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Floor Debate
January 27, 2011

[LB12 LB23 LB74 LB75 LB76 LB81 LB85 LB134 LB146 LB157 LB157A LB264 LB294
LB326 LB367 LB469 LB492 LB508 LB521 LB575 LB589 LB592 LR40CA LR61 LR62]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the sixteenth day of the One Hundred Second Legislature, First Session. Our chaplain for today is Senator Avery. Please rise.

SENATOR AVERY: (Prayer offered.)

SENATOR GLOOR: Thank you, Senator Avery. I call to order the sixteenth day of the One Hundred Second Legislature, First Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

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

SENATOR GLOOR: Thank you, Mr. Clerk. Are there any corrections for the Journal?

CLERK: I have no corrections, Mr. President.

SENATOR GLOOR: Are there any messages, reports, or announcements, Mr. Clerk?

CLERK: I do, Mr. President. Your Committee on Banking, Commerce and Insurance, chaired by Senator Pahls, reports LB23 to General File, LB74 to General File, LB75 to General File, and LB76 to General File with amendments; those reports signed by Senator Pahls. The Executive Board, chaired by Senator Wightman, reports LB264 to General File and LB326 to General File with amendments; those signed by Senator Wightman. The Judiciary Committee, chaired by Senator Ashford, reports LB12 to General File and LB85 to General File; those signed by Senator Ashford. In addition, I have communications from the Governor making certain appointments. That will be referred to the Executive Board, Mr. President, for referral to standing committee for confirmation hearing. Senator Wightman would offer LR61, that resolution will be laid over and considered another time. Notice of hearings from the Agriculture...notice of cancellation of hearing from the Agriculture Committee, and from the Government, Military and Veterans Affairs Committee. I also have a Reference report, I'm sorry, not a Reference report, it's a confirmation report from the Government Committee; that signed by Senator Avery, as Chair. And finally, Mr. President, this morning, a motion: Senator Carlson would like to withdraw LB592. That will be laid over. That's all that I have. (Legislative Journal pages 381-387.) [LB23 LB74 LB75 LB76 LB264 LB326 LB12 LB85 LR61 LB592]

SENATOR GLOOR: Members, we are having a technical issue. We'll be at ease but for

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a brief time, so please don't leave the Chamber if you can help it. Thank you. (Doctor of the day introduced.) Mr. Clerk, we will proceed to confirmation reports.

CLERK: Mr. President, the first confirmation report I have is by the Retirement Systems Committee involving the appointment of John Maginn to the Nebraska Investment Council. (Legislative Journal page 355.)

SENATOR GLOOR: Senator Nordquist, you're recognized to open on your confirmation report.

SENATOR NORDQUIST: Thank you, Mr. President and members. The Retirement Systems Committee had a confirmation hearing for John Maginn on January 24. He is being reappointed by the Governor to serve on the Nebraska Investment Council, which manages the investments of over 30 different entities of the state, including our pension funds and endowment funds. Mr. Maginn graduated from Creighton with a degree in finance and business administration, and received his master's from the University of Minnesota in finance. He retired from Mutual of Omaha in 2000, where he was the executive vice president, chief investment officer, and treasurer. He currently is the president of Maginn Associates, an investment consulting firm, and an adjunct faculty member in the College of Business Administration at Creighton University. He will continue to bring his real-world business experience and investment experience to the Nebraska Investment Council and is well qualified to make decisions regarding the investments of public funds. The Retirement Committee unanimously voted to move John Maginn's appointment to the Legislature for confirmation, and I urge your support in confirming this appointment. Thank you.

SENATOR GLOOR: Is there any discussion on the report? Senator Nordquist, you're recognized to close on the report. Senator Nordquist waives. The question is the adoption of the report offered by the Nebraska Retirement Systems Committee. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal pages 387-388.) 39 ayes, 0 nays, Mr. President, on the adoption of the confirmation report.

SENATOR GLOOR: The report is adopted.

CLERK: Mr. President, a second report from the Retirement Systems Committee involves two appointments to the Public Employees Retirement Board. (Legislative Journal page 355.)

SENATOR GLOOR: Senator Nordquist, you're recognized to open on your confirmation report.

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SENATOR NORDQUIST: Thank you again, Mr. President. The Nebraska Retirement Systems Committee held a confirmation hearing for these two appointments to the retirement or the Public Employees Retirement Board on January 24. The appointments are reappointments by the Governor to serve on the PERB. The first is Judge Randall Rehmeier and the second is Richard Wassinger. Judge Rehmeier received his B.A. in business administration from UNL. In 1972 he earned his juris doctorate. He served as the Otoe County Attorney for 15 years and was appointed county court judge in 1987. He has served as the chair of the district court judges retirement committee for four years and brings his experience and dedication to the board, as does our second appointment, which is Richard Wassinger. He received his undergraduate degree in 1968 from the University of Nebraska and his master's degree from UNL in 1973. He has served as the Cass County Treasurer for the past 27 years and is currently the president of the County Treasurers Association. He was originally appointed to the board in 2007 and this will be his second term. He is the representative of counties on the Public Employees Retirement Board. Again, both of these were unanimous votes by the Retirement Committee, and I urge your support for the confirmation.

SENATOR GLOOR: Thank you, Senator Nordquist. Is there any discussion on Senator Nordquist's report? Seeing none, Senator Nordquist, you're recognized to close on your report. Senator Nordquist, you're recognized. Senator Nordquist waives. The question is the adoption of the report offered by the Nebraska Retirement Systems Committee. All those in favor please vote aye; all those opposed please vote nay. Have you all voted? Record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal page 388.) 37 ayes, 0 nays, Mr. President, on the adoption of the report as offered by the Retirement Systems Committee.

SENATOR GLOOR: The report is adopted. Mr. Clerk.

CLERK: Mr. President, the Health and Human Services Committee, chaired by Senator Campbell, reports on two appointments to the Nebraska Child Abuse Prevention Fund Board. (Legislative Journal page 364.)

SENATOR GLOOR: Senator Campbell, you are recognized.

SENATOR CAMPBELL: Thank you, Mr. President, and good morning, colleagues. The Health and Human Services Committee is pleased to bring two nominees for the Child Abuse Prevention Fund Board. We would ask your favorable vote on Reverend Dr. Rebecca Brown and the appointment of Brandon Verzal to the Child Abuse Prevention Fund. The Health and Human Services Committee held a public hearing on Friday, January 21. The appointees appeared in person and answered questions from the committee. The first nominee is Reverend Dr. Rebecca Brown, is a reappointment to the board. She is pastor of East Lincoln Christian Church here in Lincoln, and Reverend

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Dr. Brown also serves as a board member of the Child Saving Institute of Omaha. She has volunteered as a counselor at a home for unwed mothers and a representative on the board against domestic violence. She is a native of Nebraska, a graduate of Benson High School in Omaha, and she has traveled extensively internationally and worked in Kenya and Zaire. Her education includes a master of divinity and a doctor of ministry from Lexington Theological Seminary. Reverend Dr. Brown is a mother of three sons: Adam, Daniel, and Benjamin. Our second appointee is Brandon Verzal; if confirmed, will be a new appointment to the Child Abuse Prevention Fund Board. Tragically, Mr. Verzal has intimate knowledge of issues suffered by families as a result of child abuse, because his daughter, Alexis, is the victim of shaken baby syndrome, afflicted at the hands of a day-care provider. The family moved back to Nebraska from Texas to facilitate Alexis' rehabilitation at Madonna Rehabilitation Hospital. Mr. Verzal is a video producer. He and his wife Tiffany produced a video about his daughter Alexis' rehabilitation that facilitated the raising of funds, including \$1.2 million from Dan Whitney, better known as Larry the Cable Guy, to construct a pediatric rehabilitation hospital at Madonna. Mr. Verzal has helped mentor dozens of parents whose children are receiving treatment at Madonna, many of them victims of child abuse and neglect. I ask for your confirmation of the reappointment of Dr. Brown and the appointment of Mr. Verzal to the Child Abuse Prevention Fund Board. Thank you, Mr. President.

SENATOR GLOOR: Thank you, Senator Campbell. Are there any senators wishing to be recognized on this report? Seeing none, Senator Campbell, you're recognized to close on the report. Senator Campbell waives. The question is the adoption of the report offered by the Health and Human Services Committee. All those members in favor vote aye; all those members opposed vote nay. Have you all voted? Record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal pages 388-389.) 39 ayes, 0 nays, Mr. President, on the adoption of the confirmation report as offered by Health and Human Services.

SENATOR GLOOR: The report is adopted. Mr. Clerk.

