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Floor Debate
February 02, 2009

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LB449 LR12 LR13 LR16]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the eighteenth day of the One Hundred First Legislature, First Session. Our chaplain for today is Pastor Fred Richart from First United Methodist Church in Auburn, Nebraska, Senator Heidemann's district. Would you all please rise.

PASTOR RICHART: (Prayer offered.)

PRESIDENT SHEEHY: Thank you, Pastor Richart. I call to order the eighteenth day of the One Hundred First Legislature, First Session. Senators, please record your presence. Please record, Mr. Clerk.

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

PRESIDENT SHEEHY: Are there corrections for the Journal?

CLERK: I have no corrections, Mr. President.

PRESIDENT SHEEHY: Messages, reports, or announcements?

CLERK: Mr. President, at this time I have neither messages, reports, nor announcements.

PRESIDENT SHEEHY: Thank you, Mr. Clerk. I would like to announce this morning that the pens which are on your desk are compliments from Senator Carlson, commemorating Valentine's month, President's Day, and also the fact that the Cardinals almost won the Super Bowl. (Laughter) So thank you, Senator Carlson. Also, while the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR12 and LR13. Mr. Clerk, we'll move to the first legislative bill under General File. [LR12 LR13]

CLERK: Mr. President, LB158 is a bill introduced by Senator White and others. (Read title.) Bill was introduced on January 12 of this year, at that time referred to Business and Labor Committee for a public hearing. Bill was advanced to General File. I do have committee amendments, Mr. President. (AM48, Legislative Journal page 303.) [LB158]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator White, you're recognized to open on LB158. [LB158]

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SENATOR WHITE: Thank you, Mr. President. LB158 is the Peace Officer Discipline Procedures Act. What this bill does is set out a minimum guideline and standard for the methods in which police officers in this state would be disciplined. What the bill does, in effect, is set forth a very simple and easy to understand guideline for cities, small cities, villages, big cities on what they must do when they come across a citizen complaining about misbehavior of a police officer. It is important to note, first, what it does not do. It does not affect in any way the criminal investigations. This is designed solely to set forward an overall minimum standard on how you would conduct a interview and disciplinary process of a police officer. Police officers are in unique positions. First of all, they are very susceptible to complaints. Even if they do nothing wrong they are susceptible to complaints. The nature of that job is such that you will anger people. You will anger the people you arrest, you'll anger their families. You'll anger people for reasons you're never even clear about. Therefore, because they're so vulnerable to such complaints a good procedure needs to be in place. Similarly, however, police officers are in a unique position to abuse the power that the state entrusts to them and, as a result, it becomes very important that there be good, reliable methods to investigate citizen complaints so that those who we ask to guard our liberties are, in fact, doing their job guarding our liberties but at the same time we are guarding theirs. What LB158 proposes is pretty basic. It states that when you have a civil complaint, you're going to look at a discipline of a police officer, you must first put the complaint in writing. That is so basic in our system of justice that just basic due process says tell me what you think I've done wrong and let me see it. It sets that forth and then it provides that if you're going to interview the police officer and take statements from the police officer, you should record them. That way there's no argument about what was said or not said. There's a record. It also requires that if a police officer wants, for example, another police officer in the room to give him advice or just moral support that they have the right to a representative. This needn't be a lawyer, though it could be. In most cases in fact it's a fellow officer who works with them or someone who comes from the Fraternal Order of Police to assist in these matters. The next basic rule it says is that, look, when possible do this on their ordinary working time. If you don't do it on their ordinary working time, you're taking their own personal time, pay them for it. Pay them for it. Finally, it has some provisions in it that say, for example, that if you're going to put a letter of discipline or a reprimand into a police officer's file give them a copy of it. Let the man know what you've said about him or the woman know. It's just basic simple fairness. There are other provisions, for example, that says a city or a village cannot, if there's been a civilian complaint, provide a picture of the officer to go with the complaint. Now, if an officer's picture is already available on the Internet, of course the news media can get it. But the point of that is we don't throw these people under a bus until the hearing is complete, until we have evidence in place and we understand what has occurred. These are the kinds of basic, due process facts that we ask police officers to obey and provide to every citizen they encounter. This bill is a minimum level of those rights and we ask that they be provided to these police officers. Now, there are some

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exceptions built into the bill. First of all, that Nebraska State Patrol and any agency that is certified by the designated group is exempt from this. The designated people who receive that certification actually have far higher rights and standards. They are provided more due process than this bill which is a mere minimum are. Therefore, I don't wish to interfere with the right to bargain for more nor do I think this Legislature does. I also, if they are provided greater rights, don't want to take those away. That is an individual choice for those communities. So you will see there are exceptions and those are designed to protect those departments who are actually certified. Now, certification is an important factor. It is a national organization. They really try to encourage and reward the very finest law enforcement agencies in the country by certifying them. If something as minimal as this won't even qualify for that, it tells you that this is a bill that is very necessary. We want, we should insist on high levels of professionalism across the state. You will not get that unless you recruit and retain gentlemen and ladies who are willing to honor your rights. This is a bill that tells them from the outset, we're going to honor yours; you don't give up all your rights right now; you have a right to be treated in a manner of respect even though you've put on the badge. Please understand right now existing law would permit this: A police officer thinks they've done their job. They're called in maybe before the mayor, maybe before the chief or a sergeant and they say, tell me about Friday night? And the police officer says, what about Friday night? Says, just tell me about Friday night. Why do you want to know? That's none of your business; tell me about Friday night. Well, can I have an attorney, if you're looking at me for an investigation? Yeah, you can invoke your right to an attorney, you can invoke your right to silence and, by the way, you're fired. I mean, that's the status of the law right now. That is no way to attract and retain good people. This does not inhibit a city's ability to investigate, fire bad cops and all. What it does do, however, is ensure that the evidence is gathered and preserved and that we have a fair decision-making process before we put them through that. Thank you, Mr. President. [LB158]

PRESIDENT SHEEHY: Thank you, Senator White. You have heard the opening of LB158. Prior to moving to the committee amendment, I do have a couple of announcements. (Visitors and doctor of the day introduced.) As noted, we do have an amendment from the Business and Labor Committee, AM48. Senator Lathrop, you're recognized to open. [LB158]

SENATOR LATHROP: Thank you, Mr. President and colleagues. As has been indicated, we do have a committee amendment, committee amendment AM48. It's a very simple amendment; does three things. The first one is...the first change to the bill offered by Senator White is it exempts agencies who are accredited through the Commission on Accreditation for Law Enforcement Agencies. Senator White addressed that in his opening remarks. It is an accommodation to those agencies, including the Omaha Police Department and the Douglas County Sheriff's, who are already accredited. That accreditation sets forth a standard for these very same things and, so that we don't create law that causes these agencies to lose their accreditation, we've

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made an exception for them. The second change is it strikes the language that requires that the complainant sign the complaint and that the complainant indicate the basis or the knowledge they have of the subject matter. This is also an accommodation and allows for the investigation of anonymous complaints. And the third change made is also very simple. It adds language concerning the release of the officer's photograph. The language added is, "who is the subject of an investigation." This tightens the language as the bill pertains to officers that are being investigated, and the idea behind this is, and Senator White addressed this as well, you can take...if you're...if an officer is under investigation, you can take his picture off of any Web site that you can find it on, but if someone takes his photograph in connection with that investigation, that photo cannot be released without the officer's permission. So as indicated, pretty...three pretty basic and simple amendments; don't change the substance of the bill to any degree. I support both the amendment, AM48, as well as LB158. Thank you. [LB158]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. You've heard the opening of AM48 to LB158. Senator Nelson. [LB158]

SENATOR NELSON: Thank you, Mr. President. I'd like to ask a question of Senator Lathrop, please. [LB158]

PRESIDENT SHEEHY: Senator Lathrop, would you yield? [LB158]

SENATOR NELSON: Good morning, Senator. [LB158]

SENATOR LATHROP: Good morning. [LB158]

SENATOR NELSON: I only have one question. I notice in your amendment there that you're striking the provision that says that a complaint needs to be signed and I think you said that this permits investigation of anonymous complaints. Do we really want to do that? Shouldn't people that have complaints be willing to step forward and so that the person being investigated is aware of who's bringing the complaint? [LB158]

SENATOR LATHROP: As I recall the matter in committee, there was a concern that anonymous complaints on some occasions require investigation and this is an accommodation. If you think of all the citizens out there, there might be some who are concerned about making a complaint against a law enforcement officer and any perceived retribution. I, personally, don't have a problem with the idea of requiring that people put their name on a complaint against a law enforcement officer, but I believe this was an accommodation to law enforcement...or to the people who are in charge of the law enforcement--the sheriffs, the police chiefs and so forth. [LB158]

SENATOR NELSON: All right. Thank you, Senator. I have no further questions. [LB158]

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PRESIDENT SHEEHY: Thank you, Senator Nelson. Senator Stuthman. [LB158]

SENATOR STUTHMAN: Thank you, Lieutenant Governor, members of the body. I would like to ask Senator Lathrop a question or two. [LB158]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to a question? [LB158]

SENATOR LATHROP: Sure. I'll remind you this is Senator White's bill, but I'd be happy to talk to you about the committee amendments and my thoughts on the bill, if you want to do that, too, Senator Stuthman. (Laughter) [LB158]

SENATOR STUTHMAN: Well, I will...at the present time, I will engage in a conversation with you and then I'll probably also engage in conversation with Senator White so that you don't feel that you're being singled out. [LB158]

SENATOR LATHROP: Okay. [LB158]

SENATOR STUTHMAN: At the present time, the police associations, they...the majority of those belong to a labor union, correct? [LB158]

SENATOR LATHROP: That I'm going to defer to Senator White. I, frankly, I don't know that that's the case. I think that there are a lot of law enforcement people outside of Omaha and Douglas County who are sheriffs working for the county out in greater Nebraska, as well as folks that work for police agencies out in greater Nebraska that are nonunion members and who are not in a position to engage in collective bargaining or negotiate the terms of their employment to include how are we going to handle discipline. [LB158]

SENATOR STUTHMAN: Okay. Thank you, Senator Lathrop. Now I would like to request that if I could ask Senator White a question. [LB158]

PRESIDENT SHEEHY: Senator White, would you yield to a question? [LB158]

SENATOR WHITE: I certainly would. [LB158]

SENATOR STUTHMAN: Senator White, in visiting with my local police chief in Columbus, he stated that they already belong to a labor union. And in those labor union guidelines, aren't there restrictions and regulations that deal with personnel issues? [LB158]

SENATOR WHITE: Well, in many of the contracts there are, Senator Stuthman, and this bill does nothing to diminish those in any way. This bill just says, look, this is the minimum. If you negotiate for something different, that's fine, something higher. This bill

