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Floor Debate
February 15, 2011

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PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the twenty-ninth day of the One Hundred Second Legislature, First Session. Our chaplain this morning is Reverend Casey Karges from the Cortland United Church in Cortland, Nebraska, Senator Wallman's district. Would you all please rise.

REVEREND KARGES: (Prayer offered.)

PRESIDENT SHEEHY: Thank you, Reverend Karges. I now call to order the twenty-ninth day of the One Hundred Second Legislature, First Session. Senators, please record your presence. Please record, Mr. Clerk.

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

PRESIDENT SHEEHY: Are there corrections for the Journal?

CLERK: I have no corrections.

PRESIDENT SHEEHY: Messages, reports, or announcements?

CLERK: Your Committee on Health and Human Services, chaired by Senator Campbell, reports LB237 and LB543 to General File, and LB34, LB51, LB260 to General File with committee amendments attached. Senator Howard has selected LB237 as her priority bill for this session. [LB237 LB543 LB34 LB51 LB260]

PRESIDENT SHEEHY: (Gavel)

CLERK: And a series of appointment letters from the Governor: appointments to the Foster Care Review Board, the State Fair Board, the Nebraska Resources Commission, the Commission for the Deaf and Hard of Hearing, and for the Boiler Safety Code Advisory Committee. An announcement, Mr. President: Education Committee will have an Executive Session at 1:30 today in their hearing room 1525; Education, 1:30. That's all that I have. (Legislative Journal pages 535-540.)

PRESIDENT SHEEHY: Thank you, Mr. Clerk. (Visitors and doctor of the day introduced.) And while the Legislature is in session and capable of transacting business,

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I propose to sign and do hereby sign LR68 and LR69. Mr. Clerk, we'll move to first item under General File. [LR68 LR69]

CLERK: Mr. President, LB401, a bill by Senator Howard. (Read title.) Bill was presented yesterday by Senator Howard, Mr. President. She also offered, and is pending, AM341, AM341 as an amendment to the bill. (Legislative Journal page 532.) [LB401]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Howard, would you like to give us a summary of LB401 and AM341. [LB401]

SENATOR HOWARD: Thank you, Mr. President and members of the body. Just to refresh all of our memories, LB401 would create a consumer disclosure requirement for assisted-living facilities. Facilities would be required to present potential applicants information on services provided by the facility, the staff available to provide those services, the charges for the services, circumstances under which residents would be required to leave the facility, whether the facility accepts residents eligible for medical assistance, what policies or limitations there are regarding residents whose care would be paid for by the medical assistance program. There was some discussion yesterday about this, how this bill factors into existing regulation. Just to clarify, right now much of the information in LB401...that LB401 would require is provided to the applicant for admission in the resident service agreement pursuant to the Health and Human Services regulation. This means that it's not until Mom or Dad or their designee sits down to fill out the paperwork to get into the facility that regulations require facilities to make them aware of just what kinds of services are provided or when they would be asked to leave the facility. When seniors or their loved ones are touring or comparing facilities, there is currently no requirement that this information be shared with them. What this translates to is that often an assisted-living facility highlights their selling points, of course, but does not fully explain the realities of assisted living. They can say to a potential resident, we have a nurse or nurses on staff, and the consumer will assume that all medical needs will be taken care of. What they are not aware of is that often there is only one nurse who comes for a few hours a week and he or she is prohibited by law from engaging in complex nursing intervention. This is as it is for an assisted-living facility. This is not an attempt to disparage assisted-living facilities. Many of these facilities provide in-home health nurses and aides for their clients. But it should be made very clear who's going to be responsible for payment for that service. Often consumers assume these services are available or will be provided. Even in our hearing and on the floor, we sometimes--and I include myself in this--we sometimes don't know what assisted-living facilities will provide. Imagine how difficult this must be when people are trying to make these decisions for themselves or for their loved ones. Assisted-living and nursing homes are two separate kinds of facilities that provide drastically different services for our aging population. LB401 would require assisted-living facilities to clearly explain to consumers what services they can do and they can provide, who provides them, how dependence on medical assistance would change a person's status at the

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facility, and when a person would be asked to leave. I urge you to advance this important bill, not only for our seniors but also for all of us who face decisions regarding our future independent living. Thank you. [LB401]

PRESIDENT SHEEHY: Thank you, Senator Howard. Members requesting to speak on AM341 to LB401, we have Senator Fulton, followed by Senator Coash. Senator Fulton, you're recognized. [LB401]

SENATOR FULTON: Thank you, Mr. President. Good morning, members. Would Senator Howard, Mr. President, yield to a question? [LB401]

PRESIDENT SHEEHY: Senator Howard, would you yield to Senator Fulton? [LB401]

SENATOR HOWARD: Yes, I will. [LB401]

SENATOR FULTON: Okay. Thank you, Senator. Since having spoken on this yesterday, I spoke with some assisted-living facilities locally and outside of Lincoln, too, and I guess there are some questions that probably need to be answered. And so I indicated yesterday that I'm supportive of AM341 and LB401, probably will remain that way, but there are some questions that I have. So I guess number one, are some of the things, if not all of the things, that are envisioned in the bill, indeed in the amendment, the question was asked, aren't those already required through existing rules and regulations with the Department of Health and Human Services? Can you comment on that? [LB401]

SENATOR HOWARD: I can. And, yes, regulations do require an assisted-living facility provide an agreement and basically the agreement--and I was given this by one of their representatives--an agreement, if you read through it, is quite involved and has a lot of pages and a lot of fine print, and I think that's all well and good. One of the difficulties is when someone who's aging or someone who's faced with a decision of moving from their home to a facility is handed this, it can be quite confusing and they may not understand everything that's involved with this or what they're agreeing to. This is exactly what happened in the situation that precipitated AARP bringing this to me. [LB401]

SENATOR FULTON: So these...I guess I'm not following. Is this the information being provided by the assisted-living facility that's confusing? [LB401]

SENATOR HOWARD: Well, what's confusing to people, and keep in mind these are individuals that are facing some tough life decisions, is that they're given the service agreement and they don't really, in some cases, in some cases they don't understand all the requirements or they assume something. One of the things that was an eye-opener for me was the fact that while there are nurses on staff, the nurses at an

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assisted-living facility really aren't engaging in what you would call nursing services. So it's easy to assume something will be provided and that is not the case. [LB401]

SENATOR FULTON: Okay. So you're talking then about the service agreement. I understand that. But the requirements of the amendment, are they already required of an assisted-living facility under the existing rules and regulations put forward by the Department of Health and Human Services? [LB401]

SENATOR HOWARD: To that I would answer yes and no. They're basically drawn up from those service agreements but the AARP and the nursing...or, I'm sorry, the assisted-living facility reps have really defined those more clearly in the amendment. [LB401]

SENATOR FULTON: Okay. Well, I'll just...I'll stop there. Thank you, Mr. President. [LB401]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Senator Coash, you're recognized. [LB401]

SENATOR COASH: Thank you, Mr. President. Good morning, members. I want to take a moment to discuss something I'm fairly familiar with, which is how we ask human service agencies, including assisted-living and extended-care facilities, to operate, how we ask them to do that and where we ask them to do that. And Senator Fulton and Senator Howard have just had a good exchange that have illustrated this, but I want you to consider the difference between mandating something in statute, which is what we are contemplating on LB401, and mandating something through regulations. As we all know, to change something in statute it takes legislative action, which we only have 60 or 90 days in a year to do. It's a fairly long and drawn out process, as it should be. It takes a long time to make a change legislatively. Conversely, when a regulation needs changed, it can take a shorter amount of time. It's not bound by time constraints of when someone...when we are in or out of session. It has a similar process. There is a chance for public comment, as we have in our Legislature. But from the perspective of timing, it is much more of a flexible process. So I think it's important that we consider whether or not we want to hard wire things into statute, as LB401 does, or let the rules and regs process take its course as well. And Senator Howard has, I think, done a good job of illustrating her case as to why it should be in statute. But I would...I've been listening to what she has to say and I would like to ask Senator Howard a question, if she would yield. [LB401]

PRESIDENT SHEEHY: Senator Howard, would you yield to Senator Coash? [LB401]

SENATOR HOWARD: Yes. [LB401]

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SENATOR COASH: Thank you, Senator Howard. I'm looking at AM341 and I was wondering if you could look on page 2, line 2, where it says that the information shall be presented to each applicant for admission. And you mentioned in your opening remarks that you thought it would be better to put this in statute because if we didn't...when would this information be presented that it's not being presented now through regulations? You mentioned a timing issue which I want to explore a little bit. [LB401]

SENATOR HOWARD: Let me sure...let me be clear on your question. You're asking regarding the timing when this would...this information be provided? [LB401]

SENATOR COASH: Yeah, the time. When would you...what is your intent with this amendment and bill as to when this information would be presented to a family? At what point in the process of a family exploring care for their loved one would you...does this bill mandate that this information be presented to them? [LB401]

SENATOR HOWARD: Well, we don't have a mandated...a time frame as such, but how I would see this process--and I should thank you for that opportunity to put that into intent here on the floor--I would see this process starting at the very beginning when the family contacted the facility or perhaps it was such that a family was working through a social worker in another facility--I could see that happening through a hospital--that this information would be provided in clear and concise form at the time of inquiry. [LB401]

PRESIDENT SHEEHY: (Gavel) [LB401]

SENATOR COASH: So is your intent that at the time of inquiry that they would be presented this information? All right, that's helpful. Senator Howard, you mentioned in your opening that you felt like currently it's happening at the time that they sign their paper. Can you explain? I'll give you my time to explain that, because I think this is important for the body to consider the timing of this information. [LB401]

SENATOR HOWARD: Well, thank you for your generous offer of your time. I appreciate that. That's such a good point. Senator Coash makes such an excellent point with this. [LB401]

PRESIDENT SHEEHY: One minute. [LB401]

SENATOR HOWARD: The dilemma was that the individual's husband had shown signs of Alzheimer's. He wasn't able to remain at home because she was there caring for him alone, so she was looking for alternate facilities. But he was progressing, I guess that would be the best description, with this illness and by the time he was placed in the facility, she had assumed that assisted-living would be a continuation of care and he would be able to remain there. That, you know, there are a couple of factors that enter in here. It's not only the assisted living explaining this; it's the individual being able to

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hear it at the time they're faced with a service agreement contract. She was very distressed that as he was placed in there and his illness became more apparent, he wasn't able to remain there and she had to make another move for him. So the earlier the information is provided to the individual, the better. The more clearly it's spelled out for the individual, the fewer misunderstandings there will be. [LB401]

PRESIDENT SHEEHY: Time, Senator. [LB401]

SENATOR HOWARD: Thank you. [LB401]

PRESIDENT SHEEHY: Thank you, Senator Coash. Thank you, Senator Howard. Senator Nelson, you're recognized. [LB401]

SENATOR NELSON: Thank you, Mr. President, members of the body. I rise in support of LB401 and AM341 by Senator Howard. I'm interested in some comments that Senator Coash made, and would he yield to a question or two? [LB401]

PRESIDENT SHEEHY: Senator Coash, would you yield to Senator Nelson? [LB401]

SENATOR COASH: Yes, I will. [LB401]

SENATOR NELSON: Thank you, Senator. You made a good point there about the rule-making process and going. Could you tell me what the process is if you went...I think you were indicating that perhaps this was already in the rules. How would you change that to add some of the things that Senator Howard wants to put in here by going through the rules with Health and Human Services? [LB401]

SENATOR COASH: Sure. Thank you for the opportunity, Senator Nelson. I'll try to give you my best 50,000-foot view of how I see this process going. Rules and regs process is a fairly iterative process and when there is a proposed change to rules by the department or regulations, there is a process similar to what we have in the Legislature whereas they have to make a public notice and they have to say publicly these are the rules and the regulations that we are proposing to change, and then they set a date for a hearing and that is a hearing that is open to the public and the public is welcome to come in and comment on the rules, proposed changes, and make their feelings known about how these things will impact it. So in the case of assisted livings, you would probably see groups, same kind of groups that maybe came and testified on Senator Howard's bill, the department would come, and let the department know how they feel about it. And then from there, those rules have to go through the Attorney General's Office and in some cases to the Governor to be signed off on. [LB401]

SENATOR NELSON: So it might even be a little longer process than going this route here in the Legislature. [LB401]

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SENATOR COASH: It can. My point was that they don't have...they can do it at any...they can start the process at any time. They don't have...they're not bound by 60 or 90 days, as we are. [LB401]

SENATOR NELSON: And if I felt that I needed a change in the rules, then I go to them and they get it started there. And I guess it's probably in the instance where we are trying to get rules changed, there's been a hearing and they don't change it. Then we might try to go by statute, change it ourselves here. Would that be correct? [LB401]

SENATOR COASH: That would be correct. [LB401]

SENATOR NELSON: I mean we'd be able to do that. Thank you, Senator Coash. I'd like to ask a question of Senator Howard, if I may. [LB401]

PRESIDENT SHEEHY: Senator Howard, would you yield to Senator Nelson? [LB401]

SENATOR HOWARD: Yes, I will. [LB401]

SENATOR NELSON: Senator, thank you, Senator. This only applies to...not to nursing homes but to assisted-living facilities. Is that correct? [LB401]

SENATOR HOWARD: Assisted living. [LB401]

SENATOR NELSON: All right. And I'm interested in seeing, are there assisted-living facilities then that do take care of Alzheimer's, dementia? [LB401]

SENATOR HOWARD: There are facilities that are specifically designated and identify themselves as facilities that do care for these individuals. I don't believe I would call them assisted living. That's...they define themselves as strictly Alzheimer's facilities. [LB401]

SENATOR NELSON: Well, up to a certain extent then they can deal with persons with dementia, but if it's too severe then that person may have to go into a nursing home facility. Would that be correct? [LB401]

SENATOR HOWARD: I would say if their disabilities or their personal issues were such that they required more intense care,... [LB401]

SENATOR NELSON: Uh-huh. [LB401]

SENATOR HOWARD: ...that's entirely possible. [LB401]

