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Floor Debate
April 07, 2011

[LB54 LB136 LB177 LB202 LB204 LB229 LB237 LB251 LB334 LB363 LB382 LB384
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SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the fifty-ninth day of the One Hundred Second Legislature, First Session. Our chaplain for today is Pastor Don Nunnally, retired United Methodist pastor in Lincoln. He's the guest of Senator Bloomfield and Senator McGill. Please rise.

PASTOR NUNNALLY: (Prayer offered.)

SPEAKER FLOOD: Thank you. I call to order the fifty-ninth day of the One Hundred Second Legislature, First Session. Senators, please record your presence. Record please, Mr. Clerk.

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

SPEAKER FLOOD: Thank you, Mr. Clerk. Are there any corrections for the Journal?

ASSISTANT CLERK: No corrections this morning.

SPEAKER FLOOD: (Gavel) Are there any messages, reports, or announcements?

ASSISTANT CLERK: No messages, reports, or announcements this morning, Mr. President.

SPEAKER FLOOD: Thank you, Mr. Clerk. We now proceed to the first item on the agenda. Members, we go to LB682. When we left LB682 yesterday morning, we had the bill and the committee amendment under consideration. Is that correct, Mr. Clerk?
[LB682]

ASSISTANT CLERK: Yes, it is, Mr. President. LB682 was introduced by Senator Mello. (Read title.) [LB682]

SPEAKER FLOOD: (Gavel) [LB682]

ASSISTANT CLERK: The bill was under consideration yesterday, at that time committee amendments were pending. (AM626, Legislative Journal page 860.) [LB682]

SPEAKER FLOOD: Thank you, Mr. Clerk. Senator Mello, you are given 1 minute to

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quickly update the Legislature on LB682. [LB682]

SENATOR MELLO: Thank you, Mr. President. Members of the Legislature, LB682 adopts the infrastructure financing act that we've discussed over the last two days. While the original bill was more encompassing of water and natural gas piping as well as sewer replacement, the committee amendment which I support, AM626, restricts the bill exclusively to sewer separation projects affected by CSO cities, which currently is the city of Omaha and Plattsmouth are the only two municipalities that are affected under the bill. I'd urge the body to adopt AM626 as well as LB682. Thank you, Mr. President. [LB682]

SPEAKER FLOOD: Thank you, Senator Mello. Senator Utter, as the Vice Chair of the Revenue Committee, can you briefly summarize AM626 for the Legislature? [LB682]

SENATOR UTTER: Thank you, Mr. President. Good morning, colleagues. AM626 is really just the cleanup portion Senator Mello's bill and it is...it contains stuff in it that is important to the bill but virtually just cleans it up. [LB682]

SPEAKER FLOOD: Thank you, Senator Utter. All right. Let's turn to discussion on LB682 and AM626. Senator Smith, you're recognized. [LB682]

SENATOR SMITH: Thank you, Mr. President, and good morning, colleagues. I rise again this morning in support of LB682 and AM626. I rise in support of this bill on behalf of businesses, particularly those in the Omaha metro area, the larger water users and those support businesses that are impacted by this unfunded mandate, and also on behalf of the taxpayers that depend on these businesses for their livelihood, for their jobs. Those that believe this is only an Omaha issue, I'm just asking please do not put businesses and jobs in the crossfire between the Legislature and the Omaha leadership that truly do need to be doing something to support these businesses. And for those of you that say this is not a Nebraska issue, that it's only an urban issue or only an Omaha issue, I just ask you to consider the ripple effect across Nebraska and the ripple effect they would have on tax revenues for the state, if we were to lose a single one of these large water users to another state, the ripple effect it would have on those support businesses and on those families that are taxpayers in this state that depend on these businesses for their livelihood, for their jobs. And for those of you that would say this is really not enough, that it would really only affect these large users and these businesses on the back end and not up front, I agree. It is a small effect that it's going to have but it's an effect nonetheless. It's a nod towards the business community, towards our private sector. It's a nod saying we understand, we understand that you are the goose really that lays the golden egg that supports the services that we have in this state, and we're going to stand there with you and we're going to do whatever we can to help you. I know we're limited. I do not like the turnback methods for taxes. I know that that's not ideal. But it's time for us to stand up for the private sector and to say, you know, we're

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there with you, we want to help you, and we understand that this is...these unfunded federal mandates are hurting you. So once again, colleagues, I ask that you vote green on this amendment and on this bill. Thank you, Mr. President. [LB682]

SPEAKER FLOOD: Thank you, Senator Smith. There are no other lights on. Senator Cornett, you're recognized to close on AM626. [LB682]

SENATOR CORNETT: Thank you, Mr. Speaker and members of the body. I urge the body to adopt the Revenue Committee's amendment. It significantly rewrites the bill and limits the scope and the fiscal note. It requires the cities to use their own sales tax turnback along with the state sales tax turnback and excludes the natural gas. Thank you. [LB682]

SPEAKER FLOOD: Thank you, Senator Cornett. Members, you've heard the closing on AM626. The question before they body is, shall AM626 be adopted? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB682]

ASSISTANT CLERK: 34 ayes, 0 nays on the adoption of committee amendments, Mr. President. [LB682]

SPEAKER FLOOD: The committee amendments are adopted. We now turn to discussion on LB682. Seeing no lights on, Senator Mello, you're recognized to close on LB682. [LB682]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. I appreciate the thoughtful dialogue over the last couple of days on what is a very complex issue, but hopefully we can move LB682 to Select File. And there's some other ideas that some senators have given me to help improve the bill, try to make it more expansive to incorporate other communities that face similar local infrastructure financing challenges. But at the end of the day, LB682 tries to provide that hand of cooperation to local governments who are facing an unfunded federal mandate. It happened to deal with an issue that was by no means something that they chose to rectify the way the federal government has made them to do it, as well as the taxes and fees that they are paying against their will because of what some would say would be an overstep of the EPA's boundaries on this issue. There's been thoughtful dialogue. And I really do want to single out Senator Heidemann and Senator Utter, two colleagues who I work with. I don't always agree with them on issues. And they've been fairly principled in their opposition to this bill because they don't support this style...the turnback tax style financing mechanism that we are using to help provide some relief to the cities of Omaha and Plattsmouth. I appreciate their opinions. I appreciate their thoughts. Some ideas that have been presented I will be looking into, hopefully with the passage of LB682 to Select File, to see if there's a way we can make it work for other

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communities. But the underlying issue that has never generally been presented in this argument is why the state should benefit from the unfortunate federal unfunded mandate placed on these two cities and that the opportunity that we have as a Legislature to provide a mechanism to these two communities starts to repair that relationship that we have heard throughout the session that has been frayed: the elimination of state aid to counties and cities; the limitation of occupation taxes; the limitation of commuter fees; the limitation in regards to some of the funding that we have currently in the budget that was going to cities and counties that no longer will be there. We have a frayed relationship right now with our local governments, the government that's closest to the people in the state of Nebraska. The two governments that are affected by LB682 at this point are simply asking for relief in the sense that taxes that they are mandatorily being asked to pay, for us to provide a portion of that back to them. With the adoption of the committee amendment, local governments have to also put up their local option sales tax money into the same fund that the state would put their money into to help pay for these projects to get them done faster, to lower the cost of the project and the fees that residential, commercial, and industrial users would pay on these sewer separation projects. Both the state and the local community has skin in the game. And what LB682 is trying to do is to simply provide a little bit of relief to those taxpayers who right now are shouldering the entire burden themselves. I urge the body to adopt LB682, move it to Select File. We have some suggestions and ideas to improve it that we'll be looking into. And I would appreciate your support. Thank you, Mr. President. [LB682]

SPEAKER FLOOD: Thank you, Senator Mello. Members, you've heard the closing on LB682. The question is, shall LB682 advance to E&R Initial? Senator Mello, for what purpose do you rise? [LB682]

SENATOR MELLO: Can I get a call of the house, Mr. President? [LB682]

SPEAKER FLOOD: There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB682]

ASSISTANT CLERK: 35 ayes, 0 nays to go under call. [LB682]

SPEAKER FLOOD: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senators Adams, Schilz, Hadley, Janssen, please record your presence or return to the floor. Senator Mello, all senators are present or otherwise accounted for. Members, the question before the body is...Senator Mello? [LB682]

SENATOR MELLO: Could I request a roll call vote, reverse order, please? [LB682]

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SPEAKER FLOOD: A roll call vote in reverse order has been requested. Members, the question before the body is, shall LB682 advance to E&R Initial? Mr. Clerk, please read the roll in reverse order. [LB682]

ASSISTANT CLERK: (Roll call vote taken, Legislative Journal page 1078.) [LB682]

SPEAKER FLOOD: (Gavel) [LB682]

ASSISTANT CLERK: Vote is 25 ayes, 17 nays, Mr. President. [LB682]

SPEAKER FLOOD: LB682 advances to E&R Initial. I do raise the call. Mr. Clerk, we now proceed to General File, 2011 committee priority bills, Ashford division. We begin with LB177. [LB682 LB177]

ASSISTANT CLERK: Mr. President, LB177 was introduced by Senator Campbell. (Read title.) The bill was read for the first time on January 7; it was referred to the Committee on Health and Human Services; that committee placed it on General File with committee amendments. (AM713, Legislative Journal page 886.) [LB177]

SPEAKER FLOOD: Senator Campbell, you're recognized to open on LB177. [LB177]

SENATOR CAMPBELL: Thank you, Mr. President, and good morning, colleagues. I want to thank the Health and Human Services Committee for making... [LB177]

SPEAKER FLOOD: (Gavel) [LB177]

SENATOR CAMPBELL: ...LB177 a priority designation. In 2008, Congress passed legislation entitled the Fostering Connections to Success and Increasing Adoptions Act. President George W. Bush signed it into law. The federal law requires many specific items of the states. LB177 focuses on three major principles: notifying adult relatives of a child's entry into foster care; making reasonable efforts to place siblings together or provide for visitation; and helping older children out of foster care and make that transition. LB177 is necessary because it sets forth what the Nebraska Department of Social Services will do and how the judicial system will help to ensure that children are given the greatest possible chance for: number one, adoption; for, number two, staying connected to their family members if that is desirable and acceptable; and, number three, to transition out of foster care when they reach adulthood. This legislation represents more than a year and a half of work with the Department of Health and Human Services, and I would like to thank the Division of Children and Family Services in particular for their help my office received from the start. Subsequently, our office worked with the department as well as representatives from Appleseed and the Supreme Court's initiative, Through the Eyes of the Child. A great number of people

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came together to ensure that this bill could have all of the points needed. The department raised some concerns at the hearing this session and yet again we have worked to resolve those concerns. The bill was advanced with amendments on March the 9th. The Nebraska Department of Social Services has informed me that, with the committee amendment that you will see in a moment, there is no fiscal impact. And for all of us having bills in the Legislature this year, that's important. We all know the importance of family in our own lives. Consider this in siblings, for children of two or three brothers or sisters who are removed from their home. LB177 stresses that we know from best practices that placement with kin is so important. The department must research and report for the court within 30 calendar days of the kin that they have found to help these children. The second most important is the placement with siblings if safety and well-being of children will allow. This is a lifetime connection. This was brought home so eloquently to me three years ago at our annual dinner of our agency and we printed some past pictures of children in activities as they had stayed with our agency, CEDARS. And one of our board members shared that annual report and those pictures with a woman who had become friends with their family. And she looked at the pictures and she said, that's me! And it was a little girl in front of a birthday cake blowing out the candles with a number of children around her. And she said that is the only picture I have of me and my three brothers. Folks, keeping siblings together is a huge issue. The final stage of this bill deals with aging out. At 19, anyone of our young people who are still in foster care transition out. This bill calls for a transition plan to be put into place at the age of 16 so that we can help that young person transition out of foster care and be ready. For a number of our young people in foster care, they really have no one. They may not have a parent. Their parent may be so unattached from them through drugs or whatever or may be in prison or may be deceased, and then in many cases they have no other relatives. And if you think about your own children as they mature--and for a number of our younger members, they will get there--they call you and they'll say, how do I sign a lease for an apartment, how should I apply for a job, how do I go about buying a car, do I need renter's insurance, and on and on and on. If you have no one to rely on, we need to prepare those young people to transition out at age 19. And I feel strongly about this because this year it was reported to me that one of the transition plans stated to the young person: when you age out, take your belongs and go to the People's City Mission. And, folks, there is a six-month wait at the Lincoln People's City Mission even to get into the residence. This should never happen. That is why LB177 is so important and I want to thank everyone who has touched this bill and also to remind my colleagues that in this past week or so you would have gotten your state legislators magazine with a great short article on five things that lawmakers need to know about foster care, and item number three is how important kinship and siblings are. So I hope you'll take time to read the article because it really does stress what we're trying to do in LB177. Thank you, Mr. President. [LB177]

SPEAKER FLOOD: Thank you, Senator Campbell. Members, you've heard the opening on LB177. (Visitors introduced.) Mr. Clerk, there is a committee amendment, AM713.

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Senator Campbell, as Chair of the Health and Human Services Committee, you're recognized to open on the same. [LB177]

SENATOR CAMPBELL: Thank you, Mr. President. My remarks will be brief because the amendment really does become the bill. I do want to stress that in a transition plan--and I've been asked this question so I decided to add it to my remarks--what are the types of things that we would put into a transition plan for a young person aging out of the system? And, obviously, we would help them plan for some education, how to apply for grants and aid if they plan to go on to college or what technical schools might be available. We also would hopefully put down how to deal with employment issues and where their skills might be best placed if they would like to go on to take a job and not go to school, how to plan for healthcare. And this is one of the issues that I hope the Health and Human Services Committee and the LB603 Oversight Committee will begin looking at. For our foster children who age out of the system, they then... [LB177]

SPEAKER FLOOD: (Gavel) [LB177]

SENATOR CAMPBELL: ...have no access to healthcare, and that is an issue that we need to take care of that. Some of them would be eligible for Medicaid but a large number, probably not. So we need to take a look at that. A transition plan would also have some financial planning in it and how to look for and plan for their housing needs. LB177 is an important step for the state of Nebraska and I cannot emphasize enough the cooperation that we had with the department and their staff, who work with foster children everyday, in putting this bill together and the intricacies of it as well as the Supreme Court's staff in making sure that it complied and focused on Eyes of the Child initiative. Thank you, Mr. President. [LB177]

SPEAKER FLOOD: Thank you, Senator Campbell. Members, you've heard the opening to AM713 to LB177. Mr. Clerk. [LB177]

ASSISTANT CLERK: Mr. President, I do have amendments to the committee amendments. The first from Senator Howard was AM848 but, Senator, I have a note to withdraw this. [LB177]

SENATOR HOWARD: Yes, sir. [LB177]

SPEAKER FLOOD: AM848 is withdrawn. [LB177]

ASSISTANT CLERK: Senator Howard would offer AM1110. (Legislative Journal page 1074.) [LB177]

SPEAKER FLOOD: Senator Howard, you're recognized to open on AM1110 to AM713. [LB177]

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SENATOR HOWARD: Thank you, Mr. President and members of the body. AM1110 is a change to correct some confusion about the placement of children who have biological siblings who have been placed outside the home. And I want to thank Senator Campbell. She's done an outstanding job of her work on LB177. And we've discussed this and she's graciously allowed me to put this amendment on. I'm going to go through this, present this to you, and then give you some additional information. State policy in the federal Fostering Connections Act explicitly emphasize the importance of maintaining sibling relationships, but there has been some question as to the status of the relationship if, for example, a child is born after his or her siblings have been removed from the home or adopted. Although LB177 does make effort to clarify this by referring to the biological and legal siblings, I want to make crystal clear our intention to ensure that the right to sibling relationship is not infringed upon when the state makes placement decisions. To this end, AM1110 requires that, regardless of legal status, biological siblings are a part of the family unit and shall be considered when the department is making placement decisions. I emphasize that it does not say "may," it says "shall" be considered when the department is making placement decisions. It is well-settled case law that siblings have the right to a present and future relationship and the importance of these family ties for children caught up in the system is well documented. And Senator Campbell gave you a very excellent example of how important this is and how even years and years later that tie remains. Among other things, when children are placed with their siblings, they are not burdened with wondering about their sibling's safety. They're assisted in maintaining a sense of identity and knowledge of their family and their cultural history and they can provide natural support and a sense of belonging to one another. In some cases, siblings are the only lasting support a child in the system has. I believe AM1110 will also ensure that we are in compliance with the federal Fostering Connections Act which requires all reasonable efforts be made to ensure that a child placed with his or her siblings, unless the state can document some kind of endangerment to the child's safety or the child's well-being. This morning when I came in, I was informed by my staff that I had gotten yet another call from the department, and apparently the department has some confusion about the term "family unit," which to me seems pretty clear-cut. But what I'd like to do is I would like to give this amendment an opportunity for discussion, and then if it's felt that we should take this further, this can be placed on Select File. So I'd appreciate your thoughts on this. Thank you. [LB177]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: Thank you, Senator Howard. You have heard the amendment to the committee amendment, the committee amendment, and the opening to LB177. Members wishing to be heard: Senator Hansen, you are recognized. [LB177]

SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. I, too,

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want to rise and thank Senator Campbell for introducing this. And if she would yield, I have a couple of questions for Senator Campbell. [LB177]

SENATOR GLOOR: Senator Campbell, would you yield? [LB177]

SENATOR CAMPBELL: Yes. [LB177]

SENATOR HANSEN: Thank you, Senator Campbell, and good morning. There was a fiscal note on the original green copy of the bill. Can you explain how that got taken down to zero and what the changes are in the bill? [LB177]

SENATOR CAMPBELL: Thank you for your question. And basically after the hearing, the department had a number of issues in terms of the wording more than anything else, Senator Hansen. So all the staffs got together and looked at the technical language to ensure that we were not creating...I think it had more to do with creating areas that we would need money. And the department is now in full agreement and concurs that there will be no fiscal note and impact to LB177 because of that change in language. The amendment really took all of that away. [LB177]

SENATOR HANSEN: Well, congratulations on that part. That will make things much easier. I do have a few comments on placing siblings together. Sometimes siblings don't get along. Sometimes they fight. Sometimes they're the reason why they're taken out of the home. This bill addresses that. It addresses siblings that, even though they may not live together, that they still need to spend time together, and that's really important. And the story you told about the birthday cake and it was the first time that that child had had a picture of her and her brothers, that's extremely important to that young adult or that young person, and as they become an adult they will remember that. The adult relatives are extremely important in this bill, too: the grandparents, the aunts, the uncles, or the adult siblings. And one question I would have again for Senator Campbell, but she doesn't need to yield to this one, was what age does an adult sibling become a very good role model for that younger child? And I'm sure that they will take that into consideration and the department will take that into consideration and I feel confident that they would do that and they'd take that into consideration. Some of the main points I want to make about this amendment is the aging out process. And I've talked to local people in my district and they're very willing to help with this project. There are rotary clubs, Kiwanis clubs, youth organizations or youth classes in churches that would love to mentor these young people as they transition out of foster care into the community. I think we need to provide that community support or we're going to get a fiscal note sooner or later. And I don't think the department can continue to do this for a long period of time, but still these young adults that are joining the community need to have some mentoring. They get mentoring in junior high. They get mentoring through Tom Osborne's TeamMates through high school, but then that all quits. That all stops. Community Connections is another youth mentoring program but it stops at the time

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that those children become adults. The communities need to look into this. I've talked to my community foundation. The name of it's the Mid-Nebraska Community Foundation. They need a grant written but they said that they would accept something like this because it mentors new adults into the... [LB177]

SENATOR GLOOR: One minute. [LB177]

SENATOR HANSEN: Thank you. It mentors young adults into the community to become successful mentors. I have attended meetings through the Foster Care Review Board where they've talked to...there's been panels of young adults that they get these letters, and all youth do, about the time they become age of majority. They get letters from credit card companies. There was one young lady there said she thought that that was a debit card to someone else's account, so she used it. Had no responsibility in the payment process because that was never explained to her. These community organizations, for lack of other word, would like to mentor. I think that they would like to mentor. I think we should encourage that "mentorship" in these young adults to get them involved in the community with financial and community responsibility. Thank you, again, Senator Campbell, for bringing this and thank you, Mr. President. [LB177]

SENATOR GLOOR: Thank you, Senator Hansen. Senator Pirsch, you are recognized. [LB177]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I wonder if Senator Campbell might yield to a question. [LB177]

SENATOR GLOOR: Senator Campbell, would you yield? [LB177]

SENATOR CAMPBELL: Yes. [LB177]

SENATOR PIRSCH: Thank you. And I'm trying to get an understanding statewide of uniformity. I know these...there's three parts to this bill, right, that you're hoping to have codified, and certain of these elements are at least factors employed by the department in at least certain areas of the state currently, is that right? [LB177]

SENATOR CAMPBELL: That's correct. This is the federal law, Senator Pirsch. And what LB177 does is to take the federal law and its principles and make them applicable to Nebraska and how the department will implement them and the court will respond. [LB177]

SENATOR PIRSCH: And I guess my question is, is the problem here...and this is a 2008 federal law, but is it a federal law that mandates that the states must...that all...that these three principles must be in effect by federal law or is this something that is saying that's permissive, that the states are allowed to and encouraged to do this? [LB177]

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SENATOR CAMPBELL: Senator Pirsch, that's a very good question. Parts of the fostering connection bill are optional to the states and parts are mandated. These three principles, as I best remember them, are mandated in some form or another in the national legislation. But the department is taking a very proactive view of the national legislation, and so many of the items that are optional they are adopting and putting into place. And that's why I feel strongly that LB177 has had the cooperation of both the courts and the department. [LB177]

SENATOR PIRSCH: Is this particular bill, LB177, though putting into Nebraska statute parts that the federal government said are optional or is this just restating that which is already federal law, making it also Nebraska law as a symbolic statement then? [LB177]

SENATOR CAMPBELL: Senator Pirsch, I believe it's more than a symbolic statement. That's why we've had to work so hard on all the technical language and making sure it does take those mandates, it does take those options, but it is not just a mere restating. It puts together and in place how Nebraska will implement those, and that's what's important. Fourteen other states actually have taken the federal law and done what we are doing and adapted it in making sure that it fits how our system will implement it. So it's more than a restating. Yes. [LB177]

SENATOR PIRSCH: Okay. Very good. So it fleshes out in more detail than concrete terms the way that these...that the federal government has prescribed these three general principles to be...to have the rule of law. Is that correct? [LB177]

SENATOR CAMPBELL: That's correct. [LB177]

SENATOR PIRSCH: Okay. Well, that's very helpful and I appreciate your explanation there. And I guess I would just ask one further question, is currently with respect to statewide practices and with respect to these three areas, is there a great variance area from one area of the state to another and...or are things pretty uniform? I mean, is area of the state one consideration where there are differences now with respect to these three principles? [LB177]

SENATOR CAMPBELL: You know, Senator Pirsch, I think it probably does vary in parts of the state and I think the department has pledged to really... [LB177]

SENATOR GLOOR: One minute. [LB177]

SENATOR CAMPBELL: ...step up in terms of how they apply these principles, but some of it also just has to do with the lack the services in place. And so the department will also need to worry about that and I think work hard to take care of it. [LB177]

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SENATOR PIRSCH: Wonderful. If you'd like to take the few seconds left, I'd yield the balance to Senator Campbell. [LB177]

SENATOR GLOOR: Senator Campbell, 35 seconds. [LB177]

SENATOR CAMPBELL: I'll waive the (laugh) 35. Thank you, Senator Pirsch. [LB177]

SENATOR GLOOR: Thank you, Senator Pirsch, Senator Campbell. Senator Sullivan, you are recognized. [LB177]

SENATOR SULLIVAN: Thank you, Mr. President, and good morning, colleagues. I don't often speak on these subjects when it pertains to the Department of Health and Human Services because I still feel like I'm learning a lot about the intricacies and complications of this department. However, it does not mean that I care any less about children and families, in fact, that's one of my concerns, and to that end I serve on the board of the Nebraska Children and Families Foundation. One of that foundation's major initiatives is the foster care initiative. And in the course of membership on that foundation in going to some of their board meetings and some of the presentations that they've had, we've heard from many youth that have been in foster care and there have been many heartfelt stories presented by these young people, stories of courage, complication, and rising above some very difficult circumstances. And I will say that many of the efforts by the foundation fit very nicely into the details of LB177. So when we talk about public-private partnerships and the need to support these children, I think some of the structure is there and I think this will only embellish and encourage the foundation to do the work...to continue to do the work they're already doing. For example, one of the things that they have is what they call camp catch up, and it's a summer experience for siblings who have been separated in foster care to come together to reunite. Another thing that fits very nicely is this transitioning of helping children that have been in foster care that are aging out. They really very literally in many cases do not have any sort of a support system. And so I can see that the foundation, through its grant programs that they have, will fit very nicely into these transition plans that are being required under LB177. So I think this is a good bill and it's very much needed, and I think the partnerships that are out there through programs like Nebraska Children and Families Foundation are very needed as well. Thank you. [LB177]

SENATOR GLOOR: Thank you, Senator Sullivan. Senator Wallman, you are recognized. [LB177]

SENATOR WALLMAN: Good morning, Mr. President, colleagues. This is a bill I want to thank Senator Campbell and Senator Howard. My family has...extended family has been involved in this and it's pretty emotional. And good friend of mine was also in foster care at a very young age and his siblings are spread from one end of the country to the other, and he just found them five, six years ago. And was it our fault here? I don't

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know. But siblings...he always knew he had siblings but he didn't know how many, so he had three. A couple in Iowa, one in New Jersey. And it was a special day and I was glad to be a part of that. But I think we can never do enough, foster care, you know, what age you get them. I had lunch with a young girl, five foster care parents she had and how sad that was, because it's a complicated thing. If you want to be a foster parent, trust me, it's a hard job but it's also very rewarding. So thank you, Senator Campbell. Thank you, Senator Howard. Thank you, Mr. President. [LB177]

SENATOR GLOOR: Thank you, Senator Wallman. The Chair recognizes Senator Pirsch. [LB177]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I wonder if Senator Campbell might yield to a question or two. [LB177]

SENATOR GLOOR: Senator Campbell, would you yield? [LB177]

SENATOR CAMPBELL: Yes. [LB177]

SENATOR PIRSCH: And, first of all, thank you for bringing this bill and for addressing very...topics that need to be addressed. I have just a couple of questions. First, with respect to those youth who will be I guess transitioning out of departmental care, I think that's a very good point for this body to be concerned about. With respect to that, I've, you know, become aware that there may be...is it true that there's in certain cases a federal disincentive for youth for the...for permanency to be established while the youth are in care, which normally is the goal, inadvertently through a federal incentive that says if you age out of foster care without some sort of permanency established by a certain age then you become eligible for certain financial assistance in terms of colleges and whatnot? Are you aware of that facet? [LB177]

SENATOR CAMPBELL: Senator Pirsch, I am not. [LB177]

SENATOR PIRSCH: Okay. [LB177]

SENATOR CAMPBELL: We would...certainly the Health and Human Services Committee would be glad to look into it if you could give us some reference to it but, no, I have not heard that. [LB177]

SENATOR PIRSCH: Yeah. Well, and it's my understanding that these comments have...that this is kind of federal types of incentives and the underlying idea is to help those who have not established permanency in a way that their...and so the underlying idea is good. It was, it's my understanding, unintended consequences. But so I think it's good to pay attention to that area. And I appreciate you bringing this forward, and I'll look at that perhaps on Select just to make sure that that issue is addressed. With

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respect to another point that you bring out with it, which is sibling visitation, would this require sibling visitation or placement with sibling visitation in all cases? There are certain...I don't want to say extremely rare but uncommon situations when there may be instances where it's not a wise idea to have sibling visitation at that point or placement due to sexual assault allegations, those type of things. This would not mandate that, would it? [LB177]

SENATOR CAMPBELL: No. This would still...any visitation would still, Senator Pirsch, my understanding from the bill and visiting with the court people and the department, this would still be under the discretion of the judge. And if there was information brought forward that that visitation would be detrimental, I am sure the judge would take that into consideration. [LB177]

SENATOR PIRSCH: Okay. Thank you very much. I don't have anything further. [LB177]

SENATOR GLOOR: Thank you, Senator Pirsch. (Visitors introduced.) Continuing with discussion, Senator Nelson, you are recognized. [LB177]

SENATOR NELSON: Thank you, Mr. President, members of the body. I would like to address a question or two to Senator Howard on her amendment, if she will yield. [LB177]

SENATOR GLOOR: Senator Howard, would you yield? [LB177]

SENATOR HOWARD: Yes, I will. [LB177]

SENATOR NELSON: Senator Howard, thank you. I've just...I'm looking at your amendment here and perhaps you could give me an example or two of what this is intended to address with regard to siblings that have not resided with the child? [LB177]

SENATOR HOWARD: I'm so glad you asked that because things that I present that I may just know like the back of my hand may not be that clear to everyone, so thank you. I'll give you an example of a case that I worked with. There was an older child who was placed in foster care and, over the course of time, parental rights were terminated, and the child was in a foster home that wished to adopt him. So we finalized that adoption and later on the biological parent had another child and that child unfortunately also came into the Health and Human Services system. And the family that adopted the first little boy had said at that time if there are siblings born to the same parent, we'd certainly be receptive to placement of that child. And so that's what I looked at. Fortunately, I handled the case of both children so I was able to make that placement. I had that knowledge. And so those siblings, even though they didn't have a prior relationship, they have a biological, a natural biological relationship and were able to be placed together and then grow up together and know one another and not lose that.

