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Floor Debate
April 18, 2011

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SENATOR GLOOR PRESIDING

SENATOR GLOOR: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the sixty-fifth day of the One Hundred Second Legislature, First Session. Our chaplain for today is the Reverend Dr. Selwyn Bachus, Salem Baptist Church, Omaha, Nebraska, Senator Council's district. Please rise.

REVEREND BACHUS: (Prayer offered.)

SENATOR GLOOR: Thank you. I call to order the sixty-fifth day of the One Hundred Second Legislature, First Session. Senators, please record your presence, roll call. Mr. Clerk, please record.

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

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

CLERK: I have no corrections, Mr. President.

SENATOR GLOOR: Thank you. Are there any messages, reports, or announcements?

CLERK: Mr. President, a communication from the Governor. (Read re LB543.) Mr. President, a communication from the state of Idaho regarding the legislative resolution passed there. (Legislative Journal pages 1207-1208.) That's all that I have. [LB543]

SENATOR GLOOR: Thank you, Mr. Clerk. (Visitors introduced.) We will now proceed to the first item on the agenda. Mr. Clerk.

CLERK: Mr. President, LB382, a bill introduced by Senator Nordquist at the request of the Governor. (Read title.) The bill was introduced on January 13, referred to Retirement Systems for public hearing, advanced to General File. There are Retirement Committee amendments pending, Mr. President. (AM1101, Legislative Journal page 1095.) [LB382]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Nordquist, you're recognized to open on LB382. [LB382]

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SENATOR NORDQUIST: Thank you, Mr. President and members. As the Clerk mentioned, LB382 was introduced on behalf of the Governor. I will go through the bill as introduced, and then when we get to the committee amendment, we'll discuss the changes the committee made at that time. I first want to start by thanking all the groups that participated. I know they began with discussions with the Governor related to their retirement plans, and those continued. And I must say that we are lucky for our state plans to have great groups to work with, groups that are willing to come to the table to do their fair share to try to address the shortfalls in our plans. As I've said before, you know, our state has some of the best, most well-funded plans in the nation. When Pew did their study a few years back, we were a top performer. Certainly that's something to be proud of, as many other states are facing significant challenges when it comes to this. The bill as introduced, LB382, increases the retirement contribution rates for school employees and the Nebraska State Patrol plan members over the next biennium in order to address the actuarially determined unfunded liabilities. As proposed in the original bill that I introduced on behalf of the Governor, school employees would increase their contribution rate by 1 percent up to 9.28 percent from the current 8.28 percent for a period of two years. At that point, it would then decrease back down to 8.28 for a year and then return to the rate we were at in 2009, which was 7.28 percent. And the employee contribution, this employee share, is matched by 101 percent by the employer, or the school districts. Under this bill, the State Patrol member contribution rates would increase by 3 percent to 19 percent of the employee's monthly compensation. The state also would match that at 19 percent of pay. I will note, State Patrol members do not participate in Social Security, so that's why their rate is significantly higher. And then under the original bill, after the two-year increase it would drop down back to the current rate of 16 percent. That was the synopsis of the underlying bill. I will...that will be my conclusion on the underlying bill, and then we'll move on to the committee amendment. Thank you. [LB382]

SENATOR GLOOR: Thank you, Senator Nordquist. As the Clerk stated, there are amendments from the Nebraska Retirement Systems Committee. Senator Nordquist, as Chair of the committee, you're recognized to open on those amendments. [LB382]

SENATOR NORDQUIST: Thank you again, Mr. President. Committee amendment AM1101 replaces the underlying bill and amends contribution rates for the school employees, State Patrol, and Class V Omaha school employees retirement system and changes several state contributions in order to address the actuarially defined needs. The State Patrol plan does not change again from the underlying bill. They remain...it'll be 3 percent increase, from 16 to 19, for a period of two years, at which, on July 1, 2013, it will return back to the 16 percent employee, 16 percent employer rates. The school retirement plan, we did not move with the numbers introduced in the original bill. Essentially it would have been a little too much money in the first year, not enough in the second year, so we made the adjustments to appropriately hit the numbers that we need. So beginning September 1, 2011, there will be a six-tenths of a percent increase

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from 8.28 percent to 8.88 percent. Again, school districts match 101 percent of that. Beginning September 1, 2012, we will go up an additional nine-tenths to 9.78. So over the biennium we're moving from the employee paying 8.28 percent to 9.78 percent, and, again, school districts match 101 percent. We worked closely with the State Education Association, the administrators, and the school boards and agreed that to get our plan straightened out--this plan did not have shortfalls prior to the...well, at least in the year...preceding year it did, prior--as the markets have ebbed and flowed. But in the preceding years, this plan was adequately funded, did not need that additional contribution. So we want to get back to that point. And the groups all agreed, came to the table, and said, we're willing to sustain these higher contribution rates out for six years total, and that, while it won't solve all our problem, will get us on a very, very good track to get closer to being where we need to be. So these higher rates of 9.78 and then the appropriate match from the schools will be in place until September 1, 2017, at which point they will return down to 7.28. Again, none of this is set in stone, of course, because markets do ebb and flow, and we will need to continue to make sure that we're meeting our required contribution. And I will note that on the school aid bill last year, LB...or last week, LB235, we amended on Select File to make sure that these increased rates were outside the school budget lid exemption. We also...while the employees and employer were maintaining the higher rate, we are maintaining an increased state rate that we put in place two years ago, which--the state contributes 1 percent of pay. That will stay in place for the same time line as the higher rates for the employer and employee. So at the same time, in 2017, the state rate will then fall back down to the rate it was, which was seven-tenths of a percent of compensation. Omaha...or let's see here, we've got the Class V system. As you know, Omaha maintains their own school employees retirement system. We are increasing their rates 1 percent, and that will be sustained with no sunset, where the states are sunsetted. The Omaha district, we are increasing their current rates 1 percent to 9.3 percent, which meets their actuarially required contribution. And then finally, we have...there's been a...since 1995, there was a state General Fund appropriation going to these plans to fund the COLA. When the COLAs were put in place, this was the funding mechanism. It was originally intended to sunset a year ago. We extended it so it will sunset in the following fiscal year, '12-13. And Omaha's plan at that point, when we made that last year, it did not have a sunset. We are now putting a sunset in place. So the COLA funding that goes to the Omaha plan will sunset in fiscal year '13-14, at which point that money will completely cease to all plans. And that essentially is the committee amendment. Again, it's certainly not the silver bullet, but it gets us on a pathway to shore up these plans. And, again, I greatly appreciate the work of Vice Chairman Pankonin, Senator Heidemann, certainly great members to work with on these issues, and the respective groups, the State Patrol, the NSEA, administrators, and school boards. Thank you, Mr. President. [LB382]

SENATOR GLOOR: Thank you, Senator Nordquist. (Visitors introduced.) You have heard the opening on LB382 and the committee amendment. Senator Lathrop, you are recognized. [LB382]

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SENATOR LATHROP: Thank you, Mr. President and colleagues. Good morning. I am standing in support of both the amendment and the bill, and I want to take a moment to talk about retirement and the work of the Retirement Committee. You may have experienced, as I did, a hit as the market went south a couple of years ago. My retirement account has been trying to recover from that ever since, yours probably has too, and that's certainly, certainly been a huge issue for the state of Nebraska for a couple of years. Our retirement investments have not been immune to the fortunes in the market, and as a consequence, both under the leadership of Dave Pankonin and now Senator Nordquist and the good people on the Retirement Committee, we have made changes to the retirement plans necessary to bring us back to where we need to be. And it is a good opportunity to talk about the process that led to this bill. I suspect that if I did not turn my light on, there would be very little discussion about this. We would appreciate the work of the Retirement Committee, we would recognize the long hours it took to develop this bill to help bring soundness to our pensions, and we would move on to the next bill. But I think it's appropriate to stop for a moment and talk about how we got here. How is it that the state has been able to bring fiscal soundness back to our retirement accounts? And that hasn't happened by us stuffing a bunch of money from the General Fund into the retirement accounts. It happened because the state of Nebraska, both the executive branch and the legislative branch, have sat down with the various bargaining units involved. The bargaining units and teachers, for example, have made concessions in their pension. They have made contributions they did not have to make. The same happened two years ago. It seems like for the last three years, and Senator Pankonin can probably confirm this, for the last three years we have been dealing with the fallout from the fall in the market. And on each occasion, as this well-stocked Retirement Committee has worked through each retirement account with the collective bargaining units, they've come up with a solution. And it has been a solution arrived at because the state had a collective bargaining unit to talk to and a collective bargaining unit was willing to make the...share the sacrifice necessary to bring the accounts back to where they needed to be. I say that because we can see on the horizon a discussion about collective bargaining coming. And I think it's appropriate to appreciate that these problems don't get solved without collective bargaining. Without collective bargaining, if there were no collective bargaining or the equivalent of no collective bargaining, these people who have just agreed to increase their contributions would not be at the table, the state of Nebraska would have no one to talk to, and no concessions would be made. Indeed, these groups of people would get lawyers, they'd file lawsuits and demand exactly what they've been promised; and instead, the collective bargaining process has worked. Concessions have been made by those who are in these collective bargaining units, who appreciate the spot the state is in, who have agreed to participate... [LB382]

SENATOR GLOOR: One minute. [LB382]

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SENATOR LATHROP: ...in the solution, and they have made sacrifices along the way. You will no doubt become familiar with the collective bargaining issues that will be addressed by this Legislature in the days to come. But I think it's appropriate to stop and appreciate that the reason this seems like a simple bill to move today is because the state had somebody to sit down and talk to and the state had somebody willing to make sacrifice. And for those people who think that public employees are simply greedy, trying to game the system, I point to a bill like this and those from the Retirement Committee that have come before it as an example of what we get, the benefits to the state, with collective bargaining. [LB382]

SENATOR GLOOR: Time, Senator. [LB382]

SENATOR LATHROP: Thank you. [LB382]

SENATOR GLOOR: Thank you, Senator Lathrop. Senator Ashford, you are recognized. [LB382]

SENATOR ASHFORD: Thank you, Mr. President. I, too, rise to thank Senator Nordquist and Senator Pankonin and the staff of the Retirement Committee. This has been a major effort for this state to deal with the issues that arise in the pension area during the greatest recession in our history since the Great Depression. It is a massive achievement. It is not the case in our cities, in our two largest cities. Omaha and Lincoln are suffering from significant underfunding of their pensions. And the reason for that is because bad judgment has been used by local officials for many decades. In 1961, the Omaha city firefighters pension plan was developed and initiated as a defined benefit plan in the days when defined benefit plans were cheap. In 1991, the Omaha pension plan was called on the carpet by the actuaries, and they said to the city of Omaha at that time: Your pension plan is underfunded; it is significantly underfunded; and it is going to continue to be underfunded unless you increase contributions or lower benefits. We are in 2011 and our state is hurting because the city of Omaha could not handle their pension plan. We are going to have an opportunity, as Senator Lathrop suggests, to deal with pensions as we talk about the CIR bill. If we do nothing else, if we do nothing else, we must never, ever succumb to the suggestion that city pension plans do not need oversight. May I have a gavel, please? [LB382]

SENATOR GLOOR: (Gavel) [LB382]

SENATOR ASHFORD: They need oversight because they have failed. This is not an issue of local control, as has been suggested by some high elected officials in this state. Local control is a great thing, and I advocate for it. But when local control results in a \$13 million bill to the taxpayers of the city of Omaha because we have officials in Omaha who can't make tough decisions and have not made tough decisions for decades, and we have underfunding of \$600 million in our pension plans in our city. And

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as I said the other day when we were talking about local option sales tax and I said that the cities need a vision, the cities need to cooperate with the counties, and they need to have a vision for this century and the next 25 years. Omaha ain't going to get there. Omaha is not going to get there, because they have failed to manage their pensions, and we need to fix it in this body by providing oversight, because it is the same oversight that this Legislature that does not receive a pension, by the way. Local elected officials get pensions; we don't get pensions, and we provide oversight. We provide oversight. Senator Pankonin did it. Senator Nordquist has done it. His staff has done it. The Fiscal Office has done it for as long as I've served in this body, and that's why we're not in trouble. That's why the state teachers' pension is not in trouble. That's why the state employees' pension is not in trouble, the defined contribution plans that they have. But we got a big problem in our biggest city in our state. And we cannot, we cannot, it would be dangerous at best to give to the city of Omaha full discretion, an unlimited discretion to decide pensions, because I'll tell you, the hole will get deeper and Omaha will not be that great city that it can be. So as we discuss the pension issue today and most certainly when we discuss the CIR, let's focus on the problem. It is a huge one, members. Thank you, Mr. President. [LB382]

SENATOR GLOOR: Thank you, Senator Ashford. Senator Pahls, you are recognized. [LB382]

SENATOR PAHLS: Good morning, Mr. President, members of the body. I know we are talking about teachers and highway patrol and things such as that, but I have to agree with Senator Ashford. That is one reason that I cannot support increasing the taxes on the citizens of Omaha. I think we need to take a look at what's happening there. I think Senator Ashford is correct. Things have happened in the past, but now apparently we are going to...and I'm using this word, I think we're going to punish the future taxpayers, expecting them to dig us out of that hole. I know certain things cannot be done because of past contracts, but it's a wake-up call, and I think we ought to look at who's caused--what group or groups or leadership caused the problems. And I agree with them that apparently it's this body that may need to help solve some of those problems, but I find it hard to ask for additional taxes to dig us partly out of that hole. But I agree totally with what Senator Ashford has said. This is a wake-up call. And for those outstate senator that says, well, we're going to give you the ability to tax your own citizen, I don't see that as a happy solution to the issue myself. But that is my opinion. But I do know that Senator Ashford is trying to resolve that issue, but at the moment I cannot support that avenue or that direction. But I must commend the senator for trying to help resolve this issue. Thank you. [LB382]

SENATOR GLOOR: Thank you, Senator Pahls. Senator Ashford, you are recognized. [LB382]

SENATOR ASHFORD: Thank you, and it doesn't sound as if I have Senator Pahls's

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support for LB357 as the solution, but he sits relatively close to me and I'm going to continue to work hard on him because he's a thoughtful senator. (Laugh) Senator Lathrop and Senator Utter and I have been spending a lot of time together over the summer and fall and into the winter and with numerous experts in this area, with actuaries, with insurance gurus, and it's been informative. It has been extremely informative. And I recall and I know Senator Lathrop will remember as we inquired of these experts: Why is it that the city of Omaha is in such trouble, and why is it not the case that the state of Nebraska is in this predicament? And is there something else out there that needs to be addressed in order to make certain that we have fiscally sound pensions going forward? And what the solution was and what the conclusion was from the experts in this state: You have a problem in Omaha. You have a problem in Omaha. The other small cities, smaller cities than Omaha, don't...excuse me for saying small cities, the other cities than Omaha, is that in 1984 those cities adopted defined contribution plans, all of them. The only two that didn't were Lincoln and Omaha. Omaha made a dramatic, as did Lincoln, quite frankly, made a significant mistake in not moving to defined contribution plans, but they did not. And now we are paying an exceedingly heavy price for that mistake and for that lack of foresight. We have problems to solve in this Legislature. We need to solve the problem of roads, and Senator Fischer is going to be bringing us a solution on roads that we can discuss and debate. There is a problem, in my view, around the recession and the cities being able to address the needs of the cities, and that bill is LB357, and we can debate that, and we will debate that. But I'll tell you, this issue is in such desperate need of our attention, the issue of underfunding of pension plans and using inaccurate assumptions in the revenue projections for these plans, that there was no rational way that the city of Omaha could have weathered the recession that we have gone through since 2007 and come out of it without a huge tax bill. And, as Senator Lathrop suggests, here's the box we're in. We can't change the pension benefits of existing employees. Why is collective bargaining or bargaining with a group of employees important to address the pension plan issue? It's because they can agree. Representing the employees, they can agree to changes in the defined benefit plans, as has been done by, Senator Lathrop absolutely correctly suggests, by state employees and by teachers. So we need to have those representatives in place. That's key. That is critical to resolving this issue. This is a humongous crisis for our state. We must address the pensions in the city of Omaha, and the state cannot let loose of... [LB382 LB357]

SENATOR GLOOR: One minute. [LB382]

SENATOR ASHFORD: ...it until we address it. And to give the local officials the total authority and discretion to fix the Omaha pensions is negligence. It will not solve it. It is dangerous. It is going to put us in a deeper hole than we're in now. I'm sorry. As a citizen of Omaha, I'm sorry that we didn't do what Columbus, Norfolk, Grand Island, Hastings, Scottsbluff, Kearney, Holdrege, Fremont. I'm sorry we didn't have the foresight to do what was done in 1984, but we didn't and we are paying a heavy price,

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and it is a critical issue. And I am so thankful for Senator Utter and for Senator Lathrop, because we have homed in on this issue, and we're going to bring you what we believe is a solution. But we cannot get mixed up in this whole... [LB382]

SENATOR GLOOR: Time, Senator. [LB382]

SENATOR ASHFORD: ...Wisconsin-Ohio thing. [LB382]

SENATOR GLOOR: Thank you, Senator Ashford. The Chair now recognizes the Speaker for an announcement. [LB382]

SPEAKER FLOOD: Good morning, everybody. Mr. President, thank you. Welcome back. We are nearing that time of session where we are preparing for late nights. At this time, the pages will be handing out memos that identify the nights that we may be working beyond 5:00. Remember, a late night can go as late as 11:59 p.m. And as you know from past years, we do the best job we can in the Speaker's Office of making sure you're aware of how long we'll be working or if we have to cancel. We'll do that early enough, and the memo does discuss that. Another note: Not this week but next week you know we're only in session for three days--Tuesday, Wednesday, and Thursday--and it is usually our custom to work through the noonhour or as late as the noonhour on the last day of the week. On April 28, we're going to treat it as a full day. So on April 28, we're going to go into session at 9:00; we're going to recess at noon, come back at 1:30, and work a full day. And that's because we have the Monday off--it's the Monday following Easter--and then we have the Arbor Day off that Friday. So we're going to work three full days. And so on the 28th of April, just make sure your calendar reflects a full day of work. And then as it relates to LB84, that is the roads bill from Senator Fischer, as you know, that was made a Speaker's major proposal some time ago, that bill may well be scheduled tomorrow. Senator Fischer has withdrawn a number of amendments. The issue on that bill, on LB84, is that a number of amendments were drafted to a Fischer amendment, specifically AM940. She has withdrawn or intends to withdraw AM940 and AM1025. If you look at your Chamber Viewer, you'll see that. She has now filed AM1216, and Senator Loudon has an amendment filed to AM1025. Basically, look at LB84 in the Chamber Viewer. If you are intending to file amendments on that, please have your amendment redrawn, so that we can--have them redrawn to AM1216, so that we can order those amendments to the best of our ability and give the Legislature some idea as to how we're going to proceed, at least in the short term, tomorrow. I know that may be complicated the way I said that. But at the end of the day, if you've got an amendment and you care about the roads bill and you want to make a change there, please contact Laurie in my office so that we can work with you on how that can be done, because with the withdrawal of AM940, a number of the amendments from several senators will not be drawn correctly and if adopted will cause problems with the Revisor's Office. So that's my announcement for today. Thank you very much.

