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Floor Debate
March 25, 2009

[LB16A LB93 LB202 LB260 LB292A LB328A LB355 LB403 LB430 LB483 LB549 LB649 LR67]

SENATOR LANGEMEIER PRESIDING []

SENATOR LANGEMEIER: Good morning, ladies and gentlemen, and welcome to the George W. Norris Legislative Chamber for this, the fiftieth day of the One Hundred First Legislature, First Session. Our chaplain for today is Senator Dubas. Please rise. []

SENATOR DUBAS: (Prayer offered.) []

SENATOR LANGEMEIER: Thank you. I call to order the fiftieth day of the One Hundred First Legislature, First Session. Senators, please record your presence. []

PRESIDENT SHEEHY PRESIDING []

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

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

PRESIDENT SHEEHY: Are there corrections for the Journal? []

CLERK: I have no corrections. []

PRESIDENT SHEEHY: Any messages, reports, or announcements? []

CLERK: (Read corrections.) And Enrollment and Review reports LB355 to Select File with E&R amendments attached. That's all that I have, Mr. President. (Legislative Journal pages 829-835.) [LB355]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We'll move to first item under General File. []

CLERK: Mr. President, Senator Pahls offers LB328A. (Read title.) [LB328A]

PRESIDENT SHEEHY: Senator Pahls, you're recognized to open on LB328A. [LB328A]

SENATOR PAHLS: Good morning, Mr. President and members of the body. LB328A is the A bill to accompany LB328. It would appropriate \$108,700 in fiscal year 2009-2010, and \$104,000 in fiscal year 2010-2011 from the financial institute assessment, excuse me, to the institute cash fund to the Department of Banking and Finance to carry out LB328. LB328 was introduced at the request of the director of Department of Banking and Finance, as we discussed last week. That bill would implement for Nebraska the

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federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, commonly called the SAFE Act. The SAFE Act mandates that states enact a system of licensure for residential mortgage loan originators by July 31, 2009. Loan originators would be subject to criminal history checks, credit background checks, prelicensure education, prelicensure testing, continuing education, net worth surety bonds or recovery funds requirements. These are all new requirements. The department estimates that it would administer this system for more than 1,000 licensees. The department will have a whole new set of duties. That results in the need for these cash funds. Thank you. [LB328A LB328]

PRESIDENT SHEEHY: Thank you, Senator Pahls. You have heard the opening to LB328A. Are there members requesting to speak? Seeing none, Senator Pahls, you're recognized to close. Senator Pahls waives closing. The question before the body is on the advancement of LB328A. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB328A]

CLERK: 33 ayes, 0 nays, Mr. President, on the advancement of LB328A. [LB328A]

PRESIDENT SHEEHY: LB328A advances. We'll now move to first item under Select File. [LB328A]

CLERK: Mr. President, LB260, the first bill, considered yesterday by the Legislature. Senator Lathrop had pending AM785 as an amendment to the bill. (Legislative Journal page 820.) [LB260]

PRESIDENT SHEEHY: Senator Lathrop, would you like to give us a recap of your amendment? [LB260]

SENATOR LATHROP: I'd be happy to. This is the exoneration bill brought to us by Senator Rogert. The amendment clarifies a number of matters that were brought as concerns during General File debate. In particular, we have tightened up the language when it relates to the elements, which include that the claimant must establish his or her innocence of the crime and that must be done by clear and convincing evidence, which is a substantial burden. The amendment also addresses concerns expressed by the body relative to damages. We've taken out the itemization and, in its place, left the general language which courts are accustomed to dealing with, the damages found to proximately result from the wrongful conviction be the measure of damage or the standard for what damages may be recovered. We've placed a cap in the bill. We've made the, with the amendment, made the claim nonassignable and it does not survive the claimant's death. It also addresses that this is the exclusive remedy. If someone makes a recovery, they cannot make another recovery against the state and/or any other theory of recovery or in any other court. That would be the sum and substance of AM785. [LB260]

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PRESIDENT SHEEHY: Thank you, Senator Lathrop. Are there members requesting...Mr. Clerk, you have an amendment to AM785. [LB260]

CLERK: I do, Mr. President, Senator Rogert would move to amend AM785 with AM834. (Legislative Journal page 835.) [LB260]

PRESIDENT SHEEHY: Senator Rogert, you're recognized to open on AM834 to AM785. [LB260]

SENATOR ROBERT: Thank you, Mr. President. Good morning, members of the body. AM834 has been brought up to me. It was brought up in the hearing and, well, we came to an agreement with the folks in the media and there are...there are things you can do when it comes to "expungement" and sealing of records and there are things that you just can't. In a matter of a few seconds I can search for any one of a member's of the group who had their convictions overturned and come up with several thousand pages of information. To have that expunged from the record is really unrealistic. And Senator Price had some concerns with the language. We talked about it yesterday. This amendment would strike Section 6 and put a new Section 9 that would talk about the criminal history record information. And it would say that this information shall include any judgment against or settlement with the state as a result of a wrongful conviction, pursuant with the Nebraska Claims for Wrongful Conviction and Imprisonment Act, so that when one of these folks returns to the work place, returns to getting on with their life and somebody...and employers do this very, very often, they'll search, do a background search or they'll Google a name or look on a Facebook page or a MySpace page, if it happens to be younger folks, and they'll just kind of see what they can come up with in terms of the background on the individual they're looking at hiring. And without a doubt, if you Google search one of these folks that's been in the news and had...because these are going to make the news when we have something overturned. You're going to pull that up and they're going to have to explain themselves. And so what we're going to do is with this information...with this section here, it will actually say that the record shall read their conviction was overturned, they were determined innocent and they were given a clean slate. So that's basically the gist of that and I'll relinquish the rest of my time. Thanks, Mr. President. [LB260]

PRESIDENT SHEEHY: Thank you, Senator Rogert. You've heard the opening of AM834 to AM785. Are there members requesting to speak? Seeing none, Senator Rogert, you're recognized to close. Senator Rogert waives closing. The question before the body is on the adoption of AM834 to AM785. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB260]

CLERK: 31 ayes, 0 nays, Mr. President, on the adoption of Senator Rogert's amendment. [LB260]

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PRESIDENT SHEEHY: AM834 is adopted. We'll now return to floor discussion on AM785 to LB260. Are there members requesting to speak? Senator Pirsch, followed by Senator Wallman. Senator Pirsch. [LB260]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I wonder if Senator Lathrop might just clarify the new provisions. [LB260]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to questions? [LB260]

SENATOR LATHROP: Yes, I will. [LB260]

SENATOR PIRSCH: And, Senator, with respect to the language now in the amendment, should an individual successfully obtain a judgment through this, the process, would they...is the language in there, in the statute now, such that they would be precluded from filing a 1983 federal action, for instance? [LB260]

SENATOR LATHROP: Yes, and that's in paragraph (sic) 9. It says: except that a claimant who recovers a claim under this act shall not have any other claims against the state based upon any other theory of recovery or law. [LB260]

SENATOR PIRSCH: Okay. I think I'd...that's really the only question I had at this time. [LB260]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. Senator Wallman, you're recognized. [LB260]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. I noticed there was an opponent on here and it was the Nebraska Media or something. Would Senator Lathrop yield to a question? [LB260]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to questions? [LB260]

SENATOR LATHROP: Sure. [LB260]

SENATOR WALLMAN: I noticed there was an opponent to this bill, Nebraska Media I think it was. What was their concern? [LB260]

SENATOR LATHROP: I'm having trouble hearing over the vacuum or whatever is running in the back room, but if your question was what was the...was it the media that... [LB260]

SENATOR WALLMAN: Yes. [LB260]

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SENATOR LATHROP: Okay. Their concern related to--and we just, with Senator Rogert's amendment, accommodated the media--their concern is, and they come in frequently in Judiciary Committee when we're trying to expunge records or trying to seal things, the media comes in routinely and says, we oppose this portion of the bill. The last amendment by Senator Rogert that we just passed a couple seconds ago accommodated the media and that was the only concern they had. [LB260]

SENATOR WALLMAN: Okay. Thank you. Now in regards to pardons, do you have more hearings? If I'm pardoned today am I actually totally pardoned? [LB260]

SENATOR LATHROP: Well, let me talk about that because you and I have talked about this on the mike and your concern is that somebody might be able to go talk the Pardons Board into something and now is that a ticket to the, you know, the cash window. The answer is no. The bill is set up, Senator Wallman, so that no one can get to the courthouse unless they've been pardoned or unless they've had their judgment vacated, but that doesn't mean they automatically make a recovery. They are allowed to proceed with their claim but they have to establish by clear and convincing evidence on their own, not just show that they were pardoned, but they have to show the circumstances of the crime and the fact that they were not involved or that they're innocent, and that's an element in there. And the clear and convincing standard is significant. So this isn't a situation where people who had their sentences vacated or who received a pardon for some other unrelated reason or reason unrelated to their actual innocence is going to ever make a recovery. They have to establish that. [LB260]

SENATOR WALLMAN: And in regards to that, could the victim's family ask for a review of this case? [LB260]

SENATOR LATHROP: Well, what would happen, just to kind of put it in context, if I made a claim and I said I'm actually innocent, I file a lawsuit, the Attorney General's Office would defend it. And the Attorney General's Office could then go to the victim's family and say, we need you as a witness, Lathrop is making this claim, you know he's not innocent, would you come in and testify. And so that's how they would involve the victim's families. They can participate as defense witnesses for the state of Nebraska and that would be a normal part of the litigation process in a claim against the state. [LB260]

SENATOR WALLMAN: Okay. Thank you, Senator Lathrop. Thank you, Mr. President. [LB260]

PRESIDENT SHEEHY: Thank you, Senator Wallman. Additional members requesting to speak on AM785 are Senator Haar, followed by Senator Campbell, Senator Nelson, Senator Carlson, and Senator Loudon. Senator Haar, you're recognized. [LB260]

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SENATOR HAAR: Mr. President, members of the body, first of all, I'd like to again thank Senator Rogert and Senator Lathrop for their work on this bill. I wonder if Senator Lathrop would answer a question for me. [LB260]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to questions? [LB260]

SENATOR LATHROP: Yes. [LB260]

SENATOR HAAR: Not being a lawyer, I have to ask you kind of a technical question here. When it talks about a claimant's cause of action under the act shall not be assignable and shall not survive the claimant's death, would that also apply if, let's say, somebody had put together a structured settlement and then their beneficiaries are the beneficiaries of that settlement? [LB260]

SENATOR LATHROP: That's a very good question. The answer is, no, because it's the cause of action. A cause of action is your right to make a claim and after you have a judgment entered for or against then there is no more cause of action. It's been resolved. And so you either won or you lost. If you have one of these cases and you settled it with the Attorney General's Office and you chose to structure your settlement where the money is paid out to you over time, it's not a cause of action anymore, it's a settlement. So that would continue to be paid and, frankly, those judgments or those structured settlements are actually annuities purchased from a life insurance company, so there's a contract between the claimant and the life insurance company to pay the money over time. [LB260]

SENATOR HAAR: Okay. Thank you very much. [LB260]

PRESIDENT SHEEHY: Thank you, Senator Haar. Senator Campbell, you're recognized. [LB260]

SENATOR CAMPBELL: Thank you, Mr. President and members of the body. All too often I think we appreciate the work that our fellow senators do and we often don't just say thank you, and I want to say thank you to all the senators who have worked on this because I feel that from the first discussion to the second we really have addressed many of our concerns. I particularly want to say to Senator Wallman, who raised the questions about the victims, I think that's a very valid concern. But in this new amendment, I think that both the victims' families and the citizens are given far greater assurance that the standards of innocence must be met and I very much appreciate that. I do think that is a much tighter bill and that issue is addressed. [LB260]

PRESIDENT SHEEHY: Thank you, Senator Campbell. Senator Nelson, you're recognized. [LB260]

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SENATOR NELSON: Thank you, Mr. President and members of the body. Is...I have a question for Senator Lathrop, if he's available. [LB260]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to questions? [LB260]

SENATOR LATHROP: Yes, I will. [LB260]

SENATOR NELSON: Good morning, Senator. [LB260]

SENATOR LATHROP: Good morning. [LB260]

SENATOR NELSON: I'm looking at page 5, top of page 5 here. I think you talked about it just a little earlier in response to a question, Section 9, that you only have one shot against the state of Nebraska, is that basically it, if you make a claim? [LB260]

SENATOR LATHROP: Yes. [LB260]

SENATOR NELSON: All right. Let me pose this. We...I don't know if there's been any final solution or determination about this, but we've had a question, at least according to the papers, up at Murray, the killing of the farm couple, that there's a possibility that some evidence may have been planted and that it might have been done perhaps by an investigator, could be a state patrolman or anybody like that, but as a result of that planted evidence then somebody might have been convicted even though they were innocent. My question is this: If it's an agent of the state or an officer that did something like that and it was found to be true, then the innocent person would be able to go and sue them, is that not correct, after they had made their case and got a judgment against the state of Nebraska? [LB260]

SENATOR LATHROP: They'd be able to make the claim against...and we talked about this yesterday and that may be sort of where we're going with this. Sure, you have a claim against the state; you can bring it under this. You have a claim against anybody who lied or was involved in planting evidence or... [LB260]

SENATOR NELSON: Uh-huh. [LB260]

SENATOR LATHROP: ...framing you, if that were a part of the reason you were wrongfully convicted. [LB260]

SENATOR NELSON: Oh, okay. So let's just take the instance. Suppose it were an investigator that was employed by the state of Nebraska, was an employee and, therefore, an agent of the state of Nebraska. Who would have to defend that person if you sued him? [LB260]

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SENATOR LATHROP: Well,... [LB260]

SENATOR NELSON: It would be the state... [LB260]

SENATOR LATHROP: ...you bring up a good question and there's another piece to it and that's whether or not the person is acting in the scope and course of their employment when they do something like that, and that the common example is just an employee at work and he beats up a customer. At some point when you're not doing something that you're supposed to be doing at work, you're not in the scope and course of your employment, your employer is not responsible for what you're doing. So if you can imagine a situation where a law enforcement officer was doing something like planting evidence and that was within the scope and course of his employment, which is hard to imagine,... [LB260]

SENATOR NELSON: (Laugh) [LB260]

SENATOR LATHROP: ...then the state would have some responsibility and the county or the state would defend that kind of a lawsuit. [LB260]

SENATOR NELSON: Yeah, I agree. That is hard to imagine. But, you know, if this is their course of employment, investigation, and who knows, maybe it wasn't intentional. Maybe it was...dropped a blood specimen or something like that. It was within the scope of employment and as a result then the state is going to have to defend. And guess what? If there's a judgment against that investigating officer, it's going to have to be the state that would pay \$1 million. And so we've got a second shot at the state of Nebraska, don't we? [LB260]

SENATOR LATHROP: Well, what this bill says very clearly, what this bill says very clearly is if you make a recovery under this, you don't get another shot at the state of Nebraska. So would you have one against somebody personally for framing you or for lying to you? You might, but you're not going to... [LB260]

PRESIDENT SHEEHY: One minute. [LB260]

SENATOR LATHROP: I think it's possible, though. I think it's possible to bring a cause of action against the state of Nebraska under the circumstances you described, but it wouldn't be under this act. [LB260]

SENATOR NELSON: Right. Right. [LB260]

SENATOR LATHROP: But if you do, you don't get another shot at them. [LB260]

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SENATOR NELSON: Well,... [LB260]

SENATOR LATHROP: And the law is...there are different equitable principles or principles of damage that come into play that preclude somebody from making a double recovery against a defendant like the state of Nebraska. [LB260]

SENATOR NELSON: I think we might want to take a look at the language there and make sure that if the state of Nebraska has to pay a claim up to \$5 million that that's it, you know? If as the case that I cited there and there was an additional judgment of \$1 million, for instance, against this officer, and they found it to be in his scope of employment, that officer is not going to pay the \$1 million judgment. It's going to have to be the state of Nebraska, as I see it, that would have to come in and pay that, and there we are. We've been hit for extra... [LB260]

PRESIDENT SHEEHY: Time, Senator. [LB260]

SENATOR NELSON: ...extra money. Thank you, Mr. President. [LB260]