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[LB177]

SENATOR NELSON: Thank you. Would there also be an instance where there might have been a number of children in the family and some of those children are now in their 20s, I mean, you know, quite a range? And so those might be siblings that would be interested in probably taking those children in, and then this would make them part of the family unit for notification purposes, would that be true? [LB177]

SENATOR HOWARD: Actually, very good point. And (laugh) interestingly enough, because I had done this work for so long, I can give you an example of that as well. I had an older sister of a little boy who...she had a family unit herself with her own child but she knew her brother was really struggling, and when he came into care, she offered to become a foster parent for that child and eventually was the adoptive parent for her brother. [LB177]

SENATOR NELSON: All right. Thank you, Senator. [LB177]

SENATOR HOWARD: You're welcome. [LB177]

SENATOR NELSON: Thank you. May I ask a question of Senator Campbell? [LB177]

SENATOR GLOOR: Senator Campbell, would you yield to a question? [LB177]

SENATOR CAMPBELL: I certainly would. [LB177]

SENATOR NELSON: Thank you for bringing this bill, Senator Campbell. I guess I'd like to ask a basic question. Why are we doing this? Why can't Health and Human Services do this on their own or why aren't they doing? Can you kind of clarify that? [LB177]

SENATOR CAMPBELL: Absolutely. And I clarified this off the mike with Senator Pirsch. But the Fostering Connections federal Act in 2008 has many components, not just these three but many. And the department obviously is addressing a great number of those. But in looking at the federal act and meeting with advocates and the department and people who work with foster children and families, it was felt that these were three of the most important components and that we should put them in statute in order to be very clear how the department will carry these out, and it also clarifies as the courts begin to work for this. [LB177]

SENATOR GLOOR: One minute. [LB177]

SENATOR CAMPBELL: And really it has more to do with making this Nebraska's act. [LB177]

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SENATOR NELSON: So the...thank you, the department then is part of these discussions, and this has been worked out with them and they feel that this is a good bill and will be helpful to them. Is that correct? [LB177]

SENATOR CAMPBELL: We've worked with them for a year and a half. [LB177]

SENATOR NELSON: All right. Thank you, Senator. Well, I stand in support of the bill and also the amendment from Senator Howard. Thank you very much. Thank you, Mr. President. [LB177]

SENATOR GLOOR: Thank you, Senator Nelson. There are no members remaining in the queue. Senator Howard, you're recognized to close on your amendment to the committee amendments. [LB177]

SENATOR HOWARD: Thank you, Mr. President. Members of the body, I'm going to make this very brief. I believe that AM1110 will ensure that we are in compliance with the federal Fostering Connections Act which requires all reasonable efforts be made to ensure that a child is placed with his or her siblings. I would also like to thank the department for their work in correcting my earlier amendment that I had put on and especially Margaret Bitz, who works for the department and is a long-time friend of mine, and I am certainly open and willing to work with her if there's any additional information that we need to supply for this for Select File. So thank you and I urge your support on this amendment. [LB177]

SENATOR GLOOR: Thank you, Senator Howard. The question is, shall the amendment to the committee amendment to LB177 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB177]

ASSISTANT CLERK: 35 ayes, 0 nays on the adoption of Senator Howard's amendment. [LB177]

SENATOR GLOOR: The amendment is adopted. We continue discussion on the committee amendment. Senator Christensen, you're recognized. [LB177]

SENATOR CHRISTENSEN: Thank you, Mr. President. I'd like to thank Senator Campbell and the committee that's worked on this and people that's been involved with this. We do have issues where we don't always keep the siblings together and we know this is a very important thing to be done. And we've got some corrections to be made within the department as well as what this bill will do for us. So I'd just stand in support of the bill and ask everybody to give it a green vote and move it forward. Thank you. [LB177]

SENATOR GLOOR: Thank you, Senator Christensen. There are no members wishing

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to be recognized. Senator Campbell, you are recognized to close on your committee amendment. [LB177]

SENATOR CAMPBELL: Thank you, Mr. President. And I appreciate the questions and the discussion this morning and the concern that we all have for ensuring that we have a good foster care system for our children. I particularly want to thank those families who stepped forward across the state to become foster parents. As Senator Wallman indicated, this is not an easy job that they take on. So many people give it with all of their heart to help these children. We do have problems in the area, though, in which we just do not have enough families that can take teenagers and we don't have enough families who really can take large sibling groups. So we certainly hope that we can put more...shine more light on that with LB177. I'd, again, like to thank Senator Hansen and Senator Sullivan for their comment on that it will take the community and public and private partnership. And I also want to thank Senator Howard for working with us on this, and we will make every effort between now and Select to clarify concerns that there might be yet from the department on Senator Howard's amendment. Thank you, Mr. President. [LB177]

SENATOR GLOOR: Thank you, Senator Campbell. Members, the question is, shall the committee amendments to LB177 be adopted? All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB177]

ASSISTANT CLERK: 36 ayes, 0 nays on the adoption of committee amendments. [LB177]

SENATOR GLOOR: The committee amendment is adopted. We now return to discussion on the advancement of LB177 to E&R Initial. There are no members wishing to be recognized. Senator Campbell, you're recognized to close on LB177. Senator Campbell waives. The question is the advancement of LB177 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB177]

ASSISTANT CLERK: 40 ayes, 0 nays on the motion to advance the bill. [LB177]

SENATOR GLOOR: The bill advances. Continue with General File, Mr. Clerk. [LB177]

ASSISTANT CLERK: Mr. President, LB54 was introduced by Senator Mello. (Read title.) The bill was read for the first time January 6, referred to the Urban Affairs Committee, placed on General File with no committee amendments. [LB54]

SENATOR GLOOR: Senator Mello, you're recognized to open on LB54. [LB54]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. LB54 is one of two bills that I've introduced this session as a result of the LR469 interim study

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before the Urban Affairs Committee dealing with various economic development tools available to municipalities. I'd like to thank Senator McGill and the Urban Affairs Committee for selecting LB54 as one of their two committee priority bills. Tax increment financing, or TIF, provides a means of encouraging private investment by allowing city governments to target increased property tax valuations resulting from a development to repay the initial public investment. TIF funds may be used for land acquisition, public improvements and amenities, infrastructure, and utilities. The use of property tax dollars for TIF is limited to 15 years under Article VIII, Section 12 of the Nebraska Constitution. Nearly all TIF projects are paid for initially through the issuance of TIF bonds which must be paid back within the 15-year window in the state constitution. Currently, the clock for repayment of these bonds starts when the city's redevelopment plan goes into effect. The purpose of LB54 is to delay the start of that clock, ensuring that cities are able to take advantage of the full 15-year window allowed under the state constitution. In some cases, the length of time between the redevelopment plan going into effect and the project being completed can be as much as 18 months. As a result, cities can sometimes wind up with only 12 or 13 years worth of increased property tax revenue to repay the bonds. The green copy of the bill provides that the 15-year window for repaying the bonds would not begin until the city enters into a redevelopment contract. Since the hearing, my office has been engaged in extensive conversations between representatives from the city of Omaha, the city of Lincoln, as well as the League of Municipalities, and local chambers of commerce whose members are regularly involved in TIF projects. The goal of these conversations have been to find appropriate language that better ensures that municipalities will have the full 15-year window without violating constitutional provisions. My office originally requested an Attorney General's Opinion on LB54 February 2 and received a response last Thursday. The supporters of the bill are currently reviewing this opinion and I'm optimistic that we will have a more clarified, finalized amendment language which I plan to offer on Select File. This session, there's been significant discussion on the economic development tools available to our state and local governments, including several pieces of economic development legislation that were included in Governor Heineman's proposed budget. Rather than adding a new tool, LB54 provides the body with an opportunity to instead sharpen a tool that is already in our toolbox. I'd note that LB54 faced no opposition testimony at the hearing and was advanced unanimously by the Urban Affairs Committee. I urge the body to adopt LB54. Thank you, Mr. President. [LB54]

SENATOR GLOOR: Thank you, Senator Mello. (Visitors introduced.) Members, you've heard the opening on LB54. Are there members wishing to be recognized? Senator Coash, you're recognized. [LB54]

SENATOR COASH: Thank you, Mr. President. Good morning, members. As Vice Chairman of the Urban Affairs Committee and in Senator McGill's absence, I want to stand up and let you know where the committee is and where we continue to be on LB54. The Urban Affairs Committee made the decision to advance LB54 as written. We

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believe and continue to believe that the language in the green copy of the bill satisfies the Attorney General's Opinion with regard to the commencement of these projects. And I wanted to read for the record part of that Attorney General's Opinion that the committee saw and played into its decision: Establishing either the date of execution of the project agreement or commencement of the project as the point of time in which the year prior to rehabilitation, acquisition, or redevelopment occurs for purposes of determining the redevelopment project or "base" value, as opposed to completion of the project, is not, in our opinion, inconsistent with art. Accordingly, we conclude that the proposals under LB54 or the amendment--which Senator Mello talked about--are not inconsistent with Article VIII, Section 12. So with that, colleagues, I've listened to Senator Mello. We've been...the committee has worked with Senator Mello. We believe that, as I said, the green copy of the bill meets this intent. Senator Mello is going to work with interested parties and the committee to assure that any further concerns are addressed with anything that we might do on Select File. However, I believe that it is prudent at this time to move LB54 forward and allow the committee and Senator Mello to get to that end. Thank you, Mr. President. [LB54]

SENATOR GLOOR: Thank you, Senator Coash. The Chair recognizes Senator Pahls. [LB54]

SENATOR PAHLS: Thank you, Mr. Chairman, members of the body. As I review TIF, I'm wondering how many projects actually go to the 15 years and need additional time. I understand the rationale that you want to use all of the 15 years, but I reviewed some of the past TIF projects and to me this is very, very good tool. Senator...if I could have a word or two with Senator Mello? [LB54]

SENATOR GLOOR: Senator Mello, would you yield to a question from Senator Pahls? [LB54]

SENATOR MELLO: Yes. [LB54]

SENATOR PAHLS: Thank you, Senator Mello. Okay. Let's say it's a 15-year and you...basically, you're asking, it sounds like, for 16 1/2 years if it takes...or it takes that long for a project to get off its foundation, you might say, or its basis. Is that what you're asking for? [LB54]

SENATOR MELLO: No, Senator Pahls. I think what we're...what LB54 does is it clarifies when that 15-year period actually starts. And that has been because TIF is in the constitution, there are some constitutional limitations that surround it. And in conversations in the interim study we held over the summer with the Urban Affairs Committee, this issue was brought forward by a number of cities and individuals about right now TIF starts when the city council essentially votes,... [LB54]

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SENATOR PAHLS: Okay. [LB54]

SENATOR MELLO: ...where a project might not start for two years and the city loses out on those two years to collect that money back to pay for the bond which, if they don't see that increased valuation, the city is on the hook for that remainder of the money. So this is more of a safeguard to ensure that taxpayers aren't left holding the bag on TIF projects because a TIF project may not start right away when the city council votes to adopt the plan. [LB54]

SENATOR PAHLS: Okay. Thank you for clarifying that for me. I'm just going to show you the power of this because I pulled up like ConAgra. Most of you are very familiar with the ConAgra development in Omaha, Nebraska, which started in '88, and at that time the land was valued a little over \$3 million. At the end of it, 2004, that land was valued at \$64 million. So you can see by improving the...or giving this project TIF, it allowed this land to be...increase valuation significantly. So then that caused me to start taking a look, is this just in Omaha, because it seems to me we're only talking about Omaha lately. So I pulled up and Albion, Nebraska, they're using TIF. In fact, they have 31 percent of their budget is dealing with TIF; Jackson, 54 percent. I take a look at Fairmont, 44 percent; Wood River, 29 percent; Atkinson, 37 percent. And I'm assuming a lot of these, because I know the Atkinson area, it may be because of the ethanol plant up there. Bridgeport, 34 percent; Madrid, 43 percent; Mead, almost 50 percent. And as you go throughout the state, a number of smaller communities are using the TIF concept. In fact, it started out a number of years ago, we had around about 150; now it's getting close to 600. So this does appear to be a very significant economic factor for the state of Nebraska. Notice I said for the state of Nebraska because a lot of communities are using it, almost like I say to the point of it's a very, very significant part of the taxing at the local level. So throughout the state we see...or I would say it appears that we really do need this. And I think if you look at some of the TIF projects, you would really be amazed at the different...just like...and let me refer to First National Bank in Omaha, Nebraska... [LB54]

SENATOR GLOOR: One minute. [LB54]

SENATOR PAHLS: Thank you. That land in 2001 was valued a little over \$4 million. Now that land is valued over \$120 million. So just see how the value of that one parcel of land in downtown Omaha has significantly improved because we have a nice building there, etcetera, etcetera. And there are whole raft of different projects that you...if you look back on you'd be amazed at the power of this. So if this can make TIF a better way to do business in the state of Nebraska, thank you for bringing this forth, Senator Mello. Thank you. [LB54]

SENATOR GLOOR: Thank you, Senator Pahls. The Chair recognizes Senator Adams. Senator Adams waives. (Visitors introduced.) There are no members remaining in the

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queue. Senator Mello, you're recognized to close on the advancement of LB54. [LB54]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. And thank you, Senator Pahls and Coash, for your comments and feedback. As Senator Coash mentioned, while we discussed LB54 in committee and this was the language that we had worked with primarily with the city of Lincoln and the league, there are some suggestions and opportunities out there, in regards to strengthening this language after reviewing the Attorney General's Opinion, from the city of Omaha. I'd be remiss to not also mention the city of La Vista and Sarpy County played a strong role in the interim study of helping identify some of the challenges here behind TIF and when the clock actually starts, as well as the potential cost to taxpayers by not looking to ensure we have a more accurate 15-year window period. So I'd encourage the body to adopt LB54, and more than likely we'll be bringing a Select File amendment that clarifies the language a little bit further. Thank you, Mr. President. [LB54]

SENATOR GLOOR: Thank you, Senator Mello. Members, the question is the advancement of LB54 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB54]

ASSISTANT CLERK: 36 ayes, 0 nays on the motion to advance the bill, Mr. President. [LB54]

SENATOR GLOOR: The bill advances. Continuing with General File, Mr. Clerk. [LB54]

ASSISTANT CLERK: Next bill, Mr. President, is LB637, which was introduced by Senator Adams. (Read title.) The bill was read for the first time on January 19, referred to the Education Committee, reported to General File with committee amendments. (AM838, Legislative Journal page 898.) [LB637]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Adams, you're recognized to open on LB637. [LB637]

SENATOR ADAMS: Thank you, Mr. President and members. The Education Committee amendment that will follow in effect becomes the bill and the bill has really four parts to it. In its original form, this bill came to us from the Coordinating Commission for Postsecondary Education and it is, as it has been properly titled, consumer protection. Now today we're talking about postsecondary, not K-12. And in its simplest form, I would try to explain it to you in this way. If a postsecondary institution of some kind wants to operate in our state, we have some approval methodologies. For instance, if a cosmetology school wants to operate in the state, HHS gives them approval and licensing. If a career school wants to operate in the state, our State Department of Education is the approval mechanism. If a degree-granting institution comes into the state, the Postsecondary Commission is the approval mechanism. However, the

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process that we currently have in law, put in law in the 1960s and '70s, has not kept pace with the pace at which different types of higher education institutions have tried to enter into states, ours and others. And what we're really doing here is trying to, first of all, to streamline our existing process so it's not as cumbersome for higher ed institutions to get approval; secondly, it's designed to clarify so that if an institution like ITT comes to town, there's no question about whether they go to the Department of Ed or over to the secondary commission for approval. The other thing that it attempts to do, in the last year there have been changes in federal law. As you know, the federal government subsidizes student loans in the Pell Grant program, and many of our postsecondary institutions, students that go to them regardless of the type of institution, may be eligible for those kinds of grants. What the federal government has said is this, that if you're going to be eligible, if an institution is going to be eligible to receive those federal monies, there must be a complaint resolution mechanism, which we really don't currently have in law. So what we are in effect doing in LB637 is also developing that complaint resolution mechanism in order to comply with federal statute. So the bulk of this bill is to streamline, to clarify, and bring into compliance with federal regs our approval process for postsecondary institutions that grant degrees, such as a bachelor's degree. Another component...and I'm going to just keep going and these are included in the amendment, another component of this bill was brought to us by the University of Nebraska. And what that component does is to simply say this. Right now...and many of us may be included, when we went to college, we had a major and we had a minor, maybe more than one. Well, it has become rather commonplace in institutions of higher education across the country, four-year institutions, also to grant certificates. So as an example, you may have a degree in education, a major in education, maybe a minor in business, and the University of Nebraska may want to grant a certificate in computer technology. You don't quite have a minor. You certainly don't have a degree in it, but the university could have established a line of course work that leads to that certification so that the student when they graduate can say: look, here's my major, here's my minor, and, oh, by the way, I took a list of courses required by the institution in order to be certified in this particular area. Right now, the University of Nebraska is limited in their ability to issue those kinds of certificates. What the amendment would also do to this bill would be to allow the university, with the approval of the Coordinating Commission, to be able to issue those certificates. And really what it would do is to bring students graduating from our university system into a competitive level with students of other universities where they are already allowed to get these certificates by their institution, would bring them up to that. The third component of this bill. We have today, and I think very properly so, a growing number of our high school students who, while they are still in high school, are taking college credit courses, and that's a good thing. As I look at these pages and I think about their senior year, wherever they may have gone, I'll bet it wasn't very rigorous senior year by choice and sometimes parent-endorsed. Dual-credit courses offer an opportunity for our high school students in junior year, senior year to fill in. And what it does, not only does it get them that credit but for many of our first-generation students, it gives them that confidence level that, hey, I passed a

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college English course, I passed psychology, I passed college algebra, I think I can do this, I'm going to go on to college. What we need, though, is some regulatory methods so that we're seeing more dual-credit courses popping up all over, and we really don't have our hands around those in terms of the quality and the approval and certification of some of those kinds of things. What the Coordinating Commission is asking the Legislature to do is grant them the authority to do a study on dual-credit courses and career academies so they can see what it is we need to make sure that these dual-credit courses that are popping up all over the place have some quality assurance attached to them. Now it's a study. There's no fiscal note to it. You might ask, why would the Postsecondary Commission, why don't they just go do that. They could, but if they have our endorsement, it gives them a little extra leverage to crack doors open when they do that study to find out what's going on. The fourth component of the bill, also in the committee amendment, is a correction. If you remember clear back at the beginning of this session, we moved one of the Education Committee's LR542 bills. I believe it was LB334 which was the higher ed bill that was designed to find some savings. And what we did in that bill, one of the things we did in that bill was to phase out the scholarship program we have for optometry students. We don't have an optometry school here in Nebraska so what we have been doing is paying the tuition for our students to go someplace else to optometry school. And LB334 phases that program out. Well, we thought we had all our t's crossed and i's dotted when we did that and then we found out we missed something. We had students who would be freshmen in optometry school that had already been awarded a seat in those various optometry schools and notified by the university that they would be also getting a scholarship. And then suddenly they find out, that just went away with LB334. What this bill and its amendments would do would correct that and allow those students, who would be freshmen into optometry school, to take those seats and the scholarship would still be there for them. However, the program would still... [LB637 LB334]

SENATOR GLOOR: One minute. [LB637]

SENATOR ADAMS: ...be terminated. Thank you, Mr. President. [LB637]

SENATOR GLOOR: Thank you, Senator Adams. As the Clerk stated, there are amendments from the Education Committee. Senator Adams, you're recognized to open on the committee amendment. [LB637]

SENATOR ADAMS: Well, maybe after yesterday I've decided to speed things up, but what I've just described for you is in effect the committee amendment. It is the bill. I'll just simply summarize. The bulk of the committee amendment is to become LB637 which is to streamline, clarify, and get in compliance with federal regs the way in which we investigate, approve postsecondary institutions that are coming into our state to make sure that they're doing what they ought to be doing. It's consumer protection. The other thing we're doing is granting authority to the Postsecondary Commission to do the

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study on dual credit courses so we can find out if there's regulation there that's needed. We are also allowing the University of Nebraska system to grant certificates, and we would be making a correction for those optometry students that are about to become optometry students and had been notified that they would be getting a seat in one of those schools, and they would be getting part of this scholarship. This would keep them on. Thank you, Mr. President. [LB637]

SENATOR GLOOR: Thank you, Senator Adams. Mr. Clerk, there's an amendment to the committee amendments. [LB637]

ASSISTANT CLERK: Mr. President, Senator Adams would offer AM1057 to the committee amendments. (Legislative Journal page 1055.) [LB637]

SENATOR GLOOR: Senator Adams, you're recognized to open on your amendment to the committee amendments. [LB637]

SENATOR ADAMS: Thank you, Mr. President. What this amendment does, colleagues, is really more technical than anything else on what we're trying to do, and basically what it would say is that if an institution has already been granted approval and they're here, but they modify their program from what their original application was approved to be, then they would need to come back to the Coordinating Commission. The other thing it does, the ACES Program that we have, the ACES Program is the scholarship program that we have here in Nebraska that attempts to offset the cost of those dual-credit courses. It's a very successful program. There's federal money involved in it and there is state money involved in it. And what this would do would say that the applicants, those students who apply for this scholarship, would have to provide us with information about what high school they graduated from, their Social Security number, date of birth, grade point average, grade level, qualified postsecondary institution, and any other information that the Coordinating Commission would ask to determine their eligibility for the scholarship. And basically what this is, it's data entry. And when there's money involved, and there's federal money involved, there's also typically requirements that we track these students to see how they're doing. So if that student takes a dual-credit course and we help pay for it with state money and with federal money, what the feds are asking us to do, and we ought to do this anyway, let's find out if they went on to an institution of higher education. Let's find out if they had success. That's what this amendment would do. Thank you, Mr. President. [LB637]

SENATOR GLOOR: Thank you, Senator Adams. Members, you've heard the opening to LB637, the committee amendments and the amendment to the committee amendments. There are senators wishing to be recognized. Senator Harms, you're recognized. [LB637]

SENATOR HARMS: Thank you, Mr. President and colleagues. I rise in support of the

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two amendments to LB637. As Senator Adams has stated in his opening comments that the statutes on the private institutions or institutions for profit go back clear back into the '60s and the '70s. And higher education has changed so much since then. The growth has been, throughout America, has been with the for-profit sector. And that's the sector that we don't have a lot of control over in this great state. When you go clear back into the '60s and '70s, we find ourselves with (sic) any rules and really basically any regulations. There's even confusion when you look at the law, if you come in here as a private sector, about whether they go to the State Department of Education or whether they go to the Coordinating Commission. This clarifies that. This clarifies where you go and who has control of this. LB637, as Senator Adams said, does give us the appropriate oversight that we need so badly in higher education that deals specifically with these private institutions or these out-of-state institutions who come here. They are a rapidly growing sector of higher education. They're flexible, they meet the need, but they're extremely expensive. And students who enroll in them, enroll because of the flexibility in higher education. But we have no way to monitor what's happening. We have no way to determine whether or not they're receiving a quality education, whether or not they're being treated appropriately. So what this bill does, it does put an end, an end date of authorization for out-of-state institutions. Every five years they're going to have to go through reevaluation. I think that's really important. We need to find out what's happening to them. If their ownership changes, they have to come forward and have to bring that before the Coordinating Commission for review of that to make sure that we have the same goals, the same objectives that we have. And it also stops us from being a diploma mill. Higher education in some of these for-profit institutions become diploma mills because there's no way to govern and to guide them. Students are...pay for a education that they can't use, that are not trained appropriately. Nobody will accept their credits when they transfer. This will prevent that from happening in this great state. It also puts together a process which we don't have now that allows us to deal with complaint resolution. There are complaints that come forward. You have been treated...mistreated. You don't feel that you are getting the kind of education that you deserve to have. Where do you go? In our laws from '60 and '70, we didn't address that issue. The Coordinating Commission would try to interface, but quite honestly this clarifies that for them. This gives them the authority and the power to address the issue. This is a piece of legislation that's extremely important to future higher education and to young adults and young students who want to go on. Private for-profit institutions are flexible. But the key to this is, who is governing them? Who is monitoring them? What's taking place? This is what this bill is about, a portion of this bill is about. I would urge you to support this because I think it's time that we address the issue. It's also a time for us...we know there are private for-profit institutions who would want to come into our state, but quite frankly we don't want to have them here. They don't meet the very criteria that we want to have in higher education. This sets this up for us, gives the opportunity, allows us to address the issue. I would urge you to support these amendments to LB637. Thank you, Mr. President. [LB637]

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SENATOR GLOOR: Thank you, Senator Harms. The Chair recognizes Senator Wallman. [LB637]

SENATOR WALLMAN: Thank you, Mr. President. Like my good former colleague would say, Senator Stuthman, I have a concern. May I ask Senator Adams a question, please? [LB637]

SENATOR GLOOR: Senator Adams, would you yield? [LB637]

SENATOR ADAMS: Yes. [LB637]

SENATOR WALLMAN: Thank you, Senator. Okay, like you know this commission, who regulates the university, which commission do they use? [LB637]

SENATOR ADAMS: Coordinating Commission. [LB637]

SENATOR WALLMAN: Okay. Thank you. And they decided when one college in Blair, they decided who...is that why they closed it? [LB637]

SENATOR ADAMS: Could you repeat the question? I'm sorry. [LB637]

SENATOR WALLMAN: You know a college in Blair? [LB637]

SENATOR ADAMS: Dana College. [LB637]

SENATOR WALLMAN: Yeah. [LB637]

SENATOR ADAMS: And your question was? [LB637]

SENATOR WALLMAN: Who closed that? [LB637]

SENATOR ADAMS: Well, Dana...the board at Dana College made that decision. [LB637]

SENATOR WALLMAN: Because they couldn't get recertified, right? Is that right? [LB637]

SENATOR ADAMS: I think it was financial. I don't know the ins and outs of that, I'm sorry. [LB637]

SENATOR WALLMAN: Because they had a buyer for the institution, and whatever their curriculum was, I don't know. But is it our job as a legislator to constantly watch out for consumers? You know, are we more and more and more regulations? So I do have a

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concern, and vote as you wish. Thank you, Mr. President. [LB637]

SENATOR GLOOR: Thank you, Senator Wallman. The Chair recognizes Senator Hadley. [LB637]

SENATOR HADLEY: Mr. President, members of the body, I do stand in support of both amendments and the bill. You know, I think it's important we take a long hard look at this. One of the problems we've had in higher education is that there has been a proliferation of dual-credit courses, courses taken at other places. And I think it's unfair at times to the students because I think they're at times the gullible people in this, that they're convinced that this is a quick and easy way to get through the university or college of their choice. So I think we need to have a system that at least takes a look at what we're dealing with here. You know, we don't want to put unfair impediments in front of students to get through, but we don't want to also have it so that the degree really is cheapened and becomes less and less, and that's a degree whether it comes from a community college or whether it comes from a four-year university or a private university or private college in the state of Nebraska. So I think it's appropriate we take a look at this. I don't like to do it but I will tell you one anecdotal note. In my previous life I did work with students that would come in with dual-credit courses and such as that, and the most I saw was a student from Colorado that came in after her senior year in high school with 66 hours of dual-credit courses. And so she entered the University of Nebraska at Kearney as a 18-year-old junior at that point in time. And we had a difficult time, because the dual-credit courses were from a number of different institutions, in trying to validate whether these were true courses, whether we should allow credit or not allow credit. So I applaud Senator Adams and the Education Committee for doing this so that we can make sure...as our students...being fair to our students so they understand what they're getting into, and what impact this can have on their future plans to go to either a junior college or a four-year institution in the state of Nebraska. I would yield any remaining time to Senator Adams, if he wishes it. [LB637]

SENATOR GLOOR: Two minutes forty seconds, Senator Adams. [LB637]

SENATOR ADAMS: Thank you, Senator Hadley. The only thing that I would add is, we don't accredit colleges in this state. That's done by a national entity. What we do is to look at programs. We look at viability. It is, in a sense, when Senator Wallman talked about consumer protection and are we overregulating, we have been regulating since the 1960s. This isn't new. What this bill does, if anything probably, is to some extent reduce some of the regulation. At minimum it streamlines it. And as Senator Harms properly pointed out, it clarifies things. It makes it easier for institutions to get approval. Thank you, Mr. President. [LB637]

SENATOR GLOOR: Thank you, Senator Adams. Senator Heidemann, you're recognized. [LB637]