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SENATOR NELSON: Uh-huh. One of the issues about going into an assisted-living facility is the amount of nursing care available. And so I think that some assisted-living facilities, maybe all, have a nurse on staff but they are somewhat limited in what they can do. Is that correct? [LB401]

SENATOR HOWARD: That's absolutely correct, Senator Nelson, and that's really where the issue came into play... [LB401]

PRESIDENT SHEEHY: One minute. [LB401]

SENATOR HOWARD: ...that precipitated this bill, was while they will have nurses available or consider them to be on staff, they really don't provide the intensive nursing care that someone with high requirements would need to have. [LB401]

SENATOR NELSON: And that would be brought out in this process here. I mean the people would be informed of that. [LB401]

SENATOR HOWARD: That's exactly right. It would be an issue of clarity. [LB401]

SENATOR NELSON: All right. Thank you, Senator Howard. [LB401]

SENATOR HOWARD: Thank you. [LB401]

SENATOR NELSON: Thank you, Mr. President. [LB401]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Senator Coash, you're recognized. [LB401]

SENATOR COASH: Thank you, Mr. President. Thank you, members. After the discussion I just had with Senator Nelson, I wondered if I could extend that conversation to Senator Howard for a moment. [LB401]

PRESIDENT SHEEHY: Senator Howard, would you yield to Senator Coash? [LB401]

SENATOR HOWARD: Yes. [LB401]

SENATOR COASH: Thank you, Senator Howard. You heard the discussion Senator Nelson and I were having about the rules and regulations, and I wonder if you know whether or not the changes that you've proposed in LB401 were ever attempted to be addressed through the rules and regs process? [LB401]

SENATOR HOWARD: I wouldn't have that information. I will tell you, I believe that the current rules and regs aren't looking at...they're not looking at any changes at this time,

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if that's helpful. [LB401]

SENATOR COASH: That is helpful. Colleagues, I'll ask you, Senator Howard has brought us a concept that makes sense and I don't want to...we all need to make our own decision whether or not we think these are good ideas or not. And I think they are, but I am starting to question whether or not we have jumped the gun, whether or not we should have asked these changes to be made in the rules and regs and then let that process play out before we hard wire something into statute. Believe me, colleagues, sometimes rules and regs don't work the way we want to and so we need legislative change to make the policy decisions that we feel are necessary, and so that's why I wondered if Senator Howard knew whether or not we had tried and failed and that's the result of LB401 or if we hadn't tried at all. So I'm going to continue to contemplate whether or not we need to do this through rules or regs. Again, the concepts are valid and the concepts make sense. I'm just...I'm questioning the mechanism to make these changes. So with that, I will continue to listen to the debate. Thank you, Mr. President. [LB401]

PRESIDENT SHEEHY: Thank you, Senator Coash. Senator Fulton, you're recognized. [LB401]

SENATOR FULTON: Thank you, Mr. President. Would Senator Howard yield to one last question? [LB401]

PRESIDENT SHEEHY: Senator Howard, would you yield to Senator Fulton? [LB401]

SENATOR HOWARD: Absolutely. [LB401]

SENATOR FULTON: Okay. The other question that I wanted to get asked and into the record for sake of clarity is, let's see here, on the amendment, this is...it could be page 2, line 17, so subsection (e), "the process for developing and updating the resident services agreement." Are you with me there? [LB401]

SENATOR HOWARD: I've got it. Yes. [LB401]

SENATOR FULTON: Okay. Can you describe a little bit more? We're asking these assisted-living facilities to provide in written form the process for developing and updating the resident services agreement. Can you define a little bit more clearly what you mean or what your intention is by "process"? [LB401]

SENATOR HOWARD: The way that we've written this bill, it gives leeway to the assisted-living facilities to sit down with the individual to look at their condition, how they're aging, and if in fact they need to be looking at more services. So it's a cross between the assisted living and the individual working together basically. [LB401]

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SENATOR FULTON: So would that be the...if by saying the process by which one comes to the service agreement, is it you're leaving this more to the discretion of the assisted-living facility to outline how their services agreement has been come up with? So whose discretion says that enough information has been provided? Is it the assisted-living facility or is it the department? [LB401]

SENATOR HOWARD: The point you make is a good one and how it would work or how I would envision my intent would be is that together the assisted living and the individual would make the plan for the future. If it appeared that the individual required more than the assisted living could provide, it would have to be a...they would have to be able to reach this together. And it's completely fair to ask the assisted-living facility to sit down with the individual to instigate that, to begin the process and to say, you know, we're concerned or we have a concern. [LB401]

SENATOR FULTON: Then it's not...the department doesn't...it's not at the volition of the department. It's not your intention to put the Department of Health and Human Services in any type of position where they're making decisions as to whether enough information has been provided. It's between the assisted-living facility and the individual? [LB401]

SENATOR HOWARD: That's how I would anticipate it working. They're the two that are most involved in this, and the individual's family, of course. [LB401]

SENATOR FULTON: Okay. Very good. Thank you, Senator Howard. Thank you, Mr. President. [LB401]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Seeing no additional requests to speak, Senator Howard, you're recognized to close on AM341 to LB401. [LB401]

SENATOR HOWARD: Thank you, Mr. President. I've appreciated this debate. I've appreciated the insight, I would say, of the two individuals that are very closely involved with assisted-living facilities, as well as all of the rest of us that have contributed to this. In regards to regulations, while they may be good and serve a purpose and we hopefully don't often run into difficulties with them, I would remind you of two recent developments--one is Beatrice and a second one is the Health and Human Services reforms--which both operated outside of this legislative body and relied on regulations. LB401 is about making sure that individuals and their families have the complete picture of what assisted-living facilities can offer and what they cannot. Nebraskans deserve to have as much information as possible when they make long-term care decisions for themselves and those that they love. I urge you to advance LB401. Thank you. [LB401]

PRESIDENT SHEEHY: Thank you, Senator Howard. You have heard the closing. The question before the body is on the adoption of AM341 to LB401. All those in favor vote

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yea; opposed, nay. Please record, Mr. Clerk. [LB401]

CLERK: 41 ayes, 0 nays, Mr. President, on the adoption of Senator Howard's amendment. [LB401]

PRESIDENT SHEEHY: AM341 is adopted. [LB401]

CLERK: I have nothing further on the bill, Mr. President. [LB401]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We'll return to floor discussion on LB401. Seeing no requests to speak, Senator Howard, you're recognized to close. Senator Howard waives closing. The question before the body is on the advancement of LB401. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB401]

CLERK: 34 ayes, 0 nays, Mr. President, on the advancement of LB401. [LB401]

PRESIDENT SHEEHY: LB401 advances. Next item, Mr. Clerk. [LB401]

CLERK: LB179 by Senator Krist. (Read title.) Introduced on January 7, referred to Health and Human Services Committee, advanced to General File. There are committee amendments, Mr. President. (AM124, Legislative Journal page 460.) [LB179]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Krist, you're recognized to open on LB179. [LB179]

SENATOR KRIST: Thank you, Mr. President. Good morning, members of the body. As indicated on the committee statement, LB179 advanced from the Health and Human Services Committee unanimously, 7 to 0 vote, with no opposition or neutral testimony offered. LB179, a bill I introduced on behalf of the Nebraska Pharmacists Association, the bill is supported by the Nebraska Pharmacy Board and it updates various sections of the Pharmacy Practice Act and the Uniform Controlled Substance Act. Speaking now just to the green copy, it removes a sentence from Section 28-414(3)(b) that requires a pharmacist to sign and date the face of a controlled substance, a Schedule II prescription after filling. [LB179]

PRESIDENT SHEEHY: (Gavel) [LB179]

SENATOR KRIST: Thank you, Mr. President. This is not required by federal law. By removing this sentence, pharmacies will be able to accept electronic prescribed controlled substance prescriptions once it is allowed by the DEA. The bill also defines "drug sample or sample medication" in the Pharmacy Practice Act. This will harmonize the definitions in the Controlled Substance Act in federal law. Lastly, LB179 corrects Section 38-2851 which addresses licensure of a pharmacist. It differentiates between

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requirements for initial licensure as a pharmacist and requirements necessary for licensure of a pharmacist via reciprocity. In closing, I would like to thank the Nebraska Pharmacists Association, those who offered testimony at the hearing, and my colleagues on the Health and Human Services Committee for the support of the bill. I ask for the advancement of LB179 to Select, following the adoption of AM124, which will be offered by the committee. Thank you, Mr. President. [LB179]

PRESIDENT SHEEHY: Thank you, Senator Krist. You've heard the opening to LB179. As was stated, there is a Health and Human Services Committee amendment. Senator Campbell, you're recognized to open on AM124. [LB179]

SENATOR CAMPBELL: Thank you, Mr. President and members of the body. The committee amendment is technical in nature, addressing two concerns of the Department of Health and Human Services. First, AM124 adds a definition for "drug sample or sample medication" to the Pharmacy Practice Act. Drug sample is currently defined in the Wholesale Drug Distributors Act but not in the Pharmacy Practice Act. PhARMA and HHS have requested that the definition mirror federal law. So accordingly, the definition language is taken from federal statutes for drug sample and sample unit label. Second, the amendment addresses concerns of HHS regarding the pharmacist license in Nebraska. The Nebraska Pharmacists Association and HHS developed the language in the amendment. The clarification is required because when the Uniform Credentialing Act was adopted, the language did not clearly address both licensure by exam or score transfer and licensure by reciprocity. AM124 clarifies both of these requirements. Thank you, Mr. President. [LB179]

PRESIDENT SHEEHY: Thank you, Senator Campbell. You've heard the opening of the Health and Human Services Committee amendment, AM124. Member requesting to speak, Senator Gloor, you're recognized. [LB179]

SENATOR GLOOR: Thank you, Mr. President. I rise in support of both AM124 and LB179. We have in the past couple of years, and I'm sure in upcoming years, taken a look at the fact that electronic medical records are resulting in some pretty profound changes in our healthcare system, all for the better, as far as I'm concerned. You yourself, Mr. President, have been very active in the Nebraska Health Information Initiative that's an important part of that. But all of these changes require some degree of statutory change to go along with them, and this is an example of that. This relates to the provision of care, but I would also point out that we have discussed so far this session LB20 relating to pseudoephedrine, and the Speaker has a bill, LB668, that also relates to being able to electronically track pseudoephedrine. That, too, is an important part of the electronic medical record process and making these statutory changes an inevitable part of being able to make these accommodations. Therefore, I would urge the body to support both the amendment and LB179, and appreciate Senator Krist for carrying this bill. Thank you. [LB179 LB20 LB668]

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PRESIDENT SHEEHY: Thank you, Senator Gloor. Seeing no additional requests to speak, Senator Campbell, you're recognized to close on AM124. Senator Campbell waives closing. The question before the body is on the adoption of AM124 to LB179. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB179]

CLERK: 34 ayes, 0 nays on adoption of committee amendments. [LB179]

PRESIDENT SHEEHY: AM124 is adopted. [LB179]

CLERK: I have nothing further on the bill, Mr. President. [LB179]

PRESIDENT SHEEHY: Are there members requesting to speak on LB179? Seeing no requests to speak, Senator Krist, you're recognized to close. [LB179]

SENATOR KRIST: (Microphone malfunction)...members of the body for support of the amendment and the underlying LB179. I think it's a good bill. This is one of those examples where if we enter the twenty-first century and electronically start doing a lot of things, we're going to have to prepare. This is one of those bills that helps us do that to move forward. Again, electronically, it will allow us to have a good prescription process in place and good tracking in the future, once it's approved by the DEA. And I urge your support. Thank you. [LB179]

PRESIDENT SHEEHY: Thank you, Senator Krist. You have heard the closing. The question before the body is on the advancement of LB179. All those in favor vote yea; opposed, nay. Mr. Clerk, please record. [LB179]

CLERK: 37 ayes, 0 nays, Mr. President, on the advancement of LB179. [LB179]

PRESIDENT SHEEHY: LB179 advances. Mr. Clerk, do you have items for the record? [LB179]

CLERK: I do, Mr. President. Thank you. Your Committee on Natural Resources, chaired by Senator Langemeier, reports LB105, LB207, LB563, LB621 to General File, and the following bills to General File with committee amendments: LB41, LB342, LB366, LB421. Senator Adams, as Chair of Education, announces the committee has selected LB333 as one of its committee priority bills. That's all that I have, Mr. President. (Legislative Journal pages 541-544.) [LB105 LB207 LB563 LB621 LB41 LB342 LB366 LB421 LB333]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We will now move to the next item.

