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Floor Debate
April 28, 2009

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SENATOR ROBERT PRESIDING []

SENATOR ROBERT: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the sixty-ninth day of the One Hundred First Legislature, First Session. Our chaplain for today is Senator Hadley. Please rise. []

SENATOR HADLEY: (Prayer offered.) []

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

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

SENATOR ROBERT: Thank you. Are there any corrections for the Journal? []

CLERK: I have no corrections, Mr. President. []

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

CLERK: Enrollment and Review reports LB97, LB402, LB195, LB653, and LB198A to Select File, some of which have Enrollment and Review amendments attached. That's all that I have, Mr. President. (Legislative Journal pages 1207-1208.) [LB97 LB402 LB195 LB653 LB198A]

SENATOR ROBERT: Thank you. We will now proceed to the first item on the agenda, General File, 2009 Speaker priority bills. []

CLERK: Mr. President, LB9, a bill by Senator Wightman. (Read title.) The bill was introduced on January 8 of this year, referred to the Revenue Committee, advanced to General File. There are Revenue Committee amendments. (AM709, Legislative Journal page 720.) [LB9]

SENATOR ROBERT: Senator Wightman, you are recognized to open on LB9. [LB9]

SENATOR WIGHTMAN: Thank you, Mr. President and members of the body. First of all, I wish to thank Senator Flood for designating LB9 as a Speaker's priority bill. [LB9]

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SENATOR ROBERT: (Gavel) [LB9]

SENATOR WIGHTMAN: LB9 addresses an issue critical to an important industry to Nebraska and encourages the use of renewable fuels for agriculture and certain other industrial uses. LB9 as amended by the Revenue Committee clarifies that wood used as a fuel and corn used as a fuel are exempt from sales taxes if used for the following purposes: (1) when more than 50 percent of the amount purchased is used directly in irrigation or farming; (2) when more than 50 percent of the amount purchased is used directly in processing, manufacturing or refining in the generation of electricity or any hospital. Actually, the section that is being amended has been the law for a number of years and specifically exempted a number of fossil fuels including coal, gas, fuel oil, diesel fuel, tractor fuel, propane, gasoline, nuclear fuel, and butane. More recently and out in our area we have a number of alfalfa dehydrators. Years ago, these dehydrators used to actually dehydrate the alfalfa right out in the field or cut it green and take it in. And then they used mostly natural gas, and that was exempt from sales taxes. And it finally got to the point where natural gas was totally prohibitive as far as drying this when it was still green, and so they sun-cured it. They continued to use natural gas. And more recently just within the last few years, they've begun using wood products as a method of heat to dry the alfalfa. And so this is where the bill arises. And they would use wood chips and sawdust primarily as their source for the fuel over the last couple of years. Well, it was always considered by the industry that this fuel was exempt the same as the fossil fuels were. And as a result, they were not paying the sales tax on it when it was delivered. Just very recently the revenue committee or the Revenue Department has contacted the alfalfa dehydrators and said that this was subject to tax because it wasn't included under the language of Section 77-2704.13. So while I recognized...and the purpose of this bill would be to treat the wood products that are being used, and we've also included corn products so that if they use some mixture of ethanol that it would also be exempt. I recognize the concerns that Senator Pahls has had in LB385, which he adopted as his senator priority bill that would sunset the certain exemptions from the sales tax. Since that bill is not presently being considered for further consideration, but I know Senator Pahls feels very strongly that we have to look at that. At the same time with regard to LB9, we're looking at an area that has always been exempt. With regard to fossil fuels. We're trying to encourage the use of alternative fuels, biofuels of some kind. And it seems logical that we're doing the same process, we're processing this alfalfa for final use. Actually, these processors are farmers to a great extent. They raise their own alfalfa, they also buy alfalfa, and they've always been considered under farm exemptions under the Workmen's Comp and other parts of our laws in Nebraska. And to say that the biofuels, the wood products, the corn products would not be exempt is inconsistent with the law itself. So that is the position that we're taking in LB9. We think that the limited sales tax exemption would further extend the prudent and long-established tax policy that fuels used for processing are exempt from sales tax that would be used in exactly the same way that natural gas, propane, and other fuels have been used. In fact, there will be no revenue lost because

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in the past these have not been taxed even though the Department of Revenue has now considered that they should be taxed. So the need would be it would fulfill that need, it would treat renewable energy sources, in this case wood and corn, on an equal basis with nonrenewable energy sources which has been a goal of this Legislature in the ethanol industry. And so it would merely add the word "wood and corn products" to the list of exemptions. So there is a committee amendment that will be discussed by the Chair of the Revenue Committee, a slight change from the original wording of LB9. So, again, I urge your consideration of LB9 and urge your vote to advance it. Thank you, Mr. President. [LB9 LB385]

SENATOR ROBERT: Thank you, Senator Wightman. Members, you have heard the opening to LB9. As the Clerk stated, there are committee amendments. Senator Cornett, as Chair of the Revenue Committee, you are recognized to open on AM709. [LB9]

SENATOR CORNETT: Thank you, Mr. President and members of the body. The Revenue Committee advanced LB9 with an amendment which limits the exemption to two particular items. The committee approved the exemptions from sales tax which are wood used as fuel and corn used as fuel. The term "biofuel" was eliminated from the bill. No definition of "biofuel" was offered and the committee felt the two specific exemptions would meet the goal of the sponsor. With that, I urge the body to adopt this specific amendment. Thank you. [LB9]

SENATOR ROBERT: Thank you, Senator Cornett. You have heard the opening to AM709, the Revenue Committee to LB9. Members wishing to speak are Senators Pahls, Loudon, and Wightman. Senator Pahls, you're recognized. [LB9]

SENATOR PAHLS: Good morning, Mr. President, members of the body. Several weeks ago, I sat down with some members of the Department of Revenue and said, I really don't quite understand how you come up with all these figures with all these tax exemptions because it's hard to collect some of that information. So I said, could you give me something that I can put in my hand so it would help me understand this. So they did come up with this chart that I had the pages hand out to you earlier, and I would just like to go through it just so maybe this would make things clearer to all of us. I'm just going to use the example on the first page. If you look at the top, it talks about...on one there are four columns. The first column deals with the statute that we're dealing with. The second column deals with the description of the item. And the other is the estimated tax expenditure. That is the amount of money that we are supposedly losing. But I said, the thing that caught my attention is, okay, how do you get that number because nobody hands this to you? So what they do, these are the sources that they take a look at and they are surveys. And some of these surveys they take a look at them every five years, and that's how they figure out what the expenditure would be. Well, in my estimation, when you look at a survey usually the figure would...if you had

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the actual dollar, it would probably be higher. But as you go down all of these exemptions and the descriptions you can see where they get that information. Now I would like to draw your attention to page 3 because that sort of speaks to today's bill. I'm going to show you how things move from the 2 billion column to a 3 billion column. If you take a look at the chart, you can see on page 3 you have...three of these statutes are outlined either in one or two different colors that...if I could just draw your attention to that. And you'd see 2704.13(1), (2), and (3) at the very bottom of the page. And let's take a look at the one that the senator was speaking to today. The sales of purchases of electricity, coal, gas, fuel, oil, etcetera. I will not read all of that. What we are trying to do today is now move the approximately I'd say \$36,000 this year, in four years it'd be close to \$42,000, we're trying to move that in that column that says \$109 million. So as you can see when this started in the early or the middle seventies, that number was really small. So what we do is any time there is a concern we say, well, let's give that an exemption. So that...if you take a look at those three numbers as you go down, \$109 million, \$117 million, and \$1 million, you add that up. That's basically \$225 million. Now, what we're going to do today if we pass this bill, we were going to increase that amount by \$36,000. And that number will continue to go up. So as you can see, every time we move something over from the \$2 million to the or the \$2 billion to the \$3 billion, we're doing that. We're just slowly eating away. And I did hear people the other day when they were concerned about the lack of money in the General Fund. Well, that's what we're doing. We're taking money away from the General Fund. Now the argument is, gee, in the past these things were...we weren't worried about them. But the Department of Revenue is saying, hey, let's go back and start checking out and seeing if we are fulfilling some of the obligations of some of these statutes. Now, if you can recall a couple of weeks ago or a week and a half ago, I made a comment that the Department of Revenue, every year they have not recommendations. I had a whole list of them starting from 2008 and I went down, I said... [LB9]

SENATOR ROBERT: One minute. [LB9]

SENATOR PAHLS: ...no recommendations, no recommendations, no recommendations. Now I see why. Because once they start doing their job, we come back and we bring a bill to take that suggestion that they say we ought to be taxing, we take it away. So actually they probably have been doing their job. But what we're doing is we are taking away some of their ideas. And I know that this bill...a number of people think it has merit. I'm not arguing that. I'm just saying this is how it's done. Every year this is how we do it. This year we're going to have the opportunity to do it four times. And the argument has been, well, they have not been taxed in the past because the Department of Revenue is starting to go back, so maybe we do need to have a...applaud the Department of Revenue for doing their job. [LB9]

SENATOR ROBERT: Time. [LB9]

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SENATOR PAHLS: Thank you. [LB9]

SENATOR ROBERT: Thank you, Senator Pahls. Senator Louden, you are next and recognized. [LB9]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. I rise in support of LB9 and also the Revenue Committee amendment of AM709. This is something that they never have been charged a sales tax on this. And as time came about and we are finding new technologies for using wood to use as a fuel, and now then the question is should it have been sales taxed. And this was something I think the Department of Revenue decided perhaps that it should be sales taxed. So this bill clarifies what category it would be in, and it would be exempt along with the rest of the items that are listed in that section. We have to remember what sales tax is all about. Sales tax is all about is to have a state that's a low population such as Nebraska to have other people that are coming through help pay part of the tax load. And that's what a sales tax is for. It's actually a tourism tax. And whenever you have it on items like that it does quite well. When you start putting it on items where you manufacturer your own or you're trying to value add to your commodity that we produce here in Nebraska, then it begins to be a regressive tax, and this is what could happen with this. If it was as Senator Pahls passed his circular out there, on page 3 it shows adding all this sales taxes to these different issues that are used to produce and value add to our agriculture products, and all that will do is increase the cost of them. And, of course, it can be quite regressive because this is what we're...as you noticed, most of the exemptions come about as to competition in business to lower your competition. Also, I noticed on what Senator Pahls handed out, I think it was on the page 1 that the exemptions for the room rentals and the lodging, those two there add up to about \$130 million right there are those two. So if you were looking for to increase the cash flow or the revenue source for Nebraska, why you go ahead and sales tax all your room rentals and lodging that's over 30 days, you'd have \$130 million right there. And that probably wouldn't be that regressive because that isn't value adding to any agricultural product or product that we're trying to compete with and sell from other places. But it's all in how you look at the figures. You can find figures to, I guess, defend most any argument. But with this I think LB9 Senator Wightman brought forward for those people in that area that are heating and drying their alfalfa is a good response. It puts in statutes what clearly what needs to be in there. And I support the amendment and I support the bill. Thank you, Mr. President. [LB9]

SENATOR ROBERT: Thank you, Senator Louden. (Doctor of the day introduced.) Returning to discussion. Members wishing to speak: Senators Wightman, Price, and Stuthman. Senator Wightman, you are next and recognized. [LB9]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I do rise in support of AM709. I think it clarifies the bill. I agree that without the word biofuels being

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specifically defined in that section that we might be throwing it open more than we want to at this time, and perhaps those can be considered additional biofuels if they are ever used in this particular industry or in the variety of industries that might be included, then they can be considered at that time. I agree with Senator Pahls that we do need to take a look at the exemptions that are allowed and the numerous exemptions, I might add, that are allowed under state law at the present time. We do need to look at our tax policy. But at the same time, I think we need to be consistent on where we are today. And if we are going to allow fuels used in the processing of agricultural products and in the irrigation of agricultural products and we're going to exempt fossil fuels, it seems that it would be a little strange to on one end be encouraging the use of biofuels and alternative energy sources and then say that we're going to levy a sales tax upon the corn and wood products that are being used as a heat source in this instance, but we're going to continue to exempt the fossil fuels which we are hoping to have less dependency on, that we're going to continue to give them an exemption from the tax. The only reason they probably weren't included originally when this section was adopted or when it may have been amended in the past is that these sources of fuels were not being used. And today with the high cost of fossil fuels, with the shortage of fossil fuels it's been the state policy to encourage the use of ethanol, for example, encourage the use of renewable fuels. And that's really what we're doing here. So I think this is a logical extension of the law as it now exists to put the fuels which we are trying to encourage, put them on the same footing as the fossil fuels that already have this exemption. So, again, I urge the adoption of the amendment AM709, and then advances LB9. Thank you, Mr. President. [LB9]

SENATOR ROBERT: Thank you, Senator Wightman. Senator Price, you are next and recognized. [LB9]

SENATOR PRICE: Thank you, Mr. President. Actually, I'd stood up to give some time to Senator Pahls, but Senator Pahls is no longer in the Chamber, so thank you. [LB9]

SENATOR ROBERT: Thank you, Senator Price. Senator Stuthman, you are next and recognized. [LB9]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I do support the bill and the amendment. There's one thing that...in reading over the bill, I think there's one thing that a person does not really take into consideration because of the fact of, you know, that we're using wood as fuel and corn as fuel. In order to utilize those as fuel, there needs to be equipment purchased to utilize that fuel. I think, you know, with this equipment we must realize also that the fact is, is the majority of that is on your property tax, it's on your depreciation schedule, and you do pay property tax on that equipment. So, you know, by allowing the use of this and the sales tax exemption on this, we must keep in the back of our mind, you know, that the container, the equipment that is utilizing this type of fuel, you know, is generating tax and that tax is

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generally a property tax. So it does contribute to the property tax formula of the local communities and the counties. And I think that's very important because it adds base to the county property. And that is one of the things that I have an interest in, and I think it's very worth while because, you know, the equipment that we are utilizing to utilize some of these other forms of energy, you know, is generating some tax. With that, thank you, Mr. President. [LB9]

SENATOR ROBERT: Thank you, Senator Stuthman. Senator Harms, you are next. [LB9]

SENATOR HARMS: Thank you, Mr. President and colleagues. I rise in support of the AM709 and the underlying bill. I wonder if Senator Wightman would yield for a question for me. [LB9]

SENATOR ROBERT: Senator Wightman, will you yield to a question? [LB9]

SENATOR WIGHTMAN: Yes. [LB9]

SENATOR HARMS: Senator Wightman, on the fiscal note it talks about...I believe it would be the front sheet. Are you...do you have that information so that you can kind of track with me. [LB9]

SENATOR WIGHTMAN: I have one dated February 27. Yes. I don't have a later one than that. Okay. [LB9]

SENATOR HARMS: Thank you. When you look at that paragraph under the chart where it talks about the 50 percent of the amount purchased is used for irrigation or farming and directly in manufacturing for refining processing, generation of electricity or use by the hospitals, that doesn't correspond I don't think with the bill or I'm having trouble tracking with that. Could you help me better understand that? In the green copy it doesn't show that, I don't think. Maybe I've missed that. [LB9]

SENATOR WIGHTMAN: Well, we aren't amending any of that section. Those were provisions under current law. And I guess right off hand I think that as you look under Section 2 of 2704.13 it does talk about the sales and purchases of such energy sources before April 1, 1993 or after March 31, 1994. And it says more than 50 percent of the amount purchased is used directly in the processing, manufacturing or refining. [LB9]

SENATOR HARMS: Thank you. Thank you for explaining that to me. When we use the term processing, what are we referring to? [LB9]

SENATOR WIGHTMAN: Well, in this instance it's being used in the processing of alfalfa products. And what they do is they make that into a cube that's usable. Right now it's

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used mostly in the equine segment of agriculture used largely for horses, used as a supplement somewhat for some other animals. [LB9]

SENATOR HARMS: Thank you, Senator Wightman. I do support LB9. I'd ask you to support the AM709 amendment and the underlying bill, LB9. It's a good bill. Thank you, Mr. President. [LB9]

SENATOR ROBERT: Thank you, Senator Harms and Senator Wightman. Senator Lautenbaugh, you are next and recognized. [LB9]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I, too, rise in support of LB9. As we all know, the power to tax is the power to destroy. And I realize this was an unintentional set of circumstances we have now, but why we would exempt other types of fuels and yet tax a locally produced type of fuel...I think that's the exact opposite of what we should ever intend and I think this is an important bill. I think it's correcting an important...well, an unfortunate oversight, if you will. And I am sympathetic to the concerns of Senator Pahls overall and I applaud his courage for broaching the issue this session. But that said, when we're taxing one type of fuel and not taxing another, we're distorting what otherwise would be the case in the market. This is a good bill and I would urge your support of the amendment and the underlying bill. I'll yield the rest of my time to Senator Wightman, if he'd like it. [LB9]

SENATOR ROBERT: Thank you, Senator Lautenbaugh. Seeing no other lights on...oh, my mistake. Senator Wightman, 3 minutes and 50 seconds. [LB9]

SENATOR WIGHTMAN: Well, I don't need 3 minutes and 50 seconds, Mr. President, but I would discuss the fiscal note for just a minute. As I said earlier, this has not been taxed in the past even though the Department of Revenue has recently determined that it is subject to tax. So it is not really going to take anything out of the revenue stream. Certainly it will deplete somewhat the revenue that might have been expected, but as far as actually costing us anything on comparison with the previous year, it will not. So the fiscal impact is relatively slight. They show that if those sales were to be taxed that it would be \$36,400 the first year of the biennium and \$38,100 in the second year as would be reflected on the sheet that Senator Pahls passed around showing the various sales tax exemptions. This might be the smallest one on the sheet, but it certainly would be one of the smallest ones on the sheet. So, again, I ask that you would consider how small the impact would be and I think that's far outweighed by the consistency that we would be developing. That isn't to say we don't need to look at these sales tax exemptions, but I think we need to look at them on a lot broader basis than we'd be talking about here. Here it seems to me that consistency in and of itself would dictate that we do authorize this exemption. Thank you, Mr. President. Thank you...(microphone malfunction) [LB9]

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SENATOR ROBERT: Thank you, Senator Wightman and Senator Lautenbaugh. Seeing no other lights on, Senator Cornett, you're recognized to close on AM709. Senator Cornett waives her opportunity. The question before the body is, shall AM709 be adopted to LB9? All those in favor vote yea; opposed vote nay. Have all those voted who wish? Mr. Clerk, please record. [LB9]

CLERK: 36 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB9]

SENATOR ROBERT: AM709 is adopted. Retuning to discussion on LB9. Are there members wishing to speak? Seeing none, Senator Wightman, you're recognized to close on LB9. Senator Wightman waives his opportunity. The question before the body is, shall LB9 advance to E&R Initial? All those in favor vote yea; opposed vote nay. Have all those voted who wish? Mr. Clerk, please record. [LB9]

CLERK: 38 ayes, 0 nays, Mr. President, on the advancement of LB9. [LB9]

SENATOR ROBERT: LB9 does advance. Next item on the agenda, Mr. Clerk. [LB9]

CLERK: LB494, a bill by Senator McCoy. (Read title.) Introduced on January 20 of this year, referred to the Judiciary Committee. The bill was advanced to General File. There are Judiciary Committee amendments, Mr. President. (AM844, Legislative Journal page 943.) [LB494]

SENATOR ROBERT: Senator McCoy, you're recognized to open on LB494. [LB494]

SENATOR MCCOY: Thank you, Mr. President, members of the Legislature. I'm pleased to be able to introduce LB494 to you this morning. This bill would increase the criminal penalties for owners of dangerous dogs, a term which is rigorously defined within the bill. LB494 addresses the situation when a dog commits an act of mutilation or significant bodily harm. Such an unfortunate situation...should such an unfortunate situation happen, the change being sought is potentially charging owners of a dangerous dog with a Class IV felony. The current maximum charge is a misdemeanor. I'd like to thank the members and staff of the Judiciary Committee who have assisted me greatly in this process. Soon, Chairman Ashford will discuss the committee amendment, AM844. The amendment does a number of things. It excludes police service animals that use force to apprehend criminal suspects, and tightens language ensuring that all reasonable measures are taken not to unduly burden dog owners. Specifically, I'd like to thank Senator Lathrop for sharing his expertise with me through this process. He was instrumental not only to the committee amendment, but all other matters pertaining to this piece of legislation. I believe the committee amendment makes the bill stronger. In addition, there are a couple of amendments that you'll see which will be following up and Senator Coash and also Senator Cornett which I support also. Some of you may be aware that Wendy Blevins of Omaha testified before the committee in support of this bill

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on behalf of her daughter Charlotte who suffered life-threatening injuries from a pit bull which attacked her without provocation. I met Charlotte. She's a beautiful two-year-old who's healing quite well, but permanent scars remain. And later this year she will undergo another serious surgery for facial injuries. The attack on Charlotte was a criminal act that nearly took her life. Recently, this issue became very personal for my family as well as for families across my district. In February, a 48-year-old woman was attacked by what this bill defines as a dangerous dog, meaning that this dog had committed a violent act once before this second occurrence. This violent attack happened within a half mile from our home where my wife and I are raising three young children. A recent study done for the Centers for Disease Control indicates that 70 percent of dog attack victims are children below the age of 11. Children, because of their small size and vulnerability, are generally the victims of dangerous dogs. As I have continued working on this issue, it has become clear to me that this bill is predominantly about protecting children. Nebraskans place a high premium on individual responsibility. This bill ensures dog owners in the Nebraska take seriously their responsibility to protect public safety. I would ask all my colleagues to support LB494 and the amendments attached thereof. Thank you, Mr. President. [LB494]

SENATOR ROBERT: Thank you, Senator McCoy. Members, you have heard the opening of LB494. As the Clerk stated, there are committee amendments. Senator Ashford as Chair of the Judiciary Committee, you're recognized to open on AM844. [LB494]

SENATOR ASHFORD: Thank you, Mr. President. And I appreciate Senator McCoy's comments. His staff and he worked very hard on this bill. Senator Lathrop spent a great deal of time on it. Not to change the idea of the bill, but just to make sure that the definitions were consistent with existing law and also added a balance of protections to make sure that if there is--God forbid--prosecutions in this area, and there certainly will be some, that the parties on both sides are...their rights are protected. So, again, I appreciate the efforts on the part of the introducer and Senator Lathrop in this regard. Let me just go briefly through the amendments. First of all, in Section 1...oh, I'm sorry, there's an amendment to Section 3(a) to provide that an owner of a dog that has been previously determined to be a potentially dangerous dog by an animal control authority must receive a notice. And this notice would be delivered to the owner of the dog with a laundry list of information about what the dog owner must do to control the animal. And in order for any prosecution to occur, that notice must go out. The amendment additionally provides that the owner of the dog in question could not be convicted of a crime under Section 6 of this act if the owner's dog caused harm as the result of being tormented, abused, or assaulted by the person bitten. I think a logically addition to the bill. The amendment provides that the owner of the dog in question shall not be found guilty under the act if the injury, damage or threat was sustained by an individual who at the time of being injured was committing a willful trespass or was committing any other tort on the owner's property. The amendment creates a new subsection 3(b)(iii) which

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would exempt a dog that is deemed a police animal as defined under Nebraska law. Section 6 of the bill is amended to provide that a Class IV felony occurs when a dangerous dog inflicts on a human being a serious bodily injury. And bodily injury is defined by statute. It involves a substantial risk of death or which involves substantial risk of serious, permanent disfigurement or a protracted loss of impairment of the function of any part or organ of the body, again, making this proposal consistent with existing law. Section 6 is further amended to provide that it is a defense to a violation of subsection (1) of this section that the dangerous dog was in the custody or under the control of a person other than the owner's family. Really these amendments, members, are simply clarifications of the original bill. Senator McCoy captured it well. This is an issue, the horrendous incident that Senator McCoy describes is worthy of our concern. Again, I thank Senator Lathrop for his efforts and Senator McCoy's staff. And with that, I would urge the adoption of AM844. Thank you. [LB494]

SENATOR ROBERT: Thank you, Senator Ashford. Members, you have heard the opening to AM844. Mr. Clerk. [LB494]

CLERK: Mr. President, I have two amendments to the committee amendments. Senator Coash would move to amend with AM984. (Legislative Journal page 1155.) [LB494]

SENATOR ROBERT: Senator Coash, you're recognized to open on AM984. [LB494]

SENATOR COASH: Thank you, Mr. President and members of the body. AM984 to the committee amendment does one small thing. It changes the definition of "medical treatment." This amendment is necessary to correct an unintended consequence from last year's LB1055. Last year, the definition of "medical treatment" pertained to dog bites was pretty broad and it was defined that medical treatment means treatment administered by a physician or other licensed healthcare professional. What that means is that if there was an injury, not necessarily a bite, but if a...picture a small dog nipping at a child, scratched the child's hand. Mom wants to take the child in. Well, just by taking the child into see the doctor means that that constitutes medical treatment. AM984 just changes the definition to "medical treatment" to say that medical treatment is defined as something that results in sutures or surgery or treatment for one of more broken bones. The unintended consequence without this amendment would be that if someone is taken in for a scratch, that dog could be considered dangerous. And if that dog is considered dangerous, then the owner has to spay or neuter the dog, microchip it, register it as dangerous when in fact just that could have been the result of just taking a person in to get checked out. So with that, members, I'd encourage your advancement of AM984 and I will answer any questions. Thank you. [LB494]

SENATOR ROBERT: Thank you, Senator Coash. Members, you have heard the opening to AM984, the amendment to the committee amendments. Those wishing to speak: Senators Ashford, and Lathrop. Senator Ashford, you're recognized. Senator

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Ashford, you're recognized to speak. [LB494]

SENATOR ASHFORD: Unfortunately discussing briefly education policy. (Laugh) Sorry. I would waive closing. Thanks. (Laughter) Is my light on? [LB494]

SENATOR ROBERT: Senator Ashford waives his opportunity to speak. Senator Lathrop, you are recognized. [LB494]

SENATOR LATHROP: Mr. President, make him sit down. (Laughter) Wow, Brad! That was good. I stand in support of both Senator Coash's amendment, Judiciary Committee amendment and the bill. And I developed a little bit of an interest when this passed through Judiciary Committee mostly because you could certainly see why Senator McCoy brought this to the Legislature and to the Judiciary Committee. But the concern that we had immediately was that as written it would have made a felon out of a lot of people that have that yippee little dog that puts a little tear on some young kids face or arm. And so the amendments both by the Judiciary Committee and by Senator Coash improved the bill so that for a person...and this is kind of a serious thing. We're making a felony out of somebody's dog biting another person, and you don't always have control over that dog so it is a pretty significant thing that we're doing here today. And it requires really two steps, if I can elaborate on the bill. First, you have to be a dangerous dog, and to do that you have to have at one time bitten somebody else. And Senator Coash's amendment makes it clear that it's not just a small bite, but a significant bite that requires medical attention. And then when you commit the second bite, which is a serious injury as defined in the criminal statute, you've just graduated to being a felon. And that is a serious matter, it's a serious policy question that we're dealing with this morning. And I think the amendments make it a bill worthy of our passage. Thank you. [LB494]

SENATOR ROBERT: Thank you, Senator Lathrop. Senator Nordquist, you're next and recognized. [LB494]

SENATOR NORDQUIST: Thank you, Mr. President and members. I, too, stand in support of the bill and the amendments. I want to thank Senator McCoy for bringing this legislation. Much like him, I'm about a half mile from my house there was an attack on 14th Street last June '08. A street that I had walked down several times leading up to the May primary, friends and family out knocking doors for me. It could have been any one of us at any time. And the situation and the trauma that the family had to go through to overcome and the challenges that they still have ahead are great and my thoughts are with them. I want to thank Senator Lathrop for bringing this amendment, for working on the amendments with Senator McCoy. I appreciate his expertise on this. And I think this bill will lead to more responsibility, more personal responsibility from dog owners because with dangerous breeds like this without going to an outright ban like many municipalities have, I think that we need to really incentivize personal responsibility. And

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that's what LB494 does. Thank you, Mr. President. [LB494]

SENATOR ROBERT: Thank you, Senator Nordquist. Members wishing to speak: Senators Price, Janssen, Haar, and Nelson. Senator Price, you are recognized. [LB494]

SENATOR PRICE: Thank you, Mr. President, members of the body. Would Senator Coash yield to a question? [LB494]

SENATOR ROBERT: Senator Coash, will you yield to a question? [LB494]

SENATOR COASH: Yes, I will. [LB494]

SENATOR PRICE: Thank you, Senator Coash. Quickly, my understanding is the dog, a dog could have a first bite offense before being graduated to the felony offense category? [LB494]

SENATOR COASH: Yes. [LB494]

SENATOR PRICE: How are we going to track that first bite? [LB494]

SENATOR COASH: How are we going to track the first bite? [LB494]

SENATOR PRICE: Yes. [LB494]

SENATOR COASH: If a person is bitten, they go to the doctor. The doctor is required if they see a person for a dog bite to report that to Animal Control. [LB494]

SENATOR PRICE: Okay. And the only reason I ask is there's something...I mean, probably most of us in this body have at one point in time or another either been attacked by a dog, a small dog or any other dog. And the question comes out is that many people who harbor the dangerous animals don't necessarily report, you know, when things happen. Let's say someone gets bit even by their own dog, you know, in the process of saying this happens, you know. Just the other day I was talking to a gentleman who had lost a finger. I think it was in the paper. Two dogs were fighting and he tried to break them apart. But it's not always clear that we had that first bite documented and that that documented bite would be available. That I just want to...I mean, you kind of answer the question there, but I was just hoping that we didn't leave a place for people to wiggle through and get away and not report that first bite. [LB494]

SENATOR COASH: No. When a person goes to their doctor, whether there's any kind of treatment given at all, that doctor is going to report that. [LB494]

SENATOR PRICE: All right. Thank you very much, Senator Coash. Thank you, Mr.