CLERK: Mr. President, the next item of business, Senator Mello would move to withdraw LB492. [LB492]

SENATOR GLOOR: Chair recognizes Senator Mello. [LB492]

SENATOR MELLO: Mr. President, members of the Legislature, late last year it came to my attention that based on the Nebraska Energy Office's Web site the agency was significantly behind in the appropriation of more than \$30 million they received through the American Recovery and Reinvestment Act. A significant portion of these funds had been appropriated to the Energy Office's Dollar and Energy Savings Loan Program, and it appeared at the time that less than 12.5 percent of the funds allocated to the program

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had been spent. Given that these stimulus funds had to be spent by March 2012 or they would have to be returned to the federal government, I had a legislative bill, LB492, drafted as a vehicle for the Appropriations Committee to potentially reappropriate these funds so that they could benefit Nebraskans. I also contacted the Energy Office to request an update of the status of all ARRA funds that passed through their agency. Unfortunately, I did not receive a response from the Energy Office addressing my concern until earlier this week. Based on the response that I received from the Nebraska Energy Office, it appears that the information on their Web site specific to these stimulus funds had not been updated since last August and the funds allocated to the Dollar and Energy Savings Loan Program are on track to be spent prior to the deadlines under ARRA. This new information eliminates the need for LB492, but I am still concerned about how little information is currently unavailable to many Nebraskans about the more than \$1.7 billion in federal funds received by our state under the American Recovery and Reinvestment Act. The delayed update of the Energy Office's Web site is by no means an anomaly. In fact, the Recovery.Nebraska.gov Web site has not seen a monthly update since this last October report that was posted on December 6. I have been in touch with Senator Heidemann about this issue and plan to continue to work with the Appropriations Committee to address many concerns as we develop budget recommendations. Thank you, and I'd appreciate your support on the motion to withdraw LB492. [LB492]

SENATOR GLOOR: Thank you, Senator Mello. Are there senators wishing to be recognized on this topic? Senator Lautenbaugh, the Chair recognizes you. [LB492]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. Let me state at the outset I have no objection to Senator Mello withdrawing this bill, but as this does deal with other branches of government, I thought this would be a good opportunity to raise an issue. I did not do this as a point of personal privilege, although it arguably could have been, but I'll stitch it in here because it seems to fit in a terribly expansive way. And let me say at the outset that this is not a sad story, so it will seem to be going in one direction but it will go in another direction. I can promise you that. So around the end of the year last year, at one point suddenly I couldn't speak, and some of you were thinking, wow, we longed for that day to come and it finally came and we weren't there to see it. The problem was I couldn't breathe either. And long story short, I had to seek some medical care and it turned out I had blood clots in my lungs. In diagnosing that then there was found to be some sort of a mass in one of my lungs and it was scary, understandably scary. And for a while you stop and think about what's important and the choices you made and your family and all sorts of things like that, and then you start to think about the more trivial things as time goes on. And one of the thoughts that occurred to me was, if I have lung cancer I will never hear the end of it. (Laughter) And then in a little bit of gallows humor, I thought, well, I guess I probably will, statistically speaking, hear the end of it before most of you are done talking about it. But that didn't happen. I did not have lung cancer and the blood clots...working

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diagnosis is that, after lots of consideration and study, you're kind of fat, was the diagnosis. (Laughter) It's an amazing age we live in where medical science can ultimately determine that you're overweight, so there we go. Why am I bringing this up today and what does this have to do with Senator Mello's bill? Well, it has very little to do with Senator Mello's motion, I should say, but in talking to the doctor, of course when he first revealed the presence of the mass he said, well, what risk factors do you have? And I told him. I do smoke a couple of cigars a week; I don't inhale them, but I do. And he said, that really doesn't count as a risk factor. And this dovetailed with something I had seen before in consulting the American Cancer Society's Web site where they say the risk of less than daily cigar use is not known and it's not not known because they failed to look. Believe me, they've looked. It's not known because they cannot find it. Now I'm not going to stand here and say that cigar smoking is the smartest thing anyone could ever do, but lots of things we do are not the smartest things that we could do and yet we continue to do them and that's just part of being who we are. But there was a ruling yesterday from a district court judge here in Lancaster County that all of the exemptions to the smoking ban, with the exception of research, are unconstitutional as special legislation. That means the hotel room exception, the smoke shop exception, both of which were in the original ban, are unconstitutional according to this judge as special legislation, the cigar bar bill as well, special legislation. Why am I bringing this up today? Because the ruling is important. It is also painfully incorrect, but it is important for all of us because if these items constitute special legislation then our jobs are going to get a lot easier because likely all of our sales tax exemptions would be special legislation. I knew Senator Pahls's ears would prick up and they have. [LB492]

SENATOR GLOOR: One minute, Senator. [LB492]

SENATOR LAUTENBAUGH: Thank you. This is important and this will be appealed and this should be appealed because we have the right and we have the prerogative to make certain distinctions, certain exemptions. That's what we do every day in everything we pass, and that's what we should do because there's a reason why we do the things we do. And regardless of how you felt about this bill, it passed. Regardless of how you felt about the smoking ban, it passed. And we said why we did it and we were clear and that's our prerogative. This appeal is important. It will be fought and it will be won. But it is important to how we do things that we understand this was another branch of government, not with malice, but striking at the core of what we do and what we do every day. And those rights have to be vindicated and defended, and I believe the Attorney General's Office will do that, and they have to because it is that important. And very often here we deal with trivial things that appear to be trivial on the surface but it's important when we act and it's important when someone tells us we acted wrongly, because we have to defend our prerogatives and we will in this case as well. Thank you, Senator. [LB492]

SENATOR GLOOR: Thank you, Senator Lautenbaugh. Seeing no other senators

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wishing to be recognized, Senator Mello. Senator Mello waives. The motion before the body is, shall LB492 be withdrawn? All those in favor vote aye; all those opposed, nay. Have you all voted? Record, Mr. Clerk. [LB492]

CLERK: 39 ayes, 0 nays, Mr. President, on the adoption of the motion to withdraw LB492. [LB492]

SENATOR GLOOR: The bill is withdrawn. Items for the record? [LB492]

CLERK: Mr. President, thank you. I have a series of hearing notices from the Appropriations Committee, Revenue, Judiciary Committees, all signed by their respective Chairs. Senator Larson would offer LR62; that will be laid over. That's all that I had, Mr. President. Thank you. (Legislative Journal pages 389-390.) [LR62]

SENATOR GLOOR: Thank you, Mr. Clerk. Mr. Clerk, we'll proceed to General File, LB157. [LB157]

CLERK: Mr. President, LB157 was a bill originally introduced by Senator Coash. (Read title.) It was discussed yesterday, Mr. President, at which time Senator Coash offered AM106. That amendment is pending. I do have, Mr. President,...and an amendment to that was adopted by Senator Flood, specifically AM107. I do have other amendments pending at this time to AM106, Mr. President. (Legislative Journal page 371.) [LB157]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Coash, you're recognized to refresh our memories on LB157. [LB157]

SENATOR COASH: Thank you, Mr. President. Thank you, members. We spent a lot of time on this yesterday so I don't want to belabor anything. There's nothing that has changed since our discussion yesterday. But this is the legislative reform that was recommended by a task force put together by the Chief to improve our information, oversight, and responsibilities with regard to guardians and conservators. AM106 replaces the bill. We have two amendments pending. One is Senator Flood's, one is a technical amendment, and I hope we have a short discussion on those two amendments and move this along to Select File. Thank you, Mr. President. [LB157]

SENATOR GLOOR: Thank you, Senator Coash. Senator Flood, you are recognized to open on your amendment. (AM112, Legislative Journal page 378.) [LB157]

SPEAKER FLOOD: Good morning, members, colleagues. This is AM112 and this is, of all the amendments I've got, this is the one that I care the most about, because in our effort to make sure that we're protecting wards, protected persons under LB157, I think we still have to recognize that the whole estate planning process goes forward, people that understand what they're signing in the presence of two witnesses execute a trust, a

