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Floor Debate  
May 03, 2011

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SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the seventy-third day of the One Hundred Second Legislature, First Session. Our chaplain for today is Pastor Mary Ellen Gaither, First Presbyterian Church in Humboldt, Senator Heidemann's district. Please rise.

PASTOR GAITHER: (Prayer offered.)

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

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

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

CLERK: I have no corrections.

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

CLERK: Enrollment and Review reports LB107, LB155, LB248,... [LB107 LB155 LB248]

SPEAKER FLOOD: (Gavel)

CLERK: ...LB261, LB121, LB309, LB573, LB458, LB423, LB56, LB480, and LB254, all reported to Select File, some having Enrollment and Review amendments. That's all that I have, Mr. President. (Legislative Journal pages 1395-1397.) [LB261 LB121 LB309 LB573 LB458 LB423 LB56 LB480 LB254]

SPEAKER FLOOD: Thank you, Mr. Clerk. We will now proceed to the first item on the agenda, General File state claims bill, LB585. Mr. Clerk. [LB585]

CLERK: LB585, a bill introduced by the Business and Labor Committee and signed by its members. (Read title.) The bill was introduced on January 19, at that time referred to the Business and Labor Committee, advanced to General File. There are Business and

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Labor Committee amendments pending, Mr. President. (AM1253, Legislative Journal page 1334.) [LB585]

SPEAKER FLOOD: Thank you, Mr. Clerk. Senator Lathrop, as the introducer of...as the Chair of the Business and Labor Committee, you are recognized to open on LB585. [LB585]

SENATOR LATHROP: Thank you very much, Mr. President and colleagues. Good morning. What many of you probably don't know is that the Business and Labor Committee has jurisdiction beyond just the business employer/employee relationship with bills that deal with work comp and CIR and those matters. We also deal with elevators, escalators, boilers, and we also have responsibility for the claims bills. And this is a bit of a tedious process to introduce this bill because I'm going to have to read about some claims that are being paid for by the state. But as you might imagine, the state of Nebraska has many opportunities to do things that cause injury or problems for folks and we have to pay on those claims according to the State Tort Claims Act or the Miscellaneous Claims Act. Claims that come to the state of Nebraska pass through the tort claims or the Claims Board. So just to give you a little bit of background in how these things have been vetted before I'll tell you what the claims are so that you understand the process that brings them to the Business and Labor Committee and from there to the floor of the Legislature. If you are driving down the interstate and a state truck pulls out in front of you, for example, and causes an injury, say you break your neck and you have a claim for negligence against the guy who is working for the state, those claims...the process is, according to the State Tort Claims Act, you have to file a claim within two years with the Claims Board. And the board then has six months to adjudicate that claim, and they can grant it or they can turn it down. If they turn it down, then the person who has been hurt can file a suit and in some cases a case will settle then, it'll go to judgment, or it might be settled at the Claims Board. There are a good variety of these types of claims that I'm going to read here in just a minute, but they are typically a tort claim, somebody who was hurt because of a negligent act by an employee of the state of Nebraska. They can be work comp claims. So one of our workers gets hurt on the job and they have a claim or they can be miscellaneous claims, and a perfect example of that is paying the Press Association to print all of the notices in the various newspapers across the state. I'm going to go through these but generally the rule is that if a claim exceeds \$50,000, it has to go through the Business and Labor Committee for approval. Each one of these claims have been approved by the Claims Board. They in most instances in the case of torts been settled by the Attorney General's Office or by the Department of Roads. So that you know, this isn't the Business and Labor Committee settling cases or just on its own making judgments about what cases are worth or what we should settle them for. And with that said, I will go through these and I hope you'll forgive me because it involves a fair amount of reading. LB585 is introduced by the Business and Labor Committee at the request of the Department of Administrative Services Risk Management Division. This is the

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annual approved claims bill which contains claims against the state that were either approved by the State Claims Board or were litigated and have judgments against the state. Statute requires approval by the Legislature. LB1090 includes tort and workers compensation claims and agency write off requests. Claim number 2008-02654 against the Department of Health and Human Services for \$190,000. This involves a resident from BSDC who suffered two broken legs. The next claim, number 2009-03422 against the Department of Roads for \$99,666.37. This involves a claim arising out of an automobile accident. Third one, claim number 2010-04095 against the state of Nebraska for \$475,000. This settlement involves Joseph White, one of the Beatrice Six. Mr. White has since passed away and I have another amendment to make clear that the settlement proceeds should go to his estate. Claim number 2010-04096 against the state of Nebraska for \$325,000. This settlement involves Kathleen Gonzalez, another one of the Beatrice Six. Claim number 2008-02942 against the Department of Health and Human Services for \$300,000. This one involves injuries sustained by an individual in an automobile collision. Claim number 2010-04887 against the Department of Health and Human Services is for \$35,000. This claim involved an automobile accident and injuries received in that automobile collision. Number seven, claim number 2011-10823 and 2011-10824 against the State Insurance Fund for \$300,000 each. Both claims arose out of the same automobile accident or injuries received by individuals in the same auto accident. Those are the auto accidents. We have claims for work comp as follows: The Attorney General settled three workers compensation claims in the amounts of \$157,286.77, a second for \$175,000, and a third for \$50,000. We also have agency write offs. These are when agencies like the Department of Health and Human Services have people that get benefits that they should not have gotten. We go back, we sue them, we send them to collection. We do everything we can to collect it, and at some point we have to write that debt off. This debt that the agencies have deemed uncollectable the Claims Board has approved and the requests are listed in LB585. I'm happy to answer questions and I'd ask for your support of LB585. Thank you, Mr. President. [LB585]

SPEAKER FLOOD: Thank you, Senator Lathrop. Members, you've heard the opening on LB585. Senator Lathrop, you're recognized to open on the committee amendment, AM1253. [LB585]

SENATOR LATHROP: Thank you, Mr. President and colleagues. You might imagine that when the claims bill is introduced, there are a certain number of claims and over the course of the legislative session additional claims get resolved by the state of Nebraska, so we amend the claims bill with these claims. AM1253 replaces the green copy. It includes the original provisions and adds two miscellaneous claims and three tort claims. Claim number 2010-11047 against the state of Nebraska in the amount of \$86,026.47 for expenses related to publication of constitutional amendments in the general and primary elections. Claim number 2011-11127 in the amount of \$136,227.96 to pay attorney fees ordered by the federal district court. Claim number 2009-03186

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against the Department of Health and Human Services for \$50,000. This claim relates to an abuse that occurred in a foster home. Next, claim number 2010-04097 against the state of Nebraska for \$180,000. This is another claim brought by one of the members of the Beatrice Six and was settled by the AG's Office. Claim number TC04-049-1 against the Department of Health and Human Services for \$260,000. This claim involved an elderly woman whom the state claimed as acting as a volunteer probation officer. The court found that she was in fact an employee. You might have seen this litigation in the newspaper. It went on and on and on. She passed away and we finally settled with her estate for \$260,000. AM1253 advanced from the Business and Labor Committee on a 7-0 vote and I ask for your support of AM1253. Thank you, Mr. President. [LB585]

SPEAKER FLOOD: Thank you, Senator Lathrop. Mr. Clerk, I understand there's an amendment to the committee amendments. [LB585]

CLERK: There is, Mr. President. Senator Lathrop would move to amend the committee amendments with AM1348. (Legislative Journal page 1393.) [LB585]

SPEAKER FLOOD: Senator Lathrop, you're recognized to open with AM1348. [LB585]

SENATOR LATHROP: Thank you, Mr. President. Colleagues, this one is very simple. One of the Beatrice Six whose case was settled by the Attorney General's Office died before he could get his money. And the law requires that that money go not to...of course it can't go to a decedent so it goes to his estate. AM1348 basically provides that because Joseph White passed away, his settlement proceeds will be payable to his estate. That's a legal and necessary clarification. I'd ask for your support of AM1348. Thank you. [LB585]

SPEAKER FLOOD: Thank you, Senator Lathrop. Members, you've heard the opening to AM1348, AM1253, and LB585. We now turn to discussion. Senator Howard, you are recognized. [LB585]

SENATOR HOWARD: Thank you, Mr. President and members of the body. If Senator Lathrop would yield to a few questions. [LB585]

SPEAKER FLOOD: Senator Lathrop, will you yield to a few questions from Senator Howard? [LB585]

SENATOR LATHROP: Yes, I will. [LB585]

SENATOR HOWARD: Thank you, Senator Lathrop. I wasn't fast enough to get the numbers on these claims, but possibly you could give us some more information on three of them that I'm interested in especially, and those are the claims against Health and Human Services. And you mentioned two automobile accidents. How does it

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happen Health and Human Services are responsible in those cases? [LB585]

SENATOR LATHROP: Okay. I'm going to try to identify those particular claims that you are...was it in the bill or in the amendment? [LB585]

SENATOR HOWARD: It was in the bill. [LB585]

SENATOR LATHROP: Okay. That would be claim number 2008-02942 and my committee counsel is feverishly trying to find the details on that and I'll get it to you in just a second. [LB585]

SENATOR HOWARD: Well, that's fine and I can ask you about the third one that I was concerned about and that's in the amendment. It's the \$50,000 regarding abuse in a foster home. And I'll tell you why I'm concerned about this to possibly give your assistant more opportunity. [LB585]

SENATOR LATHROP: Okay. [LB585]

SENATOR HOWARD: Every year we hear about these situations. Every year there are claims made against the state for abuse in foster homes. And every year I stand up and say, this can't continue, this can't continue, and yet again we have claims regarding a child who was abused. So if you could...if you have the information and can share that with us that would be helpful. [LB585]

SENATOR LATHROP: Well, yes, and Molly is trying to find the details so I can give you the narrative. But what I can tell you about those is typically this is how it happens. Somebody is placed into foster care and there should have been either a better investigation...and I'm not making a judgment at this point about a particular claim or describing it but generally saying this is what happens in these cases. Somebody goes into foster care and they're abused, they can be abused by the foster parents or one of the children or the other foster kids that are in that particular placement. And after the abuse happens, somebody will look back and say, you know what, the state should have caught that. The person that did the abuse had a record or a history and that was not a proper placement and it was carelessness or negligence to place them there. [LB585]

SENATOR HOWARD: And, Senator Lathrop, I'm very familiar with that. Those...I have certainly had situations like that. My concern is that these repeat themselves over and over and over again. And I'd like to know in these particular cases was this the state that had placed the child? Was it one of our private agencies that had placed the child? Where did the failing come in? You know, yesterday on the mike I described a situation. I had been contacted because a 17-year-old who has an infant hadn't been seen, hadn't had any contact with either the state worker or the KVC worker for over six months. And

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those are the kinds of situations that lend to us getting into this sort of situation. [LB585]

SENATOR LATHROP: Yeah. There's no question about that. And I understand that the one...the claim against Health and Human Services relating to the foster child involved a sexual assault, and that's always particularly troubling because...there's not a good assault but that's one that seems to last forever in a child in foster care, goes straight to the trust issues that are probably problematic to start with. Who placed the child there, whether it was the state... [LB585]

SPEAKER FLOOD: One minute. [LB585]