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President. [LB494]

SENATOR ROBERT: Thank you, Senator Price and Senator Coash. (Visitors introduced.) Returning to discussion, Senator Janssen, you are recognized. [LB494]

SENATOR JANSSEN: Thank you, Mr. President, members of the body. I rise in support of the amendments and the bill. In some cases, I don't think the bill goes far enough. I would ask Senator McCoy if he would yield to some questions. [LB494]

SENATOR ROBERT: Senator McCoy, will you yield to a question? [LB494]

SENATOR McCOY: Yes. [LB494]

SENATOR JANSSEN: Senator McCoy, the question I have actually just kind of came to me and possibly I could have asked Senator Coash this, but I think you'll be able to answer it. If a dog is chained in a backyard, fenced in yard and the owner has done everything responsible for that dog and yet somebody were to approach that dog, tease that dog in some manner. And that dog, while leashed, were able to still bite a child or anybody for that matter, would that still be deemed a first offense or second offense or is there any type of...I guess, is there any remedy for a responsible dog owner in the bill that would cover that type of scenario? And I don't know if I'm reaching too much to think that people would go into a yard and do that. I guess...I don't know. Is that a crime perhaps that they've trespassed onto your property and have done that? [LB494]

SENATOR McCOY: Yes. There's actually a couple of different exclusions to that, Senator Janssen. I appreciate you bringing that up to clarify that. In the committee amendment there's a couple of provisions also for tormenting or torturing a dog and also against trespassing. So both of those issues are covered as protections to an owner. [LB494]

SENATOR JANSSEN: Okay. Great. And this no way gets in the way of local ordinances that communities may have in place right now? Is that...certain communities I think do have bans on certain breeds, don't they? [LB494]

SENATOR McCOY: Correct, and this is not meant to be breed specific. As a matter of fact, a reference in my opening remarks, the Centers for Disease Control, the study they've done and a number of studies on dangerous dogs there's a way higher preponderance of attacks that are actually breeds other than say, for instance, pit bulls, which was the dog breed in question with the attack on Charlotte Blevins. So this is not meant at all to be breed specific. [LB494]

SENATOR JANSSEN: Okay. And I guess in hearing your story, hearing Charlotte's story and I've heard many other stories like this that have happened, even if your bill

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passes--and I hope it does, I'm going to be very supportive of it--that really would not have deterred this instance from happening. This instance still would have happened. I'm hearing that you in essence get a first chance with your pet. Is that correct? [LB494]

SENATOR McCOY: Correct. This is meant to be a second strike provisions. And you're exactly correct that in the specific case of Charlotte Blevins it maybe wouldn't have prevented this attack. However, the hopes would have been the higher penalty for the overall, even a second strike perhaps would have encouraged that owner had they thought at all that their dog was a problem to hopefully figure out a better solution for it. [LB494]

SENATOR JANSSEN: Okay. And I just want to clarify this and I think I understand that, okay, you get your first...say you have a dog, you don't know it's dangerous or not. Dogs tend to turn at certain times, and they do have an incident where they create some serious bodily harm. You have the first incident, and now you have before these higher penalties come you dog has to strike again. And therefore it's really, I guess if I'm the dog owner, my choice to take on that additional liability knowing that there are criminal consequences. And I'm assuming they will be informed of this as well. [LB494]

SENATOR McCOY: Correct. That was also another one of the provisions in the committee amendment that the Animal Control officer has to give notification to that owner of that first strike... [LB494]

SENATOR ROBERT: One minute. [LB494]

SENATOR McCOY: ...as a further...as just some additional information for that owner. [LB494]

SENATOR JANSSEN: Thank you, Senator McCoy. And, again, I support the amendments and the underlying bill. Thank you. [LB494]

SENATOR ROBERT: Thank you, Senator Janssen and Senator McCoy. Senator Haar, you're next and recognized. [LB494]

SENATOR HAAR: Mr. President, members of the body, I want to thank Senator McCoy for this bill. Just having run a campaign and knocking on 7,000 doors I got bitten only once, and that was by an angry voter, but. (Laughter) No, actually somebody who invited me into their house and they had a little dog. And they said, don't worry, and the dog bit me. But it wasn't bad. What I'm wondering, Senator McCoy, is since there's so many dogs in my district at least, could we have kind of a CliffsNotes, a real brief summary of this because I'm sure that people are going to be asking, you know, what this bill is about and especially what is a dangerous dog and what do they have to be worried about? [LB494]

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SENATOR ROBERT: Senator McCoy, will you yield to a question? [LB494]

SENATOR McCOY: Yes. Well, I'd be happy to try to address that a little more, Senator Haar. Hopefully done partially that already along with Senator Ashford and Senator Lathrop's remarks. This is intended, as was talked about, as a second strike offense in order to heighten the penalties for a lack of responsibility. As I noted in my opening remarks, I believe that Nebraskans place a high value on personal responsibility. And this is meant to work towards that end. In other words, if your dog has attacked someone in the past and deemed a dangerous dog, it should put you as an owner on high alert that your animal (a) had better be under control or you should be doing something with that animal in order to prevent a second offense because if a second offense happens, then there is a stiff penalty for it. And there's plenty of opportunities along the way for you to do something with that animal or have that animal under control. But it's also meant not to be unduly harsh on kind of some of those unintended consequences, and that's where things were crafted about trespassing and torture, abuse of the animal, teasing aspect or if it's someone other than the owner has the dog in their possession. A lot of safeguards were put in there, Senator Haar, in order to make sure that this penalty is not being passed onto someone unintentionally. [LB494]

SENATOR HAAR: Okay. Well, thank you very much. I guess what I was requesting as well as maybe something in writing that would briefly describe this that we can e-mail back to people who are making requests, especially about what the definition of a dangerous dog is because people are worrying about that. [LB494]

SENATOR McCOY: Sure. And we'd be happy to work on that with you at a later time. [LB494]

SENATOR HAAR: Okay. Thanks very much. [LB494]

SENATOR ROBERT: Thank you, Senator Haar and Senator McCoy. Senator Nelson, you are next and recognized. [LB494]

SENATOR NELSON: Thank you, Mr. President, members of the body. I'd like to ask a question of Senator Coash if he would respond. [LB494]

SENATOR ROBERT: Senator Coash, will you yield to a question? [LB494]

SENATOR COASH: Yes, I will. [LB494]

SENATOR NELSON: Thank you, Senator. Do you have a copy of the Judiciary amendment there before you? [LB494]

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SENATOR COASH: I don't, but I'll pull one up. Okay. [LB494]

SENATOR NELSON: All right. I'm looking at page 3 and your amendment there which appears on line 6. And it's...you added that results in sutures or treatment for one or more broken bones, that expands the definition there of what medical treatment is. Is that correct? [LB494]

SENATOR COASH: I would say it narrows the definition because... [LB494]

SENATOR NELSON: Narrows it. Okay, yes. That's a better term. Looking back on page 2 if you come down to line 5, the Judiciary Committee has added in there "control authority," but then it goes on to say, "and the dog inflicts an injury on a human being which does not require medical treatment, injures a domestic animal, or threatens the safety of humans." How does your amendment relate to that discussion there that does not require medical treatment? In other words, we're defining a dangerous dog here, and then we get in there saying that it does not require medical treatment. Is your amendment consistent there, if you understand my question, or does it affect that in any way? [LB494]

SENATOR COASH: Senator Nelson, I don't believe it does, but I will double check. [LB494]

SENATOR NELSON: All right. Thank you, Senator. Let me ask Senator McCoy then a question if he will respond, Mr. President. [LB494]

SENATOR ROBERT: Senator McCoy, will you yield to a question? [LB494]

SENATOR McCOY: Yes. [LB494]

SENATOR NELSON: All right. Do you have those sections there in front of you, Senator McCoy? [LB494]

SENATOR McCOY: Would you mind repeating it again, Senator Nelson? [LB494]

SENATOR NELSON: Well, I guess the one I'm concerned on page 2 here, I'm a little puzzled here. We're defining a dangerous dog. And on line 5 it goes on to say "and the dog inflicts an injury on a human being that does not require medical treatment." Well, Senator Coash narrows that to say that there have got to be sutures and things of that sort, but over here I'm just wondering if that same definition applies then in the determination of whether we have a dangerous dog. Senator Haar spoke about being nipped on the heel. I should ask Senator Haar if he considered the possibility of medical treatment on there. But because of that fact, and I encountered a lot of dogs when I was walking door to door and had a couple of narrow escapes, if you do get nipped on the

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heel and you don't need medical treatment, do we...of course, you already have a dangerous dog right there. And I realize that you're not changing the language here, but what would be your thoughts on that? [LB494]

SENATOR McCOY: Well, I appreciate those thoughts, Senator Nelson. And that would be the intent of Senator Coash's AM984, and that is that we're not intending to legislate ordinary house pets, those nipping at the heels as you might say and Senator Lathrop addressed that as well. And Senator Lathrop was very instrumental throughout this process of addressing that to make sure that...and again, that's the intent of Senator Coash's amendment that we're not... [LB494]

SENATOR ROBERT: One minute. [LB494]

SENATOR McCOY: ...instituting dangerous dog first strike provisions for just those very minor, doesn't require medical attention, small animal instance. [LB494]

SENATOR NELSON: All right. We may want to...assuming your bill passes here on Select, we might want to take another look at the wording there as long as we're doing amendments. Were there any penalties assessed on this before? You have a Class IV felony now. What were the previous penalties? [LB494]

SENATOR McCOY: It was a misdemeanor and I believe it was a Class IIIA misdemeanor. [LB494]

SENATOR NELSON: And do you know what the penalty would have been then in the terms of fine or imprisonment, if any? [LB494]

SENATOR McCOY: Well, it certainly gives some latitude there on that, and I'll check on the specificity or specifics of exactly what the range could have been. [LB494]

SENATOR ROBERT: Time. [LB494]

SENATOR NELSON: All right. Thank you, Senator. [LB494]

SENATOR ROBERT: Thank you, Senator Nelson. (Visitors introduced.) Returning to discussion, Senators wishing to speak are Senators Louden and McCoy. Senator Louden, you're recognized. [LB494]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. I rise in support of LB494 and also the Judiciary amendment AM844, but I do question this AM984...what is it, AM844. Anyway, I'll get it straight. Yeah, AM984, Senator Coash's amendment there. And as Senator Nelson is asking on page 2 there line 5 where it describes what does not require medical treatment. And then over on page 3 in Section

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5 there, subsection (5) where the amendment goes on, it says "results in sutures or surgery or treatment for one or more broken bones," and that's what they describe as medical treatment. Well, that's really mauling. So I question whether that should be in here. I think as you read on down in subsection (7) on page 3 it talks about a potentially dangerous dog means any dog that when unprovoked inflicts an injury on a human being that does not require medical treatment. And then you've mentioned what is medical treatment. Now, medical treatment could also be if there's any kind of a puncture wound, those persons will have to be checked to see whether they had any rabies inflicted or something. It doesn't have to necessarily have to have sutures or broken bones, so I question whether that's necessary to have this amendment, Senator Coash's amendment AM984 included in here. I think that probably will open up some rooms for controversy and also it dilutes the whole issue that Senator McCoy is trying to do with his bill and what the Judiciary has come up with their drafting of the legislation. So I can't see that I can support the AM984 here to the Judiciary amendment. I think there's a problem rising when we do this here. I think it needs to be thought out more and there's a better place for it, and I question whether we need to have that description in there. Thank you, Mr. President. [LB494]

SENATOR ROBERT: Thank you, Senator Louden. Senator McCoy, you are next and recognized. [LB494]

SENATOR McCOY: Thank you, Mr. President. I would yield my time to Senator Nelson if he would so desire to finish his questions, if he would like. [LB494]

SENATOR ROBERT: Senator Nelson, 4 minutes 50 seconds. [LB494]

SENATOR NELSON: Thank you very much, Mr. President. Thank you, Senator McCoy. I did need just a little more time because I just wanted to pursue one more question here for the record. I think you stated that this was some class of misdemeanor before, and my recollection is that that does not involved any prison time. Can you tell us how you arrive at a Class IV felony and what that involves as far as penalties are concerned? [LB494]

SENATOR ROBERT: Senator McCoy, will you yield to a question? [LB494]

SENATOR McCOY: Yes. [LB494]

SENATOR NELSON: Do you want me to repeat the question, Senator? [LB494]

SENATOR McCOY: No. That's fine, Senator Nelson. Class IV felony which is a maximum of five years imprisonment or a \$10,000 fine or both, minimum is none. So there's any amount of that range in there. The Class IIIA or Class IV misdemeanor involved no possible imprisonment time there. And obviously the Legislature can only

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increase a criminal penalty to a felony, which is how we arrived at that. [LB494]

SENATOR NELSON: So if I understand, it's up to a \$10,000 penalty and up to five years in prison, is that correct? [LB494]

SENATOR McCOY: Yes, it could be. That would be the maximum. [LB494]

SENATOR NELSON: Is there anything in between the previous penalty in what we are going to be imposing here, which I understand the gravity of the offense, but I think we have to be a little careful about severe penalties. And we've also seen articles in the newspapers about people doing prison time when we already have a lot of people in prison that are paying for that, not that that's going to happen very often here. But that's the question I raise about the penalty that you've selected there. Mr. President, I would give the remainder of my time to Senator Coash if he's here and wanted to answer Senator Louden's questions. Perhaps he's not on the floor. Already taken care of that. Thank you, Mr. President. [LB494]

SENATOR ROBERT: Thank you, Senator Nelson and Senator McCoy. Senator Lathrop, you are next and recognized. [LB494]

SENATOR LATHROP: Thank you, Mr. President. I'd like to jump in on this one because these are very good questions and there is a legitimate policy issue that we ought to consider about whether you want to make this a Class IV felony or a Class I misdemeanor. A Class I misdemeanor carries up to a year in jail and I think a \$1,000 fine. The next thing you can be higher than that is a Class IV felony, which by definition means that you can carry...ultimately end up in the penitentiary. So that's a fair discussion and I appreciate Senator Nelson's observation because, believe me, the Judiciary Committee has concerns about every time we bump things up to...that were formerly Class I misdemeanors into the felony range, we now take something that's generally handled in county court and move it into a district court function. As for the dangerous dog and...let me reiterate maybe to answer questions and to tell you why I think there is good logic behind Senator Coash's amendment. Things happen to your dog and to you as an owner if you have a dangerous dog. What Senator Coash's amendment does is it clarifies that a dangerous dog isn't a dog that's simply puts a puncture wound into another person. Okay? Why is that important? Because dogs will do that. They'll do it while they're chasing children, they'll do it while they're at play. When I first got married, I had...ultimately we had a dog that we had to destroy because it bit one of my kids and it put just the tiniest little hole in there. That requires medical treatment as soon as you puncture the skin, but does that mean the dog is dangerous or that the dog was caught in play? So Senator Coash's amendment essentially is saying we're talking about those dogs that are truly dangerous and not catching in that net those dogs that nip somebody in the course of play. Now, in order for you to get to the place where you are a felon and your dog is as defined by Senator McCoy's bill and

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would cause you to be a felon, first, you have to have a dog that's dangerous. Okay? It has to bite somebody, kill another animal, and it has to cause or necessitate medical treatment as defined by Senator Coash. And that has to be on the records of the medical control officer or the Animal Control officer if you have that status. Your dog has bit somebody and requires medical treatment, you've killed an animal. In short, you are a dangerous animal according to the Animal Control officer. And you go out a second time while in the control and you don't do this to a trespasser, you don't do this to somebody teasing the dog, but unprovoked attack while under the control of the owner and you cause a serious injury and that's defined in our criminal statutes. Same definition we use when we're talking about grading assaults. If you do that, then you are a felon. You're not going to trip into this without knowing after that first dog bite after the Animal Control officer says: Guess what? If this dog causes serious personal injury you're going to be a felon. So there's a certain logic to this. I think it fits, and I think the amendment of Senator Coash makes the bill a better bill, it makes our dog bite statutes better statutes and our Criminal Code made more sense. So I would encourage you to support the amendments as well as the underlying bill. Thank you. [LB494]

SENATOR ROBERT: Thank you, Senator Lathrop. Seeing no other lights on, Senator Coash, you're recognized to close. Senator Coash waives his opportunity to close. The question before the body is, shall AM984 be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted who wish? Mr. Clerk, please record. [LB494]

CLERK: 38 ayes, 1 nay, Mr. President, on adoption of Senator Coash's amendment. [LB494]

SENATOR ROBERT: AM984 is adopted. [LB494]

CLERK: Senator Cornett would move to amend the committee amendments with AM1203. (Legislative Journal pages 1209-1213.) [LB494]

SENATOR ROBERT: Senator Cornett, you're recognized to open on AM1203. [LB494]

SENATOR CORNETT: Thank you, Mr. President. I'd like to thank Senator McCoy for allowing me to place AM1203 on his bill. We have worked with several parties in drafting this amendment, including the veterinarians and the trial attorneys. AM1203 would expand to veterinarian professionals a duty to report incidents related to animal abuse, neglect or mistreatment, but provides an immunity for liability similar to the immunity that would be extended to reporting veterinarians working for governmental agencies under Section 4 of 28-1017. Currently, veterinarians working for state agencies are exempt from immunity if they report suspected abuse, and private practice veterinarians are not exempt from that liability. In the amendment we add the definition of animal healthcare professional as a licensed veterinarian to definition Section

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38-3310 or licensed veterinarian technician is defined in Section 38-3311. The amendment does not impose a duty to investigate observed or reasonably suspected abandonment, cruelty, neglect or cruelty treatment of an animal. Other healthcare professionals are required to report abuse, neglect or mistreatment under forded immunity from prosecution from reporting suspecting abuse where veterinarians are not. Animal healthcare professionals are seeking the same coverage from liability. Thank you. [LB494]

SENATOR ROBERT: Thank you, Senator Cornett. Members, you have heard the opening to AM1203, the amendment to the committee amendments. Those wishing to speak: Senator Dierks and Lathrop. Senator Dierks, you are recognized. [LB494]

SENATOR DIERKS: Thank you, Mr. President. This amendment that Senator Cornett has was a bill over in Ag Committee, and when it came out of Ag Committee it had an amendment on it that changed the word "shall" to "may." I was preparing an amendment here to change the word back to "may." Then I was informed that I would have a big floor fight with the trial attorneys and I have to bow to the power of the trial attorneys, so I'm going to just not support the amendment. So I support the bill. Thank you. [LB494]

SENATOR ROBERT: Thank you, Senator Dierks. Senator Lathrop, you're next and recognized. [LB494]

SENATOR LATHROP: Thank you, Mr. President. And I'd like to...good timing. I'm glad I had a chance to follow Senator Dierks so that I might explain the concern when we put an immunity provision in any legislation that passes through here. When we put an immunity provision in a bill and in a statute, generally you'll see me stand up and say this is wrong. And the reason it's wrong as a general policy matter is very simple. When people say we want to be immunized from our conduct, what they want and what they're asking for is to avoid civil liability for their careless actions. Now, that's bad public policy as a general matter. It's a bad public policy as a general matter because the civil law and the idea that somebody is accountable for their carelessness is good public policy because it makes people safe. And when we say with an immunity provision that it's okay to go ahead and be careless, you're not going to be held liable, just like...we don't do that in this country because we encourage people to be safe and to conduct themselves in a safe way and to be accountable when they're not. You don't get an immunity when you're driving a car because you're a senator. And you don't get an immunity in your business practice, whatever that might be, for whatever it is you're responsible for your careless actions. In this bill, in this amendment offered by Senator Cornett there is one thought and I got to tell you, I'm not often sold on this. I'm not really sold on it here, but that is if we make somebody do something which we are asking veterinarians to do here, which is you must, you shall if you suspect abuse report it. And you will be immunized from any lawsuits if you do, we're meeting a public need and it is a public policy exception to an immunity, but we're not immunizing careless conduct.

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We're telling the veterinarians that you must do something. Now, if we change the language, as Senator Dierks has suggested, back to "may," then it's all discretion. Right? So if they're going to be exercising judgment, then they shouldn't be immunized because...and I'm not picking on the veterinarians. I'd say the same thing about medical doctors, dentists or lawyers. So the reason that an immunity makes sense to the extent that it does, and I'm not sold on it to be perfectly honest with you, the reason an immunity makes sense is because we're making somebody do something, not asking them to exercise judgment. And so with that, I will support Senator Cornett's amendment, and that's my explanation on immunity. So thank you. [LB494]

SENATOR ROBERT: Thank you, Senator Lathrop. Senator Cornett, you are recognized. [LB494]

SENATOR CORNETT: The Ag Committee sent the original bill out with "may." We drafted this amendment to Senator McCoy's bill with his permission with "shall." All other professions that have an exemption from liability to report abuse, whether it's doctors, teachers, social workers are all "shall." If you have a professional organization that is requesting exemption from liability from prosecution from reporting, you need to have "shall" to have it uniform with the other requirements for other professions. Additionally, if you have "may" in the language, you are potentially opening them up for further litigation instead of limiting it because then they have discretion on who they are going to report and who they are not. So if you report one person who you don't know for suspected abuse, but your neighbor down the street, well, you don't report him, then the person that you did report could potentially sue you for reporting him and not the other person. "Shall" limits that potential. Thank you very much. And I would urge the body to support this amendment. [LB494]

SENATOR ROBERT: Thank you, Senator Cornett. Senator Price, you are next and recognized. [LB494]

SENATOR PRICE: Thank you, Mr. President, members of the body. Quite frankly I pushed my light, sitting in the Agriculture Committee when we heard this bill, the issue that we were dealing with and its amendment is that veterinarians...and it also had to deal with vet techs, as I recall, they were being mandated for a reporting procedure. Well, the thing was it cut the other way. And we're going to work on digging this up so we make sure why we went and put a "may" instead of "shall," why we made that amendment. But the idea was you're mandating that these people are having to report something, and there could be retaliation because I believe in some of the definitions that were provided that someone could retaliate against...let's say you had an animal out there and you felt that it wasn't being neglected, but the vet did. Then that person could have some type or form of retaliation brought out against them. And that was the concern for the professionals, for the veterinarians and the vet techs that they would be held...you know, kind of damned if you do and damned if you don't. So, again, I'm

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concerned when I see...and then talking again of full disclosure just briefly, only briefly did I speak with Senator Cornett just a moment ago that, you know, they're pulling this bill and putting it as an amendment to this so it can get heard because it's a priority bill standard practice. But I want you to know, that's not what came out of committee. It's fine that we amend things. I have no standing to say that we can't amend things on the floor, but I want the body to know this is not what came out of committee and that the "shall" and the "may" have significant impacts. And deliberated a few times on this bill in committee to determine why we changed it from a "shall" to a "may." And I was wondering if it's possible that would Senator Carlson yield to a question? [LB494]

SENATOR ROBERT: Senator Carlson, will you yield to a question? [LB494]

SENATOR CARLSON: Yes, I will. [LB494]

SENATOR PRICE: Senator Carlson, in our committee I'd like to see if you would take a brief moment to bring us back to speed, if you would, of why the "shalls" and the "mays" and why we had the deliberation on that issue? [LB494]

SENATOR CARLSON: Okay. Thank you, Senator Price. And I'm in an uncomfortable situation here having been in a meeting on another bill and just got up to the floor to respond to this because it relates to LB71. And one of the concerns that was indicated to us on LB71 was for the veterinarians to be able to have some comfort level with reporting abuse and yet not creating a liability. And that's why the wording was "may report" rather than "shall report." And so as I come up here and hurriedly put on my light, I'm treading water. When it is my turn I'm going to talk to Senator Dierks. But at this moment I stand here uncomfortable, Senator Price. [LB494 LB71]

SENATOR PRICE: Well, thank you very much. And I am very fortunate now to be able to ask if Senator Council would yield to a question, please. [LB494]

SENATOR ROBERT: Senator Council, will you yield to a question? One minute. [LB494]

SENATOR COUNCIL: Okay. If I can respond to the question I will. (Laugh) [LB494]

SENATOR PRICE: Senator Council, I have absolute faith that given enough time you can respond to any question anybody would ask you. And that is in our discussions on having veterinarians have to report versus may report abuse in animals in LB71, could you take whatever time we have to say why we changed the "shall" to a "may?" [LB494 LB71]

SENATOR COUNCIL: Well, it was my understanding during the discussions of that issue, Senator Price, that we didn't want to impose an obligation upon veterinarians to

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make those kinds of reports, that we wanted the veterinarians to have discretion and to exercise their discretion in terms of making those kinds of reports. So in LB71, it was urged that we didn't want to mandate... [LB494 LB71]

SENATOR ROBERT: Time. [LB494 LB71]

SENATOR COUNCIL: ...to veterinarians to do that. [LB494 LB71]

SENATOR ROBERT: Thank you, Senator Price and Senator Council. (Visitors introduced.) Returning to discussion. Those members wishing to speak: Senators Carlson, Wallman, Ashford, Price, and Cornett. Senator Carlson, you are recognized. [LB494]

SENATOR CARLSON: Mr. President and members of the Legislature, Senator Dierks came over and talked to me a little bit. I'm going to wait for him to get back to his mike and then I'd like to address Senator Dierks. [LB494]

SENATOR ROBERT: Senator Dierks, will you yield to a question from Senator Carlson at your leisure? [LB494]

SENATOR DIERKS: Yes, sir. [LB494]

SENATOR CARLSON: Senator Dierks, thank you. My indication on the floor from Senator Cornett is that now veterinarians are fine with this change in wording from "may report" to "shall report." I think it's a significant change. What do you think? [LB494]

SENATOR DIERKS: I agree with you. It is a significant change, and it's something that we have not been a part of as far as that sort of reporting. I understood from Senator Lathrop when he spoke about the issue that if you're going to have protection, you have to have the "shall." If you're provided the immunity from prosecution, you have to have the word "shall" in there. And I had just kind of made my mind up that I was going to not do the argument and go along with the bill, probably not support the amendment, but. And when I talked with the representative for the Veterinarian Association a minute ago, she indicated that she'd had some conversation with some other veterinarians at the state level that are saying that we're probably better to have the immunity and have the word "shall" in there than not to have the immunity at all. So I think we're going to go with the amendment. [LB494]

SENATOR CARLSON: Okay. Thank you, Senator Dierks. Senator Cornett, I'd like to address a question to her if she would yield. [LB494]

SENATOR ROBERT: Senator Cornett, will you yield to a question? [LB494]

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SENATOR CORNETT: I'd be happy to. [LB494]

SENATOR CARLSON: Senator Cornett, we have LB71 which has not been presented on the floor. It was voted out of the committee. What does your amendment here do to LB71? [LB494 LB71]

SENATOR CORNETT: Basically the only thing it does is change the "may" to "shall." And the reason that we did that is all of the professional groups that are required to report suspected abuse or neglect, whether it's for children or if you're talking about a doctor, a teacher, a social worker, they are all "shall report." And we felt that veterinarians should...we shouldn't be creating one a separate standard for veterinarians over any other professional group and also to have it remove any doubt in regards to the issue of liability if they do report. [LB494]

SENATOR CARLSON: Okay, thank you, Senator Cornett. I see Senator Lathrop is here, and I'd like to address Senator Lathrop if he would yield. [LB494]

SENATOR ROBERT: Senator Lathrop, will you yield to a question? [LB494]

SENATOR LATHROP: Yes, I will. [LB494]

SENATOR CARLSON: Senator Lathrop, if you can understand me coming up here the way I have, I'm pretty uncomfortable. And you believe that the wording should be "shall" rather than "may." I don't particularly agree with the idea because all other statutes are the way they are and they have "shall" that we shouldn't have "may." We can do whatever we want to do. But can you explain the idea of how this gives the veterinarians...doesn't create a liability for them. [LB494]

SENATOR ROBERT: One minute. [LB494]

SENATOR LATHROP: Sure. The amendment creates immunity from civil liability, period. So if they report somebody, right or wrong, they're immune from a lawsuit for the consequences of that. And the only logical reason to do that is that they're mandated to report it if they suspect it. If they can decide in a given day, well, maybe I will and maybe I won't, it's my neighbor, this guy is not my neighbor, then there shouldn't be immunity because they've begun to exercise judgment about who they're going to turn in and who they're not going to turn in. And the trade-off here as a matter of policy is we're going to make them report when they suspect, and in exchange they get immunity from any consequences that follow from that reporting. [LB494]

SENATOR CARLSON: All right. We're running out of time here, but thank you. I'm going to hit my light and address you again. [LB494]

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SENATOR ROBERT: Time. Thank you, Senator Carlson. Senator Wallman, you are next and recognized. [LB494]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. Would Senator Dierks yield to a question? [LB494]

SENATOR ROBERT: Senator Dierks, would you yield to a question? [LB494]

SENATOR DIERKS: Yes, sir. [LB494]

SENATOR WALLMAN: Senator Dierks, as a practicing veterinarian, does that bother you that you have to decide if like a roadside animal gets run over or is that an abused animal or how do you decide that? [LB494]

SENATOR DIERKS: You know, it won't change my actions at all because whenever I felt there was something to be reported, it was reported. And if I found a disease problem in a neighbor's...in somebody's herd out there, a neighbor, I'd go to the neighbors and tell them. Now I've had a little difficulty with that right now in the Department of Agriculture because they won't let us know exactly where some of these trichomoniasis problems are. And we can't seem to spring that information out of them. They think it's a violation of confidentiality I guess. But it's a terrible violation of the practicality for the ranchers and farmers around where the outbreak is. You aren't going to know this until all of a sudden you come up with maybe a 30 percent abortion rate on your cows, 70 percent bred. And you don't see any sign of abortion and all of a sudden you just don't have pregnant cows. It could be devastating, and it can just engulf the entire neighborhood if you don't know where it is. But at this point, we haven't been able to get Department of Agriculture to the point where they want to let us know where these problems are. So, yeah, I've always been willing to let people know exactly where I stand on all these diseases. I think it's important for animal owners to know that. So there's no problem with me to tell people. I think it's my duty, so with me it isn't a "shall" or "may" problem. But it is a binding...it is a more binding statute. [LB494]

SENATOR WALLMAN: Yeah. Thank you, Senator Dierks. That bothers me, too, with the Department of Ag. We can wipe out farmers and ranchers literally and you can't tell anybody. So here we're treating pets different than farm animals you make a living with I guess. So I'd yield the rest of my time to Senator Lathrop. [LB494]

SENATOR ROBERT: Senator Lathrop, 2 minutes, 45 seconds. [LB494]

SENATOR LATHROP: Thank you and thank you, Senator Wallman. Maybe I'll just take a moment to perhaps reiterate what we've come to or summarize where we're at. By placing the requirement or a duty on the veterinarian to report suspected abuse and making that a mandatory responsibility and not a discretionary responsibility, we are

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following the same pattern we use with medical doctors, teachers, and other professionals, which are also given an immunity, but they are also required to do something. It is consistent with what we've done in the past, and the veterinarians have indicated their willingness to accept this change in exchange for immunity, which I've already discussed is something we should hand out only when public policy dictates it and demands it, which I think it does in this case. And so, again, I would support Senator Cornett's amendment. Thank you. [LB494]

SENATOR ROBERT: Thank you, Senator Lathrop and Senator Wallman. Senator Ashford, you are next and recognized. [LB494]

SENATOR ASHFORD: Okay. This obviously, as we all know, this amendment doesn't have anything to do with LB494. This is a separate provision that was debated in the Agriculture Committee. The reason that I'm supporting this amendment, and I fully understand what Senator Dierks is saying. And if I were a veterinarian with the kind of experience that Senator Dierks has, I would have the same concerns and reservations, no question. But what we...when we're dealing with a designation of an abused or a neglected animal, what the original bill was trying to get at, I think, was a matter of state policy where you have...and Brenda just explained to me that in Omaha, for example, under the Omaha ordinance involving veterinarians reporting abuse and neglect that those particular veterinarians are immune under the ordinance. I don't know whether that would apply or would not apply, I don't believe, to state statute or to civil liability. But maybe that is for violation of the ordinance. But what this...what we are saying is as a matter of state policy it is essential or important, as a matter of public policy, that this reporting occur. And as such, the veterinarians have said, well, if we're going to have to do this, be required to do this, we want immunity from civil liability. That is our decision to make. If we believe...and Senator Price has made a good point when he talks about some of the day-to-day issues that a veterinarian faces in his or her job that, you know, where does this reporting kick in and where doesn't it, and I think Senator Carlson also. But we are by amending this to this AM1203 to LB494, we are making a statement as a matter of state policy that this reporting is, quite frankly, essential, it's critical, and as such we are granting immunity, the same immunity to private veterinarians that apply to state agencies I believe. There's...we do it all the time. There's nothing particularly radical about this. Certainly the comments that are being made are appropriate and relevant. But again, I think we are responding to a need out there, and it seems logical, and I would support the amendment. And I think Senator Lathrop clearly has established and has talked about the general policy of when you should...when liability immunity should apply and when they should not and what sort of balancing act we must go through to make those determinations. Thank you, Mr. President. [LB494]

SENATOR ROBERT: Thank you, Senator Ashford. Members wishing to speak: Senators Price, Lautenbaugh, Nelson, Carlson, Cornett, and Dierks. Senator Price, you are recognized. [LB494]

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SENATOR PRICE: Thank you, Mr. President, members of the body. And I would like to yield my time to Senator Council if she would like to have it. Thank you. [LB494]

SENATOR ROBERT: Senator Council, 4 minutes, 50 seconds. [LB494]

SENATOR COUNCIL: Okay, and just briefly, Senator Price, I believe, yielded his time to address the question, and I think that has been resolved with regard to the reporting by the veterinarians. So with that, I'll yield the balance of the time back to Senator Price if he wants it. Otherwise, I think he'll waive his time. [LB494]

SENATOR ROBERT: Thank you, Senator Council and Senator Price. Senator Lautenbaugh, you are next and recognized. [LB494]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. It was not my intent to speak on this until this issue with the "may" and the "shall" came up. And I will be, I guess, the hardhearted one who stands up here and says, you know, first of all, for clarity's sake we have a dog. I love my dog. I loved our old dog. I think anyone who abuses an animal should be prosecuted. There's no excuse for it, absolutely no excuse for it. I pause, so to speak, every time we start equating pets with children. And I want to make sure that's not what we're doing here. I've thrown in an amendment that says we're going back to "may" instead of "shall." This is not a ditch I intend to die in, but I think it is an important issue. We're saying that, well, we require doctors to report suspected abuse, we use "shall." We require teachers, as I understand it, to report suspected abuse and we say "shall." That is dealing with children and this is dealing with pets. And this is a policy decision we're going to make. And like I said, it's not my intent to slow down Beau's bill. It's not even really my intent to stop this amendment. It surely isn't my intent to deny immunity to the veterinarians. That's not what I'm about here. But I'm more comfortable with the "may." I've thrown in the amendment to that effect. I won't belabor the point. I certainly won't try to slow this down. If it passes with the "shall" in there, it will pass with the "shall" in there. But I think there's a difference, and I think it's a difference worth pointing out, and it's a significant difference. Thank you. [LB494]

SENATOR ROBERT: Thank you, Senator Lautenbaugh. Senator Nelson, you are next and recognized. [LB494]

SENATOR NELSON: Thank you, Mr. President. Is Senator Ashford available, would entertain a question? [LB494]

SENATOR ROBERT: Senator Ashford, will you yield to a question? [LB494]

SENATOR ASHFORD: Yes. [LB494]

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SENATOR NELSON: Is your answer yes? [LB494]

SENATOR ASHFORD: Yes, it is. [LB494]

SENATOR NELSON: All right, thank you. [LB494]

SENATOR ASHFORD: Definitively so. [LB494]

SENATOR NELSON: Sorry to bring you back on the floor, Senator. [LB494]

SENATOR ASHFORD: Oh, it was just a, you know. [LB494]

SENATOR NELSON: All right, and I won't keep you long. In your previous remarks, you said that as a matter of policy we are responding to a need, a critical need here. Would you kind of expand on what this need is, this critical need? [LB494]

SENATOR ASHFORD: It's defined in the statute, Senator Nelson. I think what I'm saying is that...and I wasn't in the Agriculture Committee, obviously, and I didn't hear the arguments, but the need that's expressed in the original bill is, it seems to me, a valid need, which is to care for abused and neglected animals. That is something that I would say the vast majority of Nebraskans would support and agree with. It's reflected in the original bill and the reason for it. That would be the critical need that I'm talking about. [LB494]

SENATOR NELSON: All right. To your knowledge, was this amendment of Senator Cornett's brought at the behest of the veterinarians? Did they request this? [LB494]

SENATOR ASHFORD: That I don't know. I don't know that. I'd defer to Senator Dierks. Senator... [LB494]

SENATOR NELSON: Thank you, Senator Ashford. May I ask... [LB494]

SENATOR ASHFORD: ...Cornett is saying yeah. [LB494]

SENATOR NELSON: ...Cornett a question? [LB494]

SENATOR ROBERT: Senator Cornett, will you yield to a question? [LB494]

SENATOR CORNETT: Yes, I will. [LB494]

SENATOR NELSON: Was this amendment of yours, Senator Cornett, brought at the request of the veterinarians? [LB494]

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SENATOR CORNETT: It was brought to me by a vet clinic. And since then, the lobby for the veterinarians supports the bill. And they are willing to accept "shall" if they can gain the immunity, which they want, to be able to report. I do want to clarify very quickly, though, that with this amendment we are not trying to bring animals to the level of children, which I completely would not agree with, even though I do love animals. But we are trying to provide continuity in how we provide liability for reporting. And that is why we have "shall" instead of "may" for that continuity in regards to providing exemption from liability. [LB494]

SENATOR NELSON: So if I understand you, this was brought at the request of the veterinarian clinic that was concerned about the liability that they might incur. [LB494]

SENATOR CORNETT: Yes. Their veterinarian clinic in my district brought the bill to me saying that a number of times they've had cases where they believe an animal is being abused and they have reported it. But every time they report it, they have the fear that they could be sued. Since I brought the bill, we have been working with the veterinarians overall in regards to this bill because there is the agreement that they need immunity from liability if they report a suspected case. Of course, any professional group would prefer to have a, I want to say their cake and eat it too, their cake being exemption from liability and being able to eat that cake being they can report who they want when they want. [LB494]

SENATOR NELSON: Thank you, Senator Cornett. I appreciate your answer. Members of the Legislature, I stand in opposition to this amendment. We may hear from Senator Carlson, but this very thing was considered by the Agriculture Committee. It has some far-reaching possibilities I think, and here we have an amendment... [LB494]

SENATOR ROBERT: One minute. [LB494]

SENATOR NELSON: ...that's being added on. Is that one minute, Mr. President? [LB494]

SENATOR ROBERT: Yes, one minute. [LB494]

SENATOR NELSON: All right, thank you very much. An amendment that's kind of does an end run around I think what the Agriculture Committee, how they decided to handle this. You know, we mandate things. It seems to me that veterinarians are professionals. They will know whether there's been abuse or not of an animal. And as part of their professional responsibility, if they think there is and it's serious enough, they're going to go ahead and report that. And they are going to be sustained, in all likelihood, in their professional opinion. And if they're sustained, then they don't need...they don't have any fear of liability. They don't need to be concerned about that. Let's leave it with "may."