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SENATOR HEIDEMANN: Thank you, Mr. President and fellow members of the body. I do stand up in support of LB637 and the amendments. The part that I want to talk about is the optometry school students that Senator Adams has talked about. Just to let you know that this, I believe, is part of the LR542 process and there was something identified that we could save some money on the financial status and we went forward with that. There was an oversight on probably more people's part that there was a class that was committed to out there that the state said that, yes, we're going to do this for you. And it was an oversight on our part that that was out there. So with this amendment to LB637, that will correct that problem. I will say that there is a cost of \$154,000 to see that last class through. This will be the last class that will be funded through that program. So we put it in the university's budget in the first year, not in the second year. It's already accounted for. We can correct our problem with this amendment and the money is already in their budget. So I would appreciate your support on the amendments and the underlying bill. Thank you. [LB637]

SENATOR GLOOR: Thank you, Senator Heidemann. Senator Pahls, you're recognized. [LB637]

SENATOR PAHLS: Thank you, Mr. President and members of the body. I thought Senator Wallman brought up an interesting question and this is sort of going to dovetail into what Senator Adams says, because this summer I contacted the particular organization we're discussing here today and they have...they deal with this accreditation of this, like Dana. They're not involved in that at all. And the reason why that deal collapsed, because the organization that wanted to take over Dana, they could not get accreditation from a national organization, so although...that caused all their finances to sort of collapse. So that's one reason why Dana ceased to exist. Thank you. [LB637]

SENATOR GLOOR: Thank you, Senator Pahls. Senator Carlson, you're recognized. [LB637]

SENATOR CARLSON: Mr. President and members of the Legislature, I'm interested, because I listened to Senator Harms's testimony and he indicated support for the amendments and the bill so the students will know what they're taking, is it beneficial, is it meaningful, is it acceptable to other institutions that they may want to receive credit for it. And then I'm a little puzzled by a comment that Senator Adams made and I'd like to address a question to Senator Adams. [LB637]

SENATOR GLOOR: Senator Adams, would you yield? [LB637]

SENATOR ADAMS: Yes, I will. [LB637]

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SENATOR CARLSON: Senator Adams, following up Senator Harms's testimony you said, I believe, that this bill kind of streamlines and makes it easier for institutions that want to provide credit to get permission to do that. Now that doesn't quite line up with what I think I heard Senator Harms say and could you comment on that? [LB637]

SENATOR ADAMS: Yes, I would. By that I mean we're not making it easier for them to be approved. All the steps will still be there. Part of what we're doing is we're eliminating some loops and we're clarifying. So if you're an ITT and you're offering career programs but you're also offering a bachelor's degree, trying to decide, well, we're supposed to go to the Department of Ed or do we go to the Coordinating Commission, this will clear those kinds of things up. So it's not really to make it easier for a school to get approval. The process is still there. It streamlines and it clarifies. [LB637]

SENATOR CARLSON: Okay. So in layman's terms, it's not allowing a private institution that wants to make a profit to come in with a do-nothing course, and allow students to take it and pay them money for it, and then not be able to do anything with it? [LB637]

SENATOR ADAMS: It...that's right. Now that, obviously, that wouldn't...a do-nothing course. (Laugh) We could probably pick those out of any institution, even some that you and I attended, but it wouldn't eliminate that. But it is an attempt to kind of screen that type of thing, yes. [LB637]

SENATOR CARLSON: Okay. Thank you, Senator Adams. And with that, I do support the amendments and the bill. [LB637]

SENATOR GLOOR: Thank you, Senator Carlson. (Visitors introduced.) There are no members waiting to be recognized. Senator Adams, you're recognized to close on your amendment to the committee amendments. [LB637]

SENATOR ADAMS: All right. Thank you, Mr. President. Members, AM1057 does two things. It allows the Coordinating Commission to collect the data that is needed for those students that apply for the scholarships for the dual-credit courses. The other thing it does is to clarify language that's in the committee amendment about the approval process and any modification that occurs to that process. Thank you, Mr. President. [LB637]

SENATOR GLOOR: Thank you, Senator Adams. The question is, shall the amendment to the committee amendment to LB637 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB637]

ASSISTANT CLERK: 37 ayes, 0 nays on the adoption the Adams amendment to the committee amendments. [LB637]

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SENATOR GLOOR: The amendment is adopted. Mr. Clerk. [LB637]

ASSISTANT CLERK: Mr. President, I have nothing further to the committee amendments. [LB637]

SENATOR GLOOR: Seeing no further senators in the queue, Senator Adams, you're recognized to close on the committee amendments. [LB637]

SENATOR ADAMS: Mr. President, members of the body, the committee amendment becomes the bill. And again let me reiterate, there are four parts to this: first of all, the streamlining and clarifying and coming into compliance with federal regs on the Postsecondary Commission's ability to approve institutions that grant degrees; secondly, there is the certificates that could be granted by the university system, with again the approval of the Coordinating Commission; and third, the study that the Coordinating Commission would do for dual-credit courses; and then, fourth, the fix, if you will, of LB334 and the optometry scholarship program, reinstating those students who were going to be freshmen in optometry school and had been told that they were going to get scholarship money and they'd been notified already that they had a seat in that school. This would correct that. Thank you, Mr. President. [LB637 LB334]

SENATOR GLOOR: Thank you, Senator Adams. The question is, shall the committee amendments to LB637 be adopted? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB637]

ASSISTANT CLERK: 38 ayes, 0 nays on the adoption of committee amendments. [LB637]

SENATOR GLOOR: The committee amendments are adopted. Mr. Clerk. [LB637]

ASSISTANT CLERK: Mr. President, the next amendment is offered by Senator Avery, AM883. (Legislative Journal pages 1079-1084.) [LB637]

SENATOR GLOOR: Senator Avery, you're recognized on your amendment. [LB637]

SENATOR AVERY: Thank you, Mr. President. AM883 establishes a pilot program to evaluate the efficacy of the ACT, that is the American College Test, as a possible substitute for Nebraska statewide test, otherwise known as NeSA, currently required by state statute. The current situation is that NeSA testing is done every year in grades 3 through 8 and grade 11. The subject areas tested are reading, math, and science. The objectives of this pilot program that I just mentioned would be to evaluate whether the ACT could be an appropriate measure of content knowledge and college career readiness. It is the hope that it would improve the college-going rate among Nebraska's young people. It could possibly also replace the currently required 12th grade state

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assessment in reading, math, and science. This is how it would work. Eight districts would be selected to participate in the program. Those eight that have already been identified are Alliance, Columbus, Gering, Hastings, Lincoln, Scottsbluff, Sidney, and South Sioux City, a broad cross-section of districts around the state. The program would be a three-year program to gather evidence on the impact on the college-going rate, and the usefulness of this as an adequate test to replace NeSA. The cost is \$160,000 and that money would pay the \$32 cost of the ACT test per student. We estimate about 5,000 students would participate. Here's a key point about the funding. All of these funds would come from the state lottery money, the education part of state lottery money. That's been confirmed that there's enough money there to do this. This concept was presented to the Education Committee in a public hearing on LB635 on March 15. It was well-received by the committee. However, LB635 remains in committee but we believe this idea is a worthy one and should be given an opportunity to move forward. And I would ask that you give this serious consideration for a green vote. Thank you, Mr. President. [LB637 LB635]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Thank you, Senator Avery. You have heard the opening on AM883. The floor is now open for discussion. Senator Adams, you're recognized. [LB637]

SENATOR ADAMS: Thank you, Mr. President. Members, I am supportive of this amendment. Procedurally, I wasn't at first but we walked our way through it and I'm comfortable with the way that the process has now gone. Senator Avery has properly explained this. Initially, my reaction was, we just spent an awful lot of time and energy changing our whole Nebraska assessment system and now we're deviating from that. However, this is for the 11th grade, it's for the 11th grade, and I think it is conceivable. And the state board's endorsement recognizes that it is conceivable that maybe simply using the ACT in the 11th grade, in lieu of our statewide assessment, might be the way to go. But we won't know that and it doesn't meet ACT muster, nor does it meet federal Department of Education muster until we have piloted it. And that's what this is. It would be a pilot. Thank you, Mr. President. [LB637]

SENATOR LANGEMEIER: Thank you, Senator Adams. Senator Lautenbaugh, you're recognized. [LB637]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. I'm wondering if Senator Avery would yield to a couple of questions. [LB637]

SENATOR LANGEMEIER: Senator Avery, would you yield? [LB637]

SENATOR AVERY: Yes, I will. [LB637]

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SENATOR LAUTENBAUGH: Thank you, Senator. Senator, how widespread would this pilot program be? [LB637]

SENATOR AVERY: It would involve about 5,000 students and it would involve eight school districts. [LB637]

SENATOR LAUTENBAUGH: Is there any estimate, and I apologize if I missed this, of the cost involved? [LB637]

SENATOR AVERY: Yes, \$160,000, all from lottery funds. [LB637]

SENATOR LAUTENBAUGH: Okay. Thank you, Senator Avery. I believe this is probably a very good amendment for us to move forward on, and here's why. We've been having this discussion off and on as to whether or not we could go towards the ACT for testing, and I think, as indicated, the state board is behind this. They want to do it. They've identified funds to pay for it, and if we can...what I hope we're trying to do here is kill two birds with one stone and get more kids to take the ACT. A few years back I think we had a conversation...or I had a conversation with some of the state board where I said, well, if we're telling you what to do in everything, why do we need the State Board of Education? Well, they're in the constitution, as I pointed out the other day. So that's why we need them, because we have to have them, and they are coming to us for guidance and assistance on this and I think that's very proper. And I think this is a good amendment and I would urge your support. [LB637]

SENATOR LANGEMEIER: Thank you, Senator Lautenbaugh. Senator Pahls, you're recognized. [LB637]

SENATOR PAHLS: Thank you, Mr. Chairman and members of the body. Senator Avery, a question or two. [LB637]

SENATOR LANGEMEIER: Senator Avery, would you yield? [LB637]

SENATOR AVERY: I will. [LB637]

SENATOR PAHLS: Thank you, Senator. Again, I'm not arguing against the concept at all. The initial cost is going to be paid by lottery funds. Is that what I've heard you...? [LB637]

SENATOR AVERY: That is correct. [LB637]

SENATOR PAHLS: Okay. Let's say that we decide this is the route to go. Then would that fall on the state or the individual school districts to pick up that tab? [LB637]

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SENATOR AVERY: That's yet to be determined. The cost per test is...will be driven down from \$34, I think, to \$32 per student because of the number that would be involved. And because this is a pilot program that the state is initiating, we thought we ought to be the ones to pay for it. [LB637]

SENATOR PAHLS: Right. [LB637]

SENATOR AVERY: I think the school districts probably would absorb a lot of this and maybe the students themselves and families. [LB637]

SENATOR PAHLS: Okay. Right. And I understand that. Again the concept of a statewide test would actually lead into a little bit...and this may be what the state school board is thinking about, is an accountability, because I do think we need to have a testing program that is certified that we can make some comparisons. Now I don't know if that's what's behind the state school board's...the rationale. By just looking at the outside looking in, it does look like that, which I have no arguments about. But again, I just want to say for those of us who talk about mandates, if it's additional financial requirements to the school districts, we ought to keep that in the back of our minds for future thinking when it comes to developing the budget. I do like the idea of a test that has been, for the most part, proven to be reliable as compared to some that are out there, and this test is recognized and a number of students do take this. I can remember a number of years ago taking this myself. I'll be honest with you, I'm not going to tell you the results of it, but it did wake me up. Again, I like the idea. Pilot program is the way to go and...Senator Avery, one more question. [LB637]

SENATOR AVERY: Yes. [LB637]

SENATOR PAHLS: When would this pilot...how long would this pilot program last, like one year, two years...? [LB637]

SENATOR AVERY: Three. [LB637]

SENATOR PAHLS: Three years. And at the end of that we'd come up with the idea of which direction we should go. [LB637]

SENATOR AVERY: Well, at the end of those three years we'll decide if it's doing what we hoped it would do. [LB637]

SENATOR PAHLS: Okay. Okay. Thank you. Thank you very much. [LB637]

SENATOR LANGEMEIER: Thank you, Senator Pahls. Senator Avery, you're recognized. [LB637]

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SENATOR AVERY: Thank you, Mr. President. I just want to mention that we currently have a 75 percent test taking rate for the ACT in the state. And we'd like to see that increase because, of course, you cannot go to college unless you have taken the ACT or the SAT. The current college-going rate is 67 percent of our graduating high school students. We want that number to go up as well. And there's a good reason for this. I just looked up some average yearly income numbers. If a person only has a high school degree, the average income is \$29,000...just over \$29,000 a year. But if they have a bachelor's degree, it jumps up to \$54,700 a year. With a master's, it jumps to 67.9 percent; with a doctorate it's 92.9; and a professional degree it's \$119,000. So there are definite benefits to the individuals and definite benefits to the economy of the state when we improve the college-going rate. So I would ask you to vote yes on this. Thank you. And by the way, I want to thank my colleague, Senator Lautenbaugh, for his generous remarks on this. I hope that's not the last time you hear some generous remarks from him about some of my bills. Thank you. [LB637]

SENATOR LANGEMEIER: Thank you, Senator Avery. Senator Louden, you're recognized. [LB637]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. Would Senator Avery yield for questions? [LB637]

SENATOR LANGEMEIER: Senator Avery, would you yield? [LB637]

SENATOR AVERY: I will. [LB637]

SENATOR LOUDEN: Well, at the present time, do schools give ACT tests for their placements and for your college to apply for scholarships and that sort of thing? Do you have to have an ACT rating in order to get a scholarship? [LB637]

SENATOR AVERY: You do have to have...I believe you have to have a pretty high rating, a high score on the ACT to get scholarships. And I think the closer you get to 30, which is a perfect score, then the better your chances are of a scholarship. [LB637]

SENATOR LOUDEN: Well, that depends on the school. Now if you're going to give all of these kids ACT tests, I guess, what are you going to do with this information when you find it out? [LB637]

SENATOR AVERY: It goes to the ACT board and it goes to the school districts. It goes to the student and students then can decide whether they want to send that on to colleges they're considering for enrollment. [LB637]

SENATOR LOUDEN: Well, and that's all that becomes of this information that you're

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compiling? [LB637]

SENATOR AVERY: The information that would be compiled would be used to determine whether this is an adequate substitute for our current NeSA test, and whether or not it's actually contributing to college going, which is what we're hoping. [LB637]

SENATOR LOUDEN: Yeah, because the ACT tests have been given for, what, 40 years? [LB637]

SENATOR AVERY: I think it's at least 40 years. [LB637]

SENATOR LOUDEN: And, I mean, that's what I'm wondering, it looks like you could probably tell now whether your state testing is doing any good compared to what we've done for years with the ACT test because I can remember when my kids were in school taking ACT tests, I've known of kids who were testing 18 or 19 and they had to get over that in order to play college sports. And they could get a scholarship, but they had to test 18 or 19 on their ACT in order to get...to play college sports. Or if they tested above 30, they could probably get some UNL Regent Scholarships or get some stuff to Harvard and that sort of thing. I mean, it was all the way through there. But that's what I'm wondering, when we give these tests what are we going to find out? [LB637]

SENATOR AVERY: Well, here's what we hope. A lot of students don't take the test because they think, well, I can't go to college, I don't have the money. Or they think, I wouldn't do well on the test. This will give the other 25 percent in our state that do not take the test now, give them an opportunity to find out, and they might be surprised. Students that may come from an impoverished background, they might find they score very high, and they can get a tremendous boost in confidence, confidence enough to try college, perhaps even to go after a scholarship. [LB637]

SENATOR LOUDEN: Well, agreed. At the present time the school districts don't require these kids to take that...some kind of a diagnostic test in a certain grade? [LB637]

SENATOR AVERY: We require them to take the state test...the Nebraska statewide test, which is known as NeSA. They have to take that in grades 3 through 8 and grade 11. [LB637]

SENATOR LOUDEN: Right. [LB637]

SENATOR AVERY: And what we were expecting is that taking the ACT in grade 11 might actually be a good substitute for the NeSA test. [LB637]

SENATOR LOUDEN: Then after this state testing came in, then they weren't required to take any other kind of a diagnostic test, like your ACT or SAT test or anything? [LB637]

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SENATOR AVERY: Well, no student is required to take the ACT or the SAT. That's entirely optional. And if this pilot program does what we hope it will do, it will increase the test taking rate throughout the state, and we think it would have an impact on the college-going rate. [LB637]

SENATOR LOUDEN: Well, yeah, I would... [LB637]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: One minute. [LB637]

SENATOR LOUDEN: ...question whether it will have an impact or not because it will be about like it is now. If you want to go to college, you take an ACT test to set your standard, I guess, and if those...if there are people that don't want to take it, I don't know how you can force them to it. But it's a fine program. See how it works, I guess. This is one of these things we're shooting at the moon with out there, and we'll see where it lands. But I question whether the information is going to be of any more value than what we could already gather at the present time. But I admire you for taking a crack at it. Thank you, Senator Avery, and thank you, Mr. President. [LB637]

SENATOR GLOOR: Thank you, Senator Louden. There are no members remaining in the queue. Senator Avery, you're recognized to close on your amendment. Senator Avery waives. The question is, shall the amendment to LB637 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB637]

ASSISTANT CLERK: 38 ayes, 0 nays on the adoption of Senator Avery's amendment. [LB637]

SENATOR GLOOR: The amendment is adopted. Discussion continues on the advancement of LB637 to E&R Initial. Senator Schumacher, you're recognized. [LB637]

SENATOR SCHUMACHER: Thank you, Mr. President. Would Senator Avery yield to some questions? [LB637]

SENATOR GLOOR: Senator Avery, would you yield to some questions from Senator Schumacher? [LB637]

SENATOR AVERY: I will. [LB637]

SENATOR SCHUMACHER: Senator, on your amendment that we just passed, is there a reason that the students could not choose between the SAT and the ACT? [LB637]

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SENATOR AVERY: I don't know if there's a good reason for it. It's just that the ACT happens to be the one test that is most frequently used here in the state of Nebraska. I believe it's most frequently used for testing readiness for college around the country. I remember taking the SAT and the ACT when I was preparing for college. But I think that there is a...probably in some southern states the ACT is not as popular as the SAT, but that's...the only reason that I can think of that we chose the ACT is that is the one that's most frequently administered here in this state. [LB637]

SENATOR SCHUMACHER: Okay, thank you, Senator Avery. Senator Adams, would you yield to some questions? [LB637]

SENATOR GLOOR: Senator Adams, would you yield? [LB637]

SENATOR ADAMS: Yes. [LB637]

SENATOR SCHUMACHER: Senator Adams, I'm trying to put this bill in context of where many people see education going and that is a highly competitive environment that is basically moving, in some areas, from the classroom to the Internet, and that is a mechanism for not only continuing education but for advanced education. How does this work if I am a student in Colorado that has signed up with an Internet company to get an academic degree, or maybe even a divinity degree for that matter, and I move to Nebraska and my school is not accredited in Nebraska, can I continue on with my course? [LB637]

SENATOR ADAMS: You know, specifically, I don't have an answer to that. I would tell you at least this much. This bill intends to regulate only those entities that have a physical presence in Nebraska. [LB637]

SENATOR SCHUMACHER: Well, I thought there was language that I was reading before that indicated that if they had no physical presence, they were also regulated. [LB637]

SENATOR ADAMS: No. [LB637]

SENATOR SCHUMACHER: Okay, then if that's the case, then thank you for that... [LB637]

SENATOR ADAMS: That Internet world, as you're...I think you're properly describing, is out of our reach. [LB637]

SENATOR SCHUMACHER: Right. Well, even if I have a presence in Nebraska, I have an office in Omaha in which I'm recruiting business or an office anyplace, and thus have

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an office in this state, aren't we pulling ourselves out of the Internet market by putting this level of regulation, if other states are not doing likewise? I mean, is this some effort kind of to monopolize our existing institutes of education, giving them an edge over the marketing on the Internet? [LB637]

SENATOR ADAMS: I see where you're headed but I don't think it's putting a corner on the market for our institutions. The Internet will be there. Students can take those courses. All we're saying is that if you're going to come into the state of Nebraska and have a physical presence and do business and offer degrees, we want to know about it. [LB637]

SENATOR SCHUMACHER: Well, not only do we want to know about it, but apparently we'd get the Attorney General involved in it. [LB637]

SENATOR GLOOR: One minute. [LB637]

SENATOR SCHUMACHER: We can have them file complaints before this board. And it seems to me we're dealing in the dangerous territory here of trying to regulate information and we haven't really defined what we're trying to stop these people from doing or saying they do. Can they issue a pretty certificate and call it a degree? This is a pretty long and involved bill, and it seems to me we're treading on areas that haven't been defined here and we may be excluding ourselves from something. I guess I'd echo a little bit of what Senator Wallman said before, and I suddenly become concerned. Thank you, Mr. President. [LB637]

SENATOR GLOOR: Thank you, Senator Schumacher. There are no further senators in the queue. Senator Adams, you're recognized to close on the advancement of LB637. [LB637]

SENATOR ADAMS: Thank you, Mr. President. And I know that I've already summarized the amendment which becomes the bill, but one other point that I would point out. A lot of what we're doing here is brought to us by the feds in an attempt to look more carefully at these postsecondary institutions that are in our state. Thank you, Mr. President. [LB637]

SENATOR GLOOR: Thank you, Senator Adams. Members, the question before us is the advancement of LB637 to E&R Initial. All those in favor vote aye; all those opposed please vote nay. Have all voted who care to? Record, Mr. Clerk. [LB637]

ASSISTANT CLERK: 40 ayes, 1 nay on the motion to advance the bill, Mr. President. [LB637]

SENATOR GLOOR: The bill advances. Items for the record, Mr. Clerk. [LB637]

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ASSISTANT CLERK: Thank you, Mr. President. New resolutions: LR155 by Senator Pirsch, and LR156 by Senator Ashford and others. Those will be laid over. That's all I have. (Legislative Journal pages 1084-1086.) [LR155 LR156]

SENATOR GLOOR: Thank you, Mr. Clerk. Continuing with General File, committee priority bills, Mr. Clerk.

ASSISTANT CLERK: Mr. President, LB463 was introduced by Senator Ashford at the request of the Governor. (Read title.) Bill was read for the first time on January 14 of this year. It was referred to the Judiciary Committee. That committee places the bill on General File with committee amendments. (AM754, Legislative Journal page 857.) [LB463]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Ashford, you're recognized to open on LB463. [LB463]

SENATOR ASHFORD: Thank you, Mr. President. LB463, as the Clerk suggested, has committee amendments and also has amendments to the committee amendments, which really make up the bill. But I will introduce LB463 and touch on the committee amendments. Before I get started, I do want to thank Senator Adams and the Education Committee for their work on truancy issues. Senator Adams and I spent some while this summer working on effective methods to deal with truancy and I appreciate his efforts and the committee's efforts. LB800 that was passed last year dealing with truancy was this Legislature's statement that truancy was not...or excessive absenteeism was not only a education issue but it was a juvenile justice issue. When children, young people are not in school for legitimate reasons, oftentimes they are...they certainly are not learning and oftentimes they are getting in trouble and exhibiting behaviors that cause a great deal of harm to them as they progress through life. We talked last year about the number of truancy...or excessive absenteeism cases in our state and there are over 23,000 young people that were absent more than 20 days, which is the cutoff time. And the efforts since...and certainly some of those children are absent for legitimate reasons and LB463, we...and I'm sure some of you or many of you or all of you have received letters and calls and e-mails from parents who are concerned about the impact of LB800 on sick children, so this bill does directly address that issue by...and Senator Price has brought this question to my attention. The excessively absent child who is ill is dealt with in the bill by requiring that the school district have a policy in place with the county attorney to make certain that no prosecution would occur. But what is clear is that at 20 days it is the policy of this state, has been the policy of this state that the county attorneys do get involved in some way, shape or form. The goal though of LB800 and certainly the goal of LB463 and the amendments is to have early intervention processes in place so that when a young person is absent that the schools will bring those children into school somehow and, if necessary, have collaborations with the

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county attorney or other authorities in the county or the city or in the school district area to find out what's wrong, why isn't the child in school. And that is really the essence of LB800 and LB463 and it's working. It's interesting if we look at the...I passed around the numbers for February across the state. I know in my district, in OPS district, two years ago I think for the entire year there were only 200 or 300 cases referred to the county attorney. Now in last...this February, almost 300, just in one month alone, cases were referred to the county attorney. Now what does the county attorney do with those cases? In my city, in Omaha, what happens is Don Kleine, the county attorney, has 13 people on staff that work with juveniles, 2 specifically working with cases of excessive absenteeism. He talks to those parents and they have had success in getting children back in school, and that's a result of your action, this Legislature's action in LB800, which I think was a significant piece of legislation. And I've mentioned before that Grand Island and Hastings, two communities in our state, have been on the cutting edge of working with students who are excessively absent. In Grand Island, for example, last year there were over 1,100 students that received letters saying that, you know, they've exceeded their limit of absences and they need to come to school, and of those 1,100, I believe there were only 11 filings by the county attorney because of a project that was undertaken by the county attorney, Mark Weber (sic), in Hall County to have little hearings in the schools using a deputy county attorney to bring the parents and guardians into the schools, talking to the school authorities, finding out what's wrong. And there were 175 of those cases and I think only 11 filings. And I think Don Kleine in Douglas County is having similar good luck. So this is massively important work that this Legislature has done and I certainly appreciate that. The issue in the metro area is addressed in this bill and in the amendments. The 11 superintendents in the metro area have been working diligently, really diligently on this issue of excessive absenteeism and by August 1 of this year we are asking them in this bill to have a truancy intervention plan, and that plan will be worked out together with local juvenile authorities, the county attorney, law enforcement, juvenile assessment centers, so that by August 1 we will have a plan in the metro area. We are giving the learning community in Douglas County metro area, it's Douglas and Sarpy County, the authority to help with this project and that language is also in the bill. Another element of working with juveniles in the area of truancy and excessive absenteeism is making certain that schools have adequate information about these children as early as possible. So when a child is absent excessively, the school should and now can and will continue to have real-time information on where those children are. If they're in the Health and Human Services system or in the juvenile justice system, they will be able to...those school districts will be able to access information in real time so at least we know who to call, which foster parent, what is involved, who is the probation officer. And many of these young people are on probation. What we don't want is them to become more deeply involved in the juvenile justice system. So that ability to have real-time information...I want to applaud in this regard the Crime Commission for developing a database that can be accessed by all of the school districts. They have Mike Overton, who is in charge of that part of the Crime Commission, has really done stellar work. So many things go

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on in our state government we don't see every day, certainly, and really some good work is being done in this area of the coming together of education, and Roger Breed, as the Commissioner, with HHS and Probation and the courts are coming together around excessive absenteeism and truancy. And I really also would like to extend my appreciation to the Governor for his focus on truancy and excessive absenteeism. Also, as we recall in January when Mike Heavican, the Chief Justice, came here to talk to us and he prioritized at the very top of his list truancy in our state, and this bill does encourage the court system to develop a statewide plan that will work with and seek out best practices throughout the country and state in this area of convergence between juvenile justice and education. [LB463]

SENATOR GLOOR: One minute. [LB463]

SENATOR ASHFORD: And I'll add a few more things on the amendment, but what is to me so, you know, so positive is that over the last year and a half this Legislature has set the course. We are going to bring...make it more inviting to bring our children, who have a history of not being in school, back into a school environment. It is in the schools that we can identify the issues that they have that need work, and if they are not in school we can't identify those issues. The collaboration by state and local officials and education officials and superintendents has been exceptional. And with that, we can go to the committee amendments which add a few more pieces. Thank you, Mr. President. [LB463]

SENATOR GLOOR: Thank you, Senator Ashford. As both you and the Clerk stated, there are amendments from the Judiciary Committee. Senator Ashford, we continue with you, as Chair, recognized to open on those amendments. [LB463]

SENATOR ASHFORD: Thank you, Mr. President. And I've outlined really the bill with the committee amendments but I do want to mention a few other points. I mentioned that there will be...we are granting in metro area Omaha, Sarpy and Douglas County, we are granting to the learning community some ability to help with the...as the superintendents develop their plan and to expand their jurisdiction to include truancy issues. We are transferring cash fund dollars from the Committee (sic) on Public Advocacy to the State Court Administrator to work with, as I suggested, with school districts and county attorneys across the state and other local agencies to develop a statewide plan for dealing with excessive absenteeism. In addition to that, we are transferring from the Commission on Public Advocacy...and just to be clear, the Commission on Public Advocacy has an operating fund and a grants fund, I believe, but certainly in this case there is no transfer, there is not a transfer out of the grant portion of the fund. This is a transfer out of the operating portion of the Commission on Public Advocacy--and that transfer has been discussed with the Appropriations Committee and I appreciate Doug Nichols and his help in drafting the amendments--to the CASA Program. And the CASA Program, as many of you know, is a volunteer program of

