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Floor Debate
February 10, 2009

[LB7 LB20 LB52 LB55 LB80 LB87 LB90 LB102 LB131 LB133 LB189 LB192 LB201
LB219A LB220 LB522 LB675 LR11 LR16 LR17]

SENATOR ROBERT PRESIDING []

SENATOR ROBERT: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the twenty-fourth day of the One Hundred First Legislature, First Session. Our chaplain for today is Pastor Robert Snell of the Southern Heights Presbyterian Church in Lincoln, Nebraska, Senator Fulton's district. Please rise.
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PASTOR SNELL: (Prayer offered.) []

SENATOR ROBERT: Thank you. I call to order the twenty-fourth day of the One Hundred First Legislature, First Session. Senators, please record your presence. Mr. Clerk, please record. []

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

SENATOR ROBERT: Thank you, Mr. Clerk. Are there any corrections for the Journal?
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ASSISTANT CLERK: Mr. President, I have no corrections this morning. []

SENATOR ROBERT: Any messages, reports, or announcements? []

ASSISTANT CLERK: Mr. President, your Committee on Enrollment and Review reports LB80, LB87, LB189, and LB192, all as correctly engrossed. I have a notice of committee hearing from the Retirement Systems Committee. And the Committee on Health and Human Services reports LB220 to General File with amendments attached. That's all I have, Mr. President. (Legislative Journal pages 430-431.) [LB80 LB87 LB189 LB192 LB220]

SENATOR ROBERT: Thank you, Mr. Clerk. We will now proceed to the first item on the agenda, General File. Mr. Clerk. []

ASSISTANT CLERK: Mr. President, LB7 introduced by Senator Wightman. (Read title.) Bill was read for the first time on January 8 of this year, referred to the Government, Military and Veterans Affairs Committee, that committee reports the bill to General File with no committee amendments attached. [LB7]

SENATOR ROBERT: Thank you. Senator Wightman, you are recognized to open on LB7. [LB7]

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SENATOR WIGHTMAN: Thank you, Mr. President, and members of the body. As so many do when they get up to speak, I will say that this is a...LB7 is a simple and straightforward bill. I remember saying that about two years ago when I introduced my first bill and by the time Senator Chambers finished with that bill, it was two and a half hours later and I was picking myself up and dusting myself off, and suspected maybe it wasn't as simple and straightforward a bill as I thought. But I think today's is. LB7 provides that a clerk of the district court elected after 2008 does not need to be a resident of the county in which he or she files for election, but is required to reside in the county when holding office. So that they would have to move into the county prior to actually taking the office. Kind of a strange situation here in that a year ago, I carried a bill at the request of the county officials in which the deputy clerk of the district court didn't happen to be a resident of the county and the county officials wanted that changed because frequently they hired somebody without the county and it was...then they were working in the clerk of the district court's office not as a deputy, and when they got ready to promote him they found out that they weren't a resident so that was changed last year to provide that the deputy did not have to be a resident in the county in which they were serving. And then, lo and behold, during the summer in reviewing that, the county officials found that there wasn't even a residency requirement for the clerk of the district court, and they felt that should be changed and that's what LB7 seeks to do. LB7 was heard by the Government, Military and Veterans Affairs Committee and was advanced to General File on a unanimous vote. No one appeared in opposition. The requirement of residency for the clerk of the district court which is, by the way, an elective office is similar to other elected county officials who are required to reside in the county where they hold office. Again, I think it's a noncontroversial bill, but maybe if some of you can remind me of my lesson with Senator Chambers two years ago, but I would urge you to vote in favor of the advancement of LB120 (sic) to Select File. Thank you, Mr. President. [LB7]

SENATOR ROBERT: Thank you, Senator Wightman. (Doctor of the day and visitors introduced.) Returning to discussion on LB7, wishing to speak, Senators Stuthman and Carlson. Senator Stuthman, you're recognized. [LB7]

SENATOR STUTHMAN: Thank you, Mr. President, and members of the body. I would like to ask a couple questions of Senator Wightman. [LB7]

SENATOR ROBERT: Senator Wightman, would you yield to a question? [LB7]

SENATOR WIGHTMAN: I will. [LB7]

SENATOR STUTHMAN: Senator Wightman, how do you describe a resident? [LB7]

SENATOR WIGHTMAN: Well, a resident is someone...and that's not the most, the

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clearest thing in the law, but generally it is someone who moves there with the intention to make that their residence. [LB7]

SENATOR STUTHMAN: Can a post office box be called a resident? [LB7]

SENATOR WIGHTMAN: I wouldn't think so if they don't reside there. [LB7]

SENATOR STUTHMAN: So this bill addresses the, addresses the situation where if there's an individual that doesn't reside in the county and runs for the clerk of the district court, if he or she is elected, then must become a resident of that county in which that elected official would be serving in, is that correct? [LB7]

SENATOR WIGHTMAN: That is correct. I think in most instances, Senator Stuthman, that person would be a resident, but in some of the small counties I think that gives them an opportunity to run if no one else is running and, for that position, and they could move there and be qualified even though they were residing out of the county. That would probably be, most cases, would be where there was no opposition for the position. [LB7]

SENATOR STUTHMAN: But this individual could, Senator Wightman, you know, reside out of the county, and if, in fact, that individual was elected for that position could establish a post office box in the county and work in the county and yet live and maybe have an apartment or something during the week when she's working, but her residence, in my opinion, would still be not in the county. Could that happen? [LB7]

SENATOR WIGHTMAN: I suppose it could happen, because the person can determine by their intent what their residence is to be. And there are a lot of people that have a summer home somewhere and live in a different community during the rest of the year and they pretty much can declare where that place of residency is going to be. And certainly, we have that same situation out of state where people reside down in Texas or Florida. I think you will find that most often in states that have no state income tax and so they declare their residence to be in the state with no state income tax. So it's probably...it still is a matter of intent. [LB7]

SENATOR STUTHMAN: Well, thank you, Senator Wightman. I have a concern with this, you know, if an individual is running for this position and doesn't live in the county when they are, you know, filing for the position and then gets elected and then has to make the determination as to whether to live there, establish some type of a residence in that county, I don't know whether we're really solving the problem. Because I think there would probably be ways to get around the fact that they could still be a resident of another county and also be, be...have residency in that county to satisfy that. Would Senator Wightman be willing to answer another question? [LB7]

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SENATOR ROBERT: Senator Wightman, will you yield to a question? [LB7]

SENATOR WIGHTMAN: I will certainly try. [LB7]

SENATOR STUTHMAN: Senator Wightman, are there counties that have a defined clerk of the district court that that is just one individual or are there counties that combine the clerk of the district court with other offices? [LB7]

SENATOR ROBERT: One minute. [LB7]

SENATOR WIGHTMAN: I can't tell you whether they combine clerk...yes, they do combine clerk of the district court with other offices. I thought you meant a clerk of the district court serving more than one county. There are a number of counties among the smaller counties that will have a clerk, sometimes a register of deeds, and also the clerk of the district court all holding the...all being in one person. [LB7]

SENATOR STUTHMAN: Thank you, Senator Wightman. I think that is true in some of the smaller counties where there are not enough people, not enough duties for the clerk of the district court, and maybe not enough work for the county clerk. And I think, you know, they do combine that position and one individual holds both of those offices. I think that is true. I just have a real concern with the fact that, you know, are we solving anything by this or are we trying to create a way for people to get around something that if they have a residence in one county and want to be working as a clerk of the district court in another county, and may never, ever change, you know... [LB7]

SENATOR ROBERT: Time. [LB7]

SENATOR STUTHMAN: Thank you, Mr. President. [LB7]

SENATOR ROBERT: Senator Carlson, you're recognized to speak [LB7]

SENATOR CARLSON: Mr. President, and members of the Legislature, in regard to Senator Wightman's bill, I recall very well two years ago when he thought he had a bill that would slide through rather easily and it didn't work out that way. I also remember very well after a week of intense debate on another issue, that Senator Avery stood up and said that he was glad he had something that everybody could agree to quickly, and that didn't work out either. But certainly our thoughts and prayers are with Senator Avery and Ann as they come back today from his surgery and we wish him the best on the way back. I'd like to address a question to Senator Wightman. [LB7]

SENATOR ROBERT: Senator Wightman, will you yield to a question from Senator Carlson? [LB7]

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SENATOR WIGHTMAN: I will. [LB7]

SENATOR CARLSON: To follow up a little more on Senator Stuthman's questions, I like the intent of the bill, and residency to me does not mean a P.O. box. It means, live there. Is that your definition as well? [LB7]

SENATOR WIGHTMAN: That's right. I think it's been defined by the courts, at least it had sometime ago. I can't say whether there's been a decision that would change that. It's moving to someplace with the intent to make that your place of residence. [LB7]

SENATOR CARLSON: And many of us, right now, we have two places of residence. [LB7]

SENATOR WIGHTMAN: That's correct. [LB7]

SENATOR CARLSON: We have one here and we have one at home, but I consider myself a resident of Holdrege, but I'm also a resident of Lincoln. And if that occurred, would there be a problem? [LB7]

SENATOR WIGHTMAN: Well, I think under a lot of laws, you can only have one place of residency and that is where you vote, where you're registered to vote, and so you have to take steps to declare one particular place your place of residence. Registering to vote is one of the issues. If you're talking about two different states where you are a resident for purpose of taxation becomes an issue, but probably the one place of residency follows all of the various requirements. You can't be a resident of one city for one purpose and a resident of another for the other. You can live there during a part of the year, but one or the other has to be your place of residence, Senator Carlson. [LB7]

SENATOR CARLSON: I agree with that, and I probably wasn't very clear because my body and my heart resides in Holdrege. But once in a while my body resides in Lincoln and we're all that way. Senator Wightman, what's the consequence of not following this law if it passes as you've submitted it? [LB7]

SENATOR WIGHTMAN: Well, I think that the consequence of not following it, is exactly where we are right now, and that is that there is no residency requirement as a whole for the clerk of the district court, even though there is a residency requirement for most other elective offices. The one major exception to that being the county attorney because there are probably 10 to 15 counties and perhaps more than that, that there's not an attorney living in. So an attorney in North Platte might serve four or five different Sandhill counties as a county attorney, and so there isn't a residency requirement there for a real reason. [LB7]

SENATOR CARLSON: Well, I think that...certainly the intent of the law is have

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residence where you've been elected. I think it should be carried out and I think there should be a consequence if it isn't. But having said that, I am in support of LB7. Thank you. [LB7]

SENATOR ROBERT: Thank you, Senator Carlson and Senator Wightman. Wishing to speak, Senators Louden, Wightman, and Stuthman. Senator Louden, you are recognized. [LB7]

SENATOR LOUDEN: Thank you, Mr. President, and members. I was wondering if Senator Wightman would yield for questions, if he would please. [LB7]

SENATOR ROBERT: Senator Wightman, will you yield? [LB7]

SENATOR WIGHTMAN: I will. [LB7]

SENATOR LOUDEN: As I read this, do...you mentioned where some of the counties that the county attorneys, you know, don't reside in it. The one county attorney will be an attorney for several counties up in the Sandhills area. Well, how about the clerks of the district courts? I was thinking in our part of the country up there we had one clerk of the district court for two or three counties. Is that...does each county have to have a clerk of the district court or do they trade between counties? [LB7]

SENATOR WIGHTMAN: As far as I know, every county has its own clerk of the district court. That clerk of the district court may serve in some other capacities and I mentioned, I know Frontier County is a county I get to quite often, I believe the clerk of the district court also serves as the county clerk and also the register of deeds. That varies from county to county. We have to keep in mind that we're talking about a rule of law that's going to apply to Douglas County with almost 500,000 in population, and it also applies to Arthur County, which is the least populace of our counties that I think has under 400 people. And I think that's part of the reason for leaving this open so that if a person wants to serve as a clerk of the district court and no one else is running, they could live in an adjoining county and as long as they moved into the county by the time they are sworn in and start holding office, that that...they met the requirement. [LB7]

SENATOR LOUDEN: Well, that's what I notice in there that they can file for election but then by the time if they win the election, then they have to reside in that county and I'm wondering how that works in some of these smaller counties if they're using a clerk of the district court that serves more than one county. [LB7]

SENATOR WIGHTMAN: And I do not believe that happens at the present time. [LB7]

SENATOR LOUDEN: Okay. Well, thank you, Senator Wightman. I was under the impression that we do have a spot up there and I will check into it further, but this is

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mostly a way of someone can file in a county and not necessarily live there to file. And I would question that. I always thought when you filed for election in your county, you had to file...you had to be a resident of where you're filing. And I'm wondering if this will work down through some of the other laws, because we had quite a problem here a few years back on a local level of someone that was filing for, I think, county deputy...well, it was the county officer and they weren't living in the county at the time. So with that, thank you, Senator Wightman. Thank you, Mr. President. [LB7]

SENATOR ROBERT: Thank you, Senator Louden, Senator Wightman, you are next. [LB7]

SENATOR WIGHTMAN: Well, I originally had my light on and I wanted to talk about the county attorneys being an exception to that in a number of counties and I've already had an opportunity to address that in response to some previous question. So I think I've adequately covered that at this situation, with regard to the fact that I think there are other elective offices within the county and within the statutes that are allowed to not live in the county at the time they file as long as they become a resident at the time they are sworn in. So I don't think this is out of line with other elective offices in the county. [LB7]

SENATOR ROBERT: Thank you, Senator Wightman. Senator Stuthman, you are next and recognized. [LB7]

SENATOR STUTHMAN: Thank you, Mr. President, and members of the body. I would like to ask Senator Wightman a couple of questions. [LB7]

SENATOR ROBERT: Senator Wightman, will you yield? [LB7]

SENATOR WIGHTMAN: Yes, I will. [LB7]

SENATOR STUTHMAN: Senator Wightman, in your bill on page 2, line 1, section 1, a clerk of the district court elected after 2008 need not be a resident of the county when he or she files for election of clerk of the district court. How can this happen when you're a registered voter in a county, but you're running for a position in another county, and the county that you live in is going to elect you to a position in another county? Does this work? Is that the correct procedure? [LB7]

SENATOR WIGHTMAN: Well, I think you're going to, have to have made a statement that you intend to reside in the county by the time you're elected and, you know, I think it happens in other situations. I think we've had situations where at least it was debatable whether a congressman representing a particular district was a resident of that county. And Senator Carlson pointed out that people frequently have two places of residence and I think we all know of one situation where what we would have considered the primary place of residence, probably was in Lincoln, and we had a third district

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congressman and he was elected and seated. I know that's under a federal law, but I don't think this is substantially different than that. But I think it's, is an attempt to address the issue in some small counties and I know Senator Louden has several of those small counties in his district that only have 350 or 400 people and it may well be that nobody is seeking that post, and maybe somebody at North Platte or Ogallala is willing to file for that position, the clerk of the district court, and is willing to say they will move there before they are sworn in. So I think it does work and has worked. [LB7]

SENATOR STUTHMAN: The situation that I'm thinking of is the fact that how can you...can a person, can an individual file for an office in another county or another district where that individual does not reside? [LB7]