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Let's not make it mandatory just in the cause of giving them protection here... [LB494]

SENATOR ROBERT: Time. [LB494]

SENATOR NELSON: ...because they make a wrong decision. Thank you, Mr. President. [LB494]

SENATOR ROBERT: Thank you, Senator Nelson. Speaker Flood, you are recognized for a Speaker announcement. [LB494]

SPEAKER FLOOD: Thank you, Mr. President. Good morning, members. Just kind of a heads up as to the rest of our week. Tomorrow morning we're going to continue on General File. We'll do some Select File in the afternoon. My office should be calling a number of your offices to make sure that you're ready for the bills that will be put on Select File tomorrow afternoon. We'll return to General File after Select File in the afternoon on Wednesday. On Thursday, we're going to take up the safe haven package. That will be filed under LB603. It was a bill introduced by the Health and Human Services Committee. This bill will become the vehicle for all of the bills inside that package that we discussed earlier this session. We will be taking that up on Thursday morning. Assuming that the body is okay with it, we will then proceed to IPP motions on the other bills in the vehicle after that time. We'll take up other General File matters of importance--I'll clarify that a little bit more tomorrow--on Thursday after the safe haven package and then return to General File. I do intend to go to 5:00 today so that you have a little idea as to which direction we're going. But again, tomorrow afternoon there will be some Select File up, and Laurie in my office will be communicating with yours. Thank you very much. [LB494]

SENATOR ROBERT: Thank you, Speaker Flood. Mr. Clerk, items for the record. [LB494]

CLERK: Thank you, Mr. President. Enrollment and Review reports LB159, LB159A, LB246, LB440, and LB549 as correctly engrossed. Enrollment and Review also reports LB671, LB476, LB476A to Select File, some of which have Enrollment and Review amendments attached. Senator Haar offers LR101; that will be referred to the Executive Board as it calls for an interim study. That's all that I have, Mr. President. Thank you. (Legislative Journal pages 1213-1214. [LB159 LB159A LB246 LB440 LB549 LB671 LB476 LB476A LR101])

SENATOR ROBERT: Thank you, Mr. Clerk. (Visitors introduced.) Returning to discussion on AM1203, the amendment to the committee amendments. Those wishing to speak: Senators Carlson, Cornett, Dierks, Schilz, Price, and Lathrop. Senator Carlson, you are recognized. [LB494]

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SENATOR CARLSON: Mr. President and members of the Legislature, again, I'm going to go back to LB71 heard before the Ag Committee and the original bill as introduced by Senator Cornett had the wording "shall report." After the hearing and being in correspondence with veterinarians association, the Ag Committee decided that the wording of "may" was more to their liking, addressed their concern. It's what we're supposed to do, I think, in our committee meetings as we have people show up to testify. Now I'm going to stick by that position because the veterinarian association has not contacted me and said we've changed our mind. And it's our understanding that the original bill included a duty to report primarily because the veterinarians were under the mistaken assumption that veterinary professionals were already subject to such duty under the Veterinary Practice Act. But the Veterinary Practice Act doesn't read that way. It reads: A veterinarian who releases information under a written authorization or other waiver by the client or pursuant to a court order or subpoena is not liable to the client or any other person. And it was our understanding that when they realized that then they were more comfortable with the wording "may report." I'd like to address another question to Senator Lathrop if he would yield. [LB494 LB71]

SENATOR LANGEMEIER PRESIDING []

SENATOR LANGEMEIER: Senator Lathrop, would you yield? [LB494]

SENATOR LATHROP: Sure. [LB494]

SENATOR CARLSON: Senator Lathrop, I'm not real good at flying by the seat of my pants, but that's what I'm doing so bear with me. If we're not talking about animals but we're talking about law enforcement, there's a subjective evaluation, I think, by an officer witnessing something. Is it abuse or isn't it abuse? And I've lost my wording here. Is it assault or isn't it assault? And there's a decision that they make whether to take action or not. Is that a fair enough statement? [LB494]

SENATOR LATHROP: You're asking me if that's what law enforcement does? [LB494]

SENATOR CARLSON: Yes. [LB494]

SENATOR LATHROP: And I think the answer is, yeah, they probably do that every day. [LB494]

SENATOR CARLSON: So how does "shall" change that? [LB494]

SENATOR LATHROP: Here's the difference and that there's going to be a certain amount of judgment at the front end of this even with "shall." The judgment is going to be by the veterinarian--does this look like abuse or doesn't it? Okay, a dog or an animal comes in with certain conditions that are consistent with...maybe they got caught in a

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fence and cut or they were abused. The vet makes a decision. I suspect that this particular animal has been abused because of their professional judgment, maybe it's cowering, maybe it's giving other indications. At that point, they would have a duty to tell. The "may" is what happens after...the "may" and the "shall" is what happens after they suspect abuse. Okay? It's not...the "may" and the "shall" isn't part of their judgment about whether they suspect abuse. It's about what they do after they suspect abuse. And what the change does, Senator Carlson, is it says consistent with the way we've done it with teachers and doctors, we use the same system or the same paradigm. [LB494]

SENATOR LANGEMEIER: One minute. [LB494]

SENATOR LATHROP: That doesn't mean we're equating animals with kids, but we're borrowing something that works when it comes to teachers and saying you shall and in exchange you will be given immunity. [LB494]

SENATOR CARLSON: Okay, thank you, Senator Lathrop. And I think that's perhaps an area where there's a reasonable degree of uncertainty and perhaps difference of opinion because we're not talking about children. We're talking about animals. Animals shouldn't be abused. If a dog runs into a barbed wire or electric fence at full speed and gets ripped up and then taken to the vet, is that abuse or isn't it abuse? The way the bill would be, the way LB71 is written, if that veterinarian reports it, they don't create a liability... [LB494 LB71]

SENATOR LANGEMEIER: Time. [LB494]

SENATOR CARLSON: ...when the truth comes out. Thank you. [LB494]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Cornett, you are recognized. [LB494]

SENATOR CORNETT: Thank you, very much. I think that we're getting a little off course here. There's a couple of things that I want to explain briefly. (1) In the state of Nebraska, if you are a veterinarian working for a municipality or a state agency, you are exempt from liability if you report suspected abuse. (2) The bill does not require the vet or the vet tech to investigate in any way, shape, or form if they suspect abuse, only that they report it that they believe it might be occurring. (3) The veterinarians want and need the exemption from liability if they report. They are very concerned that if they report a suspected case now that they will be open up to a lawsuit. And that is very unfair when they are trying to do what is right by the animal. (4) Shall and may has nothing to do with putting animals on the same level as a child. I truly believe that children deserve a higher level of protection than animals under the law. What this is, though, is a continuity in regards to how liability laws are decided in this state. My aide

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has spoken with the veterinarian lobby multiple times now, and they have also spoken with Senator Dierks. They want the immunity and they are willing to accept "shall." And I want to make it very clear to the body that if it goes to "may" because of the doors that we will open, I will pull this amendment from the bill. Thank you. [LB494]

SENATOR ROBERT PRESIDING []

SENATOR ROBERT: Thank you, Senator Cornett. Senator Dierks, you're next and recognized. [LB494]

SENATOR DIERKS: Thank you, Mr. President. I got to thinking about the question that Senator Wallman asked and express how it would affect me, but my practice was 99 percent large animals. So when I relate to the question that Senator Cornett is talking about with abuse of dogs, and I'm not sure, I think she's talking about dogs that have been abused as well as people that have been abused by dogs. And that's a little bit...I just haven't had that kind of a problem in my practice. We...most of the communities in my practice area had legislation in place in their communities, the community statutes that called for animals to be confined. They couldn't be running loose. And they also have to be vaccinated for rabies. So all of these communities have an annual rabies clinic day. They had it last Saturday in Ewing. I used to do those all over the country up there. I think that I saw even a notice in the paper the other day for one of the communities up there that they forbid having pit bulls in their community. They can't even have them. They name the breeds that they won't allow. That's a pretty touchy subject. I think that the major cities have had long, hard discussions about that. So I'm not so sure that...I think that the "shall" and the "may" thing could cause us some difficulties. And I...even though I understand what the lobby for the veterinarian association has found out in her phone calls this morning trying to get some direction that maybe the amendment wouldn't be all that bad. I still think that...I'm just...I guess I'm disappointed that the bill came here as an amendment when it didn't have the entire committee amendments on it that brought it out of committee. With that, I'm going to suggest that I really don't want to support this amendment. I do want to support the bill. And that's my stand at this point. Thank you. [LB494]

SENATOR ROBERT: Thank you, Senator Dierks. Senator Schilz, you are next and recognized. [LB494]

SENATOR SCHILZ: Thank you, Mr. President and members of the body. Just as all the other members who have stood up on the Ag Committee have said that they are somewhat uncomfortable with this amendment, I stand here in the same manner. You know, I think we do need to remember that this bill or this amendment is not just about pets, it's all animals, including livestock, and when we need to be careful. I'm always concerned when somebody has a duty to report something because you can...even though "may," the word "may" can cause some confusion, the word "shall" can cause

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folks to report anything and everything to make sure that they cover themselves so that they have less liability there. So with that, I would just say that I am not in support of this amendment. I do support the bill, though, but I think this needs to come off. Thank you very much. [LB494]

SENATOR ROBERT: Thank you, Senator Schilz. Senator Price, you are recognized, and this is your third opportunity. [LB494]

SENATOR PRICE: Thank you, Mr. President, members of the body. Just to polish the rock, would Senator Lathrop yield to a question? [LB494]

SENATOR ROBERT: Senator Lathrop, will you yield to a question? [LB494]

SENATOR LATHROP: Yes. [LB494]

SENATOR PRICE: Thank you very much, Senator Lathrop. And my question is, in looking at page 7, line 16, Section 7 subparagraph (1), and I'll just let you know what it says. I won't hold you on this one, but my question is when is a veterinarian not bound on duty? Because the bill talks about in the course of their practice or duty and I'm concerned if a veterinarian is driving down a road and sees a horse out in the meadow and they...they're not at the shop but they see a malnourished, a potentially malnourished horse. And that veterinarian doesn't report it because it's not at the clinic. Are they duty bound even if they see it, because like a doctor, you know, doctors I think, I assume, and I'm hoping that you will once again educate me--much like a medical doctor, are they ever off duty? Or do they have a fiduciary, if I could use that term, responsibility with concerns in the medical world for like a horse if they see one they're driving by? [LB494]

SENATOR LATHROP: I couldn't find that language so I'm going to have to go with your interpretation. And that interpretation was that if a person in the scope and course or in the course of their duties as a veterinarian identifies suspected abuse, they have a duty to report. And your question is, are they always on? I think that language would...a reasonable interpretation of that language would be in the course of their practice. Okay? So if they are seeing somebody's pet in the clinic or if they go out to somebody's house and look at their pet in a home setting and they recognize some suspected abuse, that's when it would kick in. But if they're driving down the Interstate and going by one herd after the other and they see a skinny horse out there showing its ribs, do they have a duty to pull over and call the police? No, I don't think so. [LB494]

SENATOR PRICE: Okay, great. And thank you very much for working with me to build this scenario. So now let me ask this question: In light of the polo horses that all died all of a sudden out there in a polo match, what if a veterinarian is...I think this happened. Maybe Cap can...Senator Dierks can help me. If a veterinarian is servicing one animal

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in a stable, like a racetrack or in a, maybe not racetrack but in a stable, so the vet doesn't really have a contract service with all the horses in the stable, he's only servicing certain owner's horses, and they're walking by the stable and they see it, it's not in the course of their duties (inaudible) and I'm not trying to be nitpicky, I'm just trying to make sure if we're really truly trying to protect, I'd like to make sure that we don't make somebody liable because then owner B says, well, you walked by the horse all the time and you saw the... [LB494]

SENATOR LATHROP: Yeah. I don't think that...first of all, I don't think the duty to report extends to animals that they've not been called upon professionally to examine. [LB494]

SENATOR PRICE: Oh. [LB494]

SENATOR LATHROP: So if whether you're driving by a herd on the Interstate or you see a skinny cat in the ditch or perhaps caught in a fur trap (laugh), I don't think you have a duty as a vet to report. [LB494]

SENATOR ROBERT: One minute. [LB494]

SENATOR PRICE: Thank you, Mr. President. Senator Lathrop, that was a nice turn there. Thank you very much. I wonder would Senator Dierks yield to a question? [LB494]

SENATOR ROBERT: Senator Dierks, will you yield to a question? [LB494]

SENATOR DIERKS: Yes. [LB494]

SENATOR PRICE: Just real quick there, Senator Dierks, is it a practice that you know of where a veterinarian would be servicing or working with one animal in a stable and not be responsible for the other animals in the stable? [LB494]

SENATOR DIERKS: Yeah, I think that's correct. [LB494]

SENATOR PRICE: All right, thank you very much, Senator Dierks. Thank you, Mr. President. [LB494]

SENATOR ROBERT: Thank you, Senator Price. Senator Lathrop, you are next and recognized. [LB494]

SENATOR LATHROP: Thank you, Mr. President. Colleagues, if I can make an observation: It seems like there's two questions going on and we're mixing them up and it's causing the confusion. The first question is whether or not we care enough about animals to impose a duty to report suspected abuse. Now we can care about animals,

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whether they're dogs or cats or any other kind of animal, we can care about them enough to require that somebody report abuse. Now, where are we at on that score? We already have laws against abusing these animals. Okay? We've already elevated them higher than some other object that doesn't live, like an automobile. Because we have, as a society, recognized the importance of animals, the fact that they're living, breathing, we share the planet with them, and we care about whether or not they're abused or not, reporting is just a natural follow up to the fact that we have laws against abusing them. If you don't think...if you think reporting abuse is putting animals on par with human beings, then we should repeal all the statutes on abusing animals and have no duty to report it. I don't think that's where we're at. We're at a place where we recognize people shouldn't abuse animals. Now the next question is, should a vet have a duty to report them? That's different than whether we recognize the duty or the...or where we're at as a society not to abuse animals. The other question is whether or not a vet should have a duty to report them. They want to report them. All right? They want to report them. They accept that they will have a duty to report them in exchange for the immunity. The vets are onboard. Where we're getting hung up is the Ag Committee. Now I appreciate--we just went through this with the Education Committee--believe me, I feel that way when Judiciary Committee stuff comes out here and people think they know more about the issue than the Judiciary Committee that sat and listened to the testimony. But we're now dealing with the subject matter of an immunity, which is typically the province of the Judiciary Committee. All right? Sometimes we got to make a judgment call and this one went to Ag. Well, it's out here and we now have an issue causing a problem that typically is dealt with in Judiciary Committee. And by the way, we deal with all the dog abuse and the animal abuse stuff in Judiciary Committee as well. That aside, let me suggest something to my friends on the Ag Committee. I appreciate the work you do, but it is unrealistic to expect that because the Ag Committee has put something out without a dissenter that it will come to the floor and the rest of us should accept it without exercising our own judgment, our own input, and for that matter, our own professional judgment about whether there aren't some things that need to be tweaked. I do have a problem with immunities. I have a significant problem with immunities because I believe the civil tort system provides incentive for people in this country to behave in a careful manner. And when we give immunities, we provide a hole in that incentive. Here there is a public policy reason. It only fits if we mandate that vets who suspect abuse report it. It provides them with the incentive to not report it or the disincentive to report it, if you will. The amendment as offered by Senator Cornett, while not exactly what the Ag Committee put out, makes sense... [LB494]

SENATOR ROBERT: One minute. [LB494]

SENATOR LATHROP: ...when you consider the immunity and the policy involved. And let us not, as we go on, confuse the first question, which is whether or not we regard animals as deserving of some level of protection, from the second issue, which is what should immunities look like for veterinarians in this situation. I hope that clarifies things.

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It's the best I can do on immunities. And with that, I would encourage you to support Senator Cornett's amendment. Thank you. [LB494]

SENATOR ROBERT: Thank you, Senator Lathrop. (Visitors introduced.) Returning to discussion, senators wishing to speak: Senators Lautenbaugh, Carlson, and Karpisek. Senator Lautenbaugh, you are recognized. [LB494]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I just had an occasion to visit the lobby and talk about this some more and I don't think the Ag Committee is the problem here. This is an important bill. What we're trying to do is encourage vets to report suspected abuse, and we're granting them immunity if they do so and they're wrong and they get sued. Fine. I categorically do not accept that we have to require them to report the abuse for the immunity to make sense. There doesn't always have to be a stick with the carrot. Sometimes the carrot is okay. And here's what I'm being told out in the lobby: The trial attorneys will never accept this if the reporting is optional. Now ask yourself why is that, that the trial attorneys will absolutely, positively never accept optional reporting and immunity? I don't see the link there. I don't see why the trial attorneys should necessarily be driving this bus. And again, I'm not talking about anyone in this body. I'm talking about the people out in the hall who say we will kill this bill, as if that's their prerogative somehow, if we don't have an absolute reporting duty for veterinarians. We are trying to take care of pets here. But I don't see why we have to use a club on the veterinarians to get them to do it. There aren't a lot of people that go into veterinary medicine that have an active dislike for animals I'd surmise. They probably kind of care for them as a general rule, as they're veterinarians. We're just giving them a little something here to say, hey, if you report it and you're wrong, you're not going to get sued. Well, boy, we can't have a scenario where someone can't be sued. That would be awful. That would just be awful if someone couldn't be sued for doing the right thing and finding out they made a mistake. So now we have to put this extra club in there, well, then you have to report it. You have to report it. That's not how the bill came out of the Ag Committee. It's true. When it came out of Ag Committee, it's my understanding, it says you may report it and you get immunity. But I don't think the Ag Committee is the problem here. It's not the Ag Committee threatening the underlying bill as I read this or the underlying amendment. It's the trial lawyers out in the lobby who are saying if you do this, if you opt for "may" instead of "shall," Senator Lautenbaugh, if you don't pull your amendment, we will kill Abbie's, Senator Cornett's amendment. I don't know where they sit when they vote, but apparently they're going to come in and do it. So I have a decision to make because I improvidently brought this "may" versus "shall" amendment because I thought it was a better policy for the veterinarians. Do I endanger their immunity by persisting with this amendment? What do I do? I'm looking at Senator Sullivan. I'm not expecting an answer. I'm just looking over there. You can answer if you know. Senator Sullivan, would you yield to a question? (Laugh) [LB494]

SENATOR ROBERT: Senator Sullivan, will you yield to a question? [LB494]

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SENATOR SULLIVAN: I'd prefer not to if you don't mind (laugh). [LB494]

SENATOR LAUTENBAUGH: That's fine. I don't know the answer either. Thank you. [LB494]

SENATOR ROBERT: Thank you, Senator Lautenbaugh. Senator Carlson, you are next and recognized. [LB494]

SENATOR CARLSON: Mr. President, members of the Legislature, this has been one of the most interesting 30 minutes that I've spent in three years in the Legislature. I resent any kind of an insinuation that the Ag Committee can't handle issues. This bill was before the Judiciary Committee, didn't come out with any shalls in it, took an amendment. I also don't like when groups that are interested in legislation are asked what they think about an issue in relationship to a hearing, and it takes two weeks or more for them to get back to you. And I'm talking about the veterinarians association. They were slow getting information back to the Ag Committee. They were slow getting information back to Senator Cornett. I'm going to yield some time to Senator Cornett in a minute. If this bill is passed and then comes back on Select File, if they want changes and they know what they want, they need to come to me and make that understood because we've got a related bill, LB71, out of the Ag Committee and they need to come to Senator McCoy and make sure he understands and he's onboard with it, and they need to make sure that Senator Cornett as well. It's the right way to do things. You don't do things the right way and everything blows up. With that, I'll yield the balance of my time to Senator Cornett. [LB494 LB71]

SENATOR ROBERT: Senator Cornett, 3 minutes, 25 seconds. [LB494]

SENATOR CORNETT: Thank you very much. First of all, I want to thank Senator Carlson. He has been wonderful to work with on this bill. And the last thing we wanted to do was usurp the authority of the committee. We did not get an answer until this morning from the veterinarians in regards to the language on "shall" or "may." I am going to pull this amendment at this time. Senator Carlson and I have spoke and he has been very, very agreeable and understands the need for the immunity from liability. We are going to work on this amendment between now and Select File, and I will reoffer this bill after Senator Carlson has spoken with the veterinarians and they have also spoken with Senator McCoy. Again, I stress how important this amendment to the bill is, and I want to thank Senator McCoy for putting up with this on his priority bill. He has been very, very wonderful to work with also. The only thing that I would like to comment on is Senator Lautenbaugh's statement in regards to the trial attorneys dictating what I am doing in regards to this bill. That is not correct. I worked on this bill and it came from my veterinarian originally. It did not come from the trial attorneys. It did not come from the veterinarian lobby. I worked with both sides to find a bill that works to provide the

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immunity that veterinarians need and the legal responsibility if that immunity is provided. Again, I look forward to working with Senator Carlson and Senator McCoy between now and Select File. At this time, I will pull the amendment. [LB494]

SENATOR ROBERT: Thank you, Senator Cornett. AM1203 is withdrawn. [LB494]

CLERK: Senator Lautenbaugh, I'm assuming your amendment, Senator, would now go away. [LB494]

SENATOR LAUTENBAUGH: Yes. [LB494]

CLERK: Okay, thank you. [LB494]

SENATOR ROBERT: Returning to discussion on the committee amendments, AM844. Those wishing to speak: Senators Lathrop, Lautenbaugh, and Wightman. Senator Lathrop, you are recognized. Senator Lathrop waives his opportunity. Senator Lautenbaugh, you are next and recognized. [LB494]

SENATOR LAUTENBAUGH: Thank you, Mr. President. And briefly, and so I'm clear on this, it was not my intention to say that Senator Cornett was working for the trial attorneys or that Senator Cornett came to me and said the trial lawyers were going to do this. That was solely what was represented to me out in the lobby and that's where I heard it and that's what I reacted to. If I gave that impression, misimpression that it was coming from in here, I regret that, I withdraw that, that was not my intent. My, well, I'll call it anger was directed beyond the glass, not within the lobby. I'm sorry, let me try that again. It was specifically addressed and directed towards the lobby and not within the body. Thank you. [LB494]

SENATOR ROBERT: Thank you, Senator Lautenbaugh. Senator Wightman, you are next and recognized. [LB494]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I haven't spoken on this issue. I have listened and it's been very interesting debate. I am concerned, as Senator Nelson is, however, with regard to the fact that we are stepping this from a Class III misdemeanor to a Class IV felony, even on first offense. It's not a first offense for the dog, I understand that, but it's a first offense as far as the owner is concerned. We've had some discussion. Probably I'm not going to offer an amendment at this point, but I think that it's a huge step to go from a Class III misdemeanor to a Class IV felony when we could have either a Class II or a Class I misdemeanor. I think it would be a far better bill, quite frankly, if we went to a Class I misdemeanor when they met the tests that are set out in LB494, as amended by AM844, that would be amended by AM844, and not making it specific to the particular dog, but specific to the owners that if they're charged with a second offense, whether it be a different dog or the same

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dog, that then it become a Class IV felony. But I'm concerned over making someone a felon. There's still, even though Senator Coash's amendment I think was a big improvement, there's still a wide range of offenses that could fall within this particular offense as defined by statute. And it just seems to me that the first offense probably should be a Class I misdemeanor--even that has a penalty of up to one-year imprisonment and a sizable fine, where a Class IV felony goes to a five-year imprisonment. Quite frankly, I think the penalty is going to be about the same, but you're going to be branded with being a felon if you were charged. And there's really no lesser offense probably, not that you perhaps couldn't find a lesser offense. But I would plan to at least propose an amendment on Select File that would be a Class I misdemeanor; then with a second offense and not necessarily with the same dog but with any dog, that he might...that owner might subsequently own, then becoming a Class IV felony. Thank you, Mr. President. [LB494]

SENATOR ROBERT: Thank you, Senator Wightman. Senator Lathrop, you are next and recognized. [LB494]

SENATOR LATHROP: Thank you, Mr. President. I guess I'm done talking about LB494 and the immunities that were found in Senator Cornett's bill. But I do rise to respond to the demagoguery against the trial lawyers. And they have become to certain constituencies the whipping boys of politics. And I have made that my profession for nearly 30 years, and I'm not going to stand on this floor, sit on this floor and let somebody take a crack at them and demagogue against the trial lawyers. To suggest that because trial lawyers, who typically have concern for the civil liberties of people in this state, to suggest that because they have a concern relative to a bill that somehow they're being heavyhanded or they're going to come in here and vote or they are threatening is wrong. Senator Cornett spoke to their lobby and agreed that if the language wasn't changed, because of the concern over immunities, that she would pull it. That's no different than what happens with interest groups that have concerns regarding legislation all the time in here. I can tell you because I've been involved with that organization as its past president, I've spent my entire professional life as a trial lawyer, and I can tell you that I have come to this body, as have the trial lawyers, and worked on issues regarding work comp. We worked on issues regarding recreational liability, which was a crisis in this state two years ago, and resolved it. That organization doesn't deserve to be kicked around by anybody on this floor, no one. I don't stand up and get after the Chamber of Commerce when they're on the other side of my bills. And I think it's entirely unprofessional to hear it about any other organization back there. And if you have a problem with them, come talk to me. Thank you. [LB494]

SENATOR ROBERT: Thank you, Senator Lathrop. Seeing no other lights on, Senator Ashford, you're recognized to close on AM844. [LB494]

SENATOR ASHFORD: Thank you, Mr. President. I was just talking to Senator

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Langemeier, and he suggested the tip off would be at noon. (Laughter) I don't know if that will settle everything or not but (laugh)...Senator Wightman, that is if you get an opportunity to start. Thank you. I...actually we've had an interesting discussion about criminal and civil liability in one morning. And we try to keep these bills limited to at least criminal liability in one bill and civil liability in another bill because it does get very confusing. But in any event, getting back to the Judiciary Committee amendments, Senator Coash has given us a good amendment. It was adopted. In order for this felony charge to come up at all, there must be a serious injury, there must be notice. I think Senator Wightman has brought up an excellent point about a felony record being attached to a dangerous dog charge. And it's something we can most definitely think about between now and Select File. Assessing punishment or penalties is a very...should be a very serious matter, and I know it is in this body. So we will continue to work with Senator McCoy on this. Senator McCoy has done a great job actually, quite a good job in getting the bill to where it is now. I'd urge the adoption of the AM844 and move the bill ahead. Thanks. [LB494]

SENATOR ROBERT: Thank you, Senator Ashford. Members, you have heard the closing to AM844, the Judiciary Committee amendments. The question before the body is, shall AM844 be adopted? All those in favor vote yea; opposed vote nay. Have all those voted who wish? Please record, Mr. Clerk. [LB494]

CLERK: 39 ayes, 0 nays, Mr. President, on the adoption of committee amendments. [LB494]

SENATOR ROBERT: AM844 is adopted. [LB494]

CLERK: I have nothing further on the bill, Mr. President. [LB494]

SENATOR ROBERT: Returning to discussion of LB494, are there members wishing to speak? Seeing none, Senator McCoy, you are recognized to close on LB494. [LB494]

SENATOR MCCOY: Thank you, Mr. President. I think we've had great debate this morning on some far-reaching topics as it pertains to the underlying bill, and I appreciate all thoughts that were included in that discussion. We started a couple of hours ago talking about what again is the underlying bill, and that is penalties as it relates to second strike offenses with dangerous dogs. I'd like to touch on, if I could very briefly, I believe what Senator Ashford said a moment ago about how we should take things very, very seriously, penalties as it relates to Nebraskans. I wholeheartedly agree with that statement, and that's the intent of this bill. I believe also that as long-time attorneys, Senators Nelson and Wightman brought up a couple of very good points as it relates to the differences between changing from misdemeanors to felonies. And I pledge to them off the mike as I do on the mike to them and also the remainder of the body that I will work with them in-between General and Select to clarify, if need be,