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last will and testament. In this case it's a power of attorney. And so the issue is, who do we require to have bond? The bill as written, especially this green copy, and as amended by AM106 says if you have more than \$10,000 in assets, more than likely you're going to have a bond unless the court decides you shouldn't. What my bill says, that if you have executed a valid, written power of attorney and in that power of attorney you have nominated, specifically nominated, somebody to be your guardian or conservator, should the time come, and you have specifically said that no bond should be required, the court, in my opinion, assuming it's a valid power of attorney, should not require a bond. Those things are expensive. They are burdensome. They're necessary, I think, under Senator Coash's premise of protecting folks that fly blind without this kind of estate planning. But think about it. If I'm going to pick my guardian or conservator and I'm a healthy, 36-year-old person, and I pick my wife and then Senator Harms, and I say no bond, I've picked two people that I trust and I've said I want either her or him, if she dies before me, to do this work, or is incapacitated, and I don't want them to have to do a bond. We should make that the law of the land. And so for a lot of these folks that go through guardianships/conservatorships, they have a power of attorney that specifically nominates somebody, so that is very important. The other thing that my amendment says is that a court shall consider who you chose as your personal representative in terms of deciding whether or not to waive bond. Say I don't do a power of attorney but after my wife I pick Senator Dubas to be my personal representative, the court should look at that and say, well, you know, Senator Dubas worked with Mike for seven years and she would be a good choice. You know, there's nothing in her background that would suggest that there's a problem so we'd consider waiving the bond if Senator Dubas did it after...if my wife died before me. That is, I think, permissible. I don't think the intent of what Senator Coash wants. I also say in here if you're a trust company or a bank and you've been appointed as a guardian/conservator, you shouldn't have to pay the bond, because you're audited, you're licensed, you're checked on by the feds and by the state. A lot of times people don't realize this but in small towns especially, and admittedly my dad for 30-plus years was a trust officer and a trust officer in a town like Norfolk, the courthouse will call and say listen, Roger needs some help and he doesn't have any family, would you be willing to take the appointment as conservator and guardian? And the bank in Madison or Norfolk will call up and say, yeah, we'll do it. And so when Roger gets somebody appointed, it's not Dan Flood. It's Elkhorn Valley Bank and Trust or Bank of Madison or Frontier Bank or whatever the bank is in your small town. If you're a bank doing business and you're licensed and you're audited and you're checked on, you shouldn't have to or you're a trust company, there's one just down the street from the Capitol, First Nebraska Trust, if you're a trust company you shouldn't have to get a bond and that's what my bill...that's what my amendment says. Three changes: If you nominate somebody and you say no bond, no bond; if you have it in your last will and testament, that should be considered by the court, it's not may consider, it's shall consider; and the third is if you're a bank or trust company you shouldn't have to get a bond because you're already licensed and insured and bonded anyway. So those are the issues and I hope that you find it in your heart to vote for

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AM112. Thank you. [LB157]

SENATOR GLOOR: Thank you, Senator Flood. Are there senators wishing to be heard on this issue? Chair recognizes Senator Coash. [LB157]

SENATOR COASH: Thank you, Mr. President. Thank you, members. I stand briefly to let the members know that I do support AM112 for the reasons that Senator Flood outlined. This makes this bill better and I urge your support to move this forward. Thank you, Mr. President. [LB157]

SENATOR GLOOR: Thank you, Senator Coash. Senator Haar, you are recognized. [LB157]

SENATOR HAAR: Mr. President, members of the body, I've been trying to listen to all this testimony and there have been moments I wished I was a lawyer and then I come back to reality. (Laugh) Anyway, I'm glad we do have the lawyers in the group who are looking at this with very careful eyes. I appreciate that. So is my understanding correct then, and I guess I would direct this to Senator Coash if he's willing to, that for example in a family situation that then it will be important to put into the will or into some kind of statement that the daughters, for example, like in my family, the daughters would not be required to be bonded. Is that correct? [LB157]

SENATOR GLOOR: Senator Coash. [LB157]

SENATOR COASH: Yes, Senator Haar, with AM112 a properly executed will, will not require the...in your example, your daughters to acquire a bond to become your conservator. [LB157]

SENATOR HAAR: Uh-huh. When you say a properly executed will, does it need to say in the will that there doesn't need to be a bond then or not? [LB157]

SENATOR COASH: No. [LB157]

SENATOR HAAR: Okay. [LB157]

SENATOR COASH: Just needs to have a will that says...that names them as...you outline the powers that you want to give to them and if you've outlined those powers then it doesn't require, automatically, through AM112, doesn't require a bond. [LB157]

SENATOR HAAR: Okay. Thank you. I'm also impressed by your legal ability to speak in legalese around this issue, so... [LB157]

SENATOR COASH: Well, that's what happens when you sit on Judiciary. [LB157]

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SENATOR GLOOR: Thank you, Senator Haar. Senator Wightman, you are recognized. [LB157]

SENATOR WIGHTMAN: Thank you, Mr. President. Members of the body, I also rise in support of AM112. Senator Flood is exactly right when he says that this would require an expenditure of funds that is unnecessary, it seems to me, in the specific instances that he sets forth in AM112. And we do have to be careful of expending these funds that at this point the person alleged to be incapacitated has probably no ability to speak about. But we do consider the statements that he's made, the course of action that he's taken, whether he's given this person a power of attorney not requiring a bond, whether he had a will in which no bond is provided for or specifically provides that there not be a bond. I think all of these are matters entitled to be taken into account in whether or not the ward's funds should be expended for these. So I do support AM112 and would urge its passage. Thank you. [LB157]

SENATOR GLOOR: Thank you, Senator Wightman. Seeing no further senators wishing to be recognized, Senator Flood, you're recognized to close on your amendment. Senator Flood waives. The question is, before the body, shall the amendment to AM106 be adopted? All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB157]

CLERK: 41 ayes, 0 nays, Mr. President, on the adoption of Senator Flood's amendment to Senator Coash's amendment. [LB157]

SENATOR GLOOR: The amendment is adopted. [LB157]

CLERK: Mr. President, Senator Coash would now move to amend AM106 with AM140. (Legislative Journal pages 391-395.) [LB157]

SENATOR GLOOR: Senator Coash, you are recognized to open on your amendment. [LB157]

SENATOR COASH: Thank you, Mr. President. Thank you, members. AM140 is a technical amendment. Given the changes that we made yesterday, we needed to harmonize some language and make some references in other sections. So there are two parts to this. One is with regard to the interested person. It's defined in two different sections of the probate code and the amendments alert the reader that it is referenced in another section. The second change has to do with the uniform part of the bill, which was LB85. We had to change some of the ages from 18 to 19, otherwise there were going to be conflicts with existing probate code. We've consulted, Senator Karpisek and I have consulted with the uniform code folks and they agree this is an appropriate amendment. It's technical in nature. I would urge your support of AM140. Thank you,

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Mr. President. [LB157 LB85]

SENATOR GLOOR: We now move to discussion. Are there senators wishing to be recognized? Seeing none, Senator Coash, you're recognized to close on your amendment. Senator Coash waives. The question is, shall the amendment to AM106 be adopted? All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB157]

ASSISTANT CLERK: 41 ayes, 0 nays on the adoption of the amendment, Mr. President. [LB157]

SENATOR GLOOR: The amendment is adopted. [LB157]

ASSISTANT CLERK: Mr. President, we're back to the Coash amendment, AM106. [LB157]

SENATOR GLOOR: Senator Coash, you're recognized. [LB157]

SENATOR COASH: Thank you, Mr. President, members of the body. I appreciate my colleagues' patience as we work through these issues. I think it's been a helpful debate over the last day and a half. I look forward to working with Senator Flood and Senator Nelson and Senator Wightman on some technical changes that we'll bring back on Select File. But for now, I would urge the body's support of AM106 and the underlying bill. Thank you, Mr. President. [LB157]

SENATOR GLOOR: Thank you, Senator Coash. The question before the body is, shall the amendment to LB157 be adopted? All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB157]

CLERK: 42 ayes, 0 nays, Mr. President, on the adoption of Senator Coash's amendment. [LB157]

SENATOR GLOOR: The amendment is adopted. [LB157]

CLERK: I have nothing further on the bill at this time, Mr. President. [LB157]

SENATOR GLOOR: The floor is open for discussion on the advancement of LB157 to E&R Initial. Seeing no senators wishing to be recognized, Senator Coash, you're recognized to close on the advancement of LB157. [LB157]

SENATOR COASH: Thank you, Mr. President. Thank you, colleagues. AM106 turned into the bill, so I would encourage your pushing the green light one more time to move this to E&R Initial. Thank you, Mr. President. [LB157]

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SENATOR GLOOR: Thank you, Senator Coash. The question is the advancement of LB157 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB157]

CLERK: 41 ayes, 0 nays, Mr. President, on the advancement of LB157. [LB157]

SENATOR GLOOR: The bill advances. Mr. Clerk, we'll proceed to General File, LB157A. [LB157 LB157A]

CLERK: LB157A is a bill by Senator Coash. (Read title.) [LB157A]

SENATOR GLOOR: Senator Coash, you're recognized to open on LB157A. [LB157A]