SENATOR WIGHTMAN: Well, obviously, under the terms of LB7, if it is passed, they will be able to do that. But I think there are other county officials in which the same thing applies. Certainly, as a county attorney, and I think those county attorneys, and I should tell you that, probably are appointed. I'm not sure whether they run or are appointed when they're serving numerous counties or several counties, but that happens all the time. They may be appointed to fill that position. I'm not sure. [LB7]

SENATOR STUTHMAN: But, Senator Wightman, the clerk of the district court is an elected position, am I correct? [LB7]

SENATOR WIGHTMAN: It is an elected position. [LB7]

SENATOR STUTHMAN: And it's an elected position...the concern that I have is on the ballot when you file for an office in another county and you're not a resident of that county, can this happen that you can file in another county? Can that happen in legislative districts, if you live in one district, can you file for senator in another district? [LB7]

SENATOR WIGHTMAN: Without checking that statute, Senator Stuthman, I can't tell you what the law is. I'd have to check. [LB7]

SENATOR STUTHMAN: Yes, and I appreciate that answer. I mean, I've just been looking at the definition of residents and when you're a resident of one county, I don't know, maybe you can. I do not know. I am not an attorney or anything and I don't know what the regulations are as far as where can someone else file for a position in another county... [LB7]

PRESIDENT SHEEHY PRESIDING []

PRESIDENT SHEEHY: One minute. [LB7]

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SENATOR STUTHMAN: ...and have those people vote on you from when you're a resident of another county. I mean, I think this is an issue that we've got to look at and I need to get some definition on that. I think...I do support the fact that the Nebraska county officials, you know, supported this and I think they're trying to clear up some of the concerns that they had that this was not addressed. But, Senator Wightman, could you get me information as far as the regulations, can anybody file for an office at any place or anywhere in the state that he does not reside with an intent to reside there if elected? [LB7]

PRESIDENT SHEEHY: Time, Senator. [LB7]

SENATOR STUTHMAN: Thank you. [LB7]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Lautenbaugh, followed by Senator Carlson. Senator Lautenbaugh. [LB7]

SENATOR LAUTENBAUGH: Thank you, Mr. President, and members of the body. I think the answer may be coming to Senator Stuthman right now. I think it might vary from office to office actually, but I see information on the way as we speak. I'm really answering a question I think Senator Loudon might have raised, and that was the question of whether or not there are clerks of district court that serve multiple counties, and I believe the answer is absolutely not. And this is really a tale of two court systems. The county court systems, which are run largely out of the Supreme Court offices as I understand it, there are some counties where they have a combined magistrate for the county courts. But every county has a clerk of the district court regardless of population size, regardless of case volume. There's a clerk out there for each county, I believe. And I would like...I guess, would Senator Wallman yield to a question? I'm sorry, Senator Wightman, yield to a question? [LB7]

PRESIDENT SHEEHY: Senator Wightman, would you yield to questions? [LB7]

SENATOR LAUTENBAUGH: At ease, Senator Wallman. (Laugh) [LB7]

SENATOR WIGHTMAN: I will. [LB7]

SENATOR LAUTENBAUGH: Senator Wightman, why is it important in your mind that the clerk of the district court live in the county when serving? [LB7]

SENATOR WIGHTMAN: Well, I guess first of all, I'm carrying this bill for the county officials and they seem to think it's important. I think most of the voters would think it's important but if there's anyway possible that that person live within the county. And if they're going to elect them and not necessarily that they be a resident of the county at that time but they be available within the county. It is a...pretty much a full-time job,

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although I do think there are some smaller counties that are open maybe less than five days a week. But, you know, I think it's just enfranchising the voters to have a person holding that office that is a resident of the county. And I understand that the county attorney being an exception to that as I said previously. [LB7]

SENATOR LAUTENBAUGH: Thank you, Senator. This is another one of those bills where it is just a policy decision and I think people of good will can differ. If the voters of a county chose to elect someone as their clerk of the district court, and we're asking you to believe that the voters in a particular county are particularly passionate about who their clerk of the district court is, and they specifically wanted someone from the neighboring county, I don't know who we are to say that this person would have to relocate. And I don't know if all of the counties pay the clerk of the district court the same. I would assume not, but I don't know the answer to that. I would assume it might be tied to volume and whether or not the job is full-time, and there are certain qualifications for serving as clerk of the district court too, not necessarily professional certifications, but hopefully a level of understanding of the court system. You wouldn't have to be an attorney, but some knowledge of a system would help. And once again, the smaller the county gets, the pool of likelier possible candidates does get smaller. And if you're requiring that person to leave their home and relocate to the adjoining county if successful in the election, you may be limiting your pool further. That's just the concern I have. Again, I don't know the cost of maintaining a separate clerk of the district court in each county. This does bump us up against some unpleasant issues that everyone is loath to talk about regarding county government, and I'm not going to be the one to raise them today. I'm just going to say, for the record, to answer an earlier question, yes, rightly or wrongly, every county has a clerk of the district court regardless of population, and I believe they are all elected. Thank you. [LB7]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Senator Carlson. [LB7]

SENATOR CARLSON: Mr. President, and members of the Legislature, I'd like to address a question to Senator Stuthman, if he would yield. [LB7]

PRESIDENT SHEEHY: Senator Stuthman, would you yield? [LB7]

SENATOR STUTHMAN: Yes. [LB7]

SENATOR CARLSON: Senator Stuthman, in listening to your testimony, do you believe that a person should reside in a county before being allowed to file for this office, clerk of the district court? [LB7]

SENATOR STUTHMAN: I think an individual that wants to be a leader in the organization or clerk of the district court or any of those offices, in my opinion, should be a resident of that county where they're going to be working, where they're going to be

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getting their paycheck from, I think they should be a resident of that county. [LB7]

SENATOR CARLSON: Now, there may be good people that are living in the adjacent county, they're looking to further their careers, it appears to be an opportunity is coming up with an office being open, and I agree that once they were elected to that office, they should reside there. We don't have the same rule in some other things. I think having served on a local school board, that we hire a teacher into our system, they ought to live there. We don't really enforce that. Senator Stuthman, I was, in my former life, football and baseball coach. And it's not quite the same and yet there's some parallel here. Suppose I looked at Columbus and I saw that the football job was going to be open and I'd like to apply for that position. I'd sure hate to think I had to move to Columbus and establish residency before I could apply to be the football coach at Columbus High School. And I know that's different than what we're talking about here, but it's, in some ways it's the same. I certainly think that once a person is elected, they're serious about what they've been elected to and they should become a resident of that county. But I think we need some leeway until that point. And yet, Senator Wightman, a law isn't effective unless there's some consequences to not paying any attention to it and I don't know how we address that. How much time do I have left, Mr. President? [LB7]

PRESIDENT SHEEHY: Just over 2 minutes. [LB7]

SENATOR CARLSON: Okay. Thank you, Senator Stuthman. Then I'd like to address Senator Wightman, if he would. [LB7]

PRESIDENT SHEEHY: Senator Wightman, would you yield? [LB7]

SENATOR WIGHTMAN: Yes. [LB7]

SENATOR CARLSON: Senator Wightman, what can be done about having something, having some teeth into this so that if somebody does not comply and ignores it, there's some consequences? [LB7]

SENATOR WIGHTMAN: Well, I think at the request of any resident of that county, that the person could not be seated. And so I think there would be teeth in it if anybody and, of course, the teeth in any law probably depends upon some willingness of someone within the county to enforce those provisions. And if everybody sits idly by, it probably would never be raised. But, you know, I think there's teeth in the law as long as anybody attempts to enforce those provisions. [LB7]

SENATOR CARLSON: Would you be open to, by Select File, having that as an amendment that if they're not a resident by the time that they are to be seated in the office, they're not seated? [LB7]

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SENATOR WIGHTMAN: Well, quite frankly, I think the law includes that. But I think if we were going to do that, because it's my understanding and I don't have the sections...
. [LB7]

PRESIDENT SHEEHY: One minute. [LB7]

SENATOR WIGHTMAN: ...in front of me, that a number of elective offices within the county have exactly the same provision. I'm being furnished with that information. I don't have the statutory section numbers. And by the way, I might address, and I'm doing it on your time rather than Senator Stuthman, but he did ask if a member of the Legislature had a different residency requirement, and they do by the constitution. I've just been handed Section 3...Article III, Section 8, and that does require a residency requirement for one year to be elected a state legislator, so. Statewide, at least, some of these residency requirements are different than they are for county officials. But, you know, I'd certainly take a look at that. But if it's going to involve a lot of county offices other than the clerk of the district court, then that might be difficult to do without addressing all of them. Thank you. [LB7]

PRESIDENT SHEEHY: Time, Senator. [LB7]

SENATOR CARLSON: Thank you. [LB7]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Stuthman. [LB7]

SENATOR STUTHMAN: Thank you, Mr. President, and members of the body. I think this is a situation where we have to put a little bit more thought into it. I do realize that the county officials, the clerks of the district court, you know, support this. I think we have situations throughout the state of Nebraska where, you know, one size really doesn't fit all. We've got, you know, where the population is in the eastern part of the state of Nebraska and then we have counties out farther west what have very little population, and probably there are counties that, you know, may have the situation where no one does file for the clerk of the district court. And there are capable people that could fill that position and they probably don't live in the county. Maybe they are two counties away. I think that situation does arise. But in order for them to fill that position, there might be a very capable person for the clerk of the district court, like I had stated, living maybe 40 miles away. And this individual says, yes, I will establish a residence there if I am elected. And if I'm not elected, I can stay where I'm at. I don't think that this really means that that individual is going to build a new house in that county, that that individual is going to buy a house in that county, that individual may rent a house in that county, but I think it states in there it must be a resident of that county. And I think we need to define, you know, what a resident really is. I think the individual, you know, if elected to office would establish a residency. And that would be where she or he stays, you know, the four, five days a week when she is the clerk of the district court in that

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county. She may rent an apartment and that's her residency. It's no different than us that live out further in the state of Nebraska and rent an apartment down in Lincoln here. But our real residence is still in the county or in the district that we serve. I think this is a situation also where if the opportunity arises, an individual can be a clerk of the district court, or it would be a situation where the county board of commissioners would have to appoint a clerk of the district court because of the fact that no one did run, no one lived in the county, no one really wanted the job in some of those small counties because they could probably go to a different county where there's more population and get a larger paycheck. I would like to see the issue of the residence be defined a little bit more. I have no problem with them establishing a residence there and living there, you know, the five days a week in an apartment. But I am concerned with the fact that, are we expecting these people that maybe live 40 miles away, have a new home by a golf course, to pick up stakes and go and live in a smaller community. Are they going to do that for the possibility of only 4 years of their elected office? I think we should try to define the resident part of it as to state, you know, that they are eligible, you know, to rent an apartment... [LB7]

PRESIDENT SHEEHY: One minute. [LB7]

SENATOR STUTHMAN: ...or to create a post office box where they're going to establish that residency for the duration of that office. I don't know whether we should demand them to purchase or rent property and move the family to that county just because of the fact that they were elected to the clerk of the district court. I think...I would like to ask Senator Wightman another question. [LB7]

PRESIDENT SHEEHY: Senator Wightman, would you yield? [LB7]

SENATOR WIGHTMAN: Yes. [LB7]

SENATOR STUTHMAN: Senator Wightman, would you be willing to work on this, the resident part of it, try to define that a little bit more before Select File, if we move this bill? And I'm supportive of this bill but I'm trying to define the resident part of it. [LB7]

SENATOR WIGHTMAN: Uh, there is a separate residency requirement by statute that I do have in front of me now, which I did not have at the time. I don't know, how much time do we have? [LB7]

PRESIDENT SHEEHY: Five seconds. [LB7]

SENATOR WIGHTMAN: I won't try to read it in 5 seconds, but I do have my light on and I'll discuss that. [LB7]

PRESIDENT SHEEHY: Time, Senator. [LB7]

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SENATOR STUTHMAN: Thank you. [LB7]

PRESIDENT SHEEHY: And, Senator Stuthman, that was your third time. (Visitor introduced.) Senator Wightman. [LB7]

SENATOR WIGHTMAN: Thank you, Mr. President, and members of the body. I do appreciate this opportunity to address questions because I think it's important that we always understand the legislation that we're dealing with. And, certainly, we've kind of framed the issues here with Senator Lautenbaugh questioning whether they should even necessarily have to be residents of the county, and Senator Stuthman being concerned over somebody who may not be a resident at the time they file but becomes a resident at the time of when they would actually be sworn in and start holding office. I have been informed that there is a procedure called a Petition for Removal that maybe addresses some of Senator Carlson's concerns, that if any resident brings a petition for removal because they haven't fulfilled the residency requirement at the time they take office, that that is a proper procedure. I'd like to read the definition of a resident since that's been a lot of the issue that we're talking about here today. It's covered by 32-116 of the Nebraska State Statutes and because of the length of my practice, I think that was less carefully defined or not defined, maybe by court decisions. I see that's a 1994 decision, or a statute. About two-thirds of my practice of law was prior to the passage of this but it reads "Residence shall mean (1) that place in which a person is actually domiciled, which is the residence of an individual or family, with which a person has a settled connection for the determination of his or her civil status or other legal purposes because it is actually or legally his or her permanent and principal home, and to which, whenever he or she is absent, he or she has the intention of returning." So it kind of gets into the same, which I think at one time was more legal determinations than court determinations that it is the place that he lived with the intention to make that his place of residence, so. He actually answers, he or she, actually answers that question by (inaudible) it. And it talks about, who has the determination of his or her civil status or other legal purposes, and some of that can be where you get mail delivery, where you're registered to vote, where you exercise some other forms of citizenry. And so, it's still fairly broad, but it basically does get down to what your intention is. And then it gives two other, two other subsections of 32-116, "(2) being the place where a person has his or her family domiciled even if he or she does business in another place." And, of course, there are many people who, perhaps, run a business in a county that's not their county of residence. And then (3), and I assume these people would not likely be seeking public office is, "if a person is homeless, the county in which the person is living," so. And then it also has some provisions with regard to the armed forces and that you aren't deemed to be a resident of Nebraska just because you're stationed in Nebraska. Usually, a member of the military is considered to be a resident of the state that he originally started serving from or where he... [LB7]

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PRESIDENT SHEEHY: One minute. [LB7]

SENATOR WIGHTMAN: ...registered or was taken into the service, rather than where he's stationed at the time. Again, I think if you were stationed there you could take steps to become a resident of that state, but just because of the fact that you're serving there would not make you a resident of that state, so. I think a lot of those questions are answered and I'm not too sure we would improve upon that by amending this bill, but I certainly would consider that prior to Select File. Thank you, Mr. President. [LB7]

PRESIDENT SHEEHY: Thank you, Senator Wightman. (Visitors introduced.) Additional members wishing to speak on LB7, Senator Wallman. [LB7]

SENATOR WALLMAN: Thank you, Mr. President, and members of the body. I would like to ask Senator Wightman a question. [LB7]

PRESIDENT SHEEHY: Senator Wightman, would you yield to questions? [LB7]

SENATOR WIGHTMAN: I will. [LB7]

SENATOR WALLMAN: Thank you. Senator Wightman, is this a problem in your area or in various counties that they come to you with this bill? [LB7]

