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Transcriber's Office

Floor Debate  
February 22, 2008

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SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for this the twenty-ninth day of the One Hundredth Legislature, Second Session. Our chaplain for today is Pastor Mary Beth Cross, from New England Congregational, United Church of Christ, Stanton, Nebraska, Senator Rogert's district. Would you please rise.

PASTOR CROSS: (Prayer offered.)

SENATOR LANGEMEIER: Thank you. I call to order the twenty-ninth 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 to the Journal?

CLERK: I have no corrections, Mr. President.

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

CLERK: There are, Mr. President. I might indicate Banking Committee will meet immediately under the south balcony; Banking Committee, immediately, south balcony. Revenue will meet at 12:45 p.m. today in Room 1524. And Transportation Committee will meet at 9:15 a.m., this morning, under the north balcony. Mr. President, priority bill designations: LB853, one of the Banking, Commerce and Insurance Committee bills...I'm sorry, that's Senator Pahls' personal priority bill; Urban Affairs Committee, LB1096 and LB1072; Senator Karpisek, LB844; Senator Ashford, as Chair of the Judiciary Committee, LB1014 and LR4CA; Senator Hudkins, LB777; Senator Loudon, LB1068; and Natural Resources Committee, LB924; as well as Senator Dubas, LB830; and Senator Friend, LB963. Those are priority bill designations as of this morning, Mr. President. I have the withdrawal of a gubernatorial appointment letter from Governor

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Heineman. Lobby report for this week. And a series of reports received in the office that will be available for member review. And that's all that I have, Mr. President. (Legislative Journal pages 659-661.) [LB853 LB1096 LB1072 LB844 LB1014 LR4CA LB777 LB1068 LB924 LB830 LB963]

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

CLERK: Mr. President, the first report this morning, Senator Aguilar, as Chair of the Government Committee, would report on two appointments to the State Emergency Response Commission.

SENATOR LANGEMEIER: Senator Aguilar, you're recognized to open on the confirmation report.

SENATOR AGUILAR: Thank you, Mr. President and members. We had a hearing February 13 for these two appointments from the Governor. One of them is Mark Graf to the State Emergency Response Commission. The other one was Keith Deiml, also of the same commission. Both of them showed up for the hearings and answered questions quite readily. I think they both are excellent candidates for this position and I recommend approval by this body for their confirmation. Thank you, Mr. President.

SENATOR LANGEMEIER: Thank you, Senator Aguilar. You have heard the opening on the first of three confirmation reports offered by the Government, Military and Veterans Affairs Committee. The floor is open for discussion. Seeing no lights on, Senator Aguilar is recognized to close. He waives closing. The question before the body is, shall the confirmation report offered by the Government, Military and Veterans Affairs Committee be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wished to? Record, Mr. Clerk.

CLERK: 26 ayes, 0 nays, Mr. President, on the adoption of the confirmation report.

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

CLERK: Mr. President, a second report from the Government, Military and Veterans Affairs Committee involves the appointment of Gregory Osborn to the State Personnel Board.

SENATOR LANGEMEIER: Senator Aguilar, you're recognized to open on the confirmation report.

SENATOR AGUILAR: Thank you, Mr. President. We also heard a hearing...had a hearing date of February 7 of this year on Gregory Osborn to the State Personnel

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Board. Mr. Osborn was there, answered questions quite readily, and was favored by the committee on a vote of 7-0. Recommend to the body his approval and confirmation to the State Personnel Board. Thank you, Mr. President.

SENATOR LANGEMEIER: Thank you, Senator Aguilar. You have heard the opening on the second confirmation report offered by Government, Military and Veterans Affairs Committee. The floor is now open for discussion. Seeing no one wishing to speak, Senator Aguilar is recognized. He waives closing. The question before the body is, shall the second confirmation report offered by Government, Military and Veterans Affairs Committee be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk.

CLERK: 25 ayes, 0 nays, Mr. President, on adoption of the confirmation report.

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

CLERK: Third report by the Government Committee, chaired by Senator Aguilar, Mr. President, involves the appointment of Richard Nelson to the Accountability and Disclosure Commission.

SENATOR LANGEMEIER: Senator Aguilar, you are recognized to open on the third confirmation report.

SENATOR AGUILAR: Thank you, Mr. President. Richard Nelson is an appointment by the Secretary of State to the Nebraska Accountability and Disclosure Commission. We had a hearing on the date of February 7. And again we had an approval vote of 7-0, and I recommend approval...confirmation of this appointment. Thank you, Mr. President.

SENATOR LANGEMEIER: Thank you, Senator Aguilar. You have heard the opening on the third confirmation report offered by Government, Military and Veterans Committee. The floor is now open for discussion. Seeing no lights on, Senator Aguilar waives closing. The question before the body is, shall the third confirmation report offered by the Government, Military and Veterans Affairs Committee be adopted? All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 32 ayes, 0 nays, Mr. President, on adoption of the confirmation report.

SENATOR LANGEMEIER: Thank you. (Visitors introduced.) Continuing on, on today's agenda, we go to Final Reading, LB395. [LB395]

CLERK: Mr. President, with respect to LB395, I do have a series of motions. Senator Erdman, I understand, Senator, you at this time want to withdraw AM1907. Is that accurate? [LB395]

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SENATOR ERDMAN: AM1907 was drafted to the original Final Reading, so that needs to be withdrawn. [LB395]

CLERK: Thank you. [LB395]

SENATOR LANGEMEIER: It is withdrawn. [LB395]

CLERK: Mr. President, Senator Erdman would move to return the bill for a specific amendment, AM1914. (Legislative Journal page 623.) [LB395]

SENATOR LANGEMEIER: Senator Erdman, you are recognized to open on your motion to return, on AM1914. [LB395]

SENATOR ERDMAN: Thank you, Mr. President and members of the Legislature. I offer this small harmonizing amendment to Senator Johnson's bill to accomplish what it is that he's proposing. Senator Johnson, in LB395, eliminates local control with his bill. It removes the ability for communities and businesses to have a say in their public policy for their community, and therefore preempting local law to the extent that it's not more restrictive than the proposed language of LB395. What AM1914 does is it specifically states that "The Nebraska Clean Indoor Air Act preempts any smoking ban ordinance, resolution, regulation, or legislation of a political subdivision, and any ordinance, resolution, or other regulation or legislation enacted by a political subdivision prior to the operative date of this act is null and void." So it does two things. It technically does what LB395 already does, and that is that it clearly states that it takes care of any of those bans that are currently out there--Lincoln, Omaha, or potentially any other ones that may pass. It also does another thing, and that is, as we go forward, it ensures that the public policy of the state of Nebraska in this area is set by the Nebraska Legislature. Now the logic behind that is, is that we want a level playing field. We want to ensure that we don't have one community be more restricted than another community, such as the argument from the representatives in places that are in Lincoln; that the communities outside of them have an advantage because the law is too restrictive upon them, and, therefore, it drives citizens out of their community to other communities to partake in nonrequired activities, such as dining out. However, under LB395, it doesn't completely ban smoking in all places throughout the state. For example, you can have 20 percent of your hotel rooms be smoking rooms. That could be subject to a local ordinance to completely ban smoking in those hotels. And then in a few years what you would have is that you'd have the hotel association standing here instead of the restaurant association, saying you need to help us because we have an unfair advantage to getting smokers to come stay in our place, so please change the state law to fix it. I think we should avoid that discussion. I think if we're going to go down the path of saying to local governments that LB395 is the response to what you've asked for in some areas or is the response to what you've objected to in other areas, it's

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irregardless. This is a state law; it will govern in this manner. The political subdivisions of the state were created by the state. We grant them authority. The legislation that we pass in the Nebraska Legislature enables them to do things, otherwise they're prohibited. What this amendment does is clarify that we don't go back to the discussion that we're currently having throughout the state, and that is that some are more restrictive, others are less restrictive. We do what Senator Johnson wants, we create a level playing field, because that's what I'm told this bill does. And if that's what our goal is, then let's actually accomplish it. Now I've heard some of you come up to me and say, you know, I can't support your amendment because it takes away local control. Well, then don't support LB395. Senator Avery has got me on his computer, so...turn his volume off. But if you want to do what LB395 does, then do it right. Step out there and say we are going to take away this authority from you. It is realistic to assume that communities will then push the next envelope to get to the next goal, and that is a further restriction of what's in LB395, and then they'll go to the next step. And whether they do that or not is not my problem. In fact, I think that's fine under current law. If the city of Lincoln wants to ban smoking, go for it. The city of Omaha, as crazy as they've done it, wants to do what they've done? Congratulations, those of you who live in Omaha; those are the people you've elected. That's the decision that they've made on your behalf. But if you're going to ask the state to set the policy, then I think the state should reserve its right to set that policy now and into the future. That's what the amendment does. It preempts local ordinances, just as LB395 does, but it does it beyond the scope of LB395 to ensure that we as state lawmakers get to make the decision, because that's what we're being asked to do under LB395 by Senator Johnson. I have no illusions about the wild success of this amendment, but I do think that it's appropriate for this discussion, at least a rationale as to why we don't want a level playing field. Because without this amendment, you don't have a level playing field. Mr. President, how much time do I have left? [LB395]

SENATOR LANGEMEIER: 4:56. [LB395]

SENATOR ERDMAN: Senator Johnson, I have about four and a half minutes. Would you care to utilize some of that time? I yield my time to Senator Johnson. [LB395]

SENATOR LANGEMEIER: Senator Johnson, 4:40. [LB395]

SENATOR JOHNSON: Thank you, Senator Erdman. Appreciate this and it is a way to make better use of our time. And the...I guess the best thing to do is to say this, is that, first of all, I am not an attorney and am not skilled in these kind of legal matters. Therefore, what I did when I heard of this resolution...or amendment is to turn to my excellent legal staff in our office. And what they found in a review of this and the Nebraska preemption of local power is this: In a nutshell, what the Nebraska law says is that state law sets a floor for uniformity that applies across the state. This is, in essence, what LB395 does. Nebraska needs a uniform state law. Local cities and municipalities

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can enact stronger and more extensive laws to protect the public, in and as long as they are not inconsistent with the state law. Local cities can regulate smoking in outdoor areas such as parks and at football games. Therefore, I would urge you not to adopt this amendment which will basically tie the hands of local government in regard to other state laws which may be necessary. Therefore, it would not be our desire or my desire to invalidate more restrictive ordinances that subdivisions already have adopted. Therefore, Senator Erdman, I would respectfully ask that we do not adopt this motion to return to Select File. It would be my desire to achieve Final Reading of this bill this morning, in its current form and without further amendments. Thank you for your time, Senator Erdman. [LB395]

SENATOR LANGEMEIER: Thank you, Senators Johnson and Erdman. The floor is now open. You have heard the opening on the motion to return for a specific amendment. The floor is now open for discussion. Those wishing to speak: Senator Preister, Johnson, Chambers. Senator Preister, you are recognized. [LB395]

SENATOR PREISTER: Thank you, Honorable President, friends all, and frog in my throat too. I rise to speak on topic and then to take a moment of personal privilege to give you an announcement. I'm not going to support the motion to return, which is not likely a surprise to Senator Erdman or to anyone else, but I think the bill is in the form that I would like to see it pass, and Senator Johnson and many others as well. It's not what everybody wants, but I think it's important for the safety, the protection of workers, and the people of the state of Nebraska. I think it's long overdue. As someone who served in this Chamber when people actually smoked right in here when I came here 16 years ago, and Senator Lynch and Senator Chambers and I got that stopped that year, and then we worked for a long time to get it stopped out in the Rotunda and in areas where students would frequent. We have come some distance from there. This is another step in a long process of helping to protect the public. So I support what Senator Johnson is doing and I support LB395 in its current form. Having said that, I would like to let you all know that across the hall in the Warner Legislative Chamber we are currently conducting a wind working group. There are approximately 70 citizens from around the state that are over there listening to a national renewable energy lab representative, Larry Flowers, give information about wind power and the potential economic development and advantages of that in Nebraska, some of which is already here, more of which we hope to implement. So if you would like to stop in, it will be going on for most of the day. It will give you a chance, if you have not had the opportunity to see the wonderful Senate Chamber that that is. This was the House Chamber. That was the Senate Chamber. Ornate. We implemented some electronic updates in the room so it can be used for educational purposes, and it has been a true gem for the state. It's being used for that public educational purpose today, and I would certainly invite any of you to go over to...particularly those on the Natural Resources Committee who are working on renewable and other energy issues. With that, I thank you for that time in giving some information. [LB395]

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SENATOR LANGEMEIER: Thank you, Senator Preister. Senator Chambers, you are recognized. [LB395]

SENATOR CHAMBERS: Mr. President, members of the Legislature, when the state, in general, enacts a statute that is of the nature of LB395, that enactment is a floor, not a ceiling. It says that no political subdivision can enact an ordinance, rule or regulation which is less restrictive than the state enactment. But it is allowed to enact one which is more restrictive, especially when you're dealing with the health and welfare of the citizens. If a locale feels that in order for its citizens to be protected adequately, in line with the spirit of the state legislation, it has to go beyond that, that locale generally is allowed to do so. As with carrying concealed guns, cities cannot offer anything weaker. Now, when you deal with the U.S. Constitution, which the Attorney General does not seem to understand, which the Chief Justice of the Nebraska Supreme Court does not seem to understand, the enactments found in the U.S. Constitution are for the purpose of showing a level below which nothing can fall. It sets, in other words, a minimum standard. Any state is allowed, pursuant to the U.S. Constitution, to enact greater protections of and for citizens and their rights than those contained in the U.S. Constitution. Therefore, when the Nebraska Supreme Court took the language in Article I, Section 9, of the Nebraska Constitution, "Parson" Carlson, which mirrors the language in the Eighth Amendment to the U.S. Constitution, the Nebraska Supreme Court can construe those words to provide greater protection for citizens than the U.S. Supreme Court has said the Eighth Amendment to the U.S. Constitution provides. Mr. Bruning, the Attorney General, I presume is a lawyer. But it demonstrates that, unlike a barber, a lawyer, once admitted to the craft, does not have to be competent. If, on the other hand, you're a barber and you have great skill when you first enter the trade, as demonstrated by your ability to pass the practical exam, if you slip up, then that offense carries its own punishment. You will not get customers. Once a lawyer is ensconced, that lawyer can be as incompetent as Mr. Bruning has shown himself to be, remain the Attorney General of the state, remain a lawyer in good standing. You can show yourself as incompetent in construing the law as Chief Justice--what's his name?--Heavican, Mike Heavican. Now if I had said county attorney, I would have remembered, because those guys are supposed to have a very narrow view. If I had said U.S. attorney, I would have remembered Heavican because they have blinders even narrower than those of a local county attorney. He forgets that he is a judge now. He is not trying to win at all costs. He should manifest what is called a judicial temperament. He should realize that the world... [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