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citizens throughout the state of Nebraska. I believe there are around 1,400 young people or 1,500 young people in the state now who receive help and support from CASA. These are citizens, are not paid, not reimbursed, who spend time with children who are in the juvenile justice system. The committee heard I thought compelling testimony from young people who had been mentored by CASA volunteers who had come into the juvenile justice system and with stories that were very, very heartrending, obviously you can imagine, and these CASA volunteers have had meaningful impacts on the lives of these individuals. It helps the guardians ad litem. I believe Senator Pirsch does some of this work. I believe that it helps the guardians ad litem in their work with young people in the juvenile court system. And most importantly what I found compelling was that the CASA volunteers only have one or two cases at a time. The juvenile court system is in many jurisdictions clogged up with so many cases, neglect and abuse cases, cases involving delinquency, and our goal I think certainly in the Judiciary Committee over the last few years and I believe in the court system, as led by the Chief Justice, is to unclog the juvenile system, not by necessarily just getting people through the system itself but preventing people from coming in. And certainly that's what this truancy initiative is all about and we believe that these CASA volunteers make such a dramatic impact on the lives of these children that they don't reoffend. They are no longer delinquency cases. They are no longer excessively absent from school. This is a tremendous investment. We do not invest state money in CASA at this point but without state money, just with grants alone, they are able to help 1,400 or 1,500 people in our state. They are a critical and integral part of the juvenile justice system and part of our goal of effective intervention policies. So we are transferring \$100,000 in this year and \$200,000 in the second year out of the Public Advocacy Fund to the CASA Program and it is anticipated that this will, most importantly...CASA tends to be centered in urban areas and it's difficult to find volunteers in the rural areas and this infusion of money from the Public Advocacy Fund will help in recruiting, most certainly, CASA volunteers so that they can help more children across the state in the rural and urban areas. With that, I believe I've covered the amendments and the bill, and I know there's amendments to the amendment but I believe I've covered those in my discussion of these two, of LB463 and AM754. But we can go to the...well, I guess we have the amendment here. [LB463]

SENATOR GLOOR: Thank you, Senator Ashford. Mr. Clerk, as Senator Ashford stated, there's an amendment to the committee amendment. Correction, the amendment is to the bill. Members, you have heard the opening to the bill and to the committee amendments. There are senators wishing to be recognized. Senator Pahls, you are recognized. [LB463]

SENATOR PAHLS: Thank you, Mr. President, members of the body. I don't want to rehash some of the discussions we had in the past but, to me, this is a wake-up call and I think we're trying to find some solutions here, so I thank Senator Ashford for that. You know, we've talked about the 20-year plan on roads, 20-year plan on the sewer system

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in the metropolitan area. A lot of senators stand up and say...believe this is my bill, this has a lot of merit. Well, to me, this is again is a wake-up call because we're talking our future of our children. I believe, and if you've not picked up on that the last two days I've talked about we need to hold the schools accountable. We just can't keep tossing money without some type of payback. But to make it fair, we have to make sure the kids get there. And I'm amazed at the raw data that I have in front of me of the number of children, our young adults, who are not making it to school. Senator Ashford shows for the month of February and he's broken it down, which I think it's very uplifting to hear school districts like Grand Island have found a good approach to hopefully solving this problem. But I am totally amazed and I am disappointed, be very honest, I'm disappointed that we're not getting more children there. Now I know there are reasons because of health and I don't have that information in front of me, but I pulled up, just to give you an idea, just so you have a feel: in Hastings, now this is for the year 2009 to 2010, out of a little over 3,000 children or young adults, 284 missed more than 20 days; Alliance, around 1,500 children, 860 of them missed 10 days; Kearney, out of 5,000 kids, 1,000 missed 10 days, 184 missed 20 days. It goes on and on. I'm just totally amazed at what is happening. Here's Cozad: out of 974 children, 452 missed 10 days, 258 missed 20 days. You can't educate a person unless they're in front of you. You're missing several of those very, very important days because there's teaching, then there's reteaching. Now if you happen to be missing some of those very important days on those concepts, it builds up and you lose out. And that's why we need to...that's why I'm so much into early childhood education, because we got to get that child prepared for at least coming into the process of what we call schooling. It is amazing in the Omaha Public Schools, 10 days, 18,000; they only have 46,000, over 6,000 missed 20 days. Now if you take the rest of the schools in the learning community, that total number of schools, there's 14,000 of those who missed ten days, so it's not just the Omaha Public Schools but all those surrounding schools there. There's a significant loss of student days. It mounts up. And if you go... [LB463]

SENATOR GLOOR: (Gavel) [LB463]

SENATOR PAHLS: I think I would tell some of you senators to take a look at your local communities. This should be written up in the paper, the number of days that children should be in school and the number of days they are missing. The local newspapers, if you're not writing those up you are doing a disservice to your clients and to the people of your community. [LB463]

SENATOR GLOOR: One minute. [LB463]

SENATOR PAHLS: Thank you. This is literally uncalled for and it cannot all be dropped on the schools. If the child gets to school and they're not doing adequate, then you drop it on them. But it's time that we start taking a look at this. And I'd like to, if I have time, to ask Senator Ashford one question before my time runs out. [LB463]

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SENATOR GLOOR: Senator Ashford, would you yield? [LB463]

SENATOR ASHFORD: Yes. [LB463]

SENATOR PAHLS: Apparently I see where \$800,000 of the learning community dollars is going to go towards... [LB463]

SENATOR ASHFORD: Well, right now the...what is happening is that we are authorizing the learning community to expend funds on truancy specifically and then they are going to access their levy to do that. [LB463]

SENATOR PAHLS: Okay. So this...their focus is going to be this would you say, not a focus school but their focus is going to be on... [LB463]

SENATOR ASHFORD: Their focus, I believe, is going to be on truancy, diversity, and we did pass a bill earlier... [LB463]

SENATOR GLOOR: Time, Senators. [LB463]

SENATOR ASHFORD: ...that dealt with focus schools to some extent. [LB463]

SENATOR GLOOR: Time. [LB463]

SENATOR PAHLS: Thank you. Thank you. [LB463]

SENATOR GLOOR: Thank you, Senator Pahls and Senator Ashford. (Visitors introduced.) Senators in the queue wishing to be recognized are Louden, Ken Haar, Price, Nordquist, Dubas, Harms, and Lathrop. Senator Louden, you are recognized. [LB463]

SENATOR LOUDEN: Thank you, Mr. President and members. Would Senator Ashford yield for questions? [LB463]

SENATOR ASHFORD: Yes. [LB463]

SENATOR LOUDEN: As I look at this amendment, Senator Ashford, you have AM754 up there on the board now but there's also AM1046. Is there a difference in them? And which one are we supposed to work off of? [LB463]

SENATOR ASHFORD: And thank you, Senator Louden, for asking that question and the way it sets up is that AM1046 really becomes the bill. [LB463]

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SENATOR LOUDEN: Okay. Now what is the difference? Because it was on my machine and I don't have a copy of it and it's, what, 30-some pages, what's the difference between it and I guess AM754? Is there just some technical differences or are there anything drastically different. [LB463]

SENATOR ASHFORD: Prior to AM1046, the bill deals with excessive absenteeism as it relates to illness, and it also...with AM1046 there is a shift in the...and it also deals with the development of a plan by the metro area superintendents. But the AM1046 does add some language to give to the Supreme Court the ability to develop a statewide plan. It adds the CASA language that I talked about and it does change how the learning community would fund truancy programs. [LB463]

SENATOR LOUDEN: I see. But as I looked through them, I presume they both have that...well, I think it's in Section 13 in the AM754 amendment where they would...oh, it deals with what schools have to do about absenteeism and they have to develop a collaboration with the county attorney. [LB463]

SENATOR ASHFORD: Right. [LB463]

SENATOR LOUDEN: And I see you've added new language in there that if there is someone that has excessive absences due to documented illnesses, so they would actually be handled different than the regular run-of-the-mill absenteeism in there,... [LB463]

SENATOR ASHFORD: Correct. [LB463]

SENATOR LOUDEN: ...because we do have times when there can be students that will be gone for six months if it's a medical deal and yet they could still probably keep up with their studies. [LB463]

SENATOR ASHFORD: Right. And technically, they would be truant but, as a practical matter, they're not because they'll have an excuse. [LB463]

SENATOR LOUDEN: Yeah, and they could still probably continue at their grade level. [LB463]

SENATOR ASHFORD: And I think that happens. [LB463]

SENATOR LOUDEN: Yeah. Okay. And that's what I was wondering, if that was...that was a part that I was mostly interested in, because not only do we have sometimes excessive illnesses but we've had storm problems. I don't know if anybody remembers the winter of '78 and '79 out there, but actually it got to where it stormed so bad that the schools finally just held school and it was up to those people to try and get there. They

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quit running the buses and everything and all they could do is just count the kids absent but they had to have their days in with that school open. And I'm wondering if that would probably...something in there I suppose could be used in there so that a whole a bunch of those kids wouldn't be considered a truancy of any sort. And I presume we don't need anything in statutes to address that. [LB463]

SENATOR ASHFORD: I don't think so. I think what we're trying to do here...well, I know what we're trying to do is we're trying to, with LB800, we brought the county attorney, which quite frankly the county attorney... [LB463]

SENATOR GLOOR: One minute. [LB463]

SENATOR ASHFORD: ...was supposed to be involved under prior law but really in many cases wasn't, so we clarified that at 20 days the county attorney would be involved. But it's up to the school district to work with the local county attorney,... [LB463]

SENATOR LOUDEN: Okay. [LB463]

SENATOR ASHFORD: ...not up to us to tell them when necessarily to do that, except at 20 days there does need to be a report. [LB463]

SENATOR LOUDEN: And there has to be some common sense used here in some of that, places like that. [LB463]

SENATOR ASHFORD: Right. [LB463]

SENATOR LOUDEN: Yes. Now do you intend to pull AM754 or do we go ahead and vote on that one? [LB463]

SENATOR ASHFORD: Yes, and I'm sorry, Senator, this is kind of a funny way to do it. I intend...what I ask is that AM754 be voted on and then we would adopt the amendment to the bill. That's what I think is the cleanest way to do it, is to adopt AM754 and then adopt...then the amendment to the bill then would include the language you're talking about. [LB463]

SENATOR LOUDEN: Okay. Thank you, Senator Ashford, and thank you, Mr. President. [LB463]

SENATOR GLOOR: Thank you, Senator Louden. Senator Ken Haar, you're recognized. [LB463]

SENATOR HAAR: Mr. President, members of the body, I have a few questions for

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Senator Ashford, but I'd like to start with the case of a constituent. One of my constituents has a daughter who is currently 13 years old but, a severe mental disability, she basically performs like a 9-month-old infant. And she, quote unquote, attends Schoo Middle School. She has an IEP, an individual education program, that says that she will go to school every other Wednesday. The doctor has advised not to take her outside if the weather is under 36 degrees and, you know, because it's the law, the school has referred the situation to the county attorney because the girl has missed 20 days of school. So in...and I'm sorry we're confusing the amendment with the bill here but, okay, on page 30 of the bill (sic), you add language that allows district to consider "illness that makes attendance impossible or impractical." Now this is not an illness. It's a developmental disability. And again, the school gets squeamish because it's the law and so on and so forth. Could you explain how maybe that would work or should we have an additional phrase in there? [LB463]

SENATOR ASHFORD: Thank you, Senator. Yes, we should have the phrase "developmental disability," and we will put that in at Select File. Clearly, that's a case that needs to be addressed and we can certainly do that. [LB463]

SENATOR HAAR: Okay. Well, I appreciate that and I also appreciate my constituent being well-informed and asking about this kind of issue. Thank you very much. [LB463]

SENATOR GLOOR: Thank you, Senator Haar. Senator Price, you are recognized. [LB463]

SENATOR PRICE: Thank you, Mr. President, members of the body. On the first iteration of LB463, I had significant and grave concerns, and I just want to extend my gratitude to Senator Ashford for amending and moving things around to accommodate what was significantly problematic. But I still have just a few questions and concepts I'd like to articulate and here's the gist of it. It seems that what we're doing is we're setting up a model that says when a student misses greater than ten days or ten days of cumulative hours, they're identified as an at-risk student. And now they're either at risk because they already are in the Office of Probation or they're at risk because they missed greater than ten days, and my concern is that's kind of a one size fits all, and I'll give you an example for me. When you look at Section 13, page 30, lines 2 through 6, it says, and I'll paraphrase to shorten it, there shall be a policy on how the school and the county attorney will handle due to documented illnesses. I'd like to bring that in context to a scenario that many of us would see. I can talk to it from the learning community area, from the Bellevue-Papillion part of Omaha area. Someone, a father or a mother, deploys away for a year to 18 months. When they come back, they get time off. You know, they've gone into the box, they've done the work, they come back and the federal government, everybody realizes we need to let them decompress, and we want them to be with their families because that's a real important component. What we won't allow is we won't allow them to take their children and go do something perhaps that helps build

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that family bond and, I don't know, strengthen it I should say, let's say a trip to Disneyland. Now take that into context with the current policy will allow for family leave. If you have a child in there or something goes on, a medical thing, you have a Family Leave Act. So I would hope that we could have the conversation that says in a situation that's not due just to illness but where the school and everybody understands there was an extraordinary circumstance, that those days they'd be held harmless. I'd like that discussion to be had because I don't know, because I don't do it, but perhaps are there sometimes students who are involved in agricultural concerns? They're not sick. They're helping out with the farm. So they miss a few days and then, subsequently, later in the year they get an illness, they get the mono, they get the flu. Well, now you had a cumulative of ten days you've lost and now you are in that at-risk pool. So I would hope that we could have a level of sophistication that when we weave this net that we take those extraordinary concerns that do not follow only in an illness. And with that, I'd like to engage Senator Ashford in a few questions, if he would yield. [LB463]

SENATOR GLOOR: Senator Ashford, would you yield? [LB463]

SENATOR ASHFORD: Sure. [LB463]

SENATOR PRICE: Thanks. Again, Senator Ashford, I do want to tell you I appreciate all the work you're putting into this and you've heard my discussion there. So would you... [LB463]

SENATOR GLOOR: One minute. [LB463]

SENATOR PRICE: Thank you. Would you take this last minute and explain how we would deal with maybe the children of deployed soldiers, sailors and airmen who have come back? [LB463]

SENATOR ASHFORD: Sure. And in the metro area specifically, what we're doing and what we're suggesting is that it's up to the superintendents to develop a plan for students in their area and certainly the Sarpy County, and not only Sarpy County but some in Douglas County, students are in the military, that it would be certainly part of that plan, I would assume, that the children who...students who are in...whose parents are in the military should be treated in the way you suggest. I think that's perfectly...they're able to do that. We give them the opportunity to do that in this bill. That hasn't changed current law at all. I think when we start talking about other exceptions, I worry a little bit because the excessive absenteeism in the state is so bad... [LB463]

SENATOR GLOOR: Time, Senators. Thank you, Senator Price, Senator Ashford. Mr. Clerk for an announcement. [LB463]

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ASSISTANT CLERK: Mr. President, the Business and Labor Committee will meet in Executive Session now under the north balcony. [LB463]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Nordquist, you're recognized. [LB463]

SENATOR NORDQUIST: Thank you, Mr. President and members. I'd first like to start by thanking Senator Ashford and members of the Judiciary Committee. Certainly Senator Ashford has spent an enormous amount of time on this issue while he's been in the Legislature and continues to come up with innovative, well-thought-out approaches, bringing people together in the metro area and in the entire state to address this serious problem. LB800, which we worked on the last couple years, was a great first step to raise the awareness within schools to get them on a pathway to establish responses within the district, you know, a districtwide response to get them to lay out a plan for how they're going to address excessive absenteeism. And I think this is the next great step forward. We know that when we're talking about truancy or excessive absenteeism that there's no one factor that contributes to it. We're talking about factors in the home, factors in the school building, factors in the community, factors with the student themselves, their health. I think we need an approach that takes that into account. One of the key pieces of this I think that will help us going forward is the data sharing component. We don't have an exact number but we know in the metro area a substantial amount of the students that are excessively absent are either on probation or are a ward of the state in our foster care system. I think that the sharing of data between HHS, probation, the schools is critical. Schools need to know those students that are on probation and those that are wards of the state in a timely manner. HHS needs to know when wards of the state aren't attending school and same with probation. I think that step forward is critical. The other piece, and Senator Ashford does such a great job of this, is bringing people together, the learning community, making this a key goal of the learning community, something we as a state that we can get around, something the superintendents in the metro area can get around and support and come together and say this is something we have to address. The other component of the committee amendment I think that is absolutely critical is the support for the CASA Program. CASA and its volunteers serve a critical function for our state and especially in this time when our child welfare system is going through such...through reform and such upheaval that I think this program is so worthy of state dollars and state investment. They commissioned an evaluation on the impact that they have and it's very successful. Children with CASA volunteers on average spend four months fewer in out-of-home care than children without a volunteer and are 16 percent less likely to enter the foster care system. The dollars that we spend here to build and recruit volunteer infrastructure for CASA will come back to us many, many, many times over by savings in the foster care system and keeping and moving kids out of out-of-home placement in a more timely manner. I know we're going through tough times in our state budget but certainly this rises to a high priority for me, and I know it does for Senator Ashford and the rest of

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the Judiciary Committee. And any time I have left I would yield to Senator Ashford so he can continue responding to Senator Price's questions. I know he was partway through that. Thank you. [LB463]

SENATOR GLOOR: One minute twenty seconds, Senator Ashford. [LB463]

SENATOR ASHFORD: Thank you. Thank you. And I will work with Senator Price on his issues regarding the military and I thank Senator Nordquist for his comments. [LB463]

SENATOR GLOOR: Thank you, Senator Nordquist and Senator Ashford. Senator Dubas, you are recognized. [LB463]

SENATOR DUBAS: Thank you very much, Mr. President. I stand in support of the bill and the amendment, especially the component that talks about CASA and the CASA Program. That is such an incredible and valuable service that our CASA volunteers provide for these kids, especially in the midst of what we're going through right now with the reform movement. These CASA volunteers are often the most stable force in that child's life at that time and I'd like to stress the use of the word "volunteer," because these people do do this voluntarily but it takes up a considerable amount of their time. And as I've had the opportunity to visit with these people, you know, just the size of their heart and what they're willing to do is pretty incredible. Senator Ashford mentioned the fact that we struggle to attract and recruit CASA volunteers in the more rural areas of the state and that is very true. There's a variety of reasons for that happening. But I think if our CASA organizations had access to some additional dollars, it would help them in that recruitment and the training of these volunteers. The CASA organization in my area, in the Grand Island area, they're just doing such great work helping these kids when they're going through the court systems, when their families are in the middle of turmoil. The dollars that are included in this bill and in this amendment will really go a long way to help these kids, and these CASA volunteers do such important work. And I would just encourage anybody in the body, if you haven't had a chance to really understand what CASA is, if you haven't had a chance to talk with the CASA organization in your area or specifically some CASA volunteers, please do so. The amount of dollars that these CASA volunteers save our state are probably beyond measure, what they do. And again, just that stabilizing force that they bring into these children's lives, you can't put a dollar figure on that. So this is a very important component in this bill. CASA does great work. Any dollars that we can direct their way to help them continue their work will be dollars that will return benefits for a long, long time. So I appreciate the inclusion of this particular issue into LB463. Thank you. [LB463]

SENATOR GLOOR: Thank you, Senator Dubas. (Visitors introduced.) Items for the record, Mr. Clerk? [LB463]

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ASSISTANT CLERK: Thank you, Mr. President. I have a potential conflict of interest statement from Senator Burke Harr. New resolutions: LR157 by Senator Cook and LR158 by Senator Pahls, those will be laid over. (Legislative Journal pages 1087-1088.) [LR157 LR158]

And I have a priority motion. Senator Harms would move to recess until 1:30 p.m.

SENATOR GLOOR: Members, you've heard the motion to recess until 1:30 today. All in favor say aye. All opposed say nay. We are 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. Do you have any items for the record?

CLERK: I do: a series of confirmation reports from the Health and Human Services Committee, signed by Senator Campbell, as Chair; and a motion from Senator Langemeier to LB229 to be printed. That's all that I have, Mr. President. (Legislative Journal pages 1089-1090.) [LB229]

SENATOR GLOOR: Thank you, Mr. Clerk. Members, we'll proceed to that area of agenda marked for 1:30 p.m., General File committee priority bills. Mr. Clerk.

CLERK: LB617, introduced by Senator Mello. (Read title.) Introduced on January 19, referred to the Executive Board for public hearing. The bill was advanced to General File. There are committee amendments pending, Mr. President. (AM906, Legislative Journal page 938.) [LB617]

SENATOR GLOOR: Thank you, Clerk. Senator Mello, you're recognized to open on LB617. [LB617]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. As introduced, LB617 was designed to provide additional legislative oversight to the rule-making process in our state government. Based on a nearly identical bill that was introduced by then-Senator Pat Bourne in 2001, the bill would have created a legislative committee with the authority to review proposed rules and regulations for compliance

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with legislative intent. Currently, at least 40 states have some form of legislative oversight or involvement in the rule-making process, typically by means of a separate legislative committee like the one proposed in the green copy of LB617. A similar committee was actually in place in this Legislature from the early '70s to the mid-1980s. At the hearing on LB617, a number of concerns regarding the current rule-making process were brought up, most notably the frequent situation where a bill has been passed by the Legislature but was not being enforced by the executive branch because of the appropriate state agency had yet to begin the rules and regulations process. Shortly after the hearing, the Performance Audit Committee released its preaudit report on the timeliness of rule promulgation. The language in the committee amendment, which replaces the bill, represents the culmination of the concerns brought up during the hearing and the implementation of the legislative recommendations included in the preaudit report. In an era of term limits, I believe it's increasingly important that the authority delegated by our branch of state government to the executive branch is being exercised in accordance with the Legislature's intent. As many veteran senators in the body can no doubt attest to, legislative intent is being thwarted when rules and regulations are not adopted in a timely manner. I'd like to thank Speaker Flood, Senator Wightman, and Senator Harms for their work in helping draft the committee amendment language, as well as the Performance Audit Committee staff and my colleagues on the committee for designating LB617 as a committee priority bill. I'd urge the body to adopt the committee amendment, as well as the underlying bill, LB617. Thank you, Mr. President. [LB617]

SENATOR GLOOR: Thank you, Senator Mello. As the Clerk stated, there are amendments from the Executive Board. Senator Nelson, as Vice Chair of that board, you're recognized to open on the amendments. [LB617]

SENATOR NELSON: Thank you, Mr. President. The committee amendment strikes all of the provisions in the green copy and replaces them with the following requirements regarding the adoption of agency rules and regulations. A public hearing must be held on a rule or regulation that is being adopted, amended, or repealed pursuant to a bill within 12 months after the effective or operative date of the bill. The government may extend the 12-month period for up to an additional six months upon a written showing of good cause. The regulation process must then be completed within one year after the public hearing. If the agency does not adopt and promulgate such rules and regulations within one year of the public hearing, it must submit a written explanation to the Executive Board and the standing committee with subject matter jurisdiction over the issue. The statement must include: reasons as to why the rules and regulations have not been adopted, the date the agency expects them to be completed, and any suggested statutory changes that may enable the agency to adopt the rules and regulations. Public hearing notices must include the identification of the specific legislative bill, if applicable, or the authorizing statute when there is no legislative bill. On or before July 1 of each year, each agency must provide to the Performance Audit

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Committee a status report on all rules and regulations pending before the agency. And if an appropriation was made, with respect to legislation for which rules and regulations are pending, to provide funding for an additional staff to implement a program, that status report must include what the funding has been used for and what functions the staff have been performing while the rules and regulations have been pending. Finally, the committee amendment adds the emergency clause. Again, the committee amendment replaces the provisions of the bill as introduced. I ask for your support of the amendment and would be happy to answer any questions. [LB617]

SENATOR GLOOR: Thank you, Senator Nelson. Members, you've heard the opening on LB617 and the committee amendment, AM906. Are there senators wishing to be recognized? Senator Harms, you're recognized. [LB617]

SENATOR HARMS: Thank you, Mr. Chairman and colleagues. I rise in support of AM906. This amendment really does...as Senator Nelson said, does replace the bill. This is a very important piece of legislation. And, quite honestly, the purpose of AM906 is really to address concerns that all of us have, at least in the length of time that it sometimes takes to create these regulations. And for me, as a Chair of the Performance Audit Committee, I can tell you this is extremely frustrating for our committee members. When you have a length of time from five years to six years or longer and they haven't promulgated the rules and when you then file a complaint and say, would you have the Performance Audit Committee go in and look at this agency, when our staff goes in and looks at the agency and they find, well, part of the problem is very simple. You haven't promulgated the rules. You haven't adjusted the rules to the law that has been created, and that creates a lot of problem for us. Let me give you a couple of examples of how this has actually worked. The Legislative Performance Audit Committee audited the Department of Health and Human Services in their community-based behavioral health system. They found that the regulations were not in place six years, colleagues, six years after the enactment of LB1083. The Legislative Performance Audit Committee also did an audit on the Public Service Commission office of the public advocates and, along with the State Auditor's report, found that the PSC had not promulgated a required regulation seven years after the passage of enacting legislation. The State Auditor also found in a draft retirement board regulations approved by the board in 2002 had never been finalized. Well, that list goes on and on. We spend hours in here debating. We spend hours in here trying to find solutions to some of the issues, and when we pass the laws and the bills and the bills become law, then the agencies don't follow through. And that's really troublesome for me and I know for our committee because it creates so many problems for the public outside of this environment that says, I don't understand why we're having this problem because this is what the law says, but these regulations aren't here. It took us a while to figure that out and when we did, it became very clear that that is a major problem for us. I think as Senator Nelson had brought out that we put some time limits on this that I think are appropriate. It forces it them to deal with the issue. And the clock starts ticking as soon as they have their

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hearing. The neat thing about this is that once they have that hearing, every year, July 1 until this is done, they'll have to report to the Performance Audit Committee to let us know where that's at, where they are with that. And that gives us then the opportunity to continue to monitor that. Right now there's no one monitoring these rules or regulations. And I'm not so sure if you didn't go through a lot of the laws that we have passed you'd probably find even more. These are just things that we've run across, things that we've focused on because you, as colleagues, have mentioned that to us and said, would you please look at this to see why there's so much discontent, why there are so many problems with this in these particular areas. Well, that's normally what we have found. And I don't think we can...(cough) excuse me, it's allergy season...I don't think we can actually tolerate this. We spend hours, as I said before, trying to put these into place and then people just simply don't do it. And so I would urge you to go ahead and support the AM906. I think it's the right thing to do. I think you're going to find some discussion about do we really need this. Yes, you do need this. If you want to continue to pass bills and not see the regulations implemented, then you'll continue to have the same problems, the public will have the same problems that we have today. This has to change. And I think it's an embarrassment to this body, to this floor to pass laws and agencies refuse to go ahead and promulgate the rules. It's not right. [LB617]

SENATOR GLOOR: One minute. [LB617]

SENATOR HARMS: Thank you, Mr. President. I would urge you to please support this. Ask your questions. We'd be happy to answer your questions. But I don't think this can be tolerated anymore. Thank you, Mr. President. [LB617]

SENATOR GLOOR: Thank you, Senator Harms. Senator Flood, you're recognized. [LB617]

SPEAKER FLOOD: Thank you, Mr. President. Good afternoon, members. I do support LB617 and the committee amendment. Senator Mello brought us a bill to the Executive Board that didn't look like it does now in the committee amendment, but I think at the end of the day the issue for the Executive Board is when the Legislature acts and directs the policy of the state of Nebraska, the agencies of the state should then follow through with the regulations to make the process work. And I think there's value in that. One caution here and it's going to come up again, and that is the separation of powers. I do believe as it relates to the agencies, we as a Legislature have the power and the authority to direct them to operate in good faith and work fast enough with dispatch to get these things done. Once those regulations get into the hands of a constitutional officer such as the Governor's approval or the review by the Attorney General or the Secretary of State, I don't believe the Legislature can direct their actions as independently elected constitutional officers. But I don't think the problem we've seen in the Exec Board is with the constitutional officers. It's not a matter of them acting on a regulation. The issue in my experience and the testimony in front of the Executive Board

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relates to the delayed action of the agency. And so what I'm saying is I'm voting for this bill. I'm voting for this amendment. But I do intend to work between General and Select on an amendment that further clarifies that an agency is not absolved from liability if they drop a bunch of regulations on the Governor's or the Attorney General's desk at 11 months and 28 days after the bill was passed. That I think is not the way this works. This isn't, okay, we go after the Governor. Excuse me for a second. If you could just limit your conversation. Thank you. I think we have to get to a place where the agency works a little bit quicker to get this into the hands of the constitutional officer and then move it along. And for that reason, I'm going to vote for the bill, I'm going to vote for the amendment, and I'm going to work on Select File. Thank you, Mr. President. [LB617]