SENATOR LATHROP: ...or one of the contractors is something that we're trying to find out for you, Senator, and I'd be happy to provide that to you and I'll do it on the mike if our discussions continue long enough. Going to the claims relating to the automobile accidents: In one, the claim had alleged that on May 25, 2007, she was involved in an accident with a state driver and has suffered permanent medical injuries as well as pain and suffering. This was filed in the Lancaster County District Court and it was settled for \$300,000. And in the other, the claim had alleged that in October of 2009, she was eastbound on M Street and was stopped at 9th Street going east. The claimant states that the other vehicle, which was a state vehicle, was travelling south on 9th and failed to stop. So these don't appear to be... [LB585]

SPEAKER FLOOD: Time, Senators. Senator Howard, you may continue. [LB585]

SENATOR HOWARD: Thank you, Mr. President. Senator Lathrop, please continue. [LB585]

SPEAKER FLOOD: Senator Lathrop, you can continue as well. [LB585]

SENATOR LATHROP: Thank you. These do not appear to be instances where somebody is in the car with a state employee but a state employee out driving about as they do, doing something negligent or violating a stop sign, for example, or rear-ending somebody and causing an injury and that that... [LB585]

SENATOR HOWARD: So then the state employee was found at fault. [LB585]

SENATOR LATHROP: Yes. [LB585]

SENATOR HOWARD: But there wasn't a foster child involved or... [LB585]

SENATOR LATHROP: No, not in the case of the automobile collisions. And the foster child, that was a sexual assault. [LB585]

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SENATOR HOWARD: I find that particularly heinous that there would be another claim, yet another claim come in regarding a situation where a foster child had been sexually assaulted, abused, whatever the term is you care to use in a foster home. These children suffer immeasurable harm prior to coming into the state which is the very reason they're placed in the state custody. And under any circumstances we want to be able to regard foster homes as being safe. I just...I find this very concerning and I think we should all share that concern at minimum. If you have any more details on that, that would be very helpful. [LB585]

SENATOR LATHROP: I do and we don't get in the claims process, unless there are specific questions, we don't develop a record that goes on and on about all the detail that I might get in an initial client interview for somebody who's come in to talk to me about this in my law practice. But what I do know is that there's a foster child. In the case of the foster child, the foster child is placed in a foster home and the biological child of the foster parents had a sexual relationship with the foster child. And just by definition they're not capable of consent, but it was not a forcible sexual assault in the sense that, you know, somebody was at knife point. [LB585]

SENATOR HOWARD: We don't know the age of the child who was the perpetrator of the... [LB585]

SENATOR LATHROP: I do not know the age of the child but almost by definition the fact that they're in foster care would suggest that they're minor children, and so... [LB585]

SENATOR HOWARD: Well, I'm not talking of the child in foster care. I'm talking of the child that perpetrated. [LB585]

SENATOR LATHROP: I don't have that and I think Molly...oh, pardon me, 17 years old would be the answer. [LB585]

SENATOR HOWARD: We do know that? We do know that was a 17-year-old...? [LB585]

SENATOR LATHROP: Seventeen-year-old. [LB585]

SENATOR HOWARD: ...that perpetrated on a younger foster child? [LB585]

SENATOR LATHROP: Yes. The foster child was 15. [LB585]

SENATOR HOWARD: Thank you. Thank you, Senator Lathrop. And please don't assume that I'm being critical of you. I'm not at all. But this is an issue that really is unforgiveable that a child was placed in harms way in this way. We can't see everything

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that happens in a foster home and we can't predict everything that's going to happen, but there are some things that should be, as people say, red flags. And certainly if the older child, the biological child of the family, has any history of acting out, that places any foster child that's placed there at...in danger frankly. Do we have any way of knowing if this foster home was shut down and there aren't any additional children being placed in there? This may be something that's beyond your knowledge of the situation. [LB585]

SENATOR LATHROP: It is, and it's...what it is, is it's sort of beyond the scope of trying to determine whether we should pay on the claim or not. I certainly agree that as a matter of policy we should be at the bottom of that. I need to correct the record. The victim was 17 and the assailant was 15. And I do not know but, God, I have to hope that these people aren't foster parents any longer. But I'd be happy to get those details for you as the claims person is just outside the Chamber and I'd be happy to... [LB585]

SENATOR HOWARD: Well, I appreciate that, Senator Lathrop, and I know these are... [LB585]

SPEAKER FLOOD: One minute. [LB585]

SENATOR HOWARD: ...these are as difficult for you...thank you. [LB585]

SPEAKER FLOOD: Thank you, Senators. There are no other lights on. Senator Lathrop, you're recognized to close on AM1348. Senator Lathrop waives his opportunity. The question before the body is, shall AM1348 to AM1253 be adopted? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk. [LB585]

CLERK: 32 ayes, 0 nays, Mr. President, on adoption of the amendment to the committee amendments. [LB585]

SPEAKER FLOOD: AM1348 is adopted. Mr. Clerk, we now proceed to AM1253. There are no lights on. Senator Lathrop, you're recognized to close. Senator Lathrop waives closing. The question before the body is, shall AM1253 to LB585 be adopted? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB585]

CLERK: 33 ayes, 0 nays, Mr. President, on the adoption of committee amendments. [LB585]

SPEAKER FLOOD: We now turn to discussion on LB585. There are no lights on. Senator Lathrop, you're recognized to close. Senator Lathrop waives his opportunity. The question before the body is, shall LB585 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,

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please record. [LB585]

CLERK: 35 ayes, 0 nays, Mr. President, on the advancement of LB585. [LB585]

SPEAKER FLOOD: LB585 is advanced to E&R Initial. Mr. Clerk, we now move to the motion to override the gubernatorial veto on LB204. [LB585 LB204]

CLERK: Mr. President, Senator Council would move that LB204 become law notwithstanding the objections of the Governor. [LB204]

SPEAKER FLOOD: Senator Council, you're recognized to open on your motion. [LB204]

SENATOR COUNCIL: Thank you, Mr. Speaker, members of the body. I rise this morning for the purpose of urging you to support the motion to override the Governor's veto of LB204. LB204 was introduced on the third day of this session. A similar bill was introduced last session and was not advanced to General File by the Education Committee. I listened intently to the current concerns expressed last year by the committee members and others and worked hard to address those concerns before reintroducing the bill. The hearing on LB204 was held on February 8 and no one appeared to testify in opposition or in a neutral capacity. I want to, again, thank my colleagues on the Education Committee for voting unanimously to advance LB204 to General File. After the bill was advanced to General File, I continued to work to address any concerns that were expressed regarding the bill and its operations. And as you know, there were several amendments that were adopted in relation to the advancement of LB204. I, again, want to thank the body for voting to send LB204 to the Governor. Needless to say I was shocked and surprised when I received the Governor's veto message because I was unaware of any concerns that he or his administration had with LB204. I requested and the Governor graciously granted me the opportunity to meet with him to gain a better understanding of his objections to LB204. The result of that meeting was a respectful disagreement as to the purpose and effect of LB204. In order for each of you to have a better understanding of the purpose and effect of LB204 and the areas of disagreement with the Governor, I have provided each of you with a packet containing material essential to gaining an understanding of the purpose and effect of LB204. I apologize if some of you received the packet today while my staff and I were able to disseminate others last evening. The Governor's veto rests in part on his belief that LB204 requires all students to have undergone an actual blood-lead test prior to enrollment in kindergarten. The fact is that LB204 does not require all children to actually undergo a blood-lead test, rather the practical effect of LB204 is to require all children to be assessed for their risk of elevated blood-lead levels and tested only if the assessment reveals that the child is in fact at risk of an elevated blood-lead level. In fact, LB204 expressly provides that a blood-lead test shall not be required for a student's enrollment if the parent or guardian provides a statement from an authorized

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medical provider that the child has had a risk assessment and has been found to not be at risk of an elevated blood-lead level. The Governor and, for that matter, some school nurses do not see the link between the blood-lead testing and assessment and entry into kindergarten. This is perhaps the most disconcerting area of disagreement because of the volumes of medical research establishing this actual link. And while I agree with the school nurses that parents should have their children assessed for elevated blood-lead level risk as early as 12 months of age, recent research reveals that elevated blood-lead levels in children age six as compared to toddlers are more strongly associated with IQ and reduced volume of gray matter in the brain, the area of the brain which is operative in planning, complex thinking, and moderating behavior, all of which are essential to a child's success in school. As noted in the article which you will find as Exhibit 1 in your packet: For children with the same average blood-lead levels through age six, those who received more of their exposure to lead at age six had substantially greater losses in intellectual ability than those more heavily exposed at age two. So indeed enrollment in kindergarten is the optimum time to determine whether a child has been adversely affected by elevated blood-lead levels. The Governor also believes that LB204 will likely result in children not at risk of elevated blood-lead levels being unnecessarily tested. I respect and appreciate his concern in that regard, but I submit to you that LB204 is more likely to result in the targeting of blood-lead testing to only those who are at greatest risk of elevated blood-lead levels. This suspected outcome has a particular significance in light of the Governor's suggestion that LB204 runs counter to recent national developments relative to blood-lead testing of Medicaid-eligible children. The Governor correctly notes in his veto message that the CDC revised its recommendations for blood-lead testing of Medicaid-eligible children in 2009. Prior to 2009, CDC recommended that Medicaid-eligible children be tested in accordance with the requirements that are found in the federal Medicaid law. That requirement in the law is that all Medicaid-eligible children receive a blood-lead test at ages 12 and 24 months and that children age 36 to 72 months receive a blood-lead test if they have not previously been tested. This requirement in the Medicaid law was based on the belief, then supported by data, that all children in poverty below the age of six were at risk of elevated blood-lead levels. In 2009, the CDC revised its recommendations to no longer require universal blood-lead testing for Medicaid children. This change was the result of data submitted to CDC from states across the country which indicated that Medicaid-eligible children were at no greater risk than non-Medicaid-eligible children for elevated blood-lead levels. So rather than universal blood-lead testing, the CDC now recommends that each state develop a targeted blood-lead testing program based upon local data as to the risk for lead exposure. States that have submitted such data and developed such targeted programs have essentially been granted a waiver of the Medicaid requirement to blood-lead test all Medicaid-eligible children. I don't disagree that blood-lead testing should be focused only on those populations identified at highest risk of lead exposure. The problem is that Nebraska is not in a position to implement the 2009 CDC recommendations with regard to the Medicaid or any other population of children in this state, and this is because the state has not submitted the record of the

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data or developed the required targeting testing program. Rather, as evidenced by the DHHS guidelines which are found in your packet at Exhibit 5, the state of Nebraska continues to be required to blood-lead test all Medicaid-eligible children under the age of six. On the other hand, LB204 is aligned with the CDC recommendations. Directing your attention to Exhibit 5 which are the current DHHS guidelines on blood-lead testing, you will see a series of risk assessment criteria. At the bottom it says: even if all of the answers to those questions are negative, which means this child is not exposed to any of these risk factors, currently DHHS requires and is required to have those children blood-lead tested at age 12 months and again at age 24 months, and if the child is considered at high risk, they're to be tested at every visit to the doctor. Now if you look at LB204, LB204 does contain a list of similar risk assessment criteria, but if you will note, if all of the questions...all of the answers to those questions are negative, the child does not have to submit to a blood-lead test, the exact opposite of what's required under the current DHHS guidelines. And if the risk assessment performed by that provider, again, reveals that they're not at risk, they're not required to have a blood-lead test before they enroll in kindergarten. Thus, LB204 in fact does exactly what CDC is recommending be done which is to focus blood-lead testing on children appropriately assessed as being at risk of elevated blood-lead levels, and thereby decreasing the unwarranted blood-lead testing for children who are not at risk, which again is at the core of one of the Governor's objections. With respect to the risk assessment criteria found in LB204, I want to direct your attention to the documents in your packet that show that this criteria is consistent with criteria recommended by the Centers for Disease Control, the criteria which is currently employed by the Department of Health and Human Services, and the risk criteria that is found in the blood-lead testing law enacted in Iowa in 2007 which provided the model for LB204. Finally, the Governor and others have raised... [LB204]