SENATOR COASH: Thank you, Mr. President. Thank you, members. LB157A is going to change because of all the amendments that we just adopted. There are two expenditures here affecting cash funds, one to the Supreme Court and the other to the Nebraska State Patrol. The amendments that we just adopted should take care of those. The original bill had a database built into it that the Supreme Court Administrator would have to build and maintain. That was amended out so that will change. The State Patrol also had a cash fund expenditure due to some...the background checks. However, we amended that so that it would not be mandated that it go through the State Patrol. So with those two changes, we expect this fiscal note to change and we will have a revised fiscal note on Select File reflecting that should we advance LB157A. Thank you, Mr. President. [LB157A]

SENATOR GLOOR: Thank you, Senator Coash. Are there any members who wish to speak? Seeing none, Senator Coash, you're recognized to close on the advancement of LB157A. Senator Coash waives. The question is the advancement of LB157A to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB157A]

CLERK: 38 ayes, 0 nays, Mr. President, on the advancement of LB157A. [LB157A]

SENATOR GLOOR: The bill advances. Mr. Clerk, we will proceed to General File, LB134. [LB157A LB134]

CLERK: LB134 is a bill by Senator Cornett. (Read title.) Bill was introduced on January 6 of this year, referred to the Revenue Committee, advanced to General File. I have no amendments to the bill at this time, Mr. President. [LB134]

SENATOR GLOOR: Senator Cornett, you are recognized to open on LB134. [LB134]

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SENATOR CORNETT: Thank you, Mr. President. And good morning, members of the body. LB134 is our annual IRS update bill. I introduced LB134, which is designed to update references in all Nebraska statutes to the most recent version of the federal Internal Revenue Code, except as provided by: Article VIII, Section 1B of the Nebraska Constitution which states that, "When an income tax is adopted by the Legislature, the Legislature may adopt an income tax law based upon the laws of the United States"; the statute sections listed in Section 1 of the bill that govern the Nebraska income tax; and the statute sections listed in Section 1 of the bill that govern Nebraska's business tax incentive programs. For the purpose of LB134, the most recent version of the Internal Revenue Code would be the version that existed on the effective date of the bill, which contains the emergency clause. April 6, 2010, is the applicable date under the current statute, so Nebraska statutes need to be updated to coordinate when the change is made by Congress to the Internal Revenue Code since that date. There are no Revenue Committee amendments to the bill. I urge you to pass LB134 so we can be in compliance. Thank you. [LB134]

SENATOR GLOOR: Thank you, Senator Cornett. We're now open for discussion. Are there senators/members who wish to speak? Seeing none, Senator Cornett, you're recognized to close on the advancement of LB134. Senator Cornett waives. The question is the advancement of LB134 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB134]

CLERK: 36 ayes, 0 nays, Mr. President, on the advancement of LB134. [LB134]

SENATOR GLOOR: The bill advances. Mr. Clerk, we will proceed again to General File, LB81. [LB134 LB81]

CLERK: LB81 is by Senator Cornett and others. (Read title.) Introduced on January 6 of this year, at that time referred to the Revenue Committee, advanced to General File. I do have Revenue Committee amendments pending, Mr. President. (AM14, Legislative Journal page 333.) [LB81]

SENATOR GLOOR: Senator Cornett, you're recognized to open on LB81. [LB81]

SENATOR CORNETT: Thank you, Mr. President, members of the body. I introduced LB81 with the intent of prohibiting Nebraska municipalities from imposing a wheel tax on nonresidents of their cities and villages, while allowing such tax to be continued to impose on entities that have places of business within the Nebraska city or village. I introduced the bill on behalf of the residents and nonresidents of the state of Nebraska in the interest of regulating intrastate commerce within Nebraska, ensuring equitable and "nondiscriminatory" taxation of interstate commerce by Nebraska cities and villages. During 2010 the city of Omaha enacted a city ordinance seeking to impose its wheel tax, beginning in 2011, on residents and certain nonresidents of the city who commute

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to work in Omaha more than 30 days per year. Since then it has become clear that the ordinance is not merely a matter of local concern but a serious matter of statewide concern. The Revenue Committee amendment, AM14, to LB81 helps clarify that our intent is to regulate imposition of wheel taxes only and not occupation taxes also. The Revenue Committee amendment aims for that result by striking Sections 2, 3, and 4 of LB81 and by striking certain other language in the bill. LB81 contains an emergency clause and has an operative date of January 1, 2011. I will also offer a separate amendment to the bill, AM32, to allow wheel taxes to be imposed on entities that have a place of business within Nebraska cities or villages and to exempt full-time college students from the municipal wheel tax. I urge the quick enactment of LB81 as amended to avert serious problems statewide. Thank you very much for your time and consideration of this very important bill. [LB81]

SENATOR GLOOR: As the Clerk stated, there are amendments from the Revenue Committee. Senator Cornett, as Chair of the committee, you are recognized to open on the amendments. [LB81]

SENATOR CORNETT: The Revenue Committee AM14 to LB81, as I mentioned earlier, strikes Sections 2, 3, and 4 of the bill; strikes the proposed language in Section 1 of the bill that provides no license or occupation tax shall be levied on a nonresident of such city, and strikes the new proposed phrase "license or occupation" tax in two places in Section 5 of the bill in which the phrase appears and substitutes the word "such" tax for the new proposed phrase in the second instance which appears in Section 5 of the bill. The effect of those changes clarifies that the legislative intent of LB81 is to regulate imposition of wheel taxes only and not occupation taxes also. [LB81]

SENATOR GLOOR: Thank you, Senator Cornett. We now move to discussion. Senator Fulton, you are recognized. [LB81]

SENATOR FULTON: Thank you, Mr. President, members of the body. This will be, I suspect, one of these debates where we actually get to debate and I suspect that it will break down along some very fundamental lines which, if you pay attention to future debates and debates in the past, debates tend to break down into principles and pragmatism. I think on one side there will be a debate, there will be a position that takes the principle that one should not be taxed unfairly if one does not have the ability to elect those imposing the tax. On the other side there will be a pragmatic argument saying that if we were to do this it will cause structural imbalances in Omaha's budget and that we would be making a decision that has an effect on a decision already made and with the authority of a city. So principle and pragmatics, that's the way all these debates break down. I cosponsored this bill and the reason I did is because when it immediately became known that included in Omaha's...the city of Omaha's budget was a tax on residents outside of Omaha, I was contacted by people who live in my legislative district. I represent District 29, which is south-central, southeastern Lincoln,

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and there are individuals there who would get hit with this tax. When I first received e-mails from people, I thought they were joking. I thought that perhaps they misunderstood. But in reviewing the media report and, indeed, what occurs...what had occurred in Omaha, I have come to learn that there will be people who live in Lincoln who will be paying this tax because they drive on the streets of Omaha. That's the rationale. So if you are hit with this tax and you do not live in Omaha and you do not like the tax, how would you have voice? Would you vote to have the city councilperson who you disagreed with, would you vote against him or the mayor or whoever it is that's elected at the city level? You do not have that ability in the present course of things, and if we don't pass this bill forward this could proliferate across the state such that we in Lincoln perhaps could come up with a way to tax people in Scottsbluff. Now that might sound far-fetched, but you follow the logic and, philosophically, that's what we're talking about. Now one of the arguments we're going to hear is, well, what about the sales tax? You know, people who shop in Lincoln during the state tournament time, they're paying the sales tax to Lincoln people and that's not right. There's a principle to be grasped there but what I would argue, on the contrary, is that the sales tax is done by volition. I can choose whether I purchase a...something, and it's understood that as part of that choice there is a sales tax. It's called a consumption tax. It's embedded in the price of something. There's quite a difference between being able to exercise one's free volition in making an expenditure versus having one's paycheck docked for a wheel tax, in this case in Omaha. So I stand in support of what Senator Cornett is trying to do and I would like to yield the remainder of my time to Senator Cornett, Mr. President. [LB81]

SENATOR GLOOR: Senator Cornett, 1 minute 40 seconds. [LB81]

SENATOR CORNETT: Senator Fulton, I want to thank you for bringing up a point, how the city of Lincoln could reach out and touch other communities in the state. When people purchased season tickets to the football games, they're going to be here a certain number of days a year, theoretically. That wheel tax could be added on to that purchase and justified under the thought that they use the streets of Lincoln, they use police services on the game day and without taking into consideration the amount of money that the people are spending inside the city of Lincoln on those days. So I want to thank you very much. The other thing that I want to make very clear is this is about policy. [LB81]

SENATOR GLOOR: One minute. [LB81]

