

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

Floor Debate
January 29, 2008

[LB6 LB20 LB68 LB92 LB179 LB201 LB202 LB204 LB204A LB210 LB220 LB235
LB257 LB379 LB380 LB383 LB448 LB467A LB467 LB474 LB525 LB533 LB535 LB552
LB566 LB567 LB585 LB587 LB618 LB624 LB690 LB760 LB761 LB767 LB914 LB983
LB1013 LB1107 LR5CA LR231CA LR235]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for this the fourteenth day of the One Hundredth Legislature, Second Session. Our chaplain for today is Reverend Paul Lillenas from Hickory Grove St. Paul Lutheran Church, Auburn, Nebraska; Senator Heidemann's district. Please rise.

PASTOR LILLENAS: (Prayer offered.)

SENATOR LANGEMEIER: Thank you. I call to order the fourteenth day of the One Hundredth Legislature, Second Session. Senators, please record your presence. Mr. Clerk, please record.

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

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

CLERK: I have no corrections, Mr. President.

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

CLERK: Your Committee on Enrollment and Review reports LB92, LB202, LB379, LB380, LB383, LB467, LB467A, LB690, and LR5CA, as correctly engrossed. A notice of hearing from the Education Committee. A priority bill designation: Senator Aguilar has selected LB587 as his priority bill for this session. A Reference report, Mr. President. New resolution: LR235, offered by Senator Flood. That will be laid over. And a final item, Mr. President: a confirmation hearing report from the Education Committee. That's all that I have at this time. (Legislative Journal pages 411-414.) [LB92 LB202 LB379 LB380 LB383 LB467 LB467A LB690 LR5CA LB587 LR235]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We will now proceed to the first item on the agenda: confirmation reports.

CLERK: Mr. President, the Natural Resources Committee has several reports. Senator Loudon, the first I have are Tim Else and Steve Hanson to the Nebraska Ethanol Board.

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

Floor Debate
January 29, 2008

(Legislative Journal page 414.)

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Louden, you are recognized to open on your first confirmation report.

SENATOR LOUDEN: Thank you, Mr. President and members of the body. The Natural Resources Committee conducted a confirmation hearing on January 24, 2008, for two appointees for the seven-member Nebraska Ethanol Board. Both candidates appeared before the committee for their hearing. Tim Else is from Belvidere, and is a reappointment to the committee board, representing the sorghum industry. Tim received a bachelor's degree in ag economics from the University of Nebraska-Lincoln and is currently engaged in farming. He is a member of the LEAD group XIX and is a past director of the Nebraska Cattlemen's local affiliate. The second appointee was Steve Hanson from Elsie, and he is a new appointee to the board, representing the wheat industry. Steve attended the University of Nebraska-Lincoln and is currently engaged in farming and ranching. The committee recommended unanimous approval of Tim Else and Steve Hanson to the Nebraska Ethanol Board. Thank you, Mr. President.

SENATOR LANGEMEIER: Thank you, Senator Louden. You have heard the opening on the first confirmation report offered by the Natural Resources Committee. The floor is now open for discussion. Seeing no lights on, Senator Louden, you are recognized to close. Senator Louden waives closing. The question before the body is, shall the confirmation report offered by the Natural Resources Committee be approved? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal page 414.) 28 ayes, 0 nays, Mr. President, on adoption of the first confirmation report.

SENATOR LANGEMEIER: The confirmation report is adopted. Mr. Clerk.

CLERK: Mr. President, the Natural Resources Committee reports on the appointment of Mick Jensen to the Game and Parks Commission.

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Louden, you are recognized to open on the second confirmation report.

SENATOR LOUDEN: Thank you, Mr. President and members of the Unicameral. The Natural Resources Committee conducted a confirmation hearing on January 24 for S. Michael "Mick" Jensen to the Game and Parks Commission. He is a new appointee to the eight-member commission, representing District 3. Mick graduated from the University of Nebraska-Lincoln with a degree in business administration. He began working at the telephone company in 1966, working on the construction crew in Grant,

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

Floor Debate
January 29, 2008

Nebraska. Two years later he moved to Osmond, and later to the home office in Blair, and in 1998 was named CEO of Great Plains. Mick is past chairman of the Nebraska Telephone Association and a past director of the Nebraska Cellular Telephone Corporation. He has served on the board of trustees of the Nebraska chapter of the Nature Conservancy, and is a past member of the Nebraska Educational Television board of directors. Mick is a director of the Nebraska Chamber of Commerce and Industry and was an ambassador for the Blair Chamber of Commerce. He currently is a member of several local civic organizations. The committee recommended unanimous approval of Mick Jensen to the Game and Parks Commission.

SENATOR LANGEMEIER: Thank you, Senator Louden. You have heard the opening on the confirmation report offered by the Natural Resources Committee. The floor is now open for discussion. Senator Carlson, you are recognized.

SENATOR CARLSON: Mr. Chairman, members of the Legislature, several days ago I indicated that I was going to approach these committee appointments a little differently than I had done before, and feel like it is a responsibility of the committee to thoroughly talk to and question these candidates. I feel like the Natural Resources Committee has done that, done it well, and I do wholeheartedly endorse Mick Jensen, as the others that we have asked for approval on. Thank you.

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Dierks, you are recognized.

SENATOR DIERKS: Thank you, Mr. President. I too will support Mick Jensen. I just was going to ask Senator Louden if he could...for a question please.

SENATOR LANGEMEIER: Senator Louden, would you yield?

SENATOR LOUDEN: Yes, I would.

SENATOR DIERKS: Senator Louden, District 3; what counties does that represent? Do you know that?

SENATOR LOUDEN: Not for sure, Senator. I'm not that familiar with how the district is cut up, but my understanding, it's more or less in the northeast corner of the state is what District 3 is.

SENATOR DIERKS: Okay, thank you.

SENATOR LANGEMEIER: Thank you, Senator Dierks. Seeing no other lights on, Senator Louden, you are recognized to close on the confirmation report.

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

Floor Debate
January 29, 2008

SENATOR LOUDEN: I just ask for your confirmation of his appointment. Thank you.

SENATOR LANGEMEIER: Thank you, Senator Louden. You have heard the closing on the confirmation report offered by the Natural Resources Committee. The question before the body is, shall the confirmation report be confirmed? All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal page 415.) 36 ayes, 0 nays, Mr. President, on the adoption of the report.

SENATOR LANGEMEIER: The confirmation report is adopted. Mr. Clerk, next confirmation report.

CLERK: Mr. President, third report from Natural Resources involves the appointment of Kent Forney to the Nebraska Game and Parks Commission.

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Louden, you are recognized to open on the third confirmation report offered by the Natural Resources Committee.

SENATOR LOUDEN: Thank you, Mr. President and members of the Legislature. The Natural Resources Committee conducted a confirmation hearing on January 25 for Dr. Kent Forney to the Game and Parks Commission. He is a new appointee to the eight-member commission, representing District 8. Dr. Forney received a bachelor of science degree from the University of Nebraska-Lincoln, and a doctor of veterinary medicine from Iowa State University. He has a veterinary practice in Lincoln. Dr. Forney is a member of the Nebraska State Board of Health and currently serves as chairman of the rules and regulations committee. He is a member of the Nebraska Veterinary Medical Association and a past member of the advisory board for the Nebraska College of Technical Agriculture veterinary technology program. Kent served on the Lincoln committee of Ducks Unlimited, and is a lifetime member of the Nebraska chapter of Pheasants Forever. In 1992, he was named the Nebraska Veterinary Medical Association's veterinarian of the year. The committee recommended approval of Dr. Kent Forney to the Game and Parks Commission by a vote of seven members for, and one was absent at that time. With that I would ask for the confirmation of Dr. Forney.

SENATOR LANGEMEIER: Thank you, Senator Louden. And I would ask at this time, the visiting...I understand the importance of that, but it's getting a little hard to hear. Thank you. The floor is now open for discussion on the confirmation report. Seeing no lights on, Senator Louden, you are recognized to close.

SENATOR LOUDEN: Thank you. I would just ask for the confirmation of Dr. Forney, and this is one person that I can vouch for, for character, because I've known him since he was a little bitty boy. And I ask for the confirmation of Dr. Kent Forney.

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

Floor Debate
January 29, 2008

SENATOR LANGEMEIER: Thank you, Senator Louden. You have heard the closing on the confirmation report offered by the Natural Resources Committee. The question before the body is, shall the confirmation report be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal pages 415-416.) 35 ayes, 0 nays, Mr. President, on the adoption of the confirmation report.

SENATOR LANGEMEIER: The report is adopted. Mr. Clerk, next confirmation report.

CLERK: Mr. President, the Natural Resources Committee reports on the appointment of Donald Williams to the Environmental Quality Council.

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Louden, you are recognized to open on the fourth report offered by the Natural Resources Committee.

SENATOR LOUDEN: Thank you, Mr. President and members. The Natural Resources Committee conducted a confirmation hearing on January 25, 2008, for Don Williams, a reappointment to the 17-member Environmental Quality Council. He is from Orchard and represents the chemical industry on the council. Don received an associate of applied science degree in agribusiness from Northeastern Junior College in Sterling, Colorado. He served in U.S. Army, where he was awarded the Presidential Service Badge and Meritorious Service award. Don is the owner and manager of Orchard Fertilizer Services, Incorporated. Don is chairman of the Nebraska Certified Crop Advisor Program. He previously served as a member of the Nebraska Fertilizer Institute board of directors, was chairman of the Nebraska Fertilizer Ag Chemical Institute board of directors, was appointed to the Cenex Agronomy advisory board, and served on the city board. The committee recommended approval of Don Williams to the Environmental Quality Council with a vote of 7 members for and 1 absent that day. With that I ask for the confirmation for Don Williams.

SENATOR LANGEMEIER: Thank you, Senator Louden. You have heard the opening on the confirmation report offered by the Natural Resources Committee. The floor is now open for discussion. Seeing no lights on, Senator Louden, you are recognized to close.

SENATOR LOUDEN: Thank you. I would just ask for the movement of the confirmation and a green vote for Don Williams.

SENATOR LANGEMEIER: Thank you, Senator Louden. You have heard the closing on the adoption of the report offered by the Natural Resources Committee. All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record,

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

Floor Debate
January 29, 2008

Mr. Clerk.

CLERK: (Record vote, Legislative Journal page 416.) 35 ayes, 0 nays, Mr. President, on the adoption of the confirmation report.

SENATOR LANGEMEIER: The report is adopted. Mr. Clerk, next confirmation report.

CLERK: Mr. President, the Health and Human Services Committee reports on four appointments to the Foster Care Review Board.

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Gay, as Vice Chair of the Health and Human Services Committee, you are recognized to open on the confirmation report.

SENATOR GAY: Thank you, Mr. President. The Health and Human Services Committee desires to report favorably upon the following four appointments to the Foster Care Review Board. We held a public hearing on Wednesday, January 23, to consider the appointments, and all of the appointees appeared either in person or via telephone before the committee and answered questions posed by that committee. Ronald Albin is a new appointment to the board for a three-year term. He is an attorney from Norfolk with 30 years of family law experience, including divorce, criminal, and juvenile justice matters, and almost 30 years' experience as guardian ad litem and a child advocate. Gene Klein is a reappointment for a three-year term. He is executive director of Project Harmony, which is a nonprofit child advocacy center in Omaha. Before that, Mr. Klein managed social service and behavioral health programs for Family Service of Greater Omaha, and prior to that he served as program director at Methodist Richard Young Hospital. Judy Meter is a new appointment for a three-year term, and she is a mother and community volunteer from Scottsbluff. Ms. Meter appeared for her confirmation via the telephone due to distance and answered questions posed by the committee. Her community volunteer experience also includes membership on her local foster care review board. Our last, Alfredo Ramirez, is a new appointment for a three-year term, and he is the executive director of Odyssey III, a counseling firm in Norfolk, Nebraska, and he has more than 30 years' experience in the field of human services. Mr. Ramirez has a master's degree in social work from the University of Nebraska at Omaha. He is a licensed master social worker, a licensed mental health practitioner, and a licensed alcohol and drug counselor. Mr. President, after having public hearings on all these members, they were all very qualified and we were pleased to...all of them were voted unanimously by the committee, and we're pleased to present those to the full Legislature. Thank you, Mr. President.

SENATOR LANGEMEIER: Thank you, Senator Gay. You've heard the opening on the committee report offered by the Health and Human Services Committee. The floor is now open for discussion. Senator Hansen, you are recognized.

Floor Debate
January 29, 2008

SENATOR HANSEN: Thank you, Mr. President and members of the Legislature. I rise solely to...for maybe just to start a little bit of discussion on one of the applicants--and we did vote them out unanimously; we voted on all four at one time--and I thought it was a good idea to bring it to the floor. Gene Klein is very personable young man, does a lot of good work in Omaha in Project Harmony. I have no problem with that. But the discussion I'd like to hear from some of the other members is that he is a provider. He gets money to his organization from HHS. HHS writes him checks every week, every month, whatever the rules are there; but he has a financial interest in the Foster Care Review Board. He has sat on that for three years now, and as far as I know he's done a good job. But the idea of a provider sitting on a state-appointed board...and that's the question: Do we want someone with a conflict of interest sitting on a board? I know we've talked about looking at these confirmations. There hasn't been a confirmation now in two years that I haven't voted for. But I do bring this up to the body as a point of discussion, and I don't know if this is the time to do it or not. But I think that the Foster Care Review Board, I think has to have one provider on that board, and right now I think it has three, so the conflict of interest is there, and that financial interest of the group that he runs is certainly there. Thank you, Mr. President.

SENATOR LANGEMEIER: Thank you, Senator Hansen. Senator Carlson, you are recognized.

SENATOR CARLSON: Mr. President and members of the Legislature, I would follow up Senator Hansen's remarks. I too think that there is a probable conflict of interest when a board member represents a provider and is in a position to have his group benefit financially from what that board does, what that board recommends. And I would be interested in some discussion, how these boards got to the point that members are on there whose groups benefit financially in a direct way. And I think this is probably not good procedure and something that needs to be looked at very closely. Thank you.

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Howard, you are recognized.