SPEAKER FLOOD: Thirty seconds. [LB204]

SENATOR COUNCIL: ...a concern with regard to the costs of LB204 to the parents and guardians. And, again, I appreciate the concerns that have been expressed, particularly by the school nurses in this area. I am not unmindful of the number of families in our state who are uninsured or underinsured. However, I also know that our federally qualified health clinics, as well as our county health departments have and will provide the risk assessment and if necessary the blood testing at no cost. I also must address the suggestion that LB204 requires families to bear an additional cost of a... [LB204]

SPEAKER FLOOD: Time, Senator. [LB204]

SENATOR COUNCIL: ...medical visit. Thank you. [LB204]

SPEAKER FLOOD: Thank you, Senator Council. Senator Gloor, turning to discussion on the veto override motion, you are recognized. [LB204]

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SENATOR GLOOR: Thank you, Mr. President. I want to thank Senator Council for providing this packet. I think I've done a little additional research on this and she's been kind enough to visit with me about this as I've gotten e-mails. So I think I've tried to stay up to snuff, yet I've...this packet, as I thumb through it, contains some additional information. I wonder if Senator Council would yield to a question? [LB204]

SPEAKER FLOOD: Senator Council, will you yield to a question from Senator Gloor? [LB204]

SENATOR COUNCIL: Certainly, Mr. President. [LB204]

SENATOR GLOOR: Senator Council, the Exhibit 3 which is current school immunization rules and regulations, can you tell me the reason that this packet with that particular exhibit was included in your packet? [LB204]

SENATOR COUNCIL: Yes. It's included in the packet specifically to address one of the concerns raised by school nurses, who many of you have heard from. One of the concerns expressed by school nurses is that LB204 imposes an additional obligation on nurses, school nurses, to go out, contact parents, and get them to comply with not only LB204 but the current immunization requirements. For those of you who did receive some of those e-mails, you will have noticed that they expressed a concern that it's already a burden for them to comply with the immunization requirements. I included that document because as you know, Senator Gloor, that document is accessible on the Internet, accessible by all school nurses. And in addition to that document, records of all immunizations that children have received in the state of Nebraska are also accessible via the Internet. And so if a child presents for enrollment and the parent doesn't have the document, and you'll see in your packet I've provided a sample of the currently utilized health examination card, that's generally what parents come in with, a card signed by the physician that says these immunizations have occurred and these other, the physical exam has occurred. Well, if a parent comes in and doesn't have that, the school nurses were concerned about the amount of work it would require of them to make sure that this information was provided. And I've provided you the document from the Web site because doctors, school nurses, health clinics, county health departments can access information and determine exactly what immunizations children have or have not had and it'd be very easy to add the risk assessment and the blood-lead test if necessary. [LB204]

SENATOR GLOOR: Thank you, Senator Council. I may have another question or two, but I would yield the remainder of my time to Senator Council if she chooses to have it. Thank you. [LB204]

SENATOR COUNCIL: Thank you. And I want to thank Senator Gloor and others who

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brought to my attention some of the concerns raised by school nurses. And, again, I am not unmindful of the issues presented by the school nurses, but the information that we need to base our decisions on have to be as accurate as possible, and that's one of the reasons I've prepared the packet for you and particularly Exhibit 1 that speaks to the importance of finding out the condition of these children before they enter kindergarten. And I also want to direct your attention to one of the support letters found in the back behind Exhibit 8. It's from a parent in Ohio by the name of Leann Howell who she and her husband wanted to reside in rural Ohio and they discovered an old farmhouse that they wanted to renovate. The farmhouse was 200 years old. Without knowing the potential lead exposure presented by that farmhouse, they undertook to renovate the farmhouse. When their child reached age ten months, he was taken in for his well baby exam, and during the well baby exam the physician... [LB204]

SPEAKER FLOOD: One minute. [LB204]

SENATOR COUNCIL: ...conducted a lead exposure risk assessment and based on that, blood-lead tested her son. Her son was found to have 44 micrograms per deciliter of lead in his blood, four times the rate that CDC says places a child at risk of serious and substantial long-term brain development delay. And Ms. Howell now has started a national organization to increase knowledge. And if you look at a targeted lead testing program, in Nebraska the age of housing will certainly be one of the risk factors that must be considered because that's the primary source of lead exposure for children. And in that regard, we need to continue to be as vigilant as we can to ensure that the information that parents will receive as the result of LB204 is made available. [LB204]

SPEAKER FLOOD: Time, Senator. [LB204]

SENATOR COUNCIL: Thank you. [LB204]

SPEAKER FLOOD: Thank you, Senator Council. Senator Nordquist, you are recognized. [LB204]

SENATOR NORDQUIST: Thank you, Mr. President and members. I think it's important to reiterate the point that Senator Council has been making. I know there's been a lot of discussion about this. I've talked to members off the mike about this, colleagues, who have had concerns thinking it's too broad. But Senator Council made the point, I want to reiterate it, that it isn't too broad. We assess...a physician assesses the children. If they think they need to be tested or screened, which is the word the CDC uses, then they are. But if they hit the marks outlined in Section 4 on page 6 and 7, then there's no need for the testing. The assessment covers that. I think that's the point that we all need to remember here, that not every child will be tested. And I hope that members of this body also understand that this is not...that this issue is not geographically centered in a few areas. Any place in the state that has a house built before 1960 is subject to it. I

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mean, children in every single community in this state are exposed to lead. And I think this is a good statewide initiative to first assess by a physician and then if they need to be tested, they're tested. This is going to save us money in healthcare in the long run but it's also going to help us make sure that every child reaches the potential that they have because the costs, the greater costs here is the lost productivity, the lost potential of those youth that are not diagnosed and treated and given the services they need in a timely manner. That is the greater cost to the state than any of the other pieces of this. So I rise in strong support of the motion to override on LB204, and if Senator Council would like the remainder of my time I would yield it to her. [LB204]

SPEAKER FLOOD: Senator Council, you have 3 minutes. [LB204]

SENATOR COUNCIL: I thank you very much, Senator Nordquist, for providing me with some additional time because, again, it's important to recognize that Nebraska currently is not authorized to have a targeted blood-lead testing program for Medicaid children, and because we don't have one for Medicaid children, we most assuredly don't have one for non-Medicaid children. I want to applaud, though, local county health departments who have undertaken on their own to begin to develop the data and the information required for them to target their blood-lead testing of the children who reside in the county. Now let me give you a feel for what happens when you identify the greatest risk of lead exposure for children and that becomes the basis for your targeted lead testing program. Iowa undertook that exercise. Iowa is one of the states that the agency that administers the federal Medicaid program, CMS, Iowa is one of the states that CMS has allowed a waiver. So they're no longer required to test every Medicaid-eligible child under age six, however they do so. And why do they do so? Because the data that they developed from the counties throughout the state of Iowa demonstrated that because of the age of the housing stock in the state of Iowa that every child under the age of six was in fact at risk of lead exposure. Now in Nebraska, we have comparable age of housing stock. But I submit to you that with passage of LB204 that we may be in a position... [LB204]

SPEAKER FLOOD: One minute. [LB204]

SENATOR COUNCIL: ...to establish to the CDC that we have a different way of targeting the testing of children under age of six and that different means of targeting that testing is through the assessment that must be conducted in order to comply with the requirements of LB204. The next time I'm on the mike, so I'll direct your attention to it now, I want to direct your attention to another one of the support letters that was submitted by the South Heartland Health Department District in support of LB204 and highlight to you some of the significance of the information contained in that exhibit. Thank you. [LB204]

SPEAKER FLOOD: Thank you, Senator Council, Senator Gloor. Senator Council, you

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may continue. Your light is next. [LB204]

SENATOR COUNCIL: Thank you. Again, directing your attention to Exhibit 8 where behind that tab you'll find a number of support letters. One of those support letters in addition to the support letter from Ms. Howell, there is a support letter from Barbara Baier who submitted her letter of support in her individual capacity, however, my Lincoln area colleagues will know her as a member of the Lincoln board of education. We also had a letter of support submitted by Linda Gardels from the Nebraska Developmental Disability Council because Ms. Gardels and the people she speaks on behalf of are intimately familiar with the affect that blood-lead poisoning has on the development of the brain in young children. Coincidentally, last night I stopped at my local area Walgreens on my way home and one of the sales clerks there is a young woman who works part-time in a project between the Douglas County Health Department and the University of Nebraska Medical Center as a part of Douglas County's lead poisoning prevention program, and she asked me how things were going on LB204. And I explained to her that we were going to have a motion before the body today to override. And she shared with me that just last week the number of phone calls that her area and her program received from educators who were trying to determine whether or not a particular child who was exhibiting some behavioral problems had ever been blood-lead tested and if so whether or not that child had an elevated blood-lead level. Again, the kind of information that is being developed can be accessed by nurses, by health clinics, by the county health department, by Department of Health and Human Services. And she said it came as no surprise to her that with respect to both of the youngsters that she had been contacted with regard to, they both had had elevated blood-lead levels. And the point that LB204 seeks to address is to identify these children as early as possible, provide educational programs and services that may be helpful to enable them to have a successful K-12 educational experience. Again, if you look at Ms. Howell's letter, she shares the excruciating experience she's had during the 14 years of her child's development in trying to get educators to understand the impact of elevated blood-lead levels on her child, his behavior, and his academic success. But I ask you to look at the South Heartland District letter. And for those of you who may not know, the South Heartland District encompasses the health departments in Adams, Clay, Nuckolls, and Webster Counties. And of the data they've collected and as of 2010 of the children who have had blood-lead tests in those counties, 6.7 percent or them had elevated blood-lead levels. Now that doesn't sound like a large percentage but that's almost seven times the national average. The national average is 1 percent. And in these five counties you have youngsters with elevated blood-lead levels at rates that are seven times the national average. And in terms of developing a targeted testing program, the representatives of the South Heartland Health Department District appropriately note: One effective method of addressing this goal of reducing blood-lead poisoning would be to increase rates of screening for lead. Now screening again, some use that term to mean the actual testing, others use that term to mean the risk assessment. Based on our calculations of screening rates... [LB204]

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SPEAKER FLOOD: One minute. [LB204]

SENATOR COUNCIL: ...for children under six, South Heartland rates are low compared to Nebraska as a whole and compared to the United States, but the percentage of screened children testing high for blood-lead levels is greater than the rate for Nebraska as a whole and the U.S. Furthermore, the percentage of occupied housing units in this district were built before 1950, ranges from 41 percent in Adams County to 62 percent in Webster County. This high potential for lead exposure in the South Heartland District underscores the importance of goals to increase blood-lead screening rates. Therefore, the South Heartland District Board of Health supports LB204 as a positive step toward prevention of blood-lead poisoning in our children. We do have a problem in the state of Nebraska with regard to elevated blood-lead levels. [LB204]

SPEAKER FLOOD: Time, Senator. [LB204]

SENATOR COUNCIL: Thank you. [LB204]