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just sets a minimum. But the reality is, Senator Stuthman, an enormous number of the police in this state are not represented by any kind of a union. Now, many of them will belong to the Fraternal Order of Police, but that's not that they can actually collectively bargain. So one of the things that becomes increasingly important to us, especially as we have arrests that come across the state, for example, the horrible drug trade we're seeing down I-80 right now, you'll see major arrests all over, and those kind of things mean we have to start bringing some kind of minimum statewide standard to treat these people fairly because we're asking them to do a lot more than they used to have to do when crime didn't seem to come into our small towns the same way. So there are very, very many officers out there who are not protected in any way by any kind of agreement, and this bill will help them and it will help bring professionalism. It also, I think, Senator Stuthman, really helps a mayor, a city councilman, a village attorney or a chief of police who may not be able to afford the training that Omaha provides or Lincoln provides or Columbus provides. It says, look, we got a guy, we think we have a complaint, he's out of line, what do we do? Well, it's real simple now. They'll have a simple manual. They can read this bill in four or five minutes. It sets simple rules very clearly and it's a clean guideline of how you handle it. And that will be very helpful. [LB158]

SENATOR STUTHMAN: Senator White, would you say that the metropolitans and the larger cities, all the police organizations belong to unions? [LB158]

SENATOR WHITE: Well, I cannot speak for all of them. I can tell you that the Omaha police certainly are represented by a union, as are the Douglas County sheriffs. But beyond that, I wouldn't want to make representation of who's represented by unions or not. My concern is really not so much that. My concern is there ought to be minimum standards for the guy out in the Panhandle... [LB158]

PRESIDENT SHEEHY: One minute. [LB158]

SENATOR WHITE: ...in a sheriff's department, that he not give up all his rights because he chooses to put on a badge and try to protect the public. [LB158]

SENATOR STUTHMAN: Thank you, Senator White. I do realize that there are a lot of police organizations in some of the smaller communities and I would say the majority of the sheriff's department are not a participant in the union contract. The concern that I had was that, you know, are we going to be putting some more restrictions or another level, but Senator White has pretty well explained that to me and it sounds to me like they're not doing that. I would like to comment on the fact of the signature that the amendment deals with, and I do support that. Thank you, Mr. President. [LB158]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Members wishing to speak on AM48 are Senator Adams, Senator Hadley, Senator Carlson, and Senator Lathrop.

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Senator Adams. [LB158]

SENATOR ADAMS: Thank you, Mr. President. I'd like to ask Senator White a question, if I could, please. [LB158]

PRESIDENT SHEEHY: Senator White, would you yield to questions? [LB158]

SENATOR WHITE: Oh, certainly. [LB158]

SENATOR ADAMS: Senator White, in the...as I listened to Senator Stuthman and you converse back and forth, you talked about in this bill establishing some statewide standards. Is that correct? [LB158]

SENATOR WHITE: Yes. [LB158]

SENATOR ADAMS: Can you tell me--and I don't mean to catch you off guard here, it came to me as I was listening--how do our existing state statutes dealing with civil service pair up with establishing statewide standards? In other words, I guess where I'm headed, do we already have these on the book? [LB158]

SENATOR WHITE: My understanding is we do not. You know, we certainly have minimal standards for criminal work and, if it's a criminal investigation, those are set. As we all know, you have a right to silence, you have a right to counsel, you have a right to see the charge, you have a right to confront witnesses, those kind of things. On civil rights issues certainly there are standards, but I am unaware of civil...and it's not to say they're not there, but I am unaware, and I've practiced in this area representing police officers for many years. I'm unaware of state statutes that provide this function and certainly none in a comprehensive, simple fashion that gives good guidance going forward. One of the things, Senator Adams, the reason I bring this is I have represented both people making complaints against police officers for constitutional violations and I've represented the other side, and I am deeply convinced that the way we minimize lawsuits, the way we professionalize and protect police and the way we protect citizens is to afford our police officers basic, fundamental due process and then say we will hold you to do the same to the citizens, and we will get better, more efficient law enforcement. [LB158]

SENATOR ADAMS: Thank you, Senator White. I have nothing else. [LB158]

PRESIDENT SHEEHY: Thank you, Senator Adams. Senator Hadley. [LB158]

SENATOR HADLEY: Mr. President and members of the body, I would like to ask Senator White a few questions. [LB158]

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PRESIDENT SHEEHY: Senator White, would you yield to questions? [LB158]

SENATOR WHITE: Certainly. [LB158]

SENATOR HADLEY: Senator White, I notice that the State Patrol is exempted from this bill. Could you explain why the exemption for that? [LB158]

SENATOR WHITE: Yes. When we were putting it together they asked to be exempted. The State Patrol is a state agency. It's a state institution. My impression is that they already have a different process in place. I, in my experience, have never had a personal experience with State Patrol's feeling that the disciplinary process was out of line. So it was really just their request that they not be included; therefore, we did so. Beyond that, I cannot give you a better reason, Senator. [LB158]

SENATOR HADLEY: Thank you. Another question would be, we have about 114,000 other state and local employees. If this is a good idea for police officers, would it be a good idea for all state and municipal, county, city employees? [LB158]

SENATOR WHITE: Well, certainly I think it is, but police officers occupy a very unique and precarious situation, Senator Hadley, and therefore I would say they merit a specific statute. No one else is given a gun as a regular part of their duties, maybe game wardens, but no one else interacts with the public and takes away the public's liberty on a regular basis in order to perform their job. No one else is going to engender the kind of anger and animosity that police officers, even the best, doing nothing but their duty, strictly by the book, will engender. Therefore, because they have great power and yet at the same time are greatly vulnerable, it seems to me to be very reasonable that we give them an assurance that they're going to get a fair, basic hearing with a record, knowing what the complaint is and a chance to respond. We ask so much of them that this is the minimum we should give them back. I don't think other state employees face quite that situation and, therefore, that's why I would justify them having this set of rights, even though we have not afforded it to everyone. [LB158]

SENATOR HADLEY: One last question, Senator White: Are there any specific instances that this bill would have helped in the past that have occurred that the bill is kind of a reaction to? [LB158]

SENATOR WHITE: Well, thank you, Senator. In my own experience, yes. I mean, I have...I'm kind of on difficult ground here because I cannot reveal any client information, give you real specifics. But if I can be permitted to talk in generalities, oftentimes what happens is you will have interdepartmental rivalries. Yeah, you know, somebody got an assignment they didn't want. You have an officer who sees their job as being perhaps more aggressive towards one aspect of the community or another and they become very vulnerable. And so I have had complaints from officers saying, look, they hauled

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me in, they grilled me for eight hours, they wouldn't let me make a phone call and they wouldn't even tell me what they were after. And those kind of situations are very chilling to the officer. He doesn't know what he did wrong or was alleged to do wrong. He doesn't even know necessarily why they're after him. And those kind...putting any citizen in that kind of situation is completely contrary to our character as a people, based on the constitution, but it makes for a very bad working environment for that officer going forward. It makes him think, why should I respect other people's rights, nobody respects mine. But at the same time he thinks, why should I stay in a job where any anonymous complaint, I don't even get to say what it was and they can haul me in on my... [LB158]

PRESIDENT SHEEHY: One minute. [LB158]

SENATOR WHITE: ...and not pay me--I'm sorry to take your time--not pay me and put me through this? I don't think we hold...attract and hold good people under those kinds of abuses. [LB158]

SENATOR HADLEY: Thank you, Senator White. That is it. [LB158]

PRESIDENT SHEEHY: Thank you, Senator Hadley. Senator Carlson. [LB158]

SENATOR CARLSON: Mr. President and members of the Legislature, I, too, would like to ask Senator White a couple of questions. [LB158]

PRESIDENT SHEEHY: Senator White, would you yield to questions? [LB158]

SENATOR WHITE: I will as long as he's not going to argue about my handicap. [LB158]

SENATOR CARLSON: I'll try not to. [LB158]

SENATOR WHITE: All right. [LB158]

SENATOR CARLSON: I don't remember this coming up in the hearing that we had last week, and maybe it did and it went right by me, but in your introduction you talked about some groups being certified and then they would be exempt. And if you didn't say that, clear it up for me and perhaps some others. What kind of certification would exempt a group from this bill? [LB158]

SENATOR WHITE: Well, thank you. That's a good question, Senator. Any agency that is accredited by the Commission on Accreditation for Law Enforcement Agencies are not included in the act. The reason for that is that that commission sets all kinds of standards. I mean, they set standards on how you respond to a hostage situation, they have training standards, they have firearm standards, they have equipment standards.

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They have all kinds of standards to make sure that your agency is (inaudible) the level of professionalism. They also have minimum standards for officer discipline and the rights of the officer that are more onerous than those in this bill. Those officers covered by those kind of accreditation rules generally are afforded rights greater than this and, therefore...and, by the way, these are many of our largest agencies. Now not every city, not every small town, not every county could afford that, and I wouldn't want to put that on them so I'm not asking them to meet the standards that would keep them in. At the same time, I think those standards are generally very good and, therefore, I would urge that we be allowed...that they be allowed, if they can negotiate those higher standards to protect the officers who serve in those communities, that we shouldn't interfere with that. But at the same time, we shouldn't leave the officer out in the Panhandle, down in a rural county, or the county board or the city council without guidance on how to handle a complaint. So that's why they're exempted, but yet I think a minimum standard is necessary. [LB158]

SENATOR CARLSON: Okay. Thank you. That would be then why the Omaha Police Department and the Douglas County Sheriff's Association (sic) would be exempt from this law. [LB158]

SENATOR WHITE: Yes, they actually meet standards far higher and which would be much more expensive and difficult for the community to meet, therefore, no, they're exempted just because I wouldn't want to take those standards and put them on a small town. [LB158]

SENATOR CARLSON: Okay. In our hearing on this bill, I indicated that I couldn't support it without talking to the law enforcement people that are in my district. And so I'd ask you, Senator White, in talking about these groups that provide certification, there's the Nebraska Intergovernmental Risk Management Association and at least...I'm not sure if all of the counties in my district are members of this but I think that they are, certainly I know some of them are, and that association sets down procedures that pretty well cover the rights of an officer and others that would be county employees. To your knowledge, then, would the--and that's referred to as NIRMA--would that be such that it would allow the sheriffs' departments and the police forces that are under this association exempt from this bill? [LB158]

SENATOR WHITE: No, it won't. If you look at the bill, it requires they be certified by the Commission on Accreditation for Law Enforcement Agencies. Now, I don't know what the NIRMA standards are and I also know that an intergovernmental agreement, especially one that's changed inside of the state of Nebraska, may be very variable. And so what I would say to you is the national standards are very stable. I mean, they're set forward. [LB158]