PRESIDENT SHEEHY: Thank you, Senator Nelson. (Doctor of the day introduced.) Resuming floor discussion of AM785 to LB260, members requesting to speak: Senator Carlson, followed by Senator Louden, Senator Pirsch, and Senator Price. Senator Carlson, you're recognized. [LB260]

SENATOR CARLSON: Mr. President and members of the Legislature, I would like to address a question to Senator Lathrop, if he would yield. [LB260]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to questions? [LB260]

SENATOR LATHROP: Yes, I will. [LB260]

SENATOR CARLSON: Senator Lathrop, you know that I had some concerns about the way this amendment was going to come out, so I'm simply trying to clarify some of that. On page 2, Section 4, it gets into costs that would not be subtracted from the damage amount payable. And then we go to page 3 and item (4): In no case shall damages awarded under this act exceed \$500,000 per claimant per occurrence. And I think the answer to this is probably the answer that I want, but that's the limit. We've kind of taken all the possibilities of claims, legal expenses, and education, and medical, and what have you and put it into this limit of \$500,000. [LB260]

SENATOR LATHROP: That's it. It is as simple as it appears. [LB260]

SENATOR CARLSON: Okay. [LB260]

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SENATOR LATHROP: There is a cap on these claims. The maximum anybody can recover is \$500,000. In my judgment, it will more than...more likely than not be a lot less than that. But if a judge thought a claim was worth \$1 million, he could only enter or she could only enter a judgment for \$500,000. That's the limit. [LB260]

SENATOR CARLSON: Okay. Well, I appreciate the work that you and Senator Rogert and Senator Lautenbaugh and others have done on this and it's brought us a long way toward a resolution, and so I am in support of AM785. Thank you. [LB260]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Louden, you're recognized. [LB260]

SENATOR LOUDEN: Thank you, Mr. President and members. I would like to address a question to Senator Lathrop, if he would yield, please. [LB260]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to questions? [LB260]

SENATOR LATHROP: Sure. [LB260]

SENATOR LOUDEN: I think as you had some dialogue with Senator Wallman, you answered some of my questions but you talked about if there were settlement payments over a period of time. Is that correct? If...that someone could take their payments, rather than lump sum, they could be over a period of time or something like that? [LB260]

SENATOR LATHROP: We...I'm having a little trouble hearing you. Your question is, can somebody take their payments over time rather than in a lump sum? [LB260]

SENATOR LOUDEN: Right. [LB260]

SENATOR LATHROP: Yes. How that happens, Senator, is if you are about to enter into a settlement with the state of Nebraska, you bring in an insurance guy who sells annuities, and that person...essentially what you do is you put your settlement into an annuity premium and the insurance company then pays you your payments over time. [LB260]

SENATOR LOUDEN: Okay. [LB260]

SENATOR LATHROP: It's not unlike electing to take your lottery proceeds over time. [LB260]

SENATOR LOUDEN: Yeah, that...okay, I understand that. Now my next question would be then at times there's always a chance that these people could probably break the law again or something like that. Are they still eligible to receive those annuity payments?

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[LB260]

SENATOR LATHROP: Well, let me correct you because that's part of the problem and I've heard other people ask the question the same way and that is what if they break the law again. Remember, these people didn't break the law. (Laugh) That's the whole point--they're innocent. It's like you... [LB260]

SENATOR LOUDEN: Okay. [LB260]

SENATOR LATHROP: ...or me. We didn't do something and now we're going to make a recovery. So they haven't broken the law in the first place. In the second place, which is what if somebody does something and now they've broken the law, there is no claim, no case in tort law, in claims against the state, in claims against political subdivisions that we ever say you can't go ahead with your claim because you've, in the meantime, broken a law of the state of Nebraska. So I mean at that point everybody who's ever filed a lawsuit against the state or a political subdivision would have to not run a stop sign, not be involved in any... [LB260]

SENATOR LOUDEN: Okay. [LB260]

SENATOR LATHROP: ...infractions, and that's just not practical. [LB260]

SENATOR LOUDEN: Yeah, very good. Well, I...okay, that's the clarification I wanted. And one last clarification was on page 2 and subsection (4) there. Could you explain that to me a little bit more, I guess,... [LB260]

SENATOR LATHROP: I'd be happy to. [LB260]

SENATOR LOUDEN: ...where you get down to: except that the guilty plea and...or an admission coerced by law enforcement and later found to be false? Now does that person have to prove that they were...that they were coerced or something? Is that... [LB260]

SENATOR LATHROP: Yes, sir. [LB260]

SENATOR LOUDEN: ...is the burden of proof on the person or on the... [LB260]

SENATOR LATHROP: Yes, sir, exactly. And imagine that somebody comes in and they say, I was wrongfully convicted. And law enforcement says, you were? Why did you plead guilty to it or why did you confess to the crime? Now one of the elements is that if you plead guilty or if you gave a confession, you have to prove by clear and convincing evidence that that confession or that guilty plea was the result of coercion, okay? And I can tell you, Senator Louden, that's going to be very, very difficult for somebody to do.

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It's very difficult for somebody to do but it happens. [LB260]

SENATOR LOUDEN: Well, I guess then a lot of these cases are found on DNA tests or something. If that shows that the person was innocent but yet they were coerced into a guilty plea or something like that, how does that...how are those, affect each other, I guess? [LB260]

SENATOR LATHROP: Well, I think you're exactly right, that what we're talking about, and that's why I think that the application of this probably is going to have more to do with those situations where there was blood or semen found at the crime scene... [LB260]

PRESIDENT SHEEHY: One minute. [LB260]

SENATOR LATHROP: ...and they couldn't use DNA 20 years ago because we weren't there in the science. Now we can take that blood sample or semen sample, do a DNA test and, lo and behold, it wasn't the guy; he was telling us the truth before. But somebody offered to put him in life...in prison for life instead of the electric chair and he said, I'll do it. And so now we got a guy who's plead guilty to something to avoid the death penalty and science has come along far enough so that DNA can identify that the person's blood that they thought was the defendant's is actually somebody else's, and I think that's probably the most common scenario that we'll see this bill used on. [LB260]

SENATOR LOUDEN: Okay. Will that be a stumbling block in there? I mean will there be a place for a lot of litigation on this particular subparagraph here? [LB260]

SENATOR LATHROP: Well, I think...I think what it is, is it's a protection. It is a further protection. [LB260]

PRESIDENT SHEEHY: Time, Senator. [LB260]

SENATOR LOUDEN: Thank you. [LB260]

PRESIDENT SHEEHY: Time. Thank you, Senator Louden. Senator Pirsch, you're recognized. [LB260]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I'll be brief. I was, you know, kind of conceptualizing the new paradigm. I do appreciate that my old concern was addressed. I do, however, have a concern that I would like to share and hopefully we can address that, and that deals with, under this paradigm, there is a narrowing, so to speak, whereby, you know, you have to, to be eligible to file this claim, you have to bring forward...you have to have been, (a) pardoned or at some point in time had your conviction vacated or had your decision reversed and remanded. And so I

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think we would all admit, and if you...I mean, let me...I guess that would be the first part that I'd like to hear. I think the reason that there were additional steps added on to that is because there are some individuals who we would all acknowledge are guilty who can still meet that criteria such that we need to move on to this third step, which is to have a civil court determine, under the Tort Claims Act, actual innocence so that we can weed out those people who are just...you know, had their case...their punishment, I'm sorry, sentence vacated on a technicality--hey, you probably are guilty as sin but you were not accorded your full constitutional safeguards in the manner in which they went about convicting you. Or a pardon, that pardon might not necessarily mean that you were not guilty but more likely it just means that clemency was granted. So we needed this additional step and I do appreciate that additional step added on, which is this tort claims court judge looking at actual innocence. However, when the...what I'm concerned about is what information the torts claim...this judge is going to have access to. Keep in mind the criminal conviction could have occurred decades before, 20 years, 10, 20, 30 years before. And so when this...the rules of evidence guide every trial, whether it's in criminal, whether it's in civil, and the rules of evidence are just rules that a court will use to determine whether certain evidence can be in, can get presented to the judge so that he can consider it, or whether they're excluded. But I guess I'm concerned about the hypothetical, which is pretty common that in most of the...or a lot of cases, criminal cases, a defendant might plead, knowing that he faces charges, might plead no contest. And we're all familiar with what guilty and not guilty means, but very few people know there's a third entry which is no contest. No contest essentially means I'm not admitting guilt, I'm not denying guilt. I know that you'll find me guilty if there's enough evidence put forward by the prosecutor in his...in his kind of statement of what the state's case would be. But it is not an admission of guilt and I would say the vast majority of cases where people are convicted, they do plead no contest and are accepted by...that's a good basis for a conviction, that's fine, but it is not an admission of guilt, and that takes place far more often than actual trials. Now I guess I had been somewhat assured about cases, when I was thinking about it, you know, 20-30 years down the line, I was somewhat assured by the fact that there would be a criminal court transcript that could be introduced into evidence so that this new judge in the civil court could... [LB260]

PRESIDENT SHEEHY: One minute. [LB260]

SENATOR PIRSCH: ...could consider what happened 20-30 years ago at that criminal court. Because keep in mind, evidence perishes quickly. The elderly neighbor who saw the defendant run out of the house with the knife in his hand, she died 17 years ago, potentially. Even if there's an overwhelming amount of witnesses, they may well be dead by the time this is. And so what I'm suggesting here, that could not get in. Even though that's an overwhelming amount of evidence, a civil court judge would insist upon those people being present or he would not consider that evidence at 20 years down the line in a civil court when he's determining a money payoff. And so I would like to have that addressed somewhat because I think there's a big...a huge loophole here.

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Most cases are not...do not go to trial, especially these open-and-shut cases. And so I'm afraid that we're opening the door here to... [LB260]

PRESIDENT SHEEHY: Time, Senator. [LB260]

SENATOR PIRSCH: Thank you. [LB260]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. Senator Price, you're recognized. [LB260]

SENATOR PRICE: Thank you, Mr. President and members of the body. I have a question yet today on page 3, Section 6--actually, that was yesterday so I have to go correct that--page 1, line 23. And I would like to ask if Senator Lathrop could yield to a question. [LB260]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to questions? [LB260]

SENATOR LATHROP: Yes, I will. [LB260]

SENATOR PRICE: Thank you, Senator Lathrop. The question I had was on the first page there, about line 23, where we say any part of a sentence. Could...help me out here. Sometimes people are put out on bail and they are...I guess (inaudible) remanded, are put in jail for awhile while the trial is going on and then a conviction could happen. I want to know what...at what point in time does a clock start for any part of a sentence? Would that include the time they spent before the conviction perhaps? [LB260]

SENATOR LATHROP: No, they wouldn't be sentenced to anything before. A person who sits in jail awaiting trial is not serving...is not being punished. The only reason they're in jail before a trial is to secure their attendance at the trial. It's not until they've been convicted and actually been told, you're now going to the penitentiary, because this is felonies and that's where they'll go is the penitentiary, and the idea behind this is it's sort of a narrowing so that we're not dealing with everybody who's got a gripe. We're dealing with people that have actually been convicted of a felony and actually been sentenced to prison and actually done some time. [LB260]

SENATOR PRICE: Okay. So the time...does the time that they serve before the conviction count as part of time served or part of the sentencing? Like they're sentenced to five years and they're... [LB260]

SENATOR LATHROP: Sometimes. Sometimes a court can say I'm going to sentence you to a year in the penitentiary with credit for time spent in jail before trial. [LB260]

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SENATOR PRICE: Okay. [LB260]

SENATOR LATHROP: That does happen. [LB260]

SENATOR PRICE: Okay. That's it. And then one other question, Senator Pirsch kind of piqued my curiosity there is criminal court, you're convicted and then we go to torts court. Is that going to be a smooth transition to take the burdens of evidence and all the rules that maybe apply in a criminal court and then take that into the torts court, which I take is a different body? Is there going to be a chance or is there going to be that opportunity where things would fall between the cracks or, better yet, the burdens of proof and those concepts are going to be different? [LB260]

SENATOR LATHROP: You know what, the likelihood is it may not even be the same judge because it may be something that happens ten years after a conviction. So you're sitting in jail, you're sitting down in the penitentiary... [LB260]

SENATOR PRICE: Sure. [LB260]

SENATOR LATHROP: ...and ten years later somebody, the Innocence Project, runs your DNA and, wow, it's not Scott Price's DNA. So you are now pardoned or your judgment,... [LB260]

SENATOR PRICE: Uh-huh. [LB260]

SENATOR LATHROP: ...your sentence has been vacated and you come back to...you go through the claims process. The Claims Board doesn't pay you, which is the typical routine. And then you file a lawsuit in the district court. You show up. You got a judge you either haven't seen for ten years or it might be a new appointee. Here's the thing: All of these elements you now have to establish independently. We don't say, judge, remember what happened... [LB260]

SENATOR PRICE: Sure. [LB260]

SENATOR LATHROP: ...ten years ago? I got a couple other things to tell you. You have to start out all over again and prove the elements of your case and also prove the elements of your damages by the measure of proof that we've put into this bill. [LB260]

SENATOR PRICE: Okay. I just (inaudible) when you go between the two courts, wanted to make sure that you didn't have a... [LB260]

PRESIDENT SHEEHY: One minute. [LB260]

SENATOR PRICE: ...an issue. Thank you. [LB260]

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SENATOR LATHROP: Yeah, and maybe to give you a better understanding of the way our court systems work, we have of course the Supreme Court and the Appellate Court, but we have the district court where bigger matters are tried, and then we have the county court. So the district court hears criminal cases and it hears civil cases and it hears domestic relations cases, some of them with a jury, some of them without a jury, depending upon the type of a case it is. So it's not a different body. It's the very same courtroom. [LB260]

SENATOR PRICE: Okay. [LB260]

SENATOR LATHROP: The very same judge perhaps or someone who is his or her successor. [LB260]

SENATOR PRICE: So it's the same level so that helps. [LB260]

SENATOR LATHROP: Absolutely. Absolutely. [LB260]

SENATOR PRICE: All right, thank you very much, Senator Lathrop. Thank you, Mr. President. [LB260]

PRESIDENT SHEEHY: Thank you, Senator Price. Mr. Clerk, you have an amendment on your desk? [LB260]

CLERK: Mr. President, Senator Wallman would move to amend Senator Lathrop's amendment. (FA23, Legislative Journal page 836.) [LB260]

PRESIDENT SHEEHY: Senator Wallman, you're recognized to open on FA23 to AM785. [LB260]

SENATOR WALLMAN: Thank you, Mr. President. And I want to thank the judicial system for...Judicial Committee for the work they've done. And I'm worried that we're opening up Pandora's box here, so on page 7 we would go from the...after the Tort Claims Act we would strike from there to line 23, and that's basically all this amendment does, takes some language out of the bill. So I would appreciate some conversation on this and also your support. Thank you, Mr. President. [LB260]

PRESIDENT SHEEHY: Thank you, Senator Wallman. You have heard the opening to FA23 to AM785 to LB260. Senator Wallman, you were next in the queue. Did you wish to speak? Senator Wallman waives. Members requesting to speak are Senator Pirsch, followed by Senator Nelson, and Senator Rogert. Senator Pirsch, you're recognized. [LB260]