SENATOR HOWARD: Thank you, Mr. President and members of the body. I think we're going to get a little confused here about private providers versus those who are employed by different offices in this state. I've known Gene Klein for probably 30-plus years, I would say. We worked together early on in the trenches in Health and Human Services. He has devoted his life to children, to children's issues. He does not gain personally from any position working on the Foster Care Review Board or volunteering his time on Foster Care Review Board. He works with Project Harmony, which is the initial assessment, the intake group, for children who have been victims of heinous situations in our society. Gene has worked diligently to make opportunities available for children; for example, so that children are not repeatedly victimized by being

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

Floor Debate
January 29, 2008

interviewed over and over again when something has happened to them. Gene does not benefit financially in any way from his work on the Foster Care Review Board. This actually is a position that he's taken on because he cares; frankly, because he cares. The Health and Human Services agency does not benefit financially from Foster Care Review Board. I can't make the connection with that. Gene is a conscientious, a stand-up person that I can personally vouch for. I feel that Gene...I feel lucky that Gene is willing to take on this additional responsibility. He doesn't gain in any way from this individually, financially or otherwise. Thank you for listening.

SENATOR LANGEMEIER: Thank you, Senator Howard. Senator Wallman, you are recognized, followed by Gay, then White.

SENATOR WALLMAN: Thank you, Mr. President. Will Senator Gay yield to a question?

SENATOR LANGEMEIER: Senator Gay, would you yield?

SENATOR GAY: Yes, I would.

SENATOR WALLMAN: Senator Gay, were you very comfortable with this confirmation hearing, with this individual?

SENATOR GAY: Very much so, and I have my light hit to talk about him, Senator.

SENATOR WALLMAN: Okay. Thank you.

SENATOR LANGEMEIER: Thank you, Senator Wallman. Senator Gay, you are recognized.

SENATOR GAY: Thank you, Mr. President. I would echo Senator Howard's view of this situation. These were approved unanimously, by the way, and chances were to have a discussion. Gene Klein is a fine person and we're lucky to have him on to be serving on this board. I think if we were to have questions on this, we should look back at the whole legislation, because the Foster Care Review Board has many components that have to be made up. One of those is a director of a child advocacy center, so any advocacy center that is doing business would probably have some way they're interacting with state government--federal government, for that matter, as well. So it's very narrow who can be on this board. And to fill these positions, sometimes you may have that. There is no direct conflict in my mind on this. I think it's a good discussion and we have every right to be discussing that. And Senator Hansen discussed this with me earlier, and I think it's right that he brings up his concerns. However, I do believe that there is no conflict there. And looking at Gene Klein's resume' and his service--I know Gene personally, have for probably the last 12 years--he's a fine person. And like I say, we're lucky to have him. And not just him. I would say these other members that are

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

Floor Debate
January 29, 2008

presented to you are very fine individuals. I don't question the debate we're having, but I feel that we covered that during the hearings. It was...I think it was discussed amongst the members, but if we want to have more of a discussion on that. I would say though, to talk about one person, let's don't get there. I think we could talk about the concept of that. But I would hate to use Gene's name in any way, in that way, because he is just an upstanding gentleman. Thank you, Mr. President.

SENATOR LANGEMEIER: Thank you, Senator Gay. Senator White, you are recognized.

SENATOR WHITE: Thank you. I want to, first of all, say how much I appreciate the committee's work on this. And Senator Carlson is absolutely right, we don't just rubber-stamp these people. This is an important issue when we look at confirming these positions. It's a constitutional duty. I would also though respectfully suggest that we must rely on our committees. They see the candidate. They have time to do the investigation. And absent some kind of strong evidence to the contrary, I will vote to support this gentleman in reliance on the committee's work. Thank you, Mr. President.

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

SENATOR LATHROP: Thank you, Mr. President and colleagues. I met Ron Albin, who is one of the people to be confirmed this morning, many, many years ago when I was up in Norfolk doing some work. And I've had dealings with him; he's a terrific guy; committed to this purpose, and I think he would make a wonderful member of this organization. I do have a concern though when I hear folks talk about conflicts of interest. And what I would like to hear is the connection between Gene Klein, who is a provider, and his role, if he is confirmed, because I think it's our responsibility as a body to listen to the concerns of those who talk about conflicts of interest. It's not our place nor are we discharging our responsibilities, simply to rubber-stamp and move people along because they're nice guys and because they have an interest in the subject matter. So if there are those who can enlighten me on the relationship between this appointment and being an HHS provider, I'd be interested in hearing that. Everything I've heard about Gene Klein, a wonderful person, very capable, and would make a contribution. But I think, as a legislative body, it's important that we ferret out whether there's a conflict and whether that conflict will affect Mr. Klein's ability to perform in the capacity for which he is to be confirmed today. Thank you.

SENATOR LANGEMEIER: Thank you, Senator Lathrop. Senator Hansen, you are recognized.

SENATOR HANSEN: Thank you, Mr. President. I want to be very clear. This is certainly not a personal attack on Gene Klein. I met the gentleman just last week, and I know

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

Floor Debate
January 29, 2008

he's doing a good job with Project Harmony. There is no problem there at all. It's just the main idea of having a provider that gets monthly checks and weekly checks from HHS, and then sitting on the Foster Care Review Board. I would hope, I would assume, that the people who know Gene Klein think that he is qualified to sit on the Foster Care Review Board and take care of some of the foster children that we have in this state. We have thousands of wards of the state. We're finally down below 6,000, but still there's...we should, per capita, we should be down to 4,000. It's not an attack on Gene Klein. I want to make that perfectly clear. The problem is, I think that the gentleman has a conflict of interest--getting money from HHS and sitting on that state board. I don't want to disallow anyone from sitting on that state board, but I think the providers are probably not the ones to be there. Thank you, Mr. President.

SENATOR LANGEMEIER: Thank you, Senator Hansen. Seeing no other lights on, Senator Gay, you are recognized to close on the confirmation report offered by the Health and Human Services Committee. He waives closing. The question before the body is, shall the confirmation report be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal pages 416-417.) 30 ayes, 5 nays, Mr. President, on adoption of the confirmation report.

SENATOR LANGEMEIER: The confirmation report is adopted. (Visitors and doctor of the day introduced.) Mr. Clerk, we will now move to Final Reading. Members, will you please return to your seats in preparation for Final Reading. First item on Final Reading, Mr. Clerk, LB204A. [LB204A]

CLERK: Mr. President, Senator Synowiecki would move to return LB204A to Select File for a specific amendment, AM1604. (Legislative Journal page 402.) [LB204A]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Synowiecki, you are recognized to open on your motion to return LB204A. [LB204A]

SENATOR SYNOWIECKI: Thank you, Senator Langemeier. Those of you who may recall, on January 14 when we advanced LB204A to Final Reading, we adopted an amendment, AM845. That particular amendment decreased the fees involved with the bill and as a result, this amendment that I'd like to offer back on Select File, would reduce the fee income to this fund, and we will, as a consequence, lose one of the labor specialists involved with the registration act. Thank you. [LB204A LB204]

SENATOR LANGEMEIER: Thank you, Senator Synowiecki. You have heard the motion to return LB204A for a specific amendment. The floor is now open for discussion. Seeing no lights on, Senator Synowiecki is recognized to close. He has waived closing. The question before the body, is shall LB204A return for consideration of a special

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

Floor Debate
January 29, 2008

amendment? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB204A]

CLERK: 38 ayes, 0 nays, Mr. President, on the motion to return the bill. [LB204A]

SENATOR LANGEMEIER: LB204A does return. Mr. Clerk. [LB204A]

CLERK: Senator Synowiecki, AM1604. [LB204A]

SENATOR LANGEMEIER: Senator Synowiecki, you are recognized to open on AM1604. [LB204A]

SENATOR SYNOWIECKI: Thank you, Senator Langemeier, and thank you, members, for your consideration. Again, pursuant to the amendment that was adopted on Select File debate on the underlying bill, LB204, we need to amend the A bill to reflect the decrease in the amount of fees that will be collected as a result of the decrease in the accompanying fee. I would appreciate your advancement of the A bill, just so we move it back to Final Reading with the substantive bill, the underlying bill. Thank you. [LB204A LB204]

SENATOR LANGEMEIER: Thank you, Senator Synowiecki. You have heard the opening on AM1604 to LB204A. The floor is now open for discussion. Seeing no lights on, Senator Synowiecki is recognized to close. He has waived closing. The question before the body is, shall AM1604 be adopted to LB204A? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB204A]

CLERK: 34 ayes, 0 nays, Mr. President, on the adoption of the Select File amendment. [LB204A]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator McGill for a motion. [LB204A]

SENATOR MCGILL: Mr. President, I move LB204A to E&R for engrossing. [LB204A]

SENATOR LANGEMEIER: You have heard the motion. All those in favor say aye. All those opposed say nay. LB204A does advance. Mr. Clerk. [LB204A]

CLERK: Mr. President, on LB210. Senator Cornett, I understand you would like to withdraw AM1602, right? [LB210]

SENATOR CORNETT: Yes. [LB210]

CLERK: Thank you, Senator. [LB210]

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

Floor Debate
January 29, 2008

SENATOR LANGEMEIER: It is withdrawn. [LB210]

CLERK: Senator Cornett would move to return the bill for a specific amendment, AM1692. (Legislative Journal page 418.) [LB210]

SENATOR LANGEMEIER: Senator Cornett, you are recognized to open on your motion to return. [LB210]

SENATOR CORNETT: Thank you, Mr. President and members of the body. As you may recall, LB210 reduces the number of members required to serve on the Workforce Investment Board. AM1692 makes a few housekeeping changes to the bill. They are purely technical in nature and make no substantive changes to the bill. I would ask your support in adopting AM1692. [LB210]

SENATOR LANGEMEIER: You have heard the opening on the motion to return. The floor is now open to discuss the motion to return. Seeing no lights on, Senator Cornett, you are recognized to close on the motion to return LB210 for a specific amendment. She waives closing. The question before the body is, shall LB210 return for a specific amendment? All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk. [LB210]

CLERK: 41 ayes, 0 nays, Mr. President, on the motion to return the bill. [LB210]

SENATOR LANGEMEIER: LB210 does return. Mr. Clerk. [LB210]

CLERK: Senator Cornett, AM1692. [LB210]

SENATOR LANGEMEIER: Senator Cornett, you are recognized to open on AM1692. [LB210]

SENATOR CORNETT: AM1692 replaces AM1602. AM1602 was the amendment withdrawn, and it was withdrawn because it was drafted to the green copy. AM1692 makes the same technical changes drafted to the correct area. Thank you. [LB210]

SENATOR LANGEMEIER: Thank you, Senator Cornett. You have heard the opening on AM1692. The floor is now open for discussion. Seeing no lights on, Senator Cornett, you are recognized to close. Senator Cornett waives closing. The question before the body is, shall AM1692 be adopted to LB210? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB210]

CLERK: 42 ayes, 0 nays, Mr. President, on the adoption of the Select File specific amendment. [LB210]

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

Floor Debate
January 29, 2008

SENATOR LANGEMEIER: AM1692 is adopted. Senator McGill for a motion. [LB210]

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

SENATOR LANGEMEIER: You have heard the motion. All those in favor say yea. All those opposed say nay. It does advance. With that, we return to now to General File, LB474. Mr. Clerk. [LB210 LB474]

CLERK: LB474, a bill by Senator Chambers. (Read title.) The bill was discussed yesterday, Mr. President, and committee amendments were presented, ultimately rejected. I now have pending an amendment by Senator Chambers, AM1673 as an amendment to the bill. (Legislative Journal page 407.) [LB474]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Chambers, we are...since this has been discussed yesterday and this is your amendment, we're going to let you just start opening on AM1673. [LB474]

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, I will be as brief as possible. We did have considerable discussion on the bill yesterday. It would make a matter of public record certain disciplinary actions which were imposed by the employing agency of teachers, on the one hand, and law enforcement persons on the other. The committee amendments were rejected in place of an amendment which I've offered, that narrows the scope of the bill considerably. The component relative to the teachers has been agreed upon, and the language was drafted in consultation with their representatives. The component related to law enforcement is going to have an amendment offered which will substantially narrow the scope so that what I said was the intent will be carried out; namely, that trifling or petty or internal-type disciplinary matters would not become public record. There would be three areas covered by that amendment: verbal, physical, or sexual abuse. And it should be kept in mind that this bill does not define or describe any of these particular acts, because the official policies of the agency will be implicated. The matter of state law is not complicated. You can look at the law and see whether conduct violated that or not. But there cannot be any invocation of the terms of this bill unless the agency itself imposes disciplinary action. With law enforcement, the language will say, a "sustained" complaint or whatever that language will be, so that it is clear that we're not talking about a complaint somebody filed or any of the things that were raised yesterday that may have given some of my colleagues heartburn. Because there will be additional discussion, I don't think I need to take any more time at this point. Thank you, Mr. President, but I am prepared to answer any questions. [LB474]

SENATOR LANGEMEIER: Thank you, Senator Chambers. You have heard the opening on AM1673. The floor is now open for discussion. Senator Carlson, you are recognized. [LB474]

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

Floor Debate
January 29, 2008

SENATOR CARLSON: Mr. President and members of the Legislature, I'd like to address a question to Senator Chambers. [LB474]

SENATOR LANGEMEIER: Senator Chambers, would you yield? [LB474]

SENATOR CHAMBERS: Yes, I will. [LB474]

SENATOR CARLSON: Senator Chambers, really bothersome to me is this concept of verbal abuse, and I don't know how to get my hands around it. What is verbal abuse, and who determines what is verbal abuse? [LB474]

SENATOR CHAMBERS: Senator Carlson, I've said it over and over: We are not defining that; the agency does. They have policies, they have procedures, and they will go through whatever steps, whether it's a hearing, that would be necessary to determine whether the officer has violated that policy. We will not determine that as a Legislature; the agency will. And it seems that only when I'm offering a bill is there this much participation by this many senators. And even though I will answer a question over and over, I get the same question, and I'll continue to answer it. But we are not making that determination. There must be a finding that the officer or the teacher violated whatever the rule, policy, or law is that's involved, and disciplinary action must be imposed. So you don't have to worry about what constitutes that, because the agency itself will. And they know, based on what their rules, regulations, and policies are, what language rises to the level of verbal abuse. But I'm not even going to try to define it for you this morning. [LB474]

SENATOR CARLSON: All right, let me ask this. So from what you just said, if a school system has their own definition of what verbal abuse is, and they go by that, that's good with you. [LB474]