CLERK: LB197 by Senator Dubas. (Read title.) Introduced on January 7 of this year, at

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that time referred to the Judiciary Committee. The bill was advanced to General File. At this time I have no amendments to the bill, Mr. President. [LB197]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Dubas, you're recognized to open on LB197. [LB197]

SENATOR DUBAS: Thank you very much, Mr. Lieutenant Governor. Good morning, colleagues. It is with a great deal of pleasure that I introduce to you this morning LB197. After introducing the bill and since the bill's hearing, people have continued to ask me why do we need this legislation. It's very simple, in my mind. We need this legislation to codify that a woman is not breaking any laws when they are taking care of their child's most basic need for nutrition by nursing in a public place. Hopefully, a secondary benefit from this bill will be the changing of the public's perception and opinion about this. Making the decision to either use a bottle and formula to feed your baby or nurse your baby is a personal one, and I recognize that and so...but no matter what decision a woman makes, no matter how she chooses to take care of her child, she should not be persecuted for that decision. We don't ask women who are bottle feeding their baby to go into a bathroom, and I don't think we should ask a woman who is nursing her child to go into a bathroom either. Women need to be reassured through this legislation that they should not fear repercussions or threats of indecent exposure or any other type of violation. Nebraska is one of the two remaining states that do not offer some type of protection for nursing mothers. This bill will not cost us one single penny to implement but it has the very real potential to save our state money in multiple ways. Breast-feeding leads to a decrease in childhood obesity, it improves the health of the child. For low-income and all women, for that matter, it offers savings by not purchasing expensive formula. Healthy children improve employee attendance at work, employee morale, fewer insurance claims, so there's savings for businesses as well. Breast-feeding also protects women's health by aiding in weight loss, it supports stronger bone health, and lowers a woman's risk of breast and ovarian cancer. Several years ago I had the opportunity to tour the Central Nebraska Public Health Department in Grand Island and during that visit I was introduced to Jane Miller, who's in charge of the WIC Program and also leads a very impressive mentoring group for nursing mothers. I even had the chance to meet one of those mothers in the program who shared with me her appreciation for the support that she was receiving. Yet she and so many other women, when they are in public places, face rude comments, are asked to leave, to take the baby out into the car or, worse yet, go into a public rest room to feed their child. Again, all this bill does is give that woman...all this bill does is let a woman know she has a right to breast-feed her child in any public or private place that she is otherwise authorized to be. While the language is brief, the statement support carries a large and powerful message. There is a great deal of support for this bill. I know if you look on your committee statement there's not a long line of testifiers, but these people came in representing a variety of interests. I'd just like to list people who have contacted me with letters of support. Those letters have come from Alegent Health, the Douglas

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County Health Department, Nebraska Breastfeeding Coalition, the American Academy of Pediatrics, Lancaster County Health Department, Nebraska Academy of Family Physicians, Nebraska Dental Association, Nebraska Dietetic Association, Nebraska Medical Association, the Nebraska Nurses Association, Public Health Association of Nebraska, Public Health Solutions, and Two Rivers Public Health Department. I have been amazed by the number of women and men who have stopped me in the halls of this building or as I've been out in other places and have thanked me profoundly for introducing LB197. Just knowing that the state of Nebraska recognizes the importance of their choice gives women a sense of confidence and security. No woman should be made to feel ashamed or apologetic or threatened when they are simply responding to a basic need of their child. No one should ever be told to go into a public rest room to feed their baby. This is a topic that seems to lend itself to jokes, but, all jokes aside, this is a serious topic and I respectfully ask your support for LB197. Thank you. [LB197]

PRESIDENT SHEEHY: Thank you, Senator Dubas. You've heard the opening to LB197. Member requesting to speak, Senator Gloor, you're recognized. [LB197]

SENATOR GLOOR: Thank you, Mr. President. I thought maybe I'd be somewhere back in line. I am pleased to see that's not the case. Breast is best and, you know, I say that only because it was one of the mantras that was brought to me a number of years ago in my hospital. I have to be candid and say if this issue would have come up 30 or 40 years ago, I would have said, oh, please, do we really need legislation like this? Breast-feeding back in those days was resigned to hippie moms and whole wheat mothers and was considered sort of an abnormality because, you know, we had fancy things like formula, Enfamil, far more nutritional things, we thought, to feed infants rather than going back to the old days of breast-feeding. And there's been a turnabout on that, and there was a turnabout on my feeling about this when it came to the hospital. We started a program to support mothers called "Eat at Mom's," which I thought was one of the cleverest titles that anybody ever came up with in their entire life, and I'm not saying this from a humorous standpoint but, you know, trying to take off some of the almost prohibition about mothers being encouraged to breast-feed has been a big issue. And it got to the point where in our institution, because we ended up with so many of our employees who were breast-feeding, we found out that moms who were going in with breast pumps to public rest rooms or employee rest rooms or clothes closets, and that's a terrible place to resign mothers, to try and do what we know is now a far healthier option than anything else that we can offer. We cut funding and have to cut funding to a variety of programs in this state and it seems to me that making a small move that takes some of the onus off of this encourages even more women to feel comfortable breast-feeding is a good offset to the reality of less money to pay for some of those things that might provide nutritional supplement. And again, I think it's also a small step in making a comment that this is a good thing, it's a healthy thing. And the more of that we do, the less this becomes a joke or this becomes a discussion about, well, we don't want to offend Grandma or whomever. It's a good program. It's a good law. I don't think

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it's earthshaking, it's not going to encourage thousands of mothers, I don't think, to make this transition to breast is best, but I think it's a step in the right direction and a lot of what I think we do legislatively is try and move in a direction that we think will make a difference long term. I think this bill is an example of that and I appreciate Senator Dubas bringing it forward. Thank you. [LB197]

PRESIDENT SHEEHY: Thank you, Senator Gloor. Members requesting to speak on LB197, we have Senator Harms, followed by Senator Fulton and Senator Ken Haar. Senator Harms, you're recognized. [LB197]

SENATOR HARMS: Thank you, Mr. President. Colleagues, I rise in support of LB197. I want to thank Senator Dubas for introducing this legislation. I probably have received 35 letters from my own community from women asking that I support this piece of legislation. They're tired of being told that they have to go to the rest room to feed their child or to leave the restaurant because they were going to feed their child or go to the car to feed their child. I don't think women should be treated that way and I think they should have the right to do this. I told Senator Dubas earlier in the session I was rather relieved that she was introducing this legislation because this summer I was approached by women in my community that said, would you introduce this legislation because we're one of the few states left that has not protected women for breast-feeding, and of course I said, yes, I would. But I started worrying about how am I going to handle this issue. I don't know anything about breast-feeding and whether it's appropriate or not. But I do support it and I thank you very much because I'm happy that you have introduced it and it's easier for you to address than probably it would be for me. But I'd ask you to support LB197. I think it's deserving and I think our women need to be treated better than they have in the past in this great state. So thank you, Mr. President. [LB197]

PRESIDENT SHEEHY: Thank you, Senator Harms. Senator Fulton, you're recognized. [LB197]

SENATOR FULTON: Thank you, Mr. President. I wasn't actually going to speak on this but I'm glad that a few people have spoken up to support Senator Dubas and her bill. I had...there could be some resistance or reluctance to vote for this bill and I want to maybe get in to share a little bit why it would be appropriate to support this bill even if one thinks it might be unnecessary. When I first came into the Legislature, my kids were very interested in work down here at the Capitol and they started, I noticed, to pay attention to more of our laws and more of our practices. There was a time I remember when we were getting into the car and one of the kids did not put on his seat belt right away and his sibling came down on him and said, you have to put your seat belt on or the police are going to get you. I remember him saying that. And rather than saying, well, you realize it's only a secondary offense, (laugh) I just let it stay. But I think back to my own childhood. When I was younger, I don't believe seat belts were required by law.

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Now I'm not getting into whether it was appropriate to pass the law or not. I'm simply making a point here. We senators are given great power. The law has a formative power on the populace. There's a formative element in the law, because it is the law and because most people want to follow the law, there is the power of formation that is given to each of us 49 senators. It's something that I contemplated on that day when one of my children was berating another child for not buckling his seat belt, but there's something deeper that occurs in the law sometimes than we even pay attention to. Now my wife and I were out to eat some years back and I believe it was our third child and we were at a restaurant and she was breast-feeding that child, and she does this very discreetly. There's a blanket and there's...really, I don't know that anyone would know that she's breast-feeding a child. But there was an individual in the restaurant who, for some reason or another, was watching us and noticed this and began to make a big stink about my wife breast-feeding our child. And slowly my wife began...I watched as she...as my wife recognized that she's being watched and singled out and a manager became involved because the person evidently needed to go and tell a manager that this terrible woman was breast-feeding her child. Eventually, it was publicly humiliating. So I had to sit there and watch my wife suffer the indignity of public humiliation for breast-feeding her child. The irony in all of this was that just a couple tables over a young lady was engaged...was wearing something that I'll just say is common fashion today and probably more...she was more exposed than my wife was. And so I'm sitting there griping to this manager the irony in all of this, that we live in a society where people can just about be bare and be celebrated for being trendy and the latest...and celebrating the latest in fashion, whereas a mother who is breast-feeding her child can suffer the indignity of public humiliation. And so I do support LB197. Perhaps one could argue it's not necessary, but Nebraska is now one of two states and we ought to use the formative power of the law to communicate to our citizenry that it is appropriate and proper for a mother to feed her child... [LB197]

PRESIDENT SHEEHY: One minute. [LB197]

SENATOR FULTON: ...in the way that God intended. So thank you, Senator Dubas. Thank you, Mr. President. [LB197]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Senator Ken Haar, you're recognized. [LB197]

SENATOR HAAR: Mr. President, members of the body, I want to thank Senator Dubas for bringing this bill forward and I think it's very appropriate that men stand up and talk in favor of this bill because men have been the ones who have been the problem in this area. Some ways I really can't believe that we even need this, it would seem. (Laugh) I think the only smiles about this is why would we actually need this? Who would be offended? But we do. It needs to go into the law. It's the right thing to do and more and more we see the value of breast-feeding for the baby and for the mother. I just hope that

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more mothers and more families will take this option because it's a healthy thing to do and it's a good thing to do. So thanks, Senator Dubas, and I wholeheartedly support LB197. [LB197]

PRESIDENT SHEEHY: Thank you, Senator Haar. Additional members requesting to speak on LB197, we have Senator Sullivan, followed by Senator Karpisek. Senator Sullivan. [LB197]

SENATOR SULLIVAN: Thank you, Mr. President. Good morning, colleagues. I stand also in support of LB197. And with our daughter having a new baby herself and breast-feeding and will be returning to work in a few weeks, I think this is a good move. You know, this bill carries no enforcement with it, but it sends a message. And in reference to what Senator Fulton said, our decisions, our comments here in this body go on record, they carry a significant amount of weight in this state, and so I think it's good that because there is no enforcement mechanism in this bill that we have enough conversation on it and show of support that it does send a message that this is good legislation, it's proper legislation, and that we are fully behind it. Thank you. [LB197]

PRESIDENT SHEEHY: Thank you, Senator Sullivan. Senator Karpisek. [LB197]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. Would Senator Dubas yield to a question, please? [LB197]

PRESIDENT SHEEHY: Senator Dubas, would you yield to Senator Karpisek? [LB197]

SENATOR DUBAS: Yes, I will. [LB197]

SENATOR KARPISEK: Thank you, Senator Dubas. And I support LB197. We talked off the mike earlier about is there any sort of anything in the bill saying that the woman should reasonably attempt to cover up, as Senator Fulton just said his wife was trying to do, or is that necessary? That's some of the concern I've heard from constituents. [LB197]

SENATOR DUBAS: Well, I would say it's not necessary because I think by putting any kind of language in there, one, how would you define what is "discreet," and two, we're making an assumption that women are not being discreet and, by and large, the vast majority of the women are discreet. The clothing, the blankets, the things that are available to women these days makes it very easy for them to take care of their child without having to fully expose themselves. So, you know, I've heard those same concerns but I just don't...I just don't feel that we need to go that direction. [LB197]

SENATOR KARPISEK: Do you think if someone was intentionally doing something not being discreet that there would be other laws maybe that would cover that sort of thing?

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[LB197]

SENATOR DUBAS: Well, again, I'll go to the fact that I don't think...these are mothers who probably have other children and husbands and boyfriends and things like that in their lives so the fact that they would be wanting to take off their clothes or do anything like that, I'm just not thinking it's there. But I do think if it was a really extreme case, there would be other avenues that could be taken to pull that woman into line, I guess. [LB197]

SENATOR KARPISEK: (Laugh) Very good. Thank you, Senator Dubas. And I do support LB197. Thank you, Mr. President. [LB197]

PRESIDENT SHEEHY: Thank you, Senator Karpisek. Seeing no additional requests to speak, Senator Dubas, you're recognized to close on LB197. [LB197]

SENATOR DUBAS: Thank you very much, colleagues, and I would especially like to thank the men who stood up and spoke this morning because I think it is important that we hear from the men that they do respect women and respect the choice that women make. As I said in my response to Senator Karpisek, there are no mandates, there are no requirements. There are other avenues, if something gets out of line, that are available for people to use. Just, you know, for too long we have made women feel ashamed of doing something that is probably the most beautiful, nurturing, loving act that can take place between a mother and a child. So I just ask for your support and appreciate the comments that were made this morning. Thank you. [LB197]

PRESIDENT SHEEHY: Thank you, Senator Dubas. You have heard the closing. The question before the body is on the advancement of LB197. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB197]

CLERK: 41 ayes, 0 nays, Mr. President, on the advancement of LB197. [LB197]

PRESIDENT SHEEHY: LB197 advances. We'll now move to the next item. [LB197]

CLERK: LB61 is a bill by Senator Heidemann. (Read title.) Introduced on January 6, referred to Judiciary, advanced to General File. I have Judiciary Committee amendments, Mr. President. (AM211, Legislative Journal page 463.) [LB61]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Heidemann, you're recognized to open on LB61. [LB61]

SENATOR HEIDEMANN: Thank you, Mr. President, fellow members of the body. LB61 increases the penalties for unlawful intrusion which currently is a Class III misdemeanor. Section 28-311.08 states that it shall be unlawful for any person to knowingly intrude

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upon any other person without their consent or knowledge in a place of solitude or seclusion. "Intrude" is defined as viewing of another person in a state of undress or recording by video or other electronic means of another person in a state of undress. "Place of solitude or seclusion" is defined as a place where a person would intend to be in a state of undress and have a reasonable expectation of privacy. Under LB61, viewing a person without their knowledge in a place of solitude or seclusion would increase to a Class I misdemeanor. If the intrusion is video or electronically recorded, the penalty would increase to a Class IV felony, and if a video or an image from the intrusion is distributed to another person or made public in any manner, it would include to a Class III felony. Last May, a constituent contacted me, telling her personal story with video voyeurism. She was very distressed to learn the minimum consequences for a crime that had such a severe impact on her. After I received her e-mail, I contacted the county attorney in that area who has also agreed that the penalty in the current law for distributing a video on the Internet of someone in a state of undress without their knowledge was deficient. A Class III misdemeanor, as found in the current law, is the same penalty given someone caught operating a vehicle without a certificate of title or unlawfully hunting pheasants. I worked with the Attorney General's Office on this legislation as I wanted to increase the penalties for this crime but did not want them out of line with similar offenses. LB61 was advanced from the Judiciary Committee on an 8 to 0 vote with committee amendments. This has been a work in progress. We are still, as we speak, working a little bit. We'll come in with the committee amendment right now, but just in closing, on my part, video voyeurism is not only a sexual offense but also a violation of basic human rights. The penalty should fit the crime and I urge you to vote favorably on the committee amendment to LB61 and advancement of the bill. [LB61]

