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Floor Debate  
April 05, 2011

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[LB20 LB41 LB45 LB54 LB70 LB80 LB84 LB95 LB112 LB156 LB176 LB200 LB200A  
LB229 LB229A LB279 LB283 LB286 LB305 LB357 LB360 LB389 LB389A LB421  
LB465 LB468 LB477 LB479 LB499 LB509 LB541 LB546 LB570 LB575 LB600 LB637  
LB648 LB682 LR40CA LR102 LR141 LR146 LR147 LR148]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the fifty-seventh day of the One Hundred Second Legislature, First Session. Our chaplain for today is Reverend Barbara Mitchell of Tabernacle of Faith in Omaha, Nebraska, Senator Council's district. Please rise.

REVEREND MITCHELL: (Prayer offered.)

SENATOR GLOOR: Thank you, Reverend Mitchell. I call to order the fifty-seventh day of the One Hundred Second Legislature, First Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

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

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

CLERK: I have no corrections, Mr. President.

SENATOR GLOOR: (Gavel) Thank you, Mr. Clerk. Are there any messages, reports, or announcements?

CLERK: Enrollment and Review reports LB20, LB41, LB45, LB389, LB389A, LB421, LB465, LB468, LB509, LB541, and LB546, all reported correctly engrossed. Enrollment and Review also reports LB156, LB95, LB112, LB305, LB70, LB286, LB477, LB499, LB229, LB229A, LB479, LB200, LB200A, and LB176 to Select File, some of which have Enrollment and Review amendments attached. New resolution: Senator Flood offers LR146; that will be laid over. And an Attorney General's Opinion addressed to Senator Mello (re LB54); that will be on file or inserted in the Legislative Journal, Mr. President. And that's all that I have. (Legislative Journal pages 1037-1050.) [LB20 LB41 LB45 LB389 LB389A LB421 LB465 LB468 LB509 LB541 LB546 LB156 LB95 LB112 LB305 LB70 LB286 LB477 LB499 LB229 LB229A LB479 LB200 LB200A LB176 LR146 LB54]

SENATOR GLOOR: Thank you, Mr. Clerk. Members, we will now proceed to the first item on the agenda. Mr. Clerk.

CLERK: Mr. President, the first item this morning, LR40CA, offered originally by Senator Pirsch. It would propose an amendment to Article XV by adding a new Section 25 to the

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state constitution. The resolution was introduced in January, referred to Natural Resources, advanced to General File. Senator Pirsch presented his constitutional amendment to the body on Friday...or on Thursday, excuse me. At that time he offered, as an amendment to the resolution, AM886. Senator McGill then moved to amend the resolution and Senator Pirsch's amendment with AM1069. Those two amendments are now pending, Mr. President. (AM886, Legislative Journal page 995.) [LR40CA]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Pirsch, you're recognized to open on LR40CA. [LR40CA]

SENATOR PIRSCH: Thank you, members of the body. Just as a refresher, this legislative resolution, LR40CA, is intended to protect and preserve Nebraskans' rights, specifically the rights we currently enjoy to hunt, to fish, to harvest wildlife, for future generations. Thank you. With respect to the amendment, AM886, that language is very short and very direct. It states, I'll read it verbatim: The citizens of Nebraska have the right to hunt, to fish, and to harvest wildlife,... [LR40CA]

SENATOR GLOOR: (Gavel) [LR40CA]

SENATOR PIRSCH: ...including by the use of traditional methods, subject only to the laws, rules, and regulations that promote wildlife conservation and management and that preserve the future of hunting and fishing. Public hunting and fishing shall be a preferred means of managing and controlling wildlife. This section shall not be construed to modify any provisions of law relating to trespass or property rights. Again, to refresh your recollection, the green copy of the bill was voted through Natural Resources Committee on 7 votes in favor, only 1 against. It was designated as a priority bill by that committee, and I thank them for that designation. There were many who testified in support of the bill and there was no opponent testimony, neither was there any neutral testimony at committee. On that basis, I would ask for your support of AM886 as well as the underlying LR. Thank you. [LR40CA]

SENATOR GLOOR: Thank you, Senator Pirsch. Mr. Clerk. [LR40CA]

CLERK: Mr. President, pursuant to Senator Pirsch's offering his AM886, Senator McGill moved to amend with AM1069. (Legislative Journal page 1034.) [LR40CA]

SENATOR GLOOR: Senator McGill, you're recognized to open on your amendment, AM1069 to AM886. [LR40CA]

SENATOR MCGILL: Thank you, Mr. President. Members of the body, welcome back after that wonderfully long weekend. If you don't remember, my amendment is to add to the list of things protected in the constitution under this amendment: the right to swim, to farm, to ranch, to drive, to boat, to tube, to golf, to nap, to parent, to learn, to camp, to

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pioneer, to innovate, and to watch Husker football. Was also given several other suggestions over the weekend that include the right to wrestle at UNO, the right to sunbathe, the right to go to the theater. You know, I introduce this amendment not because I'm serious about tacking it on to this. In fact, I will likely pull the amendment when it comes to my closing time. But the point I'm trying to make is that this amendment is unnecessary. We should protect the constitution from any amendments that aren't absolutely necessary. Our hunting and fishing rights are indeed very secure in Nebraska. As Senator Pirsch just said, there was no opponent to this bill, which means there is no one that really is against hunting and fishing out there who is actively trying to take away those rights. I know we have USDA (sic) out there as an organization to be mindful of, but they have no real pull in Nebraska. The fact that no one came in opposed to this and I don't think I've gotten any e-mails saying that anybody wants to get rid of hunting and fishing, no one in this body does, and if we would have put it up to a vote of the people it would not fare very well to get rid of any hunting and fishing. So that's why I brought this amendment. Thank you, Mr. President. [LR40CA]

SENATOR GLOOR: Thank you, Senator McGill. (Visitors introduced.) Members, you have heard the opening on LR40CA, AM886 and AM1069 to the amendment. We now move to floor debate. Senator Dubas, you are recognized. [LR40CA]

SENATOR DUBAS: Thank you, Mr. President. Good morning, colleagues. I'm sure most of you, if you've checked the committee statement, have noticed that I was the lone no vote for this to come out of committee, so I want to be very, very clear about where my opposition comes from. I absolutely do not object to the concept or the objective of what LR40CA is trying to accomplish. I am fully behind any protections or support that we can put in place for hunting and fishing sports. My family are avid sportsmen. If I stood on the floor in opposition to anything like that, I would certainly probably be looking for a new home to go to because it's something that my family has very much enjoyed for generations. So I want to be very clear about my support for hunting and fishing sports in the state of Nebraska and I think my voting record has already indicated that in the things that I've supported over my tenure here in the Legislature. But what we're talking about, as Senator McGill said, is our state constitution, so any decision that we make about putting something into our constitution needs to be done with considerable forethought and discussion, I believe. The constitution outlines our basic principles. It's kind of like the Ten Commandments. It's those things that frame the way we operate in our lives. It's already stated in Article I of the Bill of Rights that we have that right to bear arms and that right to bear arms can be used for security, self-defense, for hunting. It's in the constitution already, that protection for hunting and for recreational use. We already have a plethora of statutes in place that in some way, shape or form are either trying to protect and preserve hunting as a recreational sport or put some reasonable limitations and restrictions in place. So I think we have already done, through statute and what exists in our constitution, we've already

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done that. It's already there. I certainly do agree and understand that there are organizations already in our state that would like to come in and challenge the way we deal with animal welfare issues, and we definitely do need to be concerned about what their agenda is and what they're trying to do. And I think what we need to be doing is working at educating the public about who these organizations are, who drives them, where their money comes from and their underlying agenda and objectives. That's...I think it's very important and I know there already are a lot of groups out there who are trying to shine the light on what these groups are trying to do, and I support those efforts. But by putting this right into our constitution, I think it has the real potential to open our existing statutes as well as any future legislation to litigation. Hunting sports are a valued part of our history, they are a part of our heritage, but so are many of the things that Senator McGill has outlined in her amendment. Those are important parts of who we are as Nebraskans. So the question in my mind is, does this rise to the level of a constitutional right? By placing this language into the constitution, we place the interpretation of future legislation, future statutes, we place that interpretation into the hands of the judicial branch. That's what they're there for. They're there to help interpret out law. But as a Legislature, I think we have... [LR40CA]

SENATOR GLOOR: One minute. [LR40CA]

SENATOR DUBAS: ...a lot more leeway to establish laws that would enable us to put additional protections in place and so I don't know why we would want to hand...why we would want to give additional opportunities to involve the courts when we have an extreme amount of legislative power to set law and to do what we want to do. I don't think our constitution should look like our statute books. Our statute books are thick and full of a lot of laws, some would say not every law should be there, but I think we have a lot of opportunity through statute to do exactly what we're trying to do through this constitutional amendment. And again, I want to state my support for protecting and preserving our rights to hunt and fish and our recreational sports, but I think we need to give very, very serious consideration to putting something like this into our constitution. Thank you, Mr. President. [LR40CA]

SENATOR GLOOR: Thank you, Senator Dubas. Senator McGill, you are recognized. [LR40CA]

SENATOR MCGILL: Thank you, Mr. President. Thank you, members of the body. Again, I rise opposed to the underlying amendment or the constitutional amendment. My question is, and the point I'm trying to make with my amendment is, where do we draw the line when it comes to amendments that we put into the constitution in protecting certain rights that we have in Nebraska and activities that we have in Nebraska? Every time a group that we may not like, like the USDA (sic), moves into our state, does that mean that we suddenly need a constitutional amendment to protect people from that? Nebraska, for instance, has a number of vegetarians. Do we need a constitutional

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amendment defending our right to eat meat? And I'm dead serious about that. I would think...I honestly think the target group of people who probably are against hunting are also vegetarians who probably have a problem with the fact that we're eating animals in the first place. We should be putting that into the constitution as well. Is that necessary? Most of us would say, no, that's not necessary. People have been eating meat since the beginning of time. But people have been hunting since the beginning of time. And this...I actually think of the statute we passed earlier this year allowing women to breast-feed, but there's no backup. So if a woman...there's no cause of action, so if a woman is told she can't breast-feed then she still has to ultimately leave that establishment. That's something we've been doing since the beginning of time, actually dates back pre-hunting and fishing. Should we have a constitutional amendment to allow for breast-feeding anywhere a woman sees fit? Changing the constitution is very serious, members. We have to put the utmost thought into the steps that we're taking, even though we all love hunting and fishing. I've been fishing a lot as a kid. I've gone pheasant hunting and, while I didn't actually hunt, I enjoyed the experience. But I don't think this rises to the level of needing an amendment to our constitution. I don't think there is a real threat in this day and age or actually for at least the next 20 years. Nebraskans enjoy these activities. And even if there are city folks, like I'm a city girl, I respect these activities. Again, I'm not serious about wanting to add the whole list of activities that I have in my amendment, but I hope I am making a point to members about how unnecessary this amendment is. Thank you, Mr. President. [LR40CA]

SENATOR GLOOR: Thank you, Senator McGill. (Visitors introduced.) Members wishing to be recognized are Lathrop, Carlson, Cook, Fulton, Council, Conrad, Dubas, and McGill. Senator Lathrop, you are recognized. [LR40CA]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Good morning. I think any time we take up a constitutional amendment, it's a very serious occasion in this Chamber. Our form of government has, as its centerpiece, the constitution, first of course the Constitution of the United States and next the Constitution of the State of Nebraska, and indeed, unlike our counterparts in England who swear an oath to the Queen, we swear an oath to a document. And by swearing an oath to a document, we reaffirm that the principles in that document and we, as senators, affirm and promise to uphold and defend this document, not the Queen, not the Governor, not any person but a document which contains our very fundamental principles. Our state constitution, like our federal constitution, includes a Bill of Rights, and let me tell you what that includes if you've not looked at the constitution lately. You probably have one at your desk and you can certainly find it in Volume 2 of the statutes, but it includes a prohibition against slavery, a significant principle. It includes the promise to the citizens of the state of Nebraska that they will have the due process of law and equal protection. It includes the right to religious freedom, freedom of speech, freedom of press, trial by jury, freedom from unreasonable searches and seizures. It includes principles relative to double jeopardy, speedy trial, quartering soldiers in the time of war, the right to peaceable

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assembly, and to petition government, the right to be compensated if government takes your private property, free elections. These are the things that are what we affirm when we take an oath as state senators. We promise to defend these principles, and the question before us today is whether or not the right to hunt and fish rises to that level. It is a very serious occasion. We are not simply amending the statute. We are amending the cornerstone of our democracy--the state constitution. Before we go into that process, before we let interest groups take us into this area, it is important that we appreciate first a need. You probably growing up read in social studies, in history about the framers of the constitution, our forefathers, those great minds that debated the issues that will...and the substance of our federal constitution are legends. We honor them with holidays and we commemorate the constitution every year. And today we take up hunting and fishing. I grew up in an urban setting. I spent my childhood hunting with my father until he passed away. I have a hunting license for every year since I was 16, except my freshman year in law school and my first year down in this place, and I've saved them because they mean a lot to me. This isn't about whether hunting and fishing are important to the people of the state of Nebraska. They are. The question is whether or not there's a threat... [LR40CA]

SENATOR GLOOR: One minute. [LR40CA]

SENATOR LATHROP: ...that requires that we amend the cornerstone of our democracy to protect an activity, and I haven't heard that case made today. I have great memories hunting and fishing. I am, by anybody's measure, a hunter and a fisherman. But we're talking about the constitution, not a statute, not a statute. And before we go there we need to have more than theoretical threats, constructs of reason that bring us to the edge of some catastrophe where some group comes in here theoretically and passes a bill that stops us from hunting or fishing. Who's going to do that in this body? [LR40CA]

SENATOR GLOOR: Time, Senator. Thank you, Senator Lathrop. The Chair recognizes Senator Carlson. [LR40CA]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. Always interested in the very articulate way that Senator Lathrop phrases things and in his testimony I think he has an argument that is worth talking about. I do believe there's a real threat here and I think a threat needs to be dealt with, so I'm going to start by saying we've got the same tune but a different issue. Now last week we debated LB305. We talked about why the debate was necessary and it's because of the misleading efforts of the Humane Society of the United States. And I'm sorry if this is a repeat, but this is their doing and not mine, and we've got to respond to it. They have a determination to drastically change the Nebraska way of livestock production and really for no good reason. But today we have LR40CA which guarantees the right of Nebraska citizens to hunt, fish, and trap forever. Now what could be more appropriate for constitutional consideration than the threat of basic freedoms being taken away? Is

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LR40CA necessary? I think it is. Thirteen other states have taken the same action. But again, this comes about as a result of Humane Society of the United States and their radical agenda, an agenda that can't be defended, it shouldn't be defended, and it must be defeated. HSUS is an enemy of agriculture and an enemy of hunters, fishermen, and trappers, really an enemy of anyone who eats meat. The Humane Society of the United States has been criticized for deception and misrepresentation. Out of every \$1 they receive from individuals who think they are helping rescue abused, starving animals, only about 2 cents goes for rescue, the rest for their dangerous political agenda. Now even other animal rights groups criticize how HSUS operates. Merritt Clifton, a publisher of "Animal People," a newsletter written by animal rightists for animal rightists, singled-out HSUS for appearing to be something it is not. In the December 11 annual report on fund-raising, he referred to HSUS and how they fool the world. The Humane Society of the United States is not and never has been a collective voice for all, most, or any humane societies, neither does it shelter animals, adopt out animals, neuter animals, or share funding with local humane societies. That's a quote from this gentlemen. I also have some other quotes that I would share from the Humane Society of the United States and Wayne Pacelle, the president of that organization: If we could shut down all sport hunting in a moment, we would. Our goal is to keep sport hunting in the same category as cockfighting and dogfighting. Sport hunting, the killing of wild animals as recreation is fundamentally at odds with the values of a humane, just, and caring society. [LR40CA LB305]

SENATOR GLOOR: One minute. [LR40CA]

SENATOR CARLSON: Waterfowl, pheasant, and dove hunting are no more than shooting at living targets. The pheasant hunt has developed into a pathetic blend of factory farming and canned hunting. The sport is nonexistent, makes a mockery of ethical field conduct. In an interview with Wayne Pacelle, the interviewer said, where would your organization...or would your organizations support black bear hunting anywhere in the United States? Answer: Nowhere. Where does your organization support the hunting of deer anywhere in the United States? Nowhere. Where in the United States does your organization support any hunting of any species? Nowhere. So the real agenda is to get a total ban on all hunting everywhere? Yes. This is a threat. It's a good debate. It's worthy of our time and I ask for your support of LR40CA, not your support of AM1069. Thank you. [LR40CA]

SENATOR GLOOR: Thank you, Senator Carlson. (Visitors introduced.) Senator Cook, you are recognized. [LR40CA]

SENATOR COOK: Thank you, Mr. President, and good morning colleagues. I pushed my button on Thursday to rise to...as the voice of a Nebraskan who has absolutely no direct interest in hunting or fishing, someone who's lived here for most of her life and really is becoming a bit fatigued by the imagery that's continually put forward about the

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state of Nebraska. Certainly, Nebraska is an agricultural state and the agricultural industry is enjoying quite a boon, from what I understand and compared to the rest of the United States in terms of a financial recovery. When people get on the microphone and enforce ideas with which I do not agree as being particularly Nebraskan or the Nebraska way, that deletes fully half of the people in the state from consideration, philosophically. It's tiresome, it's typical, but I wanted to rise in philosophical support of Senator McGill's amendment and to reinforce the idea that placing things in the constitution, because they won't pass as a statute, is not the direction we would want to go. Certainly, the bulk of the body that would object to some of my proposals that would go on to the constitution wouldn't like that if every time you couldn't get something passed in statute, something that you believed to be Nebraskan and you wouldn't like it. So I'm just rising in support, certainly not the most articulate support, but in philosophical support of Senator McGill's AM1069 to AM886. Nebraska is a diverse state. Nebraska people get on the microphone and talk about how they want their kids and their grandkids to stay here and every time you jump on the microphone and say how great it was on the farm and how much you want to hunt and fish and do whatever it is you like to do, that makes some people just want to pack up and leave. And my bet is that if the economy were better on the coasts, they wouldn't be coming back in the droves that you claim they're coming back in. So a word for the record if some day somebody reads the record of the Legislature, I'm proud to represent the fact that Nebraska includes people who are interested in urban pursuits, that really does happen here, people who not have a vehement opposition to hunting and fishing, they choose not to do it themselves and that's allowed. Thank you, Mr. President. [LR40CA]

SENATOR GLOOR: Thank you, Senator Cook. Senator Fulton, you are recognized. [LR40CA]

SENATOR FULTON: Thank you, Mr. President, members of the body. The question it seems that is being raised here is whether this proposal by Senator Pirsch rises to the level of consideration for our constitution. Now I've paid attention to those who were speaking in opposition to LR40CA and, with the exception of Senator Cook, who make herself clear, others who have opposed have been careful to qualify by saying that, you know, I do hunt and fish or I support hunting and fishing and I don't want this to be in any way...be construed such that I don't, and that's fine and that's an important qualifier. But the point here is that if one hunts and fishes or doesn't hunt and fish, if one doesn't believe that there's a threat posed by HSUS or others, then he or she would be able to express that through his or her vote. It was said that we are amending the constitution. We are not. We are choosing whether to put something on to the ballot, which sometimes is appropriate, sometimes it's not. It's up to our individual judgment as to whether indeed it is. In my judgment, this is appropriate to put on the ballot. If it's on the ballot, I plan on voting for it, that's one. There are others who probably won't. Perhaps Senator Lathrop won't vote for it if it's on the ballot. There will be people who enjoy hunting and fishing who may believe that this is inappropriate for our constitution. Let

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them have that say. What we can do in this body is to put this issue on the ballot such that the people can have a say. Now...so let's just be...to be clear about that, we are not amending the constitution. We are putting this on the ballot such that the people can choose whether they amend. Now why do I believe this is appropriate? And this really is the crux of the argument: Is this appropriate to be on our ballot or not? And I respect you if you don't think it is. I happen to believe that it is and I've changed. In years past I've said, no, this does not rise to that level, but I've changed and I explained a little bit why previously. Now if indeed this is the body where we change statute, and it is, let us recognize that the makeup of this body will change every four years, more so than in years past because of term limits. It will also change in complexion because of the redistricting process. We have more rural Nebraskans living in urban Nebraska, such as myself, Senator Coash, Senator McCoy, several others. That trend continuing separates a generation from the traditions that many of us grew up counting, how do I say this, grew up assuming, taking for granted, and that's why I believe this does rise to the level of consideration for the public. So I said this last time, it's on the record, I won't go into it anymore. Let us bear in mind that what we are doing here is putting something on the ballot such that people can vote on it. And if indeed, as some contend, it is inappropriate for inclusion in our constitution, then the people of Nebraska will get that and they will vote thus. If, on the other hand, the people of Nebraska believe this is something that should comprise our makeup, our constitution, then they ought to have the ability to express that, particularly at a time... [LR40CA]

SENATOR GLOOR: One minute. [LR40CA]

SENATOR FULTON: ...when groups like HSUS and PETA and others who stand in stark contradiction to the traditions that we in Nebraska have just assumed are our own. Let people have that say by putting this on the ballot. So with that, thank you, Mr. President. [LR40CA]

SENATOR GLOOR: Thank you, Senator Fulton. Senators remaining to be recognized: Council, Conrad, Dubas, McGill, Christensen, Schumacher, Lathrop, and Pirsch. Senator Council, you are recognized. [LR40CA]