SENATOR CHAMBERS: ...in which he operates now...did you say time? [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

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SENATOR CHAMBERS: The world in which he operates is broader. But so that it will not be lost what my purpose in standing at this point originally was for, I oppose Senator Erdman's amendment and I'm sure it doesn't surprise him, but I give him credit for being a good protege. He knows now how to use these opportunities to make a point even when he knows he may not prevail. So I'm going to give him an A for being a good student, and he can give me an A for being a good instructor. Thank you, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Chambers. (Doctor of the day introduced.) Mr. Clerk, for an announcement. [LB395]

CLERK: Mr. President, the Retirement Committee will meet in Exec Session in Room 2022 now; Retirement, 2022. [LB395]

SENATOR LANGEMEIER: Thank you. Returning to discussion on the motion to return AM1914, Senator Chambers, you are recognized, followed by Senator Erdman. [LB395]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, LB395 is a good bill. Much work has been done on it. There has been much debate, discussion, and attempts to modify the bill. Some of those attempts have been successful; others not. The bill, in its present form, I believe achieves a very worthwhile and even noble purpose. It aims directly at protecting, to the extent that legislation can, the health of citizens, shielding them from exposure to toxins which ultimately can result in death. There are children who accompany their parents to various locations where smoking currently is allowed. Those children have no say-so as to whether they will enter that place. There are people who, due to their economic circumstances, must be employed, unlike certain farmers and others on this floor. They do not have to take jobs where they're exposed to secondhand smoke. But there are students and adults, some as superannuated as I myself am, who must take jobs in places where smoking is allowed. I think it is cavalier for some of my colleagues and others to say, well, they don't have to work there. It's like saying if you don't have food then just don't eat. That is insane, in my view. The senators, by a majority thus far, have recognized that the state does have a responsibility to protect the health and welfare of its citizens. If as many people were dying at the hands of the pharmaceutical companies because of a product they had put into the stream of traffic, of the marketplace, and these products were being sold over the counter, everybody would say immediately, take it off; don't allow it to be sold. And since the pharmaceutical companies knew that this product would result in deaths at this rate, they should be criminally prosecuted. But the makers of tobacco products have a lot of power. They have lobbyists who can twist the arms of legislators, who can cloud the minds of legislators. And those whose arms have been twisted, those whose minds have been clouded will say, tobacco is a legal product, so if it kills citizens that's tough. Well, they can hold to that opinion. People, under the constitution, have a

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right to hold any opinion they choose. But when you're dealing with a subject matter, the validity of which can be determined from evidence, scientific research, and study, fools can hold a foolish opinion on that subject, but their opinion is not as good as anybody else's when that anybody else has engaged in the study, the research, and that which is necessary to arrive at an informed opinion. So my colleagues have a right to hold any opinion they choose, and it shows what their level of intelligence is, Senator Carlson. But not every opinion that people have a right to hold is equal in validity to every other opinion, and that shows the fuzzy thinking of Americans on so many subjects. [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

SENATOR CHAMBERS: They do not understand the term "nuance," and their thinking is not nuanced. And if they were gem cutters, what they would do is cut a diamond as thin as this piece of paper. It would not be multifaceted because the gem which is cut, Senator Carlson, would reflect the nature of their own intellect. Everybody has one but not everybody uses it appropriately. The Legislature, by a majority vote along the way, has shown that, by and large, "Parson" Carlson, they are renaissance persons. Thank you, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Erdman, you're recognized. [LB395]

SENATOR ERDMAN: Thank you, Mr. President. Thank you, Senator Chambers, for the A; not "thank you" for the teaching, although it somewhat did play into that. I do recall a couple years ago, actually on the same topic that Senator Chambers brought up while he was speaking regarding the death penalty, that Senator Chambers was very accommodating to my priority bill for two consecutive years in getting the Speaker at the time to ensure that it never got debated even though I had the votes to pass it. And so when Senator Chambers had a bill on Final Reading, I offered a motion to gut his bill, and he thought that was funny. So I'm glad I can be amusing of his last year in the Legislature. I have to work for a living. I had to work for a living when I was a farmer. I still have to work for a living now that I can't afford to farm. I don't know who Senator Chambers is talking about in that area, but that's not surprising. The reason why a majority of you have put this bill on Final Reading was because of the gamesmanship that was played. It's like The Wizard of Oz. You know, you look at the beautiful vision up on the wall but pay no attention to the man behind the curtain, right? The beautiful vision up on the wall was we were going to work this out. It was going to get to Final Reading or Select File or wherever, and we were going to work it out. And then you pulled the curtain back and there's Senator Johnson standing with a statewide smoking ban with no opt-out, and that was what he always wanted. So he played the game and pulled the levers and put the smoke out to conceal what was going on so he could get where he is. We didn't get here because a majority of you voted for this bill. We got here because a majority of you were accommodating; that you thought we were actually

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going to do what was offered to you and that was we would work it out. Shame on you, all of you that were a part of that deal, because that's not what you're getting today. The construction of our laws in this country are important. Senator Chambers is right. On the national level, the United States Constitution is designed...well, let me back up. The United States Constitution wasn't created by folks who then, in turn, created state law. It was the opposite. It was the states that created our national government, our federal government. And in doing so, they put limitations on what the federal government could do under the United States Constitution, intentionally. However, when the states created local governments, they did the same thing. So we restrict what the Congress can do in giving states as much rights as we believe we should have under the Tenth Amendment, because we created them, just as we limit local governments' rights under the state law for the same reason. We created them. Now what's before you is the ability for us to tell the entities that we created what their law should be uniformly, but that's not what we're going to do because we don't want to actually get that accomplished. Senator Johnson is in a strong point today. Because of the games that have been played, he sits on Final Reading. All he has to do today is convince a majority of you not to return the bill for an amendment, and he's got his bill in the form that he wants it. The only way that I can see he stops having amendments offered to his bill is if he invokes cloture. Because it's clear he doesn't want to fix the bill. And he and others think it's in the right form; I don't. I fundamentally disagree with the role of government at this point, but I don't disagree that it should happen somehow. In other words,... [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

SENATOR ERDMAN: ...local governments should be able to do this. Most importantly, businesses should be able to do this. But to those kids that don't have a choice with their parents about taking them to a restaurant, those kids still don't have a choice about when the parents smoke in their house. Sporadically removing the exposure to smoke doesn't address that issue. I mean, we're not creating a panacea here. We're not creating the ultimate solution. We're playing politics. And Senator Johnson, if he was playing tennis, is at an advantage. I'd like us to get back to deuce, and we can fix the bill and then go forward. Senator Johnson doesn't want to do that so we'll just keep talking. Thank you, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Erdman. Senator Karpisek, you're recognized, followed by Erdman and Lautenbaugh. [LB395]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I rise again just to say that we're back onto the health issue again, that it's better for everyone. I'm going to say again, what about personal property rights? What about the people that own these businesses? The health risks are there, of course. Smoking is bad. Secondhand smoke is bad. We've been over this and over this. Senator Erdman is

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trying to put something in here to try to get a little bit of logic back in, in my eyes, to let the locals decide. Right now, the business owners can decide, other than Lincoln and Omaha. But again, are we going to let Lincoln and Omaha make this vote for us? I like Lincoln and Omaha just fine, but I don't think that their leaders or the people can vote on what happens in my district, and we're letting them do that right now if we don't let some local control come back in. They got to vote. Two communities got to vote. There's going to be more. Good for them. Let them vote. People own businesses just like we own houses. They pay their bills. They pay their employees. I think we're going to put out businesses, especially in rural Nebraska that can't afford more businesses to be gone. We seem to always get away from this point about personal property rights. Again, I don't think that my business is any different than my house. I invite people into both. And I respectfully disagree with Senator Chambers when I say that people don't have to work there. They don't. And I don't like heights; I don't work on skyscrapers. I know that's probably not a very good analogy, but it's about as good as I can do right now. To me, this is not about smoking at all. It is about personal property rights--what can happen in a business that you own. We all know that Senator Johnson is very passionate about this and I applaud him for that, but again, I think we're going at it in the wrong direction, just trying to throw a few businesses out of the loop when, as Senator Erdman said, people can smoke in their home around their kids. Is it smart? No. People do a lot of dumb things, and Senator Chambers says they can. Yesterday we had the scrap iron bill up, and we were so worried about making those businesses jump through extra hoops, get fingerprinting done, do all these things that hopefully we can stop some of the problems of copper being stolen. But we were very concerned about those businesses yesterday, but today, when we have law-abiding businesses letting lawful tobacco be used in their establishment, now we don't want to let them do that. I don't see why there's such a difference there. I think that this steps on their rights; it steps on how they can try to make a living. I don't know who's going to be able to sell a bar in outstate Nebraska if this goes in? People will look at the balance sheets and say, well, that's just not going to work out now. I was hoping to buy that, but I don't think so; that's taking away another one of my tools. Again, I just don't... [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

SENATOR KARPISEK: ...think that this is the right way to go about it. I think that the locals need to have a say, and definitely the business owners need to have a say. Thank you, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Karpisek. Senator Lautenbaugh, you're recognized, followed by Wallman, Chambers, and Erdman. [LB395]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I have an amendment coming, as well, but time may be fleeting, so I'm rising now in support of Senator Erdman's amendment, as well, or his motion. I've made these

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comments before--a little bit of repetition here--but I don't think we can say it often enough. I heard again this morning about how this bill is about protecting the children. The amendment I'm advancing, in awhile, creates an exception for cigar bars--bars that specifically get a certain high percentage of their revenue from the sale of cigars and tobacco-related products. We already have an exception in this bill for tobacco retailers--those shops that just sell tobacco and incidental products. And apparently it's okay to smoke in there. We're not worried about those employees. We're not worried about those patrons. I understand that, because they know why they're going there; they know what they're getting into. I don't believe there's any city in the state where the only possible employer is a tobacco shop. Similarly, I don't believe there's any city in the state where the only employer would be a cigar bar. So we can stand here and say this is about protecting children, and on some level it is, some parts of the bill. The problem is, the bill overreaches. LB395 goes too far. And I will reserve the rest of my comments when my amendment comes up, but I do rise in support of Senator Erdman's motion, and I hope we do return this and I hope we keep on discussing this. And I'll yield the rest of my time to Senator Erdman. [LB395]

SENATOR LANGEMEIER: Senator Erdman, 3 minutes. [LB395]

SENATOR ERDMAN: Thank you, Senator Lautenbaugh and members of the Legislature. We have another bill that came out of the Health Committee that we discussed yesterday afternoon. (Laugh) It's kind of interesting. We send out LB395 without an opt-out from the Health Committee, and the logic behind that was is that we wanted to make sure that there was a level playing field. The hope is, is that it will somehow affect people's decisions to not smoke. LB245, however, is a bill that would mandate fluoride in all communities in the state of Nebraska in their drinking water. But do you know what's in LB245 that's not in LB395? An opt-out. So here we are talking about health issues, so Senator Johnson wants to propose LB395 without an opt-out for smoking, but with an opt-out for what the dentists and the doctors and all think is good public policy and shouldn't have an opt-out. But it's in that bill. We're not even being consistent within the same member within the same session about what our public policy is. And there's different considerations, because Senator Johnson probably knows that he can't get that bill to Final Reading without that opt-out. He knew he couldn't get this bill to Final Reading without an opt-out. And what you voted for the last time we were on this bill, in my opinion, may have been for two reasons: One, the opt-out provision was flawed, which I explained to Senator Carlson; or two, you didn't support the opt-out provision initially and you'd like it to be in this form. But whether we vote on LB395 or not, here's the card that Senator Johnson has in his back pocket, and it's usually what we're threatened with when public policy debates like this come up: Well, I've got the troops out there ready to run a petition. Well, thanks to Senator Schimek and others, it's going to be harder for them, but they still can. I'm not afraid of that. But if you're going to ask me, is this the right way to do this, the answer is no. You're going to come back in a couple years, those of you that are still here, and...