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those penalties to make them the best that they can be in these circumstances. So again, I appreciate the discussion, and I would ask my colleagues for their support in advancing LB494 to Select. Thank you, Mr. President. [LB494]

SENATOR ROBERT: Thank you, Senator McCoy. Members, you have heard the closing to LB494. The question before the body is, shall LB494 advance to E&R Initial? All those in favor vote yea; opposed vote nay. Have all those voted who wish? Mr. Clerk, please record. [LB494]

CLERK: 40 ayes, 0 nays, Mr. President, on the advancement of LB494. [LB494]

SENATOR ROBERT: LB494 does advance. Next item on the agenda, General File 2009 senator priority bills, Dubas division. [LB494]

CLERK: Mr. President, LB633, a bill by Senator Mello. (Read title.) Bill was introduced on January 21, referred to the Urban Affairs Committee, advanced to General File. There are Urban Affairs Committee amendments, Mr. President. (AM907, Legislative Journal page 897.) [LB633]

SENATOR ROBERT: Senator Mello, you're recognized to open on LB633. [LB633]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. LB633, the Neighborhood Development Act, creates a fund that would provide grants to neighborhood associations, second-class cities and villages across the state to assist with significant community development projects. The Neighborhood Development Act focuses on helping those in our communities who are making Nebraska a better place to live, work, and raise a family. This legislation gives neighborhood associations in small communities another tool to use in assisting with significant community improvement projects that focus on enhancing the quality of life and local economy. Under LB633 neighborhood associations, second-class cities and villages would become eligible to apply for competitive grants through the College of Public Affairs at the University of Nebraska-Omaha. Applicants would need to demonstrate that a grant would be used for a specific project with a specific benefit to the community served and the applicant would need to provide a match in either private dollars or in-kind value. Matching requirements either in dollars or in-kind services would be set up on a tiered system. For grants up to \$5,000 a 25 percent match would be required. For grants between \$5,001 and \$7,500 a match equivalent between 26 percent and 49 percent would be required, and a 50 percent or more match would be required for grants between \$7,501 and \$10,000. Individual grants would be limited to \$10,000. This legislation has a truly statewide benefit as it allows the 109 second-class cities, the 298 villages, and over 235 established neighborhood associations to apply for a grant. The League of Municipalities as well as the cities of Omaha and Lincoln support this bill. There are numerous examples of projects that could benefit from the Neighborhood

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Development Act. Second-class cities and villages could use grants from this program for a main street revitalization project, for a park or community center enhancements, or small business incubators. As you know from my previous statements I've made on the floor, graffiti is a growing problem in my district. Neighborhood associations could use grants to set up graffiti abatement programs or other neighborhood or park cleanup activities. The possibilities for projects that could benefit truly are infinite. As a member of the Appropriations Committee I understand the difficult situation we are in this year, but I also believe that making small investments in our communities and leveraging private matching funds in the process not only grows our local economic development capacity, but also honors the hard work and service being performed by thousands of Nebraskans. Due to the unique budget situation facing our state I've introduced an amendment that will lower the amount of General Funds to \$125,000 over a four-year period as well as sunseting LB633. Over the past few weeks I've been working with Senator Heidemann and the Legislative Fiscal Office to find an existing appropriate cash fund to finance this pilot project. If it advances to Select File I'll continue to work with Senator Heidemann and the Fiscal Office to find such an appropriate cash fund. LB633 helps leverage private investment in Nebraska's neighborhoods and communities through a small competitive grant program that focuses on community and economic development. I'd urge my colleagues to support this legislation and advance LB633 to Select File. [LB633]

SENATOR ROBERT: Thank you, Senator Mello. Members, you've heard the opening to LB633. As the Clerk stated, there are committee amendments. Senator McGill, as Vice Chair of Urban Affairs Committee, you're recognized to open on AM907. [LB633]

SENATOR MCGILL: Mr. President and members of the body. I apologize to all the Senator Friend fans out there but you'll have to deal with me this morning. I will try to speak up. The amendment we have here is very simple and straightforward. The original bill specified that an annual report would be delivered to the Legislature on January 1 of the year. This amendment changes it to November 1 so that we have a chance to look over that report and see if there need to be any changes made to the program. It's as simple as that. Senator Mello does have an amendment coming up after this. So with that, thank you, Mr. President. [LB633]

SENATOR ROBERT: Thank you, Senator McGill. Members, you've heard the opening to AM907, the Urban Affairs Committee amendment. Mr. Clerk, for an amendment. [LB633]

ASSISTANT CLERK: Mr. President, Senator Mello would offer AM1072 to the committee amendments. (Legislative Journal page 1180.) [LB633]

SENATOR ROBERT: Senator Mello, you're recognized to open on AM1072. [LB633]

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SENATOR MELLO: Thank you, Mr. President and members of the Legislature. As I stated before in my opening, this amendment simply drops the amount to \$125,000 per year over the course of four years then, and sunsets the act. In light of our current fiscal outlook, I believe it's appropriate to lower the amount directed to the Neighborhood Development Act for this biennium, and then extend the program over four years so we can get a better cost-benefit analysis of the program. The other changes are grammatical changes that were caught in the bill drafting when drafting the amendment. I would encourage my colleagues to advance AM1072. With that also, I'd like to thank Senator Friend and the Urban Affairs Committee for their work on this bill, as well as the work of the legal counsel for the committee who helped us draft some of these amendments. Thank you so much, Mr. President. [LB633]

SENATOR ROBERT: Thank you, Senator Mello. Members, you've heard the opening to AM1072, the amendment to the committee amendments. Those wishing to speak: Senator Schilz and Harms. Senator Schilz, you're recognized. [LB633]

SENATOR SCHILZ: Thank you, Mr. President and members of the body. Would Senator Mello yield to a question? [LB633]

SENATOR ROBERT: Senator Mello, will you yield to a question? [LB633]

SENATOR MELLO: Yes. [LB633]

SENATOR SCHILZ: Thank you, Senator Mello. Thank you, Mr. President. As I read through the bill...well, first of all, I should say that it looks like we've got something here that makes a lot of sense. And as I was reading through the bill I noticed a couple things that I just want to ask you about to make sure, when you mention the word "project" obviously projects are of differing sizes and differing magnitudes, does the project mean an entire project or could it be "parsed" out into certain areas? [LB633]

SENATOR MELLO: Senator Schilz, I believe the definition would kind of assert that the project that would be applying for would be the project that would qualify. So for an example, if there was a renovation of a room at a facility and that was the project being applied for, not the whole facility but just that room, that when that project was completed, that would be the project that would need to be reported back to the College of Public Affairs. [LB633]

SENATOR SCHILZ: Sure, and then, one other question. You talk in the bill about coordination from the university to these communities and finding existing programs and funds. Could you explain how you envision that working? [LB633]

SENATOR MELLO: I believe you're referring to Section 2 of the committee amendment or the regular bill, (2) under Section 3, it says "Coordinate the use of existing programs

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and funds more efficiently and effectively in support of new programs and initiatives." It would be that the College of Public Affairs would...as part of the bill and the concept of the bill is to have the College of Public Affairs help these smaller communities and neighborhood associations build capacity and develop their community development plan. And in that process help them identify not only the money that they would be applying for through the program, but other funds that might be available to that project, whether it's local funds or state funds or federal funds. [LB633]

SENATOR SCHILZ: Great. Thank you. Thank you very much, Senator Mello. Just sitting here and looking at this, I think the one thing that everybody in the body and everybody around needs to understand is that community development is different than economic development. And, you know, they tend to go together, but they really are separate. And we need a bill like this for the second-class cities and villages to start to revitalize these communities that we have, especially out west. We've got some things out west that would work perfectly for this. One town...in Kimball, Nebraska, is the Wheat Growers Hotel that they've been working on to renovate and redo. And it's a big piece of western Nebraska history and they're having some challenges in finding traction and getting things moving forward. So a bill like this and programs like this are exactly what we need to get things jump-started. I think we should always keep in mind that these smaller communities struggle to keep up with the necessary community development they need to improve their quality of life. Senator Mello said that very well earlier. And I just think that these are the types of things that if we want growth, if we want our smaller communities in rural Nebraska to see expansion and things, these are the types of programs that are probably going to have to be put in place to help jump-start that. I'm not sure that they should...that government programs should be looked to, to provide everything that these projects and communities need but at least it gets the ball rolling in the proper direction. So with that, I will sit down. I will be supporting this bill and supporting the amendment, and thank you very much. [LB633]

SENATOR ROBERT: Thank you, Senator Schilz. Senator Harms, you're next and recognized. [LB633]

SENATOR HARMS: Thank you, Mr. President and colleagues. I do rise in support of LB633. I had the fortunate opportunity on many occasions in a previous life to work with a lot of small rural communities, and one of the issues they do have is planning, finding ways to keep their community alive. We have a movement from urban...from rural to urban America and they don't know how to stop that. And so I think this is really a good opportunity for us to be able to place some dollars in the appropriate areas to assist them. The nice thing about what Senator Mello has done here is that the communities have to match these dollars so that doesn't mean...what it means is, it's not going to be a flash in the pan. It's always going to be coming back. We'll have cash continually being in this account and that's the good part of this bill. It's just not going to go away. I wonder if Senator Mello would yield to just a couple of questions for me, please.

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[LB633]

SENATOR ROBERT: Senator Mello, would you yield to a question? [LB633]

SENATOR MELLO: Yes. [LB633]

SENATOR HARMS: Senator Mello, as you know, we both have a high interest in planning. How do you see these rural communities or these smaller communities actually doing the planning because that's where they're going to struggle. And I noticed in this white copy later back, a little further in the bill, that, you know, administratively they can't actually use any of the administrative support and costs, so how do you see that actually unfolding and happening? [LB633]

SENATOR MELLO: Senator Harms, that was...I was just actually talking with Senator Sullivan. One of the reasons that the Neighborhood Development Act would be housed at the College of Public Affairs at the university is that it would be part of the bill to have the college deal and help support with the leadership development and the capacity building that needs to be done at the local level. And in my conversations with individuals at the college as well as some university representatives, they understand that was part of the original bill and believe that's necessary as regards to helping the communities actually achieve what they want to achieve and not just handing out a grant essentially and making sure they follow up with them. Try to make it more of an educational process as well as a capacity building process in the application area. [LB633]

SENATOR HARMS: So will the university actually go into those communities and give them the kind of help they need or using graduate assistants that have some knowledge and background, because I can tell you now that they will struggle with this even to get...I'm not being negative here, but just to get it organized and put in line so they can move down a pathway so they can reach their goal, so. [LB633]

SENATOR MELLO: I'm not for certain if the university will be sending per se individuals out into the community to do the leadership development capacity or the community development planning process, so to speak. I think that the university will serve as a resource when interested second-class cities, villages or neighborhood associations would like to apply for the program to help them with the application, to help them with their current project, to make sure that they're moving in the right direction of what they want to get done while they're applying for the grant with the hopes of getting them the grant, following up with them, making sure that they're meeting what the benchmarks that they need to meet to successfully fulfill their end of the grant as the grant recipient. [LB633]

SENATOR HARMS: Well, I know it was either last year or maybe two years ago,

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Senator Carlson was, I think, able to get a grant or some money funded for small rural communities to develop Web pages. And we discovered that even for some rural communities, being able to put the Web page in, being able to sell their community, being able to bring it on-line so they could be at least halfway competitive to a new world global economy, was difficult. And so I'm really excited about what you're doing here. I have one other question I wanted to ask. In regard to the university, Senator Mello, are they going to...for anytime they have a grant or dollars that come in, they do charge certain percent for handling those funds. [LB633]

SENATOR ROBERT: One minute. [LB633]

SENATOR HARMS: Is that going to happen here? Are they actually going to charge and if they are...yeah, sometimes it's 15 percent. That's kind of the going rate. It can be 20 percent. What's going to happen here so we don't get some of these dollars just taken away? [LB633]

SENATOR MELLO: That's a great question, Senator Harms. And with the amendment, we changed it. We've established the pilot program over four years and it makes it a more manageable expenditure. And in conversations with the university, they anticipate it taking a 10 percent amount the first year to be able to set up the operation and kind of leave it at that. We originally...the original A bill on LB633 said the university would look to take \$50,000 to administer the program. In my conversations with the university after we drafted the amendment, they said it would be about 20 percent of that which would be \$10,000 or so, 10 percent of what we start putting towards the first year to help get the program up and then they would absorb the rest of the cost. [LB633]

SENATOR HARMS: Then as it goes on, are they going to eliminate that or...? [LB633]

SENATOR KARPISEK PRESIDING []

SENATOR KARPISEK: Time. [LB633]

SENATOR HARMS: Thank you, Mr. President. That's nice, thank you. (Laughter) [LB633]

SENATOR KARPISEK: Thank you, Senator Harms and Senator Mello. Those wishing to speak are: Senators Howard, Fulton, Avery, Hadley, Janssen, Pirsch, and others. Senator Howard, you're recognized. [LB633]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I support this legislation and have signed on as a cosponsor. There are many small neighborhood organizations in District 9 and Gifford Park, Ford Birthsite and Leavenworth come to mind. These communities and the individuals living in them are working diligently to

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preserve and to improve the neighborhoods they love. This bill will provide new opportunities for financial support to help these hardworking people continue to invest where they live. In Gifford Park, for example, a community garden project has blossomed into a central gathering point for neighborhood events, an educational opportunity for youth, and a statement against crime and violence that so often plagues inner city. The Gifford Park bike shop provides youth the chance to build or to restore their bikes and provides a positive adult supervision and guidance to keep youth guided away from the attraction of gangs. This is an exciting forward-thinking piece of legislation to preserve the integrity of our communities. I offer Senator Harms the remainder of my time if he would like to have it since he was abruptly cut off earlier. Thank you. [LB633]

SENATOR KARPISEK: Senator Harms, you have 3 minutes and 39 seconds. [LB633]

SENATOR HARMS: Oh, thank you very much, Senator. And thank you, Mr. President. Senator Mello, could we maybe finish our conversation? [LB633]

SENATOR KARPISEK: Senator Mello, will you yield? [LB633]

SENATOR MELLO: Absolutely. [LB633]

SENATOR HARMS: It's always enjoyable, Senator Mello, as you know. Senator Mello, the other question I have is the actual evaluation of the projects. So when we have state dollars coming in and as they match those, let's talk a little bit about the evaluative process how we're going to make sure that the dollars are used appropriately. And then also to make sure that we have the ability to go in and take a look at those books and to make sure that it meets the criteria because both you and I have had an interest and discussion, not on this topic, but actually about, you know, transparency, and this is what this is about. Planning brings transparency and I just want to make sure that we have thought...I'm sure you have. Could you just share with me what your views are. [LB633]

SENATOR MELLO: Yeah, Senator Harms, a little bit actually of what AM907, the Urban Affairs Committee amendment does, is actually what, actually what you're discussing. Which is, the College of Public Affairs will have to issue to the Legislature an annual report for four years regarding details of all the projects that are funded through this program, which then provides the Legislature ample time before each session to review that annual report and to follow up with questions, which was part of the discussion we had in the hearing and as part of the discussion I've had with the university which is trying to ensure that whatever state dollars that is given out to community development projects, that we get a status report. We find out what those projects are. We find as much information as possible so that we can determine, I know I don't see Senator Pahls here, but determine almost the cost-benefit analysis of what we're getting for the

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state's investment, a return on investment, so to speak. And so the committee amendment actually solidifies the date. The components, though, are put in the bill of ensuring that there's an annual report that gives us information to us, the Legislature, so that we can review that and follow up appropriately each year with the college. [LB633]

SENATOR HARMS: When we go through the evaluation process, will we have evaluated benchmarks in there that will automatically tell us that maybe there is an issue or there isn't an issue or have you gone that far in your thinking? [LB633]

SENATOR MELLO: I have not gone that far with the university in regards to the actual...to the actual...what the report would look like in regard to the benchmarks that we would require. It's something we can work on in Select File if we want to put more detail in the bill regarding the annual report. [LB633]

SENATOR KARPISEK: One minute. [LB633]

SENATOR MELLO: I would be open to do that because I'm a big believer in transparency and making sure we measure the success of projects and/or measure the return on investment of state dollars. So if that's something you would like to work on in Select File, I would love to work with you on it. [LB633]

SENATOR HARMS: Oh, thank you. I really believe this, there's going to be some really great things come out of this and I think it's a great opportunity for us to help these rural communities do their planning and move them forward and give them some hope for the future. And maybe encourage them to be competitive in a whole new changing world global economy, so thank you very much for introducing this. And thank you, Mr. President. [LB633]

SENATOR KARPISEK: Thank you, Senators Howard, Harms and Mello. Senator Fulton, you're next and you're recognized. [LB633]

SENATOR FULTON: Thank you, Mr. President and members of the body. Would Senator Mello yield to a question? [LB633]

SENATOR KARPISEK: Senator Mello, will you yield? [LB633]

SENATOR MELLO: Yes. [LB633]

SENATOR FULTON: Okay, Senator, we talked a little bit about this off mike and I think it's important we get it into the record because this does have a sunset date on it. When we...if we were to move AM907 forward, it will be \$125,000 per year spread over four years. And did you say, is this going to be found within the existing budget or is this going to be experienced as a General Fund obligation? [LB633]

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SENATOR MELLO: At this point, the way the amendment is drafted for General File, it's a General Fund obligation. But in working with Senator Heidemann and the Fiscal Office, we're reviewing every possible option, cash funds as well as...we've had the conversation with the university as well. I do not believe the university is in a position this year to absorb the cost of this, so we're looking to various cash funds that are available to help pay for this pilot project. [LB633]

SENATOR FULTON: Okay. Okay. Secondly, and this is something that we haven't talked about yet. Is...not having a broad familiarity with the different grants and grant processes that are involved for small...that are extant for small communities as well as for neighborhood associations, is there any redundancy here? Are there other...are there other grants in place by which the intent of this bill could be met? If so, is there a difference such that this bill is still necessitated? Can you comment to that effect? [LB633]

SENATOR MELLO: There...my understanding there are various other foundations that make available grants to, for communities development projects, I think. There's probably too many other foundations to list. But I think it's part of the role of the state to help foster community and economic development. And what this bill does, essentially, is foster the public private partnerships that I believe the state should be entering into with our local communities, with second-class cities, villages, as well as neighborhood associations, and first-class cities of the first class, or metropolitan cities, I'm sorry. So I think that, yes, there's always going to be some redundancy because you have private foundations that provide private dollars for these projects. But I also think that...my understanding of existing dollars through the federal Community Development Block Grant Program, that a lot of these projects might not qualify for that. And essentially what this program does, is it's a pilot project to create a state, a smaller state version of the Community Development Block Grant Program to focus on more of our smaller rural communities as well as neighborhood associations, because the funding usually just isn't there for their needs because money is usually tight with the federal program and private dollars sometimes, you know, with our economy that we're in right now, they're drying up a little bit more. They're a little bit more stringent in regards to how much money they're able to give out for these projects. So it's just another, just another tool, so to speak, for these communities and associations to apply for community development monies. [LB633]

SENATOR FULTON: Okay. All right. Thank you, Senator Mello. Thank you, Mr. President. [LB633]

SENATOR KARPISEK: Thank you, Senator Fulton. Senator Avery, you're recognized. [LB633]

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SENATOR AVERY: Thank you, Mr. President and colleagues. Let me start by saying that I think this is a good idea, but I'm not going to end on such a positive note, perhaps. I live in an old neighborhood and I have lived in an old neighborhood for more than 20 years, so I value neighborhoods. In fact, we have about 50 recognized neighborhood organizations in Lincoln alone and 9 of those are in my district. I think neighborhood organizations and strong neighborhoods make for strong communities and improve the quality of living. But I've been looking at this and I keep remembering the discussions we've had about the fiscal constraints that we have on us. I had a conversation yesterday with Senator Heidemann about some appropriations that I was interested in. A request that came out of the Base Realignment and Closure Task Force that we had last year. And I was told there's not money for that. And it was a lot less than what we're asking for here. So I'm wondering whether we can afford this. Often some of the best ideas are not affordable, and that's one of the brutal realities of what we do here. I'm also wondering, and perhaps Senator Mello would be willing to yield to a question. I'm wondering about the College of Public Affairs at UNO and its relationship to this program. Would you yield, Senator? [LB633]

SENATOR MELLO: Yes. [LB633]

SENATOR KARPSEK: Senator Mello will yield for a question. [LB633]

SENATOR MELLO: I would, Mr. President. [LB633]

SENATOR AVERY: Thank you, Senator Mello. I'm familiar with how colleges and universities work and I know that when you start new programs like this it often has implications for FTEs that will be needed and I'm wondering if you take that into account, will the College of Public Affairs at UNO need to add a position or positions? How much of the \$125,000 we're talking about would go to administration? [LB633]

SENATOR MELLO: Senator Avery, Senator Harms asked a similar question. In my conversation with the university they said it would be 10 percent of that first year for administrative costs and that they would be able to cover the rest of the program. [LB633]

SENATOR AVERY: Is that based on the original \$500,000 or the \$125,000 we're talking about with the amendment? [LB633]

SENATOR MELLO: That is the revised amendment, the \$125,000 a year. [LB633]

SENATOR AVERY: So they are estimating 10 percent of that would be needed? That wouldn't even cover one position. [LB633]

SENATOR MELLO: You are correct and that is why the university said that they would

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be able to absorb the work that would be associated with the program. [LB633]

SENATOR AVERY: My experience with the university is that these programs have a tendency to take on a life of their own and they grow. And I notice there's a sunset provision here. Have you talked with the university about what they would do then when the sunset kicks in, or do you plan to come back and try to get an extension? [LB633]

SENATOR MELLO: Well, I think right now, Senator Avery, the sunset is to be able to do an evaluation of the program and whether or not the state is receiving a return on its investment and do these community development projects. The university knows that this program is going to be sunsetted from the outset of the bill when I discussed this issue with them. So I don't know if there's any other...you know, depending upon the success and the cost-benefit analysis of the bill, we might be able to reauthorize it after the end of the sunset but I think that's trying to predict a future right now... [LB633]

SENATOR KARPISEK: One minute. [LB633]

SENATOR MELLO: ...that we won't be able to tell. [LB633]

SENATOR AVERY: Senator Fulton...thank you, Senator Mello. Senator Fulton raised the issue of possible other sources of funds and perhaps I can shed some light on that. I have here a report from the Department of Economic Development that lists a number of grants that go to cities of the second class. Those are cities of 800 to 5,000 population. And I can just relate to you here, Furnas, Harlan, for example with a population of just over 9,000 received a grant for entrepreneurial education in the region. Bassett, a population of under 700, received nearly \$6,000 to complete a landscaping project. Eustis, a population of under 500 through various fund raisers and an E-Unit grant earned \$9,500 to renovate the football field and the high school. [LB633]

SENATOR KARPISEK: Time. [LB633]

SENATOR AVERY: Thank you, Mr. President. There are more. [LB633]

SENATOR KARPISEK: Thank you, Senator Avery. Mr. Clerk, do you have any messages, reports, or announcements? [LB633]

CLERK: I do, Mr. President, thank you. Amendments to be printed: Senator Gloor to LB195; Senator Fischer, LB497; Senator Cook to LB195; Senator Stuthman, LB97. An announcement: Education Committee will have an Executive Session today at 2:00 in Room 2022; Education Committee at 2:00. Senator Flood would like to add his name to LB97 as coinroducer. (Legislative Journal pages 1215-1222.) [LB195 LB497 LB97]

And a priority motion, Senator Janssen would move to recess the body until 1:30 p.m. []

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SENATOR KARPISEK: Thank you, Mr. Clerk. The question before the body is, shall we recess and reconvene at 1:30 this afternoon? All in favor signify by saying aye. Opposed, please say nay. The ayes have it. We are recessed. []

RECESS []

SENATOR CARLSON PRESIDING []

SENATOR CARLSON: Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. Senators, please record your presence. Mr. Clerk, please record. []

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

SENATOR CARLSON: Thank you, Mr. Clerk. Do you have any items for the record? []

ASSISTANT CLERK: Mr. President, one item. Education will meet in Room 2022 at 2:00 this afternoon. []

SENATOR CARLSON: Thank you, Mr. Clerk. We will proceed to the first item on this afternoon's agenda, Mr. Clerk. []

ASSISTANT CLERK: Mr. President, under consideration this morning was LB633, which was introduced by Senator Mello. It would create the Neighborhood Development Act. The committee amendments have been offered as had an amendment to the committee amendments from Senator Mello. This was AM1072. (Legislative Journal page 1180.) [LB633]

SENATOR CARLSON: Thank you, Mr. Clerk. Senator Mello, I would ask you to summarize the opening on LB633 and the two amendments, please. [LB633]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. LB633 as a summary creates the Neighborhood Development Act which is a pilot project competitive grant program that will be housed at the College of Public Affairs at the University of Nebraska-Omaha. Neighborhood associations, second-class cities and villages would be the eligible participants in this program. It is ultimately a tiered program that provides grand funding up to \$5,000, \$7,500, and \$10,000. There were some questions that we were discussing prior to adjournment in regards to the administrative costs. The amendment currently in front of us, AM1072, changes the funding of the bill from \$500,000 in General Funds in the year 2009-2010 to \$125,000 for four years, which spreads out that amount. It is also, as I mentioned before, I'm working with Senator Lavon Heidemann and the Fiscal Office. We've identified a

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handful of cash funds that we believe we can use to ultimately provide the funds for this bill. But we have to continue to sit down and do a little negotiating and research on these funds before we introduce an amendment which is what I would be looking to do on Select File because I firmly think that we can find the funds, but we just need a little bit more time. [LB633]

SENATOR CARLSON: One minute. [LB633]

SENATOR MELLO: With that, Mr. President, that is a fairly good wrap-up of the bill. [LB633]

SENATOR CARLSON: Thank you, Senator Mello. There are several senators wishing to speak. Senators Hadley, Janssen, Campbell, McCoy, and others. Senator Hadley, you're recognized. [LB633]

SENATOR HADLEY: Mr. President, members of the body, would Senator Mello yield to a question or two? [LB633]

SENATOR CARLSON: Senator Mello, would you yield? [LB633]

SENATOR MELLO: Absolutely. [LB633]

SENATOR HADLEY: Senator Mello, when you were talking about the cash funds and such as that, I guess I'm a little confused. Does that mean that if they're not cash funds found that the bill would be withdrawn? [LB633]

SENATOR MELLO: I'm not looking to withdraw the bill or make that concession, so to speak, right now, Senator Hadley. I believe that we can find cash funds for this. And as if in legislative process corrects me is that a bill that has an A bill and passes to Select File will sit on Select File depending upon how the budget turns out. And assuming we have a small amount of money that will be available for new A bills, LB633, unfortunately if we do not find the cash funds would sit on Select File until those funds become available or until the body chooses to move on that. [LB633]

SENATOR HADLEY: Just another quick question. I was surprised there is not an A bill attached right now. Is there a reason for that? [LB633]

SENATOR MELLO: Actually, I have the A bill right here in which I will submit to the Clerk depending upon the motion...the amendment AM1072 which changes the amount to be appropriated from \$500,000 to \$125,000. [LB633]

SENATOR HADLEY: And lastly, this is for second-class and villages. Why those versus cities of the first-class and such as that? [LB633]

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SENATOR MELLO: In drafting the bill, second-class cities and villages are probably the closest in size, Senator Hadley, to most established neighborhoods that can range at least in the metropolitan areas of Omaha and Lincoln, Bellevue, I know Kearney actually has six neighborhood associations that our research shown that has that population base anywhere between a few hundred to 5,000 or 6,000. So we felt in regards to bringing in the entire state in this community development bill that second-class cities and villages would best closely resemble the size of neighborhood associations. [LB633]

SENATOR HADLEY: Okay. And one last question, Senator Mello. I appreciate your taking the time to answer the questions. The matching funds, can they be from another grant? [LB633]

SENATOR MELLO: Yes, actually. And as the way the bill is written, we do not stipulate where they get the matching funds. So if an entity, a neighborhood association or a second-class city or village qualifies for another foundation grant, they could use that fund as matching dollars for this grant program, yes. [LB633]

SENATOR HADLEY: Thank you, Senator Mello. This is one of those tough bills because I think...I applaud Senator Mello for bringing the bill because I do think the second-class cities and villages need help in the neighborhoods, but I just question...I just have a concern about the funding at that point in time. And I do know from experience in city government that between the Department of Economic Development, block grants, the Kellogg Foundation, the Kiewit Foundation, you know, there are a lot of private foundations and public foundations that are working on neighborhood grants right now. So I just have a concern over the funding and I will leave it at that. Thank you, Mr. President. [LB633]

SENATOR CARLSON: Thank you, Senator Hadley and Senator Mello. Senator Janssen, you're recognized. [LB633]

SENATOR JANSSEN: Thank you, Mr. President, members of the body. Like Senator Hadley, I like the idea, the premise behind Senator Mello's bill and like Senator Hadley I have questions about the funding for it. I like the match, the idea of the match. It's similar to what we have in Fremont with our keno funds, and you have to bring a match to that in order to access those funds, and that has worked wonderfully in the city of Fremont with community betterment projects. I did have some questions for Senator Mello if he would yield? [LB633]

SENATOR CARLSON: Senator Mello, will you yield? [LB633]

SENATOR MELLO: Yes. [LB633]

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SENATOR JANSSEN: Thank you, Senator Mello. Kind of continuing down Senator Hadley's questioning, he answered a lot of my question but the one thing I had was cities with the first-class, which would be Fremont, would it not be possible for a neighborhood organization within that community to access these funds? [LB633]

SENATOR MELLO: No. A neighborhood association if it's an established, recognized 501(c)(3) neighborhood association regardless of the city could apply for it. So you are correct. The neighborhood association within Fremont could apply for the grant. [LB633]

SENATOR JANSSEN: Okay. So essentially it is a statewide grant program. [LB633]

SENATOR MELLO: Yes. [LB633]

SENATOR JANSSEN: Okay. And we've got an organization in Fremont now, it's a 501(c)(3). I believe it's Main Street, Fremont. That's not a neighborhood organization, it's kind of a community thing. Would they...and I ask this because they oftentimes do get keno funds in Fremont, would they qualify under that? [LB633]

SENATOR MELLO: The way the bill is written...and, Senator Janssen, I'm well aware of Main Street Nebraska. It's a very great program that focuses on renovating main streets in smaller communities around the state. The way we wrote the bill is that while we want to encourage participation with the main street groups, they ultimately have more of a targeted focus. And for the example of Fremont would be a unique instance because Fremont is not a second-class city or village or a neighborhood association, so to speak, but they do have a community improvement program such as Main Street. So they wouldn't be able to apply, so to speak, the Main Street program, but I imagine they could work with an existing creation maybe within the city of Fremont or help establish a neighborhood association that encompasses the area that they are looking to do a project in that would help them qualify possibly for the project. [LB633]

SENATOR JANSSEN: Okay. That actually helps quite a bit. You know, and many time...I've got a few more questions. I apologize, Senator Mello. Keep you at the mike here. [LB633]

SENATOR MELLO: That's all right. That's all right. [LB633]

SENATOR JANSSEN: I want to keep you on your legs so you're ready to go for the basketball game tonight. Could in this case in the keno match funds, could an organization come to the city of Fremont and say we want to get so much money for a project and use that portion for a match to qualify for this? [LB633]

SENATOR MELLO: Once again, yes. The reason that we made the match component

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is in drafting it and discussing it with community organizations, neighborhood associations it's the general philosophy that you need to have some skin in the game besides having a good project. And so whatever way you can get matching funds, whether it's private contributions or any other kind of grant for that matter from any other entity, that provides your match, so to speak for the Neighborhood Development Act fund that would be housed. So the keno funds would be the equivalent of applying, I think, for a private foundation or another public foundation in regards to seeking those matching funds. [LB633]

SENATOR JANSSEN: Thank you, Senator Mello. I agree with that. The final question I'd have for you is, have you discussed this with the trial attorneys to get their approval? (Laughter) You don't have to answer that. Thank you. [LB633]