SENATOR COUNCIL: Thank you, Mr. President. You know, I've sat here today and last week listening to those who rise in support of LR40CA. I actually sit here in stunned disbelief, stunned disbelief that responsible elected officials believe that the trivialization of our constitution is appropriate by advancing LR40CA and that's what advancement of this resolution does, ladies and gentlemen. It trivializes our constitution. And let's be clear about it, this is an effort to settle a dispute or competing agendas of competing national organizations. And I've sat here and I've listened. Everybody knows what HSUS's agenda is, and some have even characterized it as radical, but what is the other agenda being advanced here? What other special interest group is advocating for LR40CA? And when did this body become the arbiter of disputes between special

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interest groups. I listened last week to Senator Pirsch's opening and he gave an example of what happened in California and I sat and I was listening to that and I said, where have I heard this before, where have I heard this before? Well, sad but true, I have a habit of listening to talk radio. I like to hear what everybody thinks and it just so happened that last week there was a guest on one of the state's talk radio stations who was an advocate for the NRA and he recited the exact same story almost in the exact same manner as Senator Pirsch outlined about the mountain lion issue, and he outlined it as part of the NRA's national agenda to advance their special interests. And I'm not going to stand here and dispute the fact that they have an interest in hunting and fishing and trapping. That's their interest. But does their special interest rise to the level of being a fundamental constitutional right in the Nebraska Constitution? When are we going to stop being the pawns for these special interest groups? We sent a matter to the ballot a couple of years ago that I submit to you there was not a single threat to the Nebraska way of life and there weren't any real examples of any abuses, and this body advanced a constitutional amendment. And here we are again. There's no real threat to hunting, fishing, trapping in Nebraska presented by HSUS. In fact, if you listened carefully to Senator Carlson, the real threat is to cattle raising and animal consumption. Why isn't that the constitutional amendment that we're considering? If that's the real threat, then why are we dillydallying with hunting, fishing, and trapping? And I recall my first year in the Legislature. I think we spent three days on trapping in right of ways. If there's a real threat to these activities... [LR40CA]

SENATOR GLOOR: One minute. [LR40CA]

SENATOR COUNCIL: ...I haven't seen it. And if it is a fundamental way of life in Nebraska, Senator Fulton, why do we fear what subsequent Legislatures will do? If it's a fundamental way of life, they'll protect it as well, statutorily. But what we will do is fall pawn to these national special interest groups who come into our state and create threats that do not exist and get us to be their water boys and girls and carry their water through legislation such as promoting LR40CA. When are we going to get it? The constitution is a document that governs this state and sets forth the fundamental principles, and I submit that if we believe hunting, fishing, and trapping is a fundamental principle... [LR40CA]

SENATOR GLOOR: Time, Senator. [LR40CA]

SENATOR COUNCIL: ...then you need to support AM1069. [LR40CA]

SENATOR GLOOR: Thank you, Senator Council. The Chair recognizes Senator Conrad. [LR40CA]

SENATOR CONRAD: Thank you, Mr. President. Good morning, colleagues. I was hoping that Senator Pirsch would yield to some questions, please. [LR40CA]

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SENATOR GLOOR: Senator Pirsch, would you yield? [LR40CA]

SENATOR PIRSCH: Thank you. I would. [LR40CA]

SENATOR CONRAD: Thank you, Senator Pirsch. And I know you and I have had an opportunity to visit about this proposal a couple times off the mike but I think in particular, as we have the opportunity to put this before the voters, we do need to ensure that we have a clear legislative record if there would be any ambiguities if this proposal is adopted. And I was hoping that you could just clarify the changes proposed in your amendment versus the introduced copy and how you came to putting forward this amendment. [LR40CA]

SENATOR PIRSCH: Thank you. I do appreciate and I will yield to such question and it gets back to I think a little question that Senator Council had raised earlier, is this where we have met some sort of nationwide organization's...was the impetus of this bill some nationwide organization contacting me, and it really wasn't. This doesn't have anything to do with outside groups. I had not spoken with or talked to anyone from the NRA prior to dropping my green copy of my bill. Now they, of course, have an interest, outside group, many, many groups actually, the sportsmen who I had been talking to, Nebraska Sportsmen, and there was a number of inputs given as to how can you take this concept that's expressed in the green copy of the bill and put it in a way...in language that's been tested in other states to express the exact concept that you're trying to get across in a more precise, a more perhaps defined basis. And so that is the underlying...part of the underlying reason for the green...I'm sorry, the amendment. There also is a substantive change that was part of their recommendations after I dropped this that it would...that would come about with the amendment and that would be it clarifies that the right to hunt, fish, and harvest wildlife applies to citizens of the state of Nebraska. And so I thought that was a good part. So if you...the state can have a different scheme for outsiders who come into the state, and so that was one of the underlying reasons that I felt that it was necessary to go forward with an amendment expressing the same concept. [LR40CA]

SENATOR CONRAD: Thank you, Senator Pirsch. And I just... [LR40CA]

SENATOR PIRSCH: Sure. [LR40CA]

SENATOR CONRAD: ...did want to make sure that we did have that on the record, as I understand that there have been questions in the past and has been litigated extensively how some of these natural rights, so to speak, may be implicated by the privilege and immunities clause and other things. And so I think that your amendment, which squarely puts this right to our citizens, is much clearer. And then the two other questions I had, and I don't know if we'll have enough time and I'd be happy to hit my

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light or hope maybe others will address them, is really related to, in the pending amendment, the word "preferred," "public hunting and fishing shall be a preferred means of managing and controlling wildlife," if that is defined elsewhere in the constitution or our statutory framework or really if you could just shed a little bit more light on what that phrase means. And then also the same question would apply to line 3 and the phrase... [LR40CA]

SENATOR GLOOR: One minute. [LR40CA]

SENATOR CONRAD: ..."the use of traditional methods." I just think it would be helpful to all of us and the voters if we could have some further definition or explanation of what some of that language means. And I know we're running short on time but thank you so much. [LR40CA]

SENATOR PIRSCH: Thank you. Mr. President, how much time do I have? [LR40CA]

SENATOR GLOOR: Forty seconds. [LR40CA]

SENATOR PIRSCH: (Laugh) Well, I'll try to address it. If you note, the word is "public hunting and fishing shall be a preferred means of managing," so it's not exclusive. If there's a disease or some sort of outbreak and the Game and Parks needs to use some other mechanism besides hunting to get rid of diseased animals, they can use a different preferred means of managing control. So it's "a," not "the." With respect to tradition...traditional methods, that's as of the time that the...it goes to the voters to decide, so we're talking about, when we say traditional methods that will be used as of the time that it goes to the voters. [LR40CA]

SENATOR GLOOR: Time, Senators. [LR40CA]

SENATOR PIRSCH: Thank you. [LR40CA]

SENATOR GLOOR: Thank you, Senator Conrad and Senator Pirsch. The Chair recognizes Senator Dubas. [LR40CA]

SENATOR DUBAS: Thank you, Mr. President. And thank you to Senator Conrad. She asked many of the same questions that I had and may follow up with some further explanation. I think this is an important discussion to have because we do have groups that have targeted Nebraska, HSUS among them. They have a very specific agenda. They have a very strong agenda that they are out to promote and there is nothing that we can do to divert them from that agenda. They have deep pockets. They have high-dollar attorneys. We can put this constitutional amendment in place and they're going to find a way to subvert it or come in and overturn it or take it a different direction. Make no mistake about it, these guys, their agenda is clear and they're going to follow

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through with that. I think this conversation that we're having this morning is important because it's giving us the opportunity to educate the public about this organization and what their agenda is. And I know a lot of the farm organizations have really rallied the troops and are working hard to educate the public about how we conduct ourselves in ag through livestock and crop production, and I think that's one of the most important things we can do, is to educate the public about a group that is coming, not from within the state but from outside of the state, targeting us for some very specific issues, bringing their money into the state and then trying to convince people that we should be operating otherwise. So I support those educational efforts wholeheartedly. I think we can do the same thing with...through hunting and through our recreational activities. I think the population of Nebraska understands the importance of hunting and fishing and these recreational sports. I host on a regular basis people from outside of our state as well as across the state that come out and enjoy our particular area of the state for hunting. There's a great deal of support. I think if we had a petition drive being conducted in the state right now that would be attempting to outlaw some of these activities, I think they would be met with a great deal of resistance because these practices are such an important part of our heritage that we protect. Our right to bear arms, I mean any sniff of someone trying to control our ability to carry arms would be met with a huge amount of resistance. So again, I think that our opportunity to educate the public about who these organizations are, what their agenda is, I invite you to go to their Web site and really, you know, when you first look at it, it's very soft and pretty and puppies and kitties and this is what they're going to do, but if you really get into their Web site and look at what they're doing, their agenda becomes very clear. And I don't think we can state that enough times on the floor about who these organizations are, what they're trying to do. We need to get the word out, as I said last week when we were talking about LB305, no one tells our story better than we do and we need to be talking to the citizens of Nebraska about what we do out in rural Nebraska and the importance of hunting and fishing, not just for recreational but it's one of the best tools that we have for conservation. I mean any of you who drive across the state of Nebraska and see the populations of deer, we just had a bill a couple years ago dealing with how can we put some extra opportunities out there for people to help us with these large numbers of deer. I, as a member of the Natural Resources Committee, worked on that bill. It's important that we understand this isn't just recreation but it does serve public safety as well as some other issues. And us being able to use hunting in that manner, I think the Game and Parks... [LR40CA LB305]

SENATOR GLOOR: One minute. [LR40CA]

SENATOR DUBAS: ...have been very clear about that. So every opportunity again that we have to educate the public about who these organizations are, what their plan is, but make no mistake, colleagues, no matter what we do or don't do here, they're in the state. They have a plan. They have an agenda. They're going to move forward with it. I think through this amendment we give them just another tool to use to bring litigation in

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to cost the state money, and any way that we can minimize their ability to do that, I think that we need to. And we need to continue to talk about this publicly and let our citizens know what's going on in our state. Thank you. [LR40CA]

SENATOR GLOOR: Thank you, Senator Dubas. Senator McGill, you're recognized. This is your third time. [LR40CA]

SENATOR MCGILL: Thank you, Mr. President. The first thing I need to do is apologize to USDA for throwing out that acronym in my first floor speech, as opposed to HSUS. That's my bad. I apologize for getting my acronyms messed up in my head. Moving on to Senator Fulton's point that we should just put this up to a vote of the people, we serve as a filter for what goes on the ballot, just as the initiative process serves as a filter. This is something or we are here to create a barrier of what really needs to be put to the people as a constitutional amendment and what doesn't. And I wonder if Senator Fulton or many people in here would have the same opinion if we were talking about a gambling issue right now. Next year it is very possible we'll be looking at expanded gambling, especially since we're in need of revenue sources. And I wonder how many people in here will go ahead and put that to a vote of the people, because that is actually a popular activity in Nebraska, too, a little more controversial, much more controversial, but also a very popular activity. As for the initiative process, how many people in here actually think that anyone could get the signatures necessary for an amendment as clear as banning or a ban to prevent any hunting and fishing in Nebraska? Seriously, how many people in here think that that would get enough votes if USDA (sic) tried to move that in our state? It certainly doesn't have the support in this body. And even if they got the signatures, do you seriously think Nebraskans would vote to completely ban hunting and fishing? You've got to be kidding me. As for other states, no one has banned hunting and fishing. And last week Senator Pirsch did mention several states that had limited...had limited bans on hunting and so I pulled one up. I thought Colorado is a neighbor, he said they banned bear hunting, so I pulled it up. Turns out the wildlife commission there did create a rule that you could not hunt a bear when it's in its den. So basically, when it's hibernating and maybe just waking up and coming out, they don't think that's sportsmanlike so they don't allow hunting of bears in dens. That's a long way from HSUS being successful at banning some form of hunting in Colorado. So when you look at these examples, you also have to hear the stories behind them and the reasons for them. There is no real threat here, folks. And our fears of HSUS have grown to the point that when I brought a bill a couple of years ago to add true household pets to protection orders for domestic violence cases, it didn't advance because people thought, oh, this could be a doorway for HSUS to get in there and put more protection on animals. That was a bill so that if a boyfriend is threatening a girlfriend by threatening to kill her dog, that she can put that in a protection order to protect that animal as well, since that's a psychological way to get at the woman. And yet we voted that down because of HSUS and this fear of them. We have to be realistic about what threats are out there and what our everyday Nebraskans actually support. I

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can't think of anyone right now that I know that would support a full-out ban on hunting and fishing. Even some of the vegetarians I know wouldn't go that far. So please, think about the necessity of this in reality, folks. Thank you, Mr. President. [LR40CA]

SENATOR GLOOR: Thank you, Senator McGill. (Visitors introduced.) Continuing with the discussion, senators wishing to be heard: Christensen, Schumacher, Lathrop, Pirsch, Lautenbaugh, Schilz, and others. Senator Christensen, you're recognized. [LR40CA]

SENATOR CHRISTENSEN: Thank you, Mr. President. First, I'd like to thank Senator Pirsch and the Natural Resources Committee for advancing this bill. I want to make clear that we're not pawns for the NRA. They didn't bring this bill to be introduced. And this all goes back to the abuse that has occurred in other states, from Ohio and many others, where they're trying to set a precedence not only against animal husbandry but against the rights to hunt and fish and trap. And Senator Carlson stated the HSUS wants no hunting, no fishing, harvesting of animals. That is what they'll say if you go to their meetings. Are we going to just wait, be attacked, or are we going to be proactive and protect ourselves? Let's make HSUS work to attack Nebraska. This constitutional amendment shows the state that this is important to the state of Nebraska. When we bring this issue forward and we discuss it, it gets the press, it gets known around the state, and people start understanding, hey, Legislature thought this was important, we better pay attention to what's going on. Let's not be the sleeping dog that gets attacked and we're trying to play catchup. Let's be proactive. Let's go after this. We need LR40CA and everyone working together in this state against HSUS's agenda. They hate how our forefathers fed their families. They hate our number one industry--livestock. You don't have to look far to see how low they'll stoop when they purposely took a pitchfork to a cow and took a picture to make it look like animal husbandry was bad. I ask you to support LR40CA and advance this. And I'm opposed to AM1069. Thank you. [LR40CA]

SENATOR GLOOR: Thank you, Senator Christensen. Senator Schumacher, you are recognized. [LR40CA]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. I'm no Barack Obama and I certainly don't claim to be a constitutional law professor, but I do know a little bit about the stuff and the courts have got an idea that when something goes into a constitution it has meaning. It changes things. Somehow life is different after the amendment than it was before. They kind of have the idea that you just don't put stuff in a constitution to create political hooplas. So I look at our present constitution and the very first section of our Bill of Rights says: All persons are by nature free and independent, and have certain inherent and inalienable rights; among those are life, liberty and the pursuit of happiness, and the right to keep and bear arms for the security or defense of self, family, home, and others, and for lawful common defense, hunting,

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recreational use, and all other lawful purposes, and that such rights shall not be denied or infringed by the state or any subdivision thereof. It goes on in another section to say the enumeration of rights shall not be construed to impair or deny others retained by the people and all powers not herein delegated remain with the people. All of our rights, including hunting, fishing, trapping, farming, and the ones enumerated in Senator McGill's proposal, in addition to pages and pages of other ones, are retained by the people. Now when we throw an additional paragraph in there that says, oh, by the way, hunting and fishing are preserved and shall not be messed with by the Legislature or by initiative because they're superspecial rights, what does the creation of superspecial rights do to all of our other rights? Are they then less-special rights, more subject to being regulated, more subject to being obliterated by legislative or initiative action? We create an inequity. Now one could argue and say, well, listen, folks, there's a difference between tubing in the river and watching Husker football and hunting and fishing, because what we're trying to do in this amendment is define man's relationship with the animal kingdom and we want to be able to hunt and we want to be able to fish and we want to be able to trap. And that's fine, but Senator McGill has something in her amendment that is interesting--farming and ranching--also dealing with the relationship of man to the animal kingdom. So by not including farming and ranching in with hunting and fishing, are we saying those are less protected, those are less equal rights, more subject to attack by whatever outside group might come in here and choose to attack. And quite frankly, if that argument were presented to me, if I were on the court, I'd say, hey, they might be on to something. Maybe they wanted to elevate hunting and fishing above farming and ranching in our relationships with the animal world, and that may influence my decision on a matter before me because, after all, this means something. I'm told as a judge I better read this thing called the constitution and this change and it means something. I don't think I can support this measure unless farming and ranching are included in our relationship with the animal kingdom as being some of those very, very fundamental things to our economy and our culture. [LR40CA]

SENATOR GLOOR: One minute. [LR40CA]

SENATOR SCHUMACHER: Thank you, Mr. President. [LR40CA]

SENATOR GLOOR: Thank you, Senator Schumacher. Senator Lathrop, you are recognized. [LR40CA]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I have sort of a list of things that I want to talk about maybe in the time I have. First, I'm pleased to hear that the NRA is not on this issue, Senator Christensen. I think that will come as a relief to some people here. Now we can talk about the merits of this. Senator Carlson brought up the Humane Society of the United States and I've got to tell you I've been on the Ag Committee now for a year and that subject comes up a lot, and Senator Carlson called it a radical agenda and they have a radical agenda and they're exporting it to places like

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Nebraska. And the problem with this argument is nobody in Nebraska is buying it, okay? You know how you look around and you go, well, that senator, you know, his line of work is this or that or they come from the farm and so their special interest is in the farm? You can't point to one person in this body who has a particular interest in the philosophy of the Humane Society of the United States of America. There isn't. They may have a Web page and they may have an agenda about abusing farm animals. I looked on their Web page. I don't see anything about hunting on there. So the fact that we would characterize their agenda as radical means it doesn't really need protection. It will die on its own. When the truth and when knowledge touch that subject, hunting and fishing will prevail. I also think it's important that we stop for a second and talk about the amendment. When you put something in the constitution you can't enact anything inconsistent with it, right? That's the whole idea behind the constitution and the fact that we're amending the constitution. So what if we have some problem with the fish? All right, now we have some invasion of those carp that fly through the air and that are headed up the Mississippi towards the Great Lakes. And what if we said we're going to net them all? But now wait a minute, that's not a traditional means or the preferred means of managing or controlling wildlife. We're now going to have to run everything that has to do with the management of diseased animals or invasive species that we do not like in our streams and rivers past the constitution. So we want to kill them, but what if somebody steps up and said the preferred means of getting rid of zebra mussels is for us to go diving for them and hunt them? Wait a minute, we've got an unconstitutional law. And what's it mean to be a traditional means of hunting or fishing? Machine gun, is that okay or not okay? Does that mean we've got to use a spear and do it on horseback? We're being hasty in this process. I hope we spend time on the subject because when we amend the constitution we must be careful of the words we have chosen. And when we talk about traditional means or when we talk about constitutionally enshrining the way we're going to manage wildlife, we're talking about the zebra mussels, the carps that fly in the air and other invasive species that now will be subject to how we harvest them. How we eliminate them from our streams and our rivers will now be a constitutional subject. Colleagues, there is no threat. There is a theoretical threat, perhaps, by a group whose message does not take hold... [LR40CA]

SENATOR GLOOR: One minute. [LR40CA]

SENATOR LATHROP: ...in the state of Nebraska. There is no occasion to amend our constitution to preserve a way of life that will be preserved all on its own because those are our values, and it need not be enshrined in the constitution next to your right to a jury trial, your right to be free from unreasonable searches and seizures. It doesn't rise to that level how meritorious and how important the subject might otherwise be. Thank you. [LR40CA]

SENATOR GLOOR: Thank you, Senator Lathrop. Senator Pirsch, you are recognized. [LR40CA]

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SENATOR PIRSCH: Thank you, Mr. President, members of the body. I think...and I appreciate the conversation that's going on. I think it is, you know, I really do appreciate all the statements that my friends in the Legislature are making. I think it's important to discuss some of the issues they raise and so I hope this does go on. And towards that, I would just start by addressing, since just Senator Lathrop recently spoke here, with respect to his concept of some sort of outside invasive species moving up, zebra mussels, etcetera, that would overwhelm the population. Again, this constitutional amendment does not ban hunting in an absolute sense. It allows the Legislature and the department of...well, many departments to pass rules and regulations. And so in an instance the hypothetical that was presented by Senator Lathrop, where we're talking about invasive species that will quickly overwhelm the indigenous population of animals, then that is not consistent with promoting wildlife conservation and management. Then a rule, either by the department or a law passed by the Legislature, would be consistent with promoting wildlife conservation and management, preserving the future of hunting and fishing. And so it is a broad discretion that is granted and retained by the departments and by this Legislature. The purpose here is not to change to some new untested structure. It is to preserve and protect the freedoms that we do have now for coming generations. And so why don't I...and with respect to machine guns, you know, obviously that is not an accepted practice now, nor would it be consistent with any of...I mean we can perfectly regulate it under this constitutional amendment that we're putting before the people, asking for their approval. Toward the idea...I think the underlying concern is...and it is a valid one to raise here and for us to talk about, and that is are we cluttering up the Nebraska Constitution by allowing the voters a chance to add these three sentences to a document that apparently has, you know, I don't know, somewhere around 24,000 words already to it? And I might...and the answer to me is clearly not. Now keep in mind we are not...this is not the U.S. Constitution. The U.S. Constitution, because it applies in all 50 states, must by its...have more generality to it. Those are guiding. Now we are under more freedom to add and customize to our particular state that which is important and fundamental to us, as other states do, and that is what we have done. When you talk about these rights Senator Lathrop speaks of that...and he is correct, those are imbued in the Bill of Rights in the U.S. Constitution and not 100 percent but some of those are at the beginning of our Nebraska Constitution as well. But when you look at our constitution, like I said, we have an 80, you know, 80 pages, about 300...well, 80...the copy I have, 82 pages, 300 or more words per page. We're talking about a 24,000-word document. And I believe subjects like fundamental subjects such as the existence of TERC is in there, the Public Service Commission. We have included in here, as to Senator Schumacher's... [LR40CA]

