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Floor Debate
March 25, 2008

[LB606A LB606 LB766 LB797 LB822 LB880 LB888 LB902 LB959 LB960 LB961 LB986
LB986A LB988 LB988A LB1019 LB1063 LB1068 LB1096 LB1147 LR277 LR278 LR279
LR280 LR284]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Good morning, ladies and gentlemen, and welcome to the George W. Norris Legislative Chamber for the forty-sixth day of the One Hundredth Legislature, Second Session. Our chaplain for today is Pastor Chuck Bentjen from Immanuel Lutheran Church in Beatrice, Nebraska, Senator Wallman's district. Would you all please rise.

PASTOR BENTJEN: (Prayer offered.)

PRESIDENT SHEEHY: Thank you, Pastor Bentjen. I call to order the forty-sixth day of the One Hundredth Legislature, Second Session. Senators, please record your presence through roll call. Please record, Mr. Clerk.

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

PRESIDENT SHEEHY: Do you have corrections for the Journal?

ASSISTANT CLERK: There are no corrections this morning.

PRESIDENT SHEEHY: Message, reports, or announcements?

ASSISTANT CLERK: Mr. President, this morning I have no messages, reports, or announcements.

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Mr. Clerk, we will move to Final Reading. Members should return to their seats in preparation for Final Reading. Members should return to their seats in preparation for Final Reading. Mr. Clerk, the first bill is LB606. [LB606]

ASSISTANT CLERK: (Read LB606 on Final Reading.) [LB606]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB606 pass with the emergency clause attached? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB606]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1061-1062.) The vote is 48 ayes, 0 nays, 1 present and not voting, Mr. President. [LB606]

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PRESIDENT SHEEHY: LB606 passes with the emergency clause attached. We will now proceed to LB606A. [LB606 LB606A]

ASSISTANT CLERK: (Read LB606A on Final Reading.) [LB606A]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB606A pass with the emergency clause attached? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB606A]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1062.) The vote is 49 ayes, 0 nays, Mr. President, on the passage of the A bill. [LB606A]

PRESIDENT SHEEHY: LB606A passes with the emergency clause attached. Mr. Clerk, we will now proceed to LB797. The first vote is to dispense with the at-large reading. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB606A LB797]

ASSISTANT CLERK: 38 ayes, 3 nays to dispense with the at-large reading, Mr. President. [LB797]

PRESIDENT SHEEHY: The at-large reading is dispensed with. Mr. Clerk, please read the title. [LB797]

ASSISTANT CLERK: (Read title of LB797.) [LB797]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB797 pass with the emergency clause attached? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB797]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1063-1064.) The vote is 49 ayes, 0 nays, Mr. President. [LB797]

PRESIDENT SHEEHY: LB797 passes with the emergency clause attached. We will now proceed to LB822. [LB797 LB822]

ASSISTANT CLERK: (Read LB822 on Final Reading.) [LB822]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB822 pass? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB822]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1064.) The vote is 49 ayes, 0 nays on the passage of the bill, Mr. President. [LB822]

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PRESIDENT SHEEHY: LB822 passes. We will now proceed to LB1096. [LB822 LB1096]

ASSISTANT CLERK: (Read LB1096 on Final Reading.) [LB1096]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB1096 pass? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1096]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1065.) The vote is 48 ayes, 0 nays, 1 present and not voting, Mr. President. [LB1096]

PRESIDENT SHEEHY: LB1096 passes. We will now proceed to LB766. [LB1096 LB766]

ASSISTANT CLERK: Mr. President, with respect to LB766, Senator Stuthman would...first a motion by Senator Rogert to strike the enacting clause, but I have a note to withdraw that, Senator. [LB766]

PRESIDENT SHEEHY: FA231 is withdrawn. [LB766]

ASSISTANT CLERK: Mr. President, Senator Stuthman would move to return the bill to Select File for a specific amendment. That amendment is AM2453. (Legislative Journal page 1059.) [LB766]

PRESIDENT SHEEHY: Senator Stuthman, you're recognized to open on your motion to return. [LB766]

SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. I have filed a motion to return this back to Select File, and I'll explain the reasons why I did this. In thinking it through as to what we had, you know, had proposed in the amendment and adopted on Select File, the information that I'm going to try to explain is what I'm going to delete, what I'm going to take off is in Section 4...in Section 4 on page 5, strike beginning with "and" in line 1 and through "seller" in line 2. Everything else stays the same. It gets paid by a check. The only difference is I'm trying to take out the fact that and the check shall be mailed to the seller to the address provided by the seller. In doing some research on this and what we are doing here with the current bill is that we're asking the scrap metal dealers to cut a check for the copper and being mailed to the individual. The address to the individual is all covered, you know, in this bill. Identification is already taken care of. In Section 2, there is a person selling copper, you know, must give his name, signature, and address, proper operator's license number, state identification card number, or a federal government-issued identification card, and a photocopy of the current motor vehicle operator's license. That's what an individual

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has to give at the present time if this bill is enacted. They have all of that information. The only difference is, is I'm going to try to attempt to get the fact that the scrap metal dealers don't have to mail the check to the individual. And this is just for the copper and the catalytic converters. In some of the research that I've done over the past week, is I have visited with the scrap metal dealer in my community, Columbus Metal Industries, and got just a snapshot of what takes place at the scrap metal dealer. I will say it is one of the largest scrap metal dealers in the area. On Friday of last week they took in...they had 169 customers, 57 of those, you know, had...were with copper, either just copper alone or copper and some other metals that they're bringing there. Then they also had two catalytic converters delivered at that time. On Saturday, which is only a half a day, there was 137 total customers, 46 were with copper and 3 catalytic converters. If you take the fact that the majority of them have scrap metal and just a small amount of copper that they're bringing along with the load and they have to...they would pay for the scrap metal to the individual with a check and they would pay a check, too, for the copper alone and then would have to mail that check to the individual. It's a double duty for the scrap metal dealers. But I just kind of averaged it out, and there would be about 50 a day that have copper, that they deliver copper to this scrap metal dealer; 50 a day at 41 cents a day and an average of 6 days per work week comes to \$6,400 a year just in postage for the scrap metal dealers to have to spend, and that's just the postage part of it. That's just the 41 cents part of it. The fact that they're going to have to mail them, there's going to be duplication of duties because they have to be kept and mailed. Another check is going to have to be cut for those individuals. They are concerned what they are already spending, what they are already spending in the bill as we have passed. And I do not oppose it. But there is the video equipment that these scrap metal dealers have to purchase. The one in Columbus will be spending \$25,000 to \$30,000 just for that video equipment for checking on the stuff that's coming across the scale and everything like that, so they got a video camera continually going. So we're asking them to spend that \$25,000 and we're asking them to spend \$6,400 a year just in stamps. And most generally just the basic cost, you could just about double that so they would be spending at least \$10,000 a year for additional staffing to take care of the workload of the mailing, cutting the extra checks, and doing that portion of it. So I mean we're really asking the scrap metal dealers to do all of the homework, you know, to catch these individuals that are stealing the copper. And 99 percent of the people are honest people out there bringing in a little bit of copper with their scrap that they're bringing in. So...and we're putting the burden on those people. So I would ask for your support. I did visit with Senator Cornett and she was agreeable to this of just striking, just striking the mailing portion out of it. There's nothing else stricken from it except the mailing of the check. The identification, everything, the address of the individual, that's all in place. That is already taken care of. So I'm just asking for your support on this. Thank you, Mr. President. [LB766]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. You have heard the opening on the motion to return to Select File for a specific amendment. Members wishing to

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discuss this: Senator Rogert, followed by Senator Fulton and Senator Cornett. Senator Rogert. [LB766]

SENATOR ROGERT: Thank you, Mr. President. Good morning, members of the body. Shortly after General File of this bill, I ran into a fellow that's in the industry at a social gathering. We had an appointment set up to go do some driving around at some scrap yards in Omaha. Unfortunately, the bill came up on Select File before I was able to do this. But shortly thereafter Select File, I spent a Saturday morning driving around downtown Omaha, south Omaha, north Omaha going to various scrap yards and witnessing the process of scrap metal recycling, which I assume is pretty accurate across the state. There are...this is kind of its own little world. We visited several of the guys and discussed their process, and Omaha has some different things in place which this bill makes statewide with the fingerprinting and the registering of the recycler with the group or wherever they're coming from, and those are all good things. We sat in a vehicle for about an hour at a couple of different spots around the corner, kind of like undercover and watched as folks came in with their loads. And literally there's about 75 to 150 of these a day at each one of these places, and you could tell pretty much which ones were legit and which ones were probably recycling their collections from the previous evening. But the problem is how do you determine to how do you enforce that? Every one of these scrap metal recyclers could probably point out each guy that stole the stuff the night before. But if he turns it away, he's just going to go to the next guy down the street. And if the next guy down the street turns him away, six blocks away for most of these folks in Omaha is Carter Lake, Iowa, and there are no regulations and no restrictions whatsoever. I agree that we have a problem, and I want to go to the record and say that I was wrong when we spoke of this on Select File when I said that any step made would be a step in the right direction. And I'm not sure that that's true. I think some of the steps in this bill are good. It makes statewide some of the things that are working in Omaha, and I appreciate those. There are issues in this bill with catalytic converters that are probably not going to be solved by this bill. Most catalytic converters are not taken to scrap dealers. They're taken to salvage yards and they're not covered in this. And they're also taken to places called gypsies. There's folks that set up vans outside of buildings downtown Omaha on a Saturday or every morning and they accept any catalytic converter you want for 100 bucks. They're not regulated and they take everything down to Texas or South Carolina or wherever it is. They're broken down and the platinum is taken out of them. So I question the fact that once again there's a lot of bills that go through here and we try to solve fairly narrow problems with big, broadening solutions. And I think Senator Stuthman is correct that we are probably going to create a little more or a lot more than is necessary for some of these scrap dealers that are doing things correctly. A lot of these guys that I went to already have video equipment so they won't be affected that way. Many of them are doing their payment through a debit card system to where they get the debit card and they can go process the money and that way they're not handing them cash. Some of them are writing them checks and then there's a check cashing place two blocks away that doesn't require any ID. So they're

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going to find a way around most of these things. I think it's an issue of enforcement, an issue of going after the criminal and not after the scrap recycler. It might be as simple as random checks on random days at random recyclers by the police just questioning those that are bringing in their recyclables. Most of them bring in what would be a couple hundred dollars or less of scrap, but it may have done thousands of dollars of damage to the place they took it from. [LB766]

PRESIDENT SHEEHY: One minute. [LB766]

SENATOR ROBERT: So for the police to come in and say, well, we need to look at your \$40 scrap pile here and see where you got it from, although it's all chopped up, is pretty hard to say it's going to happen. So I support Senator Stuthman's amendment. And I think we're probably going to have to come back to this in the future and try to find a solution that will be more towards the heart of the matter. So thank you, Mr. President. [LB766]

PRESIDENT SHEEHY: Thank you, Senator Robert. (Visitors introduced.) Senator Fulton. [LB766]

SENATOR FULTON: Thank you, Mr. President. Would Senator Stuthman yield to a question? [LB766]

PRESIDENT SHEEHY: Senator Stuthman, would you yield? Senator Stuthman. [LB766]

SENATOR STUTHMAN: Yes. [LB766]

SENATOR FULTON: Senator, I'll just ask a quick question, then hopefully you can get back to talking with the Speaker. If we enact this amendment, is there anything in LB766 that would slow the process down, that would slow the exchange of, the fiduciary exchange of metal for money? Would there be anything that would slow the process down within the bill? [LB766]

SENATOR STUTHMAN: Senator Fulton, no, I don't think there's anything in there that is directed to trying to slow the process down. No, there isn't. But I am really concerned about do we want to slow the process down for the 99 percent of the people that are honest? [LB766]

SENATOR FULTON: Okay. That's fair. Thank you, Senator Stuthman. I'm not going to support AM2453. I actually was engaged in this bill early on, but I've ceased being engaged. And Senator Cornett has done an excellent job of carrying the bill. My concern is that there was an accord struck, and that accord was the means by which this bill moved from Select File. There is a concern that, you know, the fiduciary

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exchange, the exchange that occurs at the point of sale, would happen too fast. And if it were possible to find the bad guys, the bad guys would be long gone. And so I believe that was why this amendment or this particular part of the bill that the amendment seeks to strike was enacted in the first place. That being the case, that was the accord that moved this bill forward, I don't believe I can support the amendment because that's how I was able to support the bill going forward. So I'd ask you to not support AM...or actually I would ask you not to support this return to Select File under the premise that I'm not supporting AM2453, and I don't believe anyone should support AM2453, as it was part of the reason the bill moved forward. So thank you, Mr. President. [LB766]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Senator Cornett, followed by Senator Stuthman and Senator Louden. Senator Cornett. [LB766]

SENATOR CORNETT: Yes. I just wanted to clear up a few points on this. As the body might remember, this part of the bill was not in my original bill. This was Senator Stuthman's amendment that he is amending now. My committee and I or my office and I had sat down with the scrap dealers and worked out an agreement that there would not be a hold or a pay by check. Senator Stuthman, on Select File, amended the bill to include the payment by check through the mail, and I agreed to that amendment. In regards to the amount of money that his scrap dealer is saying that they're going to have to spend, that is not something that we are legislatively requiring, that dollar amount. If you read the bill, it's video or photography or photograph. They can...we intentionally wrote the bill that they can buy a digital camera for minimal expense, take photos of the material, and keep copies of that on a disk to reduce the cost to the scrap dealers. Secondly, in regards to what Senator Rogert said in reducing theft, I'm just going to read the success that other states have had in reduction of copper thefts when they have enacted these measures. I know that he toured Omaha, and Omaha already has ordinance authority and has ordinances in place in regards to theft. And if he had spoke with the police department and not the scrap dealers, he would find out that theft of copper had been reduced when they passed these ordinances, the same as in the city of Lincoln. The bill that I originally introduced is quite less restrictive than what the recommended changes in regulations are. One state went so far as to not allowing anyone convicted of theft in the past five years to sell copper. With that enactment, they saw an immediate 42 percent reduction in copper thefts. We made this bill as least onerous as possible to the scrap dealers and even less restrictive than what the city of Omaha and the city of Lincoln have enacted and allowed the cities ordinance authority. I do rise in support of Senator Stuthman's amendment. It takes the bill back to closer to my original intent and part of the agreement that I had worked with the scrap dealers. I'd appreciate your support on the passage of the amendment and the bill. Thank you. [LB766]

PRESIDENT SHEEHY: Thank you, Senator Cornett. Senator Stuthman. [LB766]

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SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. I'm going to be very short in my comments right now. But the thing that really concerns me is we are placing upon the scrap metal dealers all of the work, the workload for the power companies. The power companies are the ones that are really concerned about safety. That is also one of my concerns about the workers of the power company. The people that are stealing, you know, the copper from the power companies I don't think should be the duty of the scrap metal dealers to do all the heavy lifting and all of the work. I think the power companies are asking the scrap metal dealers to do all the work for them. And I think if we could just take the mailing part of it off, all the identification and the fingerprinting is already there. So I'm just asking you people to support my amendment. Thank you, Mr. President. [LB766]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Are there additional members wanting to speak on the motion to return? Seeing none, Senator Stuthman, you're recognized to close. [LB766]

SENATOR STUTHMAN: Thank you, Lieutenant Governor. All I'm asking is that we try to help the scrap metal dealers a little bit as far as extra duties that are being placed upon them. They're going to have to do extra things already with the bill, but just the mailing thing is the thing that I'm attempting to remove from that. So I think this is just something that we can take care of. All of the names, the addresses, the photo ID--everything is in the bill. That's in the bill. Fingerprinting, that's in there. So they will be identified, those individuals. The only...and they will be giving an address, you know, that if my amendment is not adopted where they have to mail it to, they'll be giving that address already. I'm just trying to help the scrap metal dealers out so they don't have this additional cost. Yes, 41 cents doesn't seem like a lot. But a lot of 41 "centses" do add up. So I ask for your support on returning it back to Select File. Thank you, Lieutenant Governor. [LB766]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. You have heard the closing. The question before the body is on the motion to return LB766 to Select File for a specific amendment. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB766]

ASSISTANT CLERK: 29 ayes, 6 nays on the motion to return the bill, Mr. President. [LB766]

PRESIDENT SHEEHY: The motion to return passes. [LB766]

ASSISTANT CLERK: Mr. President, Senator Stuthman would offer AM2453. [LB766]

PRESIDENT SHEEHY: Senator Stuthman, you're recognized to open on AM2453. [LB766]

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SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. What my amendment does, and we have discussed it almost in length prior to this, will on page 5 of the bill, strike beginning with "and" in line 1 through "seller" in line 2. And I will read you the portion that it will strike. "And shall be mailed to the seller to the address provided by the seller." There will be a check made for the copper and the catalytic converters and in accordance with the policy that is adopted in this. So I'm asking for your support to delete the portion of mailing the check to the seller, and I ask you for your support. Thank you, Lieutenant Governor. [LB766]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. You have heard the opening of AM2453 to LB766. The floor is open for discussion. Senator Fulton. [LB766]

SENATOR FULTON: Thank you, Mr. President. I didn't hear on my first go-round on Final Reading here one of the reasons that this provision should not be stricken is to introduce an element of time. Now if you recall during General and Select File, this is something that we tried to bring into the bill. And Senator Cornett touched on that when she was explaining her part of the bill just earlier this morning. There actually were more onerous things that existed at the time, but some of those were taken out and this is the accord that was struck. When people who have stolen scrap metal come to a place where they can receive money for their scrap metal, their best interest is in getting their money and getting away quickly. Now I'm not suggesting that this comprises a large percentage of the people that come that deal with scrap metal. It doesn't. It is a small percentage. But this is a mechanism which has worked in Lincoln and in other places around the country. And part of that mechanism, part of the formula for success is to slow the process down. If we adopt this amendment, we won't slow the process down so why even have a bill? That's an integral part to this policy which has been proven in other parts of the country, as well as here in Nebraska. And so I ask you not to support AM2453. Thank you, Mr. President. [LB766]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Additional members wishing to speak on AM2453? Seeing none, Senator Stuthman, you're recognized to close. Senator Stuthman waives closing. The question before the body is on the adoption of AM2453 to LB766. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB766]

ASSISTANT CLERK: 27 ayes, 9 nays on the adoption of Senator Stuthman's amendment. [LB766]

PRESIDENT SHEEHY: AM2453 is adopted. Senator McGill, you're recognized for a motion. [LB766]

SENATOR MCGILL: Mr. President, I move LB766 to E&R for engrossing. [LB766]

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PRESIDENT SHEEHY: You have all heard the motion. All those in favor say aye. Opposed, nay. LB766 advances. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR277, LR278, LR279, and LR280; and I also propose to sign and do hereby sign LB606, LB606A, LB797, and LB822, and LB1096. Mr. Clerk, do you have items for the record? [LB766 LR277 LR278 LR279 LR280 LB606 LB606A LB797 LB822 LB1096]

ASSISTANT CLERK: Mr. President, I do. With respect to LR284, I have a communication from the Speaker referring it to the Reference Committee. I have a Reference Committee report referring LR284 to the Judiciary Committee and a notice of hearing from Judiciary on LR284 for Monday, April 7. (Legislative Journal page 1066.) [LR284]

PRESIDENT SHEEHY: (Doctor of the day and visitors introduced.) Mr. Clerk, we'll move to first item under General File.

ASSISTANT CLERK: Mr. President, first bill, LB1063, offered by Senator Chambers. (Read title.) The bill was read for the first time on January 22 of this year, was referred to the Judiciary Committee. That committee reports the bill to General File with committee amendments attached. (AM1841, Legislative Journal page 582.) [LB1063]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Chambers, you're recognized to open on LB1063. [LB1063]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, this is one of those very somber, solemn, melancholy occasions when we're dealing with as serious a matter as can ever come before a legislature. We are dealing literally with an issue of life or death, whether the state should ever kill. My view is that it should not. This is a position I had prior to coming to the Legislature. It is a position I maintain to this day. Trying to get the state where I live to leave the business of killing has been a tortuous start-and-stop journey. In 1979, the Legislature voted to abolish that horrid, barbaric, uncivilized penalty. The then Governor vetoed it. There not being enough votes to override, I made no effort to do so. I have tried to take away from the death penalty by bits and pieces to the extent that I could. I persuaded the Legislature to vote, prior to the U.S. Supreme Court taking the same position, that any person who committed what would be a capital crime prior to his or her 18th birthday, no death penalty could be imposed. The same action was taken prior to the U.S. Supreme Court reaching that conclusion that no mentally retarded person could be killed in this state by the state, and as a result of that action, two retarded individuals were removed from the death penalty. I have done everything which was in my power to end the death penalty. When the Legislature has tried, with strenuous support on occasion, from the Governor and the Attorney General, I have been able to prevent the state from adopting an

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alternative method of execution, alternative to electrocution. I made no secret of what my intent was for over a decade--to do by indirection what I could not do directly. Being unable to persuade the Legislature to abolish the death penalty, I had to try to render it ineffective, to make it impossible for the state to kill, even if the words were on the book that put the state in the killing business. So after fending off every attempt to substitute a method of execution for electrocution, what I hoped would happen did. States one by one did away with the electric chair as the sole means of execution. It was just a matter of time before Nebraska would become the only state with electrocution as the sole means of carrying out judicial executions. That day having arrived, it was a foregone conclusion in the minds of those who observed this matter that the Nebraska Supreme Court would strike down the electric chair as being cruel and unusual. That having been done, Nebraska was left with the words of a death penalty on the books, but no way to carry it out. My belief was and remains that because when the persons on death row were sentenced to die, the then existing law stated that the only way, the only legal way that the state could take the lives of these people was by means of electrocution when the only means under the law, according to which these men were sentenced to die, stated that electrocution was the way and that method was struck down, I do not believe that the Legislature subsequently can substitute a different method and it withstand constitutional attack. We are here today trying to put this monstrosity, the death penalty, to rest regardless of what the Governor has said he will do. We know that this is a tripartite government, three branches. The duty of the Legislature is to carry out its function of establishing the policy of the state. My hope is that after today's discussion and by the time this session, my last one and the last one for some of my other colleagues, will be ended that the policy, regardless of what anybody else may do, has been established by the Legislature that the state in which we live will not kill again. The death penalty will be discussed from various angles today. My arguments will not be primarily legalistic. This is a highly emotional issue. It is based on feeling. Many people came to a belief in and support of the death penalty, not through rational discussion or thought; so rational discussion is not alone going to move people from that position. I hope there will be enough who will say when it comes to killing--enough. The state has killed enough people. This state prides itself on being what it calls pro-life. That means in favor of life. But to have such a tight hold on state killing to feel an almost pathological necessity to have on the books of this state the authorization to kill is something that seems inconsistent in my view with all of the other discussion about pro-life. The first bill we passed this morning was put together by Senator Ashford, Senator Lathrop, others with varying views on the issue of abortion. But a decision was taken, and I voted for that bill, that when it came to stem cell research certain types of things would not take place, would not be allowed under the laws of this state to be done in certain facilities funded certain ways. People said that was a pro-life decision. I would find it regrettable if we have more sympathy with a stem cell embryo than with a full-fledged human being. I do not intend to excoriate anybody, to condemn anybody, to judge anybody. My task, if I can carry it off, is to be persuasive in order to bring conviction to my colleagues who will allow what others have said and I have mentioned a few days ago, the angels of

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their higher nature, the angels of their better nature to guide and control their conduct, their ultimate decision. And we will give an eternal reprieve not only to those who have been convicted and sentenced to die, but to this state itself. It can join those states which have gotten out of the business of killing... [LB1063]

PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR CHAMBERS: ...its residents. They have not suffered as a result, and I do not think this state will suffer as a result. Because the committee amendments will become substantially what the bill is about, I have not discussed precisely what this bill will do. My very capable Chairperson of the Judiciary Committee will undertake and do that very effectively. Thank you, Mr. President. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Chambers. You have heard the opening to LB1063. As noted, we do have a committee amendment filed. Senator Ashford, you're recognized to open on AM1841. [LB1063]

SENATOR ASHFORD: Thank you, Mr. President. Let me first of all commend to you the material that we sent out to your offices over the last few days, I believe on Thursday, which outlines many of the issues involving the imposition of the death penalty--going through the number of states that do not have the death penalty and the crime statistics reflecting no correlation between the death penalty or the lack of the death penalty and crime in general. And in fact, states with the death penalty in many cases have higher crime rates than those without. The materials also go through a comprehensive analysis of the issue of deterrence. The materials go through a comprehensive analysis on all sides of the issue regarding clemency and exoneration and DNA evidence. I think it's very important that members have an opportunity to take time to read through that information. It's the kind of information that I personally have reflected on over the last 20 years. Years ago in the Legislature in the late eighties when we discussed the death penalty, I supported measures to narrow the death penalty significantly, though I did not vote to repeal it. In fact, we didn't really have a vote to repeal the death penalty during the eight years I was there. But I had significant doubts about it. The Judiciary Committee has spent two years looking at this issue. We have had two significant hearings and in both cases when the bill...in both years when the bills involving repeal came to the floor, the vote on the committee was 7 for repeal and 1 against. And I would suggest to you, members, that the seven members of the Judiciary Committee who voted to send LB1063 to the floor and the bill last year to the floor came at this issue from varying positions. The evidence presented at that time during our discussions last year and during our discussions this year are hard to get around. The arguments for repeal are hard to get around. They're hard for me to get around. It's very, very difficult when a mistake can be made and a life can be taken and when we have other means to incarcerate people for life without parole why the death penalty is necessary for our state. I can't for the life of me think of any rational reason to maintain the death penalty

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with the number of exonerations that have occurred, the number of mistakes that have been made. We heard testimony at our hearing from an individual who--it was well-publicized--who was convicted twice of first degree murder and sentenced to death twice and finally exonerated. These cases are not isolated, but they occur across the country. Mistakes are made. The death penalty is imposed or not imposed not because prosecutors make mistakes or defense attorneys make mistakes. The problem, in its essence is, that the system is managed by human beings. Well-intentioned as they may be to try to find the truth, they're human beings and as such, they make mistakes. And when we're dealing with life or death, when we're dealing with the state's taking of a life, no matter how vile that life may seem to us, any mistake, any wrong decision that incorrectly takes the life I think deflates us as a people. And that's why I'm voting to repeal. That's why I have come to this conclusion after looking at it for 20 years and listening not only to Senator Chambers, and I admire immensely and will always admire the tenacity of any one individual that can deal with an issue for so many years, year after year after year. It takes tremendous strength of character and tremendous tenacity. But I have come to this conclusion, as I believe many of my fellow committee members have, by looking at the facts. The facts are in front of us. They are irrefutable. The death penalty is horribly flawed, and it's not the result of defense attorneys being good at what they do or overzealous prosecutors. It is because it is a human system. With that, Mr. President, let me just briefly explain the committee amendments. How much time do I have? [LB1063]

PRESIDENT SHEEHY: Four minutes, fifty seconds. [LB1063]

SENATOR ASHFORD: Thank you, Mr. President. First of all, what is clear in this AM1841 to...the Judiciary Committee amendments clearly state that life imprisonment without parole is the punishment for first-degree murder. There is no decision. If a jury convicts a defendant of life imprisonment...of first-degree murder, life imprisonment without parole is the penalty. It's the only penalty. There will no longer be a hearing on aggravating and mitigating factors as are in some states for life imprisonment without parole as the penalty. There is an absolute penalty of life imprisonment without parole. That means life imprisonment without parole unless there is clemency granted by the Governor, Secretary of State, Attorney General under our system. There is no access to computers. There is no access to initiating terrorist acts as has been suggested before across the country in arguments. There is no ability to go out and raise an insurrection. It isn't there. It isn't going to happen. These individuals will be in prison for life without parole. If by some happenstance it is determined that the defendant or the convicted person is found to be not guilty, that person will not be dead but will be in prison and can be released. Those are the essences of the committee amendments. There's some minor changes that deal with incarceration work camps. Someone who is convicted of first-degree murder would not be eligible for an incarceration work camp. This amendment and a subsequent amendment makes it clear that the judge may order restitution, again, an effort in the committee amendments as the amendments to the