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SENATOR GLOOR: Thank you, Speaker Flood. Continuing with floor debate, Senator Lathrop, you are recognized. [LB382]

SENATOR LATHROP: Thank you, Mr. President, colleagues. I want to follow up on some comments made earlier and follow up on an observation made by Senator Ashford. And that is, the cities have pension problems too. They have what we call defined benefit plans, Omaha and Lincoln for sure; some of the other political subdivisions do as well. And they are in need of attention, the kind of attention the state has given to the pension issues under the leadership of Senator Pankonin and Senator Nordquist. We can be grateful for what they've done and recognize that their work is a model for the cities to follow, which is to say they need to have (a) somebody they can sit down and talk to that can speak for a number of employees, and (b) they need to have someone willing to sit down and talk to them. Now, it is important to appreciate when we talk about the problems that the cities, some of the cities, have with the pensions, is that that is a matter of contract law. This body cannot change what is a contractual right to particular benefits. We cannot legislate our way out of the hole Omaha, for example, finds itself in with underfunded or unfunded pension liabilities. That has to happen through agreement. There's only two ways, and listen to this very carefully, there's only two ways to get rid of a pension obligation: one is in a bankruptcy court and the other is in the collective bargaining process. The city of Omaha has no intention of going through a bankruptcy, and that leaves only a single option, and that's the collective bargaining process. That's going to be important. And soon you will be lobbied on the issue of the CIR, and representations will be made, people will give opinions, there will be spin, and you need to appreciate, going in, that when people want to talk to you about other solutions, the question is, will there be a collective bargaining unit willing to come to the table when we're done making reforms to the CIR for the collective bargaining process? I think it's also important for you to appreciate that this isn't a union/nonunion thing. In fact, if you...the great number of collective bargaining units are not even unions. They're simply an association of people come together to sit down with the political subdivision or the state of Nebraska for the purpose of resolving what the pay is going to be, and the mark is always average pay. I think the fact that the state has resolved its pension issues is a model for the cities, and we need to give them the tools. And those tools involve collective bargaining and an ability to sit down with a collective bargaining unit that's motivated, as they will be under the proposal that we will bring to the floor. Thank you. [LB382]

SENATOR GLOOR: Thank you, Senator Lathrop. (Visitors introduced.) Senator Ashford, you are recognized, and this is your third time, Senator. [LB382]

SENATOR ASHFORD: Thank you. I think I forgot to mention Nebraska City and North Platte. (Laugh) Senator Utter is no liberal. (Laughter) And I'm sorry, Senator Utter. I really...I apologize from the bottom of my heart for that, but I had to let it out there, and if

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anybody else wants to speak, they can, on that issue. But the point of fact is that we sat for two or three months thinking about pensions. And Senator Utter came to the...I think, and I don't want to speak for him, but I will a little bit, he came to this issue thinking that why should we have the CIR, why should we have state oversight? And then I think he realized, as all of us have that have been working on this issue for a year, that this is a problem that needs solutions, and it is a problem that needs solutions involving the state of Nebraska and the best practices and the standards that we have developed here. And with the reform of the Commission of Industrial Relations, which is significant and substantial, that will specifically address the problem that is plaguing--and I mean plaguing--the taxpayers of the city of Omaha. It may not be plaguing the taxpayers of North Platte or other cities, Nebraska City, Beatrice, because they had the foresight in 1984 to make a significant change in how they dealt with these issues, but we didn't. And just as Senator Fischer came to us three or four years ago and said, we need to address roads, because, you know what? They can't build themselves. And we've got to find a solution. And we're going to...and Senator Fischer has come to us with another solution and another solution and another solution. It is a state responsibility to address roads. It is a state responsibility to address education. And I have to tell you, members, it is a state responsibility, unfortunately caused by our own city's inability to deal with the problem, but because it represents 40 percent of the population, it is...unfortunately now is the responsibility of the state of Nebraska to intervene to help the city of Omaha get out of its problem. It is a mess! It is a mess, mess, mess! And in my years here I have never seen anything quite so bad. Thank you, Mr. President. [LB382]

SENATOR GLOOR: Thank you, Senator Ashford. Senator Ken Haar, you are recognized. [LB382]

SENATOR HAAR: Mr. President, members of the body, I was just going to give Senator Ashford more time, if he wanted it. [LB382]

SENATOR GLOOR: Senator Ashford, 4 minutes, 50 seconds. [LB382]

SENATOR ASHFORD: Thank you, and I won't take it. And I appreciate the body's indulgence on this issue. We won't have a tougher one to deal with this year. There is no question. It is an issue that has loomed above this Legislature because of states like Ohio and Indiana and Wisconsin and New Jersey. New Jersey can't solve its own state pension plans. New Jersey's pension plan is the worst underfunded pension plan in the country. But you know what? Ours isn't. It's because of Senator Pankonin and Senator Nordquist and their staff and Senator Synowiecki before them and all of the other senators that have been in the chair, that have dealt with the Retirement Committee issues. Unlike New Jersey, unlike other states that have taken this issue to the moon, we have people in the state government that can help us solve this issue. And we aren't those places. We should not and must not go to the moon with this issue. We must solve the pension underfunding problem in Omaha this year, if we do nothing else. And

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I'll tell you, I think we need to solve the problem of roads, because it plagues our state. It plagues Scottsbluff. It plagues Norfolk. Those are Nebraskans, too, and they have problems that need to be solved. They need economic development. They need opportunities for tourism that those changes can address. But the taxpayers of Omaha are really hurting, big time hurting. So thank you, Mr. President. I know we're going to be talking about this more, but what I implore you to do is bring this issue of public employee pensions into this...and I want to mention my friend Senator Smith. Senator Smith has taken on a very critical job in looking at moving from defined benefit plans to defined contribution plans, just like private employers have done and many state employers have done. It's a big job. It's going to take Senator Smith...I don't know what else he was planning to do after he left the Legislature in June, but it will be that. (Laugh) Maybe he has a short vacation. But after that, it's going to be, how do we get to a defined contribution plan and allow our workers who are on a defined benefit plan to transition to a defined contribution plan? Major problem. Major issue. But if we don't address it this year, in the police and fire contracts in Omaha, we will be negligent as a body, and it's not negligence that was caused by us but by city officials that did not address the problem. And I'm embarrassed because it's happened. Thank you, Mr. President, and thank you, Senator Haar. [LB382]

SENATOR GLOOR: Thank you, Senator Ashford and Haar. Senator Fulton, you are recognized. [LB382]

SENATOR FULTON: Thank you, Mr. President, members of the body. With respect to Senator Nordquist, this bill is good and I'd like the record to reflect that there are a number of us who recognize the value of collective bargaining and are thankful to those bargaining units who have put forward great effort here, and Senator Nordquist has been at the head of that. So I want the record to reflect that, because listening to the rhetoric, one could conclude something other. Now, I suspect that we will have this debate on CIR, and we should, but I'm not going to allow this body to be prejudiced one way or the other. When we get to that debate, let's have it. Right now we're talking about AM1101 and LB382. The two items are intermingled. I've been saying it for years and I brought bills to that effect. When it comes time to debate CIR, let us debate it but let us debate it fairly and let us not misrepresent anyone's position. I'm a little bit hot about this. I'll cool down and, with respect, I will yield the remainder of my time to my colleague Senator Ashford. [LB382]

SENATOR GLOOR: Senator Ashford, 3 minutes, 40 seconds. [LB382]

SENATOR ASHFORD: Thank you, Senator Fulton. Good. Good. I think that we should do...I think we...I'm hot too. I'm hot too. I'm hot, too, because this is embarrassing, Senator Fulton. It's embarrassing what's happened in the city of Omaha, and I'm hot too. And we need to solve it. You've got some ideas, we'll debate them. We've got some ideas, we'll debate them. It's not about prejudging a solution; it's about stating the

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problem. You can't solve the problem until you identify the problem, and the problem is clear. We have massively underfunded defined benefit plan--plans in our two major cities, clearly in Omaha. The solution is up for debate. The negligence is in not doing anything about it. My point and my request as we get into this issue--and it is related, because we do have a model, we do have an example of what we can do correctly--is let's stick to the problem and stick to the issue. And my concern is that, only that. So as we think through this issue and as we are continuously lobbied from the outside on issues that are unrelated to the central, core problem, I only ask that we focus on what's important--as Senator Fulton has suggested--we solve it, we solve it this year, and we get on a pathway that Senator Smith is in charge of--is directing, to move from defined benefit plans to defined contribution plans. That's the real solution. That's the end solution. That's where we need to be, because we--just as if...just as the federal government cannot afford Medicare and Medicaid and Social Security without reform, the city of Omaha cannot afford to pay defined benefit plans in the same way and on the same course as they've been doing since 1991 or 1961 before that. This is our budget debate, in my view. [LB382]

SENATOR GLOOR: One minute. [LB382]

SENATOR ASHFORD: I wish it could be done on the local level, but it is going to be decided, to a great extent here, by solutions that Senator Fulton is going to bring to us, I'm assuming; and many others in this body have other solutions. But what I'm asking is that we focus on the problem and we solve it in here between our...amongst ourselves and move forward. Thank you, Mr. President. Thank you, Senator Fulton. [LB382]

SENATOR GLOOR: Thank you, Senator Ashford and Senator Fulton. Senator Karpisek, you are recognized. [LB382]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I'd like to also talk about LB382 and the amendment. Senator Nordquist in the Retirement Committee has done a lot of work on this, the staff, everyone, so I'd like to talk about that. What I'd like to talk about is the state troopers and the schoolteachers and the schools that are going to have to pay to help fund this. Now, we can argue about their benefits, and they are good benefits. That's part of the job. We want good state patrolmen. We want good teachers. The judges are okay this year. We also want good judges. This is the state part of that. And I greatly respect the teachers and the troopers for coming in and putting more money in toward retirement. Of course, it is for their benefit in the end, but they have come to the table and they have worked it out. I don't want my talk to go to CIR at all. This has not been an easy bill to work on. Not at all. We're bumping the troopers quite a bit. Schools are going to have to pay more for the matches on these benefits. It puts them in a tough spot. And the teachers are going to put in more. It puts them all in a tough spot, hopefully down the road so they'll have a very good retirement. The retirement of the teachers I am especially...I have a soft spot for, because I feel that

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those teachers that we have, especially in our rural towns, in our rural school systems, hopefully, will retire and stay in those rural places where they are. Hopefully, they'll make a home there and, hopefully, keep our rural towns and communities going. That is my push when we work on these retirement bills, especially for the teachers. It is a whole different ball game being on the Retirement Committee in the way the state patrolmen do their retirement. But going up on the retirement does take right out, and right now in this economy we know it's tough for anyone to be putting more of their money anywhere. Again, I realize it's for their benefit, but I would just like to rise and say thank you to them for coming to the table and working this out, because, as Senator Nordquist talked about, these funds, the way the market has been, has not kept up. And we can talk about or argue about the type of retirement they have, the plans, and we do that in the Retirement Committee at great length, and I'm sure that there will be studies over the interim to look at the defined benefit plans, and that's fine. That's great. But I did want to bring this back here to say this has not been an easy bill, not at all, and it's not easy for the people that it affects. But we do need to go somewhere. I hear all the time or read all the time, they know what they need to do, just do it. I think that this bill does just do it. It does what we need to do to look at what we're doing to try to make it work for everyone. We need to remember that these are real people out there working for us, for the citizens. [LB382]

SENATOR GLOOR: One minute. [LB382]

SENATOR KARPSEK: And we want to do what we can but, at the same time, by keeping our state budget where it needs to be. We've made a lot of cuts and we're going to make more cuts this year, and they are hard decisions. We are moving that way. I think the Retirement Committee has done a good job here finding some middle ground, and the people that it affects have come to the table and worked it out. I appreciate that, because that's the way that things have to get done here. It doesn't always have to end up in a floor fight. Sometimes we can get it done beforehand. Thank you, Mr. President. [LB382]

SENATOR GLOOR: Thank you, Senator Karpisek. There are no senators waiting to be recognized. Senator Nordquist, you're recognized to close on the committee amendment. [LB382]

SENATOR NORDQUIST: Thank you, Mr. President. Again, for...this bill essentially will make some changes to contribution rates to meet the actuarially required contribution. It's what we do in Nebraska. We meet the obligations we have. We've done it in partnership as long as I've been involved with the issues before the Retirement Committee. It's a great partnership that we have. And our plans are some of the most sound plans in the country, and I think that's important to remember as we talk about defined benefits. And we, you know...we know that there's many that have problems. But ultimately the equation of a defined benefit plan is pretty simple. You just have...you

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balance the contributions with the investment return, and that has to equal the benefits you pay out and the expenses of administering those benefits. And we've done a good job in Nebraska of maintaining that balance for a long time in our school plan, in our State Patrol plan, and others. We do encounter challenges. When you see a market downturn like we did in 2008-2009, I don't know how you overcome that without having to make some changes and meet those obligations. It certainly was we lost \$1.5 billion worth of investments that we have to smooth out over five years, and that's a big hole to crawl out of. But we have great partners who have come with us and helped us, and that's what's helped maintain our plans. On the municipal side, the Retirement Committee will be conducting an interim study. We're going to be introducing an interim study to look at the challenges that are out there in our state, outside of state, defined benefits plans, and see where we go from there. It will be a top priority of the Retirement Committee over the interim. So with that, Mr. President, I encourage the body to adopt the committee amendment and the underlying bill, and appreciate the support of the entire Retirement Committee and the partners that we work with. Thank you. [LB382]

SENATOR GLOOR: Thank you, Senator Nordquist. Members, you've heard the closing on AM1101. The question is, shall this committee amendment to LB382 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB382]

CLERK: 41 ayes, 0 nays, Mr. President, on the adoption of committee amendments. [LB382]

SENATOR GLOOR: The amendment is adopted. Discussion continues on the advancement of LB382. There are no senators wishing to be recognized. Senator Nordquist, you're recognized to close. Senator Nordquist waives. The question is the advancement of LB382 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB382]

CLERK: 42 ayes, 0 nays, Mr. President, on the advancement of LB382. [LB382]

SENATOR GLOOR: The bill advances. (Visitors introduced.) Continuing with General File, committee priority bills. Mr. Clerk. [LB382]

CLERK: Mr. President, the next bill, LB464, is a bill by Senator Campbell, introduced at the request of the Governor. (Read title.) The bill was introduced on January 14, referred to the Appropriations Committee. The bill was advanced to General File. There are Appropriations Committee amendments pending. (AM1130, Legislative Journal page 1096.) [LB464]

SENATOR GLOOR: Senator Campbell, you're recognized to open on LB464. [LB464]

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SENATOR CAMPBELL: Thank you, Mr. Speaker and...Mr. President, I should say. I introduced LB464 at the request of the Governor, and it was a part of the Governor's biennial budget recommendations. The original bill proposes to amend Nebraska Revised Statute 43-536 by repealing the requirement that childcare providers be reimbursed at a rate not less than the 60th percentile and not more than the 70th percentile of the current market rate survey. The Department of Health and Human Services would continue to conduct the market survey of childcare providers as required by federal law, but payment would no longer be determined in relation to the market rate survey. Colleagues, I know that I would speak for a number of the members of the Health and Human Services Committee in saying that I appreciate the work of the Appropriations Committee, and I would heartily hope that you listen carefully to the amendment and support the amendment, as it would become the bill. Thank you, Mr. Speaker. [LB464]

SENATOR GLOOR: Thank you, Senator Campbell. As the Clerk stated, there are amendments from the Appropriations Committee. Senator Heidemann, as Chair of the committee, you're recognized to open on that amendment. [LB464]

SENATOR HEIDEMANN: Thank you, Mr. President and fellow members of the body. I bring to you AM1130, which will be, as Senator Campbell...will become the bill. I think in my seven years on Appropriations Committee, I've never come across a bill that caused as much concern and angst that we have with LB464. Hopefully, with AM1130 we will relieve some of that concern, I'm sure not all of it. It's kind of just a sign of the times that we're in, though. This is...we've had a lot of difficult decisions this year that we've made in this body, and this is definitely one of them. LB464 as introduced would have told the state of Nebraska Health and Human Services that they were still going to do the market rate survey, but they wasn't going...we wasn't as a state going to have to follow it anymore. It was the intent, as Senator Campbell came in and introduced, that she wanted an amendment on there, after conferring with members of the Health and Human Service Committee, that her amendment would have said that we're going to do this but we're only going to do it for two years. There would have been a General Fund savings of, I think, \$5.6 million a year the next biennium, and every biennium after that the savings would have racked up, but underneath the amendment that she was talking about, it would have been just for two years. There was still...after we had public hearings on this, there was still a lot of discussion on this in the Appropriations Committee, a lot of concern. There was members of the committee that were just not willing for it to go forward as...even as Senator Campbell would have liked it, just for two years. So there was still work done on it and a compromise on it that said, yes, we are going to move forward with LB464, we are going to hold you flat for two years, but no one is going to fall below the 50th percentile. According to the market rate survey and according to how Nebraska has always did it, it's...we've held in between the 60th and the 75 percentile. If we would have did LB464 and said we're going to just hold them flat for two years, we would have had some providers that went below the 50th percentile.

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So this amendment says, no, you can't do this. We're going to hold everybody at least to the 50th percentile. You'll have some at 60, some at 65, some at 70. So they'll be a little bit over the board but they won't be below the 50th percentile. There was a cost savings of, under the original LB464, as I said, \$2.8 million a year, \$5.6 million over the biennium. Because of the amendment and nobody can fall below the 50th percentile, it'll cost us a million dollars per year. So there--under LB464 with the amendment, we will save \$3.6 million as a state yet. We won't save quite as much, but the savings are still there, and I believe because of AM1130, everybody might not get all their concerns addressed, but it's in a good enough spot that, hopefully, we can get everybody behind it and move LB464 ahead with AM1130. If you have any questions, I will try to answer them. Thank you. [LB464]

SENATOR GLOOR: Thank you, Senator Heidemann. We now move to floor discussion. Senator Campbell, you're recognized. [LB464]

SENATOR CAMPBELL: Thank you, Mr. President. And colleagues, I just want to speak briefly and draw your attention. As I said, I fully support AM1130 and appreciate Senator Heidemann and the work of the Appropriations Committee to bring it forward. I do want to draw your attention that there is a second component piece to this, hopefully, in LB601. And so if you have time, you may want to take a look at it. LB601 is being held by the Health and Human Services Committee, and we hope to work with providers and advocates and invite the Appropriations Committee as well as the Education Committee to help us take a look at childcare subsidies as well as the education and training of those providers. It isn't enough to just look at the subsidy, and we know that. We also need to begin looking at the quality of care and the training and education that our providers have as they work with children. We certainly don't want a situation where we're just looking at children being somewhat warehoused or just kept day after day. It's important, and many of our providers, I would say a vast majority, are giving excellent care and ensure that the child development of those children is continuing. But we will need to look at what initiatives the department has put in place to look at quality indicators. And I want to thank Senator Krist, because he posed a question at the hearing on LB601 which brought some information to us from the department, and I'd like to quote the last sentence: and that the higher levels of training and education of childcare providers translate into best practices within programs. So we will invite additional work on this in LB601 and look forward to working with two other committees to take a look at this issue. Thank you, Mr. President. [LB464 LB601]

SENATOR GLOOR: Thank you, Senator Campbell. The Chair recognizes Senator Carlson. [LB464]

SENATOR CARLSON: Thank you, Mr. President, members of the Legislature. I'd like to address a question to Senator Campbell, if she would yield. [LB464]

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SENATOR GLOOR: Senator Campbell, would you yield? [LB464]

SENATOR CAMPBELL: Yes, certainly. [LB464]

SENATOR CARLSON: Senator Campbell, I think I know the answer to this, but I'm going to ask it for the record. In the hearing, the director, besides yourself, was the only one that testified as a proponent, and there were a number of opponents. Why were they opposed? [LB464]

SENATOR CAMPBELL: I think that what the opponents...and I was able to listen to most of the testimony, Senator Carlson; I think what most of them were trying to say is that this is a difficult time in which we would (a) totally take away the market survey and not ever return to it. I think that was one point, because the providers have worked under this system and it's helped us increase the quality and education. Number two, many of them felt that we would be greatly hurting some of our low-income families if we did not provide a subsidy or at least a base level to those providers. [LB464]

SENATOR CARLSON: All right. So maybe to ask another question, and you've partially answered it, I believe, what...those that opposed it, what did they want? [LB464]

SENATOR CAMPBELL: Senator Carlson, I think most of the providers wanted to at least (a) have the market study continue and then, number two, to not freeze the rates as drastically as the original LB464. And I think the Appropriations Committee did a good job of finding a compromise there and bringing it forward. [LB464]

SENATOR CARLSON: Okay. Thank you, Senator Campbell. I think that this bill is another example of the fact that we are in difficult times, we are making difficult decisions, but we are balancing a budget and we're not slighting that responsibility. Thank you, Senator Campbell, and I do support AM1130 and the underlying bill, LB464. [LB464]

SENATOR GLOOR: Thank you, Senator Carlson. Seeing no further members wishing to speak, Senator Heidemann, you're recognized to close on the committee amendment. [LB464]

SENATOR HEIDEMANN: Thank you, Mr. President. Fellow members of the body, this is one of these difficult decisions that we're going to make this year, as Senator Carlson has said, to balance the budget. There are certain things that we wouldn't like to have to do, but it's the times that we are in. Hopefully, in a couple of years we can go back to the market rate survey as we've done for year after year and we can get these people back to the 60th and 75 percentile, in between, and move forward in a positive way. But at the present time, I urge you to support AM1130 to LB464 and then vote green on LB464 itself. Thank you. [LB464]

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SENATOR GLOOR: Thank you, Senator Heidemann. Members, the question is, shall the committee amendment to LB464 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB464]

CLERK: 42 ayes, 0 nays, Mr. President, on the adoption of committee amendments. [LB464]

SENATOR GLOOR: The amendment is adopted. Discussion continues on the advancement of LB464. There are no senators waiting to be recognized. Senator Campbell, you're recognized to close on LB464. Senator Campbell waives. Members, the question is the advancement of LB464 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB464]

CLERK: 40 ayes, 0 nays, Mr. President, on the advancement of LB464. [LB464]

SENATOR GLOOR: LB464 advances. Mr. Clerk. [LB464]

CLERK: Mr. President, LB289; it's a bill by Senator Mello. (Read title.) The bill was introduced on January 12, Mr. President, at that time referred to the Transportation and Telecommunications Committee, advanced to General File. There are committee amendments pending. (AM416, Legislative Journal page 627.) [LB289]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Mello, you're recognized to open on LB289. [LB289]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. LB289 would allow for the operation of low-speed vehicles on Nebraska roads and highways and is similar to bills introduced by both Senator Louden and myself last session. The bill builds on legislation passed last year that allowed for the operation of minitrucks and UTVs and opens up the market for Nebraskans to take advantage of low-speed electric vehicles, also known as neighborhood electric vehicles, NEVs. Under LB289, any person operating a low-speed vehicle would be required to carry liability insurance coverage and possess a valid Class O operator's license and vehicle registration. All low-speed vehicles purchased on or after January 1, 2012 would be required to have a certificate of title. The registration fee for a low-speed vehicle would be \$15, which is the same as the registration fee for most other vehicles. More importantly, low-speed vehicles could only be operated on roads and highways with a speed limit under 35 miles per hour. As fuel prices continue to rise and Nebraska families and businesses look to save money, NEVs represent an alternative mode of transportation that has many potential uses. Already allowed in at least 35 states, NEVs are regularly used in planned communities, on university and industrial campuses by security personnel, and in airports. In addition, NEVs encourage walkable communities and promote positive

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urban design. Members should have received a series of handouts regarding the differences between low-speed vehicles and other classes of vehicles that are already allowed on Nebraska highways. LB289 would also repeal the Alternative Fuel Tax Act and replace it with an alternative fuel fee. A relatively obscure provision of the state statute, the Alternative Fuel Tax Act requires that every person registering a motor vehicle designed or modified to be propelled in whole by alternative fuel must obtain an alternative fuel permit from the Nebraska Department of Revenue. Under LB289, the fee for alternative fuel vehicles would instead be collected at the point of registration, reducing the burden on the owners of alternative fuel vehicles. Any fees collected would continue to flow into the Highway Trust Fund and the fee would remain at \$75, which is the amount of the current alternative fuel tax. According to the Department of Revenue's Motor Fuel Division, there were only six vehicles that fell under the Alternative Fuel Tax Act in 2009. With the advent of the Chevy Volt and Nissan Leaf and with, hopefully, more electric vehicles yet to come, we can only expect this market to continue to grow. Low-speed electric vehicles are just another step in that direction. And I hope to continue working with Senator Fischer and the Transportation Committee to promote the use of alternative methods of transportation by Nebraskans. There was no opposition to LB289 at the hearing and the bill was advanced to the floor with an 8-0 vote. I would urge the body to advance LB289 to Select File. And I want to specifically thank Senator Fischer and her committee counsel for helping work with us over the interim and this session on getting this bill into shape with the Transportation Committee amendment. And I'd also like to thank Speaker Flood for selecting LB289 as a Speaker priority bill. Thank you, Mr. President. [LB289]