SENATOR GLOOR: One minute, Senator. [LR40CA]

SENATOR PIRSCH: ...concern that if we address something in this constitution, doesn't it somehow abrogate or negate something, well, we are...we restate in our Bill of Rights

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many of the rights that are there in the U.S. Constitution in the Bill of Rights. We say we have inalienable rights, life, liberty, pursuit of happiness. We go on to state slavery is prohibited. Do you think if we were to remove that from our state constitution we'd be perfectly constitutionally permitted to allow for slavery? And the answer is no, so due process of law. Without that there still would be due process guaranteed through the fourteenth clause...I'm sorry, Fourteenth Amendment that applies to states that added the due process clause to states. So I appreciate all these comments, but the long and the short of it is, and I'll just...and among the Section 1 statement of rights it does say right to keep and bear arms for hunting... [LR40CA]

SENATOR GLOOR: Time, Senator. [LR40CA]

SENATOR PIRSCH: Thank you. [LR40CA]

SENATOR GLOOR: Thank you, Senator Pirsch. The Chair recognizes Senator Lautenbaugh. [LR40CA]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body, and I do rise in support of this proposed amendment and let me explain why. I do believe that we should amend the constitution very carefully in Nebraska and that's why we leave it to a vote of the people to do it, so that we don't have free rein here just to amend as we see fit. So we're putting this before the people for a vote and I think what Senator Pirsch was alluding to is that the state constitution does cover a lot more topics and go into a lot more detail than maybe the federal constitution, the U.S. Constitution does, and rightly so. Article I, Section 28 establishes crime victim rights in certain ways, surely important. Section 29 bans same-sex marriage. Section 30 seems to ban some racial preferences. Article III, Section 14 mandates our bills be read. Article IV, Section 20, sets up the Public Service Commission. Those of you who thought maybe that was a statutory creature, no, it's in our constitution. Article VII, Section 2, the State Department of Education is set up. Article VII, Section 3, the State Board of Education is set up. Article VII, Section 10, the Board of Regents is established, which is probably why we didn't weigh in on wrestling and football very much, because we have a Board of Regents in our constitution that makes those decisions. Article VIII, Section 10, provides that grain and seed may be taxed by an alternative basis. And Article XV, Section 19, if I'm reading the Roman numeral correctly, deals with local control, to some extent, of liquor licenses. These are all items that are currently in our constitution and it would be a mistake to stand up and say any one of them is trivial. It would be a mistake to say this proposed amendment is trivial and we make that mistake sometimes, all of us do reflectively. If it's not something that is important to us, all too often we say, you know, why does anybody care about this or it's important but not important enough for the constitution. I have to disagree in this instance. Earlier there was a reference to the roadside trapping and the protracted debate we had a couple years ago on roadside trapping. Well, why did we have that protracted debate? Because some prior

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Legislature outlawed on Select File roadside trapping in ditches, in public right of ways if memory serves. And surely we would think no future Legislature would outlaw hunting or do anything that would be negative regarding hunting, but there we did it, we outlawed trapping. And we heard the arguments on the floor, you know, why do we care about this, why are we bringing this repealer bill, this is a silly bill, why do we care about this enough to repeal the ban on roadside trapping? Well, the reason for me was very simple--because there were a group of people out there who enjoy that thing, not me but some, and I couldn't think of a good reason to stop them. Someone obviously did have a good reason to try to stop them and so a couple years prior, on Select File, without hearing, an amendment was added to ban roadside trapping in right of ways. That actually happened and now we're being told, well, there's not a specific enough threat to hunting and fishing in Nebraska yet, that we're premature in acting at this point. I don't believe that to be the case. And I don't see where this does harm to our other priorities and I don't see where this is something that is not worthy of this level of protection. This amendment does not say... [LR40CA]

SENATOR GLOOR: One minute. [LR40CA]

SENATOR LAUTENBAUGH: Thank you, Mr. President. This amendment does not say you must fish or you must hunt. And I don't know if a majority of Nebraskans do anymore. I honestly don't know the answer to that. But I'm glad the ones that do, do, and I want them to keep on doing it and I want us to have a clear statement I guess that this is one of our priorities. And I think it is important enough that it does rise to the level of a constitutional amendment if the voters of this state so decide, again coming back to that, if the voters of this state so decide. So I do rise in support of the underlying amendment and constitutional amendment I should say, and I'd appreciate your support as well. Thank you, Mr. President. [LR40CA]

SENATOR GLOOR: Thank you, Senator Lautenbaugh. Senator Schilz, you're recognized. [LR40CA]

SENATOR SCHILZ: Thank you, Mr. President. Good morning, members. I would just like to say, you know, we've heard a lot of comments on what should rise to the level of the constitution and whether an amendment should be there and, you know, I'd like to put a little different spin on this, little different angle, if you would. In my district and in the western part of the state, there are actually people that rely on hunting and fishing to put food on their table every day. I know this because some of them were my friends in high school, some of them are my friends now. And so as we talk about what is important, having access to proper nutrition, having access to food, does that rise to the level? And if you would take away then what would you do? You could actually see a cost to the state of Nebraska because people would no longer be able to look at that. Is it a big one? I don't know, but I can tell you this. As you look at things and as you start to measure what's going on, you need to take in the whole concept and the whole reality of

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what's out there, and folks in my neighborhood, when hunting season comes along, it's part of their obligation to their family to be out hunting to fill the freezer with meat so that they can go the rest of the year and have enough resources to support their family. That's why I support a constitutional amendment like this, because it really is about a bigger thing than sport hunting and fishing, even though I believe that that, in and of itself, is, you know, okay to look at as well in a constitutional amendment. Senator Schumacher, I think he's right on board. I think that if you're going to go down this path, and I want to thank Senator McGill for, you know, sparking the interest and bringing this up, if you want to talk about that, yeah, let's talk about traditional farming and ranching, absolutely. I'd be all for that as well. And I can tell you this: I've watched groups like HSUS for a lot of years. Been involved in industries that are diametrically opposed to what their beliefs are. And, folks, they're very good, they're marketers, they understand how to move things forward and they prey upon the ignorance of populations to pull at your heart strings to get you on board with what they believe, and then they use your money that you send them to do things that no one ever intended. There isn't one person sitting here today that I've heard so far that says hunting and fishing isn't something that should continue. Senator Lathrop stood up and said that on their Web site they don't have anything about banning hunting and fishing, no, not on the Web site. Search on the Internet Wayne Pacelle's interviews on hunting and fishing. Look and read what comes out of this man's mouth and understand that they are not our friends, and anything that we can do to deter them or to hold them back are things that as a state, as a Legislature, as agricultural interests, and I put us all in that category,... [LR40CA]

SENATOR GLOOR: One minute. [LR40CA]

SENATOR SCHILZ: ...we should be against whatever they want and we should enact constitutional amendments to protect our ways of life, even if the threat isn't seen today. Threats don't just pop up overnight and threats like this are grown through subversiveness, they're grown through marketing and slick opportunities that they take on. So I would just tell everybody there's two ways to look at this. Is hunting and fishing good? Is it right? Is it a problem? Let's move forward. Let's make a stand. Let's tell people that the state of Nebraska, it's okay, it's all right to hunt and fish and we're okay putting that in our constitution. Thank you very much. [LR40CA]

SENATOR GLOOR: Thank you, Senator Schilz. Senator Council, you're recognized. [LR40CA]

SENATOR COUNCIL: Thank you, Mr. President. I appreciate my colleagues' opinions and positions on this issue. It does not deter me in my belief that this amendment is unnecessary and it does trivialize. You know, I'm listening to the whole issue about hunting and I listened to Senator Schumacher, too, and so I'm going to ask Senator Pirsch if he would yield to a couple of questions. [LR40CA]

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SENATOR GLOOR: Senator Pirsch, would you yield? [LR40CA]

SENATOR PIRSCH: I would. [LR40CA]

SENATOR COUNCIL: Senator Pirsch, you do understand that Section 1 of Article I of the Nebraska Constitution does provide protection for the right to bear arms for lawful common defense, hunting, recreational use, and all other lawful purposes. Is that the existing constitution as you know it? [LR40CA]

SENATOR PIRSCH: That is, yes. [LR40CA]

SENATOR COUNCIL: And what does your proposed amendment add that the current constitution doesn't protect? [LR40CA]

SENATOR PIRSCH: Well, thank you for that question and I was going to raise that in my last time speaking but ran out of time. I do appreciate that and that is also the question that I think Senator Schumacher had raised earlier. So my understanding of Section...or Article I, Section 1, which is a recitation of a number of rights, among these life, liberty, pursuit of happiness, and the right to keep and bear arms, and then it gives an explanation of that right to bear arms for security or defense of self, family, home or others, recreational use, hunting. They all pertain to that right to keep and bear arms. So what they're explaining in that amendment doesn't necessarily pertain to hunting but, rather, your right to keep and bear arms. The limits of whether you can hunt or not hunt are not explained in there. It says to the extent, in my reading of this, to the extent that you are allowed to do hunting, you can certainly...that would be certainly one area in which you could keep and bear arms. And so what this...my legislative resolution, LR40CA, does is saying, separate and apart from saying to the extent you're allowed to hunt you can keep and bear arms, we're saying you have a right. It pertains fully to the right to hunt and not just as a secondary type of measure. [LR40CA]

SENATOR COUNCIL: Okay. But it's your opinion that in light...in the face of the First Amendment to our constitution, that a Legislature could enact legislation banning hunting? [LR40CA]

SENATOR PIRSCH: Well, I'd say no right is absolute. We have the right of free speech in the First Amendment and yet you can't yell "fire" in the movie theater. And so the constitution, having that constitutional amendment doesn't mean that the First Amendment means nothing, but it doesn't mean that it's an absolute right. And so I guess with respect to your question, I think it does give...it would lend importance, it does have meaning to include this separate constitutional right in the constitution to allow for hunting and fishing. [LR40CA]

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SENATOR COUNCIL: So if I understood your statement though, then you're suggesting that your proposal creates an absolute right to hunting? [LR40CA]

SENATOR PIRSCH: No, no. I'm sorry if I was...I'm sorry. Let me make that perfectly clear. This right that if it were approved by the people and added to the constitution would not call for an absolute right. No right is absolute. [LR40CA]

SENATOR GLOOR: One minute. [LR40CA]

SENATOR PIRSCH: Every right is...constitutional right is balanced one on top of the other again. And I guess that's why I was trying to illustrate through the use of we have a right to free speech under the First Amendment yet you can't yell out "fire" in a movie theater. That right, that purported right doesn't cover you that far. So I guess what I'm saying is this right to hunt, it does have substantive meaning but it's not absolute. [LR40CA]

SENATOR COUNCIL: Okay. But it would have the same meaning as hunting in Section 1, wouldn't it? [LR40CA]

SENATOR PIRSCH: My position is no. Clearly that doesn't. What Article I, Section 1 talks about is your right to bear arms which is not synonymous with hunting. [LR40CA]

SENATOR COUNCIL: Okay. But the reference to specifically for hunting, so is that unnecessary? Do we need to amend the constitution to delete that reference from Section 1? [LR40CA]

SENATOR PIRSCH: No, not at all. I think they work in harmony together, they're complementary but they're not...they're neither oppositional nor are they synonymous. [LR40CA]

SENATOR GLOOR: Time, Senators. [LR40CA]

SENATOR COUNCIL: Thank you. [LR40CA]

SENATOR GLOOR: Senators wishing to be heard: Burke Harr, Dubas, Pirsch, Conrad, Lathrop, Brasch, and Council. Senator Burke Harr, you're recognized. [LR40CA]

SENATOR HARR: Thank you, Mr. President. Once again I rise in absolute neutrality on this issue today. I have a couple of issues on this. First of all, I'd like to start out as everyone else has to say hunting is very important. I enjoy it. I had quail for dinner last night that we shot. And I have a great time hunting, fishing not so much. And I also think the constitution is very important. There was some talk about how, well, is this watering down the constitution. Well, it's already watered down. Well, I don't think we should

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water it down more. There was an argument made about roadside trapping. What's next? Hunting? We can't...well, we already can't hunt on public right of ways, so we have attacked that, and there are reasons why we do that and it's good. I don't think we have an issue of hunting being outlawed in this current day, but I guess what I want to really address here is, words matter. This constitutional amendment with this amendment matters. Within Senator Pirsch's amendment it says, "Public hunting and fishing shall be a preferred means of managing and controlling wildlife." Now I'm from Omaha. We get an occasional wild turkey and that's about it. But I know for a fact out in western Nebraska there is an issue with prairie dogs. Well, underneath this constitutional amendment hunting and fishing would be the preferred means of managing and controlling that wildlife. We currently are looking at legislation--it's passed Ag, I don't know when it will be heard on the floor--that would allow for treating prairie dogs differently. Well, if this constitutional amendment passed, I would argue that law is unconstitutional because the preferred means of managing and controlling wildlife is hunting and fishing. The other problem I have with this bill is it says, subject only to the laws, rules, and regulations that promote wildlife in conservation and management, this constitutional amendment would be. We make a constitutional amendment subject to laws, rules, and regulations? Is that a constitutional amendment? That doesn't make sense. We pass constitutional amendments because we feel that issue is so important it needs to be protected and it can't be changed by laws, rules, and regulations, and yet the very language of this bill, this amendment does just that. We are going to put this to a vote of the people if this passes, and that's good and well and they can decide whether this is good or bad, but we control the wording and that's what we need to control on...what we need to control. Words matter. They need to be precise. I feel as though this bill, while the intent is good, I think it needs some work. And my final thought is, there's been a lot of talk about the bogeyman, HSUS. Now I don't know if they're a bogeyman or not. Kind of reminds me of Fight Club where there's a mythical figure on the side who is supposedly evil, we never see, we find out is imaginary. Maybe HSUS is. I kind of believe they are, but they aren't here yet. This amendment, if it went to a vote of the people, there would be advertising and this would give HSUS the perfect opportunity to introduce... [LR40CA]

SENATOR GLOOR: One minute. [LR40CA]

SENATOR HARR: ...themselves to the state. This would allow them to say all the evils that go on with trapping. This would allow...we are not presenting an argument for them. We are opening the door and inviting them into the state, and I think we have to be very careful. We need to keep HSUS out of the state, and I feel as though this is inviting them into the state. Thank you, Mr. President. [LR40CA]

SENATOR GLOOR: Thank you, Senator Harr. Senator Dubas, you're recognized, and this is your third time, Senator. [LR40CA]

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SENATOR DUBAS: Thank you very much, Mr. President. Thank you, Senator Harr, for that comment because that's very true. We have just given them a platform. We have just...they're here and the threat is very real. I recognize that fully. The threat of what HSUS wants to do in this state is very real. Their track record is out there. We've seen what they're doing in other states. But my question continues to be by putting this constitutional amendment in place, do we thwart that agenda? Do we stop them from doing what they're doing? No. No. They just find other means. In fact, maybe through a constitutional amendment we've just given them another avenue to use. I think it's imperative that we educate the public as well as ourselves about what HSUS and other organizations like them are wanting to do in our state. I'm a huge advocate for education on all fronts, and the more educated your populous is, the easier it is for you to do or not do what you're trying to put forward in the state. So I just think it's critical. I know in my time down here there have been at least two senators who were either approached or who have introduced legislation on behalf of HSUS. It didn't take them long to figure out that that wasn't the wisest thing for them to do. I mean, it was very clear, the body made it clear, the committee hearings made it very clear we do not like your agenda, we will not support your agenda. And those senators very quickly realized that that wasn't the road that they wanted to go down. So, again, we have a lot of power in the Legislature. Let's use that. Let's use that through legislation. Let's use that through education. Let's make the public aware of what's going on in the state. What's going to be our most effective means to counter what HSUS is doing? I don't think our most effective means is this constitutional amendment. We need to preserve and protect that right of hunting and fishing, along with farming and ranching, I'm with Senator Schumacher on that too. Would Senator Lathrop...he left, didn't he? Senator Lathrop. Would Senator Pirsch yield to a question please? [LR40CA]

SENATOR GLOOR: Senator Pirsch, would you yield? [LR40CA]

SENATOR PIRSCH: I would. [LR40CA]

SENATOR DUBAS: Thank you, Senator Pirsch. And I know you've gone into some explanation as to your amendment and why you added the extra language. You know, my experience in the Legislature so far is sometimes we try to be so thorough that we actually create more problems than we address. And I guess that's some of my concerns with the language and I think maybe that's what Senator Harr was getting at too. By putting that additional language in there, do we actually open up more avenues for challenges through the courts with that language, in your opinion? [LR40CA]

SENATOR PIRSCH: In my opinion, no. [LR40CA]

SENATOR DUBAS: So by putting words like "traditional" and "preferred means"... [LR40CA]

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SENATOR PIRSCH: Um-hum. [LR40CA]

SENATOR DUBAS: ...versus just the very simple straightforward language in the green copy,... [LR40CA]

SENATOR PIRSCH: Yes. [LR40CA]

SENATOR DUBAS: ...would that give anyone who's questioning what we're trying to do here other opportunities to challenge in court what we're trying to do? [LR40CA]

SENATOR PIRSCH: Well, I can only know what history has shown us, and this...there's a number of other states that use pretty closely this language and there has not been any litigation or challenges in actually any of the 14 states to my knowledge that have had these. Actually, these type of provisions go back to the year 1777 I believe. Vermont passed their first constitutional right to hunt and fish I believe in that date. So we've had these type of provisions since the founding of our country. [LR40CA]

SENATOR DUBAS: Okay. Thank you, Senator Pirsch. I appreciate the input. Thank you. [LR40CA]

SENATOR GLOOR: Thank you, Senator Dubas. Senator Pirsch, you're recognized. [LR40CA]

SENATOR PIRSCH: Thank you, members of the body, Mr. President. I appreciate the debate as it continues to evolve, and I think it is that the idea that we need to evaluate here as a body the worthiness of this to be presented to the people as a constitutional amendment is a topic worthy of debate before this body here today. With respect to that, I would just posit if a right is fundamental and important, then we should move to allow the people to decide whether they want to protect it. I think we've had people who have risen here today and last week who have spoken about the real...that the stated objective of some of these fringe groups and we have...we know that they have the financial capabilities to misportray or miscast issues because of their large...the resources that they possess. Have they been...were they willing to do it in other states, and the answer has been yes, as we talked about last week. And so what we have to decide is, is this a fundamental important right. Again, when our forefathers back in, you know, the 1700s decided to, after we gained our liberty from the British, put into our constitution such provisions as we did in the bill of rights: no law respecting establishment of religion, prohibiting free exercise thereof, abridging the freedom of speech, the press, the right of people peaceably to assemble, petition the government for a redress of grievances, etcetera, etcetera. That was just Amendment I. And the other amendments, there was a serious debate at that time. Do we need to...you're just messing up the constitution. You're cluttering it up. We don't need to have these specific guarantees. And yet time has proven that having them specifically enumerated and

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guaranteed to us, the people of the United States, has been important. And they've been over the course of 200-plus years proven to have come into question. And though at the time that they were cast I'm sure people said, why do you need to include...they did, they said, why do you need to include this in the constitution. There's no threat to these types of rights that exist now. And there wasn't. But it was very prescient of them to have included it in the document because as we know in hindsight those questions, those liberties did come into...were threatened over the course of time. And so it is in that same vein and that same light that I would say to you that if a right, if a liberty is important and fundamental, and given what we know about what's occurring in other states, then I think we do have a...it's perfectly appropriate to put it in front of the people and say this is an opportunity to protect it. And so I do appreciate this opportunity. Again, with respect to our constitution, it is not like the federal constitution, which is the shortest constitution in the world where they...because of the nature of our federalist system. We have basic enumerated rights in the constitution and then a breath when we started this country it was not a national government, it was the states who seeded some powers to the federal government... [LR40CA]

SENATOR GLOOR: One minute, Senator. [LR40CA]

SENATOR PIRSCH: ...and retained for either the states or the people the other rights. And so it is appropriate that our constitution is different than the constitution of Vermont or any other state, and that we are allowed to protect rights and freedoms in this state that we feel is important for Nebraskans. Thank you. [LR40CA]

SENATOR GLOOR: Thank you, Senator Pirsch. Senators remaining to be recognized are Conrad, Lathrop, Brasch, and Council. Senator Conrad, you're recognized. [LR40CA]

SENATOR CONRAD: Thank you, Mr. President. And I was so busy trying to build the record on some of these issues I forgot to mention the fact that I rise in opposition to Senator McGill's amendments and very supportive of what Senator Pirsch is trying to do with his proposal. I was hoping since we ran out of time, however, that Senator Pirsch would be willing to yield to some questions because I would like to continue our dialogue. [LR40CA]

SENATOR GLOOR: Senator Pirsch, would you yield? [LR40CA]