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committee amendments to get around potential appeals. In the end, I certainly would urge the adoption of AM1841, and I would urge this body to reflect on what is before you. Reflect on the experience of other states. Reflect on the over 170 exonerations of persons who have been convicted of first-degree murder and sentenced to death since 1976. Consider the number of people who have actually been put to death in Nebraska; it's a very small number, the number who have been exonerated, the number who have been released for whatever reason off of death row in Nebraska. And I think I urge this body to reflect on those facts. And as Senator Chambers suggests, this is an issue of feeling. It is an issue of feeling. It is an issue of feeling. But one must be open to understanding what is in front of them. And I believe that if one does that, life imprisonment without parole is not an easy penalty. It's not some sort of walk in the flowers. It's not some vacation. It's not some sort of escape from death, because the individuals who are there for life without parole will face death at some point, as we all will. But they will not be out there hurting others. We will be able to protect our society in the way that's appropriate, and protecting society against that one mistake that is not, in my view, worth it for us to risk. Thank you, Mr. President. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Ashford. You have heard the opening of Judiciary Committee amendment, AM1841. Mr. Clerk, do you have an amendment to committee amendment? [LB1063]

ASSISTANT CLERK: Mr. President, Senator Ashford would offer AM1912 to the committee amendments. (Legislative Journal page 666.) [LB1063]

PRESIDENT SHEEHY: Senator Ashford, you're recognized to open on amendment to committee amendment, AM1912. [LB1063]

SENATOR ASHFORD: AM1912, Mr. President, is a technical amendment that makes it clear in the bill, if these amendments are attached, that a judge can order restitution in a case involving first-degree murder. And that would be the extent of those amendments, and I would give the rest of my time to Senator Chambers if he wishes. [LB1063]

PRESIDENT SHEEHY: Senator Chambers, 9 minutes, 40 seconds. [LB1063]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Ashford. To make it clear where these amendments came from, I think I should say a few things. When the bill first was presented, the county attorneys' association came before the committee. On the death penalty itself as to whether or not it should be repealed or retained, the county attorneys' association is neutral. There are county attorneys who believe that there should be a death penalty. There are county attorneys who believe there should not be a death penalty. That may shock some people, but that lets you know immediately that in some counties there will not be a seeking after the death penalty. The county attorney is not going to seek it due to personal scruples. In other

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counties, the death penalty is not going to be sought because it is too expensive. So if a person were as venal and wicked as we're told people who commit first-degree murder are, those persons would select those counties which have found it too expensive to bring a first-degree murder charge and to seek a death penalty, take a victim there and commit the murder. But all of these arguments were given about the viciousness, the wickedness, and the total evil of these people are designed to stir up emotions; and those kind of words do exactly what they're designed to do. I have not been swayed by them. I will not be swayed by them. My job as a part of this government is to be rational. What we did as a committee was to behave in a rational manner. Every issue, every question, every doubt raised by the county attorneys' association has been addressed in these amendments. They have taken the position of neutrality once again. No longer is their position one of being opposed to the bill, and they have made that clear. So if you vote in favor of these amendments, you are not voting for the abolition of the death penalty. That vote will come after the bill has been amended. These amendments, as Senator Ashford said about the last one he mentioned, that one is technical. The two of them together will put the bill in the form which takes away certain provisions that could have, in the minds of prosecutors, lead to more appeals, more litigation. For example, if there was a mandating of restitution, there could be a question as to whether or not the law was being equally applied to everybody because in some cases those who committed a similar offense would not have to pay restitution. So somebody convicted of first-degree murder sentenced could raise the argument that I have been required to do something that others who have committed the same act are not required to do. That was removed. Judges still have the discretion, as they do under the current law, to order restitution where they think appropriate. If a person is in a position to pay restitution, it will be ordered. If a person appears to be on the verge of making money from the crime committed, a judge can order restitution and probably would do so. By putting in place only the sentence of life without parole, you do away with an entire layer of judicial or court activity, that is the weighing of what are called mitigating and aggravating circumstances. If on the left hand you had a sentence of what you would call life and on the right hand a harsher sentence of life without possibility of parole, the courts require that there be something that separates this penalty on the left hand from the penalty on the right hand. So it was necessary to put in place a method to show why one person who was convicted of first-degree murder received life, somebody else who committed first-degree murder was sentenced to life without possibility of parole. The way that was to be done was to show that the murder which resulted in life without possibility of parole had certain factors accompanying it which are known as aggravating factors. Without those aggravating factors, straight life would be the sentence; with those aggravating factors, life without possibility of parole. By putting in place one sentence for first-degree murder; namely, life without possibility of parole, there does not come the weighing of aggravating and mitigating circumstances. There is not created a basis for appealing a life without parole sentence because somebody else got a straight life sentence. This bill, should it become law, will no more do away with all appeals anymore than having a crime of theft, even receiving a traffic ticket will do away with

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appeals. In this system of jurisprudence, any and every conviction is amenable to being appealed, and that's as it should be due to the fact that lower courts, the judges, juries make mistakes. Cases are reversed. Decisions are overturned. Sentences are set aside as being too severe even when the underlying conviction is upheld. So the only thing these amendments are going to do is to bring the bill in line with what the county attorneys felt would present a lessening of the likelihood of appeals, should we decide to abolish the death penalty. Before I get into my arguments against the death penalty as such, I want to restrict my comments to what the bill is doing so that we can focus step by step, as much as is possible under the circumstances, on what it is that is actually before us. So right now Senator Ashford's amendment to the committee amendment is before us, and I hope you will adopt that. Then I hope you will adopt the committee amendment as amended by Senator Ashford's amendment, and then we will discuss the bill itself in its entirety. Thank you, Mr. President. Thank you, Senator Ashford. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Chambers. You have heard the opening of the amendment to committee amendment AM1912 to AM1841. Members wishing to speak from the floor: Senator Lathrop, followed by Senator Kruse, Senator Ashford, Senator Nantkes, and others. Senator Lathrop. [LB1063]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Today I rise in support of LB1063, and I have an opportunity early on in the debate to make an observation. For decades, for decades the death penalty has served as a shorthand for elected officials when they are campaigning. People ask where are you at on crime and punishment? Where are you at on crime and safety in my neighborhoods? And the response is, I favor the death penalty. The death penalty has been used to communicate and to be responsive to the public's need for safety. The people of the state of Nebraska want to be safe in their homes, and they want their children safe in their schools. And to prove that we feel that strongly about safety and crime, we say I support the death penalty. But such a use of the death penalty ignores the policy. And my friends, my colleagues, today we are here to debate the policy behind the death penalty in the state of Nebraska. I will tell you that as member of the Judiciary Committee we have had an opportunity to have hearings, and we have had opportunities to hear the facts on the death penalty. And the death penalty in the state of Nebraska is broken. It is a policy that is indefensible. You have received over the last week information on Nebraska's death penalty. Please look at it. You will see the Nebraska death penalty. We call it the ultimate punishment for the worst of the worst. Here's the report card on the Nebraska death penalty. We know, first of all, that it doesn't deter crime. You don't even have to cite the sources for that anymore. It does not deter crime. It is wildly more expensive than incarcerating someone for the rest of their lives. And the statistics on the death penalty in Nebraska are these: The so-called worst of the worst--253 murders fall into the category of the worst of the worst since 1973. Of the 253 worst of the worst, we have put 38 of them on death row. Fifteen

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percent of the worst of the worst get the death penalty; 85 percent of the worst of the worst don't get the death penalty. And of the 15 percent that get the death penalty, 63 percent of those sentences will be reversed. We have had, of the 253 worst of the worst, 3 executions. That's like 1 percent of the death-eligible defendants for murder. That is a system that is broke. It is a system that is indefensible. We are wasting millions of dollars that we could put into public safety defending something so that we can run campaigns and say, I support the death penalty. Why do we continue a policy that is broken, that consumes our resources and delivers 1 percent of the time? Perhaps we'd like to think that we're responding to a higher purpose, like the victims' families. But that can't be, because we tell... [LB1063]

PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR LATHROP: ...85 percent of the victims' families, we're not going to seek the death penalty for the death of your loved one. And of the 15 percent that we provide and the county attorneys seek the death penalty, 63 percent of those will be reversed. We put these families on an emotional roller coaster and it is...we are not doing them a favor with the death penalty. We are not serving the purpose of the victim's family with the death penalty. We are using those people. We are using those people so that we can say, I support the death penalty. This is an indefensible policy. We are wasting money. We have a system that delivers 1 percent of the time, and there is no program in state government that we would support that delivers 1 percent of the time and we would continue to support. I would urge you to vote for and in favor of Senator Chambers' LB1063. Thank you. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Kruse. [LB1063]

SENATOR KRUSE: Thank you, Mr. President and colleagues. I stand in support of the amendments and of the base bill. I don't know where this is going to go or how we're going to end up with it. And frankly, I'm far more concerned about the attitude of the public. That's what we're working on here. I think we have come to the tipping point where most of the people in Nebraska really do not support the death penalty anymore. It's pretty clear in a few surveys and certainly in the conversations that I have around my district. Wherever that is, we know where it's going. We struggle and strain on this particular bill. But sooner or later we will be done with it because the system doesn't work. When the people understand that the system does not work, we will be done with this. We don't have to be in the business of killing people. It's wrong. Good Friday is a time when we, as the public, remember a state execution of someone we consider to be innocent. It was...the person was executed because the prosecutor wanted a death. He needed a death. He thought the public would settle down if he had a death, and so he had a death. It doesn't sound that far away when you look at our present newspapers and accounts. We have prosecutors that want a death. It doesn't really matter if it's the wrong person. The person that was here recently from Oklahoma found out that when

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he was released, having been found innocent, was released from the death row. When he went back home, there were persons who complained because he wasn't dead. They needed a death. The prosecutor on Good Friday needed a death. And we also recognize that the following Sunday we have evidence that God disagreed with that. I'm not about to get into all of the theological overlay of these events because that's really not important. It is important to recognize that we have clear evidence within our tradition that God disagreed with the state execution on Good Friday. What does that have to do with us? Well, quite a bit. We are taking on a bit of God when we decide to take away somebody's life. We talk that way, we think that way, we say it that way, that it's a...not bold action, but an action with a great deal of affront to it when we decide to take away somebody's life. We are playing part of God. The problem with that is that we're not God. I alone or all of us together are not God. We are human. I alone or all of us together, the whole state together, we are human and we make mistakes. The best of people make mistakes. And yet here we are, continuing to debate a system where you dare not make a mistake because you cannot take it back. You take an innocent life and you cannot take it back. Nebraska has taken two of those lives, innocent life. To me, that's... [LB1063]

PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR KRUSE: ...enough to put us back in our seats. Are we really going to run the risk of doing that again? We have piles of things coming through our e-mail. And I note in one of them, on page 5 this fellow claiming to be an expert states that there is not proven case of an innocent person being executed since 1900. Well, hello. I guess he's not doing all of his research. And I suppose it's a technicality when the person who's already been executed is found to be innocent because another person confesses to the crime in 1908. It doesn't go back to court. So I suppose you could technically say he wasn't proven innocent. But he was innocent, and we have to look at that possibility as we consider the humbling challenge we have in weighing this legislation. Thank you. [LB1063]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Kruse. (Visitors introduced.) Members wishing to speak on AM1912: Senator Nantkes, followed by Senator Harms, Senator Gay, and Senator White. Senator Nantkes. [LB1063]

SENATOR NANTKES: Thank you, Mr. President. Good morning, colleagues. I rise in support of both of the amendments--one substantive, one technical in nature--and the underlying bill, LB1063. I am opposed to the death penalty in all instances. This is a decision that I did not come to lightly. But after careful consideration with my religious beliefs and legal training, I believe there is no other conclusion. As eloquently stated by Justice Harry Blackmun in a dissenting opinion in the case of Callins v. Collins he said, from this day forward I shall no longer tinker with the machinery of death. Recent developments from the Nebraska Supreme Court have now thrown our method of

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execution to the wayside, and Nebraska is without a method to impose this ultimate penalty. We've heard discussions about, after today's debate we may be facing a special session to look at alternative methods of execution. And my friends, that will continue our effort to tinker with the machinery of death. There are three primary arguments made in favor of capital punishment: morality, utility, and fairness. I wanted to briefly address each of those with a few counterpoints. In terms of morality, we hear a lot about how the death penalty is appropriate based on the Old Testament and the principle of the lex talionis; an eye for an eye, a tooth for a tooth. But with careful consideration and analysis of that principle, that's in fact a limitation on punishment rather than a reason for the ultimate punishment. And in fact, we must look at that in context. If all of our punishments were based upon the Old Testament, for example, the Old Testament includes 36 capital crimes. Beyond murder and adultery it would include working on the Sabbath and being an unruly child. So remember those things in context. Secondly, Senator Lathrop talked very eloquently about the political nature of some of these decisions in relation to crime and punishment. And in particular, I wanted to visit a little bit on the utility issue about deterrence. That is an appropriate public policy debate that we as lawmakers should have, in terms of meting out punishments to protect society. However, no study has concluded that the death penalty is a deterrent, and I think that's something that we need to keep in mind as we move forward. You want to be tough on crime? There are proven ways to do that. Help support and prevent. Help support programs that prevent substance abuse and treat substance abuse. Help support principles and policies for good quality paying jobs. Help get more police officers on the street and help reduce gun and other violent crimes. Those are ways to protect society that are proven. Then finally I wanted to talk a little bit about fairness. The U.S. Supreme Court and a variety of state courts have over the years consistently limited and narrowed not only the class of offenses that are appropriate to be considered for this ultimate penalty but also the offenders who could be considered appropriate for this ultimate penalty. And we've seen this narrowing over the years, and it will continue to narrow. [LB1063]

PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR NANTKES: And I think that we need to keep that in mind, that our system is so flawed and applied in such a way that is racially and socioeconomically unconstitutional, that we have an opportunity to say it stops here, it stops now. And I hope that you can join with me in that position. Finally, I did want to add a special note of thanks to Senator Pedersen, who I don't think is here at the moment, but who led a delegation of state senators down to the Tecumseh State Prison earlier this year and we visited death row. We had a chance to walk into the cells and see what their daily living conditions were like. We had a chance to visit with people who are on death row. And it's hard to explain how moving that experience is when you're standing face to face with somebody who's been sentenced to this ultimate punishment. I will not condone nor... [LB1063]

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PRESIDENT SHEEHY: Time, Senator. [LB1063]

SENATOR NANTKES: ...ever support state-sanctioned murders. Thank you. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Nantkes. Senator Harms. [LB1063]

SENATOR HARMS: Thank you, Mr. President and colleagues. I rise in opposition to LB1063. I believe very strongly that if life imprisonment is the only thing we can offer someone who murders, what can we offer that individual who kills a child, someone who does horrible things to children? I've had two of those happen in my community where I grew up. And I want to share a little bit about this background because it sets the stages for the argument that I want to have in regard to this particular issue. The issue that occurred was with Mata, who killed a young boy by the name of Adam--three years old. He killed this young boy because he was jealous of his mother, because he had an affair with his mother; and she became pregnant then by her husband. It bothers me tremendously to even discuss this issue because, quite frankly, it was a horrible crime; a crime that was...one that's very difficult to explain. Mata killed Adam. He cut him up, he boiled his body, he fed it to the dogs, he flushed it down the toilet. And I say to you, what's wrong with this? What's wrong with us saying that this is not appropriate, that the death penalty is appropriate for someone who does that to a child? This man used part of the body as a trophy in his bedroom where he skinned the face, left the eyes and wrapped it up with tape. What's wrong with this? How do we argue that the death penalty is not appropriate here? We had another case in my community where I grew up where a young girl was raped, taken to Lake Minatare, shot in the basement of an old house. The killer leaves, goes home, listens to a scanner, and then goes to sleep. What's wrong with this? I'm not asking you to be emotional about it. I'm not asking to make a decision based on emotions. I'm asking you to make a decision about facts that harm children, that do such terrible things to people. It doesn't seem right to me. How do I go home and face the parents and the grandparents and their brothers and sisters and say to them: we just took care of the man who raped your daughter or your sister and then killed her; the man who destroyed your son, Adam, cooked him up, fed him to the dogs; and we gave him life imprisonment? What's wrong with this? What don't I see about this? What's not right about this? It's wrong, people. And I oppose LB1063. I oppose it strongly because what I've seen, what I've experienced in my own community. You know, I believe that some actions are so horrendous an assault on human decency... [LB1063]

PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR HARMS: ...that perpetrators deserve the most extreme of state consequences. Indeed, as a broad segment of Nebraskans still strongly affirm that capital punishment is a proper social response. In fact, the study was recently done that

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shows that 78 percent of Nebraskans still support the death penalty. Don't tell me that Nebraskans are not supporting it, because they are. And I would just ask, as you review this carefully, and I'll be back to discuss more about what I think about the death penalty, but I would ask you not to be emotional. I'd ask you to look at these facts that I just shared with you in regard to children, in regard to issues that are taking place. What's the right penalty? You know, some of these people who go into prison and are put on...who have killed and they're in for life, they kill in prison. Don't tell me that a killer is just going to turn over and not try to kill again. They will kill... [LB1063]

PRESIDENT SHEEHY: Time, Senator. [LB1063]

SENATOR HARMS: ...and there's evidence. Thank you, Mr. President. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Harms. Senator Gay. [LB1063]

SENATOR GAY: Thank you, Mr. President. Senator Harms brought up a good point. He says let's not get emotional, but it is an emotional issue for many people here. And the crimes that are committed are heinous or evil, every other word you can think. That's what we're dealing with here. This is the third time now we will be discussing this issue, and I oppose the bill, I oppose the amendments. There's a reason. I know we come here and just say, well, you got to vote your conscience, you've got to do what you think is right. But what about the majority of Nebraskans who still support the death penalty? They know...this is a black and white issue. They know what they're telling you when they say they support it. I understand, and I've received many cards and letters and phone calls to the office of a group of people who are opposed to the death penalty, and I respect their views. I respectfully disagree with them, but I do respect their views. Senator Chambers has made this a life's work and I respect his opinion. There's no one here in this body probably who has such views and has been so consistent on the issue. But the fact is, a majority of our constituents tell us they want this and they think about it. Senator Lathrop brought up the fact, he said the death penalty is broken, it's indefensible. So far I've seen a lot of people on the Judiciary get up. They're lawyers. If the system is so bad, let's fix it. I don't think this bill does that. But if the system is so bad, as I read through the amendment, it says defective legal procedures and implementation, the financial costs, the appeals. And then it says the Legislature remains troubled by the lack of any meaningful procedure in the courts to ensure uniform application of the death penalty throughout the state. Well, yeah, I think everybody is just sick and tired of the constant appeals that can go on. And for years this has been broken and we're not fixing it? I would argue we go fix the problem. We keep the death penalty as an option for some of these most heinous crimes. We could sit here, and we all know the stories. I'm from Sarpy County. John Jubert was from Sarpy County. And you know, things have changed. When John Jubert was arrested and we...you know, the way you treat your children, how you watch your kids. Times have changed from when I was growing up and from when you grew up. Now we look at

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a thing. There's such evil out there that you got to watch every move your kids make, where they're at, and it's unfortunate. We've seen some terrible things happen in this state, and I do think there's a justification at some point when we have these just horrendous crimes. Senator Lathrop mentioned 38 out of 254 cases. Those juries knew what they were doing. They fully understood the implications when they gave the death penalty for those crimes. So I think as we discuss this today, let's discuss both sides of the issue, have a good, fair debate. And hopefully we'll get through some of these issues again. Like I say, this is the third time we've heard it in two years. I don't know how much people's minds have changed, but I think there is a view of the majority of Nebraskans who want to keep the death penalty, and they understand what they say when they say they want to keep the death penalty. And right now I oppose this bill, as I did the prior two bills that came before us. Thank you, Mr. President. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Gay. Senator White, followed by Senator Chambers, Senator Erdman, Senator Engel, and others. Senator White. [LB1063]

SENATOR WHITE: Thank you, Mr. President. By way of background, my personal experience with the death penalty is extensive. My brother-in-law was murdered. His killer lives on death row today in Nevada. My father signed the death warrant of "Walkin' Wili" Otey. I sat with him while it was executed. My brother is a public defender in Cook County, on a firsthand basis has related to me the number of innocent people who were on death row in Illinois who were released. The emotions that the death penalty bring are profound and deep and abiding. Confronted with those emotions, what I have done is referred to philosophy and the teaching of my religion. My religion teaches that it is absolutely wrong to kill for vengeance; that if somebody did something so horrible that you cannot abide it, you only diminish yourself if you kill in vengeance. My religion teaches, though, that killing is permitted in one circumstance, and that is to defend the life of innocent people, yourself or others. That is the only time killing is permitted. I cannot support this bill because, though not frequent, there are substantial examples of inmates who simply remain too dangerous to be left alive. There are well-documented instances of criminal enterprises being run from jails in which murder for hire is a regular tool of their business. There's well-documented incidences of inmates who have repeatedly killed other inmates or guards. There are well-documented incidents of people who have been convicted or are awaiting trial who have caused murders to be committed against judges, prosecuting attorneys, and witnesses. While I share the horror of Senator Harms at the incalculable depths of evil sometimes exhibited by our fellow citizens, I also share the horror of Senator Chambers at the thought that we who would call ourselves civilized would kill. Trying to balance those and bring them to mind leaves me to go back to the philosophies I was taught and the religious principles I was taught, and that killing sometimes in very rare circumstances is the only moral course; that the man who is in prison also has a right to find salvation in life in prison and not be afraid that he will be killed in his cell; that the guard trying to keep society safe not be worried that a murderer who will never get out can murder and murder again without

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any additional consequence; that the justice system, as imperfect as it may be, cannot be corrupted by people committing murders from prison to avoid punishment. Given that, in my experiences, I cannot vote for this but I remain committed that should Senator Chambers, anyone else ever propose that the death penalty be reserved only for people who after conviction are sentenced by a jury which finds specifically, that despite life imprisonment they remain too dangerous to be left alive, in those circumstances I do support... [LB1063]

PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR WHITE: ...the death penalty. Thank you, Mr. President. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator White. Senator Chambers. [LB1063]

SENATOR CHAMBERS: Mr. President, members of the Legislature, I believe I probably am more aware of vicious murders having been committed in this state than anybody else. I follow them as they are committed. A young woman that I know, that I knew, had her throat cut in front of two children and was stabbed 13 times. And the killer was sentenced for second-degree murder. There was a decapitation, I think, up in Norfolk and a dismemberment. That person did not get the death penalty. There was a Nokes family where they had a trio in a love nest and one of the victims was shot, dismembered, the parts wrapped in paper, dropped in a reservoir, no death penalty. Former Chief Justice of the Nebraska Supreme Court Norman Krivosha detailed numerous, vicious, heinous murders where no death penalty was sought; where no death penalty, after being sought, was imposed; and in cases where a death penalty was imposed, the case was overthrown for a different reason. My view on this is not going to be swayed by anything Senator Harms says about vicious murders because I'm familiar with them. My nephew was viciously murdered and people couldn't wait to come to me and say, how do you feel about the death penalty now? I told them, the same way. My son was shot in the face--not killed, fortunately. I still am opposed to the death penalty. A young woman who was a North High School student was viciously murdered and raped. The family came to me to ask me to help make sure that the case was properly handled, and they knew that I'm opposed to the death penalty. And I reminded them, and they said that has nothing to do with why we're coming to you; we know what your position is. Nebraska unfortunately has not evolved to that state of decency and civilization where it can see past the death penalty. All of the so-called industrialized countries have reached that point. Thirteen states within this country have reached that point. But Nebraskans cannot do it. There were death penalty laws for crimes other than murder. The U.S. Supreme Court said there are so many cases where race and economic standing results in a person being killed that the only crime for which a death penalty can constitutionally be imposed in America is murder. And not just ordinary murder, but a murder with what are called special circumstances. The U.S. Supreme Court, when it first struck down all of the existing death penalty statutes,

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stated there was such arbitrariness it was like a person being struck by lightning. And when a review was made of the cases of those sentenced to die and those similarly convicted, those who committed similar offenses, there was nothing to distinguish the case of those who were sentenced to die from the cases of those who were not. In view of these facts, people still say you've got to have the death penalty for the worst of the worst. All Senator Harms would have to do, all Senator White would have to do, all that anybody who supports the death penalty would have to do is read the murder cases that have occurred in Nebraska. [LB1063]

PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR CHAMBERS: And you want to talk about a heinous murder? You can find all that you want. And it should be noted that two of the three men executed were black, and their crimes were not as horrible as those of many white people who were not even confronted by the death penalty. So those kind of things that are being presented are not going to sway me. I want to try to move this state to a higher level of civilization. We should serve the function of teachers and educators and those who will do what a man you all say you worship--take people away from the old way to a better way. Thank you, Mr. President. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Erdman. [LB1063]

SENATOR ERDMAN: Mr. President, members of the Legislature, I rise in opposition to the pending amendments and I rise in opposition to LB1063. The first amendment is a technical amendment. The second amendment, however, is a rewrite of the bill. And by voting for the committee amendment, you are essentially voting to repeal the death penalty. In practice, it would require that amendment to be adopted and ultimately the bill to be advanced, but in all practicality it's the committee amendment that is the operative bill, the operative language that becomes LB1063. And that's just a point of clarification. It's an interesting discussion. Senator Gay has pointed out that we've had this discussion twice; now this is our third time in a two-year legislative session. I highly doubt that any of our minds have been changed on this subject, regardless of what information wants to be cited or not. Maybe that's a bad thing, maybe that's a good thing. I think that's just a reflection of the reality. I don't think most people have arrived at a position on the death penalty without a great deal of thought. And as Senator Ashford and others have pointed out, that thought can evolve over time. But I think at this point with this Legislature it's probably similar, as a collective group towards this issue, as it was during the last legislative session. The things that have changed since last legislative session are quite obvious. The Nebraska Supreme Court has found, under the Nebraska Constitution, that the electric chair is unconstitutional in spite of the fact that the U.S. Supreme Court has held that it is constitutional with the same language in the Eighth Amendment. So we do have a change of precedent. But it isn't that much different than what a lot of us went through in 2002 with the Ring decision.