SENATOR GLOOR: Thank you, Senator Mello. As the Clerk stated, there are amendments from the Transportation and Telecommunications Committee. Senator Fischer, as Chair of that committee, you are recognized to open on the committee amendment. [LB289]

SENATOR FISCHER: Thank you, Mr. President and members. The committee amendment, AM416, makes several changes to the original bill. Sections 7, 14, 28 and 36 are amended to clarify that off-road vehicles are still exempt from the definition of motor vehicle within their respective articles of Chapter 60. The change in language will make sure that off-road vehicles, such as golf carts, ATVs, and UTVs, will not be inadvertently included in titling, registration, and financial responsibility requirements for typical motor vehicles. The amendment does clarify that low-speed vehicles and minitrucks would be authorized under law to operate on the highway and thus would still be considered a motor vehicle under the new language. This ensures that these two types of vehicles will be subject to the various titling, registration, and financial responsibility requirements. Section 10 amends 60-165 to outline the process for a lienholder to obtain a certificate of title for a low-speed vehicle in the case where an owner fails to obtain a title. The amendment also provides for a low-speed vehicle base fee for the motor vehicle tax and motor vehicle fee that every motor vehicle pays. The

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committee believes that if low-speed vehicles are to be operated on the streets and roads of this state, then the owner should be paying the standard fees that every motor vehicle owner currently pays. Finally, Section 21 authorizes the use of smaller dimensions for low-speed vehicles' license plates. Thank you, Mr. President. [LB289]

SENATOR GLOOR: Thank you, Senator Fischer. Members, we now move to floor discussion. There are no senators wishing to speak. Senator Fischer, you're recognized to close. Senator Fischer waives. Members, the question is, shall the committee amendment to LB289 be adopted? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB289]

CLERK: 35 ayes, 0 nays on adoption of committee amendments. [LB289]

SENATOR GLOOR: The amendment is adopted. Discussion now continues on the advancement of LB289. No senators wishing to be recognized. Senator Mello, you're recognized to close. [LB289]

SENATOR MELLO: Thank you, Mr. President. Thank you, members of the body. Once again, I'd like to thank Senator Fischer and her committee counsel and the committee for the diligent work that they provided of helping us with the committee amendment that we just adopted. It ensures that the purpose of LB289 is carried out and makes sure that we don't create any loopholes within existing vehicle titling issues. Just for a preface, also there is an A bill that I'll discuss next. It's a simple cash transfer from the DMV, but we'll get to that soon. I urge the body to adopt LB289. Thank you, Mr. President. [LB289]

SENATOR GLOOR: The question is the advancement of LB289 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB289]

CLERK: 35 ayes, 0 nays, Mr. President, on the advancement of LB289. [LB289]

SENATOR GLOOR: The bill advances. Mr. Clerk. [LB289]

CLERK: LB289A, a bill by Senator Mello. (Read title.) [LB289A]

SENATOR GLOOR: Senator Mello, you're recognized to open on LB289A. [LB289A]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. LB289A provides a one-time cash transfer from the DMV Cash Fund, in the amount of \$29,250, for programming changes to the vehicle title registration system that's needed to carry out LB289. With that, I urge the body to adopt it. Thank you, Mr. President. [LB289A LB289]

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SENATOR GLOOR: Thank you, Senator Mello. Are there any members that wish to speak? Seeing none, Senator Mello, you're recognized to close. Senator Mello waives. Members, the question is, shall LB289A be advanced to E&R Initial? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB289A]

CLERK: 37 ayes, 0 nays on the advancement of LB289A. [LB289A]

SENATOR GLOOR: The bill advances. Mr. Clerk, items for the Journal. [LB289A]

CLERK: Thank you, Mr. President. Enrollment and Review reports LB176, LB229, LB229A, LB235, LB279, LB283, LB297, LB388, LB388A, LB479, LB524, LB600, LB600A, and LB628 all reported correctly engrossed. Mr. President, I have a motion to be printed: Senator Christensen to reconsider the vote on AM1032 to LB606. That's to be printed. New resolution: Senator Coash, LR164. That will be laid over. And a conflict of interest statement as required by rule offered by Senator Burke Harr. That will be on file in the Clerk's Office. (Legislative Journal pages 1208-1211.) That's all that I have, Mr. President. [LB176 LB229 LB229A LB235 LB279 LB283 LB297 LB388 LB388A LB479 LB524 LB600 LB600A LB628 LB606 LR164]

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

CLERK: Mr. President, LB665 is a bill by Senator Pirsch. (Read title.) Introduced on January 19, referred to the Judiciary Committee. The bill was advanced to General File. At this time I have no amendments to the bill, Mr. President. [LB665]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Pirsch, you're recognized to open on LB665. [LB665]

SENATOR PIRSCH: Members of the body, Beveridge Magnet School is a school in my district. From time to time I visit the school, and when I do I pass through a little...a very little but well-cared-for garden in the front of the school. That garden was added in 2006. The garden is named after Amber Harris. Twelve-year-old Amber Harris disappeared one day while she was coming home from school, just plain disappeared. And I can't begin to imagine the horror, grief, and uncertainty that her parents, family, and classmates experienced as the months drew on and on. As winter turned to spring and spring looked to turn to summer, what happened to Amber remained a mystery and it looked as though it always would. But in May of that year, Amber's remains were found in a desolate wooded area north of the city. Eventually it was determined that her promising young life was brutally ended at the hands of a convicted child sex offender as she walked home from her school bus. Every time I pass through Amber's garden there at the school, it's a somber reminder to me that there are real dangers that exist for children in our state. There are twisted individuals out there who look for the right

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opportunity. LB665 is a bill intended to better protect children. It is currently a crime that's on the books for a stranger to entice a child up to 13 years of age into a vehicle. LB665 would extend the protective measures, and the actual language of the bill is quite short. It indicates that, in essence, no person shall entice a child under the age of 14 years old to enter into any place with the intent to seclude the child from his or her parent, guardian, or other legal custodian or the general public. And so in doing this, in utilizing this language and extending the protective provisions of law, we are better protecting children. At committee, there were no opponents, no neutral testimony. The committee, Judiciary Committee, who I do want to thank for their work with respect to this bill, passed the bill along on an 8-0 vote. I also want to thank the Speaker, Speaker Flood, who has prioritized this bill and brought it to you here today. So my appreciation for that. Thank you. I would ask for your vote on this bill. [LB665]

SENATOR GLOOR: Thank you, Senator Pirsch. We now move to floor discussion. Are there members wishing to speak? Seeing none, Senator Pirsch, you're recognized to close on the advancement of LB665. Senator Pirsch waives. Members, the question is the advancement of LB665 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB665]

CLERK: 39 ayes, 0 nays, Mr. President, on the advancement of LB665. [LB665]

SENATOR GLOOR: The bill advances. Continuing with General File. Mr. Clerk. [LB665]

CLERK: Mr. President, the next bill, LB535, is a bill offered by Senator Utter. (Read title.) Introduced on January 18 of this year, at that time referred to the Banking, Commerce and Insurance Committee. There are Banking Committee amendments pending, Mr. President. (AM454, Legislative Journal page 767.) [LB535]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Utter, you're recognized to open on LB535. [LB535]

SENATOR UTTER: Thank you, Mr. President. Good morning, colleagues. Today I'm introducing LB535, and at this time I just want to express my appreciation to the Speaker for including this bill among the Speaker priority bills. LB535 with AM454, which--the Chairman of the Banking, Commerce and Insurance Committee has asked me to just kind of do the whole thing together, because the AM454 really replaces the bill. After discussions with the Department of Insurance and the various stakeholders, AM454 was introduced that clarifies several issues that were brought to our attention from the Department of Insurance. LB535 with AM454 is the Portable Electronics Insurance Act. This act ensures that Nebraska consumers of portable electronics have a consumer-friendly method to make certain that proper disclosures and cancellation rights are properly and thoroughly explained when they purchase portable electronics and insurance from Nebraska retailers. Portable electronics means an electronic device

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that is portable in nature and any accessory related to the use of the device. In AM454, the language was clarified to include an electronic device that is personal, self-contained, easily carried by an individual, and battery operated and includes devices used for electronic communication, viewing, listening, recording, computing, or global positioning. It is important to note that this insurance product is not a service contract or an extended warranty. The bill was brought to my attention by the providers of this coverage. They were seeking clarification for these types of products. LB535 with AM454 contains licensing and regulatory requirements for an insurance program that protects a consumer's investment in their wireless communications device. It achieves this by insuring it against loss, theft, damage, and internal malfunction of the device. The bill provides for an entity-level license to vendors offering portable electronics insurance and provides for key consumer protections related to such coverage. As wireless devices are an integral part of our everyday lives, their functionalities have expanded exponentially, and the cost of these devices has also risen. Portable electronics insurance ensures that the consumer's investment in such a device is protected. It also ensures that a consumer has very little downtime when a problem does occur. Oftentimes, a consumer will receive a preprogrammed phone or other portable electronics device by the very next day after a claim has been made. As we all know, staying connected in today's world is crucial. The insurance product that is the subject of this important piece of legislation ensures that consumers stay connected. LB535 with AM454 creates a licensing framework applicable to the sale of portable electronics insurance in Nebraska. Currently there is no statutory regulatory structure that exists for the sale of this product in Nebraska. The bill provides for such a structure, provides for an individual limited lines producer to sell this type of insurance product. The legislation ensures a balanced regulatory structure that avoids the need to have every individual on the floor of every retailer in Nebraska that offers this insurance to consumers, with consumer protections and disclosures. As you can imagine, licensing every sales floor representative of a large retailer such as Best Buy or Verizon, or any of the retailers of portable electronic devices, would be impractical and overly burdensome on both the Department of Insurance and carriers. The bill creates a licensing framework under which the retailer itself holds the license authorizing employees to sell this insurance product on their behalf. This avoids the retailer from having to license every individual salesperson on the floor of its stores. This model is consistent with a national trend that we have seen with respect to the regulation of this product. This creates an efficient and fair licensing framework for the entities offering this product to consumers. It also gives regulators the authority they need to effectively oversee these activities. Similar laws have been, in many other states, covering and providing consumer protections to a majority of the U.S. population. We have worked closely with the Nebraska Department of Insurance regarding the licensing framework created by this bill. LB535 as amended also provides significant consumer protection measures. It states that the enrollment by the consumer in portable electronics coverage is not required in order to purchase or lease portable electronics or services. It requires extensive disclosures to consumers regarding the insurance coverage that is being

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sold, which includes the amount of any applicable deductible and how it is to be paid; the benefits of coverage; the key terms and the conditions of coverage; a summary of the process for filing a claim, including how to return the portable electronics device and the maximum fee applicable if the customer fails to comply with any equipment return requirements, proof of loss requirements; and states that the customer may cancel enrollment for portable electronics coverage at any time and receive a refund of any applicable unearned premium. In addition, it requires the retailers to train salespeople acting under the retailer's license. In summary, this bill with the attached amendment is a good bill not only for the retailers of Nebraska but also for the consumers of Nebraska. It creates a regulatory structure for this product that ensures full disclosure to the consumer of the terms and conditions of this insurance coverage. At the same time, it provides the Department of Insurance with the regulatory authority to ensure that the product is sold to Nebraska consumers in the right way. The bill strikes an effective balance between the interests of consumers and industry. The bill also has no fiscal impact and would be an ideal vehicle to promote and protect the interests of our consumers. I ask that you adopt the committee amendment and advance this bill to Select File. And I do know that there is one other small amendment that will be introduced beyond the committee amendment. Thank you, Mr. President. [LB535]

SENATOR GLOOR: Thank you, Senator Utter. As the Clerk stated, there are amendments from the Banking, Commerce and Insurance Committee. Senator Pahls, as Chairman of that committee, you're recognized to open on the committee amendment. [LB535]

SENATOR PAHLS: Thank you, Mr. Chairman, members of the body. As Senator Utter indicated, he actually has given the amendment, the details of the amendment, to this particular bill. Thank you. [LB535]

SENATOR GLOOR: Thank you, Senator Pahls. Mr. Clerk. [LB535]

CLERK: Mr. President, Senator Christensen would move to amend the committee amendment with AM1066. (Legislative Journal page 1192.) [LB535]

SENATOR GLOOR: Senator Christensen, you're recognized to open on AM1066. [LB535]

SENATOR CHRISTENSEN: Thank you. The purpose of AM1066 is to clarify existing Nebraska law which exempts service contracts from the statutory definition of insurance. The amendment will offer greater certainty to businesses that use portable electronics in the course of providing services in the state of Nebraska and wish to guarantee continuity of services to their customers through routine service agreements covering electronic devices. I ask for your support of AM1066. Thank you. [LB535]

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SENATOR GLOOR: Thank you, Senator Christensen. Members, we now move to floor debate. Senator Lautenbaugh, you are recognized. [LB535]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I wonder if Senator Utter will yield to a few questions. [LB535]

SENATOR GLOOR: Senator Utter, would you yield? [LB535]

SENATOR UTTER: Yes, I will. [LB535]

SENATOR LAUTENBAUGH: Thank you, Senator. And I'm trying to make sure I understand how this works. As I read your bill as amended, these policies we're talking about that would be regulated now are ones that are provided by the vendors of the cell phones, or marketed by the vendors of the cell phones. Is that correct? [LB535]

SENATOR UTTER: That's correct. [LB535]

SENATOR LAUTENBAUGH: And it's not your intention to go beyond the scope of those that are provided by the vendors. Is that correct? [LB535]

SENATOR UTTER: That's my understanding. Yes, sir. [LB535]

SENATOR LAUTENBAUGH: Thank you, Senator Utter. And I do rise, curiously, familiar with this area that I otherwise know nothing about because I did just purchase a new and incredibly, incredibly expensive phone. And I started to look at the coverage that was available through the carrier, the vendor, and I think my monthly payment went up to \$10 or \$11 a month just for the insurance, and I think the deductible is about \$175 or \$195 if something happens to the phone, which I think retails, if you don't have a contract, to \$700 or \$800 to get a replacement. So happily, with a contract, that's not near what I paid, but that will be a big downstroke. That's a huge deductible. So I started looking around on-line, and there are entities out there not affiliated with the vendors that do provide coverage for electronic devices. I can't remember the names of any of them and I have yet to sign up with one of them, and I'm not going to mention if I did recall, because I'm not here to plug those entities. But I do think that they do fill a void and provide an option beyond what might be available through the vendors. And it was much lower cost; it worked a little differently. But as I became aware of this bill not too awful long ago--you could measure it in minutes and not days--I started to wonder if that would affect access to those. And it's not my understanding that it does, so that concern would go by the wayside, and I would urge you to support the committee amendment to the underlying bill, and Senator Christensen's amendment too. Thank you. [LB535]

SENATOR GLOOR: Thank you, Senator Lautenbaugh. Senator Schumacher, you are recognized. [LB535]

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SENATOR SCHUMACHER: Thank you, Mr. President. Would Senator Utter yield to a question? [LB535]

SENATOR GLOOR: Senator Utter, would you yield? [LB535]

SENATOR UTTER: Yes, I will. [LB535]

SENATOR SCHUMACHER: Senator, I've got a number of credit cards, and I'm sure everyone does, and some of those credit cards have as part of the service that you get for paying them their fee an insurance policy that if you lose the thing that was purchased with the credit card or it breaks, they will refund your money or get you a new one. Is this intended to include that kind of activity? [LB535]

SENATOR UTTER: No, it is not, Senator. It covers the...this bill actually covers the sale of this insurance product by the retailers of the product and has no bearing at all, as far as I know, on any type of credit card insurance. I would also mention one more thing on your time, and I apologize for that, that your homeowners insurance may also enter in to this product, and certainly it...depending upon what your deductible is on your homeowners insurance, you may have some insurance coverage against loss or theft of this product on your homeowners insurance too. [LB535]

SENATOR SCHUMACHER: Thank you, Senator Utter. I wasn't going to use my time for anything more anyway, so you can have the rest of it, if you want it. Thank you. [LB535]

SENATOR GLOOR: Senator Utter, 3 minutes 33 seconds. And Senator Utter waives; although, Senator Utter, you are the next speaker in the queue. [LB535]

SENATOR UTTER: And I just waived that. [LB535]

SENATOR GLOOR: Senator Utter waives. Senator Pahls, you are recognized. [LB535]

SENATOR PAHLS: Thank you, Mr. President, members of the body. I think what Senator Lautenbaugh--is an example of what we should do as consumers. We need to take a look and see what is out there, because, surprisingly, after this bill came before my committee, or the Banking, Commerce and Insurance Committee, and we supported it, especially with Senator Utter's amendments and also with Senator Christensen--but I looked at my...it made me more aware of it. And I looked at my particular phone bill, and the insurance is going to be going up. So I think, again, also as Senator Utter said, it may be your house...your policy...homeowners policy may...so it's just another avenue that we can help the consumer. But again, the consumer should be looking at what's out there and going for the better deal. Thank you. [LB535]

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SENATOR GLOOR: Thank you, Senator Pahls. Senator Lautenbaugh, you're recognized. [LB535]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. And I would just like to underline Senator Pahls's comments that I am an example that you all should follow, so I hope you take that to heart. I don't think he limited it to this bill, but okay. It is a serious topic, though. You can go on-line. You can go on Google. You can look for insurance coverage for portable electronic devices. It doesn't just come through the vendors. It is available otherwise. So in this day and age, with information flowing more freely than it ever has before, I think it's incumbent upon all of us to be smart consumers, and that's the way to stay well-informed. So I hope we've made an adequate record that this bill is not meant to outlaw those types of entities and simply regulates those that are affiliated with the vendors that actually sell the phones in the state of Nebraska. And with that, I'll yield the rest of my time to Senator Utter, who's shown a passion for waiving it these last few times, but... [LB535]

SENATOR GLOOR: Senator Utter, 3 minutes 60 seconds. [LB535]

SENATOR UTTER: Thank you very much, Senator Lautenbaugh, but I have nothing further to say. [LB535]

SENATOR GLOOR: Thank you, Senator Utter and Senator Lautenbaugh. (Visitors introduced.) There are no senators waiting to be recognized. Senator Christensen, you're recognized to close on your amendment to the committee amendments. Senator Christensen waives. Members, the question is, shall the amendment to the committee amendments to LB535 be adopted? All those in favor say aye...vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB535]

CLERK: 37 ayes, 0 nays, Mr. President, on the adoption of Senator Christensen's amendment to the committee amendments. [LB535]

SENATOR GLOOR: The amendment is adopted. There are no further senators waiting to be recognized. Senator Pahls, you're recognized to close on the committee amendments. Senator Pahls waives. The question is, shall the committee amendments to LB535 be adopted? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB535]

CLERK: 40 ayes, 0 nays on adoption of the committee amendments, Mr. President. [LB535]

SENATOR GLOOR: The committee amendment is adopted. Discussion continues on the advancement of LB535. There are no senators wishing to be recognized. Senator Utter, you are recognized to close on the advancement of LB535. [LB535]

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SENATOR UTTER: Thank you very much, Mr. President. I'd just point out that it's very often that you see an industry, insurance providers, that come seeking regulation. And I think what this bill does is provides responsible regulation on not only the product that the insurance companies that offer this product provide but also the disclosures that are necessary and the conduct of those who are actually marketing this product to consumers. And so I would urge you to vote green on this bill. Thank you. [LB535]

SENATOR GLOOR: Thank you, Senator Utter. Members, the question is the advancement of LB535 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have all voted who wish to? Record, Mr. Clerk. [LB535]

CLERK: 36 ayes, 0 nays, Mr. President, on the advancement of LB535. [LB535]

SENATOR GLOOR: The bill advances. Mr. Clerk, items for the record. [LB535]

CLERK: Mr. President, the Natural Resources Committee, chaired by Senator Langemeier, reports LB549 to General File with committee amendments attached. New A bill: Senator Nordquist offers LB382A. (Read LB382A by title for the first time. Legislative Journal pages 1211-1215.) [LB549 LB382A]

And, Mr. President, I have a priority motion. Senator Flood would move to recess the body until 1:30 p.m.

SENATOR GLOOR: Members, you have heard the motion to recess until 1:30 p.m. today. All those in favor say aye. All those 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: One item: Senator Louden would like to print an amendment to LB84. (Legislative Journal pages 1215-1218.) [LB84]

SENATOR GLOOR: (Gavel)

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CLERK: That's all that I have, Mr. President.

SENATOR GLOOR: Thank you, Mr. Clerk. (Visitors introduced.) We now proceed to the first item on this afternoon's agenda. Mr. Clerk.