SENATOR CHAMBERS: That's not in the teacher component. That's in the police component, because they wanted it narrower. So that...the teacher component is much broader. Their representatives drafted that language. That's not why...that's why I'm not lingering on it. The amendment which will be offered will mention, in the police component, verbal abuse. And if I'm not mistaken, and I can be corrected, the State Patrol and the sheriffs have no problem with that. You all worry too much because I'm bringing it. You've been put in great fear that I'm going to undermine all law enforcement, that these officers should never be brought to book, which is not my view. But Senator Carlson, I have not attempted to define verbal abuse. The agency will do that, and I am satisfied with the agency making that determination, and I'll tell you why. Sometimes merely putting in place something like this will have an impact on the conduct of those whose conduct is to be modified. So rather than put themselves in a position to come under it, they will pay attention to what they're doing, and I actually

Floor Debate
January 29, 2008

think there might be less of this kind of conduct once this is in place. [LB474]

SENATOR CARLSON: Okay. I am taking a little page out of your book, in that I'll continue to ask questions until I'm satisfied that I've gotten the answer or the response that I'm looking for. [LB474]

SENATOR CHAMBERS: Tell me what you want me to say. We'll save everybody some time. [LB474]

SENATOR McDONALD PRESIDING

SENATOR McDONALD: One minute. [LB474]

SENATOR CARLSON: In law enforcement, which I'm not as familiar with it as you are, but whatever their policy is that defines verbal abuse, you're not arguing that. [LB474]

SENATOR CHAMBERS: No. [LB474]

SENATOR CARLSON: Whatever that is, and they follow their procedures because someone has got a violation in the area of verbal abuse, that's okay with you. [LB474]

SENATOR CHAMBERS: Right. I'm leaving that up to that agency to make that determination. That's okay with me. What else do you want me to say? [LB474]

SENATOR CARLSON: Well, are you ever verbally abusive on this floor? [LB474]

SENATOR CHAMBERS: No, because I'm dealing with equals. I don't have power over anybody. And anything I say can be responded to by anybody to whom I may address it, or even if I don't address it to anybody, I'm not able to take anybody's freedom from them or kill them. So when you have people who are equals, when it comes to prerogatives... [LB474]

SENATOR McDONALD: Time. [LB474]

SENATOR CARLSON: Thank you. [LB474]

SENATOR McDONALD: Thank you, Senator Carlson. Senator Friend. [LB474]

SENATOR FRIEND: Thank you, Madam President and members of the Legislature. Just for a point of reference as we start off, I...the amendment that was actually being discussed earlier, I guess, on the record, is not necessarily AM1673. It's the amendment that I saw yesterday, scratched out on a yellow amendment pad. And there's nothing wrong with that; I've done that myself. But my answer, when I saw it, was more or less

Floor Debate
January 29, 2008

that I don't necessarily agree to that, because I don't know what that does either. Or in other words, I don't know. I'm not sure. I don't know what the lobby thinks of that. And contrary to popular belief, I don't care, because I'm not taking my marching orders from the lobby. Nobody showed me, other than that stuff on that amendment pad, what the new amendment that goes on top of AM1673 or onto LB474, is. So I'm dealing with what I know. Yesterday, part of the discussion related to, among a lot of other things, related to the language in the bill, specifically what the bill would practically do. Okay. Now, that's directly related to what I'm going to try to put out on the floor right now. It's directly related to the big picture idea of the policy change that we're going to make here. There may be a feeling or an attitude or an idea that public policy throughout our nation is leaning in the direction of full disclosure under these circumstances, that transparency under these circumstances for public employees and personnel records, is the way everything is going. I pointed out yesterday that the California Supreme Court said, look, the legislature hasn't told us that that's the way it's going yet. So they rejected that idea. I would submit to you that it's just not the case, that that attitude is permeating nationwide. And I know we don't sit here and try to figure out what Iowa has done or what Wisconsin has done, and then follow suit. I mean, a safe haven law is a perfect example. I think we are one of the last ones to really deal with that issue. That's fine. Maybe we're trying to get it right. Maybe we're trying to do it the best. But here's the point: This direction is cloudy, at best. Let me give you a couple of examples. The League of Wisconsin Municipalities points out to its members that there is...from a public...there are public policy reasons for supporting nondisclosure of public disciplinary or personnel records. Then they go into what the statute says. They go into legal cases about how it's been challenged. And Wisconsin is still dealing with this issue. It sounds like a study issue to me. Get some committees together. Get a big committee together, and start talking about the privacy rights of some of these folks, and whether we should, you know, deal with the subject matter. The Commonwealth of Virginia, the state of Virginia, the department of human resources management policies and procedures manual, they define third parties: Individuals other than subjects of the records, including other state agencies who request information from the records maintained by the agencies. The disclosure of information to third parties, other personnel information, may not be disclosed to third parties without written consent of the subject employee. So here's what they've done in Virginia, it sounds like to me. [LB474]

SENATOR McDONALD: One minute. [LB474]

SENATOR FRIEND: They've said, we'll disclose this, but you better get the permission of that employee. Is that good public policy? I'm not really sure. Is that the way the law should be? Is that the way the statutes should be in our state? I don't know. They include performance evaluations, they include mental and medical records, records of suspension or removal, including disciplinary actions under the standards of conduct, under one of their policies. Then we go to Massachusetts, Massachusetts Department

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

Floor Debate
January 29, 2008

of Education. I can finish this later. But the bottom line is, I've got countless documents that indicate that this is unsettled...these are unsettled ideas. We're going to settle it in four hours? This is a study item, folks, in my view, respectfully. Thank you, Madam President. [LB474]

SENATOR McDONALD: Thank you, Senator Friend. Senator Wallman. [LB474]

SENATOR WALLMAN: Thank you, Madam President. I wonder if Senator White would yield to a question. [LB474]

SENATOR McDONALD: Senator White, would you yield? [LB474]

SENATOR WHITE: Yes. [LB474]

SENATOR WALLMAN: Thank you. Senator White, in the city of Omaha, do you have a commission to watch over police officers, fire departments, or...? [LB474]

SENATOR WHITE: Yes, public safety. Yes. [LB474]

SENATOR WALLMAN: It's called public safety commission? [LB474]

SENATOR WHITE: Yes. Yes. [LB474]

SENATOR WALLMAN: Do you think this bill would enhance this or make it any better, or do they need it? [LB474]

SENATOR WHITE: The commission? The commission doesn't need it. They have access to the records. [LB474]

SENATOR WALLMAN: Thank you. That's all. [LB474]

SENATOR McDONALD: Thank you, Senator Wallman. Senator Harms. [LB474]

SENATOR HARMS: Thank you, Madam President and colleagues. Senator Chambers, would you yield to a question, please? [LB474]

SENATOR McDONALD: Senator Chambers, would you yield to Senator Harms? [LB474]

SENATOR CHAMBERS: Yes, I will. [LB474]

SENATOR HARMS: Thank you, Madam Chairman. I'm struggling, as you know, a little bit with this, not so much by the fact that we want to have government transparent. I

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

Floor Debate
January 29, 2008

believe that very strongly. But I feel that we have taken on two classes of employees, and we have a whole series of other employees that should be included in this. But the question that I would like to ask you, in your amendment, on line 19--could you pull that up, please, Senator? [LB474]

SENATOR CHAMBERS: Yes, I'm with you. [LB474]

SENATOR HARMS: Do you have that? Okay. Where you talk about, the employee has the right to attach a written response to any item in such file. So if in fact, Senator, a teacher or an administrator was not happy with the evaluation and what took place, they have a right to defend themselves and attach that in their file. Is that correct? [LB474]

SENATOR CHAMBERS: Yes. [LB474]

SENATOR HARMS: Okay. Now, the second part of my question is item 20, please. Are you with me? [LB474]

SENATOR CHAMBERS: Is line what? [LB474]

SENATOR HARMS: Item...line 20. I'm sorry. [LB474]

SENATOR CHAMBERS: Sure, I'm with you. [LB474]

SENATOR HARMS: Are you with me? Okay. Where it says that such a teacher, administrator, or employee may, in writing, authorize any other person to have access to such file. Senator, would you explain to me that if I was a teacher and I had a bad evaluation, and I put into my file that I do not want anybody to have access to this, does transparency go away with this? If what you're trying to accomplish, does that disappear by the fact that I can say no, I want no one else in my files? That's the issue that I have here, because I think it does. [LB474]

SENATOR CHAMBERS: Senator Harms, this amendment of mine does not affect things like what you're talking about. Those are things in the law that are not touched by my bill. You're bringing up issues that may be a problem to you because maybe you've just read this existing language for the first time, but this is not what my bill relates to. [LB474]

SENATOR HARMS: Well, I think that it might, in my view, because when you look at transparency, all these things fit together. And whether...what you have in your bill and what we have in other portions of this bill still has an impact in transparency. But I thank you very much, Senator. [LB474]

SENATOR CHAMBERS: All right. [LB474]

Floor Debate
January 29, 2008

SENATOR HARMS: Senator Kopplin, would you yield to a question, please? [LB474]

SENATOR McDONALD: Senator Kopplin, would you yield to Senator Harms? [LB474]

SENATOR HARMS: Thank you, Madam Chair. [LB474]

SENATOR KOPPLIN: Yes. [LB474]

SENATOR HARMS: Senator Kopplin, I have great...I respect you highly because you've had a lot of experience in public school education. And as an administrator, can you tell me what your views are on this piece of legislation and how that impact is, and the fact that...does some of our present laws that deal with contracts actually have an impact on what is occurring here. [LB474]

SENATOR KOPPLIN: Yes. I am listening carefully to the discussion of this bill because I am concerned about it. I don't know as I understand everything in it yet. The issues of disciplinary actions with teachers is a complicated issue. Certainly there are principals involved, teachers involved, records that get stored. Whether they should be open to inspection or not, I don't know. I'm not sure this bill would allow inspection of those kinds of records. But you're dealing with contract issues, and I understand perhaps the... [LB474]

SENATOR McDONALD: One minute. [LB474]

SENATOR KOPPLIN: ...teachers are in support of this. But I still have a few concerns, because I'm not sure exactly where administrators would be in it, what the contract laws might require, what we're actually changing here. So I have a few concerns. I'm listening. Does that answer you? [LB474]

SENATOR HARMS: Yes. Thank you very much, Senator Kopplin. My concern about the bill is, Senator Chambers, is I think if we're going to do this, we need to do it across the board. If you want transparency in government, don't pick out two segments. Let's do it all the way through--city, county, and states. There's a lot of people who have great impact on a lot of different people, and I just don't think this is good legislation unless we do it all across the board and have true transparency in all government. Thank you, Madam Chairman. [LB474]

SENATOR McDONALD: Thank you, Senator Harms. Senator Chambers. [LB474]

SENATOR CHAMBERS: Madam President, Senator Carlson asked me if I am verbally abusive on the floor. What I have to say is that sometimes educationists do not read. I explained yesterday that when it comes to teacher discipline, there are two areas. One

Floor Debate
January 29, 2008

relates to performance, and the other to what this bill deals with. If we were talking about performance and the kind of reports that Senator Harms is talking about, that would have been included in my amendatory language. If Senator Harms had taken the time to read it, he would see this: This subsection shall not apply...and the subsection that's being discussed will mention the things that are not a matter of public record. What I'm reading here is the exception carved out. Any...well, I'll just read the whole thing. "This subsection shall not apply to specific documents in the personnel file which record disciplinary action taken by the employing district's administration involving a teacher, administrator, or full-time employee which involves,"--and this is the crucial language--"any specific event, occurrence, or act which was deemed to be in violation of or contrary to school district policy, rule, or state law." Do you know why I spend so much time pointing out that I worked with the representatives of the teachers? Because there is language used which constitutes a term of art. These words have meaning--the event, the occurrence, and the rest--that distinguishes it from the kind of stuff Senator Harms is talking about: an unfavorable evaluation. The language was crafted by those who know what this language means, and Senator Harms doesn't. So he asks me questions about things not touched by my language. I am not striking anything from the law that Senator Harms talked about. Those matters in the personnel folder are still protected. The language in my amendment was crafted by those who deal with these matters, and make the distinction as is done between a teacher's performance and the specific event which results in disciplinary action. Had he taken the time to read it, he would not be confused. When we come to the police portion of it, even without the amendment that I've been discussing that will be offered, Senator Friend pretends to be confused and he says we ought to see what they're doing in California because they don't do what he thinks, or Wisconsin, or all these others. That is totally irrelevant and beside the point, and when he brings stuff out of his committee, he doesn't tell us, now in California they do it this way, they do it that way. What California does is totally irrelevant. This is the Nebraska Legislature. We are enacting a law that involves Nebraska and Nebraska's people. I just wish that my colleagues, especially chairpersons, since Senator Friend had so much to say about the Judiciary Committee,... [LB474]

SENATOR McDONALD: One minute. [LB474]

SENATOR CHAMBERS: ...would read and understand legislative processes and what they are designed to do. This does not affect cops in California. It does not affect teachers in Wisconsin. And maybe they have bungled laws because they don't have anybody like me in their Legislature who can clearly craft legislation and explain it in great detail. Senator Friend is upset because every time he tries to raise an issue as he discusses it, it doesn't even make sense to him so he winds up saying, I just don't know. (Singing) I just don't know, so all alone, can't face this woe. Well, I'm nowhere now, because I just don't know. What kind of sense does that make? Thank you, Madam President. [LB474]

Floor Debate
January 29, 2008

SENATOR McDONALD: Thank you, Senator Chambers. Next is Senator Friend.
[LB474]