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That changed the way things were done. The sentencing process was changed under Ring. The Legislature and the state had to change our laws to comply with that Supreme Court ruling, or we couldn't have sentenced an individual to death at that point forward. Essentially it would have left our death penalty without the ability of sentencing somebody to death penalty. We would have had it, but no new individuals would have been able to be sentenced to it. Similar situation here. We have a law that is unable to be enforced. And one could make the argument that all the individuals that are on death row were sentenced to a specific penalty, a specific way of carrying out that sentence. However, if you ready page 69 of the Nebraska Supreme Court's opinion, the majority opinion, they find that Mata's death sentence was affirmed. Now one could make the argument, well, the court wasn't necessarily hearing that part of it. But they affirmed his sentence of death. The sentences below that says, but it can't be by electrocution. So if the argument is made that all individuals that are on death row are ineligible for a sentence of death--and I'm not a lawyer, I'm just assuming that the court would have dealt with that in this opinion. Maybe they haven't and maybe they may later. But as I read the language, they affirm Mata's death sentence while striking down electrocution. The other thing that I think is important is that this area of law is heavily litigated, numerous appeals, and regardless of where you set the bar there will continue to be numerous amounts of appeals. But what you always have to remember, especially in the sentence of death, is that the prosecutor and the state must have flexibility on when they seek the death penalty. It is unlike any other penalty that may be imposed by the state. We cannot mandatorily sentence everybody that fits a similar crime to the same punishment, if it means that their life is being taken by the state. It doesn't mean it's murder; it means that that is the sentence that will be carried out, and the Supreme Court has held that. And not all of the 253 deaths, the murderers that have been convicted, had aggravators. [LB1063]

PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR ERDMAN: And if you don't have the aggravators, then you don't get to that level of the trial where you get the next step, or you're obligated to provide that next step to get a sentence of death. And so if the argument again this year is going to be made, as it was last year, that somehow we should remove prosecutorial discretion, that's against the Supreme Court's rulings. The other side of this is, is that you'll have families that don't want the death penalty sought. You'll have prosecutors, for whatever reason, that will make a deal, as we've talked about last year, to get a conviction without pursuing the process. And that is all part of the framework that's been given us, either by precedent by the Supreme Court or within the confines of legal practice. Senator Kruse and I are going to have a conversation about some of the topics he brought up privately. But I do think that this is a healthy discussion. And I'm not afraid, and I don't think the Legislature should be worried about debating this for the third time in two years. This is an important issue. [LB1063]

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PRESIDENT SHEEHY: Time, Senator. [LB1063]

SENATOR ERDMAN: Let's discuss it. Thank you, Mr. President. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Erdman. (Visitors introduced.) We will return to discussion on the floor on AM1912 to AM1841. Members wishing to speak: Senator Engel, followed by Senator Kruse, Senator Lautenbaugh, Senator Wightman, and others. Senator Engel. [LB1063]

SENATOR ENGEL: Mr. President, members of the body, I too oppose LB1063 and the amendments. You know, we talk about life without parole. Last year during both debates, I believe I did mention to Senator Chambers and others, if you could guarantee me that these people who commit these heinous crimes do actually get life without parole--limited appeals, they are in a cell by themselves, the only reading material they get is the Koran or the Bible or something similar to that, and they're graphically reminded every day of their life what they did, of these heinous crimes they did--then I could go with that. But I know nobody can guarantee that. Just mentioned this morning, you cannot guarantee that. And Senator Harms talked about the Raymond Mata case, and we talk about...Senator Kruse had mentioned about the innocent and we are not God. We're not God, you're right; but who could be more innocent than that little child? And how about some of these other cases, this Jeffrey Hessler that kidnapped Heather Guerrero, the 15-year-old who was finishing her morning newspaper route? Took her in the country, raped her, and murdered her execution style and left her in an abandoned home. Now how innocent is that person? And Michael Ryan took three days to torture his victims to death for his loyalty...just loyalty to his cult before caving in his chest with a cowboy boot and killing his victim. He shoved a large shovel handle into his rectum, lashed him with a leather whip, shot off his fingertips on the left hand, broke his legs, ripped the skin of his leg with a razor blade and a pair of pliers. How innocent and how heinous is that crime? Now as far as I'm concerned these people, like I say, everyone deserves life. But how much life do these deserve? Then we talk about the most innocent of the innocent. Now as far as I'm...if we're talking about innocents, Senator Chambers talked about innocents, others have too, about the most innocent of the innocent. And since Roe v. Wade we've killed 170,000 babies in the state of Nebraska. Now how innocent are they? They have never committed a crime. They haven't done anything. They haven't had a right to take a first breath. So let's don't talk about innocence here when we're talking about these people that commit these heinous crimes. So as far as I'm concerned, I still think it is a deterrent. I really do believe it is a deterrent. And even Senator White mentioned something about, as far as the death penalty, if they cannot be confined to the point that they will not commit another crime. Well, this Mata, what he did to a little child, what makes you think when he gets in prison he doesn't get angry at somebody and kill again? Any of these people, the way they act, it just, in my mind they have no value for anybody's life except their own, just their own life. So I feel that they could kill again and that's why I believe in the death

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penalty itself and I do oppose this. Thank you. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Engel. Senator Kruse. [LB1063]

SENATOR KRUSE: Thank you, Mr. President and colleagues. I would have a friendly quarrel with my friend Senator Engel. I'm going to talk about innocence. He and others have talked about persons who deserve to die. That is not the question, as I look at it. I recognize it may be for others. I do not debate for a minute that these persons deserve to die. Of course they deserve to die. The question is, do I deserve to kill them? Do my neighbor kids deserve to watch me kill them? But more on that, I'd rather add to it at this point that, is it worth killing them to kill somebody who's innocent? Nebraska has killed two people who are innocent, executed them; the ritual killing by a public employee I might call it. Both of them are around 1900. In one case the man who was executed was already gone when the husband of the woman who had been killed confessed that he was the one who did it, clearly established innocence. The other one I reserve for second because it's a lot more fun, and we're to the point we need to have a little bit of fun. In the early days of Nebraska, there were a couple of fellows who obviously were bitterly disposed toward each other. Each of them wished the other one dead. The one became very clever about it. We can't really document all of his feelings, but it becomes obvious what he did. He disappeared and made sure that somebody accused his enemy of having killed him. There was a trial and the man was hung. As soon as the man was hung, the fellow who supposedly was killed came back onto Main Street and walked up and down and enjoyed life from there on. Now that's kind of fun to consider. (Laugh) Each of them wanted the other one dead. One of them was dead, but the person who was responsible for engineering that was free, absolutely free. He walked around having used the passions of the people. We haven't talked enough about whether or not we should be guided by the mentality of a mob. He knew the mentality of a mob, he knew what it would take to rouse them up, and he knew the time line would be short without a bunch of appeals in those early days. So he did it. The big problem I have is not that some people deserve to die. It is rather that the law is unevenly applied. And I would again pick on my wife a little bit here. If my wife were to kill me in a heinous fashion--I will not get into how she might do that, it might give her ideas--she will not be executed. Guaranteed, gold-plate guaranteed. Why? For four reasons: one, she's a woman; two, she's white; three, she's elderly; and four, she could hire her own attorney. Now it would take two of those at least to get her off. She's got four. [LB1063]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: One minute. [LB1063]

SENATOR KRUSE: She will not be executed. And all these things, Senator Chambers talks about aggravating circumstances and we can play this out, have a lot of fun because she's aggravated with me a lot. (Laughter) But she is not going to be executed.

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If my neighbor, my black neighbor, my male black neighbor were to do the same thing, he would run the chance of being executed because he's black, I'm white, I have some prestige in the community, he does not. He's going to have to go another way. The death penalty is applied unevenly and we all know it, and that makes it wrong. Thank you. [LB1063]

SPEAKER FLOOD: Thank you, Senator Kruse. Senator Lautenbaugh, you're recognized. [LB1063]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I wasn't sure that I was going to speak on this at all today, to be honest, but I thank Senator Harms for his comments and Senator Erdman for his. I found Senator Harms to be thoughtful, his comments and sentiments to be powerful, and I believe he is right on the mark. Going on 20 years ago, I attended a symposium on capital punishment. And the side opposed to it was represented by two of the attorneys representing "Wili" Otey at the time. One of them was at the microphone and he was explaining his experiences on death row, visiting death row. And he ended with the comment: and I want to tell all of you, these men on death row are not animals, they're just people. People who have made a mistake, he said. Yes, they're not animals. But I did ask, when it was open for question and answer, is mistake really the word you meant to use? Is it really right to describe what "Wili" Otey did as a mistake? If the members of the victim's family were here, could you use a word like "mistake" to describe what he did? And the two attorneys became very angry with me; visibly, vocally angry because I asked that question going on 20 years ago. At that point, I supported capital punishment and I still do today; and I rise in opposition to these bills and the amendments. The main reason I tell that story is because that is how I felt then and that is how I feel now, and I will not stand here and question the motives of those who want to repeal capital punishment. They have their reasons, and we disagree. When I hear some of my colleagues suggest that those of us who oppose this bill are doing so so we can say we're tough on crime, I get angry. I get very angry. My reasons are my reasons, and I'll discuss them at length if you want to. But I do not have this position so I can go tell people I'm tough on crime, and I believe all my colleagues have come to their position after serious deliberation as well. And I don't question their motives, and I believe their sincerity. I've heard this charge many times over the years regarding this being a pro-life state. How can you be pro-life and in favor of capital punishment? That does not work for me. I am pro-life; I consider myself to be strongly pro-life. But when you violate our society's most deeply held rules, there is an ultimate sanction that I believe is appropriate. You can be pro-freedom and still favor incarceration when a crime is committed. That doesn't make you anti-freedom; that means you're in favor of appropriate punishment. I consider myself to be a pro-life person and I consider myself, or I know I am, an opponent of these bills and these amendments. Thank you. [LB1063]

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PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Members wishing to speak: Senator Wightman, followed by Senator Nantkes, Senator Ashford, Senator Carlson, and others. Senator Wightman, you're recognized. [LB1063]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I rise in support...or in opposition to LB1063 and the amendments. I spoke on this a year ago, as did many other people. I certainly respect the opinion of Senator Chambers, and I know it is a heartfelt feeling that he has and he has held. Likewise, Senator Lathrop, Senator Ashford has spoken, I think passionately on this issue. For myself, I still believe that it is an appropriate punishment in certain cases. I don't contend that it's been proportionately applied. I believe what Senator Kruse is saying, that quite frequently it isn't. But I still don't believe that's justification for just throwing the death penalty out. A lot of things aren't proportionally applied. One person drives down the road and maybe a patrolman sees him, he's going 85 miles an hour, he's not apprehended. Another one drives down the road at 75, he is apprehended. That's not proportionally applied either, but I don't think that's reason to throw out speeding charges or any other type of charges. We'll never get down to all laws being applied proportionately. I agree that this is the ultimate penalty. Maybe there should be some different rules for it. But I'm not willing to jettison the entire idea of the death penalty because it's not proportionately applied. It does bother me a great deal that innocent people have been sentenced to death. I probably wouldn't have a big problem if we limit it to situations where there is either eyewitnesses or DNA tests. But I don't think we're headed in that direction. Again, I probably would not oppose such a measure. The question...one of the big questions to me is whether it is a deterrent. I have seen and read many of the statistical studies that says that it's not a deterrent. Quite frankly, I can't help but believe it is a deterrent. It seems to me that there are number of crimes that are committed and the people who commit those crimes who, if they were to eliminate an eyewitness, might very well do that and take what would be a bank robbery and it becomes a murder. So I do believe it's a deterrent no matter what statistical studies people come up with. One of the big things I have, and I think Senator Harms spoke eloquently on this, is the justice to a victim. We have spent all of the history of this country saying that people should not take justice into their own hands. I think they had to believe that there is justice. And I think in many instances if the death penalty were gone, the victims would believe and the families of victims would believe that there is no justice. And I think we have a lot more difficult time convincing people not to take justice into their own hands if we eliminate the death penalty. So that would be one additional reason. As Senator Harms so eloquently described the situations of crimes there in Scottsbluff, we had a similar...a couple of similar crimes some time ago. They haven't all got the death penalty. I think one instance where the death penalty may well be justified is where a law enforcement officer is killed in the line of duty. We had one where somebody was picked up for speeding... [LB1063]

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PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR WIGHTMAN: ...a number of years ago, and he was picked up just for speeding. He shot the patrolman. Again, I think that may well be justification for the use of the death penalty. I know that Senator Engel spoke about the Michael Ryan case. It's probably worse than he said, in that I think the original description of that murder was that he skinned this young James Thimm over a period of three days, removed the skin from him and totally tortured the poor child. And to deprive the family of that James Thimm of the death penalty, it seems to me, would be almost cruel and unusual in itself. So I do urge that if your mind is not already totally made up, that you do oppose LB1063. [LB1063]

PRESIDENT SHEEHY: Time. [LB1063]

SENATOR WIGHTMAN: Thank you, Mr. President. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Senator Nantkes, you are recognized. [LB1063]

SENATOR NANTKES: Thank you, Mr. President. And again, good morning, colleagues. It's hard to stomach some of the details that we've heard this morning about some of the most horrific of crimes that have been perpetrated in our state upon our citizens. But take into account, friends, that continuing to have this ultimate sanction in the death penalty in Nebraska spreads that blood to all of our hands as we give our sanction to state-sponsored murders. With that, I'd yield the balance of my time to Senator Chambers. [LB1063]

PRESIDENT SHEEHY: Senator Chambers, just over 4 minutes. [LB1063]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Nantkes. Members of the Legislature, do you hear how various people's families are used in this discussion? Senator Engel brought up the Michael Ryan case. Senator Wightman underscored it. But neither of them pointed out that the family of the victim came to the Judiciary Committee and spoke in favor of abolishing the death penalty. So there are people here demanding that the state do what the family of the victim said they do not want to see happen. When Randolph Reeves was sentenced to death, the family of the victim came before the Pardons Board to speak in order to have him saved, have him spared. Ultimately he was, in another of those cases in Nebraska where people are saying that the death penalty ought to be imposed even though it's not carried out. When it was mentioned that the U.S. Supreme Court had not struck down the electric chair pursuant to the language of the Eighth Amendment to the U.S. Constitution, neither the U.S. Supreme Court nor any other court prior to the Nebraska Supreme Court had a record presented during the trial of the effects of electrocution on a human

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being. So the Nebraska Supreme Court, prior to having that record presented to it, had gone along with decisions by the U.S. Supreme Court, even though there was no record on which to make a ruling really one way or the other. When the Nebraska Supreme Court was given that record of what happens with electrocution, it struck down the chair. Senator Wightman mentioned that if you don't have a death penalty in executions, the public may feel, the families of the victims may feel they've got to take the law into their own hands. What about all those states where there is no death penalty? That's not happening. And in those states where there is no death penalty, they're not having the prisons overrun with murders of inmates. And in the countries where there is no death penalty, they have a lower murder rate than that in the United States. So people say these things but they have no real validity whatsoever. As far as Senator Erdman's comments about the Mata case where the Nebraska Supreme Court struck down the electric chair but left undisturbed the death sentence, the courts never go beyond what they have to go beyond to resolve a case. What was challenged in that Mata case was the electric chair as a means of carrying out the death sentence. The death penalty, for everybody who may not be aware of it, was not challenged in any of the cases that have challenged the electric chair in Nebraska. The death penalty itself was not challenged. The record was not presented. The arguments were not offered in opposition...
[LB1063]

PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR CHAMBERS: ...to the death penalty, so that issue was not confronted; and the court did not have to even make a comment on it. But it chose to do so to point out the limit of the decision it was handing down, not that the death penalty ought to be upheld as a penalty nor that these people can be executed if the Legislature would subsequently put another form of execution in place. Senator, poor Senator...oh, I don't even see him back there. My good friend Senator Engel said you cannot guarantee somebody will get life. In Nebraska, you just about can. But you cannot guarantee that somebody will get death in Nebraska; and you cannot guarantee that when sentenced to death the person will be executed, because the majority of those placed on death row in Nebraska have left death row not as a result of execution. Thank you, Mr. President.
[LB1063]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Ashford, you are recognized. [LB1063]

SENATOR ASHFORD: Thank you, Mr. President. I would just like to comment on a...from our committee meetings and sessions that we've had on this issue in response to some of the comments made in opposition to the bill. And I'm just going to go down a few of these points. Senator Chambers has mentioned the issue of victims. And I realize there are many victims that are impacted by these kinds of events in many different ways, and it's difficult to generalize. But many victims' families have come to us, to the

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committee, over the last two years and expressed a desire that the death penalty be abolished and that these cases be ended. I'm sure that there are other victims who would take opposite positions. But it is clearly not a 100 percent type of issue. On the issue of pro-life state, we are a pro-life state. And what that means to me--and certainly that's a consideration that we have to think about, being a pro-life state. And what that means to me is that we err on the side of life. I believe that's what it means and it's, to me, in its essence. We err on the side of life so that if there is a chance that taking of this life would not be an appropriate course, that we should err on the side of life. In response to Senator White, we had county attorneys come in to talk to us over the last two years about this issue. And in fact, this year the county attorneys took a neutral position. And no one from any county attorney's office anywhere, no one from the Department of Corrections at any time has come to us and suggested that they cannot incarcerate a murderer who has committed a vile, heinous act in a secure way in the Nebraska penal complex. It simply is not...though it is...one can think about how it might happen, when balance that against the other side of the coin, whether or not to put that person to death because someday, somehow, some person who has committed a heinous act may kill someone else and therefore we should have the death penalty, is way too remote a reason, in my view. And so that if we are a pro-life state, and most of the religious groups in our state have come out opposed to the death penalty and for abolishing the death penalty, if we are a pro-life state then we should err on the side of life. On the issue of proportionality, Senator Wightman is a thoughtful person and he brings up good issues. But there is a significant difference between proportionality when we're dealing with an automobile offense, a speeding offense or some other offense, and a capital murder case. And there is no proportionality of punishment in Nebraska or anyplace else that has the death penalty in this country. It is disproportionate. It is not proportionate. So again, the question is if we have a system that is admittedly not proportionate, that is disproportionate, we have a penalty of life imprisonment without parole which, Senator Engel, in all due respect, does mean life imprisonment without parole. It means life imprisonment without parole, and that's what the committee amendments are all about. It seems to me that the issue of proportionality starts to wane when we're dealing with these life-and-death issues when we have options, the option of life imprisonment without parole. Deterrence, the representative of the County Attorneys Association that came and testified this last time on the bill,... [LB1063]

PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR ASHFORD: ...we discussed deterrence at great length. Mark Young was questioned about deterrence, and he said there is no deterrent effect particularly. He can't find any statistical analysis which would say to us that there is a deterrent effect. There is not a deterrent effect. There is not a deterrent effect. There is no evidence that the death penalty has a deterrent effect. In fact, the evidence that's presented to us--and that's what we have before us when we're in this committee, and that's why I would suggest to you seven of our committee members voted to put this bill on the floor.

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There is no evidence of deterrence. Thank you, Mr. President. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Ashford. Senator Carlson, followed by Senator Dierks, Senator Chambers, Senator Harms, and others. Senator Carlson, you're recognized. [LB1063]

SENATOR CARLSON: Mr. President and members of the Legislature, I rise in moderate opposition to LB1063, and I'm going to share some thoughts in regard to that. Over my experience in two sessions in this Legislature, I have grown to admire many, many senators in this body. Certainly Senator Chambers is one of them. I will agree with him on some of these issues and I'll disagree on others. Senator Chambers, you may succeed on this bill. You may not. But in a sense, you already have because you brought the process of capital punishment to a standstill in our state. We have great freedoms in America. The process of free speech and debate is one of them. In determining where we are in free speech and debate, we receive our value system from some source. For many of us, it's the Bible, for others it may be the Koran; for others, could be other sources. But those of us who govern have a unique position and a unique responsibility. I strongly believe that each of us are here because God appointed us. That includes Senator Chambers, that includes me, it includes all the rest of you. We'll be here as long as and only as long as He wants us here. But while here, I believe we're in the position that the Book of Romans talks about in chapter 13, verses 1 through 6. And Paul says, there is no power but of God; the powers that be are ordained of God. That's where we are right now. We're making law. It also says that we as rulers are not a terror to good works but to the evil. And so Romans tells us that those that we govern over, if they do that which is evil they ought to be afraid; because it says we bear not the sword in vain, for we are ministers of God, we are a revenger to execute wrath upon him that doeth evil. I think that Senator Chambers has made a comment that it's hard for him to understand how people who call themselves Christians could possibly be for the death penalty, and it's a tough question. In many ways, as we read what the Bible tells us, we see through a glass darkly. We know that. I've tried to look at the New Testament and see how that does away with capital punishment. At this point, I can't see that. I'd be open to Senator Chambers' discussion with me. I'd be open to discussion with anyone else. But this is a serious matter. This is a matter that affects the lives of not only those that are on death row, but the families, their families, the families of those against who the crimes have been committed. [LB1063]

PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR CARLSON: We want to make the right decision. Thank you, Mr. President. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Carlson. (Visitors introduced.) Senator Dierks, you are recognized. Senator Dierks. [LB1063]

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SENATOR DIERKS: Thank you, Mr. President. My position, of course, is in support of this legislation. And I've supported doing away with the death penalty since I first came here. And I knew that that might not be the most popular thing that I talked about in my district, but when I was campaigning for the office I told those people that I was pro-life. I would do everything that they asked me to do, the majority of them, except for several issues and one of them is a pro-life issue. And I consider this a pro-life issue. I don't think I'm going to change anybody's mind. I think most people here have their minds made up. We could probably vote right now and it wouldn't be any different if we went all day before we voted. But one of the things that stands in my mind is the possibility of putting someone to death who is not guilty. And just one of those cases is enough, I think, for me to not be able to support the death penalty. And that has happened across the country and we know that. I think we even had someone in your Judiciary Committee who had had the unfortunate experience of being convicted to die in the state of Oklahoma for a crime that he did not commit. DNA, I think, was the thing that brought about his release. But he was within hours of being executed. It was done based on, I think, on biases by the police department in that particular community. They decided they wanted to kill a man and this was a man they were going to kill. If we have that sort of thing going on in our nation or in our state, we just cannot support the death penalty. Thank you. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Dierks. Senator Chambers, you're recognized. [LB1063]

SENATOR CHAMBERS: Mr. President, members of the Legislature, I say we should be teachers. There are people observing and listening, not just those in this Chamber. So I think the discussion is worthwhile. I think they are watching, they are making judgments. Senator Lautenbaugh hasn't been here as long as I have, but I've had senators even this session tell me that they vote a certain way because of what will happen in their district. So it's not something that's based on a subtle conviction that voting to keep the death penalty is the thing. They have said that because of the attitude in their district they're voting that way. If it were not for that pressure, they don't care whether there's a death penalty or not and they could vote to abolish it. But since my good friend "Parson" Carlson opened the way, I'm going to read something that I handed out to my colleagues because others than my colleagues will not see it otherwise. This...I give a rhyme every day of this session, my last one. This one has some language or textual material prior to the rhyme. And the heading for the whole thing is WHAT WOULD JESUS DO? "This being the somber day we debate the melancholy issue of the Death Penalty, I offer a Rhyme made appropriate to the occasion by the Daily Prayer and the New Testament story of how Jesus dealt with the only 'death-penalty' case presented to him, involving a woman 'taken in the very act' of adultery. The LAW, as asserted by her accusers, mandated that she be executed by stoning. Without challenging or questioning the 'letter of the LAW'--but initiating a 'New Testament' that ushered in a

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new way of doing things--Jesus articulated the Standard for carrying out a death sentence: 'THE FIRST STONE SHALL BE CAST BY THE PERSON WITHOUT SIN.' Knowing that 'all have sinned and come short of the glory of God,' Jesus knew that neither the 'first' nor any subsequent stone could be cast. According to Christian belief, only Jesus was without sin; therefore, only Jesus is 'qualified' to carry out a death sentence if it is to be carried out at all. To the query: WHAT WOULD JESUS DO?--it appears that He, Himself, has provided the answer. Hence, without rancor or irony, I present the following Rhyme for whatever it may be worth to 'people of faith': 'VENGEANCE is Mine; I shall repay.' Why does the Almighty want it that way? Humans who taste of REVENGE, overeat; REVENGE--so destructive--seems ever so sweet. REVENGE does poison the soul and the mind; REVENGE, the Eye of Justice, does blind. Love, Hope, Redemption--Gentle Jesus taught;" "Parson" Carlson, "REVENGE, with 'pay-back' and hatred, is fraught. LIFE, by no State, should ever be taken, For VENGEFUL humans, oft are mistaken. Twisted by VENGEANCE, when anger is high, Judgments are clouded and innocents die. Jesus said: 'Only the SINLESS may kill'--Knowing quite fully that they never will. Thus, that awful VENGEANCE ROD Should be in no hand--" Senator Carlson, "but the hand of God..." Ironically, the 'Jesus Standard' created a situation like that confronting Nebraska: having a Death Penalty but no way to carry it out." Senator Carlson, in the same way that maybe Jesse James and... [LB1063]

PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR CHAMBERS: ...the sheriff saw eye to eye on some issues, it's kind of ironic that Jesus set a standard where there was a death penalty in the law, which he didn't touch, but they couldn't carry it out according to the standard he set. I, who people view as the Devil, created a set of circumstances where they have a death penalty here but they cannot carry it out. This is why sometimes it might be wise not to judge too quickly. Thank you, Mr. President. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Harms, followed by Senator Kruse, Senator Lathrop, Senator Nantkes. Senator Harms, you are recognized. [LB1063]

SENATOR HARMS: Thank you, Mr. President, colleagues. The death penalty should be maintained in Nebraska for two reasons. First, at the top of that list is deterrence. And I've heard on several occasions here today, I heard last year in the debate that deterrence...the death penalty did not have any impact on deterrence. In fact it does. Two studies that were done support this position. And let me give you where those studies are and you can read them for yourself, but I will quote. In 2003, the American Law and Economic Review study...does capital punishment have a deterrent effect. And I quote the results. "Our results suggest that capital punishment has a strong deterrent effect; each execution results, on average, in eighteen fewer murders." A second study

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that was done in 2006, done by the Stanford Law...was done by the Stanford Review article entitled "Is Capital Punishment Morally Required?" And they also talk about it is a deterrent fact. And you can read that for yourself. But it does talk about the fact that it does have an impact on whether people continue to kill or kill at all. And the second reason that I think that we should continue to have the death penalty, and that's the appropriate punishment. Certain acts are so heinous that they violate our social conscience and merit the ultimate penalty. Punishment must be held in proportion to the crime for the justice to be served. And I believe that very strongly. Now let me talk to you just a little bit about where Nebraska stands. I've heard some things and I've heard people comment in here. But let me get a little more...give you a little more detail on where this great state stands. In a survey that was done by McGrain Berryman and Mines, and I quote: 78 percent of the respondents said they support the death penalty for heinous crimes. And not surprisingly, a nearly identical number, 76 percent, said they opposed legislation that would abolish the death penalty. And I want to go on further with this study. They state that 60 percent said they disagree with the state Supreme Court ruling that Nebraska use of the electric chair constitutes cruel and unusual punishment. And I further quote: 57 percent said they would support legislation to make lethal injection the sole means of execution in Nebraska. So I believe that the majority of the people in Nebraska still support this. The studies support it. I've explained to you that there are studies that show that there are deterrents, that it can be used for deterrents of murders. And I would be in hopes that you'll keep these in mind as you begin to mull over where you're going to be and what you're going to do in regard to this important decision that we're about to make. So I thank you, Mr. President. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Harms. Senator Kruse, and this is your third time on AM1912. [LB1063]

SENATOR KRUSE: Thank you, Mr. President and colleagues. The discussion that's going on is, I think, most appropriate for us and especially in front of persons of the state. You see various opinions expressed and it's time for us to weigh them without a mob mentality, but deliberately and look at them. The proposition has been given that some crimes are heinous and the person deserves to die. I am not resisting that there are heinous crimes and the person deserves to die. Along with that some will say, well, what you're really thinking as a person of religion, if the person's soul can be saved then they don't deserve to die. No, I'm not thinking that at all. If the person's soul can be saved, fine. But the person still has committed a heinous act and does not deserve to live. The question is not whether somebody deserves to die. The question is, do I deserve to kill him. Why should I be copying a killer? Why should we all together copy the acts of a killer? Aren't we better than that? I would hope so. And even more important, do the neighbor kids deserve to watch me kill this man, almost invariably a man? A silly little incident still gets at my feelings about it. Many years ago the neighbors all decided that a cat should be killed and I was chosen as the one to do it.