CLERK: Mr. President, LB449, by Senator Nelson. (Read title.) The bill was introduced on January 14, referred to the Government, Military and Veterans Affairs Committee. The bill was advanced to General File. I do have committee amendments pending. (AM867, Legislative Journal page 907.) [LB449]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Nelson, you're recognized to open on LB449. [LB449]

SENATOR NELSON: Thank you, Mr. President, members of the body. I am here today to introduce LB449. Before I begin, I would like to thank Speaker Flood for making LB449 one of the Speaker priority bills. I would also like to thank Senator Avery and all members of the Government, Military and Veterans Affairs Committee for their hard work and for advancing LB449 to General File. LB449 makes several technical changes to the Election Act. LB449 is the product of several months of work with a number of election commissioners around the state. I want to thank Douglas County Election Commissioner Dave Phipps and Sarpy County Election Commissioner Wayne Bena for helping develop LB449 and also Lancaster County Election Commissioner Dave Shively for his valuable input. Sections 1 and 2 of the bill permit county election commissioners to seek public office. The committee amendment substantially changes these sections and I will wait to speak on this topic until Senator Avery has an opportunity to open on the committee amendment. Section 3 makes a simple change removing notification deadlines regarding the training of election workers and requires deputy registrars to complete a training session at least once every three years. Section 4 adds a blank in the voter registration form for e-mail addresses. Sections 5 and 6 make December 15 before the primary election the earliest date a candidate can file for office. The purpose of these sections is to prevent candidates from filing for an office which won't be on the ballot for years. Section 7 prohibits members of a political party from bypassing their party's partisan primary in order to run for partisan office as a by-petition candidate. Partisan primaries have meaning, and partisan primary voters should not have their will subverted by candidates who avoid primaries only to run by petition in the general election. Under this section, only those registered as nonpartisan would be allowed to run as a by-petition candidate in the general election for a particular office--or for a partisan office, rather. During the committee hearing there was some question as to the constitutionality of this section. Chairman Avery and I agreed that the section would be removed until the Attorney General's Office reviewed this matter. After review, the Attorney General's Office has assured me that they find no constitutional issue with Section 7. Accordingly, an amendment to the committee amendments has been

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introduced to reinsert Section 7 into LB449. Section 8 adds Class V school districts to the list of offices which do not require names to be listed on the primary ballot if all candidates automatically advance to the general election. Section 9 increases the maximum amount of voters living in a precinct from 1,000 to 3,000. This change will give county election commissioners and clerks more latitude in drawing precincts. Section 12 makes technical changes to absentee ballot request forms. Section 13 clarifies when the record of early voters and request forms are open for public inspection. This section is a continuation of the policy in Sections 10 and 11 which make the election process more transparent. Section 14 adds the learning community coordinating council to the list of offices which must pay the cost of nominating and electing its officers. Numerous other officers already pay these costs...offices, rather, already pay these costs, and Section 14 simply adds the learning community to the list. Section 15 requires the principal circulator of a recall petition to collect the petition forms from the election commissioner or clerk within 20 days after receipt of the official's defense statement. This section places a reasonable deadline for the principal circulator of a recall petition to begin the process of recall. Section 16 introduces the...increases, rather, the time a political subdivision must hold a recall election from 45 days to 75 days after notification of the official to be recalled that an election must be held. This increased flexibility will make the process of scheduling a recall election easier and should increase voter turnout in recall elections since it would be easier to avoid major holidays with the wider window. So the foregoing is an interview (sic) of the many components of LB449, and I encourage your support of LB449. [LB449]

SENATOR GLOOR: Thank you, Senator Nelson. As the Clerk stated, there are amendments from the Government, Military and Veterans Affairs Committee. Senator Avery, as Chair of the committee, you're recognized to open on those amendments. [LB449]

SENATOR AVERY: Thank you, Mr. President. AM867 strikes the original sections of LB449 and becomes the bill. There are, of course, multiple sections to this amendment and, if you'll bear with me, I'll go through them sequentially. Section 1 of the amendment allows an election commissioner to be appointed to an elective office during his or her term as election commissioner. Acceptance of such an appointment will be deemed to be his or her resignation from the office of election commissioner. This is a change from the original bill, which allowed election commissioners to run for elective office. Section 2: In order to remain qualified as a deputy registrar, each person will complete a training session at least once every three years, unless the Secretary of State determines that additional training is needed. Current law provides that deputy registrars are not required to attend another training session unless the Secretary of State determines that additional training is required. This section appears to be important because, at least in Douglas County, because some election commissioners decline to provide training; Douglas County has found themselves in the situation where a number of registrars from surrounding areas have come and requested training there. This seems

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to make sense, that our registrars undergo some continual training. Section 3: The registration application has changed to request an applicant to provide an e-mail address. At the request of the applicant, a designation, however, can be made that the e-mail address remain private, and it would preclude the listing of any e-mail addresses in any voter registration information that becomes public. If the applicant does not wish to have their e-mail listed and declines to provide it, the application is not affected. So the refusal to provide an e-mail address does not affect your voter registration in any way. Sections 4 and 5 of the amendment provide for filing periods for candidates for elective office. Currently there is a deadline in order to file for office; however, there is no beginning date for filing for office, and this has caused some difficulties in election...for election officials. When a candidate comes in to file for an office that will not be up for election for some time, there is the possibility that the paperwork could get misplaced. There's also the possibility that the salary might change in the meantime, and thus the filing fee would be different. And it is, of course, cumbersome to have filing forms ready for office that will not be up the next election. So Sections 4 and 5 will deal with this. Currently we have only filing deadlines beginning December 1 and ending at the current deadline for incumbent and non-incumbent candidates, and this would correct that. It would provide for a filing period. Section 6 adds Class V school districts, that is, Omaha Public Schools, to the list of offices that if there are not more than two candidates for each position to be filled, any such candidate will be declared nominated and their names will not appear on the primary ballot. Other offices currently included in this list include: natural resources districts, public power districts, community college boards, and Class III schools. This is sometimes referred to as the automatic advancement. It seems only reasonable that Class V school districts be included in this as well. Section 7 deals with the size of precincts. Precincts will contain not less than 75 or more than 1,750 registered voters. Currently, the standard is 75 or more than 1,000 registered voters. The original bill called for precinct sizes between 75 and 3,000. The committee felt that 3,000 was a little bit too large. And the Secretary of State raised the issue, in fact, in hearing, that precincts containing 3,000 registered voters have the potential of long lines, and that is something we try to reduce. And so, based on these concerns, the committee reduced the number to 1,750 from the original 3,000. Section 8: Current law requires the county clerk, election commissioner, or any employee of either of these to write his or her signature or initials on the early voting ballots. The amendment allows the signature or initials to be affixed to the ballot. The reason for this is that currently election officials have to manually sign or initial each ballot that is being sent out for early voting. This amendment would allow counties to electronically or otherwise affix a signature or initials to the ballots, or perhaps a stamp, that can save hundreds of hours in election work. For example, in Douglas County in the 2008 presidential general election, the commissioner sent out 40,000 early voting ballots through the mail. All of these had to be manually initialled. And in 2012, Douglas County expects that that number will grow to over 80,000 ballots. So you can see the value of changing this so that it can be affixed to the ballot in a more efficient manner. Section 9 deals with the record of early voters and applications for early ballots. It will provide that

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they will be open to public inspection prior to the election. Currently, applications are open to public prior to the election and both applications and the record of early voters are open to the public after the completion of the election. This one is a response to many complaints that come in in the larger voting areas like Omaha and Lincoln from voters who continue to hear from candidates after they have already returned their ballots. And this would allow campaigns to know who has voted and, thus, no longer contact those voters. Section 10: This amendment adds the learning community coordinating council to the list of political subdivisions required to pay for the cost of nominating and electing its officers. It, really, corrects an oversight in previous statute. Other subdivisions on the list include: municipalities, schools districts, public power districts, SIDs, MUDs, NRDs, community colleges, and a number of boards like that. Sections 11 and 12. [LB449]

SENATOR GLOOR: One minute. [LB449]

SENATOR AVERY: Sections 11 and 12 clean up statutes relating to recalls. In recall petitions, the principal circulator will gather the petition pages within 20 days after the receipt of the official's defense statement. If sufficient signatures are gathered to place the issue on the ballot, the governing body will order an election not less than 30 or more than 75 days after the notification of the official whose removal is sought. The current deadline is not less than 30 and no more than 45. This gives them a little bit more time. This bill was amended and advanced on a 5 to 1 vote with 1 member absent and 1 member present but not voting. Thank you, Mr. President. [LB449]

SENATOR GLOOR: Thank you, Senator Avery. (Visitors introduced.) Mr. Clerk, there is an amendment to the committee amendment. [LB449]

CLERK: Senator Nelson would move to amend the committee amendments with AM1213. (Legislative Journal pages 1218-1219.) [LB449]

SENATOR GLOOR: Senator Nelson, you're recognized to open on your amendment to the committee amendment. [LB449]

SENATOR NELSON: Thank you, Mr. President, members of the body. I want to thank Senator Avery for doing an excellent job of presenting the committee amendments which...and the committee amendment, of course, replaces the original bill. As I said before on my introduction of the green copy, there was some question with regard to Section 7, as to the constitutionality of that section. And as I said, we did contact the...my office contacted the Attorney General and have had them look it over, and they gave me informally their opinion that there was no constitutional issues as far as they could discern at this time. So what I'm doing now is bringing back in that Section 7, which is a simple amendment which I feel and many others feel makes the bill better. First, on page 1, line 13, of the committee amendment, my amendment strikes the

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words, "and shall not be eligible to any elective office." This simple change harmonizes the entire section and makes the bill better. As Senator Avery described, our initial bill was to permit election commissioners to run for public office while they were still election commissioners. And the committee took that out, but there was some language left there, in the committee amendment, that was a little ambiguous, and we want to make it crystal clear; so that language, "and shall not be eligible to any elective office," is removed. Second, this amendment reinserts Section 7, as I said, of the green copy. As mentioned in my opening, Section 7 prohibits individuals from skipping primaries in order to run for a partisan office in the general election by petition. Allowing individuals to skip primaries can lead to multiple candidates of the same political party being on the ballot in the general election and renders the primary process meaningless. This section only applies to partisan races. At hearing, an individual suggested, I said, that there may be a constitutional issue. I've already addressed that; the Attorney General's Office did not find a constitutional issue when they reviewed this section. So I urge your support of this amendment and of the underlying bill. Thank you, Mr. Speaker...Mr. President. [LB449]

SENATOR GLOOR: Thank you, Senator Nelson. Members, we now move to floor discussion. Senator Avery, you're recognized. [LB449]

SENATOR AVERY: Thank you, Mr. President. Let me explain why the committee decided not to have this particular section in the amendment that I just described. If you go back to 1977, the Eighth Circuit Court in a case involving Roger MacBride, etcetera, v. J. James Exon and the Secretary of State of the state of Nebraska, Allen J. Beermann, the court said the following, that Nebraska has a constitutional right, subject to restrictions, to regulate the formation and operations of political parties and the right to prescribe how and in what circumstances the names of party candidates or independent candidates may be placed on the general election ballot. They have the right to protect the ballot from unreasonable congestion, voter confusion, and fraudulent or frivolous candidates. However, on the other hand, it must be recognized that the power of the state to restrict the right of qualified electors to vote for candidates of their choice and the right of candidates, including independent candidates, to run for office is severely circumscribed by the constitution. Restrictive measures are constitutionally suspect, and if they are to pass constitutional muster they must be reasonable and must be justified by reference to a compelling state interest. This is what we were looking at when we decided not to include that section in the committee amendment. We felt that it simply would not pass constitutional muster. So if Senator Nelson would yield to a question, I'll give him an opportunity to put something in the record that might help him. [LB449]

SENATOR GLOOR: Senator Nelson, would you yield? [LB449]

SENATOR NELSON: Yes, I will. [LB449]

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SENATOR AVERY: Thank you, Senator Nelson. If you listened and heard what I read there from this 1977 case, where it states that restrictive measures are constitutionally suspect and if they're going to pass constitutional muster they must be reasonable and must be justified by reference to a compelling state interest, would you be willing to address what the compelling state interest is in this amendment that you have? [LB449]

SENATOR NELSON: Thank you, Senator Avery. Yes, I will address that, but let me give a little background first on the history of this case. Senator Avery and I talked earlier today and I had an opportunity to review the case, which involved, basically, back in 1977 the attempt of two candidates of the Liberty party to get on the presidential ballot. And what happened back there is that our statute provided that any political party had to certify its candidates within 90 days of the primary election, and the Liberty party had failed to do that. So Secretary of State Beermann at that time said, under our statutes he could not place them on the ballot, and consequently the lawsuit took place. Incidentally, Eugene McCarthy was interested in getting in the ballot on the same way. And I'd have to say that this has got...this is a very narrow decision on the part of the court, and it has to do with political parties, and here in this...and not independents, and in this case here we're talking about candidates that are members of political parties... [LB449]

SENATOR GLOOR: One minute. [LB449]

SENATOR NELSON: ...bypassing the primary. And there is a process for the primary, and I think the state has a compelling interest, and they are authorized, certainly under this opinion, to control the political parties and how they put people on the ballot. It's a compelling interest, I think--not to keep independents from filing, because they certainly can without any sort of a primary. But any of you who have run in a primary and had to fight your way with four or five other candidates and have been successful and then find someone who has bypassed the party, or the primary through your political party, and gets on the ballot again, that's essentially unfair to you as a candidate. It's unfair to members of the public because they haven't had an opportunity to screen this independent candidate--or this political candidate, this party who's filing, who is a member of a party--haven't had the opportunity to screen... [LB449]

SENATOR GLOOR: Time, Senator. [LB449]

SENATOR NELSON: ...that person before getting on the ballot. [LB449]

SENATOR GLOOR: Senator Nelson, you are next in the queue. Feel free to continue. [LB449]

SENATOR NELSON: Thank you very much. Let me...and thank you, Senator Avery. Let

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me read from the opinion here of Judge Urbom, who is one of our finest district judges, and I really respect what he has to say. He said: But in this case, the state has not pointed nor have I been able to discern any compelling interest to require every political party seeking to have its presidential candidate placed on the November general election ballot to be certified in advance of the May primary. Likewise, the state has not pointed to nor have I been able to discern any compelling interest which would require every political party seeking to have a candidate placed on the November general election to participate in the state's presidential primary in May. Well, that's what this ruling is based on, that narrow set of circumstances here. We're not dealing with presidential candidates. We're dealing with legislative candidates or other candidates that are supposed...who are members of a political party and are supposed to file at the appointed time and run for that particular office, that legislative office, in the primary. And as I said, that's an opportunity for the voters to take a look at that candidate and compare him or her with the other candidates. If we're going to let members of a political party who want to run for the Legislature just bypass that and then get enough signatures to get on the petition for the general ballot, we're missing that. And therefore I think we do have a compelling interest in restricting at least the members of political parties to running in the primary, where they are in competition with other members of their own political party. As I said, our statute does not provide that for independents. If independents, who don't belong to a political party and they have no primary to go through, why, yes, then they have to go on by petition, and we are not prohibiting that. Let me read further. Then the appellate court, the Ninth Circuit, said: We agree with the district court. The American political system is basically the two-party system with which all are familiar, and, ordinarily, popular dissatisfaction with the functioning of that system sufficiently produces third-party movements and independent candidacies, and they don't manifest themselves until after the major parties have adopted their platforms and nominated their candidates. So there we are again. We're talking about major political parties and candidates--presidential candidates, vice president--and I just have to contend that this case, while it does speak about the stringent requirements of the constitution, I don't think we have any problem here. I think we are very much within our province to say that if you're a member of the political party, if you're a Republican or a Democrat, as of March 1 of the year of the primary campaign, then if you're going to file, you have to run in that primary. I don't think I can add anything to this. I don't think it's unfair. I think that it certainly is constitutional to do that. It's a reasonable provision and in compliance with our two-party system, which is covered in a number of sections of our statutes, setting this up and regulating it, and I think this is a fair and reasonable requirement and regulation. Thank you, Mr. President. And I will stand down for any questions that anyone may have. [LB449]

SENATOR GLOOR: Thank you, Senator Nelson. (Visitors introduced.) Continuing with floor discussion. Senator Ken Haar, you're recognized. [LB449]

SENATOR HAAR: Mr. President, members of the body, I wonder whether Senator

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Nelson would answer a few questions. [LB449]

SENATOR GLOOR: Senator Nelson, would you yield? [LB449]

SENATOR NELSON: I'd be happy to. [LB449]

SENATOR HAAR: Okay. Thank you. Would this also apply to the Legislature, which is a nonpartisan race or...? [LB449]

SENATOR NELSON: Yes, it...well, no, it's a nonpartisan race, so it doesn't apply in that instance. [LB449]

SENATOR HAAR: Okay. I'm just trying to decide in my own mind if this is really necessary, because sometimes, having been a political party operative, if you're having trouble recruiting people, let's say, and then you get someone finally, after the primary, would this disallow them to...would this disallow somebody who didn't...let's say a Democrat who decided to run after the primary, would there be any way for them to get on the ballot? [LB449]

SENATOR NELSON: You know, as I think about our legislative races, we're nonpartisan, and we know who the Republicans and the Democrats are, but, no, not in this case. And if I...when I was using the Legislature, I guess, as a illustration, I probably should have gone to some other race rather than doing that, because here we're dealing with a nonpartisan race, and, so far as I know, we're not affecting that with this provision, with this amendment. [LB449]

SENATOR HAAR: Okay. And then in the case of a party that couldn't find someone to run until after the primary, there's really no way under your amendment to get them on the ballot? [LB449]

SENATOR NELSON: That would be true. If...you know, you've got to get your work done before the primary. The parties are already certified. If they don't have a candidate in the primary election, then I think the only way...well, if you're registered in that party as of March 1, then I would have to say unless you are registered as an independent you're not going to be able to file and get on the ballot by petition before the general election. [LB449]

SENATOR HAAR: Okay. I think I understand this. I probably won't vote for it, but I appreciate your answers. Thank you. [LB449]

SENATOR NELSON: All right. Thank you, Senator Haar. [LB449]

SENATOR HAAR: Um-hum. [LB449]

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SENATOR GLOOR: Thank you, Senator Haar. The Chair recognizes Senator Hadley. [LB449]

SENATOR HADLEY: Mr. President, members of the body, would Senator Nelson yield to a question? [LB449]

SENATOR GLOOR: Senator Nelson, would you yield? [LB449]

SENATOR NELSON: Yes, I will. [LB449]

SENATOR HADLEY: And this is more out of ignorance of our laws. What would happen in a Buffalo County race that's a partisan race for a county office where there is just one person from one party and they happen to pass away before the primary election? Would this bar anybody else from replacing them? [LB449]

SENATOR NELSON: I think you would have...Senator, I think it would have to depend on write-in ballots. I don't think there would be, under this amendment, there would be anyone able to come in who was a registered member of a party as of March 1 and then get on the ballot for the general election. That's an interesting question. I suppose something like that could happen. Someone could certainly petition as an independent. But I think you would have to...and I think probably this has happened once in a while, where people have just publicized the fact that someone was deceased and if there cannot be an appointment taken place under the provisions of that particular office. In other words, if you have an existing board like, I don't know, county board of commissioners or something like that and there's no one on the ballot, then they may appoint. But probably it would have to be--and this is a long answer--by write-in. [LB449]

SENATOR HADLEY: Okay. I was just curious, because I know in certain, especially county, elections, it's not...in our area, it's not uncommon that you might have one person from one party being on the primary ballot and none from the other party, and, you know, something can always happen and you have basically no one for that election, given this particular amendment. [LB449]

SENATOR NELSON: Well, and that happens a lot, especially with regard to township elections. It's hard to find people to run and you don't have anybody on the ballot. So I think the board itself or what's left of the (laugh) township board, if they have to have a certain membership, then they recall people and ask them if they will serve by appointment. [LB449]

SENATOR HADLEY: Okay. I will sit and listen. Thank you, Senator Nelson. [LB449]

SENATOR NELSON: Thank you, Senator Hadley. [LB449]

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SENATOR GLOOR: Thank you, Senator Hadley. Senator Lautenbaugh, you're recognized. [LB449]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. And I do rise in support of this amendment, and I think we may be getting into some extraneous issues that this amendment really doesn't affect. There is another section of law that deals with what happens in a vacancy circumstance, as in when a candidate would pass away after the primary. That's not affected by this at all. What we're talking about here is partisan offices, and it's important to understand that the only way for an independent to get on the ballot in a partisan race, really, is by some petition mechanism. That's not affected by this either. What this is saying is, is that the filing deadline is March 1. If you are an independent...I'm sorry, if you are a member of a party, you should file to run for the nomination of that party. If you have not by March 1, you cannot do that. Now, an independent can always petition on, and an independent could change his or her party affiliation over the summer, but that would not make them the nominee of that party; they would still appear by petition on the ballot. So there is a mechanism for filling vacancies that is unaffected by this, and this only applies not to legislative races but to partisan offices. And I think there is...I've listened to the constitutional discussion regarding the issues here, and I'm comfortable with the Attorney General's verbal opinion that it really wouldn't apply, that there really shouldn't be any issues, because I do think to the extent we have partisan races we do have the ability to set the primary date, the qualifications for the primary to a certain extent, that kind of thing. And this would be keeping people from basically circumventing the primary process outright. So I think this is designed to apply to just a limited set of circumstances for partisan offices only, and I think that it would not be found to be unconstitutional or, more clearly said, I think it would be found to be constitutional if challenged. And I would urge your support of this amendment. [LB449]

SENATOR GLOOR: Thank you, Senator Lautenbaugh. Senator Avery, you are recognized. [LB449]

SENATOR AVERY: Thank you, Mr. President. Hold your breath. I'm going to agree with Senator Lautenbaugh on something. He is right that there are provisions in current statute to take care of vacancies. If someone were to die after being nominated by a party, I think the way the law reads now these parties can fill those vacancies themselves. So I don't think that is a real issue. One of the things that the committee talked about when we decided not to include this in our amendment was the concern that it might also run afoul of the constitutional right to free association. And when you add that to the 1977 case before the Eighth Circuit Court, we felt like it was a little bit too risky. If I might just read additionally from that 1977 case. The court went on to say that measures adopted by a state may not go beyond what the state's compelling interests actually require. I'm not sure we've established that yet. And broad and stringent

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restrictions or requirements cannot stand where more moderate ones would do as well. I believe this is a fairly stringent requirement and probably would not pass muster if it were ever challenged in the court. I don't know if this is a big issue. The committee felt after researching it and after discussing this with the Secretary of State that we did not need to do this and didn't have to be a part of the bill. The bill has a number of good features, and Senator Nelson is to be applauded for bringing them to us, and he has done a good job of explaining them. But as the process unfolded in the committee, we felt that if we were going to put something in the amendment that might not be constitutional, that it could jeopardize the good things that are in this bill--and we did not want to do that. So I probably will not vote for this amendment on the grounds that it has two problems: one, we haven't yet been able to establish what is the compelling state interest for this; and, number two, it might run afoul of the constitutional guarantee of free association. Thank you, Mr. President. [LB449]

SENATOR GLOOR: Thank you, Senator Avery. The Chair recognizes Senator Louden. [LB449]

SENATOR LOUDEN: Thank you, Mr. President and members. Would Senator Nelson yield for a question? [LB449]

SENATOR GLOOR: Senator Nelson, would you yield? [LB449]

SENATOR NELSON: Yes. [LB449]

SENATOR LOUDEN: Now, this amendment, AM867, was the one that became the bill for LB449. That's correct, isn't it? Anyway... [LB449]

SENATOR NELSON: Yes, AM867 is the committee amendment. [LB449]

SENATOR LOUDEN: Yeah, yeah. Now on page 2 there: The election commissioner or county clerk shall make training available for deputy registrars in the county that he or she serves. Now, when you say "deputy registrars," are those the people that run the polling place that day of the election? They have to record names and that sort of stuff. Is that the people you're talking about there? [LB449]