PRESIDENT SHEEHY: Thank you, Senator Heidemann. You've heard the opening to LB61. As was stated, there is a Judiciary Committee amendment, AM211. Senator Ashford, you're recognized to open. [LB61]

SENATOR ASHFORD: Thank you, Mr. Lieutenant Governor. And Senator Heidemann and his staff have done a very good job, nice job on this bill, and it is...because we're dealing with privacy issues and proof issues that can be somewhat difficult, this is a tricky area of the law. There is another amendment coming after the committee amendment that talks about the Adam Walsh Act and how it would apply to circumstances in this...with this legislation, so that's coming next. The committee amendment, though, deals with a couple of other areas. Senator Heidemann has gone through the penalty provisions in the amendment actually, the committee amendment, so I'm not going to go over those enhanced penalties again. Let it be said that the committee felt that the enhanced penalties recommended by Senator Heidemann are appropriate, though there are a couple of changes in the committee amendments that I will reference. First of all, the committee amendment revises the definition of the word "intrude" to clarify that it means "either the viewing of another person in a state of

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undress or the recording by video or other electronic means of another person in a state of undress." I believe Senator Heidemann referenced that but that is clearly the intent of this legislation. In addition to that, the committee amendments implement in Section 1(4) a three-year statute of limitations period to begin from the latter of the commission of the crime, when law enforcement...or...one; two, when law enforcement or a victim receives notice of either a video or other electronic recording of the intrusion or notice of the distribution of an image, video or other electronic recording of the unlawful intrusion; or when the youngest victim of the intrusion reaches the age of 21. The committee was concerned about the statute of limitations of three years if there was a subsequent showing of this video at...either when the victim reaches age 21 or a video transmission of the images later than three years after the actual taking of the video. And as a result, we moved the statute of limitations to reflect that concern by the committee. These are tough penalties but this is a tough crime, as Senator Heidemann has suggested, and we feel that the Class III felony, which is a stiff penalty, is appropriate in those cases where there is a video streaming taken in these circumstances. There is some Adam Walsh issues raised by the State Patrol. There are some Adam Walsh issues raised by the State Patrol that we will deal with in the next amendment. This amendment does strike reference to the Sex Offender Registry Act but we fix that in the next amendment. And finally, the amendment would remove the word "audio," so we're not talking about audio transmissions of individuals in a state of undress. Obviously, that's pretty hard to do with audio and we're only obviously concerned with video transmission. With that, Mr. Lieutenant Governor, I would certainly urge the adoption of the committee amendments. [LB61]

PRESIDENT SHEEHY: Thank you, Senator Ashford. You've heard the opening of the Judiciary Committee amendment, AM211, to LB61. Mr. Clerk, do you have an amendment to the amendment? [LB61]

CLERK: Well, Mr. President, I did. Senator Ashford, I had a note that you wanted to withdraw AM329. [LB61]

SENATOR ASHFORD: Yes. [LB61]

CLERK: Thank you. I have... [LB61]

PRESIDENT SHEEHY: Amendment... [LB61]

CLERK: I have nothing further on the committee amendments, Mr. President. Excuse me. [LB61]

PRESIDENT SHEEHY: AM329 is withdrawn. Are there members requesting to speak to AM211? Seeing none, Senator Ashford, you're recognized to close on the amendment. Senator Ashford waives closing. The question before the body is on the adoption of

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AM211 to LB61. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk.
[LB61]

CLERK: 38 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB61]

PRESIDENT SHEEHY: AM211 is adopted. [LB61]

CLERK: Mr. President, Senator Heidemann would move to amend the bill with AM357.
(Legislative Journal pages 545-548.) [LB61]

PRESIDENT SHEEHY: Senator Heidemann, you're recognized to open on AM357.
[LB61]

SENATOR HEIDEMANN: Thank you, Lieutenant Governor. Fellow members of the body, AM357, under the law as currently written, unlawful intrusion is a Class III misdemeanor; however, if the victim was under the age of 18 a violation would be a Class II misdemeanor. Since LB61 increases the penalties above the Class II misdemeanor level, the distinction for a minor was no longer needed. However, after the public hearing and after the bill was advanced from the Judiciary Committee, the State Patrol informed us that in order to remain compliant with the Adam Walsh Act, the crime of an unlawful intrusion pursuant to 28-311.08, when the victim is under the age of 18 at the time of offense, needed to remain in statute. Therefore, the new language in AM357 reinstates the distinction when the victim is a minor, in subsection (4) of 28-311.08. Additionally, Section 29-4003 pertaining to the Sex Offender Registration Act, is amended to reflect the changes. At this time, I want to thank Senator Ashford and the legal counsel from the Judiciary Committee, Senator Burke Harr, and Senator Steve Lathrop helping me with this law. I think I've said it on the mike more than once, I'm not a lawyer, this gets over my head. I appreciate their concern and the help with not only LB61 but with the amendments. With that, I urge your voting green on AM357 and LB61. [LB61]

PRESIDENT SHEEHY: Thank you, Senator Heidemann. You've heard the opening of AM357 to LB61. Member requesting to speak, Senator Ashford, you're recognized.
[LB61]

SENATOR ASHFORD: Thank you, Mr. Lieutenant Governor. And thank you, Senator Heidemann, for bringing this amendment. It does satisfy the concerns raised by the State Patrol that the offense of recording these images, if the victim is under 18...or 18 or younger, under 18 that it's a registerable offense under the Adam Walsh Act, and that was deleted because of some of the changes we made in the committee amendments, and now it's reinserted consistently with our reading of the requirements of the Adam Walsh Act. So with that, I would concur with Senator Heidemann that AM357 should be adopted. Thank you. [LB61]

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PRESIDENT SHEEHY: Thank you, Senator Ashford. Seeing no additional requests to speak, Senator Heidemann, you're recognized to close on AM357. Senator Heidemann waives closing. The question before the body is on the adoption of AM357 to LB61. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB61]

CLERK: 38 ayes, 0 nays, Mr. President, on the adoption of Senator Heidemann's amendment. [LB61]

PRESIDENT SHEEHY: AM357 is adopted. Anything further, Mr. Clerk? [LB61]

CLERK: Nothing further, Mr. President. [LB61]

PRESIDENT SHEEHY: Are there members requesting to speak on LB61? Seeing none, Senator Heidemann, you're recognized to close. [LB61]

SENATOR HEIDEMANN: Thank you, Mr. Lieutenant Governor. Fellow members of the body, when this issue was brought to me last summer and I realized what happened to this girl and what she's been put through and how this is going to affect her for the rest of her life, and then I realized what the penalty was for this, I realize there was almost...there was an injustice done to her. So we took up this issue, even though it's a place that I'm not the most comfortable with, because I felt it was important, if this ever happened to anybody else, that there could be a little bit more justice served. So with that, I would appreciate your vote for advancement of LB61 to Select File. [LB61]

PRESIDENT SHEEHY: Thank you, Senator Heidemann. You have heard the closing. The question before the body is on the advancement of LB61. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB61]

CLERK: 40 ayes, 0 nays, Mr. President, on the advancement of LB61. [LB61]

PRESIDENT SHEEHY: LB61 advances. Next item, Mr. Clerk. [LB61]

CLERK: LB308, Mr. President, a bill by the Urban Affairs Committee and signed by its members. (Read title.) Introduced on January 12, referred to Urban Affairs, advanced to General File. At this time I have no amendments to the bill, Mr. President. [LB308]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator McGill, you're recognized to open on LB308. [LB308]

SENATOR MCGILL: Thank you, Mr. President, members of the body. LB308 is a pretty simple bill that does three things. First, the city of the...for cities of the second class, LB308 clarifies when the term of mayor begins and provides for the terms of office for

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officers appointed by the mayor and confirmed by the city council, are to be confirmed by the council or to be established by the city council by ordinance. The ordinance is to provide that either the officers hold the office which they've been appointed until the end of the mayor's term of office or that the officer should hold office for one year unless sooner removed. There's currently no statutory term of office for cities of the second class. The bill language provides that the term of office for the mayor in a city of the second class would begin on the date of the first regular meeting of the city council held in December following the statewide general election. Believe it or not, right now in statute there is no beginning date for that office so we want to put that in statute to make it clear for those cities. Second, LB308 also clarifies in statute that the term of office for villages is one year. And third, LB308 puts the current statutory language regarding the appointment and discipline of police officers for cities of the second class and villages into its own subsection to avoid confusion and to separate the provisions relating to police officers from the provisions for appointed officials. Thank you, Mr. President. [LB308]

PRESIDENT SHEEHY: Thank you, Senator McGill. You've heard the opening to LB308. Are there members requesting to speak? Seeing none, Senator McGill, you're recognized to close. Senator McGill waives closing. The question before the body is on the advancement of LB308. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB308]

CLERK: 37 ayes, 0 nays, Mr. President, on the advancement of LB308. [LB308]

PRESIDENT SHEEHY: LB308 advances. Next item. [LB308]

CLERK: LB335 is a bill by Senator McGill. (Read title.) Introduced on January 12, referred to the Urban Affairs Committee. The bill was advanced to General File. At this time I have no amendments to the bill, Mr. President. [LB335]

PRESIDENT SHEEHY: Senator McGill, you're recognized to open on LB335. [LB335]

SENATOR MCGILL: Mr. President, members of the body, this bill is also pretty straightforward. LB335 is a bill that creates statutory language that allows all cities and villages to waive their bidding procedures if necessary to comply with any federal grant, loan or program. Questions were raised recently when cities were eligible to apply for federal stimulus grants under the American Recovery and Reinvestment Act program. A requirement of this grant was for cities to buy American during the bidding process. So the intent of LB335 is to eliminate the possible conflict between bidding requirements in state law and requirements in federal programs. With this enactment, the question will be resolved for future federal programs. Thank you, Mr. President. [LB335]

PRESIDENT SHEEHY: Thank you, Senator McGill. You've heard the opening to LB335.

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Seeing no requests to speak, Senator McGill, you're recognized to close. Senator McGill waives closing. The question before the body is on the advancement of LB335. All those in favor vote yea; opposed, nay. Mr. Clerk, please record. [LB335]

CLERK: 38 ayes, 0 nays, Mr. President, on the advancement of LB335. [LB335]

PRESIDENT SHEEHY: LB335 advances. (Visitors introduced.) Next item, Mr. Clerk. [LB335]

CLERK: Mr. President, LB160 is a bill by Senator Campbell. (Read title.) Introduced on January 7, referred to the Agriculture Committee, advanced to General File. I have no amendments pending at this time, Mr. President. [LB160]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Campbell, you're recognized to open on LB160. [LB160]

SENATOR CAMPBELL: Thank you, Mr. President and members of the body. The Nebraska Association of County Officials asked me to introduce LB160 to remove a requirement for assessors to report to the Secretary of State listing all trusts holding agricultural land. NACO sought this change because assessors believe there is no clear understanding of the need for the report. Assessors in some counties are not doing this and they don't want to be in violation of the law. Assessors submit the report to the Secretary of State annually and the Secretary of State maintains the reports in a file. According to the Secretary of State's Office, it is rare for anyone to ask to see the reports. This portion of the law was enacted the year before the voters amended the state constitution to ban corporate farming in Nebraska. As you know, a federal court has since then ruled that Nebraska's ban is unconstitutional. There does not appear to be any reason to continue to require assessors to submit the lists. Another section of statute, 76-1520, requires corporate officers to report the same information to the Secretary of State. LB160 does not change that. The bill had no opposition at its hearing in the Agriculture Committee. One person testified in a neutral capacity. John Hansen of the Nebraska Farmers Union said that he could not think of any reason to oppose the bill. The bill also reflects a Revisor's change to bring sections of statute into compliance with the state constitution. The change is on page 3, lines 2 to 5. It directs fines to be distributed in accordance with Article VII, Section 5 of the state constitution. Thank you, Mr. President. [LB160]

PRESIDENT SHEEHY: Thank you, Senator Campbell. You've heard the opening to LB160. Members requesting to speak are Senator Wightman, followed by Senator Utter. Senator Wightman. [LB160]

SENATOR WIGHTMAN: Thank you, Mr. President, colleagues. I don't intend to speak a great deal on this bill but I do appreciate the fact that Senator Campbell did bring the

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bill. I think it is time, and we try to do that on a regular basis, to eliminate obsolete statutes and obsolete language and here it seems clear that that was tied to Initiative 300. When the court struck that down, the federal court struck that down, it appears that there was no longer any need for this particular service to be done. So it does take up time. It's one of those many duties that perhaps should be eliminated in this case but maybe others should be as well. And so I do rise in support of LB160. Thank you, Mr. President. [LB160]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Senator Utter, you're recognized. [LB160]

SENATOR UTTER: Thank you, Mr. President. Good morning, colleagues. I'm wondering if Senator Campbell would visit with me just briefly about this, please. [LB160]

PRESIDENT SHEEHY: Senator Campbell, would you yield to Senator Utter? [LB160]

SENATOR CAMPBELL: Of course. [LB160]

SENATOR UTTER: Senator Campbell, it's been brought to my attention that there may be additional bills out there that have some reporting requirements very similar to the ones that we are dealing with in this bill. And I'm wondering if there is...if whether we're doing the whole load or whether we're just dealing with a half a load here in this, and shouldn't we maybe add some of these additional bills. [LB160]

SENATOR CAMPBELL: Senator Utter, I certainly would not be opposed to adding additional. At this time I'm not aware of them but would gladly work with you between General File and Select if we need to add...pick up some of those bills. I'm just not aware of them right at the moment. [LB160]

SENATOR UTTER: Well, I think that might be a good idea. I think what we're doing here is right. You know, we're doing the right thing, but as long as we're doing it, maybe we should just do it all. And at least that will give us some time between now and General File to figure out what these other bills might be that we should try and take care of, the other statutes that we should try and take care of at the same time. With that, I have nothing further, Mr. President. Thank you. [LB160]

PRESIDENT SHEEHY: Thank you, Senator Utter. Seeing no additional requests to speak, Senator Campbell, you're recognized to close on LB160. [LB160]

SENATOR CAMPBELL: I'll waive closing. [LB160]

PRESIDENT SHEEHY: Senator Campbell waives closing. The question before the body

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is on the advancement of LB160. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB160]

CLERK: 35 ayes, 0 nays on the advancement, Mr. President. [LB160]

PRESIDENT SHEEHY: LB160 advances. Speaker Flood, you're recognized for an announcement. [LB160]

SPEAKER FLOOD: Thank you, Mr. President. Good morning, members. Tomorrow morning we're going to take up Final Reading. We probably have an hour and a half to two hours of Final Reading to consider. That will be followed by General File debate. Again, tomorrow morning we'll have Final Reading and that will start shortly after 9:00. Thank you, Mr. President.