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[LB395 LB245]

SENATOR LANGEMEIER: One minute. [LB395]

SENATOR ERDMAN: ...you're going to be debating this again, because some community will have gone beyond this act and have created an island for themselves within this level playing field that we think we're having. And Senator Johnson is right, we can create the floor as state law. But guess what? We can build the ceiling right on top of it. We can say that this is the law; there shall be no local option to address it, period. It ensures the level playing field. That's what AM1914 does. It doesn't undermine his bill. It actually fulfills his obligation. It fulfills his request. But, see, he doesn't want it today because that means he'd have to take a little longer to get his bill passed, which hasn't been prioritized. So there's another card in the game that has to be played. Thank you, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Erdman and Senator Lautenbaugh. Senator Wallman, you're recognized. [LB395]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. And I, too, support Senator Erdman's amendment. It seems like we all run on local control, local issues, local businesses, economic development. A biker bar south of town called me up last night. Vietnam veterans, Freedom Riders, they visit this bar and they smoke. It's their choice. Tobacco is legal. If we want a smoking ban, let's ban tobacco, no cigarettes sold in Nebraska, you can't smoke, smoking ban. Is that where we want to go? Do we want to do away with all the income we get? These local communities around Lincoln and Omaha are doing quite well, as Senator Lautenbaugh said, because they visit, and now they like these places because they have freedom. Are we about freedom or are we about bullying people to do what we want them to do? And we had a bill in here about bullying. And I visited my doctor's office the other day and the receptionist said, be sure to vote for the smoking ban. And then I explained a few issues, and she said, yes, there should be some opt-out clauses, because it is about freedom. Veterans' clubs, you know, VFWs, Legion Clubs, these people have served our country and then you want them not to smoke? I don't have to go into those places. I am a member. I go in there, but I do not have to smoke. But my friends smoke. Does that bother me? No. Would it bother me with a little child? Sure. I wouldn't take my grandchild in there to smoke, and I don't smoke. But it's about freedom of choice. And each community, you can put up your no smoking sign in your bar, in your restaurant. You know, the Applebee's and some of those, they have, sometimes, no smoking. And it's a choice you make. If I don't like a smoking place, I don't have to visit. And that's all I have, Mr. President, and I'd turn the rest of my time to Senator Erdman. [LB395]

SENATOR LANGEMEIER: Senator Erdman, 2:50. He waives the time. Thank you, Senator Wallman. Senator Chambers, you're recognized. [LB395]

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SENATOR CHAMBERS: Mr. President, thank you. I heard Senator Erdman use the term "consistency." Some people misquote a statement. They say consistency is the hobgoblin of little minds. They leave out a word, a "slavish" consistency, meaning that you disregard individuating circumstances, and say, something was done this way yesterday, what is being done today is similar so you are bound to do it the same way. When people have information, then they will understand the meaning of the word I used the last time I spoke. The word was "nuance," and I said often people don't do nuanced thinking. Senator Erdman's argument is not nuanced and he knows it. But again, he's trying to make the best case he can for a lost cause. But nevertheless, we must speak, on the record, in opposition to his motion. But I don't think that extended discussion is necessary to make that point, but people are free to talk about this as long as they want to. Senator Erdman probably voted against overriding the Governor on LB39. Now if he wanted to talk about consistency, he would have done what I did, in looking at the cover of that bill and seeing that one of our colleagues signed on as an introducer of the bill, and then that colleague voted against the override. Now you talk about inconsistency, there it is, but he was voting like Senator Erdman. So Senator Erdman did not know inconsistency. But as a member of the Legislature, you have a right to be as inconsistent as you choose. Senator Wallman, for example, after making the flawed, weak, nonsubstantial argument that he did in favor of Senator Erdman's motion--I think that's what I gathered from what he said--if he puts on his thinking cap and listens and changes his mind, somebody could say that's inconsistent. But when you improve your education, when you correct your lack of information, and, as a rational, prudent person will do, conform your conduct to new information, that defines wisdom, Senator Wallman. Senator Wallman mentioned putting up signs. Senator Wallman knows that we don't allow people to put up signs near their property, saying what the speed limit is going to be. Maybe they have cattle who are not properly fenced. Maybe they have children who venture out into the street, so they decide that vehicular traffic should, in this area, travel at five miles per hour and he puts up a sign. Who's going to pay attention to it? These are the types of analogies which indicate that those in opposition to this bill have no position. I'd like to ask Senator Erdman a question, if I may. [LB395 LB39]

SENATOR LANGEMEIER: Senator Erdman, would you yield? [LB395]

SENATOR ERDMAN: I will. [LB395]

SENATOR CHAMBERS: Senator Erdman, you know sometimes we stray far afield when we're discussing a bill, right? [LB395]

SENATOR ERDMAN: Really? [LB395]

SENATOR CHAMBERS: Yes. You have heard me say that, in quoting Stonewall

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Jackson, if the sleeves of my coat knew my plans, I should have to burn my coat. Have you heard me say that a number of times? [LB395]

SENATOR ERDMAN: Yes, I have, and hopefully you take your coat off before you do that. [LB395]

SENATOR CHAMBERS: And you can say did...well, it wouldn't burn me because clinically I've been dead for 14 years already, so it would make no difference, and it might prepare me for where people say that I'm going when I shuffle off this mortal coil. But here's what I would ask you,... [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

SENATOR CHAMBERS: ...and if you don't want to answer, just say ditto, that you're not going to reveal your plans. At this point, are you contemplating running for a different office when you leave the Legislature? [LB395]

SENATOR ERDMAN: No, I can answer that, Senator Chambers. At this point, I'm not contemplating running for another office. [LB395]

SENATOR CHAMBERS: But if you were, this might help, right? [LB395]

SENATOR ERDMAN: My light is on, Senator Chambers, and, in honesty, I will answer your question. [LB395]

SENATOR CHAMBERS: (Laugh) Okay. Thank you, Senator Erdman. Members of the Legislature, I hope that we will defeat Senator Erdman's motion, we will defeat the other offered amendments, and then go on with the bill as we should. Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Chambers. (Visitors introduced.) Continuing with floor discussion on the motion to return for a specific amendment, AM1914. Senator Erdman, you're recognized. [LB395]

SENATOR ERDMAN: Thank you, Mr. President. Before I respond to Senator Chambers' question, I was wondering if he would yield to a question of mine. [LB395]

SENATOR LANGEMEIER: Senator Chambers, would you yield? [LB395]

SENATOR CHAMBERS: Yes, I will. [LB395]

SENATOR ERDMAN: Senator Chambers, do you have any plans to pursue another office when your opportunity here is no longer available? [LB395]

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SENATOR CHAMBERS: I don't have any plans to do that, but in the interest of full disclosure, I'm being heavily lobbied and pressured by people in my district to run for that governing board on the learning community. But at this point, if I had to say I was going to do it today, the answer would be absolutely no. But unlike some people, circumstances can intervene. If my mind can be changed, I would do it. Right now, I'm not seriously even considering it. [LB395]

SENATOR ERDMAN: Okay. You have till July 15 to make that decision. (Laughter) Because I actually think that's what you're going to do, but I don't know and I can only assume, and I would rather hear it from you than someone else. In all candor to your question, I didn't get elected to the Legislature to run for something else. And whether I support a bill or not on the floor of the Legislature is quite irrelevant to whether or not there are other opportunities for me, because, candidly, I believe that what I do as a member of the Legislature will likely have a bigger impact on my future opportunities than not. And so whether I want to pursue another office in the future or not is probably irrelevant to the debate at hand, because I've never read the polls, I've never looked at the decision to decide whether or not I should do something because it was popular or not. I, like you, Senator Chambers, have the philosophy that we should do what's right. And whether I think we're doing the right thing or not, at times, is somewhat irrelevant to whether or not I think I'm being popular. And in fact, there have been times, and today may be no exception, that I'm not popular in here. And I'm okay with that, because the last time I checked none of you are registered voters in my district and I didn't get elected to represent your opinion. I got elected to represent theirs to the best of my ability. So from the standpoint of why I do what I do, I didn't get elected...I didn't think of running for this job in the first place, similar to the way people are courting you, and I'm not envisioning positioning myself for something else. If there is another opportunity, it will likely be based on the warts and the goods of what I am and what I've done here. And if there's not, then at least I will have the satisfaction of knowing I did the best job that I can in the time that I was there. So that's where that is, and I'm happy to answer your question. And I'm sure the people of District 1 and the learning community council would like to know if you're going to file by July 12...or July 15, because there's only one candidate currently filed. Consistency, sure. Is it different on this bill than on that bill? It is. You know why? Because Senator Johnson knew that he had to put that bill out in the same form as this one to get it to Final Reading. That's the consistency. I'm not talking--and Senator Chambers was listening, he would have heard that--I'm not saying you have to be exactly the same on every bill. But what Senator Johnson has done effectively is manipulate the members of this body to give him what he wants. Senator Chambers tries to do that all the time. And he probably will be as successful in his efforts as I will be on this one, except I'll probably get a couple extra green votes than what he usually gets, which is about one. What difference does it make? The reason why I don't have to address Senator Pahls being inconsistent on the motion to override LB39, because Senator Chambers already did it. Why do I have to pick on the wounded soldier here? After the tongue-lashing he got from the senior member, he probably

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needs a hug. Maybe Senator Chambers is going to come give him one. But what's being done here and what's being done in most other bills before the Legislature is what's being done to get it done. It doesn't matter whether it's the right thing to do. It's whether or not we want to be able to say that we did it. I got asked this weekend, when I was having my town hall meetings...I had five of them. I have eight counties, I had five town hall meetings. They're well-attended. Some people like the opportunity to come listen to what we're doing, some people like the opportunity to come debate me or discuss the issues with me, and some just want to see what other people's thoughts are on the issues before the state. But an interesting observation was pointed out to me. Somebody says, well, you get elected to pass laws. No, that's not true. Members of the Legislature and any other elected body get elected to set policy. Sometimes you pass laws, and sometimes you have to pass them over the objection of Senator Chambers and others. But sometimes you don't pass them, and that's just as much of a public policy as what a law would be if it passes. This discussion is exciting for a lot of people because it's easy to understand. It's simple. Should people be allowed to smoke or not, yes or no? [LB395 LB39]

SENATOR LANGEMEIER: Time. [LB395]

SENATOR ERDMAN: Should...thank you, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Erdman. Senator Lautenbaugh, you are recognized. He waives his time. Senator Pahls, you're recognized. [LB395]

SENATOR PAHLS: Thank you, Mr. President, members of the body. I rise to say I'm a little disappointed with Senator Chambers this morning, and let me explain why. When we voted for the learning community and that board, there were only two of us in this body who voted against the learning board, and I happen to be one of them, but it passed. But the reason why I'm disappointed this morning, when Senator Chambers says he's not sure yet whether he's going to run for it, because I challenge him, he should run for that because we do need his type of thinking, although he and I have disagreed on several issues, which was clearly pointed out this morning. But I'll tell you one thing. Sometimes there is an inconsistency, because at one time I was for the opt-out. If you noticed, my vote on this bill recently has changed because I'm hoping my thinking is continually evolving. Now, it may not be to the point where some of you like my decision, but that's mine. But again, Senator Chambers, I am disappointed at the comments that you made this morning about you're not sure what you're going to do. I would like to return the rest of my time to Senator Chambers. [LB395]

SENATOR LANGEMEIER: Senator Chambers, 3:40. [LB395]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Pahls, for the time, and I appreciate his vote of confidence. I will not let that position on that learning

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community from my district be forfeited by nobody running for it or somebody in whom I and the community have no confidence. But I am not beating the bushes to try to get people to not run for it or to support me. Frankly, I don't think I'd have to do all that anyway, but I'd like to ask Senator Erdman a question or two and... [LB395]

SENATOR LANGEMEIER: Senator Erdman, would you yield? [LB395]

SENATOR CHAMBERS: Senator Erdman. [LB395]

SENATOR ERDMAN: Yes, I will. Sorry. [LB395]

SENATOR CHAMBERS: Okay. You said you think I'm going to run for that office. You might be right. Will you stand on this floor and say you're not going to run for Secretary of State? [LB395]

SENATOR ERDMAN: No, I won't, Senator Chambers, and I wanted to address that. I have shared with individuals that if that opportunity presents itself, I would consider it. I'm not contemplating...contemplating, I guess is...to answer your question directly, if that opportunity presents itself, similar to the one you're considering, I would consider it. I have not... [LB395]

SENATOR CHAMBERS: Okay. [LB395]

SENATOR ERDMAN: ...made any decisions to do anything beyond what I'm currently doing. [LB395]

SENATOR CHAMBERS: Okay. Thank you. Do you see the difference in how we operate? I said, in the interest of full disclosure, what I would do. Then he makes comments about me without adding, "and in the interest of full disclosure, I will express my interest in Secretary of State." And also, I did not mention the name of my colleague this morning as having the one who I said may have been inconsistent. Senator Erdman, who voted with him, mentioned his name; not Senator Chambers. So sometimes people, in trying to be smart, trying to be slick, and trying to catch people in their words, will catch themselves. And I like to point these things out on the floor so that we can have these direct, open debates and discussions. Anything I say is fair game for anybody, and anybody is welcome to "come after me." But I will certainly respond, whoever that person happens to be. And if I had in mind running for an office, and I went after somebody else for having perhaps the similar position, I would say, oh, and by the way, there's an office I'm thinking about perhaps running for. And we all know when a senator tap-dances around an issue. If he runs for Secretary of State, then you will know that I am correct in my assessment. If I run for that board, he will be correct in his prediction. [LB395]

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SENATOR LANGEMEIER: One minute. [LB395]

SENATOR CHAMBERS: I don't see what is so hard about giving an honest, forthright, full answer about a subject when you choose to discuss it. Senator Erdman mentioned that there are bills that pass over my objection and some don't. He tried to get lethal injection. You know why that hasn't passed? When the next amendment comes up and I have a chance to make it clear, I'm going to make my colleagues and everybody else aware of some things that the media seem to have forgotten. Thank you, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Chambers and Senator Pahls. Seeing no other lights on, Senator Erdman, you are recognized to close on your motion to return. [LB395]

SENATOR ERDMAN: Meanwhile, back to the Legislature. Thank you, Mr. President. I didn't...just for the full and fair disclosure of this discussion, I wasn't the one that took the goldenrod copy of LB39 and read who the members were that cosponsored it. That was already on the record from a previous debate. I wouldn't have known who that individual was had it not been already pointed out on the floor by the transcript or by the debate on that override, or, at a later date, actually on Senator Pahls' first committee priority bill. So, yes, I did use the name, but Senator Chambers directly questioned him on that. So for the sake of that, whatever it is. At this point, Senator Chambers, by the end of this legislative session, I may never want to run for another office in my life. I may not win, okay. I may run but I may not win, fair enough. But you see there's a lot of things that play into an individual's decision about their actions and whether or not they're willing to serve in a public office. Now, at this point, I haven't made any decisions to pursue any other office. So if that matters to anybody, I guess they've got that now. But as in the same light as Senator Chambers pointed out, others may provide an opportunity, or there may be opportunities present themselves. And I'll tell you that most members of the Legislature leave the Legislature before their terms expire anyways. So Senator Chambers and his inconsistencies and my inconsistencies can have a party together. What the amendment before you is this: Senator Johnson wants to state that it's the public policy of our great state on how smoking should be limited. Fair enough. Then let's make it the state's policy now and into the future. I believe it's a harmonizing amendment. Had we been on Select File, Senator Johnson would be in a more freer position to consider this amendment. But because of the process we have in front of us, he's not going to consider any amendments, so he should get 33 votes because there will be other amendments. And even if he doesn't get 33 votes and the bill doesn't advance, he's still got his opt-out of the Legislature that he can get the petitioners to do his work for him. Fair enough. But if we're going to set the public policy of the state as the floor, then let's make sure that we're the one building the house. And what AM1914 would do, would ensure that we as a body, as we're doing today, set this public policy. And I'm not going to run for the United States Senate in the year 2008. Senator Friend