SPEAKER FLOOD: Thank you, Senator Council. (Visitors introduced.) Continuing with discussion, Senator Dubas, you are recognized. [LB204]

SENATOR DUBAS: Thank you very much, Mr. Speaker, members of the body. I, too, along with everybody else have received a considerable amount of contact, mainly from my school nurses on this issue. And Senator Council's arguments definitely are compelling but I can't ignore what the questions that they have raised with me, so would Senator Council yield to some questions? [LB204]

SPEAKER FLOOD: Senator Council, will you yield to a question from Senator Dubas? [LB204]

SENATOR COUNCIL: Yes, Mr. President. [LB204]

SENATOR DUBAS: Thank you very much, Senator Council. Among the questions that have been raised is, and I think it's outlined in the CMS guidelines, is why aren't we requiring this earlier? Why not at six months, at a year and a half? It seems to be that's when you could really catch this issue. [LB204]

SENATOR COUNCIL: Okay. And, you know, that's a great question, Senator Dubas, and it's one of the issues that is addressed in one of the articles that said Exhibit 1. I don't disagree with the school nurses that children should be tested along the continuum from zero to age six. And, in fact, the original draft of LB204 provided that the requirement would be to produce...if you had not been assessed at low risk, then you have to produce evidence that the child had been blood-lead tested between ages 18

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months and 48 months. Now interestingly enough, school nurses objected to that. The school nurses said, well, you know, how are we to determine whether the blood-lead test was conducted during that time period. If they just come in and present evidence of a blood-lead test, how are we to determine whether it occurred during that time period? And they raised a very valid point. So the bill was changed in response to that concern but as well in response to the data that shows that even if the child is blood-lead tested at let's say age 12 months or 24 months, if you look at the article, again if they're exposed to lead closer to age six, it has a greater impact on their intellectual brain development. And so by changing, by amending the bill to say you just have to produce a blood-lead test...evidence of a blood-lead test if you are at risk that has occurred before age six. [LB204]

SENATOR DUBAS: Thank you, Senator Council. You have referred to the fact that not all children would...if they answer the questions, they wouldn't have to be required to have the test. But as I look at those guidelines I think the vast majority of children in my district and probably across the state if they answer yes to question one, meaning the age of their home, that basically would constituted their need for a test. Would that be correct? [LB204]

SENATOR COUNCIL: Yes, and if I may continue, that's one of the risk exposure factors. Even if we had a targeted screening program, that would be one of the risk exposure factors that would be utilized in Nebraska, and those children would under other circumstances need a blood-lead test. [LB204]

SENATOR DUBAS: So basically this would encompass a large population of our children across the state because of the age of the home that they're living in. [LB204]

SENATOR COUNCIL: Yes. [LB204]

SENATOR DUBAS: Okay. The cost of the test has been raised, and I think in your packet of information you talk about it being between \$10 and \$20, and the information I've been given is that the test can range up to \$35 to \$40. That's probably different across the state, but where did you get your information from? [LB204]

SENATOR COUNCIL: Okay. My information, Senator Dubas, comes from the Department of Health and Human Services, because currently a Medicaid child when they go in for... [LB204]

SPEAKER FLOOD: One minute. [LB204]

SENATOR COUNCIL: ...EPSDT, the well baby exam, DHHS pays a flat rate to that medical provider. So whether he does or she does or doesn't perform everything in there, the department pays a flat rate. If a blood-lead test is performed, DHHS pays the

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lab who conducts the blood-lead test. And based upon information from county health departments, those lab costs I've been told range between \$10 and \$17. [LB204]

SENATOR DUBAS: Okay. Are there specific counties in the state of Nebraska that have been declared high-risk or has there been any designation of that kind at all given across the state? [LB204]

SENATOR COUNCIL: Okay. And what you may be referring to, Senator Dubas, is the fact that portions of Douglas County are designated as a super fund site because of lead exposure associated with a smelter. And if you look in the risk assessment criteria in the bill,... [LB204]

SPEAKER FLOOD: Time, Senators. [LB204]

SENATOR COUNCIL: Thank you. [LB204]

SENATOR DUBAS: Thank you. [LB204]

SPEAKER FLOOD: Thank you, Senator Dubas. Senator Campbell, you are recognized. [LB204]

SENATOR CAMPBELL: Thank you, Mr. President, and good morning, colleagues. Colleagues, I certainly do support Senator Council in her effort to override the veto. I think that we are embarking on an important phase of trying to ensure protection for children across the state and the more that we learn about this issue, particularly in the age of homes and that this could affect any child in any county across the state, should give us pause to say, what can we do to protect them. My questions this morning with Senator Council are going to take a little different...because I'm trying to assess from the Health and Human Services Committee in terms of the Medicaid portion. And yesterday Senator Council and I had a discussion off the mike and I thought we ought to discuss some of those points. Senator Council, Nebraska has not changed its Medicaid policy and to your knowledge have we tried to collect the data that would be necessary? [LB204]

SENATOR COUNCIL: No, Senator Campbell. Prior to 2009, and if you'll recall when I originally introduced LB204 I spoke to the fact that, and I think it was established in 2007, Department of Health and Human Services established a Nebraska lead poisoning prevention coalition. And they were seeking at that time to develop...one of their objectives was to develop criteria that gave us a better understanding of the risk of children to lead exposure, and regrettably that coalition just dissolved. And it's my understanding that since prior to 2007, Nebraska received CDC funding to perform blood-lead testing for free and we haven't received any of those CDC funds since because we haven't met the data threshold to receive those funds. [LB204]

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SENATOR CAMPBELL: Senator Council, if we were to proceed with LB204, would we begin to have the targeted data that we need? [LB204]

SENATOR COUNCIL: I absolutely believe that we will, Senator, because the children who would have to be receiving blood-lead tests would provide that data associated with what the risk factors are. [LB204]

SENATOR CAMPBELL: Because now as I understand from your conversations on the floor with us essentially we are doing this in some health departments and we have some data, but it's not border to border and in somewhat of a similar vein. Would that be correct? [LB204]

SENATOR COUNCIL: Correct. [LB204]

SENATOR CAMPBELL: Colleagues, this is important because it would seem to me that if LB204, aside from the protection that it would give children across the state who may need very much this testing, it would give us the ability to look at our Medicaid program and our policy here because if CDC has indicated clearly in their 209 that not every child has to be if they go through the assessment and we can figure that out, there may be children right now through the Medicaid program, Senator Council, who are needlessly tested because we're not...we don't have the policy in place that would screen them first. Would that be accurate? [LB204]

SENATOR COUNCIL: That's absolutely accurate and that's one of the reasons for the 2009 CDC recommendations. [LB204]

SENATOR CAMPBELL: So, colleagues, I really do want you to take it in mind and I realize it's difficult because everybody is using different terms. The most important part is that we would assess children first in a series of questions and if there is an indicator, then we would go ahead and screen/test with the blood test. I think a lot of these terms are being confused as we talk about this on the floor. The assessment is so critical because that's the opening step. And if we can get the kind of... [LB204]

SPEAKER FLOOD: One minute. [LB204]

SENATOR CAMPBELL: ...targeted data, it would seem to me that we could also build a stronger Medicaid policy and program. Thank you, Mr. President. [LB204]

SPEAKER FLOOD: Thank you, Senator Campbell. Senator Carlson, you are next. [LB204]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I am

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listening to this debate and certainly looking at correspondence that I have, one being from the school nurses who say don't vote for it, others being from a couple of public health departments that say vote for the bill. And I want to follow up a little bit on what Senator Campbell has said in her testimony and would ask to address Senator Council. [LB204]

SPEAKER FLOOD: Senator Council, will you yield to a question from Senator Carlson? [LB204]

SENATOR COUNCIL: Yes, Mr. President. [LB204]

SENATOR CARLSON: And, Senator Council, what I'm going to ask and what you're going to say is going to be retreading on some of the things that we talked about this morning. But for us to get a better understanding of what all this really means I think it's important because in your information, your material here reacting to the Governor's letter, the fact is LB204 does not require all students to have undergone blood testing versus being assessed for risk. Now you've gone over this but help me be clear on it so that I understand it. What's the difference between a blood test and an assessment for risk? [LB204]

SENATOR COUNCIL: Okay. In order to put it in context, the assessment occurs first, Senator Carlson, or should occur first, and that is the medical provider asking the series of risk assessment criteria questions. And then based upon the responses to that, the medical provider determines whether the child is at risk of an elevated blood-lead level and if so, then the test is performed. The test more often than not consists of a finger poke. There are occasions where there has to be a venous draw but those are rare. So that's the difference. The assessment is what is the determining factor as to whether or not the finger poke occurs. [LB204]

SENATOR CARLSON: Okay. Now under your paragraph here it says if the parent or guardian...you say it shall not be required because if the parent or guardian provides a statement from an authorized medical provider that the child has been assessed for risk and determined to be a very low risk, then they don't have to be tested. Now but then you go on to say the practical effect of LB204 is to require that all children be assessed for risk. So, again, filling out that form and the medical person or the doctor says they're low risk, they do not have to have the blood test. Is that true? [LB204]

SENATOR COUNCIL: That's correct. [LB204]

SENATOR CARLSON: You mentioned about these public health in South Heartland, what five counties...would you repeat those five counties that were high in incidents? [LB204]

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SENATOR COUNCIL: Those five counties are Adams, Clay, Nuckolls, and Webster. [LB204]

SENATOR CARLSON: Okay. And three of those are in my district. So as I stand here listening to this debate, that's the uncomfortable position, but I'll continue to listen and make the best vote that I can. Thank you, Senator Council. [LB204]

SENATOR COUNCIL: Thank you, Senator Carlson. [LB204]

SPEAKER FLOOD: Thank you, Senators. Senator Sullivan, you are recognized. [LB204]

SENATOR SULLIVAN: Thank you, Mr. President, and good morning, colleagues. I sit on the Education Committee and I was one of the positive votes to send this bill out to the floor. I sure wish the school nurses had been at the table during the committee hearing. You know, there's great value in hearing testimony in a committee hearing because then you have what amounts to be a two-way conversation. We didn't have that. There were absolutely no opponents at the committee hearing on LB204 and I think that's regrettable. Be that as it may, the school nurses have weighed in, and several of them including I think one of the co-presidents of Central Nebraska School Nurses Association is in my district. And I've taken...I've read the constituent communications, I've taken them to heart and studied them and pondered them. You know, one of the cases that they make is that blood-lead testing is different than immunizations because immunizations deal with communicable diseases and I can't argue with that. The other one statement was made something to do with the fact that vision evaluations are conducted for young people and that's a statewide health concern. Well, that sort of struck a chord with me because I have to say that maybe this discussion on blood-lead levels is also a statewide concern. So that sort of made me be...continue to be torn on this issue because even though some would make the case that we don't have as many problems with older homes in rural Nebraska, even if this testing can impact in a positive way the life of one child, I think that might be a good thing. I do have a couple of questions though for Senator Council if she would yield. [LB204]

SPEAKER FLOOD: Senator Council, will you yield to some questions from Senator Sullivan? [LB204]

SENATOR COUNCIL: Yes, Mr. President. [LB204]

SENATOR SULLIVAN: Thank you, Senator Council. We've heard a lot of discussion about the different terms--assessing, screening, testing. I wonder if you would just give me the scenario of parents getting their child ready to go to kindergarten and with this...if this legislation were in place, how that would play out. [LB204]

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SENATOR COUNCIL: All right. And this is how it would play out, Senator Dubas. [LB204]