SENATOR WIGHTMAN: Well, I think it was a problem that was recognized by the county officials in that...and there probably are all kinds of holes in the statutes like this, but prior to one year ago, there was a requirement that the deputy clerk of the district court live within the county but there was no requirement that the clerk of the district court live within the county even though they were the elective office. So I think it's just the recognition of a hole in our statutes more than anything else. Because almost every other requirement, the county clerk, the county assessor, the county treasurer, which are the primary elective offices other than the county attorney, which we've addressed earlier, there is a requirement that is almost identical to what LB7 is providing. Thank you. [LB7]

SENATOR WALLMAN: Thank you. I would yield the rest of my time to Senator Stuthman. [LB7]

PRESIDENT SHEEHY: Senator Stuthman, 3:50. [LB7]

SENATOR STUTHMAN: Thank you, Mr. President, and thank you, Senator Wallman. I would like to ask Senator Wightman a question or two yet. [LB7]

PRESIDENT SHEEHY: Senator Wightman, would you yield? [LB7]

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SENATOR WIGHTMAN: I will. [LB7]

SENATOR STUTHMAN: Senator Wightman, do you feel that the statement of resident is not an issue as far as this bill is concerned and it's defined in other statutes as what constitute a resident and that you're comfortable with the bill that you have drafted? [LB7]

SENATOR WIGHTMAN: I am comfortable with it as it is drafted because it does mirror the requirements for many of the other county offices. And it just seems to me that this one should read the same. Now, we can study that and I would be glad to address that prior to the bill appearing on Select File. But if they're all the same, then we might be bringing this one out of, out of identity with the other elective offices within the county and I don't know that we would want to do that. [LB7]

SENATOR STUTHMAN: Well, Senator Wightman, I'm also very supportive of the fact that we need to be consistent with the elected officials in county offices. And the way I understand that is, if this bill is passed it's consistent with other elected officials in the county that these offices are held. [LB7]

SENATOR WIGHTMAN: To the extent that that would be necessary to make it mirror the other elective offices, I would certainly consider that. I haven't had time during floor debate to find out exactly how those other elective offices, how the residence requirement is worded, but I would certainly be willing to look at that, Senator Stuthman. [LB7]

SENATOR STUTHMAN: Well, thank you, Senator Wightman. I truly appreciate that. You know, if we can make these elected county officials consistent as far as, you know, where they have to have their residence when they're filing for office, and where they need to have their residence after they take over on the office. So I would be supportive of this, and I would hope and I am positive that Senator Wightman, if he finds some inconsistency with the county officials, that we will address and give me the opportunity to discuss with him prior to it being voted on on Select File. So I respect that of you, Senator Wightman, that you're agreeable to that part of it, and I do support the bill. Thank you. [LB7]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Are there additional members requesting to speak on LB7? Seeing none, Senator Wightman, you're recognized to close. [LB7]

SENATOR WIGHTMAN: Thank you, Mr. President, and members of the body. I certainly will take a look at those and address Senator Stuthman's concern, and find out the other elective offices, exactly what the language is. Probably would not look at addressing it if the language, as we now have it in LB7, is identical to what it is with

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other elective offices within a county. But if it's different, I certainly would be willing to consider that. With that, I would urge your vote to advance LB7 to Select File. Thank you, Mr. President. [LB7]

PRESIDENT SHEEHY: Thank you, Senator Wightman. You have heard the closing. The question before the body is on the advancement of LB7. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB7]

ASSISTANT CLERK: 43 ayes, 0 nays, on the motion to advance the bill, Mr. President. [LB7]

PRESIDENT SHEEHY: LB7 advances. Mr. Clerk, do you have items for the record? [LB7]

ASSISTANT CLERK: Mr. President, your Committee on Government, Military and Veterans Affairs reports LB131 and LB133 to General File. Urban Affairs reports LB522 to General File. New A bill, LB219A by Senator Flood. (Read LB219A by title for the first time.) (Legislative Journal page 431.) [LB131 LB133 LB522 LB219A]

PRESIDENT SHEEHY: Next item under General File, Mr. Clerk. []

ASSISTANT CLERK: Mr. President, LB55 introduced by Senator Fischer. (Read title.) The bill was read for the first time on January 8, referred to the Government, Military and Veterans Affairs Committee. That Committee reports the bill to General File with no committee amendments. (Legislative Journal page 431.) [LB55]

PRESIDENT SHEEHY: Senator Fischer, you're recognized to open on LB55. [LB55]

SENATOR FISCHER: Thank you, Mr. President, and members of the body. LB55 proposes to change the qualifications for county attorneys as well as the qualifications for Nebraska's Attorney General. I believe that these qualifications are very straightforward and are a matter of common sense. LB55 requires that those seeking the nomination for county attorney or attorney general shall be practicing law in Nebraska. While this may seem fundamental to such positions, the statute currently only requires the standards for counties of Class 4, 5, 6 and 7, which have populations of 25,000 or more. Additionally, state statute also requires that the individual practice law for two years in the state prior to taking office in these counties. No such conditions exist for those seeking the position of county attorney in our smaller counties or for the position of Nebraska Attorney General. Therefore, LB55 requires the person seeking the office of county attorney in Class 1, 2, and 3 counties, which have populations of less than 20,000, be admitted to the practice of law in Nebraska. This classification of counties is referred to in the current statute as well as in LB55 as previously indicated. However, no statutory reference currently exists so the bill also specifies the appropriate

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statute in reference to the classes of counties. Lastly, LB55 includes a provision that the candidate for Attorney General be admitted to the practice of law in Nebraska for a minimum of two years prior to taking office. I became aware of the lack of qualifications for county attorneys when an individual was elected as county attorney in my legislative district prior to passing the bar. While there's no longer an existing concern in my district or in the state, the implications of a nonpracticing attorney serving in this capacity are apparent. It's very costly for a county to have to hire another attorney to carry out the duties of the office that only a practicing attorney is authorized to complete. LB55 creates uniformity for the qualification of county attorneys across the state so regardless of the size of a county, a practicing attorney will hold this key county position. The Nebraska Bar Association brought to my attention the fact that there are currently no existing qualifications for Nebraska Attorney General candidates. Again, it is only appropriate to set professional standards for this elected office by requiring that a nominee has at least two years experience practicing law in Nebraska. Thank you, Mr. President, and I ask for your support for LB55. [LB55]

PRESIDENT SHEEHY: Thank you, Senator Fischer. You have heard the opening of LB55. Members requesting to speak, Senator Friend, and Senator Wightman. Senator Friend. [LB55]

SENATOR FRIEND: Thank you, Mr. President, and members of the Legislature. I got a chance, briefly, to talk to Senator Fischer about this and, I too, think that this makes sense in a lot of ways, especially on page 2 of this bill. And first of all, let me, let me preface this by saying the only reason that I discussed it with Senator Fischer is because I wasn't really sure why this was necessary or why this came forward. I can read the committee statement. I mean, I know that the Nebraska County Attorneys Association, and the Nebraska State Bar Association, the Nebraska Association of County Officials, and Senator Fischer's explanation makes a lot of sense. I think if I had any concern, and there's a reason for my concern too. It's not just because I think I'm like some omniscient being that follows every bill and it's time for me to raise concern. I'll explain that in a second. The first piece of this bill, Section 1, her explanation is...was awesome. I mean, I liked it. I understand why. The second section is what I think I had a little bit of concern about and that is, Section 2, 32-507, on page 3, there is new language that says "A candidate for Attorney General shall have been admitted to the practice of law in this state for at least two years next preceding the date such candidate would take office." Okay. I don't know if this is problematic or not, but let me give you a hypothetical. My brother, Jim, and some of you I've talked about him on a couple of occasions out here, is in the United States Military. He's in the JAG Corps. He's a Lieutenant Colonel. He's been practicing law for almost 20 years now. It just so happens, he's licensed to practice law in the state of Nebraska, so under...and look, if Bruning decided he wanted to go be something else, and my brother whose been...you know, was educated at the University of Nebraska, grew up here, was educated here, decided he wanted to come back and run for Attorney General, if he wasn't licensed to

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practice law in the state of Nebraska because he was stationed in Virginia for five years or whatever the case might be, he wouldn't qualify to run for this office. Now, I...again, I don't know if he...it's a bad hypothetical because he is licensed to practice law in this state. He's licensed to practice law in the state of Nebraska and to the best of my knowledge, the state of Iowa. But he did a tour in Iraq, he's been to Kosovo, he is also licensed to practice law in Virginia, it's my understanding, and Maryland. What if he decided he didn't just want to try to take the bar exam in Nebraska and Iowa. Section 1 is mandatory. I mean, and I think we talked about that earlier. Section 2, I'm not really sure. I'd like to find out what you all think about this. I'm not...and Senator...by the way, Senator Fischer gave a really good explanation to me off the record as to why Section 2 would be necessary. And that is, because if you look at Section 1, 23-1201.02 there's precedence for this. No person shall seek nomination or appointment for the office of county attorney, in counties of Class 4, 5, 6 or 7, nor serve in that capacity, unless he or she has been admitted... [LB55]

PRESIDENT SHEEHY: One minute. [LB55]

SENATOR FRIEND: ...to the practice of law in this state for at least two years next preceding the date such person would take office, has practiced law actively, La La La La La. Okay. There's precedence. We're bringing the Attorney General situation in line with the counties of Class 4, 5, 6 or 7. You know what, I've got to be honest, I don't know that we should even have it in place for counties of Class of 4, 5, 6 or 7. I think Senator Wightman's got his lights on. I'd like...I'm not trying to bog this thing down. I do want to hear from some, maybe from some other attorneys who may share a little bit of my concern. I guess, I guess that would be all I'd have for now. Thank you, Mr. President. [LB55]

PRESIDENT SHEEHY: Thank you, Senator Friend. (Visitors introduced.) Returning to floor discussion on LB55, members requesting to speak, Senator Wightman, followed by Senator Sullivan. Senator Wightman. [LB55]

SENATOR WIGHTMAN: Thank you, Mr. President, and members of the body. I think generally this LB55 is probably a good bill. I think probably it should...for a person to be elected county attorney, it should require more than going to law school. And this seeks to establish that they must have taken the bar examination and have been admitted to practice in the state of Nebraska. I would like to have some conversation with Senator Fischer, if she would yield. [LB55]

PRESIDENT SHEEHY: Senator Fischer, would you yield to questions? [LB55]

SENATOR FISCHER: Certainly. [LB55]

SENATOR WIGHTMAN: Senator Fischer, I know in your opening on LB55 you talked

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about being a practicing attorney, and you and I have had some discussion with regard to that. And actually, the provisions of this section do not say that you had to have been a practicing attorney but say that you had to be admitted to the practice of law in this state. Does that...is that a difference between practicing attorney and admitted to practice? [LB55]

SENATOR FISCHER: Oh, Senator Wightman, as a country lawyer, you would know that better than I. But I would say some people probably can practice law without being admitted to the bar. But in order to be legal, I guess, in the state, in order to file with the courts and go before the courts, you do need to be admitted to the practice, is that correct? [LB55]

SENATOR WIGHTMAN: Well, that would be my understanding that being admitted to practice does not necessarily mean that you have practiced law. You may have. But you may serve as a corporate attorney that you're called upon to take part in business decisions probably more than you are the practice of law. But if you're admitted to practice, at least you've taken the steps to take the bar examination and the state has admitted you to the practice of law. You know, an example of somebody who never took the bar exam, yet I think was a brilliant member of his law school class, was our former colleague, Senator Ernie Chambers. You know, he attended law school, was an outstanding graduate of Creighton University, but for one reason or another never elected to take the bar. He would not be qualified under probably either Section 1 or Section 2 dealing both with county attorneys and with the Attorney General's Office, because he was not a practicing attorney. And again, that, that...I'm using that term loosely because practicing attorney and admitted to practice, I think, are two different things. And this only requires that you be admitted to practice. It doesn't mean that you've been out running a law office or that you've been involved in private practice, but that you've been admitted and that qualification could very easily take place serving as corporate counsel. And I believe there are people who have served as corporate counsel who have gone to even the Supreme Court of the state of Nebraska, so. I just wanted to point that out that that doesn't mean necessarily that you've been out hanging your shingle and practicing law actively within a county, but that you have taken the bar exam and you have been admitted to practice. Thank you, Senator Fischer. Thank you, Mr. President. [LB55]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Senator Sullivan, followed by Senator Lautenbaugh. Senator Sullivan. [LB55]

SENATOR SULLIVAN: Thank you, Mr. President, and members of the body. I stand in support of this bill even though, if you will note, that I voted against it as it came out of committee. But the main reason I did was from probably mostly an organizational standpoint. I just didn't feel that...certainly I feel the Attorney General needs to be a member of the bar, admitted to be able to practice law in the state of Nebraska, but from

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an organizational standpoint, I thought that component really didn't belong in this statute. But perhaps it needed to be placed along with duties and qualifications of other constitutional officers. So that was my only problem. I don't really have a big issue with that and I won't stand in the way of getting this bill passed. Thank you. [LB55]

PRESIDENT SHEEHY: Thank you, Senator Sullivan. Senator Lautenbaugh. [LB55]

SENATOR LAUTENBAUGH: Thank you, Mr. President, and members of the body. I do rise in favor of this bill conceptually. And I do want to echo some of the sentiments of Senator Wightman in that there is a difference between being admitted to the practice of the law and practicing law. In some of the other counties where the requirements are somewhat different, there is a requirement of being engaged in the practice of law to be the county attorney and then we always have an issue as to what that means. Is being in law enforcement enough? That was the issue in one county. An officer serving as a...in the sheriff's department, I believe, ran for county attorney. Is that practicing law? Do we really know what that means? Is a corporate lawyer practicing law the same way a trial lawyer is practicing law? So, I would caution us about the two year requirement, because in this case it just says, you have to have been licensed for two years, but it doesn't say what you've been doing those two years. You could have been on an around-the-world tour twice, who knows. So I may offer an amendment on Select File. I hope it's a friendly amendment to just take out the two years so it just says you have to be licensed to practice law, and I think it becomes a good policy at that point. Thank you very much. [LB55]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Senator Dierks. [LB55]

SENATOR DIERKS: Thank you, Mr. President. I wonder if I could visit with Senator Fischer for a minute. [LB55]

PRESIDENT SHEEHY: Senator Fischer, would you yield to questions? [LB55]

SENATOR FISCHER: Yes, I will. [LB55]

SENATOR DIERKS: Senator Fischer, I didn't see any in the...anything in the language here that indicates that the county attorney candidate has to be a resident of that county. Is that still a part of our law or has that been changed? [LB55]

SENATOR FISCHER: I don't know the answer to that right offhand, Senator Dierks. I know that in many of my counties that I represent, there's not an attorney in some of those counties. And the county boards then contract with attorneys in adjoining counties to serve in that position. I don't know the answer to that offhand. I'll have to look...have my staff look that up and we'll answer that for you. [LB55]

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SENATOR DIERKS: Well, thank you. I would appreciate that. At one point a number of years ago, I had legislation that would allow for county attorneys to be elected from a different resident than the county they were serving in, even though there might have been an attorney in that county. But at that time, I think we knew that counties without resident attorneys could get, could hire attorneys from other counties. But the idea, I think, at that time was that if there was a resident attorney in that county, that was the man who got the job, or woman. So I'd like to know what you know about that or can find out about it. Thank you. [LB55]

PRESIDENT SHEEHY: Thank you, Senator Dierks. Are there additional members requesting to speak on LB55? Seeing none, Senator Fischer, you're recognized to close. [LB55]

SENATOR FISCHER: Thank you, Mr. President, and members. Senator Dierks, the committee counsel for the Government Committee is looking up the statute on that. But I believe she told me in passing that there was a law passed several years ago that allowed counties to share a county attorney, if that helps in answering that. But we will look up that residency requirement for you. Again, I bring this bill before you because of a situation that one of my counties happened to encounter. And that was a person who ran for the position of county attorney, was elected, and then had not passed the bar yet. They had just graduated. There was no problem with that person in any way. I want to make that clear. And then that person did pass the bar, and serves ably in the position of county attorney. But that brought up some questions for us in these smaller counties when you don't have that qualification there that you have to be admitted to the bar. If someone was elected county attorney and they would not pass the bar, a county would have the expense of paying for an elected county attorney who could not practice, and then have to hire an additional attorney in order to do the county's business. So this, I think, is a common sense bill. It puts those smaller counties in line with larger counties in regard to the qualification that the attorney must be admitted to the bar. For the Attorney General's part, again, I think that's just common sense that the attorney representing the state of Nebraska should be able to practice before the courts. With that, I would ask you to please advance LB55. Thank you. [LB55]

PRESIDENT SHEEHY: Thank you, Senator Fischer. You have heard the closing. The question before the body is on the advancement of LB55. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB55]

ASSISTANT CLERK: 41 ayes, 0 nays, on the motion to advance the bill, Mr. President. [LB55]

PRESIDENT SHEEHY: LB55 advances. Next item under General File. [LB55]

ASSISTANT CLERK: Next bill, Mr. President, LB20, introduced by Senator Harms.