SENATOR FRIEND: Perfect timing. Thank you, Madam Chairwoman--Madam President, excuse me. I love his singing. You know, he can...Senator Chambers can spin this any way he'd like. He'll do it. He'll cajole; he'll threaten. I've been...this is my sixth year here, or fifth year, whatever, and every year, the same thing: Friend doesn't understand; he's ignorant. Wallman doesn't understand--whoever. It doesn't matter who--you're ignorant. You don't understand his intricacy, you know, his intricate mind and his geometric logic. You know what? Here's what I understand, okay? This is a major public policy shift. He called me out, says I don't understand this; I'm a committee chair. And I chastised the Judiciary Committee yesterday. Oh, God forbid, should anybody out here ever do that. You know, the bottom line is that it's tough to take controversial legislation and move it through in a very fluid form. And we have to sit here and listen because he's been here 38 years, that this is the best way to do it and this is fluid form. I don't have to buy that; I'm not going to buy that. He shakes his head; yeah, I should buy that. No. Uh-uh. Not me. Go find some lackey to help you do your work with you. That's what I usually do. I don't have many lackeys. Maybe you have more than I do. So he can pretend that I don't understand the issue. You know, go ahead; I've already said that this is cloudy as all get-out. We've changed the discussion, the practical discussion about what this language should look like, three times. We're about to change it again, and I don't have an amendment in front of me. Let's change it; somebody throw an amendment up. Let's put it this way. Here's what I'm dealing with right now: AM1673. I don't see another amendment about the sexual predator piece or the sexual assault piece, (inaudible) the yellow memo that I saw yesterday. I don't have that. So what am I supposed to deal with? Perceived language or something that could come? Here's what I know: AM1673 isn't that much different than LB474, languagewise--practically. There are some differences but not that much, especially the first section. You can dismiss what the other states have done or the problems that they're having or the issues that they're having with this subject matter, but it's extremely relevant. I'll tell you why. It's relevant because other people are having the same problem that Senator Chambers, the Judiciary Committee, and this Legislature is having, trying to resolve the issue. That's why it's relevant. It's not because I want to follow Massachusetts. Look, it's not because I want to follow Massachusetts. Do you like I would want to follow the Commonwealth of Massachusetts over a cliff? No, I wouldn't. They make bad laws up there. The only one that made any good laws was John Adams, and everything after that has been downhill. I don't like following them and I'm not going to. The point is, others are struggling with this subject matter. But we should just fly through because we shouldn't have this struggle, because the venerable Senator Chambers said we shouldn't have this trouble. Correct? I've got it. That's it. No, no, no. No, no, no. Would his colleagues 38 years ago have let that happen? [LB474]

Floor Debate
January 29, 2008

SENATOR McDONALD: One minute. [LB474]

SENATOR FRIEND: Would his colleagues 20 years ago have let that happen? Would his colleagues, like Senator Beutler or others, Landis, whoever, would they have let that happen? I'm not comparing myself to them. They were far superior to me. But the point is, what kind of fun is he going to have if he doesn't have this? He knows this is valuable discussion. He knows that what other states do is relevant, because it gives you an indicator and an idea of how other people are struggling with this subject matter. He knows that. He'll paint it any way he wants. He'll demonize any way he wants. And you know what? I'll fall on the sword. My wife told me last night, she said, boy, don't you have any bills out there that people might try to kill? Yeah, I do, and they're going to try to kill them anyway. I've got news for you. Does he need a recipe here to go after my bills? No. Let's continue with the discussion. I've still got an IPP motion coming. That's the only thing that I know other than what I'm seeing on the board. [LB474]

SENATOR McDONALD: Time. [LB474]

SENATOR FRIEND: Thank you, Madam Chair; thank you, Madam President. [LB474]

SENATOR McDONALD: Thank you, Senator Friend. Senator Louden. [LB474]

SENATOR LOUDEN: Thank you, Madam President and members of the body. I've listened to the debate on this all day yesterday and whatever has went on today. I was wondering if Senator Chambers would yield for a question, I guess. [LB474]

SENATOR McDONALD: Senator Chambers, would you yield to Senator Louden?
[LB474]

SENATOR CHAMBERS: Yes, I will. [LB474]

SENATOR LOUDEN: Senator, as I've looked this over, now start with the green copy, and this was the bill that you introduced and went before the committee. And that had, oh, disciplinary action on the sheriffs and I guess law authority. And then it goes on through your bill, where anabolic steroids and also probationary stuff for teachers that weren't tenured, and that sort of thing. Now, when that was...then as you added the committee bill, about all the committee bill did was take out school nurses. Now is that correct so far from what I understand of this thing? [LB474]

SENATOR CHAMBERS: What I explained yesterday, Senator Louden, was when I had the bill drafted, there were sections of law that related to teachers and other employees. And to have everything before the committee, I included all of those statutory references in the green copy. After the hearing it became clear that many of those sections had no application to what it was I was interested in achieving. So the committee drafted an

Floor Debate
January 29, 2008

amendment that narrowed the scope. They took out nurses, because nurses are under a licensing agency that will deal with whatever inappropriate conduct they may engage in. Private schools were removed. The amended bill was advanced to the floor. Prior to any action being taken on the floor, Mr. McGuire, who represents the teacher interests, had stated he would work with me to get language which would do what I had in mind without involving a lot of those other areas. Some people... [LB474]

SENATOR LOUDEN: Okay, now as... [LB474]

SENATOR CHAMBERS: I'm just going...then I'll stop. We got that language. So my amendment that is before you now is the result of all of that negotiation that eliminated the unnecessary material in the green bill. [LB474]

SENATOR LOUDEN: Well, what I was wondering now, then you still got in statute the anabolic steroid and that's still going to be in statute, and your certified part for your teachers, and all that, that was in the original bill. And then when you strike the original sections and all amendments, then did you strike that, when you introduced your amendment, your amendment... [LB474]

SENATOR CHAMBERS: AM1673. [LB474]

SENATOR LOUDEN: Yeah. Did you strike all of that then out of it? [LB474]

SENATOR CHAMBERS: Yes. All of that is gone. [LB474]

SENATOR LOUDEN: Gone out of statute too? [LB474]

SENATOR CHAMBERS: With this amend...no, no. [LB474]

SENATOR LOUDEN: Just gone out of your bill? [LB474]

SENATOR CHAMBERS: Right. Out of my bill; right. [LB474]

SENATOR LOUDEN: Okay. And then actually then your amendment mostly gets around to just talking about what you're going to do with law authorities, is that correct? [LB474]

SENATOR CHAMBERS: No. Teachers all... [LB474]

SENATOR LOUDEN: Because... [LB474]

SENATOR CHAMBERS: It would deal with... [LB474]

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

Floor Debate
January 29, 2008

SENATOR LOUDEN: You have...you strike the original sections, and then you go on with Section 1, and that's different than what it is in the green copy, and it isn't at all in the committee amendment. So that's what I'm wondering. You've changed Section 1 in your amendment, is that correct? [LB474]

SENATOR CHAMBERS: Yes. And also if you look at Section 2, that is the portion that relates to the teachers. So it still will involve disciplinary actions involving law enforcement, plus those that involve teachers. Section 1 of my amendment... [LB474]

SENATOR LOUDEN: Yeah, but in the teacher part it's been... [LB474]

SENATOR McDONALD: One minute. [LB474]

SENATOR LOUDEN: ...what would you say? Watered down somewhat, I guess. [LB474]

SENATOR CHAMBERS: No, not watered down; focused on exactly what the purpose of the bill is. [LB474]

SENATOR LOUDEN: Oh, okay. What I'm wondering is, how come--and thank you, Senator Chambers--I guess what I've wondered all the time is how come we didn't just go ahead and do this AM1673 in the committee and we'd be discussing that? I always think of the old adage that you've got to know what you're going to do before you start, so that when you quit you'll know whether or not you finished the job. And that's what I'm trying to figure out here, is where are we going to be at or are we going to be able to finish the job? So thank you, Madam President. [LB474]

SENATOR McDONALD: Thank you, Senator Louden. Senator Ashford. [LB474]

SENATOR ASHFORD: Thank you, Madam President. Let me try to give some perspective to the discussion that Senator Friend is having and Senator Louden is having about the Judiciary Committee's procedure on this bill. This bill was introduced by Senator Chambers, and it was introduced, as many bills are introduced, because there were issues involving...and to Senator Harms's suggestion or point, these were issues involving particular segments of public employees; in this case, police officers and teachers. And as Senator Chambers rightly indicates, both those types of employees have sections in the statutes that deal with them, and they are segments of public employees that are dealt with specifically in statute for many reasons. But one of the reasons is that these are employees that deal with the public on a day-to-day basis and have always had special treatment in statute. Whether they are proposals that come to the Legislature by those specific groups, whether they're police officers or whether they are school teachers, they tend to be treated separately, have been treated separately, are treated separately in our statutes. When this bill was introduced and

Floor Debate
January 29, 2008

heard, there was opposition by various groups. However, no one suggested any language to us. The bill was fairly clear to the Judiciary Committee. It's simply saying that these records, disciplinary records, should be made available. It was fairly straightforward, fairly clear on its face. After the hearing and after we had discussions...I had discussions with teachers' representatives; I had no discussions with police representatives. And as a matter of fact, I've had, up to this second, have had no discussions with anybody from the police. But the idea certainly was, once this bill was...without any other language, it seemed clear to the committee what we were trying to do. We are trying to do something very specific, very confined, to these groups, and it made very, very good sense to me, as Chair, and others on the committee, to do this, because these particular types of public employees, as I say again, have been dealt with, are dealt with separately in the statutes, and have been for many, many years. Over the summer, the teachers came to me and said, we're going to work on this over the summer. However, it was not until about ten days ago, I believe, that the--and I don't know if I've got my days right--that the teachers came up with some language which is incorporated in AM1673. And it's also my understanding that now after the summer and now into the fall, that the police organizations have looked at this, have talked to Senator Chambers. Senator Cornett has taken a leadership role in this and has come up with some language that deals specifically with some of the concerns police officers have. The amendment that Senator Chambers is offering here is a very good amendment. It makes it more clear, that it simply says that a document in a disciplinary file...one, the document that creates, that includes an action taken, that document and that document alone is available for public...is a public document, a public record. It doesn't say all of the superfluous materials. It doesn't talk about the transcript of any hearing. It talks about a document, and that would be an order of suspension or an order of disciplinary action, or whatever it is. It is very narrowly drawn. That sort of...and we've had in the committee much discussion about what happens if a teacher does something that causes concern to parents. You know, is that information available, that that action was taken? And it seems logical, reasonable, that that kind of... [LB474]

SENATOR McDONALD: One minute. [LB474]

SENATOR ASHFORD: ...information should be available to parents. Why not? I just don't get it. I don't get the concern here. And Senator Harms makes a good point about all public employees should have the same transparency rules. I agree with that, but that's not going to happen, really, I don't believe. And so if we deal specifically with the problem that was raised by Senator Chambers, which is a valid one, we've reacted to it with committee amendments very similar to Senator Friend's bill on cyber crime. We've dealt with additional amendments on the floor, and his bill passed. This is not irregular. This is very regular. There is a very specific, very correct, way to deal with the issues in AM1673. It is not overbroad. Parents have a right to now if their disciplinary action has occurred, and what that disciplinary action does. They probably don't need to know all the superfluous information. [LB474]

Floor Debate
January 29, 2008

SENATOR McDONALD: Time. [LB474]

SENATOR ASHFORD: So there is absolutely nothing that is irresponsible or overbroad in this amendment. Thank you, Madam President. [LB474]

SENATOR McDONALD: Thank you, Senator Ashford. Senator Chambers, and this is your last time. [LB474]

SENATOR CHAMBERS: Thank you. Madam President and members of the Legislature, the way this bill has been handled is not different from the way bills are handled. When water bills have been presented to us that involve the rural area, it would come out in a certain form. We would have several major rewrites on the floor: white copy 1, white copy 2, white copy 3. Issues would arise which were not ripe for consideration during the committee hearing. There would be discussion on the floor when problems would be pointed out, and additional refining would be done. This is not unusual. What makes this happen is because it's my legislation. When I am critical, as I was just the other day, of Senator Langemeier's bill on the rifle ranges, I offered amendments; I gave extensive discussion. He agreed with some of my amendments. That's the way we operate. If I don't raise issues on other bills, nobody does. When I bring a bill, people come from everywhere, and they will not have read the legislation. Senator Friend, if he will read the transcript of his comments earlier, he did use the term, "I just don't know," but that is not a basis for the rest of us taking leave of our senses and our intelligence. There is nothing gigantic, monumental, or mysterious about anything in this bill. If Senator Harms were dealing with any other bill and the group affected had agreed that the language was appropriate, he wouldn't be raising all these issues. Nobody on the floor would. They don't do that. The teachers are not concerned because they understand the language of the bill, and Senator Harms has misread the amendment. It deals with a specific event. And Senator Harms, legally speaking, when they're talking about this disciplinary area, there is an area of performance, an area of discipline. The way the language was adopted that deals with that specific event eliminates anything relative to performance. So all these things you've mentioned about an unfavorable evaluation, is eliminated. It's not even touched. That is totally untouched. If Senator Friend finds the language, even in my existing amendment relative to law enforcement, so befuddling that he cannot comprehend it, he ought to ask me questions for clarification. Befuddlement is something that can befall anybody, and it's the responsibility of the one offering the proposal to clarify so the befuddlement is removed. And I've extended that invitation since the first comments I made on the bill and on my amendment. I've explained it over and over. Senator Kopplin knows the difference, I'm sure, between the performance area where a teacher is involved, and the specific event for disciplinary action. And I've explained it. I've said they can go out into the hall and talk to the representatives of the teachers who will explain it further. If you'd rather not do that and just raise theoretical hypotheticals based on a lack of knowledge and

Floor Debate
January 29, 2008

information, then address a question to me on that basis. I will answer the question.
[LB474]

SENATOR McDONALD: One minute. [LB474]

SENATOR CHAMBERS: But I will have to answer it the same way. This bill simply says that when certain misconduct occurs and it has been determined to be misconduct in violation of the policies, rules, state law--the language that's in the bill--when the agency itself makes a finding and imposes disciplinary action, that is a matter of public record. I gave examples. One was where a man's child had been hit on the head with a book by a librarian. He was told that something was done to the librarian but they could not say what was done. Our belief is that nothing is done and they hide behind this supposed veil so that we have no way of determining whether it was or not. And when that kind of misconduct occurs, it should not be shielded. Thank you, Madam President. [LB474]

SENATOR McDONALD: Thank you, Senator Chambers. Senator Friend. [LB474]