SENATOR PIRSCH: I would. [LR40CA]

SENATOR CONRAD: Thank you, Senator Pirsch. And I think that this is a good place to visit about some of these issues because it mirrors some of the issues that Senator Burke Harr brought forward in terms of ensuring we have the most precise language possible presented to the voters so that they can weigh in on this important topic. And I

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asked earlier about the definition or intent in the phrase on line 3 in the pending amendment about the use of traditional methods. And I know we ran short on time, but if I understood your response, you said that that would include whatever was utilized as a method of hunting or fishing or harvesting wildlife at the time of the vote. Is that correct? [LR40CA]

SENATOR PIRSCH: Yes, that is correct. That is what I intended. That is the legislative intent and that is the ordinary, as I take it, meaning of it is as of the time that this is submitted to the voters for a vote, which since this will be I believe in 2012 on the general ballot, as of that time. I think what we're talking about today is just modern techniques, modern methods. [LR40CA]

SENATOR CONRAD: Okay. And my question, it's probably more academic than practical at this point in time, would be, having grown up in a family where we found hunting and fishing activities to be very rewarding, even though there's a lot of similarities there's also changes to the technology in terms of the equipment available for anglers and hunters and trappers. And I was wondering if you had a chance to think about or anticipate how any of those potential changes would be impacted by this phrase. [LR40CA]

SENATOR PIRSCH: Sure. And let me begin by saying this is not absolute. Nothing about this measure that we have here is absolute. It's balanced against other rights, constitutional rights, and it also has the way the court will...let me explain it this way, it does envision a continuing role by the Legislature if they so choose to pass a law, and it does envision a continuing role much in the same way it has with respect to the involvement of rules and regulations by the department. It just ensures that as they design these rules and regulations that they are for the purpose of promoting wildlife conservation, management, and preserving of the future of hunting and fishing. And so with those in mind, I don't see...I mean, obviously if you have something to the extent...and I'm just using a hypothetical here of some sort of laser that you could point to the sky and shoot out 50 birds at a time kind of have the same effect as a punt gun, that would not be consistent with what is allowed here. I think the department or the Legislature could make rule or regulation prohibiting same. [LR40CA]

SENATOR CONRAD: Okay. Thank you, Senator Pirsch. And then to be clear, you noted that other Legislatures have put similar issues before a vote of their citizenry in recent years, and I was hoping that you could share a little bit about your research in terms of how much this proposal or the pending amendment mirrors some of those other... [LR40CA]

SENATOR GLOOR: One minute, Senators. [LR40CA]

SENATOR CONRAD: ...proposals or how indeed it is specifically tailored to meet

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Nebraska's constitutional and statutory structure. [LR40CA]

SENATOR PIRSCH: Yes. Thank you. And always the tried and true path is the best path when you're talking about utilizing language and constitutional amendment, adding language to the constitution because ultimately it is interpreted by courts and if it is so challenged...and so in this...and it speaks volumes if language that you chose do not invite litigation and they are...give you a greater sense of security about the meaning of those...of that language. And so in this sense, this particular language had been utilized in other constitutional amendments, and so on that basis it seemed preferable to use it. [LR40CA]

SENATOR CONRAD: Okay. Thank you, Senator Pirsch. [LR40CA]

SENATOR GLOOR: Time, Senators. [LR40CA]

SENATOR CONRAD: Thank you, Mr. President. [LR40CA]

SENATOR GLOOR: Thank you, Senator Conrad. Senator Lathrop, you're recognized. [LR40CA]

SENATOR LATHROP: Thank you, Mr. President. I'm getting over that shock. I saw it happen this morning at the morning prayer too. I don't know what it is about grabbing these things but it just...big shock. Anyway, Good morning, colleagues. I know you're all probably thinking about lunch right now. And I'm going to talk. This is my third time on this amendment, you'll be happy to hear. But I do want to talk about, if I might, a couple of things. First, we're not addressing public safety in this. Okay. There's not an exception for public safety. So here's a question for you, and it illustrates the consequences of amending a constitution. It is the trump card. Anything we do in here is subject to whatever is in the constitution. So here's a question for you. What about the municipality that wants to stop me from hunting squirrels in my backyard? What if they're taking over my neighborhood and we got too many of them or I got too many rabbits? My neighborhood, the rabbits are eating everything to the ground, so can I...with this, can the city of Omaha or the state of Nebraska stop me from hunting in town? They can't. So when people say what we put into the constitution means something, that the words we choose are important, that's why they didn't get together when they developed the federal constitution and pound it out in a couple of days. They took a long time and they were deliberate about it, and there are problems because there's no exception for public safety. Senator Harr's comment that it's...and Senator Pirsch, and I wrote this down, when he was speaking he said, well, it's subject to the broad discretion retained by the departments and the Legislatures. Wait a minute. This is supposed to stop us from having broad discretion and the departments from having broad discretion to legislate in the area. It covers...it's the big footprint. And a constitutional amendment that leaves the door open to legislation by the Legislature or

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to be regulated by a department is accomplishing nothing. It is, as they used to say a few years back, feel-good legislation. And I appreciate what we're trying to do. Believe me, I've hunted and fished my whole life. It means everything to me when I can get on somebody's ground, which is a bigger problem than the U.S...whoever these guys are. This amendment...and what are you going to do with AM1069? If we're just trying to make a political point with amending the constitution, what are you rural folks going to do with Senator McGill's amendment that includes a constitutional protection to farm and to ranch? Are you going to vote against it or for it? Boy, that should be a dilemma because it seemed like a silly amendment to Pirsch's amendment to make a point, but in the middle there, there's something that you might want. So what are we going to do with it? I hope Senator McGill allows it to go to a vote so we can see if you are going to vote for protection of ranching and farming or against it. You see, when we use the constitution to make a political point or to satisfy a constituency, we're not doing our work here. This is the... [LR40CA]

SENATOR GLOOR: One minute. [LR40CA]

SENATOR LATHROP: ...cornerstone...pardon me? [LR40CA]

SENATOR GLOOR: One minute, Senator. [LR40CA]

SENATOR LATHROP: This is the cornerstone of our government right here. When we took an oath, we took an oath to this document. On the way down here today I thought, you know, the folks in England swear allegiance to the Queen and we swear an allegiance to the constitution, and if this were going on in England, it might be like putting a billboard on the backside of the Queen Mother or hanging something off of her clothing or her jewelry or her carriage or something like that. This is not the place. We don't rent the constitution out to constituencies. It is a document too important for that. This is an amendment that isn't well-thought-out. We have made no allowance for public safety, and then we make it subject to future legislation and regulation, which is like the third tier of regulating. [LR40CA]

SENATOR GLOOR: Time, Senator. [LR40CA]

SENATOR LATHROP: Thank you. [LR40CA]

SENATOR GLOOR: Thank you, Senator Lathrop, and thank you for self-disclosing your third time for speaking. Senator Brasch, you're recognized. [LR40CA]

SENATOR BRASCH: Thank you, Mr. President, and good morning, almost noon, body. I'm listening to everyone and reflecting a little bit here and having some thoughts that are taking me way back in time, actually back to J. Sterling Morton in 1854 when he came here from Detroit and saying that some trees would do us good in this state.

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Lewis and Clark thought we were the great American desert, and we needed trees at that point. And we did pass an official legal, state holiday, bringing more trees. Before we even became a state, the State Fair Board declared that they would give premiums for people coming here planting trees. There was all kinds of work going into where we are today. We should not take hunting and fishing for granted or lightly in this state. Attitudes change in a hundred years too. I believe also a hundred years or more ago the city of Lincoln and the city of Omaha fought fiercely over the state fair to be in its city, that at one point Omaha stole the state fair at night. So attitude towards agriculture, towards trees and things shift. And I'm wondering again as I sit with my wonderful colleague Senator Cook this morning who addressed that not everyone lives on a farm that people are...I think that's where she was going, yes, she's agreeing, and we don't expect everyone to live on a farm. But at the same time, those of our neighbors who do live in our urban areas, perhaps you would think of your farms and those of us who live and work in agriculture as that great furnace that if everything is working right in the cold of winter we give you heat. You know, we do help sustain the state. Again, don't take hunting and fishing for granted, that, you know, this is something that, you know, we as farmers, as Senator Dubas had mentioned, that we are hosts to many of our urban neighbors and providing our farms as good places to hunt and fish. My first fishing experience was in Lincoln here at Oak Lake with a string, a can of corn, and a bucket which I would take a lot of carp home to my mother to (laugh) help clean and we would enjoy a good dinner. So, you know, I do support LR40CA. I do believe that AM1069 is taking us to the limit in making light of it. If I have remaining time, I'd like to give it to Senator Pirsch. [LR40CA]

SENATOR GLOOR: Senator Pirsch, 1 hour 40...(laughter) 1 minute 42 seconds.  
[LR40CA]

SENATOR PIRSCH: Mr. President, yes, I will use all of the 1 hour. Get settled in, people. (Laughter) Let me tell you about my childhood here. (Laughter) Just to quickly, I know Senator Harr had a question as to whether or not we might inadvertently be inviting these fringe groups into the states who have wider name recognition, that's why purposefully I've been trying not to utilize specific names of organizations. But with respect to the organization that many have spoken about here today, they're already here. They were here before the time that this bill was introduced, and that's why this bill is a reaction to this. Just two months before this session began, the organization for which we were talking about had added boots to the ground here and hired a state director for the state of Nebraska, and so things are underway. And so this, in my opinion, is no longer...you don't hire a state director for no reason, for no objective and goals. And when you listen to what those...what their stated objective is and goals is, I mean, I think you have to take it seriously. And so that was in October of 2010 I understand. And so I just wanted to reiterate that, that it's not a theoretical but I think an actual beginning here in the state. With respect to the main point here, which I appreciate, does this...do these freedoms which we today perhaps... [LR40CA]

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SENATOR GLOOR: Time, Senator. [LR40CA]

SENATOR PIRSCH: Thank you. [LR40CA]

SENATOR GLOOR: Thank you, Senator Pirsch. (Visitors introduced.) Mr. Clerk for a motion. [LR40CA]

CLERK: Mr. President, I do have a motion and a couple of items, if I may. The Redistricting Committee reports LR102 back to the Legislature for further consideration, signed by Senator Langemeier as Chair. Revenue Committee reports LB570 to General File with amendments, signed by Senator Cornett. Senator Pankonin offers LR147; Senator Heidemann, LR148. Those will both be laid over. Senator Louden has an amendment to LB84 to be printed. Senator Haar, Ken Haar, would like to add his name to LB200. (Legislative Journal pages 1050-1054.) [LR102 LB570 LR147 LR148 LB84 LB200]

And Senator Hadley would move to recess the body, Mr. President, until 1:30 this afternoon.

SENATOR GLOOR: Members, you've heard the motion to recess until 1:30 this afternoon. All those in favor say aye. All opposed say nay. We stand recessed.

RECESS

SENATOR GLOOR PRESIDING

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

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

SENATOR GLOOR: Thank you, Mr. Clerk. Are there any items for the record?

CLERK: Mr. President, amendments to be printed: Senator Adams to LB637; Senator Larson to LB360; Senator Council to LR40CA. That's all that I have. (Legislative Journal pages 1055-1058.) [LB637 LB360 LR40CA]

SENATOR GLOOR: Thank you, Mr. Clerk. Members, we'll now proceed to the first item on this afternoon's agenda. Mr. Clerk.

CLERK: LB279, a bill by Senator Karpisek. (Read title.) Introduced on January 11,

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referred to General Affairs. The bill was advanced to General File. There are committee amendments, Mr. President. (AM694, Legislative Journal page 806.) [LB279]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Karpisek, you're recognized to open. [LB279]

SENATOR KARPISEK: Thank you, Mr. President. Members of the body, good afternoon. I'd like to thank Senator Janssen for prioritizing LB279 and we will try to give you the lowdown on it and the quick bullet points. LB279 is the Storz exemption. Under current law there is an exemption that allows a beer manufacturer to also own a beer distributorship, which would also be known as a wholesaler. LB279 eliminates this exemption in the Liquor Control Act. This exception is often referred to as the Storz exception, named after the Storz Brewing Company that was based in Omaha. The Liquor Control Commission expressed concerns regarding whether this exception should be kept in state law since the intended beneficiary is no longer in business. Nebraska, just like all other states, follows a model often referred to as the three-tiered system. Under the three-tier system, separation is maintained between the manufacturer, the distributor, and the retailer. This system assists the state in its law enforcement and tax collection efforts. The commission is asking the Legislature to eliminate the Storz exemption in order to strengthen the integrity of the three-tier system. Thank you, Mr. President. [LB279]

SENATOR GLOOR: Thank you, Senator Karpisek. As the Clerk stated, there are amendments from the General Affairs Committee. Senator Karpisek, as Chairman of that committee, you are recognized to open on the committee amendment. [LB279]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. The committee amendment would allow a beer manufacturer to have an ownership interest in a wholesale operation for up to two years upon the death or bankruptcy of the wholesaler or if the wholesaler becomes otherwise ineligible to hold a liquor license. This bill really does nothing other than protect the three-tier system to say that a beer manufacturer, along with any wine manufacturer, which is already in statute, or a hard liquor manufacturer could only be in one of the three tiers. Right now you can make beer but you cannot distribute it and you cannot own a bar. I know that's not the case in some European countries, but here it is the case. It also, in my opinion, helps the idea of not having a monopoly. If you make the product, distribute the product, and then in the end you could sell the product, all along the line you could set your prices wherever you want and not have a lot of competition. You could have your own bar to only serve your own product. That is not how we want to do it. Our wholesale distributors in the state bring a lot of revenue into the state. They do a lot of good things that work with our communities within the state, and I would like to keep it that way. This bill was brought forward by the Liquor Control Commission and also the wholesalers who are concerned that somehow they could be taken out of business by a manufacturer, which, of course,

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they don't want and we don't want either. With that, I would be glad to take any questions. Thank you, Mr. President. [LB279]

SENATOR GLOOR: Thank you, Senator Karpisek. Members, you have heard the opening on LB279 and the committee amendment. There are senators wishing to be heard. Senator Janssen, you are recognized. [LB279]

SENATOR JANSSEN: Thank you, Mr. President, members. Thank you to Senator Karpisek for permitting me to prioritize LB279. LB279, as mentioned by Senator Karpisek, would repeal the so-called Storz exemption. It is a best practices recommendation that states maintain a three-tiered form of distribution. Exempting beer manufacturer is an anomaly and has led to litigation in other states. Like many of you, I have local businesses in my area that distribute these beverages. They employ a great many people and contribute to many charitable causes in our communities and assist in economic developments in my hometown of Fremont and throughout their distribution area of Dodge County and I believe even Columbus. Strengthening their ability to compete and run their business is in our state's best interest. The three-tiered system ensures better tax compliance and better law enforcement. Removing the Storz exemption is good policy. Thanks again to Senator Karpisek and the General Affairs Committee for working on LB279, my 2011 senator priority bill. Thank you, Mr. President. [LB279]

SENATOR GLOOR: Thank you, Senator Janssen. Senator Krist, you are recognized. [LB279]

SENATOR KRIST: Thank you, Mr. President and colleagues. For the record, let it be noted that the Storz exemption will allow an economic development of a large brewery to locate within the state of Nebraska and produce and also distribute. This will make it impossible for a brewery to come in and do what the Storz, Metz, and other breweries have done in the Omaha area. I was the only person that did not vote this out of committee. It's also important to note that, as you all are fully aware, it is sometimes an issue that is heavily lobbied and is brought to our attention as the only alternative because of a lobby concern. That is indeed the case in this particular piece of legislation. Do I agree with the three-tier system? Absolutely. Do I think the Storz exemption would have led to major breweries coming in and potentially building within the state? I think it's possible. So when you vote for AM694 and for LB279, realize that we'll have to undo this if a brewery should decide to locate within the state. Thank you, Mr. President. [LB279]

SENATOR GLOOR: Thank you, Senator Krist. Seeing no...Senator Nelson, you are recognized. [LB279]

SENATOR NELSON: Thank you, Mr. President and members of the body. I am in

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support of LB279, but I do have some questions on the amendment, AM694, if Senator Karpisek would yield. [LB279]

SENATOR GLOOR: Senator Karpisek, would you yield? [LB279]

SENATOR KARPISEK: Yes, I will. [LB279]

SENATOR NELSON: Thank you, Senator Karpisek. The change on the amendment reads "A manufacturer of beer may acquire an ownership interest otherwise prohibited...for a period not to exceed two years, upon the death or bankruptcy of the wholesaler"...can you detail a little more about how this would work? I think in bankruptcy a trustee in bankruptcy would take over for a period of time. Also a death of a wholesaler, generally there's a family interest or something like that. Why then would the manufacturer want to acquire an interest or be permitted to acquire an interest at that time? Could you answer those questions for me? [LB279]

SENATOR KARPISEK: Sure. Thank you, Senator Nelson. It may take a while to get everything set up to be moved upon the bankruptcy. Of course, someone would be taking it over but probably not to run. They would probably want to sell it to someone else, to another distributor maybe, or someone coming in. What we didn't want to happen...right now what would probably happen would be the manufacturer would come in and take it over and they may not ever sell it. So we wanted to give them an opportunity to come in, keep it running, not hurt the business, and then be able to sell it off but not run it for an indefinite amount of time. Same way on the death of the person--there may be a family interest and that may be all right and it may go along fine. However, if there would not be someone and these distributorships are very expensive. They sell for a lot of money so it's not just that you would just find the guy next-door probably to come buy it. So it may take a little while for them to find the right person, get the money needed to run it. [LB279]

SENATOR NELSON: So with regard to a death, the manufacturer then, they would actively pursue some other wholesaler to see if they could...would it make any difference to them pricewise or would they just be interested in a wholesaler that could do well on the wholesale side? [LB279]

SENATOR KARPISEK: Oh, I'm sure that they would be interested in the price. They would, I would hope anyway, they would go to the neighboring districts and ask if they would be interested in it or someone else that they may know that would be interested. I'm sure there are people...I don't know...I'd be surprised if there aren't people lined up that are ready to invest some money in these distributorships. But this would give them a little bit of time. We first were going with a year. The committee decided two years, just the way things could go, to give it enough time so that we don't see it closing down. [LB279]

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SENATOR NELSON: That's important. And in looking at this, I can see where a trustee in bankruptcy it would be helpful to the trustee to have the manufacturer come in with a knowledge of the business and run it so that perhaps start getting it back on its feet. But the bottom line is here that this would only go for two years and then they would have to get back out and we'd be in the genuine three-tier system, right? [LB279]

SENATOR KARPISEK: Correct. And when the license would run out, Senator, they would have to have someone to renew the license. So that's why we made it so they could come in but then they have to get back out. [LB279]

SENATOR GLOOR: One minute, Senators. [LB279]

SENATOR NELSON: All right. Thank you very much, Senator. Thank you, Mr. President. [LB279]

SENATOR KARPISEK: Thank you, Senator Nelson. [LB279]

SENATOR GLOOR: Thank you, Senator Nelson. Seeing no senators wishing to be recognized, Senator Karpisek, you're recognized to close on the committee amendment. [LB279]

SENATOR KARPISEK: Thank you, Mr. President. The committee amendment did come from one of the manufacturers to try to make sure that there isn't a stoppage of the business in case any of these things would happen. So it did come from one of the manufacturers, and we did put the two years in instead of one year. The last thing we want this to do is to stop a distributorship because then it would be a real hard thing maybe to get it going again. So this did come from them and they are okay with that. We are taking away where they could own it forever but they could come in for two years, run it, and sell it back out. Thank you, Mr. President. [LB279]

SENATOR GLOOR: Thank you, Senator Karpisek. Members, the question is, shall the committee amendments to LB279 be adopted? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB279]

CLERK: 36 ayes, 1 nay on adoption of committee amendments. [LB279]

SENATOR GLOOR: The amendment is adopted. Discussion now continues on the advancement of LB279 to E&R Initial. Senator Carlson, you are recognized. [LB279]

SENATOR CARLSON: Mr. President and members of the Legislature, I'd like to address some questions to Senator Karpisek if he would yield. [LB279]

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SENATOR GLOOR: Senator Karpisek, would you yield? [LB279]

SENATOR KARPISEK: Yes, I would. [LB279]

SENATOR CARLSON: Senator Karpisek, I'm not standing to block the bill, but I do have a question you could clarify it for me. In this system, we have the manufacturer, is that the right term, that's the one who makes the beer? [LB279]

SENATOR KARPISEK: Correct. [LB279]

SENATOR CARLSON: And then what's the next level? [LB279]

SENATOR KARPISEK: The wholesaler. [LB279]

SENATOR CARLSON: The wholesaler and then the retailer? [LB279]

SENATOR KARPISEK: Yes. [LB279]

SENATOR CARLSON: Those three. [LB279]

SENATOR KARPISEK: Yes. [LB279]

SENATOR CARLSON: Senator Karpisek, does the manufacturer have any responsibility as to how much product he sells to the wholesaler? [LB279]

SENATOR KARPISEK: Does he have any responsibility? No, I don't think so. [LB279]

SENATOR CARLSON: So should be able to sell unlimited whatever the wholesaler wants to buy. [LB279]

SENATOR KARPISEK: Yes. [LB279]

SENATOR CARLSON: Okay. Does the wholesaler have any responsibility to the retailer on how much the retailer can buy? [LB279]

SENATOR KARPISEK: No. [LB279]

SENATOR CARLSON: So the retailer can buy all that he or she wants. [LB279]