SENATOR NELSON: Yeah. It's talking about, so far as I can tell here, it's...and I should say that we have an election commissioner in the lobby, Mr. Wayne Bena from Sarpy County, I suppose might be available to define what a deputy registrar would be, but I would read that to mean anybody that's involved in the elections, whether it was a clerk or an official or... [LB449]

SENATOR LOUDEN: And that's on the day of election? [LB449]

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SENATOR NELSON: That's true. Um-hum. [LB449]

SENATOR LOUDEN: Because out here in these rural areas they usually appoint some of those people to run that polling place that day, and I was wondering if that's who you were talking about, because on the next page you're saying where they have to have a training session at least once every three years, and I'm wondering what effect that will have on some of our small, rural counties. [LB449]

SENATOR NELSON: Well, there--there were...excuse me, go ahead. There there's no question but what the term "deputy registrar" talks about voter registration. And I know when we were doing that in Douglas County and we had registrars around the county to take registrations, we always had to put out notice. But those registrars had to be trained, or we felt they had to be trained. Now, it's my understanding in some counties they don't do that training. And so this is put in there at least to have a measure of training every three years for the people that are taking the registrations. [LB449]

SENATOR LOUDEN: And what would that training entail? I mean, would they have to go someplace for a whole day and take some workshops, or can they go into their registrar's office when they get the sack of ballots and she shows them how to crown them and that sort of thing and go from there? [LB449]

SENATOR NELSON: Well, in the case of registration, you're talking about probably an hour just going over the requirements of registering voters and what information you have to obtain. In Douglas County, with people working the elections, there was generally a training session prior to every election where...in fact, maybe two or three training sessions, when I was there anyway, so that people had a choice of coming, but that was to bring them up to date. [LB449]

SENATOR LOUDEN: Well, they evidently do...they do that now, then, evidently, without this in statute, is that what you're saying? [LB449]

SENATOR NELSON: Well, we did. I mean, I'm not...and perhaps it's Senator Lautenbaugh who might want to speak to this, but I just know in the larger counties with the larger populations, where you have a lot of polling places, it's essential to do that type of training. [LB449]

SENATOR LOUDEN: Yeah, but that wasn't in statute requiring you to do that up until now. [LB449]

SENATOR NELSON: Apparently not. No, because it... [LB449]

SENATOR LOUDEN: Yeah. Now, about this filing period, you have in there between December 1 and February 15. At the present time, someone can file for an office before

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September 1, can't they, of the preceding year? [LB449]

SENATOR NELSON: Before December 1 you mean? [LB449]

SENATOR LOUDEN: Yeah, because you're putting it in statute now that they have between December 1 and February 15 prior to the date of the primary election. [LB449]

SENATOR NELSON: That's right. And this is to prevent people from filing a year in advance. I mean... [LB449]

SENATOR GLOOR: One minute. [LB449]

SENATOR NELSON: And that... [LB449]

SENATOR LOUDEN: Well, what about our Attorney General filing for the Senate already or indicating he's going to run for it? Does that include that, or how does that affect that? Because I'm wondering... [LB449]

SENATOR NELSON: What section is that? [LB449]

SENATOR LOUDEN: Oh, it's on page 7, Section 4, and it's the new language. They had a deadline and before it was...had in there they had to file prior to February 15, but now you put in there between December 1 and February 15, so you narrow it down, the date that they have to file for an election for a...to file... [LB449]

SENATOR NELSON: Well, I think you're talking, in that case--with the filing for the Senate race and House of Representatives, you're probably dealing with other deadlines and regulations, because that's on the federal level, so I'm going to have to venture that this doesn't cover that. [LB449]

SENATOR LOUDEN: But they would cover any state or county races? [LB449]

SENATOR GLOOR: Time, Senators. [LB449]

SENATOR NELSON: Yes. [LB449]

SENATOR LOUDEN: Okay. Then you... [LB449]

SENATOR GLOOR: Time, Senators. Thank you, Senator Louden and Senator Nelson. (Visitors introduced.) The Chair recognizes Senator Council. [LB449]

SENATOR COUNCIL: Yeah. Thank you, Mr. President. I rose to address another issue in AM1213, but Senator Louden raises a very compelling point. And I guess I need to

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determine from the committee what was the compelling reason for limiting the time period in which one can file for an office. As Senator Louden indicated, if someone wanted to file a year before the filing deadline, what problems were created by being able to do that? Senator Nelson, if he'd yield. [LB449]

SENATOR GLOOR: Senator Nelson, would you yield? [LB449]

SENATOR NELSON: Yes, I will yield. And let me say, I'm not on the committee, Senator Council, if you're addressing the amendment by the committee, but I will be glad to answer your questions. [LB449]

SENATOR COUNCIL: Well, I...but I guess I assume you support AM12... [LB449]

SENATOR NELSON: Yes, I do. [LB449]

SENATOR COUNCIL: ...13 and that you support the committee amendment. And the committee amendment imposes this December 1 to the current filing deadline as a window for filing. And I guess I'm trying to determine, you know, what problem is being sought to be addressed by limiting the time period in which one can file for an office. [LB449]

SENATOR NELSON: I think, my understanding is, from the election commissioners, that it just adds to the confusion when you permit candidates to file early and get started, and there doesn't seem to be any particular reason why it should be necessary to file any earlier than what we have here in the amendment, unless you can think of one. [LB449]

SENATOR COUNCIL: Okay. Well, (laugh) somebody who wants to get a head start on their opposition, I guess, that's what gets them. And I guess I don't understand the compelling reason why if someone wanted to file in September of the year preceding a primary, why they couldn't file. But my larger question is the gist of the amendment reflected in AM1213. And as I understood the concern that Senator Nelson was indicating was being addressed by this amendment, it appears to me that the amendment itself goes far beyond addressing that concern and I do believe raises some constitutional issues. I can appreciate a concern that a candidate decides to wait until after a primary election has been held and the nominees from the respective parties have been determined and then trying to get on the ballot. But the way I read AM1213, it prevents someone from trying to get on the ballot before the primary election is even held. So the situation that I was sitting here contemplating, if there's a partisan office--give you an example: in Douglas County, it's not uncommon for the county surveyor position not to have a nominee from a party. It's not uncommon for the county assessor not to have a nominee from a party file. And according to AM1213, if no one filed from a particular party in a partisan office, if no one filed by the filing deadline,

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somebody from that party who decided that he or she wanted to run, doesn't AM1213 bar them from getting a place on the ballot? [LB449]

SENATOR GLOOR: One minute. [LB449]

SENATOR COUNCIL: Senator Nelson, if he'd yield. [LB449]

SENATOR NELSON: I don't believe so. I don't know. Senator Lautenbaugh referred to other provisions in the statutes that deal with situations like that, and he might be the proper person to ask, if he's aware of those. But I don't think the fact that there's no one on the ballot would prohibit, then, someone from filing by petition or getting on the ballot. [LB449]

SENATOR COUNCIL: Senator Lautenbaugh, will you yield? I thought the vacant... [LB449]

SENATOR GLOOR: Senator Lautenbaugh. [LB449]

SENATOR COUNCIL: I thought the vacancy provision dealt with you had a nominee and that nominee withdrew for some reason and a vacancy was created. [LB449]

SENATOR LAUTENBAUGH: I believe that's correct, that the...that would not be a vacancy if people just failed to file, but I believe that there would still be...first of all, the partisan offices are not township and village board-type ones. [LB449]

SENATOR GLOOR: Time, Senators. Thank you, Senator Council and Senator Lautenbaugh. Senator Lautenbaugh, you are now recognized. [LB449]

SENATOR LAUTENBAUGH: Thank you, Mr. Chair. I would yield my time to Senator Mello. [LB449]

SENATOR GLOOR: Senator Mello, 4 minutes 53 seconds. [LB449]

SENATOR MELLO: Thank you, Mr. President. Thank you, members of the Legislature. Thank you, Senator Lautenbaugh. I have to go run to an Appropriations Committee hearing, so I'm going to speak and then I'm next in queue and going to give my time to Senator Lautenbaugh and then leave. Colleagues, AM1213, at least the way I understand and the way I interpret what the purpose is, is this amendment seeks to take power out of individuals through the election process and put that power into political parties, which--as drafted now I don't support AM1213, because what it does is essentially will not allow an individual to petition onto a partisan ballot regardless of the circumstance and instead gives that power back to the political party to manage and manipulate through the primary election process. So would Senator Nelson yield to a

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question? [LB449]

SENATOR GLOOR: Senator Nelson, would you yield? [LB449]

SENATOR NELSON: Yes. [LB449]

SENATOR MELLO: Senator Nelson, my interpretation of that amendment, of what I just laid out, AM1213, is that essentially what this amendment will do is that an individual will no longer be able to petition onto a ballot, a partisan ballot, after March 1, and instead that power is ceded over to the political parties? [LB449]

SENATOR NELSON: Senator Mello, I did not get the first part of your description because I was engaged in conversation with the Speaker and others here. Do you want to give me the factual situation just again that you described? [LB449]

SENATOR MELLO: Current state law allows a person, regardless of political affiliation, to petition onto a partisan ballot after a primary election. Is that correct? [LB449]

SENATOR NELSON: Yes. [LB449]

SENATOR MELLO: This amendment... [LB449]

SENATOR NELSON: Well, it doesn't prohibit it, let's put it that way. [LB449]

SENATOR MELLO: It doesn't prohibit. So an individual, regardless of their reasons, if an individual feels that their nominee is completely out of tune with what they believe in and what they believe their political party believes in, whether or not they believe the candidate has done something illegal, and the person won't leave their nomination or won't tender their resignation of their nomination, they won't drop out of the race, this amendment pretty much--my interpretation at least--will not allow an individual now to petition onto a partisan ballot regardless of the circumstances, and instead you have to go through a partisan primary, ceding control over to the political parties in that process, to be able to run for a partisan office. Is that...I mean, is that my interpretation of this? [LB449]

SENATOR NELSON: No, I don't agree with that. I don't think the individual parties have any control of who runs under that...on that partisan ballot. I mean, they might do some arm twisting and say we're not going to support you and that sort of thing. But if you want to file, as long as you remain a member of that party and are a party member on March 1, you've got to run on that partisan ballot, primary ballot. [LB449]

SENATOR MELLO: But once a political party chooses their nominee through the primary election, an individual, then, under your amendment, an individual has no ability

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to challenge that. There's no remedy, so to speak, that an individual voter has to challenge what has been the choice of a political party. So while the political party may not be able to control a... [LB449]

SENATOR NELSON: Senator, they challenge the party nominee or the person the party is supporting by just saying, "To heck with you, I'm going to run," and they get on the partisan ballot. How can a party prohibit them from filing on the partisan primary ballot? [LB449]

SENATOR MELLO: I understand that, in a sense, though, that after that primary election, though, an individual, regardless of political affiliation, has no remedy available to them after that primary election, which--current state law, they have that remedy. They can petition onto a partisan ballot for whatever reason they feel they're justified to do so. [LB449]

SENATOR GLOOR: One minute. [LB449]

SENATOR MELLO: Is that...that's the current law, right? [LB449]

SENATOR NELSON: You have an election in the primary and you select...a person wins in the primary and that's the person that goes on to the general election. I just come back to the fact that if you choose to be a member of the party and you don't get on the primary ballot, then you're out. Yes. [LB449]

SENATOR MELLO: Okay. [LB449]

SENATOR NELSON: You can't run. [LB449]

SENATOR MELLO: Thank you, Senator Nelson. [LB449]

SENATOR NELSON: Um-hum. Yeah. [LB449]

SENATOR MELLO: Colleagues, I tried to...the line of questions I had for Senator Nelson essentially stems from my reading and understanding of the underlying purpose, I guess, of AM1213, which is to take power away from individuals and give it instead to the partisan political process through the primary system. I feel that is bad public policy. We do not have problems with this right now... [LB449]

SENATOR GLOOR: Time, Senator. [LB449]

SENATOR MELLO: ...under state law and... [LB449]

SENATOR GLOOR: Time, Senator. Senator Mello, you are now recognized. [LB449]

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SENATOR MELLO: I would yield my time to Senator Lautenbaugh. [LB449]

SENATOR GLOOR: Senator Lautenbaugh, 4 minutes 58 seconds. [LB449]

SENATOR LAUTENBAUGH: Thank you, Mr. President, and thank you, Senator Mello. I wonder if Senator Council would yield to a question. [LB449]

SENATOR GLOOR: Senator Council, would you yield? [LB449]

SENATOR COUNCIL: Yes. [LB449]

SENATOR LAUTENBAUGH: Senator, it seems to me you had a question you were desirous of me answering, and I've forgotten what it is. Could you tell me what your question was? [LB449]

SENATOR COUNCIL: Thank you, Senator Lautenbaugh. And this is a question: number one, when we're talking about a vacancy in a nomination, that's what the current statute addresses, when a vacancy occurs in a nomination, which means that the primary election has been held, doesn't it? [LB449]

SENATOR LAUTENBAUGH: Yes, it does. [LB449]

SENATOR COUNCIL: Now, as I read AM1213, and this is the question I have, the way AM1213 is written, a person is barred even before the primary election, because it says, if they haven't filed by March 1, so clearly they're not in the nomination process. And if they wanted to get on the ballot before the primary, AM1213 prevents them from getting on the ballot before a primary election. And that's the point I was making with Senator Nelson, is...the concern he was trying to address, everybody else has gone through the primary and now you want to jump on the ballot. The way this is written, the others haven't even gone through a primary and that individual is barred from...do you read it that way? It says, before March 1. [LB449]

SENATOR LAUTENBAUGH: I believe this would only...and I thank you for refreshing my recollection regarding your question. I believe this would only apply to getting on by petition after March 1 if you're a member of a party. If there are any other mechanisms currently available in law, those would still apply. This is just to...it would not be a vacancy circumstance, as you indicated. This would be for people getting on by petition only. Vacancies are filled in a different way. [LB449]

SENATOR COUNCIL: I'm on your time, so...(laugh) [LB449]

SENATOR LAUTENBAUGH: Senator Council, did you have another question you

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wanted to ask? [LB449]

SENATOR COUNCIL: Yes, sir. (Laughter) Thank you, Senator Lautenbaugh. Again, again, reading AM1213, it says, if I'm a member of a political party and I haven't filed for a partisan office by March 1 and I want to be on the ballot for the primary for that partisan office, if I haven't filed by March 1 I can't get on the ballot by petition. So this amendment removes a right for an individual to even participate in a primary election if they haven't filed for the office by March 1. I think that's what the problem is. [LB449]

SENATOR LAUTENBAUGH: Okay. Thank you for that response, Senator Council. Again, this would just apply to the circumstance where it is by petition. And I would yield the rest of my time to Senator Avery. [LB449]

SENATOR GLOOR: Senator Avery, 1 minute 38 seconds. [LB449]

SENATOR AVERY: Thank you, Mr. President, and thank you, Senator Lautenbaugh. If you don't mind, I'd like to address a question that came up earlier, when Senator Loudon raised the issue about Section 4. There is a rationale for why Section 4 is there, and Section 4, I would remind you, adds language that would create a candidate filing period. Currently, all we have is a deadline in order to file for office. [LB449]

SENATOR GLOOR: One minute. [LB449]

SENATOR AVERY: There is no beginning date for that, and what's happened in some cases is that people come in and it's a particular burden on election officials when they have to have people who are filing for an office way in advance, then they have to keep track of those files. There's always the possibility they could be mislaid. There's also the possibility the salary could change, and therefore the filing fee would change. There is no requirement to file for office before beginning a campaign, however. You can campaign all you want for years in advance; it's the actual filing for the office that we're talking about here. In no way is that intended to be an unnecessary burden on candidates. So I don't think that should be a problem. But I do think that AM1213 does have some constitutional issues that I've explained on the microphone before. [LB449]

SENATOR GLOOR: Time, Senator Avery. [LB449]

SENATOR AVERY: Thank you, Mr. President. [LB449]

SENATOR GLOOR: However, Senator Avery, you are next in the queue. This will be your third time, Senator Avery. [LB449]

SENATOR AVERY: Thank you, Mr. President. I think I want to go back to the constitutional issue, because that's really what AM1213 is about. I would remind you

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that the committee carefully considered this. We decided not to include it in our amendment because it has two constitutional vulnerabilities. And number one is the 1977 case before the Eighth Circuit Court, where the courts said very clearly that restrictive measures have to have a compelling state interest. I haven't seen a clear argument as to what that compelling state interest is. And the other one, constitutional issue, we dealt with was whether it might restrict the right to free association. I have a note here that says, "Sit down and be quiet." Thank you, Mr. President. [LB449]

SENATOR GLOOR: Thank you, Senator Avery. Senator Council, you are recognized. [LB449]

SENATOR COUNCIL: Thank you, Mr. President. Thank you, Senator Avery. And, again, I was just trying to point out the constitutional vulnerability of AM1213. On its face if there is no person from a particular political party who files by the filing deadline for a partisan office, AM1213 would prevent someone from seeking to get on the ballot for that partisan office after March 1 but before the primary election. And I don't see any compelling state interest in preventing someone from using the petition process under those circumstances to get on the ballot as a member of a particular party who did not have any candidate file for that office. And AM1213 imposes that kind of restriction, and I would urge my colleagues not to vote to advance AM1213. Thank you. [LB449]

SENATOR GLOOR: Thank you, Senator Council. Senator Nelson, you are recognized. [LB449]

SENATOR NELSON: Thank you, Mr. President. May I ask, is there anyone else in queue? [LB449]

SENATOR GLOOR: There is no one else in the queue. [LB449]

SENATOR NELSON: Then I would take this opportunity to close, if that's all right with the Chair. [LB449]

SENATOR GLOOR: You may close on your amendment, AM1213. [LB449]

SENATOR NELSON: Thank you, Mr. President. We've run into some questions here, and in the interest of time I think we want to move on my amendment, AM1213. Let me say this. This is a simple amendment. It just is attempting to regulate a certain thing that has been happening in the past when there's been a partisan election and we have seen people bypass the election and just run by petition. With regard to Senator Council's question, March 1 is the deadline. That's the filing deadline, and so that's why we selected March 1 as being the time when you either were a Democrat or a Republican or an independent or nothing at all. If on that filing deadline, if it's a partisan race, at that time you were a member of a political party, then you have to go through

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the partisan election, and I don't think that's unreasonable. Senator Avery says that we have to have a compelling interest. You know, that language there, as I pointed out, is very narrow language that was looking at a national election. I don't think that as a Legislature we want to be frightened to death just because back in 1977 there was an opinion that dealt with a particular set of circumstances that are much higher than we're dealing with here and saying, then, that we have to apply that to this single situation here where we're trying to fix something. In a sense, we do have an interest in the elements of fairness here. And those of you...as I said, although our race is a nonpartisan race, if you are in a partisan race, you want to be in contention with the other candidates and put yourself forward and have others take a look at that time so that you can come out and move on. And then you don't want to have to face someone who's going on by petition. Freedom of association. What does that mean? I don't understand how that applies in this case when you go on the ballot by petition or why that is even involved in going on by petition. We're talking about elections. We have parties. We have a screening process through the primary election. And it seems fair and reasonable to all people concerned, and the state does have an interest in that regard, and it may not be compelling but I think it's certainly reasonable. This is a modest proposal. I urge you to vote green on AM1213. And I don't think that we...in my opinion, I don't think we're going to run into any constitutional issues whatsoever on this, and I think it will expedite our election process. Thank you, Mr. President. [LB449]

SENATOR GLOOR: Thank you, Senator Nelson. Members, the body will stand at ease. Senator Nelson, for what purpose do you rise? [LB449]

SENATOR NELSON: Thank you, Mr. President. After some discussion with the various parties involved, we feel that, maybe, to answer some of the questions here that we've tried to address, that we need to work on this a little more prior to Select, and at this juncture, then, I would ask to withdraw AM1213 at this time and refile it perhaps in a slightly different version on Select File. [LB449]

SENATOR GLOOR: Thank you, Senator Nelson. So noted. AM1213 is withdrawn. We continue with debate on the committee amendment. Are there senators wishing to be recognized? Seeing none, Senator Avery, you're recognized to close on the committee amendment. [LB449]

SENATOR AVERY: Thank you, Mr. President. AM867 is a bill that improves our current state election law. It has many features. We carefully considered the green copy and we eliminated the parts of the original bill that we thought were problematic. We had good reasons for the elimination of those sections that are not present in the amendment, and we refined some others. Senator Nelson mentioned that we will work on his AM1213 between now and Select File to see if we can come up with something that answers the questions that were raised in this previous discussion. It is my view that without that particular amendment, AM867 as presented is worthy of your vote and I urge you to

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vote green. Thank you, Mr. President. [LB449]

SENATOR GLOOR: Thank you, Senator Avery. Members, the question is, shall the committee amendment to LB449 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB449]

CLERK: 27 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB449]

SENATOR GLOOR: The amendment is adopted. There are no members in the queue. Senator Nelson, you're recognized to close on LB449. [LB449]

SENATOR NELSON: Thank you, Mr. President. The committee removed four sections, and we still have an amendment to consider on Select. I feel that with the committee amendments, we have solid amendments here, we have a good bill; practically all of them are corrections and--technical corrections that are going to improve our election process. And I think we have an excellent bill, and I hope to move on to Select, and I would certainly urge you to vote green and send it on to Select. Thank you very much. [LB449]

SENATOR GLOOR: Thank you, Senator Nelson. The question is the advancement of LB449 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB449]

CLERK: 25 ayes, 0 nays, Mr. President, on the advancement of LB449. [LB449]

SENATOR GLOOR: The bill advances. Items for the record, Mr. Clerk. [LB449]

CLERK: Mr. President, Senator Mello has amendments to be printed to LB84. (Legislative Journal pages 1219-1221.) And that's all that I have. [LB84]

SENATOR GLOOR: Continue with our agenda, Mr. Clerk.