PRESIDENT SHEEHY: Thank you, Speaker Flood. Next item, Mr. Clerk.

CLERK: LB218 by Senator Karpisek relates to state administrative departments. (Read title.) Bill was introduced on January 10, referred to the Government, Military and Veterans Affairs Committee. The bill was advanced to General File. I have no amendments to the bill, Mr. President. [LB218]

PRESIDENT SHEEHY: Senator Karpisek, you're recognized to open on LB218. Senator Avery, would you be able to open on LB218? [LB218]

SENATOR AVERY: Thank you, Mr. President. I'd be happy to. This bill came before the Government Committee and it was supported unanimously for General File. The bill allows a state agency with over 5,000 employees to exempt 50 positions at the agency's discretion, that is at the head of the agency's discretion, and they exempt them from the State Personnel System. Currently, agencies with 5,000 employees are allowed to exempt only 25 employees from the State Personnel System. The current law provides that any changes to positions exempted from the Personnel System will not affect the status of the current employees if those positions...unless the employee gives their consent. In other words, the employees covered by this bill will have the choice to opt out of the State Personnel System. If an individual decides to remain part of the State Personnel System, the position would only be filled as a discretionary position when it becomes vacant. This bill actually was brought to the committee by Senator Karpisek on behalf of the Department of Health and Human Services. The current statute states that, "The purpose of having such noncovered positions shall be to allow agency heads the opportunity to recruit, hire, and supervise critical, confidential, or policymaking personnel without restrictions from selection procedures, compensation rules, career protections, and grievance privileges. Persons holding the noncovered positions shall serve at the pleasure of the agency head and shall be paid salaries set by the agency head." This is important for the Department of Health and Human Services in order for

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the head of that department to have the discretion to hire people with specific skills and experience who can become critical members of the agency's team and management. Currently, the department consists of six divisions and one operating area. The current statute allows an average of less than four discretionary positions in each of these divisions and the director needs more of those positions. Now some may say, well, this is just a way of getting around union contracts. It is our belief in the Government Committee that this gives the director more flexibility in managing his department. It might lead to the employment of people with greater skills because of the discretionary authority of the director to pay higher salaries. It is important to point out that this bill does not increase the number of employees in the department. It does not have any overall budgetary implications and it gives the director more discretion in how he manages his department. We think this is a good bill and that it is needed, and we urge you to agree. Thank you. [LB218]

PRESIDENT SHEEHY: Thank you, Senator Avery. You've heard the opening to LB218. Members requesting to speak: Senator Conrad, followed by Senator Karpisek. Senator Conrad. [LB218]

SENATOR CONRAD: Thank you, Mr. President. I was hoping that Senator Karpisek might yield to a question. And logistically, I don't know if we can share a microphone or if we should utilize another one? Okay. [LB218]

PRESIDENT SHEEHY: Senator Karpisek, would you yield to Senator Conrad? [LB218]

SENATOR KARPISEK: Yes, I will. [LB218]

SENATOR CONRAD: Thank you. Senator Karpisek, just to clarify, it seems to be a fairly simple bill on its face, but having an opportunity to review it prior to debate this morning one thing that I'm concerned about is that this, in fact, would provide an opportunity for the Department of Health and Human Services to classify more of its employees as political appointees than are currently allowed by law. Is that correct? [LB218]

SENATOR KARPISEK: Yes, Senator Conrad, you are correct. It would allow the head of HHS--right now, Mr. Winterer--to appoint them. It gives him more flexibility in hiring these people to be able to sit down and get the people in that he believes--and the accountability--that he believes that he needs. [LB218]

SENATOR CONRAD: Thank you, Senator Karpisek. And I guess that's a key distinction that I'm really struggling with in deciding whether or not to advance this piece of legislation, because I think there is a difference between flexibility and accountability. And with an agency, with a department that we have really, really struggled with as a Legislature to ensure greater transparency and accountability, I am very reluctant to

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remove personnel and other appropriate safeguards in terms of the organization and personnel dealings of this department. And I think that by increasing this so-called flexibility, we may be relinquishing some checks and balances and accountability here. And have you thought about that and what are your thoughts on that, Senator Karpisek? [LB218]

SENATOR KARPISEK: I think that we may be relinquishing a little bit of our control, but I think that it gives Mr. Winterer more flexibility, again on what he can and cannot do, the people that he sees that he wants to hire, to be able to offer different services. I am concerned that we're maybe not always getting the person that we really want in the job because of exactly how the job is described, where he could be able to make some concessions and hopefully promote a better looking package for the person that he would really want. [LB218]

SENATOR CONRAD: Okay. Thank you, Senator Karpisek. And I'm going to listen carefully. I know Senator Karpisek has his light on, as well, and we'll have an opportunity to visit a little bit more about his intent with this legislation and why he brought it forward. But colleagues, I will tell you, I am incredibly skeptical as to whether or not we should move this forward, and frankly, believe that the track record of this agency and this director does not necessitate less accountability, but rather the opposite. Thank you, Mr. President. [LB218]

PRESIDENT SHEEHY: Thank you, Senator Conrad. Senator Karpisek, you're recognized. [LB218]

SENATOR KARPISEK: Thank you, Mr. President and members of the body. I apologize that I was not here. We moved a little faster and I was talking to the agency outside. Thank you to Senator Avery for introducing. He probably got it closer than I would have. The whole reason that I brought this bill, and we talked about it already. Senator Conrad made some very, very good statements and some very good points. My whole reason on bringing the bill is I don't know that we're always being able to get the people that we really would like or if we are at a disadvantage to the private industry. I feel that the privates can offer more...and more flexibility when someone is looking at either side of the situation where they're going to accept a job. I guess, in my opinion, that Mr. Winterer does know that we have some problems and he wants to get a handle on it and get the right person in the job to deal with some of these issues. I cannot argue at all that we don't have problems here. We all know that. My attempt here is to bring the right person to the right job in the right way to make them happy to have the job and we're happy to have them, and try to start straightening some of this stuff out. Senator Conrad is probably right in that we can't control as much from in here as we would like to, but I don't know that that's really working right now either. I don't know if we can control them the way that we would like to. We do have some separate LR committees that are looking at these things and they have definitely helped. I don't know that we

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can't still do that. I do appreciate the concern because this is a huge issue for our state, the whole HHS system. With that, thank you, Mr. President. [LB218]

PRESIDENT SHEEHY: Thank you, Senator Karpisek. (Visitors introduced.) Members requesting to speak on LB218, we have Senator Howard, followed by Senator Conrad and Senator Nelson. Senator Howard, you're recognized. [LB218]

SENATOR HOWARD: Thank you, Mr. President and members of the body. Senator Conrad's comments really caught my attention and I share her concerns. I am very hesitant to approve any more autonomy to the Department of Health and Human Services than they currently have, which seems to be quite a sufficient amount. I'll remind you of the fact that this child welfare reform is operated entirely outside of the decision making of this legislative body. So many of the choices that they have made regarding agencies and moving forward were made prior to our being in session, so there's no opportunity for this body to have input into those decisions. And I remember, last summer and last fall, many of us were concerned about the direction this was going and wrote to the Speaker and certainly expressed our worry. And I am very troubled trying to justify any more leeway to the department in view of the things that have happened in the very recent past. And also I want to bring to your attention this...you may not all be aware of this, but when we were struggling with budget problems last summer, and many of our staff and the state employees and other people directly involved working with the state were requested...it was requested that they take furlough days. Actually it was more of a mandatory decision that they take furlough days. But the administration and Health and Human Services wasn't subjected to that. That, to me, really presents a disingenuous picture of how they choose to operate. I would think the people that were in administration, they don't take the same mandatory furlough day. They're not all gone at one time. They would be gone different mandatory furlough days, which, in turn, would save that amount of money that they would not be paid. But that wasn't requested of them. So I'm...as much as I respect Senator Karpisek, as much as I would like to stand here in support, I just find that I cannot do that. Thank you, Mr. President. [LB218]

PRESIDENT SHEEHY: Thank you, Senator Howard. Senator Conrad, you're recognized. [LB218]

SENATOR CONRAD: Thank you, Mr. President. And thank you, Senator Howard, for your comments. I think they really help this dialogue and discussion. And I want to be clear. I had a chance to visit with Senator Karpisek about this, very briefly, and I by no means want to question what he considers to be very valid reasons for bringing forward this legislation, and respect the opinion of the members of the committee who advanced it to us for additional dialogue. But I think that we do have to think very carefully here. It is a very narrow bill. It, in reality, only applies to the Department of Health and Human Services. And it might be a good educational opportunity for us to think about our public

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employment systems, in general, and the reason why we allow specific exemptions from their rules and regulations otherwise. And to be clear, I think it is important that a Governor have the ability to put together a leadership team that he considers to be best for the job to carry out the various duties and obligations of various state agencies that, in our parlance, code agencies, in particular, are under his direct control, like the Department of Health and Human Services. But I'm worried, in light of an attempt to increase flexibility, particularly in a leadership team where we have numerous examples of problems and concerns expressed by this Legislature and the public as a whole, whether we...the answer is to include more political appointees that are not subject to our personnel rules. I think that's something that we have to tread very, very lightly on, and this has the potential for more impact than it may seem at first blush. I think that it reduces accountability for the citizenry, for the Legislature, and is really a move in the wrong direction in terms of ensuring that we have a leadership team that can do its job but that also is held to the same standard as other folks, those frontline caseworkers that are out there really doing the difficult work on a daily basis. And by allowing more folks to come out of that system and be subject only to political appointment and consideration rather than the system envisioned under our State Personnel System, which moves away from cronyism and focuses on a meritocracy. That's what we should be doing with state personnel--in particular, in the Department of Health and Human Services. To me this seems like a move in the opposite direction. It says we're going to have less people working on a merit basis and more people working under a system of political cronyism. And I think that's inappropriate. Thank you, Mr. President. [LB218]

PRESIDENT SHEEHY: Thank you, Senator Conrad. Members requesting to speak on LB218, we have Senator Nelson, followed by Senator Lautenbaugh, Senator Campbell, Senator Howard, and Senator Council. Senator Nelson. [LB218]

SENATOR NELSON: Thank you, Mr. President and members of the body. I'd like to ask a question or two of Senator Karpisek if he would yield. [LB218]

PRESIDENT SHEEHY: Senator Karpisek, would you yield to Senator Nelson? [LB218]

SENATOR KARPISEK: Yes, I will. [LB218]

SENATOR NELSON: Thank you, Senator. I'm looking at page 5 of the bill and I see that currently it provides that the head of this agency over 5,000 can exempt 25 people. Is that right? [LB218]

SENATOR KARPISEK: That is correct. [LB218]

SENATOR NELSON: Do you happen to know how large Health and Human Services is right now? Are they a ways above the 5,000? [LB218]

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SENATOR KARPISEK: They are over 5,000. They are the only agency in the state. [LB218]

SENATOR NELSON: Okay. Well, the way the bill reads now, if you had 5,000 employees, 25 would be one-half of 1 percent, and so now we're moving up to just 1 percent--in other words, 1 of 100 that the director would have the ability to exempt. Is that correct? [LB218]

SENATOR KARPISEK: That is correct. [LB218]

SENATOR NELSON: All right. I was going to ask you the purpose, but I...it's well-covered in the statute and I'm just going to read it for the record. "The purpose of having such noncovered positions shall be to allow agency heads the opportunity to recruit, hire, and supervise critical, confidential, or policymaking personnel without restrictions from selection procedures, compensation rules, career protections, and grievance privileges." Senator, I've heard comment that this is an ability for political appointments. Do you believe that actually to be the case, or are we trying here to give the director the ability to really get people that will improve some of the things that we're criticizing? [LB218]

SENATOR KARPISEK: Well, in...my opinion is that it would allow the director to hire who he or she--currently, Mr. Winterer--would like in the job, and do what he feels would be the work that needs to be done. However, maybe again you could ask Senator Conrad that she feels differently about that. [LB218]

SENATOR NELSON: Would it be attractive because you could offer additional compensation to someone who specialized in certain areas? [LB218]

SENATOR KARPISEK: Correct. [LB218]

SENATOR NELSON: Okay. And they would serve at the pleasure of the agency head. [LB218]

SENATOR KARPISEK: Correct. [LB218]

SENATOR NELSON: So it could only be there as long as were needed to get the job done. Is that correct? [LB218]

SENATOR KARPISEK: That is correct. Give them more flexibility in their hiring. [LB218]

SENATOR NELSON: Do you know if the agency is currently in the position having 25 exemptions, that none of those, or one or two of those, could be...would they be able to let them go or say I don't need you anymore? [LB218]

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SENATOR KARPISEK: You know, I don't know that, Senator, but I can find that out. [LB218]

SENATOR NELSON: All right, okay. [LB218]

SENATOR KARPISEK: The way I take it is it's not so much of who we have now, it's who we don't have right now. [LB218]

SENATOR NELSON: All right. Okay. Thank you very much for those answers. I think this is a good bill and I'm supportive of it. I think anything we can do to help the agency, if it's not completely impractical, that we ought to do that. And so I'd urge my colleagues to advance LB218. Thank you, Senator, and thank you, Mr. President. [LB218]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Senator Campbell, you're recognized. [LB218]