PRESIDENT SHEEHY: One minute. [LB158]

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SENATOR WHITE: They're not going to change. I cannot agree that a small intergovernmental task force carrying only counties would allow you to exempt what are basic due process. I don't think that there is any way any officer should be hauled in, questioned without at least knowing the basis of what the complaint is, being held alone in a room without a representative, not being paid for his time, not being given a copy of any statement against him. And I would be unwilling to trust that officer's liberties to an intergovernmental...interstate...inter-Nebraska governmental agreement. [LB158]

SENATOR CARLSON: Thank you, Senator White. How much time do I have? [LB158]

PRESIDENT SHEEHY: Twenty seconds. [LB158]

SENATOR CARLSON: That's not enough. I'll come back later. Thank you. [LB158]

PRESIDENT SHEEHY: Thank you, Senator Carlson. We have Senator Lathrop, followed by Senator Dubas, Senator Stuthman, Senator Pirsch, Senator Fulton, and others. Senator Lathrop. [LB158]

SENATOR LATHROP: Thank you, Mr. President. I wanted to weigh in on this one. I've introduced the committee amendment, but I'd like to talk about the underlying bill for a moment, if I can. When we had the committee hearings on this bill, we had a number of law enforcement officers that kind of came in and testified in support, and they gave us an interesting perspective and their perspective was...included the following: that law enforcement, just by virtue of the very nature of their job, because they are interfacing with the public there, they are the people who stop cars that are speeding, they are the ones that investigate significant crime, they're the ones that show up to domestic calls, they're the ones that go down the dark alleys in the middle of the night. And they said by virtue of the fact that we are dealing with people that aren't happy with us to start with, that we're enforcing the laws when people want to be left alone, by virtue of the nature of their employment they're going to draw complaints. And you would think that they would draw up a bill that says some limitation on complaints. They don't. In fact, what they said in the committee hearings was this, that complaints are a good thing. They welcome complaints because it gives the public an opportunity to be heard about a grievance. Some of them are unfounded, some of them are...some have some basis to them, but it's the law enforcement people that recognize that the complaint process is a good thing for the public. It also allows them an opportunity to learn. If they're being corrected for violating a procedure or a policy which invariably is the subject matter of these investigations, they learn from it, and so they appreciate them. They also, law enforcement, want the complaint process. They believe it's healthy because it will weed out the bad police officers. Ultimately, if there is a bad police officer in the corps, it doesn't help the police, it doesn't help the sheriff's department. They want those folks gone, too. So they're perfectly comfortable with, recognize the importance and the need

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of the complaint process. All they've asked for is that it have certain due process. And I think it might be fair to point out that if a police officer picks somebody up for burglary, that person has a right...many rights guaranteed to them by the constitution. There are liberties and they're important rights, but they have a right to know what their accuser is saying, they have a right to confrontation, and the list goes on. The police officers who deal with the criminals, we send them into the dark alleys at night to take care of the calls in the middle of the night. These guys are just asking for basic. As Senator White indicated, this is not the Cadillac, this isn't make it impossible to do an investigation. All it is, is securing for them basic and fundamental fairness in the process. The last comment I would make, there's been some question about the accreditation exception. I was told along the way, perhaps in the committee, that the accreditation is a matter of great distinction for law enforcement agencies. This accreditation that we are carving an exception out for represents 1 percent of law enforcement agencies across the country, was the representation made to me. So this isn't a club that we're letting out or somebody who has a different deal. This is the elite agencies and we're fortunate to have a number of them here in the state of Nebraska. So that's the basis for that exception. And I fully support AM48 as well as LB158. [LB158]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Dubas. [LB158]

SENATOR DUBAS: Thank you, Mr. Lieutenant Governor. Would Senator White yield to some questions, please? [LB158]

PRESIDENT SHEEHY: Senator White, would you yield to questions? [LB158]

SENATOR WHITE: Certainly. [LB158]

SENATOR DUBAS: Thank you, Senator, and forgive me if these questions have already been answered. I've missed some of the discussion and I just want to make sure that I'm understanding things. First, I want to qualify any questions I have. I have a brother who's a police officer, so I will do anything that will support those types of professions. I just want to make sure I'm understanding this bill fully. First off, we're putting an exemption in for those agencies who are accredited. Is that correct? [LB158]

SENATOR WHITE: That's correct. [LB158]

SENATOR DUBAS: Do you know how many are accredited in the state? [LB158]

SENATOR WHITE: I don't. I can't tell you. I know that Douglas County is. I know that Omaha is. Other than that, I don't know. It's a rigorous process to become accredited and it's not cheap. [LB158]

SENATOR DUBAS: I certainly understand that, yes. Now it's my understanding that

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areas of the state that have larger populations already fall within, like, the Merit Commission or the Civil Service Commission and they have processes and procedures in place. Does this bill complement what those different... [LB158]

SENATOR WHITE: Well, my understanding of the law--and that's an excellent question--is police officers are very different than normal state employees. A police officer, under existing constitutional law, can walk in and their commander can ask them any question they want, and if the police officer refuses to cooperate or refuses to answer on the grounds it might incriminate him or because he doesn't know what they're asking about or he wants an attorney, they can be fired, period. That's not really true and nor are those other employees in that situation. Based on committee counsel's research, right now the police officers across the state are entitled before they're fired--now this is very important to a lawyer and to a police officer--not before they're questioned, before they're fired they're entitled to being told what the charge is and to give an answer for it, and then they can try to deal with that on appeal. The problem, of course, is the evidence and how it's gathered disappears because nobody is required to record it. When you try to answer, you don't have a right to know what the complaint is before you're questioned. So all that police officers are entitled to right now are some minimum rights on appeal, when it's too late to really address the issue. So, no, I don't think the other statutes do cover them and, therefore, I believe this statute is necessary to give them a minimum amount of rights when the record on what they're going to be fired for or disciplined for is being created, because it's too late just on an appeal. [LB158]

SENATOR DUBAS: Thank you. Just based on some of the information you just shared, it sounds like some of the larger populated agencies in the state, like Omaha, Douglas County, they're already...they are covered through accreditation, etcetera. How would you see this particular piece of legislation impacting the smaller, lesser populated counties across the state, especially in regards to financial responsibilities? [LB158]

SENATOR WHITE: Oh, I think it's very helpful to them. I mean, it is a very simple guideline. If you've read it, anybody, any city councilman, any mayor, any village attorney can read this. It's in one place and it says, well, we got a complaint that Ms. Smith was abusing her power. She unnecessarily maced someone and then clamped the handcuffs on too tight. How do we handle this? And this is a very simple checklist... [LB158]

PRESIDENT SHEEHY: One minute. [LB158]

SENATOR WHITE: ...and what it will do is make their life much more easy and it will also reduce litigation expenses because if they follow these procedures, which are simple and straightforward, they are going to have an ironclad case against the officer if they abused their power. So there's no more guessing and it's not onerous. When you

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read this bill, it's simple, common sense fairness. [LB158]

SENATOR DUBAS: Thank you, Senator White. [LB158]

PRESIDENT SHEEHY: Thank you, Senator Dubas. Senator Stuthman. [LB158]

SENATOR STUTHMAN: Thank you, Lieutenant Governor, members of the body. I would like to ask Senator White a couple more questions. [LB158]

PRESIDENT SHEEHY: Senator White, would you yield to questions? [LB158]

SENATOR WHITE: I will. [LB158]

SENATOR STUTHMAN: Senator White, this bill is a totally new bill. It doesn't... [LB158]

SENATOR WHITE: Well, no, it actually is modeled on bills that are in place in other states. It closely resembles one in Minnesota. You know, we looked at what other states are doing and Minnesota seemed a good example. They have a big population center in the Twin Cities, then they have a lot of very small towns and rural counties. [LB158]

SENATOR STUTHMAN: And this bill is the Peace Officer Discipline Procedures Act. [LB158]

SENATOR WHITE: That's the title, yes, sir. [LB158]

SENATOR STUTHMAN: Aren't there provisions already as far as discipline procedures as far as organizations, sheriffs, police unions? Are...the concern that I have is, is there...are we duplicating something? Are we going to eliminate something or are we going to make it more of a problem by having this bill, as far as the organizations are concerned and they're following their local police union's discipline procedures act and now we put this and pass this bill? Is this going to create any type of a problem in a police setting, like in my community, that has and they do belong to a union? [LB158]

SENATOR WHITE: Well, I would say no, because what this is, is a minimum standard. And what it will do is, for example, we have officers moving from city to city now regularly. You need a new police chief, you might go look at York. You might hire him from somewhere else. What this does is set out a basic, minimum, statewide standard that says this is the minimum. Now, you got to look at your contract. If they have something more that's fine, but this is a minimum standard. It...also, there aren't any state standards for how you handle initial investigations, period. Counsel, who did a...counsel for the Business and Labor Committee, who did a marvelous job in supporting us, handed to me a case from the Court of Appeals, Nebraska Court of Appeals, and they say due process requires for an officer anywhere only that

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they're...prior to termination of employment, a tenured public employee is entitled to oral or written notice of the charge against her/him, an explanation of the evidence, and an opportunity to present his or her side of the story. And at that point, Senator, it's way too late because what they've already done is their investigation. You know, they get to question you maybe for eight hours without letting you have lunch and then they tell you what the charge against you is. That's upside down and that standard is not necessarily...that you would have a right to know what you're being questioned about isn't uniform across the state and it needs to be. And so, no, we are not undoing any kind of greater protection and we're not going to add confusion. We're going to remove it. [LB158]

SENATOR STUTHMAN: So in your statement, you're not going to make it any harder on, like, the police chiefs in communities as far as the discipline procedures part of it. The thing that, you know, I'm concerned with is the fact that, you know, is there going to be some duplication? Is there going to be some interpretations by county attorneys as to what procedure act that they're supposed to follow? Are they going to be caught between the hard stone and the rock as far as, well, we thought we were going this way and then something else occurs? Do you think that this could happen, Senator White? [LB158]

SENATOR WHITE: Not realistically. I mean, I think what will happen if this bill is passed and it's specifically directed at law enforcement officers and it's specifically on their disciplinary procedure, this bill will control any other prior act, enacted statutes. [LB158]

PRESIDENT SHEEHY: One minute. [LB158]