SENATOR GLOOR: Thank you, Senator Flood. Senator Mello, you are recognized. [LB617]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. I, too, rise in support of AM906. And without repeating what Senator Harms, Nelson, and Flood have said, there's one component of the committee amendment that I think is very critical. And it's something that we learned after the committee...after the Exec Board hearing on LB617 in regards to the number of regulations that have not been adopted. But the issue was raised: what happens to those appropriated funds that are given to the agency to implement legislation but they do not implement the rules and regulations? What do they do with that funding? One of the last sections of the committee amendment on page 4, it starts on page 4 and ends on page 5, requires that agencies will now produce an annual report to the Performance Audit Committee on where they're currently at with rules and regulations that are in front of them, but also that they need to provide information to the Performance Audit Committee, as well as I'm sure that information will get shared with the Appropriations Committee, on what has been done with that appropriation that was given to them to actually implement the legislation. And if the rules and regulations have not been adopted, what have they done with that appropriated money over the course of the year in regards to hiring staff, utilizing staff, or any other aspects of the program? So it provides another additional oversight for the Legislature through the Performance Audit Committee to see where the money we appropriate on programs that involve rules and regulations, where that money goes when we see a significant lag time between the implementation of the bill and the actual implementation and codifying of the rules and regulations. So with that, once again, I'd like to thank Senator Flood, Harms, Wightman, and the Exec Board for moving out AM906 on LB617 and urge the body to adopt it. Thank you, Mr. President. [LB617]

SENATOR GLOOR: Thank you, Senator Mello. Senator Fulton, you are recognized. [LB617]

SENATOR FULTON: Thank you, Mr. President, members of the body. I was mistaken and I was reading LB617. I didn't take time to read AM906. So I have done that and

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recognize there's quite a difference between the two. But the question I had at the time I pushed my light on remains, so I'll ask Senator Mello if he would yield to a question. [LB617]

SENATOR GLOOR: Senator Mello, would you yield? [LB617]

SENATOR MELLO: Absolutely. [LB617]

SENATOR FULTON: Senator, the original bill had attached to it a fiscal note which I think I understand why it did. AM906 is putting forward time lines, and so I assume that those are not going to require any money. But the requirement, I think the July 1 requirement to the Performance Audit Committee, any feedback on what kind of fiscal note to expect with respect to AM906? [LB617]

SENATOR MELLO: We don't anticipate a fiscal note in the sense of just providing the information that they currently have in regards to where they're at with existing rules and regulations because that information also needs to be shared with the Secretary of State through the rules and regulations tracking process. So the original fiscal note on LB617 focused on computer changes, technology changes that the Secretary of State's Office felt needed to be made in order to allow the Legislature to have an additional step in the rules and regulations process where we're no longer involved in that step right now. We simply are establishing time lines and a little bit more oversight in regards to the time line process. [LB617]

SENATOR FULTON: Okay. Thank you, Senator Mello. Thank you, Mr. President. [LB617]

SENATOR GLOOR: Thank you, Senator Fulton. Senator Howard, you are recognized. [LB617]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I want to thank Senator Mello and every member of the Executive Board for this bill. I didn't realize until just recently how significant this bill is. As you may remember, my priority bill, LB237, is the prescription drug monitoring bill, and we were able to put that bill in such a way that it's going to be effective and it's going to be put in place at no cost to any of us here in the state. But also included in this bill is a requirement that the department write the rules and regulations and it's worded that they shall write the rules and regulations, as is their responsibility. And in talking to Dr. Schaefer after we had advanced this bill all the way to Final Reading, and Dr. Schaefer has been wonderful and she's been a terrific help to me on this bill, but she said, you know, we're really backed up on writing those rules and regulations. And I had the sinking feeling in my heart that this could be put on the back burner for years, years, which is really a disservice to the people that need this bill in place for themselves, for their families, for

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anyone that's impacted by prescription drug abuse. And this bill, this bill really looks at that issue and puts time frames in place. And I am very, very grateful. I think we don't need to pass bills and I certainly don't want to pass bills that are a sham and don't do what we expect them to do. With this bill, we will get those regulations written and they'll be written in a timely fashion and my bill, LB237, will do what it's intended to do. So thank you. [LB237 LB617]

SENATOR GLOOR: Thank you, Senator Howard. Senator Harms, you are recognized. [LB617]

SENATOR HARMS: Thank you, Mr. President, colleagues. I just wanted to walk you through how this might really work. I mentioned earlier that the clock starts to tick as soon as this bill is passed, becomes law, and as soon as they have their hearing, they've got a time, a length of time there that they've got to have their hearing. When that hearing starts, the clock begins to tick again, and that gives our Performance Audit Committee the opportunity then to start monitoring what's really taking place. And I think we've got all the check and balances in here we need in order to make this happen. I think it's really important for us to accomplish this to make sure that we have these regulations in place. And as I mentioned earlier in my testimony, it is extremely frustrating for our staff, Performance Audit staff or the State Auditor, to go in, when they all of a sudden realize what the problem is, even the agency doesn't understand what's happening because the rules are not established, not by the law itself. Now I want you to keep in mind that the rules and regulations we're talking about are those which the law requires, nothing outside of that are we going to be looking at. We're wanting to make sure that this law that we passed on this floor that these regulations are dealing specifically what we have requested, and that's what this is about. So I hope that you'll continue to look at this and will pass it along. And I'm thankful for Senator Flood. He has great skills in looking ahead and looking at some of the other issues and whatever he will produce on Select File, we will support because we know it will be good. So thank you, Mr. President. [LB617]

SENATOR GLOOR: Thank you, Senator Harms. There are no senators remaining in the queue. Senator Nelson, you're recognized to close on the Board amendment. [LB617]

SENATOR NELSON: Thank you, Mr. President. I'll be brief. This amendment, AM906, is considerably shorter than the original bill. We've gotten it right down to the bare bones of things we wanted to achieve: just a reasonable time for a hearing to be held, which can be extended by approval of Governor from 12 months to 18 months, which there's a lot of initial work and everything prior to hearing, notices to be sent out and things of that sort. And then once a public hearing is held, then there's another 12 months in which to complete the regulation and the promulgation. So...and if this isn't done, why then there has to be a report filed with the Audit Committee that Senator Harms heads up, and

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then there's also a process to inquire as to what any funds that were appropriated, how they were being spent during this period. So with that, I will close and ask that this body approve AM906 and then go on to advance LB617. Thank you, Mr. President. [LB617]

SENATOR GLOOR: Thank you, Senator Nelson. The question is, shall the Executive Board amendment to LB617 be adopted? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB617]

CLERK: 33 ayes, 0 nays on adoption of committee amendments. [LB617]

SENATOR GLOOR: The amendment is adopted. Discussion continues on the advancement of LB617 to E&R Initial. There are no members wishing to be recognized. Senator Mello, you're recognized to close on LB617. [LB617]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. With the adoption of the Executive Board amendment that now is the bill which, without belaboring the point, looks to solve what has been some challenges over a number of years in regards to the adoption of rules and regulations in a timely manner as well as providing more transparency in regards to what is done with the actual appropriations that we as a Legislature give state agencies in regards to carrying out our legislative intent through various legislative bills. So I agree and support what Senator Harms said in regard to the Speaker looking to ensure...we'll work on an amendment between now and Select to ensure that we focus, continue to focus the bill on making sure that we put the responsibility where it needs to lie in regards to rules and regulations and not leave that at the footstep of our constitutional officers, because that has not been the issue in regards to the conversations both in the committee as well as afterwards as well as to ensure that we have a good framework constitutionally in regards to our separation of powers issues to carry out our rules and regulations process in a timely and transparent manner. With that, I urge you to adopt LB617. Thank you, Mr. President. [LB617]

SENATOR GLOOR: Thank you, Senator Mello. Members, the question is the advancement of LB617 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB617]

CLERK: 38 ayes, 0 nays, Mr. President, on the advancement of LB617. [LB617]

SENATOR GLOOR: The bill advances. (Visitors introduced.) Continuing with General File, Mr. Clerk. [LB617]

CLERK: LB251, Mr. President, a bill introduced by Senator Council. (Read title.) The bill was introduced on January 11 of this year, referred to the Judiciary Committee. The bill was advanced to General File. There are Judiciary Committee amendments pending, Mr. President. (AM945, Legislative Journal page 981.) [LB251]

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SENATOR GLOOR: Thank you, Mr. Clerk. Senator Council, you are recognized to open on LB251. [LB251]

SENATOR COUNCIL: Yes, thank you, Mr. President, and I do indeed rise to introduce LB251. I introduced LB251 in response to the reduction in the judiciary's budget that would have been necessary in order to fulfill the Judiciary Committee's obligation under LR452. According to the response the Judiciary Committee received from the Supreme Court, the required reductions would result in the depletion of a cash fund that currently enables certain offenders to remain in their communities rather than be incarcerated at a significantly greater expense to taxpayers, and would also have resulted in the closing of numerous county courts. In order to avoid these consequences, I introduced LB251, which basically provides for a \$20 increase in all court fees. The committee voted to advance LB251 with the understanding that the amount of the increase in court fees, if any, would be dependent upon the amount of the cuts ultimately proposed by the Appropriations Committee. The committee then proceeded to designate LB251 as one of its priorities. Prior to designating LB251 as one of its priorities, the Judiciary Committee also considered and voted to advance LB202. Allow me to provide a little background on LB202. Since my appointment to the Judiciary Committee in 2009, juvenile justice reform has been a priority of the committee. In 2010, the body enacted and the Governor signed LB800. If you'll recall, this morning we discussed another bill that moves us along the path of juvenile justice reform, and that bill is LB463. As part of that reform initiative, the committee has considered the elimination of the sentence of life without possibility of parole for person who were...who committed a homicide or were charged with first-degree murder under the felony murder rule prior to reaching age 18. And if some of you will recall, in 2009, the committee advanced a bill I introduced that provided for the elimination of that sentence. If you'll also recall, we began floor debate on that bill, but principally due to national developments, specifically a case pending before the U.S. Supreme Court that I believe could have significant impact on our consideration of the measure reflected in the bill I introduced in '09, I moved to indefinitely postpone that bill. We adjourned before that motion was heard and, consequently, that bill was carried over to the second session of the last Legislature. At the beginning of the second session, I moved to recommit the bill to the Judiciary Committee since the Supreme Court had not rendered its decision as of the end of the session. And as the end of the session was nearing, I requested and the committee agreed to indefinitely postpone that bill. At the end of May last year, the U.S. Supreme Court did render its decision in the cases coming out of Florida questioning whether the U.S. Constitution permits a juvenile offender to be sentenced to life in prison without possibility of parole for a non-homicide offense. The Supreme Court ruled that it is cruel and unusual punishment to sentence a juvenile to life without possibility of parole for an non-homicide offense. In doing so, it reaffirmed the fact underlying its earlier holding that a juvenile cannot be sentenced to death. That universal fact is that, based on uncontroverted psychology and medical science, there is a fundamental

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difference between juvenile and adult minds. In fact, the areas of the juvenile brain that govern impulse control, regulate emotions, regulate risk assessment, and moral reasoning are still developing as late as age 20. An example of this universally known fact is a recent advertisement by Allstate Insurance. Allow me to read it to you. Why do most 16-year-olds drive like they're missing a part of their brain? Even bright, mature teenagers sometimes do things that are "stupid." But when that happens, it's not really their fault. It's because their brain hasn't finished developing. The underdeveloped area is called the dorsolateral prefrontal cortex. It plays a critical role in decision making, problem solving, and understanding future consequences of today's actions. Problem is it won't fully mature until they're into their 20s. And this is an Allstate advertisement for insurance for juvenile drivers. In light of the Supreme Court decision, I conducted extensive research during the interim to determine what other states were doing on the subject of juvenile sentencing. My research revealed a number of major trends in juvenile justice reform relative to sentencing. One of those trends is the abolishment of the sentence of life without possibility of parole for juveniles for all offenses. Texas, Colorado, Georgia, and Washington fall in this category with the expectation that more states will follow as a result of the Supreme Court's decision. One of the other trends I followed is the acknowledgement that juveniles are capable of redemption. An example is the Colorado legislature's creation of a separate juvenile Board of Pardons. Another example is a senate bill that is currently working its way through the California legislature. That bill provides that a juvenile serving a life sentence has an opportunity to petition a court to recall, review, and, if appropriate, resentence the juvenile to a shorter term based upon the presence of various factors. In light of these trends, I reintroduced the bill providing for the abolishment of the sentence of life without possibility of parole for juveniles, but I also introduced LB202, which in its original form was modeled after the California senate bill. However, recognizing that our state constitution prevents judicial involvement in a sentence reduction, I redrafted LB202 in the form of an amendment to LB202 before the bill was heard in the Judiciary Committee. So what in fact was presented to the public at the hearing is what will come to you in the form of the committee amendment to LB251. LB202 is before you in the form of an amendment to and a replacement of LB251 because it was determined, after the committee designated LB251 as a priority, that there no longer appeared to be a need to pursue any increase in court fees in light of the Appropriation Committee's preliminary report and subsequent discussions with members of the Appropriations Committee. So the Judiciary Committee unanimously agreed that LB251 should be amended to become LB202. I want to take this opportunity to express my appreciation to my colleagues on the Judiciary Committee for their belief that LB202 is warranted and worthy of debate during this session. Briefly stated, LB202, as reflected in the upcoming committee amendment to LB251, provides that after a juvenile has served... [LB251 LB202 LB463]

SENATOR GLOOR: One minute. [LB251]

SENATOR COUNCIL: ...at least 20 years of a life sentence, he or she has a right to

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petition the Board of Pardons for a sentence commutation hearing provided that that petition contain certain information regarding the juvenile's age at the time of the offense, the juvenile's disciplinary record while incarcerated, and evidence of rehabilitative efforts. If the decision of the Pardons Board after the hearing is to deny commutation, LB202 allows for that juvenile to resubmit petitions every five years until he or she has served 40 years of the sentence. If they have not received a commutation after serving 40 years of the sentence, the bill does not provide them any further right to petition for commutation under this legislation. It came to my attention today that the Governor has some concerns as to the constitutionality of LB202 as it is going to be an amendment... [LB251 LB202]

SENATOR GLOOR: Time, Senator. [LB251]

SENATOR COUNCIL: ...and I'll address it when we get to the amendment. Thank you. [LB251]

SENATOR GLOOR: 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 amendment. [LB251]

SENATOR ASHFORD: Thank you, Mr. President. And I am going to give most of my time, my opening, back to Senator Council who can certainly more adequately than myself explain the details of AM945, but I want to comment on a couple of points that Senator Council made. And one was her...and I appreciate her thanking the committee for their attention to this issue and I'd like to do the same thing. For five years, we've been struggling with juvenile issues in our committee. We are I think still one of the...maybe the only or one of the two or three only states where felony charges are filed against juveniles in adult court and not juvenile court, a reform that we need to address in the future. But certainly with the issues involving truancy and education and juvenile justice and all of those issues that are so relevant to a child's life, I thank the committee for its willingness to explore them. We have spent hours, hours, days on juvenile justice issues. And this Judiciary Committee in my...without the support of my committee, the Judiciary Committee, we wouldn't be at this place to discussing AM945. And, secondarily, I would mention this. Early in the session we had discussion about closing county courts. Senator Council mentioned the decision by the Judiciary Committee to put out a bill to this floor that would have raised court costs significantly to protect our justice system in our state and to make certain that our county courts remain open and accessible to the people of this state and all the citizens of the state. And I...and, thankfully, we are not going...it is not going to be necessary to raise court fees this session to address the needs of the entire state. But I want to thank my Judiciary Committee members for that initial decision to put that court fee bill out. It is not popular to do, but I can tell you that the Judiciary Committee is committed, remains committed to ensure that all of the courthouses in this state be adequately staffed and available to

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pervade justice to all the citizens of Nebraska. And I appreciate Senator Council's reference to that point. Getting to AM945, Senator Council and prior to Senator Council on other occasions, there have been efforts to address the issue of incarcerated...individual juveniles who have been incarcerated for life...to life imprisonment without parole. And the issue has been before this Legislature on more than one occasion. And I will say that Senator Council, in bringing this alternative to the body, has thoughtfully addressed this issue and has provided a remedy that I think is, in my view and in the view of my colleagues on the Judiciary Committee, a balanced approach to the issue. There is no question that the crimes that are committed by juveniles and adults alike are vicious in many cases and heinous. There is no question about that. But as Senator Council has suggested, and as so much evidence presented to the Judiciary Committee also suggests and as the Supreme Court has reflected on more than one occasion but most certainly in the decision mentioned by Senator Council, that there is a pattern and trend in this country to accept the fact that there is a difference in the development of the juvenile mind and the ability of a juvenile to make a reasoned decision and especially in an impulsive situation. So recognizing that, Senator Council has put forth what I believe to be one of the most significantly important pieces of legislation I have seen in my 13 years here. It is a recognition. It is a recognition, much like, though on a totally different topic, involving the bill we dealt with pre...with the 20-weeks issue involving abortion last year, as science develops and we begin to understand more fully the differences of the juvenile mind and we see in all of its iterations the...what juveniles can and are capable of doing without thinking. I'm always struck by Senator Harms's thoughtfulness and when he...last year, we talked about juveniles and alcohol. And Senator Karpisek dealing with juveniles and drugs. We had that debate last year. These are incredibly thoughtful comments made by colleagues over the years. And this bill is not a radical bill in any way, shape, or form. It is a measured, balanced approach that recognizes the differences that exist between juveniles and adults. And it is a further recognition of this, that we are in the end of the day fallible human beings. We all make decisions that sometimes we regret and in the cases that we may be dealing with in Senator Council's bill, they have had horrific consequences. But to deny hope to a juvenile in those cases where those individuals have no possibility of parole whatsoever is to me, especially with the advance in human science on these topics, something that this Legislature must, must consider extremely seriously. And I strongly urge that we advance this bill. And there may be some constitutional issues over parts of it raised by the Governor's Office, that's fine. But we can talk about those. But we cannot stumble in this effort to recognize the difference between juveniles and adults even though we are dealing with juveniles in some of these cases that have committed the most heinous acts that we can imagine in certain cases. So with that, Mr. President, I would urge the adoption of AM945. I applaud Senator Council's efforts and the efforts of the Judiciary Committee in so thoughtfully looking at this issue. Thank you. [LB251]

SENATOR GLOOR: Thank you, Senator Ashford. Members, you have heard the

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opening on LB251 and the Judiciary Committee amendment, AM945. There are members wishing to speak. Senator Flood, you are recognized. [LB251]

SPEAKER FLOOD: Well, thank you, Mr. President. Good afternoon, members. You know, the Pardons Board, when I think of that, I think of the word "mercy." And Senator Council has identified what she sees as a concern in our justice system as it relates to the word "mercy." A pardon is the executive branch's constitutional authority in Article IV of the constitution saying: Yes, we know you had a hearing; yes, we know you had a trial; yes, we know that you were found guilty and you were sentenced. But upon reflection of all of the facts, mercy dictates that we commute, suspend, or eviscerate your conviction. And I understand what she's doing and I respect it. My concerns are these. Okay. First of all, we just had the conversation about the constitution and the separation of powers. Article IV, Section 13 of the state constitution says, "The Governor, Attorney General, and Secretary of State, sitting as a board, shall have the power to remit fines and forfeitures and to grant respites, reprieves, pardons, or commutations in all cases of conviction for offenses against the laws of the state, except treason"--where we get involved--"and cases of impeachment." It does not provide for any other mechanism. It doesn't say per the Legislature's review. It doesn't say the Legislature has a role. We don't let the executive branch or the Supreme Court through those doors of this Legislature unless we pass a motion that says they can be here. Your county judge cannot sit under that balcony unless we decide he or she is allowed in here. The Governor cannot walk down the aisle of this Legislature unless he is invited and escorted and monitored. We do not invite them to tell us how to make decisions in here. I don't think we can go into the executive branch and tell them what they're going to do and what things they're going to consider when determining whether or not to grant a pardon. It doesn't mean that Senator Council is not identifying a problem, but a remedy in the Legislature would be felony convictions for people under the age of 19. And by way of full disclosure, I probably would not support that either. But that would be our remedy. The constitution does not say, "as directed by the Legislature." Second of all, on page 2 of the amendment, LB251, line 23, it says: If the board--we're talking about the Pardons Board--finds by a preponderance of the evidence that the statements in the petition are true. This is not a court. These are not judges. One of the three will always be a lawyer in this state, that being the Attorney General. And in this case, the Secretary of State is an attorney, but Allen Beermann wasn't (sic) an attorney before John Gale and Governor Heineman is not an attorney. And we're asking them to determine by a preponderance of the evidence, which is a legal standard used by courts. This is not a court. This is the executive branch. This is the relief valve in the checks and balance system that says: Mercy! It's okay to commute the sentence. This is the relief valve that says to somebody with a 15-year license suspension: All right! You've served ten. You're behind in your child support. You need to get your tail to work because... [LB251]

SENATOR GLOOR: One minute. [LB251]

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SPEAKER FLOOD: ...the license suspension is not working. Okay. Mercy! And then I want to talk real briefly just about a concern I had on page 1 of the amendment. It does talk about in line 12 those persons who entered custody prior to July 1, 1994. Now if we're going to pass this, we're going to have to say what kind of custody are they in. Is it pretrial custody? Is it county custody? Is it state of Nebraska Department of Corrections? That's easily fixed. I have concerns. I don't know that we can do this, but I'd like to have the conversation down the road as to what type of approach we need to use if we're going to get at what Senator Council has identified. I see a separation of powers issue here, first and foremost. Thank you, Mr. President. [LB251]

SENATOR GLOOR: Thank you, Senator Flood. (Visitors introduced.) Senator Campbell, you are recognized. [LB251]

SENATOR CAMPBELL: Thank you, Mr. President, and good afternoon, colleagues. And I certainly do not rise as an attorney. As I made the statement this morning, I am not an attorney and happily so. I do, however, want to support the concept of what Senator Council is trying to do and would leave it to the attorneys and the legal folks to figure out what the best method is to get to that. But I do understand very much the concept that Senator Council is trying to put forward here, and I do think that some of the ideas that she has presented certainly have a balanced approach in terms of the safety and protection of the public. I do want my colleagues to know that juvenile justice a number of years ago was folded into what we now know as our child welfare system. And as we are beginning conversations with people on our legislative resolution to look at child welfare, we are beginning to pick up concerns about how we deal with young people in our juvenile justice system. And whatever method we come or legal avenue that we use, I do not want to diminish Senator Council's concern and the concept she's putting forward. Our young people often make very poor decisions, but to say to that young person, I'm sorry, for the rest of your life, there's absolutely no hope, I do not think that is a message that we want to give if that young person earnestly works while they are incarcerated to become a better person or a person that they feel can navigate society again. I would hope that we wouldn't just dismiss this concept, because it is important. Thank you, Mr. President. [LB251]

SENATOR GLOOR: Thank you, Senator Campbell. Senator Council, you are recognized. Senator Council, yes. [LB251]

SENATOR COUNCIL: Oh! Thank you. I'm sorry. I was engaged in conversation with Speaker Flood. And I want to begin by responding to one of the concerns that Speaker Flood raised about the language of the amendment, AM945, to LB251 as it relates to a finding to be made by the Pardons Board. And if you carefully read that section, what it speaks to is what the petition to be filed by the juvenile offender must contain. And it says that a petition filed by someone who was...who committed an offense prior to

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reaching age 18 and was sentenced to life. And I must add this caveat. We talk a lot about life without possibility of parole because our statutes up until this session provided a sentence of life without possibility of parole. We added that phrase "without possibility of parole" in an unconstitutional manner. Before I got here, that sentence, that phrase, was added. The Supreme Court says that the Legislature exceeded its jurisdiction and so we had to remove "without possibility of parole." And a bill introduced by Senator Wightman has already advanced through this body eliminating that phrase. But when we speak to "without possibility of parole," that's because a life sentence in Nebraska is a life sentence. And unless the Pardons Board commutes your sentence, you serve life. You are incarcerated for your natural life. But the preponderance of evidence standard, it really doesn't apply so much to an evidentiary standard as to the contents of the petition. And allow me to read it to you, that: the person shall file their original petition with the board--skip down--the petition shall include the person's statement that he or she was under 18 years of age at the time of the crime; was sentenced to life imprisonment; and that one of the following is true: that the person was convicted pursuant to Section 28-303 or 28-304--and that's felony...that's first-degree murder or felony murder--or of aiding and abetting another person in the violation of such section; the person does not have a juvenile felony adjudication for assault or other felony crimes with a significant potential for personal harm to victims; the person committed the offense with at least one adult co-person; or the person has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing him or herself of rehabilitative educational or vocational programs, if those programs have been available at his or her classification level and at the facility, using self-study for self-improvement, or showing evidence of remorse. That's what the Pardons Board has to say. One of those facts has to be present by a preponderance of the evidence. I suggest to you that the Pardons Board routinely reviews cases and files for exactly this type of evidence when ruling on any other matters of commutation or pardons that come before it. With regard to the issue of separation of state, I would ask my learned colleague Speaker Flood if he would yield to a question. [LB251]

SENATOR GLOOR: Senator Flood, would you yield to a question? [LB251]

SPEAKER FLOOD: Yes. [LB251]

SENATOR GLOOR: And there is 1 minute, Senator. [LB251]

SPEAKER FLOOD: Yes. [LB251]

SENATOR COUNCIL: Okay. Speaker Flood, to your knowledge, can the Legislature set any parameters on the Pardons Board's exercise of authority? [LB251]

SPEAKER FLOOD: When I remember back to the time I was on the Judiciary Committee when we had these same discussions, I remember an opinion offered by

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committee counsel at the time that suggested that we could not place any procedural hoops or expectations upon the independent executive branch Pardons Board. [LB251]

SENATOR COUNCIL: Okay. And I will come back on the mike if I run out of time, but I would like to commit to my learned colleague's attention, as well as everyone else in the body, Section 83 of the Nebraska Revised Statute, 83-1,129 specifies that any person whose operator's license has been revoked... [LB251]

SENATOR GLOOR: Time, Senator. [LB251]

SENATOR COUNCIL: Thank you. [LB251]

SENATOR GLOOR: Thank you, Senator Council. Senator Howard, you are recognized. [LB251]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I think all of you in here know me as a person who is a kind, generous person who, if you need my help, I'd try to be there for you. And I say this because I'm going to step out of the role you typically know me as and stand in opposition to this bill, and I'll tell you why, because in November of 2009 on a cold, chilly night before Thanksgiving, three youth who were engaging in a gang activity in an initiation went on a killing spree. They started out by shooting a man in his driveway in south Omaha, man who had no contact with them, wouldn't have known them from anyone. They drove by and shot him as he got out of his car. Then they went up to Dundee and they randomly shot a person who was at the ATM just taking out money, like any of us would be. Fortunately, that person didn't die. But then to me the most horrific of all is they went over to about 54th and Leavenworth. On the corner is a Kwik Shop with gas stations, and it's getting pretty late at night. It's one girl in the Kwik Shop by herself running the register. She's getting ready to lock up and they're watching her. She closes the shop, walks toward her car. She has no money. She's barely older than they are, gets in her car. They surround the car. One of them puts his hand on the hood of the car, pulls her out. They drag her to the alley and they shoot her point blank. When the time comes that her family can come to us and petition to get their family member back, that's the time I'll listen to a bill like this and be supportive. But we all know that's never going to happen. And it doesn't matter how many vigils they hold. It doesn't matter how many monuments or flower displays or remembrances that they put up. And it doesn't matter how many stories are in the paper about her family and what they're going through. They will never, ever have her back. She was very, very young, totally innocent, and she went through...I can't even imagine what she went through after they pulled her out of that car. She is the one that we should be considering in this whole issue. Killing is killing and dead is dead. My heart goes out to her family and I say someone that commits murder, a cold-blooded murder like this, no matter how old they are, should be facing the consequences. Thank you, Mr. President. [LB251]

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SENATOR GLOOR: Thank you, Senator Howard. Senator Flood, you are recognized. [LB251]

SPEAKER FLOOD: Thank you, Mr. President, members. Senator Council and I were discussing, prior to the end of the expiration of her time, some of the statutes relating to the Board of Pardons. And she's pointing to 83-1,129 which does lay out three different provisions of statutory language and it goes on to pardon authority in Section 83-1,130. And she rightly points to several statutes that relate to the Board of Pardons' authority. And I'm going to give her some time for her and I to discuss that, but I do see in that statute in (3) of the first one that I read there that the manner...that the Pardons Board hearing shall be conducted in an informal manner and a record of the proceeding shall be made and preserved according to the guidelines of the board, which does seem to suggest in a very vague fashion that this is not something we have the authority to go in and regulate. I would note, in Senator Council's defense as it relates to this bill, she is not telling the Pardons Board that they have to grant a pardon. Her bill says the conditions that the board shall consider, which I think does take us to a new place in the statutes, but it doesn't tell the board what they have to rule. Mr. President, can I have Senator Council's attention for a back and forth? [LB251]

SENATOR GLOOR: Senator Council, would you yield? [LB251]

SENATOR COUNCIL: Yes, sir. [LB251]

SPEAKER FLOOD: Senator Council, you just heard what I said about kind of where...did I summarize that accurately, you know? [LB251]

SENATOR COUNCIL: Yeah. I mean, the...according to the statute and the statutory history, there has been a number of modifications to this section of the statute that deals with authority of the Pardons Board. And the section you read, in an earlier version, the version as of prior to 1994 that says: Any person desiring the Board of Pardons to exercise its pardon authority shall file a written application with its secretary. And then right below it, it says the application shall be considered with or without a hearing by the board at its next regular meeting or within 30 days, whichever is earlier. So as recently as 1999, before this section was changed and moved, the Legislature was telling the Board of Pardons when they had to hear applications for pardons. [LB251]

