution proves, by a preponderance of the evidence, that there is a reasonable exception." Now I'm just speculating that there's going to be a motion about that, there will be an argument before the court as to whether the exception should have been allowed or not? Can you elaborate on how that... [LB179]

SENATOR LATHROP: I will. If it turns out that someone is being prosecuted for one of the crimes that we have on the short list of crimes covered by this bill, and there is a custodial interrogation in detention that was not recorded, then the prosecutor would only need to show by the greater weight of the evidence, just not by...beyond a reasonable doubt but the greater weight of the evidence, that one of the exceptions found in the bill apply. So if the officer testified that the machine malfunctioned, they began, they sat down, they were going to record it and the guy starts spilling his guts and he pushes the button and the machine doesn't work, then he has satisfied the requirement and established, by a preponderance, that he has an excuse for not recording it, and in that situation then the instruction would not be given. [LB179]

SENATOR NELSON: And that would be a determination by the judge, right? [LB179]

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SENATOR LATHROP: Yes, it would. [LB179]

SENATOR NELSON: Okay. You stated this is basically a bill...an amendment to unclog the courts. In what way? I mean could you just tell us a little bit about what this will avoid or eliminate then? [LB179]

SENATOR LATHROP: Yeah, I would. And thank you for the opportunity to do that because I think it...an illustration will help. Somebody gets picked up for kidnapping and a murder and a sexual assault. And the public...and the person is taken in and gives a confession to law enforcement, and imagine in one situation where that recording is recorded or where that confession is recorded, and another where the only recording or the only place where that confession is found is in the mind of the police officer who has to testify. Every time that comes up, he's the person that has to come in and say what was said. What you will have and why I think this avoids litigation and hearings is this: If the defendant now, after he's talked to a lawyer, after he's talked to other people down at the jail, says, I never said that, or they didn't properly advise me of my Miranda rights, or they did unethical things, used improper interrogation techniques--promised him some inducement, lied to him, starved him, wouldn't let him go to the bathroom, whatever it is--you're going to have hearings over the circumstances of that confession,... [LB179]

PRESIDENT SHEEHY: One minute. [LB179]

SENATOR LATHROP: ...and this will avoid those hearings. And then when it comes to trial and the person is going to make a decision about whether to go to trial and defend himself or plead, he can't tell his public defender, let's have a trial because I never said that. The public defender takes the tape recording down to the jail and plays it for him and says, you did, you said it, now what exactly do you want me to tell the court at trial? So I think what it does is it eliminates a lot of hearings and it eliminates a lot of trials. [LB179]

SENATOR NELSON: Thank you, Senator. I appreciate that exploration there of how this works for the benefit of us all, and thank you. And thank you, Mr. President. [LB179]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Further floor debate on Judiciary Committee amendment, AM583? Seeing none, Senator Ashford, you are recognized to close. [LB179]

SENATOR ASHFORD: I would urge the adoption of the committee amendments. As Senator Lathrop, I think, has adequately explained, we have tightened this up. And there may...Senator Pirsch has asked a question that I...that we can maybe take a look at an amendment before Select File. But essentially, we have tightened this up to a very specific list of crimes and events. Again, the opposition to this was very little, if any. And

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the two major groups that involved themselves with this evidence support it. So I think we've got a good bill here. I would urge that we adopt the committee amendments and hopefully advance the bill, if possible, today. Thank you, Mr. President. [LB179]

PRESIDENT SHEEHY: Thank you, Senator Ashford. You have heard the closing. The question before the body is, shall Judiciary Committee amendment, AM583, be adopted to LB179? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB179]

CLERK: 30 ayes, 0 nays, Mr. President, on the adoption of committee amendments. [LB179]

PRESIDENT SHEEHY: AM583 is adopted. We will return to...we'll return to debate on LB179. Seeing none, Senator Lathrop, you're recognized to close. [LB179]

SENATOR LATHROP: Thank you, Mr. President and colleagues. You've just voted on the substance of the...the amendment has taken over the bill. And I would move LB179. Thank you. [LB179]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. You have heard the closing. The question before the body is, shall LB179 advance? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB179]

CLERK: 28 ayes, 0 nays, Mr. President, on the advancement of LB179. [LB179]

PRESIDENT SHEEHY: LB179 does advance. Next item under General File. [LB179]

CLERK: LB179A, Mr. President. LB179A by Senator Lathrop. (Read title.) [LB179A]

PRESIDENT SHEEHY: Senator Lathrop, you're recognized to open on LB179A. [LB179A]

SENATOR LATHROP: Thank you, Mr. President. I have to tell you that I looked at LB179A briefly yesterday when I signed it. I think it's about \$4,300, isn't it, for the state? It's not on the gadget and I don't have it in front of me, but I think it's about \$4,300 for the State Patrol to buy some tape recorders, \$4,200. This is a very nominal expense for the cost of buying equipment necessary to have the equipment at the places of detention for the State Patrol. I'd ask you to advance LB179A. Thank you. [LB179A]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. You've heard the opening to LB179A. Are there members requesting to speak? Seeing none, Senator Lathrop, you're recognized to close. Senator Lathrop waives closing. The question before the body is, shall LB179A advance? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB179A]

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CLERK: 27 ayes, 0 nays, Mr. President, on the advancement of LB179A. [LB179A]

PRESIDENT SHEEHY: LB179A does advance. Do you have items for the record? [LB179A]

CLERK: Mr. President, new resolution: Senator Chambers offers LR234, calling on the Legislature to retrocede to the United States the criminal and civil jurisdiction over the Omaha Indian Reservation acquired by the state of Nebraska in Public Law 280 of 1953. Pursuant to that introduction, Mr. President, a communication from the Speaker directing that LR234 be referred to Reference for referral to standing committee for purposes of a public hearing. Your Committee on Revenue, chaired by Senator Janssen, reports LB915 to General File with amendments, and LB985 indefinitely postponed. Government Committee, chaired by Senator Aguilar, reports LB750, LB752, LB856, LB857 to General File; and LB763 to General File with amendments. I have a communication from the Governor regarding an appointment to the State Foster Care Review Board. A series of hearing notices: Natural Resources Committee; Judiciary Committee; and from the Agriculture Committee. Motion to be printed with respect to LB495 by Senator White. A name add, Mr. President. Senator Erdman would like to add his name to LB782. An announcement: Reference Committee will meet upon adjournment in Room 2102. (Legislative Journal pages 391-396.) [LR234 LB915 LB985 LB750 LB752 LB856 LB857 LB763 LB495 LB782]

And I do have a priority motion. Senator Karpisek would move to adjourn until Monday morning, January 28, at 10:00 a.m. []

PRESIDENT SHEEHY: You have heard the motion to adjourn until Monday, January 28, 2008, at 10:00 a.m. All those in favor say aye. Opposed, nay. We are adjourned. []