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is. Mr. President, thank you. [LB395 LB39]

SENATOR LANGEMEIER: Thank you, Senator Erdman. You have heard the closing on the motion to return for a specific amendment. The question before the body is, shall LB395 return for a specific amendment? All those in favor vote yea; all those opposed vote nay. Senator Erdman, for what purpose do you rise? [LB395]

SENATOR ERDMAN: Roll call. [LB395]

SENATOR LANGEMEIER: There's been a request for a roll call vote in regular order. Could we have the senators please check in? Record your presence, excuse me. One moment please, I changed the system. Now you can check in. Senator Christensen, could you please check in? Senator Raikes, would you please check in? Senator White. There's been a request to do a roll call vote in regular order. Mr. Clerk, please call the roll. [LB395]

CLERK: (Roll call vote taken, Legislative Journal pages 663-664.) 18 ayes, 30 nays, Mr. President, on the motion to return. [LB395]

SENATOR LANGEMEIER: The motion to return fails. Mr. Clerk, next motion. [LB395]

CLERK: Mr. President, may I read some items first? [LB395]

SENATOR LANGEMEIER: Yes. [LB395]

CLERK: Thank you. Retirement Systems Committee will meet now in Room 2022; Retirement Systems in 2022. Priority bill designations: Senator Adams, LB1157; Senator Wightman, LB973; Senator Raikes, LB1154; Education Committee, LB988; Education Committee, LB1153; Senator Preister, LB986; Senator Heidemann, LB533; Senator White, LB1001; Senator Schimek, LB721; Senator Carlson, LB736; General Affairs Committee, LB995; Senator Harms, LB1092; and Senator Lathrop, LB952; Senator Lautenbaugh, LB888. New resolutions: LR244 by Senator Howard, declaring the week of October 5 through 11 as Nebraska School Bullying Awareness Week; LR245 by Senator Flood, congratulating the Madison High School wrestling team. New A bill. (Read LB846A by title for the first time.) Motions to be printed: Senator Chambers to LB1049; Senator Ashford, an amendment to LB1063. Confirmation report from the Natural Resources Committee. And I do have one final priority bill designation: LB1082 and LB1016 by the Business and Labor Committee. That's all that I have, Mr. President. Oh, no, excuse me, I've got some Enrollment and Review reported correctly engrossed: LB744, LB747, LB750, LB752, LB791, LB856, LB857, LB915, LB925 reported correctly engrossed. (Legislative Journal pages 664-667.) [LB1157 LB973 LB1154 LB988 LB1153 LB986 LB533 LB1001 LB721 LB736 LB995 LB1092 LB952 LB888 LR244 LR245 LB846A LB1049 LB1063 LB1082 LB1016 LB744 LB747 LB750 LB752 LB791

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LB856 LB857 LB915 LB925]

Mr. President, LB395. Senator Erdman, I now have your motion to return for AM1913, Senator. (Legislative Journal page 623.) [LB395]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Erdman, you are recognized to open on your motion to return for a specific amendment, AM1913. [LB395]

SENATOR ERDMAN: Thank you, Mr. President, members of the Legislature. AM1913 is the corrected version of what the bill should have been in before it advanced from Select File, or a version of that. As you recall from our debate previously, the way that LB395 was on Final Reading the first time, a community, whether it's a village, unincorporated village or a city or a county, could have opted out of the provisions under LB395. By doing that, they could have either done it by the county board or by the board of the elected officials. They could have done it by petition, but if the county board or the elected body voted to opt out, all that the individuals had to do was get 5 percent of the registered voters to sign a petition and they were back in the smoking ban. So some of you may have voted for the opt-out provision to be clarified or eliminating it because it was problematic in the bill, but as I said at that time and said repeatedly that I believe we could fix that and still provide a candid up or down vote. Now again, Senator Johnson doesn't want it. I'm beyond interested in what he wants and what he doesn't want because of the fact that this is now the opportunity for us to decide what the policy should be. What this amendment does is similar, if not identical, to what Senator Carlson had previously asked, and that is it would have said, on or after the operative date of this section, this act, the governing body of any county or the voters of the county may adopt a nonsmoking resolution that is less restrictive than the Clean Indoor Air Act, except that such resolution shall not be less restrictive to the existing provisions of the act which generally govern the public facilities. And again, it follows that same logic. The county board can do it by resolution, or the people in the county can do it by resolution, or the people, by petition, can undo what was done at the county level by the county board if they don't agree with that. It follows the same thresholds that are currently in law for recall petitions, that threshold. But again, it's a provision that lets counties recognize their opportunities here. Because, clearly, Senator Johnson wants to take away local control. Senator Stuthman, as a former county board member, would like to probably have local control, except in this instance. But this gives us an opportunity to vote up or down on an opt-out provision that's functional, because the bill, in the form that it was in that was advanced to Final Reading, candidly, was not. So here you have the opportunity. Senator Carlson and others brought up the idea that, well, we don't want one community in a county to do this and one community not. Fine. We can do it by county level. That's an accommodation. But I wanted to present the amendment before you because I said I would, and so now you have it for your consideration. There are other proposals that are before you, as well, that you can consider at a later date. But candidly, I think that if we're going to say that it's the public

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policy, generally, that we should allow those local bodies to have input, what we have done in LB395 is say that the local input being done in Lincoln is good enough for the communities that I represent, and it's not. So AM1913 gives you the opportunity to give some flexibility under LB395. If they do not opt out by the date, they would go into the ban. So the default actually is in Senator Johnson's favor, that if they don't do this by June 1, 2009, that they would then be in the smoking ban. However, they would still have the flexibility between the passage of this bill and that date to opt out or they would also have the flexibility after that date to opt out. At the same point, they would have the flexibility to opt back in. This again leaves it open to the communities that are affected by this law to make sure that they have the freedom and the flexibility to address their community's concerns, to be accommodating, because LB395 is not. Thank you, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Erdman. You have heard the opening on the motion to return for a specific amendment, AM1913. The floor is now open for discussion. Senator Carlson, you're recognized. [LB395]

SENATOR CARLSON: Mr. President and members of the Legislature, before I address this amendment I'd like to address Senator Chambers and... [LB395]

SENATOR LANGEMEIER: Senator Chambers, would you yield to a question? [LB395]

SENATOR CARLSON: I'm not asking him to yield right now. I want him to listen. Then I'm going to ask him to yield. [LB395]

SENATOR LANGEMEIER: Okay. [LB395]

SENATOR CARLSON: Senator Chambers, I don't normally defend the attorneys of Nebraska. They don't need my defense. But you mentioned them and barbers in some earlier remarks, so now I would like to address a question to you. [LB395]

SENATOR LANGEMEIER: Senator Chambers, would you yield? [LB395]

SENATOR CHAMBERS: Yes, and don't ask me who the first woman barber was, because she was...Delilah was not a barber. She summoned the barber to cut Samson's hair. Just heading you off at the pass, if that was where you were going, which it probably was not. [LB395]

SENATOR CARLSON: That probably is not, and you're taking a little bit of my time here, but... [LB395]

SENATOR CHAMBERS: I'm sorry. [LB395]

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SENATOR CARLSON: ...I want to address a question. [LB395]

SENATOR CHAMBERS: Yes. [LB395]

SENATOR CARLSON: Senator Chambers, when you go to a barber, the majority of the time you're going to get clipped, trimmed, or cut. Would you agree with that? [LB395]

SENATOR CHAMBERS: It depends what each one of those words are...mean, just like sometimes it depends on what "is" is. [LB395]

SENATOR CARLSON: Okay. I expected that may be kind of a response, but thank you. Thank you for your answer. [LB395]

SENATOR CHAMBERS: Okay. [LB395]

SENATOR CARLSON: We get back to AM1913. I do support most of this amendment and appreciate Senator Erdman bringing it forth. And Section 20(1), I support, and then "(2) A proposed nonsmoking resolution or proposed repeal of an enacted nonsmoking resolution may be placed on the ballot for the voters of the county (a) by a majority vote of the governing body..., (b) by initiative under sections 18-2501 to 18-2538, or (c) by petition meeting the requirements of and subject to," and so forth, "signed by at least thirty-five percent of the registered voters residing in such county." I don't really support (3), but that's a part of it. I do support (4), and so I will vote for a return to Select File for this amendment. And this would provide an option for the counties, an option for the voters of that county to decide whether they are a part of this or not, and I think that that would be an important step. I think that there may not be any counties that would vote to do this. But, as I've said before, if there was one or two or three or four out of 93 counties, I don't think that that's a substantial problem. And the idea of the level playing field is not as important to me as it is allowing the people to speak. So I appreciate Senator Erdman bringing this amendment forward and I will support it. Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Seeing no other lights on, Senator Erdman, you are recognized to close on your motion to return for a specific amendment, AM1913. [LB395]

SENATOR ERDMAN: Well, it's unanimous. Two people have spoken in favor, so shall it be. Right, Senator Carlson? I, in all candor, think that this is an appropriate amendment. I wouldn't have offered it otherwise. I think that the opportunity that we have afforded other areas of the state in this area are important to consider, and to, most importantly, put into the law for others to be able to have the same opportunities they did, and that is, a local discussion on this topic. We currently have a local discussion on the topic. And, in fact, in places like Kearney, 70 percent of the businesses and restaurants are

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smoke-free. Hardly a resounding need for a law, but nonetheless, if we could get 70 percent compliance with our speed limit, we would probably enjoy that and think that was wonderful, although it would cost a whole lot of you a whole lot more money because you're getting off scot-free now. But the amendment before you would allow for county opt-out or county opt-in, depending upon when it happens. The provisions of this allows the people to overrule the decision of the county board if they don't like it. It also allows the county board to place it on the ballot directly to get the people's involvement in this discussion, so that they can decide, or they can ask the people to decide. And if they decide, the people still have the ability to overturn whatever decision they made, whether they opted in or opted out and when they did that. I could keep talking and encourage all the people that are having Executive Sessions this morning to come back, but I doubt that they will, so we'll just see what the vote is, and I would ask that members please check in. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Erdman. We are on Final Reading. Senators, please record your presence and check in. Senator Erdman, how do you wish to take the vote? [LB395]

SENATOR ERDMAN: Board vote. [LB395]

SENATOR LANGEMEIER: There's been a request for a board vote once we're all checked in. Seeing all members present, we've heard the closing on the motion to return for AM1913. The question before the body is, shall LB395 return to Select File for a specific amendment? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB395]

CLERK: 17 ayes, 30 nays, Mr. President, on the motion to return the bill. [LB395]

SENATOR LANGEMEIER: The motion to return is defeated. Mr. Clerk. [LB395]

CLERK: Mr. President, the next motion I have, Senator Karpisek would move to return for AM1938. (Legislative Journal page 657.) [LB395]

SENATOR LANGEMEIER: Senator Karpisek, you are recognized to open for your motion to return for a specific amendment, AM1938. [LB395]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. My amendment, AM1938, would make it possible for the...allowing smoking while food is not being served. We keep talking about kids, people being in there while food is being served. They try to have lunch, they can't; supper, they can't; dinner. So this would just allow it while they're having lunch or prepared foods to be served, there would be no smoking. There would be smoking sections established at other parts of the day. Again, I think that this brings it back to local control. If people want to go out and have supper

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and don't want to be around the smoke, they still can. And if the bar wants to keep it that way the whole time, they can. I think that this is a start of a way to maybe get some business owners to see, well, maybe I don't need to have smoking to stay open, although I doubt that that will be the case. But I think it's a small step in the direction to go before throwing the whole thing out in a year. Once again, I'm going to go back to private property issues. If the place doesn't have prepared food on site, then there would be no smoking ban in effect at all, and they could decide how they want to do that. This gives businesses the opportunity to decide, do we have food, do we have food at certain times, do we have prepared food, or do we just have things that we don't prepare? I think it gives a decent way out for all different kinds of businesses, and I just think that this is one way that we can try to give a little bit more back in the hands of the owner, the person who's paying the bills. Thank you, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Karpisek. You have heard the motion...the opening on the motion to return to Select File for a specific amendment, AM1938. The floor is now open for discussion. Senator Lautenbaugh, you are recognized. [LB395]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. I rise, probably not surprisingly by now, in support of Senator Karpisek's motion. Once again, I don't think children need to be exposed to cigarette smoke. I have a son with asthma. I don't want him exposed to cigarette smoke. I mean, this is very basic. And what I do to kind of make my own luck there is I don't take him to places where there is cigarette smoke, and it works well, generally...well, always, because we don't take him to places where people smoke. This is, again, what I believe to be a reasonable exception to this bill, which I continue to describe as overbroad. I applaud Senator Karpisek for bringing this. If we get to it, I'm going to have a motion, as well, to craft out another exception. I talk to my constituents, as we all do, and when I start explaining how I feel about this bill, they understand, and when I say, look, I have a very strong feeling about this and a very real problem putting a place out of business because we don't want smoking allowed anywhere. I believe there is a difference between public places and private businesses, and we've had this discussion before and we're probably going to hear a lot about it. I'm probably going to regret saying those words. But I believe there's a difference, and I believe in a private place of business the business owner can make some decisions. And adults going there, especially in a business where only adults should be allowed, adults going there can make choices. I'll yield the rest of my time to Senator Karpisek, but I applaud him for bringing this. [LB395]