SPEAKER FLOOD: Okay. And I appreciate that. And I guess to follow up on my comments before this opportunity to speak, you know, I still believe that this is an area where the Legislature should tread carefully into the executive branch power conferred solely upon the Governor, the Attorney General, and the Secretary of State. To Senator Council's credit, she identifies the State v. Otey case where, as she mentioned, it does specifically reference statutory authority. As I read the statutes here, it does indicate the

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Legislature has been careful, when the Legislature drafted, these to give the Board of Pardons as much authority and room to move as necessary, but I don't see where any of the annotations suggest these have really been challenged in the Supreme Court. I still think that what she's asking us to do elevates a part of our government or our system that's designed as a check and balance instead of the actual justice system and takes it to a place where, you know, you're ignoring juries. When you are convicted of murder... [LB251]

SENATOR GLOOR: One minute. [LB251]

SPEAKER FLOOD: When you're convicted of murder, you are tried by a jury of your peers and you are...unless you plead guilty and accept the consequences, and that jury determines whether you're guilty or innocent, and then a sentence is handed down within the guidelines of the classification of the crime. I'm very uncomfortable manipulating the pardons process because it is a sideshow compared to the work of the justice system, and I don't believe we belong in there. We belong inside the confines of what a county attorney, a defense counsel attorney, and a judge do with a defendant and witnesses and evidence. That goes to my larger concern and I'll talk one more time. Thank you, Mr. President. [LB251]

SENATOR GLOOR: Thank you, Senator Flood. Members wishing to speak: Council, Ashford, Schumacher, Flood, and Howard. Senator Council. [LB251]

SENATOR COUNCIL: Yes, thank you again, Mr. President. And, again, looking at one of the most recent cases decided by the Supreme Court on the separation of powers issue, it makes...it acknowledges that one has to look to the Nebraska Constitution and statutes governing the exercise of pardon authority to determine whether or not there has been any violation of the separation of powers. And inherent in that look at governing statutes is the fact that this Legislature, on more than one occasion, at least four occasions since 1969, have altered, amended the parameters within which the Board of Pardons works. I want to take this time to specifically address the concern expressed by Senator Howard because it's not a concern that has not been heard in the past. In fact, when LB307 was debated in 2009, that exact concern was expressed. The fact of the matter is that there is nothing, nothing in LB251, as amended by AM945, that mandates that any person who is incapable of redemption or who the Pardons Board believes is so beyond what we consider to be humane in their conduct, there's nothing in this bill that mandates that their sentence be commuted or that they be released from custody. The sad thing about that argument is that in LB307 we heard the same thing, and all LB307 said was you have the possibility of parole, didn't mandate a discharge, just the possibility of parole. Here we're saying we are going to leave it to the Pardons Board to look at all of the factors that Pardons Boards ordinarily look at when commuting sentences or granting pardons to determine whether or not that individual has been rehabilitated. What is ignored in the argument, both by Speaker Flood and

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Senator Howard, is that young people, their brains have not fully developed. And, yes, the incident involving the three...those three youth was heinous. Some could even say calculated. But if your brain is not in a position for you to make those kind of controlled decisions and that you're operating on impulse, then it's understandable that perhaps after 20, 30, 40 years of incarceration, taking programs designed to improve themselves, that if anyone, anyone is capable of redemption it's a juvenile. And that's what is recognized by LB251, as amended by AM945. And just as there are cases where the families of the victims don't see any circumstance under which someone who has taken the life of their loved one should be considered for release,... [LB251]

SENATOR GLOOR: One minute. [LB251]

SENATOR COUNCIL: ...allow for me to quickly read a letter that was offered into evidence: I'm sorry I will not be able to attend the meeting tomorrow. I would appreciate it if you could give this message and present it for me. I lost my 15-year-old son Jeremy Drake to a homicide in 1992. I and my entire family were absolutely devastated by this. I don't believe a worse thing can happen to a mother. I was glad the two young men were arrested and prosecuted. They certainly deserve severe punishment for their crime. Nothing can ever bring back my son. It does me or anyone no good to remain bitter. I have chosen to forgive both of the young men. I, for several, years kept up correspondence with the younger of the two, who was only 17 at the time. He committed a terrible crime. I don't try to make light of that. I am also aware of his background and upbringing. He was on his own at a young age without ever knowing his father. There has been a freedom and joy in reconciling with him. I want a better life for him. I firmly believe my son does. It makes perfect sense to me... [LB251]

SENATOR GLOOR: Time, Senator. [LB251]

SENATOR COUNCIL: Thank you. [LB251]

SENATOR GLOOR: Thank you, Senator Council. Senator Ashford, you are recognized. [LB251]

SENATOR ASHFORD: Thank you, Mr. President. I want to just comment on a few things as well because this is an issue that in my many years on the Judiciary Committee, even before returning, this issue has come before us on many occasions. The bills that were introduced over the years primarily...well, almost in all cases, provided that a juvenile could not be sentenced to life imprisonment without parole or, in effect, life imprisonment, which means life imprisonment without parole. And the reason for that was juveniles are different from adults. And that provision, that bill has not...has been before us...it's been argued on the floor, it has never passed. This is significant, a significant departure from that concept. And it is not a significant change from where we are now in as much as the Board of Pardons may today commute any sentence of any

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person who is convicted of first-degree murder or a crime that carries with it a life imprisonment sentence. So we are...what we are in effect doing...and I might just step back a minute, also responding to Speaker Flood, who is an excellent lawyer and a scholar of constitutional law, but I don't see the point. Senator Council has raised a couple of instances in the statutes today where the Legislature has addressed certain activities of the Pardons Board. And even this year, the Attorney General has come before the committee and asked the committee to adopt a law basically that says that the Board of Pardons may decline to accept further applications after the initial application for pardon from an offender for any prescribed amount of time, but in no case shall such time exceed five years. Well, that's a change in how the Pardons Board deals with cases. That is what we are doing here. There is not a significant difference...well, there is no difference at all. We're talking about Pardons Board procedures in AM945. We're talking about Pardons Board procedures in LB136, which was brought to the committee...or at least the Attorney General spoke in favor of LB136. And as Senator Council rightly suggests, there are other statutes which also prescribe certain rules for the Board of Pardons. It is a nuanced argument to suggest, at best, to suggest that what Senator Council is proposing is unconstitutional, whereas these other provisions already in statute are constitutional. Someone is going to have to spend a lot of time with me to explain the difference. And then lastly I would say this. Realizing that the Board of Pardons now has the constitutional authority to pardon any person who is...and it has happened, who is convicted of a crime of violence and has been sentenced to life imprisonment, which is in effect is life imprisonment without parole in Nebraska, it exists today. What Senator Council is suggesting in AM945 are a specific set of circumstances which the Board of Pardons must consider and just read those circumstances or those conditions. Those are not expanding the authority of the Pardons Board. Those are common-sense criteria which the Pardons Board must consider. Why wouldn't you consider those particular criteria? And, in addition, the Pardons Board may consider other criteria. So I just...it's...to suggest that we cannot constitutionally place rules on the Pardons Board that are consistent with their charge I think is just not correct. And I am convinced and our research convinced and the California law which was also challenged, we are convinced in the committee, despite what counsel may have said during Senator Flood's years on the Judiciary Committee, that this is constitutional provision. It is an appropriate provision. In some ways it is almost a restriction of existing constitutional authorities because we are setting up policy conditions and considerations which the Pardons Board must consider. It doesn't require the Pardons Board to, as Senator Council suggests... [LB251 LB136]

SENATOR GLOOR: Time, Senator. [LB251]

SENATOR ASHFORD: ...exculpate this individual. Thank you. [LB251]

SENATOR GLOOR: Thank you, Senator Ashford. Senator Schumacher, you are recognized. [LB251]

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SENATOR SCHUMACHER: Thank you, Mr. President. Members of the body, I think Senator Flood does raise a legitimate concern about the separation of powers. Either we're saying that this means something and the Pardons Board has got to follow these rules or do something or at least dream about these rules while it's in hearing or it means nothing at all and they can do exactly what they want to do regardless of what we say they should consider, because it doesn't take much consideration to consider something. So I'm not sure what impact this has if really it's intended to just be the kind of thing that they can go down a checklist and do. So I think there's some legitimacy in the argument that Senator Flood raises. But I always get very uneasy when we try to mix brain science, a rapidly developing area of science, with the law. And apparently the argument is here that when somebody is less than 18 years old, a certain area of the brain is not developed enough to function properly for them to know right from wrong as quite as much as somebody who is 18 years and one day. Well, somehow this begins to look unreasonable. Is a person who commits a crime at 18 years minus one day eligible for this and at the same time, in a world of equal protection, somebody who commits the same crime in the same manner two days later at 18 years and one day ineligible for this? Is the brain that much developed in that period of time? Is this index for bringing on this review procedure an arbitrary thing of 18 years magical? What if somebody had an aneurism that debilitated that section of the brain? Or what if somebody was 18 years and one day and was born two months premature? We're getting into an unreasonable point at which to trigger these rights if we can trigger them by simply saying it's a matter of arbitrary age. And for that our justification is, well, that section of the brain isn't quite developed. So if we're going to do something here, we need some type of other standard than just plain, simple age, because I think we're going to deal...and this is a very litigious thing. These people are in prison for a long time. They've got every reason to contest these kind of things and run up every asset they can because they've got nothing else to do. So we're going to see all of these issues explored if this thing is passed and we create a 20-year out for somebody and two days difference in brain development or maybe none at all, depending upon their genetics and their family history and racial composites and everything like that that cause brains to develop a little differently at times. We're going to see those issues in court and those are not cheap issues to litigate because you're going to have to call in the best psychiatrist, the latest technology in order to create the testimony as to whether or not we are being arbitrary and capricious in setting a magical date. So the intent I think is good here but I don't think the mechanism is good. And maybe this all boils down to something even a bigger issue, and that is the throw-away-the-key attitude toward sentencing and the very nature of some of our criminal procedures. Thank you, Mr. President. [LB251]

SENATOR GLOOR: Thank you, Senator Schumacher. Senator Flood, you are recognized. This is your third time. [LB251]

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SPEAKER FLOOD: Thank you, Mr. President. And before I begin I need to correct the record. Earlier, I said that Allen Beermann was not an attorney. He is in fact an attorney. He graduated from Creighton Law School and he went straight from law school to the Secretary of State's Office. So I want to make sure that the record is both accurate and we appreciate his service to the state today. What Senator Council is trying to do I think, when you think about the purpose of the Pardons Board, it makes sense because you want to show mercy to somebody that has fit the criteria. The concern I have about the criteria is that the constitution doesn't say as directed by the Legislature, it doesn't say that we don't have authority either, to her credit. But what is considered when you say these are the things you shall consider, okay, when we do that to a court, when we say, you can be the custodial parent in a divorce but you shall consider these 15 items, loving parent to the child who does the diapers, who feeds the child, who takes the child to the doctor, okay, custodial parent award. When we do that in child custody, we have a remedy if the judge doesn't follow our law. We say, okay, District Court, Madison County, you erred. Dad does change the diapers. Dad does do all these things. Dad meets all of these criteria and you gave custody to the mother. So Dad appeals to the Court of Appeals of the Supreme Court. There is a remedy. In this case, we are setting forth a criteria to the executive branch to say you're going to do these things, but does that mean the court gets involved again if those considerations are not followed? Do we set up an expectation of a pardon? I don't know for sure that we can do that. It would be a vicious cycle if the defendant commits this crime, serves 20 years, 35 years old, files an application for pardon on paper, meets every one of those criteria, Pardons Board says no. Does the defendant then have a cause of action to go to the Supreme Court or back to the District Court and say the Pardons Board erred? The problem is they're not a court. They're a release valve. They're a pressure valve. They're part of the checks and balance system that says, you committed the crime, you're doing the time, you've been a good prisoner, there's value to letting you out, we're going to commute your sentence or we're going to pardon the offense. But that should be used sparingly because pardons, while they're a check on the justice system, the judicial branch of government, they aren't the judicial branch of government. The other one question that I have and then I'll be done for a while would be on page 1, line 12, "Those persons who entered custody prior to July 1, 1994, may submit a petition in 2012." I'm sure there's a reason. I'm going to give Senator Council the rest of my time here in a moment to answer what that reason is. But I worry about are we creating a closed class here. You know, what if you... [LB251]

SENATOR GLOOR: One minute. [LB251]

SPEAKER FLOOD: ...what if you were placed into custody, whatever that means. We'd have to define what "custody" is. But if custody is you're remanded to the custody of the Department of Corrections following your conviction or remanded to the custody of the sheriff following your conviction pending a sentencing date, if that's the operative date and it was January 15, 1991, you can't file if you were a juvenile offender at that time.

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I'm sure there's a reason for that. I'll give Senator Council the meager time I have left and let her answer that. But I am concerned that it's special legislation and would also be unconstitutional. Thank you, Mr. President. Would you give the balance of my time to Senator Council? [LB251]

SENATOR GLOOR: Thank you, Senator Flood. Twenty-five seconds. [LB251]

SENATOR COUNCIL: (Laugh) It doesn't set up a special class. If he would read the preceding section, it initially begins by saying you committed the crime before you reached age 18 and have served at least 20 years. And in terms of the July 1, 1994, I will confess that in revising and amending LB202, we... [LB251 LB202]

SENATOR GLOOR: Time, Senator. [LB251]

SENATOR COUNCIL: Excuse me. [LB251]

SENATOR GLOOR: Thank you, Senator Council and Senator Flood. (Visitors introduced.) Senators wishing to be recognized: Howard, Ken Haar, Council, Krist, Ashford, and Langemeier. Senator Howard, you're recognized. [LB251]

SENATOR HOWARD: Thank you, Mr. President and members of the body. When I spoke to you earlier, I told you what happened that November night. And, yes, we have been down this road before and I'm very sorry that we have to go down it again. And I hope to God this does not cause additional pain to the families of the people that I mentioned earlier, but I do want their names read into the record. The first person is Charles Denton. He was 21 years old. He was the individual that was shot while he was getting money out of the ATM, probably intending to do something fun that evening, not anticipating that he would be wounded. The other two people, Luis Fernando-Silva, age 22, and Tari Glinsmann, age 27, both were killed. I will say to you, redemption is in the eye of beholder. Thank you. [LB251]

SENATOR SULLIVAN PRESIDING

SENATOR SULLIVAN: Thank you, Senator Howard. The Chair now recognizes Senator Ken Haar. [LB251]

SENATOR HAAR: Madam Chair, members of the body, I have some opinions I'd like to share, but I'm going to give the rest of my time to Senator Council because I'd like to hear more on the constitutional question. [LB251]

SENATOR SULLIVAN: Senator Council, you have 4 minutes and 45 seconds. [LB251]

SENATOR COUNCIL: Thank you. And thank you, Senator Haar. I'd first like to respond

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to Senator Schumacher because the issue of arbitrariness, capriciousness, why are we looking at age 18, we're looking at age 18 because the Supreme Court of the United States has said that's the age we look at. The Supreme Court, in 2005, held that it is cruel and unusual punishment to sentence a juvenile, someone who committed a crime before reaching age 18, to death. That is the standard set by the Supreme Court, having committed a crime before reaching age 18. In doing so I would commit to you to go back and read the decision rendered in 2005 because the Supreme Court based that decision on its review of medical research showing the developmental activities in a juvenile brain and how juvenile brains are not the same as adult brains. And it's because of that we have a separate juvenile system of justice because juveniles are not small adults. That recognition is due to brain development. And it's not me; it's the Supreme Court who has set the age at 18. They set it at 18 for execution, and just last year they set it at 18 for sentencing a juvenile to life without possibility of parole. And if you look at our criminal code, the determination as to whether or not you are capable of being prosecuted as an adult is whether you have reached the age of 18. And that supposedly is based upon our understanding of brain development in a juvenile. And the reason why we set up a separate system of juvenile courts, because juveniles, because their brains haven't developed, if you look into what the mission of the juvenile courts are, it's not as much to punish as it is to do what is in the best interests of that child. Well, that standard gets thrown out the window if, unfortunately and regrettably, the child commits a heinous act of homicide. But the Supreme Court said even in that instance you cannot execute a juvenile. And the decision is based upon medical science with regard to brain development. So it's not some number that I just pulled out or someone else just pulled out. We're talking about constitutional issues and constitutional arguments. This statute, as reflected in the proposal, is constitutionally grounded. I don't know, but I guess I'm going to have to continue to repeat myself. LB251, as amended by AM945, doesn't release anyone. It provides an opportunity for an individual who committed a crime before age 18 to be considered by the Pardons Board. Now with respect to Speaker Flood's concerns, I'm willing, if there is an issue, although I don't agree necessarily with it,... [LB251]

SENATOR SULLIVAN: One minute. [LB251]

SENATOR COUNCIL: ...if there is an issue that the bill as drafted and the amendment says here are factors that the Board of Pardons shall consider, put it at "may" consider. But if you look at those factors, colleagues, those are the factors that medical evidence and judicial research has shown are indicators of whether or not someone who committed an offense as a juvenile has been redeemed, has been rehabilitated and should be given a second chance. Indeed, the criteria set forth is the exact same criteria coincidentally that former Governor Arnold Schwarzenegger relied upon in one of his last acts as Governor in pardoning a young woman who had been sentenced at age 16,... [LB251]

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SENATOR SULLIVAN: Time, Senator. [LB251]

SENATOR COUNCIL: Thank you. [LB251]

SENATOR SULLIVAN: Mr. Clerk. [LB251]

CLERK: Madam President, thank you. Just a few items: your Committee on Appropriations, chaired by Senator Heidemann, reports LB496 indefinitely postponed; Revenue, chaired by Senator Cornett, reports LB590 to General File with amendments; Senator Karpisek, an amendment to LB204 to be printed; and a confirmation report from Natural Resources, that signed by Senator Langemeier, as Chair. That's all that I have. Thank you. (Legislative Journal pages 1090-1094.) [LB251 LB496 LB590 LB204]

SENATOR SULLIVAN: Thank you, Mr. Clerk. The Chair now recognizes Senator Council. And, Senator, this is your third time to speak. [LB251]

SENATOR COUNCIL: Yes, thank you, Madam President. And we were speaking about who should and should not be considered or if anyone should be considered as being capable of redemption. And I was reading the testimony that was requested to be introduced when LB202 was heard. This is the mother of Jeremy Drake, who was a homicide victim in 1992. I was partway through her letter and I would like to continue it: Nothing can ever bring my son back. It does me or anyone no good to remain bitter. I have chosen to forgive both of the young men. I have, for several years, kept up correspondence with the younger of the two who was only 17 at the time. He committed a terrible crime, I don't try to make light of that. I am also aware of his background and upbringing. He was on his own at a very young age without ever knowing his father. There has been a freedom and joy in reconciling with this young man. I want a better life for him; I firmly believe my son does also. It makes perfect sense to me to allow this young man the opportunity to rehabilitate himself and make amends to society. I know he is truly remorseful and regrets that horrible night. I know he has learned from his mistake and has turned his life around, even without the hope of parole. I firmly believe he should have the opportunity for a life outside of prison. It's hard for him to stay positive and motivated while he has no chance for release. I know after teaching junior high and high school that many young people are not thinking as clearly as they need to or are not thinking as adults. It would do my heart much good to be able to see these people given the opportunity for productive lives outside of prison. This, of course, would also be a good way to help reduce the population and the costs of incarceration. I trust the Pardons Board to do their job and not release anyone who might still be a threat to society. We need to be a people of compassion and forgiveness. Give these young people a chance and thank you for your consideration. And that is all that LB251, as amended by AM945, seeks to do. Put trust in the Pardons Board to do what we expect them to do, and that is to review the facts surrounding the crime committed, taking into consideration the offender's age, review the facts regarding that individual's

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period of incarceration, any other evidence submitted, including victim statement, victim family statements, and to determine whether or not that individual has demonstrated that they have been rehabilitated and will no longer be a threat to society. That's what we expect the Pardons Board to do when and if it commutes a sentence, which it has the authority to do. Believe me, it is not my intent in LB251, as amended by AM945, to infringe upon the authority of the Pardons Board. This bill seeks to balance what I've heard from colleagues and some members of the public since 2009, and that is, yes, we need... [LB251 LB202]

SENATOR SULLIVAN: One minute. [LB251]

SENATOR COUNCIL: ...we need to recognize that juvenile offenders are not small adults and that we have to recognize their brain development and their capacity for redemption. But we also believe that they should be punished. And I'm vividly reminded of a conversation I had with Speaker Flood when I first introduced LB307, back in 2009, and seeing if there was any way we could come to a compromise. And he said, well, you know, maybe if they serve 30 years before they were eligible for parole or 40 years before they were eligible for parole it might be something I could give some favorable consideration to. Well, this bill seeks to strike that balance. Their first opportunity is at 20 years, which is what my original bill provided for. But their last opportunity is after 40 years. I think it strikes that balance. I think it provides for the safety of the citizens of the state of Nebraska. [LB251]

SENATOR SULLIVAN: Time, Senator. [LB251]

SENATOR COUNCIL: Thank you. [LB251]

SENATOR SULLIVAN: Senators wishing to speak are Krist, Ashford, Langemeier, Ken Haar, Cook, and Lathrop. Senator Krist, you're recognized. [LB251]

SENATOR KRIST: Thank you, Madam President and colleagues. I am neither a lawyer nor a constitutional expert or scholar. But at some point I will have to cast a vote green or red. So I'd like to bring this back into a few logical questions in order for me to make my decision today. I do support the scientific fact that a brain is not developed until a certain point, just as I do support the fact that viability was established in this Legislature last year at 20 weeks. Those are scientific facts in my mind. So I think logically I've come to that decision. And 18...and I have a great deal of trust in our judicial system and in the Supreme Court, and 18 years of age is that line that has been drawn. I follow Senator Flood, Speaker Flood's analysis on constitutionality. But I'd like to address a question first to Speaker Flood and then to Senator Ashford and potentially allow Senator Council to talk to it as well. LB136 was a bill that was brought by the Attorney General's Office asking for a change in the procedural process of conducting a pardon, as I understand it. And I'll read for you just one section: After consideration of the

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application and after such further investigation as it may deem appropriate, the Board of Pardons shall neither grant or deny the relief requested or grant such other relief as may be justified. The board may decline to accept further application after the initial application for the pardon from an offender for any prescribed amount of time, but in no case shall such time exceed, and the word "two" was stricken and the word "five years" was put in. So here's a request to us to change the process so that they would hear at five rather than two years. Again, they're asking the Legislature to change the process. So constitutionally, I have an issue, I guess, at that point of saying if they at this point recognize the fact that we would have to change that, to change the process, I don't understand why there would be that division. And at this time I'd like Senator Flood, if he would, to comment on that philosophy. [LB251 LB136]

SENATOR SULLIVAN: Speaker Flood, will you yield for a question or comment? [LB251]

SPEAKER FLOOD: Yes, I will, Madam President. Thank you, Senator Krist. I think there's two different discussions in the amendment, Senator Krist. The one I've raised considers the...or regards the considerations that have to be made by the Pardons Board prior to determining how they are going to vote on a pardon. The point you raise, and I was unaware of the Attorney General's request, but it would be more in line with what Senator Council's amendment does on page 4, lines 13 through 21, where she says you can ask for one of these so many years after you've been in there 20 years, and then you have to wait another 5 years. She outlines that. That may or may not...I mean, obviously, she has a good case to make as it relates to that because there's already existing statutory language and you've got the Attorney General making a request. But I would distinguish that issue that you raise from the issue in the amendment on page 2, line 23, where they have to find by a preponderance of the evidence, and then they have to take into account the factors in paragraph (6), starting on page 3, line 1, into page 4, line 6. I think those are two separate issues. One is... [LB251]

SENATOR SULLIVAN: One minute. [LB251]

SPEAKER FLOOD: ...how often you can submit and the second is what you have to consider. [LB251]

SENATOR KRIST: Thank you. And now if you could, Senator Ashford, comment on the same subject. [LB251]

SENATOR SULLIVAN: Senator Ashford, would you yield? [LB251]

SENATOR ASHFORD: Thank you, Madam President. I just disagree. If you read 83-1,130(1), which is the question being asked, it is granting to the board certain criteria

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as it relates to hearing these cases. Now I honestly, other than a nuisance difference possibly in the criteria themselves in Senator Council's bill, I think it's getting...it's the same sort of criteria, maybe somewhat expanded. And just an expansion of criteria, in my view, does not make it unconstitutional, Senator Krist. I just don't see it. And if the Attorney General is proposing this... [LB251]

SENATOR SULLIVAN: Time, senators. Thank you, senators. And, Senator Ashford, you are now recognized. [LB251]

SENATOR ASHFORD: Thank you. And I might ask if, Senator Krist, do you have any other...I'd give you a little bit more time, if you'd wish. [LB251]

SENATOR KRIST: Well, I would just point out that for most of us lay folks it's going to be a matter of whittling through each one of these exceptions because last thing that I want to do is vote green on something that is going to be a constitutional problem. So it's going to be, I think, incumbent upon you lawyers to figure out how to satisfy those concerns. Thank you. [LB251]

SENATOR ASHFORD: Thank you, Senator Krist. And I think that's the point. Senator Flood is correct to raise the constitutional issue. And when you're dealing with a constitutionally created board, in this case the Board of Pardons, there is no question that that is a legitimate issue to raise. But I don't think it's a sufficient reason to stop this bill from moving over to Select File and we can take a further look at this. But I am certainly...and Senator Flood, I appreciate what he has...Speaker Flood has said regarding the part of Senator Council's bill which provides that the Board of Pardons shall hear a pardon application after 20 years, 25 years, 30 years, 35 years, whatever it is, as being constitutional. If that's constitutional then we get into a discussion of what additional criteria can constitutionally be added to the Pardons Board's duties as it relates to juveniles who are sentenced to life in prison without parole. That's a reasonable discussion that we can have between now and Select File. But I think that it is...and I appreciate Speaker Flood's comments because it is unquestionable to me that Speaker...that Senator Council's amendment, and we had a unanimous vote on this to advance this bill, that certainly Senator Council's bill, which deals with the Board of Pardons hearing these applications, is constitutional, that it's constitutional. Remember, these individuals have been sentenced to life imprisonment. They are not being sentenced to some sort of leniency or they've been sentenced to life imprisonment. What we are doing and all we are doing by this bill is we are granting to...we are asking the Pardons Board to hear juvenile cases involving, there are about 27 of them now in the corrections system, to hear cases of juveniles who were sentenced to life in prison without parole under certain different criteria than what applies to adults. I do not believe that the criteria set forth in this bill is such a substantial difference from what we have done with the Pardons Board in the past that it makes this bill unconstitutional. Secondly, the criteria that we are asking the Pardons Board to apply in Senator

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Council's bill...let me ask Speaker Flood a question if I could. [LB251]

SENATOR SULLIVAN: Speaker Flood, would you yield for a question? [LB251]

SPEAKER FLOOD: Yes. [LB251]

SENATOR ASHFORD: Speaker Flood, if perchance we were to amend this bill to put...insert "may" for "shall" in the criteria that the Pardons Board must consider, would that ease your concern? [LB251]

SPEAKER FLOOD: Well, I think that goes to the issue of this section of the amendment, you know. Earlier in your comments you said we're not asking the Pardons Board; we are telling them to do something. I question why we have it in the statute in the first place, if it's "may." But, you know, I understand what you're saying. I think it certainly makes it more palatable from my standpoint alone. [LB251]

SENATOR SULLIVAN: One minute. [LB251]

SENATOR ASHFORD: Thanks, Speaker Flood. And I appreciate the answer. The bottom line, members, is that whether we insert "may" or "shall" in that portion of the bill, what we are asking the Pardons Board to do is to hear these cases at 20 years, and then 5 years thereafter, and 5 years thereafter. The Pardons Board already has the authority to hear an application anyway. But this is asking them to hear it. And I really would suggest that I see no, nor does the committee, nor does the committee counsel see any constitutional infirmity in asking the Pardons Board to do such a thing for these 27 people that were sentenced as juveniles. Thank you. [LB251]

SENATOR SULLIVAN: Thank you, senators. The Chair recognizes Senator Langemeier. [LB251]

SENATOR LANGEMEIER: Madam President, members of the body, I rise, as Senator Krist did, as not being an attorney and I find this conversation quite interesting. And I know they're both running out of time so I'm going to yield some of my time at this time to Speaker Flood for...to continue this discussion. [LB251]

SENATOR SULLIVAN: Senator Flood, you're yielded 4 minutes and 40 seconds. [LB251]

SPEAKER FLOOD: Thank you, Mr. President, Madam President. Sorry. What I find objectionable about the content of the bill is not the motive of the introducer. More than anything it's the idea that we can take the Pardons Board and manipulate their decisions like we manipulate the law that courts use to rule under. The Pardons Board is a political reprieve that embraces the concept of mercy when appropriate, sparingly