SENATOR WHITE: The best of our research is that there are no other statutes. There are none that really affect how they gather and preserve evidence, there aren't, and there needs to be for police officers because they have a unique position. So (1) this isn't redundant, and (2) to the extent anybody might want to interpret it something different, the standards of interpretation in the courts are the more specific law controls and the more recent controls over the older. So it should be perfectly clear. As far as it being harder, and this is important, if what a chief wants to do is he'll pull anybody in and give them the fifth degree without telling them why he's after them or what the problem is, then this bill will make his life harder. But if he wants a professional force, that he respects his employees and expects them to respect other citizens, this bill makes it very easy. He knows what he has to do and the order he has to do it. It's not hard to comply with. [LB158]

SENATOR STUTHMAN: Thank you, Senator White. Thank you, Lieutenant Governor, before you tell me time. [LB158]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Stuthman. Mr. Clerk, you

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have messages on your desk. [LB158]

CLERK: I do, Mr. President. Your Committee on Natural Resources reports LB184 and LB379 to General File, those signed by Senator Langemeier. Hearing notices from Education Committee, signed by Senator Adams; Urban Affairs, signed by Senator Friend; Revenue Committee, by Senator Cornett. And a new resolution: Senator Karpisek offers LR16; that will be laid over. That's all that I had, Mr. President. (Legislative Journal pages 340-341.) [LB184 LB379 LR16]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Resuming floor discussion on AM48 from Business and Labor to LB158, members requesting to speak: Senator Pirsch, followed by Senator Carlson, Senator White, Senator Flood, and others. Senator Pirsch. [LB158]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I wonder if Senator Lathrop might yield to a quick question, if he's... [LB158]

PRESIDENT SHEEHY: Senator... [LB158]

SENATOR PIRSCH: ...here on the floor. [LB158]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to a question? [LB158]

SENATOR PIRSCH: If he's not here, I can...oh. [LB158]

SENATOR LATHROP: Yes, I will yield to a question. [LB158]

SENATOR PIRSCH: Very good. With respect to the committee's proposed amendment, that being to...it would exempt certain peace officers or agencies, rather, from being subject to this act and it refers to an accrediting process, is that right, or an accrediting agency, is that correct? [LB158]

SENATOR LATHROP: It is an institution that law enforcement agencies can apply to for accreditation, not like unlike hospitals that are accredited to perform certain types of care. So it's an agency that comes into a law enforcement agency and with certain standards and criteria, and they are then given the coveted accreditation if they are able to pass the test. [LB158]

SENATOR PIRSCH: Are you using that in a generic sense of the term or are you saying there's a specific organization, an accrediting entity, one, that you're referring to in your amendment? [LB158]

SENATOR LATHROP: It is a particular accrediting agency and it's called CALEA, which stands for the Commission on Accreditation for Law Enforcement Agencies, which is a

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generally recognized accreditation for superior performance by law enforcement agencies. [LB158]

SENATOR PIRSCH: Okay. Are there multiple accrediting agencies within the law enforcement sphere or is this pretty much generally regarded as the authority? [LB158]

SENATOR LATHROP: I believe...the answer is I don't know if there are other accrediting agencies, but I believe this represents the gold standard. [LB158]

SENATOR PIRSCH: Okay. Thank you. With respect to my other questions, I wonder if Senator White might yield to a series of questions. [LB158]

PRESIDENT SHEEHY: Senator White, would you yield to questions? [LB158]

SENATOR WHITE: I will. [LB158]

SENATOR PIRSCH: And, Senator White, was this language, and specifically on page 2 there's some definitional language, was that definitional language utilized in some other states, a similar bill in other states? [LB158]

SENATOR WHITE: I cannot answer your question with certainty, but my understanding is generally yes. [LB158]

SENATOR PIRSCH: Well, I guess what I'm wondering is where did this...and I'll put one in particular, the definition of office, I'm sorry, "officer" in...on page 2, line 11. Was that taken from a different statute or was that something that you had drafted up? [LB158]

SENATOR WHITE: Well, we drafted this bill and certainly we wanted to refer to what we define as police officers. [LB158]

SENATOR PIRSCH: Okay. And in that particular definition then, as the underlined bill would state, "Officer means a peace officer as defined in Section 49-801, who is employed, either full-time or part-time, by the state or any political subdivision, except the Nebraska State Patrol." And that's the language even after the amendment that you...you hope to keep that language in the bill, correct? [LB158]

SENATOR WHITE: Yes, absolutely. [LB158]

SENATOR PIRSCH: Okay. And in looking at 49-801, specifically how they define peace officer in (15), it indicates then, and should have the force of law if your bill goes into effect,... [LB158]

PRESIDENT SHEEHY: One minute. [LB158]

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SENATOR PIRSCH: ..."Peace officer shall include sheriffs, coroners, jailers, marshals, police officers, state highway patrol officers, members of the National Guard on active service by direction of the Governor during periods of emergency, and all other persons with similar authority to make arrests." [LB158]

SENATOR WHITE: Yes. [LB158]

SENATOR PIRSCH: So with respect to your bill, was it your intent to keep coroners within the list of those who are eligible, as other law enforcement under the act? [LB158]

SENATOR WHITE: To the extent that they are eligible to make arrests and are sworn officers, yes. When they're performing that function, yes, and that's why we specifically say full and part-time. One of the situations that can frequently happen is, let's say, a small town has a large festival so they will hire a number of people from that list to come in, deputize them or hire them for that purpose. [LB158]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator. (Visitors introduced.) Continuing floor discussion on AM48, Senator White. Senator White waives. Senator Flood. [LB158]

SPEAKER FLOOD: Thank you, Mr. President, members. I come at this with a real open mind. Senator White's proposal I think does address something in this and in small towns it's very important. You have a lot of small communities where the officer is sworn to uphold the laws of the state of Nebraska. He or she writes a DUI ticket. From, you know, his perspective, the suspect was drinking over the limit. Suddenly there's community pressure to run the officer out of town for following the law. I think that does happen. Nobody likes to talk about it but I think it does happen in small communities, and you have police officers whose jobs are in peril for doing the very thing that they're supposed to do, and that is uphold the laws of the state of Nebraska and the city ordinances of the community of which they serve. I also know there are situations where police officers know that drinks are being served after 1:00 a.m. They go into the bar; they shut it down. For whatever reason, there's problems down the road with the officer's employment and I think it can be legitimately connected to their work as a police officer. You put them in a tough spot. You put them in a tough spot in these small towns. So I understand where Senator White is coming from in trying to find some extra protections. And I think right now he's also correct in saying there is an appeal process available for second-class cities and villages found in the statutes at 17-107 and 17-208 respectively, but there is no statutory requirement that they be provided notice and counsel, and I think that's also important to identify something that's been missing from our statutes. That said, I wonder, Senator White, if there's a way to accomplish those goals in this bill and strike Section 17, which seems to cause the separate cause of action for a violation of the bill and allow actual damages and reasonable attorney fees.

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It seems to me that under common law they would be entitled to some...they'd be entitled to the damages they could prove up, without making this a direct violation of a constitutional right to due process, and make that part of the discussion of a court case. And I would ask Senator White to respond to that. [LB158]

PRESIDENT SHEEHY: Senator White, would you yield to questions? [LB158]

SENATOR WHITE: I will. Well, thank you, Senator Flood, for that question. Unfortunately, there are a number of statutes that we as a body have passed saying, look, people have a right to this, they get to do this, and then the courts, for whatever reason, say, yeah, but you don't have any right to sue for violation of it. And I would give you many of the Consumer Protection Acts. Believe it or not, the courts have said there's no private cause of action or right to sue as an individual for a violation of it. What this is intended to say, and we use "actual damages," is, look, if you're going to violate this, if you're just going to all of a sudden say to some guy, hey, here's your notice, we think you were too physically aggressive in an arrest three months ago and you're fired and you can send a letter later and tell on me, and now he has to go to the court. And especially if this language was in it, Senator Flood, and now we take it out, the courts are going to argue that there is no private cause of action. Now I think a person who has that done to them has a right to go to the city or the small town and say, look, I lost salary for this six months and you never even gave me a right to respond to it. I don't think that's unfair. I think what this tells the city or the municipality is you can still fire him, make your finding and all those kind of things, but if you don't follow these basic fairness procedures you're in jeopardy of being hit for violating them. And "actual damages" are to limit them to really what's your lost salary, to make them whole, not punitive damages, nothing like that, just to make them whole. And if they find, by the way, another job quickly then, of course, as you know, the municipality gets credit for the money they're making at that job; therefore, their damages are limited. [LB158]

PRESIDENT SHEEHY: One minute. [LB158]

SPEAKER FLOOD: I guess my concern is that it seems that we're creating a property right of sorts in that job where, obviously, due process should be provided, the officer should have notice of the charges, the officer should have an opportunity to have counsel present to represent his or her interests in front of the city administrator or the county board or the city council or whatever the governing body is and, you're right, that is missing in today's statutes. That's not found anywhere in those two sections that I talked about before. I think that might be guaranteed to them under common law in a Supreme Court case that I need to dig up. But I do think going the step of making this a violation of the act and then entitling the terminated police officer to actual damages and then also reasonable attorneys' fees may go a step beyond where I'm interested in going, but, you know, maybe that's something we can work out on the floor. Maybe it's

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something we could work out between General and Select. I don't know if you're interested in that. But I see some value to your bill. I understand what you're trying to do. [LB158]

PRESIDENT SHEEHY: Time, Senator. [LB158]

SPEAKER FLOOD: Thank you, Mr. President. [LB158]

PRESIDENT SHEEHY: Thank you, Senator Flood. We have Senator Friend, followed by Senator Wightman, Senator Lautenbaugh, Senator Pirsch, and others. Senator Friend. [LB158]

SENATOR FRIEND: Thank you, Mr. President, and members of the Legislature. It's interesting that Senator Flood actually brought that up because I had actually pointed out to Senator Lathrop earlier that that was probably the only, the only real legitimate concern that I had with the bill. I think...and I don't even know if it's that significant that I wouldn't support it. I've said this on a couple of occasions in the past and I've always tried to adhere to it. I think the key to any, to analyzing any piece of legislation that we end up...that ends up in front of us, is that there are some rhetorical questions that you ask yourself. That's the key. What is this legislation...what is the purpose of this legislation? What type of problem are we trying to solve? What type of problem are we trying to define? I challenge anybody out here, I challenge anybody in the state to tell me when a piece of legislation is actually passed and become law and it becomes part of our Revised Statutes, we didn't just do it for kicks. We thought we were solving a problem somewhere along the line. Every time we revise a statute there's a potential problem that we're creating. And as Senator White has done a fairly decent job of explaining what this legislation does, I have a real problem trying to identify any difficulty with this legislation at all, except for Section 17 that Senator Flood just pointed out. And that's what I brought in front of Senator Lathrop about 30 minutes ago. But here's the kicker, here's the challenge. Has Senator White communicated, and others who have done a pretty good job of discussing this on the floor, has there been enough communication, has there been legitimate enough communication that describes a legitimate problem for peace officers throughout the state? Senator Stuthman asked a question earlier, is this the first time we've seen this bill? Absolutely not. I've seen it just about every year since I've been here, sometimes on the floor, sometimes not, but I can tell you this is the cleanest form that I've seen. And if we've seen it for six straight years or we've seen it for eight years or we've seen it for ten years, I think it's safe to say that somebody out there believes that it's a problem. So in other words, what I'm saying is, do you get the feeling that we're trying to figure out whether this is a union fight and a leave us alone fight, right? Can we call it what it really is? I have never seen it that way. And a union is not a union, is not a union, is not a union. What you have to understand is how a union operates. The AFL-CIO didn't come in here and sit down as a proponent. Is it because they were afraid that it might hurt the bill? I don't really know. I don't know