SENATOR CAMPBELL: Thank you, Mr. President. And good morning, colleagues, again. And, Senator Karpisek, I apologize because I did not hear all of the opening comments to this and would like to ask you a question. [LB218]

PRESIDENT SHEEHY: Senator Karpisek, would you yield to Senator Campbell? [LB218]

SENATOR KARPISEK: Yes, I will. [LB218]

SENATOR CAMPBELL: In your discussions with Mr. Winterer, did he talk at all about the components to an executive team or leadership team that this would aid? [LB218]

SENATOR KARPISEK: Yes. [LB218]

SENATOR CAMPBELL: Would you mind elaborating a little bit on that "yes"? [LB218]

SENATOR KARPISEK: Well, his whole thought is this can get him the people that he would like, hopefully, to be the leaders. And if those leaders could come together as one team or one head and try to work on some of these problems, that would be beneficial. [LB218]

SENATOR CAMPBELL: If we moved the bill along and it were to be made law and there were 50 positions, what happens to the existing 50 people? [LB218]

SENATOR KARPISEK: In...I think that they would stay. I don't know that all of those positions are filled at the current time. [LB218]

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SENATOR CAMPBELL: Okay. [LB218]

SENATOR KARPISEK: But in...I don't see that this would be a way to eliminate anyone but when a position does come open they would be able to try to find the person that they really want to go after. [LB218]

SENATOR CAMPBELL: Thank you, Senator, very much for your response to my questions. Colleagues, I have to tell you that I took a look at this bill and a red flag was raised. I had an opportunity, this summer, in a conversation with Mr. Winterer, and he certainly did express--to me, at least--that his thoughts about having more people that he could bring on without having to work through the system. But at no point did we discuss any number, and I didn't think beyond that. I want my colleagues to know that I'm somewhat disappointed here because...and certainly not with Senator Karpisek, but perhaps we need to...the committee needs to talk with Mr. Winterer. At no point in our budget discussions with the department this summer was this idea expressed nor did we look at the numbers, nor did we look at what an additional 25 would do. I mean is it a need on an executive team in HHS for an additional ten or whatever, and how that would relate to the total agency? I understand some senators may have a concern with regard to the child welfare part, but there are all of the agencies of the department, the six different divisions, that Mr. Winterer has responsibility for. And I have to say the Health and Human Services Committee has not discussed this either from a budgetary standpoint or a policy or a philosophy, not to say that in the end we wouldn't agree, but I have to share my concerns with you, my colleagues. Thank you, Mr. President. [LB218]

PRESIDENT SHEEHY: Thank you, Senator Campbell. Senator Howard, you're recognized. [LB218]

SENATOR HOWARD: Thank you, Mr. President. How timely. I was just sitting here listening to Senator Campbell's comments, and thinking how accurate she is and how succinct. I think we really need to listen. And hopefully, people heard what she said. Again, this was conducted outside of our legislative process. It's only now coming to light. How does the department propose to pay for 25 additional positions, if that's what this is going to be? And obviously these will be administrative decision-making positions, which are higher salaried. I really...I don't feel at all good about this. This is another thing that feels like it's being done outside of the Legislature. Being put in place to give the Department of Health and Human Services or the department, shall we say, yet another stronghold to simply do what they are intending to do anyway. I think we need to retain our responsibility to what's happening over there. This is becoming a large issue and we're not...we're not players in it, and that's simply wrong. Would Senator Karpisek be agreeable to yielding to a question or two? [LB218]

PRESIDENT SHEEHY: Senator Karpisek, would you yield to Senator Howard? [LB218]

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SENATOR KARPISEK: Yes, I would. [LB218]

SENATOR HOWARD: Senator Karpisek, I see in the committee statement that the representative for NAPE/AFSCME came in and testified in opposition to this bill. I worked at the department long enough to remember when there was a...actually when it based on a merit system and there was no union. And at that time employees could be fired at will. Can you share with us what their concern was regarding this bill? [LB218]

SENATOR KARPISEK: As I recall, their concern was just taking 25 more people out of the union to have less paying members and to not make the union as strong, is what I got out of it. [LB218]

SENATOR HOWARD: Well, that troubles me too, because the union members are all line staff. There's no one above a supervisory position that would be in the bargaining unit. So if these are administrative people, I would not envision that they would be taking these people from the bargaining unit. I am confused about that concern. But thank you for sharing your... [LB218]

SENATOR KARPISEK: Could I...? [LB218]

SENATOR HOWARD: Yes. [LB218]

SENATOR KARPISEK: Thank you, Senator Howard. In my closing, I brought that exact point up, and just say I don't think that these would be people that would come out anyway, of the union, because they are probably not in it to begin with. [LB218]

SENATOR HOWARD: I would agree with you on that. These are not the people that are paid at the salary level of the administrators. Again I really have to say I stand in opposition to this bill. I think this is yet another piece that's being put into place or being attempted to be put into place to thwart this body in the decision making of how business is conducted over at Health and Human Services. I don't think I have to remind any of you the problems in even getting the scantest of information from Health and Human Services when you need it to address a problem. So I'm not going to support this. Again, I would like to be able to support my friend Senator Karpisek, but in all honesty I can't be with him on this bill. Thank you. [LB218]

PRESIDENT SHEEHY: Thank you, Senator Howard. Senator Council, you're recognized. [LB218]

SENATOR COUNCIL: Thank you, Mr. President. I rise in opposition to LB218, with all due respect to Senator Karpisek. I don't believe this is the time for this body to be considering this request from the Department of Health and Human Services. At this

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point in time, I know I and many other members of this body are being inundated with concerns and complaints regarding the accountability and transparency of the operations of the Department of Health and Human Services. I guess I would feel better about this piece of legislation if the Department of Health and Human Services had engaged in a conversation with members of the Committee on Health and Human Services with respect to the necessity for adding 25 exempt positions. What does the department have in mind in terms of restructuring its operations? With all of the concerns that have been expressed, I think, timingwise, this is not the time for this body to extend further autonomy to an agency. And I know personally that my staff and I have tremendous difficulties in obtaining timely and accurate information in order to respond to constituent concerns. And without having some real feel for the necessity and what it would mean in terms of improving service delivery to residents in the state of Nebraska, I cannot support providing this department with additional autonomy in terms of structuring the administration of its operations. And with that said, I would yield the balance of my time, if she would like, to Senator Conrad. [LB218]

PRESIDENT SHEEHY: Senator Conrad, you are yielded 3 minutes. [LB218]

SENATOR CONRAD: Thank you, Mr. President. Colleagues, to be clear here, I don't rise in opposition to this measure based on a position of support or opposition to unions and collective bargaining and union organizing. I don't think it's a pro- or anti-union issue. I think it's an issue about legislative oversight and accountability. And I'm hopeful that we can all agree on that topic. The other thing I do want to point out, which is interesting if you look at the existing statute that is amended under LB218, which is 81-1316, not only does it allow for now, under current law, at least 25 employees at the Department of Health and Human Services to be counted as nonexempt from the personnel department, go and look at the--from the personnel rules--go and look at the previous sections in that law. I've counted, just on a quick count, starting in section (s) working, through to section (t), (v), (w), (x), over 18 additional positions that are unclassified...or that are exempt from the State Personnel System, specifically within the Department of Health and Human Services, starting at the director, moving to the various directors of the different divisions, any and all pharmacists, physicians, psychiatrists, psychologists, service area administrators, facility operating officers. These folks are all exempt as well, and it specifically lists out over 18 positions in that regard. But I imagine if you would go back and look at a flow chart here and...the numbers would be much, much, much higher. So it's not just about, oh, it's to increase it to 1 percent or, oh, it's a move from 25 to 50. There's already a significant amount of folks specifically exempt that are part of this leadership team. So this is an unqualified, unclear, no parameters kind of... [LB218]

PRESIDENT SHEEHY: One minute. [LB218]

SENATOR CONRAD: ...open checkbook to the Department of Health and Human

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Services. And I think that's wrong. I think the other thing that brings to mind in this bill is, how much time the department spend at the committee level and then here today rearranging the deck chairs, while we know the ship is sinking? Leadership has spent countless time behind this glass, at the committee level, pushing for this ridiculous small proposal to try and allow it to come, not into the light but out of the light, and to get more political cronies on board. You know, how much of that precious time could be utilizing figuring out a safe haven for our kids in the child welfare system, making dramatic improvements in behavioral health, making strides forward in the Beatrice State Developmental Center? What a waste of time. What a slap in the face to this Legislature that has been clear that we need more oversight and accountability... [LB218]

PRESIDENT SHEEHY: Time, Senator. [LB218]

SENATOR CONRAD: ...in this department. Thank you. [LB218]

PRESIDENT SHEEHY: Thank you, Senator Conrad. Members requesting to speak on LB218: Senator Lautenbaugh followed by Senator Conrad, Senator Avery, Senator Wallman, Senator Hadley, and others. Senator Lautenbaugh, you're recognized. [LB218]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I do rise in support of this bill. And I do rise, as my blood pressure rises, on this bill as well. We've just been told we're rearranging the deck chairs but the ship is sinking, but for heaven's sake, don't let the leadership at HHS have more control over who is running the show. We want to not allow that. Now, we will take every opportunity that a bill comes up with three letters associated with it--and I think they are H-H-S--to stand up and turn it into sort of an open mike night where we pour all of our disappointments and beefs and prior disappointments and past failures in getting information, etcetera, etcetera, into a big bucket out here on the floor for everyone to see. But if they come here and say, "Give us another management tool to try to right this ship, or even turn this ship," well, why are you wasting our time with this? Why won't you go do the things that the 49 of us have been very clear about what we want you to do? And I'm sure you could assemble a list, because the 49 of us have been very clear. And I'm being sarcastic in case that's not painfully obvious. We have someone charged with running this department. Why anyone would want to do it is beyond me. But now we're saying, "Maybe there's a problem with the referencing; maybe HHS shouldn't have seen this bill go to Government." Well, I don't think they're on the Exec Board and I don't think they sent it to Government. I note it came out 8 to 0 with only the union opposing. And here we are, again saying, well, I'm kind of upset that the management didn't take the furloughs. I am this close to figuring out how to bring an amendment that says the 49 of us are directly responsible for running HHS and see if we take the furloughs, and see if we know how to do this better. We've heard a lot about morale in other scenarios. How would you like to be trying to run the show at HHS and have something like this go on,

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on this trivial bill? Trivial. Another management tool; 8 to 0 out of committee and here we are, here we are again. I support this bill and I thank Senator Karpisek for bringing it. This is a modest tool for management to use to do the things that we, sometimes with clarity, sometimes not, say we want them to do. But everybody recognizes the change needs to be made, including the leadership at HHS. But you better do it the way we approve or some certain number of us approve, or we're going to stand up on the floor again and start going on about past disappointments and past issues, etcetera, etcetera, etcetera. We should be happy that any one wants to lead HHS at this point. I don't know if any of us can conceive of the difficulties in running the show over there. And thank goodness we have someone qualified and willing to do it. And we stand up on a bill like this and say the things we're saying? Sometimes we talk about how the Legislature isn't respected as a branch of government. Sometimes respect is earned. And when we do things like this, we fritter it away to people watching on the outside. And we're giving someone a little flexibility to bring in the people he needs to manage this entity. I hope potential candidates are not watching this floor debate today or they would be out of their minds to try come work at HHS in Nebraska. Who would want it? Not me. We need to measure our comments and we need to decide what's important and we need to also recognize our limitations. [LB218]

PRESIDENT SHEEHY: One minute. [LB218]

SENATOR LAUTENBAUGH: Thank you, Mr. President. And if someone is charged with running this entity, we should let him run this entity. Yes, they should give us information. Yes, we have an oversight obligation. I spoke in favor of Senator Campbell's resolution for that very reason. But this is the kind of thing that seems so insignificant in the grand scheme of things but would be a valuable tool for HHS. I would urge you to support this bill and I would urge you to stand behind HHS as they try to make changes, not constantly block and then criticize the outcome. Thank you, Mr. President. [LB218]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Senator Avery, you're recognized. [LB218]

SENATOR AVERY: Thank you, Mr. President. I just want to address a couple of issues that have come up that I think have perhaps caused a little bit of ambiguity or confusion. I think it's important to note that if you are an employee in one of the positions that might be up for reclassification, that you cannot be reclassified without giving your consent. That's very clear in this statute. You would be consulted. If you choose, however, to opt out of the State Personnel System, you can do that. But if you choose not to, you can't be forced out. That's important. The second issue is that we're not talking about increasing the total number of employees. That would not change. And still the department has to operate within its budgetary constraints and its policies of trying to increase efficiency. And, in fact, I think there is a program where they're trying to reduce

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the number of overall employees. The increasing the discretionary power of the director seems to me is not going to affect accountability. That issue has been raised. In fact, it might actually increase the accountability, because these will now become...at least 25 individuals will become at-will employees, over time, as people who are being reclassified, consent to it or as they retire. The at-will employees will be directly accountable to the director, without restrictions from selection rules, compensation rules, career protections, and grievance procedures that now are in effect in the State Personnel System. This is a management tool that I think is necessary. Will the department continue to function without it? Of course. Can it do its job better with this flexibility? I think it can. It was also suggested that this bill was bypassing the legislative process. And very definitely not. It was referred to the Government Committee, appropriately, because we do handle bills relating to the State Personnel System. We had a hearing on it. It was a thorough hearing. We discussed it carefully and completely in Executive Session, and we voted unanimously to advance it to the floor. I don't know how one could argue that this somehow bypassed the legislative process. It did not get referred to the Health and Human Services Committee and we never consulted with them on it, and perhaps we can do that between General File and Select File. I think that the bill is a modest proposal to simply give the director of the largest department of government in this state, with...give him some more flexibility in how he manages the department. I think this is a reasonable bill and I would urge you to support it. Thank you. [LB218]

PRESIDENT SHEEHY: Thank you, Senator Avery. Senator Wallman, you're recognized. [LB218]