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(Read title.) The bill was read for the first time on January 8, referred to the Committee on Education, which reports the bill to General File with no committee amendments. (Legislative Journal page 431.) [LB20]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Harms, you're recognized to open on LB20. [LB20]

SENATOR HARMS: Thank you, Mr. President, and colleagues. LB20 allows the Coordinating Commission to make several minor changes in the access to the College Early Scholarship Program. Let me give you just a little bit of background about this so you have a little bit better understanding about it. This program is relatively new. It started in 2007. After this body approved it, it replaced an earlier program that we referred to as the Community Scholarship Foundation Program because it was ineffective. Students weren't using it. The access of College Early Scholarship Programs supports tuition for needy students who are in high school and taking college classes, dual enrollments. If these students would have actually been enrolled as freshmen in college, they would qualify for just about every federal program that's available. Studies have shown us that students who take dual credit classes actually stay in high school, they graduate, they go on to college, and in fact, they do better than the students who did not take dual credit classes. They're more persistent and they understand what it takes to be successful. They understand the study skills that it takes to be successful in such a program. That's why it's becoming so common among states to pay for, as well as school districts, to pay for students in dual credit classes. And a lot of states make no determination of whether you're needy or not. A great example of that is a neighbor to us, is the state of Iowa. They actually put \$9.8 million into such a program. Other states are doing the same thing. This past fall, the Coordinating Commission had \$115,000 available and they used every bit of that amount of money for students to enroll. The second semester, they have \$100,000 which comes from a federal grant, and they've used every bit of that money to enroll students. And what this academic program has done during this academic year, is that it has supported 756 high school students from approximately 150 high schools and 12 different colleges and universities. They've spent all of their funds that have been allotted at an average of \$285 per student. We've also found that 182 students made application for this program that were unfunded. They did not have enough money. And the Commission was notified that there were more students that were getting ready to make application, but simply walked away because they learned that there were not enough money available for them to participate in this program. So what LB20 does is make two minor changes for the Commission. First, it allows the Commission to limit the number of scholarships awarded each semester so that they can balance that budget and move money into second semester if they need to. And it also, secondly, allows the Commission the option to limit students and the number of scholarships they can take. Right now, currently, the money is distributed on the first-come, first-served basis, which would mean that a student could take three or four classes. And they just don't have the

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money to be able to do that right now. This is a great program. We hit a home run with it. We reached the group of students that we were unable to reach that are going to college that are being successful and I would urge you to make these changes. Thank you, Mr. President. [LB20]

PRESIDENT SHEEHY: Thank you, Senator Harms. You've heard the opening to LB20. Members requesting to speak are, Senator Adams, followed by Senator Cook. Senator Adams. [LB20]

SENATOR ADAMS: Thank you, Mr. President, and members of the body. This bill that Senator Harms's has brought, I think he's described it very, very well. Quite simply, what we're doing is taking a limited resource that there's great demand for, and putting a cap on how much a student can get so that more students can have access to that limited resource. More importantly, I think, is the long-range goal here. We want to see as many Nebraska school kids, and it doesn't matter what size of town you come from, we want to see as many kids as possible transition into some type of postsecondary education, which is exactly what this scholarship program gives them an opportunity to do. So while they're in high school, some of them during their junior year, most of them during that senior year in high school, will elect to take these dual credit courses. And just as Senator Harms has described, it helps them make that transition, it gives them a competence base, it gives them some college credit as they head off to college, and they can say, I can do this. It also may fill in some time during that senior year when they otherwise maybe wouldn't be as productive as they could be. So with that, I'm going to close. This is a good bill. Thank you, Mr. President. [LB20]

PRESIDENT SHEEHY: Thank you, Senator Adams. Senator Cook. [LB20]

SENATOR COOK: Thank you, Mr. President. I'm very excited about the prospect of this bill, but would like to ask Senator Harms if he would yield to a question. Perhaps Senator Adams addressed it, but I would still like to ask. [LB20]

PRESIDENT SHEEHY: Thank you. Senator Harms, would you yield? [LB20]

SENATOR HARMS: Yes, I would. [LB20]

SENATOR COOK: Thank you. I read in reviewing the bill that students were only eligible to apply for the scholarship once. If that's the case, could you enlighten me, as students are probably unlikely to come up with more money to take additional courses, is there a reason for that? [LB20]

SENATOR HARMS: Well, we just simply don't...yes, there is. We simply don't have enough money to be able to cover this. And right now, you know, if we wanted to put more money into this program, I would support that. But in the...I'm on the

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Appropriations Committee. I understand the fiscal concerns we have. I understand that this...we don't know where the bottom line is going to be. And until we know that, I would really not want us to do that. I think it's a great program, a great cause, but I'm afraid to make that move, because we have to transfer from someone else and I don't think that's the appropriate thing to do right now, so. Am I answering your question? [LB20]

SENATOR COOK: All right. Yes. Thank you very much. I agree that we should support and move this bill forward. I worked with students who took advantage of dual enrollment and it did indeed anchor them and offer them an opportunity to get encouraged about postsecondary education. Thank you. [LB20]

PRESIDENT SHEEHY: Thank you, Senator Cook. Senator Stuthman, followed by Senator Nordquist. Senator Stuthman. [LB20]

SENATOR STUTHMAN: Thank you, Mr. President, and members of the body. I would like to ask Senator Harms a question, please. [LB20]

PRESIDENT SHEEHY: Senator Harms, would you yield? [LB20]

SENATOR HARMS: Absolutely. [LB20]

SENATOR STUTHMAN: Senator Harms, in your opening statement here, or...the opening statement, it said it also limits the number of scholarships each student may receive. Can you tell me how many scholarships are there available that these students could receive? You know, if you're going to limit the number, explain that part of it. What could they have got without this bill and what can they get with this bill? [LB20]

SENATOR HARMS: Well, that it was a first-come, first-serve basis, Senator. They could probably get four or five. They could take up to 15 credit hours while still in high school during that particular span of time. So what I think what they're asking to do now, is to hold that down to maybe one or two. It also depends upon the demand that they have...well, in the Coordinating Commission. But in order to get as many students as possible into the program, that's what they're trying to do, just trying to limit the number that the student can take. [LB20]

SENATOR STUTHMAN: So in other words, it limits the number that the student could receive as far as scholarships, but the intent is to keep the amount of scholarships there, but make them available to more students in the postsecondary education, is that what this bill is about? [LB20]

SENATOR HARMS: Yes. Thank you, and thank you for clarifying that because that's a good point. Yes. [LB20]

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SENATOR STUTHMAN: Okay. Thank you. I do support the bill. Thank you, Mr. President. [LB20]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Nordquist. [LB20]

SENATOR NORDQUIST: Thank you, Mr. President. I have a quick question for Senator Harms. Can you elaborate on the qualifications for this program? [LB20]

PRESIDENT SHEEHY: Senator Harms, would you yield? [LB20]

SENATOR HARMS: Thank you very much. That is a good question and let me just go through that for you. The way the law reads is that a student or student's legal guardian or the student's parents are...if they're eligible to receive the following: if they're eligible to receive supplemental security income; if they're eligible to receive food stamps; if they're eligible to receive free and reduced lunches, or aid to families with dependent children; assistance under the special supplemental nutrition; a program for women, infant and children. And Senator, we added one other item to this and that was hardship. And let me define that for you. We were concerned when we put this bill together that there are possibilities that a child could fall through the cracks such as a fire in a home, burned the home down, the parent dies or the parent, all of a sudden, is bankrupt, or there is an illness, and the family just cannot make that payment. What we wanted to make sure is, that we didn't turn one of those kids away. We wanted to make sure that we gave them the opportunity to have that experience to go to college and be successful and that's how they qualify. [LB20]

SENATOR NORDQUIST: Thank you, Senator Harms, for your answer. And thank you for your leadership on this issue. I know this is the bill that you championed back in 2007 and it's critical to the future of our state. These are, these are kids that if we get them in the system now, if we get them in the higher education system while they're in their last year or two of high school, that these are kids that will go through and most likely complete a degree and make us more competitive as a state. It's a shame that, you know, we're not funding it at a higher level. I know we're in tough fiscal times, and hopefully in the future we can make this the priority it needs to be. Because, you know, as you said the state of Iowa is funding and there's a program at \$9 million, was that correct? Nine million dollars they're putting...and we're funding it at \$115,000. So I hope when times get better that we really try to make this the priority that it needs to be. Thank you. [LB20]

PRESIDENT SHEEHY: Thank you, Senator Nordquist. (Visitors introduced.) Are there additional members requesting to speak on LB20? Senator Nelson. [LB20]

SENATOR NELSON: Thank you, Mr. President, and members of the body. Would

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Senator Harms yield to a question? [LB20]

PRESIDENT SHEEHY: Senator Harms, would you yield? [LB20]

SENATOR HARMS: Yes, I will. [LB20]

SENATOR NELSON: Senator Harms, I'm certainly in support of this bill. If you have the green copy in front of you, I'm looking at page 3 on line 6. Subparagraph 4 thereafter talks about limiting the number of scholarships a student may receive, but right above that the language is "may limit the number of scholarships awarded in each term." Is that a different thing that we're talking about? [LB20]

SENATOR HARMS: Yes, yes, it is, Senator. [LB20]

SENATOR NELSON: Could you just elaborate on that a little. [LB20]

SENATOR HARMS: Yeah, they just want to limit the number of scholarships individually a student can take. And also have the ability to limit per semester overall the number that they can award so that they can transfer money back and forth. That's part of the problem. And the reason for that is, as I testified earlier about, Senator, is that it's based on a first-come, first-serve basis, so students who get their applications in early could have three or four or five in and could be funded for all of those. [LB20]

SENATOR NELSON: So is there a certain amount of money allocated for each semester or do they have a lump sum that they can use over the entire year, and you're just saying that they would want, perhaps, to reduce the amount for the first semester so more is available later on, is that what this permits them to do? [LB20]

SENATOR HARMS: Well, the answer is yes to both of those. They have a limit in the number, and the amount of money in General Fund was \$115,000. They spent every bit of that the first semester. They had \$100,000 left in a grant for federal...a federal grant that they were able to use, and so, it's both. They have a limit on the amount they have and they want to be able to move that around and limit the number that students can receive. [LB20]

SENATOR NELSON: Well, thank you. Thank you for answering those questions, Senator Harms. Thank you, Mr. President. [LB20]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Senator Wallman. [LB20]

SENATOR WALLMAN: Thank you, Mr. President, and members of the body. Would Senator Harms be open for a question? [LB20]

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PRESIDENT SHEEHY: Senator Harms, would you yield? [LB20]

SENATOR HARMS: I'd be happy to. [LB20]

SENATOR WALLMAN: Thank you, Senator. I noticed on this testimony, one neutral. Why did Wesleyan give for a neutral testimony? [LB20]

SENATOR HARMS: Pardon me? [LB20]

SENATOR WALLMAN: Wesleyan University, I noticed their representative put neutral on this position. I just wondered... [LB20]

SENATOR HARMS: To be honest with you, Senator, I didn't stay for...because of where we were with...in Appropriations and our budget building, I did not actually...I was there at the end of the hearing so I didn't close the bill. And maybe one of the senators can answer that for me. [LB20]

SENATOR WALLMAN: Thank you. [LB20]

SENATOR HARMS: You're welcome. [LB20]

PRESIDENT SHEEHY: Do you have a preference, Senator Wallman? [LB20]

SENATOR WALLMAN: Would Senator Sullivan please... [LB20]

PRESIDENT SHEEHY: Senator Sullivan, would you yield? [LB20]

SENATOR SULLIVAN: Thank you, Mr. President, and members of the body. I was trying to get Senator Adams' attention to help me refresh my memory. But to the best of my knowledge, Nebraska Wesleyan was in full support of this. It's just that they were also commenting that there are far more applicants than there are dollars to go around, so limiting it might be wise. [LB20]

SENATOR WALLMAN: I do support this bill. Thank you. [LB20]

PRESIDENT SHEEHY: Senator Sullivan. Thank you, Senator. Are there additional members requesting to speak on LB20? Seeing none, Senator Harms, you're recognized to close. [LB20]

SENATOR HARMS: Thank you, Mr. President. I would just urge for you to support these changes. This is a great bill. This is a great program for kids and it gives kids the opportunity who many times will have the doors shut on them, gives them a chance to experience what it's like to be successful, what it's like to go to college, what it's like to

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begin to develop study skills to be successful, and these are the students that we've been losing. And these are the students we want to go to college. So I'd ask you to support it. Thank you, Mr. President. [LB20]

PRESIDENT SHEEHY: Thank you, Senator Harms. You have heard the closing. The question before the body is on the advancement of LB20. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB20]

ASSISTANT CLERK: 37 ayes, 0 nays, on the motion to advance the bill, Mr. President. [LB20]

PRESIDENT SHEEHY: LB20 advances. Next item under General File. [LB20]

ASSISTANT CLERK: Next bill, Mr. President, LB102, which is introduced by Senator Adams. (Read title.) The bill was read for the first time on January 9, referred to the Committee on Education. That committee reports the bill to General File with committee amendments attached. (AM43, Legislative Journal page 325.) [LB102]

PRESIDENT SHEEHY: Senator Adams, you're recognized to open on LB102. [LB102]