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SENATOR PIRSCH: Thank you, Mr. President, members of the body. And again, conceptually, I don't have any problem with what the Legislature is attempting to do here to isolate, if possible, those people who are actually innocent, as distinguished by those people who there wasn't enough evidence to convict but, you know, you can't necessarily establish he is actually innocent. I don't have the problem with the Legislature going forward and remunerating them, but I am afraid of unintended consequences and loopholes. And I guess when I was, at first, analyzing this, Senator Lathrop is right, what a civil court 10, 20, 30 years down the line would do in analyzing if somebody was actually innocent, they will start from scratch, from square one. They will not necessarily consider anything that was considered by a criminal court. The rules of evidence say you start from square one and if you say that somebody...that you have an eye witness who saw this person commit the murder, then bring them forward. Well, the problem is, it's 30 years later, so. Now if that person was, at the time of the criminal case, which was very close to the actual murder or, for instance, we're using this as a hypothetical, that witness was available at that time but the problem is if, you know...it basically is who can live longer, is the gist of the problem that I'm wondering about here. If you have met this criteria of have your convictions vacated or you have had a pardon, and we all agree...I think we would all agree that still that isn't enough to narrow it down, that there are still going to be some cases where...I would posit the case of Jeremy Sheets. He had his convictions overturned...I mean, set aside, but it was on a technicality. It doesn't mean that he was actually innocent. Now...and this is the situation. By the time, you know, oftentimes, I can tell you as a prosecutor, when great stretches of time pass, necessary witnesses to prove case have moved away or vanished or have died. And so when you're talking about long periods of time, 20-30 years, and you're talking about the fact that this civil case doesn't assume anything, they start from scratch and say if you, you know, I'm just going to pretend that this is...you know, that I'm hearing this for the first time. So you might have had three witnesses 30 years ago who said I saw this guy stab the victim and with this knife. But if all three of the witnesses are "unlocatable" or have passed away then there really is no evidence that the court will even consider so they wouldn't have any basis but to find the person, who is claiming actual innocence, innocent by clear and convincing evidence, even though 30 years earlier we would all say, boy, there isn't even a square inch of room for this person to say that he was innocent. So that's the sum and substance of my concern here and I hope that somebody can, you know, speak to that and reassure me that that isn't...because if you talk to prosecutors, and having been one I can tell you this, cases over the course of time, even if you have multiple witnesses, you know, if you're looking 20-30 years later, and you might have a knife that's the murder weapon sitting in a box, an evidence box, but you can't get that introduced into evidence if there's no one to say, because of the rules of evidence, your honor, I was there on that day, that's the knife... [LB260]

PRESIDENT SHEEHY: One minute. [LB260]

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SENATOR PIRSCH: ...that's the knife that I saw this individual have in his hand. If there's no one there because 20-30 years has passed, we would reach...I mean, the judge in the civil case would have no other choice but to say there's clear and convincing evidence that the person was innocent, whereas 20-30 years earlier, when there was those witnesses, when somebody, you know, I mean, you know, we would all probably find that there is no chance that that person was innocent. And so that's my concern. I would...I'll just listen to, you know, comments on that and hopefully that can be addressed. Thank you. [LB260]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. Senator Nelson, you're recognized. [LB260]

SENATOR NELSON: Thank you, Mr. President and members of the body. I have a question or two for Senator Lathrop. [LB260]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to questions? [LB260]

SENATOR LATHROP: Yes. [LB260]

SENATOR NELSON: Thank you, Senator. You and I were talking off the mike just a little bit and perhaps we'll have an opportunity to talk more but...and we were discussing the possibility of adding to...I guess it was (laugh)...the provision where the state of... [LB260]

SENATOR LATHROP: I think you were in Section 6 when you...or... [LB260]

SENATOR NELSON: What page? [LB260]

SENATOR LATHROP: ...pardon me, Section 9. [LB260]

SENATOR NELSON: Section 9... [LB260]

SENATOR LATHROP: Section 9 of the bill, yeah. [LB260]

SENATOR NELSON: ...and that was page 6. Is that correct? [LB260]

SENATOR LATHROP: Well, it's 4 or 5, page 4 or 5. It's having to do with this is the only remedy you get. If you make a claim against the state and make a recovery here, you can't go down to the federal courthouse and make a claim or bring another claim against the state under some other theory. [LB260]

SENATOR NELSON: All right. And since I can't find that right now, I'm not going to pursue that. I guess I'd like to ask a question. If you go to page 2, line 14, we see the

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term "or an admission, coerced by law enforcement and later found to be false." I, at this point in time, haven't found any definition of what coercion by a law enforcement officer might be and perhaps that's just something that either the court or jury is going to have to decide. Let me pose this question kind of in terms of the Beatrice Six. And I'm not passing any judgment there as to whether there was coercion or not. I don't know that much about it. But if you have someone, an accused, coming, being confronted or talked to by an officer of the law or even a county attorney saying, well, there's a possibility you could get the death penalty, it's not for sure or anything but there's a possibility it could go that far if you are in fact guilty of murder, and I'm going to offer you a plea bargain at this time for a reduced sentence of 20 years just so you don't have to face that, if that's a possibility. In your mind, would that be coercion to offer a plea bargain? [LB260]

SENATOR LATHROP: No. No. [LB260]

SENATOR NELSON: It wouldn't. [LB260]

SENATOR LATHROP: I think a coercion is going to be something different and maybe if I can take it into your practice area a little bit, it would be like undue influence. We don't have to define undue influence for you because you practice in the area of wills and estates and things like that. This is...coercion I think is commonly understood in...and let me also remind you that this will be a case tried to the court and not to a jury, so we don't have an untrained ear trying to decipher what "coercion" means. That is a significant proposition establishing coercion and then to establish that by clear and convincing evidence would be a significant hurdle. [LB260]

SENATOR NELSON: It would be a hurdle and a burden for the claimant to do that. [LB260]

SENATOR LATHROP: Yes, sir. [LB260]

SENATOR NELSON: If you want to take the remainder of my time, would you care to address the amendment on the floor at this time? I guess it's FA23. [LB260]

SENATOR LATHROP: I would. [LB260]

SENATOR NELSON: Yes. [LB260]

SENATOR LATHROP: I would. And I appreciate Senator Wallman. My friend Senator Wallman comes from Beatrice and there are...I take this only because I'm getting e-mail from these people, I don't know them. Frankly, I don't know anything about the Beatrice Six. I don't know if they did it or didn't do it. I know some people think they did and some people think they didn't. This is not a bill to... [LB260]

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PRESIDENT SHEEHY: One minute. [LB260]

SENATOR LATHROP: ...give an award to the Beatrice Six, okay? We're not deciding whether the Beatrice Six ought to make a recovery today. What we're doing today is setting in place a process and that process needs to be available for people that were wrongfully convicted. And let me just tell you that the amendment we've put together is responsive to the concerns folks had that only those people who are obviously wrongfully convicted should make a recovery. To turn this into a Beatrice Six bill or a Beatrice...a judgment about whether these guys are really innocent or guilty, it misses the point. We're setting up a system that ought to be set up irrespective of what happened in Beatrice but just as a recognition that a system built and based on human beings making judgments in a court system are going to be wrong sometimes and there's going to be consequences and there ought to be some compensation to the people wrongfully convicted. So I don't support... [LB260]

PRESIDENT SHEEHY: Time, Senator. [LB260]

SENATOR LATHROP: ...Senator Wallman's amendment. [LB260]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Thank you, Senator Nelson. Senator Rogert, followed by Senator Lathrop. Senator Rogert, you're recognized. [LB260]

SENATOR ROGERT: Thank you, Mr. President. Members of the body, I rise in opposition to FA23. What this does, and Senator Wallman didn't explain it but I will, what this does is it takes out the ability for this bill to be retroactive. It would allow those that have had their convictions overturned recently or in the past, it would disallow them from seeking a claim. Let me remind you what this bill does. This bill does not write a check to anybody. It allows...creates a process that allows for those who have been wrongfully convicted/imprisoned to make a claim against the state for compensation for that imprisonment. This does not write a check. It doesn't create an absolute for anyone. We are not the judge in this case or any cases that have come before today. This allows for those who have had a tort against them to make a claim against it. They will have to prove their innocence to a judge by clear and convincing evidence. Senator Wallman, I understand his concerns and I understand the situation in his district, but this bill is not necessarily about anyone, folks, but it sure should allow them to present their case. The Pardons Board, which is the Governor, the Attorney General, and the Secretary of State, made no question when they said these folks didn't do it. The Attorney General's Office and the staff worked very diligently to get these folks...get their name cleared for things that they were put in prison for. We are not the judge in this body today. We are simply allowing for those folks, who had a claim...or had wrong done to them, be able to make a claim for compensation. So I rise in opposition to FA23. The Beatrice Six is not

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the reason for the bill but it brought a reason to bring a process and make us consider about those that have had this happen to them in the past and that will have this action possibly created in the future. We may never use this act again. We may use it twice in the next ten years. We don't know. In 20 years, this act may be completely obsolete because of the science and technology that have come before us and will continue to come. There are no doubts that in the past people have been put in prison for questionable...with questionable science and for things they did not do. We need to let those folks at least make their claim once more to prove their innocence. What we've done is we've turned the burden of proof 180 degrees. We don't have to reprove that they were guilty. We have to prove that they were innocent by clear and convincing evidence, and that is the opposite of what we normally do. So these folks won't have an easy row to hoe. There are many hurdles for them to make a claim. It will take time and it will be the decision of a judge in a district court to decide how much they get paid, if any. Thank you, Mr. President. [LB260]

PRESIDENT SHEEHY: Thank you, Senator Rogert. Senator Lathrop, you're recognized. [LB260]

SENATOR LATHROP: Just briefly, to reiterate my remarks and maybe to expand on them a little bit, Senator Wallman's amendment is essentially an attempt to close the door on the Beatrice Six and there is some sentiment, I gather from Beatrice, that these people who the Attorney General seems to think were actually innocent and has exonerated them, there is some sentiment, at least among the victim's family, that that's not true and that that's not the case. The Beatrice Six will be required, if they want to take advantage of this act, to prove that they were actually innocent. That is where this discussion belongs. It doesn't belong in closing the door to a group of people who may or may not have been actually innocent, who may or may not actually be able to make a claim under this act. Understand something: We aren't trying today to decide whether the Beatrice Six deserve money. I don't know if they do or not. I don't know enough about it. But what I do know is that we have put together a tight amendment here, and when I say a tight amendment, it is not going to be easy for the Beatrice Six or anybody else to prove that they were actually innocent of something by clear and convincing evidence. That's where this fight belongs. It belongs in a courtroom down in Gage County where, if the state chooses to defend itself on this type of a liability, it can bring in the victim's family if they have something to say. Now there may be a lot of opinions. Opinions aren't evidence and opinions really aren't what should guide us in this situation. Ultimately, the decision on one of these claims will be made in a courtroom by a judge using a clear and convincing standard and requiring of the claimant that they prove they were innocent. And let me, and while I'm at it, respond to a concern expressed by Senator Pirsch, because I think it kind of goes to the same thing, and that is if you bring one of these claims 20 years after you were wrongfully convicted, let me tell you, it is the claimant that's going to be handicapped and not the state. The claimant is going to be the one looking for witnesses because this isn't try the crime all over

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again and if the person is acquitted he gets a recovery. This is the claimant proving that he was in Chicago when the murder happened in, you know, Furnas County. This is the plaintiff, the claimant, establishing that the DNA evidence proves that it was somebody who's in a jail down in Alabama and not him or her. So the burden is...remains, and that's what makes this a clean, tight little bill, is that the burden remains on the claimant, the guy who got out of jail, to prove that he was wrongfully convicted, and I think that this remedy ought to be available to anybody who can meet that difficult burden and we shouldn't be shutting the door on somebody because some folks in Gage County believe that these folks are actually not innocent. That's a decision that ought to be made by the district court when this matter comes on for trial. So I would oppose Senator Wallman's...respectfully oppose Senator Wallman's amendment and ask you to give it a red light. [LB260]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Pirsch, you're recognized. [LB260]

SENATOR PIRSCH: Thank you, Mr. President and members of the body. I wonder if Senator Lathrop might yield to a quick question. [LB260]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to questions? [LB260]

SENATOR LATHROP: Yes, I will. [LB260]

SENATOR PIRSCH: And it's with respect to my line. In, say, the distance between the original criminal action and the civil action, some 20 years down, as you point out, it does start fresh, right? The judge in the civil case has got to start from square one, cannot consider or piggyback onto any evidence that was introduced into the criminal trial 20 years before, correct? [LB260]

SENATOR LATHROP: Not necessarily. If there are unavailable witnesses and there is testimony that was subject to cross-examination and under oath and the witness is unavailable, the court can consider that as an exception to the hearsay rule. [LB260]

SENATOR PIRSCH: That's true. That assumes there's a transcript of a criminal trial, correct? [LB260]

SENATOR LATHROP: Or a deposition, yes. [LB260]

SENATOR PIRSCH: Correct. But in many cases or the vast majority in criminal cases never go to trial, correct? [LB260]

SENATOR LATHROP: I would say that, yeah, most cases end up in some form of a plea. [LB260]

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SENATOR PIRSCH: And is it common for someone...I mean, there's a plea of no contest, correct, that is commonly taken by someone who is convicted, correct? [LB260]

SENATOR LATHROP: More in misdemeanors. I don't know that I see it very often in felonies, but I didn't do a lot of felony work, Senator Pirsch, so I'm not sure. [LB260]

SENATOR PIRSCH: Very good. Well, I guess, and I'll get to my fear here, is that since you're starting over and fresh, I'm a civil court judge 20 years down the line, I can't consider any police reports because those are all hearsay. If the individual pleaded no contest and that was the basis of his conviction 20 years ago, there's no admission at all. So if the only facts that are there is this individual 20 years down the line who had served prison time coming in and saying, I didn't do it, and the witnesses have died during that interim between the criminal case and the civil case, then that would be the only thing that the judge could consider. If that is in fact correct, if the only evidence that the civil court can consider is his statement, I didn't do it, then wouldn't he be entitled to a judgment as a matter of law that he is... [LB260]

SENATOR LATHROP: No. No. There are safeguards in here and you're looking at things in isolation and not looking at the whole picture. Let me tell you how that would work. First of all, a guy who pleads no contest, that's the same as a guilty plea. It's an admission. So we'd have to go down to paragraph (4) and show, by clear and convincing evidence, that he was coerced into that. Okay? So let's say the cops are all dead and it's just him. He's not going to meet the clear and convincing evidence that his confession was coerced. So I believe that the elements that we placed in here meet the different contingencies and one of them is, if a guy pleads guilty and everybody dies and there's, you know, we want to get the police report out and we can't because it's hearsay, he still has to get by establishing by clear and convincing evidence, and that won't happen just because everybody is dead and he's the only guy alive. That will not, in my judgment, get you past a clear and convincing evidence burden of proof. [LB260]

SENATOR PIRSCH: I appreciate that. I would take issue with the statement that no contest is seen as an admission. No contest means you're not pleading guilty, you're not pleading innocent, but you understand if the prosecutor gives a factual basis sufficient to the judge that he will find the defendant guilty, even though he's not pleading guilty. And so I don't see in any way that that's an admission. And again, I think that the future... [LB260]

PRESIDENT SHEEHY: One minute. [LB260]

SENATOR PIRSCH: The future civil court judge starts from ground zero; says, I'm pretending I haven't heard anything, I don't care what's gone on in the past, I'm not privy to that, I, as a matter of my duty is not to make myself aware of that, starting fresh, tell

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me what exists now, start like the case happened yesterday. If the only person who's alive is the person who has served time and he says, the only thing I can tell you is I didn't do it, and if there's any...if the state doesn't have any witnesses at that time to lay the groundwork like they could have 20 years ago, then the judge, as a matter of law, has to find that person innocent by clear and convincing evidence. And I guess that's my concern. But I wish...and I know you disagree with that, but I guess that is something that I wanted to, you know, kind of put out there on the floor that that does very much concern me and I think that it is a realistic... [LB260]

PRESIDENT SHEEHY: Time, Senator. [LB260]

SENATOR PIRSCH: Thank you. [LB260]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. (Visitors introduced.) Continuing floor discussion on FA23 to AM785, members requesting to speak, Senator Lathrop, you're recognized. [LB260]