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what their motivation was. All I know is this, the FOP is a heck of a lot different than the AFL-CIO. So if we want to call it what it really is or we want to call our concerns what they really are, let's call them that. But I haven't heard anybody say that yet. That's what's occurred in the past. I'd say it this way, if you go through every section in this bill and you can stand up and say, this is particularly problematic for my city, great. Communicate that. I'm not telling you what to do by the way. It's just the way, I guess, I communicate. Then I'd agree. I mean, that's what I've been looking for over the last, over the last few years. What would be wrong... [LB158]

PRESIDENT SHEEHY: One minute. [LB158]

SENATOR FRIEND: Thank you, Mr. President. What would be wrong with passing legislation like this if it's in a good solid form, and we all understand exactly what it was going to do? The answer is, nothing. I think...but again, I'll go back. I think Section 17 is problematic. I think that that's a reach, but I could be wrong. But I will sum up by saying, I don't think this is a...I don't think this is an old stereotypical union versus right to work fight. I just don't. I don't see it that way. There are so many extenuating circumstances that I just don't think it's that simple. And I think if we try to break it that way in our minds without communicating that on the floor, I think we may be making a mistake. I think that's all I have right now. [LB158]

PRESIDENT SHEEHY: Time, Senator. [LB158]

SENATOR FRIEND: Thank you, Mr. President. [LB158]

PRESIDENT SHEEHY: Thank you, Senator Friend. Senator Wightman. Senator Wightman. [LB158]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. My concern was the same concern that was raised by Senator Flood and also by Senator Friend, I believe, primarily with regard to Section 17. I know that...and I know that Senator Adams addressed that question that don't we have much the same procedure under the Civil Service Act that would apply to first-class cities. I think there's also legislation in Chapter 17 that would apply to second-class cities. I think the cities are very concerned, the communities are very concerned, the counties are very concerned over the possibility of having this cause of action in which they've already waived by statute their immunity under the Political Subdivision Tort Claims Act. So I think that's a concern to some of them. That's my biggest problem with the bill. If Senator White's available, I might ask him a question or two. [LB158]

PRESIDENT SHEEHY: Senator White, would you yield to questions? [LB158]

SENATOR WHITE: I will. [LB158]

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SENATOR WIGHTMAN: Senator White, under the Civil Service Act is there a provision such as Section 17 that would give the wrong police officer, allegedly wrong police officer, a claim against the agency or political subdivision by which he was employed? [LB158]

SENATOR WHITE: I'm not aware of that, Senator, if there is. I mean, I do not claim to have exhausted knowledge of the Nebraska statutes. I can tell you, it's my perception that there is not a remedy for this kind of matter at this time. That right now, in fact, they can...if your sergeant feels aggrieved by you, he can haul you in and question you without telling you a thing. And then, if he doesn't like the answer, he does have to tell you before he files under the Civil Service. You're fired because of this and you can send me a letter if you want, but you're fired. And that's it. [LB158]

SENATOR WIGHTMAN: Okay. Then he usually can ask for...he can take an appeal to the governing board of the community, the city, county or whatever it is, is that correct? [LB158]

SENATOR WHITE: Yeah, they can, under some classes, but there's no record. I mean, he doesn't ever get to confront the evidence. He doesn't get to really respond in a timely fashion. The decision is already made. That's like saying, you know, you get an appeal, but you don't get a trial. That's a meaningless thing. It's actually a cruel hoax. [LB158]

SENATOR WIGHTMAN: He would have the right to call witnesses, I believe, under a lot of the legislation in force, wouldn't he? [LB158]

SENATOR WHITE: Well, no... [LB158]

SENATOR WIGHTMAN: With regard to a discharge hearing. [LB158]

SENATOR WHITE: Well, no, actually, Senator, if you take a look at the case McKey v. City of Hemmingford Village Board of Trustees it says, "Public officers, employees. Termination of employment, due process, notice. Prior to termination of employment, a tenured public employee is entitled to oral or written notice of the charges against him or her, an explanation of the employer's evidence, and an opportunity to present his or her side of the story." They don't have any right to know what the complaint is when they're questioned or even to be questioned. They don't have a right to a copy of the statement that was made against them. They don't have a right to have a representative there when they're making an inquiry. They don't even have a right for an inquiry to be made. So what I would say to you is, it's illusory. It's not accurate that they have any kind of meaningful due process. They don't. [LB158]

SENATOR WIGHTMAN: Senator White, don't they...aren't they usually afforded a

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hearing in which the witnesses are... [LB158]

PRESIDENT SHEEHY: One minute. [LB158]

SENATOR WIGHTMAN: ...named and presented to them? [LB158]

SENATOR WHITE: Not at all, Senator, but if they were, then there should be no objection whatsoever to this bill because they're already doing it. I mean, if the argument is, well, they're already doing this, then all this bill says is, well, it's a good practice, make it your absolute rule. I mean, if they're already doing these things, why are they complaining? [LB158]

SENATOR WIGHTMAN: But many of these things probably apply to the discharge hearing and doesn't...don't give him a separate right of action as Section 17 does, is that correct? [LB158]

SENATOR WHITE: Well, and discharges are different. You can ruin a career without firing a person, you know. For example, if officer gets a complaint he pulled over somebody for speeding and this person says he improperly or she improperly made sexual advances to me, so they put the letter in his file or her file and he doesn't even have a right to a copy of it? He decides to move on to a different place and they say, sure, let's see your personnel file. It's sent from the chief and it says, well, the guy has a habit of hitting on people, women that he pulls over for speeding. He never got a chance to confront it. [LB158]

PRESIDENT SHEEHY: Time, Senator. [LB158]

SENATOR WIGHTMAN: Thank you, Senator White. Thank you, Mr. President. [LB158]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Thank you, Senator White. Additional members requesting to speak on AM48 to LB158, we have Senator Pirsch, followed by Senator Pahls, Senator Council, and Senator White. Senator Pirsch. [LB158]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. Not to belabor a point, but I think it's important when we refer to the scope of those who are covered that we have a good idea definitionally who we're talking about. So toward that end, I wonder if Senator White might yield to a question. [LB158]

PRESIDENT SHEEHY: Senator White, would you yield to questions? [LB158]

SENATOR WHITE: Certainly. [LB158]

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SENATOR PIRSCH: Very good. So it's your intent to cover jailers, correct, and within this scope? [LB158]

SENATOR WHITE: To the extent they qualify at that time as sworn police officers, yes. Because again, they're in a position where complaints are made by prisoners and, you know, they can both abuse but be abused by these nature of complaints. [LB158]

SENATOR PIRSCH: Well, no doubt about that. Okay. And it's your intent under this bill to include coroners who in Nebraska are county attorneys, lawyers? [LB158]

SENATOR WHITE: To the extent that they are acting in as a sworn police officer at that time, yes. [LB158]

SENATOR PIRSCH: Where does it say that, to the extent that they're acting as a police officer? [LB158]

SENATOR WHITE: Well, I think it's endemic throughout the bill, Senator. If you read the whole bill, it all applies to, from the title on, it's the police officer's disciplinary act. Now, if they're acting in other capacities other than a police officer, this bill doesn't apply. And I'm certain we've now made a good history, thanks to your trenchant question, that that's the fact. [LB158]

SENATOR PIRSCH: But coroners are specifically included in the last two, do coroners ever act as a police officer? [LB158]

SENATOR WHITE: Oh, absolutely. Absolutely. A coroner comes to a scene. A coroner starts moving through. As a matter of fact, right now, there's a major investigation of the Douglas County Coroner's Office, the police lab unit, on whether or not they mishandled some blood evidence that got some people charged, and it turns out to be inaccurate. You bet, they act as police officers and investigators at different times. [LB158]

SENATOR PIRSCH: So that would be at all points of time then do they act as police officers, correct? [LB158]

SENATOR WHITE: No, I mean, certainly a coroner, for example, when he's filling out his budget isn't really in the way of acting as a police officer in that situation, you know, or he's doing other writing reports and making nonpolice investigative reports to the State Health Department. He may not always, but if he is acting as a police officer, if he's doing investigation, yes, they should be protected by this act. [LB158]

SENATOR PIRSCH: Wouldn't that...isn't that a hard to identify distinction? Anytime you interact with the outside third party, wouldn't you by your definition then be acting as a coroner or a lawyer acting as a police officer? [LB158]

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SENATOR WHITE: No. For example, I would tell you one of the original and kind of just common sense distinctions is, is he investigating a crime at the request of the police department? If he's in the process of investigating a crime at the request of the police department, then he's acting. If he is doing almost anything else, then he's not. I mean, Senator, we cannot define everything to the degree. Because if you do, you end up with nothing or you end up with statutes that are bigger than the building we currently occupy. [LB158]

SENATOR PIRSCH: Right. But this is within the context of a complaint, which means there's a third party. That's the only thing that activates this whole statute. And so by it's very definition we're not talking about coroners filling our forms. We're talking about a coroner interacting with some third party who's got a beef with that individual. [LB158]

SENATOR WHITE: And complaint, and the coroner is acting as a sworn police officer. Right. So if the coroner...well, Senator, you were a prosecutor, you know. If a coroner is down at the crime scene and he tells somebody get out of there, you're spoiling the evidence and yells at them, right, and they file a complaint. Was he acting at that point in time... [LB158]

PRESIDENT SHEEHY: One minute. [LB158]

SENATOR WHITE: ...as a sworn police officer? I would say, yes. [LB158]

SENATOR PIRSCH: Oh, sure. And that's not by utilizing this language. I think that's the clear case. But I guess I ask for the example of other than when he's just sitting at home filling out innocuous forms, not interacting with third parties, when could he not be a police officer and yet still field a complaint by a third party? [LB158]

SENATOR WHITE: When he promotes somebody from secretary to administrative assistant and somebody else is mad. [LB158]