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And I did. As I did that act and reflecting back on it, the one thing that I spent more time on than anything else was trying to figure out how to do this without the neighbor kids knowing I was doing it. I do not want the kids in my neighborhood or your neighborhood to watch us kill someone, to copy a killer, to act like the highest level of value that we have is to respond like a gang member and wipe out somebody who has offended us. And I do believe that the public is coming to that opinion. Several of you have been contacted this morning by the Attorney General to warn you that if you vote for this bill it will hurt your reelection. Well, I don't think that's accurate. But certainly it's not accurate in my district. I'm not running for reelection but several people want my job. It's a very fine job and a lot of people want it. I would warn every one of them that if they would oppose this bill in my district, it would be a mark against them. Because we know, within my neighborhood, that this does not deter. We need to think about deterrence and several things have been said about it. I think that the death penalty deters just about everybody on this floor. And we're the ones who write the law, bill, so that's why we put it in there. But unfortunately, or fortunately, we're not the ones that are the target of this. A gang member is not going to fear death. A gang member will fear, far more, life in prison. That is where the deterrence is, to have that door clang behind you and know... [LB1063]

PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR KRUSE: ...that that's the end of your life. I think this debate is important for us. I affirm Senator Chambers bringing it back to us again before we leave this place so that the public can have a chance to look at it, see the primitiveness of it, see that it's a system that does not work, and to adopt other systems, for there are systems that do work. We do have to take crime seriously. And frankly, in this case I don't think we are taking crime seriously, as serious as we should. Thank you. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Kruse. Senator Lathrop, you're recognized. [LB1063]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Again, I rise in support of LB1063, and I'd like to take this opportunity to make an observation if I can. And that is, each time we have debated the death penalty, invariably there is someone who will stand up and talk about the most hideous crime. Today that was done by Senator Harms. I appreciate that. I appreciate his position and his thoughtful remarks. Last time we discussed this issue, Senator Flood talked about the people that were killed up in Norfolk. There is no question in my mind that these people deserve the worst penalty that we can hand out in this state. They are the worst of the worst. There have been 253 of them and 38 of them have ended up on death row. But my opposition, and you can oppose the death penalty for a number of reasons, but my opposition, my opposition comes from what the death penalty does to the victims' families. And so I think by telling these stories it sort of begs the question, and that is what happens when

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we provide these families with--the victims' families--with the death penalty? If you have been through a trial and the court ultimately imposes the death penalty, we have ushered these families who have lost a loved one in the most heinous circumstance, we usher them over to our death penalty program. Our policy on the death penalty, the practice of implementing the death penalty and carrying it out, it's not just about the guy who committed the crime; it's about those families. Because I have been around litigation involving wrongful death claims. And I can tell you that those people that get involved in litigation, those people that get involved in litigation, every time they go to a deposition, every time they go to a hearing, every time they go to another step in the legal process they have to relive their grief. And so we offer the families of these victims, in the name of doing the right thing for them, we offer them a ride on the death penalty roller coaster. But I assure you that when they leave the courthouse the day the death penalty is imposed, there is no sense of satisfaction. They don't feel good at that time. There is no closure because for the next 20 years, for the next 20 years the person that killed their son or daughter or husband or wife is now going to be in the paper, they're now going to have appeals, they're now going to have lawyers, and it's going to go on and on and on for 20 years. And 63 percent of those people will have their convictions reversed. And what's that doing to these victims' families? They hope that they will have some sense of closure at the end when someone is finally put to death, but it doesn't happen. One percent of the time do we put somebody who is the worst of the worst to death. That means for these 99 percent of the families who have had a loved one killed by a heinous, criminal, murderous act, they're left short with the death penalty. It isn't about whether we're trying to do the right thing for the family, trying to avenge the worst kind of murders that one could imagine. I sat through, when I was... [LB1063]

PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR LATHROP: ...a law clerk for the district court judges in Douglas County, I sat through part of Michael Ryan's trial. I remember it. It was the most sickening thing in the world. But what do we do with the families for 20 years while his appeals go on? They go up and they go down and they never get on with their life because they're hanging to the next appeal, the next decision, the next stay. The death penalty isn't just wrong for a variety of reasons; it's wrong for the victims. Let us put these people away where we never hear from them again, where they never have a chance to get out, where they sit in a cell in segregation and rot. And if we've made a mistake, we can pull them out of the cell and put them on the street instead of performing the ultimate and irreversible form of punishment. Thank you. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Mr. Clerk, do you have items for the record? [LB1063]

ASSISTANT CLERK: Mr. President, I do. The bills that were read on Final Reading this

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morning have been delivered to the Governor. (Re LB606, LB606A, LB797, LB822, and LB1096.) I have a notice of committee hearing from Health and Human Services. Amendment to be printed by Senator Synowiecki to LB1147. Your Committee on Enrollment and Review reports LB988, LB988A to Select File. And the Education Committee will meet in Executive Session in Room 1023 at 12:15 today. (Legislative Journal pages 1067-1069.) [LB606 LB606A LB797 LB822 LB1096 LB1147 LB988 LB988A]

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

PRESIDENT SHEEHY: You have heard the motion to recess until 1:30 p.m. All those in favor say aye. Opposed, nay. We are at recess.

RECESS

SENATOR LANGEMEIER PRESIDING

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

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Please record, Mr. Clerk.

ASSISTANT CLERK: There's a quorum present, Mr. President.

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Do you have any items for the record?

ASSISTANT CLERK: Mr. President, I do. Your Committee on Enrollment and Review reports LB766, LB959, LB960, LB961, and LB1019 all as correctly engrossed. (Legislative Journal pages 1069-1070.) [LB766 LB959 LB960 LB961 LB1019]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. When we left off just prior to lunch we were on AM1912 to AM1841. Senator Ashford, would you like to give us a summary of your amendment? [LB1063]

SENATOR ASHFORD: Yeah, we're still on LB...or on AM1912, which is a clarification of AM1841, Mr. President, and it simply clarifies that a court may/can order reimbursement in a first-degree murder case where life imprisonment without parole is the sentence, and that really is the extent of it. LB1063 is significantly amended by AM1841, so hopefully we can get to the Judiciary Committee amendments, which essentially

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becomes the bill, and then move on from there. Thank you, Mr. President. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Ashford. Members wishing to speak on AM1912, we have Senator Nantkes, followed by Senator Pedersen, Senator White, Senator Erdman, and others. Senator Nantkes, you're recognized. This is your third time on AM1912. [LB1063]

SENATOR NANTKES: Thank you, Mr. President. Good afternoon, colleagues. I think that as was the case in last session when we addressed this issue, has been the case this session. We've heard a lot of very passionately and heartfelt pleas about people's individual positions on this important public policy and based in a variety of different facts and reasons which are persuasive to them. I'm under no illusion at this point in time that we're probably changing many minds within the body, because individual senators have spent such a great deal of personal time thinking about and reflecting upon these issues. But I do feel it is important that we make a clear and complete record here about some of the issues that have been addressed. There's been some discussion this morning about public opinion polls, in particular, some that have recently been distributed on how Nebraskans feel on the death penalty. And, of course, as elected officials we must always be...we must always be aware of and try and be responsive to how our constituents do feel about a particular issue. But, colleagues, in terms of something like the death penalty, which has many...a multitude, really, of constitutional issues at play within it, public opinion means very little in this context when we're talking about constitutional rights and we're talking about human rights. I think those are things that we need to think about as we move forward and when we look at a public opinion poll in deciding issues of life and death. The other issue I wanted to talk a little bit about was the concept of justice; in particular, delivering justice to the victims and the victims' families who have suffered through these horrific, horrific crimes, and they do deserve justice. But make no mistake, my friends, that justice deferred is justice denied. And under our current system, we're looking at decades before this ultimate punishment is, in fact, carried out, if ever. Again, I want to thank the Judiciary Committee for passing around this information they did last week. It was really well put together and very informative. Think it may have been mentioned this morning, but I wanted to just go through and repeat again that, you know, looking at the 1,450 homicides that have occurred in Nebraska from 1973 to the present day, you see that narrowing down to the amount of people charged with homicide and then first-degree murder, and convicted of first-degree murder, and determined death eligible, and death sentences meted out, and then after a variety of different court appeals have been exhausted that we've executed 3 people. To quote from "Death: The Ultimate Run-On Sentence," written by Judge Alex Kozinski and published in the Case Western Law Review from 1995: The death penalty, as we now administer it, has no deterrent value because it is imposed so infrequently and so freakishly. To get executed in America these days you have to not only be a truly nasty person but also, statistically, very unlucky. So what we really have is the illusion of justice underneath this death penalty

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discussion, rather than actual justice and actual closure for these victims and their families which does need... [LB1063]

PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR NANTKES: ...to be attended to. With that, I'd yield the balance of my time to Senator Chambers. Thank you. [LB1063]

PRESIDENT SHEEHY: Senator Chambers, just over 50 seconds. [LB1063]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Nantkes. And Senator Nantkes has presented some very cogent arguments and reasons for supporting LB1063, and were I not already convinced, she would have convinced me. Thank you. (Laughter) [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Pedersen, you are recognized. [LB1063]

SENATOR PEDERSEN: Thank you, Mr. Lieutenant Governor and members of the Legislature. I haven't said anything all morning, but I want to stand up in support of Senator Chambers' bill. When I first came into the Legislature 16 years ago, I was thoroughly supportive of the death penalty because I thought there was people who deserved...who have done things that deserve to die. I don't know that I've come away from the idea that there were people have done things that deserve to die, but I've definitely come away from the death penalty because it has not been used fairly, it has not been used consistently. It has done nothing to stop crime. If the death penalty was slowing down crime or stopping crime then why do we keep going up in our numbers that we have locked in prisons and the more heinous deaths keep getting numbered more, with more heinous deaths than the ones before. Today's day of age, these people do not get out of prison when they've been given life imprisonment. The thing that scares me even more--that we have probably killed people who did not commit the crime. I do believe today that the Sixth Commandment that I learned as a child, thou shalt not kill, is exactly what we do when we put somebody to death by the state. I've learned in my older age that resentments is an illness. I work in a profession that has taught me that it is a cancer that you never get even with. I say a little prayer, a meditation, every morning that says help me, Lord, to deal with resentments, the real curse of your people; take from me all hatred, anger and woefulness, and persuade me to work toward emotional health and maturity, and let me fully enjoy the blessings of respectability. Hatred, anger and woefulness I seen in action, since I've been in the Legislature, by the people who promoted death and did rallies around it at our death chamber here in Lincoln. Thou shalt not kill has hit home, and I believe it is murder in the name of the state and not in defense, but in resentment and anger. I'll give the rest of my time to Senator Chambers. [LB1063]

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PRESIDENT SHEEHY: Senator Chambers, 1 minute, 25 seconds. [LB1063]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Pedersen. Members of the Legislature, we've heard facts given, and none of them has been denied, that this punishment is not fairly administered and applied in Nebraska. It has been shown,... [LB1063]

PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR CHAMBERS: ...not just in Nebraska but throughout the country, that if you have a good lawyer it's not likely that you're going to die. The worst murderers are those who are connected with organized crime, and they never get the death penalty. They get into the witness protection program; they become snitches. So the ones for whom we're told the death penalty exists are the ones who always escape it. All of this conversation trying to justify the death penalty is like so much gossamer--it has no substance. It flies in the face of the facts. And it has a very intelligent man, like Senator Harms, who is an educationist, not just an educated person, accepting the notion that you can prove a negative. Senator Fulton can explain why that's impossible. For these people to conduct some kind of survey, and it's on an economics model, that for every execution there are 18 murders that don't occur, you cannot establish that. There is no way it can be established. [LB1063]

PRESIDENT SHEEHY: Time, Senator. [LB1063]

SENATOR CHAMBERS: Thank you, Mr. President. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator White. [LB1063]

SENATOR WHITE: Thank you, Mr. President. I rise in response to comments made by Senator Ashford, who indicated that the fear of prisoners who are too dangerous to keep incarcerated was not realistic. I would commend to my fellow senators that they Google Aryan Brotherhood on your computers. What you will come up with are a series of stories that will tell you why in fact it is quite realistic. For example, John Gotti, the Gambino family crime boss, was incarcerated at Marion, Illinois, which is a "supermax" facility. While there incarcerated, he retained the Aryan Brotherhood to commit a murder on his behalf of a fellow prisoner. In 2005, over 40 members of the Aryan Brotherhood were indicted. About 20 of them faced death penalty; 19 of them plead guilty, the ones that were not facing the death penalty, and the prosecutors commented repeatedly that this gang, which runs drugs and is allied with terrorists and gang members across the world, was incredibly difficult to prosecute because a great number of the members and those in leadership are already serving life without the possibility of parole. Now the FBI has estimated that this one gang, which approximates 15,000 members worldwide, but

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1 percent of the federal prison population commits as much as 26 percent of its murders in prison. And it is true we do not have a problem with this gang in Nebraska, but there was a time when we did not have a problem with Crips or Bloods either. And I would submit to you that we have other problems. Currently on death row is a gentleman who was convicted and sentenced to life in prison for murder in Minnesota. While serving that sentence, he murdered a cellmate. He was transferred to Nebraska where he murdered another cellmate. I submit to you that it is not unrealistic and that the law must be prepared for all eventualities, not just the current conditions that we face. Therefore, I would submit that wherever you stand on this, recognize that the guards and the other prisoners who have lost their liberty have a right to a reasonably safe environment. They have a right to pursue salvation, if you're a religious man. They have a right to live out their days in the hopes of finding some measure of reform if you are not. In any event, the concept that there are not people that are, oh, so thoroughly evil that they will not kill and kill again is unrealistic. Thank you. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator White. Senator Erdman. [LB1063]

SENATOR ERDMAN: Mr. President, I call the question. [LB1063]

PRESIDENT SHEEHY: The question has been called. Do I see five hands? I do. The question is, shall debate cease? All those in favor vote yea; opposed, nay. Senator Erdman. [LB1063]

SENATOR ERDMAN: Mr. President, I request a call of the house. [LB1063]

PRESIDENT SHEEHY: There has been a request for the call of the house. The question before the body is, shall the house be placed under call? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1063]

ASSISTANT CLERK: 35 ayes, 0 nays to go under call, Mr. President. [LB1063]

PRESIDENT SHEEHY: The house has been placed under call. All unexcused senators please report to the Legislative Chamber. All unauthorized personnel please step from the floor. The house is under call. Senators, please record your presence. Senator Friend, Senator Preister, the house is under call. Senator Erdman, all senators are present or accounted for. How would you like to proceed? [LB1063]

SENATOR ERDMAN: Mr. President, I accept call-in votes. [LB1063]

PRESIDENT SHEEHY: Senator Erdman indicates he will take call-in votes. And the question before the body is on the question, shall debate cease? [LB1063]

ASSISTANT CLERK: Senator Christensen voting yes. Senator Fischer voting yes.

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Senator Heidemann voting yes. Senator Cornett voting yes. Senator Louden voting yes. [LB1063]

PRESIDENT SHEEHY: Please record, Mr. Clerk. [LB1063]

ASSISTANT CLERK: 25 ayes, 8 nays to cease debate, Mr. President. [LB1063]

PRESIDENT SHEEHY: Debate does cease. Senator Ashford, you're recognized to close on AM1912, and the call is raised. [LB1063]

SENATOR ASHFORD: Yes. Members, this AM1912 simply clarifies that a judge may order restitution in a case where life imprisonment without parole is the sentence. With that, I would urge the adoption of the amendment. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Ashford. You have heard the closing. The question before the body is on the adoption of AM1912 to AM1841. All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. Senator Chambers. [LB1063]

SENATOR CHAMBERS: I would ask for a roll call vote. [LB1063]

PRESIDENT SHEEHY: I do have a request for a roll call vote. Mr. Clerk. [LB1063]

ASSISTANT CLERK: (Roll call vote taken, Legislative Journal page 1071.) Vote is 25 ayes, 5 nays, Mr. President. [LB1063]

PRESIDENT SHEEHY: AM1912 is adopted. We will now return to floor discussion on Judiciary Committee amendment, AM1841. Members wishing to speak are Senator Ashford, followed by Senator Aguilar, Senator Schimek, Senator Chambers and others. Senator Ashford, you are recognized. [LB1063]

SENATOR ASHFORD: Thank you, Mr. President and members. Just to, if I could, briefly respond to some of the comments that were made by Senator White and others, I don't doubt that there are cases involving gangs in prison. The question that I would have or the issue that I think that Senator White raises is an important issue, but it applies to prisoners across the board. And if you have some time and want to take some time to read the studies that have been done on violence by prisoners in prison that is in your packet and it's well documented, the Marilyn study involving violence by prisoners, the Bedau study, all of which are in your packet, would indicate that the opposite is in fact true; that the data would support the conclusion that basically states that have the death penalty in fact have a higher degree or higher propensity for violence within prison and involving...or violence involving prisoners than do states without the death penalty. And that generally applies across the board with crime

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outside of prison as well. So, though I certainly don't doubt Senator White's point that when someone is in prison someone is...that person is subject to violence or may commit violent acts, and it happens all the time, it tends to be a violent culture, that that in and of itself certainly is not a reason to have the death penalty. With that, Mr. President, I would give the rest of my time to Senator Chambers, if he so wishes. [LB1063]

PRESIDENT SHEEHY: Senator Chambers, 3 minutes. [LB1063]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Ashford. Members of the Legislature, with all due respect to Senator White, I disagree with the example he gave if the intent is to suggest that that's what's happening in Nebraska or likely to happen here. The Aryan Brotherhood have no presence in the Nebraska Penitentiary of the kind that is resulting in murders in prison or out of prison. There are none of the Gotti family, the Gambino family, in a prison in Nebraska and they would not set foot in Nebraska because there is nothing here for them. So when you're going to take an agricultural state with a population of 1,700,000 people and try to compare what happens there to these huge metropolitan areas where they not only have organized crime in the underworld but organized crime in the upper world, including prosecutors, judges, police officers, governors in some instances, mayors, then you are reaching. You do not have anything that applies and is relevant to what we're talking about here in Nebraska. He did mention the case of a person who had killed before and was transferred to Nebraska--first error. The prison people should not have accepted him. That could have been avoided. If he had killed a cellmate in another state, another error is to put him in a cell with a cellmate when you know what his propensities are. That murder could have been prevented very easily by using the methodology of maintaining security in a prison by the prison officials. They looked the other way and the man did what could have been anticipated. So what Senator White has argued for... [LB1063]

PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR CHAMBERS: ...is a more competent management of the prison, not only when it comes to one who might kill another inmate, but just in general. What we're dealing with here is an issue that makes people uncomfortable and it is one where, contrary to Senator Lautenbaugh's naive belief, political considerations do enter. And I had been told by some of my colleagues about receiving calls from the Attorney General mentioning the possible dire consequences if they vote for this bill. So for Senator Lautenbaugh, because he says he arrived at his position through serious thought, to project that on everybody else who is sharing his view is a mistake on his part. There is reality which must be confronted and this issue, whenever it is discussed, causes many of my colleagues to leave the realm of reality and enter a world of fantasy. Thank you, Mr. President. [LB1063]

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PRESIDENT SHEEHY: Thank you, Senator Chambers. (Visitors introduced.) Senator Aguilar. [LB1063]

SENATOR AGUILAR: Thank you, Mr. President and members. I rise in support of the committee amendments, as well as the underlying legislation, and I would yield the rest of my time to Senator Chambers. [LB1063]

PRESIDENT SHEEHY: Senator Chambers, just over 4 minutes, 50 seconds. [LB1063]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Aguilar. Members of the Legislature, I've been laboring in the belly of this beast for 38 years. I have been in this caldron for 38 years. I have never been a bit player. I have never lurked on the fringes. I have always been in the middle and I act on the things that I believe in. I act without fear or favor. There was a man named Carey Dean Moore sentenced to die, and he had a death warrant signed by the Nebraska Supreme Court and nobody could rescue him, nobody, and I said this is a job for Superman. (Laughter) His lawyer could not file a paper in his behalf because Moore had said he wanted all appeals ended. So without violating his ethics, the lawyer could not file anything in his behalf. Family and friends have been ruled, in countless court cases, not to have standing to object to an inmate's execution when the inmate says he or she wants to die. So there was nobody who could raise the issue. But I feel so strongly against the state killing that I undertook to do something that even lawyers and one judge told me would be a mistake on my part. I'm not a lawyer. I'm not a party to the proceedings. The inmate wanted to die. I wrote a letter to the Nebraska Supreme Court and laid out my reasons why they should not carry out the execution and the three main arguments that I gave in my letter were the very points that the Supreme Court, by a majority vote, adopted and wrote into their decision in overturning that death warrant. Had I not acted, Nebraska would have killed again, and I will do anything that I can to stop that. And remember, I'm acting within the law. I'm playing by the rules. I'm not a religious man. I don't pretend to be religious. I don't have God or any supernatural force telling me what is right and what is wrong. I believe what I believe. I have a core system of values which guides and controls my conduct. And when I believe something is wrong I'm not going to watch it happen and say, nobody else is doing anything, there's nothing that can be done. As long as there was breath in that condemned man's body, I felt that there was something that could be done and somebody had to try to do it. And another step that I took was to file an action for a declaratory judgment in Lancaster District Court to say that the method by which the execution protocol was adopted violated the law of Nebraska, the Administrative Procedure Act. The judge set an emergency hearing. He knew what I was trying to do; everybody knew. I told the media. I was trying to stop an execution and I was told it couldn't be done. They say a bumblebee, based on principles of physics, should not be able to fly, but it does. There are many things which people give up on. They are whipped before they start, but that is not according to which I live my life. I am supposed to be an example... [LB1063]

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PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR CHAMBERS: ...of what it is I say I believe in. And, "Parson" Carlson, if I say this state should not kill, I have an obligation, if nobody else does, to try to prevent the state from killing. I do not excuse myself from undertaking a difficult task because others refuse to. We all have heard it said that bad thing...or evil triumphs because good people do nothing. I don't even call myself good. I'm practical, I'm pragmatic, I'm realistic, I'm a politician. But I'm also a man who is honest with himself and this that I'm trying to do is not going to benefit me, but I think it will cleanse this state. Thank you, Mr. President. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Schimek, you are recognized. [LB1063]

SENATOR SCHIMEK: Thank you, Mr. President and members. I wasn't going to speak today because I know that there are lots of people who want to speak today and who should speak today, and I'm not sure that, as Abraham Lincoln said, that the world will long remember nor...will little note nor long remember what we do say here today. But what we do here today is of some consequence and it has more global kinds of implications, perhaps, than just what we say here today. I wanted to at least make my thoughts known for the record. I am standing in favor of both the Judiciary Committee amendment and the overall bill itself. And I have to tell you that when I came into the Legislature in 1988, at that time I was asked how I stood on the death penalty, and I said at that time that I was opposed to the death penalty. And, you know, I don't think it had a huge role in whether people voted for me or not in that election. And perhaps at that time there wasn't as much passion about the death penalty as developed during the early to mid-nineties when there was a big push to get crime under control, and people began feeling more and more in favor of the death penalty. I don't think that same thing is true today. And I don't know about you, but I haven't taken any poll in my district to ascertain how my constituents feel. I suspect that none of you have, and even if we had taken a poll a year ago it might be different today. It changes from time to time. So I think that's what is important here is that we do what we think is right. And I just can't help but read to you the quote from Edmund Burke, the famous English parliamentarian, of whom I had never heard before I came onto the floor of this Legislature and I heard Jerry Warner, Senator Jerry Warner, quote it...quote him. And Edmund Burke said about representation, about representative democracy: Your representative owes you not his industry only but his judgment, and he betrays instead of serving you if he sacrifices it to your opinion. We are sent here to study the issues. We're sent here to listen to the testimony before the Judiciary Committee. We're sent here to read as much as we can of all the surveys and reports and information that we can, and it is up to us in the final analysis to make that vote because we can't tell how everybody in our district feels. We may have an overall impression or a gut reaction, but we don't know for sure.

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I can tell you that the testimony at the Judiciary Committee hearings was overwhelming, overwhelming in favor of doing away with the death penalty, whether that was because people on that side of the issue feel more passionate or whether the general population doesn't feel as strongly about it anymore, but it was overwhelming. [LB1063]

PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR SCHIMEK: I think that one of the significant things that the information contained that was given to us ahead of time was information that many of the major religions of the United States and the world are in favor of doing away with the death penalty, and that would include the Baptists, the Brethren, the Buddhists, the Catholic, Disciples of Christ, Episcopal, Friends, Jewish, Lutheran, Mennonite, Methodist, Presbyterians, Unitarians, United Church of Christ, and many more, most of the major religions of this country. I think that it is, to me, one of the most important issues that we will ever decide on the floor of this Legislature and it behooves each of us to do not what... [LB1063]

PRESIDENT SHEEHY: Time, Senator. [LB1063]

SENATOR SCHIMEK: ...our election is going to be all about but what we believe to be... [LB1063]

PRESIDENT SHEEHY: Time, Senator. [LB1063]

SENATOR SCHIMEK: ...the right thing. Thank you very much. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Schimek. Senator Chambers, followed by Senator Avery, Senator Pedersen, and Senator White. Senator Chambers, you're recognized. [LB1063]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, Senator Harms had mentioned some studies and he's not the only one who places credence in those studies. But we had a county attorney testifying before the Judiciary Committee. One of those studies came up and he dismissed it out of hand just like I did. County attorneys live in the real world. That's why they enter plea agreements. That's why they do not seek a death penalty even where heinous crimes are committed. They are the realists. They know that their county boards do not want them expending a lot of money on a capital case, so they do not file for the death penalty. They know that all these studies and surveys about deterrence mean nothing. The U.S. Supreme Court has said in a number of decisions that there is no empirical evidence that executions deter. You can find that everywhere. But if you want a laboratory situation, consider the little island of England where people knew what was happening, where during a certain period they did not have television. They had the theater, but not everybody could go

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there. Public executions were like holidays. They were announced in advance and huge crowds, thousands of people, came to witness the execution. They had literally thousands of public hangings on that little island, so many hangings for so many types of offenses that one person from another country was led to say words to the effect that England has some of the most humane laws and yet some of the most barbaric punishments. Yet, with all of those thousands of executions and a proliferation of laws allowing executions, no crimes were deterred, not even those for which people were executed, not even those for which people were executed and they knew on that island what the punishment was for these various offenses. There were hangmen who themselves went to the gallows for committing crimes for which they had hanged others before them. So in view of facts that can be demonstrated historically, internationally, nationally, people continue to bring out the nonarguments of the only kind they can find to allow them to rationalize holding tight to something which they know is barbaric, something which is uncivilized--a state ritualistically, ceremonially carrying out what amount to sacrifices of scapegoats. The scapegoat was the innocent creature which was killed after all the sins of the killers were placed on that goat. Then people became a bit more humane, saying this animal did not actually do anything wrong except be caught, so they would heap the sins on the animal, then turn it loose. Now had I been a Roman senator, "Parson" Carlson, and I heard that there was an itinerant Jew who was going to be executed because of things he said, I'd say, what did he do? Well, they say he healed sick people. What else? Well, they said he resurrected dead people. What else? They said he cast demons and devils out of animals. And what else? [LB1063]

PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR CHAMBERS: He cast devilish human beings out of the temple. I said, and for that they're killing him? And colleagues, like some I have here, would say, yes, and what do you say we should do? I'd say, I say you should turn him loose. Now we're not saying that people who commit crimes should be turned loose. They should be locked up, and that is a very harsh and severe punishment. And the Catholic Church, through the Pope, has said when you can have this kind of surety there's no justification for a death penalty. Thank you, Mr. President. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Avery. [LB1063]

SENATOR AVERY: Thank you, Mr. President and distinguished colleagues. Last year when we discussed this issue I confessed that I was undergoing a great personal struggle in my mind and in my heart about the death penalty. When I was sworn in last year, I was a supporter of capital punishment and had taken that position during my campaign, much to the chagrin of many of my friends that are in the north balcony. But in the end, I voted to repeal. It is a fair question to ask how did I arrive at that decision, because I thought I was right. I thought my opinion was pretty solidly based. I listened to solemn debate last year and I listened to it this morning, and I came to the realization

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that I could no longer hold my opinion so casually as I had before because now my opinions had consequences. In here, what we think about things really matter. What we do in here matters and because it matters, we have to get it right. So I came to the conclusion that I was not so comfortable anymore with my opinions, and I came to the conclusion that maybe they weren't so absolutely correct. Things are different now because now what I do has consequences. My opinions shape how I vote and how I vote matters. So I reexamine my conscience, I again examine the empirical evidence on the death penalty, and I learned something. Let me walk you through it. For the sake of argument, I think we can set aside the dispute over whether the death penalty is immoral. Good and honest and decent people can disagree on that and we can make arguments on both sides that are pretty compelling. I think we can also set aside the argument that the death penalty is a deterrent to further capital crime. I've looked at the literature and I've seen studies that say, yes, it is, and studies that say, no, it isn't. Good and honest people can disagree on that too. The studies are conflicting. But we cannot set aside so easily the compelling evidence of disproportionality and bias in sentencing. Proponents of the death penalty do not adequately deal with this issue, and I have scoured the literature to try to find some effective arguments about this very issue. There may not be much difference in the crimes that are selected for the death penalty, but there certainly is a significant difference in who gets sentenced to death, and that's been discussed here. Who are they? They're minorities. They're poor. They are people whose victims are white. This we know. This is not in dispute. This we know. Is this sufficient to vote to put people in prison for life without the possibility of parole? I think yes, and I came to that conclusion with a long period of thought and reflection. There appears to be a lingering feeling in the debate in this body today that the death penalty is probably a deterrent, that the death penalty might actually be administered in a fair and consistent manner. I think we might hope that is so. We might hope... [LB1063]

PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR AVERY: ...that people on trial for a capital crime are represented by someone who provides first-rate, vigorous, and skillful defense, but that's not always true. We might hope that the defendant is represented by someone who cares about the possible fatal consequences of a weak defense and will do all within his or her power to prevent a bad result and the sentence from happening, but that's not always so. We might hope that the courts will carefully follow evidentiary and procedural rules, but that is not always so. We might hope that juries are unbiased and not prone to impose the death penalty in an unfair and inconsistent manner. That, too, is not always so. Note that I've been using the word "hope." Hope is like faith. It is the substance of things desired but the evidence of things not seen. We must not place our confidence in the fairness and consistency in the application of the death penalty on hope or on faith, hoping that it will be done right. [LB1063]

PRESIDENT SHEEHY: Time, Senator. [LB1063]

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SENATOR AVERY: Thank you. [LB1063]

PRESIDENT SHEEHY: Time. Thank you, Senator Avery. We have Senator Pedersen, followed by Senator Pirsch, Senator Erdman, Senator Flood, and others. Senator Pedersen, you are recognized. [LB1063]

SENATOR PEDERSEN: Thank you, Mr. Lieutenant Governor. I give my time to Senator Chambers. [LB1063]

PRESIDENT SHEEHY: Senator Chambers, you're yielded 5 minutes. [LB1063]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Pedersen. Members of the Legislature, let me give you the three issues that I raised to let the Supreme Court get out of the bind it placed itself in by signing Carey Dean Moore's death warrant. I first of all pointed out that the court, on its own motion, could take action in this or any other case; they did not need a filing from a lawyer or anybody else. And then I gave examples of where courts, on their own motion--that means without an issue being presented by somebody--took an action to avoid an obvious injustice. I pointed out also that it made no difference that the inmate himself had said he was prepared to die. The issue of whether or not an execution should be carried out under the circumstances existing at that time transcended the wishes of the inmate, and the inmate, through expressing a wish, could not handcuff the court and require it to take an action which ought not be taken. Then the final one related to the cases pending before the Supreme Court at that time on appeal which contained a fully developed record dealing with executions by way of electrocution, and the record was one that had never been presented to another court before. So until the court satisfied themselves that this was an appropriate way to kill somebody and they could make that decision after listening to these cases on appeal, until they were satisfied of that there should be no executions. And beyond all that, Carey Dean Moore was not going anywhere. They had him. He was not going anywhere. They could kill him whenever they wanted to, but they shouldn't kill him now. And if you read the court's opinion and you read the letter that I wrote and sent to the court, you'd see that they considered my arguments to have weight. But suppose I had not made them? Suppose I said, I haven't been able to get 25 votes out of this Legislature so I won't put forth the effort? I don't know how somebody is going to act today, even if that person acted a certain way yesterday. Things enter in. People's minds may come to grips with matters in a way they had not before. Senator Avery, although it was more than just an overnight period of time, pointed out a process that he went through that carried him inexorably from being in favor of the death penalty to being against it. In other words, he set his mind to work and he looked at the reality of the situation. Why is it necessary so many times, year after year in state after state, to try to find a way that the state can constitutionally kill somebody? Why is it that the very court, which at one time said this method is

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constitutional, has second thoughts itself and will say, no, it's not constitutional now? Maybe it was then, but there has been an evolving of society. Its level of decency has reached a higher level. What was accepted during the Dark Ages, during medieval times are no longer acceptable. The errors of yesterday cannot become the orthodoxy of today. And the court, when it has the evidence before it which indicates that what had been done in the past was unjust, unconstitutional, it has an obligation to act, and the Nebraska Supreme Court acted in the highest tradition of the judiciary and the law. [LB1063]

PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR CHAMBERS: What the Nebraska Supreme Court did, what the lawyers who compiled that record in the trial court did, what a judge in the lower court who made his opinion available about the flaws he saw in the death penalty had done was to give the reason that people learned in the law will say I love the law; that the law can be a means to salvation for a society no matter how corrupt, no matter how cynical. If the law is allowed to function, eventually the law will find a way to prevail. Will it prevail while I'm in this Legislature? I don't know. I'm going to quote something Senator Carlson will love: Paul plants,... [LB1063]

PRESIDENT SHEEHY: Time, Senator. [LB1063]

SENATOR CHAMBERS: ...Apollos waters, God gives the increase. Thank you, Mr. President. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Pirsch, you are recognized. [LB1063]

SENATOR PIRSCH: Thank you, Mr. Lieutenant Governor, members of the body. I appreciate the dialogue that's gone on thus far this morning, this afternoon. I think that, as somebody had mentioned, I think it is important that we address this issue in a very state-specific manner. Each state has its own unique system, as far as the criminal justice system, and standards as far as this issue is concerned. And one point in particular I think was pointed out several times today, or one area of concern, and I have an interest in exploring that a little bit more, the concept of indigency as a factor that would lead to a greater likelihood of having the death penalty involved, a disproportionality argument. And I wonder if Senator Chambers might yield to a question or two on that issue. [LB1063]

PRESIDENT SHEEHY: Senator Chambers, would you yield to questions? [LB1063]

SENATOR CHAMBERS: Yes, I will. [LB1063]

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SENATOR PIRSCH: Very good. Senator Chambers, is it...is my understanding correct, you were instrumental in establishing the Office of Public Advocacy in the state? Is that correct? [LB1063]

SENATOR CHAMBERS: Yes, I supported that strongly. [LB1063]

SENATOR PIRSCH: What year did that...did the Office of Public Advocacy...what year was that established? Do you remember? [LB1063]

SENATOR CHAMBERS: I don't recall. I really don't. [LB1063]

SENATOR PIRSCH: Was it quite a long while ago or in the recent... [LB1063]

SENATOR CHAMBERS: No, it hasn't been that long a time ago. [LB1063]

SENATOR PIRSCH: Within the last ten years you would say? [LB1063]

SENATOR CHAMBERS: Oh, I'm sure of that. [LB1063]

SENATOR PIRSCH: Okay. And could you just explain the purpose of the creation of the public advocacy at that time? [LB1063]

SENATOR CHAMBERS: One thing it does is to provide counsel for people facing serious charges, not just murder, which otherwise would not be available, this counsel. Secondly, it takes off the counties a heavy burden of finances by not having to pay for the defense of the people whom the advocacy council or agency will defend. [LB1063]

SENATOR PIRSCH: Would indigent people in Nebraska qualify then to have the Office of Public Advocacy represent them in death penalty cases? [LB1063]

SENATOR CHAMBERS: Yes. [LB1063]

SENATOR PIRSCH: Do you believe, based upon your experience, that they're up to the task, funded to the level and competent enough to perform that task? [LB1063]

SENATOR CHAMBERS: The cases they take, but they can't take all death penalty cases throughout the state. But, yes, the cases they handle, they handle very competently. [LB1063]

SENATOR PIRSCH: Okay. And is there a funding issue as far as the Office of Public Advocacy is involved? Are they adequately funded by the Legislature? [LB1063]

SENATOR CHAMBERS: I don't think so, because from time to time I've had to loosen

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my objection to raising court costs in order to find some money to help fund the advocacy agency. [LB1063]

SENATOR PIRSCH: But at the current time and in recent days, do you believe they're fully funded? [LB1063]

SENATOR CHAMBERS: At the moment. We were given indications that with no high profile cases that they might have to handle, they had some excess money on hand. But in terms of sustainable financial support, that is not reliable. It may be there; it may not be. So if a number of cases came along that they had to handle, then funding would become a very serious issue. [LB1063]

SENATOR PIRSCH: I do appreciate...I'll yield back the balance of my time. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. Senator Erdman. [LB1063]

SENATOR ERDMAN: Thank you, Mr. President, members of the Legislature. Just, again, a point of clarification as to where we are in this process. The committee amendment to LB1063 becomes the bill. If the committee amendment is adopted, it replaces the entire contents of LB1063. A vote yes on the committee amendment is a vote to abolish the death penalty and replace it with the process, as now amended by the Judiciary Committee, for life imprisonment without possibility for parole, and that's just a point of information. Earlier there was a comment made that these are technical amendments. This is not a technical amendment. This is a substantive amendment that becomes the bill, and if it's adopted it will be the form that LB1063 will be in for the vote on advancement. I think the discussion has been good today. I think the discussion last year was good. I enjoy hearing my colleagues and whatever I can contribute to that. I enjoy listening to these high-level discussions. I think they're beneficial for our process and I think it's healthy for the state to have these types of discussions, as necessary, as is possible. Thank you, Mr. President. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Erdman. Senator Nelson, followed by Senator Chambers, Senator Ashford, and Senator Carlson. Senator Nelson, you're recognized. [LB1063]

SENATOR NELSON: Thank you, Mr. President, members of the body. I'm standing in opposition to the bill, LB1063, as well as the Judiciary Committee's amendment. I have too much to cover here for five minutes, but we'll give it a try. First of all, let's talk about the matter of deterrence, that the death penalty does not deter crime. We have heard that stated as an absolute fact here today, that it does not deter crime. I simply want to read to you what Justice Stewart of the Supreme Court stated in Gregg v. Georgia: Although some of the studies suggest that the death penalty may not function as a significantly greater deterrent than lesser penalties, there is no convincing empirical

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evidence supporting or refuting this view. We may, nevertheless, assume safety that there are murderers, such as those who act in passion, for whom the threat of death has little value, but there is no convincing empirical evidence supporting or refuting this view. For many others the death penalty, undoubtedly, is a significant deterrent. There are carefully contemplated murders, such as murder for hire, where the possible penalty of death may well enter the cold calculation that precedes the decision of the act. I also...I don't like to get into a lot of statistics, but there's a graph here. I think I attribute this to Senator Pirsch. It shows specifically that as the imposition of the death penalty...the imposition of that goes down the amount of murders go up. Back in 1976, when the death penalty was abolished by our court for awhile, the murders went up. I guess I want to address the polls, and I will hand out a packet here and I'm not going to read through that, but I think we have to be cognizant of the fact that a number of polls have been taken nationwide. And I'm just going to tell you that in February of '08, the Harris Poll, when the question was asked, do you believe in capital punishment, that is, the death penalty; are you opposed to it or do you believe in it, 63 percent believed in it that answered. In December of '07 there was an ABC News Facebook poll and, again, 65 percent were in favor of the death penalty for persons convicted of murder. The Gallup poll taken in May of 2006 showed that about 25 percent felt that the imposition of the death penalty was about right, and another 51 percent said it was not enough. That's 76 percent. And we know, as we stated on the floor this morning, that 78 percent of our Nebraskan citizens, our constituents, whether they're in our district or not, and whom we represent, are in favor of keeping the death penalty. Are we here to superimpose our judgment on the feeling of the citizens of Nebraska? I don't know how you measure in your own district what the feeling is. I've had many, many e-mails from people that say abolish the death penalty, and you know I don't criticize them. These constituents and these people are very passionate, but they're a minority. And I think we have to be aware of what the majority of citizens here in Nebraska feel... [LB1063]

PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR NELSON: ...about this. I can only speak to my many years of experience. I remember in Omaha there was a gentleman who beat a woman almost to the point of death, discarded her, raped and strangled the 12-year-old daughter and then drowned the 7-year-old brother there in Omaha. He's on death row right now, I believe. That shocked the conscience. And I thought of Iowa, where they had eliminated the death penalty. I thought to myself, thank goodness we have the death penalty here in Nebraska because that person is inherently evil; he deserves to die. There's a reason the death penalty is on our statutes, because there are some people who are so inherently evil that they cannot safely...we cannot safely protect them...or protect others from them, as far as I'm concerned. [LB1063]

PRESIDENT SHEEHY: Time, Senator. [LB1063]

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SENATOR NELSON: Thank you. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Senator Chambers, you're recognized. [LB1063]

SENATOR CHAMBERS: Mr. President, members of the Legislature, I'm having my education improved. According to Christian belief, according to things Jesus said, human beings are not inherently evil. To be inherently anything means that it's of your very nature. One who is inherently evil cannot be redeemed. But once again, when we get on the hobby horse of having to justify something which itself is evil, then we have to make those against whom it is used seem even more so. I'd like to ask Senator Nelson a question. [LB1063]

PRESIDENT SHEEHY: Senator Nelson, would you yield to a question? [LB1063]

SENATOR NELSON: Certainly. [LB1063]

SENATOR CHAMBERS: Senator Nelson, am I to understand you to say that when you take positions in the Legislature you take your position depending upon what the majority of people in Nebraska feel about that particular issue? [LB1063]

SENATOR NELSON: Not necessarily, Senator. [LB1063]

SENATOR CHAMBERS: If a point was reached where a majority of the people in Nebraska were shown to oppose the death penalty, would you oppose it then? [LB1063]

SENATOR NELSON: I would very possibly change my position, yes. [LB1063]

SENATOR CHAMBERS: So then it's not one of conviction with you on the death penalty, but how the majority of people feel. It's one of those kind of issues where you're swayed by what the majority feels. Is that accurate? [LB1063]

SENATOR NELSON: I am not swayed. I am influenced by what the majority, and a sizeable majority, of Nebraskans feel about this very important issue, Senator. [LB1063]

SENATOR CHAMBERS: Thank you. Members of the Legislature, it is known that black people, as a whole, are opposed to what are called gay rights. I'm not. I come from a black district. I've been sent here so many times that I would have a life sentence if term limits was not giving me a parole, Senator Carlson. (Laughter) But the issue is one that I believe I have to take a position on, because I see all human beings as possessing a certain dignity. And I'm not constrained by religion, political party, anybody else's opinion to turn my back on anybody. If I'm the only one speaking for these people whom I feel are being unfairly treated, then there will be that one voice crying in the wilderness

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and it will be mine. And I tell the people in my district, if you don't like the way that I represent, if you don't like what I do, put somebody else in that position. I'm not begging you all to put me there. But as long as I'm there, I'm going to use my judgment and I am not here to represent ignorance. I study and I know what these issues are, and I know what in my judgment is the position that ought to formula the policy of this state, and killing is not one of them when we have so much killing everywhere else. A society that sanctifies killing is hardly in a position to tell young people don't kill. There is so much that is contradictory that is stated; there is so little known about history. Senator Nelson knows, and every lawyer knows even if he or she may have forgotten it, crimes under the law are not deemed to be committed against the victim or the victim's family; the crime is committed against the state. That's why it says, whenever a crime is being prosecuted, no matter how minor or major, the state versus so-and-so, because the crime is deemed to have been committed against the state and no family, no victim is entitled to an execution. That is one of the silliest things that ever was said and lawyers en masse ought to stand up and say that is not so. [LB1063]

PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR CHAMBERS: It has never been so. And in old England, because one person could take personal vengeance and there were a lot of people dying, families, blood feuds would start, and if I couldn't kill Senator Carlson, my family could. The king was losing too many people so he said no longer will an individual or a family or a group of people take the law into their own hands; a crime is committed against the king, against the crown, and from now on these crimes are going to be handled as though they're against the state--no more of this private vengeance. There are reasons behind us reaching the state in the law where we are now, but people act as though these things developed in a vacuum. And it's difficult, in the short time we have, to meet all these errors and overcome them. Thank you, Mr. President. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Ashford, you're recognized. [LB1063]

SENATOR ASHFORD: Thank you, Mr. President. And if I do have some time left, I will be happy to give it to Senator Chambers so he can continue to talk on the issue. But my job, I believe, as Judiciary Chair, is to put out to the body the facts as they are. It is also to talk to others, professionals, who deal in this issue, and I've done that. I've talked to many of the judges on my district court bench. I've talked to many prosecutors, county attorneys, federal prosecutors throughout the state. And I don't know what the public polls are today. I don't know if we took a poll today and asked how many of you would support life imprisonment without parole rather than the death penalty, I don't know what it would be. I have no idea. I know polls have been taken around the Midwest that show it's about even, but I don't know that. But I do know, when I talk to judges and prosecutors about this issue, they are deeply concerned about the death penalty and

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how it's applied in Nebraska. It takes up an inordinate amount of time. It takes judges away, in many cases, from other cases that they can spend time on. Quite frankly, I believe it takes time away from the effective...the effectiveness of law enforcement and the criminal justice system to deal with crime. The issue I think we should all be concerned with, and I as Chair of the Judiciary Committee am concerned with, is are we safer, are we safer with the death penalty? And the answer is absolutely, unequivocally no. We...there's not any data...in fact, the data is absolutely, absolutely in opposite across this country that states without the death penalty have a reduction in crime compared to states with the death penalty. Now why is that? I can't tell you that and I don't know if there's any data that explains it. But I would suggest to you that states that have a tradition, like Minnesota and Iowa, other Midwestern states, that have a tradition of not having the death penalty don't...are not required to spend the time, the effort on cases that for the most part never result in the death penalty being executed. I believe there is a correlation and that belief is based empirically, on talking to judges and prosecutors. That's all...that's what I have to deal...that's what I have to go on. I was interested in the World-Herald yesterday talking about the case of Terrence Moore who was sent back to the district court of Douglas County for resentencing--in fact, the case came back to my brother--because the Supreme Court said the sentence was too lenient. And in the article it says that while the court didn't dictate a sentence, it did note that Moore's crimes actually met some of the statutory criteria for the death penalty. It was an execution-type slaying. It was the case where it was a drug deal and there was one killing and then a woman was shot while sleeping. The case came back to my brother and my brother sentenced the guy to life imprisonment. The point is, I feel safe with that person in prison without parole for the rest of his life. I don't feel...would feel...I would feel not any bit safer if that person was sentenced to death and spent 28 years or 25 years appealing his sentence. It just makes no sense. If you look at the facts, and I would invite you please to, before you vote on this, at least look at some of the data. [LB1063]

PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR ASHFORD: It makes no sense to suggest that we are safer today because we have the death penalty than if we don't. And we don't have the death penalty in effect today. So what...the choice you have here is you can vote no on this amendment and then you have no punishment for life in prison without parole, that's what you have, and that is not a less safe...that is not a situation of safety at all. Thank you, Mr. President. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Ashford. Members wishing to speak are Senator Carlson, followed by Senator Flood, Senator Nelson, Senator Pedersen, and others. Senator Carlson, you're recognized. [LB1063]

SENATOR CARLSON: Mr. President and members of the Legislature, stand again in

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opposition to LB1063. I want to refer back just to a statement that Senator Schimek made, and this is not to criticize her but she referred to the hearing as being an overwhelming case for repeal of the death penalty. And when this statement is heard a lot of times I look up on our gadget and see exactly what the voting was. And there were six there that were in favor of repeal and two were there against and one a neutral. And maybe in terms of time taken, it may have been overwhelming, but I wouldn't call that overwhelming in terms of numbers. We've had committee hearings where we have 14 or 15 people as proponents of something and no opposition, and I would call that kind of thing overwhelming. As I said earlier today, at the end of this process Senator Chambers may succeed in abolishing the death penalty. Now in a sense, as I said, he already has by his work on the electric chair being cruel and unusual punishment. And as I reflect on the testimony that's been given today, the attention is not on killing the innocent but it's on extending the life of the guilty. But whatever the outcome, he centered focus on the sanctity of life, so we are again discussing extending the life to the worst of the worst in our society, and I've heard that terminology several times today, but this discussion and this debate is appropriate and I don't question the procedure. Now before my next point, I'm going to repeat some statements recently made by Senator Chambers, and if I'm accurate I'm sure that he will correct me, and if I'm wrong I'll withdraw. But in a bill that we were hearing concerning parents making a decision not to give medical attention to their children or not to allow shots for their children, he said that it's okay for parents to make decisions against their own health, but we must do what's in the best interest of protecting the child. I agree. He said that sometimes parents' rights have to be secondary to the child. I agree. He said, I don't care what a parent believes, the child must be protected, and I would agree, unless it may be just a loving whack to the behind if the child needs it; but other than that, I would agree. But unfortunately in our, quote, civilized society, we make it legal for a parent to sign a legal contract to kill their child. Now some would say this is not a child. I disagree. In testimony last session I told you that we have wonderful twin grandchildren. They were born at eight months. They are real people. Since then, I've talked to grandparents that had twins in their family at seven months. They are real people. Very recently, an outstate Nebraska family gave birth to quadruplets at five months. They're doing fine. They're real people. [LB1063]

PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR NELSON: Talked to another grandparent that had a grandchild that was born weighing 11 ounces. The child is doing fine. That's a real person. No one can say at what point the baby is not a child. We must protect the innocent, the defenseless in our society, and I think doing anything less is wrong. We've spent a lot of time talking about a process that in Nebraska has executed three guilty criminals in the last 30 years. And according to HHS records, in the last 21 years there were 102,978 abortions that this body gave a blessing to. But I thank Senator Chambers for bringing this up, because it offers the opportunity to talk about defending the innocent and the

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defenseless and potential future legislation to do away with this barbaric process. Thank you, Senator Chambers. Thank you, Mr. President. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Flood, you're recognized. [LB1063]

SPEAKER FLOOD: Thank you, Mr. President, members. I don't need a poll to guide my vote on this issue or any issues, for that matter, because like Senator Harms, I live in a community that has seen the most heinous of crimes committed thoughtlessly against citizens that I now represent and their families that I represent. And I don't want to recount what happened inside that bank in 2002 in Norfolk blow by blow, but I want to talk about the weddings, the births, the birthdays, the anniversaries, the Christmas Eves and the Easter Sundays that don't happen like they used to because five people were killed for no reason in that bank in 2002. There are a lot of victims in my corner of the state reeling from the senseless acts of four men, three of whom walked into that bank. And I was a supporter of the death penalty before that, I'm a supporter of it today, and I'm opposed to AM1841 and LB1063. There are four reasons for criminal sanctions, if you read any law treatise: public safety, rehabilitation, deterrence, and retribution. I'm not going to walk away from the fact that I recognize and support retribution and criminal sanctions when it comes to the most heinous acts and that retribution being appropriate as the death penalty. In the system of justice, we afford the defendant due process, we require the state to prove aggravators, we give the defendant opportunity to present evidence on mitigators. It's a process that is closely scrutinized by this Legislature, by the courts, by federal case law, federal courts, federal code, and it allows a civilized society to impose the most serious of criminal sanctions, that being the death penalty. I support the death penalty. I support the idea of the death penalty as serving, at the very least, the public safety and deterrence and retribution goals of criminal sanctions under any law treatise that you read, and I intend to oppose the amendment and the underlying bill. Thank you, Mr. President. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Flood. Senator Nelson. [LB1063]

SENATOR NELSON: Thank you very much, Mr. President, members of the body. I'd simply like to finish up where I left off earlier. Senator Flood has stated very well some of the things that I was going to cover much better than I. I think that I just want to remark about two things. I've heard several times that we have executed innocent people here in Nebraska. When since 1908 have we possibly executed anyone that was innocent? There never seems to be talk about the guilt of the person. We know, and I'm going to quote from Kansas v. Marsh where Senator...or, not Senator, Justice Scalia wrote a concurring opinion to the decision of our Supreme Court in 2006 that the Kansas death penalty statute was not unconstitutional. He said it should be noted at the outset that the dissent does not discuss a single case, not one, in which it is clear that a person was executed for a crime he did not commit. If such an event had occurred in

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recent years, we would not have to hunt for it. The innocent's name would be shouted from the rooftops. In every case of an executed defendant of which I am aware, DNA technology has confirmed guilt, and we do have DNA technology. It's been said that since 1976 we've only executed three people here in Nebraska. There was no question of whether they were guilty or innocent. It was obvious from all of the court proceedings. I just simply, when we talk about disproportionality, whether or not that happens, I can't argue. I just know that if it takes 15 years to finally execute a person in this state, it's because of the fact we have countless appeals. We have a procedure that runs on two or three pages that was passed out to us, I think, or distributed by the Attorney General, telling all the safeguards and all the things that have to happen before a death penalty can be imposed. And then we have all sorts of appeals. In my mind, the possibility that an innocent person is going to be executed in Nebraska in this day and age is just absolutely impossible, almost. That may be a strong word, but I just can't see that happening anymore. When we reach the point where execution is to be carried out...we can't do that right now. That will be decided at a later time. One final comment: Reference has been made to the pamphlet that...or the material that was passed out by the Judiciary Committee. I just think you should be aware, if you're depending on a lot of that information, that it's...no less than 20 pages of that information was copied directly from the Death Penalty Information Center's web site. They are an organization working to abolish the death penalty and they proclaim fairness, yet they provide only enough information to lead people to the conclusion that the death penalty must be repealed. So I think if you read that report, you have to be aware of the background there. Thank you, Mr. President. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Senator Pedersen, you're recognized. [LB1063]

SENATOR PEDERSEN: I'd give my time to Senator Chambers. [LB1063]

PRESIDENT SHEEHY: Senator Chambers, you're yielded 5 minutes. [LB1063]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Pedersen. And for Senator Nelson to mention Justice Scalia in any context other than a man who has shown himself to be outright bigoted is in error. Justice Scalia was a part...and I'm not going to tell Senator Nelson the case, because I hope he thinks I'm not telling the truth and he'll look it up. The current U.S. Supreme Court ruled that actual innocence is not a basis for overturning a death sentence. Members of the Legislature, what some of these judges say is, you're not entitled to a perfect trial; you're entitled to...and then they give some word for it. Senator Nelson knows, if he has read as much as I'm sure he has from the information he has presented to us, that after jurors have reached their decision, after the trial judge or court or panel of judges in Nebraska has handed down a death sentence, as that sentence has been upheld by the state's highest court, subsequent to that the whole thing will be overturned, because contrary to what Senator

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Flood suggested, due process was denied. And that has happened in Nebraska cases, too. Due process was denied. All of the talk of how perfect...or, not perfect...how good and thorough this system is, it has been shown to be very, very flawed. When you look at over 100 people who were convicted, sentenced to die, and on death row, who were exonerated, not what people call a technicality--I don't call it a technicality, though, if somebody is convicted contrary to the law--but where they were absolutely shown to be innocent, that should cause people to have pause before they praise this system. And it's not that the system worked. It's that they were found innocent in spite of the system. Their efforts were fought by prosecutors. Prosecutors even in the presence of exoneration through DNA have tried to keep those people locked up, have tried to bring new charges. And in some cases, judges have not allowed new charges to be filed, and in other cases judges have called those men before the court and released them right there. This is a corrupt system when you have people manning it, "womaning" it, who know that somebody is innocent, and nevertheless wants that person to die. That is very, very bad, and not very encouraging. Senator Nelson mentions, as have others, three people have been executed. With all the murderers, you've got a death penalty on the books--forget that it can't be carried out now--do you all feel safer? Only three of the murderers have been executed. Haven't all those other murderers on death row been killing everybody? Haven't those hundreds of murderers in the population out at the penitentiary been killing people? The existing facts give the lie to everything that people have been saying on this floor as a justification for the death penalty. Those things are not happening now. Why does a lot of time have to be taken with death cases? Because of rulings by the U.S. Supreme Court. Even though it's what I call a hanging court, down through the years they have established certain procedures and processes that must be complied with so you cannot convict somebody today and execute them tomorrow, in a manner of speaking. There might be people in this state who love children as much as I do, but nobody, nobody loves children... [LB1063]

PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR CHAMBERS: ...more than I do. But John Joubert, who had killed two young boys needed somebody, I believe, to look out for his interests. If anybody did, that man, universally hated, needed somebody, so I was there with him during his last days to make sure that these vindictive Christians and others who believe in the law did not torment and torture that man. He was sentenced to die, not to be tortured, not to be tormented, and I prevented a lot of that from happening. And before the day is over, I'll mention a couple of other things that distressed me while I was spending the last days with two men who wound up being executed. Thank you, Mr. President. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Members wishing to speak on AM1841, Senator Kruse, followed by Senator Chambers and Senator Wightman. Senator Kruse, you are recognized. [LB1063]