SENATOR LATHROP: I feel like I need to respond. Thank you, Mr. President. I feel like I need to respond to what Senator Pirsch just said because he is a lawyer and he makes assertions and then casts doubt on a bill, and I think I've been clear that I believe we've covered those contingencies. Let me take his hypothetical. First, this person, his hypothetical person, would first have to have his sentence vacated or he'd have to have a pardon. Okay? Now that's your first safeguard. You're not going to get one of those just because you're the only guy still alive. You don't get out of the penitentiary to go to a hearing if you're just the only guy left alive. So the first safeguard is that you have to have a pardon or to have your sentence vacated. Secondly, he's absolutely wrong that the court would have to accept, as a matter of law, enter a judgment for the plaintiff if this person who was hypothetically pardoned and now finds himself making a claim and the only person left alive. He's wrong. And I can tell you that to say that the court must do something as a matter of law, lawyers understand that that means something. That means something. That isn't just an assertion we say on the floor of the Legislature. That means something and the court would not have to accept anybody's statement. That's a very common principle in the law that no one, no fact finder has to accept a true one man's assertion. You can take the context in which it was made, whether somebody has an interest in the outcome. If the person is the only one left then he, in all likelihood, isn't going to meet the burden of proof. So I want to, to the extent Senator Pirsch's comments may have made you uneasy about this bill, let me assure you that it remains everything I've represented it to be and that is a very difficult burden to overcome, something that will require actual innocence before someone can navigate the safeguards that we've put in place with this amendment. And going back again to what's before us, which is Senator Wallman's amendment, I would encourage you to vote no. [LB260]

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PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Council, you're recognized. [LB260]

SENATOR COUNCIL: Thank you, Mr. President. I rise to thank Senators Lathrop and Rogert and others who have worked diligently to try to make this legislation the most fair and just piece of legislation to address a very troubling issue, and that is the false incarceration of innocent individuals. With regard to Senator Wallman's amendment, I'm not in support of that amendment so my comments really go to AM785. And again, Senator Lathrop, I certainly appreciate all of the hard work to try to address all of the issues that have been presented during the debate of this issue, but I cannot in good conscience sit here and not express one of the factors that is troubling, extremely troubling to me about AM785, and that is the fact that the intent of the bill was to address those who were exonerated as a result of a false conviction, that they were actually innocent, they had been convicted and incarcerated and they had lost freedom. And that is the one element that is missing from AM785. There is no recognition of the fact that there is a cost associated with the mere loss of freedom. And rather than acknowledging the fact that that loss of freedom is the responsibility of the state and that individuals should be compensated, the way the bill has been amended, the entire burden now is placed upon the falsely convicted, now incarcerated individual to prove every single element of their recovery, and we place the burden on the exonerated individual to convince a judge, and that is in fact what's going to happen, ladies and gentlemen. If the State Claims Board approves a claim or disapproves a claim, I don't care which result, these cases are going to be decided by the judicial system. And under this amendment, we are now forcing the exonerated to convince a judge as to the value of the loss of their freedom, which is something that we as a state should be admitting in the first instance and should not be placing that burden on someone who has been exonerated who was falsely incarcerated. But I appreciate the efforts because the intent is to provide some compensation. So I am struggling with how I will vote on AM785, but I think as a body we ought to understand what we're now doing, is we're basically relieving the state of the obligation to compensate exonerated people merely for the loss of their freedom. And we started battling about other damages that could be recoverable, and I appreciate that, but the main purpose of this bill, in my opinion, was to compensate the exonerated for the loss of their freedom. So I hope that everyone takes that into consideration when voting on AM785. Again, I respect and appreciate and, in fact, I applaud Senators Lathrop and Rogert for their dedication and commitment to trying to fashion a bill that they believed could make it through this body and to provide compensation for exonerated individuals. But I would like for you to keep in the back of... [LB260]

PRESIDENT SHEEHY: One minute. [LB260]

SENATOR COUNCIL: ...of your minds the fact that the main intent of the bill initially is now lost through the process of just simply saying that the recovery cannot exceed

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\$500,000 per occurrence and now it's my responsibility, as someone who has spent, in the case of some of the Beatrice Six, 18 years of my life and now I have to convince a judge as to what the value of my freedom was. I think that that's this body's responsibility. [LB260]

PRESIDENT SHEEHY: Thank you, Senator Council. Seeing no additional lights on, Senator Wallman, you're recognized to close on FA23. [LB260]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. I appreciate Senator Council's questions and answers and also Senator Lathrop. But there's a large segment of our population, it's called the military. If you get charged for something, you're presumed guilty till you prove yourself innocent. So that's in...we have that in our country, unless they changed it since I was in. So we're not changing that much there. But all this discussion, all this discussion, I've never heard one thing about the victims, compensation for the victims. I feel for the falsely imprisoned, don't get me wrong. There's probably more than we think. Is this opening up Pandora's box? I don't know. We can't solve all society's problems by law. We have to have morals, integrity, accountability, all these things. It has to come from within. So do we have it within this body to straighten things out in the whole United States. It'd be nice. But so that's where I'm coming from and I would hope you could support my amendment. Thank you, Mr. President. [LB260]

PRESIDENT SHEEHY: Thank you, Senator Wallman. You have heard the closing. The question before the body is on the adoption of FA23 to AM785. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB260]

CLERK: 5 ayes, 25 nays, Mr. President, on the amendment. [LB260]

PRESIDENT SHEEHY: FA23 is not adopted. We will now resume floor discussion on AM785. Seeing no lights on, Senator Lathrop, you're recognized to close. [LB260]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I appreciate the discussion. I know that the concerns that we've heard today and on General File were thoughtful concerns. I believe AM785 addresses those concerns. It has been well thought through. I appreciate the help of Senator Lautenbaugh and Senator Rogert in coming up with AM785, and I would encourage you to give it the green light. Thank you. [LB260]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. You have heard the closing. The question before the body is on the adoption of AM785 to LB260. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB260]

CLERK: 37 ayes, 0 nays, Mr. President, on the adoption of Senator Lathrop's

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amendment. [LB260]

PRESIDENT SHEEHY: AM785 is adopted. [LB260]

CLERK: Mr. President, I have other amendments to the bill. Senator Fulton, AM556, but I had a note that he wanted to withdraw. [LB260]

PRESIDENT SHEEHY: AM556 is withdrawn. [LB260]

CLERK: Mr. President, an amendment from Senator Gloor, AM567, again a similar note to withdraw. [LB260]

PRESIDENT SHEEHY: AM567 is withdrawn. [LB260]

CLERK: Senator Lautenbaugh, AM572, again a note to withdraw. [LB260]

PRESIDENT SHEEHY: AM572 is withdrawn. [LB260]

CLERK: AM577, Senator Carlson, withdraw. [LB260]

PRESIDENT SHEEHY: AM577 is withdrawn. [LB260]

CLERK: And the last amendment, Senator Gay, AM586, I had a similar note to withdraw. [LB260]

PRESIDENT SHEEHY: AM586 is withdrawn. [LB260]

CLERK: I have nothing further on the bill at this time, Mr. President. [LB260]

PRESIDENT SHEEHY: Senator Flood, you're recognized for a motion. [LB260]

SPEAKER FLOOD: Mr. President, I move LB260 to E&R for engrossing. [LB260]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB260 advances. Next item under Select File. [LB260]

CLERK: Mr. President, LB483, the next bill. I do have Enrollment and Review amendments, Senator Nordquist. (ER8027, Legislative Journal page 671.) [LB483]

PRESIDENT SHEEHY: Senator Nordquist. [LB483]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB483. [LB483]

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PRESIDENT SHEEHY: You have heard the motion on the adoption of the amendments. All those in favor say aye. Opposed, nay. They are adopted. [LB483]

CLERK: Mr. President, I had a motion from Senator Langemeier, but I have a note you want to withdraw, Senator. [LB483]

SENATOR LANGEMEIER: Yes. [LB483]

CLERK: Mr. President, Senator Langemeier would move to amend with AM839. (Legislative Journal page 826.) [LB483]

PRESIDENT SHEEHY: Senator Langemeier, you're recognized to open on AM839 to LB483. [LB483]

SENATOR LANGEMEIER: Mr. President, members of the body, AM839 does become the bill. It does take the replacement of LB483 and the amendment adopted previously. We've had a lot of great discussion on this. As I said on General File, LB483 would be back with an amendment. We had to clarify some things on the surface irrigation portion of this bill, and we have done that. The bill, as an amendment, is a rearrangement of the language. There was some confusion to the sections so we tried to rearrange them so everybody could understand it. This bill establishes an equitable procedure for the state to proceed in the issue of ground water and surface water appropriations for the good of the state in the event there is any changes in the status from a fully appropriated to a nonfully appropriated area or a particular river basin. It's my intention to this bill to apply to ground water and surface water but evenly. There is great public interest in avoiding a fully appropriated status and promoting economic development. The health of the state is based on agriculture and all economic development. All development in Nebraska hinges on water and its availability. I have a couple things that I'll read into the record, just to make sure we're all...everyone that has to deal with this legislation into the future as we talk about water law and its continued hostility and tension across the state. But first I'm going to tell you a little bit how this all works for the record. If a basin should be declared nonfully appropriated, the Department of Natural Resources must notify the NRDs. The NRDs have two options. The first option is to take what's in the bill as a default of 2,500 acres or 20 percent of those irrigated acres within a basin, whichever is less. They're going to adopt rules and those rules are going to be determined on two things: number one, to make sure they don't go into a fully appropriated; and number two, to make sure that they have some procedure to designate these acres out, to divvy out well permits to get to the 2,500 acres. If they don't choose that route, they can go over to the second route which would be they create rules. They would then ask DNR for a different number of acres. So if they wanted to try and apply for 5,000 acres versus 2,500 acres, they would have that option. If that option was presented to DNR, DNR said that's too many acres, they

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couldn't do it and they were rejected in the request for a higher number of acres, then they, too, would fall back to the 2,500, the default mechanism. So they would...each NRD district would create one set of rules to use either in a default method or in the method where they ask for additional acres, and so that is how that would work. A couple things I just want to clear...make sure that are on the record for DNR and the future of this legislation, we need to clarify the intent of some of the words in the bill so that the record will be clear what was to be expected from the Department of Natural Resources. On page 24, section (f) the sentence starts in line 13, says the department shall not issue new natural flow surface water appropriations for irrigation. That will result in a net increase of more than 834 acres in each NRD for the next four years. So what does "net increase" mean? First, it does not refer at all to the limits placed on ground water irrigation acres but the natural resources districts. The intent is that it refers to allowing any acres that have been irrigated under existing appropriations but the appropriation is cancelled for nonuse in that year. These acres may be reappointed to another user and is not to be considered in the 834 acres of new irrigation. Another example where net increase might be used is if existing surface water irrigated acres are voluntarily relinquished, for example, as an offset to an application for new irrigated acres. The relinquishment of those acres do not count against the 834 acres that are provided for surface water. Transfers of surface water appropriations may also occur without affecting the 834 acres limited to new irrigated acres. Also, unaffected would be the "resignment" or the cancellation of water rights within an irrigation district by that irrigation district. The department must allow any of these under its existing rules and regulation. It is not only my intent for the department to be required to develop any new rules and regulations due to LB483. Just putting some intent in the language, again, this would allow for 2,500 acres or an additional request put in to DNR for a higher number of acres, or if you're on the surface side you'd get 834 acres administered by the Department of Natural Resources based on their current rules and regulations for applying and distributing those 834 acres. With that, I would ask the body to adopt AM839. I think this is in the best governmental interest of the state of Nebraska. It is crucial that this is for the state of Nebraska and the positive aspects of becoming an area that is not fully appropriated. I would ask the body adopt AM839. Thank you. [LB483]

PRESIDENT SHEEHY: Thank you, Senator Langemeier. You have heard the opening of AM839 to LB483. (Visitors introduced.) Members requesting to speak on AM839 are Senator Price, followed by Senator Dierks. Senator Price, you're recognized. [LB483]

SENATOR PRICE: Thank you, Mr. President and members of the body. I was wondering is Senator Langemeier would yield to questions. [LB483]

PRESIDENT SHEEHY: Senator Langemeier, would you yield to questions? [LB483]

SENATOR LANGEMEIER: Yes. [LB483]

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SENATOR PRICE: Senator Langemeier, first and foremost, this legislation is very comprehensive, very complicated, and riveting reading, I must say. I have a question to you, Senator Langemeier. When...do we have within this amendment and this legislation opportunity for the status to be moved back from fully appropriated to nonfully appropriated? [LB483]

SENATOR LANGEMEIER: The department has a process. At the request of an NRD annually you can make a request to DNR to reevaluate your subbasin, and so with that determination at the end of every year, it has to be out by December 31, they have to make a designation that it stays fully appropriated or they change the status. That is in LB962. That's currently in law. [LB483]

SENATOR PRICE: Okay. Great. And my next question is in some training we received earlier in the year there seems to be areas where we're having water mounding in the aquifer and is it the intent of this bill and the amendment to allow access to that mounding water and perhaps like have some cookie cutter areas within an appropriated area or is it not? [LB483]

SENATOR LANGEMEIER: No. LB962 looks at a basin or reach by a basin or reach. It wouldn't look at a particular subbasin within a basin and said your mound is rising, like in the Republican River Basin where we do have a mound rising due to surface irrigation activities at best. So it won't narrow down. This doesn't do that. DNR has to look at each basin, whether it's the Republican River Basin, the Platte River Basin. It can't look at a small subbasin within. [LB483]

SENATOR PRICE: Okay. Great. And finally, Senator Carlson has had a project or been championing a project that we've seen some tremendous increase in water flows by taking out the Russian olive and the salt cedar and phragmites and the water flow in some areas has been dramatically increased. Will that increase of water flow assist in opening up these areas that you're talking about or is that going to be taken into consideration? [LB483]

SENATOR LANGEMEIER: That is up to DNR, through LB962, to look at the...through their process of evaluating the fully appropriated. This piece of legislation won't affect that at all, but they will look at that. I don't think that's going to be the highest determination. That helps more in the compliance with Kansas versus the fully or overappropriated status that's in the district. [LB483]

SENATOR PRICE: Okay. Great. And then have you seen yet where an area that has been designated as fully appropriated has been removed from a fully appropriated list yet? [LB483]

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SENATOR LANGEMEIER: We have not, but we are going to have the opportunity to have one of those rulings, which will be coming on April 10. So that's why we're moving this bill, to try and get ahead of at least that date. [LB483]

SENATOR PRICE: Great. Thank you very much, Senator Langemeier. Thank you very much, Mr. President. [LB483]

PRESIDENT SHEEHY: Thank you, Senator Price. Senator Dierks, you're recognized. [LB483]

SENATOR DIERKS: Thank you, Mr. President. I wonder if I could have a word with Senator Langemeier, please. [LB483]

PRESIDENT SHEEHY: Senator Langemeier, would you yield to questions? [LB483]

SENATOR LANGEMEIER: Yes. [LB483]

SENATOR DIERKS: Senator Langemeier, how many NRDs are not fully appropriated today in the state of Nebraska? Are there any? [LB483]

SENATOR LANGEMEIER: Including the temporary moratorium that we're in right now or the preliminary designation, I believe we have only...I think there's two or three that are not fully appropriated, the Pappio and Southeast Nebraska.. [LB483]

SENATOR DIERKS: The procedure for objecting or whatever you call the designation of being fully appropriated, is there a procedure that NRDs go through to try to get a different ruling? [LB483]

SENATOR LANGEMEIER: There is. There's kind of two procedures. The first one where we're in, in the Platte River Basin, where it's a preliminary determination, after that determination is made the department has 90 days to take public hearings, which they have done which just concluded on March 12. After that final hearing, the department has 30 days to make that preliminary determination, either fully appropriated permanently or nonfully appropriated. So that's the procedure for new basins going in. Now if you happen to be the Republican River Basin that's been overappropriated designation for some time now since the passage of LB962, they can ask on an annual basis that DNR reevaluate their district and DNR has to do that by December 31 of that year and confirm that they stay fully or overappropriated or change their status in some way. [LB483]

SENATOR DIERKS: But it's not automatic, that has to be requested. [LB483]

SENATOR LANGEMEIER: Correct. It has to be requested by the NRDs. [LB483]

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SENATOR DIERKS: You...if...you indicated that there's a 60...or a 90-day period of grace, more or less, before they make the final designation. Does the...how much influence does the manager of the NRD have as far as his objections, for instance, to the fully appropriated status? Is he...I mean I understand they listen to him, but is there any way that they can prevail? [LB483]

SENATOR LANGEMEIER: The director of Natural Resources, over the 90 days, has had four hearings and there has been a number of citizens coming in and expressing their thoughts. The irrigation equipment manufacturers have expressed their economic impact. The NRDs have done a study to demonstrate that the science that the department is using is incorrect. The director of the Department of Natural Resources is chartered to make this decision based on the best and most reliable science so we hope that the final decision is based on the best science. I believe that what the NRD presented in their comments about the science demonstrates there's enough question whether it is the right science. [LB483]

SENATOR DIERKS: So is there any way that a farmer, for instance, can get a waiver to put a well in after the designation of fully appropriation? [LB483]

SENATOR LANGEMEIER: No. The only way you're going to put a well in is if you're retiring another well or you're replacing a well or you had...let's say we stay in a fully appropriated within the Platte River Basin but you had already gotten a well permit in December, before the December 16 designation. [LB483]

PRESIDENT SHEEHY: One minute. [LB483]

SENATOR LANGEMEIER: If you had already gotten a permit, the NRD will create an integrated management plan and in that integrated management plan they will figure out how they're going to let you proceed with that well. [LB483]

SENATOR DIERKS: Okay. I think you mentioned something about conjunctive use, ground water versus or in addition to surface water. What were you talking about then? [LB483]

SENATOR LANGEMEIER: In this bill we provide two things. We allow the NRD districts to expand if this change happens. It also lets surface water irrigators expand. So not necessarily conjunctive together but they both get an equal opportunity to expand if the designation is changed. [LB483]

SENATOR DIERKS: Thank you very much. Thank you, Mr. President. [LB483]

PRESIDENT SHEEHY: Thank you, Senator Dierks. Senator Schilz, you're recognized.