CLERK: Mr. President, LR40CA is a constitutional amendment proposed by Senator Pirsch. It proposes an amendment to...by adding a new Section 25 to Article XV. The resolution has been discussed on the floor twice, April 5 and March 31. Senator Pirsch had offered AM886 as an amendment to the resolution. That amendment is pending. Senator McGill had pending as an amendment to Senator Pirsch's, AM1069. (Legislative Journal page 1034.) [LR40CA]

SENATOR GLOOR: Senator Pirsch, can you give us an abbreviated review of LR40CA? [LR40CA]

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SENATOR PIRSCH: Thank you, members of the body. I will talk to the amendment a little more. That will replace the green copy of the bill. Same concept. I think more clear and precise and artful language. It states simply three sentences. The underlying idea here is simply to preserve and protect the current freedoms we enjoy with respect to hunting, fishing, and harvesting wildlife for future generations. I've appreciated all the conversation we've had thus far. And that is it in sum and substance. Thank you. [LR40CA]

SENATOR GLOOR: Thank you, Senator Pirsch. Senator Pirsch, would you also like to give us a review of AM886? [LR40CA]

SENATOR PIRSCH: Yes, thank you. I'll actually just read the three sentences. It simply reads as follows as amended, and this is the totality of the LR then if this amendment is adopted, "The citizens of Nebraska have the right to hunt, to fish, and to harvest wildlife, including by the use of traditional methods, subject only to laws, rules, and regulations that promote wildlife conservation and management and that preserve the future of hunting and fishing. Public hunting and fishing shall be a preferred means of managing and controlling wildlife. This section shall not be construed to modify any provision of law relating to trespass or property rights." And that is the end of it. Thank you. I would ask... [LR40CA]

SENATOR GLOOR: Thank you, Senator Pirsch. Senator Council, it's my understanding that you will give us a review of Senator McGill's AM1069. [LR40CA]

SENATOR COUNCIL: Yes, Mr. President. Senator McGill has been delayed in her return to the Capitol and asked me to give a brief opening reminder of her AM1069. And as Senator McGill stated when she originally introduced AM1069, it was not introduced lightly but was introduced for the express purpose of showing and establishing the lack of necessity for LR40CA as proposed to be amended by AM886. Just as a reminder, AM1069 adds to the list of enumerated fundamental rights of citizens of the state of Nebraska the right to swim, to farm, to ranch, to drive, to boat, to tube, to golf, to nap, to parent, to learn, to camp, to pioneer, to innovate, and to watch Husker football--that these are all considered by most, if not the majority of, Nebraskans as fundamental rights at least as worthy of protection as hunting, fishing, and trapping. And of particular note in Senator McGill's bill is that it preserves the right to farm and to ranch. And Senator McGill wanted to reiterate the point that the asserted reason for LR40CA is a threat from the United States Humane Society and their ultimate national agenda being to prevent the consumption of any animals, whether they be fish, fowl, or livestock. And that if we are really seriously concerned about protecting Nebraska against the ultimate asserted threat by the Humane Society of the U.S., that we certainly should be concerned about the right to farm and to ranch. Senator McGill indicated in her original opening that she believed that we should seriously consider the fundamental rights set forth in her AM1069. And at a minimum, if she were to withdraw AM1069, she would be

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considering an amendment that would certainly add, "to farm and to ranch." I have an amendment pending that provides as a fundamental right the consumption of cows and pigs. And one of my colleagues pointed out that I should not, and I will not, leave out fowl, so I will add poultry to my amendment by floor amendment. But the point is that this proposed amendment is unnecessary. Again, I would like to specifically direct the body's attention to what Article I, Section 1, of the Nebraska Constitution currently provides. And it provides an unfettered right to bear arms for the purpose of hunting. And I don't think that there's anyone in here who could make a case that if this legislative body or any subsequent legislative body attempted to ban hunting, that it would not withstand a constitutional challenge as being in violation of Article I, Section 1. Since that right is stated in the first amendment to the Nebraska Constitution, I don't think there's any question about the ability to protect and preserve that right. And when my time on the mike comes--and I'm opening now for Senator McGill--when my time on the mike comes, I will point out how the constitutional amendment with AM886 raises more challenges that could withstand constitutional scrutiny than it would protect. Thank you. [LR40CA]

SENATOR GLOOR: Thank you for the review, Senator Council and Senator Pirsch. We move to floor discussion. Senator Lathrop, you are recognized. [LR40CA]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Good afternoon. We're back on the constitutional amendment. And you'll recall when we left this subject that I had some concerns about whether this was the proper subject of an amendment to our constitution. I continue to have those concerns. Those concerns are based on a number of matters, and I'd like to talk about a couple of things. The first is, the amendment makes no allowance for regulation for safety. So the point of a constitutional amendment is, no law can be passed that is inconsistent with the statement we've put into the constitution as a governing principle. So that if we attempt to regulate hunting and fishing, the safety of hunting and fishing...say we tried to have young people...well, we have those statutes that require that young people go through a hunter and safety course. Those would be unconstitutional, in my judgment. So what we do here matters. This isn't just a statute. And one of the...so safety is not allowed for, or we're not permitted to regulate safety. It's just we can hunt and fish and we have a constitutional right to do that, and the only thing we are subject to are rules and regulations that promote wildlife conservation and management and that preserve the future of hunting and fishing. Safety doesn't fall in there. Can you hear me? We cannot regulate hunter safety if we pass this. And once we pass it, our attempts at regulating hunter safety will be unconstitutional. We will pass this and have a body of law that will now be unconstitutional. One of the reasons--I'm on to a different matter--one of the reasons is that this...we're trying to get ahead of the United States Humane Society. And I've been on Ag Committee to know enough that this is supposed to be our mortal enemy, and we don't like these guys because they want to stop people from eating meat. And for a state like Nebraska, that's an important matter, and I appreciate...I don't

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agree with their agenda. But the question, I suppose, if this is the reason we're doing this, the first question I think we ought to ask is, what's their agenda? Does somebody know it? And what's on the list of their agenda? Is this the top priority of the Nebraska Humane Society? How come we are not passing a constitutional amendment--and frankly, I'd support it--that says you have a right to ranch and farm? Okay, I'm in. That's probably a bigger...there's probably more of an immediate need for protection than, certainly, hunting and fishing: the right to farm and ranch. Senator Schilz--sitting on the Ag Committee, we see these bills come through--and Senator Schilz offered a bill this year that basically said, and I'm going to paraphrase, that cities cannot pass ordinances that change the relationship between an animal and a human. Did I get that close to right? The Chair is shaking his head yes. And the point is, if we want to get into this area, if we want to protect something from the U.S. Humane Society, pass a statute. But when we go into amending the constitution, we are amending our governing principles. And there are consequences to it. And I will just tell you, as I did the first time I spoke on this issue, this is where we prohibit things like slavery and guarantee due process--and we are going to add hunting and fishing. [LR40CA]

SENATOR GLOOR: One minute. [LR40CA]

SENATOR LATHROP: And when we do that, it will become the governing principle of all bills relating to hunting and fishing. And anything inconsistent with it will be a nullity. It will be unconstitutional. Hunter safety is now, or it will be, unconstitutional under this constitutional provision. And it's time we step up and say: wait a minute. I know we're tempted to vote green on this, and I know we're hoping somebody else will take care of it or we can turn it over to the voters and let them fix it. It is our responsibility. We are the filter. Before this makes it to a ballot, we are the filter. And, colleagues, this would prohibit us from regulating hunter safety. Did we mean that? No. But what we mean or think we're doing is subordinate to the... [LR40CA]

SENATOR GLOOR: Time, Senator. [LR40CA]

SENATOR LATHROP: ...language we're using in the constitutional amendment. Thank you. [LR40CA]

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

SENATOR DUBAS: Thank you very much, Mr. President and colleagues. I will reiterate the comments that I made the first time around when I talked about this. I am not opposed to protecting the rights of our hunting and fishing sports in this state. My family are avid sportsmen. I am there. But the question we need to be asking ourself is, does this rise to the level of a constitutional amendment? And that's where my questions and concerns come in. We have many rights as citizens, some of them outlined in Senator

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McGill's amendment. But do those rise to the level of constitutional protection? Again, that's the question we have to ask. We've talked about the Humane Society of the United States, and they are a threat. Make no mistake about that. They are a threat. Missouri is actually discussing a constitutional amendment right now that would protect farming and ranching. They are talking about the fact that agriculture, which provides food and energy and security to Missouri's economy--they feel the need to protect this sector. And it shall be the right of persons to raise livestock, without imposing an undue economic burden on animal owners. If HSUS is the threat that we know them to be, shouldn't we be taking this language even further than on hunting and fishing? We're talking about this amendment because of the threat of groups like HSUS. But if we're going to put something into the constitution, if that's something this body feels they need to do, we need to make sure that it's clear and concise and that it's doing the...serving the purpose we intend. I have very serious concerns about the language and how this amendment is written. Would Senator Pirsch yield to some questions, please?
[LR40CA]

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

SENATOR PIRSCH: Yes, I would. [LR40CA]

SENATOR DUBAS: Senator Pirsch, when you...you...excuse me, let me get the language here. In your amendment, you talk about having this constitutional amendment be subject to laws, rules, and regulations. Is that common practice for the constitution to comply with laws and rules? It's my understanding that it was kind of the other way around. We create the constitution as that foundation for we, as policymakers, to create laws and rules and regulations. [LR40CA]

SENATOR PIRSCH: Well, thank you for the question. And, yeah, the purpose of the constitution is, the highest law of the land, is to say what, absent another constitutional amendment, a law or regulation can and cannot do. So it mentions law, rule, and regulation only insofar as it's saying what a law or regulation--how far it can go, that it can exist. It allows for it, and so it doesn't abolish the ability to regulate in any sort of manner. But it does then proscribe: in this instance, yes; in this instance, no, that would be proscribed. So in that sense it's not unique or unusual, I wouldn't think. There are other constitutional amendments that out-and-out ban everything in the area, but mostly--the old adage is: no right or no constitutional right is absolute. So there's always some...take, for instance, the right to speak, which is guaranteed in our constitution, the U.S. Constitution. Yes, there is a right to speak, and...but that doesn't mean you can be in a movie theater, screaming: Fire. So in that sense, this sets it out with more specificity just exactly the meaning of this particular legislative resolution. [LR40CA]

SENATOR DUBAS: I guess I'm still not clear there. [LR40CA]

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SENATOR GLOOR: One minute. [LR40CA]

SENATOR DUBAS: I mean, we have every right and ability--in fact, more right and ability to lay out statutes and laws to protect hunting and fishing and trapping and a variety of other things. In my estimation, we have a lot more leeway through statutes than we do through a constitutional amendment. So if we're putting into the constitutional amendment, "subject to laws, rules, and regulations," why don't we just go the route of creating and crafting statutes that help us achieve the same results? [LR40CA]

SENATOR PIRSCH: Yes. Well, that's a great question, and it also answers a point that you had brought up, which is, is this fundamental enough, this liberty interest, that it rises to the level of wanting to enshrine it into our constitution? And that is a question that I think that each one of us 49 representatives here in this body will have to ask ourselves. And based on the totality of the factors that we know and what these... [LR40CA]

SENATOR GLOOR: Time, Senators. [LR40CA]

SENATOR PIRSCH: ...activities amend, I say it does. [LR40CA]

SENATOR DUBAS: Thank you. [LR40CA]

SENATOR GLOOR: Thank you, Senator Dubas and Senator Pirsch. Senator Council, you are recognized. [LR40CA]

SENATOR COUNCIL: Thank you, Mr. President. And I certainly respect and appreciate the line of questioning that my colleague, Senator Dubas, was engaged in, because that is the issue here. And again, I would direct the body's attention to what Article I, Section 1, of our constitution says right now with regard to the right to bear arms for the purpose of hunting. It says we shall not be infringed or denied. So, arguably, you know, that we have greater protection now for hunting, I submit to you, than the AM886 provides. And to give you an example, it speaks to "subject only to laws, rules, and regulations that promote wildlife conservation and management." When introducing LR40CA, Senator Pirsch made reference to a situation that occurred in California dealing with mountain lions. And the California Legislature passed a statute that prohibited private hunting of mountain lions, and it was advanced as a wildlife conservation and management initiative. The state of California wanted to manage how these mountain lion herds were to be reduced, and they elected that it would not be by allowing the private hunting; that it would be a controlled measure utilizing the state of California's resources. And according to Senator Pirsch, without this constitutional amendment, we'd be in the same position as California's sportsmen who were denied the opportunity to hunt mountain lion. I submit to you, the language of this amendment sets up the very same opportunity

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that existed in California. If this Legislature enacted a statute that placed some restriction and based it upon a conservation and wildlife management perspective, there is nothing that LR40CA could do to constitutionally prevent this body from taking that action. And, in fact, if we were, in my opinion, to advance LR40CA and the voters approved LR40CA, I submit we'd have a conflict between LR40CA and Article I, Section 1, of our current constitution, because one says "not to be denied or infringed," and this one says, eh, if you want to conserve and manage wildlife. And what if the particular statute that was enacted in the future said, well, probably hunting and fishing won't be the preferred means. If you read the language, it says public hunting and fishing shall be a preferred means, not the sole preferred means, just a preferred means. So there is nothing that says that our Game and Parks department or this body could (sic) determine something other than public hunting and fishing would be the preferred means of managing... [LR40CA]

SENATOR GLOOR: One minute. [LR40CA]

SENATOR COUNCIL: ...and controlling wildlife. Again, you read this language, and it's clear that the intent here is to advance an agenda which is admittedly a counter agenda to the Humane Society of the United States' agenda, and that counter agenda is to create the appearance of a threat to the right to hunt, fish, and trap, that, I submit to you, colleagues, no such threat exists in this state. And, in fact, if LR40CA with AM886 were advanced, we would place this body, with the exception of the safety issues that Senator Lathrop rightly and aptly addressed, would place this body in a position of imposing as many restrictions as we desired, as long as they were cast as... [LR40CA]

SENATOR GLOOR: Time, Senator Council. [LR40CA]

SENATOR COUNCIL: Thank you. [LR40CA]

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

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I'd like to address a question or two to Senator Lathrop, if he would yield. [LR40CA]

SENATOR GLOOR: Senator Lathrop, would you yield to a question from Senator Carlson? [LR40CA]

SENATOR LATHROP: Certainly I will. [LR40CA]

SENATOR CARLSON: Senator Lathrop, I listened to what you had to say about this, and I am intrigued by some of your thinking and your ideas. The amendment itself talks about the right to hunt, to fish, and to harvest wildlife, subject only to laws, rules, and

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regulations that promote wildlife conservation and management and that preserve the future of hunting and fishing. Now, where I'm caught is that you're saying if this gets into the constitution, we can't change anything in the future? [LR40CA]

SENATOR LATHROP: We cannot change anything that would be inconsistent with that. So the "subject only to" is the only thing we could do, and we've talked about why that doesn't make sense, for the constitution to subject itself to rules and regulations by the Legislature and the agencies. But, no, once that's in place, that becomes the law of the land, and anything we do or anything on the books that's inconsistent with that is then unconstitutional and becomes unenforceable. [LR40CA]

SENATOR CARLSON: But I think you indicated we couldn't do anything about safety. [LR40CA]

SENATOR LATHROP: Right. Firearm safety is not one of the exceptions to the rule. So if you say...you have a...I have a constitutional right to hunt and fish, or, let's say, if I had a son, and I don't, but if I had a 10-year-old son and they wanted to go hunting, and the statute says, well, you can't do that until you've been through a firearm safety course. That's null and void because it's inconsistent with this statutory provision that my 10-year-old son has a constitutional right to hunt and fish, and it's not one of the exceptions that we're putting into the constitution. So it then becomes an unconstitutional provision, and that's 37-413: hunter safety. [LR40CA]

SENATOR CARLSON: Okay, but I'm going to disagree with you on that statement, because... [LR40CA]

SENATOR LATHROP: All right. [LR40CA]

SENATOR CARLSON: ..."regulations that promote wildlife conservation and management and that preserve the future of hunting and fishing." If we don't go about it in a safe manner, we don't preserve it. [LR40CA]

SENATOR LATHROP: Oh, I don't think...yeah, I appreciate where you're going. And the question then is whether or not--not having a 10-year-old die in a hunter accident, is that preserving the future of the sport? And I think that's a stretch. [LR40CA]

SENATOR CARLSON: Okay. All right. Thank you, Senator Lathrop. I'd like to address Senator Pirsch, if he would yield. [LR40CA]

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

SENATOR CARLSON: How much time is left? [LR40CA]

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SENATOR GLOOR: Two minutes 17 seconds. [LR40CA]

SENATOR CARLSON: Okay, Senator Pirsch, you've heard what I've asked Senator Lathrop. Would you want to respond to those questions? [LR40CA]

SENATOR PIRSCH: Yes. Thank you, Senator. And I appreciate the issue of public safety being addressed. I appreciate Senator Lathrop. And, of course, that is something that I wanted to look into as I was introducing this amendment, to make sure that that was clearly taken care of--and it is. And you rightly surmised, you're right, the two-pronged steps that Senator Lathrop has talked about, I would lean in your...I would agree with you, Senator, that that would be accorded under that. But, notwithstanding, say it wasn't mentioned and it wasn't...a court said it wasn't clear from those two prongs that that was inherent. Nonetheless, public safety is inherent. Let's take, for example, the issue of...I'm talking about Article I, Section 1, which is a different right, which is the right to bear arms. All persons...in the relevant part, it states, "All persons...have certain inalienable rights." You can't get rid of them. "Among these...are the right to keep and bear arms...and such rights shall not be denied or infringed by the state or any subdivision thereof." Pretty strong language. [LR40CA]

SENATOR GLOOR: One minute. [LR40CA]

SENATOR PIRSCH: Would purport to be an absolute right. Nowhere in there do you see the word "public safety." And yet the courts, in cases like State v. Comeau, which is...can be found...it is published 448 N.W.2d 595, indicates that there it doesn't have to be, that public safety is an inherent...will inherently be read into this and can be legitimately acted on by government, whether you include this in the constitutional right and in the first...in Article I, Section 1, or not. And in that case, we act, and the courts have always held that's legitimate for the state to do that. We can restrict felons from owning firearms even though our constitution doesn't say there's an exception if it's a felon, for public safety you can't put it in there. So it's an inherent police power that the state has always had, from the beginnings of our constitution. [LR40CA]

SENATOR GLOOR: Time, Senator. [LR40CA]

SENATOR PIRSCH: So thank you for the question. [LR40CA]

SENATOR GLOOR: Thank you, Senator Pirsch and Senator Carlson. Senator Schumacher, you are recognized. [LR40CA]

SENATOR SCHUMACHER: Thank you, Mr. President. I've got a few points to raise with regard to this particular discussion. The first part is just kind of a technical thing. This particular amendment says that "public hunting and fishing shall be a preferred means of managing and controlling wildlife." And yet I think in many sections--particularly when

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they've got a breed of fish in a lake that is eating all the other fish and is a counterproductive species that they want to clean out. After it's eaten all the other fish in the lake, they come in and they pour chemicals into this lake to kill it, and then they come back in and they restock it with little baby fish. And this would seem to say that the Game and Parks people will have to show why they should not just fish this lake dry before they bring it in. In fact, I'm wondering, in order to frustrate Game and Parks, whether or not these HSUS people wouldn't come in and actually bring a lawsuit, putting Game and Parks in a position where it had to defend an action to poison these fish. It seems to me that that really encumbers our Game and Parks people. Secondly, Senator Lathrop raises a good issue. If we're talking about preserving some things that are cherished, particularly our ability to eat various forms of meat in our food chain, then certainly hunting and fishing should be joined with farming and ranching, which are far greater productions of food than hunting and fishing. And I think to leave them out of this particular amendment puts us in a position where we are divided and conquered. If this HSUS outfit comes in with its full force against the hunters and fisherman, we need to be united so that the farmers and ranchers stand against the onslaught of these folks from out of state if they try to impose their will on us. I think that that's an important point that needs to be looked at. This seems to create an absolute right and, really, restrict a lot of the power that we have to regulate hunting and fishing. When I walk over from the parking lot in the morning, I see the little squirrels playing. And like every Nebraska boy when they see squirrels, you think of the days when you took your .22 rifle out and tried to get a few. And I'm wondering, the city...I suspect if I brought my .22 in and took a few potshots at those squirrels--and naturally, I'd probably miss--that I'd find myself in a situation where the city of Lincoln would be writing me a ticket. But, by gosh, the constitution would then say I have a right to hunt and fish. And the only limitations on the state's action would be those regulations which promote conservation and management. And me taking that squirrel out wouldn't promote conservation or management one way or the other. I think that we do restrict ourselves and our authority to regulate in these areas unless this amendment is very much refined. Finally, it's a larger constitutional issue that bothers me. By elevating particular rights to a super-protected status, what does it do...what does it relegate to our other reserved rights? Do they become lesser rights? I mean, how can you have protected rights and then super-duper-protected rights in a constitution? These are all problematic issues. But I think the selling point on this so far, for me, is we need to include ranching and farming among our fundamental ways to raise our food, in addition to hunting and fishing. Thank you, Mr. President. [LR40CA]

SENATOR GLOOR: Thank you, Senator Schumacher. Senator Council, you are recognized, and this is your third time, Senator. [LR40CA]

SENATOR COUNCIL: Thank you, Mr. President. And I suspect it's my third time because I opened for Senator McGill, who will be gracious enough to yield me time when we... [LR40CA]

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SENATOR GLOOR: That is correct. [LR40CA]