SENATOR ADAMS: Thank you, Mr. President. Members of the body, this particular bill really, in some respects, is philosophically a spin-off of what Senator Harms's bill just did. His bill was trying to encourage more secondary students to find a way to move into postsecondary education, which is exactly the intention of this bill. What this bill does, in the simplest terms I can describe it for you, is this. It creates a third option for admission and qualification for state aid to a four-year institution. And what I mean by that is this. Currently, you can be admitted to a four-year institution in Nebraska and you can qualify for financial aid if you are a high school graduate, there's one, or number two, you have a GED degree. You have either one of those right now in Nebraska you can apply for admission to the university or to Wayne State and you could qualify and you would also qualify for assistance, financial aid. What LB102 does is add one more option, and I think it's a good one. What it says is, in effect, if we have students out there who maybe don't have a high school diploma, who may not have a GED degree but they have an associate's degree from a community college, if they have that criterion, what this bill would say is then you, too, become eligible for admission, you, too, become eligible for financial aid at a four-year institution. What this essentially does is to create an additional pathway to get students into our postsecondary schools, into the four-year colleges, and takes away a barrier. That's the essence of the bill. Thank you, Mr. President. [LB102]

PRESIDENT SHEEHY: Thank you, Senator Adams. You've heard the opening of LB102. As indicated, there is a Education Committee amendment. Senator Adams, you're recognized to open on AM43. [LB102]

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SENATOR ADAMS: Thank you, Mr. President. If you'll notice the committee statement, and some of you may have gotten e-mails to this effect, the exempt school folks were upset by the green copy of the bill. And I believe that they were primarily upset because of the language on page 2 of the bill, in Section 1, in line...about line 6 where the word "accredited" is used, "an accredited high school." There was also some concern on the part of the State Board of Education, probably reflecting concerns of high schools across the state, that in some way, if you look at the language on page 2 really beginning from about line 6 on down to line 14, that this bill was in some way trying to establish what graduation requirements are going to be, and that's the prerogative of individual schools in this state and not the intention of this bill. Hence, what the amendment does, quite simply, is to strike the language there where you have four units of English and three units of mathematics. It also strikes the language of "an accredited high school." In so doing, the State Board of Education came in, in support, and I believe this should remedy the exempt school folks' concerns about would their children be disallowed from admission and financial aid qualification into a four-year institution. So I think the amendment is an important one and we still get at the core of what the bill is trying to do. Thank you, Mr. President. [LB102]

PRESIDENT SHEEHY: Thank you, Senator Adams. You've heard the opening of AM43 to LB102. Members requesting to speak are Senator Pirsch, followed by Senator Hadley, and Senator Fulton. Senator Pirsch. [LB102]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I appreciate your statement coming fore with an amendment, Senator Avery (sic). Just for the record, you know, I had some contacts from home educators in my district with respect to the intent of the bill. Just to clarify, I think you did but just to be absolutely sure, is the legislative intent of the bill purely to generate one more category of high school graduate who qualifies for postsecondary education and not to exclude any categories of high school graduates already recognized by postsecondary institutions for admission and financial aid? [LB102]

SENATOR ADAMS: If I understand your question correctly, yes. Your answer is yes. [LB102]

SENATOR PIRSCH: Very good. [LB102]

SENATOR ADAMS: All we are really doing, we're not excluding anyone. What we're doing is creating actually a third opportunity for people to get in and to quality. [LB102]

SENATOR PIRSCH: Very good. Thank you very much. I'd yield the balance of my time, should you like it. [LB102]

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PRESIDENT SHEEHY: Just under 4 minutes. [LB102]

SENATOR ADAMS: What Senator Pirsch has referred to, I'll just recap again. It was a concern of the exempt school folks that the language was going to disallow them. That was never the intention of the bill. The intention of the bill is to create, and I'm being repetitive, but another pathway for people to qualify for state aid and admission to a four-year institution by saying that an associate's degree from community college would give them that avenue. Thank you, Mr. President. [LB102]

PRESIDENT SHEEHY: Thank you, Senator Adams. Thank you, Senator Pirsch. Senator Hadley. [LB102]

SENATOR HADLEY: Mr. President, members of the body, would Senator Adams yield to a question? [LB102]

PRESIDENT SHEEHY: Senator Adams, would you yield? [LB102]

SENATOR ADAMS: Yes. [LB102]

SENATOR HADLEY: Senator Adams, is it correct now then that someone may go to a community college and earn an associate degree without a high school diploma? [LB102]

SENATOR ADAMS: To my understanding, community colleges really don't set the same standards for entry that other institutions do, so the answer would be yes. [LB102]

SENATOR HADLEY: Okay. Another question then: Part of the bill does require certain courses to be taken. Would those be the normal type of courses that a university would expect a high school graduate to have to enter a university? [LB102]

SENATOR ADAMS: Well, the courses that you're referring to, I'm assuming you're looking at page 2 and four units of English. [LB102]

SENATOR HADLEY: Yes, that's correct, Senator. [LB102]

SENATOR ADAMS: The amendment takes that out. [LB102]

SENATOR HADLEY: That takes that? Okay, the amendment... [LB102]

SENATOR ADAMS: That takes that out. [LB102]

SENATOR HADLEY: ...takes that one out. [LB102]

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SENATOR ADAMS: Because the determination of what constitutes a diploma from Kearney High School or York High School is determined by the board of education of Kearney Public Schools. [LB102]

SENATOR HADLEY: Okay. Thank you, Senator Adams. I'll yield the rest of my time to Senator Adams, if he wishes it. [LB102]

PRESIDENT SHEEHY: Senator Adams, 3 minutes, 50 seconds. [LB102]

SENATOR ADAMS: Thank you, Senator Hadley, but I really have no further comment. [LB102]

PRESIDENT SHEEHY: Thank you, Senator Hadley. Senator Fulton. Senator Fulton waives. Senator Pirsch. [LB102]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I wonder if Senator Avery (sic) might yield to a quick question. [LB102]

PRESIDENT SHEEHY: Senator Adams, would you yield? [LB102]

SENATOR PIRSCH: Thank you very much, Senator, and I, you know, I hope I'm not belaboring the point. I wonder then if after the amendment the original language would still read, and tell me if I'm incorrect, "For purposes of financial aid relating to postsecondary education and admission to postsecondary educational institutions, a student shall be deemed a high school graduate if he or she has obtained an associate of arts degree or an associate of science degree from a community college in Nebraska," is that...and then period. [LB102]

SENATOR ADAMS: Period. [LB102]

SENATOR PIRSCH: Is...that would be remaining language? [LB102]

SENATOR ADAMS: That language would remain. Everything from line 6 down then would be amended out. [LB102]

SENATOR PIRSCH: Would it...could it...is it capable of being misinterpreted by that one sentence then, because it says for financial aid and admission the student is deemed a high school graduate if they obtained a degree from a community college, and associate of arts degree or an associate of science degree from a community college in Nebraska. That doesn't purport to, and you can probably fill this in from the rest of the context of the bill which I don't have, that doesn't, that statement in and of itself would not purport to say that's the only occasion in which, right? There are other language within the bill as a whole that would allow for then an understanding of those who are eligible for

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admission and student aid if they had gone through home education. Is that correct?
[LB102]

SENATOR ADAMS: Yeah, I think the answer would that...would be yes. I mean the other qualifications of a high school degree or a GED degree are still there. This just adds a third. [LB102]

SENATOR PIRSCH: Okay. Well, thank you for clarifying that and, with that clarified, I would urge passage of the amendment to help make that clarification and then the underlying bill as well. [LB102]

SENATOR PIRSCH: Thank you, Senator Pirsch. Senator Karpisek. [LB102]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. Could I ask Senator Adams a couple questions, please? [LB102]

PRESIDENT SHEEHY: Senator Adams, would you yield to questions? [LB102]

SENATOR ADAMS: Yes. [LB102]

SENATOR KARPISEK: Thank you, Senator Adams. I heard Senator Hadley's question but I maybe want to ask again. How would these young people or anyone take the classes at a community college? Would it be in high school they could take these classes or... [LB102]

SENATOR ADAMS: Well, what this is...what this is, in essence, saying is that, you know, maybe through the dual credit option that we talked about earlier with Senator Harms or as a part-time or full-time student at one of our community colleges you get an associate's degree and inherent typically in those degrees are English classes and math classes. And what this would simply say is that if you have that degree, however you came about those hours, then you have met an admissions possibility to a four-year institution. [LB102]

SENATOR KARPISEK: But so the bottom line is you have to have your associate's degree, not just have taken classes there. [LB102]

SENATOR ADAMS: That's right. Not just have taken classes, that's right. [LB102]

SENATOR KARPISEK: Okay. Thank you, Senator Adams. I think it's a wonderful idea. Anyway that we can get students to go on to school, however they can get there, I think is a very worthwhile effort and I commend Senator Adams for the idea and I will definitely support the bill. Thank you. [LB102]

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PRESIDENT SHEEHY: Thank you, Senator Karpisek. Are there additional members requesting to speak on AM43? Seeing none, Senator Adams, you're recognized to close. [LB102]

SENATOR ADAMS: I'll make my closing very short on the amendment. What the amendment does is to delete language that we found in hearing was problematic to the State Board of Education and to the exempt school folks, and it takes that language out. Thank you, Mr. President. [LB102]

PRESIDENT SHEEHY: Thank you, Senator Adams. You have heard the closing. The question before the body is on the adoption of AM43 to LB102. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB102]

ASSISTANT CLERK: 38 ayes, 0 nays on the adoption of committee amendments, Mr. President. [LB102]

PRESIDENT SHEEHY: AM43 is adopted. We will now resume floor discussion on LB102. Seeing no members, Senator Adams, you're recognized to close. [LB102]

SENATOR ADAMS: Thank you, Mr. President. And again, I'll keep the closing very, very short. All we are doing is creating a third opportunity for a student to get into and qualify for a four-year institution. And what you might also think about are the number of nontraditional students we have in our community college world today and we very well may be helping them get into our four-year institutions. Thank you, Mr. President. [LB102]

PRESIDENT SHEEHY: Thank you, Senator Adams. You have heard the closing. The question before the body is on the advancement of LB102. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB102]

ASSISTANT CLERK: 41 ayes, 0 nays on the motion to advance the bill, Mr. President. [LB102]

PRESIDENT SHEEHY: LB102 advances. Next item under General File. [LB102]

ASSISTANT CLERK: LB201 is legislation introduced by Senator McGill. (Read title.) Bill was read for the first time on January 12, referred to the Committee on Judiciary. That committee reports the bill to General File with committee amendments. (AM83, Legislative Journal page 326.) [LB201]

PRESIDENT SHEEHY: Senator McGill, you're recognized to open on LB201. [LB201]

SENATOR MCGILL: Mr. President, members of the body, this is a cleanup bill dealing

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with some legislation we passed two years ago in 2007. This is the case of the Nebraska child who was being abused by her father in Canada. Her mother Susan has been around speaking to you, almost all of you, about this case since session began, so hopefully this is familiar in most of your minds. I am, for the record, going to go through some of the details from the past before I'm going on to the amendment that we have in the Judiciary Committee. In 2007, with LB341, the Legislature unanimously and in only two weeks after introduction corrected a very grave problem in our state's efforts to protect our most valuable assets--our children. Prior to the 2007 amendment, courts of foreign countries were free to place Nebraska's children where one parent lived outside of the United States in abusive and neglectful homes, and our Nebraska courts were powerless to do anything about it. With the help of the Nebraska Bar Association and the National Conference of Commissioners on Uniform State Laws, in 2007 we passed model legislation that kept the best of the international provisions of the Uniform Child Custody Jurisdiction and Enforcement Act, while at the same time providing under certain situations our Nebraska courts with the final authority to prevent foreign courts from subjecting these Nebraska children to documented abuse and neglect. LB201 solves a procedural problem which could not have been anticipated in 2007. The current law is subject to an interpretation which allows an abusive parent living in a foreign country to dangle the foreign court's child custody order over the head of the Nebraska parent and child indefinitely without actually attempting to enforce it in Nebraska and thereby thwart the protections we put in place in 2007. As a result, the abusive parent can continue to torment the child from abroad by threats and uncertainty. LB201 closes this gap by providing that a Nebraska court can exercise child custody jurisdiction and protect the child jeopardized by the foreign court's order through the implementation of our 2007 law, even if the foreign parent delays or withdraws his or her efforts to enforce the foreign decree. The bill does not change the substance of the law, just the procedural aspects. We did come up with an amendment, thanks to Senator Council and some great questioning and debate that we had in the committee hearing that brought up another possible hole we can go ahead and fill today as we're debating the bill. With that, thank you, Mr. President. [LB201]

PRESIDENT SHEEHY: Thank you, Senator McGill. (Visitors introduced.) As was noted, we do have a committee amendment from the Judiciary Committee, AM83. Senator Ashford, you're recognized to open. [LB201]

SENATOR ASHFORD: Mr. Lieutenant Governor, and Senator McGill has aptly described the intent of this legislation and I just might add that in this process we found, in looking at a decision which was entered by Judge Merritt, an opinion written by him a couple of years ago really focused on a gap in Nebraska law. So again, this is an example of this Legislature dealing with an issue that, in this case, the judiciary had highlighted and brought to our attention. And though it does apply, rightly so, to a resident of the state who is identifiable to us because she has come to many of us and expressed her concerns about her child that was adversely...has been adversely

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impacted by this gap in our law, but in reality this issue is far greater than any one individual case and certainly it is our responsibility to pass laws for all citizens and I think we're clearly doing that. The committee amendments, as Senator McGill suggested, just go one step further from where we were last year. Essentially, what we did last year in the bill that was passed is we made clear that if a child was in the state of Nebraska and was habitually, the wording is "an habitual citizen of the state," essentially living here on an ongoing basis, and there is evidence of abuse and neglect in a foreign jurisdiction, which in the case that was decided by Judge Merritt there was evidence of that abuse and neglect, that this court...the state courts of Nebraska could in fact...could reject the order of, in this case, a Canadian court or any other foreign court if it was not in the best interests of the child. So that's what we did last year and, in so doing, I believe went one step in protecting the children of Nebraska, as Senator McGill so rightly suggests. What this amendment does, the committee amendment, is simply clarify further that under the standards and laws of our country and certainly consistent with those interpretations of international law, that if a child is habitually residing in Nebraska and if there is evidence of abuse and neglect that the court of...courts in...district courts or whatever court takes jurisdiction of a case in Nebraska involving this child can't enter an order regarding custody without personal jurisdiction over the other party, and that rule, that provision and the provision that's in this amendment is consistent with, and I'm going to give you the cite, the Uniform Child Custody Jurisdiction and Enforcement Act, UCCJEA, which is a bit of a gobble of words and letters, but basically this amendment is consistent with that act. So here's what we have today. If there's a child...with this amendment, if the Legislature so deems it appropriate to pass this amendment on and advance the bill, which I suggest it should do, is that if a child is habitually a resident of Nebraska, if the child is...if there is evidence of abuse and neglect and if they're in another jurisdiction, and even if there is a court order in another foreign jurisdiction in this case, in the case that Senator McGill alludes to, that the court in Nebraska can in fact change the custody of the child or enter a custody order regarding that child in Nebraska without personally serving the other party in the other jurisdiction. So in effect what would happen is a case, original case, could be filed in Nebraska regarding that child, notice can be given through publication but it's not required that there be an actual service of summons or service of the petition to that other party. And the rationale underlying all of this is the best interest of the child. Certainly the other party could come in and litigate the issues, but it's not...what's important to us and what is consistent with uniform laws, and this amendment has been researched by the Uniform Laws Commission of the Federal Bar Association and certainly the Nebraska Bar Association has looked at this, that what is in the best interest of our children is to pass a bill that is...and a law that is consistent with these uniform laws, and that's what this does do. In addition to that amendment, which makes it clear that personal jurisdiction, and again Senator Council, as Senator McGill suggests, did do some good work in the committee in bringing out some of the inconsistencies of the bill as introduced unless these amendments were, as they were by the committee and hopefully by this body, are adopted to make sure that this is