SENATOR KARPISEK: Correct. [LB279]

SENATOR CARLSON: Does the retailer have any responsibility as to how much product he or she sells to the customer? [LB279]

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SENATOR KARPISEK: Yes. [LB279]

SENATOR CARLSON: And would you expand on that a little bit. [LB279]

SENATOR KARPISEK: Well, the retailer is not to sell to someone who is visibly intoxicated so that would be one part. Another part, and I don't know that it is actually saying you can't do it, but the manufacturer, I'm sorry, the retailer is supposed to record anytime someone is buying a certain gallonage, and I can't tell you the gallonage of beer right now, but if it would be a keg or I think it's equivalent to about seven cases of beer. Senator Janssen tells me 20 gallons. So if that happens, they're supposed to record it so they know where that alcohol is going. [LB279]

SENATOR CARLSON: Okay. Thank you, Senator Karpisek. If the retailer sells to somebody that's visibly intoxicated, I don't...you may not know this so you don't need to be embarrassed if you don't, what's the penalty? What's the enforcement? [LB279]

SENATOR KARPISEK: They could have an infraction and I cannot tell you the penalty, but they could have their license revoked and a fine for a certain number of days. [LB279]

SENATOR CARLSON: Do you have any idea how well or frequently this is enforced? [LB279]

SENATOR KARPISEK: I think it's enforced quite a bit, especially at the, say, Husker games, those sort of things. Quite a few people end up in detox. It's probably not enforced as much as some would like it to be. [LB279]

SENATOR CARLSON: And, Senator Karpisek, it is against the state law to sell liquor to an intoxicated person, isn't it? [LB279]

SENATOR KARPISEK: It is, that is correct. [LB279]

SENATOR CARLSON: Thank you, Senator Karpisek, for answering these questions. And I am in support of LB279. [LB279]

SENATOR GLOOR: Thank you, Senator Carlson. Seeing no further senators in the speaking queue, Senator Karpisek, you're recognized to close on LB279. [LB279]

SENATOR KARPISEK: Thank you, Mr. President and members of the body. LB279 does enforce our three-tier system. Nebraska and the Liquor Control Commission is very, very much involved in protecting our three-tier system. When I first came to this body, I didn't know that I agreed with that system. In my three years now chairing the

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General Affairs Committee and five years being on the committee, I've come to see where it is needed. It's a good, good way to do things. It not only keeps the tax money accountable, but again I think you can see where the alcohol goes. You have to...they have to show where it's made, who made it, how much and where it's sold, and where it ends up. I will do anything that I can to protect the three-tier system. And this closes a loophole that could in some way harm the three-tier system. And I would appreciate your green vote on LB279. Thank you, Mr. President. [LB279]

SENATOR GLOOR: Thank you, Senator Karpisek. Members, the question is the advancement of LB279 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB279]

CLERK: 40 ayes, 1 nay, Mr. President, on the advancement. [LB279]

SENATOR GLOOR: The bill advances. (Visitors introduced.) Mr. Clerk. [LB279]

CLERK: Mr. President, LB600, a bill by Senator Campbell. (Read title.) Introduced on January 19, at that time referred to Health and Human Services Committee. The bill was advanced to General File. I do have Health and Human Services Committee amendments, Mr. President. (AM844, Legislative Journal page 907.) [LB600]

SENATOR CARLSON PRESIDING

SENATOR CARLSON: Thank you, Mr. Clerk. Senator Campbell, you're recognized to open on LB600. [LB600]

SENATOR CAMPBELL: Thank you, Mr. President and good afternoon, colleagues. It's not an unusual experience for me to be in my office last summer and to have an industry walk in and say, we would like to assess ourselves in order to keep our facilities open across the state of Nebraska to serve our senior citizens. Colleagues, LB600 is a bill about the state's budget problems. This bill is about reducing the amount of losses that nursing homes face under proposed budget cuts. This bill is about keeping our nursing facilities operating throughout the state. Without this bill, we could anticipate some nursing facilities will close because they cannot operate with the amount of loss expected. LB600 is about keeping our loved ones safe and well cared for and, importantly, near us. LB600 was suggested by the state's nursing home operators. They realize that they cannot operate with additional rate cuts and so they are telling us that they want to contribute the money that the state needs to qualify for federal matching funds. It's very simple. The nursing homes want to impose an assessment on themselves because this will allow them to receive federal funds. The assessment will go back in full to the nursing homes and the nursing homes will receive 1.5 times that amount from the federal government. One of the Health and Human Services Committee members, Senator Krist, put it very well and I quote Senator Krist: If my dad

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tells me that if I give him 40 cents he will give me back 60 cents, why wouldn't I do that? LB600 would generate additional federal funding for payment of Medicaid rates to Nebraska nursing facilities. The federal funding will partially offset significant projected financial losses resulting from expected Medicaid provider rate reductions for the next biennium. Nursing facilities across Nebraska anticipate that this revenue will help to ensure adequate funding to maintain quality, long-term care services and access, which is extremely important, colleagues, to Medicaid-financed care. Federal law allows the states to collect an assessment from a class of healthcare providers. In fact, 46 states across the country use this federal law. Nebraska is already doing this for intermediate care facilities for the developmentally disabled or what we know as ICF/MRs. LB600 will allow this for nursing facilities. Once collected, the state would pay 100 percent of these assessments back to our long-term care facilities. Under federal law, this repayment back to the facilities is a state payment to Medicaid providers, and this payment qualifies the state to receive federal matching funds of 58.44 percent. Thus, for every \$1 of assessment returned to nursing facilities, the state will receive approximately \$1.50 from the federal government. In aggregate, nursing facilities would be reimbursed \$2.50 for every \$1 invested. Under LB600, each long-term care facility would assess itself \$3.50 per day for all days of service to Medicaid residents and private pay residents. Medicare days are exempt as permitted under the federal regulations. At this assessment rate, approximately \$14 million in assessments will be deposited into the Nursing Facility Quality Assurance trust. This assessment will be reimbursed as required under federal regulations in proportion to a facility's Medicaid days of service. These reimbursements would qualify for approximately \$20 million in new federal funding, which would restore some of the anticipated rate cuts. The Governor's budget recommended a 5 percent cut in rates. The Appropriations Committee will certainly bring forth their own recommendations soon. No matter what rate is put into the budget, LB600 will only make facilities lose less. Medicaid nursing facility costs in Nebraska were \$394 million as of the most recent audited cost report, fiscal year 2008-09. Medicaid payments that year were \$344 million. That's \$50 million that long-term care nursing homes are already losing by taking Medicaid patients. Since inflation has outpaced appropriations for rates, this gap has widened. LB600 would bring in approximately another \$20 million from the federal government, and that means that the loss would be reduced. The crux of LB600 is that facilities lose less with LB600. LB600 will buffer that blow. It only helps them lose less. I have heard from some questions that I've had that people say, well, this is nothing but a shell game. And when that phrase came up to me, the image that I had was at the Nebraska basketball games where they had a pizza or a Pepsi and they're under these three and I never win--never. I never can figure out. Colleagues, this is not a shell game. We know exactly the dollars that the long-term care facilities will put in. We know exactly that that meets the state match. We know the federal dollars that will come down. This is not a shell game. This is a program to help our seniors and our long-term facilities stay near to the seniors that we most care about and want to care for. Thank you, Mr. President. [LB600]

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SENATOR CARLSON: Thank you, Senator Campbell. As the Clerk mentioned, there are amendments from the HHS Committee. And, Senator Campbell, as Chair of that committee, you're recognized to open on the amendment. [LB600]

SENATOR CAMPBELL: Thank you, Mr. President. The committee amendments make three changes in the green copy of the bill. First, they fill in a couple of x's that were in the green copy. The first one is on page 7 of the green copy, and this amendment specifies that the penalty for overdue assessment is 1.5 percent. The second is on page 9 of the green copy and specifies that the administrative fee for enforcing and collecting the quality assurance assessment is to be "reasonable" rather than a specific amount and will certainly be worked out with the department. Finally, the committee amendments require the Department of Health and Human Services to submit a waiver to the federal Centers for Medicaid and Medicare Services to include the nursing facility quality assurance assessment. And I have to say that our plan is very much like many of the other state plans so we don't anticipate a problem with the waiver. And in fact, two of our neighboring states passed similar legislation last year in Iowa and Kansas. And now I will have the pages distribute for each of you a handout which I hope visually will cover the points that I included. Thank you, Mr. President. [LB600]

SENATOR CARLSON: Thank you, Senator Campbell. Members, you've heard the opening on LB600 and the amendment. And those wishing to speak include Hadley, Pankonin, Gloor, Sullivan, and Harms. Senator Hadley, you're recognized. [LB600]

SENATOR HADLEY: Mr. President, members of the body, good afternoon. I stand in full support of AM844 and LB600. As Senator Campbell mentioned, we are doing this now in Nebraska with the ICF/MRs are the only class of providers currently utilizing this system. You made that possible last year when you passed a bill that allowed us to do that. And with this, we're able to help those people with developmental disabilities at Mosaic and other institutions. We need to do that as we go along because of the match. This particular bill does the exact same thing for nursing homes. Can you imagine what our small towns would be if the nursing homes were to close? What a dramatic impact that would have. I agree with Senator Campbell that this is not a shell game. This is money that the federal government is willing to give us. As she said, 46 states are doing this. Nebraska needs to do this. With that, Mr. President, I would yield any of my remaining time to Senator Campbell if she wishes it. [LB600]

SENATOR CARLSON: Thank you, Senator Hadley. Senator Campbell waives. Senator Pankonin, you're recognized. [LB600]

SENATOR PANKONIN: Thank you, Mr. President, members of the body. I want to say this twice. I think this bill is as important a piece of legislation that we will look at this year as any. For me personally, it's as important as any bill that we will consider this year. Let me tell you why I think that. Most of you know I'm from Louisville, Nebraska,

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was mayor of that community for a while; on the city council; had been on the local city-owned care center advisory board a couple of times, presently am on that board. There are 15 percent of our care centers are city owned in this state, that's 33 of them. Another 5 percent are county owned. And over half of the care center facilities in the state, even if they're nonprofits in one way or the other, a little over 50 percent. Right now, folks, this is a tough business to be in. You've got a higher percentage of Medicaid residents, fewer private pay citizens all the time. That ratio has flip-flopped over the last 20 years. It's gone from 70 percent in our facility private pay to 70 percent Medicaid. That's the first thing you need to know. Second thing is as we know in this budget and what has been a continuing trend is there's pressure on Medicaid reimbursement, both at the federal and state level. It's not getting bigger, it's going down. On top of that you have rising costs for your own employees' healthcare and all the other costs of running this business. There's increased care requirement mandates all the time. You're in a tremendous margin squeeze. For the investment in our facility in Louisville and for the fine care that we give, we make next to nothing. It's not a business you would be in financially for any valid reason. For the risk and for the investment, this is not a business to be in except there is a huge need for this business to care for our citizens. We used to call these facilities, like the one in Louisville when it was first built, the rest home. They're not rest homes anymore and there's all kinds of other facilities that do take folks that are in good shape. So many of these citizens that are in these care centers are required...require acute care that used to be 20, 30 years ago only given in hospitals, in my opinion. We need to keep these facilities open. And as has been stated, many could close without this legislation. Then what happens? Without these facilities, our healthcare system would not be the same and Nebraska citizens and families would suffer greatly. They would either have to go a great distance to visit their loved ones, there would not be places for them to even get in, and they would have to try to care for these folks at home. And as I said, so many of them need acute care. As Senator Campbell said, this bill cuts losses. This is not a windfall. This bill cuts losses for these facilities. I consider this vote on LB600 to be as critical a vote as any for this Legislature this session. This is an important public policy initiative that needs to be passed. So I'm please asking you for votes in favor of the amendment and the underlying bill. And I want to thank Senator Campbell and her office and staff and the HHS Committee for bringing this to us. Thank you, Mr. President. [LB600]

SENATOR CARLSON: Thank you, Senator Pankonin. Senator Gloor, you're recognized. [LB600]

SENATOR GLOOR: Good afternoon, Mr. President, members. I stand in support of AM844 and LB600. And I also am appreciative of the comments of both Senator Hadley and Senator Pankonin putting an exclamation point on the importance of this bill. A couple of years ago the long-term care industry considered asking for this legislation to be brought forward, but decided against it, is my understanding, because they were looking at an increase, as Senator Campbell has already stated. Now they're looking at

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what could be a 4 to 5 percent decrease. I want to emphasize a couple of points that have been already made. Coming from the hospital industry, I can tell you that this has been thought about within the hospital industry, but their decision has not been to make this particular request jump. And one of the primary reasons is most hospitals may have anywhere from 5 to 15 percent of their patient population Medicaid, 5 to 15 percent in acute care hospitals. But as Senator Pankonin has already pointed out, there are facilities out there that can have as high as 70 percent of their patient population in Medicaid. Fifty percent is not uncommon and 40 percent I think is probably very standard in most institutions. The smaller the facility, the more likely you are or the smaller the community--sometimes they go hand in hand--the more likely this is to be a challenge. And faced with that reality, what the long-term care industry was able to do was get its members to come together and say, we need to tax ourselves and realize those additional federal dollars that are available. It's a wise decision. It's an inevitable decision, sadly, that they have to look at. But it's the nature of the challenges there are in having appropriate funding for any number of healthcare programs that are out there. If you don't like this program, I have a bill that has to do with cigarette taxes that will make these provider decreases go away and you could rally behind that. But I'm guessing that that might take a lot longer to discuss than this little bill. And because of that, I would encourage you to advance this little bill and its amendment to help out the long-term care industry, give them an opportunity to provide care to Nebraskans who, in most cases in the final years of their lives, are looking for a comfortable place to go for quality care. Thank you, Mr. President. [LB600]

SENATOR CARLSON: Thank you, Senator Gloor. Those still wishing to speak: Senators Sullivan, Harms, and Krist. Senator Sullivan, you're recognized. [LB600]

SENATOR SULLIVAN: Thank you, Mr. President. I stand in support of AM844 and the underlying bill and also wanted to just give a little bit of an actual face and dollar figures to some of the impact that this legislation will have. In District 41, an eight-county area, I have nine long-term care facilities. And they provide not only a huge medical and healthcare benefit to the communities and all the surrounding area, but it's a big economic engine in the area. In terms of this particular legislation, we're looking at real dollars that will come back to these facilities: \$73,000 in one case; \$67,000 in another; \$100,000; \$82,000; \$33,000; and \$69,000 to name just a few. As I said, these are real dollars that will, first of all, go to things like boosting the salaries of staff in the area; making possible that there will actually be some cost savings for the private pay individuals and the residents in these facilities. It's actually about saving jobs in these facilities. We're taking advantage of an opportunity. It's not a shell game. It's not anything that should be laughed at or dismissed because it's very, very important to these facilities. One of the administrators in one of the e-mails I received said that in a national ranking Nebraska nursing homes deliver low-cost care...low-cost, high-quality care. In that ranking, we rank 13th. We're doing a great job with less. This just simply means with the passage of this legislation we will still lose, but we will lose a little bit

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less. So we're doing the right thing with this legislation, and I'm in strong support of it. Thank you. [LB600]

SENATOR CARLSON: Thank you, Senator Sullivan. Senator Harms, you're recognized. [LB600]

SENATOR HARMS: Thank you, Mr. President, colleagues. I rise in support of AM844 and the underlying bill, LB600. I have had the fortunate opportunity to visit with a couple of people who are in the nursing care world in my own home, in my community. And one of them has about 75 percent of his...of the people or the clients that he has in his nursing home are Medicaid patients. And there is no question in my mind after seeing the numbers and listening to him speak three years from now he will not be in business. And what this program does, this quality assurance assessment, quite honestly will help us with some of the appropriate reimbursement. But beyond that it will keep jobs and economic activity alive. It will keep rural communities alive and being able to have a nursing home there. In my area, we're seeing a large increasing number of people going on Medicaid. And to my surprise and amazement to a study that was just recently done by the Health Department, western Nebraska, particularly Scotts Bluff County, is one of the highest in the state of Nebraska in underprivileged and poor. And to see a loss of a nursing home and no opportunities for these people to go anywhere is critical. It's harmful to the parents and to the individuals who are clients in a nursing home. They want to be close to their loved ones. They want to be able to see their great-grandchildren come and see them. They want to be able to see their favorite dog or cat come in. That encourages them. They won't be able to do any of those things if they have to travel 100 miles, 150 miles away. So I thank Senator Campbell for doing this. I think it's important for us to do it. I don't see it as a shell game. I see it as the only way for many of the nursing homes, particularly where I live, to survive. Or what will happen in many cases, they'll just quit taking Medicaid patients, and that doesn't help us at all. Medicaid patients want to be close to home, close to their loved ones, close to their family. So I would encourage you to support AM844 as well as the underlying bill, LB600. Thank you, Mr. President. [LB600]

SENATOR CARLSON: Thank you, Senator Harms. Senator Krist, you're recognized. [LB600]

SENATOR KRIST: I want to stand and publicly thank Senator Hadley for his comments and also applaud Senator Pankonin for his service, serving on a board and providing so many years of service to our retirement homes, our care facilities. I heard this in committee and it took me a while to actually absorb the concept. I applaud the industry. I don't know very many people that will tax themselves in order to save the industry. That's how dedicated these people are. They came forward and said, we can help ourselves in the short run. We can make it until the day turns around, until the sunshine comes out, we can make it work. I applaud them for taking that effort. I really encourage

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a green on AM844 and the underlying LB600. It is what we can do for our seniors. Thank you, Mr. President. [LB600]

SENATOR CARLSON: Thank you, Senator Krist. There are no other senators wishing to speak. Senator Campbell, you're recognized to close on your amendment. [LB600]

SENATOR CAMPBELL: Thank you, Mr. President, and thank you, colleagues, for certainly the support that LB600 has received. I hope you have a minute to take a look at your gadget because I particularly want to thank the great number of senators who have signed onto this bill. So many nursing homes have had to rely on private pay residents to make up the difference. Hopefully LB600 will slow that to some extent. There are growing numbers of our seniors who are in need of Medicaid assistance, and it is one of the largest parts of our Medicaid budget. It is extremely important to the long-term future of Nebraska that we give good, quality care to our seniors while we are looking for innovative plans to pay for it. Senator Gloor described LB600 as a little bill, but it has extremely large impact for our seniors and communities all across the state. I believe the federal government put this program into place to ensure quality of care for our seniors. We ask this industry to care for them and now they are willing to step forward and tax themselves. Please support the amendment and LB600. Thank you, colleagues. [LB600]

SENATOR CARLSON: Thank you, Senator Campbell. Members, you've heard the closing on the amendment. The question is, shall AM844 to LB600 be adopted? All those in favor vote aye; all opposed vote nay. Has everyone voted who wishes to vote? Record, Mr. Clerk. [LB600]

CLERK: 38 ayes, 0 nays, Mr. President, on the adoption of committee amendments. [LB600]

SENATOR CARLSON: Thank you. The amendment is adopted. We return for discussion on LB600. Seeing no lights, Senator Campbell, you're recognized to close. Senator Campbell waives closing. The question is, shall LB600 be advanced to E&R Initial? All in favor vote aye; all opposed vote nay. Record, Mr. Clerk. [LB600]

CLERK: 38 ayes, 0 nays, Mr. President, on the advancement of the bill. [LB600]

SENATOR CARLSON: LB600 is advanced. Next item, Mr. Clerk. [LB600]

CLERK: Mr. President, LB648 is a bill by Senator Christensen. (Read title.) Introduced on January 19, referred to the Judiciary Committee, advanced to General File. There are committee amendments pending, Mr. President. (AM802, Legislative Journal page 897.) [LB648]

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SENATOR GLOOR PRESIDING

SENATOR GLOOR: Senator Christensen, you're recognized to open on LB648. [LB648]

SENATOR CHRISTENSEN: Thank you, Mr. President, colleagues. My intent with LB648 is to provide some practical changes for improving the notification and due process for the relevant parties involved with foster child. In the spirit of full disclosure, most of you know I've had some negative experience with Nebraska foster care system through my experience with my daughter Erica and her husband Sam who were foster parents. I have seen firsthand some of the major problems that plague our current system. Due to such difficult experiences with the Department of Health and Human Services and the system in general, Erica and Sam have recently given up their foster care parenting license, like so many other frustrated foster parents in recent months. These experiences have led me to introduce four bills addressing different areas of our foster care system. LB648 is one of these four. Like I said before, LB648 was designated to bring some practical changes to notification requirements in Nebraska foster care system. It amends Section 43-1314 by establishing certain notification requirements for court reviews and hearings pertaining to a child in a foster care placement to provide standing for foster parents in reviews and hearings regarding the removal of foster child from the foster parents' home. Specifically, this bill makes four changes to Section 43-1314. First, it would require that the courts have a specific phone number available to them to call the Department of Health and Human Services or relevant contact agency to obtain up-to-date contact information so the court may comply with notification requirements found in Section 43-1314. Moreover, any changes in contact information would be required to be updated within 72 hours of a change. I've become aware that many times foster child foster placements has changed, but the contact information was not transferred to the court. I believe this is important because the court can only comply with the notification requirements if and when their contact information is correct. And people who are supposed to receive a notice of reviews or hearings according to this section and are interested in the well-being of the child can only show up if they actually receive the notification. Second, LB648 has an additional change in notification requirements that was modeled from the language in the rules of practice and procedures in the Separate Juvenile Court of Douglas County. This change would require notification five full days prior to the review or hearing if the party is not represented by counsel. I believe this is necessary to ensure that those who are a part of the foster child's life can provide the necessary support to the child during the process, prepare to provide the court with any additional information about the well-being of the foster child. Third, this bill would also put in statute standing for foster parents as necessary parties in the context of hearing regarding the removal of a foster child from a foster parent's home. I had meant to use the term "interested parties" instead of "necessary parties," which I will address in a moment. This level of standing as an interested party was recognized in the 1996 Nebraska Supreme Court decision In the Interest of Jorius G. With this level of standing, foster parents would be able to call