SENATOR MELLO: Senator Janssen, no I've not discussed it with the trial attorneys, so to speak, in regards to my amendment AM1072 or the Urban Affairs Committee amendment or LB633. [LB633]

SENATOR JANSSEN: Okay. Well, thank you very much for yielding. I do like the idea behind this. You know, the one issue I may have is neighborhood associations or smaller communities, possibly the smaller communities could miss out. [LB633]

SENATOR CARLSON: One minute. [LB633]

SENATOR JANSSEN: They may not be as organized to get that funding. I'd be interested possibly if the funding is available, which would be great, if we could work something out to where a certain portion would have to go to cities of the second-class as opposed to neighborhood organizations. And I want to be careful when I do that because it's really not a metropolitan versus rural issue because it's still a neighborhood association which is a small subsection of people and cities of the second-class, which also mirrors that. So I thank you and I'll just stand by and listen to debate. [LB633]

SENATOR CARLSON: Thank you, Senator Janssen and Senator Mello. Senator Campbell, you're recognized. [LB633]

SENATOR CAMPBELL: Thank you, Mr. President. I want to follow up on Senator Janssen's suggestion because I had an opportunity to talk to Senator Mello off the mike. And my suggestion was just that, that if the bill proceeded to Select File to look at categories so that small villages were not competing with larger neighborhoods and urban areas. Having worked on some grants, it's a lot easier if you know that the competition is the same size as you are. I would also suggest that perhaps of those categories that there be a letter from the city or village if a neighborhood is applying just to ensure that it fits in with what those goals are. Secondly, I would share the same concern in terms of the concern for funding. I think that that's the key to this bill in terms

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of how we look at its future and how it can be funded. And so I would hope that between now and whenever the bill is looked at again that we look at all other available programs that we are already running for small business or community development or economic development to make absolutely sure that this is not a duplication or could not be combined with another effort. Thank you, Mr. President. [LB633]

SENATOR CARLSON: Thank you, Senator Campbell. Mr. Clerk, for an announcement. [LB633]

ASSISTANT CLERK: Mr. President, Retirement Systems Committee will meet in Room 2102 at 2:00 p.m. [LB633]

SENATOR CARLSON: Thank you, Mr. Clerk. Those still wishing to speak, Senators McCoy, Coash, Cook, Utter, and others. Senator McCoy, you are recognized. [LB633]

SENATOR McCOY: Thank you, Mr. President and members of the body. I have a couple of concerns and comments as it relates to not only underlying amendments, but to the bill. And if Senator Mello would yield for a couple of questions, please. [LB633]

SENATOR CARLSON: Senator Mello, will you yield? [LB633]

SENATOR MELLO: Absolutely. [LB633]

SENATOR McCOY: Thank you, Senator Mello. If I could, could you relay to me how the intent would be because I'm really not seeing it in AM907 or AM1072, the underlying bill just how the College of Public Affairs at UNO would go about letting communities know and community improvement groups hundreds of miles west across the great state of Nebraska know about this program. I'm not really seeing that outlined anywhere that I can see. [LB633]

SENATOR MELLO: Senator McCoy, in my conversations with the university as we've been working on this bill, they committed that the University Extension Offices would help publicize this program if it became law as it serves a grant funding opportunity for villages and second-class cities and neighborhood associations around the state. In that same sentence, though, you should have received a letter from the League of Municipalities who stated that the league has worked with the College of Public Affairs on a number of issues and has confidence in the ability of the College of Public Affairs to fairly award grants to neighborhood associations as well as cities of the second-class...second-class cities and villages. So it's my understanding as well that while it's being housed at the College of Public Affairs, the university will help promote the program statewide, as well as other entities that have worked with them feel comfortable in their fairness of the university of trying to award grants to projects around the state. [LB633]

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SENATOR McCOY: Thank you. However, there really doesn't appear to be an overall process about how they're outline process of how they are to go about that. I guess to follow up on what Senator Campbell...the concerns that she expressed, I, too, would have concerns that we might have competing interest with the sizes of the community improvement groups, villages, towns, and whatnot that go into this process and compete over this pool of resources. And certainly I would also have a concern to make sure that we wouldn't be parochial in this discussion as it relates to UNO's interest within the city of Omaha however important that is as it concerns obviously the whole state since we are tying that a statewide piece of legislation. And I appreciate you addressing those concerns, Senator Mello. And I also would also express a concern as it relates to the fiscal environment that we're in. Just exactly how we are to go about this I understand from what Senator Mello has addressed here as we opened up here this afternoon that we're somewhat influx with the funding as it relates to cash funds. And I know that I would have a great concern with that and also a huge interest in exactly where we would be talking about pulling those resources from especially given, as I mentioned, the fiscal environment that we're in. With that, thank you, Mr. President. [LB633]

SENATOR CARLSON: Thank you, Senators McCoy and Mello. Mr. Clerk for an announcement. [LB633]

ASSISTANT CLERK: Mr. President, Senator Pankonin has changed the meeting time for the Retirement Systems Committee to 2:30 which will meet in Room 2102. [LB633]

SENATOR CARLSON: Thank you, Mr. Clerk. Senator Coash, you are recognized. [LB633]

SENATOR COASH: Thank you, Mr. President, members of the body. I rise to clarify a few things. If you look at the committee statement on the original bill, LB633, you'll see I was a nay vote. Wanted to explain a little bit about where that came from, where I am now. When this originally came to the committee there was obviously a big fiscal note. The consensus at the time was, well, let's kick it out and see if Senator Mello can find the money. And I was little bit uncomfortable with that probably because I'm a new guy like he is and didn't want him to have to fight that right away. I thought you could come back and address some of the concerns that we all have that I've heard already. The fiscal note was pretty big. We didn't know where the money was coming from. We didn't know what kind of time we needed to get it, and there was no sunset and no method for evaluation and I thought those were important parts of the bill. And with the amendments and the amendment to the amendment I think that we've started to take a better look at those issues. And Senator Mello has done a nice job of explaining where this comes from. Again, I just want to let you know my opposition of the bill wasn't on the substance of the bill, more on the timing. Many of the concerns that I had have been

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brought up. Some of them are gone, but I think at this time it's prudent to let Senator Mello continue to work on this, work towards finding the funds. And then we can decide as a body where this might fit in. I have neighborhoods in my district which would benefit from this. There are neighborhoods that we all represent that just need a little bit of a boost. I think it's good policy when we incentivized communities to get together, and when the state can participate in that in a way that doesn't take away from other things I think that's good policy. So with that, I'll yield my time to Senator Mello if he'd like any extra time to explain more about this bill. Thank you, Mr. President. [LB633]

SENATOR CARLSON: Senator Mello, 3 minutes. [LB633]

SENATOR MELLO: Thank you, Mr. President. Thank you, Senator Coash, for the time. Senator McCoy raised a concern in regards to the parochialism of having this bill or having this fund be housed at the University of Nebraska-Omaha, the College of Public Affairs. CPACS or College of Public Affairs, has a statewide role and a statewide mission. And so this college while housed at UNO still does business and programming around the state. And it's something I should have...failed to mention that when I was discussing this with Senator McCoy, but that's something to take into consideration. Hopefully alleviate some of the concern that Senator McCoy expressed. And I did off the mike speak with Senator Campbell full well knowing that there might be some changes that we have to make on Select File if the bill does reached there that would not pit a small village of 200 against a neighborhood association of 4,000. Obviously they will have different projects and they have different needs. So that's something that's a good idea that Senator Campbell brought to me that I'm looking forward to hopefully working with her on, but hopefully that answers a few questions that Senator McCoy and Senator Campbell posed. The funding issue, once again, just to put things in a bigger perspective, the original bill was at \$500,000 in General Funds this biennium. We cut that down to \$250,000 in General Funds to bring it to General File so we could have the debate full well knowing that I'm still in negotiations with some of the cash funds that Senator Heidemann and Fiscal Office have helped identify for me that might serve as a sustainable fund for the four-year duration of LB633. So once again, while if the bill passes through General File it's my full intention to bring an amendment before we debate it again on Select File to have a cash fund so we can negotiate... [LB633]

SENATOR CARLSON: One minute. [LB633]

SENATOR MELLO: ...and try to find existing funds and existing resources to pay for what I believe is a very, very small but worthwhile investment in Nebraska's communities and Nebraska's neighborhoods. Thank you much, Mr. President. [LB633]

SENATOR CARLSON: Thank you, Senator Mello and Senator Coash. Senator Cook, you are recognized. [LB633]

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SENATOR COOK: Thank you, Mr. President, members of the body. I pressed my light to stand in support of the overall bill, recognizing as a member of the Urban Affairs Committee that there would be committee amendments addressing the fiscal note to the bill. I also represent a district in Omaha, Legislative District 13, in which there are many, many committed community volunteers who often dip into their very own personal resources to make projects happen. I know of a woman in the Florence community who used her own money to pay for ads for the community, their own money for ads on bus benches, food for community activities that are advertised throughout the state for tourist purposes. So I rise in support of LB633 and the committee amendments, and would also be willing to yield my time to Senator Mello if he wanted to speak more on the bill. Thank you, Mr. President. [LB633]

SENATOR CARLSON: Thank you, Senator Cook. Senator Mello, you have 4 minutes. [LB633]

SENATOR MELLO: Thank you, Mr. President, and thank you, Senator Cook, for the time. I don't want to belabor the point. If there's other questions that members of the body have I'd like to answer them and try to provide as best of information as I can. I do understand there is a concern regarding General Fund, using General Fund dollars, so to speak. But as I had conversations with a few colleagues today, we have a lot of bills actually that everyone has expressed some concerns about, but once again those bills are sitting on Select File full well knowing the process of the Legislature that we will not take up A bills, so to speak, on Select File until after we pass the budget. So we determine how much money is available to spend on A bills. And the floor of the Legislature determines the priorities of where that spending goes. So if community development, building local capacity, providing opportunities to bring hardworking volunteers who are trying to improve their quality of life and trying to improve their local economy is a priority of yours, I think you'll support LB633. And at this point all it will do is sit on Select File. I've made the gesture on the mike, as well as Senator Heidemann will be able to back me up, that we are looking for funds from existing resources because we do not want to have an A bill that will call for increased General Funds knowing that there are a lot of other good bills and a lot of other good priorities that will be in front of the Legislature after we pass the budget. And I would feel more comfortable trying to find those cash funds and going that path first, which I think we have a very viable option to do that. So with that, thank you, Mr. President. [LB633]

SENATOR CARLSON: Thank you, Senator Mello. Those still wishing to speak: Senators Utter, Price, and Pirsch. Senator Utter, you're recognized. [LB633]

SENATOR UTTER: Thank you very much, Mr. President and ladies and gentlemen of the body. I'm having a great deal of difficulty getting my arms around this bill. I respect Senator Mello for his creative thoughts and for his willingness to do something that

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helps the smaller communities of the state and the neighborhood groups in the larger communities. But I have a great deal of problem as to whether the timing is really right for this kind of a bill considering our current economic situation. Another thing that is bothering me about the bill has been brought up by Senator Avery and others, there are numerous programs already, private and public, that are available that do virtually the same things that this bill would do. And frankly I'm in the mode of what this state needs is fewer programs not more programs, and particularly not programs that duplicate existing services that are already available. Frankly, we cannot continue asking the state to do for us what we should be doing for ourselves. And I see this as kind of feel-good legislation but, folks, I think we need to take ownership in our own neighborhood groups and our own communities and work to improve them without the state having to incentivize every turn that we take. So I at this point in time...unless somebody can convince me otherwise, it's going to be very difficult for me to support this bill. And I know that Senator Mello is talking about other cash funds that may be available that he's identified and that he's negotiating for, but it seems to me like this whole body should be made aware of what those cash funds are and that we need to be prioritizing. If there are cash funds laying here and there, why, we need to know what those funds are and see how they meet some of the other necessary needs of the state. And we just don't pick one up and say, well, I'll use it here or use it there without actually prioritizing what we're doing. Thank you, Mr. President. [LB633]

SENATOR CARLSON: Thank you, Senator Utter. Senator Price, you are recognized. [LB633]

SENATOR PRICE: Thank you, Mr. President, members of the body. I rise because Senator Mello asked me to. He wanted to engage me in conversations, and while I was reluctant to do so, I would like to see if Senator Mello would yield to questions. [LB633]

SENATOR CARLSON: Senator Mello, will you yield? [LB633]

SENATOR MELLO: Yes, Mr. President. [LB633]

SENATOR PRICE: Thank you, Senator Mello. We've been talking about the CPACS. I know they do great work. But I was wondering if we couldn't allow the state colleges like Peru, Wayne, and Chadron to share in the bounty? [LB633]

SENATOR MELLO: Well, once again, Senator Price, the College of Public Affairs at the University of Nebraska in Omaha is a statewide mission and a statewide role. I don't know at this point if that there are specific colleges at the state colleges that serve the similar role that would focus on leadership development, community building capacity, community development, local planning efforts. So to answer your question, I don't know if that's current...I don't have that information, I guess, to provide you an answer. [LB633]

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SENATOR PRICE: I would submit that if we have the colleges here that they could champion and say that, yes, they could in some way in some form and capacity meet that need. But we'll move forward on there from that point. There are many things here. Page 1, line 10, subparagraph (3) we talk about groups. Groups is a tenuous term here and I was concerned about what groups. But we'll segue on down. When we talk about limiting the groups and the amount of funds any one group could get in any one year, one of the things that caught my attention is that we said that a group...and I'm worried that if one group would absorb the funds from everyone else, and that is we stipulate in that community. So if we had a statewide group, organized group, maybe even national group, could that national group because of organization and their funding at the national level have all the matching funds that they need to come in and get that \$10,000 per community and gobble this up? I mean, is that a plausible scenario? [LB633]

SENATOR MELLO: Once again, if...I guess your hypothesis or idea, so to speak, or hypothetical, if there was a national group that could establish a community improvement committee in villages and second-class cities as well as creating neighborhood associations in the various other cities around the state that are recognized as separate 501(c)(3)s, and they're all part of one group in theory and they all applied for projects, they could...yes, I guess that one group nationally could be in charge of all of that money. Once again, it's a very big hypothetical. And once again, there would have to be an awful lot of organizing being done to have a community improvement group or community improvement committee establishing these locals, as well as being identified usually by a city or another governmental body as a recognized neighborhood 501(c)(3) organization. So... [LB633]

SENATOR PRICE: Okay. So then am I to take from your conversation there that we won't see an influx of community organizing groups coming in. They must already be something that the community has already...it has to be a recognized community beforehand? [LB633]

SENATOR MELLO: I would be willing to say, Senator Price, that the grant application will...and I believe...I don't know if Senator Campbell mentioned it, but it's something that if we want to add more detail on the bill come Select File... [LB633]

SENATOR PRICE: Great, great. [LB633]

SENATOR MELLO: ...of putting information of saying they require a letter of support from the local municipality or... [LB633]

SENATOR PRICE: And I'd be happy to work that out. [LB633]

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SENATOR MELLO: ...that's completely acceptable. I think it's a great idea to do...
[LB633]

SENATOR PRICE: Okay. [LB633]

SENATOR MELLO: ...and to make sure we have legitimate groups applying if that's
your concern. [LB633]

SENATOR CARLSON: One minute. [LB633]

SENATOR PRICE: Thank you, Mr. President. Finally, Senator Mello, if he would indulge
me. Page 3, line 20, subparagraph (b) it says about...duplicating the existing programs.
Are those programs that are identified as federal, state, local or philanthropic? [LB633]

SENATOR MELLO: The project, the project does not duplicate an existing public
program. So if there is a school...no, no, no. [LB633]

SENATOR PRICE: What I'm asking if there were public programs at those levels, if I
have a federal program for get out of the vote or if I have a philanthropic one for an
education, if that already exists to get meals to four-year-olds, if you already have it you
wouldn't be doing it again. And I'm just making sure that we do that balance to cross
multiple level of where we have existing ones and not just how do we define public,
Senator Mello. That's maybe where I'm trying to get to. [LB633]

SENATOR MELLO: I think you have to look at the entire sentence, Senator Price. It
says that the project does not duplicate an existing public program. [LB633]

SENATOR CARLSON: Time. Thank you, Senator Price and Senator Mello. Senator
Pirsch, you're recognized. [LB633]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I wonder if
Senator Mello might yield to a few questions? [LB633]

SENATOR CARLSON: Senator Mello, would you yield? [LB633]

SENATOR MELLO: Absolutely. [LB633]

SENATOR PIRSCH: Thank you, Senator. And it as has been mentioned at the
University of Nebraska-Omaha, the College of Public administration...I'm sorry, of Public
Affairs and Community Service would be the administrator of the fund, correct? [LB633]

SENATOR MELLO: Yes. [LB633]

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SENATOR PIRSCH: And who specifically...and the language here in the act says, the college shall award, the college shall develop. Who specifically at the college would be in charge of making the determination we're picking this submission and that submission or not the other? Would it be the dean or how would that work? [LB633]

SENATOR MELLO: The bill specifically doesn't lay out who will be...I mean, the director or the dean of the College of Public Affairs will ultimately have the responsibility to ensure this gets enacted. So in conversations with the university, they're willing to absorb a majority of the costs within their existing staff and faculty to make this program work. So it would be the dean, so to speak, of the College of Public Affairs who would have the responsibility to ensure of the compliance of this act as well as making sure that the grant program is executed. [LB633]

SENATOR PIRSCH: Right. He may make the...according to the language he could make the determination himself or herself or he or she could appoint a committee or an advisory committee. Is that what it is? [LB633]

SENATOR MELLO: Yes. [LB633]

SENATOR PIRSCH: Okay. Is there any limit to the type of projects, community projects or neighborhood projects which they could look at funding? [LB633]

SENATOR MELLO: You know, there is a handout that I'm looking for right now that gives more background on the various projects that could qualify for the grant fund. I don't specifically think the language in the bill does not limit it to just community centers, or as Senator Schilz had mentioned earlier, just rehab rooms of a community project. It is a project that demonstrates a public good. I'm looking...actually, let me look for the exact language. Right here on page 3, Section 2 it says, to be eligible for a grant the applying community improvement group shall demonstrate that the grant funds will be used for a neighborhood or community project, demonstrate with regard to the project...demonstrate that it provides a public benefit. And that will provide a particular benefit to the applicant's neighborhood or small community, and that it will be completed within one year after receipt of the grant. So it doesn't really limit it in regards to the kinds of projects that a community could apply for, but obviously I have confidence in regards to the College of Public Affairs at the university that they would use wise judgment in regards to funding certain kinds of projects and the competitive...once again, it's a competitive grant process. [LB633]

SENATOR PIRSCH: I see, competitive...and they'll formulate the college there criteria by which they judge certain types of submissions more appropriate or more valuable. Is that right? [LB633]

SENATOR MELLO: Yes. And actually if you continue to read further down on page 3, it

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states that the project does not duplicate an existing public program, as what Senator Price was asking, that it document verifiable goals for the project which the grant funds are being requested. And that there's a document that the applicant will bring the project a match equivalent in money or in-kind services... [LB633]

SENATOR CARLSON: One minute. [LB633]

SENATOR MELLO: ...equal to the tiered amount that I discussed earlier. [LB633]

SENATOR PIRSCH: Okay. Well, thanks for answering those questions. And if you'd like to, I'd yield the balance of my time...how much time left, Mr. President? [LB633]

SENATOR CARLSON: Thank you, Senator Pirsch. Senator Mello, you have 43 seconds and your light is next. [LB633]

SENATOR MELLO: Okay. Thank you, Mr. President. Members of the Legislature, I have to respectfully disagree, I think, with the assessment of Senator Utter. This program does not duplicate an existing program. What the Neighborhood Development Act in LB633 provides, very small competitive grants that current villages, second-class cities, and neighborhood associations don't particularly qualify for for community improvement projects. As I stated earlier, there are federal dollars that come in from the Department of Housing and Urban Development from the federal government. But those projects are usually thousands and thousands and thousands of dollars in which they have to...they get the match essentially or a majority of the money from this program. What LB633 does is that it rewards individuals in communities who are trying to improve their community by having them raise the money or raise the resources, identify the project. And then when the project is coming close or they see a somewhat light at the end of the tunnel, they come and utilize the money they've already leveraged and ask for that additional last step. So I would be willing to say in all due respect to my colleague, Senator Utter, that it's not a duplication of an existing program. There is no existing state program that provides funding at this microlevel for these cities, second-class cities or neighborhood associations in regards to meet the projects and the goals of what LB633 does. I understand the concern that Senator Utter might have in regards to a bill that has a General Fund A bill. That's understandable. Once again, though, I think there also is cash funds available at the state that we can try to find bills and programs that we can align with those existing cash funds. And that is an issues that has been brought up numerous time that there is a cash fund in agency X or agency Y that is supposed to be funding X, Y or Z. That is at least the perspective that I am taking with LB633 is looking to identify those cash funds that best can align with what LB633's goals and mission is so that we do not have to spend any additional General Fund dollars. With that, Mr. President, thank you. [LB633]

SENATOR CARLSON: Thank you, Senator Mello. Those still wishing to speak:

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Senators Louden, Coash, Fulton, and Price. Senator Louden, you're recognized.
[LB633]

SENATOR LOUDEN: Thank you, Mr. President and members. As I looked over this LB633 and it's called a Neighborhood Development Act, and as I read down through it, it was supposed to strengthen neighborhoods and small communities. And then I read on down here and then all of a sudden we're talking about University of Omaha College of Public Affairs. And there is where I start to ask questions. I was wondering if Senator Mello would yield for questions, please. [LB633]

SENATOR CARLSON: Senator Mello, would you yield? [LB633]

SENATOR MELLO: Yes. Yes, Mr. President. [LB633]

SENATOR LOUDEN: Senator Mello, can you give me a short session here on when you're using the college of the University of Nebraska at Omaha to do this grant funding and to choose these grants, why are you doing it through the college like that? I mean, is there a particular reason for it and what are you trying to do? [LB633]

SENATOR MELLO: The reason that we choose the College of Public Affairs at the University of Nebraska-Omaha is that they have, once again, a statewide role and mission to help engage the community and help with the fostering of capacity building, so to speak, in certain areas of emphasis in the college. This program since it is a pilot project program and its focus is on very small communities in very small organizations... [LB633]

SENATOR LOUDEN: Now, when you're talking about small communities, are you talking about like small communities inside a metropolitan city like Omaha, little neighborhood communities that want something done because when I see where you have \$5,000 grant and they're supposed to put up 25 percent match, you're talking about, what, \$6,250. What can they do with \$6,250? I mean, probably paint the local community hall or something. [LB633]

SENATOR MELLO: Well, I don't think you have to look at...Senator Louden, I don't look at it as just a metropolitan issue. I think you can look at cities whether it's Hay Springs, Nebraska, or you can look at it at Hildreth or Odell, Cedar Rapids, Rising City. There are various projects that communities are always engaged in and always trying to improve their quality of life. If Rising City would like to create a new welcome sign to their city to try to improve their quality of life, that's a project that would qualify for this act. [LB633]

SENATOR LOUDEN: Okay. Now, when you mentioned something like that in there, what is it that they can't do? Like the environmental trust give grant money to some of

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these towns to...oh, if they have to clean up junk and some of those things like that they can get grant funding from the environmental trust. There's more people working at it, but there is money being put out there all the time on that. And I'm wondering where that would be...would this be any better than what they can probably do through the environmental trust. [LB633]

SENATOR MELLO: Well, Senator Louden, I think there's some projects...you know, Senator Schilz mentioned it earlier and I could have mentioned on the floor as well. Was it the Wheat Growers Hotel in Kimball, Nebraska, is an renovation of a historic building in Kimball, Nebraska, that is trying to revive as it can serve multiple purposes whether as they can use it for community meeting rooms or they can use it for economic purposes for the city. It's what I would consider to be almost a Main Street Nebraska kind of project or a small community economic development project that might not qualify under every other existing program, whether it's the environmental trust or the Community Development Block Grant Program that's administered by the state, so... [LB633]

SENATOR LOUDEN: Now, where does this Main Street...there is a Main Street community program because a lot of towns have done that to improve their Main Street and do things like that, but they got a lot more money than \$10,000 which is your top dollar for your grant the way I understand it. And I'm wondering where this would be as well... [LB633]

SENATOR CARLSON: One minute. [LB633]

SENATOR LOUDEN: ...would do as good a job as what those Community Block Grants already do. [LB633]

SENATOR MELLO: Well, once again, Senator Louden, to bring it back I guess to the scope of what LB633 does, it provides just another tool in the tool chest of community development. So that could mean it can dovetail and leverage additional resources from private donors, private foundations, public foundations, and other public entities, other public 501(c)(3)s whether it be Main Street Nebraska or any other group for that matter. [LB633]

SENATOR LOUDEN: Well, the way it's set up they do have to get some private donations or something because unless the small community comes up with like your match grants of 50 percent or more for over \$7,500. That would have to come from somebody, the small communities or private donations or something right there, wouldn't it? [LB633]

SENATOR MELLO: Well, you're correct, Senator Louden. But I also if you read the bill it also says, in-kind services as well. So... [LB633]

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PRESIDENT SHEEHY PRESIDING []

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Mello. Senator Price, you're recognized. [LB633]

SENATOR PRICE: Thank you, Mr. President, members of the body. Again, I wanted to give Senator Mello an opportunity here in a moment to reengage in our conversation that we were having about duplicating existing program. But for just a moment also I would also give an opportunity to answer. When we were talking about the university handling it, I don't doubt the university's ability to handle it in any way, shape or form. And I do like the idea of the economic development aspect of community development. What I am questioning, though, if the town of Lingle wants to do something out off of 26, how is the University of Omaha going to be more in tune with what Lingle versus maybe Chadron State? And even if no one lives in Lingle and Senator Schilz will tell me, but in those little towns out there, how are they going to know that...thank you, Senator Schilz, for the commentary. But, again, that's why I think that perhaps a college in the community may well have a better understand of the community. But please, if you would, answer that and tell me about if we have federal, state, and local, and/or philanthropic programs, okay, and they're already in place, is that what you say they cannot duplicate and receive funds for? [LB633]

PRESIDENT SHEEHY: Senator Mello, would you yield? [LB633]

SENATOR MELLO: I will. Senator Price, I don't want to belabor the point. Your hypothetical of Chadron State does not serve the same statewide role as the University of Nebraska does. So regardless if it's at CPACS at the college, which is a specific college at the University of Nebraska-Omaha, that college alone has a specific statewide role and focus and mission. So CPACS role is to find out more how they can be helpful in Lingle, so to speak. But I think that we're going a step above or a step ahead of the game of trying to say this is what...they're not in tune with what this community want not knowing what this hypothetical community has put on their application, that the kind of supporting documentations that they have to back up their project or the additional funding that they've raised from other sources to put in their application. So I think that's hypothetical and I think we're taking maybe one step further than where we're at right now with the dialogue. Your question I know that related last time we spoke dealt with Section 5 that the project does not duplicating any existing public program. What that means is exactly what that means, that if you have a public program being financed, so to speak, by the Springfield Public Schools, it's an after school program that the city of Springfield then couldn't apply for funds to help pay for this after school program if it's already a public program, which it is because the Springfield Public Schools are paying for that program. So essentially it's making sure that we're not taking these grant dollars to fund public programs that are already being

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funded. What it's there for is community development projects. [LB633]

SENATOR PRICE: Okay. Senator Mello, thank you very much. You're saying the current public program could not generate its revenue from this funding stream. Okay. That's great because it seemed to say, it seemed to look like what you were saying there is that Building Bright Futures has a program, and Omaha Public Schools has a program, and the learning community has a program. And now a neighborhood housing 501(c)(3) comes in and they want to do something. But it's the same thing. We want to feed the children after school or before school or something like that. And all those other public programs are in existence. That's where I was getting tripped up there. You said if there's a public one. It doesn't sound like that the public program is coming asking for funding. It's that... [LB633]

PRESIDENT SHEEHY: One minute. [LB633]

SENATOR PRICE: Thank you, Mr. President. It's that the applicant which could be a community group is asking for funding that is a duplicate to a program in existence which reflects what Senator Utter was saying. And that's why I wanted the clarification. [LB633]

SENATOR MELLO: No. Actually, once again this goes back to...let's take it back a couple of steps. This fund is for community development projects. The examples that you were listing do not, so to speak, focus on community development projects. Building Bright Futures is not there to renovate a park. The Omaha Public Schools after school program is not there to repave a main street or to buy new lamp posts for their newly renovated main street. Once again, it's for community development projects and I want to make sure we focus back on that. That is the purpose and that is what the bill lays out. And most of those projects that I was listed in my opening as well as through our conversation are not public programs. They're enhancements, redevelopments or development projects... [LB633]

PRESIDENT SHEEHY: Time, Senator. [LB633]

SENATOR MELLO: It will only enhance the community. [LB633]

PRESIDENT SHEEHY: Thank you, Senator Price. Thank you, Senator Mello. Further members requesting to speak on AM1072: Senator Schilz, followed by Senator McGill, and Senator McCoy. Senator Schilz, you're recognized. [LB633]

SENATOR SCHILZ: Thank you, Mr. President and members of the body. Sitting here and listening to the debate that goes on and I really appreciate it. I think one of the things that I would like to bring up, and this is in response to Senator Mello and Senator Loudon's exchange. I think that we should all remember here that the University of

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Nebraska, whether it's in Omaha, Lincoln, Curtis or wherever it is there's a land grant university that has a mission and an obligation to the people of the state of Nebraska. It doesn't matter if they're in Omaha. It doesn't matter if they're in Lincoln or in Lingle. Any (laugh)...which is actually in Wyoming, but you know we'll get to that later. I'll educate Senator Price off the record here. But, you know, I think in small communities out there, one thing that I've noticed in acting as economic development president for my county economic development group, Keith County Area Development, it became very apparent that folks in rural Nebraska have lost those relationships with the university and those programs. So I think any time something like this comes up we should always take a look to see if there's opportunities for us to get on board with this and start creating and fixing and mending those relationships that seem to have gone by the wayside. So I look at this not so much as, hey, there's an opportunity for people in...or for the university to manage this program. I look at it as saying, hey, there's an opportunity for the people in the state of Nebraska and rural Nebraska to build relationships with the universities and put programs in place that strengthen all of us. So thank you very much. And if Senator Mello would like the rest of my time I would yield it to him. [LB633]

PRESIDENT SHEEHY: Senator Mello, you're yielded 3 minutes. [LB633]

SENATOR MELLO: Thank you, Mr. President. Thank you, Senator Schilz. I know that there was some...Senator Price I think was trying to get at, what kind of projects are available under LB633. And as I mentioned before, it can be anything from a small business incubator to a downtown revitalization project, you know, whether it's park renovation, neighborhood cleanups, you know, building renovations or helping to establish a new park for that matter if that's what the community decides. I want to make sure we don't get off track too much. I know there was a couple of questions regarding what actually could qualify and if a nonprofit entity, a national group could come in and try to suck up all the money, so to speak, that's highly unlikely obviously. And I just want to make sure I go on the record of saying that. Either one they'd have to create their own city or take over a city for that matter and/or establish organizations in a way that would have them almost take over the city. So with that, I just want to reiterate AM1072 reduces the amount of money to LB633 in this biennium. It stretches \$500,000 over four years and sunsets the provision. I know Senator Pahls has talked about sunseting at length. The idea and goal behind sunseting this bill is that we can actually have a thorough cost-benefit analysis and see what our return on investment is. And with that, I believe is thoughtful policymaking so that we do not get locked into a program long-term without seeing the benefits good or bad that come with it. I obviously believe that the more money we invest in community development projects, whether it's in Alda or whether it's in Morton Park Neighborhood Association that that will help improve the quality of life, that will help improve the local economy, and that will help improve the state of Nebraska. [LB633]

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PRESIDENT SHEEHY: One minute. [LB633]

SENATOR MELLO: With that, thank you, Mr. President. [LB633]

PRESIDENT SHEEHY: Thank you, Senator Mello. Senator McCoy, you're recognized. [LB633]