SENATOR COUNCIL: And following up on some of Senator Schumacher's statements, you're absolutely correct. And I've done a little research, and, you know, we've got LR40CA as originally introduced, and then we have the amendment. And I noted that Senator Pirsch stated that the state of Oklahoma recently passed a law to amend their constitution to add this prohibition. And I would commit to you to read the Oklahoma Constitution, because the Oklahoma Constitution does not have an Article I, Section 1, like the Nebraska Constitution has with respect to the right to bear arms for the purpose of hunting. You will not find a similar provision in the Oklahoma Constitution. So if they felt compelled to elevate hunting in that regard, there is certainly a rationale that exists there that doesn't exist in this state. But, reading to you from an article: Four More States Propose Right-to-Hunt-and-Fish Constitutional Amendment. And it states...and it's written by a Darren La Sorte, manager, NRA-ILA Hunting Policy. And I quote, "I wrote articles detailing NRA's leadership and interest in developing new and improved language for these constitutional amendments. Instead of the old language that simply provided for a right to hunt and fish pursuant to laws and regulations, NRA's new provisions offer specific defenses against known and predicted threats from the radical animal-rights extremists like those at the Humane Society of the United States. The old model arguably allows any laws and regulations short of an outright ban on all hunting." Now, if you look at the original LR-CA, it basically does what was originally proposed, and it says, "will be a right preserved for the people subject to reasonable restrictions as prescribed by law." So all that that original version would do would, arguably, prohibit an outright ban of hunting and fishing. But you turn now to the amendment, and this is the suggested language of the amendment to address what are identified as specific defenses against known and predicted threats from HSUS. And again I submit to you, what threat? Predicted threat. No actual threat. But the proposed language...and then if you look at AM886, you'll hear much of this: The citizens of this state have a right to hunt, fish, and harvest wildlife lawfully. It pretty much says that in AM886. Exclusive authority to enact laws to regulate the manner, methods, or seasons for hunting, fishing, and harvesting wildlife is vested in the Legislature, which may delegate rule-making authority to a Game and Fish Commission. What are we actually...? I mean this--under this constitutional amendment, the intent of it--it changes nothing. [LR40CA]

SENATOR GLOOR: One minute. [LR40CA]

SENATOR COUNCIL: We can do exactly what we have done and continue to have the right to do, is to enact reasonable rules...reasonable laws and regulations with respect to hunting, fishing, and trapping. But I submit to you that AM886 goes further, because it doesn't just say reasonable laws. It says we also get to deal with conservation and wildlife management. And if the agency says a particular restriction is conservation and wildlife management-based, whatever prohibition or restriction that puts on hunting,

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according to the language of this constitutional amendment, would be constitutional. So what are we gaining? Absolutely nothing. Very symbolic, joining in, taking action against this perceived threat from HSUS, but it changes nothing. [LR40CA]

SENATOR GLOOR: Time, Senator. [LR40CA]

SENATOR COUNCIL: Thank you. [LR40CA]

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

SENATOR PIRSCH: Thank you, members of the body. I just thought maybe I'd address some of the issues. I do appreciate the conversation that is taking place, and I just wanted to address some of the issues raised with respect to what we went over: the public safety. With respect to the agenda of the HSUS groups, I think that was discussed in previous days when we've addressed this (inaudible), and it's based on explicit statements by leaders of these organizations. And these are not organizations who don't have deep pockets. In fact, I believe the number that was bandied about is over \$120 million in annual expenditures, and so...and with respect to an interest in doing so, with respect to this state in particular, they have started...that particular entity has started public opinion polling, which is the usual method that leads up into a campaign--also hired a state director in recent months, is my understanding. And so to that extent, it's not just kind of a broad, amorphous type of general concern about what's happening in other states, though it's happened in other states. It is what's in particular occurring here in the state of Nebraska with respect to the idea that it is...and how much time do I have, then? How much time do I have, if I could ask? [LR40CA]

SENATOR GLOOR: 3:20, Senator. [LR40CA]

SENATOR PIRSCH: With respect to the idea of cluttering up the constitution, again, we went over that with respect to the difference between our state constitution and the U.S. Constitution, which is the U.S. Constitution is a lot more spartan: essential rights. And that's, out of...you know, when you think about, a good idea, because they're going to be applicable to all 50 states that are very different, and then we customize them and tailor them here in our state to our specific needs. And that is the beauty of federalism, isn't it? And so we don't have a short document. We have some 24,000 words already in our constitution--very explicitly point things out. This would only add three sentences, my amendment. We already point out such things in our constitution, such as Article III, Section 29: what to do if we are invaded by...our state, and how we're going to carry on our governmental functions if the Canadians massing at the border or something of that sort--and, of course, I'm being funny, but...so there is the TERC board--Tax Equalization and Review Commission is embedded in our constitution, Public Service Commission; there is lottery. There is mention of all types. This is not a spartan listing of basic liberties, as the U.S. Constitution is. We talk about things in here: how you're going to

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split up fines and penalties about overloading of vehicles, that 75 percent of a fund will go to state highways and 25 percent to the county general fund, a number of others. I could go on and on. But it is certainly not going to clutter up. But again, it begs the question: What do you view as a fundamental right and freedom that you wish to protect? And the issue should be, if you feel that a right or a freedom is important enough and it is imperiled, possibly imperiled, then you should take measures to protect it. And that is the underlying concept behind this bill, and like 14 other states have done so as well. With respect to the idea of adding farming and ranching... [LR40CA]

SENATOR COASH PRESIDING

SENATOR COASH: One minute. [LR40CA]

SENATOR PIRSCH:to this, you know, I think that we have a process in this body, and it includes committee vetting, giving the public a chance to air on both sides and neutral testimony as well. We have not had that to include important concepts like farming and ranching. And so when you're talking about ideas, this amendment would add watching football, camping, pioneering, golfing. And so for those two reasons, I would urge you, if we want to bring a bill next year so that that can be properly vetted, I would seriously take a look at that. But I think this is the bill idea before this body, this way, and that's the way we go about our business here in the Legislature for the best outcome. It's not this way just because of this bill, but every year that's the process. So on those bases, I would not support looking at adding things that have not been properly vetted, even though I might support them. So, obviously, I wouldn't support the right to tube and golf, adding those to the constitution, but... [LR40CA]

SENATOR COASH: Time, Senator. [LR40CA]

SENATOR PIRSCH: Thank you. [LR40CA]

SENATOR COASH: Senator Dubas, you are recognized. [LR40CA]

SENATOR DUBAS: Thank you, Mr. President. Would Senator Pirsch yield to a question, please? [LR40CA]

SENATOR COASH: Senator Pirsch, will you yield? [LR40CA]

SENATOR PIRSCH: I would. [LR40CA]

SENATOR DUBAS: Thank you, Senator Pirsch. What would you see the main benefit should this make it to the ballot and ultimately pass? [LR40CA]

SENATOR PIRSCH: Yes. And I appreciate that, and now we're getting to the heart of it.

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I think it would be harder for groups who have an agenda, outside groups who have deep pockets can come into the state and misportray, in a short period of time, practices to have laws changed. Right? Laws changed that would...or don't make any--that effectively would get rid of the freedoms that we now today enjoy with respect to hunting, fishing, and harvesting wildlife. [LR40CA]

SENATOR DUBAS: To date, they've not been very effective as far as bringing legislation forward. We've had several senators who have learned that lesson probably in a difficult way. Do you see that having this in the constitution, would that prevent any of these special interest groups from coming in and maybe trying to introduce their own constitutional amendment to make changes? [LR40CA]

SENATOR PIRSCH: Well, constitutional...a way to enact a constitutional provision, as we're finding out with this floor, requires deep and weighty conversations, well-thought-out, an amount of time for serious deliberation. It also requires this body and the voters to, if it's introduced in this fashion, to review it and approve it. And so is it possible that in future decades it could be dug out of the constitution, you know, in the year 3030? You know, anything is possible. It's just...but it makes it more difficult to, on a lark or as a culmination of a misportrayal, to do so. And so it would require deep and thoughtful...in my mind, more meaningful consideration of future generations. It's a different level, a higher level, to root it out of our constitution. [LR40CA]

SENATOR DUBAS: I think, going back to your original, the green copy of the amendment, and then now your amendment, I believe I asked you this question the first time we discussed this, and forgive me for not remembering your specific answer. But we know that words matter in this body, and words especially matter when we put them into law. And sometimes the more we try to clarify something, oftentimes the more we maybe make it unclear. And so just your reasoning behind amending the original language to the language that you have now. [LR40CA]

SENATOR PIRSCH: Yeah. And I appreciate that, and there were a number of reasons. As I brought this general concept forward, I believe that general concept that came forward with the original LR40CA, that concept is also equally embedded in the AM886. It's just phrased in a more, I think, helpful manner and more precise manner to achieve the goals and objectives. For instance--and I think I pointed this out, the prior instance. And I apologize, I don't have the green copy that lies in front of me. But one example would be the very start on the first sentence. It says, "The citizens of Nebraska have the right to hunt, to fish...." And again, I...by the green copy of the language, it isn't a right that applies to the people. It just says fishing, trapping, and hunting are a valued part of the heritage of the people. And so on that basis, we would not...it makes it clear and precise that this is a right that the citizens of the state of Nebraska enjoy, not necessarily citizens of other countries or other states. And so you could not...this is for Nebraska citizens to invoke. [LR40CA]

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SENATOR COASH: One minute. [LR40CA]

SENATOR PIRSCH: And so it's those changes. Also it makes it clear, in the third paragraph, that if there is concerns about trespassing or property rights, that this somehow modifies it. That's why it's expressly in there. I don't think it has to be in there, and, you know...but I think, out of an abundance of caution in those areas which may, I consider, be gray, that one seems to be just fine. And there was some other feedback. It was by other groups, and I think the end result of this, these conversations I had, is what led me to introduce the amendment. I think it's more effective language to achieve the concept that was even hoped to be conveyed in the original green language. [LR40CA]

SENATOR DUBAS: Thank you, Senator Pirsch. And as I stated earlier... [LR40CA]

SENATOR COASH: Time, Senators. [LR40CA]

SENATOR DUBAS: Thank you very much, Mr. President. [LR40CA]

SENATOR COASH: Those wishing to speak: Senators Hadley and Cook. Senator Hadley, you are recognized. [LR40CA]

SENATOR HADLEY: Mr. President and members of the body, I haven't spoken on this before, but I did do some research, and it's interesting. Three states, last November, had it on the ballot, constitutional amendments, this very constitutional amendment we're working with. And I thought you might be interested in the vote in those three states. The amendment passed by 90 percent in Tennessee; 89 percent in South Carolina; and 82 percent in Arkansas. Overwhelming support. And I think the important part of that is, is that I think they do see a fear from these outside groups, and that was the reasons that they saw such an overwhelming support of this kind of amendment. Just to let you know, within the last two or three weeks, Wyoming has passed, my understanding, has passed a bill. It will be a constitutional amendment on the ballot for the state of Wyoming. And Kentucky has also passed, out of their Legislature--it will be a constitutional amendment in Kentucky to be voted on. So I think there are some states that are worried about the Humane Society of the U.S. I think they're trying to put up protection, and I think that protection is not only their hunters and fisherpersons, but I think it's also their agriculture that they're trying to protect. So I certainly support the underlying bill and Senator Fischer's amendment. I do not support AM1069. Thank you, Mr. President. [LR40CA]

SENATOR COASH: Thank you, Senator Hadley. Senator Cook, you are recognized. [LR40CA]

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SENATOR COOK: Thank you, Mr. President. Good afternoon, colleagues. I would like to yield my time to Senator Council. [LR40CA]

SENATOR COASH: Senator Council, just under 5 minutes. [LR40CA]

SENATOR COUNCIL: Yes. Thank you, Mr. President. And I appreciate the research results that Senator Hadley shared with the group. And I will also suggest to the group, if you review the constitutions of those states, they do not have constitutional language similar to the language we currently have in Article I, Section 1, of our constitution. So in those instances where there's some concern that you don't have some degree of constitutional protection, then perhaps that gives rise to the percentage turnout. But I'm talking about the very first article, in the very first section of our constitution. I don't know how much more strongly one could state what this state's fundamental beliefs and principles are. And if you're talking about the real threat, Senator Hadley talked about agriculture. There is nothing in LR40CA that will stop the Humane Society of the United States from coming in and advancing what we all understand to be their ultimate agenda, which is to prevent the consumption of animals. Nothing. LR40CA? Believe me, that won't stop HSUS from pursuing that agenda. And for all I know, that's the reason they're opening a state office here, is not to stop hunting, fishing, or trapping; it's to stop the raising of livestock, including sheep and poultry, for human consumption. And we haven't done anything here in this amendment to ward off that threat. And if the threat of them convincing a majority of this body, current or future, to ban hunting, fishing, or trapping, then the question that was raised by Senator Dubas is, if you believe that HSUS could do that, then what is it about this constitutional amendment that would prevent them from doing that? If they're prepared to spend \$120 million to achieve their agenda and their ultimate objective, believe me, they'll spend \$120 million whether this amendment passes or not, because the amendment itself says we have the right to pass laws. The Game and Parks can pass rules and regulations that would limit and restrict this constitutional right to hunt, fish, and trap as long as it was couched in terms of conservation and wildlife management. Period. We've done nothing--nothing--to deter this perceived threat. And again, reading from the article I read from, they said "specific and perceived threat." We don't amend our constitution on the basis of a perception. We amend it because there are real issues affecting the residents of the state of Nebraska. And I submit to you, this issue does not rise to the level of constitutional protection... [LR40CA]

SENATOR COASH: One minute. [LR40CA]

SENATOR COUNCIL: ...and doesn't rise to the level that it suppresses other, more significant basic and human rights, like our right to consume animals if we believe that that's necessary for our health and well-being. And if there's an issue about vetting, certainly I was not at the committee hearing on LR40CA, but, as I understood, what was presented at the hearing was the intent of this was to outright prohibit a ban on hunting,

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fishing, and trapping. And that's not what AM886 does. All it does is set out our legislative authority, what we have now. We have the legislative authority to take every action that's set out in AM886. And if that's what the people at the hearing thought... [LR40CA]

SENATOR COASH: Time, Senator. [LR40CA]

SENATOR COUNCIL: ...then you need to take it back to a hearing. [LR40CA]

SENATOR COASH: Thank you, Senator Council. Senator Hansen, you are recognized. [LR40CA]

SENATOR HANSEN: Thank you, Mr. President and members of the Legislature. Would Senator Pirsch yield to some questions? [LR40CA]

SENATOR COASH: Senator Pirsch, will you yield? [LR40CA]

SENATOR PIRSCH: I would. [LR40CA]

SENATOR HANSEN: Thank you, Senator Pirsch. Just some questions that came up in my mind when we were talking about this earlier. If this constitutional amendment would pass the muster of the people of the state of Nebraska, would you still have to have a hunting license? Would you have to buy a hunting license if you are going to go hunting? [LR40CA]

SENATOR PIRSCH: Yes. [LR40CA]

SENATOR HANSEN: Would you have to buy a fishing license? [LR40CA]

SENATOR PIRSCH: Yes. [LR40CA]

SENATOR HANSEN: Would you have to have your dog licensed? [LR40CA]

SENATOR PIRSCH: (Laugh) Yes. [LR40CA]

SENATOR HANSEN: Would you have to have a license on your boat trailer? [LR40CA]

SENATOR PIRSCH: On your boat trailer? Yes. [LR40CA]

SENATOR HANSEN: Would you have to have a license on your boat? [LR40CA]

SENATOR PIRSCH: Yes. [LR40CA]

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SENATOR HANSEN: Would you suppose Game and Parks would have a limited hunting season like they do now? [LR40CA]

SENATOR PIRSCH: Yes. [LR40CA]

SENATOR HANSEN: Would they have a daily limit on, maybe, the fish you catch? [LR40CA]

SENATOR PIRSCH: Yes. [LR40CA]

SENATOR HANSEN: Okay, thank you. I think that serves the purpose, to my mind, that we are not changing the fundamental laws of the state of Nebraska by passing a constitutional amendment to make hunting and fishing part of our constitution--and trapping. Thank you, Mr. President; thank you, Senator. [LR40CA]

SENATOR PIRSCH: Thank you. [LR40CA]

SENATOR COASH: Thank you, Senators Hansen and Pirsch. Seeing no other lights on, Senator McGill, you are recognized to close on AM1069. [LR40CA]

SENATOR MCGILL: Thank you, Mr. President, members of the body. I apologize for not being here earlier today, and I thank Senator Council for carrying my water for me this afternoon. This debate has actually gone on a lot longer than I ever intended with this particular amendment. I'll just recap real quickly. I'm sure people are making some great points here today that I haven't been able to listen to. But I introduced this amendment because I feel that we do not have a real threat in Nebraska to hunting and fishing. And honestly, the information we just received about how popular this constitutional amendment is in other states proves the point that hunting and fishing is so popular that we don't need these amendments. No one during the debate that I've heard of--since I wasn't here this morning, I'm not sure--but no one has pointed out exactly how successful HSUS has been. But I've heard no cases, actually, of how successful they have been in trying to stop hunting and fishing. And I know Senator Dubas spent the time talking about the real threat this morning, and Senator Council did as well, and that's to the production and the growing of cattle, fish...or cattle, sheep, other animals for consumption, and how those animals are treated. That is a much bigger threat. We all know that a ban would never pass in Nebraska--a ban on hunting and fishing. Every single one of us in here knows that would never happen. We're voting on this as a feel-good piece of legislation because, yes, 90 percent of Nebraskans probably do support hunting and fishing--again, which is why we don't need this protection. At this point I feel like I've made my point, and I'm willing to withdraw my amendment. Thank you. [LR40CA]

SENATOR COASH: Thank you, Senator McGill. Your amendment is withdrawn. Mr.

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Clerk, for announcements. [LR40CA]

CLERK: Mr. President, before we proceed with the next amendment, some items. Thank you. Enrollment and Review reports LB382 and LB464 to Select File, one of which has Enrollment and Review amendments attached. New resolutions: Senator Schumacher, LR165, LR166, LR167, and LR168. Those will all be laid over. Senator Heidemann offers LR169; likewise, that will be laid over. Senator Larson would offer LB305A. (Read LB305A by title for the first time.) And I have an amendment to be printed by Senator Conrad to LB84. (Legislative Journal pages 1221-1225.) [LB382 LB464 LR165 LR166 LR167 LR168 LR169 LB305A LB84]

Mr. President, the next amendment I have to LR40CA: Senator Council, AM1095. (Legislative Journal page 1058.) [LR40CA]

SENATOR COASH: Senator Council, you are recognized to open on your amendment to the committee amendment. [LR40CA]

SENATOR COUNCIL: Yes, thank you, Mr. President. And I've already alluded to my amendment, AM1095. And AM1095 adds to these constitutionally protected rights that we wish to preserve from the real or imagined threat from the Humane Society of the United States another part of their announced agenda, which is to ultimately ban consumption of livestock and poultry. So my amendment...and I do have a floor amendment, because the original amendment, AM1095, just spoke to the fundamental right of Nebraskans to consume cows and pigs. I have a floor amendment that adds sheep and chickens, because if we're talking about putting in our constitution protections against the threat of HSUS, why should we wait until sometime down the road to amend the constitution against the threat that everyone who has risen earlier in support of LR40CA has acknowledged is at the root and heart of the agenda of HSUS? Why don't we put in our constitution something that actually protects fundamental ways of life, specifically farming and ranching? Because if HSUS is coming after the consumption of meat, they're coming after farming and ranching, which is absolutely fundamental to the existence of the majority of residents of the state of Nebraska. I introduced AM1095, again, because if we're really serious, if we're really serious that LR40CA is necessary to protect fundamental rights, fundamental traditions of residents of the state of Nebraska, then you need to support AM1095 with the upcoming floor amendment, because those are fundamental rights. I will tell you, just as some will tell you you'll have to pry their fishing pole out of their cold, hard hands, well, you'll have to pull a T-bone or a New York strip or a pork chop or a chicken leg out of my cold hand if someone threatened my fundamental right to consume those products, which--much of our economy is based upon the raising of cows, pigs, chickens, and sheep. So if we're serious about protecting against the threat, let's protect...let's protect against the real threat, not the perceived threat, the real threat. And I again submit to you that if you think by passing LR40CA you're going to keep HSUS from advancing their agenda,

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you're grossly mistaken. In fact, I think one of my colleagues the last time we debated this made the point that if you wanted to roll out the red carpet for the HSUS, you'd do it by passing this amendment and providing them an opportunity to come into this state and advocate for their position. And if you're so concerned that because they have all this money they're going to sway all of the voters in the state of Nebraska, then this amendment won't pass on Election Day. Now, some of you say, okay, well, then, put it out there. It may or may not. But the point is, if you're really concerned about a threat, a fundamental threat, something that we should devote amendments to our constitution to, I urge your support of AM1095 with I think it's FA17 (sic--FA18) that will be coming, that adds sheep and chickens to cows and pigs, as stated in AM1095, and our fundamental right as Nebraskans to consume those animals however they are acquired. Thank you. [LR40CA]

SENATOR COASH: Thank you, Senator Council. You've heard the opening to AM1095 to AM886. Those wishing to speak: Senator Campbell. [LR40CA]

SENATOR CAMPBELL: Thank you, Mr. President. I've been listening to the conversation the other day and today, trying to gain some perspectives. And I do want to say that--and listening to Senator Carlson and the conversations that I've had, I really appreciate his passion and his protection for a very vital industry in the state of Nebraska. And if he wouldn't mind, I'd like to ask just a couple of questions. [LR40CA]

SENATOR COASH: Senator Carlson, will you yield? [LR40CA]

SENATOR CARLSON: Yes, I will. [LR40CA]

SENATOR CAMPBELL: Senator Carlson, in this session of the Legislature, how many bills have been put forward to protect us against the national Humane Society's thrust? [LR40CA]

SENATOR CARLSON: Well, exact number, probably two. [LR40CA]

SENATOR CAMPBELL: Have we gone ahead and passed those bills yet? [LR40CA]

SENATOR CARLSON: One is headed for Final Reading. [LR40CA]

SENATOR CAMPBELL: Okay. My second question is, even with the proposed amendment, do you foresee that more bills will come forward and need to come forward? [LR40CA]

SENATOR CARLSON: There may be additional need for bills in the future. I certainly wouldn't say no. [LR40CA]

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SENATOR CAMPBELL: Okay. Thank you, Senator Carlson. Colleagues, I will continue to listen to the debate, but I think what's important here is that when we have the agricultural leaders in the state bringing forth bills to protect this industry from the national Humane Society's thrust and that we foresee that other bills--and I would hope other bills would come forward--that we can act and be on top of a situation rapidly. I'm still not convinced that the constitutional amendment is the way to protect this industry, as important as it may be...that the legislative committees and their ability to bring forth specific bills that may impact particular situations in these all-important industries may be our most important line of defense rather than a constitutional amendment. Thank you, Mr. President. [LR40CA]

SENATOR COASH: Thank you, Senator Campbell. Senator Council, you're recognized. [LR40CA]