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and cross-examine witnesses and appeal an adverse decision regarding the removal of a foster child from the foster parents' home. I believe the following amendment, AM1091, which I introduced, addresses the concerns of the Judiciary Committee. One of the main reasons was this provision was too broad when giving foster parents standing as necessary parties, especially in the context of a hearing regarding removal of a foster child from the foster parents' home to reunify the child with the biological parents. I will explain this change when I open on the amendment. Finally, LB648 will require that the court shall inquire into the well-being of the foster child from any willing foster parent, preadoptive parent, or relative providing care for the child if they are present at the hearing or review. Currently, Section 43-1314 says the court "may" inquire into the well-being of the foster child from a foster parent, preadoptive parent, or relative providing care for the child. If an individual is in one of these care-giving categories and they make an effort to be at the review or hearing and they are willing to speak on behalf of the child's well-being, I believe it is necessary to make a better informed decision about what is the best interest for the foster child that the judge should inquire into what these individuals know about the well-being of the child and any appropriate knowledge regarding the child's situation. Those are the four changes in LB648 propose, practical changes that provide better communications, due process for foster child review in hearings. Thank you for consideration of LB648, and I urge your advancement to Select File. [LB648]

SENATOR GLOOR: Thank you, Senator Christensen. As the Clerk stated, there are amendments from the Judiciary Committee. Senator Ashford, as Chair of that committee, you're recognized to open on the committee amendments. [LB648]

SENATOR ASHFORD: Thank you, Mr. President. And Senator Christensen does have a subsequent amendment, as he mentioned, that deals with the committee amendments. In a nutshell, the...Senator Christensen is absolutely right. The discussion was whether or not a foster parent in a case where the children are being removed or child is being removed from the foster parent would, under the amendment that you'll be hearing about if AM802 is adopted, would require that foster parents not only be notified of a hearing but that they be interested parties, as Senator Christensen rightly suggests. And as interested parties, they would have the ability to engage in the hearing. These foster parents would have the ability to appeal a decision of the juvenile court. The foster parents would have the right to be obviously represented by an attorney. The committee felt that certainly that is a change from current law, and the committee felt that the appropriate standard in these cases would be to grant to the foster parent the notice, notice of the hearing so they could appear and be aware of and be not simply told indirectly but be directly involved at least in the process of seeing what is going to happen or has happened with these foster children. And that's the committee amendment. I think the discussion really...I would certainly encourage the adoption of AM802, and then we get into the policy discussion that Senator Christensen has raised and that is should we go further than that in the case of a foster parent and allow them

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to engage in the hearing, actively engage in the hearing, as would guardian ad litem or biological parents, other traditionally necessary or interested parties in the outcome of these cases. So with that, Mr. President, I would certainly urge the adoption at this point. Because of the way the amendments are filed, I believe the next amendment is on the committee amendments so...is that correct, Mr. Chair? I believe it is. [LB648]

SENATOR GLOOR: Correct. [LB648]

SENATOR ASHFORD: And then we can discuss more fully Senator Christensen's policy shift really or the idea of getting the...having the foster parents more engaged in the process. Thank you, Mr. President. [LB648]

SENATOR GLOOR: Thank you, Senator Ashford. As both you and Senator Christensen have stated, there is an amendment to the committee amendments. Mr. Clerk. [LB648]

CLERK: Senator Christensen, Mr. President, would move to amend with AM1091. (Legislative Journal page 1059.) [LB648]

SENATOR GLOOR: Senator Christensen, you're recognized to open on your amendment to the committee amendment. [LB648]

SENATOR CHRISTENSEN: Thank you, Mr. President and colleagues. Like I said earlier, AM1091 addresses the concerns of the Judiciary Committee. It strikes the new language providing standing for foster parents on page 3, lines 8-13, and inserts different language with a few changes. It changes the term "necessary parties" on page 3, line 9, to "interested parties," which is the terminology used in case In the Interest of Jorius G. It adds a requirement that the foster child be placed in foster parent's home for at least six months before the foster parent becomes an interested party. Finally, the amendment narrows the context as to when a foster parent has standing. Currently in LB648 allows standing when there is any hearing regarding removal of a foster child from a placement with foster parent. With AM1091, the foster parent would only have standing when the hearing is removed from the foster child from the foster parent to another foster home. I believe this should reduce the amount of unnecessary foster home changes which happens far too often today. I have discussed this amendment with the members of the Judiciary Committee, and I believe that they are all on board with these changes. Thank you for your time and consideration. I ask for the adoption of AM1091 and the advancement of LB648. Thank you. [LB648]

SENATOR GLOOR: Thank you, Senator Christensen. Members, you've heard the opening on LB648, the committee amendments, and the amendment to the committee amendments. There are senators wishing to be recognized. Senator Howard, you are recognized. [LB648]

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SENATOR HOWARD: Thank you, Mr. President and members of the body. If Senator Christensen would yield to a few questions. [LB648]

SENATOR GLOOR: Senator Christensen, would you yield? [LB648]

SENATOR CHRISTENSEN: Yes. [LB648]

SENATOR HOWARD: Thank you, Senator Christensen. In looking at this and in listening to your explanation, there are a few things that are troubling to me based on my past work and experience with juvenile court. The first question I would have is, are you assuming that the juvenile court makes the placement decision regarding the child? [LB648]

SENATOR CHRISTENSEN: No, but they...it's in a court hearing when they decide to move them from one to the other. The department makes them decisions. So when they were going to move them, they would allow, in a placement from one foster home to another foster home, standing to speak on behalf of the child. [LB648]

SENATOR HOWARD: Well, then I would ask you, are you assuming that there's a court hearing every time a child is moved? [LB648]

SENATOR CHRISTENSEN: I guess I don't...I assumed there was every time there's one moved. [LB648]

SENATOR HOWARD: No, the answer to that would be no, there's not. The decision regarding placement resides with the department. The decision is made by the department, and it's reasonable to expect the department is going to inform the juvenile court, the guardian ad litem, the other people, CASA, individuals that are involved with the child as soon as it is possible. But there isn't a court hearing every time a child is moved. If you notice, for example, in the Foster Care Review Board report, there's many concerns about how often a child is moved. Required court reports occur every six months. That's a federal requirement. A child may, unfortunately, be moved a number of times prior to that. Now if a guardian ad litem or a parents' attorney or someone requests a hearing, which isn't usually the course regarding a move, that can occur. But that would have to be scheduled. I noticed in your amendment you specify move from one foster home to another foster home. What about a situation where a child would be in foster care, the department would plan to move that child to an adoptive home but the foster parents aren't comfortable with that? They have questions. Would they have standing then? Would they question that move and request a court hearing or possibly ask the guardian ad litem to request a court hearing? [LB648]

SENATOR CHRISTENSEN: Well, there would have to be a court hearing for this to have effect, yes. [LB648]

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SENATOR HOWARD: What do you mean there would have to be a court hearing?  
[LB648]

SENATOR CHRISTENSEN: Well, I believe the way this is written this is speaking to the courts. So if the courts are the one moving it, I'm not sure we can address that my amendment addresses your movement from when the department is moving from one home to another. We probably should address that. [LB648]

SENATOR HOWARD Well, you're talking about foster home to foster home, but there's a lot of other situations. For example, and I think you'll probably realize that this happens, is that a child is in foster home and the department makes a decision that the parent is ready to take the child back home. And the foster parents have had that child, let's say a baby, an infant, for a number of months and don't feel it's safe. They feel that the parent still has some serious issues. They don't have a say in that other than the input that they give the case manager and the department. They are not the ones that make that decision. It's the department. But the way that this is worded is foster home to foster home, that wouldn't be included. [LB648]

SENATOR CHRISTENSEN: Correct. And the idea was in visiting with the Judiciary Committee they didn't want to ever put a foster parent in odds with a... [LB648]

SENATOR GLOOR: One minute. [LB648]

SENATOR CHRISTENSEN: ...biological parents. And that's the reason the green copy was struck and went to the amendments. [LB648]

SENATOR HOWARD: Thank you, Mr. President. But I think your concern goes deeper than this. It's not only a placement from foster home to foster home. Wouldn't you agree there would be concerns or possible concerns in foster home placements and foster home parents who love the child are saying I don't think it's safe? I don't think this is a safe move. Or foster parents who love a child and are not supportive of a change in placement to an adoptive home? I mean it's not isolated simply to foster home to foster home. [LB648]

SENATOR CHRISTENSEN: I agree with you that all of them are a concern even when the department is moving. [LB648]

SENATOR HOWARD: But you have this very narrowly drafted. [LB648]

SENATOR CHRISTENSEN: Correct, I do. And I'd be willing to look at broadening it if we figure out a way that's acceptable. [LB648]

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SENATOR HOWARD: All right. And I have a second question, and I'll try to make this brief. In terms of parents' standing in court, if they want to ask questions... [LB648]

SENATOR GLOOR: Time, Senator. [LB648]

SENATOR HOWARD: Thank you. [LB648]

SENATOR GLOOR: Thank you, Senator Howard. Senator Ashford, you are recognized. [LB648]

SENATOR ASHFORD: Thank you. And I appreciate Senator Howard's comments. What we were struggling with in the committee was a couple of things. One is the issue of whether or not there actually were hearings and how often they occurred when there was a movement from one foster placement to the next. And it is...we concluded, as Senator Howard has suggested, that it rarely happens, though I suppose potentially there is some testimony that it could happen, I suppose. But it was not something that happened in the normal course. And the committee then decided that as long as notice were provided if there was a hearing that that would be satisfactory. I think Senator Christensen is suggesting that...and maybe I'll ask Senator Christensen just so I, for the record, I understand if Senator Christensen would answer a question. [LB648]

SENATOR GLOOR: Senator Christensen, would you yield? [LB648]

SENATOR CHRISTENSEN: Yes. [LB648]

SENATOR ASHFORD: And, Senator Christensen, I understand the concerns that you've raised and they're heartfelt and important concerns. If in a case of a child that is with a foster parent for six months and then that child is removed, your intent here would be to require that the foster parent that had the child with...parents that had the child with them would be given notice and would be allowed to participate in the case or the juvenile hearing. Is that correct? [LB648]

SENATOR CHRISTENSEN: Correct. [LB648]

SENATOR ASHFORD: Okay. And would it also be your thought that if there weren't a hearing that if there were a placement without a hearing or a change in placement without a hearing that there would be no requirement to participate in the hearing because the hearing would not, in fact, take place? [LB648]

SENATOR CHRISTENSEN: It's correct that they...there wouldn't be a hearing taking place. I've got to check some statute, but I think there is a place of...a challenge in that which would give them that later that they have to do within seven days, but I'll check on that. [LB648]

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SENATOR ASHFORD: Yeah. I think that's...to clarify for the body, at this point our concern...thank you, Senator Christensen. Our concern was that in many cases, as Senator Howard has suggested, that hearings...there may be hearings after the fact or reviews after the fact of the change. But that prior to the change, oftentimes there was not a hearing. And so in the committee amendments prior that we briefly discussed, we require notice but not standing in the case was to address this concern that there oftentimes was not a hearing. Yeah, I think at this point the amendment that Senator Christensen offers is satisfactory to me, provided that there's a clear understanding, and we're going to have to look at it between, if it's adopted, between now and Select File to clarify what happens when there is not a review or a hearing. And so that we're not creating a responsibility to have a hearing when there is not now one given. With that, I will listen to the additional discussion. Thank you. [LB648]

SENATOR GLOOR: Thank you, Senator Ashford. Senators wishing to be recognized are Price, Council, Campbell, Hansen, and Howard. Senator Price, you're recognized. [LB648]

SENATOR PRICE: Thank you, Mr. President, members of the body. I rise today to talk about something that piqued my interest when I was hearing the discussion of the bill and we were talking about the standing of individuals in proceedings that deal with foster care. And last year at a symposium that was conducted by a bunch of groups and young individuals--I hesitate to call them children--folks who are growing up in our state right now who are going to be our future leaders in one way or another, many of whom have been in the foster care system or in different programs after school and they talked about a few different subjects. And what it led me down to a long chain to in talking with guardians ad litem and issues within the state is that in the foster care program one individual or group of individuals which don't have standing in the state of Nebraska are siblings. And I found it perplexing that as you...as presented to me that they have a unified code out there that's been adopted that we haven't adopted here in Nebraska, and I thought about bringing a bill to address that this year but we have to do a little more work on it. What happens is as children of the same family are placed out and they're in two separate families, there's no consideration and no standing legally in court for a sibling. So they can't get them because we know that the outcomes are better if these siblings are adopted together, if they can stay together and that isn't there. Now this isn't what this bill is talking about, and I would like to work with Senator Christensen on a bill next year which addresses and with Senator Howard to where we could come in line with what is a best practice. And that is to give a standing to siblings in certain matters in this domain. And with that, Mr. President, I would yield the balance of my time to Senator Howard if she would like to use it. [LB648]

SENATOR GLOOR: Two minutes 45 seconds, Senator Howard. [LB648]

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SENATOR HOWARD: Thank you, Senator Price. I have a feeling you're a bit of a visionary because I actually have an amendment to address that on a bill that we didn't get to this morning, but we will get to, which I hope that you will be able to contribute to that at that time. I continue to have concerns about this amendment. I realize the intent and I understand that and I think it's a good intent. However, it's fraught with problems is the best way for me to explain it to you. If we would require a court hearing prior to the move of a child, there are times when we would be in a situation where that child could possibly be in an unsafe home. I've certainly had this happen doing foster care work. There would be an allegation against a foster parent and a pretty reasonable situation to believe that there could be reason to address that allegation, for example, a sexual abuse allegation. And it's the responsibility of the Department of Health and Human Services to ensure that that child is in a safe situation irregardless. And at that point, it becomes the responsibility of the department to move that child and do the investigation with that child not being present in that home. There's really no two ways to look at that. That child cannot be allowed to stay in a home where there's a possibility that the child is experiencing any form of sexual abuse. Again, I go back to the questions that I have of Senator Christensen if he would be willing to respond again. [LB648]

SENATOR GLOOR: Senator Christensen, would you yield? [LB648]

SENATOR CHRISTENSEN: Yes. [LB648]

SENATOR GLOOR: One minute, Senators. [LB648]

SENATOR HOWARD: Thank you. Oh, this will have to be quick again. Senator Christensen, with this perceived standing of the foster parents, if they would want to address the court or ask questions, most...in most occasions there's an attorney present. If they would need the representation of an attorney, who would be responsible for paying for that? That isn't addressed in here at all. [LB648]

SENATOR CHRISTENSEN: Well, that's typically you pay for your own. So it does unless you have a court-appointed one, you're going to pay your own in this deal. [LB648]

SENATOR HOWARD: Well, that's the very reason I'm asking that question is because, as I say, it's not addressed in here. And I think anybody would realize you could be at a disadvantage in juvenile, in any court without having representation. So I wanted that to be on the record that that is your expectation, that the foster parents would be responsible for their own attorney costs. [LB648]

SENATOR CHRISTENSEN: But it doesn't say they have to have it. It says if the parents are there they can speak on their behalf. [LB648]

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SENATOR HOWARD: But if they would desire that, if that would be their choice.  
[LB648]

SENATOR CHRISTENSEN: Correct, yes. [LB648]

SENATOR HOWARD: Right. Thank you. Thank you, Mr. President. [LB648]

SENATOR GLOOR: Time. [LB648]

SENATOR HOWARD: Thank you, Senator Christensen. [LB648]

SENATOR GLOOR: Thank you, Senator Howard. Senator Council, you are recognized.  
[LB648]

SENATOR COUNCIL: Yes, thank you, Mr. President. I rise in support of AM802, the Judiciary Committee's amendment and allow me a moment to explain why. And I respect and I appreciate Senator Christensen's concern around this matter. And as the original draft of LB648, it provided...it maintained language under the current statute that said that "Notice to the foster parent, preadoptive parent, or relative providing care shall not be construed to require that such foster parent, preadoptive parent, or relative is a necessary party to the review or hearing," and then there was an exception for foster parents that made them...that provided them standing as necessary parties. I had concern with that language on two grounds. One, it singled out foster parents and made no special provision for preadoptive parent or a relative who was providing care. And by limiting it and restricting it to foster care parent having standing as necessary parties in a removal case, it would, in my opinion, create an adversarial opportunity between the foster parent and the biological parent if the hearing was to carry out reunification. And that was very, very troubling to me that we would be creating this adversarial situation between a foster parent and a biological parent who has completed all of the requirements set out by the department for reunification and then they were placed in a position where they were going to have to endure another adversarial relationship with a foster parent. But even of greater significance and concern was that same standard wasn't going to be applied to preadoptive parents or a relative who had been giving care to a child. The foster parent was singled out. With regard to Senator Christensen's amendment, AM1091, I've had conversations with Senator Christensen about this, and I appreciate his concern. But as Senator Howard pointed out, and I had hit my light earlier, was that the Department of Health and Human Services has the authority and regularly authorizes the authority...its authority to move children from one foster home placement to the next without court approval. You ordinarily do not have a hearing before a child is moved from one foster care provider to the next. Now the fact that there may be a subsequent review of what has occurred with regard to the care provided to that child, it would be at that time under Senator Christensen's amendment that his amendment would provide any opportunity for the foster parent to be heard. And in that

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context, it could be months after the child has already been moved to another foster care home because that's the way these juvenile court dockets work. Sometimes it's six to eight months between reviews. And if a child is moved at the beginning of that six-month period, it could be again a long period of time before there was a review before the issue of the move could even be addressed. [LB648]

SENATOR GLOOR: One minute, Senator. [LB648]

SENATOR COUNCIL: And I would submit to you that it would be moot at that particular point in time. So if there's any opportunity to address Senator Christensen's concern, I think it would be from a regulatory perspective with the Department of Health and Human Services. And I think we also need to take into consideration if we do anything that adds a requirement and imposes a requirement on the court to have hearings every time a foster child is moved from one home to the other that we need to take into account the impact that that would have on the budgets of county courts as well as the provision of court-appointed legal counsel for foster parents in that context. Thank you. [LB648]

SENATOR GLOOR: Thank you, Senator Council. (Visitors introduced.) Mr. Clerk, announcements. [LB648]

CLERK: Mr. President, some items, thank you. Education Committee chaired by Senator Adams reports LB575 to General File with amendments. The Government Committee reports LR141 back to the Legislature for further consideration. And Senator Fulton would like to print an amendment to LB283, Mr. President. That's all that I have. (Legislative Journal page 1059.) [LB575 LR141 LB283]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Christensen. Senator Christensen, I understand you wish to withdraw your amendment. So noted. AM1091 to Judiciary AM802 is withdrawn. We continue with discussion on the committee amendment. Senator Hansen, you are recognized. [LB648]

SENATOR HANSEN: Thank you, Mr. Chairman, members of the Legislature. I had a question for Senator Ashford if he would yield. [LB648]

SENATOR GLOOR: Senator Ashford, would you yield to a question from Senator Hansen? [LB648]

SENATOR ASHFORD: Yes, thanks. [LB648]

SENATOR HANSEN: Senator Ashford, I appreciate the time that would answer a couple of questions of mine that refer back to 2007 when I was new and you were newly back, that I had a bill that Senator Chambers objected to the standing part. And I'm glad

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that Senator Christensen probably withdrew this and will work on it until Select. But can you remember any of the discussion that we had on the floor with that standing of foster parents? I mean that was the crux of the problem at that time. And that was the time that we came up...that the university and the Supreme Court were working together for a program called "Through the Eyes of a Child." Can you recall any of that part where we did talk about the standing and what the problem was? [LB648]

SENATOR ASHFORD: Yes. And, Senator, I do recall generally those conversations and I do recall your interest in them. And you had a bill, as I recall... [LB648]

SENATOR HANSEN: Right. [LB648]

SENATOR ASHFORD: ...in '07, was it '07? [LB648]

SENATOR HANSEN: Correct. [LB648]

SENATOR ASHFORD: And, yes, I think that...and that, quite frankly, is why we need to spend a little time between General and Select and to iron out the issue here that Senator Christensen brings to the body and that is what is the interest, the legal interest, or what should the legal interest be of a foster parent in the different situations that occur? And as I do recall, you're right--Senator Chambers objected to the bill. And I think his concern, as I recall, related to the welfare of the child I believe, but I...I can't...I'd have to defer back to you, maybe I'm not correct. But I recall that discussion generally, yes. [LB648]

SENATOR HANSEN: Yes. And then the year prior to that Senator Friend had legislation that would change the word "may" to...or from "shall" back to "may." That the judges shall listen to foster parents... [LB648]

SENATOR ASHFORD: Right. [LB648]

SENATOR HANSEN: ...when they come to court. And that didn't pass... [LB648]

SENATOR ASHFORD: Right. [LB648]