SENATOR LANGEMEIER: Senator Karpisek, 3 minutes. [LB395]

SENATOR KARPISEK: Thank you, Mr. President. Thank you, Senator Lautenbaugh. And I appreciate his comments on the difference between a public and a private place. In my opinion, a public place is where people have to go, where they have to go to the

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post office, they have to come to the courthouse, the State Capitol, places that are owned by the public, not owned by a private person. We need to let people that own businesses make some decisions on their own. They decide what they're going to sell. They decide when they're going to be open, how they're going to do it, who's going to pay their bills, how they're going to pay their bills. They run the whole business. And now, to take away one of the things that they can decide, does not take sense to me. So with this amendment they can decide if they want to have prepared food; they can decide if they don't want to have prepared food. They can decide if they want smoking or not, which is what we have right now but doesn't seem to be good enough. I think that, as Senator Lautenbaugh has said, this just reaches too far. It goes past anything, to me, that is right. And it does nothing for those kids in the homes. We keep getting back to the kids. It does nothing for them in the homes. And I...try that one and I'll be just as upset, because I feel it's the same situation. You own your house, you own your business, you own your car, they're yours. Yes, we put exemptions on things: You can't drive over a certain speed limit; you can't sell things that are illegal in your business. But darn it, if you're still selling a legal product and doing legal things in your business, let them do it. [LB395]

SENATOR STUTHMAN PRESIDING [LB395]

SENATOR STUTHMAN: One minute. [LB395]

SENATOR KARPISEK: Thank you, Mr. President. We're expecting some bad news today on the state of the state, what the money situation is going to look like. I think that this is going to even make it worse. We keep trying to entice business to come to the state, and we need to, but to put such a restriction on freedoms on my things that I own, just doesn't seem right to me. It's overreaching, it's going too far. And hopefully, with AM1938, it helps it out a little bit. [LB395]

SENATOR STUTHMAN: Time. [LB395]

SENATOR KARPISEK: Thank you, Mr. President. [LB305]

SENATOR STUTHMAN: Thank you, Senator Karpisek. Senator Johnson, you are recognized. [LB395]

SENATOR JOHNSON: Mr. President, I'm not going to take a great deal of time here, but what we're dealing with again, it's just the same thing that we've been talking about over and over and over again. And thank you for sticking to what we have put together in essentially the Lincoln city ordinance that has worked so well. We have been able to keep from adding exceptions, be it the opt-out clauses for different municipalities. And one of the things is this, is that...and we've actually heard some negative comments about our friends up in the Omaha area. I think one of the things that we need to see is

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how well the Lincoln city ordinance has worked. We have gone from a place where bar owners and restaurant owners have come and testified before our committee, saying that they were adamantly opposed to the Lincoln city ordinance. They then came to our committee and said, boy, were we wrong; this is one of the best things that has happened to our community. Yes, in a few instances there was a turndown in business for a short period of time, but now things are better than ever. Let's learn from the experience of our friends here in Lincoln and our friends in the Omaha area. This is why we've gone this route and we're...this was asked to us by community after community after community. I received letters from six communities in one day, saying whatever you do, make it a level playing field. And I would say this. One of the opponents to LB395 originally was the restaurant association. They have seen the light and now are in full support of this. I don't think that they made this decision without due consideration. I think the same thing we will find with our friends that own the bars. In every state where this has been put in, yes, there have been short period turndowns, but the long-term effect has been negative. And I would close with one thing. If they can make the bars in Dublin nonsmoking, I think we can make them nonsmoking in Nebraska, as well. Thank you. [LB395]

SENATOR STUTHMAN: Thank you, Senator Johnson. Senator Chambers, you're recognized. [LB395]

SENATOR CHAMBERS: Thank you, Mr. President. I'd like to ask the "offeror" of this amendment a question or two. [LB395]

SENATOR STUTHMAN: Senator Karpisek, would you yield? [LB395]

SENATOR KARPISEK: I will. [LB395]

SENATOR CHAMBERS: (Speaking with French accent) Monsieur Karpa...I just want to say Karpisek, I offer you "zee ques-che-own." I wonder if Senator Karpisek would yield to a question or two from somebody not knowledgeable in this area? [LB395]

SENATOR STUTHMAN: Senator Karpisek, would you yield? [LB395]

SENATOR KARPISEK: I will if he can find someone that's not knowledgeable in this area. [LB395]

SENATOR CHAMBERS: I. Moi. [LB395]

SENATOR KARPISEK: Oh, no, you....no. [LB395]

SENATOR CHAMBERS: Senator Karpisek, there is a reference to a couple of statutes here, and this is not a trick question. It refers to 71-5708 and 71-5709, and it says that

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the duties and restrictions in those sections will remain in place. What do those sections deal with? [LB395]

SENATOR KARPISEK: You caught me, didn't you? [LB395]

SENATOR CHAMBERS: It wasn't...I thought you knew it . Is this your amendment, monsieur? [LB395]

SENATOR KARPISEK: It is mine, but it was brought to me, Senator. [LB395]

SENATOR CHAMBERS: By whom, if I may be so bold as to ask? [LB395]

SENATOR KARPISEK: I think it was the restaurant. [LB395]

SENATOR CHAMBERS: The restaurant! [LB395]

SENATOR KARPISEK: Well, some of the restaurants. [LB395]

SENATOR CHAMBERS: Was it the restaurant or the restaurateur? [LB395]

SENATOR KARPISEK: Well, I don't know. [LB395]

SENATOR CHAMBERS: Okay. Here's why I want to ask that. Here's why I ask the question. The way the first part of the amendment reads is as follows: "The proprietor of an establishment having a license issued under the Nebraska Liquor Control Act may designate smoking areas in such establishment and allow smoking in such designated smoking areas during times when no prepared foods are being served in the establishment." Senator Karpisek, there's a filling station I go to regularly to get gas, and they have shots in little bottles. Are there people with filling stations who have licenses from the Liquor Control...under the Liquor Control Act? [LB395]

SENATOR KARPISEK: Yes. [LB395]

SENATOR CHAMBERS: And if they're not serving prepared foods, based on the way the amendment is written, anybody could designate a nonsmoking area, and it doesn't just have to be a bar and have smoking. Would that be true? [LB395]

SENATOR KARPISEK: That would be true. [LB395]

SENATOR CHAMBERS: And so you want to say that anybody with a Liquor Control...with a liquor license should be able to designate a nonsmoking area, whether it's a package store, a filling station, or any of the other establishments allowed to do so. [LB395]

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SENATOR KARPISEK: Correct. [LB395]

SENATOR CHAMBERS: Now do churches and other charitable organizations get licenses which allow them to sell liquor for certain events and during certain times? [LB395]

SENATOR KARPISEK: I guess they do. I'm not familiar with any, but I've heard about them, I guess. [LB395]

SENATOR CHAMBERS: Well, if they legally serve liquor, must they be granted some kind of license by the Liquor Control Commission to do that? They can't just do it on their own, can they? [LB395]

SENATOR KARPISEK: No, but they may use a caterer's license for someone else. I'm not sure, Senator. [LB395]

SENATOR CHAMBERS: But if they have such a license, they'd be allowed to designate a smoking area. [LB395]

SENATOR KARPISEK: Yes, sir. [LB395]

SENATOR CHAMBERS: And did you intend the amendment to be that broad when you brought it? [LB395]

SENATOR KARPISEK: No, because I don't think that the church already has a restriction. [LB395]

SENATOR CHAMBERS: No, not the church, but what I was getting to at first,... [LB395]

SENATOR KARPISEK: No. No, I understand what you're getting to. [LB395]

SENATOR CHAMBERS: ...filling stations and so forth. Were they in your mind when you brought this amendment to us; the fact that they have a liquor license means they should be able to allow smoking? [LB395]

SENATOR KARPISEK: No, Senator, that was not in my mind. [LB395]

SENATOR CHAMBERS: Sometimes maybe we ought to look...thank you, Senator Karpisek. [LB395]

SENATOR KARPISEK: Thank you. [LB395]

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SENATOR CHAMBERS: How much time do I have, Mr. President? [LB395]

SENATOR LANGEMEIER PRESIDING [LB395]

SENATOR LANGEMEIER: 1:14. [LB395]

SENATOR CHAMBERS: There's a children's story. And an apple, a very delectable, tempting apple was presented to...see there? See there? See? I get people's attention, don't I, whenever I do something that humanizes me. [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

SENATOR CHAMBERS: This apple, take this apple and eat it; you'll enjoy it and it will do good things for you. And what happened when the person ate the apple? Who was the person who ate the apple? Who was given the bad apple by a wicked person in the children's story? Nobody knows? Nobody here was a child, or your memory doesn't go back that far? Somebody said Sleeping Beauty. Is that correct? I see no's. I'm going to have to turn on my light. We got some educating to do around here. Thank you, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Karpisek, you're recognized. [LB395]

SENATOR KARPISEK: Thank you, Mr. President. Again, the reason for my amendment--although, as Senator Chambers has pointed out, too far-reaching--is trying to get a little bit of local control, personal property control back into this mix, to me, to try to bring a little more reasonableness into the mix. I do not intend to make anyone get a smoking permit or a...I guess smoking permit, that was a different subject that we had brought up. But they don't have to have smoking if they don't want to. Once again, I'm just going to say it's just a way to try to let the people who own the businesses decide what they want to do in their business and have a fair shot at staying in business. Thank you, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Karpisek. Senator Chambers, you're recognized. [LB395]

SENATOR CHAMBERS: Mr. President, members of the Legislature, I'd like to ask Senator Karpisek a question or two. [LB395]

SENATOR LANGEMEIER: Senator Karpisek, would you yield? [LB395]

SENATOR KARPISEK: Yes, I will. [LB395]

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SENATOR CHAMBERS: The first one he's going to be able to answer. Senator Karpisek, who is the person I was speaking of who had eaten that contaminated apple? [LB395]

SENATOR KARPISEK: Senator Dubas said Snow White. [LB395]

SENATOR CHAMBERS: Oh, so she tipped you? You didn't know it before she told you? [LB395]

SENATOR KARPISEK: Well, (laugh) I should have maybe. [LB395]

SENATOR CHAMBERS: Okay. Your defect... [LB395]

SENATOR KARPISEK: She said it so fast I didn't get to think. [LB395]

SENATOR CHAMBERS: Your defective education was cured by Senator Dubas, and I appreciate that. [LB395]

SENATOR KARPISEK: That happens quite often. [LB395]

SENATOR CHAMBERS: When she ate that apple, what happened to her? [LB395]

SENATOR KARPISEK: She fell asleep. [LB395]

SENATOR CHAMBERS: For how long? [LB395]

SENATOR KARPISEK: Rumpelstiltskin is coming to mind. (Laughter) Until the prince came and kissed her. [LB395]

SENATOR CHAMBERS: (Laugh) Okay. Well, what Senator Karpisek is trying to get across is that Rumpelstiltskin had taken straw and woven it into gold, so he's going to take the straw example I gave and try to spin some gold out of it so I wouldn't be embarrassed, and for that I thank Senator Karpisek. Now I will ask this question. Senator Karpisek, there had been discussions about trying to shield employees from this secondhand smoke. Under your amendment, even if adopted and narrowly applied as you intended, which would be bars, would there be employees in those areas subjected to secondhand smoke? [LB395]

SENATOR KARPISEK: Yes, sir. [LB395]

SENATOR CHAMBERS: And that would go counter to what some of the justifications for the bill would have been. Do you agree with that? [LB395]

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SENATOR KARPISEK: Yes, I do. [LB395]

SENATOR CHAMBERS: And you think that employees should be subjected to secondhand smoke as a condition to holding a job in that place. Is that correct? [LB395]

SENATOR KARPISEK: No, I think it's their choice to work there or not. [LB395]

SENATOR CHAMBERS: Thank you, Senator Karpisek. Members of the Legislature, we can see we have a very bad amendment here. First of all, it's overly broad. The one who brought it didn't realize--and he brought it in good faith--didn't realize how broad it was because he had confidence in those who presented him with the amendment. When I'm not here what is going to happen to this Legislature? Will it be enough to say that a group who ordinarily might be accorded respect and confidence gave me the amendment, therefore I accept it? Who reads these amendments? Who cares about the amendments? I care about the Legislature, but after I'm not here--"Parson" Carlson, the "Bible" says in one place, the dead know nothing--when I'm not here, I will be dead to this Legislature. I will have no part or role in anything this legislation does, just as when somebody croaks that person no longer has anything to do with this physical, material world. But while I'm alive I do know something, and while I'm in this Legislature I do care about the Legislature. And some things I say here may seem overly harsh, but remember, I'm putting you all through a crash course. You don't have sense enough to understand or perceive what I'm doing. I can't sit here and wet-nurse you and feed you a sugar-tit and say, please understand what I'm telling you. I don't have time to do it. We have to get the job done. And you need to learn and you can. But if you don't develop a feeling of responsibility and loyalty, if you will, to the branch of government of which you are a part, you're going to be run over and trampled by any and everybody. The Governor will have his way. He'll be able to come into a committee and say, send that bill out there, even though it's asinine, and the committee will send it out obediently. And once out here, nobody is going to challenge it because the Governor said do it. While that's done or if it's done this session, I will challenge it. I will challenge the Chief Justice, the Attorney General, my colleagues on the floor,... [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

SENATOR CHAMBERS: ...the director of HHS, or any other person. They're just people, no matter what badge or title they wear, but when they have assumed a role which gives them a fiduciary relationship with the public or one of especial trust, then they should be held accountable. Although we enact laws and do not enforce them, we should exercise some measure of oversight, even if only to the point of observing how these laws are administered, and if not properly done, change something to bring about accountability and responsibility. Thank you, Mr. President. [LB395]

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

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recognized. [LB395]