SENATOR McCOY: Thank you, Mr. President. I think we've had a great discussion on not only this amendment, but the underlying bill as well. And I think a couple of concerns have been raised that I would share. And one is that whether or not this is duplicative on some level the Community Development Block Grant Program...the state of Nebraska has received from '04 to '08 \$177 million in grants through that from Bridgeport's new fire engine to Gothenburg's senior center to Wayne downtown revitalization. We do have some other programs out there. And I would have concerns, especially as I had mentioned earlier when I spoke in this fiscal environment that we're in to make sure that we aren't adding another layer on this. And I think Senator Mello maybe even spoke to that a few minutes ago when he'd said this is another tool in the toolbox. That would be a concern that I would have, that this is another tool in the toolbox rather than the tool in the toolbox that's most efficient and the most efficient way to go about this process. Thank you, Mr. President. [LB633]

PRESIDENT SHEEHY: Thank you, Senator McCoy. Seeing no additional requests to speak, Senator Mello, you're recognized to close on your amendment AM1072. [LB633]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. AM1072, once again, reduces the amount on the original bill from \$500,000 this biennium to \$250,000 this biennium and spreads it out over the next biennium as well, as well as the amendment sunsets LB633 after four years. In all due respect, I'll have to disagree with my colleague Senator McCoy in regards to the concern about duplication. The Community Development Block Grant Program is a federal program that the state administers. The intentions of LB633 is not to duplicate a \$176 million program. What it is intended to do is to provide miniature grants to these smaller communities and I want to remind everyone, smaller neighborhood associations that are in areas of Nebraska that don't qualify for that money. So once again, it does have a relationship, so to speak, with the Community Development Block Grant Program, but it does not duplicate it in my view because it provides small microgrants, essentially, to these cities, second-class cities, villages, and neighborhood associations and the other eligible cities for projects that are well-intentioned, that are being funded by private dollars or outside dollars or in-kind services that are using hard work and volunteer hours of Nebraskans to help make their community a better place to live, work, and raise a family. So while I have to respectfully disagree with my colleague, Senator McCoy, I believe regardless of that, the concern of duplication that community development is what our state needs to look to invest in. In tough economic times we have to invest our money in strategic

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investments that will yield jobs, that will make our state a better place to live, and will improve our infrastructure that will lead to a better and stronger economy. So I don't look at additional spending on key strategic investments such as infrastructure, a public park, trying to help finish the Wheat Growers Hotel in Kimball or trying to help deal with the graffiti abatement in north Omaha or south Omaha as duplicating efforts. I see those key strategic investments as improving the lives of our fellow citizens, of improving the communities we live in, and strengthening our local economy. With that, Mr. President, thank you. [LB633]

PRESIDENT SHEEHY: Thank you, Senator Mello. You have heard the closing. The question before the body is on the adoption of AM1072 to AM907. All those in favor vote yea; opposed, nay. Senator Mello, you're recognized. Please record, Mr. Clerk. [LB633]

CLERK: 27 ayes, 0 nays on adoption of the amendment. [LB633]

PRESIDENT SHEEHY: AM1072 is adopted. We will now return to floor discussion on Urban Affairs Committee amendment AM907. Seeing no requests to speak, Senator McGill, you're recognized to close. (Legislative Journal page 897.) [LB633]

SENATOR MCGILL: Thank you, Mr. President, members of the body. This is just that quick little amendment that takes the changes we just adopted, and then moved the report date from January 1 to November 1 so that would give us a better opportunity to assess the program every year as that report is produced. With that, I ask for the adoption of AM907. Thank you, Mr. President. [LB633]

PRESIDENT SHEEHY: Thank you, Senator McGill. You've heard the closing. The question before the body is on the adoption of Urban Affairs Committee amendment AM907 to LB633. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB633]

CLERK: 29 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB633]

PRESIDENT SHEEHY: AM907 is adopted. We will now return to floor discussion on LB633. Seeing no requests to speak, Senator Mello, you're recognized to close. [LB633]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. I'd like to thank a few of the senators, Senator McCoy for bringing some very thoughtful questions and concerns to the floor today. Also, Senator Price in engaging me I think in a very thoughtful conversation about making sure we don't duplicate existing public programs because that is a concern. I don't think anyone on the floor of the Legislature wants to see us waste or throw away tax dollars. And I think everyone wants to see a strong return on investment when we spend the public's money. So I fully appreciate the

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conversations that we had, Senator Price, and the conversations we had, Senator McCoy. Once again, LB633 puts a priority on helping second-class cities, villages, and neighborhood associations of helping themselves. These are entities and municipalities around the state who have raised money, who have planned out projects, who are trying to rebuild or continue to build the sense of community in their area, and need a little additional help from the state of Nebraska to help make this project a reality. Once again, Senator Harms made some great observations early on in the debate, which is trying to ensure that the College of Public Affairs with a statewide role and mission is there to help these entities continue to plan for the future in conjunction with these projects. That's something I think can be done and will be done at the University of Nebraska at Omaha College of Public Affairs because that is what they do. They help build local capacity through their education and program resources. And I fully think that some of the projects that have been mentioned on the floor today are projects that need our help. And in tough economic times we have to make key strategic investments. And while it is my intention to fully engage other members of the body if they wish to to help look for these existing resources beyond my work with Senator Heidemann and the Legislative Fiscal Office, I encourage you to let's talk after the debate because community development is and needs to continue to be a bigger priority in our state because community development not only helps enhance our competitiveness as a state in a global economy, it helps stop one of the biggest issues that plague our state which is brain drain. We want to keep our younger Nebraskans here in our communities, our rural communities and other places around the state, then what we have to do is make sure that we're consistently trying to enhance the quality of life in these communities. And that quality of life means better community centers, it means a more vibrant downtown, it means better parks and better venues to try to bring people together and try to continue to build that sense of community. So by voting for LB633 you're placing community development, once again, as a priority of the state. And in the conversations we've had today, it is a priority in this state. Now, the concern once everything goes back to the General Fund impact. We just voted on the amendment that cut that in half for this biennium. It spreads it out over four years and it sunsets the act in four years. I look forward to working with other senators if LB633 advances to Select File to find the necessary funds to make this a reality because there are communities and organizations in our state that need just a little bit more help, need just a little bit more assistance to help make their local dreams a reality, to help improve their economy, to improve their quality of life, and help keep their Nebraskans in their community. With that, thank you, Mr. President. [LB633]

PRESIDENT SHEEHY: Thank you, Senator Mello. You have heard the closing. The question before the body is on the advancement of LB633. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB633]

CLERK: 29 ayes, 2 nays, Mr. President, on the advancement of the bill. [LB633]

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PRESIDENT SHEEHY: LB633 advances. We'll now proceed to LB342. [LB633 LB342]

CLERK: LB342 is a bill originally introduced by Senator Gay. (Read title.) The bill was introduced on January 15, referred to the Health and Human Services Committee, advanced to General File. There are committee amendments, Mr. President. (AM741, Legislative Journal page 818.) [LB342]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Gay, you're recognized to open on LB342. [LB342]

SENATOR GAY: Thank you, Mr. President. This is a bill. I'd also like to thank...Senator Pankonin and I both worked on this bill, and I'd also like to thank Senator Campbell who prioritized this bill. LB342 simply requires the Department of Health and Human Services Committee to apply with CMS to allow for an amendment to the state's Medicaid program. If accepted, the change to our Medicaid program would be minor. It would allow for reimbursement for interdisciplinary programs that treat pediatric feeding disorders. According to the fiscal note, this would result in savings in the long run. LB342 was heard by the Health Committee on February 25 and advanced unanimously with the committee amendment. Again, this bill requires HHS to make application. Provided that CMS approves the application, reimbursement would be allowed for children who are already qualified for Medicaid and are on a waiting list for noninvasive treatment. And I'll discuss a little bit about what that means technically. Children develop feeding disorders when an underlying medical condition causes the eating to be painful or difficult. And what we heard in the committee was many stories of parents who had infants, and these are up to...you know, clear up to four or five-years-old. But they just don't quite start eating maybe the way we all...many of us did and then they have problems. So there are other ways to do this, but the initial treatment for such disorders is placement of an NG tube. It is placed through the nose of a child and into his/her stomach so the child can receive nourishment and nutrients. If the NG tube does not work, the next step is usually the placement of a gastric tube or a G-tube. This G-tube is a surgical intervention in which an opening is made through the child's stomach, and the child is then fed directly through a tube. Though the G-tube does ensure a child gets the needed nutrients, it does not promote oral feeding. This summer, part of the reason why we brought this bill is, as I said, myself and Senator Pankonin toured the Munroe-Meyer Institute and others have toured I know as well, Senator Howard and probably many of you. But what we saw was many times if you work with a young child and just different techniques, and what we're saying, this noninvasive method that there...it's really new at the University of Nebraska. They try that before they have to go to these ulterior methods which are much more...you can only imagine what the parents go through and the cost. The cost I'll get to in a minute. But the cost is much more when you have to have a surgery, let alone all the other issues that go with that. But what we heard in the committee was many stories where you can only imagine everything that we do is surrounded around food and meals and first birthdays, you know, many of these things

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that we do or many parents get to take for granted doesn't happen necessarily with...if you have a child that has this disorder. So the idea that you can treat it without these invasive methods is not only cost-effective, but it's much better. The parents are involved and they learn how to help teach the child. And there's different causes that can do this and I won't get into all of them, but if you have any question I'll try to answer those. But the different methods that they train the parents is amazing. And we'd talked to many of the parents and it was just a blessing many times when this gets done. The program has a 90 percent success rate and is covered by many insurance providers, but it's currently not covered by Medicaid. Medicaid does, however, cover the G-tube. However, research has shown that children with G-tubes are less likely to eat by mouth than children who do not have G-tubes. If the child does not resume eating by mouth, the G-tube may be necessary long into the child's lifetime, resulting in extraordinary long-term care. So what happens is once they become dependent on the G-tube, it's much harder to go back and try to feed them orally. So what we're trying to avoid is that because it just makes it much more prohibitive to try to come back and teach the child. And, again, we're working with infants, very small to what we saw there I think probably the oldest age probably six maybe the oldest. So this interdisciplinary treatment offers children with feeding disorders to focus more on just getting nutrients as a child. It also focuses on getting the child to eat by his/her own. According to the fiscal note provided by the Fiscal Office, we could realize an annual saving over three years after implementation of about \$2 million. That's \$855,000 in the state dollars and \$1.2 million in the federal. So this is state and federal savings when we look at the Medicaid and then our match, of course. So I will close there and then there is a committee amendment. [LB342]

PRESIDENT SHEEHY: Thank you, Senator Gay. You have heard the opening of LB342. As was stated, we do have a Health and Human Services Committee amendment, AM741. Senator Gay, you're recognized to open on your amendment. [LB342]

SENATOR GAY: Thank you, Mr. President. The committee amendment was introduced in order to address some of the issues that Health and Human Services brought up during the committee hearing. It didn't solve some of the problems and Senator Campbell will be offering an amendment to the committee that then after much more discussion will go on. So what I will do, I'll urge you to listen to Senator Campbell's amendment, and then if we're fortunate to get that drafted on, that would replace...well, we need to amend that onto our amendment, and that would take care of what we feel. When you go apply for a CMS waiver, you need specific things to be done, and Senator Campbell took care of that with her amendment coming. Thank you, Mr. President. [LB342]

PRESIDENT SHEEHY: Thank you, Senator Gay. You have heard the opening of the Health and Human Services Committee amendment AM741 to LB342. Mr. Clerk, you

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have an amendment to committee amendments. [LB342]

CLERK: Senator Campbell would move to amend AM1225. (Legislative Journal page 1204.) [LB342]

PRESIDENT SHEEHY: Senator Campbell, you're recognized to open on AM1225. [LB342]

SENATOR CAMPBELL: Thank you, Mr. President. I took this as my priority bill because of the strong opinion of the Health and Human Services Committee all members that this bill needed to be brought forward and it needed to have a priority. It represents a very innovative treatment approach to feeding disorders, and Senator Gay has given you a very good background to why the bill is important. What the committee felt and why it needed to be a priority is because it is not now available to our Medicaid patients. At best guess we think that there are probably 50 children Medicaid eligible who are waiting to be helped by this treatment. This amendment basically replaces the committee amendment and the original bill. So when you look on your gadget, as we all call this, and look at that you will see that it basically replaces the entire bill. I really do appreciate the work of Senator Gay's staff and the department because what the amendment AM1225 does is it simplifies the language. And what we are going to try to do is amend the Medicaid plan, which is far easier to do than to apply for a waiver and, we hope, quicker. But we have given the department, as you can tell, until 2010 to accomplish this because it does take a while to prepare all of those document. We have also put in this amendment a sunset of January 2015. This allows us time to apply for the waiver or I'm sorry, the change to our plan, and then it allows it time to see truly can we serve the Medicaid patient and young child. In other states using Medicaid dollars, generally they have treated children with developmentally disabled or autism, but the treatment applies to all children. I just want to make a very startling comparison here. Usually children who have a G-tube it takes five years for the treatment which costs upward of \$190,000. If you go through this disorder treatment primarily now in Nebraska offered by Munroe-Meyer, they offer a program for two years at a cost of \$56,000. So that's how we are accumulating the savings to the state over time. So I would urge your approval to AM1225 which really then becomes the basis for LB342. Thank you, Mr. President. [LB342]

PRESIDENT SHEEHY: Thank you, Senator Campbell. You've heard the opening of the amendment to committee amendment AM1225. Members requesting to speak: Senator Gloor, followed by Senator Pankonin, Senator Lathrop, Senator Dubas, and others. Senator Gloor, you're recognized. [LB342]

SENATOR GLOOR: Thank you, Mr. President and members of the body. I rise in support of LB342 and the underlying amendments, but I will tell you as a committee member I was a hard sell on this bill originally. I have a career worth of people

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approaching me with wonderful programs or technologies that will ultimately save money and be less costly than the way we're providing care, and unfortunately too few of those programs, too few of those technologies live up to their billing. I do not believe that is the case with this feeding program. I do think it will be a less costly option. So far the success rate of 90 percent is phenomenal. You're hard-pressed to come up with any program that is able to justify that level of success rate. I think it's also important to point out here that the patients we're talking about are children, actually, they're infants. We will provide care to these children one way or the other. In fact, we'll probably throw everything but the kitchen sink at trying to provide care for these patients given their struggles to take in nutrition in appropriate ways, which is one of the reasons that we're talking about significant savings. There will be effort after effort after effort whether it's surgical intervention, whether it's referral to another specialist, but we will continue to try to rescue these infants from their feeding challenges or we can have a program that is very specific to this type of concern and save the kind of dollars that would otherwise be spent over a period of time. On programs like this I quite frequently also have a concern that it will catch on. Other institutions, other medical centers, other physician groups will say, well, here's another business line we can get into. I would tell you that the level of specificity the team approach towards this type of program will be self-limiting, but there would be very, very few organizations, very few institutions, teaching institutions, probably specifically research institutions that will have the kind of support necessary to make a program like this work and will be able to tackle a program like this. So I think it is very much self-limiting. The cost savings, I believe, are real. I think it will an important service to provide for the residents and families and the struggling children in our state, and I therefore ask you to vote in favor of LB342 and the underlying amendments. Thank you. [LB342]

PRESIDENT SHEEHY: Thank you, Senator Gloor. Senator Pankonin, you're recognized. [LB342]

SENATOR PANKONIN: Thank you, Mr. President and colleagues. As Senator Gay mentioned, I was a cosponsor early on in this bill and I also stand in support of it and its amendments. Sometimes our path down here is not easy. It's complicated and it's hard to see the right way to go. With LB342 this is a great story. What we have is some parents who saw the results of Munroe-Meyer in their own children's lives and in their family's quality of life. They saw what this program could do and they wanted to make sure that other people had this available. The people that brought it to us had their own private health insurance and were able to access this program, but they wanted to make sure that other families had this opportunity as well and that's why they spent the time to bring this issue forward. And this is one that also has the great result of saving the dollars, saving the taxpayer dollars on treatment options, one that's very effective and lower cost than the more invasive treatment. So I think this is one of those stories where it's a win all the way around, and we would appreciate your support. Thank you. [LB342]

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PRESIDENT SHEEHY: Thank you, Senator Pankonin. Senator Dubas, you're recognized. [LB342]

SENATOR DUBAS: Thank you, Mr. President, members of the body. I rise in support of the bill and the amendment and agree with everything that's been stated so far on the floor. This is a bill that maybe isn't going to impact a large number of lives, but the lives that it does impact will have long and positive consequences. I'd just like to share with you a little bit about a story of a little guy who lives in my district. Jacob is 19 months old and since the moment he was born he has faced truly an uphill battle and challenge. He's endured more surgeries than most of us could ever even imagine in a lifetime. He has a loving family and support system who are working hard to get him the types of treatment and help that he so much needs. As of today, Jacob is 19 months old and he's just currently learning to crawl. He has issues with his muscle tone so, you know, he's definitely behind developmentally. But Jacob has a very severe eating disorder. In fact, he's not able to eat. He's had the NG tube. He has the G-tube. He's got a pump. He's endured so much pain in his little life, but if you see a picture of him you just can't help but fall in love with him. Jacob continues to require the feeding pump at least four times each day to acquire the needed nourishment. During Jacob's entire young life he has not taken enough orally to sustain him. He either tires of eating, simply quits eating or vomits. The feeding of Jacob has always required much time and patience. And he has, as I said, a loving support system of people who are willing to help him with this. But as of this date Jacob has not seen him pick up a single piece of food to place in his mouth. One of Jacob's greatest needs right now is to be accepted into the feeding clinic that we have just spoken of, the University of Nebraska Munroe-Meyer Institute. We understand that this clinic has a 90 percent success rate, and specialist agree that this is a definite need for Jacob. However, Jacob's family's private insurance for whatever reason has denied his acceptance into this program twice. We believe that the state of Nebraska must amend state Medicaid plan to provide payments for utilization of money to allow for Medicaid payments for treatments of pediatric feeding disorders through behavior or psychological means. Children such as Jacob must have services as families cannot afford the cost of intense outpatient therapy. An emergency does exist for many children in Nebraska, so it's imperative that LB342 be adopted as soon as possible so that Jacob and other children not being accepted can receive treatment immediately. We have an opportunity to do several things with this bill. We have an opportunity to serve some children who really, really deserve the treatment and the services available through the Munroe-Meyer Institute, and we have the opportunity to save money at the same time. That's icing on the cake, I think. But I truly hope that my colleagues will give serious consideration to this bill and give it a green light. Thank you. [LB342]

PRESIDENT SHEEHY: Thank you, Senator Dubas. Speaker Flood, you're recognized for an announcement. [LB342]

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SPEAKER FLOOD: Thank you, Mr. President. Good afternoon, members. As you'll note on your agenda, we are now moving to LB160. It is my hope that we can take a vote on this as we intended to do yesterday with some confusion, obviously, that happened earlier. You will note on your agenda that we will then be moving onto LB630. We will not be returning up to the bill that is currently before you, LB342. That will come off the agenda today as we will be heading south after this to LB630 and after that, LB307. Thank you, Mr. President. []

PRESIDENT SHEEHY: Thank you, Speaker Flood. Mr. Clerk, do you have items for the record? []

CLERK: I do, Mr. President. Enrollment and Review reports LB56, LB162, LB430, LB436, LB551 correctly engrossed. Natural Resources Committee chaired by Senator Langemeier reports LB561 to General File with amendments. Amendments to be printed: Senator Pankonin, LB188; Senator Coash, LB498; Senator Pankonin, LB414; Senator Adams to LB9. And a new A bill, Senator Mello offers LB633A. (Read by title for the first time.) That's all that I have, Mr. President. (Legislative Journal pages 1223-1231). [LB56 LB162 LB430 LB436 LB551 LB561 LB188 LB498 LB414 LB9 LB633A]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We'll move to the 3:00 p.m. agenda items. The first item, LB160, Mr. Clerk. [LB160]

CLERK: Mr. President, LB160, a bill originally introduced by Senator Gay. (Read title.) The bill was discussed on two separate occasions, most recently yesterday. Committee amendments and amendments to the bill have been adopted, Mr. President. At this time I have no additional amendments. [LB160]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Gay, would you like to give us a recap of LB160? [LB160]

SENATOR GAY: Yes. Thank you, Mr. President and I hope the collegial attitude will continue on to LB160. First, I do want to thank Speaker Flood for rescheduling this vote. And second, I want to thank the body for their patience on LB160. I want to let all of you know that I certainly didn't want to put anyone in an uncomfortable situation and I certainly didn't want to be in this situation. As I had mentioned several times, LB160 is the result of many years of costly studies and in-depth discussion. This is a very important issue and Senator Nelson's priority bill, and I think it deserves the proper vote. It would be unfortunate to the legislative process to let a miscommunication be the deciding factor in the outcome of any legislation we consider. We have had a lengthy and very good debate on this bill so far. In the interest of time and as a courtesy to other members of the body who are also working on important issues, I won't continue to debate LB160 on General File. However, I will answer any questions. Instead, I ask that

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we just take an accurate vote as was intended yesterday and move on. Again, I want to thank the Speaker and the body. Thank you, Mr. President. [LB160]

PRESIDENT SHEEHY: Thank you, Senator Gay. You've heard the opening to LB160. Are there members requesting to speak? Seeing none, Senator Gay, you're recognized to close. [LB160]

SENATOR GAY: Thank you, Mr. President. Mr. President, I would like a call of the house and a roll call vote in regular order. (Laughter) [LB160]

PRESIDENT SHEEHY: Thank you, Senator. (Laugh) [LB160]

SENATOR GAY: Thank you. (Laughter) [LB160]

PRESIDENT SHEEHY: Thank you, Senator Gay. You have heard the closing to LB160. There has been a call of the house. The question before the body, shall the house be placed under call? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB160]

CLERK: 35 ayes, 0 nays, Mr. President, to place the house under call. [LB160]

PRESIDENT SHEEHY: The house is under call. All unexcused senators please report to the Legislative Chamber. All unauthorized personnel please step from the floor. The house is under call. Senators, please record your presence. Senator Utter, Senator Janssen, Senator Heidemann, the house is under call. Senator Gay, you're recognized. [LB160]

SENATOR GAY: Mr. President, we could proceed without Senator Heidemann. [LB160]

PRESIDENT SHEEHY: Thank you, Senator Gay. Members, we will be voting on the advancement of LB160. Senator Gay has requested a roll call vote in regular order. Mr. Clerk. [LB160]

CLERK: (Roll call vote taken, Legislative Journal page 1231.) 31 ayes, 11 nays, Mr. President, on the advancement. [LB160]

PRESIDENT SHEEHY: LB160 advances. The call is raised. Mr. Clerk, we will now move to LB630. [LB160 LB630]

CLERK: Mr. President, LB630 is a bill originally introduced by the Business and Labor Committee. (Read title.) Bill was introduced on January 21, referred to Business and Labor, advanced to General File. I do have committee amendments, Mr. President. (AM874, Legislative Journal page 904.) [LB630]

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PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Lathrop, you're recognized to open on LB630. [LB630]

SENATOR LATHROP: Thank you, Mr. President and colleagues. LB630 is a committee priority bill that was introduced on behalf of the Workers' Compensation Court. LB630 is the Business and Labor Committee's work comp Christmas tree bill. It is by Judiciary Committee standards an amateurs effort. There are only a few bills and maybe I can use that metaphor to introduce you to the contents of LB630. The tree, if you will, is the underlying Work Comp Court bill. That underlying bill does just a few things that are on the order of cleanup. It does do one thing that is important and deserving of an explanation. Two years ago this Legislature adopted a hospital fee schedule. We exempted from that hospital fee schedule for a period of two years those DRGs or those medical tasks, or procedures rather, that are done in a trauma setting. The purpose behind that was to determine what savings were realized by having the hospital fee schedule and to give us an opportunity to collect some data to determine whether or not the hospital fee schedule was affecting insurance premium rates. We hoped to have a, we hoped to have a study done over the interim. That was not done only because there wasn't enough data to tell us whether or not there was a savings realized, and which positively affected insurance premium rates, so we are extending the sunset on those trauma codes one year. That's the core of the bill. There are three, essentially three bills that we are amending on to it and I'll make this representation to you before I introduce those three bills that are incorporated into this Christmas tree bill. That the bills that are being introduced are an attempt by the Business and Labor Committee to strike a balance. We have with these bills being amended into the committee bill, tried to provide something for the ag community. We've tried to provide something for the business community, and we've tried to provide a modest benefit increase for employees. Those particular bills that will be incorporated into LB630 are LB453. LB453 requires agricultural employers exempted under the Workers' Compensation Act to provide notice of the time of hiring that an employee will not be covered under the Workers' Compensation Act. That is to say, right now the law requires that an employer hiring a farmhand has to tell them at the time of hiring that they will not be covered by work comp since employers in that industry can opt out. What LB453 does, which is being incorporated into this, is to allow ag producers to give notice to their employees any time 30 days before an injury. That is a significant improvement in work comp as it relates to the ag industry. Section 2, pardon me, Section 3 incorporates LB243. LB243 would annually adjust permanent disability benefit amounts to account for cost of living increases. AM874 also addresses the inequity of permanent disability benefits but instead of adjusting all permanent disability benefits upwards, new language would annually review the awards and give individuals either 66 2/3 percent of their weekly wage or the maximum amount computed under Section 48-121.01, whichever is less. Currently, that maximum is \$671. I'll come back to that section in a moment. LB...Section 6 incorporates LB194. This is a significant benefit to the business

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community. LB194 which has the support of the business community, currently under Nebraska law lump sum settlement agreements under work comp must be approved by the Work Comp Court. This involves a significant expense to employers or their insurance carriers which can be avoided with the approval of LB630. AM874 addresses the difficulties and creates several exceptions to the requirement that a lump sum settlement agreement be approved. In fact, it avoids the need for the Work Comp Court's approval except in just a few situation. One would be where the employee is not represented by an attorney. The other would be where the lump sum settlement involves a Medicare set aside. The other is those situations where the lump sum settlement involves commuting death benefits to a survivor, and the third situation is that situation in which a lump sum settlement does not satisfy all outstanding medical expenses. As I indicated, that's a significant benefit to the business community as they will have cost savings relative to not having to pay attorneys to do lump sum settlement agreements. That is the substance of the bill and I think I will talk about, I will talk about the amendments and the particulars of those three elements of this Christmas tree bill when I introduce the amendments. I might take a moment though in the time I have left introducing the bill to give you an overview of work comp. I've done this before, but it might be helpful just so you have a framework to understand what we're doing to the work comp statutory scheme. When an individual is hurt in the scope and course of their employment, they're entitled to several benefits according to Nebraska Workers' Compensation Act. The first thing that they're entitled to is have their medical expenses paid for by the employer or the employer's work comp carrier. The second thing they're entitled to is total disability benefits during the period of convalescence. And what that means is, they're entitled to two-thirds of their average weekly wage for the period of time that their injury has them totally disabled, they're unable to work. It is the substitute of one's income benefit of work comp. Finally, work comp will also provide a benefit if you have suffered a permanent injury. You will be compensated permanent partial disability benefits in those instances where you've suffered a loss of your earning capacity or if you've injured your hand, foot, arm, eye, or your hearing, you can be compensated for your loss of a, of a physical or permanent loss of your vision or what we call a member disability. Those are the benefits generally that are available in work comp. When you make a claim as an employee, if you enter into a settlement with your employer currently, you have to have that settlement approved by the Work Comp Court. This is problematic because it creates an additional expense for the employer who has to hire attorneys to do those settlements. It is also a...with respect to the lump sum settlement, it's expensive and it's also time consuming. It can take the court several weeks and in some cases, when they get backed up, months to approve a settlement, which takes some of the incentive out of those settlements. When an employee receives total disability benefits, as I said, the law allows them to be compensated two-thirds of their average weekly wage. So a person making, for example, \$1,500 a month, two-thirds of their average weekly wage would be \$1,000. Normally, they would receive that \$1,000 which is intended to substitute for their pay that they've lost because they cannot work. But the law caps what you can receive as a total disability benefit.