SENATOR HANSEN: ...that way either. But thank you, Senator Ashford. I just want to remind the body that we do have the Through the Eyes of a Child program. And the Supreme Court, with help from the University of Nebraska, has been training judges all these last four years. Some of the judges are a little reluctant to take that on, but there is a questionnaire and sometimes foster parents have to go to the court and ask for that, but there is a several-page questionnaire, I believe like 13 questions on there: How is the child doing? What are the problems? What are the good things? Are there any changes? Foster parents are the closest people to those children, and we do need their

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input when they do go to court, even though I think Senator Christensen is talking about more court appearances. But still the Through the Eyes of a Child program is very important. Thank you, Mr. President. [LB648]

SENATOR GLOOR: Thank you, Senator Hansen. Senator Ashford, you are recognized. [LB648]

SENATOR ASHFORD: Thank you, Mr. President. And I also would second what Senator Hansen has said and also referring to the Through the Eyes of a Child initiative is an incredibly important initiative in our state and very forward-looking, addressing some of these critical issues. I...the issue that Senator Christensen brings to us, and we are going to think about it a little bit here and have something ready for the body on Select File that addresses what Senator Howard has so rightly talked about and that is that each case is clearly different. Every child is different. And when we enlarge the jurisdiction of the courts or enlarge their responsibilities in these cases, it has repercussions on the child certainly as it relates to the child, but certainly the foster care parent. And Senator Christensen brought to the committee very compelling testimony regarding that issue. And this is a very thoughtful area of the law. Just as an aside, as we deal with (laugh)...they are just...they're listening with baited breath. That's okay, Mr. President, I'll proceed. But as we think about what happens when children are moved from foster care home to foster care home, it has an impact on children in so many ways. We see it in the...and Senator Hansen's Through the Eyes of the Children reference is key here. We see it in the truancy numbers in our schools. We see dramatic increases in truancy with at-risk children who are moved from foster care home...from one to another foster care home. And that mobility issue enters into the truancy issue as well. So it's important. I can't, quite frankly, think of any more important subject than foster care and...and I would mention that the department has certainly focused on this issue and has made significant strides in many areas. This is an important issue, and we will continue to work with Senator Christensen to address the needs that he raises. And it's one aspect again of the entire problem, and that is who should be at a court proceeding? What should that foster care person...what opportunity should that foster care individual have...parent have in making the final determination on the outcome of where that child should be living? Very important, needed discussion. So with that, Mr. President, I would... [LB648]

SENATOR GLOOR: Thank you, Senator Ashford. Senator Howard, you are recognized. [LB648]

SENATOR HOWARD: Thank you, Mr. President. I appreciate Senator Christensen withdrawing the amendment. I think that certainly shows good faith. The amendment needed a lot of work. I do...there's a piece in this bill that I'm very supportive of and that's the 72 hour notification, for anytime a child, youth, state ward is moved, that's always been problematic in our system. When I worked for the Department of Health

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and Human Services there was a three day requirement in terms of getting in the court reports and the understanding was that when a child is moved, the court is notified immediately, and there was a change of placement notice that was sent up to the court. And also what I did because it was the right thing to do, I would call the other participants in the case, the guardian ad litem, the CASA, the people that been involved with this child and had worked with this child, I would call them as soon as I could possibly, possibly do that to let them know the circumstances why the child had been moved. That really, if there's a line of communication, that addresses so many problems. My concern is with so many difficulties within the system now with this privatization, that the very basic key important things are getting lost. They're just not being done when you've got a turnover of from six to eighteen months is the longevity of the workers right now with the two lead agencies. I had lunch on Monday with some of the people who had been former workers that I knew so well and that's their projection, is that if a worker stays 18 months in the private agency, they're considered to be senior employees. And when you've got that kind of a turnover, you're not going to get these details addressed. I like the notification of 72 hours for the court system anytime a child is moved, and I wonder how that's going to be enforced. If Senator Christensen would yield to a question. [LB648]

SENATOR GLOOR: Senator Christensen, would you yield? [LB648]

SENATOR CHRISTENSEN: Yes. [LB648]

SENATOR HOWARD: Senator, I appreciate your putting in this notification period of 72 hours. I think that's very reasonable. My question is, right now it's not being done, how do you see this being enforced and how do you see this actually working? [LB648]

SENATOR CHRISTENSEN: Well, I didn't bring any penalty or anything into it right now. I figured the department in good faith should put it out there, should do this. And if not, we'd have to come back and address it at another time. [LB648]

SENATOR HOWARD: Senator Christensen, I appreciate your faith. When the department is not currently doing it at three days time, I suggest maybe you look at what can be done to enforce that and move it to 72 hours, if you feel that's possible. I'm not opposed to that in any way. I just question what would make us think that that would be done by the department. [LB648]

SENATOR CHRISTENSEN: Well, I agree with you. I struggle that they haven't followed all the rules and regulations we pass now. But, you know, pretty soon if they don't step up and meet what we're requiring, there's going to be a lot of push back to have a change. [LB648]

SENATOR HOWARD: I agree with you. And that's the very reason I brought in the

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accreditation bill that we addressed last week. And Senator Lautenbaugh was very negative regarding picking out pieces of the department to try to enforce. And I think if we don't start picking out pieces of the department to try to enforce, we're letting the whole thing go. And so in terms of notification, you're right on. That needs to be done. It needs to be done as soon as possible. I think we need to be vigilant. You've got a piece of the puzzle here that I support and I think, again, we're just... [LB648]

SENATOR GLOOR: One minute, Senators. [LB648]

SENATOR HOWARD: ...all going to have to be on top of this. Was that time, sir? [LB648]

SENATOR GLOOR: One minute. [LB648]

SENATOR HOWARD: Oh, thank you. I continue to be concerned about the validity or how this will work in terms of foster parent input. Right now, it's supposed to be...the knowledge is supposed to be with the person managing the case and that's supposed to be correctly relayed to the court by the court reports. That can be problematic anytime you deal with human beings, there's problems in terms of communication. But I think in the basic essence of this bill has a lot of qualities that I do support, so thank you. [LB648]

SENATOR CHRISTENSEN: Thank you. [LB648]

SENATOR GLOOR: Thank you, Senator Howard and Senator Christensen. There are no senators waiting to be recognized, Senator Ashford, you're recognized to close on the Judiciary Committee amendment. [LB648]

SENATOR ASHFORD: Okay, thank you. And I'll be very brief, but just to reiterate that foster parents are obviously critical to the process of trying to reunite these children with their biological parents and obviously it does not always happen that way. So we have to look at each one of these initiatives in light of that overriding responsibility or goal which is to reunite children with their biological parents. At the same time, it is clearly the case that foster care parents do develop a strong relationship and in many cases a very positive relationship for the child. And those competing interests are involved in most every case and they become more difficult when a child is removed for whatever reason from a foster home to another foster home or some other place. So with that, I appreciate the discussion and we will continue to work with Senator Christensen and anyone else that's interested to come up with something on Select File that will address these competing interests. Thank you, Mr. President. [LB648]

SENATOR GLOOR: Thank you, Senator Ashford. Members, the question is, shall the committee amendments to LB648 be adopted? All those in favor vote aye; all those

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opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB648]

CLERK: 38 ayes, 0 nays, Mr. President, on the adoption of committee amendments. [LB648]

SENATOR GLOOR: The committee amendment is adopted. Discussion continues. Mr. Clerk. [LB648]

CLERK: Mr. President, Senator Christensen, I now have your original AM888, but I have a note you want to withdraw that, Senator. Thank you. Senator McGill would move to amend with AM868. (Legislative Journal pages 1060-1062.) [LB648]

SENATOR GLOOR: Senator McGill, you're recognized to open on your amendment to the bill. [LB648]

SENATOR MCGILL: Thank you, Mr. President and members of the body. For those who want to follow along on their gadgets or at home, this is actually what was originally my bill, LB80. It was heard before the Judiciary Committee and voted out a little while ago. And my committee members know that I was...and we voted it out with the intention of, I'm trying to get it amended on to Senator Christensen's LB648. Right now when there's a case plan presented in a foster care case, there's a presumption that the case being presented by the state, by HHS, well, it's presumed that it's a good case and so any opposition to that case has to show this preponderance of evidence that the case isn't what's best...the case plan isn't what's best for the child. We're the only state in the Union that requires this preponderance of evidence. So under current law, the case plan is presumed to be in the juvenile's best interest and this bill would place the burden of proof on the state to show that the case plan is in the best interest of the child rather than on the other parties to rebut that presumption. Like I said, again, we're the only state that currently has this. It was brought to my attention by an organization, the Nebraska Court Improvement Project, which one of their initiatives is Through the Eyes of the Child Initiative, they brought this to my attention. I decided to go ahead and make it into legislation here today. In their testimony, which was neutral, they gave us some factual information about how they came upon this. They said that in 2009, the Court Improvement Project contracted with the National Council of Juvenile and Family Court Judges to conduct an assessment of the Lancaster County Separate Juvenile Court. They also reviewed Nebraska statutory and case law. The following was in the findings from this report: Nebraska law provides that HHS case plan is presumed to be in the child's best interest. The assessment team questioned why the burden would be placed on parties to rebut this presumption rather than being placed on the government to show that its plan is in the best interest of a child. A presumption that favors the government in cases with broad authority to significantly intervene in the lives of families is troubling. This is particularly important to be revisited as the HHS...as HHS moves forward with privatization of the case work and the HHS caseworker's role changes due

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to case management rather than...or to case management rather than case plan development. I feel this makes a lot of sense moving forward right now especially with some of the...not to exaggerate, but a little bit of the chaos going on in the courts where the judges haven't...have yet to feel really comfortable with many of the changes going on and are seeing that they, in their courtrooms, are having to make more and more decisions regarding these case plans. Judge Larry Gendler came and testified in favor of this plan, of this bill. He's one of the stars, I guess, or the most knowledgeable folks about the juvenile justice system...and so his feedback, and many of the bills that we have before us are very important, as well as some other judges. The State Bar Association, the Foster Care Review Board, they all felt that this was a good idea and in the best interest of our families. That I hope that I will find your support, and thank you, Mr. President. [LB648 LB80]

SENATOR GLOOR: Thank you, Senator McGill. We move to discussion. Senator Christensen, you're recognized. [LB648]

SENATOR CHRISTENSEN: Thank you, Mr. President. I stand in support of this. Senator McGill come up and asked me about this and I actually talked to the whole Judiciary Committee on this one also, just to make sure that we had the strong interest even though they voted it out. But I want to go back to the court, Supreme Court case of Nebraska in the Jorius G. case and it says the Department of Social Services filed notice of change of foster care placement for two children who had been adjudicated without proper support. The County Court, Lincoln County, held that the placement was not in the child's best interest. Upon review, juvenile review panel board affirmed the DSS appeal and the Supreme Court Wright, J., held that children's foster parents had standing to object to DSS plan to change foster care placement, and foster parents proved by preponderance of evidence that change of placement was not in the best interest of children. And so that's what this bill is doing right here, removing that preponderance of evidence. The Supreme Court has already said it's not in the best interest of the children and that's who we're here to represent and take care of, are the children. So we're actually bringing statute into line with what the courts have said. I think the history has proven out what's happened with the cases that we need to have everybody on the same level when we're looking at what's in the best interest of the kids, whether it's the foster parents, whether it's the biological parents, whether it's foster care system, whatever it is, put everybody on the same level with their evidence so that the best interest of the children can be represented. That's why I stand here in support of this amendment. I hope we can adopt this and advance the bill on. Thank you. [LB648]

SENATOR GLOOR: Thank you, Senator Christensen. There are no members waiting to be recognized. Senator McGill, you're recognized to close on your amendment. [LB648]

SENATOR MCGILL: Okay, thank you, Mr. President and members of the body. Again

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this was a difference in our law from all other states that was brought to my attention by the folks who work on Through the Eyes of the Child initiative. It's supported by the bar, the Foster Care Review Board, many juvenile court judges. I can't speak for all of them, but I know many of them do support this, and I hope I can get your support as well. Thank you, Mr. President. [LB648]

SENATOR GLOOR: Thank you, Senator McGill. The question is, shall the amendment to LB648 be adopted? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB648]

CLERK: 37 ayes, 0 nays, Mr. President, on the adoption of Senator McGill's amendment. [LB648]

SENATOR GLOOR: The amendment is adopted. Discussion continues on the advancement of LB648 to E&R Initial. There are no senators wishing to be recognized. Senator Christensen, you're recognized to close on the advancement of LB648. [LB648]

SENATOR CHRISTENSEN: Thank you, Mr. President. Again I'm just going to ask for your support and if anybody has concerns or suggestions on the amendment that Senator Ashford and I have talked about bringing back on Select, please get ahold of one of our offices and we'll try to work out all the concerns that have been brought forth on that amendment when we'll bring it forth next time. And at this time, I ask for a green vote to advance LB648. [LB648]

SENATOR GLOOR: Thank you, Senator Christensen. The question is the advancement of LB648 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB648]

CLERK: 35 ayes, 0 nays, Mr. President on the advancement of LB648. [LB648]

SENATOR GLOOR: The bill advances. Continuing with General File. Mr. Clerk. The Speaker has an announcement. Senator Flood. [LB648]

SPEAKER FLOOD: Thank you, Mr. President. Good afternoon, members. Just want to let you know I plan to adjourn today, with your help, at 4:00; again at 4:00 adjournment today. We'll be back at it tomorrow morning at 9:00 A.M.; 4:00 P.M. adjournment. Thank you, Mr. President.

SENATOR GLOOR: Thank you, Senator Flood. Mr. Clerk.

CLERK: The next bill, Mr. President, LB682 offered by Senator Mello. (Read title.) Introduced in January, referred to Revenue, advanced to General File. There are Revenue Committee amendments pending, Mr. President. (AM626, Legislative Journal

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page 860.) [LB682]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Mello, you're recognized to open on LB682. [LB682]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. Over the next 15 years the city of Omaha will undertake what will likely be the largest infrastructure project in the history of the state of Nebraska. At a cost expected to exceed \$1.7 billion, the project has the potential to create thousands of new jobs and provide a long overdue jump start in the local construction economy. Unfortunately, this same project will also have the effect of driving up sewer utility costs, forcing some Omaha residents out of their homes, and driving Omaha area businesses out of the state. Much of the discussion surrounding the city of Omaha's federally unfunded mandated combined sewer overflow project has revolved around the effect this massive public works project will have on Omaha area residents whose sewer bills will see dramatic increases over the life of the project. While the severe pain felt by residential customers from this unfunded mandate will be substantial, the potential effect of the CSO's current plan fee structure on industrial water users is potentially devastating to our state and local economies. Of the more than 160,000 water users in the greater metropolitan area, the 29 users who are classified as industrial will be forced to pay 5 percent of the entire project, which averages out to nearly \$3 million for each of these businesses which employ a significant number of metropolitan area residents. Collectively, the top nine water users, six of which reside in my legislative district, employ more than 4,000 Nebraskans, paying an average salary of nearly \$46,000. While the fee structure for this project is largely a local government issue, the impact that the CSO project will have on our state's economy and budget will be deep and extensive. The problem with the Omaha Combined Sewer Overflow is not unique. The city of Plattsmouth currently faces a similar unfunded federally mandated project on a smaller scale. Ultimately, Omaha and Plattsmouth will not be the last Nebraska cities to face such a mandate on their sewer and storm water systems. Communities throughout the state will soon be forced to deal with their aging infrastructure. And without some form of assistance, local taxpayers will be the ones bearing the brunt of this increasingly heavy burden. Plans for both CSO projects had to be approved by the Nebraska Department of Environmental Quality. Omaha's plan was done in 2003 and Plattsmouth's plan in 2009. Since these plans were approved, no attempt to provide assistance to these communities have been made by the state of Nebraska, either by the Governor or the Legislature. As many members will no doubt remember, last year's effort to address the CSO projects came in the form of former state Senator Tom White's LB952, which would have exempted sewer fees paid on CSO projects from state and local sales taxes. While LB682 is also geared toward CSO projects, it takes a completely different approach to solving the problem. Rather than exempting all sewer fees from sales tax, LB682 would allow communities and utilities to apply for state assistance in the form of a turnback of state sales tax on increased sewer fees used to

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fund the project. This mechanism is based upon the same infrastructure financing method developed by our own Senator Brad Ashford when he helped fund the construction of the Qwest Center. Unlike last year's bill, LB682 is not an Omaha only bill. LB682 provides a long-term financing mechanism for all Nebraska communities who may face federally mandated CSO projects. The bill as amended would have little impact on the current biennial budget as it would only apply to sewer...to increase sewer fees after July 1 of 2013 with the committee and my other amendment. As far as the mechanisms of LB682 are concerned, the bill provides a three member board consisting of the head of the Department of Environmental Quality, the CEO of the Department of Health and Human Services, and the State Fire Marshal. Eligible municipalities or utilities would submit an application to the board with a description of the project and the proposed financing and the board would review the application for eligibility. Upon a finding of eligibility, the Tax Commissioner would determine a base level of sales tax from sewer fees as well as the amount of assistance each applicant would be eligible for. Importantly, LB682 also includes safeguards and accountability measures to ensure that any sales tax dollars that are turned back from the state are being used to finance the project for which they were intended. Recipients of assistance under the act must keep any assistance received from LB682 in a separate transparent fund and can only use those funds for the cost of acquiring, constructing, improving, or equipping the eligible facilities, including any financing costs. The Department of Revenue would also submit an annual report on assistance awarded pursuant to the bill, including the amounts of such assistance, the status of each project, and the number of jobs created by each project. Regarding the fiscal note, there are several issues that the body should be aware of. First, the committee amendment makes significant changes to the green copy of the bill, including striking funding for natural gas and water infrastructure projects. This change eliminates the vast majority of the estimated fiscal impact of LB682 in future years. Second, the bill is not intended to apply to the total sales tax on sewer fees used to fund CSO projects, but only to any increases enacted after July 1, 2011, for cities...for villages, first-class and second-class cities, and July 1, 2013, for cities in the metropolitan or primary class. Based on information the city of Omaha provided the legislative Fiscal Office, the total amount of turnback money over the life of the Omaha CSO project would be roughly \$40 million over a 15 year period. Colleagues, over the course of this session we have passed multiple bills that have had an effect of limiting the financing tools available to local municipal governments. Meanwhile, the city of Omaha and Plattsmouth are being burdened with unfunded federally mandated projects that could potentially be devastating to our state's economic recovery. LB682, while I admit is far from a silver bullet solving the problem, represents a strong commitment by the state to assist these Nebraska communities currently facing this federally unfunded mandate project, and also represents a promise to assist other Nebraska communities that could face very similar mandates in the near future. I'd like to thank Senator Cornett and the Revenue Committee for advancing LB682, and I'd like to thank the body for their thoughtful consideration in advancing LB682. Thank you, Mr. President. [LB682]

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SENATOR COASH: Thank you, Senator Mello. As the Clerk has stated, there are amendments from the Revenue Committee. Senator Cornett, as Chair of the committee, you are recognized to open on the amendments. [LB682]

SENATOR CORNETT: Thank you, Mr. President and members of the body. AM626, the Revenue Committee amendment to LB682, rewrites the bill. Section 1 to 11 of AM626 constitutes the Sewer Infrastructure Act; Section 8 which creates the Sewer Infrastructure Fund. The major difference between LB682 as introduced and AM626 as the amendment removes references in the bill to natural gas and water line replacement projects so only the sewer overflow projects could qualify for state assistance under this act. AM626 also requires the cities to invest state sales tax turnback money only in combined sewer overflow projects, and it requires the cities to use their share of the city local option sales tax from the combined sewer overflow projects for the same purposes as the state sales tax turnback. Section 4 of AM626 authorizes the state assistance to any city that constructs or has approved a general obligation bond, issue or revenue bond to acquire, construct, improve and equip eligible facilities. Such state assistance can only be used for certain specified purposes, for example, to repay bonded indebtedness to construct an eligible facility. Section 5 of AM626 requires an application for state assistance and Section 6 of AM626 requires the board established by the bill to issue a finding that the combined sewer overflow project is eligible for state assistance, but only after the board has determined that the application conforms to all requirements for eligibility for state assistance under this act. If the board approves an application, Section 7 of AM626 requires the Tax Commissioner to conduct audits to determine the amount of state and local sales tax revenue collected by the city on the increase and monthly sewer fees on and after July 1, 2013, and annually certify the amount of state sales tax revenue collected by the city on such increased fees to the State Treasurer. Section 9 of AM626 authorizes a city applicant to issue its bonds and refunding bonds to finance and refinance the acquisitions, construction, improvement, and equipping of eligible facilities and public facilities that are part of the same project. The other provisions of the amendment set forth legislative fines, key terms, required Department of Revenue to submit an annual report to the Legislature relating to the Sewer Infrastructure Act, and authorizes the Department of Revenue to adopt rules and regulations to carry out the Sewer Infrastructure Act. Thank you. [LB682]

SENATOR COASH: Thank you, Senator Cornett. Mr. Clerk, there's an amendment to the committee amendment. [LB682]

CLERK: Mr. President, Senator Mello would offer AM1012 to the committee amendments. (Legislative Journal page 1028.) [LB682]

SENATOR COASH: Senator Mello, you are recognized to open on your amendment to the committee amendments. [LB682]