SENATOR FRIEND: Thank you, Madam President and members of the Legislature. It's interesting...I'd like to go back and see the transcripts, too, because if I have to amend it, I would. When I said I don't know, I was talking about that mystery amendment that I saw yesterday on a yellow pad. I don't know if it's going to be introduced. I don't know if it's a good idea. I don't know if we're ever going to see it again. That's what I don't know. So if I have to amend it, that's about as close as I'm going to be able to come, I would imagine. You know, there's been a point made out here on a couple of occasions about the process, about how to get through these things. I know the Judiciary Committee has done good work. They've done some of it with me. Senator, yes, I've worked well, I think with Senators Chambers, Lathrop, Ashford, especially Senator Ashford allowing me to have that open line of communication. But guess what? I approached them. I said, hey...maybe not about that municipality bill, but on other types of bills. I've approached Senator Chambers on the floor, and said, what's wrong with this cyber stalking bill, Senator? Are you going to try to stop this? And he said, you know what, Mike, I can probably help you; I don't have time right now but let's work this. And he did. He was a man of his word. But you know what? He wouldn't have walked up to me and said I'm going to kill your bill. I really believe that he would have just let it die on the vine had I not approached him and asked for his help. This is disingenuous at best, to say that I'm out here looking around to try to just find something from Senator Chambers, Ashford, Lathrop, anybody else on the Judiciary Committee, to smash it for no good reason. This is bad public policy; it's as simple as that. That's why I'm opposing it. And nobody has walked up here and said, hey, Friend, just curious, what would get you off of our backs here? Not that they have to. I'm not asking them to. But that has not happened. So here I am, looking at a bill that's potential bad public policy...and Senator Ashford, absolutely he's right. I worked with him last year and worked with his committee, and I think we worked in a very decent way. I found out this bill was going to be on the agenda, this

Floor Debate
January 29, 2008

weekend, on Monday. I said, I've always thought that was bad public policy. And now for some reason, let's look at Friend as the ogre that he didn't approach Ernie and try to work things out. That's not my responsibility. I don't like this public policy. Maybe it would behoove Ernie to walk up to me and say, hey, Mike, I know you're an idiot, but I'd like your help, because you can really slow things down here for me; humor me. That's insulting. I've said this before: I've not the sharpest tool in the shed. Maybe there's 45, 49, 48 people out here, including the Clerk and everybody else, that's smarter than me. But guess what? I'm the one that's got the IPP motion up. I'm the one that I believe thinks that the IPP motion can succeed, and that we do not need this as public policy in the state. And Senator Ashford points out, I just don't understand why transparency is such a bad thing. Well, look, I just pointed out that nobody has a good, clear understanding of what this transparency is going to end up doing. We live in a vacuum here in Nebraska. Let's make sure that we totally disregard what the Commonwealth of Massachusetts has done. Grant it, I'd love to, but I don't think we can. I think they find it offensive that a person standing up here, arguing the public policy, and maybe pointing out on a couple of occasions that the language is a little bit befuddling? Yeah, it's befuddling, and he hasn't turned around to come back to ask me...you know what Senator Lathrop did last week? Walked up to me on LB179, and said Mike, what are you issues; what are your concerns? He sat down with me and humored me. [LB474 LB179]

SENATOR McDONALD: One minute. [LB474]

SENATOR FRIEND: In his mind he might have been thinking, ho, Friend is an idiot; here we go; let's spoon-feed him this information. And he did. And guess what? I was nowhere to be found on LB179. I could have thrown an IPP up on that, couldn't I, just like anyone of you could have. Am I offended they didn't walk up and ask? No. I'm just pointing out the fact that it didn't happen. I respected his opinion enough on that issue that I put into the Judiciary Committee--and when I say his, you all know who we're talking about: his; Senator Ernie Chambers, because he is it. I asked his opinion because I respect it and I wanted it. I could have clotured him on something he didn't like. Maybe he didn't like the whole bill. He helped. Yes, he did, and I asked for the help. Maybe next time, in hindsight, I just go ahead and just start trying to cloture everything that I've got. [LB474]

SENATOR McDONALD: Time. [LB474]

SENATOR FRIEND: Thank you, Madam President. [LB474]

SENATOR McDONALD: Thank you, Senator Friend, and that was your last time. Senator Ashford. [LB474]

SENATOR ASHFORD: Thank you. And we can get to a vote here. Are there a number

Floor Debate
January 29, 2008

of lights on? [LB474]

SENATOR McDONALD: You are the last light. [LB474]

SENATOR ASHFORD: Okay. And so I'm not going to belabor this. But I just want to respond a little bit. There's no question that Senator Chambers has his own style, which he's cultivated over 38 years of working in this body. And I can agree with Senator Friend, that at times it is tough to figure out exactly where Senator Chambers is going to go on the floor. And I would also suggest that Senator Friend is...there are no dumb senators here, Senator Friend, and you're certainly one of the brighter ones, and you have a certain style and there's nothing wrong with your style. I just...my only point here is that we do work these things out on the floor, from time to time, and we make good legislation on the floor because we have 49 of us who care as deeply as we all do. And I think we all do care very deeply. I've never seen 49 people that care so deeply about something as this body does about our state. So I think our intent is all on the right end of this. But Senator Chambers does have his own style. In this case, he's done a pretty good job, as he does in many cases, as do you, Senator Friend. But he's done a pretty good job of dealing with some of the ambiguity in the language that came out of the committee. Here's the issue, for me, when it comes to the teachers. We're just dealing with the teachers here, and the next amendment, I believe, will have to do with police officers having--we'll talk about that when we come to it--but my sense is, police officers don't have a problem with disciplinary action of certain kinds being made public. I've never heard that from a police officer, and I don't think they're afraid of that. But what we hear in the Judiciary Committee, oftentimes, are cases where a teacher--not very many--but sometimes a teacher will commit an act or do something which is injurious to children. And that's the big issue for me. And that documentation which reflects the discipline that happens as a result to that particular teacher is something that a parent should know about; that that document, that action taken is something that the public has a right to know. We pay the teachers, and we ought to know if there's something that happens like that; and that, for me, is the issue. And as we vote for this amendment and vote for this bill, I think if we just look at the four corners of the legislation and the amendments, and not go beyond that, but talk about...and certainly we talk about the public policy behind it, but this is not a far-reaching piece of legislation. It's not going to revolutionize disciplinary action. The only last point I would make, and it really relates to, I think, maybe it was Senator Harms mentioned the issue of...or Senator Kopplin. He brought up a great issue, and that is, how does this kind of language interface with collective bargaining agreements? And it's a good question, and maybe we should have had more discussion about it. My understanding is that if we put in this state law, that it does trump a collective bargaining agreement. A collective bargaining agreement is...and that's why the teachers' union, in this case I think, was very careful in drafting this amendment, or helping to draft this amendment, because they're obviously very conscious of collective bargaining and the rights of collective bargaining. In my view, this language would control those instances where there is disciplinary action as defined

Floor Debate
January 29, 2008

in the act. So even though a collective bargaining agreement may deal with a particular part of disciplinary action, the actual record of the action taken would be available as a public record if it falls under this language, so. But it's a great question that Senator Kopplin asked. I would just urge that we adopt this committee amendment, move on. If there's one more amendment dealing with police officers, we can deal with that. And as Senator Friend rightly says, as a matter of public policy if one doesn't want to vote for this in the end, so be it. That's what we do everyday. But with that I would urge the adoption of AM1673. [LB474]

SENATOR McDONALD: Thank you, Senator Ashford. Seeing no more lights, Senator Chambers, you are recognized to close on your amendment. [LB474]

SENATOR CHAMBERS: Madam President and Senator Friend, with whom I enjoy discussing matters. Senator Friend yesterday told us that this bill ought to be sent back to committee because my proposed amendment altered it so drastically. He thinks I don't pay attention to him. A few minutes ago he said that the language in my amendment is not very different from what's in the green copy. He said that. That's what I said yesterday. We've cut out a lot of things but nothing has really changed. He admits today what he didn't see yesterday. That's good. That shows growth. I didn't put a kill motion on his electronic bill. I helped rewrite it...well, I did rewrite it. But Senator Friend wasn't the only one who came to me. The Attorney General's Office was coming to me, pleading with me--pleading with me to let some portion of that bill go because they needed it. And however I rewrote it, whatever I wanted to eliminate, they would accept the finished product. And when they saw it, they said it indeed was an improvement. They took an approach similar to what Senator Friend might be asking us to do today. They had gone to some federal legislation, where in discussing an electronic device they put eight or nine specific types of record players, recorders, all kinds of things which were not necessary to be in the bill. Senator Friend, I guess, thinks we ought to see what people in California feel about what I'm doing, Wisconsin, and all these other places. And I don't think that's necessary. I am able to evaluate a situation. If I see a problem I can craft what I feel is a solution. And if what I offer as the solution is adopted, the problem will indeed be solved. We have talked about many, many things, as often happens. I will ask that this amendment be adopted. It then becomes the bill. We will know exactly what is before us. That's what has been discussed anyway. Senator Loudon asked questions about the green copy which were appropriate, because he wanted to have explained to him what was the difference between the original bill, as offered, and what the amendment would offer, and how the two differed. Perfectly justifiable. And in the words of Alexander Pope, an old English poet, it gave me the opportunity to expatiate free o'er the entire terrain covered by this bill. Now we are at my amendment. I have put on the desk an additional amendment that would address the narrowing of the element or segment or component of the bill that deals with law enforcement. So what will happen is that this amendment should be adopted. It becomes the bill. Senator Friend has filed a kill motion. That would be the next order of

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

Floor Debate
January 29, 2008

business in my opinion,... [LB474]

SENATOR McDONALD: One minute. [LB474]

SENATOR CHAMBERS: ...unless some other kind of priority motion was offered. We might be past that stage now. But if you will adopt this amendment, it's identified by the number AM1673, we will then be focused on the language of that amendment. If we properly dispose of Senator Friend's kill motion, another amendment that I've offered would be taken up. Rather than tinker with this amendment right now that would become the bill, that subsequent amendment would be drafted after the style of this one. It would eliminate all of that amendment and rewrite it so that if you adopt that amendment you will see the language relative to the law enforcement... [LB474]

SENATOR McDONALD: Time. [LB474]

SENATOR CHAMBERS: ...and that relative to the teachers. Thank you. Madam President, I will ask for a call of the house and I will accept a machine vote. [LB474]

SENATOR McDONALD: There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB474]

CLERK: 31 ayes, 0 nays, Madam President, to place the house under call. [LB474]

SENATOR McDONALD: The house is under call. Senators, please record your presence. Those senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. [LB474]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: All senators are present or accounted for. Senator Chambers, did I hear you right; you would accept a board vote? Thank you. The question before the body is, shall AM1673 be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB474]

CLERK: 39 ayes, 0 nays, Mr. President, on adoption of Senator Chambers' amendment. [LB474]

SENATOR LANGEMEIER: AM1673 is adopted. Mr. Clerk, items for the record, and with that I raise the call. [LB474]

CLERK: Mr. President, a series of committee reports. Your Committee on Judiciary,

Floor Debate
January 29, 2008

chaired by Senator Ashford, reports LB6, LB68, LB201, LB220, LB448, LB525, LB535, LB552, LB566, LB567, and LB618 indefinitely postponed. Revenue Committee, chaired by Senator Janssen, reports LB914 to General File with amendments. The Government, Military and Veterans Affairs Committee, chaired by Senator Aguilar, reports LB761 to General File with amendments, and LB767 as indefinitely postponed. Hearing notices from Revenue Committee, Health and Human Services Committee; a series of notices from the Judiciary Committee and the Urban Affairs Committee; and a second notice from Health and Human Services. Amendments to be printed: Senator Raikes to LB235. And a motion with respect to LR231CA offered by Senator Erdman, to withdraw the resolution; that will be laid over. (Legislative Journal pages 419-426.) [LB6 LB68 LB201 LB220 LB448 LB525 LB535 LB552 LB566 LB567 LB618 LB914 LB761 LB767 LB235 LR231CA]

Mr. President, with respect to LB474, Senator Friend did have a indefinitely postpone motion filed. Senator Chambers, pursuant to Rule 6, Section 3, would have the opportunity to present his next amendment first, however. Senator Chambers, I have AM1681 in front of me. (Legislative Journal pages 426-427.) [LB474]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Chambers, you are recognized to open on AM1681. [LB474]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, if you follow me I won't have to keep repeating this, although I will if necessary. This amendment that I'm offering would replace the one we just adopted. Here is why: Senator Friend had tipped you off to the fact that there was a proposed amendment, a version of which he had read on a yellow pad, but nothing formal had been drafted and offered. I wanted to give everybody the opportunity to discuss what was in my original amendment so that we could clear that out of the way, and either get it adopted or not. Now comes this amendment, and because it changes component one or Section 1 relative to law enforcement, instead of saying strike language from the amendment we just adopted and go through that process, this that I'm offering is a rewrite. It does not change anything in Section 2 relative to the teachers. That agreement was reached. It is their language. I agreed with it. I have not altered my position. They have not altered theirs. So that language remains intact. It has not been touched, modified, or amended in any way by what I'm offering here. What I'm offering here is different when it comes to Section 1, and here is what is different. Instead of simply saying, as the amendment does which we just adopted, any disciplinary action which involves any specific act which was deemed to be in violation of or contrary to an official policy, rule, or state law. It was pointed out by Senator Pirsch that in conversations he had with police persons from Omaha, that the language would include, because of what is contained in their policies and so forth, whether shoes were shined or a uniform was properly worn, the types of things I said over and over I'm not interested in. In discussing this matter with Senator Cornett, it became clear that three areas could be specified which this bill,