SENATOR COUNCIL: Yes, thank you, Mr. President. I want to comment on a point that Senator Hansen was seeking to make in his questioning of Senator Pirsch about what Game and Parks can do, and I want to give you a slightly different spin on it. Senator Hansen asked if Game and Parks Commission now has requirements that a person be licensed to fish. And the response was yes. And the conclusion drawn by Senator Hansen: Well, that shows why, you know, we need this constitutional amendment, so that we can preserve this. I submit to you that with the language of this constitutional amendment with AM886, you present the opportunity for a constitutional challenge to any effort by this body to require a license to fish, unless you can establish that the license is required for conservation or wildlife management. And if you arrive at that conclusion, what you're saying is that only so many people in the state have this fundamental constitutional right to fish. Because if you don't grant a license to everyone who comes forward with the registration or the license fee, if you don't grant everyone, then the one you don't could raise a challenge under LR40CA that they're being denied and deprived of their constitutional right to fish. The same with hunting license and the same with any other license. If there is not a direct relation between that license and conservation and wildlife management, as stated in AM886, we present a constitutional challenge. We present a constitutional challenge. Right now, we don't have to be concerned about whether it's conservation or wildlife management, because we have the authority to legislate in these areas, and under the current constitution we can't unduly infringe on hunting. There's nothing on fishing and trapping. And I'm really questioning where is the, I mean, the huge threat. And someone tried to tell me, in passing, that HSUS is on a mission to stop fishing because of the hook and the pain to the fish. And if you have a fear that a majority of Nebraskans will buy that and then come demanding that their legislative representatives take action to prevent that from occurring, we're not being realistic. And so, again, if we're really concerned about the things that we have some control over and that are at the fundamental core of our traditions, then you'll support AM1095, because raising cattle and poultry... [LR40CA]

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SENATOR COASH: One minute. [LR40CA]

SENATOR COUNCIL: ...for consumption is at the fundamental core of the traditions in the state of Nebraska. And if HSUS is coming after consumption of cattle, sheep, pigs, fish, chickens, then you need to enact AM1095 to this constitutional amendment. Thank you. [LR40CA]

SENATOR COASH: Thank you, Senator Council. There are no other lights on. Senator Council, you are recognized to close on your amendment. [LR40CA]

SENATOR COUNCIL: And at this time, because I have a floor amendment and there are so many amendments in the queue, I'm going to withdraw AM1095 and reintroduce an amendment that incorporates AM1095 and the floor amendment. And I believe that that is proper procedure, Mr. Clerk, so I withdraw AM1095 at this time. [LR40CA]

SENATOR COASH: It is withdrawn. Mr. Clerk. [LR40CA]

CLERK: Senator Council, I now have in front of me, Senator, what I'm calling FA18 that I think incorporated the changes you wished. FA18, Senator. (Legislative Journal page 1225.) [LR40CA]

SENATOR COUNCIL: Thank you. [LR40CA]

SENATOR COASH: Senator Council, you're recognized to open on FA18. [LR40CA]

SENATOR COUNCIL: Yes. And FA18 just provides that the citizens of Nebraska...adds the sentence, "The citizens of Nebraska also have a fundamental right to eat cows, pigs, chickens and sheep." And again, if we're talking about protections against threats from HSUS, the greatest threat to the traditions of this state are those directed towards the raising of livestock and fowl for human consumption. That's the greatest risk posed by HSUS. And for that reason, then, the body should overwhelmingly support FA18, because it says these are what are at risk; these are the rights, the fundamental traditions, that are at risk by this invasion by HSUS and this inundation of dollars into the state. Well, we know strategies for bringing in dollars. We either distort facts or create threats. HSUS distorts facts. You know, they will represent that their only objective is to save and rescue dogs and cats. Well, we know that not to be the case. And they raise an awful lot of money, as those who are in support of LR40CA have stated. Well, others create threats, even when those threats don't exist, and they do it for the exact same reason that HSUS distorts facts, that is, to raise money by advising their members of these perceived threats. So if LR40CA were to be advanced, there would be money from those who have told us there is a threat; there will be money from those who are perceived to have made the threat. And, yes, the battle lines will be drawn and perhaps the vote will come out as indicated. But I submit that perhaps it will

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be a little different because of Article I, Section 1, of our constitution. LR40CA is unnecessary to resist a threat against hunting. But LR40CA with FA18 is necessary, because there's nothing in the constitution of the state of Nebraska that preserves our right to consume that which we raise on our farms and ranches. So if we want to protect these fundamental rights, these fundamental traditions, I urge your support of FA18 to AM886. Thank you. [LR40CA]

SENATOR COASH: Thank you, Senator Council. Senator Schumacher, you are recognized. [LR40CA]

SENATOR SCHUMACHER: Thank you, Mr. President. Constitutional amendments are kind of important things. And if they do pass, they're kind of hard to undo. We just can't say, oops, do over. It's at least two years before we get a chance to admit our mistakes to the people and see if they agree. And if the scenario that this HSUS outfit is so powerful, they may stick us with our own mistakes. But if you give somebody a constitutional right to hunt and to fish and to harvest wildlife and you charge a fee for a license to do that, can you do it? Will...are we putting at risk here, unintentionally, the fees and the money stream that we're getting from hunting and fishing licenses? Because it's my right to do it. Now you may have the right to regulate it to conserve and to promote wildlife, but you don't have the right to charge me a fee for a license to do it. So in these times of financial difficulties, that's something to think about. If this is going to progress, we might make it clear that that regulation includes the right to charge a fee. And then you get to the question: Well, if you have the right to charge a fee and the Legislature is so inclined and we set the fee at a million dollars a license, have we, in effect, then excluded the right to hunt and to fish? So we're getting into a lot of issues here that I don't know if we intend, really, to get into, with regard to these particular matters. The issues have been raised pretty consistently that the real problem here is not hunting and fishing. If there is a problem, it is with farming and ranching. And this does nothing to preserve that right to farm and to ranch, even though Senator Council's amendment does preserve for us the right to eat what farmers and ranchers produce. I think this is problematic in this case, and at best we should take it back and review some of these issues before we put this on the ballot for the people, and it will likely pass by 80 percent. So if we're going to put it out there, let's cover our tracks and make sure we're putting out there something that indeed protects what we intend to protect, and that is against an invasion from this HSUS outfit, and also make sure that we don't stumble and do something that may later be construed in a lawsuit to restrict our revenue sources from conservation and management of game. And constitutional amendments are intended to be important things and change things, and this one may not be ready for showtime yet. Thank you, Mr. President. [LR40CA]

SENATOR COASH: Thank you, Senator Schumacher. There are no other lights on. Senator Council, you are recognized to close on FA18. [LR40CA]

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SENATOR COUNCIL: Thank you, Mr. President. Again I appreciate Senator Schumacher's sound analysis of the issue that's presented here. If LR40CA goes forward without addressing farming and ranching in some context, LR40CA may pass, but you will not prevent HSUS from coming in and during the next two years doing whatever we fear they can do now on hunting, fishing, and trapping, doing it on farming and ranching. And we won't be in a position to address or resist that threat because we've already passed this constitutional amendment, and we don't have an opportunity to do it again until after HSUS has come on the scene and done all of these things that we fear that they're going to do. I just find it problematic and, I guess, really unrealistic to believe that Nebraskans would be vulnerable to HSUS's agenda, be it the one on hunting and fishing or the one on eliminating the consumption of animals, that we really have this fear that Nebraskans are and would be that vulnerable to that move. And assuming that they are or we believe that they are, even if this passes, if we believe that they're that vulnerable to this threat from HSUS, two years from now this could be repealed and we'd be right back where we are today, which is--what I submit all LR40CA does is put us where we are today with problems of the sort identified by Senator Schumacher and earlier by Senator Lathrop: laws that we currently have on the books could all be found to be unconstitutional. But there are no laws on the books prohibiting or restricting or placing any regulations on our right to consume cows, pigs, chickens, and sheep. And for that reason, I urge your support of FA18. [LR40CA]

SENATOR COASH: Thank you, Senator Council. Members, you've heard the closing to FA18 to AM886. All those in favor vote aye; all those opposed vote nay. Senator Council. [LR40CA]

SENATOR COUNCIL: Call of the house, Mr. President. [LR40CA]

SENATOR COASH: There has been a request for a call...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. Record, Mr. Clerk. [LR40CA]

ASSISTANT CLERK: 28 ayes, 0 nays to go under call, Mr. President. [LR40CA]

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. Senators Larson, Pahls, Lathrop, Mello, and Avery, please return and record your presence. Senator Mello, please return to the Chamber and record your presence. Senator Avery, please return to the Chamber and record your presence. Senator Council, all members are present or otherwise accounted for. How would you like to proceed? [LR40CA]

SENATOR COUNCIL: Call-ins allowed, Senator...I mean, Mr. President. [LR40CA]

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SENATOR COASH: Members, the question is on the adoption of FA18 to AM886. [LR40CA]

CLERK: Senator McGill voting yes. Senator Pirsch. You had voted no, Senator Pirsch. Senator Fulton voting no. Senator Price voting no. Senator Sullivan voting no. Senator Langemeier voting no. Senator Smith voting no. Senator Larson voting no. Senator Cornett voting no. Senator Pankonin voting no. Senator McCoy voting no. Senator Pahls voting no. [LR40CA]

SENATOR COASH: Record, Mr. Clerk. [LR40CA]

CLERK: 5 ayes, 27 nays on the amendment, Mr. President. [LR40CA]

SENATOR COASH: The amendment is not adopted. Raise the call. Returning to discussion, we now go to AM886. Those wishing to speak: Senator Pirsch. [LR40CA]

SENATOR PIRSCH: Thank you, members of the body, Mr. President. I have just some comments with respect to issues that have been brought up before, and I'll just randomly take those up. With respect to Senator Council's concern about Article I, Section 1, statement of rights, that that language which currently exists in the constitution playing the same effective role as this constitutional amendment. And we had talked about this, I believe, on the first day of debate of this constitutional amendment or possibly the second day that we debated this. But again, it reads as follows: "All persons are by nature free and independent, and have certain inherent and inalienable rights; among these are life, liberty, the pursuit of happiness, and the right to keep and bear arms." And then it illustrates for what, not in the absolute sense but in certain situations, you have the right to bear arms: "for security or defense of self, family, home, and others, and for lawful common defense, hunting, recreational use, and all other lawful purposes, and such rights shall not be denied or infringed by the state or any subdivision thereof." And so, yes, it does mention, by reference, the hunting, but only within the context of your right to bear arms. And so it's not setting the limits of your right to hunt or whether you do or don't have the right to hunt, but it is saying, to the extent that you do have a right to hunt, you can bear an arm for those. That is one type of legitimate purpose. And so what we're doing in LR40CA is entirely different, which is setting forth the proposition that the right to hunt, that--the scope of it and how it can be regulated or not regulated, as the case may be. So they're not adverse to each other, this LR40CA. They're not...and this Section 1...Article I, Section 1, they're not adverse to each other. They don't contradict each other. And they're not...on the other hand, they're not synonymous. One doesn't cover the other. They deal with two different topics. But they are, in fact, complementary, if both...if this LR is passed. And I think...so they mean different things. And there is a rule of construction that courts look at when looking at constitutional amendments or, for that matter,

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statutes that are passed, and that is there is a presumption that the two fit in together, that they can be read reasonably together and not contradict. And so on that basis I think that is...I do appreciate the conversation on that. And that is certainly something that I looked at in introducing the original LR and the green copy...I'm sorry, in the green copy as well as the amendment. With respect to the concern about fishing, that that is a nonissue, there are--again, with respect to the group that has been mentioned by others, the HSUS, they are led by a gentleman who has made this statement while he was being interviewed. And so...and it says...the interviewer says: About fishing, now, do you avoid campaigning against it--meaning fishing--because there isn't a groundswell movement in our culture to eliminate it? And the director of this group said: That is correct; we're out to minimize suffering wherever it can be done and wherever our limited resources can be utilized most effectively; abusive forms of hunting now, all hunting eventually. And so that was the question specifically brought about fishing. [LR40CA]

SENATOR COASH: One minute. [LR40CA]

SENATOR PIRSCH: And in the minds of this gentleman, he views it all to be one and the same--hunting, fishing--and so he specifically mentions that all of these forms eventually. So on that basis, I think that it is reasonable to conclude that is imperiled as well and a goal of this group. I just wanted to reiterate Nebraska has 280,000 sportsmen. They spend hundreds and hundreds of millions of dollars annually; 8,500 jobs; \$238 million in salaries; \$54 million in state and local tax revenue; and the ripple effect, over half a million...I'm sorry, over half a billion dollars. So on that basis, I would ask you to support this amendment. Vote yes. Give it the green light. I do appreciate it. [LR40CA]

SENATOR COASH: Thank you, Senator Pirsch. Those wishing to speak: Senators Council and Lathrop. Senator Council, you are recognized. [LR40CA]

SENATOR COUNCIL: Thank you, Mr. President. And I certainly appreciate the body going on record saying that hunting, fishing, and trapping is more important than protecting our farming and ranching, because the consumption of meat is the outcome of our farming and ranching. I appreciate you all going on record in elevating hunting, fishing, and trapping before farming and ranching. And in response to Senator Pirsch, if he would yield to a question? [LR40CA]

SENATOR COASH: Senator Pirsch, will you yield? [LR40CA]

SENATOR PIRSCH: Yes, I would. [LR40CA]

SENATOR COUNCIL: And Article I, Section 1, speaks to an inherent and inalienable right. Is that correct? [LR40CA]

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SENATOR PIRSCH: Yes, I believe that's correct. [LR40CA]

SENATOR COUNCIL: And it goes on to say that that right shall not be denied or infringed by the state. Is that correct? [LR40CA]

SENATOR PIRSCH: Yes. [LR40CA]

SENATOR COUNCIL: If the state of Nebraska banned hunting, would that ban, in your opinion, constitute an infringement of the inalienable and inherent right to bear arms for the purpose of hunting? [LR40CA]

SENATOR PIRSCH: I'm sorry. You know, I think that...your question is, if an all-out ban of hunting, would that infringe on Article I of Section 1? [LR40CA]

SENATOR COUNCIL: Yes. [LR40CA]

SENATOR PIRSCH: Okay. Well...and I guess, if I'm allowed a little leeway in answering that? [LR40CA]

SENATOR COUNCIL: Well...yes or no? [LR40CA]

SENATOR PIRSCH: Yes or no. Okay. With respect to that, if something were passed by this Legislature, could we ban hunting altogether? I'm not sure. I haven't...I would say that there may be some courts that interpret it that way unless and until we have this constitutional amendment. [LR40CA]

SENATOR COUNCIL: Okay. So my direct question to you is, if I have an inherent and inalienable right to bear arms for the purpose of hunting, if this state banned hunting, wouldn't that be an infringement upon my inherent and inalienable right? [LR40CA]

SENATOR PIRSCH: I think the question becomes then...what I believe Article I, Section 1, is saying, is to the extent that you enjoy this right, which--we're not saying in this particular article whether and to what extent you have that right, but to the extent that you have that right, that's a situation in which you can bear arms. [LR40CA]

SENATOR COUNCIL: So then help me understand what LR40CA does. To the extent you have the right to hunt, we have the right to regulate it by rules, laws, regulations, and we have the right to consider what's conservation and wildlife management. Correct? [LR40CA]

SENATOR PIRSCH: Well, LR40CA sets the dividing line by which those rights exist. It says there are certain limited areas in which the Legislature and the departments are

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free to act with respect to regulating these activities. But those are clearly spelled out. It has to meet those conditions that are set forward in that provision. Otherwise, you cannot limit...you cannot prohibit hunting or eliminate hunting to some extent that do not meet those provisions or other constitutional provisions. [LR40CA]

SENATOR COUNCIL: Well, and I... [LR40CA]

SENATOR COASH: One minute. [LR40CA]

SENATOR COUNCIL: And the question I have is, why couldn't we? If you...and I'm going to use your mountain lion example. We prohibit private hunting of mountain lion; that is a ban on hunting. And we eliminate that under the auspices of conservation and wildlife management. Have I violated LR40CA? [LR40CA]

SENATOR PIRSCH: Well, I don't mean to suggest...I mean, I don't have an ability to look into each particular type of animal and to tell you exactly what a court...but I can tell you the process by which, then, a court would look at that, and that would be through the filter of this constitutional amendment. Does it meet that conservation type of category, that first requirement, and lead to the protection of fishing and hunting in the future? And so that would be the screen or the filter. [LR40CA]

SENATOR COASH: Time, Senators. Senator Lathrop, you are recognized. [LR40CA]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Once again we're back to Senator Pirsch's amendment. And I have to tell you that while I've spoken on this issue, I haven't supported those that were, you know, the right to watch Husker football and stuff. And here's the point: that those kinds of things don't belong in the constitution. The constitution...and I hope you'll forgive me if I talk like a lawyer for a minute. Okay? Because I know a lot of you go back to different jobs and to what you do for a living, and what I do for a living is open the constitution up and read it and try to interpret it. It may surprise you to know that we spend a year in law school studying the United States Constitution--a year. You've seen the document. A year in law school studying the Constitution. This is no place for a statute. And this bill, this constitutional resolution, is a statute. So what does it mean if we put it in place, if we hand it over to the voters? The only thing that we can do...the only regulation that can be done by this body in the future relating to hunting and fishing are rules and laws regulating that promote wildlife conservation and management and preserve the future of hunting and fishing. Safety doesn't fall in there. I disagree with anybody who says that it does. It will be unconstitutional to require hunter safety courses. Unconstitutional. What does it mean to make something a preference? How is the court...down the hall, there's another branch of government that interprets the laws of this body. You cannot...we cannot pass a law that is unconstitutional--it's inconsistent with our constitution. And it is the job of the judiciary, down the hall, the Supreme Court and the Court of Appeals, to

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decide when a bill is unconstitutional. What direction are we giving them when we say that hunting and fishing will be a preferred means of managing and controlling wildlife? What does that mean? What does it mean? It doesn't mean anything. It doesn't tell the Supreme Court what to do when they're interpreting one of our statutes. What protection does it afford from the Humane Society that we're worried about, when they take over the Legislature and we're passing laws to try to stop it? It doesn't say a thing. And I'm going to maybe make this my last occasion to speak, I'm not sure, but I have to tell you, I've hunted all my life--and fished. When I was 16 years old, as long as I could drive a car, this very good friend of mine and I would get up every Sunday morning, and we'd drive down mostly around Senator Heidemann's district, and we'd hunt quail down there with my dad's quail dog. And we could get on about anywhere. We'd always stop by somebody's house. It was hardly ever posted, but we always went and got permission. I'll tell you, the biggest threat to hunting and fishing is getting on somebody's property. Right? It isn't the Humane Society I'm worried about. I can't get on anywhere. If you live in Omaha and you want to go hunt, if you don't know somebody that's set the ground aside, you can't hunt. If we care about this, we'd be sitting here trying to figure out how to open up some acres so that people could actually go there and hunt the wildlife. You know, I guess my final plea to you is that the constitution is not a place to make a point. [LR40CA]

SENATOR COASH: One minute. [LR40CA]

SENATOR LATHROP: The constitution is not a place to make a point. It is the place where we put our controlling principles, and when we do that, we don't make them subject to regulations by an agency. That does not make sense. It is not...put it in the statute if you want to pass something. I'll vote for it if you want to put it in the statute. This doesn't belong in the constitution, and we make a mockery of our constitution when we put stuff like this in it that has no meaning, doesn't do anything. And actually, and it's--you know, Pete Pirsch is a good friend of mine and this is not a personal thing--but this is not well written enough to go in the constitution. It's not well written and thought through enough. And when you make it subject to laws and rules, it doesn't perform the job or the function of being the supreme statement... [LR40CA]

SENATOR COASH: Time, Senator. [LR40CA]

SENATOR LATHROP: ...of policy of the state of Nebraska. Thank you. [LR40CA]

SENATOR COASH: Thank you, Senator Lathrop. (Visitors introduced.) Seeing no other lights on, Senator Pirsch, you are recognized to close on AM886. [LR40CA]

SENATOR PIRSCH: Thank you. And I appreciate all the conversations that have gone on thus far here in the body, actually between...and, you know, there was a senator who would always say "friends all," and truly feel that way. This is the, as the Speaker

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speaks of often, this is the marketplace of ideas, here in this body. And I think this is a very important concept, to have a great deal of discourse, and so I truly did appreciate all the comments and questions. And with respect to the issue of public safety--and I do appreciate Senator Lathrop bringing that again--again, if you look at Article I, Section 1, of our state constitution, it does mention the right to bear arms. Nowhere in that is the words, "except for if public safety is involved, then the state can regulate it." But no constitutional right is absolute, and it's inherent that regulation for the public safety takes place--and it does. Felons, for instance, cannot have firearms, and so--but it doesn't say that in our constitution. It just says "inalienable." Very strong language that (inaudible). And that's how courts will apply it to this constitution as well. Of course, public safety is going to apply. That is an inherent police power of the state. So I do appreciate the comments and concerns. I do think, when you look at our state constitution, it plays a different role than the U.S. Constitution, which has to apply to 50 states. And I urge you to look at it and read it. When it deals with things like TERC and Public Service Commission, you know, maybe those are not concepts that would quite--fundamental freedoms that are imperiled--make it to the constitution. But this certainly does. And so I ask you to support this AM886, and I do appreciate all of the conversation that's gone on before. [LR40CA]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Thank you, Senator Pirsch. Members, you've heard the closing on AM886. The question before the body is, shall AM886 be adopted? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LR40CA]

CLERK: 29 ayes, 8 nays. [LR40CA]

SPEAKER FLOOD: AM886 is adopted. Returning now to discussion on LR40CA. Seeing no lights on, Senator Pirsch, you're recognized to close. Senator Pirsch waives closing. The question before the body is, shall LR40CA advance to E&R Initial? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LR40CA]

CLERK: 32 ayes, 6 nays, Mr. President. [LR40CA]

SPEAKER FLOOD: LR40CA advances to E&R Initial. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR155, LR156, LR157, LR158, LR159, and LR160. Mr. Clerk, items for the record. [LR40CA LR155 LR156 LR157 LR158 LR159 LR160]

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

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Priority motion. Senator Flood would move to adjourn the body until Tuesday morning, April 19, at 9:00. []

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. We are adjourned. (Gavel) []