SENATOR WALLMAN: Thank you, Mr. President. Enjoyed the conversations this morning, listening intently. Appreciate what they're saying. The director hires these people. He's had lots of authority, privatized lots of things outside of our department. And guess what? We're spending a lot of money. Where? How? When? The director and some of our heads of departments, did they come forward with furlough days or take a certain percent of their salary cuts? I didn't see it. So we speak out of both sides of our mouth here. And what's the difference in salary between a director and an employee? It's tremendous. So let's think what we're doing here, and I appreciate Senator Campbell's remarks. And Senator Karpisek, he's a good friend of mine. I hate to be against anything he does, but I can't vote for this. And I'd turn the rest of my time over to Senator Conrad. [LB218]

PRESIDENT SHEEHY: Senator Conrad, you're yielded 4 minutes. [LB218]

SENATOR CONRAD: Thank you, Mr. President. And thank you, Senator Wallman, for your comments and the time. Colleagues, to be clear, this is not about micromanaging. Under existing budget process and other statutory provisions, we give an amount to an agency, whether it's HHS or Department of Ag or otherwise, to operate and carry out

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their duties and obligations within. It is then up to the agency to figure out how to do so, in terms of hiring, the number of employees, and the types of employees. We don't make those kinds of decisions in a legislative posture. That is an administrative and executive function. So let's be 100 percent clear about that. I think it's a little fuzzy in terms of how some people have been talking about this legislation. Well, it doesn't give the authority for HHS to add 25 new positions. Well, it actually might, but it might not. We don't set the number of positions that they can ultimately employ in any various agency. It's up to the director to utilize existing resources to figure out how to do that in the best way, and I think that's a good thing and that's important. Also, let's have a little perspective here. I think it's interesting that anybody's blood would boil over legislative debate. We have a right to ask questions about bills that come before this body and that seek our approval. That's simply what I'm trying to accomplish this morning. It's not a personal attack on Senator Karpisek. I think it would be of no surprise to any one of us within this body that there are legitimate concerns about accountability at HHS. This is not a values problem in that regard, and let's keep perspective at hand. Finally, one of the most compelling points that I've heard from the other team is--and folks that are supporting this legislation--is the director has got to have the utmost flexibility to bring in the best people. I could not agree more. We need talented, qualified individuals to help us in our endeavors to serve the citizenry of Nebraska. But this legislation exempts from the selection process more of those folks. So if we're trying to get the most qualified, are they subject to the same advertising requirements that other positions that come available are? How would qualified applicants even know about them, necessarily, or submit an application? If this is all taken outside of the public purview and put within the political context and sphere, how can we indeed ensure that this flexibility is going to result in the intended effect of having the most qualified folks? Would qualified folks even know that these positions are open to submit their resume, to be part of our public service objectives? I don't know. That's a question that I'm asking the members of the committee or Senator Karpisek or others that might be able to shine some light on that. [LB218]

PRESIDENT SHEEHY: One minute. [LB218]

SENATOR CONRAD: But if you read the bill, they're specifically exempted from the traditional selection process. So how can we ensure the most qualified people are going to be aware of the positions, apply for them, and be afforded a fair process to be hired for them? That's just a question I'll throw out there. I'd look forward to any answers in that regard. Thank you, Mr. President. [LB218]

PRESIDENT SHEEHY: Thank you, Senator Conrad. Senator Hadley, you're recognized. [LB218]

SENATOR HADLEY: Mr. President and members of the body, I stand in support of LB218. It becomes almost a little bit of a game that we like to sit up and bash DHHS. I

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think we have most employees, almost...the ones I've met are trying real hard to do the right thing. We can't forget this is an agency of over 5,000 employees. We're talking about 1 percent of them being exempt. One percent. We talk about concerns about accountability. I think this is a move toward having more accountability. Let's give the director the people that he needs, that he can work with. How many times do we go back home to our districts and people say, why don't you run government more like business? Has anybody heard that? Has anybody gone back to their districts and said why don't you run it like a business? Can you imagine Microsoft advertising for a president in The Seattle Times--Wanted: President, Microsoft. It isn't going to happen. I think we need to give them the maximum amount of flexibility. One of the problems people have told me with term-limited senators is a lot of the power is going to the agencies, to the employees that have been there for years that have the corporate knowledge who might be resistant to change. Here's a chance for the director to bring in people to help him make the changes. I think we need to give the director the chance to bring in the people that he can work with to make the changes we expect. With that, I would yield the rest of my time to Senator Lautenbaugh. [LB218]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: Two minutes 50 seconds, Senator Lautenbaugh. [LB218]

SENATOR LAUTENBAUGH: Thank you, Mr. President, and thank you, Senator Hadley. Yes, I do rise again, and I echo Senator Hadley's comments and I think he's echoing mine, and maybe we're forming a little echo chamber. But that's not all bad. And it does upset me when what is being done here is described as allowing the hiring of more political cronies as the ship sinks, because I don't see that's what this bill allows. And it seems to me that's kind of an offensive characterization. And it's very all well and good to say, well, we're entitled to debate these things on the floor; that's what we do here. But is that really how we should describe what the director of HHS is trying to do here? Hiring political cronies while the ship sinks--those are direct quotes. And again, I'll leave you with the same sentiment: Why on earth would anyone want to be involved in running HHS at this point? Why would anyone come here for a job? Why would anyone want anything to do with this, if this is the way we conduct what we call floor debate on a topic like this? It's certainly okay to disagree without denigrating the leadership at HHS, and I wish we could be more mindful of that more often. Thank you, Mr. President. [LB218]

SENATOR GLOOR: Thank you, Senator Lautenbaugh and Senator Hadley. Senator Christensen, you are recognized. [LB218]

SENATOR CHRISTENSEN: Thank you, Mr. President. Would Senator Karpisek yield to a question, please? [LB218]

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SENATOR GLOOR: Senator Karpisek, will you yield? [LB218]

SENATOR KARPISEK: Yes, I will. [LB218]

SENATOR CHRISTENSEN: Senator, in this bill is there any way he can hire 25 more people, or is this just redirecting how he hires 25? He's not going to add more, so the cost...I see there's no fiscal budget, so I assume, though it says undetermined, if he's hiring, is there any way he can hire more in this situation? [LB218]

SENATOR KARPISEK: Well, yes, I think he could, but he could do that now. That's...he could hire as many...I assume that he would want to now if it's within his budget. [LB218]

SENATOR CHRISTENSEN: Okay. But so it's not a green light to hire more, but you're saying within his budget, if he can make it work he could. [LB218]

SENATOR KARPISEK: Correct. It's more trying to get the right person for the right job without having to go through the whole process and being able to negotiate with that person to go out and find the correct person and get them in that job and get them going with his direct supervision. [LB218]

SENATOR CHRISTENSEN: Senator, do you believe this can move us in the right direction? I know in Maine it's a prime example of a system that everybody really likes right now. There seems to be happy people with it, in HHS. And they've hired a director that's actually cut the department in half. They have half the staff, half the budget, and have people happier, extremely happier than they are here. Do you think this is a move that he's trying to move towards smaller government, or do you think this is just...? What do you really believe is happening? [LB218]

SENATOR KARPISEK: I don't know that it's a move toward smaller government. I think it's a move toward more efficient government, finding the right person for the right job. I think that the director is trying to find a person that has many of the components that he would like for this job, but maybe not all, and trying to get them to do that job. I think it strings his hands a little bit, because you may not be able to offer the compensation package that you need to go after the person that you really want. [LB218]

SENATOR CHRISTENSEN: Thank you, Senator. I appreciate the debate this morning because, I'll be very honest, I haven't made up my mind how I want to vote on this bill. I really believe that if this would lead towards cutting of staff and improving the system and getting the problems that each one of us runs into corrected, I'd be all over it. If it's a hidden agenda, as I've had different...I've had a couple of phone calls. People have called and said, hey, there's a hidden agenda here. Well, I can't say what that agenda would be. But they're skeptical about this. You know, I agree with Senator Lautenbaugh

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on the standpoint it would be tough to hire people in here. It might be tough to hire someone into even get the job, because there is a lot of problems in Nebraska. And I, for one, haven't had the problem; would love to see some change. And so I appreciate everybody's debate on this and discussion, and I'll wait to see yet on how I determine I'll vote. Thank you. [LB218]

SENATOR GLOOR: Thank you, Senator Christensen. The Chair recognizes Senator Howard. Senator Howard, this is your third time. [LB218]

SENATOR HOWARD: Thank you, Mr. President and members of the body. As many of you know, I worked for the Department of Health and Human Services for 34 years. Some of those years were really long. But I consider myself to be a proud alumnus of the department, and whenever possible I've tried to, I don't know if warn is the right word, or look down the road and say this is a possible looming problem. And many a time I've gone to Senator Heidemann and I've said: This is going to cost us more money, there's no two ways about it. To take a department that was always underfunded, to then...and shift that amount of money over to private agencies and expect quality, the Cadillac of services which we all want from those private agencies, is not going to work. It can't possibly work. And so we've continually seen an influx of money to those private agencies. During the years I worked for Health and Human Services, often...oftentimes there was a political agenda that went with the hiring of not only the directors but the individuals that were hired after the director, which always made it more difficult to work in that environment. I am very, very concerned that this is doing the same thing on a bigger scale and we're sanctioning it. We're moving down the road toward making Health and Human Services such a political entity that really the rules for the administration are not going to be the same rules that apply for those doing the direct service work. This is a very risky business. I'd like to ask Senator Brasch a question or two if she would be willing to yield. [LB218]

SENATOR GLOOR: Senator, will you yield? Senator Brasch? [LB218]

SENATOR BRASCH: Yes, I will yield. [LB218]

SENATOR HOWARD: Thank you, Senator Brasch. I see that you're on the Government Committee. [LB218]

SENATOR BRASCH: Yes. [LB218]

SENATOR HOWARD: And you heard the arguments for this and have heard the testimony that came in and heard the opponent argument. Can you kind of reflect on that and how that...what you saw in that conversation and what was presented? [LB218]

SENATOR BRASCH: What I remember from that particular hearing when Mr.

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Winterer--correct?--testified, I saw it as his ability to be able to be responsive in personnel decisions and that the field is very competitive is how I understood it. If he gets a resume across his desk, he's been a...and I did ask questions. He's at a convention, a conference, some national talent or resource is there, and he has a dialogue where perhaps this person could come, has an interest in coming into Nebraska to work. Therefore, he could create a position with justification that this fills a need rather than working through the personnel system, having to look for a job posted that in today's economy and limited resources, both financial, being able to bring in talent quickly. That was why I supported it. [LB218]

SENATOR HOWARD: Did you see...did he come in and say that he was dissatisfied with those that are working for him now? Since this won't be an additional...these won't be additional employees. This would be 25 positions that are currently being filled. So did you get an indication that he was looking at replacing some of these individual with people of his choice? [LB218]

SENATOR GLOOR: One minute. [LB218]

SENATOR BRASCH: I did not see that. What I did understand is he only had I think five available slots out of the...and he wanted to have the ability to fill those as needed, if needed. He did not indicate an immediate urgency, a plan to hire, or a plan to reduce. [LB218]

SENATOR HOWARD: But he didn't indicate that he couldn't fill those five spots. [LB218]

SENATOR BRASCH: He did not. [LB218]

SENATOR HOWARD: Okay. Thank you. Thank you for your assistance with that. [LB218]

SENATOR BRASCH: Thank you. [LB218]

SENATOR HOWARD: Again--again, I say this is very risky business when you move something from being a hiring standard to a political realm. We're giving a lot of autonomy and I'm not comfortable doing that. I can't support this bill. Thank you. [LB218]

SENATOR GLOOR: Thank you, Senator Howard. Senator Campbell, you are recognized. [LB218]

SENATOR CAMPBELL: Thank you, Mr. President. I want to clarify a few things because I want to be very sure that you are hearing what I mean to say. And, first of all, I'd like to say that I agree that this is a management tool. This would be why Mr.

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Winterer would bring it forward. Secondly, I don't...if I said to bypass the legislative process, I'm certainly not talking about the Government Committee. I understand why the Government Committee was involved and I think they did their job. I don't have any problems with that. Colleagues, I struggle. What my struggle here is with, is the fact that over the course of this last summer, when the Health and Human Services Committee--and again, it is the committee structure that somewhat I struggle here with, was and is duty bound--this is one of the agencies that we were responsible for looking at, and we discussed many options across all six divisions. And I want all of you to realize that this agency has six major divisions. It's not just child welfare. And this agency has done some really good things. Think of where we've come in the BSDC issue. So I agree with Senator Lautenbaugh in the sense that you can't just narrow this down to, well, we're only going to talk about the child welfare area. That's not accurate because this department has six divisions. What my quandary is, is as we discussed the budget, this summer, and a number of issues, the committee did not walk away from there saying this is a tool that we've discussed and that we need and that we know, because in our plan this is what we planned to do with veterans; this is where we cannot seem to hire the kind of help we need in the Medicaid division; this is the kind of help that we're looking for and we need a leadership team. I understand all of that. But colleagues, I have to tell you that when a committee is responsible for looking at that budget and feeling that it's our responsibility to know that agency and to work with it--and I would be the first person to tell you that Mr. Winterer has always been very responsive whenever any of us have called. But I do have to raise issue with adding another 25, when we don't know what's the plan. Where are we going with those divisions? If we have a responsibility for making those recommendations on the budget, it seems to me that that information we should have had the ability to do. I think the Government Committee did their job. I'm sure that everyone here has the right perspective. And I agree, this is not...this should not be taken as an issue against HHS. However, what it should call into question is we have a committee system. We try to review things; we try to have an honest approach. And in some respects maybe when all was said and done, the management tool would have been very appropriate. But I think that's why you see members of the Health and Human Services Committee standing up, because this is a surprise to us and we're not sure how to advise you on where we need that expertise in which of those six divisions. And yes,... [LB218]

SENATOR GLOOR: One minute. [LB218]

SENATOR CAMPBELL: ...I understand Mr. Winterer doesn't have to consult nor should he have to consult with the HHS Committee on every single phase. But this is an important step. Thank you, Mr. President. [LB218]