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absolutely clear that Nebraska is in line with uniform laws, that the children of the state are going to be protected against these orders that are flowing, you know, around from other, in this case, foreign jurisdictions, jurisdictions outside the United States, and that the children are protected in a proceeding in our courts at the appropriate time. And with that long (laugh), too long explanation, I would certainly suggest that we advance...we adopt AM83 and advance LB201. Also, the emergency clause is in the amendment as well so when we pass this bill we'll need the requisite number of votes. It's appropriate that the emergency clause apply, in my opinion. I think it was the opinion of the committee to do so as well. Thank you, Mr. President. [LB201]

SENATOR ROBERT PRESIDING []

SENATOR ROBERT: Thank you, Senator Ashford. You've heard the opening on AM83 to LB201. Those wishing to speak: Senators Pirsch, White, and Price. Senator Pirsch, you are recognized. [LB201]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I wonder, I have just some questions with respect to the bill. I wonder if...actually, I'll ask some initial non-kind-of-legalistic type of questions just in terms of background, if Senator McGill would yield to that, and then maybe I'll turn to other members of the Judiciary Committee for more legalistic type of questions. So if, Senator McGill, you'd yield to a couple of quick questions. [LB201]

SENATOR ROBERT: Senator McGill, will you yield to a question? [LB201]

SENATOR MCGILL: I will. [LB201]

SENATOR PIRSCH: Okay. Senator McGill, this stems from...I mean originates, the bill, actually in a law that was passed last year, correct, in which a... [LB201]

SENATOR MCGILL: 2007. [LB201]

SENATOR PIRSCH: Yeah, in which a particular case in Nebraska brought it to light which apparently a couple that had divorced, one in a different country then and one who is residing here in the United States right in Nebraska? [LB201]

SENATOR MCGILL: Yes. The child is a resident of Nebraska but her father had legal...she would go up there and spend a few months with him as part of his visitation and there was very, very hard-core proof that she was being abused during the times that she would go up there. [LB201]

SENATOR PIRSCH: Okay. Was that...was the child subject to a child custody order from Nebraska or from this foreign country jurisdiction? [LB201]

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SENATOR MCGILL: I'm not sure if I can answer that particular question... [LB201]

SENATOR PIRSCH: Okay. [LB201]

SENATOR MCGILL: ...about the past, but I do know that the foreign court refused to acknowledge any abuse claims, which is where the problem came, is that... [LB201]

SENATOR PIRSCH: I see. [LB201]

SENATOR MCGILL: ...Canada refused to do anything about it. [LB201]

SENATOR PIRSCH: I see. Okay. And so the long and the short of it is a bill was passed last year that said in certain situations where a domestic...where a court in Nebraska reached a clear conclusion, or whatever is legal standard, that abuse and neglect had gone on, that they can assert jurisdiction in a way that they normally could not, correct? [LB201]

SENATOR MCGILL: Yes. [LB201]

SENATOR PIRSCH: Okay. I'll turn then to...I appreciate the background. I'll turn then to...why don't I ask Senator Ashford the next question which deals with what we're doing this year. Apparently there was a tweak in the case whereby, in light of the bill that was passed last year, then this...apparently in this particular case this individual in Canada then did not go forward or avail themselves of court enforcement of this child custody order. Is that where the problem was? [LB201]

SENATOR ROBERT: Senator Ashford, will you yield? [LB201]

SENATOR ASHFORD: Senator Pirsch, could I just take one second so I get the information? [LB201]

SENATOR PIRSCH: Sure. And I guess that's what I'm trying to, while you're looking for your notes there. [LB201]

SENATOR ASHFORD: Okay. There was a custody order entered. There was an order in Canada. This was a visitation issue, not so much a custody issue, I believe. [LB201]

SENATOR PIRSCH: I see. And so... [LB201]

SENATOR ASHFORD: I mean what I'm saying is the Canada court, the Canadian court, I believe it was British Columbia, entered an order regarding custody, I believe that gave custody to the mother in this case and that visitation rights...where the issue came in

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was it was that the respondent, I guess you would say, with having visitation rights, there was a concern by the petitioner that the child would not be returned back to the jurisdiction, in this case Nebraska, and that's where the conflict arose. [LB201]

SENATOR PIRSCH: Oh. Was the original order, was that done in Canada then or was that done by a Nebraska court? [LB201]

SENATOR ASHFORD: The original order was entered in the British Columbia court. [LB201]

SENATOR PIRSCH: Okay. [LB201]

SENATOR ROBERT: One minute. [LB201]

SENATOR PIRSCH: And so the question was, the question was in certain circumstances where the state of Nebraska felt that it had a compelling reason that there was abuse and neglect going on and not being adequately enforced in the home jurisdiction, there was a need for a way to have jurisdiction over those particular cases then. Is that the original bill? And then in this particular case then this year apparently then the Canadian individual did not seek to enforce the child support order...I'm sorry, the visitation order in Canadian courts? Again, I'll ask, in this case then the loophole, if you'd call it that, is where a Canadian judge...I mean, I'm sorry, where the Canadian father did not attempt to enforce the child visitation order in Canadian courts. Is that right? And then... [LB201]

SENATOR ROBERT: Time, Senator. [LB201]

SENATOR PIRSCH: Very good. [LB201]

SENATOR ROBERT: Those wishing to speak: Senators White, Price, Council, and Pirsch. Senator White, you're recognized. [LB201]

SENATOR WHITE: Thank you, Mr. President. Would Senator Ashford yield for some questions, please? [LB201]

SENATOR ASHFORD: Yes. [LB201]

SENATOR WHITE: Senator Ashford, I understand the history of this, that there was a child located in Nebraska, the parent was relocated to Canada. The parent in Canada got a Canadian court, on really a minimum hearing in terms of evidence presented, to grant them custody of the child. We have a uniform act that requires the state to recognize the judgments of other states and also other sovereign countries. This is a significant departure from that and I have two general questions and wonder if you

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could just generally educate the floor on these matters. First, do we run afoul of due process requirements that the parent who will lose custody should the Nebraska courts change custody in the case that kind of brings us here from the Canadian residing parent to the Nebraska parent with the child in Nebraska, is that a due process violation because the noncustodial parent, the parent in Canada, doesn't get an actual notice of the hearing? That's one question. And then the other question is, are we at all in violation of full faith and credit requirements wherein we're required certainly to other states to give full faith and credit to their judgments? And again, I think probably the presence of the child is the distinguishing fact, but if you'd address those I would be grateful. And I yield the remainder of my time to Senator Ashford. [LB201]

SENATOR ROBERT: Three, twenty-four, Senator Ashford. [LB201]

SENATOR ASHFORD: Thank you, Senator White, and hopefully I can do that. The court in Nebraska would...has jurisdiction over, with this amendment, under the...for a case to determine custody. That's what we're talking about here. The jurisdiction is...follows the uniform laws as it relates to personal jurisdiction that's consistent with other statutes in the state. It isn't that this person is not served. It's that this person...it's not required that the court in Nebraska have personal jurisdiction to enter the order. So once...if the original action for custody in Nebraska is brought in Nebraska then the normal process would occur. So I think that would...and it could be collaterally attacked, I believe as well, by the respondent at a later time or certainly the person could come into Nebraska within the jurisdiction and defend the case. As far as the Canadian order which is out there and maybe...and the full faith and credit for that order or towards that order argument, I believe my answer would be, and I'll check it, Senator White, is that the uniform laws provisions cover that and that is consistent with those countries who have signed these treaties, of which Canada is one. So I believe that's the answer, but I will double-check. [LB201]

SENATOR WHITE: Thank you, Senator Ashford. Just for the members, on the full faith and credit one, that's an area that I think we still need to explore. But on the jurisdictional issue, it's technical but it is understandable and it's important for the body to wrestle with this. The concept has always been that if you're going to be sued in a court and you're going to lose something of value, you have to get a notice of the pleading, in other words, the papers physically served on you, and you have to have ties to the state. In other words, if I've never been in Alabama, I can't be sued there because I have no ties there. That is one, that's called personal jurisdiction. Those are the normal rules we think of, but they're not the same rules when we're dealing with a child. [LB201]

SENATOR ROBERT: One minute. [LB201]

SENATOR WHITE: A separate kind of jurisdiction, it's called an in rem, meaning the

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thing itself jurisdiction, and in a sense, though a child is not a thing, the court says if the child is located here we have, by virtue of the child's presence, the right to decide what's in the best interest of that child as long as they're in the state. We're not going to abandon our obligation to the children to some other state when the child is here. We're going to ensure they're safe while they're here. Now that gives you jurisdiction. The technical question was, does the other parent still have a right to notice that we're going to be doing something here? And I think Senator Ashford has said unequivocally that in this case the Canadian parent would still be given notice, which I would think is very much essential, but the court has the right, whether or not they show up, whether or not they've ever been to Nebraska, to go forward with the case. It has jurisdiction because the child is physically here. We're not going to turn our backs on children who are here. [LB201]

SENATOR ROBERT: Time, Senator. [LB201]

SENATOR WHITE: So I appreciate that. Thank you. [LB201]

SENATOR ROBERT: Thank you, Senator White. Those wishing to speak: Senators Price, Council, Pirsch, and White. Senator Price, you're recognized. [LB201]

SENATOR PRICE: Mr. President, members of the body, I'm angry. I am very thankful for the Judiciary Committee. I am very thankful for Senators Pirsch and White and everybody and Senator Ashford, who are working on this to make sure the technicalities of this bill are understood and we've met all the obligations and everybody understands it. But as a parent and a human being, I'm outraged that we spent that much time. This is simple. This little girl lives in our state and her dad takes her to another country and does what he does. We're talking about, in technical jargon, a shield and a sword. I can talk to you about shields and swords. I'm used to them. I would love to be the sword that protects this young lady. Please, I implore you, let us ensure that we do this correctly, that we use our good judgment and temperament as we need, but this young lady should not suffer, her mother should not suffer, no child or parent should suffer, not another minute to hear our voices ring in these halls, let's get this done, I implore you. Thank you, Mr. President. [LB201]

SENATOR ROBERT: Thank you, Senator Price. Senator Council, you are next and recognized. [LB201]

SENATOR COUNCIL: Yes, thank you, Mr. President. And perhaps I can address some of the questions raised by both Senator Pirsch and Senator White. And Senator Price just alluded to the shield and the sword, and what this body did when it passed the initial legislation in 2007 was to provide a shield, and that shield was that if a parent with a foreign custody judgment wanted that judgment enforced in Nebraska, a Nebraska court did not have to recognize that judgment if that child was continually or habitually a

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resident of Nebraska and there was evidence that that child was being abused or neglected by the person holding that judgment, and that's what it provided, was a shield. But as facts unfolded in the case that everyone is familiar with, that child was in Nebraska, there was evidence of abuse of that child by the parent in Canada, and the parent in Canada came into Nebraska, sought to have his custodial judgment enforced when the mother invoked the rights that this body provided to her under the existing legislation. In order to have that judgment enforcement blocked the father withdrew his petition, so there was no judgment before the court. So the mother had no recourse because all the statute provided, as originally drafted, was that a Nebraska court could refuse to enforce that judgment. But if there's no judgment before the court, there was no jurisdiction that the court would have to address the basic underlying custodial issue. So that's when the bill was introduced to allow for this legislation to be used as a sword; that it didn't matter whether or not the other parent attempted to have their foreign judgment enforced in Nebraska if the petitioning party could establish to the satisfaction of a Nebraska court that the child was habitually a resident of Nebraska, that the child...that there was substantial evidence that the child was being subjected to abuse and neglect by the parent holding the foreign judgment, that that parent, the parent here in Nebraska, would have a right to go into court, initiate an action, go into court and request that the court, first of all, has to make the underlying determination that the child is habitually a resident of Nebraska and that there's substantial evidence of abuse and neglect. I mean that needs to be clear. That finding has to be made before this provision becomes operative. Once the court makes that determination then this bill would allow that Nebraska parent who is now having the custody of the child, whether it's under the visitation provisions of the Canadian judgment or whether it's under the custody provisions of the Canadian judgment, could then invoke the jurisdiction of a Nebraska court to address custody. Well, the problem that presented itself and that this amendment is designed to address is that there was no question that the court would have subject matter jurisdiction, and I hate to be technical, would have jurisdiction over the subject of child custody; the issue was would the court have jurisdiction over the persons. No question the court would have jurisdiction over the mother, who's a resident of Nebraska. [LB201]

SENATOR ROBERT: One minute. [LB201]

SENATOR COUNCIL: She meets that requirement. The issue was whether or not the court would have jurisdiction over the Canadian father. This amendment merely adopts the same terms and conditions that would apply if the parent lived in Alabama instead of Canada. And the court can exercise personal jurisdiction over that Alabama parent regardless of whether they have substantial ties to the state of Nebraska. So what the amendment does is just allow for the Nebraska court to exercise jurisdiction in the case of a foreign judgment, the same way they would if it was a judgment of another state in the United States. I hope that answers your question. [LB201]

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SENATOR ROBERT: Thank you, Senator Council. Senator Pirsch, you are next and recognized. [LB201]

SENATOR PIRSCH: Well, thank you, Mr. President, members of the body. I appreciate this. Obviously, I don't believe any senator has put forward any other, you know, more child-protective legislation than I have in my two years here. The purpose is, again, there's a few limited numbers who are on Judiciary Committee, it is the purpose of the 49 of us here on the floor not to oppose legislation when it comes out but to have an understanding and clarify exactly what it is, especially in complex bills like this what changes are being made by law. So that is the line. I don't have any...and don't misinterpret this. I'm not saying that I have any opposition to this, but I think it's important that the 41 out of the 49 of us have an understanding of what it is, albeit, you know, right that we're voting on. And so that is the purpose of my line of questioning here today and I think it's an important function that we all have to play here. But towards clarifying the bill...and I wonder if then, Senator Council, you seem to be pretty well aware of...you serve on Judiciary Committee. Is that correct? And would you...I'd ask if Senator Council would mind yielding to a number of questions. [LB201]

SENATOR ROBERT: Senator Council, will you yield? [LB201]

SENATOR COUNCIL: Yes. [LB201]

SENATOR PIRSCH: Okay. And thank you very much for your explanation then, Senator Council. And so with respect to a few questions I have, the word was used by...well, let me put it this way. The harm to be guarded against that necessitates this bill, right, I think Senator McGill said that this court order is being dangled over the heads of the custodial parent here in Nebraska. If the noncustodial parent in Canada is not seeking to enforce this order, then what necessitates the need then? He's not indicating he wants to have visitation, is that correct? Or is he saying, once he has visitation...could you explain that a little bit more what the harm is that you're seeking to cure here. [LB201]