SENATOR CHAMBERS: Thank you. Mr. President, I had made a comment earlier and I'm going to have to deliver on it. I was talking about lethal injection. Senator Erdman had mentioned that some bills are not passed over my objection and some are, and he's correct. When the Supreme Court threw out the electric chair, the "Repelican" Party, the Lieutenant Governor...I meant the Governor, and that fellow who's Attorney General had attacked the court. And the Attorney General fellow didn't realize that he had predicted a half dozen years ago that the electric chair would be thrown out as being unconstitutional due to its cruelty, stated and emphasized his personal objection to the electric chair. Then he forgot. And while he's Attorney General, he's yippety-yapping, because he doesn't think before he speaks, and making comments. The worst one was that he was surprised that the electric chair was thrown out, even though he himself had predicted six years previously that it would be thrown out. That would be very close to a lie if he had a memory, but he doesn't. Do you know why the court could have arrived at that position? Because every attempt to put lethal injection into the law I stopped. When I was stopping it, the media paid attention because that was the story. When the chair was thrown out, it was hard for their editors to acknowledge that the only way that decision could even be reached was because Senator Chambers had virtually single-handedly kept Nebraska with the electric chair as the sole means of execution and that I had stated my intent is to make sure that Nebraska will be the lone state with electrocution, and I stopped every lethal injection bill that was brought, starting with former Governor Nelson. He even said in the paper this morning that I'm the reason they don't have a lethal injection bill. But now the chair is gone. I was able to achieve by indirection what I could not achieve directly. So ironically, in the last session of my last term, I achieved what I couldn't achieve in 37 and one-half years directly, and that's to leave the state where I live without an effective death penalty. Before leaving here I was able to ensure that the state where I live will not kill another person while I'm in the Legislature. So sometimes things happen and develop in a way that those of us who are trying hard to bring them about cannot envision, but I knew if there was any way to do it I intended to do it. And I don't just blow smoke and I don't bluff. And I would tell my colleagues along the way, you're going to trade the rest of the session for a different way to kill people? And they decided it wasn't worth it. And they all knew that the day would come that did come: February 8, 2008. And as in Shakespeare's story when that man said--and I won't tell you his name, look it up--I want my pound of flesh: I want my ton of flesh. There is no electric chair because of the conditions and circumstances I created. Yes, I--I, yo, moi, me. And it should show some of you all that no matter how difficult something seems to be, perseverance, intelligence, understanding and utilizing the system will allow you to do within the rules something that seems not feasible. [LB395]

SPEAKER FLOOD PRESIDING [LB395]

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SPEAKER FLOOD: One minute. [LB395]

SENATOR CHAMBERS: I don't quit. If I get something in my mind that I believe is the right thing for me to do, I will do everything I can to bring it about. And not everybody in my district is opposed to the death penalty. Not everybody in my district thinks a woman should be able to get an abortion. There are a lot of positions I take which the people in my district don't like, but they like the way that I represent them. They like the fact that I tell them what my position is and I stick to it. Consequently, when they need somebody they can rely on, I'm the one they come to. I'm not like a broken tooth and a foot out of joint, or one of those reeds which, if you lean on it, because it's sharp, it will pierce your palm. I am what I am. What you see is what you get. What I say is what I mean, although "Wonder Woman" over there caught me in a misstatement one time. I said I don't speak with my mouth open. (Laughter) [LB395]

SPEAKER FLOOD: Time. [LB395]

SENATOR CHAMBERS: Thank you, Mr. President. [LB395]

SPEAKER FLOOD: Thank you, Senator Chambers. There are no other lights on. Senator Karpisek, you're recognized to close on your motion to return LB395 to Select File for a specific amendment. [LB395]

SENATOR KARPISEK: Thank you, Mr. President. Members of the body, I respect Senator Chambers for what he's done in this body, although I don't agree with him on that certain thing, but it's a little bit what I'm trying to do here. I don't agree with the path that we're taking, so I'm standing up and trying to stand in the way of it. Me. I don't know all those other languages that he came up with. But I've had some help. I think it's all of our duty to stand up and do what you feel is right. We don't all have to agree. We better not all agree. But I think that we do need to stand up, say what we think, and try to make things better the way that we think that will be better. I feel it will be better for private property to make their own decision on their piece of ground. Although this amendment may be too far-reaching, it gets to the point also. With that, thank you, Mr. President. [LB395]

SPEAKER FLOOD: Thank you, Senator Karpisek. You've heard the closing on Senator Karpisek's motion to return this bill to Select File for a specific amendment. Would all members please check in? Senator Pedersen, Senator Raikes, Senator Nantkes, Senator Cornett, Senator Langemeier, Senator Synowiecki. Senator Synowiecki, would you please check in? Senator Synowiecki, would you please return to the Chamber at once. All senators are present or otherwise accounted for. The question before the body is, should LB395 return to Select File for a specific amendment? All those in favor vote yea; all those opposed vote nay. Have all those voted who wish to? Mr. Clerk, please record. [LB395]

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CLERK: 13 ayes, 35 nays, on the motion to return, Mr. President. [LB395]

SPEAKER FLOOD: The motion to return to Select for a specific amendment is not approved. Mr. Clerk, a motion on the desk. [LB395]

CLERK: Mr. President, Senator Johnson would move to invoke cloture pursuant to Rule 7, Section 10. [LB395]

SPEAKER FLOOD: It is the opinion of the Chair that a motion for cloture is in order at this time. Members, the first vote is the motion to invoke cloture. All those in favor vote aye; all those opposed vote nay. Have all those voted who wish to? Mr. Clerk, please record. [LB395]

CLERK: 37 ayes, 11 nays, Mr. President, on the motion to invoke cloture. [LB395]

SPEAKER FLOOD: The motion to invoke cloture is adopted. At this time, we will dispose of all matters pending to the bill. We now go straight to Final Reading. [LB395]

CLERK: (Read LB395 on Final Reading.) [LB395]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB395 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB395]

CLERK: (Record vote read, Legislative Journal page 668.) 34 ayes, 14 nays, 1 excused and not voting, Mr. President. [LB395]

SPEAKER FLOOD: LB395 passes. Mr. Clerk, we now proceed to LB395A. [LB395 LB395A]

CLERK: (Read LB395A on Final Reading.) [LB395A]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB395A pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB395A]

CLERK: (Record vote read, Legislative Journal page 669.) 40 ayes, 8 nays, 1 excused and not voting. [LB395A]

SPEAKER FLOOD: LB395A passes. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LB395 and LB395A. We now move off of Final Reading, to General File, 2008 committee priority bills. Mr. Clerk,

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items for the record. [LB395A LB395]

CLERK: Mr. President, the Appropriations Committee will meet now in Room 2022; Appropriations right now in Room 2022. Your Committee on Banking, Commerce and Insurance reports LB953 to General File with amendments. Agriculture Committee reports LB200, LB273, and LB860 indefinitely postponed. Judiciary reports LR4CA to General File, likewise with LB769 and LB902. Those reports all signed by the respective Chairpersons. Priority bill designations: Health and Human Services Committee, LB797 and LB928; Government Committee, LB745 and LB720; Senator Dierks, LB1174; Retirement Systems, LB1147 and LB371. And, Mr. President, your Committee on Enrollment and Review reports LB851, and LB755 to Select File. That's all that I have, Mr. President. (Legislative Journal pages 669-671.) [LB953 LB200 LB273 LB860 LR4CA LB769 LB902 LB797 LB928 LB745 LB720 LB1174 LB1147 LB371 LB851 LB755]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We'll proceed to the next item on the agenda, General File, LB756. [LB756]

CLERK: Mr. President, LB756, a bill introduced by Transportation and Telecommunications. (Read title.) The bill was introduced on January 9 of this year, at that time referred to the Transportation and Telecommunications Committee. The bill was advanced to General File. There are committee amendments pending, Mr. President. (AM1893, Legislative Journal page 604.) [LB756]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Fischer, you are recognized to open on LB756. [LB756]

SENATOR FISCHER: Thank you, Mr. President and members of the body. LB756 updates several references to federal law in the Nebraska motor vehicle statutes. This is our annual updating of dates that reference federal law in the motor vehicle statutes. These updates are necessary for Nebraska to remain in compliance with federal law. Failure to do so could result in the loss of federal highway funds. Sections updated include references to the International Registration Plan. The International Registration Plan, or IRP, is a registration reciprocity agreement among states of the U.S. and provinces of Canada, providing for payment of license fees on the basis of total distance operated in all jurisdictions. These sections need to be updated to reflect the most recently adopted version of the IRP agreement, which becomes effective on July 1, 2008. The current version of the IRP agreement will be in place until then. Sections that govern occupant protection systems, commercial drivers' licenses, motor carrier safety, and hazardous materials transportation are also updated to be adopted as Nebraska law as federal regulations existed on January 1, 2008. Thank you, Mr. President.

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[LB756]

SENATOR LANGEMEIER: Thank you, Senator Fischer. As the Clerk has stated, there is a committee amendment offered by the Transportation and Telecommunications Committee. Senator Fischer, as Chair of that committee, you are recognized to open on the committee amendment. [LB756]

SENATOR FISCHER: Thank you, Mr. President and members of the body. The committee amendment, AM1893, includes several bills that were introduced before the Transportation and Telecommunications Committee this session. LB712 provides for an exception from current law for vehicles equipped with daytime running lights designed to operate while the engine is running. Current statute makes it unlawful to drive with only parking lights turned on. The bill provides an exemption for vehicles designed by the manufacturer to operate with daytime lights. The amendment replaces the bill and, instead, repeals statute 60-6,227. LB827 reduces the time required to keep a paper record of a motor vehicle registration from six years to three years. This information is stored in the Department of Motor Vehicles' vehicle title and registration system, and the paper copy is redundant. LB834 provides that an out-of-state title with a valid lien noted on its face is sufficient proof to have the lien noted on the issued Nebraska title when transferring ownership into Nebraska. The bill applies to both motor vehicles and motorboats. LB841 authorizes the attachment of a dealer assignment form to a manufacturer's statement of origin, or MSO, when all reassignment spaces have been used on the MSO. The reassignment of the MSO allows a dealer to transfer vehicles in stock to another dealer without having to apply for the certificate of title. LB841 does not recognize...excuse me, LB841 does not authorize a reassignment form to be attached to an issued certificate of title. LB874 substitutes "rubber-tired crane" with "self-propelled specialized mobile equipment" in the motor vehicle width, length, and weight restriction statutes. This change will allow other large vehicles, such as concrete pump trucks, to qualify for a statewide annual overweight permit. Business owners of these trucks currently have to apply for ten-day single-trip permits, thus making it more difficult to service rural Nebraska. Surrounding states--Colorado, Kansas, Missouri, and Iowa--all provide these annual statewide permits. LB917 inserts a definition of "idle reduction technology" into the motor vehicle statutes. This technology allows a commercial truck driver to provide heat, air-conditioning, or electricity, without operating the main engine. Extended engine idling by diesel engines negatively affects air quality and health. It is estimated engine idling costs the trucking industry more than \$3 billion a year in fuel costs alone, while releasing 11 million tons of carbon dioxide into the air. The bill provides for an increase of up to 400 pounds, for vehicles equipped with idle reduction technology, from the maximum gross weight limit and the axle weight limit. This additional weight is not in addition to the 5 percent in excess of maximum load provisions. LB919 changes registration fee refunds for apportioned vehicles so that the refund is calculated from the date of the event involving the vehicle that triggers the refund instead of the date of the application for the refund. This has been the current

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practice regarding vehicles that are county-plated in Nebraska. Transactions that may trigger a refund include transfer of ownership, loss of possession due to fire or theft, the vehicle was wrecked, junked or dismantled, or the vehicle was disabled and removed from service. In addition, when a fleet owner adds a vehicle to the fleet, the proportionate registration fees shall be from the date that the vehicle was placed into service, or if the vehicle was previously registered outside of Nebraska, the date prior to registration expired or the date Nebraska became the base jurisdiction for the fleet, whichever is first. LB1087 removes the certificate of title as satisfactory evidence of the right of possession to a newly purchased or sold motor vehicle. Currently, upon proper demand by the authorities, a person in charge of the vehicle can show a duly executed bill of sale, a certificate of title, or other satisfactory evidence as proof that he or she has the right of possession during the 30-day grace period for licensing and registering the vehicle or when the dealer is operating the vehicle. It is not common practice by the car dealer industry to have a certificate of title for an unsold car. In addition, Nebraska is a title-holding state, meaning if the vehicle has been financed the certificate of title will be held by the lending institution. This amendment adds a new section to the bill by amending statutes 60-365 and allowing either a certificate showing the date of transfer or a certificate of title as satisfactory proof of right of possession. This section of statute allows for a 30-day grace period before a newly purchased vehicle must be properly registered, and presents the same problem that LB1087 deals with. Thank you, Mr. President. [LB756 LB712 LB827 LB834 LB841 LB874 LB917 LB919 LB1087]

SENATOR LANGEMEIER: Thank you, Senator Fischer. Mr. Clerk, for an announcement. [LB756]

CLERK: Mr. President, Government Committee will meet in Room 2102 now; Government, 2102. [LB756]

SENATOR LANGEMEIER: Thank you. You have heard the opening on LB756 and an opening on the committee amendments. The floor is now open for discussion. Seeing no lights on, Senator Fischer, you are recognized to close on the committee amendments. Senator Fischer waives closing on the committee amendments. The question before the body is, shall AM1893 be adopted to LB756? All those in favor vote yea; all those opposed vote nay. Has everybody voted that wished to? Senator Fischer, for what purpose do you rise? [LB756]

SENATOR FISCHER: Mr. President, I see we're just at 17 votes right now. I would ask for a call of the house. [LB756]

SENATOR LANGEMEIER: There has been a request to put the house under call. All those in favor of putting the house under call please vote yea; all those opposed vote nay. Record, Mr. Clerk. [LB756]

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CLERK: 22 ayes, 0 nays, Mr. President, to place the house under call. [LB756]