SENATOR CORNETT: If we do not regulate this, just as an example in the metro area--Bellevue, Papillion, and Omaha--you own a house in Papillion, your husband works at the base, you work in Omaha, the municipalities in reaction were talking about imposing their own wheel tax, so a family could end up paying two, three, or even four wheel taxes, depending on where they work as opposed to where they live. Thank you very much. [LB81]

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SENATOR GLOOR: Thank you, Senator Cornett. Senator Pankonin, you are recognized. [LB81]

SENATOR PANKONIN: Thank you, Mr. President. I just want to echo a little bit more about Senator Cornett. My legislative district, District 2, lies between Omaha and Lincoln, have a lot of commuters that go to both communities, particularly from the Plattsmouth, Beaver Lake, Bay Hills area that come up 75 through Senator Cornett's district. This wheel tax has really upset them. But I think we have to look at a broader issue here, a broader policy issue. At the hearing, I asked the folks from Omaha, the city attorney's staff person that was there and others, if this stands why wouldn't Lincoln want to do that? An example was used. There's people that commute between Omaha and Lincoln, as Senator Fulton has talked about, but why not Fremont, Norfolk, Columbus, all these regional center areas that are trade areas that have people that commute and work in those communities? If this stands, there's going to be a lot of people think this is a good revenue source. I even used the example of my small community of Louisville where I live, a town of 1,100. We have Ash Grove Cement Company there. We have people that commute to work to that cement plant from Omaha, areas in the metro area but also smaller towns around. Why not a wheel tax for us? They have to drive on our streets. They use some of those services. The water and wastewater for that plant comes from the city of Louisville. You know, if we let this stand, this policy is going to eventually affect many of you. You're going to have constituents like I do that think this is very unfair, not only for the issue that Senator Fulton raised about the representation on taxes, but you could have a patchwork of different wheel taxes all over this state. You know, you go back to medieval times, that's why they had moats and you had to pay a toll to go anywhere, and this is a start of that in a certain sense if we let this stand. So I am very much in support of LB81 and I think Senator Cornett has done a good job with the amendments to try to alleviate some concerns. But, you know, I think another argument is that those people that commute to Omaha also bring a lot of economic benefits. It's not only the cost to the streets. They eat there, they shop there, they have a lot of activities, buy fuel there. So it's an advantage, I think, for Omaha to have these people come in on a regular basis. And...but I want to reiterate, if this policy stands, if we don't pass LB81, it's going to spread. Communities are looking for revenue and there will be more of this. Want to point out that the Revenue Committee was 7-0. Everyone unanimously was for this passage and moving this legislation to General File in a very rapid fashion, and I just ask for your support to move it to Select File. This is an important piece of legislation, not only for my constituency but for the state. Thank you. [LB81]

SENATOR GLOOR: Thank you, Senator Pankonin. The Chair recognizes Senator Price. [LB81]

SENATOR PRICE: Good morning, Mr. President, members of the body. Representing

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District 3 in Sarpy County, I'm pretty sure you know where I fall. And I've spent a lot of time thinking how will I address the body. What meaningful things can I say to you? So I thought I would start with some of the things we're hearing in arguments. I mean already this morning I've heard you have a choice if you want to work in Omaha. If you don't want to pay the wheel tax, don't get it...don't have a job. Can you believe that? But more importantly, as we talk about these things and taxing people across other areas, you know, Offutt Air Force Base, how many people work at Offutt Air Force Base in Sarpy County? That's another opportunity to say we're going to tax people. I think Senator Pankonin and others have alluded to this, an escalation in these fiscally constrained times. I think about what the Governor has told us for the past year and a half. We've all heard the Governor say other states are raising their taxes, go ahead and do that because we'll come take your businesses. Well, Sarpy County is going to grow. Businesses will say, hey, let's just move our businesses, the tax burdens, property tax burdens, all these other burdens that keep popping up, let's go ahead and move businesses. And now I encourage, you know, that could be something that the different chambers of commerce use. But that's really self-defeating, you know? That doesn't help. So I figured what can I say that has an even better meaning, so I'm going to take you back a little bit. You all are pretty familiar with the historical figure of Genghis Khan. Genghis Khan is credited to be probably one of the best or to have one of the best cavalries ever known on the face of this earth, and when they would go out on mission, sometimes they would be going over mountainous terrain, get caught up in storms and not have enough supplies. So what these horsemen would do, and I don't mean to say this to offend anybody if you have delicate sensibilities, but they would actually cut a vein of a horse and take some of the blood of the horse and use that for sustenance. But what they realized is you couldn't take it all because that horse was your means of travel and everything else. And so what's the point? Do you want to drain the means of everything you have for your economic engine by adding taxes like this? Do they think that having taxes on people who come in their city and provide the work force for them...I'm looking...you've all seen the maps that we have on redistricting. If you look at the inner city part of Omaha, you'll see minus 4 percent, minus 4 percent, 2 percent. And you'll see all the surrounding areas growing. You'll see some places greater than 10 percent loss of people living in those districts. And you'll see other districts growing by 70-something, 74 percent, 30 percent. Why do you think that is? So I guess, in closing here, I would say, is this going to be like the old comedic routine--the floggings will continue until morale improves? Thank you, Mr. President. [LB81]

SENATOR GLOOR: Thank you, Senator Price. Senator Campbell, you are recognized. [LB81]

SENATOR CAMPBELL: Thank you, Mr. President. Would Senator Cornett yield to a question? [LB81]

SENATOR GLOOR: Senator Cornett, would you yield? [LB81]

Transcript Prepared By the Clerk of the Legislature
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SENATOR CORNETT: I would be happy to. [LB81]

SENATOR CAMPBELL: Senator Cornett, this is probably more as I was reading your amendment, but I just want to clarify for the record how it would work and particularly because a lot of the companies would utilize leased vehicles. Leased vehicles, I am making the assumption, do pay a wheel tax? [LB81]

SENATOR CORNETT: Yes, they do. When you lease a vehicle, you still have to go in and register and pay your taxes on that lease and you pay the wheel tax at that time. [LB81]

SENATOR CAMPBELL: Thank you very much. I will yield the rest of my time to Senator Lautenbaugh. [LB81]

SENATOR GLOOR: Senator Lautenbaugh, you have 4 minutes 13 seconds. [LB81]

SENATOR LAUTENBAUGH: Thank you, Mr. President, and thank you, Senator Campbell, for that courtesy. I have kind of an unusual district in that it does run from medium-sized towns or smaller town all the way into northwest and west Omaha. And I live in Omaha but I represent Blair, I represent Fort Calhoun. And whatever I do on this, someone is going to be disappointed, that much is certain. So in that circumstance, I guess you're free to just do what you think is right and hope for the best. And I'll digress a little and say someone handed out the map of the Omaha City Council districts. I think it was Senator Krist. Those are the most impressive-looking districts I have ever seen and whoever drew those things should get a medal. But that's neither here nor there. I believe this bill is wrong, or, I'm sorry, the bill is wrong...correct; the wheel tax is wrong. It is has troubled me since it was just applied to some around the city's periphery. It troubles me more now as it's extended north into Blair, north into Fort Calhoun for people who work in the city of Omaha. And again, I don't know how else to put it other than it just seems wrong. We all have heard the taxation without representation argument and that resonates with me. If this tax on a resident from Blair who works in Omaha is okay, I believe it's \$50, why not \$100? Why not \$1,000? I mean where would it end and where are the practical limits on this? What's a person from Blair going to do, vote against their city councilman in Omaha? No. They don't get to do that. There have to be some kind of limits. And I've heard discussion how, well, this is something we should let the courts decide. Again, and sort of dovetailing with my prior comments about other branches of government, this is a dispute we have to decide. This is one city reaching out and taxing nonresidents, and there's no one those nonresidents can go to other than the courts and other than us, and I think the court should be the last resort. This is something for us to sort out. This is something for us to clarify. And I recognize that this will have impact on the city of Omaha. The argument is that they'll lose millions of dollars. But that can't trump the fact that I don't believe they're collecting this money

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in a way that we should allow to continue. There's a point at which you have to say, regardless of the bottom line, there is such a thing as right and wrong and proper and improper, and I don't believe this tax is proper. I don't believe it's fair, I don't believe it's just, and I don't believe we can allow it to continue. And so, like I said, this will disappoint half my constituents and thrill half of them, give or take in round numbers, but I don't see any other way other than to stand up and say the wheel tax is wrong as extended beyond the city limits and we need to speak on this. Thank you, Mr. President. [LB81]