Floor Debate
January 29, 2008

should it become law, will affect. The effect would be that if disciplinary action were imposed for any one of those items, that disciplinary action would be a matter of public record. It is narrowed. So here's the way the new language would read: Any sustained disciplinary action. Why sustained? To give a level of comfort to the law enforcement persons because a complain is sustained or it's not. In my view, if a complaint is not sustained there will not be disciplinary action imposed. But in working with some people who understand the mentality of law enforcement persons, I want them to have the same level of comfort that the teachers have. So it says, "Any sustained disciplinary action which involves a specific act, event, occurrence, agency policy, rule, or state law pertaining to verbal, physical, or sexual abuse." Those three areas only. If disciplinary action imposed, it's a matter of public record. Some people say, well, if it's violation of the law, let the law take care of it. No. There are areas of misconduct in policy which would also constitute a violation of law. Prosecutors do not always file charges, even when under the law they can be filed. So this language covers the waterfront in the same way that it did for teachers. Somebody had said, if there's a sexual assault that's a crime. Right. There was an officer who had picked up a woman who was a prostitute. He told her, perform oral sex on him or he would take her to jail. He had not made the calls, reporting his movements, that he should have to the dispatcher. But more than that, when she performed oral sex, he ejaculated in her mouth. She took a plastic identification card she had and deposited what he ejaculated on that card and took it to the officials as quickly thereafter as she could. The DNA nailed him. The hunted became the huntress. He was disciplined even though he would up being prosecuted. What he did clearly violated the law. So if somebody thinks that an officer who is engaged in verbal abuse of the public, as reckoned by the department for which he or she works, that's who determines; not the Legislature. If the verbal language utterance statement rises to a level worthy of disciplinary action in the mind of the agency for which that person works, that disciplinary action is a matter of public record. The same would hold true for physical abuse, sexual abuse. If somebody would ask me, well, Ernie, if a cop said to a woman, I want to screw you, is that sexual abuse or is that verbal abuse? I'd say, well, that's for the department for which he or she works to determine. We're leaving it to that department. I am not in this law changing any rule, changing any policy, altering any procedure by which officers accused of misconduct are dealt with. I'm changing nothing--nothing, nothing. This bill does not define verbal abuse which would result in disciplining an officer. That would be determined by the policies of that agency and by the appropriate official or officials who make such a determination. And if that disciplinary action is sustained, brothers, sisters, friends, enemies, and neutrals, then and only then would it become a matter of public record. I would like to see any police executive officer argue that an officer who has been disciplined for verbal abuse toward the public, physical abuse, or sexual abuse, is entitled to have that misconduct shielded. These people will have printed on their cars, to protect and serve. Does that mean to protect the public... [LB474]

SENATOR LANGEMEIER: One minute. [LB474]

Floor Debate
January 29, 2008

SENATOR CHAMBERS: ...or to protect wrongdoing officers whose own agencies have found their conduct to be inappropriate and worthy of discipline? I've tried to explain clearly what my amendatory language does. I have not covered over anything. I have not held back anything. I read the language. But any questions you have about this language or anything else I'm prepared to answer. Thank you, Mr. President. [LB474]

SENATOR LANGEMEIER: Thank you, Senator Chambers. You have heard the opening on AM1681 offered to LB474. The floor is now open for discussion. Those wishing to speak, we have Senator Friend and Fulton. Senator Friend, you're recognized. [LB474]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. And now we have the amendment and we've all at least got a chance to read it, look at it, listen to Senator Chambers communicate, you know, what the amendment was meant to do. Great. It is different. It is different than the one he...than the one we just adopted. Is it better? He would argue that it is. Section 1 of this amendment, "Any sustained disciplinary action which involves a specific act, event, occurrence, agency policy, rule, or state law pertaining to verbal, physical, or sexual abuse by:...and then it goes down through the town marshal, chief of police, and all the way down to the Parks Commission conservation officer, "or any other person with similar authority to make arrests under authority granted by the state or by any of its political subdivisions, shall be considered a public record." Well, the first thing that occurred to me, and I think that there was some discussion going on earlier about this amendment that we had not seen yet--not everybody had seen--and Senator Chambers alluded to this, that he's not changing the definition of verbal; that--if I'm mistaken I'm sure he'll correct me--that the departments will help with their guidelines to define that information, what is verbal abuse, in other words. And we had a discussion going on a little earlier about that without having any amendment out here, and how confusing that might be. Well, let me tell you why it would be a little bit confusing. How many people have stood down there by the Qwest Center on a cold evening after some game and tried to sprint across the street against the light? I have. You know what the cop said to me? Do you want to know what the police officer said to me? Hey, moron, get back on the sidewalk. And I went, oh, that's me. I'm the moron. Is that verbal abuse? What if I went to the police department right now and said, you know what, that officer called me a moron; I don't like it. I get called a moron a lot. I didn't like the fact that the officer did that. And you know what? He was right; I was being a moron. But I'm not sure he had the right to tell me that. Maybe if I went to his captain and said, you know what, he called me a moron and I don't like it, maybe the captain would say, you know what, you called Friend a moron; he is but you can't do that. Quite honestly, I don't think that should be on the public record. What if his captain didn't like him very much? What if his captain didn't like him or her very much, and said, you know what, you've called people a moron way too often when they jump off that curb. You're fired; I've had enough. This guy tries to get a job in Seward County or this guy goes out, and he or she is a halfway decent cop

Floor Debate
January 29, 2008

other than the fact that they've got a few issues with calling morons, morons. Sometimes cops do that. He tries to get another job. Guy sees this on the record and says, look, we can't...in Seward County, we can't have somebody calling one of our citizens a moron. Blackballed. I don't think it's that hard to figure out, folks. We're still changing public policy. I guess that's my point to this whole thing. Here's where I sit on this. I've read this amendment. There are probably some unintended consequences like I just brought up. Maybe those can be countered. Somebody jumps off the sidewalk and the police calls them a moron, maybe that's not verbal abuse. What if I thought it was verbal abuse? [LB474]

SENATOR LANGEMEIER: One minute. [LB474]

SENATOR FRIEND: What if the department didn't think it was verbal abuse? Where do we go from there? Here's where we go from here as far as this amendment. If you guys like it, you'll like it. If it narrows things for you, it narrows things for you. To me, keep in mind--I hope you will keep in mind--that we're still making a significant change, and we do it all the time. But we're still making a significant change to public policy--a major shift, a reform if you will. We have to decide whether this is a good idea and whether those issues that we think are fairly cloudy have been cleared up in our minds. The IPP motion stands behind it. He deserves a vote on his amendment. I talked to the Clerk about it. I agree. Let's discuss this if we'd like. I don't think it changes the big picture public policy argument here. And I think, if anything, mind you, I think it clouds...I think this amendment actually clouds it a little more than his previous amendment, than the way the bill stands right now. [LB474]

SENATOR LANGEMEIER: Time. [LB474]

SENATOR FRIEND: Thank you, Mr. President. [LB474]

SENATOR LANGEMEIER: Thank you, Senator Friend. Senator Fulton, you are recognized. [LB474]

SENATOR FULTON: Thank you, Mr. President, members of the Legislature. I wonder if Senator Chambers would yield to a question. [LB474]

SENATOR LANGEMEIER: Senator Chambers, would you yield? [LB474]

SENATOR CHAMBERS: Yes. [LB474]

SENATOR FULTON: Senator, there are a couple words that I want to ask about, and then I'll launch into the policy and allow you a chance to respond, so that's what I have in mind here. On the first page of AM1681, I noticed that the word "sustained" has been added. [LB474]

Floor Debate
January 29, 2008

SENATOR CHAMBERS: Yes. [LB474]

SENATOR FULTON: Can you explain...? You may have explained that--I apologize if I missed it--but can you explain why that's the case? [LB474]

SENATOR CHAMBERS: In police parlance, the disciplinary action apparently can be challenged. This would indicate that it has gone through the entire process and has been sustained--found to be valid. And when that point has been reached, then it becomes a matter of public record. [LB474]

SENATOR FULTON: Okay. Okay. The question I have with regard to policy here is one that I began to bring up yesterday, and I'm going to put it out and then I will...well, I will ask you a question while maintaining control of my time. The language now is specific in that this would have to be "a specific act, event, occurrence, agency policy, rule, or state law pertaining to verbal, physical, or sexual abuse by:" and what I am noticing here and what I have a concern with is that those that are listed after that colon are only law enforcement officials. Would it be accurate to say that laws pertaining to verbal, physical, or sexual abuse involving school administrators would not be public record? Could you respond to that? [LB474]

SENATOR CHAMBERS: Sure. Senator Fulton, the language relative to teachers is broader than this language. The language relative to teachers encompasses all of these things. This language restricts the type of disciplinary action against law enforcement officers to three specified areas. If anything occurs outside those areas, it is not a matter of public record. This language does not make anything cloudy. It makes it more specific than I would have done it on my own. But because these police people are worried about shined shoes and things like that, I'm limiting it to these three clear categories, and they are clear to the agency or department which will employ these people. [LB474]

SENATOR FULTON: Okay. Thank you, Senator. I'll put this in another way. If there has been sustained disciplinary action having to do with a specific act involving physical abuse by an administrator or a teacher, would that be available for public review? [LB474]

SENATOR CHAMBERS: Certainly. [LB474]

SENATOR FULTON: Okay. Through...can you explain how that would occur? Is that occurring through...? Will that occur through existing statute or will that occur through this amendment? If it's the latter, then can you explain where in the amendment this would allow that occurrence to be public? [LB474]

Floor Debate
January 29, 2008

SENATOR CHAMBERS: If you look at page 2, that relates to the language related to teachers. If you start in line 11, "any specific event, occurrence, or act which was deemed to be in violation of or contrary to school district policy, rule, or state law." Then... [LB474]

SENATOR LANGEMEIER: One minute. [LB474]

SENATOR CHAMBERS: ...that would be a matter of public record when discipline is imposed, and I know of instances where things that we're talking about here have occurred, and teachers have been disciplined, but nobody knows what the discipline was because it will not be revealed. [LB474]

SENATOR FULTON: Okay. My...okay, thank you. That does answer my question. Then another question to follow up. My curiosity here is, why can't this subsection 2 in Section 2, why can't that be applied in the same way to officers? It seems we have different...there are different sections. There is a different application. And I understand that one is more broad, one is more specific. Why have you allowed for the language that is broad to be applied to the schools while there is more specificity? And I understand the political rallies. But what...by way of policy, can you defend that? And I'll turn over the rest of my time. [LB474]

SENATOR CHAMBERS: Thank you, Senator Fulton. [LB474]

SENATOR LANGEMEIER: Seven seconds. Thank you, Senator Chambers and Senator Fulton. Senator Chambers, your light is on. You are recognized. [LB474]

SENATOR CHAMBERS: Thank you, Mr. President. You know what I'm dealing with? A moving target. Yesterday I pointed out that the language in Section 2 dealing with the teachers was the language used in Section 1 dealing with law enforcement. They were the same. Law enforcement people talked to some of the senators and pointed out--and I didn't challenge it--that based on what I said the intent was on my part, that language was too broad for law enforcement because their rules, their policies, include how the uniform is worn, whether a patrol car is maintained; in other words, the very things I said I had no interest in covering. This language was adopted for that reason, in order to make it clear in the statute that the trivial--as I consider them, comparatively speaking--the trivial matters which might result in a write-up against an officer were not what I was interested in. We're talking about making certain types of disciplinary action public. By limiting it to these three areas for the law enforcement, it takes away the arguments they had. That's why you didn't hear Senator Friend arguing at any great length. He said, if you like it, you'll vote for it otherwise. He cannot justify shielding officers who engage in this kind of conduct and have been disciplined for it. It does not specify the discipline. It does not intensify or make more harsh the discipline. I ought to teach kindergarten. I ought to. It takes patience. I'm dealing with grown people. I'm

Floor Debate
January 29, 2008

dealing with people trained in the law. I'm dealing with engineers. I'm dealing with people who work for banks. I'm dealing with people who are considered to have at least a rudimentary understanding of the English language, and I believe I speak it as well as anybody. So on the one hand, you don't like it because the language in both sections treat police and teachers the same. So I accommodate the police. Well, now I don't like it because you treat them differently. You see what I'm dealing with? Senator Fulton doesn't do that on any issue. He's got his marching orders from somebody. And contrary to what Senator Friend says, if this was not a police issue, he wouldn't be up here doing what he's doing. Consider the bills we've had that I've had to be the lone analyzer of, who pointed out flaws to such an extent that the introducers felt additional work needed to be done. And I took a long time because I was the only one speaking. Only when it's my bill do we have all these people popping up, but I will fight them off, because the bill has merit. I don't think I look bad in this discussion. I don't think I look like somebody who is incoherent, who doesn't know what he's talking about, who does not understand English. I am not somebody who presented a bill which is so convoluted and esoteric that a person reading and understanding ordinary English cannot grasp it. It's clear. As the "Bible" says in one place: so clear a fool cannot err. [LB474]

SENATOR LANGEMEIER: One minute. [LB474]

SENATOR CHAMBERS: Everybody knows what this language means. If they don't like it, that's one thing. But they need to distinguish also between existing law and my amendatory language. When it comes to the teachers, the difference between performance matters and those specific event matters where something has been done specifically that in and of itself violates the rule, regulation, or policy, and the teachers agreed with that. They don't want teachers among their number who do such things as that. And by publicizing the discipline it will help get rid of them. So that's what people keep bringing up: Well, what about this on the teachers? They are satisfied. This that I've offered with reference to the police, narrows it to three discreet items, and now that is not understood? [LB474]

SENATOR LANGEMEIER: Time. [LB474]

SENATOR CHAMBERS: Thank you, Mr. President. [LB474]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Fulton, you are recognized. [LB474]

SENATOR FULTON: Thank you, Senator Chambers. You did answer my question and whether or not I agree or not...whether or not I agree--I'm making up mind to that effect--but I asked you a question which infringed upon your time, so I'll yield you the rest of my time. [LB474]

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

Floor Debate
January 29, 2008

SENATOR LANGEMEIER: Senator Chambers, 4:40. [LB474]

SENATOR CHAMBERS: Thank you, Mr. President; thank you, Senator Fulton. I think the discussion is good. But if you read the transcript and you were not a party to the discussion, people will say, well, why did they keep asking the same thing over and over? That was discussed over and over and over and over and over. That's done when a person doesn't have a valid argument but thinks by taking a lot of time, the appearance can be created. When I argue against a bill, I'm not reading recipes or the phone book. I am dealing specifically with the language in the bill. I read what I'm dealing with. I discuss what I think is the problem, and often the introducer will see it and amend it. I've had people who had bills that I did not like who would assure me, and I would trust them, that if I would let the bill go then certain action would be following. I'd like to ask Senator Stuthman a question before he gets away. [LB474]

SENATOR LANGEMEIER: Senator Stuthman, would you yield? [LB474]

SENATOR STUTHMAN: Yes, I will. [LB474]

SENATOR CHAMBERS: Senator Stuthman, did you have a bill called, in popular parlance, a safe haven bill? [LB474]

SENATOR STUTHMAN: Yes, I have a safe haven bill. [LB474]

SENATOR CHAMBERS: And was I opposed to it, very strongly, last session and this session? [LB474]

SENATOR STUTHMAN: I would say you were opposed to it. I don't know how strongly you were opposed to it. [LB474]