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[LB483]

SENATOR SCHILZ: Thank you, Mr. President and members of the body. As you've heard in the discussion this morning already, the one thing that I'd like to bring to the table on this bill, and I'd like to thank Senator Langemeier for introducing this because it is something that's definitely needed when and if a district or a basin is taken from fully appropriated back, that designation is taken away. We need to have some sort of a plan, some sort of a measured forward motion because what could happen is, if this isn't put in place and no regulations are in place, then we could see the same thing that we saw when NRDs first looked at putting on moratoriums for ground water declines. We could see the same thing happen on the other side and people drilling wells left and right, and we could have well drillers from all over. So we need to be measured in how we do this. We need to make sure that we don't have too much development, if it comes out of fully appropriated, to get us right back in the same position or even worse. So I would urge everyone to step aboard with this bill. It's good. It's good policy. It makes sense moving forward and it's one of the...one of the things that we need to move forward and develop smartly as we continue with irrigation here in Nebraska. So thank you very much. [LB483]

PRESIDENT SHEEHY: Thank you, Senator Schilz. Senator Fischer, you're recognized. [LB483]

SENATOR FISCHER: Thank you, Mr. President and members. Would Senator Langemeier yield to a discussion? [LB483]

PRESIDENT SHEEHY: Senator Langemeier, would you yield? [LB483]

SENATOR LANGEMEIER: Yes. [LB483]

SENATOR FISCHER: Thank you. Senator Langemeier, water law is really confusing for me and maybe some other senators in here. When a basin is declared fully appropriated, what can an NRD do within that basin now? How are well permits handled once they've decided on their IMP? Could you give us some examples of how that works? [LB483]

SENATOR LANGEMEIER: Their IMP sets forth the plan of how they're going to handle irrigation from that point forward. Some examples: If you came in and you had...you just bought a piece of ground that you want an 80 next to the 80 you already had, and you have another 80 acres that's irrigated, you could transfer those irrigated acres on so you could create a full circle of...transfer the irrigation. You can, if your well goes bad, they'll allow you to put a new well in. The nuts and bolts of it is you just can't expand the number of irrigated acres within the basin. So if you need a new well or you need to...if you're going to go from gravity to pivot, they'll allow you to revamp your well to meet the

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new requirements for a pivot versus gravity as long as your irrigated acres don't expand. [LB483]

SENATOR FISCHER: Can an IMP take into consideration, say when you're going from gravity to a pivot or to a pivot that doesn't use as much water, can an IMP take that under consideration at this time and increase number of acres because there is less water being used? [LB483]

SENATOR LANGEMEIER: No. [LB483]

SENATOR FISCHER: Would that be something maybe to look at in the future? Because you have water conservation taking place, you're putting an investment out there to try and conserve water but you're not receiving a benefit for it. [LB483]

SENATOR LANGEMEIER: Oh, I agree. I think there could be a lot of changes made to talk about efficiency in irrigation. Right now our law doesn't account for efficiency, so that may be the future of trying to come up with some credits for more efficient uses of water versus others. [LB483]

SENATOR FISCHER: Also, when the DNR is going to reevaluate if a basin is going to change status from being a fully appropriated basin...well, losing that designation of being a fully appropriated basin, which I do thank you with this bill that you're addressing, who requests that the DNR can reevaluate that process? [LB483]

SENATOR LANGEMEIER: An NRD district within that basin. [LB483]

SENATOR FISCHER: Is that also or does that also need to be a part of their IMP on how...what would...would it be part of their IMP on what would trigger an NRD making that request to have the basin's designation reevaluated? Does it have to be a part of their IMP? [LB483]

SENATOR LANGEMEIER: I don't know that it has to be part of their IMP but part of the request to ask for redesignation is a demonstration why you think they're wrong. So something would have to happen. Let's say there's an in-stream flow user that put you in the fully appropriated, like in the Niobrara. If there was a change that they, someone... [LB483]

PRESIDENT SHEEHY: One minute. [LB483]

SENATOR LANGEMEIER: ...Nebraska Public Power had a request for a large use of water and they ceased to have that request, you would put that in your argument to have the reevaluation. [LB483]

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SENATOR FISCHER: And when can that request be made? How long would a basin have to be in a fully appropriated status in order for a request to reevaluate that status? What would be the time frame or is there one? [LB483]

SENATOR LANGEMEIER: You have to have that request in by March 1 and for a determination by December 31 of the year. This bill does provide for those that are new into the process. So if you are...just got your fully appropriated...let's say, for example, in the Platte. If the Platte gets a fully appropriated designation on April 10, which is the deadline for this final determination, this bill would give them 30 days to file appeal for a reevaluation. But without that, so if...that would just be for new designations, so you go back to the Niobrara... [LB483]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Fischer. Thank you, Senator Langemeier. Senator Nelson, you're recognized. [LB483]

SENATOR NELSON: Thank you, Mr. President and members of the body. May I ask a question or two of Senator Langemeier? [LB483]

PRESIDENT SHEEHY: Senator Langemeier, would you yield to questions? [LB483]

SENATOR LANGEMEIER: Yes. [LB483]

SENATOR NELSON: I found your response to Senator Fischer's questions initially pretty interesting. You were talking about adjoining acres of land and not being able to expand the irrigation. If you have a situation where you have 80 acres of land that has a well on it and there is an adjoining 80 acres that is presently being watered under a lease agreement, that's acceptable. You...do you have to get the permission of the NRD to do that or are you free to do that, make that arrangement, if you understand what I'm saying? [LB483]

SENATOR LANGEMEIER: There are a lot of wells out there that are irrigating 80 acres on the primary farm that the owner owns, but if...let me give you an example. If you and I were brothers and we each owned...and we don't even have to be brothers. You and I are partners and I owned 80 and you owned 80 and we had one well and one pivot, that's certified as irrigated acres. [LB483]

SENATOR NELSON: Okay. [LB483]

SENATOR LANGEMEIER: If you and I blow apart and we can't stand each other anymore, through the IMP process, since we're not expanding irrigated acres, and this is all in LB962, it has nothing to do with this legislation, but within LB962 you could apply...and you're fully appropriated now, you could apply to the NRD to put your own well in to keep irrigating your 80, since we're separated, long as that number of acres

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doesn't change. [LB483]

SENATOR NELSON: All right. Suppose the brother that you had the falling out with that owns that 80 acres that was being watered from water from the initial 80, suppose he decides to sell that 80 acres and a new owner comes along. Are they going to be able to put down a well on that 80 acres? [LB483]

SENATOR LANGEMEIER: They would make the request to the NRD to continue to irrigate those acres and, in most cases, the NRDs...I don't...there's no reason not to grant that to keep that as irrigated acres. [LB483]

SENATOR NELSON: Oh, okay. But it does add an additional well there. You've got two wells on the same quarter then, don't you? [LB483]

SENATOR LANGEMEIER: Right. But we don't calculate this on wells. We calculate it on irrigated acres. So whether there's two wells on a farm or three wells on a farm, it's the irrigated acres that are certified. [LB483]

SENATOR NELSON: That are the measure. All right. Thank you. Thank you, Senator Langemeier. Thank you, Mr. President. [LB483]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Members requesting to speak on AM839 to LB483, Senator Stuthman, followed by Senator Fischer. Senator Stuthman, you're recognized. [LB483]

SENATOR STUTHMAN: Thank you, Mr. President. And I would like to ask a question or two of Senator Langemeier. [LB483]

PRESIDENT SHEEHY: Senator Langemeier, would you yield to questions? [LB483]

SENATOR LANGEMEIER: Yes. [LB483]

SENATOR STUTHMAN: Senator Langemeier, in continuing with the conversation that you just had with the two brothers and the 160 acres, the two 80s and separating that, the situation that I would like to address to you is the fact that if one individual owns the 80 acres and has a well and he has a pivot that just windshield wipes around and he has an opportunity to buy the next 80 that is dryland, can this individual run that pivot around that other 80 acres and irrigate an additional acres? They way I understand it, they would not be able to. Would this be correct? [LB483]

SENATOR LANGEMEIER: If you're in a fully appropriated area and you fall within the hydrologically connected area, no, you could not do that. Now if they change the status to nonfully appropriated, you would apply to the NRD and try and get some of these

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2,500 acres, in my bill that is before us, to include that 80 that you would like to run your pivot all the way around. [LB483]

SENATOR STUTHMAN: And that would be...that would be the process that you would have to go through to utilize irrigation for that additional 80 acres that you purchased. [LB483]

SENATOR LANGEMEIER: Correct. [LB483]

SENATOR STUTHMAN: Okay, that is one of the concerns that I had, you know, and I guess as was explained earlier on, you know, we're dealing with...not necessarily with wells. We're dealing with the amount of acres, acres to be irrigated. I think when we're dealing with something like this, I would like to see a fact that, you know, maybe there should be meters on these wells. If you pumped...put four inches on 80 acres and you buy the additional one, or let's say you put eight inches on the one 80 acres and the fact that you bought another 80 acres and you put four inches on each 80, which is the same amount of gallons that you pumped from the underground, I think then it should be a workable situation. That's where, in my opinion, maybe we should be looking at, you know, metering these wells to know how many gallons we're really pumping from the underground. Really, to me it's immaterial how many wells you put or poke holes in the ground; it's how many gallons you take from the aquifer. Is there anything in the process of are we ever going to get to metering wells? Or, Senator Langemeier, explain your knowledge on metering wells. [LB483]

SENATOR LANGEMEIER: That many of the NRDs have, when fully appropriated or at an overappropriated level, excuse me, overappropriated level have put on well meters to try and deal with the overappropriation. The fully appropriated, many have I don't know that it's a requirement but many have. And the Lower Platte North NRD, which I used to serve on, on many occasions discussed requiring well meters. I think those that have well meters have found they've been very successful, very educational. It's...they're very reluctant to put them on the first time. [LB483]

SENATOR STUTHMAN: And I will agree with you, Senator Langemeier, but I think this is something that we're going to have to look to in the future. It isn't how many holes that are poked in the ground. It's the fact of how many gallons we're taking out of the ground. And with the new technology and the new farming practices, you know, we could probably be irrigating twice as many acres with the same amount of irrigated water from the underground. So thank you, Mr. President. Thank you, Senator Langemeier. [LB483]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Are there additional members requesting to speak? Seeing none, Senator Langemeier, you're recognized to close on AM839. [LB483]

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SENATOR LANGEMEIER: Mr. President and members of the body, I thank the discussion on water law in Nebraska. I will have to get tuned up for more questions on LB962 for the future. I would ask that you adopt AM839 to LB483. It becomes the bill. I think this is a very responsible step in preparing ourselves for a status change and I'd ask for your support. Thank you. [LB483]

PRESIDENT SHEEHY: Thank you, Senator Langemeier. You have heard the closing. The question before the body is on the adoption of AM839 to LB483. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB483]

CLERK: 35 ayes, 0 nays, Mr. President, on the adoption of Senator Langemeier's amendment. [LB483]

PRESIDENT SHEEHY: AM839 is adopted. [LB483]

CLERK: I have nothing further on the bill, Mr. President. [LB483]

PRESIDENT SHEEHY: Senator Nordquist. [LB483]

SENATOR NORDQUIST: Mr. President, I move LB483 to E&R for engrossing. [LB483]

PRESIDENT SHEEHY: You have heard the motion. Senator Fischer, did you wish to be recognized. [LB483]

SENATOR FISCHER: Thank you, Mr. President and members. Would Senator Langemeier just yield to a couple more questions before we advance the bill? [LB483]

PRESIDENT SHEEHY: Senator Langemeier, would you yield? [LB483]

SENATOR LANGEMEIER: Love to. [LB483]

SENATOR FISCHER: Thank you, Senator. On pages 23 and 24 of the amended bill that we have before us now, just for clarification, at the top of page 24, lines...beginning with line 5 there where it says, "Each affected natural resource district may, after the initial four-year period has expired, annually determine whether water well permit limitations should continue and may enforce such limitations." So with this new legislation that's proposed here before us, we're looking at, I guess I would say it's a four-year kind of cooling off period after a basin is no longer determined to be fully appropriated? [LB483]

SENATOR LANGEMEIER: Correct. [LB483]

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SENATOR FISCHER: Thank you. Thank you, Mr. President. [LB483]

PRESIDENT SHEEHY: Thank you, Senator Fischer. You have heard the motion. All those in favor say aye. Opposed, nay. LB483 advances. Mr. Clerk, you have items for the record. [LB483]

CLERK: I do, Mr. President. Transportation Committee reports LB93 and LB649 as indefinitely postponed; Education Committee reports LB549 to General File with amendments. Those reports signed by the respective Chairs. New resolution: LR67. That will be laid over. That's all that I had, Mr. President. (Legislative Journal pages 837-838.) [LB93 LB649 LB549 LR67]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We'll move to next item under Select File. []

CLERK: Mr. President, LB403. Senator Nordquist, Enrollment and Review amendments, first of all. (ER8023, Legislative Journal page 579.) [LB403]

PRESIDENT SHEEHY: Senator Nordquist, you're recognized. [LB403]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB403. [LB403]

PRESIDENT SHEEHY: You have heard the motion on the adoption of E&R amendments. All those in favor say aye. Opposed, nay. They are adopted. [LB403]

CLERK: Mr. President, the next amendment I have, Senator Janssen, AM435. [LB403]

PRESIDENT SHEEHY: Senator Janssen, you're recognized to open on your amendment. [LB403]

SENATOR JANSSEN: Thank you, Mr. President, members of the body. At this time I'd like to withdraw AM435. [LB403]

PRESIDENT SHEEHY: AM435 is withdrawn. [LB403]

CLERK: Mr. President, the next amendment I have, Senator White, AM491. [LB403]

PRESIDENT SHEEHY: Senator White, you're recognized to open on AM491. [LB403]

CLERK: Senator... [LB403]

PRESIDENT SHEEHY: Senator White. [LB403]

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CLERK: ...I think this is the amendment you had filed on General File, when debate was going on, on General File. [LB403]

SENATOR WHITE: (Microphone malfunction) Pardon me? [LB403]

CLERK: This is the amendment that you had filed when debate was going on, on General File. [LB403]

SENATOR WHITE: (Microphone malfunction.) (Inaudible.) [LB403]

CLERK: Okay. [LB403]

PRESIDENT SHEEHY: AM491 is withdrawn. [LB403]

CLERK: Mr. President, the next amendment I have, Senator Karpisek, AM534. [LB403]

PRESIDENT SHEEHY: Senator Karpisek, you're recognized to open on AM534. [LB403]

SENATOR KARPISEK: I would like to withdraw that amendment, Mr. President. [LB403]

PRESIDENT SHEEHY: AM534 is withdrawn. [LB403]

CLERK: The next amendment, Mr. President, Senator Karpisek, AM680. (Legislative Journal page 811.) [LB403]