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SENATOR KRUSE: Thank you, Mr. President and colleagues. We have said our say on both sides or all six sides of this issue, and I certainly do appreciate...I commend my colleagues for being on point, which brings me to the question of closure. Always an interesting word for a pastor: Well, we've got to provide closure. Let me assure you from extensive experience in this, closure is solely in the mind of the person. It has no relationship to outside events. So for me closure is when the door clangs shut on that cell. That is closure. For somebody else it may be something else. But this moves into the question of deterrence, a piece that we have not looked at here and needs to be a part of the record. Deterrence is effective when it's quick. If we depend upon the click of the jail cell door, that can come within a few days after the murder. If we're waiting for a death sentence to take place, that will be as much as 20 years after the murder. It has lost its deterrent value. The other point that I would make to kind of respond to other comments is on polls. Senator Nelson has talked about polls that would indicate a majority of Nebraskans favor this option over life in prison. I do not agree with the statistics he quotes and that he is passing out, because they give only one option. And typically 75, 70 percent, at one time 85 percent of the people would say yes to a question, do you favor the death penalty? That's not giving the option. That's not the option that's before us. We are looking at two options: death penalty or life in prison without parole. When the question is asked in that way, Nebraskans at the present time...we don't have much data on this, but all that I have seen have been about evenly split. Just a few less in support of the death penalty than in support of life in prison. I have taken surveys on my district, which are unscientific but fairly thorough, with a lot of responses, and its 2:1 opposed to the death penalty where I live. Now, I recognize that Senator Chambers and I live in an area where people know that the system is broke. They know it. They've experienced it. They've seen it with their friends and their neighbors. They know that the chances of a fair trial for them is not the same. We know in our two districts that if one of our persons is charged with a heinous crime, it's different than a person in one of your districts. That's the unfairness. That's what we know, and that's why we have some passion about it. Have we executed innocent persons? Yes. Are we doing less of that? I think the evidence would show yes. But the real question for those of us in our districts... [LB1063]

PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR KRUSE: ...is will we execute an innocent person? It gets very quiet when we ask that question. Will we execute an innocent person? We are human beings, we have a human system, and we cannot deny that possibility. We do not know. Thank you. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Kruse. Senator Chambers, this is your third time on AM1841. [LB1063]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I want

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to make one thing clear about my position. I have not talked a lot about innocence. I am against the death penalty no matter who the perpetrator is, no matter who the victim is, no matter what the circumstances of the murder were. I am against the death penalty in every situation, in every case, under any and all circumstances. If a person were convicted and the evidence was not beyond a reasonable doubt, but beyond any doubt, I would still be against the death penalty. I allow of no exceptions, whoever the perpetrator is. And Senator Flood mentioned that there were some people killed in his district. There have been a lot of people killed in my district. I have known people who were killed. I have known family members. I have had to try to console family members. People have come to me for consolation, and they know that I'm opposed to the death penalty. That issue does not even come up. So those who sanctify the death penalty and they console people in their district by saying, the state is going to kill somebody for you, then I think they're not doing the job they ought to do. And I think that brings about a coarsening of society, a misunderstanding of the nature and purpose of penology. People can laugh at that if they want to, but there are principles according to which societies operate, and the aim should be to raise the level of civility in that society. As long as killing by the state is allowed, that level of civility that's needed to be reached never will be. Look at the nations around the world with whom America is in league, in lockstep with. And it's why many nations will not extradite the worst murderers to this country, because America has the death penalty and they don't. And that's not to say they don't have vicious murders that take place in their society. Wherever there are human beings there are going to be very bad things done by very bad people. And I don't say that they make a mistake when they do that. Three plus three are nine is a mistake. Murder is not a mistake. Murder is a crime. And I use the term murder to separate it from an accidental killing. Murder means there was an intentional, knowing, taking of somebody's life, except when it comes to felony murder, but that's another issue and I'm not going to go into that because it will take too much time. Yesterday a man was given a life sentence. He was involved in what you might call a sex lure, murder-type situation. Two men, I think at least two, were lured by the promise of sex from a woman, and when they arrived--I don't know all the details--they were killed execution style, and a third person who was to be a victim, fought and got away. To the shock of everybody on this floor who favors the death penalty and would like to demand that man's execution, the families in both cases said they did not want the death penalty, and he was not given the death penalty. And they were not saying that because they are bleeding heart, soft-headed, so-called liberals. They wanted that man to live. They wanted him to think. And despite the fact that he was defiant yesterday when he was leaving the courtroom, a lot of people have to have that false bravado when they're in front of everybody, but once alone, it becomes something else. Even if it was valid and meant at that time, it will evaporate in a relatively short period of time,... [LB1063]

PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR CHAMBERS: ...and there will be the opportunity to think. I'm not in favor of

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anybody being tortured, but some people can wind up being tormented in their own minds because of things that they did that harmed others who ought not to have been harmed. The Nebraska Supreme Court, in response to some of the types of attitudes that we hear on this floor where you say the victims were treated torturously, why should you worry about whether these inmates suffer pain when they are executed by the state, and paraphrasing the court, they said, because murderers inflict torture does not mean or justify the state in doing the same thing. We are to operate according to a different standard, and Jesus even says, he shows you a new way. But that's why I say those things don't mean anything. Where the rubber reaches the road, you all are worse than I am, and I'm going straight to hell based on what you all believe. But we're going to join arms and go there right together, and I bet you are in a hotter place than I am, because at least I'm straightforward and honest in mine. [LB1063]

PRESIDENT SHEEHY: Time, Senator. [LB1063]

SENATOR CHAMBERS: Thank you, Mr. President. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Chambers. And I do need to remind the balconies: no response, please. Thank you. Senator Wightman, followed by Senator Synowiecki. Senator Wightman. [LB1063]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the Legislature. We've talked here about sanctity of life, and particularly in light of the criminal who is awaiting execution. I think, first of all, as I stated this morning, I do believe that the death penalty is a deterrent. And I know it was stated by Senator Ashford that there is absolutely no credible evidence that it's a deterrence, and yet I know there are eight studies that are referred to in a document that I have just been reviewing that all indicate that it's a deterrence. There are many polls. There has been statistics that show that during the period of time when the death penalty was in abeyance because of the ruling of the United States Supreme Court, that murders per 100,000 people reached a relative high, and that since the death penalty has been being administered, that the murder rate per 100,000 people across the United States has lessened again. So I think we can argue that all day, but I think it still gets down to an individual opinion that each one of us has as to whether it is a deterrence. If it deters a murderer from killing one additional person, I think that it's certainly worthy of consideration because those lives, to me, probably have more value than the value of the life of the person who has committed the murder, who has committed some of the heinous crimes that we've talked about. So I think the people who are saved by it being a deterrence are likewise entitled to consideration. I think Senator Carlson makes a great point when he talks about the rights of the unborn. So often it seems like legislatures across the country have forgotten the rights of the unborn. Just as Senator Carlson referred to someone that he knew during the last year, I think that the child, after birth, reached a weight of 11 ounces. I happen to know a couple who had twins. They were living in Egypt actually, they were teaching over there.

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And she flew back. Both of the twins reached a point that they reached a level of under one pound. Both of them lived. Senator Carlson said they're living people. I think they are entitled to rights. I probably might not go quite as far as Senator Carlson in providing exemptions in abortion. I truly believe that in an early stage a woman has a right to make a decision with regard to a child that she's carrying as a result of incest or rape, but I think it ought to be an early date. But it seems to me we're going artificial distinctions. Many legislatures across the country have allowed the rights of the unborn to suffer and be destroyed. And I think that they are entitled to more rights, certainly equal rights, to the people we're considering here today who have been convicted of some of these horrendously heinous crimes. So I again urge your opposition to LB1063 and the underlying amendment. Thank you, Mr. President. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Senator Synowiecki. [LB1063]

SENATOR SYNOWIECKI: Thank you, Mr. Lieutenant Governor and members. I am in support of both the amendment and the underlying bill, LB1063. Some of the information I have received, I believe this is viable information, since Carey Dean Moore was placed on death row in 1980, through 2006 there have been 1,317 murders committed in the state of Nebraska. Over 1,300 murders committed in the state of Nebraska since Carey Dean Moore was placed on death row. Senator Lathrop mentioned some of these earlier. But with over 1,300 murders committed since this sentence, we only have nine additional individuals that are currently on death row. Those numbers just don't make any degree of sense to me whatsoever. It does not appear to me that the death penalty is a proportionately adjudicated criminal sanction within our criminal justice system. Indeed, as a person that was involved in the administration of justice for 12 years from the perspective of a probation officer, I can assure you, members, that the criminal justice system makes mistakes all the time. We do it in misdemeanors. We do it in felonies. Victims do not receive wholeness through the criminal justice system every day. It was a rare occasion when, for instance in a misdemeanor case, restitution was paid in full. So why would we expect victims in capital cases to find wholeness in the criminal justice system? I think they find it in other areas. I think they go on through their life stages and find wholeness in an interpersonal arena, not necessarily in the criminal justice arena. I think Senator Kruse spoke to that a little bit, as well. Senator Carlson and Senator Wightman, your comments relative to the sanctity of life and so forth, I agree, number one; but, number two, I'm also guided by my religion and the teachings within my moral compass. And I'm taught within my religion that respect for life applies at all. Respect for life applies to all, even the perpetrators of terrible acts. Punishment should be consistent with the demands of justice and with the respect for human life and dignity. So I'm guided by two points on this. I'm guided by the practical aspects of what I know from the criminal justice system, particularly living in it and working in it for 12 years, and I'm guided by my moral compass which guides me in my religious beliefs. And with those two I am in support of both the amendment and the underlying bill. I'd give the remainder of my time to

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Senator Chambers if he would want it. [LB1063]

PRESIDENT SHEEHY: Senator Chambers, you are yielded two minutes. [LB1063]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Synowiecki. Members of the Legislature, these are grueling issues. Those of us who feel strongly about this issue must be ourselves strong, our minds must not fail, our physical strength must not flag. And I'm not going to weaken in my resolve. I'm going to continue to hammer at this issue. Remember, there are people outside this Chamber very much aware of what we are saying. They can draw a conclusion as to whether or not compelling arguments have been made in justification of keeping Nebraska in the killing business. Especially will they be able to judge some of those who took the right position in taking the state out of the killing business, and for whatever reason have changed now. [LB1063]

PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR CHAMBERS: They will wonder if there was a pressure. Maybe the Attorney General was effective. He's a politician. He doesn't vote on these issues. He can tell other people to vote a certain way. A state can say there should be killing, the state through its legislature, but have somebody else carry out the actual killing work. Put the duty under statute on the warden to carry out the execution, but then to give the way out to say the warden can designate a suitable other person to do the dirty work. Everybody wants to keep his or her hands clean, and the executioner's identity is kept secret. If a great work is being done for the state, if society is being preserved, why don't we honor the executioner, the one who's doing what nobody else wants to do but which these members on the floor of the Legislature say is so essential to be done? Thank you, Mr. President. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Pedersen, followed by Senator Schimek. Senator Pedersen, this is your third time on AM1841. Senator Pedersen. [LB1063]

SENATOR PEDERSEN: I would give my time to Senator Chambers. [LB1063]

PRESIDENT SHEEHY: Senator Chambers, you have five minutes. [LB1063]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Pedersen. When (singing) I wore a younger man's clothes, I was a law student, and I was allowed to take some courses in summer school at the University of Nebraska down here, because Creighton had no summer school. At that time a new dean had come to Creighton who did not fear me. He felt the school had treated me unjustly in refusing to let me finish. He told me if I came back I didn't have to pay for another course, didn't

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have to pay for a textbook, and did not have to attend classes. And he would accept the grades that I got down here so that I could graduate. I was sitting in this very hot class, troubled by the death penalty, as I often am, and the very lack of fairness. So I drafted language in that hot classroom, and it became a part of the law, 29-2521.01 legislative findings. "The Legislature hereby finds that: (1) Life is the most valuable possession of a human being, and before taking it, the state should apply and follow the most scrupulous standards of fairness and uniformity; (2) The death penalty, because of its enormity and finality, should never be imposed arbitrarily nor as a result of local prejudice or public hysteria; (3) State law should be applied uniformly throughout the state and since the death penalty is a statewide law an offense which would not result in a death sentence in one portion of the state should not result in death in a different portion; (4) Charges resulting from the same or similar circumstances have, in the past, not been uniform and have produced radically differing results; and (5) In order to compensate for the lack of uniformity in charges which are filed as a result of similar circumstances it is necessary for the Supreme Court to review and analyze all criminal homicides committed under the existing law in order to insure that each case produces a result similar to that arrived at in other cases with the same or similar circumstances." And there were other provisions that established how this information would be collected, how the Supreme Court would make its evaluation. Then in 29-2521.03 it says, "The Supreme Court shall, upon appeal, determine the propriety of the sentence in each case involving a criminal homicide by comparing such case with previous cases involving the same or similar circumstances. No sentence imposed shall be greater than those imposed in other cases with the same or similar circumstances. The Supreme Court may reduce any sentence which it finds not to be consistent with..." the various sections involved. What the Supreme Court did was to gut that bill. That law said that all homicides should be reviewed. The purpose in having a review is to look at similarly positioned cases where the death penalty was imposed in one instance, not imposed in another. What the Supreme Court said it would do is compare only death penalty cases, only those where the death penalty was imposed. How can you compare a quarter? You would say, compare it to what? I would say, what's the difference between a duck? You say, between a duck and what? Well, if you're only going to compare the cases with cases where the death penalty was imposed,... [LB1063]

PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR CHAMBERS: ...it's impossible in this case to impose a harsher sentence, because death is the only thing that can be imposed. There is no proportionality review, in other words. What they would have to do is what the law made clear it should have done: Look at all the cases of criminal homicide, and if the circumstances were similar and death were not imposed in cases A through E, death will not be imposed in case F. That was clear. Do you know how the court got away from doing what it knew it should do? They said, if we follow the law the way it's written, it would lead to the abolition of the death penalty. But in other cases, they've said, we won't read into the law anything

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that's not there; we won't read out of the law anything which is there. But in this case they said, to enforce the law the way it's written would arrive at a result that the Supreme Court did not like, so they gutted it. Thank you, Mr. President. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Schimek. [LB1063]

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. I would like to give my time to Senator Chambers if I might. [LB1063]

PRESIDENT SHEEHY: Senator Chambers, you are yielded five minutes. [LB1063]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Schimek. When Chief Justice, former Chief Justice of the Nebraska Supreme Court, Norman Krivosha, was looking at this language, he was very upset at the way his colleagues had gutted the bill and ignored its plain meaning. He gave an example--and I hope I'm getting it right--if you're going to look at a situation where black people are compelled to ride in the back of the bus, and you are going to make a comparison to see whether or not they are being discriminated against, and the only one with whom you compare their situation with is other people sitting in the back of the bus, you say, no, they're not being discriminated against because they're treated the same way as everybody else in the back of the bus. But what Chief Justice Krivosha said is, you have to compare what's happening to all the people in the back of the bus with those who are not required to sit in the back of the bus; then you see that all of them are discriminated against. What this Nebraska Supreme Court has said, we're going to compare cases only with those where the death penalty was imposed. Well, they knew there could not be a harsher punishment than death, so there would be no necessity of reducing anything. That's what that court had done. That is how they ignore the law. It did not produce a result they wanted. And that is what impedes the movement of this society, but that should not dishearten others from trying to get the society where it ought to be. If you read the annotations under some of these statutes, you will see where federal courts overturned decisions by the Nebraska Supreme Court because they denied due process. In one of the Reeves' cases, the Nebraska Supreme Court said that the Nebraska Supreme Court, speaking of itself, denied him due process by denying certain rights at a first tier of review, at a second tier of review, and having denied him of these rights, the Supreme Court of Nebraska had denied him due process. This court is not infallible. No court is infallible. And if anybody would stand on this floor and say they disbelieve that having the money to hire a competent lawyer does not have a bearing on how your case comes out, I would say that person had been in a cave and just emerged and does not know anything about this criminal justice system. Why are some lawyers considered more capable than others? Why are they sought by those who have large amounts of money? Because they know how to deal with the law and get the best consideration for their client. Even if the client supposedly is guilty, what that lawyer says is, you must convict my client based on what the law allows. And if you have tainted evidence, the

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law does not allow you to use it, and you can say all you want to, that this tainted evidence proves guilt. No, you cannot violate the law in order to uphold the law, so tainted evidence cannot be used. And if a court was carried away by the public local hysteria and allowed that tainted evidence to be used, the appellate court says, uh-uh, buddy, this is thrown out. And if you cannot convict without the use of that tainted evidence, then there is no need in even bringing another trial, because you can't win, you don't have the evidence you need. Some courts do the right thing. Others do not. Some judges are corrupt. Some judges are just ignorant. Some are swayed and frightened... [LB1063]

PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR CHAMBERS: ...by public hysteria, as are many politicians. Many people have, in the past, not known whether there was a death penalty in Nebraska or not. Senator Nelson, you may find this hard to believe, but one year I had a bill to abolish the death penalty, and a lady, bless her heart, called me and thanked me for trying to reinstate the death penalty. (Laughter) First of all, there was a death penalty and I was trying to get rid of it, but she didn't understand. People in Nebraska may not even know there is a death penalty. If the question were asked, is there a death penalty in Nebraska, many would say, I don't know, I guess so. If you ask them, can it be carried out? Probably all of them would say yeah, not knowing that right now it can't be. We should not tinker. We should destroy it, get rid of it, then you all can start with a clean tablet when I'm not here next year, if want to. Thank you, Mr. President. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Wallman, you are recognized. [LB1063]

SENATOR WALLMAN: Thank you, Mr. President. Members of the body, I think it's ironic we're talking about that, as this season...Easter...just got done with Easter. One person, one free person was let free, and one was killed. And if we think we have a fair justice system, if I can hire a high-priced attorney, whether it be a sports figure, whether it be a wealthy individual in this area, or in Texas, whom I know a person was pardoned, if you know the right people, you know the right attorneys, you might not even spend a day in jail. But if you're from the wrong side of the tracks or you're a minority, then a good chance that you may see the death penalty. So I admire Senator Chamber's tenacity on this subject, and I yield the rest of my time to Senator Chambers. [LB1063]

PRESIDENT SHEEHY: Senator Chambers, yielded four minutes. [LB1063]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Wallman. Members of the Legislature, I read everything I can get my hands on. I don't get my hands on too many things while we're in session because it's so much more pleasant to read things other than what we have to read in order to do the work we do here. But this

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is my job. However, Senator Wallman mentioned this is the Easter season, and two men were involved. One was allowed to go free. Another was executed. Who was allowed to go free? "Parson" Carlson could tell you, the insurrectionist; the man who committed crimes that he and everybody knew would carry the death sentence. But as this particular time of year, the crowd was allowed to determine whether somebody would get clemency. The insurrectionist got clemency, and he lived. The one you all say was innocent, died. Does that ever happen in America? Does it happen in Nebraska? There was a white woman named Candace Harms who was kidnapped and killed, and because she had gone to school at UNL and there were some black youngsters in her class, they treated every one of those young black guys as a suspect. And they came to me and I made the university stop. But they didn't say everybody else in the class was white, so we ought to consider all of them suspects. And guess the race of those who were convicted of the murder? Two white guys. And one of them lived and the other was sentenced to die, but he died in prison instead of being executed. Whoever wins the race to the prosecutor's office is Barabbas. He lives. The one who lost the race, dies. And there have been cases where prosecutors not only knew about this, but went along with it. One was so egregious because a man had driven another person to a grocery store or drug store where a robbery was committed, and the robber killed a man. The robber ran and won the race to the prosecutor, and the robber was given a term of years and released. The one driving the car, who it was established didn't even know what was to happen, was convicted of first degree murder and given a death sentence. The prosecutor spoke in his behalf. The man who was the trigger man spoke on his behalf, and he was free. That man was executed nevertheless. That's the way this system works. It works like that in Nebraska. And knowing those things, how can my colleagues, devoted and dedicated to justice, to the law, to due process say, I'm going to disregard all that? I'm going to say, keep this flawed system even if, by the way, nobody is ever sentenced to die, and if sentenced, nobody is ever executed. What kind of shell game is that? That, to me, is a denigration of the law. [LB1063]

PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR CHAMBERS: It is a corruption of the system, and it does not inspire confidence in the minds of the public. If we did away with the death penalty, which even before the electric chair was struck down, was not being utilized, then we could bring an end to these ongoing appeals. A person will be in jail 25 years, but not continuing to bring appeals. And the reason these appeals are allowed is because courts recognize that once the state takes a life, it cannot undo it. Thank you, Mr. President. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Are there additional members wishing to speak on AM1841? Seeing none, Senator Ashford, you are recognized to close. [LB1063]

SENATOR ASHFORD: Mr. President, I would just like to conclude by talking very briefly

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about two points that I think have been the overarching issues today, and one is morality and one is security. You know, I listened to "Cap" Dierks, my friend since 1986, and he stands at the microphone and talks about the sanctity of life, and he has been consistently consistent on that issue. And when I was in the Legislature with Senator Dierks years ago, and I listened to him, and he's taught me a lot. And Senator Engel taught me a lot last summer when he said, we need to do something about stem cell research. You know, you just can't have it both ways. Senator Carlson talks about abortion. It is contra to our values in this state that the number of abortions that occur, occur. There is no question about it, and we need to do something about that in this Legislature, and I will support that, Senator Carlson. If we have a measure to restrict abortions and to stop abortions, then we should do it. We...this debate, if nothing else, I think, has overwhelmingly shown that if there is another way to preserve life, if there's a way to protect society and preserve life, we ought to take that road. Though there is a great deal of data on all sides of the issue, it seems to me to be overwhelmingly the case that no matter how vile the perpetrator, no matter how heinous the crime, that our system and our value system can preserve that life and protect society. And I really think that's the key issue. We can't have it both ways. We can't be pro-life when we talk about an embryo, we can't be pro-life when we talk about a fetus, about an unborn child, we can't be pro-life and then not be pro-life when we talk about someone who is as vile as a murderer. We can't do it. It's not consistent. Senator Dierks is absolutely right, and he's been a moral compass to me for a number of years. He may not know it, but he has been. He talks to me quietly and firmly, and he's been that way with me for many, many years, and I respect him for it. Finally, in conclusion, members, I have three children. One of them is ten years old. And the question I have to ask myself every day is, what I do on the Judiciary Committee, what I do in this Legislature, is it...what is going to make my ten-year-old son Tom more safe...safer than...safe so that he's not confronted with violence, the violence that our society renders? Members, there is no question in my mind that my ten-year-old son is safer if we could get over this issue, that we could incarcerate people, which this amendment does, for the rest of their lives without any possibility of parole, and get over this issue so we don't have to debate for another year the issue of lethal injection. All the cases on death row now will be appealed. How safe are we in that circumstance? We aren't safe. We are no safer. Our streets are no more secure. Our role is to protect society and to maintain the values that we hold dear in Nebraska. And I believe these amendments, this amendment, these Judiciary Committee amendments, accomplish, one, the reenforcement of our values, our pro-life values in this state, and protect society. I think any other conclusion is a stretch, at best. Lastly, I want to thank my comembers of... [LB1063]

PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR ASHFORD: ...the Judiciary Committee, Senator Lathrop the Vice Chair, and the other members who have worked so hard on this issue, the staff who have put together data, who have worked hard for two years to present to this body what I

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believe to be a full and complete recitation of the facts as it relates to this issue. I strongly urge, as Chair of the Judiciary Committee, that we adopt this amendment and that we advance LB1063. Thank you, Mr. President. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Ashford. You have heard the closing. I do have a request for a call of the house. The question is, shall the house be placed under call? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1063]

ASSISTANT CLERK: 41 ayes, 0 nays, to go under call, Mr. President. [LB1063]

PRESIDENT SHEEHY: The house is placed under call. All unexcused senators please report to the Legislative Chamber. All unauthorized personnel please step from the floor. The house is under call. Members, please record your presence. Senator Johnson, Senator Pankonin, the house is under call. Senator Pankonin, the house is under call. All members are present. Senator Ashford has stated his desire for a machine vote. The question before the body is on the adoption of AM1841 to LB1063. All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB1063]

ASSISTANT CLERK: 20 ayes, 28 nays, on the adoption of committee amendments, Mr. President. [LB1063]

PRESIDENT SHEEHY: AM1841 is not adopted. I will raise the call. We will return to floor discussion on the advancement of LB1063. Senator Ashford. [LB1063]

SENATOR ASHFORD: Just to try to talk about where we are now, Mr. President, with the bill, what the body just did was vote down an amendment that requires life imprisonment without parole. Where we are now is giving to the judge the discretion on what sentence to impose in the case of life imprisonment without parole. We're back to the bill that talks about a hearing on mitigating and aggravating factors, and we're back to the bill that requires mandatory restitution, which has serious constitutional issues. With that, Mr. President, I'd give the rest of my time to Senator Chambers. [LB1063]

PRESIDENT SHEEHY: Senator Chambers, you are yielded just over four minutes. [LB1063]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Ashford. Members of the Legislature, that could be considered a very disheartening vote, but I'm aware of how difficult an issue this is for my colleagues. And some of my colleagues have told me they would vote differently if it weren't for pressure that they felt. What you can do is compare some of the votes from last year with votes this year, if you choose to do that. I do not choose to do that. All that we can do when there is an issue is make the best case that we can. Obviously, I have not been very persuasive when it came to

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a majority of my colleagues. But under the circumstances, confronted by the people in this Legislature, to get 20 votes on an issue such as this is not bad at all. You listened to some of the kind of comments that were made. You heard many direct references and veiled references to what senators perceived to be the attitude of people in their districts. You have heard others jump way into organized crime in big cities as a justification for a vote to be given here. That kind of approach will not be taken on any other bill before us during the remainder of this session. We just have to see what is going to happen. I still believe that this bill ought to move forward. If there are other actions that need to be taken with reference to it, we can do that. I know the Attorney General has brought pressure to bear. The Attorney General knows that I'm not small-minded like him. Despite the fact that he often tries to undermine me in what I consider to be a very underhanded, cowardly way, he still had to come to me to get money that his office needed to carry on litigation, because he knew that I could get it and he knew that I would. He acknowledged that in a moral sense I'm a better man than he is, and my name is not Gunga Din. Those who voted for that amendment, those who will vote to advance this bill, are in a position where I can say it takes a degree of courage. It takes no courage for me to do anything that I do, because I don't fear anything and I don't fear anybody. A person in that situation may be deemed brave or foolhardy because the threat of danger does not inspire fear, so there's nothing to be overcome. [LB1063]

PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR CHAMBERS: But the person who may be trembling, all atremble inside, the one whose palms may grow sweaty, the one who may be wondering what the consequences may be of sticking with what conscience dictates, and despite fear and trembling does what his or her conscience says is the right thing, that is what takes courage. To place an act where one is not in fear is not courageous at all. To overcome fear and still do the right thing is what I deem to be courageous. So I'm going to presume that everybody who votes to advance this bill is one imbued with courage, except for myself. Thank you, Mr. President. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Chambers. We have Senator Chambers, followed by Senator Ashford. Senator Chambers, you are recognized. Senator Chambers waives. Senator Ashford. [LB1063]

SENATOR ASHFORD: Very briefly, Mr. President, and I assume there are...are there other lights on after Senator Chambers? [LB1063]

PRESIDENT SHEEHY: Just yours right now, Senator. [LB1063]

SENATOR ASHFORD: Okay. Thank you, Mr. President. And then we can get to a vote. And I would second Senator Chambers' comments about this bill. I think it's clear that

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the bill needs to move. It needs to move to Select File. There needs to be further debate. I think that, as Senator Chambers indicated, if there are...more action is needed on the bill, so be it, and the committee, the Judiciary Committee, is certainly willing to consider whatever action someone would wish that we take. But at this point, where we are in the process of dealing with our criminal justice system, is we have a penalty without a punishment. Eventually this body will, I assume, may at some point consider another punishment which will result in further appeals, which will result in no death penalty being...happening. So we all have to think about, as a body, how...what service are we doing to our constituents...for our constituents to invite further endless appeals? We certainly aren't making our society any safer. We certainly aren't dealing with a criminal justice system, which many in here today have said is broken. I think we should get about the business of dealing with crime, with dealing with murder, with violent crime. The death penalty has very little if anything to do with that. I certainly would urge this body to advance this bill and think about what we're doing by not doing that, by stopping the debate, because certainly a vote not to advance today to Select File is a vote to effectively kill the bill for the remainder of the session. We all know that. This is an issue that needs to be out there, needs to be discussed throughout this session as we deal with the serious issues that we are facing. So if nothing else, members, this matter should be advanced. Our committee stands ready, as we always have, to deal with the tough issues, to work on whatever action members would like us to work on, on this bill. Thank you, Mr. President. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Ashford. Are there additional members wishing to speak on the advancement of LB1063? Seeing none, Senator Ashford...or correction...Senator Chambers, you're recognized to close. [LB1063]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I came to this Legislature as a young man. I leave it as an old one. Yes, I am an old man. But I'm not decrepit. And I end my career as I started it. Before I was religious, when I became religious after religion and I parted paths, there was one unwavering, unshakable conviction that I held throughout all that time, and I end my career holding to that same unwavering, unshakable belief, conviction that the state should not kill anybody; that the death penalty not only is ineffective, it is wrong. And the hope that I have is that someday, as Stevie Wonder said, maybe not in time for you and me, but some day people on the floor of the Legislature will reach the point where they realize, as those in all other industrialized countries have realized, that the death penalty does not advance the cause of civilization. It is not something of which a nation, of which a people can be proud. A thing that is interesting to me is how people pick and choose when they're religious. When the Pope was giving a statement on Christmas, he talked about various things that ought to be. Then he said, but you cannot forget the areas of the world that are in turmoil...I'm paraphrasing. He said he hopes that in Iraq, in the Sudan, in Darfur, throughout the Middle East, that peace can come, that there can be an end to violence. And I don't believe a person on this floor would have said, Pope