SENATOR SULLIVAN: Sullivan. (Laugh) [LB204]

SENATOR COUNCIL: A parent with an infant ordinarily goes in periodically for well baby exams, and those are the exhibits that I've shown you--the 9 months, 12 months, 18 months. And at various points along that process there will be a lead risk assessment performed. And if the child is considered at risk of elevated blood-lead levels there will be a blood-lead test. So the same time that that immunization is being administered, that parent is going to obtain evidence as to whether or not their child is at risk of elevated blood-lead levels. And if the risk assessment shows that they are, I can't think of any parent who's not going to authorize the doctor to do the finger poke to determine whether or not the child is lead poisoned. [LB204]

SENATOR SULLIVAN: And then what would happen if it's identified that the child does have high blood-lead levels? What's the next step? [LB204]

SENATOR COUNCIL: And now under the bill, and this is one of concerns that was addressed by the Education Committee last year, at that point in time the Department of Health and Human Services already receives reports of all elevated blood-lead levels. So they already have that database. So if that child tests positive...I mean, excuse me, tests with an elevated blood-lead level, the Department of Health and Human Services receives that information, and under LB204 then is charged with providing information to the parent or guardian of that child which currently under Medicaid they have to do in any event... [LB204]

SPEAKER FLOOD: One minute. [LB204]

SENATOR COUNCIL: ...that provides that parent or guardian with information regarding any educational services and programs that are available to that child at that point in time. Say the child had the elevated blood-lead level identified at 36 months. There are educational programs available to that child if they are assessed and determined to have already been experiencing some developmental brain delay. It also requires them to provide parents or guardians with information with regard to services available to help them remediate the lead exposure in their environments. [LB204]

SENATOR SULLIVAN: Thank you very much, Senator Council. I don't know how this vote is going to end up but I do know one thing. I hope that the school nurse association will be at the table as we go forward irrespective of how this legislation plays out because I think there is a concern. They've expressed that there is a concern that needs to be addressed. [LB204]

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SPEAKER FLOOD: Time, Senators. [LB204]

SENATOR SULLIVAN: Thank you. [LB204]

SPEAKER FLOOD: Thank you, Senator Sullivan. Senator Christensen, you are recognized. [LB204]

SENATOR CHRISTENSEN: Thank you, Mr. President. Would Senator Council yield to a question please? [LB204]

SPEAKER FLOOD: Senator Council, will you yield to a question from Senator Christensen? [LB204]

SENATOR COUNCIL: Yes, Mr. President. [LB204]

SENATOR CHRISTENSEN: Did I hear you correctly earlier when you said that most of the children that have the lead poisoning are Medicaid patients? [LB204]

SENATOR COUNCIL: I told you at this point in time we are unable to determine in the state of Nebraska whether Medicaid-eligible children are at greater or lesser risk of exposure to elevated blood-lead levels. That's one of the reasons we are still required to test all Medicaid-eligible children. [LB204]

SENATOR CHRISTENSEN: They are being tested is what you said but we don't know if that's where all the majority of the children are following that are being. [LB204]

SENATOR COUNCIL: Correct. [LB204]

SENATOR CHRISTENSEN: Okay. I just wanted to get that corrected or understood that correctly so I can have a better vote here, and if you'd like my time I'll yield it to you. [LB204]

SENATOR COUNCIL: Thank you very much, Senator Christensen, and I appreciate the question because that's a very important question, and that was one of the concerns expressed by the Governor when I met with him to seek clarity of the objections set forth in his veto message. And that is while we are currently required to test all Medicaid-eligible children under age six he has a legitimate concern that we're not unnecessarily subjecting non-Medicaid-eligible children to blood-lead testing. But first and foremost we have yet to determine what the risk is for elevated blood-lead levels among the non-Medicaid population. And we do have data that shows the number of elevated blood-lead levels that are the result of the testing of Medicaid children, but in terms of the testing of non-Medicaid-eligible children, to my knowledge we haven't

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assembled all of that data from the county health departments and others across the state. I did want to take an opportunity to address a concern that was a part of Senator Dubas' question to me as to whether there were particular areas of the state where children are at greater risk than others. And I noted that Douglas County has been designated as an Environmental Protection Agency super fund site because of the concentrations of lead in the soil there which is deemed to be associated with the former operations of a smelting facility. If you look at the CDC guidelines, DHHS's guidelines, the Iowa Department of Health risk assessment, your proximity to a smelter or a battery plant or any facility, industrial facility, that produces lead is an indicator of risk. But I wanted Senator Dubas to know that when the EPA was asked to come into Douglas County, it was based upon the number of elevated blood-lead levels that were being identified by...through the Douglas County Health Department. But if you look at Douglas County Health Department data of the children who they have evidence of elevated blood-lead levels, according to the Department of Health's assessment of those children, more than 90 percent of those children's exposure came from lead-based paint. So, again, it's the housing stock that is as significant a determinate of a child's exposure to risk, as are the other factors. And in that regard, one of the school nurses raised a concern about why the risk assessment criteria in LB204... [LB204]

SPEAKER FLOOD: One minute. [LB204]

SENATOR COUNCIL: ...contains some questions that aren't found in the current DHHS guidelines or some other guidelines, and I need to point that out to you. That's because this is an evolution and that's what CDC is asking states to do, determine what your risk factors are. And many states have identified a correlation between elevated blood-lead levels and children who are new to the country and have come to the country or spend a considerable amount of time outside the country in countries where lead is still lawful to be used in a number of consumer products. So that's why the addition of that question is a part of the assessment. And quickly I want to thank my colleague Senator Schumacher for pointing out an error in the original draft of LB204. When it came to the risk assessment criteria, there was an "or" there that absolutely and most assuredly needed to be an "and." [LB204]

SPEAKER FLOOD: Time, Senator. [LB204]

SENATOR COUNCIL: Thank you. [LB204]

SPEAKER FLOOD: Thank you, Senator Council. Senator Gloor, you are recognized. [LB204]

SENATOR GLOOR: Thank you, Mr. President. Good morning, members. I will admit that when this bill was vetoed my interest and support for this bill began to waiver. And the question I asked myself was is this really a law in search of a problem. And so as I

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said in my first comments, I sat down and reviewed the material I had, some of which was from healthcare providers, some of which Senator Council provided to us, and then armed with this packet was able to go back and relook at some of the issues. And, members, I have to tell you, I will be in support of the motion to override because I've convinced myself that this is a problem and this is an issue. And people are making this issue more complicated than it needs to be. We have a system in place. We already are supposedly or should be doing some of these assessments. We have forms already printed up. We have a survey instrument that's already available. These are things that we already are doing, at least in some components of society, for our children. Senator Council made reference to it, but I had a bill on consent agenda. Hate to have to say the term again but syndromic surveillance was the title of the bill which, again, plugs into the NeHII system, the health information system we have developed at the state that links hospitals and physicians offices. And so part of the assessment we do for immunizations, part of the access we have to immunization records which will include assessments on lead screenings, we'll also include whether lead testing has been done, all this information will be easily accessible, if not right now as time goes by. Ultimately everybody who needs to, appropriately, will have access to this information. This issue isn't complicated. And the bigger issue here is, I am convinced, that this is a public health issue and not just in urban areas of our state, also in rural areas of our state. Senator Wallman and I were having a little discussion and he asked a great question which is, and so what if we find out that we have elevated lead levels for our children. And that's a great question to ask. So what? I think the answer to that is twofold. As a parent, wouldn't you like to know that your child is being poisoned because that's what's happening with elevated lead levels. As a parent, wouldn't you like to know if your child is being poisoned? And if we have strong suspicion that that's going on in this state, it's worth asking and gathering additional information on. And as a legislative body, if our citizenry, especially our children, are being poisoned, shouldn't we know about that so that we can put together appropriate action to try and address it? Because what we're doing now is not treatment. What we're doing now is simply trying to get a measure of the scope of the problem and giving that information to parents so that they can know their children are being poisoned. That's the reason I think it's important for us to override this veto and to begin what would be a more thorough collection of the information and getting that information out to parents and the public health officials. Thank you. [LB204]

SPEAKER FLOOD: Thank you, Senator Gloor. Senator Nelson, you are recognized. [LB204]

SENATOR NELSON: Thank you, Mr. President and members of the body. It's been an interesting discussion. I had just listened to Senator Gloor and I will have to say that the Governor's veto only fortified my opposition to this. And I...Senator Council is very earnest in this and very well-intentioned I know, but I just have to say I've had reservations from the very beginning that this was overkill. If you have an opportunity

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and have brought your file along, I hope you still have this blue sheet in the file and you might want to take a look at that because I'm going to get to that in just a moment. It seems to me that one of the crucial things here is the risk assessment. And the risk assessment is a questionnaire that somebody's going to have to draw up and it's going to be presented I suppose by the physician or the nurse. And if you take a look at those questions and if you put yourself in the place of a parent, how are you going to answer those? Has not lived or spent significant time in any building built before 1960? What's significant? One of the...I'm from Douglas County, just as Senator Council is, and we have homes there that are built earlier than 1960 and we have them all across the state. The problem is not in the age of the home, it's in the condition of the home and in the paint and whether the paint is crumbling or peeling. That's where the danger is. And I personally have observed crumbling paint in a lot of older homes and, yes, children are at risk there. But you go all the way across Nebraska and I think most of your farm houses and other homes go back 70, 80, or 90 years. If they are well-maintained and kept up, there's not going to be a problem from lead paint poisoning. I, too, have read the letters here from the school nurses and, again, as Senator Dubas says, I don't know why they weren't at the table but I think what they have to say is very compelling. They're out in the field, they're there observing, and I give a lot of credit to the arguments that they have. Back to the risk assessment here, there are other questions that I don't know how you could answer. Has not eaten nonfood items? Has not come in contact with an adult who works with lead on some job or some part? Has not ingested food, candy, or remedies containing lead? Has not played with toys, jewelry, or other items recalled by the United States? How is the average parent going to know how to answer that? And what's the doctor going to say? I submit to you that 100 percent of the time as a result of that assessment as is presented in this bill both the parents and the doctor are going to be reluctant to make a statement that might not be true or they might not know. Consequently, there's going to be testing. It's going to be universal across the state and it's not needed as far as I'm concerned. If you have located this graph or presentation that Senator Council put out early on in the bill, I want to point to what's already been addressed. Adams County, Clay County, Nuckolls, and Webster. Things haven't changed there. There's either no blood level...elevated blood level. There's 2 out of 13 in Adams County. I think there were 9 out of 262. Clay had 1 out of 15. Yes,... [LB204]

SPEAKER FLOOD: One minute. [LB204]

SENATOR NELSON: ...that's about 6 percent, but that puts it in perspective. That's not a pandemic or an epidemic. If you look at the dark blue Douglas County and Lancaster, Scott Bluff, yes, there's a problem there and we already know about that and there's a lot of testing whether there's an assessment or not. And this is why I think the bill is flawed. I think if we're going to go after this, it ought to be on a targeted basis, not requiring everyone across the state, every child that's going into school have to take this test at a cost to the parents which may go anywhere from \$17 on up and require extra

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paperwork, extra trouble with the schools. If Nebraska has not developed a program so far, then let's get on with that. Let's develop that program and let's submit something and... [LB204]

SENATOR COASH PRESIDING

SENATOR COASH: Time, Senator. [LB204]

SENATOR NELSON: ...get underneath this program. Thank you. [LB204]