SENATOR CHAMBERS: When that bill...has that bill moved from General File to Select File? [LB474]

SENATOR STUTHMAN: Yes, it has. [LB474]

SENATOR CHAMBERS: Was it in the form that would have satisfied me when it moved from General File to Select File? [LB474]

SENATOR STUTHMAN: No, not at that time. [LB474]

SENATOR CHAMBERS: So you had given me assurances, as had others who supported it, that additional work would be done by the time it came up again on Select File. Is that true? [LB474]

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

Floor Debate
January 29, 2008

SENATOR STUTHMAN: Yes, that is true. [LB474]

SENATOR CHAMBERS: And true to what I said, did I withdraw my opposition and let the bill move? [LB474]

SENATOR STUTHMAN: Yes, you have withdrawn your opposition. The bill has moved to Select File at the present time, and that's where it's at. [LB474]

SENATOR CHAMBERS: And have I told you that I will not fight against the language that has been agreed upon by the senators who were working on it? [LB474]

SENATOR STUTHMAN: Yes, you have agreed upon that. [LB474]

SENATOR CHAMBERS: Thank you, Senator. Members of the Legislature, I have let bills move that I disagreed with. If all I wanted to do is kill it, period, I could have held it and held it and held it. I work hard to try to maintain a standard of quality and excellence in the work that we do. I'm prepared to answer questions about my legislation. If I'm shown a better way to do it, I accept it. I am offering this amendment which is before you now, because it is a better way to achieve what I stated was my purpose. The amendment we adopted, at the time we adopted it, I thought was narrowly enough drawn. It did narrow the scope of what was in the green copy. As I stated, Senator Pirsch found out that certain of these minor items... [LB474]

SENATOR LANGEMEIER: One minute. [LB474]

SENATOR CHAMBERS: ...would be affected by that language. So I floated a narrowing of the language. Now it is in the amendment which is before you--three areas: physical, verbal, sexual abuse. And those would be determined by the agency itself. If the agency imposes no disciplinary action, it is not a matter of public record. If somebody calls Senator Friend a moron, and they chose not to discipline the officer, that is not a matter of public record. Thank you, Mr. President. [LB474]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Your light is on next. You are recognized. Okay, he turned his light off. Senator Ashford, you are recognized. [LB474]

SENATOR ASHFORD: Thank you, Mr. President. And I would rise in support of AM1681. Over the years, Senator Chambers has made me very mad many times, and he has challenged me, but. And certainly my first eight years here he challenged me a great deal and I learned a lot from that. But one thing that is clear to me, and that is that he works exceedingly hard everyday on language, on trying to make a bill better. He is doing that here now. I'm having a hard time...those of you who oppose the public's involvement in these kind of disciplinary proceedings should vote no. That's fine. That's

Floor Debate
January 29, 2008

certainly a valid thing to do. If you don't think the public ought to have a right to be involved in knowing about these disciplinary proceedings, then vote no. Or if you feel that the very specific acts of discipline involving teachers should not be a public matter, then vote no. But I think that's really what we're down to now, and with this amendment we have tightened the language. And I appreciate the work of the police officers who have become engaged with this bill. Had they been engaged earlier we could have thought about some language earlier. But that doesn't matter; it's done. This is the way it's done oftentimes, where a group that has an interest in an issue comes to the floor of the Legislature, and we look at the language on the floor and think about it, and either adopt it or not. It really is a matter of...another point I would just make, and that's...again Senator Harms, he makes good comments. I don't think this is so much a matter of transparency. I think what transparency means is that our...for example, our phone records--and I remember the great controversy that went on when I was in the Legislature before about turning over our phone records; Pat remembers that as Clerk, but others. And, you know, we have open hearings, we have exec sessions that are open to the press. That's transparency, it seems to me. This public disclosure of disciplinary records is a different thing. It is, in my view, it's more specific. It's more powerful. The ability of the public to know about when someone that they deal with everyday--a teacher or a doctor or a lawyer, or whomever, medical care professional, a police officer--when the agency they work for, when the department they work for disciplines that person, that's something we ought to know about. It just is. It just is. And transparency is a broader concept. Obviously we do our work in public. The public has a right to know how we vote. The public has a right to ask us how we're going to vote. That's transparency, in my view. But public disclosure of disciplinary records gets at the essence of civil service, really. I mean, we have civil service protections, and quite frankly, I support them and I've always supported them. I've supported the process of the Commission of Industrial Relations and the process of civil service and administrative hearings. But that doesn't mean that the outcome of those proceedings or those processes should not be public. I mean, it just, to me, is just...it's such a solid point that Senator Chambers is making, whatever his motivation is, and it doesn't really matter to me what his motivation is. He may have observed some instances involving school teachers. He's talked about those. That's fine. To me it's really...it is a clear case of, as a taxpayer, getting...if an agency makes its determination that someone has not followed the rules, that cannot be kept secret unless there's some national security reason or...and, my God, we've been debating in the Congress for the last two or three years about public disclosure of events taking place, arguably during a time of war, for goodness' sake. So it is an issue that the public is, I think, pretty much tied into. And my sense is they would like...if we were to ask ten people on the street, would you like to have information regarding disciplinary proceedings or not? And I think within reasonable boundaries--and I think those boundaries are there in these amendments--they would say yes. And in a free country, in a democracy, court proceedings...we talked to...the Chief Justice talked about the openness... [LB474]

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

Floor Debate
January 29, 2008

SENATOR LANGEMEIER: Time. [LB474]

SENATOR ASHFORD: ...of court proceedings. That's...oh, I didn't even get a...(laugh). [LB474]

SENATOR LANGEMEIER: Yeah. I apologize. [LB474]

SENATOR ASHFORD: I'm done. Thank you, Mr. President. [LB474]

SENATOR LANGEMEIER: Yes. Thank you, Senator Ashford. Senator Pahls, you are recognized. [LB474]

SENATOR PAHLS: Mr. Chairman and members of the committee, Senator Ashford just caught my attention, and maybe he can help me out with this. I heard him talk about attorneys and doctors. At that second it made me think, I can remember reading in the newspaper certain times throughout the year, this nurse has been penalized because she has taken some drugs, and dentists and doctors. That is recorded in the newspaper. So I'm assuming that's a disciplinary action and it's made public. The question I would like to ask Senator Ashford... [LB474]

SENATOR LANGEMEIER: Senator Ashford, would you yield? [LB474]

SENATOR ASHFORD: Yes. [LB474]

SENATOR PAHLS: Could you describe...I mean, since you brought up attorneys, is that...? If they're disciplined, is that made public? [LB474]

SENATOR ASHFORD: Yes. [LB474]

SENATOR PAHLS: Could you tell me how. [LB474]

SENATOR ASHFORD: If an attorney is suspended or certainly if their bar license is taken away or if some action is taken by the disciplinary section of the bar, those proceedings are public...or not the proceeding necessarily but the result is public and is oftentimes reported in the paper. [LB474]

SENATOR PAHLS: Okay. That's what I'm trying...I'm trying to see if...this is not limited just to the two groups of people we're talking about today, although I know this bill is. It's making me think about that. Also I think if...now, this is really maybe a stretch...I don't know if we have anybody that owns a restaurant in here, but if you have health violations I think you can see where those restaurants...I think you can look that up on the Internet. So I do see that we are being more open about some of the times certain organizations are disciplined. I don't know if hospitals are or not. I wish Senator Johnson

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

Floor Debate
January 29, 2008

was here so he could let me know. But I'm wondering how many other...if we start thinking about it. Well, let me ask Senator Stuthman a question, please. [LB474]

SENATOR LANGEMEIER: Senator Stuthman, would you yield to a question? [LB474]

SENATOR STUTHMAN: Yes. [LB474]

SENATOR PAHLS: Senator, you are a former county commissioner. [LB474]

SENATOR STUTHMAN: Yes. [LB474]

SENATOR PAHLS: In your tenure, did you ever have to--not you personally--but was anybody disciplined in the county organization? [LB474]

SENATOR STUTHMAN: During the eight years that I was a county supervisor I do not recall any time when we had to discipline anyone. [LB474]

SENATOR PAHLS: Have you ever...I mean, in your experiences, have you ever heard of a county person who worked for the county being disciplined? [LB474]

SENATOR STUTHMAN: No, I do not recall. [LB474]

SENATOR PAHLS: Okay. Thank you. Thank you. I was just wondering if their discipline, if that is also public record. It is just making me think about maybe there are groups out there that actually are disciplined and people do know about that. That's just...when Senator Ashford brought those two groups up, the medical and the attorneys, it just made me think about that. Thank you. [LB474]

SENATOR LANGEMEIER: Thank you, Senator Pahls. Senator Ashford, you are recognized. [LB474]

SENATOR ASHFORD: Are there any other lights on, Mr. President? [LB474]

SENATOR LANGEMEIER: You are the last light. [LB474]

SENATOR ASHFORD: Then I would waive. [LB474]

SENATOR LANGEMEIER: Senator Ashford waives his light. Seeing no others wishing to speak, Senator Chambers, you are recognized to close on AM1681. [LB474]

SENATOR CHAMBERS: Mr. President and members of the Legislature, if this amendment is adopted, it then is the bill. There have been changes to which I have agreed in trying to accommodate those who are affected by this bill. We all know that

Floor Debate
January 29, 2008

when you're dealing with legislation there is a weighing and a balancing which occurs. Even on this floor when we talked about the motorcycle helmet bill, some argued that you weigh the rights of the individual against what's best for society, and they came down on the side of societal interests. In this instance I can readily say that I believe people don't want anybody to know when they've done something wrong and been brought to book for it. That doesn't mean we should not do it. They are on the public payroll. Teachers occupy a unique position, in that they have control over people's children for many hours of the day. The police have a contact and a dealing with the public different from anybody in the society, even judges. Before there can be a judicial execution, there has to be due process. On the street, police can execute summary justice, as they see it, and take a life. Nobody in society can do that, other than the police. To suggest that their role in society is the same as everybody else's is preposterous. To suggest that what teachers do is the same as everybody else's is preposterous. When you flip that coin and you're talking about giving them money and other benefits, the argument always is made, look what teachers do which nobody else does; look how much time they spend with people's children. So I'm not even going to go deeper into that. If a day-care operator is suspended, that's in the paper. If a day care is shut down, that's in the paper. If a nursing home or these facilities violate rules and regulations, it's in the paper, notifying the public what it is you're dealing with here. Soldiers who have charges brought against them have that publicized even before they're tried, even before they're convicted. And even if they are found innocent, all of that has been in the paper. Politicians, whether guilty of an accusation or not, will have it emblazoned in the newspapers, and we know that's the way it's going to be. So for these grown people in the Legislature to suddenly give the impression they don't understand these things is what is difficult to overcome and address by means of rational argument, because the positions, with all due respect, are not rational in the sense of flowing from that which is reasonable, logical, and sensible. I will readily admit that all manner of hypothetical can be offered. You know why they have to give hypotheticals? Because if they look at the real world, they have no argument. And as we proceed this session, I'm going to see how many other senators' bills, which do things far more consequential than this one, will generate this much debate on the part of the number of people as this one. We all know the truth here. I know it and I'll tell it, and others will tell it to me off the mike. One bill I had was opposed by some sheriffs because they thought I was trying to create a job for myself in the Ombudsman's Office. That turned out to be what their opposition really was. That's why they had it. You think I want a job like that? If I did I'd say it. I hope that you will adopt this amendment. Then Senator Friend's kill motion will come up. Mr. President, I will ask for a call of the house and I will accept a machine vote initially. [LB474]

SENATOR LANGEMEIER: Thank you, Senator Chambers. There has been a request to put the house under call. The question is, shall the house go under call? All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk. [LB474]

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

Floor Debate
January 29, 2008

CLERK: 32 ayes, 0 nays, Mr. President, to place the house under call. [LB474]

SENATOR LANGEMEIER: The house is under call. Senators, please record your presence. Those senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senators Lathrop, McDonald, and Raikes, please return to the Chamber. The house is under call. All senators are present or accounted for. Senator Chambers has authorized a board vote. The question before the body is, shall AM1681 be adopted to LB474? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB474]

CLERK: 31 ayes, 1 nay, Mr. President, on the adoption of Senator Chambers' amendment. [LB474]

SENATOR LANGEMEIER: AM1681 is adopted. With that I raise the call. Mr. Clerk. [LB474]

CLERK: Mr. President, Senator Friend would move to indefinitely postpone LB474. Senator Chambers, you would have the option to lay the bill over. [LB474]

SENATOR LANGEMEIER: You wish to take it up. Senator Friend, you are recognized to open on your motion to indefinitely postpone. [LB474]

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. You are probably going to find this a little hard to believe, but issues like this, discussionwise, while they wear on you and you say, how much more can actually be said when we're not repeating ourselves, or Senator Chambers isn't forced into a situation where he feels like he's answering the same question over and over again. Let's forget about the fact for a second that the person asking the question might not have got the right answer, or might not have got a response at all--a response that didn't deal with the question that was asked. Let's set all those aside for a second. This could go on and on and on. You could take 60 days to talk about this. Proponents have made this point, and it's a legitimate one or at least it's valid. I don't agree with it but it's valid. They'll say, this is...what could possibly be wrong with providing this transparency? What could possibly be wrong with providing these type of public records to...I just got an e-mail from a person who says, 99 percent of the time I agree with you; this time, you know, we need these type of things to hold teachers accountable, blah, blah, blah. Let's not lose the focus, okay? The argument is, for the proponents, what could possibly be wrong with this type of transparency? What could possibly be wrong with taking law enforcement officials, teachers, and helping them enforce that public trust? Well, my answer is this. There is a limited right to privacy in this country. Whether you work in a public job or not, it's limited. That discussion itself could go on for a 60-day session. We could talk about that over and over again everyday till everybody is so sick of it, they're going, let's move