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Benedict XVI, I disagree with you. But when that same Benedict said that the violence of the death penalty should not exist in a society which is able to incarcerate and prevent an individual from being harmful, in that society there should be no death penalty. Well now, Benedict, you've gotten a little shaky and I don't agree with you there. Iraq is a long way off. I don't even know where Darfur is. I only heard of Somalia in a movie, so that has no impact on me. But when you talk about the death penalty, you're cutting close to the quick, and I'm not able or willing to walk with you down that path. "Parson" Carlson, I wonder if you had been in Jesus' position and they brought you the woman taken in the act of adultery, and the law said, kill her, would you have killed her? Would you have cast the first stone? That's a rhetorical question. You all know why I mention "Parson" Carlson? Because I think he's a man who tries to guide his life by the principles he believes in, in the same way my conduct is governed and controlled by the things that I believe in. [LB1063]

PRESIDENT SHEEHY: One minute. [LB1063]

SENATOR CHAMBERS: And I don't care how many people are on the other side of the issue. I don't care how they threaten. I don't care how they excoriate. I don't care how they condemn. I'm going to do what my conscience tells me that I ought to do, and I will rest well. I will not be pleased. But I think years down the line I can live a lot more comfortably with what I have done during these 38 years than some of my colleagues may be able to do, if their motives have not been as pure as mine. Mr. President, we might still be under call, but if we're not I would ask for a call of the house, and if we are I'd ask that we check in. [LB1063]

PRESIDENT SHEEHY: Thank you, Senator Chambers. And we did open the floor. We do have a request for the call of the house. The question before the body is, shall the house be placed under call? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1063]

ASSISTANT CLERK: 43 ayes, 0 nays, to go under call, Mr. President. [LB1063]

PRESIDENT SHEEHY: The house is placed under call. All unexcused senators please report to the legislative chambers. All unauthorized personnel please step from the floor. The house is under call. Senators, please record your presence. Senator Lautenbaugh, would you check in. Senator Raikes, the house is under call. Senator Chambers, all members are present or accounted for. How would you like to proceed? You have heard the closing on the advancement of LB1063. Senator Chambers has requested a roll call vote. Mr. Clerk. [LB1063]

ASSISTANT CLERK: (Roll call vote taken, Legislative Journal pages 1071-1072.) The vote is 20 ayes, 28 nays, Mr. President. [LB1063]

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PRESIDENT SHEEHY: LB1063 does not advance. The call is raised. Mr. Clerk, do you have items for the record? [LB1063]

ASSISTANT CLERK: Mr. President, one item. LB606 and LB606A were signed by the Governor, effective today. (Legislative Journal page 1072.) [LB606 LB606A]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We'll move to first item under General File, senator priority bills, Loudon division. [LB986]

ASSISTANT CLERK: Mr. President, LB986, introduced by Senator Preister. (Read title.) The bill was read for the first time on January 15 of this year, referred to the Committee on Natural Resources. That committee placed the bill on General File with committee amendments attached. (AM1998, Legislative Journal page 681.) [LB986]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Preister, you are recognized to open on LB986. [LB986]

SENATOR PREISTER: Thank you, Honorable President, friends all. Good afternoon. Over the last past eight years I've introduced a number of bills and interim studies and formed various task forces to address electronic waste, otherwise known as e-waste. Throughout this time period, I've met with and worked with all the interested parties in Nebraska that have expressed interest in this issue. These interests include the Nebraska Retailers, the League of Municipalities, landfill owners, the Nebraska State Recycling Association, Goodwill, Electronic Waste Recyclers, Nebraska Service and Repairmen, small electronics manufacturers in the state, the Sierra Club, CP Recovery, WasteCap, Nebraska Department of Environmental Quality, the State Chamber, and Policy Research, to name most of them. It's been a long road, trying to find that balance that all parties can live with. I appreciate all the hard work and dedication of everyone involved, including the Natural Resources Committee members. Each person and representative has remained focused on a common goal: to establish a program in Nebraska to provide an accessible, efficient, responsible recycling program for discarded televisions and computer equipment. The provisions in LB986 are the result of the past eight years' work. E-waste is the fastest growing municipal waste stream in the country. The National Safety Council estimates that there are between 300 million and 500 million obsolete computers in the United States. The EPA estimates that about 57 million televisions and computers are sold each year in the United States, and that currently 20 million to 24 million computers and televisions are added to storage each year. There is another factor which will affect this volume of e-waste. Broadcasters must terminate analog television broadcast transmission, then switch to digital broadcast by February 17, 2009, to ensure that our emergency responders have adequate band spectrum to communicate for response to natural disasters, terrorists attacks, and other emergencies. According to the National Association of Broadcasters, 70 million television sets still rely on an analog signal for television service. This conversion will

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affect the future volume of televisions that need to be recycled. Though several bills have been introduced as the federal level, Congress has not yet enacted e-waste legislation. Currently, 12 states have passed legislation since 2001. All except one have followed what is known as the producer responsibility model which places responsibility for recycling on the manufacturers of e-waste. Manufacturers throughout the country also support the producer responsibility model in order to establish a uniform system of e-waste legislation among the states. I had passed out pictures that appeared in the January National Geographic issue. We also sent you awhile back the article that was done in the National Geographic, January issue, if you wanted to see more details. I've received permission to copy these photos with the understanding that no other replica of them will be produced. I'm sharing these pictures because currently most of the e-waste discarded in the U.S. is exported to foreign countries such as China, Africa, and India. During this process, children and family members disassembling these waste products are exposed to toxins such as lead, which is a neurotoxin, and cadmium, which is a carcinogen that damages lungs and kidneys. Unfortunately, most of these countries do not have OSHA or other environmental or health or safety laws, as we do. Informal e-waste in these places and its processing, has become a common household business for poor people. One picture shows a man pouring molten lead, smelted from circuit boards, into the same pots that his family uses for cooking. It was recently discovered there is a connection between our exported e-waste and the lead found in recalled toys and children's products from China, which are sold in the United States. A July 2007 article in The Wall Street Journal reports that two recent studies suggest that the lead in children's products can be traced back to lead solder from e-waste electronic circuit boards. I also introduced a bill this year that would have banned the sale of toys in Nebraska which contained above a certain level of lead. It wasn't until after I introduced the toy bill that I discovered the connection between e-waste and lead in our children's toys. I believe this connection raises the level of urgency for Nebraska to act, to prevent our state's electronic equipment from being sent overseas to become part of the harmful process that comes back to our own children. LB986, as introduced, does the following: applies only to televisions and computer equipment of consumers--households, not businesses. It requires each manufacturer selling televisions and computers in Nebraska to register with DEQ by January 2009, and report the quantity of electronic devices sold in the previous year. Beginning January 2009, each retailer must provide DEQ with the name of each manufacturer and number of each manufacturer's electronic devices sold by that retailer in the previous year. Beginning July 2009, no retailer may sell televisions or computers in Nebraska from unregistered manufacturers. Retailers must consult a list posted and maintained by DEQ on their Web site of all registered manufacturers. Beginning January 2009, each manufacturer must register with DEQ and pay a registration fee as follows, based on the volume of the manufacturer's sales in Nebraska: Under 500 units, there's no registration fee; from 500 to 1,000 units, there is a \$1,000 registration fee; over 1,000 to 2,500, there is a \$5,000 registration fee; above 2,500 units, the registration fee is \$7,500. A manufacturer or group of manufacturers may submit a plan to collect, transport, and recycle 50 percent of the

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quantity of electronic devices sold by that manufacturer that were sold in the previous year. If the plan is approved by DEQ, then 50 percent of that registration fee is waived for them. The revenue from the registration fees are deposited in the Waste Reduction and Recycling Incentive Fund, and earmarked to award grants for infrastructure development, collection, transportation, and recycling of e-waste. The committee amendments, which Senator Louden will explain to you, are in response to concerns expressed by the committee and DEQ and Policy Research. I worked with all parties to address any and all issues that were raised and have agreed to all the proposed amendments. The changes are consistent with and agreed to by the interested e-waste parties in Nebraska who have committed themselves to finding a solution to our state's e-waste problems. Later, I will discuss the committee amendment, which I do support, and manufacturers' issues that have... [LB986]

PRESIDENT SHEEHY: One minute. [LB986]

SENATOR PREISTER: ...and manufacturers' issues that have recently come up. Later, I will be happy to answer any questions, as well. Thank you. [LB986]

PRESIDENT SHEEHY: Thank you, Senator Preister. You have heard the opening to LB986. As noted, we do have an amendment from the Natural Resources Committee. Senator Louden, you're recognized to open on AM1998. [LB986]

SENATOR LOUDEN: Thank you, Lieutenant Governor and members of the body. The committee amendment becomes the bill. It keeps the concepts of Senator Preister's original bill, incorporates suggestions made by the Department of Environmental Quality for clarification, and simplifies the original bill. LB986 creates the Electronics Recycling Act to establish a comprehensive electronic recycling system in Nebraska. The key provisions of the bill are, first, requires electronic manufacturers to register with the state and pay a fee based on the number of electronic devices sold in the state beginning on January 31, 2009; second, requires the electronic manufacturers to pay a \$2 recycling fee for each electronic device sold in the state the previous year, beginning on January 31, 2010; third, allows a rebate of up to 50 percent of the recycling fee if the manufacturer has certified that it has recycled 50 percent of the number of electronic devices sold in the state in the previous calendar year; fourth, prohibits the manufacturer from charging a fee for the collection of the electronic devices; fifth, if a manufacturer is not in compliance with the act, the manufacturer is prohibited from selling a new electronic device in this state; and, sixth, restricts the use of the fees collected to infrastructure development, collection, transportation, and recycling of electronic devices, less the cost of administration. An electronic device is defined as a computer, video display device, or television. The bill contains a list of devices that are not considered electronic devices for purposes of this bill, such as a device that is part of a motor vehicle or is functionally or physically a part of a larger piece of equipment designed and used in an industrial, commercial, or medical setting, or contained in a

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home appliance or telephone. However, if a telephone contains a video display area of greater than nine inches, it is considered an electronic device. I would ask for the adoption of the committee amendments to LB986. Thank you, Mr. President. [LB986]

PRESIDENT SHEEHY: Thank you, Senator Louden. You have heard the opening to the Natural Resources Committee amendment, AM1998. The floor is open for discussion. Senator Preister. [LB986]

SENATOR PREISTER: Thank you, Honorable President, friends all. I wanted to confirm that I do support the committee amendments. I think that they help the bill. I think if you look at your committee statement, you will see that seven of the eight committee members signed on to the bill, and I want to thank them. The eighth committee member, Senator Louden, introduced his own bill. I think it shows the level of commitment that the committee has for the issue, and their ongoing interest in it. You'll see that it came out of committee with those same 7 yes votes, 0 no votes, a list of proponents, 0 opponents, and no one neutral. We worked very hard, and the committee did, as well, to address all of the concerns that have been raised all along in the process. I think we have done that. However, there have been some things. Since the committee advanced the committee amendment and the bill, we, in just the last few weeks, have heard from some of the national representatives. I have agreed to delete business e-waste from the bill, so the requirements only apply to consumers. Manufacturers have agreed to support the inclusion of televisions as e-waste, which was important to me. There are a few minor definitional changes that we're working out. I've been responsive to concerns about the \$2 funding mechanism and have proposed several alternative funding structures. Though I'm not tied to one particular funding mechanism, I am, however, committed to raising enough revenue from the manufacturers to cover the cost to recycle all the covered e-waste in Nebraska--that is televisions and computer electronics. Based on Nebraska's population, the average pounds of e-waste generated by each citizen extrapolated from the national figures, and the cost of recycling e-waste, Nebraska will require approximately \$2 million in revenue to provide grants to those entities, such as communities, recyclers, and nonprofit organizations that are willing to establish and staff e-waste collection sites, transport the e-waste, and responsibly recycle the e-waste. In addition, money is also needed to educate the public about the issue, and inform them about their recycling options, including locations, dates available for e-waste recycling, and any information about existing manufacturers' e-waste recycling programs. I'm also committed to finding a funding balance that does not place financial burdens on the smaller manufacturers, particularly small Nebraska businesses. I believe the financial responsibility should reflect the volume of products sold by each manufacturer. I also want to give credit for and provide incentives for manufacturers that have established their own e-waste recycling programs. I respect and appreciate the commitment of these manufacturers, and they deserve a reduction in their financial obligations to Nebraska's e-waste program. I put together a letter and sent it to the national manufacturers and to the lobbyists that they have here regarding the issues

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that I'm willing to finalize on Select File with a Select file amendment to further address some of the issues that they have raised since the committee amendments were done. They have agreed to work with me. I gave them my word that I would come back with that amendment that would address a number of issues, including removing of business e-waste, including televisions, clarifying business-to-business electronic devices are exempt, clarifying definitions of telephones, addressing the \$2 recycling fee which concerns them because they see that's going to give away trade information because then someone... [LB986]

SENATOR FRIEND PRESIDING

SENATOR FRIEND: One minute. [LB986]

SENATOR PREISTER: ...could extrapolate the \$2 and know how many units they sell in the state, amend registration fees so they are a sole source of program revenues, grant DEQ authority to adjust registration fees, add minimum requirements for manufacturers' recycling program, allow grants for public education on e-waste recycling, clarify manufacturing prohibitions on charging fees at point of collection. Those were all of the additional issues that were raised, and I will be working on those, and we're waiting for NDEQ to give us some language; otherwise, I would have the amendment ready already. But between General and Select File, I give my word that I will continue working with everyone interested. With that, I thank you. [LB986]

SENATOR FRIEND: Thank you, Senator Preister. Senator Gay, you are recognized. [LB986]

SENATOR GAY: Thank you, Mr. President. I was looking at this bill earlier. Senator Preister and I had a discussion on it, and he answered many of the questions. But I thought it was important to discuss a little bit of where we're at, and the committee amendment clarified and improves the bill quite a bit. Would Senator Preister yield to a question or two? [LB986]

SENATOR FRIEND: Senator Preister, will you yield to a question? [LB986]

SENATOR PREISTER: Yes, I will. [LB986]

SENATOR GAY: Senator Preister, you had talked about...you did a lot of work on this, I know, in listening to the opening. You stated that. The concerns I had, and I think you addressed some of these, would this increase cost to the consumers, passed on? And there have been...the other states that have done this, we haven't seen that increased cost at this point, at all, have we? And I think they're working to try to create...you give them a break if they created their own recycling program, which I think is good. If they go create their recycling programs, does the fiscal note, at the 50 percent deduction, is

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the fiscal note correct on this, or was that fiscal note bad on this? [LB986]

SENATOR PREISTER: Senator, until we amend it we won't get a revised fiscal note, so the fiscal note has essentially two components. One is cash-funded, which would be the money that will come in from the manufacturers that will go back out, or part of it, 50 percent as you correctly identify, could go back to the manufacturers if they take back 50 percent of the number of units that they sold in the state. They create their own take-back program. We reward them. But part of that fee will also go to smaller communities where we're concerned about not having access to recycling. So part of that money will go to education and then to take-back programs, so that those units can also be included in the recycling where the manufacturer may not have a convenient way of taking them back. Doing that process obviously requires money and funding. To my knowledge, because the manufacturers are selling these units across the country, the price has not been affected. By doing it in volume, many of them have begun to voluntarily take back the units, so there are some programs already in existence. They would just bring those more directly into Nebraska and have them set up here. They could also work with the existing recyclers, which is the hope, so we're not having to create new infrastructure. We left it very flexible. They can establish their own program. They can contract with places like CP Recovery in Omaha that already recycles. They can set it up with Goodwill Industries, who a lot of people take their old electronics back to already. So we've left it intentionally flexible, so they can...the manufacturers can do it anyway that's convenient and easy for them. But what we're trying to do, protect the consumer, protect the environment, and help the manufacturer to do the right thing. In the 12 states where it has been done, all of them do it this way. The only one that doesn't, the twelfth one, is California. They have a different model. And the manufacturers eventually are going to get a federal legislation creating a federal policy. Until then, they want to stay as uniform across the country as they can, because it's easier to operate under the same operating conditions. I could go on... [LB986]

SENATOR GAY: No, that's good. [LB986]

SENATOR PREISTER: ...but I'm taking your time. I hope... [LB986]

SENATOR GAY: Oh, that's okay. I was discussing it. You're familiar with the under-the-sink program. I know you're...I think you helped set that up, but...where they take recycled chemicals and those things. So would this kind of be...would that...maybe they could go talk to somebody like that and create like a...destinations where you take these components. Keep them out of landfills is what you're doing, which is good. And we discussed the lead issues, and you discussed... [LB986]

SENATOR FRIEND: One minute. [LB986]

SENATOR GAY: ...many of those issues. But do you envision this, then, in the metro

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areas...let's say, that there's certain places to drop them off besides what's currently there, if you want to go into that? I'm going to hit my light again too. [LB986]

SENATOR PREISTER: Yes, Senator. They would be able to utilize the existing facilities. They would be educated and informed about the take-back programs that the manufacturers are doing already. And some of those would then be done through some of the retail outlets if the manufacturers set that up that way. We will have an easier time in the metro area establishing new and working with existing programs. But we're also wanting to make sure that the rural parts, the more...the less populated areas have equal access to this recycling. So there will be some additional opportunities for collection sites there, and then transporting of those units perhaps to the larger metro areas where they're being recycled. [LB986]

SENATOR FRIEND: Time. Thank you, Senator Preister and Senator Gay. Senator Wallman, you are recognized. [LB986]

SENATOR WALLMAN: Thank you, Mr. President and members of the body. I urge you, too, to support this amendment and the bill. It's time we clean up our Mother Earth a little bit, and European countries are doing a much better job with everything. And I live along the highway, I see this junk, and also I clean up my grader ditches. So let's make this a little more easy to do, and it's never popular to do these things but I think it's the right thing. And so if Senator Preister would want some more time, I yield the rest of my time to him. [LB986]

SENATOR FRIEND: Senator Preister, 4 minutes and 25 seconds. [LB986]

SENATOR PREISTER: Thank you, Mr. President. Thank you, Senator Wallman, and thank you for your help with the bill. If Senator Gay wishes to continue, we can do that. You had additional questions, Senator Gay? [LB986]

SENATOR GAY: Thank you, Senator Preister. [LB986]

SENATOR FRIEND: Senator Gay, you'll yield to questions? [LB986]

SENATOR GAY: Thank you, Mr. President. Yes. Senator Preister, the one thing I wanted to say, because as these landfills continue to be growing, putting more in those landfills which are very expensive to maintain, we are to keep some of the waste out of the landfill under this process. But you talked about, a little bit, and I didn't quite catch it, this would raise some money, the fiscal note will change. But did you say there's \$2 million, you think, was...when we look at try to getting everything going here? To \$2 million? Where is the rest of the money going to come from then? [LB986]

SENATOR PREISTER: The committee amendment adds some additional fee, and the

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total between the manufacturers' registration and the \$2 a unit would get to just under that amount. However, the manufacturers don't like that \$2 charge. They say that anybody can look at how much I've paid then, per unit, and they know how much I've sold in your state, and I don't want people knowing my business to that degree. So I've agreed to increase the registration fee and take the \$2 fee off. But the bottom line is, we still need to keep that amount. That amount is based on the cost of recycling, the cost to get everything to the recycling, and the total number of units that are being sold in Nebraska. So it's not a number that we've pulled out of the air, but there's a formula to come up with that amount. Now the other portion is administrative costs. And what we will be allowing also that will be later reflected in the fiscal note is any of the administrative fees will also come out of that registration fee. So essentially nothing will come out of the General Fund. This will cost the state, at this point, no dollars. It will also not add any FTEs so we will not...and that was one of the concerns of the Governor and the administration, that we not add to government. So we've complied with that, as well. So we've looked at every aspect, from the financing to the process, to try and find a way to resolve all of those concerns. And I think when we get the next Select File amendment, we will have addressed everything that everybody brought forward. [LB986]

SENATOR GAY: Okay, thank you, Senator Preister. And like I say, that...we had this discussion. I just wanted to have it on the mike a little bit so we figured it out. But I think it's a...you know, where you're going is pretty...you know, you are saving money by keeping it out of the landfill and fairly progressive on the way you're doing it, so it doesn't go directly to a consumer the way I understand this at this point. So I'll just wait till Select File and see how that fiscal note changes and where we're at. So thank you, Mr. President. [LB986]

SENATOR PREISTER: Thank you, Senator Gay. I would just add that we do not have a landfill ban in here. We don't want, just as Senator Wallman said, we don't want these things ending up in ditches. If you put a ban on, and we went down that road on other things in the past, it creates problems. Although the manufacturers would like a landfill ban,... [LB986]

SENATOR FRIEND: One minute. [LB986]

SENATOR PREISTER: ...we're not going to do that. So we also don't want them taken to landfills. Currently, businesses are not allowed to dump theirs in a landfill, but residents could. However, most people are very responsible. Most people have not put them in their garbage cans when they're old. They've tried to find another use for them, or where many of them are is stored in an attic, in a basement, in a closet. People are waiting to do something with them. This will give that opportunity and an outlet, will create the infrastructure, make it easy, convenient; and we won't put a fee on the end of life so that people won't say, Oh, I'm not paying to get rid of my junk. We're eliminating

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that aspect too. Thank you. [LB986]

SENATOR FRIEND: Thank you, Senator Preister. Members, we are discussing AM1998, the Natural Resources Committee amendments. Senator Stuthman, you are recognized. [LB986]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I would like to engage Senator Preister in a little bit of a discussion. [LB986]

SENATOR FRIEND: Senator Preister, will you yield? [LB986]

SENATOR PREISTER: Yes, I will. [LB986]

SENATOR STUTHMAN: Senator Preister, you discussed, and I guess I apologize for not listening early on, but you're going to have an amendment that deals with the dollar amount. In the dollar amount you have \$2 for the electronic device that is sold, and then you go into the \$1,000 for 500 to 1,000. Well, that comes to, you know, \$2 down to \$1. And then you go from \$5,000 for sales of more than 1,000 to 2,500 devices sold, which would actually be \$5 for a device sold. Are you going to address this in your amendment? [LB986]

SENATOR PREISTER: Senator, you're referring to some of what's in the committee amendment, not the original bill. The committee understood that not enough money was being raised, and they were very helpful to make sure it was fully funded. But as I said, the manufacturers didn't like that. So I'm working with the manufacturers to adjust that. That will be eliminated completely so there won't be a fee per unit. It will be just the registration fee that the manufacturers will pay. We don't want the consumer to directly pay for any of these things. The \$2 would be paid by the manufacturer as well, but it gives away what they consider proprietary information. So that aspect is what we are looking at addressing. That's one of the ones on the Select File amendment, yes. [LB986]

SENATOR STUTHMAN: So in other words, the dollar amount will be an X dollar amount that's assessed to the manufacturer for the devices that are sold, not taking in consideration how many are sold or anything like that as to dollar per device. Am I understanding you correctly? [LB986]

SENATOR PREISTER: I'm not sure I said it clearly enough then, because it does take into account the number of devices sold in the state. The manufacturers who manufacture more units would pay a higher fee. We exclude anybody who manufactures 500 or less. They don't pay anything. Perhaps they should because they're contributing some. But we would forgive them. They wouldn't pay anything. The larger manufacturers who have greater volume of sales, although we wouldn't ask them

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the specifics of what they sell in Nebraska, but the more they sell the higher their registration fee is. And that's reflected currently, but those numbers would change. [LB986]

SENATOR STUTHMAN: And it's the manufacturers that's going to be assessed the fee or will have to pay the fee. And you say that's not going to be passed on to the consumer? [LB986]

SENATOR PREISTER: The manufacturer will pay those amounts and everything that a manufacturer takes in and is a part of their business is all a part of either taking a tax deduction or the cost of business and eventually is passed on to a consumer. So I'm not saying that there's no reflection. However, the cost of electronics, because of volume, has been going down. So the ultimate, or the net effect is, we shouldn't see any increase at all; and the consumer products will continue to go down because of the volume. [LB986]

SENATOR STUTHMAN: Yes, yes, Senator Preister, I will agree with you there. But I think that when we're looking at a large amount of money as a fee for a manufacturer, that is going to be passed down to the consumer, whether it be \$1 per device or \$2 per device or \$5 per device. It's still going to be tacked onto the end product of it, and the consumer is going to have to pay for it. But I would like to see how many dollars, you know, some of these... [LB986]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: One minute. [LB986]

SENATOR STUTHMAN: ...manufacturers are going to be assessed as far as a fee is concerned, because that concerns me a lot about how many total dollars that they're going to be assessed. Thank you, Mr. President. [LB986]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Are there additional members wishing to speak on Natural Resources Committee amendment, AM1998? Seeing none, Senator Louden, you're recognized to close. [LB986]

SENATOR LOUDEN: Thank you, Lieutenant Governor, members of the body. As the discussion has centered on most of the aspects of the bill, I would just ask for the adoption of the committee amendment to LB986. Thank you, Mr. President. [LB986]

PRESIDENT SHEEHY: Thank you, Senator Louden. You have heard the closing of the Natural Resources Committee amendment, AM1998. The question is, shall AM1998 be adopted to LB986? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB986]

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ASSISTANT CLERK: 26 ayes, 0 nays on the adoption of committee amendments.
[LB986]

PRESIDENT SHEEHY: AM1998 is adopted. We will return to floor debate on the advancement of LB986. Are there members wishing to speak? Seeing none, Senator Preister, you're recognized to close. [LB986]

SENATOR PREISTER: Thank you, Honorable President. I appreciate the questioning, colleagues. I appreciate the interest in the bill and I again affirm that I will work with the manufacturers, and we will come back with a Select File amendment. But again, we want to make sure that as the committee put the bill forward, to make sure we have the funds; and also to be able to deal with the volume of waste that we have in the state, we do need to have adequate funding. So as I give them my word I will work with them, so it will be. I ask for your favorable vote to advance LB986. Thank you. [LB986]

PRESIDENT SHEEHY: Thank you, Senator Preister. You have heard the closing. The question before the body is, shall LB986 advance? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB986]

ASSISTANT CLERK: 26 ayes, 0 nays on the motion to advance the bill, Mr. President.
[LB986]

PRESIDENT SHEEHY: LB986 advances. Next item under General File. [LB986]

ASSISTANT CLERK: Mr. President, LB986A was introduced by Senator Preister. (Read title.) [LB986A]

PRESIDENT SHEEHY: Senator Preister, you're recognized to open on LB986A.
[LB986A]

SENATOR PREISTER: Thank you, Honorable President, friends all. This is the appropriations bill. It will be adjusted later. Currently it has a large note to it, but realize again that that is cash funded. That's not coming out of the General Funds. It will be self-funded. And when we finalize on Select File, even the funds that the DEQ will use for administration will also come out of the registration fee. So there will be no fiscal impact to the state. There will also be no additional employees, so there won't be that additional impact. So essentially it will be zero fiscal note to the taxpayers of Nebraska. Thank you. [LB986A]

PRESIDENT SHEEHY: Thank you, Senator Preister. You have heard the opening to LB986A. The floor is open for discussion. Senator Nelson, followed by Senator Stuthman. Senator Nelson, you're recognized. [LB986A]