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Currently that's \$671. So for the employee making greater than \$1,000, they don't receive their two-thirds of their average weekly wage, they bump into the state's cap. I'll talk about this in a little bit with the amendment. That cap is adjusted annually in a formula set out in statute and I can talk about the changes that have happened over the last several years. In 2006 the cap was \$600. In 2007 it was increased by \$17 to \$617. In 2008 it went to \$644 and it's currently at \$671. [LB630 LB453 LB243 LB194]

PRESIDENT SHEEHY: One minute. [LB630]

SENATOR LATHROP: I think I will stop there with respect to the introduction of the bill and talk about the amendments when I introduce the amendment. [LB630]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. You've heard the opening to LB630. As was stated, there is a Business and Labor Committee AM874. Senator Lathrop, you're recognized to open. [LB630]

SENATOR LATHROP: Thank you, Mr. President. I would like to talk about the three, three bills that have been amended into LB630 and talk about them in terms of the balance they provide as a bill for work comp as an institution. LB453 was introduced by Senator Rogert. This is a significant, as I said a significant benefit for the ag community. Currently, an ag producer can elect to be covered by work comp or not. You might ask, why would they do that? If you don't elect to be covered by work comp you can be, if an employee is hurt through one's negligence, you can be sued on a liability claim. Electing to be covered by work comp does happen. Some producers, we learned, don't appreciate the fact that they have to make an election and they have to advise their employees at the time of hire. This has resulted in some farmers and ranchers being sued for work comp benefits because they neglected to tell their workers that they were not covered by work comp. So Section, or rather LB453, which is Section 1 of the bill, allows the producer, the ag producer to inform his employee anytime 30 days before an injury and still be excepted out from work comp. Section 3, which is LB243, is the object of an amendment filed by Senator Schilz that you'll hear about shortly. This provides for a modest increase in benefits and I want to explain the increase in benefits and explain just how modest this increase is to workers that are injured while employed in the state of Nebraska. As I indicated before, if you are hurt and cannot return to work you receive two-thirds of your average weekly wage up to the maximum. When LB243 was presented to the Business and Labor Committee, it was presented with an automatic cost of living for everyone receiving disability benefits and that would have been a significant expense, and it would have had an impact on rates in the state of Nebraska. In an attempt to have a balanced approach to LB630, and provide a modest improvement for those employees who are totally disabled, LB430, pardon me, LB243 was amended to provide an increase that follows the adjustment to the maximum amount one can receive for total disability benefits. And you'll see in the language that a person on total disability benefits annually, when the total amount that you can receive

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for total disability benefits is increased, they may increase their total disability benefit up to the point in time where they receive two-thirds of their average weekly wage. This is a very modest proposal for workers. It covers very few people. Most people who receive work comp benefits receive total disability benefits for a short time until they can be returned to work. It is a minority, a small minority of people who are on total disability for an extended period of time, and for those who are, these increases in benefits are very modest. Finally, the lump sum settlement section which was LB194, essentially avoids the need of having lump sum settlements approved by the court. That is a significant savings or a potential significant savings to employers who will no longer have to go through and hire lawyers to go through the lump sum settlement process as has been the practice in the state of Nebraska. So if there is a theme to LB630, is that there's a little bit of something for everyone in LB630. I would encourage you to support AM874 and LB630. Thank you. [LB630 LB453 LB243 LB194]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. You've heard the opening of the Business and Labor Committee AM874 to LB630. Mr. Clerk, you have an announcement and also an amendment to committee amendment on your desk. [LB630]

ASSISTANT CLERK: Mr. President, I do. Government Committee will meet in Executive Session at 3:30 in Room 2022. That's Government Committee at, in 2022. The amendment to the committee amendments is offered by Senator Schilz as FA27. (Legislative Journal page 1020.) [LB630]

PRESIDENT SHEEHY: Senator Schilz, you're recognized to open on your amendment to committee amendment, FA27. [LB630]

SENATOR SCHILZ: Thank you, Mr. President and members of the body. First off, I just want to say that I do serve on the Business and Labor Committee and having not been involved in those types of issues before I'm learning quite a bit here this First Session about labor issues in the state of Nebraska and what goes on. On the day this vote was taken, unfortunately I was absent for the committee vote, and I did not take the opportunity to vote on LB630. So for that, Senator Lathrop, I apologize for that. But with that being said, I think it also needs to be said that LB630 and AM874 have some ideas that I really can't agree with. Most of the bill which is made up of four bills that were heard in front of the Business and Labor Committee. I can live with that and support much of the bill that has been moved to the floor in the form of LB630. Section 3 is different though. Section 3, which used to be LB243, annually updates permanent disability benefit amounts to account for costs of living increases. This, in my opinion, is not a bill or section of law that I want to see passed. Let me give you an example. And to be honest with you, I had to solicit somebody to figure out how all this worked because it's a little bit more complicated than just doing some simple math, at least for me anyway. In order for the cost of living adjustment in AM874 to kick in, employees

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must earn a gross average weekly wage of \$1,005. This represents the break-even point of the amendments language that would award the lesser of 66 2/3 percent of the gross average weekly wage and the maximum rate under Nebraska Statute 48-122.02 as set by the court, which is currently \$671. If there is an employee earning a gross average weekly wage of \$1,305 at age 50 with a life expectancy of 80 years, the additional cost of the COLA for a permanent total disability would be nearly \$240,000. In order to do the math, you must look at the language in the proposed amendment to determine the award. Sixty-six and two-thirds of \$1,305 is \$870.44. The maximum rate is currently \$671. The difference between these figures is \$199.44. For the first seven years the employee would earn the maximum rate as set by the court because it would be less than the \$870.44. I should note that historically the court has increased this maximum amount by 4 percent annually and thus the same percentage was used for this example. During the first seven years of the cost of living adjustment, the increased benefits under AM874 would cost over \$11,000. In that eighth year the benefit amount would revert to 66 2/3 percent of the gross average weekly wage or \$870.44. Once this threshold is hit, the increased cost would be fixed at the \$199.44 per week. So from age 58 to age 80, the increase in benefits under AM874 would be over \$228,000. At first glance this amendment may seem to have little fiscal impact, but as you'll probably hear a little later on...it's increased cost over the course of a claim can be pretty significant. In this day and age when we're looking to find revenues and looking to not burden businesses as we move forward, should we impose new costs in the form of increased insurance premiums upon our businesses? I'm not sure that that makes sense right now. In fact, we need to be looking for ways to lower costs for employers so they can have the best chance for success in going forward. I would encourage everyone to take a look at this, take a look at this section of the bill, which like I said before, was actually LB243 and take a good look at it. Talk to some folks, see what they think and then support to strike Section 3 out of this bill. Thank you very much. [LB630 LB243]

PRESIDENT SHEEHY: Thank you, Senator Schilz. You've heard the opening of the Schilz amendment to committee amendment, FA27. Members requesting to speak are Senator Carlson followed by Senator Ashford, Senator Price, Senator Lathrop, Senator Gay, and Senator Council. Senator Carlson, you're recognized. [LB630]

SENATOR CARLSON: Mr. President and members of the Legislature. I'd like to review a little bit of my experience on this bill in the Business and Labor Committee. At the time that we discussed this I indicated to Senator Lathrop that there was a portion of this bill that I didn't agree with. And I asked him if he would rather I not vote for the entire bill or vote for the advancement and then make my comments on the floor, and he said I needed to do what I need to do. So I did vote to advance the bill to the floor. And normally, if somebody does that I feel like they ought to support the bill on the floor. But this was something I did discuss with Senator Lathrop. I would ask the members to pull up the committee statement on LB243 because from that you can look at the committee vote and you can look at the list of proponents and opponents as well as neutral

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testimony. And with that, I would like to address a couple of questions to Senator Lathrop. [LB630]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to questions from Senator Carlson? [LB630]

SENATOR LATHROP: Yes. [LB630]

SENATOR CARLSON: Senator Lathrop, on this LB243, there were two proponents, one...in my notes I wrote down one as, I think he was a work comp attorney. I wrote the other one down as a trial attorney and sometimes when they say their names I don't catch it quickly enough, so I'm not sure who it was. As you recall, there were two attorneys that were proponents of that bill? [LB630 LB243]

SENATOR LATHROP: I don't have the committee statement in front of me, but that sounds...I think there were people who spoke for different folks who work blue collar jobs for a living. [LB630]

SENATOR CARLSON: Okay. And then I have four opponents to the bill, Werner Enterprises, PCI Property and Casualty Insurance Association, Nebraska Bankers Association, and the city of Omaha. Now on LB243 there weren't any amendments, and how do you feel that we as a committee address the concerns of these opponents? [LB630 LB243]

SENATOR LATHROP: I'm going to have to disagree with you and tell you that when LB243 was initially introduced it just had a simple cost of living increase, so everybody on work comp was going to get a bump in their work comp benefits based upon the cost of living. The bill as it was, as it was then amended into LB630, provided for a far more conservative approach. Okay. And that was an attempt to be modest in the benefit provided to workers by limiting it to, not to everyone who is on total disability benefits, not everybody gets a bump. It's only those people who were capped out by what would be the maximum rate for total disability benefits. And they are allowed to get an annual increase depending upon a formula adjustment done annually already according to statute until they get to the place where they're at two-thirds of their average weekly wage. [LB630 LB243]

SENATOR CARLSON: Okay, that's fair enough. And that's why there was not a separate amendment to this bill because it was brought into LB630 and so it didn't require a separate amendment? [LB630]

SENATOR LATHROP: That's it. [LB630]

SENATOR CARLSON: Okay. Thank you. Thank you, Senator Lathrop. I want to cover a

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little bit the concept of insurance. Having been in the insurance business for 30 years, although I've never sold a work comp policy so I'm not pretending to be any kind of an expert in work comp, but insurance is a sharing of risk. And insurance is put in place to recover a portion... [LB630]

PRESIDENT SHEEHY: One minute. [LB630]

SENATOR CARLSON: ...but not 100 percent of loss. Now, how's this insurance paid for? It's paid for in one of three ways. It's either paid for 100 percent by the employee, it's paid for by 100 percent by the employer, or it's paid for by combination of employee and employer contributions. And if we look at medical insurance as an example, whether the employer pays all or the employee pays a portion, there is a cost to the employee. It's going to be the deductible. It's going to be the coinsurance and it may be some premium. But the employee participates in some way. There can be disability insurance and there can be insurance that's provided by the employer and generally... [LB630]

PRESIDENT SHEEHY: Time, Senator. [LB630]

SENATOR CARLSON: Thank you. [LB630]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Ashford, you're recognized. [LB630]

SENATOR ASHFORD: Thank you, Mr. Lieutenant Governor. Just so I fully understand this, Senator Lathrop, and I have worked in the workmen's comp area although it's a few years ago and this is a big issue, people who are maxed out on their workmen's comp benefits. And so that's what we're talking about here, is that correct, Senator Lathrop? [LB630]

PRESIDENT SHEEHY: Senator Lathrop would you yield? [LB630]

SENATOR LATHROP: Yes, that's true. [LB630]

SENATOR ASHFORD: So these would be, these would be workers who maybe were injured 10 years ago or 20 years ago and can't get anymore monthly benefit? [LB630]

SENATOR LATHROP: Right. And actually this is only going to apply to people who get hurt after the effective date of the act so that the insurance companies can properly figure out... [LB630]

SENATOR ASHFORD: Right. It takes a while. [LB630]

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SENATOR LATHROP: Exactly. [LB630]

SENATOR ASHFORD: I mean in all due respect to Senator Schilz, and it's a thoughtful comments he made but I...and Senator Carlson, is it, this is insurance really in name only. I mean, basically what workmen's comp is, in my estimation, is really, it's a remedy, it's an exclusive remedy that workers have. They cannot sue their employer for damages, is that correct, Senator Lathrop? [LB630]

SENATOR LATHROP: That's true. You...it is the exclusive remedy no matter how careless...if an employer took the guards off of every piece of machinery and hurt employees, the only thing they can get are the modest benefits of work comp. [LB630]

SENATOR ASHFORD: And I think Nebraska has always been moderate in workmen's comp. I don't think we're particularly high or particularly low. Where do we sit in the...? [LB630]

SENATOR LATHROP: As the Chamber of Commerce publishes every year, we are in the top three in the cheapest insurance rates in the country. [LB630]

SENATOR ASHFORD: So we're the...we're the...okay. And we don't...and there is no...is there in your opinion and looking at the evidence that was presented to your committee, do you anticipate any significant increases in premiums as a result of this amendment? [LB630]

SENATOR LATHROP: No, I don't. In fact, we've tried to balance benefits so that the ag people get something, and certainly the business community is going to realize a savings with the lump sum settlement piece of this, and there is something there for a modest increase for workers who are totally disabled and will have to live on that for the rest of their life. [LB630]

SENATOR ASHFORD: Right. And the lump sum settlement is a savings in attorney fees and all those related costs, correct? [LB630]

SENATOR LATHROP: Yes, it is. [LB630]

SENATOR ASHFORD: Okay. And that can be significant. I mean, I promised Senator Carlson a little time. Maybe I'll give him a little if I have some left, but I stand in support of Senator Lathrop's efforts here and the committees efforts. Again, I think it's a modest proposal. These are workers who, if they don't get some increase, could end up on the welfare roles or some other need of support from some other sources. I mean, that's been my experience in working the workmen's comp area years ago is there's some pretty significantly difficult cases of people that just can't make it on their workmen's comp benefit if they were young workers that were disabled and, or even older workers.

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So I just think the committee has done good work here, and though I certainly respect Senator Schilz in what he's saying, I just think we're...have a hard time understanding why this would not be very, very balanced and moderate. With that, if Senator Carlson wants some more of my time. [LB630]

PRESIDENT SHEEHY: Senator Carlson, you're yielded 1:35. [LB630]

SENATOR CARLSON: Okay. Thank you, Senator Ashford. In talking about the concept of insurance and Senator Ashford said this really isn't insurance. Well, it is. It's a form of insurance. I think the difference is that this is an employer provided form of insurance. And sometimes employers provide disability insurance where the employer pays all the premium. Those are very...they're limited benefits. They don't cover all the loss. Sometimes employers provide life insurance benefits to employees. And certainly, it's an amount... [LB630]

PRESIDENT SHEEHY: One minute. [LB630]

SENATOR CARLSON: ...that would be important to the employee's family if something happened while that employee is employed. But it doesn't by any stretch cover the value of the life of that employee. It's very limited. These are limited benefits. And if I have time, I'll try to ask Senator Lathrop another question if he would yield. [LB630]

SENATOR LATHROP: Yes, I will. [LB630]

SENATOR CARLSON: Senator Lathrop, again I don't know this, but I don't think I know of any instance where any employee pays any portion of the work comp premium. Are you aware in your experience that they do? [LB630]

SENATOR LATHROP: Nope, they don't have to. In fact, I'll talk about it when my turn comes up Senator Carlson why that's the case. [LB630]

SENATOR CARLSON: Okay. Okay. Thank you. [LB630]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Price, you're recognized. [LB630]

SENATOR PRICE: Thank you, Mr. President and members of the body. I have a couple of questions or a statement. Again, another opportunity with Senator Lathrop to educate me. And I was a little confused at first, Senator Lathrop, in your opening when you talked about who this was going to apply to that the majority of people who are on permanent and total disability, or total disability are only on it for a short time. But now we hear there are those individuals who, of course, we know there are those who are unfortunately a P&T for a long period of time. But again, Senator Lathrop, I would like to

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ask a question for you in that if we make this change, would we, would we be jeopardizing any of the Social Security, or supplemental Social Security benefit that a person may be receiving, because my understanding that you could have a permanent and total disability in workmen's comp and also go apply for Social Security benefits. You know, you're 35 years old, whatever that...so would we be jeopardizing people's Social Security benefits? [LB630]

PRESIDENT SHEEHY: Senator Lathrop, would you yield? [LB630]

SENATOR LATHROP: No. You can, you can...and people oftentimes do. Let's say, that a guy breaks his back, has a fracture in the lumbar spine, severs his spinal cord, now cannot walk or work. Okay. That guy can apply for and receive work comp benefits, total disability benefits, and he can also receive some Social Security benefits. But he can't receive...there is an offset provision in Social Security so that you can't find yourself making more on disability benefits than you were getting as an employee. We don't take away the incentive to work and so while you can collect both, you don't make more than you were, you were or could make if you had not been hurt. [LB630]

SENATOR PRICE: So, then there's an offset portion here. Are we shifting the burden from the federal government and Social Security dollars on to the state and the insurance under the workmen's comp? [LB630]

SENATOR LATHROP: In some cases the offset has that affect, but rarely. [LB630]

SENATOR PRICE: Okay, great. And earlier in the session we were moving along a bill that would allow teachers who were disabled to go back into the work force to work, I believe, like up to 15 hours. Would that run afoul of that also? [LB630]

SENATOR LATHROP: I'm not...I don't remember that particular piece of legislation but there are...you don't have to be in an absolute state of helplessness to be totally disabled. You just have to not be able to get a job in a competitive work environment. So if Senator Harms suffers a neck injury and he's paralyzed from the neck down, and he's got a brother-in-law that can find something for him to do, sure, maybe he can go back, you know, as his brother-in-law can fit him in and put 15 hours a week in, but that doesn't mean he's not totally disabled. [LB630]

SENATOR PRICE: And I understand that because in dealing with, and I've had to actually deal with it somewhat when we deal with some military members. You know, they have a way of calculating things that are different and one of the concerns I have is that a permanent and total disability designation may inadvertently make them ineligible, or when we do this and give them a COLA increase, that we may make them ineligible for another benefit that they're currently receiving or one that we would enact. And that's why I wanted to make sure I asked the question that we're not going to jeopardize our

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Social Security and also to call the fact that...and I don't know as you said... [LB630]

PRESIDENT SHEEHY: One minute. [LB630]

SENATOR PRICE: Thank you, Mr. President. That the percentage of P&T cases that are currently getting Social Security or supplemental Social Security on top of that, that would then, we're doing a cost or a burden shift, and that's where maybe we can get some clarification throughout discussion or coming into Select. I just want to make sure that we're not, again, just shifting burdens. Thank you, Mr. President. Thank you, Senator Lathrop. [LB630]

PRESIDENT SHEEHY: Thank you, Senator Price. Senator Lathrop, you're recognized. [LB630]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I'd like to, maybe, take this opportunity to talk about the origin of work comp, because it might make a little more sense than just regarding this as a health insurance plan paid for by the employer, and maybe talk about a few myths as they relate to work comp. Work comp goes back to the industrial revolution when we had, we invented the factories, and the lines where we could make cars and other things in that industrial setting, and people were getting hurt. Some people got hurt because of a coworker's carelessness or the employer's carelessness and some people got hurt just because they lifted something. And it was only the people that could find some blame that would make a recovery and they would do a lot better than what work comp pays. And employers came to the employees and they went to the government and they said, let's have a Work Comp Act where everybody is covered and nobody gets to sue the employer for these big judgments. So understand, it is the exclusive remedy and something of a social contract between labor and employers. The employees have given something up. They can't sue a careless employer. If an employer takes the guards off all of the machinery and hands are lost in manufacturing, the most an employee can get is what's provided for in work comp. It's very modest compared to a liability claim. So there's a give and take just in the process itself. And the employees are totally dependent upon the Legislature to provide some increase in benefits from time to time that are reasonable and that's what we're here to talk about. Now the last time we talked about Social...the last time we talked about work comp, there was some talk about fraudulent claims. There is a process for identifying fraudulent claims. It's the litigation process and insurance companies and employers frequently will send private investigators out to follow people around to see if they are playing basketball or otherwise exaggerating their claim. This isn't about fraudulent claims. This is just about what's fair. And when we talk about what's fair with respect to LB630, understand that we put something in here for the ag producers. And we put something in here for the employers that's going to save them some money, and we've put something pretty modest in here for the employees. And I have here an amendment to take out the part for the ag producers. Honestly, it's the next thing that's going to go

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up if this passes because it doesn't make sense that we're going to say, give me the stuff that benefits the kind of work that I do and then I don't want to see the employees get anything. You know, I was thinking about this bill and the fact that we tried to strike a balance and it occurred to me that when you look at all the things we've done for ag producers on the floor of this Legislature so far this year, and I could give you the list, but it would include a cost of living increase for the tax credit for new farmers. That was Senator Schilz bill. Well, that was a good idea because it helped farmers. And we do things to improve the business climate. And I don't resent a single one of those things, but today people that work for a living are at the Legislature's door. They're here and they're asking for a modest increase. It's not enough to respond to the needs of business, respond to the needs of the educators, and to respond to the needs of the agricultural community... [LB630]

PRESIDENT SHEEHY: One minute. [LB630]

SENATOR LATHROP: ...and tell those people that work in the hotels and those people who labor that we're not going to be responsive to what they need either. It's just not right. And if you can think of something else that we've done for labor, for people that work, this isn't a union thing either by the way. This is, this is for the lady over at the Cornhusker Hotel and the person that cleans the Capitol. These are people that work for a living and they haven't asked for much this year. In fact, I can't think of a single other bill that generally touches the people who work for a living beside this provision in a Christmas tree bill coming out of the Business and Labor Committee. And is it fair to tell them, no? Well, maybe if it's...if we have a position that we're not going to help people who work for a living, then what's the point in the business incentives because every time we talk about those... [LB630]

PRESIDENT SHEEHY: Time, Senator. [LB630]

SENATOR LATHROP: ...we talk about the jobs they generate. Thank you. [LB630]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Gay, you're recognized. [LB630]

SENATOR GAY: Thank you, Mr. President. Would Senator Schilz yield to a question? [LB630]

PRESIDENT SHEEHY: Senator Schilz, would you yield to questions from Senator Gay? [LB630]

SENATOR SCHILZ: Yes. [LB630]

SENATOR GAY: Senator Schilz, we're going to be talking about this a little while

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anyway, but those figures that you named, can you go over that again for me? I was trying to write them down or could you hand that out to the body? Is that something that you could... [LB630]

SENATOR SCHILZ: Sure. [LB630]

SENATOR GAY: You talked about if we did a COLA now what the long-term ramifications may be and how you arrived at those numbers? [LB630]

SENATOR SCHILZ: Right. Yeah, well, what happens is when you take the language of the bill, as Senator Lathrop said before, you need to...if that person is not making a certain wage or if he's making more than the gross average weekly wage of \$1,005, then he can't receive any of that benefit over what would be 66 2/3 of his, his...excuse me. Let me start over. Wish it was my time. Senator Gay, if a person makes \$1,005, then they would get the award that is now there from the Workers' Compensation Court for the \$671. If they make any more of that, then the cost of living adjustment would kick in and put that in every year up until they match what is 66 2/3 of their, of their paycheck, weekly paycheck. And I think that's the way it works. [LB630]

SENATOR GAY: Okay. Well, I'm just trying to get my arms around the whole, the numbers. Because when I look at this, is we're putting a COLA on, and I'll ask Senator Lathrop a question in a minute. So the way I understand this for us not on the committee, you're putting a COLA on workers' comp ongoing. The question I had, Senator Price was alluding to it and I'm going to ask Senator Lathrop a question if he would yield to it. [LB630]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to Senator Gay? [LB630]

SENATOR LATHROP: Yes, I will. [LB630]

SENATOR GAY: Senator Lathrop, when Senator Price is talking about he'd be on permanent disability, you mentioned the broken back, you're on permanent disability then at that point, correct? You would get a workers' comp disability and Social Security? [LB630]

SENATOR LATHROP: You can be. We call it temporary total disability benefits but it's no longer temporary if you are permanently unable to work. Then we call it a running total. [LB630]

SENATOR GAY: Okay. And you said you cannot make more than when you were injured. You can't...at that threshold when you get injured, you could be at your peak career or just starting out as a young person. You're on permanent disability at that point. Are you then asking the state then to have a COLA adjustment ongoing on top of

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that? Does the federal government...wouldn't you get a COLA with the federal disability?
[LB630]

SENATOR LATHROP: You do. You do. But you have to understand, and you make a good point with the point that a person could be at the beginning of their career, making \$600 a week and they would be stuck at \$400 a week for the rest of their life. And this bill isn't going to change that for that guy. But a person that makes \$1,500 to get two-thirds, they get \$1,000, right? But right now they're capped at \$671. What the bill would do would allow that person to take increases annually as they are determined under a formula in work comp, they would take those annually until they got to two-thirds. When that person got to two-thirds of their average weekly wage, they don't get any more raises. All right. So all we're doing is letting the guy who was working and capped by a statutory limit, go up each year until he gets to two-thirds of his average weekly wage and he's got to live with that the rest of his life. And \$1,000 a week may sound like a lot right now but if we took the imaginary employee, described by Senator Schilz... [LB630]

PRESIDENT SHEEHY: One minute. [LB630]

SENATOR LATHROP: ...30 years down the road that's a small amount of money and it isn't going to pay the rent. [LB630]

SENATOR GAY: Okay and that's...but, if you're on there, it's tax free income but does the federal government allow any COLAs along the way though? [LB630]

SENATOR LATHROP: I believe...I'm not sure about that. [LB630]

SENATOR GAY: Well, that's important to me because if the federal government is allowing it and you get federal...it's nontax, it's tax free right, the income is tax free?
[LB630]

SENATOR LATHROP: I don't know that. [LB630]

SENATOR GAY: Okay. Those are the questions that I think we need to look into a little because it looks to me, if that we're already being done and then how many other states are doing this what we're proposing. Because I looked at the fiscal note, and if you read the fiscal note or anyone looks at...and if you're looking at the right one dated...well, this is a revision, I don't see... [LB630]

SENATOR LATHROP: It's changed significantly and I can address that. [LB630]

SENATOR GAY: Okay, and maybe I need to look and my time is running out. I'll look at the new fiscal note but I looked at the future ramifications, not just to the state but all

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those employers around the state that have to pay this. That's what concerns me and I am open to...this is the first time I've heard... [LB630]

PRESIDENT SHEEHY: Time. [LB630]

SENATOR GAY: Thank you, Mr. President. [LB630]

PRESIDENT SHEEHY: Thank you, Senator Gay. Members requesting to speak on the Schilz amendment to committee amendment, FA27, are Senator Council, followed by Senator Nantkes, Senator Fulton, Senator Carlson, Senator Wightman, and others. Senator Council, you're recognized. [LB630]

SENATOR COUNCIL: Thank you, Mr. President. I rise in support of LB630 and AM874 and necessarily am in opposition to FA27. I want to commend Senator Lathrop and the committee for working to try to balance the interest of everybody affected by workers' compensation. And while Senator Lathrop has addressed it, I think it needs to be emphasized. Workers' compensation is required by statute. And this body, in the past, when we established the Nebraska Workers' Compensation Act we said to any employee who is injured while working, you have an exclusive remedy. You only have one remedy and that remedy is to apply for workers' compensation and this body determined the limitations that would be placed upon what an individual would recover regardless of the extent of their injuries, regardless of the amount of their earnings. We artificially capped what those individuals can recover notwithstanding what their average weekly earnings are, in the case of an individual who is earning more on a weekly average than what's in the statute. And by nature and by virtue of the fact that workers' compensation is required by law to be provided to all employees, employers purchase insurance to cover it. Senator Schilz gives an example of someone who under the operation of LB630 with AM874 who was injured, totally disabled at age 50, and was earning a weekly wage of \$1,500, what would happen under the operation of this bill. And I think the concluding number was \$211,000 over 30 years. Now, I don't represent to be someone skilled in actuarial science, but I would submit to you that \$211,000 spread over 30 years actuarially will result in an inconsequential increase in some employers workers' compensation premium. Yet, it won't even get us to the point of fully compensated because the workers' compensation statute as it is written was never designed to fully compensate employees where they're injured, yet it fully relieves employers of any liability above that which is set forth in the statute because it's an exclusive remedy. Senator Carlson raised some questions about long-term disability insurance and other forms of insurance. Those are elective coverages. We don't have a statute that requires employers to offer long-term disability coverage. If an employer elects to offer that, that's an elective. Workers' compensation is mandated by statute. There is a difference. So if the employer wants to be gracious and provide for a long-term disability or some other form of insurance, life insurance, health insurance, there's nothing in statute that requires an employer to provide health insurance for its

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employees. If they elect to do it, whatever agreement they work out with their insurance company is what the employee buys into or chooses not to buy into. Workers' compensation folks, employees, have no choice. That is their coverage and if they are injured and if the employer is grossly negligent... [LB630]

PRESIDENT SHEEHY: One minute. [LB630]

SENATOR COUNCIL: ...the employer still benefits under the workers' compensation schedule as it's currently written, if that injured employee's weekly average earning is greater than that which the statute allows to be paid. So we have to consider this amendment and the underlying bill in the proper context. Workers' compensation is an exclusive remedy. Employers don't have a choice. Employees don't have a choice. It's not like elective benefit insurance like long-term disability. This is their remedy and for us not to be cognizant of the fact that when people are considered to be permanently disabled, that to relegate them to the increase, the limit in the statute as it currently exists and not make provisions for increases. We talk about costs, these folks will, believe me, qualify for state benefits... [LB630]

PRESIDENT SHEEHY: Time. [LB630]

SENATOR COUNCIL: ...because they will meet the poverty standards. [LB630]

PRESIDENT SHEEHY: Thank you, Senator Council. Senator Nantkes, you're recognized. [LB630]

SENATOR NANTKES: Thank you, Mr. President and initially thank you to Senator Lathrop and all members of Business and Labor Committee who worked very diligently to put forward a package that is indeed fair and balanced, and appropriately addresses interests important to the business community, workers, and also the agricultural industry. I want to talk a little bit about some of the public policy issues that have been brought forward so far this afternoon in the course of the debate. In regards to the history of the work comp system, I think Senator Lathrop and Senator Council have covered that. But in regards to ideas about how this might or might not relate to other aspects of insurance as Senator Carlson wanted to dialog on, I think that he's right in explaining how traditional insurance works and how that's an allocation of risk and an allocation of costs. And colleagues, I want to talk about allocations of costs. And the cost of living adjustments that are included within provisions that are seeking to be stricken from the bill under the Schilz FA27 to the committee amendment are really important in regards to allocation of cost. Because it's common sense to know not only do we have inflation in our world which increases the basic cost of living prices for everyday necessities, there's also something which I'm sure Senator Gloor could probably give us a lot of insight and information about, it's called medical inflation. And medical inflation is rising at a pace much, much greater than traditional inflation, and

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since we're talking about worker injuries, those are things that you need to keep in mind. So while we see healthcare costs rapidly, rapidly increase, that's why we also need to ensure that we have a very incremental progressive approach in terms of the benefits afforded under this system, which as Senator Lathrop noted, according to the Chamber of Commerce, is the third most conservative system in the nation. Injured employees do not get rich under Nebraska workers' comp system. Let's start with an accurate baseline in that regard. Finally, in terms of the actual costs, Senator Gay brought this up, and I just wanted to make sure to get this in the record for his benefit or other people who had issues in terms of cost. It's my understanding that when you look at the Business and Labor Committee AM874, DAS has actually changed their fiscal analysis in terms of what the impacts would be. Under the original bill, the state thought that there might be about 250 employees who might qualify. Under the committee amendment, they're looking at 54, colleagues, 54 people. And the reason...with a cost of about \$58,000, and I want to be very clear that that's important because it's an illustration about how these actual costs would affect private employers, large or small, in the real world. We all know that the state of Nebraska has thousands and thousands of employees and so with the committee amendment to only address a public policy issue that would affect 54 employees and cost the state of Nebraska \$58,000, these are very, very modest, if not inconsequential, as Senator Council noted costs that would occur because of this public policy change. In fact, I've had dialog and communication with the city of Lincoln and what impact it would have for them as an employer, and their, I think, response was very telling. They acknowledged that there would be an impact to them as an employer but they also noted that this public policy change could achieve cost savings into the future. And I believe that those same kind of effects... [LB630]

PRESIDENT SHEEHY: One minute. [LB630]

SENATOR NANTKES: ...would happen in the...thank you, Mr. President...in the private sector for employers, large and small. So colleagues, there's no question there will be impacts and there will be costs. But if we don't fairly allocate them amongst those who have caused the risk or created the injury or caused the harm, you're passing the cost on to the state of Nebraska in terms of their public assistance benefits that will be accessed, that will be paid, and that will be utilized, which impacts taxpayers and tax dollars that need to be collected. So if you...if we don't pass this amendment and we don't allow these costs to be fairly allocated, you're putting them on the heads of taxpayers and you're further burdening Nebraska's public assistance system. With that, thank you Mr. President. [LB630]

PRESIDENT SHEEHY: Thank you, Senator Nantkes. Senator Fulton, you're recognized. [LB630]

SENATOR FULTON: Thank you, Mr. President and members of the body. Would Senator Lathrop yield to a couple of questions? [LB630]

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PRESIDENT SHEENY: Senator Lathrop, would you yield to Senator Fulton? [LB630]

SENATOR LATHROP: Yes. [LB630]

SENATOR FULTON: Okay. I went to LB243, I think that was the bill that you had referenced earlier, and there actually isn't a committee statement for LB243 out on the gadget as they call it. So, Senator, could you give us some background, I guess for my information. I had some idea that this amendment was coming and that the bill was before us, but I have not been able to look at the bill itself as the committee treated it. So I guess my question is, is this a bill that was voted forward to General File? [LB630 LB243]

SENATOR LATHROP: Yes. [LB630 LB243]

SENATOR FULTON: So this was moved forward to General File, LB243? [LB630 LB243]

SENATOR LATHROP: No. It was...we constructed this Christmas tree, if you will, in committee, incorporating LB243 and as well as the other two bills before moving it to the floor in the form of LB630. [LB630 LB243]

SENATOR FULTON: Is LB243, I guess I could have read through this anyway, is LB243 in its entirety encompassed within AM874? Or have there been changes made? [LB630 LB243]

SENATOR LATHROP: There were changes made. And I made that point and I'll reiterate it because I may not have made it clear enough that when LB243 was initially offered by Senator Nantkes, it provided simply for a cost of living not unlike Senator Schilz cost of living in the Farm Credit bill that we moved to...that would appeared to have been a significant increase because it would have applied to a lot of people and had no ceiling, if you will, to the benefits and the increase in benefits over time. We elected to put a more modest proposal in there. It is the same concept, which is people on total disability benefits are going to realize those who are capped out will be allowed to go up each year until they get to two-thirds of their average weekly wage. [LB630 LB243]

SENATOR FULTON: What was the...I'm assuming, I'm trying to set this up. There was probably a for and against that there was some militating interests that would have caused the committee to reduce the scope of LB243. Could you... [LB630 LB243]

SENATOR LATHROP: We did. We did have some in particular I remember that day we had some trucking interests who had concerns about the cost under the bill as proposed

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by Senator Nantkes. [LB630]

SENATOR FULTON: Were the militating interests concerns met in AM...and I'm not saying necessarily this is how we dictate policy here, but it's helpful. [LB630]

SENATOR LATHROP: Yeah, sure. They haven't come back to me, but what do I suspect. I suspect that, you know, their first reaction is, well, it's an increase in benefit to labor so we don't like it. Okay. [LB630]

SENATOR FULTON: Okay. All right. Second point, and this is a question hopefully you might be able to yield some or shed some light on. I am assuming that cost of living adjustments as they relate to workers' compensation, I'm assuming there have been similar proposals brought to the Legislature in previous years. [LB630]

SENATOR LATHROP: I couldn't answer that. Not because I'm being evasive, I just wouldn't know. I don't think we saw one in the two years that I was there before being Chair, in other words in the Hundredth Session. Prior to that I couldn't tell you, Senator. [LB630]

SENATOR FULTON: Okay. Okay. All right, I'm going to search for that then. That would be instructive. Thank you, Senator Lathrop. We have a lot of new senators here. We have term limits in place. I think that if we were to move forward with the cost of living adjustment to workers' compensation, that seems to me that would be the type of fight over the course of several years that will have occurred some times. What we're talking about here is, oh, an extension of what exists by way of mandate in our statute that will be paid for by... [LB630]

PRESIDENT SHEEHY: One minute. [LB630]

SENATOR FULTON: ...business, small businesses, big businesses, all businesses, which will eventually find its way into, into the costs of goods and services that are purchased by people. So this seems to me to be an encompassing piece of policy. It would seem that it's probably been debated in the past. Being new, I don't know for certain. I sure would like to know. So I guess I'm throwing that out there. If anyone has any information on how this has been treated in the past, why there weren't cost of living adjustments when this, when workers' compensation was originally enacted, that would be informative. Okay, thank you, Mr. President. [LB630]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Senator Carlson, you're recognized. [LB630]