SENATOR GLOOR: Thank you, Senator Lautenbaugh. Senator Wallman, you are recognized. [LB81]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. Welcome to Nebraska. Be a farmer. You can't vote on some school district issues. If you have school districts in two, three different districts you can't vote on (inaudible), so you don't have representation there to that district. So welcome to Nebraska. If we pass this bill, if I was a school boarder and lived in a different district or something, I think this could open a can of worms, maybe not. Do I like this wheel tax thing? Nobody does. Nobody likes taxes. But if we pinch off state...I mean cities how to get revenue, whether it be for streets or buildings, if we keep pinching them off in this building right here and telling cities what to do, then maybe we're not doing what we're supposed to do. And I agree with Scott, Senator Lautenbaugh. I hate when the court comes in and tells us how our taxes should be or this or that. The legislative system should work. And the court system should listen to us and we should listen also to the court system and seek advice on these things before we pass something because, like I say, school districts put up with this all the time, different entities also. Some other senators may talk about this. But I've struggled with this for a long time and whether I like the school district or that school district, it transcends my boundaries where my farms are, I have to pay to all these school districts; I do not have a vote. Thank you, Mr. President. [LB81]

SENATOR GLOOR: Thank you, Senator Wallman. The Chair recognizes Senator McCoy. [LB81]

SENATOR McCOY: Thank you, Mr. President and members. I rise in a similar situation to Senator Lautenbaugh probably in some ways in that my district, District 39, represents some new areas of Omaha, I should say, or relatively new with the annexation of Elkhorn in the last few years. The vast majority of my district is in unincorporated Douglas County or Washington County or Sarpy County, and I can't tell you how many e-mails and calls and letters that we have gotten on this issue long before LB81 was ever a bill, from the beginning of my time in the Legislature the last three years. The well-worn phrase of no taxation without representation, I probably have heard that 500 times if I've heard it once from constituents. It's very, very frustrating. I'm one of them. Our family is one of them. We live in this zone area outside the Omaha city

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limits. It's very frustrating. It's a frustrating situation to not be able to vote in elections that we pay taxes for. You know, I suspect we'll probably hear throughout this discussion that, you know, if we repeal this, it's going to result in a tax increase to the city. Well, I'd like to hear why. I'm not sure why Omaha can't reduce its spending with proactive street resurfacing in the public works' budget. Why is it automatically going to result in a tax increase for the city of Omaha? I hope that's not what we hear on the other side of this discussion and this debate because I would challenge those that hopefully they can give us information as to why that that would be an automatic tax increase. Thank you, Mr. President. [LB81]

SENATOR GLOOR: Thank you, Senator McCoy. Senator Krist, you are recognized. [LB81]

SENATOR KRIST: Thank you, Chair. There are many of you that are going to wonder what's going to come out of this guy's mouth after the conversations that I've had with all of you inside the city limits, outside the city limits. I passed out a map for you and you kind of have to wonder. When I came back to the state of Nebraska, after I had served away for many, many years, I was told by an old crusty guy who I served with, do not buy a home in an SID, sanitary improvement district, SIDs, because you won't get to vote, they'll tax you, and there you'll be. Now what this map tells you, and I can't attest to its currency, I think this one doesn't include some of the Elkhorn addition after the annexation. But what this map tells you is that those little white spots do not have representation. They don't have any city councilmen. They can't vote for the mayor. They couldn't for the recall. We've got a problem with the SID and how it exists inside our city, and I would challenge the mayors and the lobby who are in Bellevue, La Vista, Papillion to say that those areas are even inside of their city limit. Those new developments, those SIDs that Bellevue, La Vista, and everyone else is collecting on, they're outside the area. They're not even inside. Let me take you on a virtual tour of Maple Street. You start out in downtown Omaha and work your way out and you run through the Benson area and you'll eventually get to a point where you turn left to my house, and you're welcome any time. I live in the city. The people across the street from me in a two-block-wide, I'm sorry, three-block-wide, seven-block-long area just recently were annexed. The SID is over 30 years old because the city didn't want the liability of having a leach pit as their sanitary function. Take you a further ways down and turn left on 120 Street and you'll go to Candlewood. Candlewood properties built a lake. The city didn't want the liability. It didn't make sense. They got hopped over. Go a further piece out and, trust me, I've heard from my son about five times in the last couple of days, he lives off 171 and Maple. That's in between my home and Elkhorn. He can't vote. He's in an SID. We have tax issues in this state. We have to solve those tax issues. We have to reasonably take two steps back and say what is jurisdiction, what is Douglas County, what is the city limit. But here's my problem. I represent an area that is completely within the city so I have to represent my constituents. We pay taxes and it's been argued not the highest levy in the state. But you know what? We have local politicians that are

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elected by us, except for the people that have no representation, and they made law and they're collecting taxes based upon legislation that was in place. They did nothing illegal. So today we're going to say, Omaha, once again you have done something wrong and we're going to slap you with a law and change the tax code. LB81 is a great idea. I applaud Senator Cornett and Revenue for bring for bringing it forward. LB81 is not a great implementation because it's not well thought out. It is not good tax policy over all. There are too many loopholes. How many of you got to study the latest amendment before just the last 24 hours? [LB81]

SENATOR GLOOR: One minute. [LB81]

SENATOR KRIST: Can we take two steps back and not make this about Omaha versus the rest of the state, if that's where we're going? Could we take two steps back and analyze tax policy and take into account all those people who have no representation and are taxed? Could we take a step back in an interim study, and say this is where we are? Could we ask the mayors of the metropolitan area to get together and work out their problems because, you know what, this is local control. We are walking across a line. The next thing we'll do is tell every small community in Nebraska, you need to fluoridate your water tomorrow. Local control--great idea, not well thought out, not good legislation. I can't support it in its present form. Thank you, Mr. President. [LB81]

SENATOR GLOOR: Thank you, Senator Krist. Chair recognizes Senator Council. [LB81]

SENATOR COUNCIL: Thank you, Mr. President. I rise in strong opposition to LB81 and its proposed amendment. And I rise to address the issue of state policy. And I find it interesting that those who support LB81 choose to ignore 50 years of state policy. LB81 amends a section of the Nebraska state statute that has for nearly 50 years granted cities and villages the authority to impose a tax on motor vehicles and, I emphasize, owned or used in that city or village. And the policy that was approved by this Legislature was that those taxes imposed by said cities and villages on vehicles owned or used was to be dedicated to the road fund. That's the only place those dollars are to be used. And that was the policy established by this Legislature nearly 50 years ago. Omaha elected to exercise the authority that this body granted cities and villages. It exercised that authority within the parameters of the statute. It imposes a tax and I don't want to use the word "tax," because the policy reflected in the statute, as it has existed for 50 years, is a user fee. Read the statute. The statute authorizes cities and villages to impose a user fee because the money can only be placed in that city or village's road fund. Vehicles run across roads, roads need to be repaired, roads need to be expanded. It's a user fee. The fact that LB81, as originally introduced, talks about occupation tax does not change the underlying policy and the underlying policy is not inconsistent with other policies of this state. If you use it, you pay for it. The parks and recreation facilities in this state, if you use it, you pay for it. Now, interestingly enough,

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when we talk about roads generally, and this is in part in response to a comment made by Senator McCoy, yeah, I mean we know in the state of Nebraska we have a great and serious issue to address in terms of roads. And we're not looking to cut state government to the bare bones to arrive at the amount of money needed to carry out that policy of providing roads. We're looking to generate new revenue. We're looking to shift revenue so we can address that very important, fundamental need of this state. Omaha did nothing different than what this body is going to be doing in upcoming weeks--looking for a source of revenue, an authorized source of revenue to address a very critical need. I also need to address those who want to summarily dismiss the comparison between a sales tax and a user fee on those who choose to work in the city of Omaha. They choose to work in the city of Omaha. And I will tell you that residents of my district, in particular, one of the few areas in this state that has double-digit unemployment, they would be glad if those folks elected to work somewhere else,... [LB81]

SENATOR GLOOR: One minute. [LB81]

SENATOR COUNCIL: ...because then they would have access to that employment opportunity. And when we look at what is being asked of the city of Omaha here, and when I get back on the mike I'm going to address it, I find it interesting that the same...very same people who are complaining about no taxation without representation, who drive on Omaha's roads every day going to and from work, they don't see a problem if they damage their car on an Omaha chuckhole to file a claim. They expect me, as a taxpayer of the city of Omaha, to pay for damage caused by the condition of the roads, yet they don't see any responsibility for contributing to providing for decent road conditions. So I think when taxation without representation is convenient to be used, yeah, we'll use it, but you can't say it doesn't apply to the sales tax, because when a city is authorized to increase their local sales tax it goes to a vote. [LB81]