SENATOR LANGEMEIER: The house is under call. Senators, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senators, the house is under call. Please return to the Chamber and record your presence. Senator Fischer, while we're waiting, how do you wish to proceed? [LB756]

SENATOR FISCHER: Mr. President, I would just take call-in votes. [LB756]

SENATOR LANGEMEIER: Thank you. Senator Rogert, would you please check in? Senator Harms, Senator Schimek, would you please check in? Senator Johnson, the house is under call. Would you please return to the Chamber? Senator Fischer, for what purpose do you rise? [LB756]

SENATOR FISCHER: We can go ahead and start on the call-in votes. We don't need to wait for Senator Johnson. [LB756]

SENATOR LANGEMEIER: Thank you, Senator Fischer. She has authorized proceeding. Senator Fischer has requested call-in votes. The motion was the adoption of the committee amendments to LB756. Mr. Clerk. [LB756]

CLERK: Senator Nantkes voting yes. Senator Louden voting yes. Senator Engel voting yes. Senator Johnson voting yes. Senator Kopplin voting yes. Senator Hansen voting yes. Senator Harms voting yes. Senator Howard voting yes. Senator Stuthman voting yes. [LB756]

SENATOR LANGEMEIER: Record, Mr. Clerk. [LB756]

CLERK: 26 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB756]

SENATOR LANGEMEIER: The committee amendments are adopted. With that, I raise the call. Mr. Clerk. [LB756]

CLERK: Senator Heidemann would move to amend with AM1853. [LB756]

SENATOR LANGEMEIER: Senator Fischer, I'm aware that you are authorized to open on the Heidemann amendment. You're recognized. [LB756]

SENATOR FISCHER: Thank you, Mr. President and members. Senator Heidemann has a committee session for appropriations and asked me to introduce this amendment for him. I do support the amendment. AM1853 makes a technical change to the statute that

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deals with those that may legally operate mopeds in Nebraska. This amendment allows for a person with any valid operator's license to legally operate a moped rather than listing specific types of valid licenses. The Department of Motor Vehicles has no objections to this amendment. This amendment will eliminate any confusion as to who is authorized to legally operate a moped, and the current statute also fails to clarify that people with Class M licenses may operate these mopeds legally. So this amendment is basically for clarification on the section of statute that deals with mopeds. Thank you, Mr. President. [LB756]

SENATOR LANGEMEIER: Thank you, Senator Fischer. You have heard the opening on AM1853 to LB756. The floor is now open for discussion. Seeing no lights on, Senator Fischer, you are recognized to close. Senator Fischer waives closing. The question before the body is, shall AM1853 be adopted to LB756? All those in favor vote yea; all those opposed vote nay. Have all those senators voted that wish to? Record, Mr. Clerk. [LB756]

CLERK: 25 ayes, 0 nays, Mr. President, on adoption of Senator Heidemann's amendment. [LB756]

SENATOR LANGEMEIER: AM1853 is adopted. Mr. Clerk, next item. [LB756]

CLERK: Mr. President, Senator Chambers would move to indefinitely postpone LB756. Senator Fischer, you have the option to lay the bill over at this time. [LB756]

SENATOR FISCHER: Take it up. [LB756]

SENATOR LANGEMEIER: Thank you, Senator Fischer. Senator Chambers, you are recognized to open on your amendment to indefinitely postpone. [LB756]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I let Senator Fischer know I was going to offer this motion. I have nothing against the bill and I'm going to support it, but this will be the last opportunity before, perhaps, the Governor is caught in a very embarrassing set of circumstances. I'm not going to talk about the bill, but there's going to be a hearing before one of our committees, Monday, to see whether or not they will approve of confirming the appointment of Patrick Thomas to the Liquor Control Commission. February 19 there was a hearing. A man was brought in on a couple of violations, which he acknowledged. He accepted the suspension or whatever the penalty would have been, and he was leaving, and Pat Thomas, who currently is on that board, had said he wasn't finished with the man yet. He then began questioning him, asking him: How long have you been in the United States? Don't you think you should learn English if you're going to live in this country? And Thomas also noted that the man appeared with an interpreter and a lawyer, which, by the way, is allowed in every court in this state. For this man, who was a sheriff, to suggest or

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insinuate that there was something inappropriate about this man, who due to his lack of fluency in English had brought an interpreter and a lawyer, is reprehensible and inexcusable. Let me give you a little sidelight on Patrick Thomas. When John Joubert was going to be executed, Patrick Thomas, as the sheriff, wanted to have the opportunity to be an observer, and that's allowed. There were people at the institution who were concerned because he had made it clear that every time he had a chance to taunt Joubert, he was going to do it. That is a macabre experience. But I told the officials that rather than allow that to happen, I said this man is convicted, he's been sentenced, there is no talk about guilt or innocence, but under these circumstances he should not be taunted, and I want to be an observer and I want Pat Thomas to know that I'm going to be there, and if he's there he better not get out of line. Pat Thomas found out I was there and all of a sudden he did not want to be an observer anymore. That's the mentality of that man. Going further, if a person has a liquor license, it's obvious he or she is a citizen of this country. Thomas went further to say: And if you ever come before this commission again, you're going to lose your license. They don't say that to white people. They don't say that. Thomas is so wrong, he is so reprehensible and will use the power, misuse it, to demean and intimidate a citizen exercising his rights as a citizen, if the Governor leaves this man's nomination--and he now has notice--it means he is in favor of appointing a racist, a man whose own words in an official setting during a proceeding of the commission of which he is a member stamped himself as a racist and a misuser of that position. The Governor should withdraw his nomination. He can attack the Nebraska Supreme Court. He'll send an acknowledged racist. Imagine how Thomas must have behaved as a sheriff in Sarpy County when he would stop people who were my complexion or who spoke with what he might perceive as a non-American accent. And the Governor appoints somebody like this? He's totally unfit. And if he...if his name stays before this body, every opportunity I get, whether the committee sends it out here or not, I'm going to take the Legislature through a history of racism, nativism, and all the other "isms" that would condemn people and stamp them as inferior because of their ethnicity, their gender, their race, their national origin, or any other artificial basis for saying that somebody is unfit to exercise the rights and privileges of a person, first of all, and of citizenship, secondly, when that person is a citizen. If I went before a court and I couldn't speak a word of English and I have entered a plea agreement and the prosecutor agreed, and I'm going to walk out of the court without going to jail, and I had an interpreter, and the judge would say: Wait a minute, Chambers, I'm not through with you; I know you pleaded guilty, I know that you've been sentenced here, we've taken care of all that but I'm not through with you; you live in this country, why don't you speak English; you have an obligation to speak English. And maybe I ask my interpreter what the judge said, and when it comes to me, I'm crushed. This is America? This is the land of opportunity? This is the land that has the statute, give me your tired, your poor, those people yearning to be free? This is the country that preaches to the world that all people are created equal? This is the country that accepted me as a citizen because I met all of the rules, all of the requirements, and I admit I did wrong. The court is where I should be and I'm in court. I

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admitted I did wrong. Why must I be demeaned? Why must I be humiliated? Why must I be separated from all the rest of the family of humankind in front of everybody who is here, and treated in this manner by a person I'm supposed to respect, a person who represents the majesty of the state, a person who is not to do these things? If they were done on the street I wouldn't like it, but things happen on the street. I would continue. I was under the impression that the only people who serve in these positions of trust are those who by dint of character, disposition, temperament, and the ability to be fair, would be the ones exercising these powers. And when I come here admitting I did wrong, accepting the punishment for the wrong that I did, I was not aware and I did not see written anywhere that a part of my punishment is to be humiliated, to be demeaned, to have the legitimacy of my being in this country questioned. I think, brothers and sisters, friends, enemies and neutrals, that is totally inexcusable, it is unacceptable. And if I become aware that this had happened to somebody because of her gender, had happened to somebody because of his or her sexual orientation, happened to somebody because of his or her religion or any other factor that is completely extraneous to what the proceeding concerns itself with, I'd be on the floor saying what I'm saying. But here's the good news, and I'd like to remind you all so you know that you're not going to have to put up with this all the time, when I'm not here you're not going to have to be confronted with things like this. But the bad news, as long as I am here I have an obligation, I have a responsibility to do exactly what I'm doing. There have been many instances in my life when deep down inside, even though I've always been able to stand up for myself, that maybe I could say secretly, but somewhere I had wished that just one person would speak in my behalf and say what you're doing is wrong and it ought not be. That has never happened to me. I would hope that, even without having gone through what I've gone through as a black person in this country, I'd have enough sensitivity, enough compassion and feeling for my fellow creatures, even if we're of different political persuasions, race, gender, and anything else, when I saw a person set upon, ganged, mobbed, mistreated because of his or her vulnerable status, that I would do as I'm doing now and step in and say you shouldn't do it. [LB756]

SENATOR LANGEMEIER: One minute. [LB756]

SENATOR CHAMBERS: But if you are going to do it, you're not going to do it to one person. You're going to have to do it to two people, because I'm going to stand with that person and I'm going to stop you if I can. And I'm doing what I can to stop this, and the Governor ought to do what he has the power to do and withdraw this man's nomination. But if he doesn't, take what I'm doing here as an opener. Every bill, every motion, every issue that comes up, I'm going to take an opportunity to tie what I have to say into that bill or that issue. [LB756]

SENATOR LANGEMEIER: Thank you, Senator Chambers. You have heard the opening on the motion to indefinitely postpone LB756. The floor is now open for discussion. Senator Chambers, you are recognized. [LB756]

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SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, the reason I took the tack of making a motion so I don't have to tinker with the bill or manufacture amendments, I would have enough time to say what it is that I want to say and I won't have to say any more on this subject on this bill or anything else we do this Friday morning, but the hearing is Monday. I do not go to those hearings, but I promise, I pledge that if I have breath in my body, if I have sense in my brain, I'm going to be at that hearing and I'm going to object to this man's nomination, and he should know that I'm going to be there. I don't want to sneak up on him. I don't want to ambush him. I'm not going to sneak up on the Governor or ambush the Governor. And I will be ready to appear before that committee to speak against this man's nomination and see if I can prevail on my colleagues on that committee to see this issue the way that I see it. And if the Governor, knowing these things, will leave this man's name in nomination, we will know what the Governor is. If he endorses this man, he endorses what this man stands for. And the reason I can say it, because the Governor, by presenting his name, is saying this man has the proper moral standards, because they like to say that, the proper "vaa-use." I say values but they leave the L out. The Governor would probably say he's got the proper "vaa-use," he can be fair, he can be judicious, he won't let any personal prejudices or biases he may have influence his judgments. But he--this man made it clear--went way beyond what ought to be said to anybody. Here's where I can tell you that I'm glad he did it. Usually these racists have sufficient savvy to not be brazen and blatant and say: Here I stand; I've got my pillowcase on my head with the eye holes cut off...cut out, I've got my bedsheet on, I've got my cross I'm set to set afire, and I'm telling you that I am a member of the Christian Knights of the Ku Klux Klan and I hate these "fureigners," I hate them black people, I hate them Catholics, I hate them fagots, I hate all of them, and I'm 'ado everything I can to fix 'em; and by God, the Governor and Almighty put me in this position to fix 'em and my first oath is to my superior, supreme white race, and that's what I'm going to stand for, and the Governor stands right with me, foursquare with me; he can't wear his hood, he can't wear his bedsheet, he can't be a night rider, but he can send his minions, such as I, to do his dirty work, and he knows what I am; and by virtue of the fact that he knows what I am and he empowers me to do this, he supports what I'm doing; I am backed up by the power of the Governor and the Governor's Office, and since the Governor is the chief executive of the state of Nebraska, I am representing the state of Nebraska when I do this; I'm on the Nebraska Liquor Control Commission, not some little city or village or hamlet; I am backed by and enclosed and cloaked with... [LB756]

SENATOR LANGEMEIER: One minute. [LB756]

SENATOR CHAMBERS: ...the power of the state of Nebraska, and this, brothers and sisters and everybody in the world, is what Nebraska is about; so if you hate them folks that I mentioned, you come to Nebraska because that's where you find people who feel just like you feel; we hates 'em; we says it in our constitution; we says it in our laws; we

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appoints people to boards and commissions who feel the same way. This is just a foretaste. I don't shoot blanks. I don't blow smoke. For the rest of the session you all will hear me, and even if you leave the floor, we're on the Internet now I believe, the world will hear. And if they get appropriate notice, they may spread the word: Watch the Nebraska Legislature now and see what Nebraska is about. Mr. President, I withdraw that motion. [LB756]

SENATOR LANGEMEIER: Thank you, Senator Chambers. It is withdrawn. We return now back to discussion on LB756, the bill itself. Seeing no lights on, Senator Fischer, you are recognized to close on LB756. [LB756]

SENATOR FISCHER: Thank you, Mr. President and members. LB756 is a committee priority bill. It deals with the Department of Motor Vehicles. It also has a number of other bills that were amended into it. There is no changes of substance made here. There were no objections to any of the bills that are in it, and so I would urge your adoption of LB756. Thank you. [LB756]

SENATOR LANGEMEIER: Thank you, Senator Fischer. You have heard the closing on LB756. The question before the body is, shall LB756 advance? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB756]

CLERK: 32 ayes, 0 nays, Mr. President, on the advancement of LB756. [LB756]

SENATOR LANGEMEIER: LB756 does advance. Mr. Clerk, next item on the agenda, Select File, LB898. [LB756]

CLERK: LB898, Mr. President, at this time I have no amendments to the bill. [LB898]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator McGill, for a motion. [LB898]

SENATOR MCGILL: Mr. President, I move LB898 to E&R for engrossing. [LB898]

SENATOR LANGEMEIER: Thank you. You have heard the motion. All those in favor say aye. All those opposed say nay. The ayes have it. It does advance. Mr. Clerk, General File, LB912. [LB912 LB898]

CLERK: LB912, a bill introduced by Senator Avery. (Read title.) The bill was introduced on January 14 of this year, at that time it was referred to the Revenue Committee for public hearing. The bill was advanced to General File. There are Revenue Committee amendments pending. (AM1927, Legislative Journal page 628.) [LB912]

SENATOR LANGEMEIER: Senator Avery, you are recognized to open on LB912.