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given at times. A court, you know, they have Lady Justice blindfolded with two scales going back and forth, a court receives evidence, conducts itself in accordance with the evidence and makes determinations in some cases of guilt of innocence, otherwise it's given to a jury within certain parameters. It's regulated and it's appealable and there's a final answer upon review. The Pardons Board is a vote by someone elected, Governor, Attorney General or the Secretary of State. Our judges don't go out and raise money, they don't campaign, they don't go down to the fish fries and shake hands and tell people what they're going to do to move the state forward. No, they sit as oftentimes recluses, the Supreme Court locked in its corridor in the Capitol reviewing the law of the land as it comes from the district courts and the Court of Appeals. They are different than us. We are politicians. We stand for election. We go to fish fries; they don't. They live differently than us. Their branch is different than us. They have a system where they appeal things up and down. We vote and I don't see anybody in here wanting to put rules on what conditions we're going to consider before voting on a bill. I don't see any...you know, I just don't think you can turn the Pardons Board into some quasi court. It's not meant for that. If we want to treat juveniles differently that commit these most heinous acts at age 15 or 16 or 17 or whatever, then we need to look at what we allow prosecutors to charge them with, look at what we allow courts to sentence them to. That is our remedy as a Legislature, that is our check and our balance on the system. And that is Senator Council's remedy. Quite frankly, this could pass and we could put this in the law. In all reality we're not going to hear much about it other than there's going to be an extra expectation by the part of an applicant for a pardon. But we're not going to...it's not like the Supreme Court is going to come in and sit down and say, okay, Governor Heineman, tell me what criteria did you use when you voted to grant or deny a pardon? Okay, John Gale, Secretary of State, did you consider these things? There's no remedy, there's no way to check it. It's feel-good; it's not going to do it. [LB251]

SENATOR SULLIVAN: One minute. [LB251]

SPEAKER FLOOD: And that's the...you know, you can change it from "shall" to "may." I don't think it removes the import of what the bill brings to the table. And you know, quite frankly, I can see where Senator Council would be very frustrated with me because I have opposed her prior efforts to ease up on the sentencing guidelines as it relates to juveniles. So it's not like I've been very helpful on the true remedy either. But I don't question her motive and I don't question why she's sincere about this because it is obvious to me that there is a lot of conviction behind where she's going. I just don't believe this is the way to go. Thank you, Madam President. [LB251]

SENATOR SULLIVAN: Thank you, Senator Flood. The Chair now recognizes Senator Ken Haar. [LB251]

SENATOR HAAR: Madam President, members of the body, I appreciate the discussion going on between the lawyers and I hope that can get worked out because I will have to

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vote one way or the other. But I want to talk about conceptually what Senator Council is, I think, trying to do here. So I have a question or two to ask of Senator Council. [LB251]

SENATOR SULLIVAN: Senator Council, would you yield? [LB251]

SENATOR COUNCIL: Yes, Madam President. [LB251]

SENATOR HAAR: Okay. This shows my lack of knowledge, but at what age now can someone be sentenced to life in prison? [LB251]

SENATOR COUNCIL: At any age. [LB251]

SENATOR HAAR: At any age. So a 10-year-old could be sentenced to life in prison? [LB251]

SENATOR COUNCIL: If the prosecutor chose to prosecute that 10-year-old as an adult... [LB251]

SENATOR HAAR: Okay. [LB251]

SENATOR COUNCIL: ...they would be subject. But I think most prosecutors, you talk about arbitrary and capricious, it's like 13, but we've had 13-, 14- and 15-year-olds who have been charged as adults with homicide. [LB251]

SENATOR HAAR: Okay. Well, I feel strongly that conceptually that this is a very good idea. There's not a single person who hasn't asked the question in the past though, why do teenagers act so irresponsibly, especially those of us who have been parents. And the time I heard that science was telling us that the brain, that part of the brain which develops judgment and so on, why that develops maybe all the way up into the 20s, that was just a, yes, that explains what I've been observing all along. So I truly believe that science has shown us that the brains of juveniles have not developed totally. We know that for a fact. Now that in no way says that someone who commits a heinous crime shouldn't be held responsible and there shouldn't be punishment for that crime. But I think we have that evidence that the brain...that the controls, how we make judgments is not fully developed in teenagers and juveniles. I also believe strongly in the concept of redemption. I believe that people can change and especially again when you consider young people, most of us have seen that also, that they can change. And we draw lines right now. And I know it's in a different kind of situation. But, you know, you can't vote unless you're over 18, you can't smoke unless you're over 18, you can't legally buy cigarettes, you can't drink alcohol in this state legally unless your over 21. So we draw some of these lines. And science is never going to tell us at what age there is the maturity to vote or to drink alcohol. We have to make those kinds of decisions as lawmakers and responsible adults. I think the reason that this may not seem to make

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sense is because when somebody is 18 years old, they look like an adult. But science has told us that they have a ways to go. And young men in particular, well, and young women too, you know, not only do they look like an adult but they've got all those kinds of hormones that hit you when you're a teenager. So this bill, the way I see it, AM945 and LB251, as has been stated, it does not guarantee a form of release. But in cases where juveniles change... [LB251]

SENATOR SULLIVAN: One minute. [LB251]

SENATOR HAAR: ...thank you, and are rehabilitated, it allows for possible reentry into society. I think science has shown us that the brain has not developed, that we can draw lines, even if they are arbitrary, we have to draw lines, and I believe in the concept of redemption. So I rise in favor of LB251 with AM945. Thank you. [LB251]

SENATOR SULLIVAN: Thank you, Senator Haar. The Chair now recognizes Senator Cook. [LB251]

SENATOR COOK: Thank you, Madam President. Good afternoon, colleagues. I will yield my time to Senator Council, if she would like it. [LB251]

SENATOR SULLIVAN: Senator Council, you're yielded 4 minutes and 50 seconds. [LB251]

SENATOR COUNCIL: And thank you, Madam President. Thank you, Senator Cook. There are a couple of points that the Speaker made that I need to respond to. Number one, I trust everyone is listening to those who are...have indicated opposition to AM945, LB251. Senator Howard's concern is based upon the possibility of people who have committed admittedly heinous acts having the potential to be released by virtue of LB251, as amended by AM945. And then Speaker Flood says it's just feel-good legislation because it doesn't mean anything, that the Pardons Board doesn't have to commute any sentence. Senator Flood is correct, there's nothing that alters, with the exception of the factors to be considered. And I want to explain why those factors are there. But I first want to address Speaker Flood's statement that my bill somehow converts or attempts to convert the Pardons Board to quasi courts. Well, I want my colleagues to know that one of the rationale given for the bill introduced this session on behalf of the Attorney General, I think it's LB136, that amends the very section of the statute that I submit establishes the constitutionality of my amendment. One of the rationales was, you know, if these guys and women can submit these pardons and commutation applications every two years, what it requires us to do is go through this where we pull all of their court records, we examine all of the testimony, we look at the police reports. Speaker Flood, according to the Attorney General, they do function as a quasi court because they've indicated that the reason they needed this change was because it's so burdensome with a two-year kind of moratorium on subsequent

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applications. I also submit to you, colleagues, the Attorney General is the individual that we look to, to advise us as to the constitutionality of certain measures that we have enacted or are considering enacting. I just ask you to consider the fact that LB136 was introduced on behalf of the Attorney General to extend the time between when the Pardons Board has to accept another application from someone that has been denied. I submit to you if the Attorney General did not believe that the Legislature has the authority to impose some parameters on the procedural aspects of the Board of Pardons' operations they would not have needed to make that request. [LB251 LB136]

SENATOR SULLIVAN: One minute. [LB251]

SENATOR COUNCIL: They could have simply decided, well, we're not going to hear them except every five years or they could have come in seeking a repeal of the entire Section 83. But to request the amendment, I submit to you, is an acknowledgement of the fact that this body does have the constitutional authority to set some parameters on the operations of the Board of Pardons. And again, ladies and gentlemen, look at AM945. The language that Speaker Flood continues to refer to says that they shall consider these but shall not be limited to those. And if you look at what the statute wants to make sure that the Board of Pardons considers are those very factors that are most relevant to a... [LB251]

SENATOR SULLIVAN: Time, Senator. [LB251]

SENATOR COUNCIL: Thank you. [LB251]

SENATOR SULLIVAN: The Chair now recognizes Senator Lathrop. [LB251]

SENATOR LATHROP: Thank you, Madam President. And, colleagues, good afternoon. I have yet to speak on this and I think it's important that I do. And not having spoken on it, I haven't been caught up in what's been going on as much and it's allowed me to kind of observe the Chamber. And there seems to be a little bit of a, really, again? What's this about and how come...why are we worried about some juveniles that did something bad? And I want to tell you something. Over in the Judiciary Committee, while you guys are dealing with trains and telegraph and revenue issues and stuff like that, we're dealing with a lot of crime and punishment issues. And we have crime and punishment issues as it relates to and their impact on putting people in prison and how that affects our budget. We've spent a great deal of time since I got here, under the leadership of our Chair, Senator Ashford, dealing with juvenile issues. And I can't tell you the number of times we have had experts in front of us talking about the development of the human brain, the fact that the human brain doesn't develop and these kids who are young people are not...they don't have a fully formed brain, they don't think like adults, they don't have the advantage of that. And that's the point of this. We're not asking you to let them loose, we're not asking you to free them, and we're not asking the pardons people

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to pardon them. That's not the point of the bill. I'd like you to just step back for just a second and catch your breath on this one. Senator Council is not doing something unconstitutional. And I'm going to weigh in on that one. All we're talking about is process. You may file, they shall look at, if there is they'll have a hearing. And then guess what? They're at the mercy of this outfit. The very people that Senator Flood said are the politicians who are there to provide mercy, it's outside of a judicial proceeding, there is no appeal, and we haven't said they have to do one, single thing but have a hearing under certain circumstances. And we've limited the number of them. That's it. They get a hearing. And we've asked them to look at some things. Please look at these things. The guys over in Judiciary Committee have studied the issue and these are the things that you ought to look at in this process. And after you have, if the politics is too tough for you, if you can't find it in your heart, if they're not deserving, whatever your version of mercy is apply it. But there's nothing here that's telling a different branch of government that they must do something. These criteria are for the application process and they are considerations to consider among any other. These things, but not necessarily limited to these things, are your considerations. Why is it important? You know, I know you come from a lot of different kinds of communities, a lot of different kinds of communities. These issues seem to be more prevalent in urban areas and so it would be natural that an urban senator would be here trying to talk to you about them, just as you might bring an issue here regarding agriculture. These are kind of big deals in an urban area. And we're not asking the executive branch to do anything but exercise mercy. We're just explaining the process. And let me tell you, in response to the constitutional argument, if you look at the statute... [LB251]

SENATOR SULLIVAN: One minute. [LB251]

SENATOR LATHROP: ...we're directing how they do this all the way through it. We're just setting up more process. And there is no appeal. And when it's all over they're still at the mercy of these folks. And if they say no, and they probably will a good deal of the time, if they say no, which they have every right to, and they may consider anything they want to as they do now, that's it. That's it. So the worst that can happen is some kid who did something really stupid when he was very young, many years into a sentence might have an opportunity before a board whose sole criteria in the end is mercy. I think it makes sense. I certainly don't think it's unconstitutional. And I would encourage you to appreciate that this is important to Senator Council... [LB251]

SENATOR SULLIVAN: Time, Senator. [LB251]

SENATOR LATHROP: Thank you. [LB251]

SENATOR SULLIVAN: Those wishing to speak are Senators Nelson, Lautenbaugh and Avery. Senator Nelson, you're recognized. [LB251]

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SENATOR NELSON: Thank you, Madam President, members of the body. I've been reading through this and listening to the statements and the testimony here. And I do have some questions to ask of Senator Council, if she will yield. [LB251]

SENATOR SULLIVAN: Senator Council, would you yield? [LB251]

SENATOR COUNCIL: Yes. [LB251]

SENATOR NELSON: Senator Council, if I can get enough light on this to read it here. On page 2, line 23, it says: If the board finds, a preponderance of the evidence, that the statements in the petition are true, the board shall hold a hearing. How does the board determine if there's a preponderance of evidence? Do they hold a hearing on that? [LB251]

SENATOR COUNCIL: Okay. And all I...my response to that, Senator Nelson, is to just look at what it is that they're considering and have to find a preponderance of the evidence and that they were convicted as a juvenile. They're going to have... [LB251]

SENATOR NELSON: And they base that on the contents of the petition alone, is that right? [LB251]

SENATOR COUNCIL: Right, exactly. [LB251]

SENATOR NELSON: Okay. Then we go on to a second set of criteria after they do hold the hearing, which is quite a bit longer and if you'll look at page 3, line 13, these are the criteria, it doesn't say "may," it says that they shall consider: Prior to the offense for which the sentence is being considered, the person had insufficient adult support or supervision and had suffered from psychological or physical trauma or significant stress. How do we determine, how does the Board of Pardons determine that? Do they take expert evidence? Is there evidence in a file that they consider? Do you know how that works? [LB251]

SENATOR COUNCIL: Yes. First of all, Senator, as I indicated, the Pardons Board does seek and obtain the full record of the proceedings that led to the conviction of the individual in these cases, as evidenced by the testimony presented in support of the bill to change how often people can file petitions; that they have access to the entire court record, as well as witnesses can appear and testify at commutation hearings, Pardon Board hearings. [LB251]

SENATOR NELSON: All right. Another criteria that the person suffers from cognitive limitations due to mental illness, developmental disabilities, or other factors that did not constitute a defense, but influenced the person's involvement in the offense, is that part of the court record? [LB251]

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SENATOR COUNCIL: It can be or it can be evidence presented during the hearing. At most commutation hearings before the Board of Pardons, as well as Pardons Board hearings, the applicant is represented by legal counsel. [LB251]

SENATOR NELSON: And so that legal counsel will put evidence in the record. [LB251]

SENATOR COUNCIL: Correct. [LB251]

SENATOR NELSON: So we're turning the Board of Pardons into a court, are we not? [LB251]

SENATOR COUNCIL: It currently functions like that when it grants hearings now, Senator Nelson. [LB251]

SENATOR NELSON: All right. I think Senator Lathrop said we aren't requiring them to do anything. But if you look on page 4, 22, in addition to the criteria and submission, the board may consider any other criteria so long as the board identifies them on the record, provides a statement of reasons for adopting them, and states why the person does or not satisfy criteria. Is there any requirement at this time that the Board of Pardons present or record something in writing as to the reasons for their determination and why they said, yes, we will commute or we will not? [LB251]

SENATOR COUNCIL: There is nothing in statute that currently requires them to state those reasons, but... [LB251]

SENATOR SULLIVAN: One minute. [LB251]

SENATOR COUNCIL: ...I suggest to you that there's nothing in statute that prevents it and in fact the statute says that when they do hold a hearing that although the hearing is to be held informally that there shall be a record kept of all statements made and documents introduced. So if they hold a hearing, the hearing, there is a record created of that hearing. [LB251]

SENATOR NELSON: Record but there is...the Board of Pardons at this time doesn't have to say what else that they considered or why they made the decision that they did in the end. Is that true? [LB251]

SENATOR COUNCIL: There is no statutory requirement that they do that. [LB251]

SENATOR NELSON: All right. Very briefly, I think I have to support what the Speaker is saying that we're...constitutionally, perhaps, we can do this, but we're nevertheless turning this into a completely different kind of process. And we're... [LB251]

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SENATOR SULLIVAN: Time, senators. [LB251]

SENATOR NELSON: Thank you. Thank you, Mr... [LB251]

SENATOR SULLIVAN: (Visitors introduced.) The Chair now recognizes Senator Lautenbaugh. [LB251]

SENATOR LAUTENBAUGH: Thank you, Madam President and members of the body. And I rise with more of a procedural pitch than anything else at this point. This bill or this amendment substantially changes a court fee bill into a different bill. So regardless of your ultimate feelings on the bill itself, I would urge you to adopt the amendment to the bill so that we are dealing with the matter we're actually discussing and that will, hopefully, help us address another bill that is still pending in committee. So again, regardless of how you ultimately plan to vote on this issue, and we're having a good policy discussion that I in no means wish to cut short, I would urge you to vote for this amendment so that it becomes the bill and so the debate actually catches up with the stated subject matter of the bill, if you will. And I'd yield the rest of my time to Senator Lathrop, if he would have it. [LB251]

SENATOR SULLIVAN: Senator Lathrop, you have 4 minutes and 2 seconds. [LB251]

SENATOR LATHROP: Thank you, Madam Chair and Senator Lautenbaugh, my good friend. I appreciate you yielding the time to me. I'm going to agree with Senator Lautenbaugh and encourage this body to move the amendment so that we can take this from a court fee bill into a bill that's dealing with the Board of Pardons. And honestly, let's move the amendment. You know, you can do what you want on the bill when we get to it. But let's get this into the bill so that we don't have a court fee bill left there, which is not what we intended when this came out of the committee. And then we'll continue our discussion. Thank you and thank you, Senator Lautenbaugh. [LB251]

SENATOR SULLIVAN: Thank you, senators. Those senators wishing to speak are Avery, Schumacher, Nelson, Lathrop, and Krist. The Chair recognizes Senator Avery. [LB251]

SENATOR AVERY: Thank you, Madam President. I have not addressed this bill so far, but I have listened very carefully. And like many others in this body, I, too, am not a lawyer so I am not going to try to argue the constitutional issues. But I do want to approach this bill from a different standpoint and that is the standpoint of justice. I believe that when we are dealing with bills of this sort and many of the bills that come out of the Judiciary Committee that we ought to be thinking about whether the bills are actually advancing because of justice. Justice is a virtue. It's been described as the first virtue of all social institutions and is to social institutions as truth is to the systems of

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thought. The sense of justice, and we all have some kind of notion of what is just and what is not just, is very tightly linked to how we view the concept of fairness. And there have been many studies that have looked at the issue of fairness and have shown that most of us consider fairness and justice as fulfilling a basic need, almost in the same manner as food and drink. I tend to accept the science that lies behind Senator Council's basic argument. It seems to me this is pretty solid evidence that juveniles are in fact immature, they're more vulnerable and they're susceptible to rehabilitation and that they should be sentenced in a manner that is consistent with their unique needs and distinct differences from older individuals. In fact, the U.S. Supreme Court has recognized in previous cases, and I believe this has been brought out already, that youth are less culpable for their actions because of their immaturity, because they have poor control over impulse behavior, because they are more susceptible to peer pressure, less capable of weighing consequences of their behavior. Their brains, as Senator Council has pointed out and as Senator Lathrop just mentioned, those brains are still developing. It doesn't mean that they shouldn't be held accountable for their actions. But it does mean that the sense of justice has to be applied to how we evaluate their behavior and the consequences of that behavior. And everybody in here probably will have a different view of what is just in many of these cases. But it seems to me that this bill at least does advance the cause of a just society and I don't believe it overreaches. I don't know if it's unconstitutional. I was impressed with the previous discussion on that issue. I would ask you, though, to consider the idea of what is just in dealing with these juveniles when you cast your vote. I'm not sure I know the correct answer to that. I guess, we all have to make that decision ourselves based upon what we consider to be just. But I appreciate the fact that Senator Council brought this bill. I was anticipating this last year and was disappointed that we didn't get a chance to debate it. I know this is a slightly different bill from the one that she had last year but it does involve the same concept of justice. And I'm inclined to support it. Thank you, Mr. President. [LB251]

SENATOR COASH PRESIDING

SENATOR COASH: Thank you, Senator Avery. Senator Schumacher, you are recognized. [LB251]

SENATOR SCHUMACHER: Thank you, Mr. President. Indeed, the Supreme Court did use the term "18 years" when ruling in a death penalty case. But the Supreme Court rules with respect to the case before it and the evidence before it. It has not had before it a case where someone has argued using the most advanced brain technology, a technology which undoubtedly becomes more advanced as our ability to perceive very tiny bits of radiation and electrical activity is developed over the next few years with smarter and smarter computers being able to interpret that activity. And that is the case where someone says, yes, but I have a 20-year-old or a 40-year-old before you whose brain is functioning exactly as someone who is less than 18 years old. That case has

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not been heard. And were I ever to have the misfortune of being appointed or having to represent someone who was 18-plus, 20 years old in a case where the person would likely get a life sentence and if this particular law were on the books and if it made a difference as the courts interpreted as to whether or not this adds any burden or any restrictions on the Parole Board, I know that I certainly would fight like heck to have the most sophisticated test done, whether it's MRI, functional MRI, positron emission, radiation technology done on my client so that 20 years hence, when he was in the penitentiary, I could make the argument that my client had the brain of an 18-year-old. And that is part of what we are opening here by passing this legislation. Not that it may not be very just legislation to have someone with a brain of an 18-year-old granted an additional modicum of mercy by the Parole Board, but this is the kind of very expensive and litigious kind of legislation that opens the door. And I think every attorney is obligated to try to push through that door who is in that position where this evidence today taken may make a difference 20 years from now in his client's opportunities, I think that's what we're after today. And whether or not it's good to open those doors or not open those doors is a decision everybody has got to make. But apart from all the other arguments, science and law are very expensive things and we are opening the door to that today. Thank you, Mr. President. [LB251]

SENATOR COASH: Thank you, Senator Schumacher. Senator Krist, you are recognized. [LB251]

SENATOR KRIST: Question. [LB251]

SENATOR COASH: Senator, there are no other lights on. Senator Ashford, as Chair of Judiciary Committee, you are recognized to close on the amendment to LB251. [LB251]

SENATOR ASHFORD: Thank you, Mr. President. Irregardless of science, I think everyone in this room knows that this body on many occasions have drawn lines regarding juveniles. Up and down the judicial system we draw lines regarding juveniles all the time in this body. We've done it and continue to do it. The science is what the science is. But I think we can use common sense. We all know the difference and I don't think it takes a lot of science for all of us to make that judgment. The horse has left the gate on the Pardons Board issue. The citizens of Nebraska have spoken. We have a Pardons Board. It is made up of elected officials, in my view, who do a good job and they make judgments regarding incarcerated individuals. May I get a gavel, please? [LB251]

SENATOR COASH: (Gavel) [LB251]

SENATOR ASHFORD: They make judgments regarding incarcerated individuals each time they meet. And my experience is they do a thorough job, a careful job when they consider these cases. And as Senator Council rightly suggests, they go back over the

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record, they do what is fair and equitable to do because...for many reasons, and they do commute sentences. Members, all this bill does, and we can think about between, and this amendment does, between now and Select File if we have to think about nuances of the constitution and how it applies to the wording of the bill, that's fair. But all this bill does is give a little more consideration to a juvenile, to a person who has been sentenced to life imprisonment as a juvenile. That is it. We are giving that individual juvenile who is in the system for 20 years to have a parole, I'm sorry, a Pardons Board hearing. That's it. And I submit that each of you would agree with me that there is plenty of justification in the record over the years as we deal with juveniles to justify simply giving that individual a Pardons Board hearing at 20 years. That is it. We have already decided the Pardons Board makes these determinations not as a court. We already give the Attorney General a seat at the table. The Attorney General can make the technical...give the technical advice that he or she may give as Attorney General. But in the end, that's all we're doing. We're not freeing this individual, we're not letting them out, we're not doing any of that stuff. Thank you, Mr. President. [LB251]

SENATOR COASH: Thank you, Senator Ashford. The question is... [LB251]

SENATOR ASHFORD: May I ask for a call of the house? [LB251]

SENATOR COASH: There has been a request for a call of the house. All those in favor of putting the house under call vote aye; those opposed vote nay. Record, Mr. Clerk. [LB251]

CLERK: 31 ayes, 0 nays, Mr. President, to place the house under call. [LB251]

SENATOR COASH: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Janssen and Utter, please return to the Chamber and record your presence. Senator Janssen, please return to the Chamber. The house is under call. The question is, shall the committee amendment to LB251 be adopted? All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB251]

CLERK: 37 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB251]

SENATOR COASH: The amendment is adopted. I raise the call. Discussion continues on the advancement of LB251 to E&R Initial. There are no senators wishing to speak. Senator Council, you are recognized to close on LB251. [LB251]

SENATOR COUNCIL: Thank you, Mr. President. Again, I appreciate all of the debate that has occurred on this bill. I appreciate everyone's careful consideration. All I want is

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for my colleagues to focus in on what the intent of this bill is, and that is to provide those who we've already made special provision for under our juvenile codes. We recognize the difference between juvenile offenders and adults currently. But under our law all the prosecutors have the discretion to prosecute a juvenile as an adult. In my opening I talked to you about trends. I commit to you to look at the trends as described in leading publications on juvenile justice because the trends are that states surrounding us and across the nation are moving to a system where juveniles must be prosecuted in juvenile court and cannot be prosecuted as adults. This bill doesn't get to that. This bill gets to what occurs after a juvenile has been convicted of an offense that imposes a sentence of life. And all LB251 does now is provide an opportunity for such juveniles to have a hearing before the Pardons Board. And when we get to the constitutional issue, the separation of powers issue I just want to direct your attention to the fact that under current law the Legislature currently dictates that all actions of the Board of Pardons shall be by majority vote and shall be filed in the Office of the Secretary of State or the office designated by the Secretary of State. That's not in the constitution; that's in statute. That's something that this body has directed the Pardons Board to do. Also direct your attention to 83-1,129 which says, "Any application filed pursuant to subsection (1) or (2) of this section shall be considered with or without a hearing by the board at its next regular scheduled meeting." Why do I read that to you? I read that to you because we changed that, we being this Legislature, changed that in 1999. Before that time it said, the application shall be considered with or without a hearing by the board at its next regular meeting or within 30 days, whichever is earlier. So for 30 years this body dictated to the Board of Pardons that if someone made an application they had to consider that application whether with or without a hearing at the next scheduled meeting or 30 days, whichever is earlier. We gave them 30 days. I submit to you that it was changed in 1999 because the Board of Pardons came and said that's too short a time, you know, we don't want to meet that often, why don't you just make it our next regular scheduled meeting, and we did that. And that's what is reflected in the current statute. I submit to you if what is being requested in this bill was unconstitutional, all of these other parameters are unconstitutional. And if the Attorney General believed that we didn't have that authority, I ask you to ask yourselves why the Attorney General believed it necessary to come to the Judiciary Committee to request that... [LB251]

SENATOR COASH: One minute. [LB251]

SENATOR COUNCIL: ...we amend the statute to allow additional time? I urge you to advance LB251 and I pledge to continue to address any constitutional issues between now and Select File. [LB251]

SENATOR COASH: Thank you, Senator Council. The question is the advancement of LB251 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Senator Council. [LB251]

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SENATOR COUNCIL: I request a call of the house, please. [LB251]

SENATOR COASH: There has been a request for a call of the house. All those in favor of placing the house under call vote aye; those opposed vote nay. Record, Mr. Clerk. [LB251]

CLERK: 39 ayes, 0 nays, Mr. President, to place the house under call. [LB251]

SENATOR COASH: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Council, how would you like to proceed? [LB251]

SENATOR COUNCIL: A roll call vote in regular order, please. [LB251]

SENATOR COASH: Mr. Clerk, there's been a request for a roll call vote in regular order. [LB251]

CLERK: (Roll call vote taken, Legislative Journal page 1094.) 18 ayes, 24 nays, Mr. President, on the advancement. [LB251]

SENATOR COASH: The bill does not advance. I raise the call. Mr. Clerk for announcements. [LB251]

CLERK: Mr. President, before we proceed to the next bill, some items: your Committee on Business and Labor, chaired by Senator Lathrop, reports LB397 to General File with amendments; Retirement Systems, chaired by Senator Nordquist, reports LB382 to General File with amendments; an amendment to be printed to LB397; and Senator Campbell would offer a new resolution, LR159. That will be laid over. That's all that I have, Mr. President. (Legislative Journal page 1095.) [LB397 LB382 LR159]

SENATOR COASH: We will return to General File debate, committee priority bills, LB384. Mr. Clerk. [LB384]

CLERK: LB384 is a bill by Senator Cornett, at the request of the Governor, relating to revenue and taxation. (Read title.) Introduced on January 13, referred to the Revenue Committee, advanced to General File. There are Revenue Committee amendments. (AM944, Legislative Journal page 975.) [LB384]

SENATOR COASH: Senator Cornett, you are recognized to open on LB384. [LB384]

SENATOR CORNETT: Thank you, Mr. President and members of the body. I'm briefly going to open on LB384 and will save the majority of the discussion for the committee

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amendment which essentially rewrites the bill. I introduced LB384 at the request of the Governor. The bill is a component of the Governor's biennial budget recommendation. Enactment of LB384 as amended by the Revenue Committee, AM944 which we will be discussing, will be required if we decide to enact a budget solution for the Tax Equalization and Review Commission, or TERC, that would restructure it from a four-member commission to a three-member commission. LB384's primary purpose is to achieve budget savings by eliminating one of the current four TERC commissioners. TERC was originally created with three commissioners by law in 1995, LB490. A fourth at-large commissioner was added following enactment of the law in 2001 by LB465. Currently, TERC has four commissioners, each of whom are appointed to a six-year term by the Governor, with confirmation by a majority vote of the Legislature. Three of the appointed commissioners represent Nebraska's three Congressional districts, and LB384 as originally drafted would have eliminated the fourth or at-large commissioner. The committee amendment redrafts that portion of it. And with that, I will explain the committee amendment after. [LB384]