SENATOR COASH: Thank you, Senator Nelson. Senator Council, you are recognized. [LB204]

SENATOR COUNCIL: Thank you, Mr. President. And I take this opportunity to respectfully disagree with my colleague Senator Nelson. You know, it's almost interesting what is good for the goose oftentimes isn't good for the gander. The questions that are set forth in the risk assessment criteria in LB204 parallel those that are required of Medicaid-eligible children. So, you know, if the issue is that we are unnecessarily subjecting children to unwarranted blood-lead testing, we're doing that now. And what LB204 does is move us further away from engaging in universal blood-lead testing by developing the kind of information that is needed for us to be targeted. And, in fact, I submit to you LB204 is a targeted testing program because these youngsters are going to be assessed by their medical provider. Now Senator Nelson is also suggesting that medical providers aren't wanting to be bothered with asking these questions or developing the information from parents. Again I submit to you that these survey questions are questions that are routinely a part of the well baby exam whether or not the child is Medicaid-eligible or not. That these determinations and assessments are being made. Again just by way of example the support letter in the packet from Ms. Howell, and some would say, well, Ms. Howell lives in Ohio. Well, we've oftentimes brought in examples from other states. But the point that I think is significant from what Ms. Howell said had to do with the point that Senator Nelson makes about the condition of the home. Yeah, Douglas County, Lancaster County, across the state we have a number of older homes and a lot of young professionals, for example, like to purchase those older homes and engage in renovation. Once they start disturbing, as you described it, that well-maintained structure they expose their child to the risk of lead poisoning. That is, in fact, the case that happened with Ms. Howell. They purchased what was a sound structure, well maintained, they wanted to renovate it. And unaware of the fact that because it was constructed prior to 1960 that the likelihood that it contained lead-based paints, once they began to renovate that property they had no idea that their child was at risk of lead exposure until the child was assessed and tested and found to have four times the level of lead in their blood as CDC currently identifies as blood-lead poisoning. And in that regard CDC, since we're talking about their recommendations, yes, they changed their recommendations in 2009 with regard to

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targeted testing as opposed to universal testing. They also are changing their guidelines as to what places a child at risk of lead poisoning. That number is coming down from 10 closer to 5 micrograms of lead per deciliter of blood. So we have a greater risk of children in the state of Nebraska being subject to blood-lead poisoning. And in regard to the data on the blue map,... [LB204]

SENATOR COASH: One minute. [LB204]

SENATOR COUNCIL: ...I recall my colleague Senator Haar/Harr then distributed a chart that showed what percentage of the children in that county were actually being tested. And it ranged, if I recall because I don't have it right in front of me, was from .02 percent to maybe 5 percent. So what we're looking at here is an opportunity to ensure that all children before they enter kindergarten are at least assessed for their risk of exposure to lead and in the case where it's necessary to be blood-lead tested. And, quite frankly, if the data that is collected as a result of LB204 shows that despite the percentage of older housing stock in the state of Nebraska, we're not seeing the kind... [LB204]

SENATOR COASH: Time, Senator. [LB204]

SENATOR COUNCIL: Thank you. [LB204]

SENATOR COASH: Thank you, Senator Council. Senator Dubas, you are recognized. [LB204]

SENATOR DUBAS: Thank you very much, Mr. President. I'm going to make just a series of some comments with some questions interspersed and then will yield the remainder of my time to Senator Council to follow-up with the comments that I make. As I'm listening to this conversation this morning I tend to agree with what Senator Gloor said. You know my support started to waiver with the objections that were raised. But this has been very good dialogue this morning in getting the facts out. So as I am listening to the points that are made this morning, this bill does not require, does not mandate across the board testing for blood-lead levels. It does require the assessment. And then from the assessment the determination for testing would go. It appears that we need this statewide information. We're gathering the information from those people who are Medicaid-eligible, but we don't have a good broad border-to-border understanding of what...if blood-lead levels are indeed as serious as they may appear to be. And then, I guess, it's my understanding that we need to put this policy in place to eliminate unnecessary testing, testing that may be going on now that doesn't necessarily have to be going on. So we tend to have a patchwork approach as it sounds to me right now. And then finally, I guess, I'd like to know what happens if we don't pass LB204? What happens if this bill goes away? Where are we at? And if this bill does advance and go forward, based on the concerns that have been brought forward by the

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school nurses and others, I would pledge my support to come back and do whatever needs to be done to address those concerns. So I would yield the remainder of my time to Senator Council. [LB204]

SENATOR COASH: Senator Council, 3 minutes 8 seconds. [LB204]

SENATOR COUNCIL: And thank you, Senator Dubas. And, Senator Dubas, I want to thank you for pointing out some very relevant and critical facts with regard to this bill and where it goes. And I also want to take this opportunity to talk about, you know, what could happen down the road. Let's use for example the current risk assessment criteria that says have you resided, spent any significant time in a home built before 1960. If the data that begins to be collected as a result of LB204 indicates that that is not as much of a risk factor as it's been believed to be, that question will no longer be part of our risk assessment criteria. That's how risk assessment criteria are developed, based upon the number of incidents of children being discovered to have elevated blood-lead levels as a result of being in those conditions. So if we begin to collect the data that LB204 allows us to collect, we may very well see a need to change the assessment criteria. And that at the point in time when DHHS is ready to go to Medicaid and say change it, they will have a new set of risk assessment criteria that will more focus the targeting of lead testing on the children who are at greatest risk for that blood-lead testing. And again, colleagues, the intent here is to protect our children and to protect our children across the state and provide them with the greatest opportunity to enter school ready to learn. You know, many of you come from education, many of you recall the "Nation At Risk" report that was released in 1986. And one of the priorities of that was to ensure that children are ready to learn when they enter school. That's one of the intents of LB204... [LB204]

SENATOR COASH: One minute. [LB204]

SENATOR COUNCIL: ...is to ensure to the greatest extent possible that all of our children are ready to learn when they enter school. And if they are not ready to learn by virtue of an environmentally imposed condition that we have an opportunity to remediate that condition. Somebody asked the question, okay, so my six-year-old is getting ready to enroll in kindergarten and they have an elevated blood-lead level. So what does that mean? That child has already been poisoned. Well, do you have siblings? Are you still residing in that home? Is that child still going to be in an environment where they are subjected to lead exposure? I, as a parent, would want to know that. And I, as a parent, would want to take the steps necessary to remediate that condition to the greatest extent possible. And oftentimes it doesn't require a complete renovation of a home, it requires the administration of appropriate cleaning methods. [LB204]

SENATOR COASH: Time, Senator. [LB204]

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SENATOR COUNCIL: Thank you. [LB204]

SENATOR COASH: Senator Hansen, you are recognized. [LB204]

SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. I have some questions for Senator Council if she would yield. [LB204]

SENATOR COASH: Senator Council, will you yield? [LB204]

SENATOR COUNCIL: Yes, Mr. President. [LB204]

SENATOR HANSEN: Good morning, Senator Council. [LB204]

SENATOR COUNCIL: Good morning. [LB204]

SENATOR HANSEN: Your Exhibit 2 or example 2 here in the packet that you handed out goes over a group of forms in the well care exam. And it says that it's suggested by the American Academy of Pediatrics, the Centers for Disease Control, the American Medical Association and other professional organizations. These range from 12 months of age up until, if I've got this marked right, until 4-year-olds. Every one of those tests...every one of these forms has something to do with testing lead. Is that...what does that...what does this set of forms fulfill in the role of finding out blood level...lead in the blood for Nebraskans? [LB204]

SENATOR COUNCIL: Okay. And, Senator Hansen, I submitted those documents because one of the concerns expressed by the school nurses was the cost to parents of...they view this bill as requiring something additional to be done aside from what is already required to be done. Those forms show that what's being requested of LB204 should and more often than not is being done at the same time that any other requirement, the physical exam for enrollment, the immunizations for enrollment. And the forms show that, you know, you only have to have a lead test if the doctor says it's necessary and you haven't had one before. So it was to show the connection, the interrelationship between immunization and blood-lead testing. [LB204]

SENATOR HANSEN: If a child is tested at 4, according to this time line, these sheets, would they be necessary to be tested again for lead upon entering kindergarten even two years later? [LB204]

SENATOR COUNCIL: No, sir. They could use that test that was conducted at age 4 to meet the requirement of LB204. [LB204]

SENATOR HANSEN: Okay. Thank you, Senator Council. I did check with our west district...West Central District Health Department and see what they did for child

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vaccines. And they just give the usual amount where at 2, 4, and 6 months they have several immunizations. Again at 12 months, 15, 18 months, 4, and 6 years old, clear up to 11 through 18 years of age. We just found this morning in my office that a young boy that happens to live in Omaha, at 2 years of age he was tested for lead and this was because he lived in a particular zip code in Omaha. He was tested for lead and found out to be lead-free. And then at 24 months, two days before his 24-month or his 2-year birthday he was found out to be autistic. And then at that time they did another blood test for lead and found to be very high. So whether more testing on a local level, on an identified level if the Health Department in Omaha finds out that by zip codes the high risk area, and I don't know where this is in Omaha, but according to the map that Senator Nelson pointed out the risk is certainly in those highlighted areas and not necessarily around the state. [LB204]

SENATOR COASH: One minute. [LB204]

SENATOR HANSEN: One last question I would have for Senator Council is that the doctor liability issue. And that if we pass LB204 and override the Governor's veto, is this not going to have an effect on doctors where they come and they do their checkup, preschool checkup, that if they don't do that lead test that in two years that child shows up to be a slow learner from...may not be lead or what, but isn't the liability on that doctor there? Do you see any potential for every child in a preschool situation, preschool exam being tested for lead across the state? [LB204]

SENATOR COUNCIL: And in response to that concern, Senator Hansen, I did speak with representatives of the Nebraska Medical Association and pediatricians with regard to that... [LB204]

SENATOR COASH: Time, Senators. Thank you, Senators. Senator Ashford, you are recognized. [LB204]

SENATOR ASHFORD: Thank you, Mr. President. How many speakers are there on the queue? Four? All right. I'll try to confine my comments to some brief thoughts here. I am going to ask Senator Council a couple of questions but first of all, I think again we are dealing with a small, obviously, a small General Fund appropriation issue. What is clear to me is that when we make decisions like this what's important is that we listen to what's presented to us. And then based on what is real and what the evidence suggests that we should make our decision. We clearly are, in this case we have been given...the burden has been met by Senator Council and others who have talked on this issue in my mind. And I thought Senator Campbell's comments were right on. What my interest is, is obviously helping these children. But also my interest is in as we become more and more embroiled in the Medicaid discussions on the state level that we have good baseline data on what we're talking about. I'm going to ask Senator Council, if she would, just very specifically again, I know she's answered this so I apologize to the body

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for the redundancy, but if she would tell me, tell us again what data is...are collected in this process under LB204? [LB204]

SENATOR COASH: Senator Council. [LB204]

SENATOR COUNCIL: Yes, thank you, Mr. President. What would be available under...as a result of LB204, Senator Ashford, certainly there would be more evidence of where children with elevated blood-lead levels are more likely to be encountered and thus would help to frame the risk factors that would guide a targeted testing program. And so with the data that could be collected here as the South Heartland Health Department district indicates that the more screening and lead testing that is conducted the greater information that you have available to help you develop and target your programs to prevent lead poisoning. [LB204]