SENATOR PIRSCH: Okay. [LB158]

SENATOR WHITE: Okay. That's not in the course of acting as a police officer. There are a lot of levels where he won't be or she won't be. [LB158]

SENATOR PIRSCH: Okay. Okay. And, you know, the role of coroner can be handed down or passed along by law from the county attorney. It's delegated. He can delegate it to deputy county attorney. He can delegate it to any individual in the...well, I don't even know if there need to be a resident of the state, actually. [LB158]

SENATOR WHITE: Well, yeah, and also similarly, National Guardsmen and women can

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be deputized in times of great civil strife. [LB158]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Pirsch. Thank you, Senator White. Senator Pahls. [LB158]

SENATOR PAHLS: Thank you, Mr. President, members of the body. Senator White, you brought back some, some old memories. It made me think of when I was a younger man and I was born and raised in a small town. And the concern that I...as I'm recalling some of the conversations and not getting into the coroner, I'm just talking about the man or woman, mostly men at that time, who were the local law enforcement. I don't know if this happens now, but when I was growing up, sometimes we became a little ornery. As I reflect back, I think at times we may have actually destroyed some of the officers' reputations because it almost was a...became a joke with a number of people how long that officer would be around. We knew what got the town authorities, we knew what would get them going, and as I recall, I think there were probably some things that we did that were...I'm not saying illegal, but did not help the situation. So if this can remedy that, because I'm assuming some of this still goes on, maybe not to the extent it did a number of years ago, but if we can help that person who is trying to help these small community with their law enforcement, I see this as many positive things about it. Because I can tell you, we did make it tough on a number of individuals for several years until I think the town fathers maybe caught on to some of the things that we were doing. Again, not illegal, we were just being...we knew what would be part of that tipping point when they would reach...would have reached their point of accepting whatever was going on, even though it may have been made up. Thank you. [LB158]

PRESIDENT SHEEHY: Thank you, Senator Pahls. Senator Council, followed by Senator Price and Senator Pirsch. Senator Council. [LB158]

SENATOR COUNCIL: Yes, I have a comment, and then I would ask Senator White if he would yield to a question. And the comment goes to the discussion that was just held between Senators White and Pirsch with regard to what is a peace officer. And I just wanted to point out that my reading of the statute says that a peace officer is as defined in Section 49-801 of the statute, the existing statute. And 49-801 includes, specifically includes coroners, jailers, sheriffs, and those types of officers as peace officers. And I don't think that it matters whether or not they're performing a particular ministerial duty at that time. If they hold any of those positions, it would appear to me that the act would apply to them. And the question for Senator White is, the exception carves out those agencies, law enforcement agencies, that currently hold a specified certification. And the question is, if that specified certification is based upon the terms of a collectively bargained agreement, and the parties collectively bargain an agreement that takes them outside of that certification, although the collectively bargained agreement may provide basic due process, under the law, the bill as is currently written, those law enforcement agencies now would be subject to the terms and provisions of the bill, is that correct?

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[LB158]

PRESIDENT SHEEHY: Senator White, would you respond? [LB158]

SENATOR WHITE: Well, thank you. Two points, Senator. First, with regard to, if you have a concern that it does not protect the various people designated in their course as performing their duties as a sworn police officer, we can certainly work on that between General and Select. [LB158]

SENATOR COUNCIL: No, I don't have the concern because the language says, officer means a peace officer as defined in Section 49-801, and 49-801 doesn't condition a status of police officer upon them performing that particular function at the time... [LB158]

SENATOR WHITE: Right. [LB158]

SENATOR COUNCIL: ...if they hold those particular positions. So I don't have a concern in that regard. My concern is with regard to the collectively bargained agreements that may, at this point in time, satisfy the certification requirements of the named agency in the amendment, but the parties in future negotiations decide to negotiate some different, procedural due process mechanism, and it is not... [LB158]

SENATOR WHITE: Okay. [LB158]

SENATOR COUNCIL: ...one of the terms or conditions that permits them to maintain certification, then they would fall under the operation of this statute, notwithstanding the fact that they have collectively bargained... [LB158]

SENATOR WHITE: Yeah. [LB158]

SENATOR COUNCIL: ...for due process. [LB158]

SENATOR WHITE: Let me turn your attention, if you would, Senator, page 5, Section 16. The rights of an officer provided by Police Officer Discipline and Procedures Act are in addition to and do not diminish the rights and privileges of an officer that are provided under an applicable collective bargaining agreement or any other applicable law. So this is a floor. Senator, you are correct that this would be a minimal level, but it would not diminish anything that they have bargained for. However, if for example, they wanted to bargain away the right to see a copy of any letter placed in their file, this law would say you must still provide that. And I would say that's in the nature of a minimum standard. But one of the things, and I'm grateful Senator Pahls had said, is, all it takes to ruin a career is an unfounded complaint or a letter that gets slid into your personnel file... [LB158]

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SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: One minute. [LB158]

SENATOR WHITE: ...and you never even get to know it's there. [LB158]

SENATOR COUNCIL: I have no further questions. Thank you. [LB158]

SENATOR LANGEMEIER: Thank you, Senator Council. Senator Price, you're recognized. [LB158]

SENATOR PRICE: Thank you, Mr. President, members of the body. I wonder if Senator White would yield to a question? [LB158]

SENATOR LANGEMEIER: Senator White, would you yield to a question from Senator Price? [LB158]

SENATOR WHITE: Certainly. [LB158]

SENATOR PRICE: Senator White, on page 4, approximately lines 10 and 11, we make references to retaining representation. Would you define for me, is that representation legal counsel, and/or a union representative? [LB158]

SENATOR WHITE: It actually says a representative retained by the officer present. That could be anything. It could be a fellow officer simply who was there, and he wants him there to give him advice on it. He might know the procedures. It could be a union representative if they belong to a union. It could be a lawyer. It could be any of the above. Generally, just so you know, the vast majority of cases, it's a coworker. [LB158]

SENATOR PRICE: Okay. Thank you. But that wouldn't add it or encumber that they would have to have a representative if they couldn't like...I'm thinking the classic scene. If you can't afford one, one will be afforded for you. It could be anybody. [LB158]

SENATOR WHITE: No, no. It can be anybody because there's no right to an attorney. I mean, literally, all this says is, I want, in general, overwhelmingly, it's another person in the department who knows the rules and procedures of the department well who sits in. [LB158]

SENATOR PRICE: Great. Thank you. And then finally, Senator White, have we looked at the cost this may add on to the smaller departments when you're recording statements and having that burden laid on the smaller departments throughout the state? [LB158]

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SENATOR WHITE: Yes, and certainly the fiscal note only talks about the state cost, and that's \$6,000 through the University of Nebraska police force, which is bigger than most...by far, than most of the small towns. So even when we look at the University of Nebraska's projected cost, it's very minimal. And what I would say to you, Senator, is that it's much less expensive than continually retraining these officers, that you get rid of the bad complaints, you protect the good officers, that's much less expensive. As far as the expense, literally, all it requires is, have a tape recorder, which everybody has, slap it down in the room, tell the officer, look, come in at this time we're going to make a questioning, do you want your sergeant, your shift sergeant, whoever, to be there? Yeah. Okay, come on in. Here's the basis of the problem. Here's the complaint. They say you made a pass at this lady when you stopped her for speeding. Okay. We're going to take your statement. Thank you. We sit down. They take the statement and you get to say your response. That doesn't really cost anything in terms of a real serious out-of-pocket. Now, it would charge if they pulled a guy in on his day off, they'd have to pay him his overtime. But really it doesn't require, and it's designed not to require the presence of lawyers or counsel at all. It just says, look, use some common sense, use some what you or I would consider just reasonable decency in treating this person who's been accused of what can be really awful things that can destroy a career. [LB158]

SENATOR PRICE: All right. Thank you. Thank you very much, Senator White. I will yield the balance of my time to Senator White. [LB158]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: It's about 2 minutes, Senator White. [LB158]

SENATOR WHITE: Thank you. And I won't take all of it, though I appreciate Senator Price. Again, what we're looking at is people who are uniquely vulnerable. I mean, imagine in your own life if since you are a sworn officer you are held to real high standards. And many of these officers in the rural areas work alone. And just the simplest complaint of, he made a sexually suggestive comment to me that was completely inappropriate and I was humiliated. Okay. That complaint, right now, can just go into his file and nobody ever tells him about it much less give that officer a chance to confront it, to confront the complaint, offer his or her own story in response. They're incredibly vulnerable, and just a letter like that in your file that you may never know existed can completely destroy your career for the rest of the time you have, because how do you dispute it if you never knew it was here. We're talking about basic, decent, fundamental fairness. Nothing more... [LB158]

PRESIDENT SHEEHY: One minute. [LB158]

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SENATOR WHITE: ...to very vulnerable people. [LB158]

PRESIDENT SHEEHY: Thank you, Senator White. Additional members requesting to speak, Senator Pirsch, followed by Senator Lautenbaugh, Senator Harms, and Senator Nordquist. Senator Pirsch, this is your third time. [LB158]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I wonder if Senator White would yield, again, to another question. [LB158]

PRESIDENT SHEEHY: Senator White, would you yield to questions? [LB158]

SENATOR WHITE: Certainly, Senator Pirsch. [LB158]

SENATOR PIRSCH: Very good. You know this is, of course, the first time this concept has been exposed to...has this been a bill proposed in past sessions? [LB158]

SENATOR WHITE: Oh, yes, for many, many years. And by the way, just so the body knows, Senator Pirsch, it's our estimation that 23 states have this or a more serious, harder statute, is our best estimate. Eighteen actually have it, the others probably have it, you know, through one method or another. [LB158]

SENATOR PIRSCH: Thank you. And, you know, my specific line of questioning falls just again with that definitional scope and hoping that we're not looking at unintended consequences when we look at the definition of peace officer including terms such as coroners and whatnot. I'm not sure if that's a problem. I think it would take some reflection on that. I don't agree with the analysis that it...that those definitions in (15) are not categorical, provide for categorical coverage. I think that they do provide for categorical coverage as opposed to those positions to the extent that they are working within the scope of a police officer. But be that as it may, I'm not sure that that is problematic. But if I...if, in fact, going forward in the analysis would you be interested in working to make sure that that isn't capturing a group or, you know, especially when you're talking about coroner, that could involve medical personnel, making sure that the language is tight going forward. Would you be interested in working with other members of the body to make sure that there are no unintended consequences in that regard? [LB158]

SENATOR WHITE: Absolutely, Senator, I'd welcome it. [LB158]

SENATOR PIRSCH: Very good. I'd yield the...how much time, Mr. President, do I have left? [LB158]

PRESIDENT SHEEHY: 2:30. [LB158]