SENATOR COASH: Thank you, Senator Cornett. As the Clerk has stated, there are amendments from the Revenue Committee. Senator Cornett, as Chair of the Revenue Committee, you are recognized to open on the committee amendment. [LB384]

SENATOR CORNETT: Thank you very much. LB384, as amended by the Revenue Committee AM944, essentially rewrites the underlying bill. AM944 contains modification provisions for four different bills which were heard in the Revenue Committee, all dealing with TERC: LB384 reduces the number of TERC commissioners from four to three commissioners and authorizes the Governor to set the commissioners' salaries; LB405, the TERC-approved single commissioner hearing; LB363, TERC-approved omnibus technical changes; and LB457 for counties with a population of at least 150,000 inhabitants. On LB457, I would like to thank Senator Campbell for all of her work on this bill. This stemmed out of a bill that we had last year and discussions since then. For counties with populations at least 150,000, inhabitants require a preliminary notice of valuation to be provided to real property taxpayers and give real property tax protestors an opportunity to meet in person with a county assessor and the county board of equalization and/or a referee. AM944 includes modification provisions of LB457 beginning January 1, 2013, for counties with populations of at least 150,000 inhabitants. AM944 requires that a preliminary notice of valuation be mailed to real property taxpayers or posted on a Web site of the county assessor or the county that the real property tax protest be given an opportunity to meet in person with the county assessor, and that real property tax protestors who protest their valuation be given an opportunity to meet in person with the county board of equalization or a referee appointed under Section 77-1502.01. If you will notice, I have filed an amendment after the committee amendment that deals with requiring a time frame that a protestor requests an in-person hearing. AM944 changes some provisions of LB384 as introduced but would still reduce the number of TERC commissioners from four to three

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by eliminating a commissioner. The changes made by AM944 to LB384 include the following. The term of all four current TERC commissioners would expire October 1, 2011, and the Governor would set the TERC commissioner salary at his or her discretion. The terms of office for the three TERC commissioners, one from each Congressional district, would be staggered six-year terms for the purpose of making a transition from four to three commissioners. The term of the commissioners from District 3 would expire January 1, 2014; District 1 would expire January 1, 2016; and District 2 would expire January 1, 2018. The committee changed the original bill from eliminating the at-large to allowing the Governor to choose which commissioner or which position is to be eliminated, because these are his appointees. TERC, not the Governor, will appoint its chairperson according to TERC's rules and regulations as authorized by Section 77-5003(3). AM944 keeps the statutory rule that a TERC commissioner can only be removed from office for cause, as provided in Section 77-5003(4). As introduced in LB384, proposed an elimination of Section 77-5003. AM944 includes the TERC's commissioner hearing provision of TERC's approval LB405 amendment. AM944 authorizes single commissioner hearings of appeals and cross appeals when a taxable value of each parcel of real property is \$1 million or less and the appeal or cross appeal has been designated for a single commissioner hearing by TERC's chairperson or by TERC's rules and regulations. Documents necessary to establish jurisdiction of TERC would constitute a record of a single commissioner hearing and no recording of a single commissioner hearing would be needed. Single commissioner's hearings would be informal proceedings. The usual common law or statutory rules of evidence would not apply. The single commissioner conducting the proceedings would be allowed to consider and utilized all matters presented at the proceedings to make his or her determination. This part of the bill and the amendment comes from years of having heard that TERC was supposed to be a taxpayer-friendly, informal process. By establishing the single commissioner hearings, we believe that we will put it back as a taxpayer-friendly environment. An order entered into single commissioner proceedings could not be appealed to the Nebraska Court of Appeals, pursuant to Sections 77-5019 or any other provision of law. However, under certain circumstances, AM944 does provide pathways for appealing to the Nebraska Court of Appeals. For example, any party to a single commissioner hearing can, before a single commissioner hearing commences, elect in writing to have the appeal heard by the three-member TERC, whose orders can be appealed to the Nebraska Court of Appeals, pursuant to Section 77-5019. Additionally, the single commissioner conducting the proceedings could at any time designate the appeal for a hearing by the three-member TERC, whose order could be appealed to the Nebraska Court of Appeals, pursuant to Section 77-5019. Finally, if a party to a single commissioner proceeding applies for a rehearing of an order issued by a single commissioner within 30 days after the date of an order issued by a single commissioner, except for an order of a single commissioner dismissing an appeal for petition for failure of the appellant or petitioner to appear at the hearing on the merits of TERC, would be required to grant a rehearing on the merits before the three-member TERC, whose order could be appealed to the Nebraska Court of Appeals. The single

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commissioner provision of AM944 would be operative October 1, 2011. AM944 includes provisions of TERC-approved LB363, except that AM944 would not increase the TERC filing fees from \$50. The filing fee would remain at \$25. AM944 would not authorize TERC's statewide equalization notice to be published on a Web site maintained by the Secretary of State. Such notice must be published in a newspaper of general circulation throughout the state, the same as required under current law. And AM944 amends Section 77-5017(2) by requiring a county board of equalization to send notice of taxable value of property that has been determined by TERC to be taxable property rather than tax-exempt property within 90 days, 30 days under current law, after the TERC's order is certified pursuant to 77-5018. Among its many other provisions derived from LB363, AM944 fixes the problem with a citation to Section 25-510.02 that appears in Section 77-5019 which governs the service of summons for appealing TERC decisions to the Nebraska Court of Appeals. The problem was identified by the Nebraska Supreme Court in Cargill Meat Solutions Corp. v. Colfax County Board of Equalization, 281 Nebraska 93. AM944 remedies that problem by using the phrase "a civil action" instead of referring to a Section 25-510.02 which section does not govern service of summons on private persons. AM944's remedy for the problem would be operative pursuant to the amendment's emergency clause. Finally, AM944's operative dates would vary. Some sections would be operative October 1, 2011. An example of that would be the TERC's from four to three commissioners and authorizing single commissioner hearings. And some would be operative either three calendar months after the adjournment of the Legislature, example, January 2013 implementation date for requiring preliminary notice of valuation would be mailed to real property taxpayers or posted on the Web site of the county assessor or the county or operative pursuant to AM944's emergency clause, fixing the problem of service will...identified in the Cargill case. TERC is a very complicated issue and it is a lot of...a lot is being introduced with this bill. And I will be happy to answer any questions I can on the bill. But I would like to thank everyone on the Revenue Committee for their true diligence in wading through these bills over the course of the last couple of years and coming to what we felt was a reasonable solution and putting them all into one bill in regards to reducing the budget, streamlining TERC, making it more taxpayer friendly, and resolving some of the illegal issues that we had to do. Thank you very much. [LB384 LB405 LB363 LB457]

SENATOR COASH: Thank you, Senator Cornett. Mr. Clerk, there is an amendment to the committee amendment. [LB384]

CLERK: Senator Cornett would move to amend committee amendments, AM1127. (Legislative Journal page 1096.) [LB384]

SENATOR COASH: Senator Cornett, you are recognized to open on the amendment to the committee amendment. [LB384]

SENATOR CORNETT: Yes, I filed this amendment just a little while ago. It's on the

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basis of an ongoing discussion that we've had with Douglas County in regards to the face-to-face hearings and the preliminary notification. Douglas County is being required to redo how they do hearings or notification with this bill. And I'd like to thank everyone involved from Douglas County in their cooperation. They certainly have not gotten everything that they wanted but have been very cooperative in regards to this amendment and moving forward with the preliminary notifications. AM1127 simply requires the real property owner who wants an in-person meeting with the county assessor to notify the assessor by February 1 of his or her intent to meet in person with the assessor. If they fail to notify the assessor, it is equivalent to real property owner waiving the opportunity for such meeting. They will still receive their preliminary notification. When they receive that notification they will have until February 1 to contact the assessor and say they would like a face-to-face meeting. This part of the bill stems from Senator Campbell's work on LB457. We have used how Lincoln does its preliminary notification and appeals. They were able to reduce their caseload by a considerable amount and their appeals to TERC by putting certain procedures in place, and one of these was the face-to-face meeting with the taxpayer. With that, I urge the body to support AM1127 to AM944 and the underlying bill. Thank you. [LB384 LB457]

SENATOR COASH: Thank you, Senator Cornett. You have heard the openings to LB384, the committee amendment, and the amendment to the committee amendment. Those wishing to speak: Senators Lautenbaugh, Pahls, Loudon, Campbell, and Utter. Senator Lautenbaugh, you are recognized. [LB384]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. I do rise in support of the amendment to the amendment and the underlying bill. And briefly, by way of explanation, I will support this on to Select File. I had prepared a floor amendment to delay the effective date of this till...from 2013 to 2014, and since the year appears on--1, 2, 3, 4--about 20 different pages, this was the worst floor amendment anyone had ever drafted. And leaving that aside, I've agreed to bring that amendment on Select File. And so we will not be talking about that today, although I appear to be now so I'll stop. But I do support this bill, and with the caveat that I will try to pursue that change on Select File. Thank you, Mr. President. [LB384]

SENATOR COASH: Thank you, Senator Lautenbaugh. Senator Pahls, you are recognized. [LB384]

SENATOR PAHLS: Thank you, Mr. President, members of the body. Could I entertain a question for Senator Cornett? [LB384]

SENATOR COASH: Senator Cornett, will you yield? [LB384]

SENATOR CORNETT: I'd be happy to. [LB384]

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SENATOR PAHLS: Thank you, Senator Cornett. I just have basically one question. You've implied it's been in the works for a long time to have a single commissioner hearing. Has that been the desire? [LB384]

SENATOR CORNETT: Yes. Last year, we had a bill that had provisions that included the single commissioner hearing but then it also had a burden of proof in it, and the bill with the burden of proof did not advance but along with that the single commissioner didn't. But that is something that both the TERC Commission and the Revenue Committee and the executive branch favor, the single commissioner hearings. [LB384]

SENATOR PAHLS: Okay. And then I'm assuming this is to speed up the process. [LB384]

SENATOR CORNETT: It's not necessarily to speed up the process but it is to simplify the process for the taxpayer. TERC was established with the idea that it would be taxpayer friendly. But through the process of court decisions, TERC has become as formalized or structured as any court. And this is to make it taxpayer friendly so people can go into a informal hearing, meet with someone one-on-one, and explain their appeal. [LB384]

SENATOR PAHLS: Right. Yes, and I appreciate that, and I think it's...we do need that because it's easy to become intimidated by somebody who...just the way they're dressing, so I understand that. But the question I have, let's say that you're the commissioner and I'm in front of you and I have a disagreement. My next step would be? [LB384]

SENATOR CORNETT: Your next step would be if you and the commissioner do not agree, you could either request it at the beginning that your appeal could go to the full TERC Commission. You have a right at the very beginning of the process under this to go to the full TERC... [LB384]

SENATOR PAHLS: Okay. [LB384]

SENATOR CORNETT: ...or to go to a single commissioner, and you have the right to appeal to the full TERC or...and their decision then to the Court of Appeals. [LB384]

SENATOR PAHLS: Okay. And now I'm just curious because in my listening to conversations with...in other groups, did the total committee agree with this concept of having one person, like the single commissioner, and then to be able to go to the three commissioners, if that's...did we...? [LB384]

SENATOR CORNETT: I understand what you're saying because there are actually two separate concepts. We've combined four bills into this bill. [LB384]

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SENATOR PAHLS: Right. [LB384]

SENATOR CORNETT: The full committee, at least it is my belief, the full committee supports the idea of the less formalized,... [LB384]

SENATOR PAHLS: Right. [LB384]

SENATOR CORNETT: ...single commissioner hearings. We had one senator that did not support the reduction of the commission by one commissioner. [LB384]

SENATOR PAHLS: Right. [LB384]

SENATOR CORNETT: And that is where there is a difference, but I do not believe any of the members of the committee were necessarily against the single commissioner hearings. [LB384]

SENATOR PAHLS: Okay. Because I'm just trying to...for future discussion and perhaps other bills that have come in front of us. So the idea of going in front of one person if you disagree, and then going to another group in that same...what I'm going to call the same organization is...they were accepting of that idea. That was never an issue. [LB384]

SENATOR CORNETT: We worked through all of the issues that we had on that. If someone has an issue, I don't mean to speak for everyone on the committee. [LB384]

SENATOR PAHLS: Okay, okay. [LB384]

SENATOR CORNETT: If someone has an issue with that, I do not know who it is or what it would be. [LB384]

SENATOR PAHLS: Okay. Right. And, again, I'm just trying to make...this is, in my mind, sort of setting a precedent for any other bills that would come in front of us using this same concept. Thank you. [LB384]

SENATOR COASH: Thank you, Senator Pahls and Senator Cornett. Senator Louden, you are recognized. [LB384]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. If perhaps some of you noticed on the committee statement, I voted against this bill, and it wasn't because of the part that goes to single commissioner hearings, especially for the Omaha area or Douglas County, but it was a part that I said is probably the biggest camouflage operation since Montgomery hid his tanks from Rommel. If you'll look here

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back here in some of the pages, on 22, where you're talking about getting rid of four of the commissioners, as the new language says: Prior to the operative date of this section, the commission shall have four commissioners, one commissioner from each Congressional district and one at large. On the operative date of this section, the term of each commissioner shall expire, and thereafter the commission shall have three. In other words, when this thing comes operative, you fire all four commissioners and then you hire three back. And that's the oddest piece of legislation I've seen come down the pike since I've been here. I've never seen anything like that before where we fired everybody and then hired three in the place of it. Another thing I might point out in here is when you were talking about going to single commissioner hearings, which I have no problem with that. It probably will help. But for a long time we had three commissioners and that didn't work, so that's the reason we appointed four and they finally kind of picked up on some of their backlog. If any of you have ever went before the TERC committee years ago when they had three, why, it was two years before you got a ruling back from them. So I think we're doing something wrong when we get rid of the four commissioners. I think that was something that made progress and we made some progress with it. Some of the other things that I might point out here, that when this was set up you had to have someone that was a lawyer and was able to practice before the Supreme Court, and now that's all taken out. In other words, people that can be on the TERC Commission is you find you a pretty good land auctioneer and put him on the TERC board because all you have to be able to is be able to have taken some tests before the Realtors Association or whatever they call it. So I think we've change that. Whether you...I guess those of you who are lawyers ought to know whether or not that should be in there. Part of this is when you go before the TERC Commission, this is somewhat like some court proceedings because you have to take testimony and it's got to be recorded because if some of those people want to protest the TERC Commission's ruling, why, they go to district court and anything that they said before there, if there hasn't been testimony taken and approved in a court situation, it can't be used at that time. So there's some things in here that I'm amazed that got put into the bill and, as I say, it was camouflaged under the fact that we're going to a one commission or single commissioner hearings in Douglas County and some of the counties, because it mentions...it gives a population on the counties that would have to have single commissioner hearings. Now in some of the counties that...rural counties that we have in most of the other states, usually people protest their valuations, they go before their local board and the local board decides first whether or not to grant any kind of relief on their valuations, then you go to the TERC committee. And there's...that's been various done. I think Dawes County up there has had quite a little problems here this last year and I think there's 200 protests alone that comes out of Dawes County for the TERC committee to work on here between now and... [LB384]

SENATOR COASH: One minute. [LB384]

SENATOR LOUDEN: ...this next summer. So I opposed that bill for the part that's in

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there. If that part was out of there, like the Section 20 and some of that out of there, I don't have any problem with it. But I think this is something that you want to look at very carefully and realize what we're doing here and to set it up. I think also that there the Governor can set their salaries here when he reappoints all three commissioners. With that, thank you, Mr. President. [LB384]

SENATOR COASH: Thank you, Senator Loudon. Those senators still wishing to speak, Senators Campbell, Utter, Cornett, and Wallman. Senator Campbell, you are recognized. [LB384]

SENATOR CAMPBELL: Thank you, Mr. President. Colleagues, I want to express my appreciation to Senator Cornett and the Revenue Committee for incorporating LB457 into the bill and, obviously, I support the underlying bill and the two amendments and specifically want to say that I support Senator Cornett's amendment, AM1127. I believe it is a good solution to some of the concerns that were expressed by Douglas County. I think you have to say, okay, what are some of the items that we're trying to accomplish here? In the bill, we provide for a preliminary notice in the larger counties that would go to the taxpayer early in the year. This system was developed by the Lancaster County Assessor and it took us roughly three years to put into place. So I will be supporting Senator Lautenbaugh's floor amendment when it gets here because it takes a little while to get it all set up. But basically, if the taxpayer wanted to come in and visit with the assessor or one of the staff and ask questions, we found that this was a great way to find any errors that might have been made or for the taxpayer to say: How did you get to this point? What comparables did you use? How did you put this together? It solved a lot of problems for us. The official notice still goes out later in the year and the taxpayer can then return and formally protest. But what we found was that a number of people went, you know, based on the information that I heard and the comparables, I feel comfortable with what my valuation increase is, and they didn't protest. And we also had in the system a way for them to appear before a referee or the board, which was also another system. And, colleagues, the best part about this whole system is that it gives the taxpayer a way to inquire, ask questions, get information before they have to do that formal protest. It gives them a way. The whole system saved Lancaster County money. And I know the county board...and I was on it when we piloted this, you don't just do something just because you think it might work. You want to save money. And it saved us money in referees, it saved us money in drastically reducing the number of cases that went to TERC. And there's a cost for counties when you need to take cases to TERC. And so we found this system to be a great budget helper for us. Again, I want to repeat that I certainly support AM1127 and would urge your support of it. And if Senator Cornett has a question, would she entertain a question? [LB384 LB457]

SENATOR COASH: Senator Cornett, would you yield to a question? [LB384]

SENATOR CORNETT: I'd be happy to. [LB384]

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SENATOR CAMPBELL: Senator Cornett, when this bill was put together, did you change the qualifications of the TERC commissioners? [LB384]

SENATOR CORNETT: I did not. The commissioners either have to be a certified appraiser, which is a very lengthy process to go through and requires now a Bachelor of Arts on top of all of the licenser testing, and at least one commissioner shall have a law degree and will have practiced in law in the state of Nebraska for at least five years before they can be appointed to the TERC. None of the educational requirements have been changed under the bill. [LB384]

SENATOR CAMPBELL: Thank you, Senator Cornett. Colleagues, you can begin to see, hopefully, as you read the bill that what we're trying to do, there is a system, there is, as we deal with not only the local board of equalization but as that moves up to TERC. I really appreciate the work of the Revenue Committee and Senator Cornett. [LB384]

SENATOR COASH: One minute. [LB384]

SENATOR CAMPBELL: They have brought forward to you a very substantial bill and I hope you will give it a very thorough look through. Thank you, Mr. President. [LB384]

SENATOR COASH: Thank you, Senator Campbell. Senator Utter, you are recognized. [LB384]

SENATOR UTTER: Thank you very much, Mr. President, and good afternoon, colleagues. I rise certainly to support this bill and to support what has been done here. The Revenue Committee and people on the Revenue Committee have been working on this issue for quite some time. Quite frankly, it was the feeling at least of some of us on the Revenue Committee that the system could be improved and should be improved and that there were some things that could be done that would make the TERC an approachable vehicle for taxpayers to question what was happening with their taxes. The report that we continued to get time and time again was that they were intimidated by their approach to the TERC Commission and, frankly, I don't see that that's the way that it should be. I do want to mention Lancaster County. It seems to me that they have...they got this right with their new approach, relatively new approach to the way that they handle the taxpayer questions, taxpayer complaints, if you wish, with face-to-face meetings that dramatically change the number of appeals that went on to the TERC when they started doing that. And we have seen the figures of the before and after. And, Senator Campbell, I congratulate you and your county for what you did to improve that, to save the taxpayers money, to save the county money, and certainly to save the state money with regard to the cost of hearings before the TERC board. I'm not sure that it's fair to say that the taxpayer should have to request a face-to-face meeting. I frankly think that it wouldn't hurt for the taxpayer to be invited to have a face-to-face

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meeting with a representative of a county assessor's office if they had questions or problems with the valuations of their property. I think that the single commissioner hearings are an excellent idea and I think they're excellent from the standpoint that it's a place where sons can go represent mothers and fathers with regard to questions to their property if the valuation of the property is under a million dollars. I'd have to say now with the escalation certainly in the rural areas of some of the farmland, maybe the million is a little too low but I think that's a good starting point. And to take those questions, after they've had their face to face with a representative of their local assessor's office, to take their questions on to the TERC before a single commissioner without the necessity of having to hire legal representation I think is a good move. I think the TERC needs to be a taxpayer friendly place to go to get the facts and figures with regard to a piece of property right. I urge your support of this bill. [LB384]

SENATOR COASH: Thank you, Senator Utter. Senators wishing to speak: Senator Cornett and Nelson. Senator Cornett, you are recognized. [LB384]

SENATOR CORNETT: Thank you very much. Again, I just wanted to go over a few of the things, particularly in regards to Senator Campbell's aspect of the bill and how Lincoln has been so progressive in what they do in limiting the number of appeals by addressing issues at the front end rather than the back end. The Lincoln assessor was able to reduce their appeals to TERC by more than 50 percent by putting this preliminary notification and a face to face or mediation with a taxpayer in at the beginning. The amendment I filed was...the second amendment, AM1127, is a request from Douglas County not to eliminate face to face but to set a time frame when a taxpayer has to request that hearing by. The preliminary notifications will be going out in January and they'll have 15 days to request a face to face; if not, they still have the full option of going to TERC or going to the single commissioner hearing. With that, I urge the body to support the amendment and the underlying bill. Thank you. [LB384]

SENATOR COASH: Thank you, Senator Cornet. Senator Nelson, you are recognized. [LB384]

SENATOR NELSON: Thank you, Mr. President, members of the body. Senator Cornett has already covered some of the questions that I had. I do have a question for Senator Campbell if she would yield. [LB384]

SENATOR COASH: Senator Campbell, will you yield? [LB384]

SENATOR CAMPBELL: Yes, Mr. President. [LB384]

SENATOR NELSON: Thank you, Senator. I just...I didn't quite hear all you had to say about your procedure in Lancaster County. Did I understand you to say that people could come in and talk to the county assessor or their representatives just on a

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one-on-one basis? Was this after they received their notice? [LB384]

SENATOR CAMPBELL: They receive a preliminary notice at the very first part of the year in January, and then they have an opportunity to stop in and see one of the assessors and kind of go over what it says and say, well, what comparables did you use and how did you arrive at that and, golly, you know, I'm having difficulty with this or I added a garage or the assessor may have that they added a garage and they didn't. So they kind of agree, you know, on what's the information. It's an informal process. [LB384]

SENATOR NELSON: All right. Well, that's good. But if the homeowner or the taxpayer wanted to bring in additional information, was there an opportunity to do that before perhaps one of the appraisers that they used or some other representative of the county assessor? [LB384]

SENATOR CAMPBELL: Yes, Senator Nelson. They can bring in additional information. And I want to emphasize that they can walk away from that and they'll receive an official notice in the bill, as you'll notice they'll get that, and they can still protest. The first preliminary hearing does not take away their ability to protest when they get that formal notice, and that's where we saw the decline in numbers. [LB384]

SENATOR NELSON: All right. All right. Well, thank you, Senator Campbell. That sounds like a good procedure and it worked well for Lancaster County. I'm not so certain it would work as well in Douglas County, which is where I'm from, when we had taxpayers protesting in the thousands. So I really appreciate the amendment that Senator Cornett put in here, well, just for that, and I don't know what bill it came from, but the fact that in Douglas County alone we have a procedure where we can meet face to face with the county assessor or his representative, and there are at times are as many, I think, as 15 or 20 that would meet with members of the public. That was done up until two or three years ago when it became, according to the assessor's office, too burdensome, and so we didn't have that opportunity anymore. And we were welcome to file things in writing as long as we got them in, you know, three or four days before the deadline. I ran into that. But that wasn't very satisfactory as far as I was concerned. They could take a look at what you presented in writing and all your arguments and everything, but you never really got an opportunity to meet face to face with the person that was going to make the decision. So I welcome this. I welcome coming back to this. And I think it's appropriate, you know, that after you get your notice by January 15, you have then 15 days in which to notify them if you do want to appear in person, and that gives you some time to argue that and then it appears you have a month to do that until March 1. I don't know if there's any further process after that. We'll have to see. We'll apparently take up the amendment that Senator Lautenbaugh has to delay this further for an additional year. I'll be interested to hear why that's necessary. I don't know what you would have to set up necessarily. That procedure was already in effect a couple,

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three years ago at the Douglas... [LB384]

SENATOR COASH: One minute. [LB384]

SENATOR NELSON: ...County Assessor's Office. That opportunity is just a matter of going back to the way they did it then. But we can address that I guess on Select. Thank you very much. Thank you, Senator. Thank you, Mr. President. [LB384]

SENATOR COASH: Thank you, Senator Nelson. Seeing no other members wishing to speak, Senator Cornett, you're recognized to close on your amendment to the committee amendment. [LB384]

SENATOR CORNETT: Thank you, Mr. President and members of the body. Again, just a brief closing on AM1127 to the committee amendment. This requires that if the taxpayer wants a face-to-face meeting with the county assessor, that they request that meeting within 15 days of receiving their preliminary notification. It closes an open-ended date that we feel was necessary. I appreciate the body's support on the amendment and encourage a vote on the underlying bill. Thank you. [LB384]

SENATOR COASH: Thank you, Senator Cornett. The question is, shall the amendment to the committee amendment to LB384 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Record, Mr. Clerk. [LB384]

CLERK: 36 ayes, 0 nays, Mr. President, on the adoption of Senator Cornett's amendment. [LB384]

SENATOR COASH: The amendment is adopted. Returning to discussion, Senator Louden, you are recognized. [LB384]

SENATOR LOUDEN: Thank you, Mr. President and members. As I mention here, there's one part that I think we've had a little discussion over, and that's the part about whether we're doing...what we're doing with the TERC Commission. You're going from four to three, and I'm wondering if that's the way it should be done. Is this something that you really want to have is less TERC commissioners in here? As we noticed before, they've always been behind. For years, they were behind on their backlog. Somewhere along the line I think that was decided that the four commissioners probably could get more done. This way they could...they'd actually would be two of them would split up and go different ways across the state of Nebraska and have hearings in different places. Now when you go down to three, there's...if two of them go someplace and do something, why, chances are then there's only going to be a single commissioner and I guess that's the one that's going to be in Douglas County to hear the cases. So somewhere along the line I think we have a problem with how we're doing this and I hate to see the fact that the way you're going to let all four of them go at the same time

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and then start pointing them back on a staggered basis in order to get the things going again. So I would think that we need to have some consideration done on how we go about handling the business of our TERC committee. If you don't want the TERC committee, then why don't we just get rid of the TERC committee and go back to the old ways that we did it and you went into district court and filed your case and put it before the judges? The reason we came up with the TERC committee was because it overloaded the court system and usually the judges didn't want to have anything to do with it. They usually put it clear down at the bottom of the list and sometimes those cases got heard and sometimes they didn't before the session was over with, with their court session. So this is I think quite important here that what we're doing here and I think you got something that's probably sliding underneath the radar very easily here, and I would hope that you would think about this before we advance this bill. Thank you, Mr. President. [LB384]

SENATOR COASH: Thank you, Senator Louden. Seeing no other senators wishing to speak, Senator Cornett, you are recognized to close on the amendment, the committee amendment to LB384. [LB384]

SENATOR CORNETT: I'll close on the committee amendment, as I said earlier, which rewrites LB384. It takes the Governor's budget requirement and reducing the commission by one commissioner and puts the responsibility of those appointments back in the Governor's hands. It enacts Senator Campbell's preliminary notification, and it also contains single commissioner hearing language, and also the statutory changes that we need for court cases. With that, I'd urge the body to support LB384. Thank you. [LB384]

SENATOR COASH: Thank you, Senator Cornett. The question is, shall the committee amendment to LB384 be adopted? All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB384]

CLERK: 37 ayes, 1 nay on adoption of committee amendments. [LB384]

SENATOR COASH: The amendment is adopted. Continuing discussion on the advancement of LB384. Seeing no other senators wishing to speak, Senator Cornett, you are recognized to close on the advancement of LB384. [LB384]

SENATOR CORNETT: I've already closed on the amendment, which rewrites the bill. But again, I would like to thank my committee for the multiple-year process this bill has been, and it has been a long road to get to this point. And I want to thank everyone involved and the cooperation of Douglas County and Lancaster County and all of the assessors. And thank you very much. [LB384]

SENATOR COASH: Thank you, Senator Cornett. The question is the advancement of

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April 07, 2011

LB384 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Record, Mr. Clerk. [LB384]

CLERK: 36 ayes, 1 nay, Mr. President, on the advancement of LB384. [LB384]

SENATOR COASH: The bill does advance. Mr. Clerk. [LB384]

CLERK: Mr. President, one item for the record: Appropriations Committee, chaired by Senator Heidemann, reports LB464 to General File with amendments. (Legislative Journal page 1096.) [LB464]

And I have a priority motion. Senator Nordquist would move to adjourn the body until Friday morning, April 8, at 9:00 a.m.

SENATOR COASH: Members, you've heard the motion to adjourn until Friday, April 8, at 9:00 a.m. All those in favor say aye. All those opposed say nay. We are adjourned.