SENATOR ASHFORD: Thanks a lot, Senator Council. And I have been so interested in the work that Senator Campbell has done and the entire Health Committee in focusing on prevention and intervention strategies. This state and this Legislature has moved so dramatically in the last five years towards intervention and prevention, especially for youth and in the youth healthcare area. And it's such an amazing transformation. As we think about and we hear every day in the national news, as Congress wrestles with how are we going to contain healthcare costs, while we do know that a significant amount of Medical healthcare costs are expended with retired persons. We know about 70 percent of the cost is at that level in Medicaid. But around 30 percent then, I guess logically, would be money that is expended for youth and for juveniles. We really must, must start to set more than...continue to set the platform in place as we are required to make more and more Medicaid decisions at the state level. It is coming, whether it's Congressman Ryan's bill or the President's initiative or whomever. The Medicaid issue will continue to flow down here. And we cannot sustain 10 percent, 11 percent, 12 percent, 14 percent increases in healthcare costs into the next 10 years or 20 years. I know that since I left the Legislature in the mid nineties... [LB204]

SENATOR COASH: One minute. [LB204]

SENATOR ASHFORD: ...the most amazing thing that I've seen, of course, is the expansion of the Medicaid budget. That is what has changed the most. It's dramatic, we all know it. So what Senator Council is recommending and what Senator Campbell, I think, is talking about and Senator Dubas as well who was so involved in safe haven is that we have to think thoroughly about creating that platform for making Medicaid decisions. This is a step towards that. The data are important to gain just that alone is worth of my vote, I think, to override. Thank you, Mr. President. [LB204]

SENATOR COASH: Thank you, Senator Ashford. Senator Brasch, you are recognized. [LB204]

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SENATOR BRASCH: Thank you, Mr. President. And thank you, legislative body. I spoke with Senator Council earlier this morning. I will not...I will be a red vote on the override. This weekend I happened to speak with more constituents and I also turned on Dr. Oz. And it just happened that he was talking about lead poisoning. But what he was recommending, and he showed there are test kits, and he was concerned because a mother had been boiling water for formula in a flowered tea kettle, similar to my coffee cup. Now I wonder about my coffee cup (laugh). And from that lead poisoning was coming through. And he suggested that families, people have the test strips. And I got out my iPad this morning and also researched the test kits, lead on surface test kits, easy to use, convenient test, easy to conduct. So it's beyond the houses, it's an item...and in talking with mothers also on the subject they would like it to be their decision with that. They would like to ask their doctors if their child should be tested for lead. My legislative aide brought up a Web site for me that shows there are 20 more things more dangerous than lead poisoning in your children. And that listed also things to be concerned about. Very respectfully I believe that it is important that we watch for things in our children for their good health, their well-being as infants and into their adult years. And I am going to be a red. But I do thank Senator Council for her work and diligence in bringing this forward. Thank you. [LB204]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Thank you, Senator Brasch. Senator Schumacher, you are recognizes. [LB204]

SENATOR SCHUMACHER: Thank you, Mr. Speaker. While I was waiting for my number to come up here I got an e-mail from a person who is quite experienced and well respected in the public health community regarding this bill. And if I can share it in a moment, thought I would throw in some input on the lead bill. We used to test at random about 300 low-income kids a year in our area. We did find about 10 positives in three years. So the rate is low in our area. The other issue is that the bill tests kids way too late to have a real impact on reducing problems with long-term learning. I voted for this proposition on General File. I think there's a problem that's been shown. However, I articulated what I thought to be the problem with the bill and that is it is overly broad. We are in a world of limited resources. We cannot have 100 percent perfection on everything. We have to use our resources and target them wisely where we can get the most bang for our buck. I think this one, as I ponder it, resolves that we are not focused enough in the direction of our efforts. And it needs more work. Certainly, we should do something. But at this point what this bill does is require every kid to be tested. Now you can say, wait a minute. You can go through this whole long checklist and if they don't trigger any of them some doctor is going to say, well, this kid doesn't need to be tested. But among the things in that checklist are that they've never ingested a nonfood product. It would be un-American for a kid not to have eaten dirt or grass at some time

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in its life. And every doctor is going to resolve that question in favor of the \$17 or \$18 test. So as a practical matter and probably trying to avoid a little malpractice in case he's wrong on something, everybody is going to get tested at least one time. Now it seems to me making that mandatory when there is a very low probability in some areas is not focused. There should be some statistical test, there should be some other measure that would determine the need to test or what areas to test in. And the question was asked quite justifiably, what happens if this doesn't pass? You know, what happened to personal responsibility? If it's a \$17 test, then, mom or dad, forget a trip to the hamburger shop and the shakes and the fries and go have your kid tested if you're concerned. Why does the government have to get in the middle of all this, particularly when there's a miniscule risk in many areas? So I think that we need to go back and look at this bill again and we need to focus in on the areas where there may be a problem because there was a lead factory in the area or there's a high incidence of a risk and adjust our focus accordingly. And I think I'm going to vote to sustain the veto of the Governor. Thank you, Mr. Speaker. [LB204]

SPEAKER FLOOD: Thank you, Senator Schumacher. There are no other lights on. Senator Council, you're recognized to close on your motion to override the gubernatorial veto on LB204. [LB204]

SENATOR COUNCIL: Thank you, Mr. President. And I appreciate the level of debate and the discussion that has occurred on this bill. I respect the opinions of those who disagree with my belief that this bill is necessary for this state and its children at this point in time. I want to respond. I was just handed an e-mail from someone who's apparently watching the debate and has suggested that I'm misleading the Unicameral regarding the bill's requirements for blood level testing. I will repeat, LB204 specifically provides that a blood-lead test shall not be required for enrollment if a child presents a statement signed by a healthcare provider that the child is not at risk of elevated blood-lead levels. I would urge this viewer, this concerned citizen, and I respect your opinion, to please read that section of the bill. It specifically says, shall not be required under those circumstances. So the statement I made that what the practical effect of LB204 is to require a risk...exposure risk assessment is accurate because one cannot avoid the requirement of a blood-lead test without having had the assessment. I believe and I agree with the Governor and those who believe that we should be moving towards aligning our practices with regard to blood-lead testing with CDC recommendations. Again, as I noted at the beginning, we are nowhere close to the point of undertaking that. Senator Schumacher made some appropriate comments and some rather critical comments with regard to, you now, so what happens if this bill doesn't pass? And my question is, what happens if it does? And what has happened in those states where it has passed? And I would direct your attention to Iowa where they have seen no substantial increase in costs and in fact the cost of blood-lead tests, the laboratory testing in Iowa has dropped significantly since the passage of a bill similar to LB204 which they passed in 2007. And again, unlike the state of Nebraska, the state of Iowa

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has conducted the kind of research, data collection and surveillance information required to receive a waiver for Medicaid. But their data showed that children are at risk of blood-lead poisoning across the state of Iowa. And I submit the same situation exists here. Senator Brasch mentioned the blood-lead strip. Yeah, I mean, we're evolving to that point medically where those kinds of tests can be conducted, and I can't think of the actual medical term for the strip. But in Iowa more and more of the physicians are moving to that process when children come in for a well baby exam. Yeah, the fact of the matter,... [LB204]

SPEAKER FLOOD: One minute. [LB204]

SENATOR COUNCIL: ...ladies and gentlemen, is parents are not going to be relieved of the obligation of ensuring the health of their children. As Senator Schumacher said, this is personal responsibility. They're not going to be relieved of the obligation of ensuring to the greatest extent possible the health of their children. But when we as government know of a risk that exists to our children, an environmental risk, I believe we have an obligation to step in and ameliorate that risk to the greatest extent possible. LB204, I submit to you, accomplishes that result. I would urge your favorable vote on the motion to override. Mr. President, I request a call of the house and roll call vote in regular order. [LB204]

SPEAKER FLOOD: Thank you, Senator Council. There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed nay. Mr. Clerk, please record. [LB204]

CLERK: 36 ayes, 0 nays to place the house under call. [LB204]

SPEAKER FLOOD: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senators Coash, Cornett, Mello, please check in otherwise or return to the floor. Senator Mello. Senator Council, all members are present or otherwise accounted for. How do you wish to proceed? [LB204]

SENATOR COUNCIL: Roll call vote in regular order, please. [LB204]

SPEAKER FLOOD: Members, the question before the body is, and I should remind the Legislature, this does require 30 votes. The question is, shall LB204 become law notwithstanding the objections of the Governor? Mr. Clerk, please read the roll in regular order. [LB204]

CLERK: (Roll call vote taken, Legislative Journal page 1398.) 21 ayes, 20 nays on the motion that LB204 become law notwithstanding the objections of the Governor. [LB204]

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SPEAKER FLOOD: The motion fails. I raise the call. (Visitors introduced.) Mr. Clerk, do you have any items for the record? [LB204]

CLERK: I do, Mr. President. Your Committee on Judiciary, chaired by Senator Ashford, reports LB669 to General File with committee amendments attached. Natural Resources Committee offers a confirmation report, signed by Senator Langemeier as Chair. And an amendment to LR40CA to be printed by Senator Christensen. That's all that I have, Mr. President. (Legislative Journal page 1399.) [LB669 LR40CA]

SPEAKER FLOOD: Thank you, Mr. Clerk. Given the motion to override the Governor's veto on LB204 having failed, the Chair will pass over LB204A and, Mr. Clerk, we now proceed to Select File, 2011 senator priority bills, Price division. We begin with LB575. [LB575]

CLERK: LB575, Senator Larson, I have Enrollment and Review amendments first of all. (ER99, Legislative Journal page 1320.) [LB575]

SPEAKER FLOOD: Senator Larson, you are recognized for a motion. [LB575]

SENATOR LARSON: Mr. President, I move that the E&R amendments to LB575 be adopted. [LB575]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. The E&R amendments are adopted. Mr. Clerk. [LB575]

CLERK: Senator Mello would move to amend with AM1355. (Legislative Journal page 1377.) [LB575]

SPEAKER FLOOD: Senator Mello, you're recognized to open on AM1355. [LB575]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. AM1355 appropriations \$26,900 from the Education Innovation Fund, traditionally known as the lottery education fund, to take care of essentially the fiscal note that was always associated with the underlying legislation, which is LB575. Senator Price, I think, did a very admirable job of discussing the financing of this legislation on General File in which more predominantly the Bellevue and Offutt community has offered to come forward and raise private funds to help pick up the costs associated with the military compact. In conversations with Senator Price, Senator Adams and Senator Heidemann, I have made the argument that I think in the sense of trying to revive both the Bellevue community the ability to continue to raise that private funds, that the state should at least ensure that we pick up part of their first year costs of that military compact through what is right now existing, unused funds in the Education Innovation Fund. Since the

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underlying bill is Senator Cornett's bill which would have appropriated General Fund dollars, really it follows along similar lines of what Senator Cornett introduced instead of taking the General Fund dollars, to take it from the second year of the biennial budget, that \$26,900 from the Education Innovation Fund. So once again, if the Bellevue community is unable to raise the necessary funds that first year, it would allow the state then to be able to put forward essentially the ability to remove themselves from the compact if they're not able to fund it, thus the state would not provide funding. But it does build a little sustainability in the sense of providing that Bellevue community, Offutt community a little bit extra time to raise the necessary funds for the long-term health of paying for what is LB575. With that, I urge the body to adopt AM1355. Thank you, Mr. President. [LB575]

SPEAKER FLOOD: Thank you, Senator Mello. Members, you've heard the opening to AM1355. We now turn to discussion on the same. Senator Adams, you are recognized. [LB575]