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SENATOR NELSON: Thank you, Mr. President, members of the body. Would Senator Preister yield to a question or two? [LB986A]

PRESIDENT SHEEHY: Senator Preister, would you yield to questions? [LB986A]

SENATOR PREISTER: Yes, I will. [LB986A]

SENATOR NELSON: Thank you, Senator. I wasn't here for all of the earlier discussion, and you may have covered this, but I'm looking at the revision here to the fiscal note and I still see \$140,000 in General Funds. Do I understand that that's out of the picture now? Or would you just speak to that? [LB986A]

SENATOR PREISTER: Yes. Thank you, Senator. That, in the next amendment on Select File, will be fully addressed. But we will allow the registration fees and the money that we collect as per the manufacturer's request to also be part of the education, and we will allow DEQ to deduct any of their administrative costs. We won't be adding any employees and they have minimal responsibility. But the collection of the data will take some time. They feel they can handle it with existing staff. And that part of the fiscal note will be absorbed, not from the General Funds but from the cash funded portion of this. So it will essentially be a zero fiscal note from our General Funds. [LB986A]

SENATOR NELSON: As a member of the Appropriations Committee, I'm always glad to hear that an increased load can be absorbed by the staff. So that's good news, and I thank you for that, Senator Preister. [LB986A]

SENATOR PREISTER: And Senator, as a member of the Appropriations Committee, you also appreciate a priority bill with no fiscal note. (Laughter) [LB986A]

SENATOR NELSON: Absolutely. [LB986A]

SENATOR PREISTER: Thank you. [LB986A]

SENATOR NELSON: Thank you, Senator. Thank you, Mr. President. [LB986A]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Senator Stuthman, you're recognized. [LB986A]

SENATOR STUTHMAN: Thank you, Mr. Lieutenant Governor and members of the body. I would like to ask Senator Preister a question or two. [LB986A]

PRESIDENT SHEEHY: Senator Preister, would you yield to Senator Stuthman? [LB986A]

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SENATOR PREISTER: Yes, I will. [LB986A]

SENATOR STUTHMAN: Senator Preister, this fee that's going to be assessed to the manufacturers, is this going to be something that's agreed upon by the manufacturers or it's going to be something that's going to be put onto the manufacturers as to, you know, what the committee decides, what would be a right amount of fee to be added to it? [LB986A]

SENATOR PREISTER: Senator, part of what we will do is continue the dialogue with them. We will get the best data that we can. There has been some disagreement over the number of manufacturers. DEQ says there are a certain number of manufacturers. The manufacturers say there are more. The fee ultimately is determined by the amount we need to raise divided by the number of manufacturers and the size that they sell, or the volume that they sell. So we're in those discussions right now. I've asked them for their numbers and more information, and they're supposed to be getting those to me. So at this point it isn't finalized, and that's why I don't have the amendment ready. And I will ask that the bill not come up until I've got it worked out. [LB986A]

SENATOR STUTHMAN: Okay. Thank you, Senator Preister. Another concern that I have also is the fact that, you know, what's going to be happening in the next year or two is, you know, a lot of the TVs are going to be outdated, not being able to be utilized. And in a lot of the rural areas, a lot of these smaller TVs end up in the road ditches. Is this going to take care of, you know, the counties having to come and pick them up and take them to the recycling? Is there going to be anything in there to help with that? Or is there going to be some type of a penalty for the individuals that are throwing them and dumping those in the rural areas? That's a concern that I have. And maybe the judicial system will take care of that portion of it if there would be littering and dumping. But I am concerned also about that, because I'm sure there's going to be a lot more of them dumped out in the community. I live about eight miles away from a larger community and, you know, we end up with couches and TVs and stereos and just cupboards and everything in the road ditches. And you know, we either pick them up on our own or the county comes and picks them up. So I'm going to wait to see what the amount is going to be that is going to be assessed to the manufacturers before I make an opinion on this. Thank you, Lieutenant Governor. [LB986A]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Are there additional members wishing to speak? Seeing none, Senator Preister, you're recognized to close. [LB986A]

SENATOR PREISTER: Thank you, Mr. President. And thank you, Senator Stuthman, for your questions. I would just add that there is no landfill ban in this bill. So we're not creating a backlog that would encourage people to dump the TVs in the ditches, and we are including televisions in the recycling process for just that reason. That was one of

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Senator Louden's concerns, particularly in the rural areas. If you look at the committee statement, the counties are supporting this along with a host of other people. We are working to keep these things out of the landfill, keep them out of third-world countries where we're exposing a lot of young children to tremendous health consequences that we will later see, and then seeing the effects of that shift back to this country in the lead that's taken out of these circuit boards and put in the paint, in the toys that are being recalled in this country. We're trying to break those cycles, we're trying to be responsible. We're asking the manufacturers to be a part of that. The retailers have been tremendous in their response. You'll see--with not one organization, including the chamber of commerce and the retailers, in opposition to this--that we've worked very hard to get to this kind of agreement. At this point, everybody is on board. It's a fine balancing act to maintain that support. We do have to have funding. Things don't just happen on their own. The manufacturers can establish their own programs. We're trying to make sure that when those televisions do become obsolete that there's an infrastructure set up, that they can be a part of that; not only in urban areas, but in rural areas. We're basically talking about televisions and computer monitors. We've eliminated a host of other electronic waste and other equipment. This bill, LB986A, essentially creates the fund, creates the mechanism which will be amended later. But it begins that process without taking any General Fund dollars to accomplish it, without adding any additional staff. With that, I would ask for your green vote on the A bill. Thank you. [LB986A]

PRESIDENT SHEEHY: Thank you, Senator Preister. You have heard the closing. The question before the body is on the advancement of LB986A. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB986A]

ASSISTANT CLERK: 26 ayes, 0 nays on the advancement of the A bill, Mr. President. [LB986A]

PRESIDENT SHEEHY: LB986A advances. We'll proceed to next legislative bill under General File. [LB986A]

ASSISTANT CLERK: Mr. President, next bill, LB888, which is legislation introduced by Senator Burling. (Read title.) The bill was read for the first time on January 11 of this year, referred to the Committee on Revenue. That committee places the bill on General File with committee amendments attached. (AM2003, Legislative Journal page 681.) [LB888]

PRESIDENT SHEEHY: Senator Burling, you're recognized to open on LB888. [LB888]

SENATOR BURLING: Thank you, Mr. President. I introduced LB888 at the recommendation of the Tax Policy Reform Commission. It advanced from the committee with no opposing votes and no opponents at the hearing. And I thank

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Senator Lautenbaugh for prioritizing this bill. As you know, the income tax began in this state in 1968. The brackets for corporate income tax was set. The lower bracket was below \$50,000 of income for a corporation; the higher bracket is above \$50,000 of income. Originally it was 3 percent below \$50,000 and 3.3 percent above \$50,000. This \$50,000 bracket has been in place for 30 years, approximately. And so we thought that it was time to adjust that upward. During this time, the brackets have been adjusted upward and inflation itself, of course, makes the tax go up just because the bracket amount stayed the same. So the corporate income tax has been rising steadily in the last 30 years. I thank the Revenue Committee for their support in this bill. And it simply addresses the tax creep that so often happens when we have figures set in statute and inflation affects them. There is a committee amendment. I will turn my light on and speak more about this after the committee amendment is introduced. Thank you. [LB888]

PRESIDENT SHEEHY: Thank you, Senator Burling. You have heard the opening to LB888. As noted, we do have a Revenue Committee amendment, AM2003. Senator Janssen, you're recognized to open on committee amendment. [LB888]

SENATOR JANSSEN: Thank you, Mr. Lieutenant Governor. The committee amendments would reduce the extension to the corporate income tax bracket from \$200,000 to \$100,000. It cuts it in half. I would answer any questions that you might have. Thank you. [LB888]

PRESIDENT SHEEHY: Thank you, Senator Janssen. You have heard the opening to the Revenue Committee amendment, AM2003. Members wishing to speak are Senator Burling, followed by Senator Lautenbaugh. Senator Burling. [LB888]

SENATOR BURLING: Thank you, Mr. President, members of the body. The fiscal note that you have, or may have at your desk was the one that was proposed as the bill was originally introduced to change the bracket from \$50,000 to \$200,000. The committee thought that probably that fiscal note was too large for consideration this year, and so the amendment would reduce the \$200,000 to \$100,000. So we didn't get a fiscal note on the amendment, but you can do the math. It would probably reduce it by at least 70 percent, changing it from \$200,000 to \$100,000. So I'm asking for the body's support for the amendment. [LB888]

PRESIDENT SHEEHY: Thank you, Senator Burling. Senator Lautenbaugh, followed by Senator Rogert, Senator Pirsch, Senator Nantkes. Senator Lautenbaugh, you are recognized. [LB888]

SENATOR LAUTENBAUGH: Thank you, Mr. Lieutenant Governor, members of the body. And thank you, Senator Burling, for bringing this bill. I do rise in support of it. It is my priority bill and I would like to say simple bill for a simple senator. It obviously

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appealed to me. There isn't much explanation necessary here, and I think Senator Burling has done a great job of setting forth the rationale for this. The \$50,000 line of demarcation, if you will, between the lower bracket and the higher bracket was set several years ago and never adjusted for inflation. This...I hate to say it's the perfect piece of legislation, but it comes as close as I think we're going to get as far as an economic stimulus in this budget environment can be, in that it is specifically targeted to small businesses, the engine of growth in our economy. And this would be significant, I believe, for small corporations in Nebraska. It is, especially with the committee amendment, not a budget buster by any stretch, or an impermissible drain on revenue. I just think it makes perfect sense right now as far as ways we can keep Nebraska more competitive, make Nebraska more competitive. And I think it is just long overdue when you consider how many years ago the \$50,000 was set as the limit. The original bill, \$200,000, was an approximation of what the adjustment for inflation would be. The committee opted in favor of \$100,000 and that amendment is before you as well. I would be happy to answer any questions I can and I would appreciate your support. [LB888]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Senator Rogert, you are recognized. [LB888]

SENATOR ROGERT: Thank you, Mr. President, members of the body. I rise in support of LB888 and the Revenue Committee amendments. For me, this is a...this hits fairly at home for me. The corporate income tax and small business development is something that affects me and many of my friends and colleagues. In the past, probably five years or so, many of my associates and friends have moved their corporations or moved themselves to states where there is no state income tax--South Dakota, Nevada, Arizona, Arkansas, those types of states. And this gets us a little bit more in the even-keeled playing field for those folks. Eighty percent of the employment in this state is by small business; and that is where our growth needs to be when we go to look at creating jobs and creating opportunities for young people in the state, especially in the rural areas. By raising this from \$50,000 to \$100,000, I think it will greatly affect a lot of those start-up companies that will be looking at incomes somewhere in that area. So I rise in support of this and I encourage the body to support Senator Lautenbaugh and Burling as well. Thank you. [LB888]

PRESIDENT SHEEHY: Thank you, Senator Rogert. Senator Pirsch, you are recognized. [LB888]

SENATOR PIRSCH: Thank you, Mr. Lieutenant Governor, members of the body. I wonder if Senator Lautenbaugh might yield for a quick question. [LB888]

PRESIDENT SHEEHY: Senator Lautenbaugh, would you yield to Senator Pirsch?
[LB888]

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SENATOR LAUTENBAUGH: Yes. [LB888]

SENATOR PIRSCH: Thank you, Senator Lautenbaugh. And in retrospect, perhaps this should...I should address this question to Senator Janssen. But in case you know this, do you know what the revised A bill is after the committee amendment? [LB888]

SENATOR LAUTENBAUGH: I believe the estimate puts it down well beneath a million at this point. I might defer to Senator Burling on that, but I believe that's correct. [LB888]

SENATOR PIRSCH: Okay. And I do appreciate that. I guess just a few comments. I do support this amendment and the underlying bill. Currently Nebraska's corporate tax rate is comprised of two brackets--5.58 percent for corporations earning up to \$50,000 and 7.81 percent for corporations earning more than \$50,000. And so what's at issue here in this particular bill is small businesses, and I think that's very appropriate. I think that's where the emphasis needs to be placed. The \$50,000 threshold has not been changed since 1982. If the \$50,000 threshold was adjusted for inflation it would be closer to \$200,000 in today's dollars. Among states with corporate income taxes Nebraska's top rate ranks 17th highest nationally according to the Tax Foundation. Nebraska has the second highest nominal rate among surrounding states with a corporate income tax. Wyoming and South Dakota have no corporate income tax. Kansas has a 4 percent flat rate; Colorado, 4.63 percent flat rate. Missouri has 6.25 percent flat rate. Iowa is 12 percent for income over \$250,000 but allows a 50 percent federal income tax deduction. So I think when you compare ourselves to our competition, we're not rating where we need to in the area of small business. And so I think this is (inaudible) we need to look at so that we can help Nebraska's small business create the jobs, especially. And we're talking throughout the state of Nebraska, really have been an engine. And so I would join with those who do support both the underlying bill as well as this amendment. Thank you very much. [LB888]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. Senator Nantkes, followed by Senator White. Senator Nantkes, you are recognized. [LB888]

SENATOR NANTKES: Thank you, Mr. President. Good afternoon, colleagues. I was hoping that Senator Burling might yield for a couple of questions. [LB888]

PRESIDENT SHEEHY: Senator Burling, would you yield to Senator Nantkes? [LB888]

SENATOR BURLING: Yes. [LB888]

SENATOR NANTKES: Thank you, Senator Burling. Senator Burling, I know that you and I have had a chance to visit a few times off mike over the course of this session about the recently completed work of the Nebraska Tax Policy Reform Commission that

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you initiated and has just completed its work and issued a report for us all to read over. And I was wondering if...do some of these ideas--I'm sorry if you mentioned this in your opening--but do some of the ideas contained in LB888 come out of the work of that commission? [LB888]

SENATOR BURLING: Yes. As the commission reviewed our tax code, this was one of the things that popped out at us. Anything that's been in statute a given amount for 30 years or 50 years or more needs adjusting to inflation. And so this was a recommendation of that commission and I think it's something we need to do, is periodically update our statutes for this very reason. [LB888]

SENATOR NANTKES: Senator Burling, and this is not to catch you off guard, but I'm just trying to sort through this from a kind of public policy perspective. I thought the work of the commission and the report was fantastic in looking at our overall tax policy in a comprehensive manner, and the commission put forth in that report a variety of different recommendations for changing our tax policy. Did you introduce other legislation to address some of those concerns? [LB888]

SENATOR BURLING: I believe the only other legislation I introduced this year to address that was the ethanol severance tax, excise tax bill, which didn't go anywhere. [LB888]

SENATOR NANTKES: Okay. [LB888]

SENATOR BURLING: But there's many others that we could have. But there's another day coming. [LB888]

SENATOR NANTKES: Okay. Thank you, Senator Burling. I appreciate getting that background information. And colleagues, I'll tell you, at this point in time I am going...I rise in support of the committee amendment and the underlying bill. I commend Senator Burling and Senator Lautenbaugh for trying to provide much needed and targeted tax relief to Nebraska's small businesses. But I also rise with hesitation in the fact that the Nebraska taxpayers funded the study commission through Senator Burling's legislation over the past few years, which put forth a wonderful and comprehensive look at our overall tax policy. And I think that we need to get serious about addressing those issues in a comprehensive way instead of some of these more piecemeal approaches. So I'd further recommend that commission report as good and important reading for each and every member of this body and future members of this body. But I think that we need to really look more broadly as we move into the future and think about more long-term issues in terms of our tax policy and in terms of the fairness and equity within all aspects of our tax policy. So at this point in time I am supportive of this effort as it moves forward. And so with that, I thank you, Mr. President. [LB888]

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PRESIDENT SHEEHY: Thank you, Senator Nantkes. Senator White, followed by Senator Wightman. Senator White, you are recognized. [LB888]

SENATOR WHITE: Thank you, Mr. President. I rise in support of this amendment and the bill, underlying bill. Over the decades, this body has regularly attempted to stimulate economic development with targeted tax benefits. Almost always, in terms of the dollars dedicated, they are dedicated to very large businesses. And sometimes I think we can fairly question whether the jobs that we really desire are actually being created in response, in fair response to the amount of money we invested. I support this because truly it is a revenue tax break designed for young businesses, new start-ups. And as such, it can go a long way to helping us correct some of the imbalances in our tax code. At the same time, I would like to respectfully remind my colleagues that we don't enjoy the same situation that Wyoming does. We do not have coal and severance tax that funds an income tax free state, nor have we accepted the broad and high sales tax that South Dakota has imposed in order to get away from an income tax. So frequently when we struggle with these, we look at states and say we should be like them. We're not like Florida; we don't have the tourism industry and the sales tax base. So while we need to continue to struggle, in reality our options are limited and often what we can do is limited as well. Thank you, Mr. President. [LB888]

PRESIDENT SHEEHY: Thank you, Senator White. Senator Wightman, you are recognized. [LB888]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I too rise in support of both AM2003 and LB888. I've long been a proponent of adjusting some of the exemptions and tax brackets to keep pace with inflation. I suspect that, going back to 1982, that doubling the tax bracket from \$50,000 to \$100,000 does not keep pace with inflation and probably nowhere near it. I think we have to also keep in mind the fact that in 1982 we were in the beginning of a rather prolonged recession, at least in the farm economy, starting in about 1981 which lasted to about 1986 in which land values and profits in farming dropped dramatically. So I think that it may even be a greater need to adjust for inflation than would have been indicated by the doubling. At the same time, as a member of the Appropriations Committee, I'm very aware of what this may do to our budget, and I think that has to be taken into account. So I think that the figure for right now is about right. I would also second what Senator White said with regard to economic development. I think bills such as this do spur economic development. It's a little tough to ever measure exactly what that effect is. But I think that it does occur and will perhaps even spur somebody to start an industry in Nebraska, the fact that they would have this lower tax bracket for up to \$100,000. A year ago, I attempted to bring forth the Nebraska inheritance tax and to try to increase the brackets in that and there was some increase. But we were talking about a bill that went clear back, as I recall now, to 1901. It was 106 years since it had been adjusted to inflation. And I know there was a lot of controversy with regard to that bill, because we were in some way creating

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less tax base for the county. But at this point I certainly do ask that you would support both the committee amendment and the underlying bill. Thank you. [LB888]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Are there additional members wishing to speak from the floor? Seeing none, Senator Janssen, you're recognized to close. [LB888]

SENATOR JANSSEN: I'll only say I think we did the right thing in lowering this another \$50,000...or raising it \$50,000. So I would appreciate your positive vote on the committee amendments. Thank you. [LB888]

PRESIDENT SHEEHY: Thank you, Senator Janssen. You have heard the closing. The question before the body is on the adoption of AM2003 to LB888. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB888]

ASSISTANT CLERK: 33 ayes, 0 nays on the adoption of committee amendments, Mr. President. [LB888]

PRESIDENT SHEEHY: AM2003 is adopted. We will now return to floor discussion on LB888. Members wishing to speak: Senator Burling. [LB888]

SENATOR BURLING: Thank you, Mr. President. Thank you, members of the Legislature, for approving that amendment. Now we're dealing with a much lower fiscal note than we had dealt with before and it varies with year. As you know, corporations can have different fiscal years than calendar years, and so it's difficult to really estimate what it would cost. But it's much less than it was now. But this is the right thing to do, to update our tax code periodically to reduce the effects of inflation. We have in Nebraska the Nebraska Advantage Act, business tax incentives. We incent companies and corporations to come and come to Nebraska and add to our tax base and add to our economy. This bill recognizes the importance of small businesses, small corporations that don't qualify for business tax credits. The existence of these small corporations is very important to our economy. On the global scene, the United States has one of the highest corporate income taxes in the world. Other countries have lowered their corporate income taxes over the years. That's one reason--one reason, not all--one reason why so many of our corporations are moving to other countries in this small global climate, is corporate income tax. Studies have shown that in the situation of corporate income tax, any reduction in taxes translates to added investment and a broadening of the tax base and does not usually result in the fiscal impact that originally thought it might. So I thank you and I urge your support of LB888 as amended. [LB888]

PRESIDENT SHEEHY: Thank you, Senator Burling. Are there additional members wishing to speak? Seeing none, Senator Burling, you're recognized to close. [LB888]

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SENATOR BURLING: Thank you. I urge your support for this bill and thank you for your attention. [LB888]

PRESIDENT SHEEHY: Thank you, Senator Burling. You have heard the closing. The question before the body is on the advancement of LB888. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB888]

ASSISTANT CLERK: 27 ayes, 0 nays on the motion to advance the bill, Mr. President. [LB888]

PRESIDENT SHEEHY: LB888 advances. Next item under General File? Speaker Flood, you are recognized for an announcement. [LB888]

SPEAKER FLOOD: Thank you, Mr. President, members. In regard to how late we're going to go tonight, we're making faster and more progress than I had originally anticipated. In light of that, we will be adjourning after the resolution of LB1068 and prior to taking up LB846. We will be working a little bit later tomorrow evening, but we will be adjourning following resolution of LB1068, which is earlier than previously reported. Thank you, Mr. President. [LB1068 LB846]

PRESIDENT SHEEHY: Thank you, Speaker Flood. Mr. Clerk, we'll move to next item under General File.

ASSISTANT CLERK: Mr. President, LB1068, introduced by Senator Louden. (Read title.) The bill was read for the first time on January 22 of this year, referred to the Transportation and Telecommunications Committee. That committee reports the bill to General File with committee amendments attached. (AM1983, Legislative Journal page 729.) [LB1068]

PRESIDENT SHEEHY: Senator Louden, you're recognized to open on LB1068. [LB1068]

SENATOR LOUDEN: Thank you, Mr. Lieutenant Governor and members of the body. LB1068 is intended to give counties flexibility in maintaining some of their roads and to use county resources as efficiently and effectively as possible. The bill would create a new classification of rural road. This bill is drafted to apply only to sparsely populated rural counties, because those are the areas of the state where the new classification would be of use. In the 1960s and 1970s, many miles of single-lane oil strips were created in the Nebraska Sandhills. The technique mixed a binding material with sand to make an oil mat. In the 60s and the 70s, asphalt was used as the binder. The oil strips were a great boon to the Sandhill regions because they allowed road building without hauling a huge amount of material from great distances. Miles and miles of single-lane roads were built, which improved access to innumerable ranches. This access is

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essential and we must find a way to continue it. However, as the price of asphalt increases, it became prohibitive to maintain this type of construction in the Sandhills. So people in the Sandhills have moved to a different type of construction and upkeep on these single-lane roads, on less traveled roads, we have used crushed rock. The crushed rock binds with the sand to make a substantial base and roadway for a small amount of traffic that uses moderate speed. These roads are critical and in need of maintenance, as you can see from the photographs I have distributed to you. As you will note, those four photographs show roads in serious need of maintenance. The problem is that the state has no standard for using this type of road unless a 26-foot base is built and covered with rock or gravel. Changing to a two-lane, 26-foot base is cost prohibitive. To address this problem, LB1068 creates a new classification and it requires the Board of Public Roads Classifications and Standards to adopt specific criteria for remote residential roads. This would then allow counties the option of using such a classification where the oil strip roads have been of such critical importance. The board can relax some of the standards but that must be done on a case-by-case basis. With counties looking at many miles of road that need to be repaired, I do not think this is an effective response to the problem. Asking for relaxed standards requires each road or segment of a road to be documented and justified and then submitting these roads on an individual basis to the Board of Public Roads Classification and Standards, and that would take an enormous amount of time. This is illustrated by the map I've distributed on Sheridan County. That map shows the roads in that county which might be eligible for the new classification. I think that the sheer number of roads in this county alone demonstrates how unworkable it would be to simply tell Sheridan County that it needs to ask for a relaxed or waived standards. You can imagine how many roads there are in other Sandhill counties that are just too many to expect such standards to be waived and be a real problem. LB1068 is drafted to apply only to those counties that have a population density of five or fewer persons per square mile or an area of 1,000 square miles. Besides Sheridan County, there are 38 counties that could conceivably use the new classification. I'm not suggesting that all 39 counties would do so, but certainly more than one county will be interested in this option. I think it is safe to say that telling counties to ask for relaxed standards is simply not realistic. We need a real solution now, which LB1068 offers. The Transportation and Telecommunications Committee advanced by a unanimous vote. There were no opponents at the hearing. The Board of Classifications and Standards gave neutral testimony on LB1068 and suggested changes. Those changes are in the committee amendments which Senator Fischer will describe for you. I ask for your advancement of the bill and the committee amendments that will be addressing that. Thank you, Mr. President. [LB1068]

PRESIDENT SHEEHY: Thank you, Senator Loudon. You've heard the opening to LB1068. As noted, there is an amendment from the Transportation and Telecommunications Committee, AM1983. Senator Fischer, you're recognized to open. [LB1068]

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SENATOR FISCHER: Thank you, Mr. President and members. The committee amendment, AM1983, pushes back the time period the Board of Public Roads Classification and Standards has to promulgate criteria for remote residential roads from 6 months to 18 months. All other changes made by our committee amendment are technical changes to the current statutes to put them in line with the current practices of the Board of Public Roads Classifications and Standards. Thank you, Mr. President. [LB1068]

PRESIDENT SHEEHY: Thank you, Senator Fischer. You have heard the opening to AM1983 from the Transportation and Telecommunications Committee. Members wishing to speak from the floor: Senator Chambers. You are recognized. [LB1068]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I'd like to ask Senator Louden a question. [LB1068]

PRESIDENT SHEEHY: Senator Louden, would you yield to Senator Chambers? [LB1068]

SENATOR LOUDEN: Yes, I would. [LB1068]

SENATOR CHAMBERS: Senator Louden, do they consider the Sandhills to be out in the country? Out in the country, do they consider the Sandhills to be under that designation? [LB1068]

SENATOR LOUDEN: What do you mean by out in the country? You mean out of this country or just the area? [LB1068]

SENATOR CHAMBERS: No, no. You know, like if something is very rural, they say this is a country setting. So are we dealing with areas that would be considered to be out in the country with these isolated roads? [LB1068]

SENATOR LOUDEN: This would be a...these would be isolated roads out in country settings, yeah. [LB1068]

SENATOR CHAMBERS: And I see here where it says "remote residential road." Would that make a good title for a country-western song, I just wonder. [LB1068]

SENATOR LOUDEN: Well... [LB1068]

SENATOR CHAMBERS: That's all right. Thank you very much. (Laughter) [LB1068]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Are there additional members wishing to speak on AM1983? Seeing none, Senator Fischer, you're recognized to

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close. Senator Fischer waives closing. The question before the body is on the adoption of AM1983 to LB1068. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1068]

ASSISTANT CLERK: 31 ayes, 0 nays on the adoption of committee amendments. [LB1068]

PRESIDENT SHEEHY: AM1983 is adopted. We'll return to floor discussion on LB1068. Are there members wishing to speak? Seeing none, Senator Louden, you're recognized to close. [LB1068]

SENATOR LOUDEN: Thank you, Mr. Lieutenant Governor. I would just ask that you advance the bill with committee amendments on it, and I'd ask for your vote to advance LB1068. Thank you. [LB1068]

PRESIDENT SHEEHY: Thank you, Senator Louden. You have heard the closing. The question before the body is on the advancement of LB1068. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1068]

ASSISTANT CLERK: 34 ayes, 0 nays on the motion to advance the bill, Mr. President. [LB1068]

PRESIDENT SHEEHY: LB1068 advances. Mr. Clerk, do you have items for the record? [LB1068]

ASSISTANT CLERK: Mr. President, a series of amendments to LB880 from Senator Dwite Pedersen, Senator Lautenbaugh, Senator Preister. An amendment to LB902 from Senator Pankonin. I have an announcement that the Transportation and Telecommunications Committee will hold an Executive Session tomorrow morning following the gubernatorial appointment hearing which begins at 8:45 a.m. in Hearing Room 1113. Name adds: Senator Pirsch to LB888. (Legislative Journal pages 1073-1080.) [LB880 LB902 LB888]

And priority motion: Senator Synowiecki would move to adjourn until Wednesday, March 26, 2008, at 9:00 a.m.

PRESIDENT SHEEHY: You have heard the motion to adjourn until Wednesday, March 26, 2008, at 9:00 a.m. All those in favor say aye. Opposed, nay. We are adjourned.