PRESIDENT SHEEHY: Senator Karpisek, you're recognized to open on AM680. [LB403]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. AM680 does a number of things to address some of the issues that were raised by senators on LB403 on General File. First, though, I would like to make it very clear for the record that LB403 contains two distinct parts: verification of legal status for public benefits and the requirement for the use of E-Verify by public employers and public contractors and companies that receive tax incentives. It is not the intent of this legislation to be duplicative on the checks for employers. What I mean is that, as defined under this bill, employment is not a public benefit and, as a result, public employees will not have to be run through the SAVE Program. However, newly hired public employees will have to be verified by the E-Verify Program. I wanted to make that clear for the record. Again, the E-Verify part of this bill was Senator Ashford's. Senator Pankonin, as Chairman of the Retirement Systems Committee, raised some concerns about retirement benefit being included in LB403. He brought up very valid points on how LB403 would interact with

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the current law on public retirement. AM680 strikes "retirement benefit" from the definition of benefit and creates a separate prohibition on participation by an employee of a state agency or political subdivision unless the employee is either a citizen or a qualified alien and is lawfully present in the United States. This change would prevent the participation in a system if an individual...if an individual is unlawfully present but would not address issues after participation, as those issues would be governed by other federal law. I would like to thank Senator Pankonin and his staff for working with us on this change, and it has taken a lot of work but I think we're getting there. Next, the university raised a fiscal concern on checking everyone walking into their clinics in Omaha. The intent of this legislation is not to require a verification if an individual makes a payment for services rendered but to verify legal status if public funds are used for a payment or other financial assistance. As an example, the burden will not be on the clinic to make the verification for services rendered but on Health and Human Services to verify eligibility for Medicaid. To clarify this, AM680 changes "health benefit" to "health payment or financial assistance benefit." This will alleviate the university's fiscal concern and the need for a big A bill. We have also worked with political subdivisions, such as NPPD, to clarify three items pertaining to public employers, public contractors, and E-Verify. First, AM680 clarifies that the E-Verify requirement only applies to those newly hired employees physically performing services within the state of Nebraska. Situations exist where a company may have employees not in Nebraska or even in the United States. We wanted to eliminate any confusion about whether or not LB403 applies to those employees. LB403 is intended to apply only to those employees physically performing services in Nebraska. Second, the definition of public contractor is redefined to include any contractor or his or her subcontractor who is awarded a contract by a public employer for the physical performance of services within the state of Nebraska. The purpose of this change is to clarify that LB403 only covers contracts awarded by public employers for services provided in the state of Nebraska. Such a public contractor will be required to verify the work authorization status of newly hired employees physically performing services in the state of Nebraska. Third, AM680 will clarify that LB403 will only apply to contracts awarded by a public employer after the effective date of this act, which is October 1, 2009. AM680, in an attempt to make implementation of the verification of legal status for state benefits as easy as possible, removes language requiring the execution of a document in a form prescribed by the Department of Administrative Services and inserts that an individual must attest in a format prescribed by DAS. The intent of this change is to allow agencies and political subdivisions to use current benefit applications if the application includes satisfactory information related to immigration status and the necessary information for a SAVE check, if required. It will also allow DAS to be more flexible in the guidance it will give to political subdivisions and state agencies. Finally, AM680 places a severability clause on the legislation. I think that goes through everything. I know we have some others that are going to ask questions and try to make this a little more clear. So with that, Mr. President, thank you. [LB403]

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PRESIDENT SHEEHY: Thank you, Senator Karpisek. You have heard the opening to AM680 to LB403. (Visitors introduced.) Resuming floor discussion on AM680 to LB403, members requesting to speak: Senator Nantkes, followed by Senator Price, Senator Pankonin, Senator Adams, and Senator Campbell. Senator Nantkes. [LB403]

SENATOR NANTKES: Thank you, Mr. President. Just for the record, I've talked with Senator Karpisek off mike and a variety of interested parties. Don't mean to be redundant in any way but we've agreed to go through a series of questions in order to clarify the record for enforcement purposes and the scope of application because, as you well know, the breadth of what in fact is a public benefit could be quite broad if left undefined and ambiguous. So please bear with us. This will probably be pretty straightforward and I think Senator Karpisek has agreed to go through these things to clarify the record and be clear. Colleagues, that is simply my intent with this floor interaction this morning. Senator Karpisek, would you yield to questions? [LB403]

PRESIDENT SHEEHY: Senator Karpisek, would you yield to questions? [LB403]

SENATOR KARPISEK: Yes, I will. [LB403]

SENATOR NANTKES: Senator Karpisek, does Section 2 of AM413 apply to library cards? [LB403]

SENATOR KARPISEK: No, it does not apply to library cards. [LB403]

SENATOR NANTKES: Does Section 2 apply to the pool passes that say, for example, the city's park and recs department would distribute to various agencies across the city of Lincoln or Omaha or any municipality? [LB403]

SENATOR KARPISEK: No, nowhere in the state. [LB403]

SENATOR NANTKES: Would this legislation and its amendments apply to the sport, nature, or other recreation programs, for example, before and after school programs, offered by the parks and rec department of a municipality? [LB403]

SENATOR KARPISEK: No, it would not. [LB403]

SENATOR NANTKES: Does this legislation or its amendments apply to the dog and cat licenses issued by the Lincoln-Lancaster County Health Department or any health department? [LB403]

SENATOR KARPISEK: No, it does not. [LB403]

SENATOR NANTKES: Would this legislation or its amendments apply to special

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permits issued by the planning department regarding zoning or land use variance?
[LB403]

SENATOR KARPISEK: No, it does not. [LB403]

SENATOR NANTKES: Does the legislation or its amendments apply to building permits issued by cities for construction? [LB403]

SENATOR KARPISEK: No. Section 2 is intended to apply to licenses, grants, or loans afforded to people who must obtain a license or permit in order to engage in their occupation, not land or real estate construction projects requiring a permit. [LB403]

SENATOR NANTKES: Thank you, Senator Karpisek. Does the legislation and its amendments apply to permits issued to persons for maintaining or operating apartments or hotels? [LB403]

SENATOR KARPISEK: Yes, it does. [LB403]

SENATOR NANTKES: Does the legislation and its amendments apply to cities' employees' receipt of benefits in the form of salary, health, or disability benefits?
[LB403]

SENATOR KARPISEK: No, it does not. Section 7 is intended to address city employees and it applies only to new employees, not retroactive. [LB403]

SENATOR NANTKES: Thank you, Senator Karpisek. Does the legislation and its amendments, is it meant to apply to contracts with business entities? [LB403]

SENATOR KARPISEK: No, Senator Nantkes. Section 2 applies only to contracts with individuals, not with business entities such as corporations, limited liability corporations, and limited liability partnerships...I'm sorry, limited liability companies. Those entities, if public contractors, will be required to use Section 7's E-Verify system for new employees. [LB403]

SENATOR NANTKES: Senator Karpisek, if a mother of a child is not a U.S. citizen and an undocumented individual but her child, who is born in the U.S. and, thus, qualifying for U.S. citizenship, would this legislation prohibit the current practice that allows that mother to apply for and receive Medicaid benefits for her unborn child during pregnancy? [LB403]

SENATOR KARPISEK: Yes, and there is current law that prohibits this. This is not affecting that. [LB403]

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SENATOR NANTKES: Great. Thank you. And then does the legislation or its amendments apply to individuals who are already eligible for Medicaid? [LB403]

SENATOR KARPISEK: No, if the individual is already Medicaid eligible then he or she has already been determined... [LB403]

PRESIDENT SHEEHY: One minute. [LB403]

SENATOR KARPISEK: ...to be a legal alien and the city does not have to reverify his or her status. [LB403]

SENATOR NANTKES: Thank you, Senator Karpisek. If the city were to enter into a contract, who is required to conduct the E-Verify check on new employees under Section 7 of the amendment? Is that contemplated in the legislation or its amendments? [LB403]

SENATOR KARPISEK: It is, Senator Nantkes. It would be the public contractor. The city must simply include in its contracts a provision requiring public contractors to use the E-Verify or an equivalent program. The city must also verify the status of any new employees it hires. [LB403]

SENATOR NANTKES: Thank you, Senator Karpisek, for yielding to questions. Colleagues, I am going to hit my light on again because, as I mentioned, we do have a series of questions and answers that we've discussed off the mike that we're trying to include in the legislative record. It's not to filibuster. It's not to extend opposition in relation to the bill, its amendments or otherwise, but it truly is just creating the record and... [LB403]

PRESIDENT SHEEHY: Time, Senator. [LB403]

SENATOR NANTKES: ...and providing clarity for local aspects of government. Thank you. [LB403]

SENATOR KARPISEK: Thank you. [LB403]

PRESIDENT SHEEHY: Thank you, Senator Nantkes. Senator Price, you're recognized. [LB403]

SENATOR PRICE: Thank you, Mr. President, members of the body. I wonder if Senator Karpisek could answer a few questions, please? [LB403]

PRESIDENT SHEEHY: Senator Karpisek, would you yield to questions? [LB403]

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SENATOR KARPISEK: Yes, I will. [LB403]

SENATOR PRICE: Thank you very much, Senator Karpisek. The questions I have for you are relating to contracts that the state enters into with, let's say, hotel providers. Oftentimes, there will be a contract of sorts that a state employee will get a contract price for...at a hotel. Would this mean that those people who had hotels would have to do the E-Verify checks then? [LB403]

SENATOR KARPISEK: If it's a contract with the state where taxpayer money is going to be used to pay the hotel, yes, they would. [LB403]

SENATOR PRICE: Okay. And then I'm going to tell you, I don't mean to be painstaking, I just want to make sure. [LB403]

SENATOR KARPISEK: That's fine. [LB403]

SENATOR PRICE: If we have a contract with the General Services Administration, GSA, all those contracts that say Schedule 70 or any of the different type of schedules at GSA, for those entities, as this amendment would have, that are doing business within the state of Nebraska, those entities would also have to do the E-Verify? [LB403]

SENATOR KARPISEK: Can you explain GSA for me, Senator Price? [LB403]

SENATOR PRICE: Yes, absolutely. I appreciate the opportunity to do so. GSA, the General Services Administration, our regional one is in Kansas City, many purchases are made either at the state and/or federal or local level on a GSA schedule. These are prearranged and negotiated contracts for goods and/or services. You'll find there's one to buy goods from disabled or there's contracts negotiated for the very radio, the D-STAR radios, that are in the dome here for emergency management system. So this is how the government buys goods and services many times, particularly in bulk. They buy them through this GSA and they have these prearranged, negotiated contract schedules. And that's why I was talking, much akin or much alike the example I gave you with the hotels. [LB403]

SENATOR KARPISEK: Okay. Thank you for the clarification, Senator Price. If it would be a federal program then, no, it would not. [LB403]

SENATOR PRICE: Okay. But they do have them for the state. That's what I'm saying. They do have the very same thing that exists for the state. [LB403]

SENATOR KARPISEK: No, it...I will clear that up later, once we get a little more time, but I'm sure that that is not part of this...the reach of this bill. [LB403]

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SENATOR PRICE: Well, all right. Thank you very much. I believe I have another question but I can't formulate it right now so I'm going to let you off the hook. [LB403]

SENATOR KARPISEK: We can get back to it. [LB403]

SENATOR PRICE: Thank you very much, Senator Karpisek. [LB403]

SENATOR KARPISEK: Thank you. [LB403]

PRESIDENT SHEEHY: Thank you, Senator Price. Senator Pankonin, you're recognized. [LB403]

SENATOR PANKONIN: Thank you, Mr. President and members of the body. I rise to support Senator Karpisek's AM680. On General File I raised some questions about including retirement benefits under the list of public benefits which could not be paid to a person not lawfully in the United States. I appreciate Senator Karpisek, the Governor's Office, and others working with the Retirement Committee, legal counsel and myself to make sure we don't jeopardize the tax-exempt status of public retirement systems throughout the state. Just a brief reminder of why we had to specifically address retirement benefits: Under 401(a) of the federal tax code, any contributions which any employee has paid into his or her retirement fund must be held in trust by the retirement fund administrator for the exclusive use of the retirement member. So the state cannot prevent distribution of those benefits which have already been contributed by an employee who is not lawfully in the United States. The language contained in AM680 clarifies that no retirement benefits will be paid to an employee of a state agency or political subdivision who is not authorized to participate in any retirement plan unless he or she is (a) a United States citizen or (b) is a qualified alien under the federal Immigration and Nationality Act 8 U.S.C. 1101, as such act existed on January 1, 2009, and is lawfully present in the United States. This means that after the operative date of LB403 a current or new employee who is not lawfully in the United States is not eligible to be a retirement system plan member, and any contributions paid into the plan by the employee or employer after the operative date will not count towards retirement benefits. If it is discovered that an employee who is not lawfully in the United States has paid into a plan after the operative date of LB403, the employee's contributions will be returned to the employee and the employer's contributions will revert back to the employer. However, even with this new language, the exclusive use rule still applies to those contributions made by an employee prior to the operative date of LB403 who is not lawfully in the United States, and the employer's contributions also apply if the employee has vested and those contributions must still be held in trust by the retirement plan administrator and paid to the employee upon retirement. We have no knowledge of persons with this status currently contributing to public retirement plans. However, if such persons were later discovered, the plan administrator would have to comply with federal law and distribution benefits...and distribute benefits to them. Though AM680

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references the five plans administered by the Nebraska Public Employee Retirement System--judges, State Patrol, school, state, and county employees--the Retirement Committee will introduce a bill next year to insert language similar to this amendment into each of the statutory sections for these five state plans. Thank you. [LB403]

PRESIDENT SHEEHY: Thank you, Senator Pankonin. Senator Adams, you're recognized. [LB403]

SENATOR ADAMS: Thank you, Mr. President. I wonder if Senator Ashford would yield to a question, please. [LB403]

PRESIDENT SHEEHY: Senator Ashford, would you yield to questions? [LB403]

SENATOR ASHFORD: Yes. [LB403]

SENATOR ADAMS: Senator Ashford, the department, State Department of Education, has approached me and had a question, and it seems like a reasonable one and I wonder if you might have a response to it. Their concern is this, if I interpret it correctly. We have a person who gets a teaching certificate from the state of Nebraska. The State Department of Education has awarded that certificate. That person then leaves the country, for whatever reason, and takes up teaching outside of the United States, be it in Canada, a military base in Germany, wherever it might be, and at the point of renewal of that certificate they indicate on the application for renewal that their place of residence is now no longer the United States. The question is a procedural one. How is the Department of Education to handle that? [LB403]

SENATOR ASHFORD: I just wanted to clarify with Stacey. They're not a resident. They would not have to go through the SAVE system at that point. [LB403]

SENATOR ADAMS: Okay. All right. [LB403]

SENATOR ASHFORD: At the point when they're asking for the renewal, they're a resident of some other state, some other country. [LB403]

SENATOR ADAMS: Yes. [LB403]

SENATOR ASHFORD: They would not have to go through the SAVE. [LB403]

SENATOR ADAMS: All right. Thank you, Senator Ashford. Thank you, Mr. President. [LB403]

PRESIDENT SHEEHY: Thank you, Senator Adams. Members requesting to speak on AM680 are Senator Campbell, followed by Senator Haar, Senator Ashford, Senator

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Nantkes, Senator Gloor, and others. Senator Campbell, you're recognized. [LB403]

SENATOR CAMPBELL: Thank you, Mr. President and members of the body. Senator Karpisek, would you yield to a question? [LB403]

PRESIDENT SHEEHY: Senator Karpisek, would you yield to questions? [LB403]

SENATOR KARPISEK: Yes, I will. [LB403]

SENATOR CAMPBELL: While this question does not necessarily affect our business, in the nursery business, but it may affect other nurseries or related agricultural businesses and that seasonal workers come and work during a period of time of the year, and the same employee comes back year after year after year. Would they have to be checked every single year? [LB403]