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SENATOR PIRSCH: I'd yield the balance of my time to Senator White if he's interested. [LB158]

PRESIDENT SHEEHY: Senator White. [LB158]

SENATOR WHITE: Thank you, again, for your courtesy. Once again, folks, this is an incredibly tough job, an incredibly tough job, and we need to make sure the people we ask to take on this job are treated fairly. Thank you, Mr. President. [LB158]

PRESIDENT SHEEHY: Thank you, Senator White. Senator Lautenbaugh. [LB158]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. This is another bill that I've struggled with this morning and I'm still struggling with it. It seems to establish some minimal standards that most officers throughout the state already have, already benefit from standards in excess of these, I guess is the best way to put it. I am troubled by the language providing for the recovery of attorneys fees, if a challenge is brought on this. Because even if the challenge is unsuccessful, under this proposed bill of rights or whatever we're calling it for police officers, even if the challenge is unsuccessful, the city has to defend it. And in defending it, there's a cost. And we all know where costs come from if you're the city, the local municipality, county, whatever the case may be. We're talking about property taxes here. If this bill had a greater property tax impact, I would have been talking about this all morning long because I think that's one real way we as a body cannot just say, hey, the Legislature doesn't raise property taxes. Every time we send something to the localities without money, we're raising property taxes effectively or causing pressure to raise property taxes. With the exception of the provision about liability and the recovery of attorneys fees for violation of this act, this really doesn't seem to be that kind of bill where we're adding a tremendous cost on the localities. Once again, aside from that troubling provision, this doesn't seem to be that kind of a bill, but I struggle with this. I struggle with this from a local control standpoint, I struggle with this from the property tax standpoint. In the end, I may very well end voting for this. But I think that's a thought process we have to bring to bear on every bill. Is this something the locals can do by themselves? Do we need to tell them to do it? And does it cost the locality money? That may very well not be the case on this one with some amendments, but we will see. Thank you. [LB158]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Senator Harms. [LB158]

SENATOR HARMS: Thank you, Mr. President, colleagues. Senator White, would you yield, please? [LB158]

PRESIDENT SHEEHY: Senator White, would you yield to questions? [LB158]

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SENATOR WHITE: Certainly. [LB158]

SENATOR HARMS: Senator White, in your conversation that you were having with Senator Price caught my attention. As an officer, I would want more than my conversation being recorded. In fact, I would request a court reporter to be there. And, Senator, isn't this the very beginning and potentially the very foundation and the very basis of taking this issue into the court? And isn't that what the judge is going to look at? [LB158]

SENATOR WHITE: Yes. And a couple of points. Generally, I do trust court reporters. The problem, one of the problems we have they are expensive and increasingly, Senator, they're extremely difficult to get in rural areas. Given that expense, I think a tape recording is something that will protect the rights sufficiently and it makes it much more workable. In terms of this going to court, what I really think, and my experience is, when people follow fundamental rules of fairness like, here's the beef, here's why we want to talk to you, you got somebody there that understands the procedures with you, you sit down, they treat you with respect, they don't keep you there eight hours, they don't keep you under hot lights, you know you're not losing your day off, we get much less litigation. What happens is, lawsuits are bad remedies for even worse situations. If we prevent the situation from going there by just simple rules that the framers put in the constitution 240 years ago, things like, the right to know what your charge is, the right to hear what the charge is and then respond, we will actually reduce litigation. Now, if they go ahead on a really egregious basis and they force this to litigation, absolutely the courts will look at that tape, they will look at the response, they'll look at the evidence to see...and they will give them great deference in the termination. I mean, they have a right to do that. This doesn't tell them how or when you can fire them. It doesn't say that. It just says, look, before you fire them, give them these basic procedures. And that's one of the things. The courts are not going to substitute their judgment for the police chief here. All it says is, chief, before you fire them, make sure you follow these basic rules so he has a reasonable or she has a reasonable chance to get the story out there. [LB158]

SENATOR HARMS: Senator, I have used court reporters in my previous life, and I know how important it is to have that foundation built at the very beginning and also have legal counsel. I think have a law enforcement officer, if I had another officer there, I don't think it's appropriate, because we're not playing with the same deck of cards here. We're talking about my career. We're talking about my future and you're going to want to have legal representation. You're going to want to have a court reporter and you're going to want to set the stages appropriately. And honestly, it is expensive. And I will tell you in rural America, it's not that difficult to get a court reporter. So I would just caution my colleagues here, that you need to go a step further and understand this is the very foundation and the very beginning of potential litigation. And as a person in law enforcement, I would want my rights protected, and I know that's exactly what you're trying to do here. But I think if we're not careful here and say that this will not be

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expensive, and you can just do this and have it recorded, I'm not sure that's the correct thing to do. And so I'm just posing this for your thoughts, to think about this carefully. Because it is the foundation, it is the beginning, and you want to have legal counsel there and if you don't have legal counsel there, I think you're making a terrible mistake. Thank you, Mr. President. [LB158]

PRESIDENT SHEEHY: Thank you, Senator Harms. Senator Nordquist, followed by Senator Fulton, and Senator Karpisek. Senator Nordquist. [LB158]

SENATOR NORDQUIST: Thank you, Mr. President and members. This...I rise in strong support of LB158. This is a bill about giving some protection to those that are sworn to protect and defend. You know, it's...being a police officer in that line of work, much of their contact with the public is in times of crisis and oftentimes also that, you know, can create hostile, kind of adversarial environment and these officers don't have the basic protections of administrative...and administrative reports. They don't have what we should be giving them, and that is some basic baseline protections. I've...as a staff member, my predecessor carried this bill. Just a little history. This bill has been around for ten years, 1998, 1999, 2000. It was on the floor in 2000. It was on the floor in 2002. And this certainly is the most...as Senator Friend said, the most streamlined version. It is the very baseline basic procedural rights. And, you know, just thinking back on some of the testimony I heard in '04 and '05 when this bill was up, you know, police officer...one example, police officer was appointed to a task force. They...served on it for maybe six months. Without any grounds they were told that, you know, they had numerous complaints in their file. Just...no specifics. Just they had numerous complaints. They were kind of...the department had kind of...gave them...implied that, you know, maybe they should look at doing something else. That officer moved on to a larger department and within a year received five commendations. This is not an issue about, you know, bad cop, good cop. It's about giving them the basic rights so that they are protected. And testimony in those hearings, you know, again and again we heard that many officers are worried about not having those basic protections. They're worried about not being given those rights. And they looked at larger...they looked to move on to larger departments that gave and provided those rights to their officers. So I think it's something we need to consider when we look at, you know, keeping small towns safe and maintaining adequate police staffing. And that this is something that needs to be in our minds as we go forward. So I would encourage you to vote for LB158. Thank you. [LB158]

PRESIDENT SHEEHY: Thank you, Senator Nordquist. Senator Fulton. [LB158]

SENATOR FULTON: Thank you, Mr. President, members of the body. It's electric in here this morning. Would Senator White yield to a question? [LB158]

PRESIDENT SHEEHY: Senator White, would you yield to questions? [LB158]

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SENATOR WHITE: Yes, I would. [LB158]

SENATOR FULTON: We were talking off the microphone for those who might be reading this at some point in the future, Senator White and I, and we ran out of time so this is something, hopefully, that would be informative to others. Page 6 of the green copy of the bill in Section 17, Senator, I had a question about, let's see, line 3 and following, the political subdivision or the state is deemed to have waived any immunity under the Political Subdivisions Tort Claims Act or the State Tort Claims Act for a cause of action brought under the Peace Officer Discipline Procedures Act, your bill. Could you explain the process behind that and maybe just enlighten as to why this portion would be necessary in your bill? [LB158]

SENATOR WHITE: Yes. Generally, in common law, the state couldn't be sued for anything. That was under English common law. The king was immune from any kind of suit. So the way the courts have always looked at it is, that the state is immune from any kind of suit unless we, as a Legislature, actually pass a law that gives an exemption so that a suit can be filed against it. So we start from square one, the state can never be sued at all. And we have over the time passed a number of exemptions. Then, one of those largest ones was the Political Subdivisions Tort Claim Act. And what this says is, this bill then comes in and there is an exception that if you're hurt because they didn't follow the procedures on how they're going about disciplining you and firing you, then you can sue for what your actual damages are. And by the way, actual damages are limited. And we're talking about what you lost. [LB158]

SENATOR FULTON: Okay. Is that not covered in the lines previous? I guess that's where my question, the beginning of Section 17, page 5, of the green copy of the bill... [LB158]

SENATOR WHITE: Yeah. [LB158]

SENATOR FULTON: ...a political subdivision or state agency that violates this act, is liable to the officer for actual damages resulting from the violation. Then is it necessary to put forward this, you know, the immunity that would fall under the Political Subdivisions Tort Claims Act? I guess that's where I'm confused. [LB158]

SENATOR WHITE: Well, I guess, two points. One is, lawyers tend to wear belts and suspenders at the same time. The other one is, the Bill Drafters put it out in this form and it is generally considered now part of the general form. So the absence from those kind of forms, Senator, would raise far more questions than the inclusion of what you indicate properly is probably redundant. But again, you know, if you ever read a will, I hereby bequeath, devise and, you know, transfer. Well, just saying it once should work but we say it often over and over again. [LB158]

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SENATOR FULTON: Okay, thank you, Senator White. Thank you, Mr. President. [LB158]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Senator Karpisek. [LB158]

SENATOR KARPISEK: Thank you, Mr. President. Would Senator White answer some questions, please? [LB158]

PRESIDENT SHEEHY: Senator White, would you yield to questions? [LB158]

SENATOR WHITE: Oh, yes. [LB158]

SENATOR KARPISEK: Thank you, Senator White. I've been listening. Don't know how I feel. I feel a lot like Senator Lautenbaugh on this one. I guess a quick question. If an officer was accused of something and maybe it wasn't a horrendous problem, but maybe you just wanted to either have them move along to another place, and if they ask or if you wanted to do that, you'd have to give them the reason, and even if that reason might really hurt them from getting the next job, would this do that? [LB158]

SENATOR WHITE: No, Senator. This bill, if you look at it, only talks about complaints about the officers performance and letters put in their file. Okay. So if, for example, you don't like the officer because he has a generally surly attitude and nobody from the community has complained and you're not investigating it, this bill doesn't apply to that. What you can do is say, I think you have a surly and dangerous attitude, you alienate the citizens and I want you fired, you're fired. This bill has no application to that because there is no hearing process as part of this bill. This bill is defined by complaints. Now, if you put in his file, you know, this guy had a surly and dangerous attitude, that's why we fired him. He'd have a right to that letter. But he already has that right once he's fired now anyway because you're supposed to give them an explanation for the reason you fire him. So it doesn't put any other burden on him. It doesn't tell you how come you fire him or whether to fire him or what standards you used to fire him. It just says, look, when you got a complaint about this officer, here's what you do. And it's really designed and hopefully, it is an arrow, not a shotgun but it's really designed to protect them from those anonymous complaints that they are so vulnerable to or those anonymous charges and how they're handled and what is done with them. [LB158]