SENATOR GLOOR: Time, Senator. [LB81]

SENATOR COUNCIL: People outside the city don't vote. [LB81]

SENATOR GLOOR: Thank you, Senator Council. The Chair recognizes Senator Fulton. [LB81]

SENATOR FULTON: Thank you, Mr. President. This is, for you new members, this is great stuff. Thank you, Senator Council, and thank you for this debate that we're going to...I suspect we're going to have. Senator Council raised a very good point and I wasn't going to talk on this but good points need to be addressed. We're on the white copy, so this is not AM14. This actually is the bill, LB81, page 5, line 5: "All cities and villages may levy a," and I'll go through the new material, they may levy "on all motor vehicles owned or used in such city or village." And Senator Council is right on the numbers

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there, owned or used. So what Omaha has done in proposing this tax on those who use the roads is not against the law. Let's be clear. They're not doing something bad. Recognizing what Senator Krist has put forward, this wasn't untoward. But the position that I'm putting forward and the position being put forward in LB81 is that that is not the way we should go forward for any of the reasons that are put forward. Now if we are to utilize the argument that that which exists in the law should guide us going forward and use it absolutely, then I would also point out that this law, this bill also is going to strike some references that perhaps many Nebraskans are not aware of. Page 2 of LB81: The council shall have the power to tax for revenue, among other things, showmen, jugglers, innkeepers, ferries, insurance, etcetera, etcetera. I wonder how many people realize that's in our law. So that's something else that we're going to accomplish by putting LB81 forward, is to get with the times with respect to our tax law. Now the proliferation of populations in Nebraska has come to a point where, indeed, many people commute to Omaha, indeed, many people commute to Lincoln. And so the question of policy that we're putting forward is, should those people who are experiencing the hardship of a tax have the ability to speak on that hardship through their elected officials? If we do not enact LB81, we would be setting the policy and communicating to future Nebraskans that they should not have that ability. Let me put this another way. Should someone in Bellevue or Lincoln be subject to a tax without having the ability to vote on that person who is subjecting them to that tax? In its purest form, people would say, no, you should have the ability to speak up if you believe that this tax is unfair and you should have the ability and the authority to elect those officials who impose that tax on you. I think most of us would say that. Well, that's what they do in the Legislature and we have the ability to make this right by passing LB81. I will guarantee you that as Nebraskans learn about the policy that was put forward in Omaha's budget, there will be quite a bit of outrage. We have the ability to make this right by passing LB81. There's another issue that is, I think, a legitimate point that needs to be addressed, and Senator Krist brought it up and I think it will be brought up in the future here, this issue of local control. Now you remember I've become the state's rights guy and, you know, this element of local control is part of what I bring...why I've taken that position. [LB81]

SENATOR GLOOR: One minute. [LB81]

SENATOR FULTON: But we have to bear in mind why we take these positions. Local control in its absolute form is not how we are structured. The state of Nebraska is sovereign. That's why I was making such a big deal about the Tenth Amendment. The state of Nebraska is sovereign. Omaha, Lincoln, Hastings, Grand Island, Kearney are political subdivisions of the state. We in the state do have the authority to set tax policy for all political subdivisions within our state. Local control taken to an absolute would have every person making his own laws. We aren't structured thus. There is a point at which local control yields to a higher authority and that is within the purview of the state. So the state has within its power to set forward tax policy that the cities and counties and everything else should follow, and I submit to you that LB81 is a proper and correct

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form of tax policy going forward. Thank you, Mr. President. [LB81]

SENATOR GLOOR: Thank you, Senator Fulton. The Chair recognizes Senator Ashford. [LB81]

SENATOR ASHFORD: Yeah, thank you. In response, Senator Fulton, I just think maybe we should take a little time getting with the times. You know, I think it's important we get with the times, but we need to take a little time getting to the times or, you know, so...and I was thinking to myself, we all like Nebraska football, I don't know the answer to this exactly but I would guess that when we want to see a Nebraska football game I know that we have to go to Memorial Stadium and I think we pay sales...I could be wrong but I think we pay sales tax on the tickets that we buy, I believe. Certainly when you go to the Qwest Center you pay sales tax on the Creighton tickets or whatever. Every city has its mechanisms to collect revenue. Nobody wants to...who lives in some other place necessarily, nobody wants to pay taxes generally. And if this bill passes certainly we can say to constituents that we lowered their taxes because they're not having to pay a sales tax or a wheel tax, which is a discretionary tax. It's less discretionary, I would grant you, than some other form of sales tax, if you go to a movie or whatever it is. But if you want to see Nebraska football, I know someone is going to correct me that you don't have to pay a sales tax, so if that's the case then I stand corrected. But I think the point is this. This is not done very much in this body where we take away the city's ability, a township's ability to raise revenue to meet its budgetary needs. Maybe we've done it before and, again, I could stand corrected there. I don't think the wheel tax is the greatest thing. I would think that hopefully there would be other ways to raise revenue. But the situation is this. Whether we like the politics of Omaha or not or whatever side we were on in the mayoral election or whatever, the simple fact is Omaha has gone through a terribly bad patch, two years of really difficult times that were brought upon, to some extent, by their own failure to address issues of pensions, issues of other employee costs. There's no question about that. But I'm not sure Omaha is alone or was alone in that; most urban areas the size of Omaha have experienced, because of the recession, have exposed things that need to be changed. And I know that our committee, the Business and Labor...Senator Lathrop's committee, the Business and Labor Committee, we're going to work very hard and have worked hard on trying to find a solution on employee costs and benefits to try to address those issues. But to me...and possibly this body wants...would like to do away with the ability of a city of whatever class to raise a particular tax. We shouldn't do it in the middle of a budget year. I can't recall that ever happening. It just isn't done by this body. I understand what Senator Cornett is saying and she's not wrong at all. I understand what everybody is saying. It's a tax we don't want to pay. I get it. Or it's a user fee that we don't want to pay. I understand that. I get it, I get it, I get it. I would have had a hard time voting for it if I were on the city council. But that really isn't the point. The point, and I've been assured by members of the city council in Omaha that they can cover this cost and that's good too. That's their job and I do believe that if they have a thorough debate

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on the budget in Omaha they will be able to find other revenue or other costs...reductions. That's fine. That's their job. We give it to them to do. That's what we do here. Now if we want to get rid of this tax a year from now, fine. [LB81]

SENATOR GLOOR: One minute, Senator. [LB81]

SENATOR ASHFORD: That's fine too. If we apply it to everybody, fine, if that's the direction we want to go. But I really feel strongly that as a body we don't want to go down this pathway, this road, and take away the ability to raise revenue at a time when my city...and granted, it is my city, but it is one of, with agriculture, the economic engine of our state. And to take away the ability to raise revenue in a relative crisis, I would suggest it was a crisis, is a crisis, we're getting out of it, to do that now is inappropriate. It's not for this body to engage in at this time. And I would urge the body, if want to do something on it, let's look at the total tax package throughout this session and do something for next year, but not in the middle of a city's budget. That really is tough stuff in our state. Thank you. [LB81]

SENATOR GLOOR: Thank you, Senator Ashford. Senator Karpisek, you are recognized. [LB81]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. Would Senator Fulton yield for questions, please? [LB81]

SENATOR GLOOR: Senator Fulton, will you yield? [LB81]

SENATOR FULTON: Yes. [LB81]

SENATOR KARPISEK: Thank you, Senator Fulton. I've just been listening to your argument about people not being...living in one area and not being able to vote for the people that make those decisions. Is that your stance? [LB81]

SENATOR FULTON: On this bill, yes. [LB81]

SENATOR KARPISEK: Okay, on...just on this bill. [LB81]

SENATOR FULTON: Well, generally, yes. [LB81]

SENATOR KARPISEK: Okay. So I have relation that own farm ground in Nebraska but they live in Kansas. They pay taxes. They pay a lot of property taxes. They have no vote on school board issues or any of those. So where is your reasoning there, Senator Fulton? [LB81]

SENATOR FULTON: Well, there's...this is the same rationale, the same philosophy that

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I would...that I would put forward with respect to a sales tax or a consumption tax. One has the free volition to purchase a given item that will have a sales tax attached to it, same with a piece of land. If one purchases land, one is not forced to purchase land nor is he precluded from purchasing land, but purchasing land in the state of Nebraska, it's fairly universally known that there is going to be a property tax attached to it. And so philosophically, that's how I come to grips with that issue. [LB81]

SENATOR KARPISEK: So these people aren't forced to work in Omaha... [LB81]