SENATOR GLOOR: Thank you, Senator Campbell. The Chair recognizes Senator Conrad. Senator, this is your third time. [LB218]

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SENATOR CONRAD: Thank you, Mr. President. And thank you, colleagues, for the good dialogue and good comments and good perspectives that have been brought forward this morning. And I agree wholeheartedly with Senator Campbell. We have seen progress in a variety of areas that are within the department's jurisdiction. But that progress also, by recognizing the beneficial nature of that progress, we can't turn our back on the root of the problems. And I've heard the special legislative committees that have been appointed by this body, whether it's through BSDC or otherwise, talk about a culture problem within the department. And if we are serious about changing the culture within the Department of Health and Human Services, we must ensure it remains as accountable, as transparent, and as responsive to the Legislature and the citizenry as it can be. I've heard it said on this floor that, oh, if we don't have this management tool the best applicants won't apply and they won't be interested in pursuing public service and helping us to meet our shared objectives. Well, let me be very clear. Applicants who are afraid of legislative oversight and scrutiny need not apply. These are public dollars at play. These are public considerations at play. And so it might sound nice and well to say we should run government more like a business. But we have different parameters when taxpayer dollars are involved, and the lives of our most vulnerable are involved. Let me tell you what else is a good management tool that can ensure flexibility in bringing in the best people: a job description with minimum qualifications, a public advertising process, a public hiring process. Those tools exist. Those are helpful to ensuring the most qualified applicant with the most expertise becomes a part of our team. They don't necessarily need this as a management tool. As I noted earlier in the authorizing statute, in addition to the 25 employees that are already exempt, there is at least 18, and probably many, many more so, who are part of the leadership team that are exempt from these requirements. Colleagues, I think it's valid to ask questions. I think it's important as we do our job to not be dismissive of past history but to learn from it and to figure out a way that we can move forward in cooperation with the department and in cooperation with the citizenry that has real needs and real concerns with the administration of this agency. I'm hopeful that this dialogue has at least sparked some thought and provoked some consideration in terms of how we move forward here. But let's be very, very clear. It's important to have a dialogue; it's important to have a debate. And if we're serious about changing the culture within this agency, we need to make sure as many positions as possible are accountable to the public process and the State Personnel System, which is based on merit, which is based on experience, which is based on expertise, the other is not. Call it political cronyism, call it whatever you will. One set and one system has clear parameters, one does not. Thank you, Mr. President. [LB218]

SENATOR GLOOR: Thank you, Senator Conrad. The Chair recognizes Senator Karpisek. [LB218]

SENATOR KARPISEK: Thank you, Mr. President and members of the body. I would like to say that I do appreciate the debate today. The reason that I brought this bill is

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because I do also feel that we have problems in HHS. Everyone feels that we have problems in HHS. I don't know that you can have an HHS system without problems. It's a big organization. There are a lot of people out there that have a lot of problems. We can't be everything to everyone, but we have to try to do the best that we can for the people that we can. I feel that this bill would, number one, give more flexibility to the head of HHS. I also believe that it would give more accountability for the head of HHS. I don't know that we still can't have a legislative group...committee, that would go in and take a look at any of these things. I don't think that this would take that away. As for the budget, I would say that I would go talk to Senator Campbell, any members of the HHS Committee. I agree that we should have probably talked to them, and I'll take that one. I should have talked to her and seen where this lies with them, because it was referenced to the correct committee but there should have probably been a little bit of talk back and forth. I did bring this bill to try to make things better, not worse, and I think that everyone understands that. We just have a difference of opinion on how to make it better. I'm up for trying just about anything to make it better because we have to do something. I don't...Senator Conrad spoke about the ship sinking. It's taking on water, that's for sure. I don't feel that this is just rearranging the deck chairs. I care very strongly about what's going on in the HHS system. I got on the BSDC task force because I feel that there was a need for it. And I think that things have done considerably better there. Are we done? Absolutely not. There's still a lot of work to be done and I don't know that we'll ever be done, because nothing is perfect. However, we are making a difference and I appreciate everyone's support on that. So I would like to talk to Senator Campbell and we'll try to get this all straightened out. I just wanted to say that I think, by giving the director more tools, more people that he would like to see in there, that he can go after...most of these jobs would still be advertised. This just gives him the opportunity that if he sees a person that he feels will plug the hole perfectly, that he can go after them and do what he has to do to get them. With that, Mr. President, I'd like to yield the remainder of my time to Senator Janssen. [LB218]

SENATOR GLOOR: Senator Janssen, you have 1 minute and 5 seconds. [LB218]

SENATOR JANSSEN: Thank you, Mr. President. Thank you, Senator Karpisek. I obviously will be brief and I'm up in the queue if I can't finish. I just thought with all this ship talk, myself as a former sailor in the Navy, I should probably weigh in on this topic. Also as a member of the Government Affairs Committee...Government, Military and Veterans Affairs Committee, we should run government like a business. I hear that a lot. In this case we're asking for 1 percent of an entire organization. I really can't imagine running my own private business being handcuffed by 99 percent of my employees. Yet, that is all that HHS has asked for. I had questions. And it's okay to ask questions--I agree with Senator Conrad--and have respectful debate on the floor. We did so in committee and came out 8-0. That doesn't mean there can't be questions out here, obviously. The question I had in committee was, why not more? I wanted and toyed with throwing an amendment of 5 percent of the total force on here, because it didn't

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increase employees. So I decided not to. Senator Karpisek advised that he'd just like to move ahead with this. This is what they asked for. He thought it was reasonable. I agreed with that. I would like more. And I agree with Senator Karpisek,... [LB218]

SENATOR GLOOR: Time, Senator. [LB218]

SENATOR JANSSEN: ...this is not less government; it's a more efficient government. [LB218]

SENATOR GLOOR: Thank you, Senator Janssen. Senators wishing to be heard are Krist, Council, Janssen, Harms, and Nelson. Senator Krist. [LB218]

SENATOR KRIST: Thank you, Mr. President. On my way into work this morning, I was listening to talk radio. And I don't know if you know this, but--I won't mention the radio name and it's one that I won't listen to for awhile--but I want you to know that all 49 of us are frustrated association presidents who are here to pave our way to heaven by making good legislation. I disagree with that. I think the decisions we make and the debate that we have on this mike is accountable to the citizens as opposed to the kind of things that are done on other public mikes. Having said that, I want to tell you that I believe that my biggest criticism of HHS is also my criticism of this body--vertical silos, vertical silos. Senator Karpisek is absolutely right. He and his committee were probably in error not bringing something to the attention of HHS that this was in committee. I have argued that from the day I set foot in this body. If something affects Transportation and Telecommunications, I have no problem talking to Senator Fischer. She's taken my head off more than once. But I keep going back. I have no problem talking to any other committee. And I really think that in the case of HHS in the past few weeks, we have laid things over so that we can talk to other committees about what's happening. That's what this is about. It's about cooperating. It's about communicating. It's about making sure that these silos are broken down and that there's more of a horizontal playing field in terms of the communication so we make the best decisions. And you know what? I think that's what Kerry Winterer is asking for here. I think he's asking for the opportunity to break down those silos and make some differences, make some changes, make some efficiencies, maybe even some consolidations within HHS. Think about it for a second. You've just been charged with straightening out the chaos that the rest of us and the rest of the state say is a problem. He's come to one of us and said, "Could you put this forward for me; this is a tool I want to use." Either he is or he is not the director or the leadership that we need in place. But you know what? This is something he's asking for, trying to solve a problem in HHS. If you're on a committee and you see issues coming up that affect other committees, I think it's our responsibility either to go to the chair to the chair or individually and try to work these things out. And I believe that's what needs to be done here. With that, I would like to yield the rest of my time to Senator Campbell if she would like to take it. [LB218]

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SENATOR GLOOR: Senator Campbell, 2 minutes and 5 seconds. [LB218]

SENATOR CAMPBELL: Thank you, Senator Krist, and certainly want to thank Senator McGill, because we sent Senator McGill out to gain some more information for us. And based upon what we have been given and in talking to Senator Karpisek, Senator Karpisek and I are committed to working between now and Select File, and we will bring information back to the body and clarify this issue so that everyone in the body will know exactly what the plan is and what the positions might be used for, and then you'll be basing your decision on very solid information. With that, I'm willing to support LB218 going forward, knowing that we will work together to find an answer. [LB218]

SENATOR GLOOR: Thank you, Senator Campbell. Senator Council, you are recognized. [LB218]

SENATOR COUNCIL: Thank you, Mr. President. And I have sat attentively listening to all the comments of my colleagues both for and against LB218. And I rise because I really don't appreciate when others characterize or mischaracterize statements made on this floor to suit their purposes. When we talk about accountability, if accountability is mentioned in support of LB218, it appears to be accepted. If accountability is mentioned in opposition to LB218, it becomes, well, we're denigrating the director of the department, Mr. Winterer. I don't recall anybody on the floor today making any disparaging comment about Mr. Winterer. I heard comments made about accountability, transparency, addressing concerns and complaints. And if someone wants to stand and suggest that we have not received numerous concerns and complaints about DHHS, I'm open to listening to that, because I also want someone to point out to me where this body has constantly--and that was the quote--constantly blocked DHHS in pursuing whatever objective they're seeking to pursue. Somebody has to point out, for me, one time, that we've blocked DHHS. I also don't appreciate that we can come to the conclusion that someone who's employed outside of the State Personnel System is automatically better than, more competent than, someone who comes through the State Personnel System. Isn't that, in fact, denigrating individuals who have been employed through the State Personnel System? It appears to me that the inference is if you come through the State Personnel System, you are somehow less than someone who is hired under the flexibility and authority given to the director for nonexempt positions. I'm saying all that to say we need to be careful and measured in the terms we use on this floor when we're debating these issues, and I'm not going to let anyone, by anything they say or do, imply that I as a member of this body don't have a right to question something I don't know or understand. And I think it is this body's right and responsibility to have some understanding other than "I need flexibility"; some understanding as to what the compelling reason is to increase the number of exempt positions in DHHS at this time. And I can stand here and say, legitimately: I don't know. And I think, based upon Senator Campbell's comments in terms of what was discussed with the committee, they don't know. So the fact that I inquire or others inquire as to what's the

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compelling reason; is there some plan of action; is there some direction that the director is considering, because perhaps if we knew, our statements on the floor could be viewed as being absolutely totally supportive of the director, but because we don't know and we ask questions to try to raise our consciousness... [LB218]

SENATOR GLOOR: One minute. [LB218]

SENATOR COUNCIL: ...so that we can vote appropriately on these measures, it becomes a question of pitting the pros versus the cons, and putting it in a way that, and quite frankly, I view as denigrating the position of those who are asking and raising these questions. Everybody appreciates and understands management flexibility, but in the environment we're in today I think we have an obligation to have some idea of the direction that the director of a department is intending to go with the flexibility that he or she is seeking from this body. And for that reason, because I don't know, I will not be supporting LB218, and would urge others not to support it until such time as this body is provided with what are the... [LB218]

SENATOR GLOOR: Time, Senator. [LB218]

SENATOR COUNCIL: Thank you. [LB218]

SENATOR GLOOR: Thank you, Senator Council. Senator Janssen, you are recognized. [LB218]

SENATOR JANSSEN: Question. [LB218]

SENATOR GLOOR: The question has been called. Do I see five hands? I do. The question is, shall debate cease? All in favor vote aye; all opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB218]

CLERK: 32 ayes, 9 nays to cease debate, Mr. President. [LB218]

SENATOR GLOOR: The motion passes. Senator Karpisek, you are recognized to close. [LB218]

SENATOR KARPISEK: Thank you, Mr. President and members of the body. Again I appreciate the debate. I think if we would have just let this go, with all the things that we hear going on at HHS, we would be asleep at the wheel. I don't feel the Government Committee was asleep at the wheel. I think we looked at it. And my feeling, anyway, is that this is a tool. We know things are not going well there. They're getting better, I hope, at least in some areas. I agree we haven't heard anything derogatory about Mr. Winterer. I think things are turning around. They're going to turn slowly. There's new problems everyday. You might put out one fire and three more start. There are issues

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that I'm not happy with that have happened, so I've tried to do something about them. We all agree that something needs to be done. Maybe we don't agree that this is the right way to do it, and that's fine. I think that I would like to give the director more leverage, more ability to get who he feels is the right person to get in the job; give him more tools to do so. I do promise to sit down with Senator Campbell, anyone from the HHS Committee, or anyone else between General and Select, and try to work this out. I made an assumption with this bill that I...and I was wrong. You think you're here long enough you shouldn't assume anything, but I did. But I do appreciate the debate on this bill. I would appreciate your vote to move it to Select File and we will work it out if there's anything to work out in between, if we can come to an agreement. If there is not and there is a lot of push back and it's not working out, then we probably won't see the bill back again. Thank you, Mr. President. [LB218]

SENATOR GLOOR: Thank you, Senator Karpisek. The question is the advancement of LB218 to E&R Initial. Those in favor vote aye; those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB218]

CLERK: 33 ayes, 8 nays, Mr. President, on the advancement of LB218. [LB218]

SENATOR GLOOR: The bill advances. Mr. Clerk. [LB218]

CLERK: Mr. President, some items. Your Committee on Enrollment and Review reports LB178, LB178A, LB215, LB43, LB410, LB410A, LB108, LB114, LB243, LB62, LB36, LB225, and LB274 to Select File, some of which have Enrollment and Review amendments. Senator Dubas, an amendment to LB114 to be printed. Senator Brasch offers LR76. That will be laid over at this time. Senator Karpisek would like to add his name to LB52 as a cointroducer. (Legislative Journal pages 549-552.) [LB178 LB178A LB215 LB43 LB410 LB410A LB108 LB114 LB243 LB62 LB36 LB225 LB274 LR76 LB52]

And, Mr. President, Speaker Flood would move to adjourn the body until Wednesday morning, February 16, at 9:00 a.m.

SENATOR GLOOR: You have heard the motion to adjourn until 9 a.m., Wednesday. All in favor say aye. All opposed say nay. We are adjourned. (Gavel)