SENATOR KARPISEK: Thank you, Senator Campbell. My intent on this bill is, no, that if the same employee being hired by the same company would not have to. It would only...public...it would be a public contractor to determine the work eligibility status of new employees. While "new employee" is not defined in LB403, there are correlations we can draw from existing statutes. For instance, under the New Hire Reporting Act found in Chapter 48, Sections 2301 through 2308, certain employers are required to report to the Department of Health and Human Services each time they hire or rehire an employee. Under this act, it is not considered a rehire when an employee is temporarily separated from employment, including unpaid medical leave, so an unpaid leave of absence, a temporary layoff or an absence for disability or maternity. So in my opinion, my intent of this bill is that a seasonal employer would not need to be E-Verified every time they return to work. An employer who has already verified the employee's work eligibility, in my opinion, should not be considered a new employee under LB403, and the employer should not be required to reverify the same employee they have already verified. I would like to point out, however, that E-Verify is a federal program and there may be some question still on this question with the E-Verify program. It is not my intent in this bill to have the same person E-Verify again with the same company. [LB403]

SENATOR CAMPBELL: Thank you, Senator. We certainly would understand that the federal may be changed and affect our system. Thank you, Mr. President. [LB403]

PRESIDENT SHEEHY: Thank you, Senator Campbell. Senator Haar, you're recognized. [LB403]

SENATOR HAAR: Mr. President and members of the body, I would like to ask Senator Karpisek some questions as well. [LB403]

PRESIDENT SHEEHY: Senator Karpisek, would you yield to questions? [LB403]

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SENATOR KARPISEK: Yes, I will. [LB403]

SENATOR HAAR: My understanding again, that LB403 has two parts. First is a public...in terms of public benefits, is that correct, and then the second is E-Verify? [LB403]

SENATOR KARPISEK: Correct. [LB403]

SENATOR HAAR: And in terms of public benefit, how is that check supposed to be made? Is that also by E-Verify or is that some other system? [LB403]

SENATOR KARPISEK: That is a different system called SAVE. That acronym is SAVE. [LB403]

SENATOR HAAR: Could you tell me a little bit about SAVE? [LB403]

SENATOR KARPISEK: SAVE is when someone would be hired. Well, let's just say they're a new hire with the state of Nebraska. They would come in. They would...on an application they would either say that they are a citizen or not a citizen. If they would say that they are a citizen, end of the story. They go on and their hiring is done. If they would check that they are not a citizen, then the SAVE Program would start. Their alien ID number would be entered in to the SAVE Program and in a matter of seconds it will come back to say whether they are legally in the country, if they are on a student visa, work visa, or if maybe there's a problem. If there's a problem, it will say there's a problem and then further verification would be needed. [LB403]

SENATOR HAAR: So the first part, if somebody says they are a citizen or...then we just take their word for it. Is that correct? [LB403]

SENATOR KARPISEK: In the way that we have gone in this bill, yes, that is the way we are going to go with it. There's people on both sides of this issue to say there's not enough teeth and people saying that there's too many teeth. In my opinion, that's one place where we could put some more teeth in the bill. However, we're not trying to make this so difficult that it would run through all sorts of processes and cost businesses more money. We hope that we would catch them somewhere else down the road in the retirement benefit, as Senator Pankonin just talked about, or that some of the Social Security or those types of programs would catch that. [LB403]

SENATOR HAAR: Okay. I was also wondering whether...obviously, you and Senator Nantkes are kind of doing a Q&A that you've worked out beforehand. Could we get copies of that, please? [LB403]

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SENATOR KARPISEK: Sure, we can get copies of that. Is it that rehearsed? (Laughter) Yes, it is, and again, what we're doing is just trying to get on record the legislative intent, because some of these, the scenarios that have been brought forward, just like the dog and cat licenses, I mean, yes, it is a question but does it need to be in the bill? I mean, we're getting pretty down to the...picking hairs here. So, yes, we can get those run off and distributed. [LB403]

SENATOR HAAR: Okay. Now there are some cases, as I was listening to that and trying to take notes on it, for example, if there's a woman who's pregnant and she's illegal, we know the child will be born in the United States so that that child will be a citizen, according to the U.S. Constitution. She would still not be eligible for services that would make that U.S. citizen a healthier child, is that correct? [LB403]

SENATOR KARPISEK: That is correct. And as I said, there is already a law that prohibits this. I guess my thinking on that is we don't know that the baby will be born here. [LB403]

PRESIDENT SHEEHY: One minute. [LB403]

SENATOR HAAR: The chances might...is there...is that a state law or a United States law? [LB403]

SENATOR KARPISEK: You know, I can't tell you that, Senator, but we can sure look into that. [LB403]

SENATOR HAAR: There are some common sense things that I'm hearing. I mean in that case certainly any kind of healthcare that we can give to a pregnant woman to make that child healthier, you know, whether or not it's born in the United States, makes an awful lot of common sense, it would seem to me. [LB403]

SENATOR KARPISEK: It does. And, Senator, I have to apologize. I was reading the question wrong. The question is, if a mother is not a U.S. citizen, is not a legal alien but her child will be when born in the U.S., may the mother still apply for and receive Medicaid benefits for her unborn child during her pregnancy? The answer is, yes, she may. So I apologize. I answered incorrectly. [LB403]

SENATOR HAAR: And then is that according to Nebraska law or United States law? [LB403]

SENATOR KARPISEK: State and federal law both. [LB403]

PRESIDENT SHEEHY: Time, Senator. [LB403]

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SENATOR HAAR: Okay. Thank you. [LB403]

PRESIDENT SHEEHY: Thank you, Senator Haar. Senator Ashford, you're recognized. [LB403]

SENATOR ASHFORD: I was going to...Senator Nantkes, do you have some additional questions because, if you do, I was going to give my time to Senator Nantkes. [LB403]

SENATOR NANTKES: Thank you. Appreciate that. [LB403]

PRESIDENT SHEEHY: Senator Nantkes, you're yielded 5 minutes. And then, Senator Nantkes, you're next in the queue. [LB403]

SENATOR NANTKES: Thank you, Mr. President. Thank you, Senator Ashford, I appreciate the time. And again, colleagues, to be clear, I know that without editorializing that this, again, really is just to clarify the record in relation to conversations that have happened in between General and Select File with a variety of different interests, including cities and different organizations that are there and also in consultation with the Governor's Office. And so we...not trying to slow down the process, not trying to pull a fast one on Senator Karpisek or anyone else who supports this bill, and we'll be happy to provide this information to the body. But with that, I'd just like to resume some questioning with Senator Karpisek, if he'll yield. [LB403]

PRESIDENT SHEEHY: Senator Karpisek, would you yield? [LB403]

SENATOR KARPISEK: Yes, I will. Thank you. [LB403]

SENATOR NANTKES: Senator Karpisek, just to kind of get back to where we left off previously, will the legislation or its amendments impose a significant administrative burden on government? [LB403]

SENATOR KARPISEK: That is not the intent and we hope it will not. Let me find my spot here again, since we've been busted on where we are. [LB403]

SENATOR NANTKES: Well, I think but for lighting, directions and choreography, we did have this pretty well scripted. [LB403]

SENATOR KARPISEK: All right. Section 4, again, it is not intended to or designed to. Section 4 of AM413, as amended by AM680, requires an applicant for public benefits to attest in a format described by DAS that he or she is a U.S. citizen or he or she is a qualified alien--the question that Senator Haar had just asked--and is lawfully present in the United States. The bill is intended to make this verification process as simple and, as possible, it is anticipated that most applicants for public benefits are already filling out

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some sort of form or application. The verification language could simply be included as an entry on that form and then it is up to himself or herself, as a qualified alien. It is only in those cases where the SAVE check will be conducted. Section 4 also allows for electronic filings of applications for public benefits. This, too, is designed to help streamline the verification process as much as possible. [LB403]

SENATOR NANTKES: Thank you, Senator Karpisek. And then finally on this topic, do we know what impact Section 7 would or could have on the public bidding process? [LB403]

SENATOR KARPISEK: Unfortunately, no, we don't. We don't know what the collateral effects or unintended consequences will be, but there is certainly the possibility that it may decrease the number of bidders, thereby reducing the advantages of competition. There is also the possibility that the requirements may drive up bids. We simply don't know exactly what this bill will have on the bidding process. I will have to say, however, that is part of the idea behind this bill, that maybe that's where some of our problems lie. [LB403]

SENATOR NANTKES: Thank you, Senator Karpisek. I think that concludes that line of questioning. I know that we have one additional question presented on behalf of public employers, i.e., the city, that I'd like to draw your attention to and then we can go get some additional record created in terms of public housing concerns. But is the public... [LB403]

PRESIDENT SHEEHY: One minute. [LB403]

SENATOR NANTKES: ...employer, i.e., the city, liable to whom the public...or and to whom is the public employer liable if the contractor does not run its new employees through the E-Verify system or an equivalent program? [LB403]

SENATOR KARPISEK: It is solely the public contractor's responsibility to run the E-Verify check on its new employees. Want to point that out. LB403 creates no liability on the part of public employers for a public contractor's failure to run the check. [LB403]

SENATOR NANTKES: Thank you, Senator Karpisek. Now just to kind of switch gears and talk a little bit about some concerns that have been raised in terms of how this legislation would affect public housing and public housing contracts and agencies and clients. So just a few, colleagues, if you could bear with us just a few more minutes in terms of this aspect of the record, and then I think we're pretty close to done. But, Senator Karpisek, could you tell us, public housing agencies... [LB403]

PRESIDENT SHEEHY: Senator Nantkes, you're now on your time. [LB403]

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SENATOR NANTKES: Thank you, Mr. President. Public housing agencies currently follow federal regulations with similar provisions found in LB403, the underlying legislation. Is LB403 designed to replace or supplant those existing federal rules? [LB403]

SENATOR KARPISEK: Thank you, Senator Nantkes. No, LB403 is designed to supplement federal regulations in this area, not supplant them. Public housing agencies would be in compliance with LB403 if they continue to follow federal regulations regarding eligibility of immigrants in federally funded public and assisted housing programs. [LB403]

SENATOR NANTKES: Senator Karpisek, thank you. Some public housing agencies in Nebraska manage housing developments that do not receive direct rental subsidy but do serve a public purpose. Is renting a unit in a property that does not receive ongoing direct rental subsidy constitute a public benefit under the legislation? [LB403]

SENATOR KARPISEK: Thank you, Senator Nantkes. That's a good question. We heard a lot on this. No, it is not. Only properties or persons receiving ongoing direct rental subsidy are considered to be receiving a public or assigned housing benefit. The rental of other properties owned or managed by public housing authorities, while they do serve a public purpose, would not constitute an individual public benefit under LB403. [LB403]

SENATOR NANTKES: Thank you, Senator Karpisek. One last question. LB403 has an operative date after which agencies must verify the immigration status of applicants. Does this law apply to persons who have applied or received a public benefit prior to the operative date? [LB403]

SENATOR KARPISEK: Another good question, Senator Nantkes. Thank you. No. It is the intent of LB403 to require the verification of immigration status of applicants for public benefits as of the operative date of the act. The act does not reach backward to prior applicants or persons who qualified prior to the operative date. [LB403]

SENATOR NANTKES: Thank you, Senator Karpisek. And also, as we've discussed earlier, there's a few other questions that I wanted to pose for the record that I think we're working to try and find some answers on. We don't have those yet so I'll simply include those. In terms of public benefits also, I think it's unclear whether or not this legislation would apply to or create administrative burdens for public defenders or other people within the legal community that clients may be seeking services from, so I'd like to work with you to get some answers on that before the next round of debate. And then finally I think some unanswered questions that exist in relation to the legislation and the amendments is...and these have been presented by local municipalities--and again, colleagues, this is just part of putting it on the record--if the SAVE check reveals that an individual is not a qualified alien, must the city immediately revoke the license, permit or

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benefit, or in fact is there some level of procedural due process constitutionally required before revoking or terminating that permit or benefit? That's one thing that I think we have not contemplated, we may need to think about. Additionally, if the applicant for the public benefit does not speak English, must the attestation of U.S. citizenship be provided in their first language? If so, will DAS be prescribing or composing different attestation formats in different languages? What happens if applicants are illiterate or cannot understand the attestation document in their first language? I think these are all probably issues that can be dealt with through rules or regulations or in between this and the next round of debate. I am confident that, again working together, we can get these answers taken care of so that we can implement this in the cleanest way possible with the least amount of administrative burden on our local cities and counties and aspects of state government, which I know Senator Karpisek is also concerned about. [LB403]

PRESIDENT SHEEHY: One minute. [LB403]

SENATOR NANTKES: So finally, colleagues, I think that basically the point would be, in terms of unanswered questions, if SAVE or E-Verify systems would indicate that an individual is undocumented, what sort of notice, appeal, or other procedures would be in place to deal with potential mistakes and to ensure there is a nondenial of maybe a property right or entitlement right without due process of law? Again, I think we've come leaps and bounds along the way in terms of the debate within this body and with members of the public who are interested in these issues to try and really find that common ground, to work out, do the hard work on the details for implementation and otherwise, and we're really moving in a sound direction here. So thank you, Senator Ashford, the Judiciary Committee, and thank you, Senator Karpisek. [LB403]

PRESIDENT SHEEHY: Thank you, Senator Nantkes. Members wishing to speak on AM680 to LB403, Senator Gloor, followed by Senator Karpisek, Senator Council, Senator Haar, Senator Price, and others. Senator Gloor, you're recognized. [LB403]

SENATOR GLOOR: Thank you, Mr. President. I rise in support of AM680 and LB403. I had the opportunity this past summer to provide testimony to Senator Ashford's task force and thought I would share some of the information I presented at that time for the body. I do so in part as sort of a reminder to those people in the public who have called, sent e-mails lecturing me on, not surprisingly, a charge of insensitivity to the plight of illegal workers. And it's probably worth reminding everyone once again that we're forced to action because of the inaction of our federal government, where the overall responsibility of this should lie. But that being the case, we do need to remember that illegal workers are exploited. We have laws in this country set up to protect workers. Many of those laws will also protect illegal workers, but not surprisingly many of those workers refuse, for obvious reasons, to seek the protection that those laws would provide them and we find ourselves in a terrible position of having employers who in

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fact, as long as we continue to make it easy for illegal workers to come into this country, taking advantage of that small...I shouldn't say small, large issue to continue exploiting those workers. But some of the testimony that I provided to Senator Ashford's task force related to the direct dollar social impact of documented workers in this country and I want to share some of those numbers. Understand, and this is in somewhat a response to questions brought by Senator Haar, that there are laws, specifically laws like EMTALA, that require hospitals to provide care to anyone who presents to the emergency room of a hospital regardless of legal status, and to provide appropriate care until stabilization, which is a loosely defined term, unfortunately. Also remember that the vast, vast majority of the hospitals in this state are charitable organizations, not-for-profit, supported by either charitable underwriting or county or community hospitals of some kind, and see this as their charitable calling. Some, like mine, consider it part of a continuation of a ministry started by religious orders many years ago and that ministry knows no borders, no bounds, and we're happy to provide that care. I now find myself wearing a different hat, obviously, and recognize that the social impact on the community ends up being paid for others. Here are some dollar amounts that were, in fact, incurred by my organization in Grand Island over about a year and a half period of time: \$567,000 provided not to an illegal worker but to a family member of an illegal worker who accompanied the family to this country illegally; \$62,000 for heart problems; \$99,000 for some cancer care; \$53,000 for heart conditions; \$243,000; \$399,000. We're well over a million dollars here. I should also point out, these are not charges. These are costs. These are actual dollar costs, up to \$1.5 million we're talking about here, that end up being shifted into the community, just as if it were shoplifting in some way, shape or form. That cost is borne by a number of people. That cost is borne by people in many cases, obviously here legally, who have a challenging time trying to pay their bills and must do so as a result of this. It also means that there are other programs that these institutions would like to provide that they can no longer provide because dollars that otherwise could go to underwrite those worthy programs get sidetracked as a result of these types of expenses. [LB403]

PRESIDENT SHEEHY: One minute. [LB403]