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SENATOR MELLO: Thank you, Mr. President and members of the Legislature. AM1012 is designed to address a concern brought to my office by the city of Plattsmouth. In drafting LB682, the bill was written to only turnback increased sewer fees after July 1, 2013. This was done for two reasons. First, to ensure that the bill did not impact our current biennial budget, but also because the city of Omaha's next planned sewer rate increase was not until 2013. While both the city of Omaha and city of Plattsmouth are dealing with the same type of unfunded federal mandate, the two communities are at different stages in their projects. The city of Omaha only recently began increasing sewer fees to fund the project while the city of Plattsmouth is preparing to enact the last of their proposed increases later this fall. In order to catch this rate increase under LB682, AM1012 would move up the eligibility date for sales tax turnback under the bill for villages, cities of the second-class, and cities of the first-class. With the amendment, sales tax on increased sewer fees on these entities would be eligible to be turned back after July 1, 2011, rather than July 1, 2013. Based on conversations between my office and city officials in Plattsmouth, and Senator Pankonin, the potential fiscal impact of including their proposed rate increase this biennium would be limited, estimated in the range of around \$11,000 to \$13,000. While I believe that moving up the date to July 1, 2011, is...for all cities, would have been appropriate given the fact that the city of Omaha does not have another rate increase until 2013, the amendment would retain the current dates for the cities of the primary and metropolitan class to ensure the fiscal impact this biennium is minimal. I'd urge the Legislature to adopt AM1012 and would appreciate any questions or concerns you may have on this amendment, or I should also state, the underlying committee amendment that Senator Cornett introduced which has a dramatic change to the legislation as it was originally introduced. Most noticeably, Senator Cornett mentioned it removes the water, natural gas piping replacement as part of the bill, but also it ensures that any state sales tax that is turned back under this financing mechanism also is matched with the local option sales tax that is generated by these federally mandated unfunded projects. So the cities and state, neither one, receive that windfall of additional sales tax revenue to help finance the project. With that, I appreciate a green vote. Thank you, Mr. President. [LB682]

SENATOR COASH: Thank you, Senator Mello. Members, you have heard the opening to LB682, the committee amendment, and the amendment to the committee amendments. Those wishing to speak: Senators Heidemann, Hadley, and Pankonin. Senator Heidemann, you are recognized. [LB682]

SENATOR HEIDEMANN: Thank you, Mr. President and fellow members of the body. I've looked at LB682 quite a bit. I will have to say that I am raising up in opposition. If you've known me over the last six or seven years I've been in the Legislature, I'm not crazy about a tax throwback. It's a position that I've had and I probably will continue to have as I serve in the Legislature. I do want to take off and say right away, Senator Mello always says, what have you got against Omaha. I'm going to start out that I don't

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have anything against Omaha. I like Omaha. My wife and I travel up there quite a bit. We stay in their motels, we go down to the Old Market which we like a lot. We buy art work down there. We buy furniture or we redo our house, a lot of times we shop and stay in Omaha. So I have nothing against Omaha. It's an economic driver in this state and I appreciate that Omaha is in this state and everything that does for us. So it's nothing against Omaha. It's nothing against Senator Mello. It's just the fact that I have trouble with the turnback. It is going to be a cost to the General Fund eventually which I, of course, you know, anytime that there's General Fund money involved, I'm going to have to stand up and think about it and let everybody know that down the road that, yes, this is going to cost us and we won't...if we spend it here, if that's a priority of the body then so be it. But we'll have less money to spend in other places. I'm trying to figure out exactly what's behind Senator Mello and him bringing this bill up. Is it a possibility I could get him to yield to a question or two. [LB682]

SENATOR COASH: Senator Mello, will you yield? [LB682]

SENATOR MELLO I'd be delighted to. [LB682]

SENATOR HEIDEMANN You said that this would help communities across the state of Nebraska. I'm trying to figure out who that all would affect. [LB682]

SENATOR MELLO: Senator Heidemann, I think I specifically said at the outset that it would affect the cities of Omaha and Plattsmouth initially since those are the only current two CSO mandated cities by the Environmental Protection Agency. But the way we've drafted the bill we ensure that any municipality regardless of it's size of a village, first-class, second-class, or primary could also qualify for it if they have a federally mandated CSO project. [LB682]

SENATOR HEIDEMANN: Would you anticipate anybody to have a CSO project besides Plattsmouth and Omaha? [LB682]

SENATOR MELLO: At this point in time, that's a decision that's made by the Environmental Protection Agency. That's something that we don't make, obviously, from the state level. It's dictated by the federal government. You know, and some of the research we have seen, the EPA is mandating these projects on municipalities every day. So to say that there is one city that is targeted over another right now, I can't answer that question. [LB682]

SENATOR HEIDEMANN: Would it be hard to argue, though, because I've looked into this, and from what I can gather, there will be nobody else that will be targeted by the EPA as far as CSO is concerned and the way it looks to me, and I don't...if this is what you're after, that's fine. But I want to be up-front with this body that I believe that the only two places that would qualify for this would be Lincoln, excuse me, Omaha and

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Plattsmouth. [LB682]

SENATOR MELLO: Well, I think part of it, Senator Heidemann, to ensure, I guess, a level of transparency regarding LB682, the original legislation actually was more broad in nature and encompassed water, natural gas pipe replacement which pretty much, we know, every municipality in the state is currently looking at or has done or is in the process of doing right now. When the committee in regards to discussing this committee amendment with the Revenue Committee in a sense of trying to narrow down the fiscal impact it would have on the state, it was an agreement that I made that we could look to first start off with the CSO project since we at least know two projects that exist. [LB682]

SENATOR COASH: One minute. [LB682]

SENATOR MELLO: Potentially other ones that may come down the road some day. [LB682]

SENATOR HEIDEMANN: So as you see it right now, as a committee amendment when you put CSO into the language, the only two that are going to qualify, so we get this straight so everybody understands it, is Lincoln (sic) and Plattsmouth. [LB682]

SENATOR MELLO: At this point in time on April 5, 2011, at 3:36 P.M., there are only two cities right now that would qualify for LB682 at this point. [LB682]

SENATOR HEIDEMANN: Omaha, and.... [LB682]

SENATOR MELLO: The city of Omaha and the city of Plattsmouth. [LB682]

SENATOR HEIDEMANN: Okay. I would anticipate that that's the way it would probably stay. And I don't have a problem with that if we want to single out a certain spot if they have a problem that needs to be addressed and if this body thinks the state needs to step up and be part of solving the problem, that's fine. But we just...I just want to make sure there's transparency here, which I know that you're big on that. So the way it looks right now, that the only two communities that would qualify this would be Omaha and Plattsmouth. I will turn my light on again and have some more conversation with Senator Mello down the road. Thank you. [LB682]

SENATOR COASH: Thank you, Senator Heidemann. Senator Hadley, you're recognized. [LB682]

SENATOR HADLEY: Members of the body, good afternoon. There's an old saying, no good deed goes unpunished. I seem to always be the one that votes this out of committee and then ends up talking against it on the floor. I talked to Senator Mello about this and voted it out because I was concerned about Omaha and what was

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happening. It was also before we had had LB...let's see, LB357 from Senator Ashford that gives...will potentially give cities an extra half cent sales tax that could be used for projects like this. So I guess I'm at the position now that I don't...can't support both of them, so I'm having to make a decision about which one I'm going to support, either the half cent that all cities would have. And for Omaha that extra half cent is \$43,818,508 a year. So I have a concern that we're passing this that will give them three to four million dollars a year in state sales tax plus then if we turn around and, I hope, pass Senator Ashford's bill, they will be allowed then to have an additional half cent which brings them in almost \$44 million. So my point is that I think we want to help the cities. Which one is the best? And I think that's something you have to think about. Do you want to go back down the turnback tax route, or do you want to look at an extra half cent that the voters of the city can vote in and use for specific projects? The last thing I'll say, I find it unique that last week we had a discussion about using state sales tax for infrastructure, LB84, and a lot of people got up and were just so opposed to that. What is this? This is using state sales tax going back to a city to use for infrastructure. If we're going to be consistent, you might want to look at that. Again, I voted it out of committee because I was concerned about the city of Omaha. They, like other cities, have taken some hits during this particular session, but I think we have a way, a good way, in Senator Ashford's bill to help all the cities of Nebraska in the future. So I reluctantly stand in opposition to the two amendments and the bill, but I will tell you up-front that I will support Senator Ashford's bill to potentially could mean \$44 million a year for the city of Omaha through an increased half cent sales tax if the people, the citizens of the city of Omaha, wish to tax themselves. Thank you, Mr. President. [LB682 LB357 LB84]

SENATOR COASH: Thank you, Senator Hadley. Senator Pankonin, you are recognized. [LB682]

SENATOR PANKONIN: Thank you, Mr. President. First, for Senator Heidemann when he made his opening, he talked about how much he liked Omaha and he didn't mention Plattsmouth. I'm assuming he likes Plattsmouth a lot. (Laughter) And...or he likes Plattsmouth so much that he wants to pass this AM1012 to the bill because he likes Plattsmouth so much. So we'll find out, I'm sure, down the road. But I do want to talk a little bit. Plattsmouth is in my legislative district. It's the county seat of Plattsmouth and I do think if we're looking at this policy we need to talk about history here a little bit. Senator Mello handed out a piece that explained the sewer separation issue and on that was a map of the United States. And if you look at that map and all the little dots, you can see that as United States developed, the dots from the northeast part of the country moved westward and they ended on the Missouri River. And it was Omaha and Plattsmouth, two of our oldest communities, that had this problem with the combined sewer. And, obviously, we brought it up in the Revenue hearing that, you know, back then the theory was, we'll mix our storm water and wastewater, send it to the Missouri, and it goes downstream, Plattsmouth, you know, St. Louis, on down. And there's a lot of water there and no problem. And it's interesting to note, I live in the community of

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Louisville, it's 15 miles west of Plattsmouth. It was settled 30 years later, a generation later. And Louisville did not have this type of a system. You got away from the river. You went a little further in history, the technology on wastewater, storm water, had already changed. So it is unique for Omaha and Plattsmouth. The history, the fact they were settled so early and in the community of Louisville, about 12, 13 years ago we did redo a lot of our wastewater and storm water sewers. They were already separated but we redid them. Redid our main street. We didn't have help from a turnback and we did it. But I can tell you from living in Cass County that what Plattsmouth has to do and Omaha is a much more massive project. The infrastructure was so old, so deep in many cases, just plain brick type tubes and the technology was so much further behind this, so much more expensive for Plattsmouth and Omaha and that's why I think it should be considered in this body. As Senator Mello mentioned, for Plattsmouth it's probably \$11,000 to 13,000 deal and in the scope of the entire project that small, I think correspondingly it's somewhat the same in Omaha. But it does give those citizens the feeling that the Legislature cares. They understand that because they were two of our state's leading early communities, that because of their history they're penalized by the federal government for a good reason. This is technology that doesn't apply today or hasn't applied, but to get over the hurdle they need our help, or at least the idea that we are trying to help, as their monthly bills go up for these communities, both of them. So I appreciate Senator Mello introducing this amendment, working with the city of Plattsmouth, and all of his work on it, his staff's work, and so I would ask for your consideration of AM1012. Thank you, Mr. President. [LB682]

SENATOR COASH: Thank you, Senator Pankonin. Those wishing to speak: Senators Utter, Wallman, Mello, Price, and others. Senator Utter, you're recognized. [LB682]

SENATOR UTTER: Thank you very much, Mr. President. Good afternoon, colleagues. Let me start out by saying that I, too, like Omaha and we go there quite often. We have a granddaughter that lives in Omaha and we seem to be drawn there by the activities and the things that happen. I also like Plattsmouth, Senator Pankonin, for your information. And I really like Louisville. You know, I've been there and I'm impressed with Louisville, and so I'm a fan of these cities. And I don't get up this afternoon to talk about the fact that I don't like or don't respect the fact that these are cities and they're important to the economy of this state, and Omaha in particular is an important hub for our state. But I am concerned about the tax policy that we are doing here. I have, like Senator Heidemann, not been a fan of the turnback tax and it seems like we are becoming more and more creative as we move along in ways that we can use turnback tax. If you remember back to last session, I think it was Senator Christensen had a bill to use a turnback tax in the Republican River Valley. I believe it was Senator Loudon had a bill to use a turnback tax and is part of the solution to the White Clay problem. And it seems to me like it's really becoming an overused piece of our tax structure today. Now this one, at one time was probably the biggest turnback tax we were talking about, this all beginning with the Qwest Center, the CSO project in Omaha certainly was

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a huge project and it's in the bill that we considered last year. I appreciate the fact that it's been amended and it's not as big a turnback tax as it was a year ago or even as Senator Mello introduced the bill this year. I have great respect for Senator Mello and the things that he does for his community. He works very hard for them. But I think we have to take a look at where we're going with the turnback tax and what we're going to do with turnback taxes. I see this, frankly, as kind of an erosion of the state's tax base because those are funds that frankly the state has been able to use. I also see it as a method that we help out Omaha that we need to help out every other city in the state with some type of turnback revenue. I will talk to you just briefly about Hastings, my town. The nitrate problem is gradually coming towards Hastings and Hastings is going to have to spend a substantial amount of money one of these years because of the makeup of our fresh water system to deal with that problem. The city of Hastings has also sewer problems to contend with. And they have down through the years made substantial improvements to the infrastructure in the city of Hastings. Never once, I don't think, the thought of getting some type of sales tax relief has entered their mind. And so down through the years they have paid an awful lot of sales tax. Frankly, coming down the road I see a whole lot more... [LB682]

SENATOR COASH: One minute. [LB682]

SENATOR UTTER: ...sales tax for them to pay that would not be covered under Senator Mello's bill. And so I rise this afternoon, regretfully, in opposition to the bill that my colleague, Senator Mello has introduced. I don't feel good about my position but I think it's important from a tax policy standpoint that sooner or later we have to call an end to the expansion of turnback taxes or the state has lost an awful lot of it's revenue base. Thank you, Mr. President. [LB682]

SENATOR COASH: Thank you, Senator Utter. Senator Wallman, you're recognized. [LB682]

SENATOR WALLMAN: Thank you, Mr. President. River cities. You've got to love river cities, federal mandates. Was there ever any plan from the federal government to pay for some of these mandates? No. Why was that? Because they didn't have the money. So neither do we have the money. But Senator Mello is trying to work out a solution here and I see nothing wrong with the toilet paper tax, Senator Mello. (Laughter) And would you yield to a question, Senator? [LB682]

SENATOR COASH: Senator Mello, will you yield? [LB682]

SENATOR MELLO: Absolutely. [LB682]

SENATOR WALLMAN: Thank you, Senator Mello. Is there a plan B if this doesn't pass? Do you have any other thing in the tool box or so that you could use, you think, that

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could fund this thing? I know it's a massive undertaking. [LB682]

SENATOR MELLO: That's a great question, Senator Wallman. And unfortunately, no. There is no plan B. Right now, residential, industrial, and commercial water users in the greater metropolitan area will face, you know, 200 percent increases in their sewer fees and with the passage of LB682 that would help alleviate some of that burden and some of that tax increase that is being put on them. But if not, there is no guarantee of any additional federal assistance and we're very limited in regards to what we can do under state statute to help finance the unfunded mandate. [LB682]

SENATOR WALLMAN: Thank you, Senator Mello. I, too, have concerns about jobs and we put this on industry, they will move. We know that. They move with incentives here and there and everywhere. So it's a water issue. Maybe it ought to be a state, on the NRDs or something like that, a small fee. We've got to keep our cities. That's where the jobs are and we don't want to lose them. We don't want to lose good people with good wages. And I commend Senator Mello for trying to find something to do here. I'll see what the conversation goes like. Thank you, Mr. President. [LB682]

SENATOR COASH: Thank you, Senator Wallman. Those still wishing to speak: Senators Mello, Price, Heidemann, and others. Senator Mello, you are recognized. [LB682]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. I appreciate thoughtful consideration from Senator Hadley and Senator Heidemann and Senator Utter in their opposition. And I wouldn't be doing my job, I guess, if I wasn't able to refute a few of the points that have been made on the floor today. First off, the whole issue of whether or not this is a choice between a local option sales tax and a turnback tax is purely in the minds, I would say, of the beholder in making that argument. Currently, right now, with no passage of LB682, cities that face a federally mandated unfunded project like the cities of Omaha and Plattsmouth have very few options to finance this. Cities of Omaha and Plattsmouth have chosen to finance it through increasing sewer rates. Those increased sewer rates by choosing that financing mechanism is a windfall in sales tax to both the city as well as to the state. If these two cities chose a different way of financing, we wouldn't even be having this conversation on LB682 because there wouldn't be a conversation to be had. We wouldn't be talking about turning back any money because the state wouldn't be receiving the money in the first place. That is the underlying issue. I've tried to have this conversation with multiple colleagues which is, this bill helps those communities who choose to finance these federally unfunded projects with not relying on property taxes. That their choosing to increase fees through using their sewer fees instead of raising property taxes, thus we should try to provide some assistance to them. The unique component, though, too, and I hope I've laid it out in my intro, is that the state will still receive some sales tax money from these projects. The state right now is receiving roughly \$2 million from the city of

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Omaha on sales taxes paid on the CSO project. That will remain flat if we adopt LB682. The state won't lose any money. And as sitting as a member of the Appropriations Committee, and I know Senator Heidemann can attest to this, I've raised this question multiple times of whether or not our own economic forecasting board or the Department of Revenue uses any revenue projections on potentially unfunded mandated projects in regard to our economic forecast. They say no, neither one. We don't plan on receiving additional state sales tax on projects that may or may not come due to a federal mandate. So the concept of saying that we're choosing between one or the other, I think is a false premise. And while I respectfully disagree with my friend and row mate, Senator Utter, tax policywise, I think a \$1.7 billion project at least for the sake of Omaha's project, knowing that the city of Plattsmouth is about finished with theirs in regards to raising their sewer fees to pay for it, a \$1.7 billion infrastructure project, I think rises to even a higher level than the creation of the Qwest Center which was the mechanism or the foundation of what this bill has been created on, as well as the bill we passed last year with Senator Lathrop creating an arena turnback tax for small arenas. So I know Senator Hadley eloquently mentioned that we had discussed infrastructure financing using sales tax a couple of weeks ago, which we did, I would say state precedent has been established by the legislation that created the Qwest Center turnback as well as last year's legislation that created a turnback for the arena that's soon to be built in the city of Ralston as precedent. We've done this. We've done local infrastructure financing. This project rises to a whole another level of anything we've ever seen, not only because of the price tag and the length of the project... [LB682]

SENATOR COASH: One minute. [LB682]

SENATOR MELLO: ...but this is not going to be generating new sales tax, so to speak, over the course of the project like a Qwest Center or a Ralston city arena. That generated new sales tax. This is trying to stave off what will no doubt be the largest tax increase in the greater metropolitan area on residential water users as well as business water users. So that is what we're trying to do here is stave off a tax increase with this legislation. We might not be generating additional new sales tax over the 15 year period. But I also remind you if you read the legislation, when the project is done, when the project is financed, the state then does receive the sales tax that was going back to the local project as does the municipality. So at least in the city of Omaha's case, this is a short-term tax relief component where while the project is finished, the state and the city received the benefit of this increased sales tax over 15 years, we're just trying to help alleviate some of the pain... [LB682]

SENATOR COASH: Time, Senator. [LB682]

SENATOR MELLO: ...that businesses and residential property owners will have to pay. Thank you, Mr. President. [LB682]

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SENATOR COASH: Thank you, Senator Mello. Senator Price, you are recognized. [LB682]

SENATOR PRICE: Thank you, Mr. President and members of the body. As I was reading the bill, looking at it, I had some initial thoughts and I read and I think I'm getting a better understanding, so I'm going to read off some questions. I don't know how much more time we're going to spend on this bill but maybe people will think about it and then will come back with more information. My first question is, what are all the municipalities that currently are going to pay the tax and the fees? When we talk about the sewer separation in Omaha, it's not just Omahans paying into that. There are many municipalities around Omaha such as Bellevue and Papillion who will be paying into the sewer separation costs. While we already have a separated sewer but we're paying into it. So the question is, when we say we're benefiting Omaha with this, are the other municipalities going to benefit directly with this? Because as I read the bill, it seems you have to have a CSO going on. Well, technically, there's no CSO going on in Bellevue or Papillion. So we're paying into it but without a CSO project, it doesn't look like...and I'll be glad to be corrected, it doesn't look like we're going to be able to get anything back on that. So pay in, and don't expect back. That's a...that could be a problem. And the next thing is, what about, should there be federal funds that came down, if our federal delegation or something happens and some money comes down, do we sunset this? Is it done or do we keep collecting a tax that goes into another pot and get the money (inaudible)? So I would like to perhaps entertain a discussion off the mike with everybody how we would amend the bill such that if monies did come down for multibillion dollar project, you would sunset it or you would end it other than the obligations as already, you know, accrued, perhaps in the bonding aspect here. So again the questions that come to me is, you're collecting fees, taxes on fees, fees on fees, from multiple municipalities for only one seems to be eligible to take advantage of it. Thank you very much, Mr. President. [LB682]

SENATOR COASH: Thank you, Senator Price. Mr. Clerk, for announcements. [LB682]

CLERK: Mr. President, I have just one announcement that Senator Sullivan would like to add her name to LB600. (Legislative Journal page 1062.) [LB682 LB600]

And I do have a priority motion. Senator Fulton would move to adjourn the body until Wednesday morning, April 6, at 9:00 a.m.

SENATOR COASH: Members, you've heard the motion to adjourn. All those in favor say aye. All those opposed, nay. We are adjourned. (Gavel)