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[LB912]

SENATOR AVERY: Thank you, Mr. President. I'm sorry to be a little tardy, but I was in an Exec Session. What this bill does, LB912, it amends the Convention Center Facility Financing Assistance Act to allow for the turnback of sales tax revenue generated from a publicly or privately funded arena and convention center; and (2) any hotels located within 450 yards of such facilities. The bill expands the scope of LB551, which we passed last year, that was popularly known as the Qwest bill. And what it does is it amends it or expands the scope to include public and private partnerships in building local event facilities. As with the original act, that is the Convention Center Facility Financing Assistance Act, 70 percent of the turnback revenue would go to construction or improvement of eligible facilities. The remaining 30 percent would go to the Local Civic, Cultural, and Convention Center Financing Fund. And this fund is used to finance grants to communities who seek to improve local tourism attractions and cultural attractions and civic convention centers. The local fund, as I will call this, is an important and I think a valuable resource for communities across the state, communities that are seeking to restore local treasures to their prior prestige or to stimulate economic development. LB912 retains the sunset clause in the current act. All applications for assistance pursuant to the act must be submitted by June 1, 2010. LB912 also retains the requirement that state assistance received under the act may only be used for public purposes. In Lincoln, these turnback dollars would help finance a new arena. That new arena would replace Pershing Auditorium. Pershing is 50 years old. It is no longer in a position to attract the kind of concerts the city needs. It can no longer support the sporting contests and conventions and other events that it used to. It is an aging facility. Its stage apparatus is not up to modern standards. Groups that might otherwise wish to come here will not do it because of outdated equipment. The loading dock backs up onto a busy street. Virtually every time an important event or large event is scheduled there, streets have to be closed. So Pershing simply no longer can handle the logistical requirements that many performers and promoters require. Lincoln needs a new arena to meet the growing needs of this community. We expect to build a mid-size facility; I emphasize mid-size. A mid-size facility, I can assure you, would not compete with the Qwest Center. It would compete with Council Bluffs' Mid-America conference center. It would compete with Des Moines and Wichita. We have an amendment that will be offered after I speak by the committee that will cap the capacity of the arena at 16,000. The Qwest Center is...it's capacity is 18,300, so there will be no direct competition there. Also I think you need to know that Mayor Beutler has pledged that before Lincoln proceeds with the construction of an arena the voters of this city will be given a chance to approve or reject the whole project in a referendum that will be conducted next year. If the voters say no, anything we do here is voided. I am going to stop there. If you want to ask questions about the economic impact of this project, probably some would like to know about the role of UNL in this project; some will probably want to talk about the fiscal impact. I'm prepared to answer those questions. I can tell you, though, that the projected cost is about \$225 million. That will involve not

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only construction of the arena, but also the assembling of land, the creation of roads and infrastructure, lighting, parking lots, roads and that sort of thing, a plaza that will connect the convention center with the Haymarket Park. It promises to be an important economic development tool for the city of Lincoln. So with that, I would ask you to advance this to Select File because it is something that I believe the state will find is an important contribution to economic development, not only to Lincoln, but to other parts of the state. And Mr. Chair or Mr. President, I think the Revenue Committee has an amendment. [LB912 LB551]

SENATOR LANGEMEIER: Thank you, Senator Avery. Senator Janssen, you are...as the Clerk has stated, there are committee amendments offered by the Revenue Committee. Senator Janssen, as Chair of the Revenue Committee, you are recognized to open on the committee amendments. [LB912]

SENATOR JANSSEN: Thank you, Senator Langemeier, members of the Legislature. The committee amendments restrict the definition of an eligible sports arena facility to an arena with a seating capacity of 16,000 or less for applicants filed after February 1, 2008. That's the extent of the committee amendments. Thank you, and I ask for your support. [LB912]

SENATOR LANGEMEIER: Thank you, Senator Janssen. You have heard the opening on LB912 and the committee amendments, AM1927. The floor is now open for discussion. Senator Stuthman, you are recognized. [LB912]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I would like to engage in a little discussion with Senator Avery. [LB912]

SENATOR LANGEMEIER: Senator Avery, would you yield? [LB912]

SENATOR AVERY: Yes, I will. [LB912]

SENATOR STUTHMAN: Senator Avery, in your opening comments you said, you know, this will replace the Pershing Center. Have you got any information as far as how many sales tax dollars is generated from this Pershing Center which will be, you know, not utilized at that time, or is there some future business that's going to take over that place so that we can generate those sales tax dollars from that facility? Have you got any information on that? [LB912]

SENATOR AVERY: I do. The existing arena...wait, I don't have it here. Actually, I don't have it handy. But what we did was we used the revenue generated by Pershing as a benchmark for calculating what we might expect would be the revenue generated by the new arena, taking into account the increased capacity. I can tell you, though, that we anticipate that the economic impact will be significant. New jobs will be created, not only

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for the construction of the new facilities, but also for the staffing of those facilities. Now we expect new economic activity in the Haymarket and downtown that will produce more sales tax receipts than we are now receiving, which could act as an offset for the turnback. In fact, let me just mention, if you don't mind me taking your time, Senator Stuthman? [LB912]

SENATOR STUTHMAN: Go ahead. We need to get this explained as to the issue of the sales tax dollars as how much the state is going to be giving up for the construction for the new arena part of it and for the future as to that servicing the bond. So I think we need to have a lot of discussion on this to really see the direction that we need to go. So, yes, continue, Senator Avery. [LB912]

SENATOR AVERY: I appreciate that, Senator Stuthman. You asked me some very tough questions the other day in your office and it made me think about some of these things. Let me just tell you this, there has been expressed the concern that maybe it would be taking business with the new hotel that would be built there, close to the arena. And that, by the way, is going to be privately built. We're still in discussions about whether the conference center will be private or whether it will be public or some combination. But one of the persons who has already put in a bid for the hotel is John Q. Hammons who built and owns the Embassy Suites, just a few blocks away. He is convinced that there will be enough new business generated that he will make money on that hotel. And you can bet that the people in the Haymarket businesses are very, very eager to see this happen. We expect also new construction of residential condos and apartments. This will increase jobs and it will increase property taxes. New restaurants, cafes, coffee houses, and bars are very likely. Increased valuation, in the Haymarket particularly, will bring more property tax income. The diffusion of economic activity will spill over to the entire Haymarket and through much of downtown Lincoln, and this new activity will benefit both the city and both the state. The actual cost, in the fiscal note you will see that the estimate is \$750,000 to \$1.5 million. That estimate is based upon a large hotel, and this is an important point. What we are talking about is not a large hotel but a mid-sized hotel, one with approximately 300 beds. And the result of this means that the fiscal estimate here... [LB912]

SENATOR LANGEMEIER: One minute. [LB912]

SENATOR AVERY: ...will actually drop down to \$440,000, with \$308,000 benefiting the city of Lincoln, and with the financing of the bonds and other expenses. Another \$132,000 going to the local development fund that would benefit other communities, like Columbus. Does that answer your questions, Senator? [LB912]

SENATOR STUTHMAN: Yes, that does answer a portion of my question. One other thing that I would have is you stated that the Holiday Inn, at the present location, the sales tax that is generated on that would not be...will still be generated, but that sales

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tax will be utilized for the payment of the bonds? Is that correct? [LB912]

SENATOR AVERY: That would be turned back as well. And my numbers, provided by the financial director for the city of Lincoln,... [LB912]

SENATOR LANGEMEIER: Time. [LB912]

SENATOR STUTHMAN: Thank you, Mr. President. Thank you, Senator Avery. [LB912]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. Speaker Flood, for an announcement. [LB912]

SPEAKER FLOOD: Thank you, Mr. President, members. Deadline for submitting requests for Speaker priority bills is upon adjournment today. Any requests received after that time will not be considered for Speaker priority designations. Again, the deadline for Speaker priority bill requests into my office, in Room 2103, is upon adjournment today. Thank you. [LB912]

SENATOR LANGEMEIER: Thank you, Speaker Flood. Senator Avery, you are the only light on. Senator Avery, you are recognized. [LB912]

SENATOR AVERY: Thank you, Mr. President. Let me continue the discussion with Senator Stuthman. He specifically asked about the turnback from the Holiday Inn. That number is, I believe, \$154,000 a year. And it's important to note that this would be the only immediate fiscal impact, because we do not anticipate that this arena will be built before 2011 and 2012, and then it would have to start generating sales tax. And once that starts, then the turnback would be triggered as well. So we're...I am expecting, and many people I talk to are, that if we are facing a downturn in the economy, by 2012 we will probably have worked our way out of that. That will be when the impact starts. But there would be a slight impact almost immediately with the enactment of this from the Holiday Inn of about \$154,000. [LB912]

SENATOR LANGEMEIER: Thank you, Senator Avery. Senator Stuthman, you are recognized. [LB912]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I would like to continue, if I could, if Senator Avery would respond. [LB912]

SENATOR LANGEMEIER: Senator Avery, would you yield? [LB912]

SENATOR AVERY: I will. [LB912]

SENATOR STUTHMAN: Senator Avery, I'm thinking of the things that come to the

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Pershing Center at the present time. Are there many functions that come at the present time? [LB912]

SENATOR AVERY: Pershing at the present time has seen a significant drop in events. Events that at one time regularly went to the Pershing Center are now going to other communities. Probably some of them are going out to 84th and Holdrege, to the Lancaster County Events Center. But I...we don't have any firm numbers on exactly what the decrease has been. I think I know where you're going with this. [LB912]

SENATOR STUTHMAN: Yes, Senator Avery, I... [LB912]

SENATOR AVERY: Is this a low estimate because of the decreased activity at Pershing? [LB912]

SENATOR STUTHMAN: Yes, because at the present time we do have activities that go there, or if they don't go there they go out to the Event Center. And possibly those events would go to the new arena. The thing that I'm considering is, you know, what type of an impact is that going to have on the state as far as at the present time we are generating sales tax that's coming to the state as revenue. In the future, you know, those will probably go into the Event Center...to the arena, I mean, to the arena, and then those sales tax dollars are going to be to service the bond. I think it's going to have a greater impact than the \$154,000. But that \$154,000 is what would occur then, unless there is a real plan for, you know, the utilization of the Pershing Center, which could, in turn, you know, generate revenue for the state of Nebraska. So those are my concerns. I just think we need to have a lot of discussion on this, and I need to get some figures and facts before I can support this at the present time. Thank you, Mr. President. [LB912]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. Senator Avery, you are recognized. [LB912]

SENATOR AVERY: I just to clarify one thing. Senator Stuthman, the number I gave you of \$154,000, that would be money turned back from the Holiday Inn. That would be the immediate effect. The rest of the turnback would not occur for three or four years, until after the facilities are built. We expect new economic activity to be generated that will more than offset any kind of relocation of some of those current events that you were concerned about at the Lancaster County Event Center. I'm going to quit here and ask for a vote on the committee amendment, Mr. President. [LB912]

SENATOR LANGEMEIER: Thank you, Senator Avery. Seeing no other lights on, Senator Janssen, you're recognized to close on the committee amendment. Senator Janssen waives closing. The question before the body is, shall the Revenue Committee amendment, AM1927, be adopted to LB912? All those in favor vote yea; all those

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opposed vote nay. Have all those voted that wish to? Senator Avery, for what purpose do you rise? [LB912]

SENATOR AVERY: Could you give me a little more time? I think I've got three people coming, otherwise I will ask for a call of the house. [LB912]

SENATOR LANGEMEIER: Record, Mr. Clerk. [LB912]

CLERK: 25 ayes, 1 nay, Mr. President, on adoption of committee amendments. [LB912]

SENATOR LANGEMEIER: The committee amendments are adopted. We return now to discussion on LB912, the bill itself. Seeing no lights on, Senator Avery, you are recognized to close. [LB912]

SENATOR AVERY: Thank you, Mr. President. I think this is a good bill. It does for Lincoln essentially what we have done for Omaha. I believe that we'll see an economic boost to the city and to the state. I believe, too, that you will find that it will be an excellent facility and it will be money well spent. The fiscal impact will not take place for a few more years yet. That will make many of us feel a little more comfortable. I urge you to advance this to Select File. Thank you. [LB912]

SENATOR LANGEMEIER: Thank you, Senator Avery. You have heard the closing on LB912. The question before the body is, shall LB912 advance? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB912]

CLERK: 27 ayes, 5 nays, Mr. President, on the advancement of LB912. [LB912]

SENATOR LANGEMEIER: LB912 does advance. Mr. Clerk, items for the record. [LB912]

CLERK: Mr. President, bills read on Final Reading this morning have been presented to the Governor as of 11:20 a.m. (Re LB395 and LB395A) I have a confirmation hearing report from the Judiciary Committee. Judiciary Committee reports LB1014 to General File with committee amendments attached. That's signed by Senator Ashford as Chair. Priority bill designations: Legislative Performance Audit, LB822; Senator Johnson, LB245; Senator Synowiecki, LB1130; Senator Erdman, LB1049; Senator Flood, LB889. Senator Lautenbaugh would like to print an amendment to LB395. A reminder, Mr. President, Committee on Revenue will be meeting in Executive Session at 12:45 p.m. today in their normal hearing room. Some name adds: Senator Cornett would like to add her name to LB786; Senator Harms to LB786, LB1129, and LR232; and Senator Dwite Pedersen would like to remove his name from LB958. [LB395 LB395A LB1014 LB822 LB245 LB1130 LB1049 LB889 LB786 LB1129 LR232 LB958]

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And, Mr. President, I do have a priority motion. Senator McGill would move to adjourn until Monday morning, February 25, at 10:00 a.m.

SENATOR LANGEMEIER: You have heard the motion to adjourn until Monday, February 25, at 10:00 a.m. All those in favor say aye. All those opposed say nay. The ayes have it. We stand adjourned.