SENATOR GLOOR: These are...thank you, Mr. President. These are only a few cases. This is not the entire expense of my institution. And take institutions all across the state and multiply it times some unknown multiplier, which clearly has to be a large one, and you are talking millions and millions and millions of dollars of expenses borne by the communities. I will say that many of these illegal workers work hard to try and pay their bills, but we're talking about bills that they can afford to pay of the \$300 to \$400 kind, not ones that fall into the tens of thousands of dollars. So these costs ultimately get shifted back to the community and these charges or costs, I'm sorry, are not...are from some of the larger cases that I was able to identify, not for many of the other smaller, smaller costs that come up on a daily if not weekly basis or weekly if not daily basis. Remember, there is a social impact here and it's one of the reasons that we are,

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because of our federal government's inactivity on this issue, forced to take a look at this and the impact it has on the... [LB403]

PRESIDENT SHEEHY: Time, Senator. [LB403]

SENATOR GLOOR: ...overall public health. Thank you. [LB403]

PRESIDENT SHEEHY: Thank you, Senator Gloor. Senator Karpisek, you're recognized. [LB403]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I think what Senator Gloor just said really said what I was going to say. There are impacts to this bill and the inactivity of the federal government is forcing our hand. All of these questions that Senator Nantkes and I just went through I think are...wouldn't have needed to be done, this bill wouldn't have needed to be done, but I think it does need to be done. Again, I just want to remind the body that the reason behind this bill is so state taxpayers' money goes to people in the state that are paying their taxes and being legal or being here under a work visa, student visa. Again, as I said on General File, a lot of these people maybe aren't our stereotypical person that we're thinking, sneaking over the border at night. They're people that came here on a student visa or a work visa and have kind of forgotten to go home or get their visas extended. They have...they have assimilated into our system and that's fine, but then I feel they need to start working toward being legal. I've gotten e-mails to say that these people do pay their taxes, that we shouldn't tell them that they have to be legal. Well, I will say that how do we know they're paying their taxes? We don't know that. We don't...we don't say how many dependents you can put down on your W-4 form, which I think is wrong and I think that that needs to be addressed in the upcoming legislation. But I think that there's a set of rules that we need to play by and everyone needs to play by them, instead of looking the other way and letting everyone just think, oh well, it's not really there, they're not hurting anything, fine. I will say again I think the federal system needs to get going and either get these people made legal, and I don't mean by doing it overnight but speeding up the process, or doing something else about it. It shouldn't have to fall to us because it is a huge problem. There are also many people that say that, I will say again, that this is a racial bill. It is not. I don't care if the people came from Germany, Czechoslovakia, Mexico, any other country, if they're not legal they need to either be legal or go home. That is not what it is about at all. We are spending a lot of money on the state level on people who are not legal. They're using a lot of social services, using a lot of other services that, truthfully, right now we can't afford. It may sound harsh; I don't mean it to but, gosh darn it, these people need to buck up and play by our rules. We also have a lot of questions that were asked by Senator Nantkes because people, well, I don't know that I would have to E-Verify or should I have to or not. Look, we hear that it's a big problem. We know it's a big problem. To me, it comes down to that somebody should do something about it. Well, I think it's time. Employers, it's time to do something. So I

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owned a business for 20 years, I understand one more piece of paper is not what you want to see, but it's on new hires only if you have a state contract or a subcontract. It's not that... [LB403]

PRESIDENT SHEEHY: One minute. [LB403]

SENATOR KARPISEK: Thank you, Mr. President. It is not that abrasive. It's not that intrusive. Again, in my business would I have jumped for joy? No. But if we're going to do something, it has to start somewhere and we can't just do it here. If we're going to make laws, we need our citizens to carry out the laws and help us with what we're trying to do. I think the support for this bill is large. I think it is well-crafted. I think Senator Ashford has narrowed his scope. I think it's a great place to start and I would just want to remind everyone of those things and, as we go through questioning, let's try to make this the best bill we can. I want it to work for the people, not against them. Thank you, Mr. President. [LB403]

PRESIDENT SHEEHY: Thank you, Senator Karpisek. Senator Council, you're recognized. [LB403]

SENATOR COUNCIL: My apologies, Mr. President. Would Senator Pankonin...is he present to yield to a question? [LB403]

PRESIDENT SHEEHY: Senator who? [LB403]

SENATOR COUNCIL: Pankonin. [LB403]

PRESIDENT SHEEHY: No, he's currently not present. [LB403]

SENATOR COUNCIL: Okay. Oh, there he is. [LB403]

PRESIDENT SHEEHY: Senator Pankonin, would you yield to questions? [LB403]

SENATOR PANKONIN: Yes, I would. [LB403]

SENATOR COUNCIL: Yes, thank you, Senator Pankonin. A question has been raised with regard to the retirement provisions of AM680 and the question relates to the effect of the amendment on survivor benefits. If an employee has paid in to a political subdivision's retirement system and then begins to withdraw their retirement benefits, passes away and their spouse is not a lawful resident of the United States, would AM680 prevent that spouse from collecting under the retirement system? [LB403]

SENATOR PANKONIN: Senator Council, that shouldn't be a problem because, first of all, the spouse is not...wasn't a member of the retirement plan. I think there's some

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questions that came up from the city of Omaha regarding.. [LB403]

SENATOR COUNCIL: Yes. [LB403]

SENATOR PANKONIN: Is that what you're referring to? [LB403]

SENATOR COUNCIL: Yes. [LB403]

SENATOR PANKONIN: We've already talked to them and told them that this wouldn't...in those two cases, would not apply. [LB403]

SENATOR COUNCIL: Okay, and that's what their concern is. Because we have one employee whose wife's...spouse's legal status is in question, whether she's, you know, whether she has maintained her Canadian residency and citizenship status or not, and when he retires whether her survivor benefits would be affected at all by (inaudible). [LB403]

SENATOR PANKONIN: It will not be a problem, according to our counsel, and we've discussed that and appreciate those questions coming up. But they are already in the system and they'll be okay. [LB403]

SENATOR COUNCIL: Okay. Thank you. [LB403]

PRESIDENT SHEEHY: Thank you, Senator Council. Members requesting to speak on AM680 to LB403: Senator Haar, followed by Senator Price, and Senator Ashford. Senator Haar, you're recognized. [LB403]

SENATOR HAAR: Mr. President, members of the body, I'd like to ask Senator Karpisek some more questions, if I could. [LB403]

PRESIDENT SHEEHY: Senator Karpisek, would you yield to questions? [LB403]

SENATOR KARPISEK: Yes, I will. [LB403]

SENATOR HAAR: Trying to get my mind around the whole issue, and maybe this is a question more for some of the lawyers in the body, but does somebody who is in this country illegally have rights of any kind of protection or anything? What are the rights of somebody? [LB403]

SENATOR KARPISEK: They do. I'm not a lawyer and I don't know whether I should be proud or not. (Laugh) But, no, they do have rights, of course they do. They have right to most of the things that we do, to be protected, but they don't have the right to public assistance, in my opinion or after...through this bill. [LB403]

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SENATOR HAAR: Is there someone in the body that we could go to for, again, a little more detail on that answer in terms of the rights? [LB403]

SENATOR KARPISEK: Could you ask Senator Nantkes, who is a lawyer, those questions? [LB403]

SENATOR HAAR: I'd be...Senator Nantkes, could I ask you a question? [LB403]

PRESIDENT SHEEHY: Senator Nantkes, would you yield to questions? [LB403]

SENATOR NANTKES: Yes. [LB403]

SENATOR HAAR: Could you tell me what kind of rights a person has simply because they're a person, whether they're legal or not? [LB403]

SENATOR NANTKES: Senator Haar, to be clear, I'm not an immigration law expert but I have studied the area in law school and dabbled in practice, in private practice, and in public policy issues related thereto, so this is not an all inclusive list but my general understanding is that, for example, the rights afforded to all persons within the borders and all American citizens, as delineated through the Bill of Rights, for example, are equally bestowed upon all persons within our borders, for the most part, regardless of their immigration status, for example, Fourth Amendment rights provided to citizens in regards to unlawful search and seizures; Eighth Amendment rights in regards to prohibitions against cruel and unusual punishments; speech rights as...and freedom of religion and a variety of other issues as contemplated under the first amendment. So that's a very, very rudimentary explanation in terms of the rights afforded to all persons within the United States and, for the most part, those are bestowed without any sort of limitation dependent upon a person's immigration status. So those are some examples. In terms of public benefits, I think Senator Karpisek is...has talked about that a little bit and I think that's an area of law which is continually unfolding in terms of property rights bestowed upon persons within the United States in relation to certain public benefits. Whether or not those apply equally to citizens and noncitizens I think is an evolving area of law. I think the federal law and the state law in most instances has been clear that in order to protect, for example, overreaching public health issues or emergency issues, we have extended those benefits very broadly regardless of citizenship status. But in terms of public assistance benefits for other purposes, we have, as a state and as a nation, prescribed them more specifically in relation to an individual or a person's immigration status. So I'd be happy to provide you some more resources about that--I know that they exist and they're just beyond my reach at the present moment... [LB403]

PRESIDENT SHEEHY: One minute. [LB403]

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SENATOR NANTKES: ...on the floor--that could lay out for members of the body, if they think it would be helpful, what rights noncitizens currently do enjoy under our structure of laws. [LB403]

SENATOR HAAR: Okay. Well, thank you very much. I mean this discussion brings up an interesting point of what are our rights and I think a lot of us aren't simply aware of those. I would appreciate that, Senator Nantkes, if you could come up with kind of a list for us for the body. I'd appreciate that. And then I'd have a question or two for Senator Gloor, if he's available. [LB403]

PRESIDENT SHEEHY: Senator Gloor, would you yield? [LB403]

SENATOR HAAR: I'll catch him later. [LB403]

PRESIDENT SHEEHY: He's moving to his mike, Senator. [LB403]

SENATOR HAAR: Oh, okay. [LB403]

PRESIDENT SHEEHY: You have about 15 seconds. [LB403]

SENATOR GLOOR: Thank you, Mr. President. Yes, I'll yield. [LB403]

SENATOR HAAR: In terms of the hospital sorts of things you talked about, can hospitals literally turn away some? Now you talked about not just emergency treatment but care. [LB403]

PRESIDENT SHEEHY: Time, Senator. [LB403]

SENATOR HAAR: I'll get to you later. Thanks. [LB403]

PRESIDENT SHEEHY: Thank you, Senator Haar. Senator Price, you're recognized. [LB403]

SENATOR PRICE: Thank you, Mr. President, members of the body. I have a question I'd like to address to Senator Karpisek, if he would, please. [LB403]

PRESIDENT SHEEHY: Senator Karpisek, would you yield to questions? [LB403]

SENATOR KARPISEK: Yes, I will. [LB403]

SENATOR PRICE: Thank you very much, Senator Karpisek. The question I have has to deal with short-term contracts. Once a company is registered under the federal E-Verify system, do the federal requirements dictate the use of the system even after a state or

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local contract has expired? And I'll give you an example. You're going to hold a two-day seminar so you enter into a contract to conduct that seminar for the state and, you know, you register with E-Verify and that two-day seminar is over. Are you bound to continue to use the federal E-Verify from there on out? [LB403]

SENATOR KARPISEK: No. Once you would have verified once, and this is a federal program, so once you had verified once, then that is all you'd have to do. [LB403]

SENATOR PRICE: Okay. And not to belabor the point, I come in, I go, I enter in a contract with the state to teach acquisitions reform for DAS. Now since I've gone into a contract with the state to teach that, it's a two-day seminar, Wednesday and Thursday so we can have Friday off to go golfing, so I'm there Wednesday and Thursday and I have to do the E-Verify. I meet the requirements, I'm no longer in a contract with the state but I still do business here in the state and I have become federally registered with the E-Verify. Does all my business from there on out have to have the E-Verify even though I'm not under contract at that time? [LB403]

SENATOR KARPISEK: No, Senator, once you would be verified then you are verified. [LB403]

SENATOR PRICE: But for all my employees, after I don't work for you, do I have to keep going back to the E-Verify if I pick up new employees? [LB403]

SENATOR KARPISEK: New, yeah, new hires, yes, on any new hires. If you had new employees then you would have to, yes. [LB403]

SENATOR PRICE: But I'm no longer under contract from the state because it was only a two-day event. [LB403]

SENATOR KARPISEK: Oh, no, I'm sorry. No, if you're not under contract with the state anymore then, no, you would not have to. Only if you would come back again in the next year. Then you would have to do your new hires. [LB403]

SENATOR PRICE: From the previous... [LB403]

SENATOR KARPISEK: Yes. [LB403]

SENATOR PRICE: ...contract date to that date. [LB403]

SENATOR KARPISEK: Yes. [LB403]

SENATOR PRICE: All right. Thank you very much, Senator Karpisek. [LB403]

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SENATOR KARPISEK: Thank you. [LB403]

SENATOR PRICE: Thank you, Mr. President. [LB403]

PRESIDENT SHEEHY: Senator Ashford, you're recognized. [LB403]

SENATOR ASHFORD: I'll give my...if Senator Haar has a comment, I'll give him my time. [LB403]

PRESIDENT SHEEHY: Senator Haar, you're yielded 5 minutes. [LB403]

SENATOR HAAR: Mr. President, members of the body, I'd like to go back then to Senator Gloor with a couple questions. [LB403]

PRESIDENT SHEEHY: Senator Gloor, would you yield to questions? [LB403]

SENATOR GLOOR: Yes. [LB403]

SENATOR HAAR: You've certainly helped define part of the problems, and that's all the free care that's given to people, I guess not only to people who are here illegally but people without insurance as many of the cases would be, cancer care, those sorts of things. Would that be true or...? [LB403]

SENATOR GLOOR: Well, I'm not sure exactly of your question, Senator Haar. I used specific examples of the type of care that was provided. The key issue was the dollar amounts. [LB403]

SENATOR HAAR: Gotcha. Gotcha. So as a hospital, whether it was public or private, could you refuse that kind of care to somebody who was...because of their immigration status? [LB403]

SENATOR GLOOR: It would be difficult because part of the determination of...under the EMTALA law, is that that patient has to be in a stable condition. So somebody who has...is suffering, as an example, a heart attack, when would you call that person stable? Would it be when they're in the intensive care unit or discharged from the intensive care unit? Would it be stable but they're not completely stable until they have open-heart surgery? Therein lies the problem for most hospitals and that is making the determination of stability on a patient who presents who obviously has a severe health problem. And the penalties against institutions, should they inappropriately determine discharge those patients, can be huge monetary fines and there can also be jail sentences. [LB403]

SENATOR HAAR: So it's not an easy decision whether... [LB403]

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SENATOR GLOOR: It is a very difficult decision. And again, I would emphasize that I think most of our...again, the vast majority of our hospitals are public or charitable organizations that feel a calling or a responsibility to provide that care anyway. So it is...there's a moral predicament here. [LB403]

SENATOR HAAR: Okay. I guess I'd ask the Chair, are we going to continue discussion tomorrow or not? You're going to move it? Okay. So is part of this a moral decision, too, I mean that you as a hospital administrator make or...? [LB403]

SENATOR GLOOR: Yes, there can be that. Certainly there's always that component to it, but the biggest challenge that you'll find and the common challenge you'll find for any healthcare institution will be the EMTALA law because it is clearly a law that governs the decision you'll ultimately make. Above and beyond that, the moral aspect of it certainly always enters into it. But the driving factor I'd have to say is you are responsible, by law, to provide care under EMTALA. [LB403]

SENATOR HAAR: Okay. Thank you very much. [LB403]

SENATOR GLOOR: Thank you. [LB403]

PRESIDENT SHEEHY: Thank you, Senator Haar. Mr. Clerk, you have items for the record. [LB403]

CLERK: I do, Mr. President. An announcement, first of all. The Education Committee will meet in Executive Session, Thursday, March 26, at noon in Room 1107; Education Committee, tomorrow at noon. New A bills. (Read LB16A and LB292A by title for the first time.) Enrollment and Review reports LB328A to Select File. Senator Fischer has an amendment to LB202 to be printed. And Judiciary Committee, chaired by Senator Ashford, reports LB430 to General File with amendments attached. (Legislative Journal pages 838-840.) [LB16A LB292A LB328A LB202 LB430]

Mr. President, a priority motion. Senator Ashford would move to adjourn the body until Thursday morning, March 26, at 9:00 a.m. []

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