Floor Debate
January 29, 2008

on to my bill, let's move on to my bill. I don't want to talk about this bill. My bill is right after this. Or my bill is two days down the road and Ernie might get mad; he might kill my bill. We can talk about this for 60 days and not come to a good, fluid resolution, I believe, because there is...a lot of folks would call it a fundamental right to privacy; I call it a limited right to privacy. Not just for folks in the private sector; folks in the public sector too. When it comes to personnel records, here is common public policy. And I mentioned earlier, other states that are struggling with this issue--not just California that I mentioned yesterday, but other states that I mentioned today--Wisconsin, Virginia, Massachusetts. I can go on and on and on. This is not settled. We're going to settle it in eight hours, six hours? How long have we talked about it? The proponent comes up and says...proponents come up and say, I don't understand where the backlash comes from; I don't get it. This is so clear, like the nose on our face, like the board out in front of us; it's so clear. No, it's not. Absolutely on the contrary, it is not clear. And other states and the federal government approved it. You know, the Freedom of Information Act does not say that you have to go out and give these personnel records out. It doesn't matter whether it's a private or a public company or a firm or an organization. That's not what it says. This to me is a reality. There are no teachers...I have never met a teacher that wants another abusive teacher to permeate his or her ranks--never met one. I know an awful lot of cops. One person, one of those cops, I respected--he passed away a couple years ago--I respected him as much as any man I've ever known. I respect my father, I respect a lot of people out on this floor, I respect a lot of people in my life. I respected him more than anybody. And you know what? I had a conversation with him one time, and he said, not necessarily about this subject matter, but he said--we were talking about a guy--and he said, that guy is a bad cop. This is a reality. Cops do not want bad cops permeating their ranks. It's the most difficult job; one of the most difficult jobs I've ever seen anybody do. It jades people. It makes them sour. You show me a cop that's been in the business for 26 years, 25 years, I'm going to show you a guy or a gal that's seen an awful lot--an awful lot of pain, some good things, a lot of difficult things that that person has seen. Does that justify them doing some of the things that some of those bad cops do? Absolutely not. But I'm here to tell you, based on my experiences, the knowledge that I have, the trust I have in a profession that promotes that type of ideal, the good ones don't want the bad ones out there. Do we need this bill? Rhetorical question, of course. I mean, everybody can stand up and we can talk about that now. I'm asking rhetorically, do we need this bill? Can we go to a study resolution to analyze what others have done? Do we work in a vacuum? Do we live in a vacuum here in Nebraska? I don't think we do. And I think that I've raised enough concern about enough folks not realizing what the best public policy is in these circumstances around this nation. To me it's a rush to judgment, in a way. It's a rush--and I've mentioned this before on the record--it's a rush to penalize. It's a rush to provide punitive measures to an organization, organizations, that a lot of us feel cannot police themselves or manage themselves. So we need to fly in the face of that public policy and change things. I've heard a couple of anecdotal arguments by Senator Chambers out here. I haven't heard anything from anybody else about something really, really egregious that a teacher has

Floor Debate
January 29, 2008

done. I know they're out there--something really, really egregious that a teacher has done and actually got away with. Now I know those anecdotal and empirical pieces of information are out there. But it would lead me to believe that if there was criminal behavior, sexual abuse, criminal behavior in regard to physical abuse, criminal behavior in regard to verbal abuse. I've seen plenty of cops' and teachers' names that show up in the paper after something like that happened. Let's put it this way: I considered last night maybe we give, you know, a normal up and down vote on LB474. Senator Chambers may get that yet. I believe--and I can sum it up this way--I believe this is unsettled public policy. Not only is it unsettled in Nebraska, because we just aren't having this discussion. Maybe Senator Chambers has been having this discussion within Judiciary committees for years. This Legislature just began, and for all intents and purposes began on Monday. To sum up, this is unsettled public policy. Are there other things? Things that I'm carrying... [LB474]

SENATOR LANGEMEIER: One minute. [LB474]

SENATOR FRIEND: ...and some of you folks are carrying that are unsettled public policy? Absolutely. We're going to talk about that. Some unsettled public policy can be settled and everybody would agree with it. Some not. I will accept the ramifications of unsettled public policy that I have, that I'm trying to jam through this Legislature. I'll accept that. But there's one thing that's important to note, and I think Senator Chambers and others out here would realize that. I said it yesterday. I have no bill. I have no agenda. I have no item that will deter me from doing what I think is the right thing to do in a public policy manner. And if there are ramifications later on, I'll deal with it. It doesn't mean I don't want some of my bills to pass. It means I'll deal with it. I think that we should move on. I think this is a study item. And I think LB474, in the end, should be indefinitely postponed. Thank you, Mr. President. [LB474]

SENATOR LANGEMEIER: Thank you, Senator Friend. You have heard the opening on the motion to indefinitely postpone. There are lights on but pursuant to Rule 7, Section 4, the primary introducer will be recognized next after the introduction. Senator Chambers, you are recognized. [LB474]

SENATOR CHAMBERS: Mr. President, members of the Legislature, the role of a legislative body is to settle public policy. We establish that policy. The debate on the part of Senator Friend and others who might have questions has not raised anything of a substantive nature which indicates that this bill is bad public policy. They want to continue ignoring what the language of the bill is. Senator Friend said this bill is punitive. No, it's not. The punishment is imposed by the agency for which the malefactor works. The Legislature does not impose any punishment. This legislation does not prescribe a punishment. It does not tell the agency involved how to conduct hearings or anything else. It says something which is so simple, is so simple, in fact, that a fool cannot err. What does it say, simply? With the police, if disciplinary action is imposed, a sustained

Floor Debate
January 29, 2008

disciplinary action in the realms of verbal, physical, or sexual abuse, that disciplinary action is made public. Who put a gun to a cop's head and made him perform an act of sexual abuse or physical abuse of verbal abuse? These are supposed to be professionals, and Senator Friend lauds their professionalism. Police are held to a higher standard than the ordinary citizen, just as lawyers and judges and teachers are. They're accorded a level of trust which places a higher duty on them, greater culpability when they violate that duty and violate that trust. We're not defining the violation. We're saying that when it is determined by those in that profession or activity who are able to make judgments, when they make such a judgment it's to be public. You know what the public can say if the bill is killed, as Senator Friend wants to happen? Why doesn't the Legislature think that sexual abuse determined by the officer's agency ought to be hidden from the public? Why does Senator Friend want to protect police who engage in physical abuse? They'll say because his family members are cops. He knows that and I know it. And it was not too long ago that the cop forced this woman to perform oral sex that I'm talking about, and people know that. Senator Friend doesn't think that ought to be made known to the public. You're punishing him in a way that Senator Friend thinks is unfair because he misused his position and his authority as pointed out by the judge when he finally went to trial, to force a vulnerable woman to perform oral sex on him under the threat of being taken to jail. And Senator Friend thinks we are being punitive if that ought to be made public. How disgusting would it be if the Legislature went on record saying, that is the position of this Legislature; that is the public policy of this state; these cops should be protected... [LB474]

SENATOR LANGEMEIER: One minute. [LB474]

SENATOR CHAMBERS: ...when they have voluntarily done wrong and been disciplined by their own agency. That's the simple approach that this bill takes. The public has a right to know when officers have been disciplined for engaging in conduct of a very unacceptable nature. Thank you, Mr. President. [LB474]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Ashford, you are recognized. [LB474]

SENATOR ASHFORD: Thank you, Mr. President. Hopefully we can get to a vote before lunch. And just very briefly and then I will sit down, but I think it's important to clarify one last time the position of the Judiciary Committee in this matter. And I realize there was one opponent, but I think I can safely say that what we were putting before this body was an idea. And the idea is, can we, in these important public positions, whether it's police or teachers, like lawyers, doctors--Senator Pahls is correct, there are many other professions which the actions of agencies involved with those professions are made public--should the decision of the agency be made public? Should the decision of the police force be made public if it involves specific acts of...violations, which Senator Chambers has described? Should the final decision of an employer of a teacher be

Floor Debate
January 29, 2008

made public? And I think, at least in my case, in talking to my colleagues who supported this bill, its advancement to the floor was a very, very simple idea. Why...why should those actions by the institution itself, whether it's the police force or the school or the administration of a school, why under any possible reason should those particular decisions not be made public? And I think our committee was...couldn't find one, quite frankly; couldn't find a reason. The issue here is not Senator Chambers' motivation. The issue here is not specific acts of police actions or teacher actions. The issue is, when we come right down to it, is what is it about police, what is it about teachers, such important groups in our society, that would make actions taken in regards to their activities be immune from public disclosure? And I can't...I can't find one. For the most part and 99.9 percent of the time, and maybe Senator Chambers and I disagree a bit on this, police do a heck of a job; teachers do a heck of a job. I worked with the Omaha police division as executive director of the OHA, every day, and without them I think we would have been in dire straits without their support. So in the end I think we have, as a committee, brought to you an idea which is powerful, credible, important. And the teachers, the police have come to us, to this body with language--it would have been nice to have had it before now--but they have come to us with language which in their minds make it more fair. So by putting this language in there, I guess the question becomes even more acute. Why would we not, following their language that they've given to us, why would we not make actions of the institution it...institutional actions, immune from public disclosure? I...you know, I don't know what it is, and each of us will have to make that decision. But with that I certainly would urge that we vote down this motion; we move the bill to Select File, hopefully; and if there is additional language changes, we can work on it and go from there as we do on most bills here. Thank you. [LB474]

SENATOR LANGEMEIER: Thank you, Senator Ashford. There are no other lights on. Senator Friend, you are recognized to close on your motion to indefinitely postpone. [LB474]

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. We've all heard the adage that a good attorney can argue both sides of any issue, right? I think they teach you that in law school right away. Grab an issue. We don't care what it is. Abortion, capital punishment--name it. Attorney, you will argue both sides of this right now. Figure it out. Make good arguments on both ends of the spectrum. I think it's pretty clear as a transition, I think it's pretty clear, based on Senator Ashford, Senator Chambers, others of you that have spoken as well as you have about this issue, that it's not a trick or it's not an assignment. There are two sides to this issue. It's clear. I think we've established that. Finally, what I wanted to establish or leave you with, I guess, is that I don't throw indefinitely postpone motions up for giggles or laughs. I feel strongly that this is public policy that sends us into very strange, vague, and uncharted waters. I think the amendment that you all...you notice I voted no on that last amendment. I think that amendment is more vague than the previous amendment that Senator Chambers

Floor Debate
January 29, 2008

had up. Verbal and physical abuse--verbal and physical abuse. There's nothing else in life. Verbal and physical encompasses everything. Those two items are so vague...okay, and he says, oh, how could you vote against the...you're promoting the idea that sexual abuse should occur. That's nonsense. It's absolutely ridiculous, and Senator Chambers knows it and he's playing to the senses. I understand that. I've done it too. It's nonsense. I don't want a cop or a teacher as a sexual abuser. They should be...same with a priest and everybody else. They should be prosecuted to the fullest extent of the law, and they shouldn't be allowed to perform the duties they're performing. It goes without saying. But what I would say, finally, is that while we know that there are two sides to this discussion, and they're both legitimate; it's not an act, it's not a play, it's not an attorney trying to force something in on one side or the other no matter what they really felt in their mind. It's real. I get that. The divide is real. Let's find out where the divide is. I don't believe we need this legislation. And at the very least, I believe this is something that we can go through an interim and investigate and study. The proponents have not told me one time...I brought up the idea of other states working through these processes, and I was playfully lambasted for it. I don't think we can ignore it. We don't know what this will do here. There are unintended consequences. I think the IPP motion is legitimate. I believe in it. I believe this is an issue that can be studied, and I believe it's cloudy enough...cloudy enough to raise enough doubt and confusion in everybody's mind out here as to what this is going to do, to move on and move on to a more productive discussion later on, possibly in an interim study format. I would like to see what the university says about it. [LB474]

SENATOR LANGEMEIER: One minute. [LB474]

SENATOR FRIEND: I believe, in a lot of ways, like I said from the outset, you feel like we've exhausted everything here. We have not. This could go on a long time. I don't think it's a slam-dunk. And again, my respect for Senator Ashford. I hope he understands that, based on all the things that have happened in the last couple days. It's unquestioned. I didn't even address it because he knows I respect him, and so does Senator Chambers and all the others. I hope you guys understand that. But the bottom line is, there is a discussion here that needs to be rectified, and I don't think we have. I'd like to see it go away. I would ask for your vote. Thank you, Mr. President. [LB474]

SENATOR LANGEMEIER: Thank...Senator Friend, for what purpose do you rise?
[LB474]

SENATOR FRIEND: Mr. President, I would like a call of the house. [LB474]

SENATOR LANGEMEIER: Thank you. There has been a request to put the house under call. The question is, shall the house go under call? All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk. [LB474]

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

Floor Debate
January 29, 2008

CLERK: 34 ayes, 0 nays, Mr. President, to place the house under call. [LB474]

SENATOR LANGEMEIER: The house is under call. Senators, please record your presence. Those senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Kruse, please return to the Chamber. The house is under call. Senator Friend, how do you wish to proceed when we're all present and accounted for? [LB474]

SENATOR FRIEND: A board vote would be fine. [LB474]

SENATOR LANGEMEIER: Thank you. All members are present or accounted for. The question before the body is, shall LB474 be indefinitely postponed? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB474]

CLERK: 22 ayes, 17 nays, on the motion to indefinitely postpone, Mr. President. [LB474]

SENATOR LANGEMEIER: LB474 is indefinitely postponed. Mr. Clerk, for a motion. [LB474]

CLERK: May I read some items, Mr. President?

SENATOR LANGEMEIER: Items for the record. With that I raise the call.

CLERK: Your Committee on Judiciary, chaired by Senator Ashford, reports LB20 to General File; LB585, General File; LB624, General File; LB533, General File with amendments; and LB257 indefinitely postponed. General Affairs Committee, chaired by Senator McDonald, reports LB760 to General File with amendments. I also have a confirmation hearing report from General Affairs. Notice of hearings from the Retirement Systems Committee; all those signed by Senator Synowiecki. A series of adds: Senator Aguilar would like to add his name to LB983; Senator Avery, LB1013; Senator Aguilar, LB1107. And I have a priority motion, Mr. President...oh, an announcement, excuse me. The Education Committee will meet in Executive Session in Room 1126 upon recess. (Legislative Journal pages 427-428.) [LB20 LB585 LB624 LB533 LB257 LB760 LB983 LB1013 LB1107]

Senator Flood would move to adjourn until Wednesday morning, January 30, at 9:00 a.m.

SENATOR LANGEMEIER: You have heard the motion to adjourn until Wednesday, January 30, at 9 a.m. All those in favor say aye. All those opposed say nay. The ayes

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

Floor Debate
January 29, 2008

have it. We are adjourned.