SENATOR KARPISEK: Thank you, Senator White. That was my concern. We all know sometimes personality conflicts play in and, of course, as you said, police officers are often accused of things that maybe they did or didn't do just because people don't like them. So that answers my questions. Thank you, Senator White. Thank you, Mr. President. [LB158]

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PRESIDENT SHEEHY: Thank you, Senator Karpisek. Senator Stuthman. [LB158]

SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. I would just like to ask Senator White a couple questions. [LB158]

PRESIDENT SHEEHY: Senator White, would you yield to questions? [LB158]

SENATOR WHITE: Yes. [LB158]

SENATOR STUTHMAN: Senator White, who was the initiator of this bill or where did it come from? [LB158]

SENATOR WHITE: Well, this bill has been issued and fought over in these halls for a long time. Senator Chambers regularly would filibuster it. And so this bill probably was initiated when I didn't have a law degree, so I can't answer that question. [LB158]

SENATOR STUTHMAN: So you do not...you're not aware of who brought it to you as to... [LB158]

SENATOR WHITE: Oh, in that sense? [LB158]

SENATOR STUTHMAN: ...who introduced the bill? [LB158]

SENATOR WHITE: And certainly, no. In that sense I talked to a number of different police officers and have for years in my practice, Senator Stuthman. And I've known there's a need for this for a long time. So I actually talked to a number of the police officers and said, do you perceive this to be a problem across the state, and talked to the Fraternal Order of Police, talked to the Omaha Police Union. Even though the Omaha Police Union is covered because they're a certified agency, they said, yeah, a lot of our fellow officers are really vulnerable. We need to do something. So I actually, probably, initiated it by going to the Fraternal Order of Police, but they certainly then helped in fashioning the bill. [LB158]

SENATOR STUTHMAN: So you're saying that the Fraternal Order of Police, and I would say maybe from the Omaha area, from the metropolitan cities which are exempt in this, would you say that they were the ones that initiated it, or... [LB158]

SENATOR WHITE: No. [LB158]

SENATOR STUTHMAN: ...that's what I'm trying to get to the bottom of. [LB158]

SENATOR WHITE: Senator, actually I initiated it. First of all, let's be clear here, I did. And two, a lot of the most support and the people who really need it the most aren't in

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the metro area. However, I do, and you do, as I travel across the state and I want a good police officer in any town that I am. I want a professional. I want somebody who is secure in their job, well trained, and knows they have an obligation to treat me with respect and they're going to be treated with respect. So, no, it's not driven from the metro area, Senator, just the opposite. [LB158]

SENATOR STUTHMAN: Okay. Thank you, Senator White. That was one of the questions that I had, so that does answer the majority of my questions. And thank you, Lieutenant Governor. [LB158]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Speaker Flood, you're recognized for an announcement. [LB158]

SPEAKER FLOOD: Thank you, Mr. President, members. You'll note here in a few minutes you're going to be receiving a memo from me regarding the designation of priority bills. This is a very important memo. There's also a follow-up to that that talks about the specific procedures of identifying a priority bill. Just to quickly recite for you some of the dates that are very important, I will begin accepting committee and senator priority designations February 4. I will also begin accepting requests for Speaker priority bills on February 4. The deadline for committee and senator priority bills is by adjournment on March 12 and for Speaker priority bills is by 5:00 p.m. on March 12. This is a very important step procedurally for all of us as we identify the bills that we want to reach the floor of the Legislature for discussion and debate. You'll note in my memo that's dated February 2, 2009, that I've listed in paragraph 3 scheduling criteria for the priority bill process. And you will note that I am going to be looking into the bills that are chosen to determine what extent, if any, there is opposition to the bill, problematic differences that have been addressed off the floor, the timing of the debate in relation to other issues, the extent to which the reported bill reflects compromise to the extent that it's possible in the work of the committee, and the date that it was advanced to General File. I will also be considering the public policy implications if the bill is not passed this year. Members, as you know, there is no requirement that you get them to me as soon as possible. This isn't a first in line, first in right, on the floor. Use your priority bill designation very responsibly as we have done in the past. I have no reason to believe that will be different this year, and this will help us prioritize our work this session and make sure that we get the people's business done. If you have any questions regarding this or the supplemental memorandum that's attached to the February 2 letter, please see me or contact Laurie in my office. As you might imagine, this will be available on my Web site. For those of you viewing on television now or citizens that are interested, you can also get this information provided to the senators on the Web. Thank you very much, Mr. President.

PRESIDENT SHEEHY: Thank you, Speaker Flood. Are there additional members requesting to speak to AM48? Seeing none, Senator Lathrop, you're recognized to

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close on AM48. [LB158]

SENATOR LATHROP: Thank you, Mr. President and colleagues. A great discussion this morning. You'll see that we have two things before us. One is the amendment and one is the bill. The amendment, I believe, is noncontroversial. The changes, I don't think anybody could argue with. We will have additional debate after we vote on this amendment, so I would encourage you to move the amendment and then we can take up and hear further discussion on the bill afterwards. Thank you. [LB158]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. You have heard the closing. The question for the body is on the adoption of AM48 from Business and Labor Committee to LB158. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB158]

CLERK: 36 ayes, 1 nay, on the adoption of committee amendments. [LB158]

PRESIDENT SHEEHY: AM48 is adopted. [LB158]

CLERK: I have nothing further on the bill, Mr. President. [LB158]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We will resume to floor discussion on LB158. Senator Flood. [LB158]

SPEAKER FLOOD: Thank you, Mr. President, members. I have some concerns with this bill, particularly Section 17, but I've been talking to Senator White. I think there's room to work on this between General and Select File. I didn't think we'd be voting on this yet today, but it appears that the body is ready to take this up as to whether or not to move it to E&R Initial. I'm going to vote yes on General File, with the understanding with Senator White and the Committee Chairperson and other members in the Legislature that we do a lot of work on this between now and Select File. And I think that given the interests of the parties, there is a reasonable accommodation that could be made and we can work through this issue. That said, I'd like to give the balance of my time to Senator Lathrop. [LB158]

PRESIDENT SHEEHY: Senator Lathrop, just over 4 minutes. [LB158]

SENATOR LATHROP: Thank you, Mr. Speaker and Mr. President. I want to echo the comments made by the Speaker. For those of you who are here on your first year, it is not an uncommon practice when a bill has general support but there are concerns with a section here or a section there, and the introducer indicates a willingness to work on those, as Senator White has in this case, it's not uncommon to move it from General File to Select. So I would encourage you to support LB158. I think Senator White appreciates, as I do, the concerns that you've expressed this morning. Those are concerns that I think that can be accommodated, and if they cannot or are not

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accommodated to your satisfaction, you can give it a red light on Select File. But today, we'd ask you to move LB158. Thank you. [LB158]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Are there additional members requesting to speak? Seeing none, Senator White, you're recognized to close. [LB158]

SENATOR WHITE: Thank you, Mr. President, and I want to thank every member of the body from Senator Pirsch's good questions regarding the definitional stuff, to Senator Council's observations regarding the impairment of contract rights, Senator Harms's concerns that these really are careers and lives and maybe attorneys should be there. You know, Senator Harms, I deeply appreciate that position. To the questions about...Senator Lautenbaugh's questions on whether or not this will put an undue burden fiscally on our smaller towns. I think the concerns that have been addressed are legitimate and real. But I would urge you to advance this to Select. In between those times, I pledge to work with Senator Pirsch, with Senator Flood, Senator Lautenbaugh, should he be so inclined, and any others who have concerns in these areas. What we cannot do is to continue to leave our peace officers in the incredibly unfair and vulnerable position of insisting they protect our liberties and our rights while we immediately, upon their pinning the badge on, take away theirs. That is not how we as Nebraskans function. It is not in the best interest of our small towns. It leads to the job being a position that does not get respected. It leads to people who move through the job quickly rather than recognizing it as meaningful and that they are respected and their services are valued. That is far more expensive. And you could talk to the small towns in the counties. The training and retraining of small officers, town officers, and their movement to the cities that do protect their rights, is an extreme expense. And this is a small step in addressing that, but it is a real one. Therefore, I ask your consideration, ask that it be advanced to Select File, and I do pledge to work with all those who have concerns on any aspect of the bill between now and then. [LB158]

PRESIDENT SHEEHY: Thank you, Senator White. You have heard the closing. The question before the body is on the advancement of LB158. All those in favor vote yea; opposed, nay. Senator White. [LB158]

SENATOR WHITE: Yes, I would ask for a call of the house. [LB158]

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. [LB158]

CLERK: 40 ayes, 0 nays, Mr. President, to place the house under call. [LB158]

PRESIDENT SHEEHY: The house is placed under call. All unexcused senators please report to the Chamber. All unauthorized personnel please step from the floor. The

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house is under call. Senator Coash, would you please check in. Senator Pankonin, the house is under call. Senator White, all members are present or accounted for. How would you like to proceed? Roll call or call in? [LB158]

SENATOR WHITE: Roll call, please. [LB158]

PRESIDENT SHEEHY: Roll call. Please proceed, Mr. Clerk. [LB158]

CLERK: (Roll call vote taken, Legislative Journal page 342.) 26 ayes, 16 nays, Mr. President, on the advancement. [LB158]

PRESIDENT SHEEHY: LB158 advances. The call is raised. Mr. Clerk, do you have messages or announcements on your desk? [LB158]

CLERK: I do, Mr. President. Your Committee on Revenue chaired by Senator Cornett reports LB165 to General File with amendments, that report signed by Senator Cornett. Enrollment and Review reports LB31, LB62, LB91, LB154, LB179, LB180, LB196, as correctly engrossed. Notice of hearing from the Revenue Committee, series of hearings from the Revenue Committee. Name adds: Senator Cook would like to add her name to LB306; Senator Howard to LB449. (Legislative Journal pages 343-350.) [LB165 LB31 LB62 LB91 LB154 LB179 LB180 LB196 LB306 LB449]

And I have a priority motion, Mr. President. Senator Dierks would move to adjourn the body until Tuesday morning, February 3, at 9:00 a.m.

PRESIDENT SHEEHY: You have heard the motion to adjourn until Tuesday, February 3, 2009, at 9:00 a.m. All those in favor say aye. Opposed, nay. We are adjourned.