SENATOR CARLSON: Mr. President and members of the Legislature. This is interesting debate to listen to. Senator Lathrop I appreciate the history of workmen's

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comp. That's helpful. Senator Council you bring up an interesting point about this being required by law and that has some impact here. If Senator Nantkes would yield to a question, I'd like to ask her something. [LB630]

PRESIDENT SHEEHY: Senator Nantkes, would you yield to Senator Carlson? [LB630]

SENATOR NANTKES: Yes, of course. [LB630]

SENATOR CARLSON: Senator Nantkes, you brought up the figure of fifty some thousand. Would you explain that again? [LB630]

SENATOR NANTKES: Sure, Senator Carlson, and it's my understanding that the fiscal analysts generally don't create a new fiscal note until it's...a bill has cleared subsequent rounds of debate and amendments have been adopted, etcetera, etcetera. But it's my understanding that according to DAS, Department of Administrative Services who would be the main people working with Fiscal in relation to this issue, that under the committee AM874, they estimate that this public policy change would affect about 54 state employees in 2008 and that would have a cost impact of about 50...oh, I'm sorry, 54 employees and a cost impact of about \$58,000. So I think it's instructive not only for our overall General, General Funds outlook, but it's also illustrative of how really modest these costs would be to smaller employers in the private sector. [LB630]

SENATOR CARLSON: All right. Now, Senator Nantkes, if that...I've missed something here because I thought this isn't retroactive. [LB630]

SENATOR NANTKES: I believe that it's not, Senator Carlson. I believe that that is utilized as an estimation of what cost would be as we move forward. [LB630]

SENATOR CARLSON: So at the start in moving forward, the first year estimate is \$58,000. [LB630]

SENATOR NANTKES: And you'd have to get the exact specifics from DAS in terms of how they came to that calculation but it's my understanding that their impact estimates would be a cost to the state \$58,000. And I don't know if that's per year or if that's a growth factor determined therein. I know that as amended, it's about \$58,000. [LB630]

SENATOR CARLSON: Well, I appreciate that information because that's a pretty important question. If that's an estimate of the first year, then the second year we've got the cost of living onto that plus, probably, I don't know how many more. It would be interesting to know. But every year we're going to add some people. We're going to have some people drop off but that's a pretty interesting figure. I'd like to...thank you Senator Nantkes. I'd like to address another question to Senator Lathrop if he would yield. [LB630]

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PRESIDENT SHEEHY: Senator Lathrop, would you yield to Senator Carlson? [LB630]

SENATOR LATHROP: Yes, I will. [LB630]

SENATOR CARLSON: Now, when Senator Council brings up that work comp is required by law, that probably dictates that the employee couldn't pay a part of the premium if they wanted to. [LB630]

SENATOR LATHROP: It's against the law. [LB630]

SENATOR CARLSON: So they can't, can they? [LB630]

SENATOR LATHROP: They cannot be forced to. I mean, they're the ones that are providing the labor and so ultimately they're the ones that are helping to generate the income, so in a sense, they're helping to pay for it, right? But no, an employer cannot say, well, we're going to split the work comp premium 80/20, that would be against the law. [LB630]

SENATOR CARLSON: Okay. Thank you. And it makes some difference on what I was going to suggest here, wouldn't work. But I would say this, this is a difficult time for employers and employees and it's not a good time to increase employer costs by mandatory legislation and we're really not sure of what that cost is, and I think it's okay to ask. I think it's okay to delve into this and I ask you Senator Lathrop, if you knew of any other, if any other states have costs of living on their work comp because of the note that I got said this would set a precedent and be the first time ever. [LB630]

PRESIDENT SHEEHY: One minute. [LB630]

SENATOR CARLSON: I think that's important that we know for the next, next go around. And then I think a simple solution, but it won't work, would be that employees be offered the opportunity to pay for the additional risk because the work comp insurance companies can surely figure this out and know what it would be, but if they can't pay a portion of the premium that is not an option. But I think it would be a good option. So thank you, Senator Lathrop. Thank you, Mr. President. [LB630]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Members requesting to speak on the amendment to committee amendment, FA27, is Senator Wightman, followed by Senator Wallman, Senator Lautenbaugh, Senator Gay, Senator Janssen, and others. Senator Wightman, you're recognized. [LB630]

SENATOR WIGHTMAN: Thank you, Mr. President and members of the Legislature. I would like to discuss a little bit the history of workmen's compensation and would like to

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discuss that with Senator Lathrop, and I know he has already addressed that issue, if he would yield. [LB630]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to Senator Wightman? [LB630]

SENATOR LATHROP: I'd be happy to. [LB630]

SENATOR WIGHTMAN: Senator Lathrop, at the time workmen's compensation was conceived by our state Legislature and first instituted, is it a fact that it was almost impossible for an employee to recover against an employer on the theory of negligence or on any other theory as far as that goes? [LB630]

SENATOR LATHROP: Before the advent of work comp? [LB630]

SENATOR WIGHTMAN: Right. [LB630]

SENATOR LATHROP: Well, I don't know that that's true. I think that they could make a claim for negligence. Certainly, if we never enacted work comp, there would be an awful lot of employees an awful lot better off, and some that never would have made a recovery. [LB630]

SENATOR WIGHTMAN: My recollection of the history of workmen's comp, workers' comp, I keep...I'll try to straighten that out and not be gender specific here, but workers' compensation was that usually there were defenses, common law defenses that were available to the employer and that some of these were contributory negligence, assumption of risk, and it was very, very difficult, and in most instances the employee did not recover because the courts determined by law that the employee had assumed the risk in taking on that particular job or that he was almost always guilty of some, some contributory negligence, and it was very difficult to recover, if not almost impossible. Does that ring a bell, or not? [LB630]

SENATOR LATHROP: Well, I would certainly agree. Honestly, I don't know what the verdicts look like back then but I would certainly agree those defenses were available to the employer who was at...before the advent of work comp subject to third party claims. [LB630]

SENATOR WIGHTMAN: So I guess what I'm suggesting is that at the time at the advent of workers' comp it was as much for the benefit of the employee because he was frequently, if not most often, not able to recover for damages. Would you agree with that? [LB630]

SENATOR LATHROP: Well, was there some benefit. I certainly say that there were for

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those who were not going to make a recovery in a third party claim, they did benefit from work comp. The guy that lifts something and his back, you know, he herniates a disk and it's not anybody's fault, that guy certainly benefited. But the guy who had the guards taken off the machinery and lost a hand, he'd have a lot better third party claim probably even back then, than work comp would ever provide. [LB630]

SENATOR WIGHTMAN: Okay. It's my recollection in reading some of the history of that that they almost always looked for a third party to include in the suit so that if there was someone who had manufactured a piece of equipment other than the employer, that they looked to those persons because it was easy to recover against those and frequently if there was no third party, there was no recovery. [LB630]

SENATOR LATHROP: Yeah, I don't know that...those are product liability suits and I don't know that any of those are easy, but to the extent you can make a recovery against the manufacturer of a piece of equipment for an employee that's been hurt, then work comp gets repaid. [LB630]

SENATOR WIGHTMAN: Now, part of the reason that workers' compensation is somewhat conservative as far as their recovery schedule, is that it's not taxable, is that correct? [LB630]

SENATOR LATHROP: That's true. It's intended to be a replacement of income and if it were taxable, then the employer would be responsible for 100 percent of the average weekly wage instead of two-thirds. So because there's no tax due on that money, we made up for it by saying you're going to get two-thirds of your average weekly wage and the difference of representing the amount you otherwise would have paid on taxes. [LB630]

PRESIDENT SHEEHY: One minute. [LB630]

SENATOR WIGHTMAN: So to the best of your knowledge, is there any federal tax, state tax, or Social Security withholding due on that? [LB630]

SENATOR LATHROP: Not to my knowledge. [LB630]

SENATOR WIGHTMAN: And you indicated that sometimes it is possible that you can combine that with some Social Security benefits if there is a total disability. [LB630]

SENATOR LATHROP: If you are running total, yes. But the Social Security administration maintains an offset which means you don't get a lot of both. You have your Social Security pared back depending upon how much you're receiving in work comp. [LB630]

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SENATOR WIGHTMAN: Now, one of the questions, I know we're about out of time, but do you know of any situations where the voters have ever voted on cost of living increases across the board? [LB630]

SENATOR LATHROP: In work comp? [LB630]

SENATOR WIGHTMAN: Oh, in any area. [LB630]

SENATOR LATHROP: No, I think that's our job like we did with Senator Schilz bill the other day where we gave the farmers a cost of living adjustment for their...beginning farmer exception. [LB630]

PRESIDENT SHEEHY: Time, Senator. [LB630]

SENATOR WIGHTMAN: Thank you. [LB630]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Senator Wallman, you're recognized. [LB630]

SENATOR WALLMAN: Thank you, Mr. President. Two miles from my house a man got injured on the job. He worked here in Lincoln. He was on workmen's comp. And I don't know where they get this figure of 80 years old, because when you get to be 65 years old, he was off of workmen's comp and on Social Security. And whether that was right or wrong, but he tried everything, that's the way it worked. And he worked for a major manufacturing place right here in Lincoln. So in regards to that, ag producers, and I'm a farmer, do I like increasing anybody's expense? No. Who was hollering at this thing, the major trucking outfits who do have people get injured on the jobs, and you're not going to get rich on workmen's comp. You have other expenses, medical expenses. If you get hurt bad, workmen's comp is a drop in the bucket. And so with that, I'll give the...yield the rest of my time to Senator Council if she'd like it. [LB630]

PRESIDENT SHEEHY: Senator Council, you're being yielded 3:50. [LB630]

SENATOR COUNCIL: Yes, thank you, Senator Wallman. And I appreciate the questions that have been raised by Senator Wightman because historically, you are correct that the workers' compensation laws were designed to provide a benefit for both employers and employees. And we can look at the historical context, but I would submit to you there would not be a modern day employer who would risk in this day and age an employee litigating an injury as opposed to pursuing workers' compensation. And there's been a lot of discussion about Social Security disability and eligibility. Well, unlike workers' compensation, Senator Carlson, individuals do pay into the Social Security system. Employees do contribute to the Social Security system and their eligibility for a Social Security disability depends in large measure on how much they

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have contributed to the Social Security system. So when we talk about some additional benefit that a disabled worker may receive if he or she is eligible for Social Security disability, and that's supplemental security income or if they reach age 65, I can assure you there's an offset of any other income to their Social Security benefits. But the point here is that as a committee, the committee worked honestly and forthrightly in attempting to address all of the issues of the parties who had a stake in all of the measures that comprise LB630. The committee operated in good faith in that regard in developing a package that we believe met the needs of all concerned. It met the needs of employers. It met the needs of specific groups of employers. It met the needs of employees. I think that each of us, if we were injured on the job and we had been earning \$1,500 on average a week, we'd have extreme difficulty for the next 30 years living off of \$661 a week when we had been earning \$1,500 a week. One of the things about the bill as introduced... [LB630]

PRESIDENT SHEEHY: One minute. [LB630]

SENATOR COUNCIL: ...and amended by the committee, is that it doesn't say that the employee would get his or her average weekly earnings. They're still limited. The cap will still be 66 2/3 percent of their average weekly earning or what the statute provides on a weekly basis, whichever is greater. And in many instances it's not going to be greater, and as Senator Nantkes so correctly noted, that it's about 58 state employees who would potentially be impacted by this. And for this body to say that we would prefer to see those individuals rely upon public assistance because many of them at that rate would meet the poverty guidelines if they have a family, then you're just substituting one payment for the other. And in terms of... [LB630]

PRESIDENT SHEEHY: Time, Senator. [LB630]

SENATOR COUNCIL: ...workers' comp, it's employer pay. [LB630]

PRESIDENT SHEEHY: Thank you, Senator Council. Senator Lautenbaugh, you're recognized. [LB630]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I do rise in favor of FA27 and I do have some concerns regarding the bill as proposed. We've heard this described as an inconsequential premium adjustment, the COLA provision, but I'm not sure what inconsequential means. I don't...numerically, I don't know what that means. We've talked about the fiscal note and we're talking about 50-some employees from the state, but it seems like that would...and I believe it is the case that number will increase with additional injuries and we keep the old ones on there too. So it will be 58 one year and then it will be more, then it will be more, then it will be more. And once again we're just talking about the fiscal note to the state, in the fiscal note, of course. There is the actual cost to employers who still do employ the bulk

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of the employees in Nebraska. And I guess I have a real problem, and I usually don't even favor arguments like this but it's coming around to bite me on this one, I guess. If we're starting this limited COLA for the highest compensated worker's comp claimants, which is what this apparently does, it's not going to take a huge leap to say next year, well, why don't we do it for everyone. The ones who really need the money are the low compensated employees who are only getting two-thirds of their weekly wage and it's much smaller than the minimum, or then the maximum benefit, I should say. So why wouldn't we COLA them as well? I have been listening to the debate on this and I have to agree with some of the comments made by Senator Carlson and others that this just seems like the wrong time to be increasing costs to businesses. And make no mistake, this is increasing costs to business. It's just plain and simple. There's no other way around it. And the other provisions in the bill, we've talked about that there's a balance here and that everyone gets something and everybody loses a little something. For instance, the provision regarding lump sum settlements. I'm not sure how many lump sum settlements that actually is going to apply to as written, but having done this enough I know just as surely as I've...representing the defendant, the employer usually suffered through the approval process with the attorneys up in the Comp office, the plaintiff's attorneys suffer right along with me. So while this is probably a benefit to the extent some of them won't have to be submitted for approval, benefit for the employer and the carrier and that attorney, it's just as surely in my mind a benefit for the employee and his attorney. And I'm not sure as drafted, and there was probably a good reason for this, I don't sit on the Business and Labor Committee so I was not privy to the discussions. I understood the original proposal that was that if you're represented by counsel, lump sums don't have to be approved by the court. I don't mean Senator Council. That would be a great boon to her. What I meant was, if your represented by an attorney, you don't have to have your lump sum approved. And there are a lot of restrictions in this that make it much less applicable. And once again, there may have been a good reason for it, but this does not cover all lump sum settlements if you're represented by an attorney. And so I do rise in support of this floor amendment just because I do think it's the wrong time to start COLA in these benefits. I just don't think...once again, the state fiscal note isn't huge, but it is there, but the brunt of this is going to be borne by private enterprise and private employers and I just think it's the wrong time to do it. Thank you. [LB630]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Senator Gay, you're recognized. [LB630]

SENATOR GAY: Thank you, Mr. President. I just wanted to talk a little bit about the fiscal note and then I'm going to talk about the fiscal note that I have. I've talked to Senator Lathrop, and Senator Nantkes has pointed out as the revised fiscal note. However, when I go on the computer and I look at the fiscal note on LB243, which is what I'm basing this on, is it's all over the board. And I know that fiscal note deals with state, our state costs, and the state employees. But you got to look at what everyone

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else is going to have to pay too, and I'm a little bit concerned about that. I understand...trying to get a grip of what we're trying to do here. But when I read on...and I'm just going to read this in the fiscal note. It says in 2009 budget request for Department of Administrative Services, the funds analysis for the workers' comp fund shows workers' compensation payments is decreasing. The funds analysis shows 2009 estimated expenditures as \$15,360,825. And then in fiscal year 2010 decreasing to \$15,355,000 and 2011, \$15,344,000. It is also noted that the actual workers' compensation expenses have decreased from \$11.8 million in fiscal year 2006 to \$11.4 million in fiscal year 2008. When I look into there that...and I want to ask Senator Nantkes if she'd yield to a question. [LB630 LB243]

SENATOR NANTKES: Yes, of course. [LB630]

SENATOR GAY: Senator, when I look at that, so we have a declining amount of revenue and you brought this up and I want you to expand on that. Declining, however, from \$11.8 million to \$11.4 million over a couple...that's not declining that much. And I'm a little bit concerned with others that if we do this, now we're asking employers to pay more because the employees don't put into this, the way I understand it, so they're paying more. Do you think now, even though we have a little bit of a decline, is that, is this the time maybe to go and expand and ask employers to put in more to a fund? I know what you're trying to accomplish but you talked about some savings and explain that again. [LB630]

SENATOR NANTKES: Yeah, thank you Senator Gay. And I think this is an important point, colleagues, because we are all concerned about fiscal impacts to the state and fiscal impacts to private employers, particularly in the midst of difficult economic conditions, but probably at all times to be fair and honest in that regard. I think to be clear, it's important, colleagues, that you actually don't look, I mean, you can look at the fiscal note in regards to the original legislation, but that's not reflective of what's proposed in the committee amendment. As Senator Lathrop noted, they've made significant changes to make the bill much, much more modest in application and much, much more modest in terms of fiscal impacts, not only to the state but to private employers as well. For example, as I noted earlier, under the original legislation, the original fiscal note that you've been talking about, they estimated that there would be over 250 employees that might be impacted at that point in time. It's my understanding after communications with DAS that under the committee amendment that has shrunk significantly down to about 50, 54 employees. And that's because of the substantively law changes encompassed in the committee amendment. So I think that you can use that original fiscal note as a starting point, but then you come, you got to come way down there. And I think that the good news is, is that because these are such modest proposes as contained within the committee amendment, that you're not going to see a dramatic jump in terms of Nebraska's ranking and its conservative ranking for our overall workers' comp system. So I think that we can rest assured that Nebraska private

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business can continue to prosper with this very modest change that keeps the cost burden off of the Nebraska taxpayer. [LB630]

PRESIDENT SHEEHY: One minute. [LB630]

SENATOR GAY: Okay, thank you, Senator. And that's fine. I wanted you to explain that more, so that's fine. But I still wonder what...we're still looking at just the state's function. I'd like to see a number of what this does throughout the whole state because that's...frankly, I'm much more concerned about what we do by changing this for all the other employers, not just looking at our own pocketbook just here in the state. That would be, I think, fairly shortsighted of us. Another thing though too, I do want to know. There's employers...there's offered individual, you got disability programs that are out there. You can buy individual disability policies, group disability, and other things to help compensate. This is a safety net, not a...it's a...you know, it's not supposed to be an entitlement. It was supposed to be set as a safety net and then you could go help compensate yourself. So I'm a little bit concerned that we're going to step in and get that gap of what's already provided by insurance policies in the private market, so I'm listening to the debate and I guess the burden is still, this modest increase we talk about what that is to the rest of these employers around the state. [LB630]

PRESIDENT SHEEHY: Time, Senator. [LB630]

SENATOR GAY: Thank you, Mr. President. [LB630]

PRESIDENT SHEEHY: Thank you, Senator Gay. Members requesting to speak on the FA27 to AM874 is Senator Janssen, followed by Senator Lathrop, Senator Price, Senator Nantkes, Senator Fulton, and others. Senator Janssen, you're recognized. [LB630]

SENATOR JANSSEN: Thank you, Mr. President, members of the body. I just jotted down some different thoughts here as I've been listening to debate, and it's been very helpful. The one thing, Senator Wightman I think was on to something earlier. He had asked about the voters, had it ever been put to the voters a COLA adjustment. I don't think Senator Lathrop had a chance to answer that. I think he kind of said no, but there actually has been a time where the voters of Nebraska, the entire state, have turned down a COLA adjustment. I don't have the year in front of me, but it was recently for increasing the pay for state legislators and with a COLA adjustment every year. I'm not sure if that was a COLA or 2.5 percent what it was, but that was actually voted down by all the voters of Nebraska. I was listening to Senator Nantkes. She talked about 54 employees in 2008 at \$58,000. And as I was listening to that, I just kind of...I just almost could visualize a snowball effect because that would be projected at possibly \$120,000 or \$180,000 if you just double it the next year. And on the other side of that equation, you'd have \$58,000, well, that would be going up an average of 4 percent so you'd be

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doubling that plus 4 percent. And you keep going on and on and on with that, and you can see how that's going to roll and roll and roll, and that's not really covered by the insurance cost if you're self-insured. There are self-insured people out there. That's a bottom line hit. This is actually a tax increase to a city like Fremont that self-insures. If they get hit with this year over year over year, they have to pay this off, and that would be a tax increase to the people of Fremont because we are currently self-insured in Fremont. So you're kind of voting for a tax increase. And by the way, I am supporting FA27. I should have said that when I rose. I'd also like to point out that the employees do pay. It's been said several times on here employees do not pay. They do. It's just a little bit differently. I hire employees in Fremont, and when I hire them, I know that I have to pay workers' comp. So I adjust what their income will be based on what I'm going to have to pay. So it's not necessarily a match where I say, okay, I'm going to hire you plus this is your match. When I set that salary out, I know for that position about what I'm going to have to pay for that. If I pay out more and more claims than that, the hiring wage for the employees that are working goes down or less and is not increased by as much. So that's something else to keep in mind. Employers do pay. It's just in a roundabout way. And I do agree. I guess I agree with Senator Lathrop on that. The employees and their labor actually produces the money that pays for that. I think Nebraska, it was said that the Chamber of Commerce or whatever, and I just got an e-mail that said that they were third in how they rank. That's actually incorrect. We're actually 18th and we have slipped dramatically over the last four years. So while Nebraska is business friendly currently, we're moving in the wrong direction. And this COLA adjustment is not the right thing to do for business. This is bad for business and could raise your taxes. And with that, I'll yield the balance of my time to Senator Lautenbaugh. [LB630]

PRESIDENT SHEEHY: Senator Lautenbaugh, you are yielded 1:40. [LB630]

SENATOR LAUTENBAUGH: Thank you, Mr. President and thank you, Senator Janssen. I wonder if Senator Nantkes would yield to a question. [LB630]

PRESIDENT SHEEHY: Senator Nantkes, would you yield to a question from Senator Lautenbaugh? [LB630]

SENATOR NANTKES: Yes, of course. [LB630]

SENATOR LAUTENBAUGH: Thank you, Senator, and I apologize if I missed this earlier. Have there been any attempts to calculate what this would cost, not necessarily the state but business in general? [LB630]

SENATOR NANTKES: Not that I'm aware of. And I use the fiscal note, it's what we have available in terms of its impact on the state. And again, as an illustration, considering the fact that... [LB630]

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PRESIDENT SHEEHY: One minute. [LB630]

SENATOR NANTKES: ...the state is such a significant and large employer, I think we can easily extrapolate how that will, in fact, be modest, modest impacts on private business, large or small. [LB630]

SENATOR LAUTENBAUGH: Do you know what percentage of the work force is state employees? [LB630]

SENATOR NANTKES: What percentage of Nebraska's overall work force is state employees? That's the question? [LB630]

SENATOR LAUTENBAUGH: Yes. [LB630]

SENATOR NANTKES: I don't know. [LB630]

SENATOR LAUTENBAUGH: Is there a concern maybe that perhaps some of the Nebraska jobs aren't as high risk and high injury as, say, roofing or construction in general? [LB630]

SENATOR NANTKES: I'm not trying to be evasive, Senator Lautenbaugh, but I think that state employees and their job classifications run a gamut of different activities, responsibilities, and risk. [LB630]

SENATOR LAUTENBAUGH: But I think you'll concede looking around the building we're a very sedentary people, some of us more sedentary than others in my own case, but... [LB630]

SENATOR NANTKES: Maybe in the Legislature, but out in our state agencies and across the state that's probably not accurate. [LB630]

PRESIDENT SHEEHY: Time. [LB630]

SENATOR NANTKES: Thank you, Senator Lautenbaugh. [LB630]

PRESIDENT SHEEHY: Thank you, Senator. Senator Lathrop, you're recognized. [LB630]

SENATOR LATHROP: Thank you, Mr. President. I would like to talk about a couple of things. One is something that's been of interest to everyone, and that's what's this going to do to premiums? A great question. I asked the person who would know. She also happens to be the person putting the opposition together and she said the NCCI won't

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give us an answer to that. They're too busy. And I take that to mean that this is inconsequential and isn't a big enough deal to give us an answer. So while there is a way to get an answer to whether this will affect premiums, and if so by how much, they're not talking. They'd rather leave us in the dark. They'd rather leave us to speculate, rather leave us to talk about what the cost might be to a hypothetical employer. Let me suggest something to you. People that work in this state have one thing to offer an employer--that's their labor. That's all they have. They offer their labor, and they've only asked for one thing out of this Legislature so far this year. And you say, well, we can't increase the cost to employers. Let me tell you what we're doing to those people that work in the state of Nebraska and pay taxes. For the farming industry, we have LB9, Senator Wightman's exemption that we just passed this morning. I don't resent any of these, voted for most of them; LB56 that changed the Livestock Waste Management Act; LB98 changed the noxious weed program and riparian vegetation task force. These things are costing my people that work for a living taxes. They're paying them. And they haven't asked you guys for one thing in this body all year long but a modest increase. And all you're saying is, well, we don't know what it's going to cost. We can't do this. My God, we'd have to...business might take a hit. You know what? They've done okay in the body, and I don't resent this either. They've got an income tax credit. Well, we do have an income tax credit for long-term care insurance policies. That was LB159. LB164 changes provisions relating to tax incentive programs. We've changed the workers' comp provision settlement, which is in this bill. We've taken care of the insurance industry in Senator Lautenbaugh's bill. He didn't tell us what they're saving by avoiding the misclassifications. You know, we can. The problem is the only thing the labor does is pay taxes and work and provide the machinery for the employers in this state, and they don't ask for much and they don't get much in here and this is the one thing they're asking for. And it isn't a labor union vote. This shouldn't be management versus labor. It should be what's fair, what's fair for the people that work and the people that pay taxes. That's what this should be about. And it shouldn't just be about might there be a small increase in tax and in work comp premiums. By the way, they should be going down after the Business and Labor Committee two years ago and this Legislature two years ago passed LB588. We gave them a cost-saving measure. We passed Senator Lautenbaugh's bill on General File to avoid misclassification. That was a benefit to employers and to their insurers. So when we talk about might there be some small increase, well, the guy who could tell us ain't talking. So should we assume that there's going to be an increase? My hunch is there isn't, and that's why they're telling us they don't have any information. I would like you tonight, we probably won't take this to a vote yet today, maybe though, I'd like you tonight to think about the people that work for a living in your district... [LB630 LB9 LB56 LB98 LB159 LB164]

PRESIDENT SHEEHY: One minute. [LB630]

SENATOR LATHROP: ...because you knock their doors and you told them you were with them. And you told them I care about the people that work hard for a living, the

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people that dig ditches, the guy who does the plumbing, and the guy who's up in the iron making a living as a steel worker. Those are the people and true, true we don't ask them to pay part of the premium, but we also told them they can't make a claim when their employer is careless and that's the reason they've been hurt. This is about fairness. But you should understand these things that we're doing for the ag industry and these things that we're doing for the business community are being paid for by the people that toil in these jobs. And this increase is modest. Let me talk about the, just for a moment, the fiscal note as it relates to the state employees. There are 54 employees affected--okay--54 employees who are on running total disability who have yet to reach the maximum. [LB630]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Lathrop. Senator Price, you are recognized. [LB630]

SENATOR PRICE: Thank you, Mr. President and members of the body. To expound upon what Senator Janssen has talked about where we have fallen from 3rd to 18th, what that's relative we were in the top 10 percent and now we're in about the 40th percent of highest. The other way you could look at that, you could invert that, say 94 percent used to be more expensive than we were and now only 64 percent so that is an appreciable drop that we see there. Also this was all done according to the Oregon workers' comp study, and also to note is that we are the 33rd for the most expensive now. We fell from 38 to 33. I know we're falling up. We have to invert that we fell to number 33 where number 1 is, you know, the most expensive. So we moved up five notches already being more expensive. I'd also like to call out that in the testimony I heard and perhaps later on Senator Lathrop or Senator Nantkes will be able to clarify for me, is that this was not going to be a retroactive action. If it's not a retroactive action and we have 54 people who would be eligible, I'm perhaps missing the boat on this, I don't deny that. There's a lot of things going on. But I don't understand how 54, these 54 individuals that we can build this projection on if it's not retroactive. So that would be an opportunity...there will be an opportunity time, I'm sure, on the mike or off the mike to inform me how it is not retroactive and not picking up people currently receiving or eligible under all the guidelines laid out in LB630 and AM874. And having said that, Mr. President, I'd like to yield the balance of my time to Senator Lautenbaugh if he would like it. [LB630]

PRESIDENT SHEEHY: Senator Lautenbaugh, you are yielded 2:45. [LB630]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. This debate is becoming a little confusing based upon some of the floor comments, and I do want to clarify some things or at least respond to some things that I've heard. We just heard this should not be about management versus labor, management versus workers. And then we just heard a whole litany of things that we're doing for management and employers and farmers but supposedly not for the workers. Let me point out that that is

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not how the economy works. When we do something that keeps down the comp premiums for some guy running a lawn care service, the employees benefit from that too. We have a competitive labor market. They get higher wages. When my misclassification bill advanced, making it a crime to intentionally defraud or mislead the insurance company so you could underbid people, not only do the insurance companies benefit, but labor benefits because there was unfair competition going on. And the employers that were paying the fair premium were getting underbid by the ones that were paying an unfair, distorted premium fraudulently. And if that benefits the employer, that just as surely benefits the employee. I can't stress enough if we're going to make this divide...we're not supposed to make this divide between business and labor but apparently we are on this issue. My bill was not a business bill nor was it a labor bill. It just had the benefit of being, I think, the right thing to do for both sides, if you will. And we've had plenty of talk this year about class division I think. We had a lecture on Wal-Mart at one point. We had someone point out today that these employers aren't even qualified or required to maintain health insurance. Some do, some don't. We've come up with a new term--responsible employers. I didn't come up with it... [LB630]

PRESIDENT SHEEHY: One minute. [LB630]

SENATOR LAUTENBAUGH: ...but it's the ones that provide health insurance. That's how we're supposed to refer to them apparently is responsible employers. Apparently we're going to sniff disapprovingly and call the other ones irresponsible employers regardless of their business, regardless of what the rest of their industry is like and who they're competing with, regardless of the fact that I believe it to be the case that the mom and pops that Wal-Mart replaced probably didn't provide health insurance either. But if we're going to make this about business versus labor, employees versus management, then let's go down that road because it is not fair to say when we pass a bill that benefits business that the workers don't have any stake in it, especially in a competitive labor market like we have in Nebraska. And we are drawing that line artificially here. It is fair to ask who gets the...who bears the cost of these increased premiums, whatever they are, because it gets passed on to the employees, I can tell you that. Or maybe one won't get hired because of the increased cost. [LB630]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Lautenbaugh. Senator Nantkes, you're recognized. [LB630]

SENATOR NANTKES: Thank you, Mr. President. I'd like to call the question, please. [LB630]

PRESIDENT SHEEHY: There has been a call for the question. Do I see five hands? I do. The question before the body is, shall debate cease? All those in favor vote yea; opposed, nay. Senator Nantkes, you're recognized. [LB630]

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SENATOR NANTKES: Mr. President, I'd like a call of the house, please. [LB630]

PRESIDENT SHEEHY: There has been a request for the call of the house. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB630]

CLERK: 34 ayes, 0 nays to place the house under call. [LB630]

PRESIDENT SHEEHY: The house is placed under call. All unexcused senators please report to the Legislative Chamber. All unauthorized personnel please step from the floor. The house is under call. Senators, please record your presence. Senator Nantkes, all members are present and accounted for. You have an option of call-in or roll call. [LB630]

SENATOR NANTKES: Roll call is fine, please. [LB630]

PRESIDENT SHEEHY: Please continue with roll call, Mr. Clerk. Again, the question is on the motion to cease debate. [LB630]

CLERK: (Roll call vote taken, Legislative Journal page 1232.) 16 ayes, 27 nays, Mr. President. [LB630]

PRESIDENT SHEEHY: The motion to cease debate is not adopted. The call is raised. Mr. Clerk, you have items for the record. [LB630]

CLERK: I do, Mr. President. Your Committee on Retirement Systems chaired by Senator Pankonin reports LB187 to General File with committee amendments attached. (Legislative Journal pages 1233-1238.) [LB187]

And, Mr. President, I have a priority motion. Senator Flood would move to recess the or adjourn the body, excuse me, until 9:00 tomorrow morning. []

PRESIDENT SHEEHY: You have heard the motion to adjourn until Wednesday, April 29, at 9:00 a.m. All those in favor say aye. Opposed nay. We are adjourned. []