SENATOR COUNCIL: Okay. The harm that has presented itself, Senator Pirsch, is that the noncustodial--and we'll use that to describe the parent in Canada--the noncustodial parent is not coming into court and saying, Nebraska court, enforce my Canadian judgment that allows me to have custody and return that child to me. What the noncustodial parent is doing, Senator Pirsch, is taking that judgment to the school where the child is enrolled and insisting that the school recognizes that judgment and allows him to remove the child from the educational setting. He takes that judgment to a day-care provider that's providing services for the child and he shows the day-care provider this Canadian judgment. They don't... [LB201]

SENATOR PIRSCH: Here in Nebraska? [LB201]

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SENATOR COUNCIL: Here in Nebraska. [LB201]

SENATOR PIRSCH: In Nebraska. [LB201]

SENATOR COUNCIL: And they don't...all they know, it's a court order and they're conflicted about honoring it and they have, it's my understanding, and Senator McGill can correct me, it's my understanding from talking to the Nebraska custodial parent is that the schools have on occasion recognized and honored this Canadian judgment and placed this child back into the hands of someone who it's been determined evidentially is neglecting and abusing this child. [LB201]

SENATOR PIRSCH: I see. And was this particular bill, was this the conference on...I'm sorry, the... [LB201]

SENATOR ROBERT: One minute. [LB201]

SENATOR PIRSCH: ...Commissioners on Uniform Laws, did they...were they proponents of this bill then, or were they opponents, or did they way in, in a neutral capacity? [LB201]

SENATOR COUNCIL: The Uniform Commission assisted in the drafting not only of the original bill, LB201, but assisted in the drafting of the amendment that's on the floor. [LB201]

SENATOR PIRSCH: Very good. So they are proponents of this measure then. [LB201]

SENATOR COUNCIL: At worst case, they're neutral. [LB201]

SENATOR PIRSCH: I see. Okay. Very good. Is there a risk that, in the same way that the U.S. is now using a sword at Canada to have access to the kids, is there a potential--and I'll turn my light on here and maybe address it--is there a potential then that this could be used as a sword against our Nebraska kids by foreign jurisdictions, not necessarily Canada but say in other jurisdictions, the Middle East or in Europe or some other area of the world? [LB201]

SENATOR COUNCIL: I cannot comment intelligently on that. I don't know specifically whether... [LB201]

SENATOR ROBERT: Time, Senators. [LB201]

SENATOR COUNCIL: ...for...let's use Canada. I don't know whether Canada has a Uniform Custodial Enforcement Act... [LB201]

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SENATOR PIRSCH: Thank you. [LB201]

SENATOR COUNCIL: ...and I don't know how they recognize them. [LB201]

SENATOR ROBERT: Time, Senators. [LB201]

SENATOR PIRSCH: Appreciate... [LB201]

SENATOR ROBERT: Those wishing to speak: Senator White, Lautenbaugh, and Pirsch. Senator White, you are recognized. [LB201]

SENATOR WHITE: Thank you, Mr. President. Would Senator Ashford yield to a question? [LB201]

SENATOR ROBERT: Senator Ashford, will you yield? [LB201]

SENATOR ASHFORD: Yes. [LB201]

SENATOR WHITE: Senator Ashford, could you address for the members of the body the issue of full faith and credit? And I will yield the remainder of my time to Senator Ashford. [LB201]

SENATOR ASHFORD: Let me...thank you, Senator White. I appreciate that and I will try to. What Senator White is alluding to is Section 43-1230(a) which states that a court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying Sections 43-1226 to 43-1247, which are the relevant sections here. If we did not...had not passed in '07 the law that's been talked about here today, which suggests...or not suggests but clearly states that if a child is habitually in the state and there's evidence of abuse and neglect that the court in Nebraska would be required, certainly more than theoretically, to comply with the Canadian order. The Canadian order was, I believe, and this isn't totally material, but was changed at some point in the process awarding guardianship, which is the same as custody under Canadian law, to the father and the father's mother and there was an effort to enforce that order, I believe, in Nebraska. Normally, under that statute, Senator White is correct in his question that we would in Nebraska be required to give full faith and credit to that foreign judgment. However, when this Legislature passed the law in '07, and it was...the statute is consistent, at least the uniform...the committee on uniform judgments and foreign judgments did not object to this change in the law, made clear that in Nebraska our policy is that if the child is here habitually, meaning living here, going to school, has the contacts that we normally would associate with residence in the state, and there's evidence of physical abuse and neglect, which there was in this particular case, that the court of Nebraska is not required to, in fact, turn the child over to the Canadian resident.

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That's important, as Senator Council suggests, in everyday life. If someone comes into this state with a foreign order that says I have custody of this child, you know, I want this child with me, takes her out of...him or her out of the day care, does whatever, interferes with the daily life of that child, that's very, very disruptive. And that, quite frankly, there was a great deal of fear in this particular case involving Canada involving that child and that's why we passed the law that we did in '07. Senator Price is correct in arguing that we've got to protect our children and that what we're doing with this new bill is, in effect, creating a sword, basically saying, in a metaphorical way, saying that the court in Lancaster County District Court can, without taking personal...without taking personal jurisdiction...would have personal jurisdiction, I'm sorry, of this matter after...in Lancaster District Court to enter an order involving this child even though the parent lives in...the other parent, respondent, lives in Canada and has a foreign judgment in Canada. That's what we would do. That's what this particular bill would do. And that particular jurisdictional change is not inconsistent with current Nebraska law on personal jurisdiction. [LB201]

SENATOR ROBERT: One minute. [LB201]

SENATOR ASHFORD: I think that's the other point that has been made by Senator Council correctly. So I think again what we're doing is we are taking what we passed in '07 to the next level, allowing the Nebraska court or giving...not allowing but giving the Nebraska courts authority to enter an order after a hearing, after service of process, a hearing to award...in this case potentially award custody to the mother, who is a resident of Nebraska, affecting a child that is habitually located in the state of Nebraska. That's my understanding of what we're doing. I believe it does meet the full faith and credit standard, at least we've been told it does by every expert we've talked to on this issue. So with that, Mr. President, I appreciate Senator White's time. [LB201]

SENATOR ROBERT: Thank you, Senator Ashford and Senator White. Senator Lautenbaugh, you are next and recognized. [LB201]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. I do rise in support of both this amendment and the underlying bill. I had been approached to introduce this bill as well and I had agreed to do it until I found out that Senator McGill had done it so I didn't. But that said, we did have a full hearing on this in committee. And I know this is confusing, I know this is complex. The committee did consider it. We had a lot of discussion on it. I don't think anyone can explain it better than Senator Council did. She did a great job. She did a great job in committee. The amendment helps clarify and protects some interests herein. I'm not going to technically try to go through this again other than to say I will be supporting this. It's necessary. It's a good bill. It was thoroughly vetted in committee and it's the right thing to do and I'd ask your support. [LB201]

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SENATOR ROBERT: Thank you, Senator Lautenbaugh. Senator Pirsch, you're recognized. This is your third time. [LB201]

SENATOR PIRSCH: Oh, good. Thank you, Mr. President, members of the body. I don't have any problems with the argument on personal jurisdiction. I'm more concerned about substances pure to form. I think utilizing the term "in rem" in a legalistic context usually is reserved only for property, not people. But that aside, I don't care. What I am concerned about, too, is protecting children. That's not what is at issue here. What the question is, is...and I will ask, I wonder if Senator Ashford might yield to a question here. [LB201]

SENATOR ROBERT: Senator Ashford, will you yield, please? [LB201]

SENATOR ASHFORD: Yes. [LB201]

SENATOR PIRSCH: Very good. Certainly, we are all interested in protecting children. No one has a problem with the bill. It is important and it is the duty of this body to understand what we're passing here. It is a complex bill. As a matter of fact, I was the one on...who originally voted for this bill from committee last year, the original bill, and voted that bill through. So there's no...this is an attempt at clarification. This isn't an additional modification to that. The question is...deals with...that I'm concerned about or at least have...want clarification is, to the extent we're creating a sword to get at kids with this, that's fine in the interest of protecting kids. Are we certain, though, that we're not opening the door for a foreign jurisdiction to say we're treating you the same way you treat us, and to...for Nebraska kids to somehow, as a result of that, be subject to a foreign jurisdiction's whim, who may not necessarily have the due process considerations, who may not be as interested in protecting children as much as the United States? In other words, is this going to cut both ways with a country that may not respect protecting kids' rights as much as the United States? [LB201]

SENATOR ASHFORD: Yeah, I'm going to go ahead and answer that, Mr. President, I guess. And obviously, Senator Pirsch, these are good questions and no one is suggesting that they shouldn't be asked. I think the answer to that question is they could; that the Canadian court has in fact entered an order which...ex parte in Canada which I believe has transferred at least partial custody of this child to the grandmother, the respondent or father's mother, so there's in effect a joint custody determination in the Canadian court, which ignores or flies in the face of, we believe here, at least the Nebraska court, that that flies in the face of the evidence; that there was...there is evidence of abuse and neglect. So the answer to your question is I think that any court in any foreign jurisdiction can enter whatever order it desires to enter. What we're trying to do here in Nebraska is make sure that that order cannot be enforced in a way that's contra to the interests of Nebraska citizens, in effect, or residents. That I think is...but nothing in this statute change is going to change an Albanian court, for example, or

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some other court from entering an order affecting a child. [LB201]

SENATOR PIRSCH: Okay. Yeah, and I appreciate that. Because you mentioned Alabama situation, I appreciate Senator Council's, but I have a certain assuredness about the integrity of Alabama courts and those of the 50 states. I'm not sure I have as high of assuredness in the integrity and the commitment to protecting kids of jurisdictions that I'm not even, you know, halfway around the world. And so before...I mean, we want to realize the unintended possible consequences of our action now. We last session engaged in things we thought were protecting kids and we, I think, proceeded in a hasty manner because we... [LB201]

SENATOR ROBERT: One minute. [LB201]

SENATOR PIRSCH: ...and so I just want to make sure that we have a full view of our actions, possible repercussions. I, whatever we can do to certainly protect kids, certainly would, you know, be for that. And so that is one of the questions I just had going forward and I hope you can...you know, I certainly am going to advance here today the bill, but let's make sure that we dot all our I's and cross all our T's in the name of protecting kids and make sure that as we're going forward in a rush, as Senator Price has rightful I guess haste in wanting to protect kids, but what we do today with the sword, we want to make sure it doesn't...that sword doesn't come around at us tomorrow. And so that's my only concern. With that, I'll yield the balance of my time. [LB201]

SENATOR ROBERT: Thank you, Senator Pirsch. Senator Council, you are next and recognized. [LB201]

SENATOR COUNCIL: Yes, thank you, Mr. President. And, Senator Pirsch, you make a very valid point and identify a potential concern. And the only statement I wish to make in that regard is that the body should recognize that the only way that a court in Nebraska is able to address this issue at all is they have to meet that first condition that the child is habitually a resident of Nebraska. And with regard to your concern about what other foreign jurisdictions may do, the probability is that they could do very little if children are habitually a resident of the state of Nebraska. There's, quite frankly, little that we can do in the event that a child is habitually a resident of that other country. So I think the fact that the first condition that must be met to even make this provision operative is that the child has to be found to have been a habitual resident of Nebraska protects us to I think a large degree from the concern you've expressed about retaliatory or what types of actions other countries may take in terms of dealing with children who may temporarily reside in Nebraska. [LB201]

SENATOR ROBERT: Thank you, Senator Council. Senator Ashford, you're recognized to close on AM83 to LB201. [LB201]

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SENATOR ASHFORD: Thank you, Mr. President and members. And I also want to thank Senator Council for her analysis of this issue. She did an excellent job in the committee and she's continuing to instruct me as we stand here on this issue. But here is the reason why we're here. The...Judge Merritt entered a subsequent order to his first order that resulted in the law that we passed last year and in that order, directly at what Senator Price is talking about in his comments, the court opined that the court...or found that the addition of the subparagraph (d), which is a statute we passed last year, is to provide a shield, not a sword. That is, if a person moves under the UCCJEA, the uniform laws, to have custody...to have a custody order of a foreign court recognized and enforced, then subparagraph (d), which is the...what we passed last year, can be used as an affirmative defense--Pete, I'm sorry, I just can't...I'm sorry--as an affirmative defense...it's hard enough when it's perfectly quiet for me to think but (laugh)...an affirmative...can be used as an affirmative defense in an attempt to have a court of this state make a determination that it will not recognize and enforce the custody order of the foreign court. So if we left the law the way it is now, Judge Merritt could find, I'm not going to enforce the Canadian order that took custody from the mom and gave it to the dad and the dad's mother. But what he is saying...but what he further says in that order is subparagraph (d), what we passed last year, cannot be used as the basis to commence an action to attack custody, a custody order of a foreign court, and thereby attempt to secure a separate custody order. That's what we're talking about here. That's what Senator Price talked about and that's what Senator Council has very ably described. Judge Merritt, if we pass this law, this bill and it becomes law with the emergency clause, Judge Merritt or any other judge of this state can enter an order regarding custody without personal jurisdiction over the, in this case, the father from Canada regarding a custody order entered by a foreign court, in effect entering a new custody order that could theoretically award custody to the mom here in Nebraska. As Senator Council ably suggests, why or how can we do that? We can because the child is habitually a resident of Nebraska and we passed that bill last year, and that there's evidence of abuse and neglect. That allows us to move forward under the uniform laws. And as Senator White suggests, there's always a full faith and credit argument regarding foreign judgments. As long as those indicia are present, the Nebraska court need not, need not give full faith and credit to the Canadian judgment. That's why we're here today. The amendment talks about the personal jurisdiction issue, which Senator Council brought up at the hearing, and also adds the emergency clause. Thank you for the discussion. Thanks for listening. It is...they teach courses and courses in law school on this issue and this is very, very complex, but I think we're getting at, with Senator Price's comments, we're getting at the nub of the issue. I would urge that we adopt AM83 and advance LB201. Thank you. [LB201]

SENATOR ROBERT: Thank you, Senator Ashford. Members, you have heard the closing to AM83 to LB201. The question before the body, shall AM83 be adopted? All those in favor vote aye; opposed vote nay. Have all those voted who wish? Mr. Clerk,

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please record. [LB201]

ASSISTANT CLERK: 36 ayes, 0 nays on the adoption of committee amendments, Mr. President. [LB201]

SENATOR ROBERT: AM83 is adopted. Anything further, Mr. Clerk? [LB201]

ASSISTANT CLERK: Mr. President, I have nothing further on the bill. [LB201]

SENATOR ROBERT: Are there any wishing to speak on LB201? Seeing none, Senator McGill, you are recognized to close on LB201. [LB201]

SENATOR MCGILL: Mr. President, members of the body, I would simply just like to thank the members of the Judiciary Committee who worked very hard on this and asked a ton of brilliant questions during the hearing that led to the amendment that we just adopted. I'm not an attorney, much less an expert on international law and custody issues, and so I had to rely a great deal on Senator Ashford and especially Senator Council to help work through these details, and I appreciate their support and how articulate they were in explaining this matter to those of us who aren't as familiar and don't have the background in law in this particular type of case. So with that, I hope that we could all vote to advance LB201. Thank you. [LB201]

SENATOR ROBERT: Thank you, Senator McGill. Members, you have heard the closing on LB201. The question before the body is, shall LB201 advance to E&R Initial? All those in favor vote aye; opposed vote nay. Have all those voted who wish? Mr. Clerk, please record. [LB201]