SENATOR FULTON: Yeah. [LB81]

SENATOR KARPISEK: ...or are? [LB81]

SENATOR FULTON: They are not. Go ahead. [LB81]

SENATOR KARPISEK: So they are not forced to work in Omaha so you know that that's going to happen if you work in Omaha or live nearby. [LB81]

SENATOR FULTON: They will if this debate becomes publicized. I know where you're going with this, that one has the free volition to choose to work in Omaha, and in a pure sense I think that the philosophy that I put forward I think could be used to argue your position. But I draw a line when you talk about someone's livelihood. If one is saying that you can't...if you do not want to pay this tax then don't work in Omaha. That, as a state, I think is bad policy. Then we're going to be...in my opinion, so I'll...it's your time so... [LB81]

SENATOR KARPISEK: Well, though the farm ground is livelihood also, Senator, and is a heck of a lot higher than any wheel tax, I'll grant you that. But thank you, Senator Fulton. I just wanted to make sure that that's...that I'm getting the gist because I think that we're trying to put one foot in each side of this thing and we just don't want to pay this Omaha wheel tax. And I will say I don't think that it's a very good idea either and I wouldn't be very happy about it. But once again, here we go, we're going to try to stick our nose into the city's business. Senator Fulton says that's because we're a sovereign state and they are not. He is correct. And philosophically, if he can be all right with that, I'm glad for him. I cannot. I was a mayor of a small town and I was tired of the state sticking their nose into our business. That's where I still come from. I was the owner of a small business and I was tired of the state sticking their nose into my business. That's where I'm coming from on this. I understand the issue, why Senator Cornett brought the bill. I absolutely understand that and I don't argue again that I don't think this was the way to go. However, they did it. They are elected. I just don't think that we should be in this business to be doing this and deciding for them. Senator Krist said they didn't do anything illegal. They did what they thought they needed to do, right, wrong, or indifferent. I think we need to let them do what they do. They're elected. They make

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more money than we do, which is another issue for another day. [LB81]

SENATOR GLOOR: One minute. [LB81]

SENATOR KARPISEK: Thank you, Mr. President. I just hope that we think about these things because it always gets blurred, and you feel this way on one bill but not another bill. We need to try to hold the same idea on every bill, whether it affects you or your community or not. If I had good sense, I would have sat down on this bill because it doesn't affect me at all, but since we are state senators I do feel that we do need to stand up and say how we feel. I hope that we can let Omaha work out Omaha and help them when we can. Thank you, Mr. President. [LB81]

SENATOR GLOOR: Thank you, Senator Karpisek. Senator Carlson, you're recognized. [LB81]

SENATOR CARLSON: Mr. President and members of the Legislature, this is interesting debate, some good ideas back and forth. I'm enjoying this. I look at this and maybe several of us do, to be honest with you, when a bill comes up, the first thing comes to my mind, how does it affect the people I represent? And if it doesn't seem to affect them then it's kind of easy to sit back and say, well, I don't much care. I appreciate what Senator Karpisek has brought forth because we all need to be keyed in on every issue that comes forward because it is important to someone. I think that my concerns here are probably answered but I want to make it clear for the record. Last year, Senator Christensen brought forth LB862 which was a bill to clarify the occupation tax that we needed for certain areas of the state on water issues. And I would like to address a question to Senator Cornett, if she would yield. [LB81]

SENATOR GLOOR: Senator Cornett, will you yield? [LB81]

SENATOR CORNETT: I would be happy to. [LB81]

SENATOR CARLSON: I think that I see, Senator Cornett, in the committee statement that the word "occupation tax" has been deleted from any part of this bill. Is that correct? [LB81]

SENATOR CORNETT: Yes. We originally were looking, as the Revenue Committee, and Senator Fischer also has an occupation tax bill, of looking at all occupation taxes. This is a stand-alone bill now that is just dealing with the wheel tax. [LB81]

SENATOR CARLSON: Okay. Thank you. Because I look back to last year and we argued pretty strongly that we needed the occupation tax and, really, that was not something pleasant but that allowed portions of the state to levy this tax and fund solutions to problems that are in that area. That is local control and I think that that was

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important. And as Senator Karpisek brought up, we certainly can't afford to have a situation where just because somebody owns land, and particularly irrigated farmland, in Nebraska and lives not in the county that somehow they could get away from an occupation tax. And so I appreciate that clarification because that is most important or we're going to have people trying to buy land and then fly out of the area and live someplace else. That's the exact opposite of what we need in rural Nebraska. So thank you for that clarification and I'll give the...yield the rest of my time to Senator McCoy. [LB81]

SENATOR GLOOR: Senator McCoy, you have 2 minutes and 32 seconds. [LB81]

SENATOR McCOY: Thank you, Senator Carlson. Interesting discussion so far. You know, I'd like to go back to what Senator Council talked about earlier. You know, I think all of us know we make public policy in this body and it's our job. I believe we were all elected to look at statutes, whether they're 50 years old or 5 years old, for whether or not they fit within the current situation that exists in our state. There are a lot of examples of that, the death penalty may be one. You know, Senator Karpisek talked about when he was a small-town mayor, he resented or...that's my word, not his, but didn't look kindly on the state sticking their nose or others into his town's business. I'd agree with that. But to go along with that analogy, he was elected as a mayor to represent his constituents. My guess would be if some of the folks around his town didn't have the ability to vote for him as mayor, they might resent that city passing some sort of a law that would infringe upon their ability to function. [LB81]

SENATOR GLOOR: One minute. [LB81]

SENATOR McCOY: They want to have a vote. I think we keep coming back to that's such a fundamental process, we have to look at the public policy of this, the patchwork quilt as it's been talked about of what could happen. Senator Karpisek, be another great example. We all work in this body. Would we look kindly upon the city of Lincoln proposing such a situation on us as legislators? It could happen. Thank you, Mr. President. [LB81]

SENATOR GLOOR: Thank you, Senator McCoy. Senator Utter, you are recognized. [LB81]

SENATOR UTTER: Thank you very much, Mr. President and colleagues. Good morning. A lot of you would probably say, Senator Utter, you're from out in south-central Nebraska. You really don't have a dog in this fight. But for some reason or another, my puppy did show up and, as a member of the Revenue Committee, I have to express to you what I hope might be a statewide viewpoint of what's happening here. Hastings, Kearney, and Grand Island are kind of known as the tri-cities out in south-central Nebraska. A lot of the people that live in Hastings work in Grand Island, and vice versa,

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or work in Kearney and vice versa. There are several small communities within that triangle of the tri-cities and, by and large, those are bedroom communities that citizens work in some business or some industry in the tri-cities. As a matter of fact, in a lot of those communities, and the community of Kenesaw that I'm most familiar with is one of them, that the man of the family may work in Hastings and the wife may work in Kearney each day. And I'm just trying to visualize what wheel taxes adopted by the tri-cities--Kearney, Grand Island, and Hastings--would look like. And we would have families paying wheel taxes, maybe actually paying more than two wheel taxes because they may have children that are still at home that might be working in another one of those communities. And so I think that we've got to take a look at this policy, at a tax policy that we are establishing that could become a patchwork of policies throughout the state that would be very uncomfortable. And I suppose you could take this far enough that you would say some day that, okay, anybody that resides in Lincoln that comes to Hastings, we're going to impose a tax on them whether they work there or not, a wheel tax on them. And so I think we have to kind of take a look. I have no problem with the wheel tax as it is applied within the incorporated limits of a city or a village, and I can understand the rationale beyond that...for that. But beyond that, looking at the...as we move outside of the villages and into other towns and assessing wheel taxes on people that come and go from those other communities just doesn't look like a wise tax policy to me. With that, thank you, Mr. President. [LB81]

SENATOR GLOOR: Thank you, Senator Utter. Announcements, Mr. Clerk? [LB81]

CLERK: Mr. President, your Committee on Urban Affairs, chaired by Senator McGill, reports LB146 to General File. Reference report referring certain gubernatorial appointees. A series of name adds: Senator McCoy to LB294; Senator Avery, LB367; Senator McCoy, LB469, LB508, LB521, LB575, and LR40CA; and Senator Cook to LB589. (Legislative Journal page 396.) [LB146 LB294 LB367 LB469 LB508 LB521 LB575 LR40CA LB589]

Mr. President, I have a priority motion. Senator Adams would move to adjourn the body until Friday morning, January 28, at 10:00 a.m.

SENATOR GLOOR: You have heard the motion to adjourn until 10:00 a.m. Friday. All in favor say aye. Opposed, nay. We are adjourned.