ASSISTANT CLERK: 40 ayes, 0 nays on the motion to advance the bill, Mr. President. [LB201]

SENATOR ROBERT: LB201 does advance. Next item, Mr. Clerk. [LB201]

ASSISTANT CLERK: LB52 is legislation introduced by Senator Fischer. (Read title.) The bill was read for the first time on January 8 of this year, referred to the Government, Military and Veterans Affairs Committee. That committee reports the bill to General File with committee amendments. (AM109, Legislative Journal page 331.) [LB52]

SENATOR ROBERT: Senator Fischer, you are welcome to open on LB52. [LB52]

SENATOR FISCHER: Thank you, Mr. President and members. LB52 changes the qualifications of county veterans service officers to allow any honorably discharged veteran who served on active duty in the United States armed forces and who is a resident of Nebraska for at least five years to be eligible to hold this office. Current

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qualifications require that county veterans service officers must have served in the armed forces during the wartime dates currently established in statute. The suggested change was brought to me by my constituents who have experienced difficulty in finding qualified people to fill the position of county veterans service officers in several counties in my legislative district. The purpose of this bill is to allow anyone who has served on active duty in the armed forces and received an honorable discharge from their service to be eligible for this office regardless of the dates of their service. State statute authorizes county boards and county veterans service committees to join two or more counties if needed in the appointment of a county veterans service officer. Such agreements are currently established within my district and across the state, and they appear to be functioning well. However, I believe that counties should not be so limited as to have the no other options than to enter into an agreement due to the fact that the service states prevent the veterans service committee and county board from being able to appoint an accomplished and worthy candidate. A veteran is no less capable and qualified to serve as a county veterans service officer because of his or her active duty during a time of peace rather than a time of war. My primary purpose in bringing this bill forward is to make certain that our veterans receive excellent services and proper assistance at the local level. These are the same men and women who have sacrificed and respectfully fulfilled their duty to represent and serve our country with honor and dedication, and they should have capable assistance provided to them. This proposal has been presented to the County Veterans Service Officers of Nebraska, the Nebraska Veterans Council, as well as two American Legions in my legislative district, and all have voted to recommend changing this requirement for the position of county veterans service officer. LB52 was advanced unanimously by the Government, Military and Veterans Affairs Committee with the amendment that I do support. I urge you to advance the bill and the committee amendment. Thank you, Mr. President. [LB52]

SENATOR ROBERT: Thank you, Senator Fischer. (Visitors introduced.) You have heard the opening on LB52. Mr. Clerk. [LB52]

ASSISTANT CLERK: Mr. President, I do have a committee amendment from the Government Committee. [LB52]

SENATOR ROBERT: Senator Pirsch, as Vice Chair of the Government, Military and Veterans Affairs Committee, you're recognized to open on AM109. [LB52]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. The committee amendment changes the qualifications for personnel, except clerical and special help, of the county veterans service offices to allow such persons to be discharged or otherwise separated with a characterization of general under honorable conditions. This is the current job qualification for these positions and the committee amendment reinstates that qualification. With the committee amendment, the job qualifications for the county veterans service officers, the members of the county veterans service committees and

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the personnel of the county veterans service office are changed from wartime status to anyone who has served on active duty. The committee believes that the argument made for expanding who is eligible to be a county veterans service officer also applies to other county positions. The committee also felt that the job qualifications relating to discharge from the service for these positions should not be changed. Therefore, the current discharge requirements remain in place for county veterans service officers and honorable discharge is required. For members of the county veterans service committee and the personnel of the county veterans service offices, a general, under honorable conditions, discharge is required. The committee advanced the bill as amended on an 8 to 0 vote. I urge your adoption of the committee amendment and the underlying legislation. Thank you. [LB52]

SENATOR ROBERT: Thank you, Senator Pirsch. You've heard the opening to AM109 to LB52. Those wishing to speak, Senator Carlson. [LB52]

SENATOR CARLSON: Mr. President and members of the Legislature, I'd like to address a question to Senator Pirsch. [LB52]

SENATOR ROBERT: Senator Pirsch, will you yield to a question? [LB52]

SENATOR PIRSCH: I would. [LB52]

SENATOR CARLSON: Senator Pirsch, in looking at this amendment, I just need some help on it. Section 1 and Section 2, tell me the difference in requirements of those two. I'm not really seeing it. [LB52]

SENATOR PIRSCH: Very good. Let me pull that amendment to answer your question. I appreciate that question. What might be of help, and I will circulate this around, I've made a chart of LB52, after the committee amendment, the overall effect that would...how it would change existing current law. That may help to answer some of your questions about the overall effect of the committee amendment. As to your specific question, you were asking how the committee amendment would change the underlying bill, is that correct, and in which provision? [LB52]

SENATOR CARLSON: No, in the amendment itself. You got Section 1 and Section 2, and as I look at Section 1 and Section 2 I'm not really seeing a difference, but maybe what you're going to pass around is going to make that more clear and I'll wait for that. And then if I have further questions, I'll address it at that time. Thank you. [LB52]

SENATOR PIRSCH: Very good, and I'll address that in just a little bit, you bet. And I will hand around that chart that I've made up. [LB52]

SENATOR ROBERT: Thank you, Senator Carlson and Senator Pirsch. Senator

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Stuthman, you are next and recognized. [LB52]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I would like to engage in a little discussion, ask a couple questions of Senator Pirsch. [LB52]

SENATOR ROBERT: Senator Pirsch, will you yield to a question? Senator Pirsch. [LB52]

SENATOR PIRSCH: I'd be happy to. [LB52]

SENATOR STUTHMAN: Senator Pirsch, this amendment deals with individuals that have served only on active duty. This does not apply to any individual that was on peacetime that was a member of Air National Guard, the Army Guard, or any member of that, that went through training and served just in a Guard capacity and really never served in active duty. So this...an individual in that situation would not be allowed to be a veterans service officer. Is that correct? [LB52]

SENATOR PIRSCH: That is my understanding. You are correct. [LB52]

SENATOR STUTHMAN: Is there a reason why you would have had to serve on active duty? [LB52]

SENATOR PIRSCH: I'm sorry, is your question why are we broadening, so to speak, the pool of applicants? Or is your question why shouldn't we have broadened it even further? [LB52]

SENATOR STUTHMAN: The question is, is why are you broadening to the individuals for active duty and not including those that would have been in the Guard, would have been, you know, served in a six-year term in the Guard, never was on active duty because their Guard unit was never called into active duty? Are we not allowing that group of people to be eligible to be a veterans service officer, or are they not included as a veteran? [LB52]

SENATOR PIRSCH: They're not included as a veteran. [LB52]

SENATOR STUTHMAN: I would tend to disagree with that. And the reason I say that is the fact that, you know, I can be a member of the American Legion and of the veterans. They accept, you know, people that have served in those Guards and that Guard position so, you know, maybe I'm incorrect, but I would just like to have that defined a little bit. So...and I think Senator Pirsch will probably address those comments when he gets the opportunity to speak again. Thank you, Mr. President. [LB52]

SENATOR PIRSCH: Well,... [LB52]

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SENATOR ROBERT: Thank you, Senator Stuthman. Those wishing to speak: Senators Price and Pirsch. Senator Price, you are recognized. [LB52]

SENATOR PRICE: Mr. President, members of the body, thank you very much. I rise in support of this effort. And just to help you understand, if you're a Guard member and you're called to active duty to serve, sometimes six months at a time or a year or more as we've seen our unit members here, then you would be eligible because you did have active duty service commitment, is my understanding of this bill right now. It's also important to understand, when this legislation was enacted, we had so many people who were drafted. We had a large pool of people available to meet this criterion. However, as we have many of the members from World War II, Korea, and Vietnam have aged and gone on, we find ourselves with a very small pool of available applicants who will take this job and this, therefore, broadens that pool of people. And I would like to let everybody know, if we don't have a VSO, or veterans service officer, available, your veterans find it extraordinarily difficult to get any service at all because then they'll have to drive to another county, perhaps, if that county can take on the extra burden, and I would venture that in greater Nebraska that could end up being quite a drive. And then again, here we are limiting our veterans. So I would urge that you support this activity and the action that we've taken here to broaden the pool of applicants. And, Senator Stuthman, did you have a question? [LB52]

SENATOR ROBERT: Senator Stuthman. [LB52]

SENATOR STUTHMAN: Yes. Senator Price, is an individual considered a veteran if he has never served his six-year term only other than his basic training and then was in the Guard for the rest of the six years? Would he be considered a veteran? [LB52]

SENATOR PRICE: Yes. [LB52]

SENATOR STUTHMAN: He would be. Thank you. [LB52]

SENATOR PRICE: Thank you. I'm finished for now. [LB52]

SENATOR ROBERT: Thank you, Senators Price and Stuthman. Senator Pirsch, you're recognized to speak. [LB52]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. Just as in terms of a clarification of Senator Stuthman's question, I, just to make sure, if you're in the Guard and you are called up to service for six months or whatnot, that does make you a veteran within the use of the term that we're saying here. I don't know, is that what part of your question is, or did Senator Price answer that? [LB52]

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SENATOR ROBERT: Senator Stuthman, will you yield? [LB52]

SENATOR STUTHMAN: Yes. Yes. [LB52]

SENATOR PIRSCH: So the question is...I mean, the statement is just if you have been, if you're a member of the National Guard, that in and of itself is not enough to make you a veteran. However, if you have been called up and served whatever length of time in Iraq or whatnot, then you are a veteran, so... [LB52]

SENATOR STUTHMAN: So, in other words, if...as in my situation, I went through basic training in the Air National Guard, served the balance of my time. We were...went to summer camp those two weeks throughout the year, but I never did serve on...was called to active duty. So then I would not be considered a veteran. [LB52]

SENATOR PIRSCH: Yeah. [LB52]

SENATOR STUTHMAN: Then I would still be? Would...now I'm trying to get, you know... [LB52]

SENATOR PIRSCH: Sure, and I appreciate that. And my understanding is if you were not called up to active service then you would not be, within the use of the term here, a veteran, as it's used within this statute. So I believe that's correct, so... [LB52]

SENATOR STUTHMAN: Well, I think I would need to get some more clarification on this. And I know I'm using your time, but I would like to probably visit with Senator Price, you know, probably off the floor. Thank you. [LB52]

SENATOR PIRSCH: Very good. And I might say, we are, it is clear, broadening the pool of applicants to serve as this VS...as these officers, because in certain jurisdictions, in certain areas, rather, there is just a dearth, a lack of individuals who can play this very important role in helping veterans. And so we want to...the step is here to broaden it so that we can ensure that these very important posts are filled, that there is someone there to help the veterans with the commitments that we have made to them. And so that is the underlying rationale behind broadening it. Unfortunately, just over the passage of time, as original...originally, wartime was the designation status that you had to have to be eligible, but in certain areas of the state just the number of vets who have had this wartime status has...in some areas is nonexistent. And so that is why, by necessity, if we're going to provide these services to veterans, which I think we have to do, we have to broaden it out and make sure these posts are filled. [LB52]

SPEAKER FLOOD PRESIDING []

SPEAKER FLOOD: Thank you, Senator Pirsch. While the Legislature is in session and

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capable of transacting business, I propose to sign and do hereby sign LR16 and LR17. Continuing with discussion on AM109 to LB52, Senator Stuthman, you are recognized. [LB52 LR16 LR17]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I am not totally clear on whether an individual that serves the six years in the Guard with basic training and summer camps, whether he is considered a veteran. I was under the understanding that, you know, quite a number of years ago you had to be a wartime vet, you know, and even a peacetime vet if you served in active duty. But I was under the impression that there was a time frame when they allowed these people, you now, to be considered vets and I am not sure on that but I need to get some clarification on that to really see, you know, are these individuals that would have served on active duty and would have been...would have been, you know, willing to serve on active duty but, because of the fact that there was never a time in their six years of Guard duty, they were never called to active duty. You know, are we not allowing them people, you know, to be considered vets? If they would have served, you know, a month on active duty, they'd a been considered a vet. And I need to get some clarification on that and hopefully I can get some answers, you know, now...from now or until we go on to Select File. Thank you, Mr. President. [LB52]

SPEAKER FLOOD: Thank you, Senator Stuthman. Senator Langemeier, you are recognized. [LB52]

SENATOR LANGEMEIER: Mr. President, members of the body, I would ask that Senator Fischer yield to a question. [LB52]

SPEAKER FLOOD: Senator Fischer, will you yield to a question from Senator Langemeier? [LB52]

SENATOR FISCHER: Certainly. [LB52]

SENATOR LANGEMEIER: Senator Fischer, I have a question for you on the in regards to just philosophy. We had a bill earlier today that you had introduced that it changed the requirements for county attorneys and the Attorney General's Office, matter of fact making those requirements more stringent. But yet here we have LB52 that would lessen the requirements of an elected or dedicated office position. Can you give me some background, why we should? I would argue that in Colfax County we don't have attorneys. Maybe we need to leave that a little more wide open so we can actually get an attorney for our county attorney. Matter of fact, we are subbing it out now as a...to an attorney out of Seward to do the job because we don't have any that live within the county that want it. But yet we're changing this. Can you give me some background on that? [LB52]

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SENATOR FISCHER: Senator Langemeier, I would love to. First of all, I was just curious, maybe you were looking for another job on possibly running for county attorney in four years, after your service here, but...and maybe we all should be looking at opening that up more. Who knows? But I think when you're talking about the profession of lawyers, that there are certain standards, certain professional requirements that need to be met, and that was the reason for LB55. On this bill, LB52, we are opening it up. We're opening it up to our veterans who have served honorably on active duty, not just the wartime dates but on active duty, in order that they may be appointed to the position of county service officer. So with all seriousness, I think there is a difference in the two bills and what we were trying to accomplish there, one dealing with the professional standards and costs to county, quite frankly, if they have a person, not even necessarily an attorney but a person who's elected to the position of county attorney who's not able to fulfill those duties, who's not able to file, who's not able to go before the courts, and they'd have to hire an attorney to perform those duties while also paying someone who's elected county attorney. In this case, I think it is only right that we open this position up to all or any veteran that he or she may be selected to...as a county service...county veterans service officer if he or she has served this country honorably, with dedication, in a time of active duty. Thank you. [LB52 LB55]

SENATOR LANGEMEIER: Thank you, Senator Fischer. And I do rise in support of AM109 and LB52. Thank you, Mr. President. [LB52]

SPEAKER FLOOD: Thank you, Senator Langemeier. Mr. Clerk, items for the record. [LB52]

ASSISTANT CLERK: Mr. President, I have notice of committee hearing, as offered by the Health and Human Services Committee. Your Committee on the Executive Board reports LR11 to the full Legislature for further consideration. Amendment to be printed from Senator Lathrop to LB90. Name add: Senator Stuthman to LB675. (Legislative Journal pages 433-434.) [LR11 LB90 LB675]

And a priority motion: Senator Janssen would move to adjourn until Wednesday, February 11, 2009, at 9:00 a.m. []

SPEAKER FLOOD: You've all heard the motion from Senator Janssen. The question is, shall the Legislature adjourn until 9:00 a.m., February 11, 2009? All those in favor say aye. All those opposed say nay. The ayes have it. We are adjourned. []