SENATOR ADAMS: Thank you, Mr. President, members. I'm going to be supportive of the amendment. However, I want to throw out a caution. What this amendment is going to do is to, in effect, delay implementation so that outside resources can be devoted to a cash fund which would eventually pay for this. And most probably this bill would have had difficulties, I think, even getting out of the Education Committee had we not worked out that mechanism for an infusion of outside money. There is need for time to raise that money. I'm willing to certainly go along with that. The part that I have the greatest reservation about is dipping into the lottery money that is committed to education. This is a one-year commitment, \$20,000, \$25,000. I don't recall what the exact amount is. So I'm willing to support that because it's one time. But if you recall, LB333, which was one of our LR542 bills that came out of the Education Committee, we reached very heavily over into the unexpended dollars of lottery money that is dedicated to education in order to offset General Fund expenditures. And what I'm concerned about, we're okay here. I think we can do this. But I just don't want this to become a habit that we can always reach over there. We have to maintain balances in that account for cash flow purposes. And this, we've been advised by the Fiscal Office, will work. But I just want to let everyone know this is not a bucket that we can continue to go back to. So with that, I will support the amendment. Thank you, Mr. President. [LB575 LB333]

SPEAKER FLOOD: Thank you, Senator Adams. Senator Price, you are recognized. [LB575]

SENATOR PRICE: Thank you, Mr. Speaker, members of the body. I want to let you know I rise in strong support of AM1355 from Senator Mello. And I appreciate all the effort that's gone on here. We understand that there are challenging economic times. And what we're doing here, our fiscal year, the way it runs and the way the dues get paid, since we don't have an E clause on this bill, this wouldn't come into effect until

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October. So for that 2012-13 year we wouldn't be paying into the compact anyway because it wouldn't be in effect yet. So this money...these monies come in, in the second part of the biennium and then they'll be able to affect that. So the Offutt community will have ample time to come about with the funds necessary and in the proper funding, I want to say landing zone in this. And so I urge your support of this. It gives the time for the community to ensure that Offutt Air Force Base, we all understand how incredibly important it is to the state of Nebraska. We understand that the mission set they do there is so critically important to our nation's defense, and that none of us would want to be...would want us to have that be taken away from Nebraska. It is again nearly a \$3 billion impact to the state. So with that, I really want to express my appreciation for Senator Mello, Senator Adams and their work, and Senator Heidemann in ensuring that we move forward on this, that we send the right message to our troops and to the Air Force staff, understand that Nebraska does care about this mission. Thank you, Mr. President. [LB575]

SPEAKER FLOOD: Thank you, Senator Price. Senator Karpisek, you are recognized. [LB575]

SENATOR KARPISEK: Thank you, Mr. President. Would Senator Mello yield, please. [LB575]

SPEAKER FLOOD: Senator Mello, will you yield to a question from Senator Karpisek? [LB575]

SENATOR MELLO: Absolutely. [LB575]

SENATOR KARPISEK: Thank you, Senator Mello. I guess, I didn't see this coming. But when I see the lottery funds again, the hair on my neck bristles. We dipped into this fund before. And I do want to say I support LB575. But why dip into that money again? [LB575]

SENATOR MELLO: Well, I think, Senator Karpisek, the underlying bill essentially has the state being a financial partner in regards to ensuring, I think, the longevity aspect of the military compact. And with some of the education that I think I and others received through the Appropriations Committee even though we utilized the Education Innovation Fund over the last couple of years through the budgeting process, it's my understanding through information from the Legislative Fiscal Office that even when the statutes need to be essentially extended or when the Education Innovation statutes are sunsetted that we will have a surplus of funding available in that fund right now. We are not spending enough out of the Education Innovation Fund when those statutes sunset, I believe, I could be corrected, in 2016 is when they sunset. So in the sense of us trying to find an appropriate financial partnership with what Senator Price and Cornett are doing with LB575, \$26,900 is something that we could utilize from the Education Innovation Fund

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which goes for an education purpose outside of the traditional TEEOSA funding formula. [LB575]

SENATOR KARPISEK: And so without the amendment it would come out of General Fund dollars? [LB575]

SENATOR MELLO: No, actually right now the way that we have...and this is something that we have been trying to work through both on General File and with the A bill, the way the bill is drafted right now is that private philanthropy or private dollars, none from the state, these are cash funds or General Fund dollars would be used to pay for the compact fees and the \$26,900. What we're trying to do is to emphasize that the state wants to ensure the sustainability of trying to find those private dollars by picking up the second year of the biennial budget, essentially the first year of the compact that's needed for the Bellevue area and the state to be part of this military compact with the understanding that if the local private dollars are not raised by next year that we would not be a member of this compact and the state would not provide that \$26,900 for the first year of the compact. So it's essentially putting out...we will pay the first year if and only if there are private dollars raised first. [LB575]

SENATOR KARPISEK: And if not, okay, so if not we don't pay anything, so we wouldn't be out? [LB575]

SENATOR MELLO: Correct. [LB575]

SENATOR KARPISEK: Okay. Why can't we use General Fund dollars instead of raiding the lottery education fund dollars? [LB575]

SENATOR MELLO: Senator Karpisek, I think that's a point that could be debated, could be argued, could be lobbied for or against by any member of this body. I think the reality, though, is that Education Innovation Funds, and this is my general interpretation, is that we have utilized those funds over the last three years to pay for General Funded education priorities and we still have an unexpended balance when this fund is sunsetted in 2016. So the question that I continually pose in the Appropriations Committee process is, we have this fund that's not being utilized in theory to the fullest extent that is possible. We need to look possibly when we have programs that need to be changed, programs that need to be funded to start considering the Education and Innovation Fund right now because otherwise we will just be sitting on a surplus of money when the sunset takes place in 2016. And I'd rather see us fund our general core education priorities out of that fund from now until then. [LB575]

SENATOR KARPISEK: Okay. Can you tell me what some of the innovation money is used for now and why we're not using it all. [LB575]

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SENATOR MELLO: Well, just...I think Senator Adams did a very ample job of explaining what LB333 does this year where we fund some key education priorities and investments out that have been funded in years past with General Fund dollars. We've transitioned them over to the Education Innovation Fund instead of eliminating them, such as Early Childhood Education and a host of other K-12 related programming needs that fall outside of the traditional Department of Education or TEEOSA funding formula program. So that is probably, I think, the most I would say...you could say it's a fairly big policy change in regards to what we have done before. Prior, actually I'd say in the special session the Governor moved to use \$10 million... [LB575 LB333]

SPEAKER FLOOD: Time, Senator. [LB575]

SENATOR MELLO: ...from the Education Innovation Fund. [LB575]

SENATOR KARPISEK: Thank you. [LB575]

SPEAKER FLOOD: Time, Senator. [LB575]

SENATOR KARPISEK: Thank you. [LB575]

SPEAKER FLOOD: Senator Cornett, you are recognized. [LB575]

SENATOR CORNETT: Thank you very much, Mr. Speaker, members of the body. I just want to urge the body to support LB575 and thank Senator Mello for bringing the amendment. We, as a community, have...are working on the funds for this. And I don't believe the funding is a problem, but part of it was in that first year it showed a General Fund expenditure. And Senator Mello has worked very hard with us to eliminate that. And I appreciate his support and I appreciate all the help from Senator Adams and particularly Senator Price on this issue. With that, I urge the body to support AM1355 and the underlying bill. Thank you. [LB575]

SPEAKER FLOOD: Thank you, Senator Cornett. Senator Avery, you are recognized. [LB575]

SENATOR AVERY: Thank you, Mr. President. I was listening to the debate and I recalled Senator Adams remarks about being careful about how we use these lottery funds. I do recall that we've used them a number of times already this year and I appreciate that. I also appreciate Senator Mello's work to find a way to fund this important bill without a large fiscal impact on the state. I believe an appropriate question to be asked at this point is this, isn't it worth a few thousand dollars of state money, however we decide to raise it or however we decide to get it, to save a \$2.5 billion industry at Offutt, 13,000 employees? Now we know from the work that the task force on the base realignment and closure issue, we know that the BRAC commission will

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look carefully at Nebraska when they start a new process of realigning and closing bases, they will look at what we are doing to remain military-friendly in this state. This compact membership is important. It is important to Nebraska that we maintain that industry, that we preserve these assets to the extent that we are able. And I would submit to you that a few thousand dollars of state money put into financing the membership into this compact is not too much money to save a \$2.5 billion industry. So I urge you to vote for this amendment. And I think that the state of Nebraska ought to be willing to ante up whatever money is necessary to continue our participation in this compact when we get past this biennium. Thank you, Mr. President. [LB575]

SPEAKER FLOOD: Thank you, Senator Avery. (Visitors introduced.) We continue with discussion on LB575 and AM1355. Senator Price, you are recognized. [LB575]

SENATOR PRICE: Thank you, Mr. Speaker, members of the body. I rise, there were some questions that were asked and I thought I'd take this time to answer them. And you know earlier we were talking off line with some of the other senators and they hoped to see me get animated. They said that, Senator Price, we're ready to see you enjoy the moment. But I'm not going to get animated like that, particularly as I was earlier. But the question comes about on this funding and what we see there are two components for the total bill of \$27,000 that we're looking at. The first part of it is the dollar per student, so dollar per student and it will fluctuate as students come and go as you well know with the military families moving in and out. So again, that's roughly \$8,000. The balance is for the partial full-time equivalent FTE to administer the program. It's my understanding that that number...that's the upper limit that they're looking at. They're not seeing that it will take more than that amount. So right now the benchmark that they put in is the \$27,000 and that's the breakout of that funding. I do appreciate what Senator Karpisek had to say because oftentimes I have wondered in the course of the bill between two concepts. We are talking about education here. And Senator Adams does a Herculean effort to get the funding done for our education programs. And he runs everything here and he has a tremendous grasp on it. But I wondered why, with a nearly, you know, \$810 million plus budget, \$25,000 seems like pulling the camel through the eye of the needle. But guess what? We're going to continue to work on that because this is what happens because of the fiscal state that we're in. And because of the way that we operate we do everything we can, because we're not going to do any fuzzy math, if you would. And so again I appreciate the effort that Senator Adams, the committee, Senator Cornett, and of course Senator Mello in figuring a way where we can balance those two questions we had, the one, the need that it's education that we're helping--we're going to help these students, and the other, the fiscal constraints we find ourselves in now. So as the questions arise, that's why we're doing it the way we're doing it. Is this the preferred method if we were flush with cash? Of course not. I'm sure a lot of things would be different if that were the case. But, you know, a frog wouldn't bump himself if he had wings either. So I just think that I want to make sure everybody understood why we're doing it the way we're doing it. And I express my gratitude for the

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level of effort of everybody involved. Thank you, Mr. Speaker. [LB575]

SPEAKER FLOOD: Thank you, Senator Price. Senator Karpisek, you are recognized. [LB575]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. And I appreciate especially Senator Adams reminding me where that money goes and what we've changed it to this year. And I think that we've done good things with it and we will continue to. I know I've said it and everybody is tired of hearing it, but I am just glad that we have that money that we can use. And where does it come from? Once again the lottery. So every time that we talk about the ills of gambling, here we are again taking some of this money and doing something good with it. And it just gets to me that we can talk about that, but then we can use this money and say what a great deal it is that we have it, and thank goodness that we have it right now and we are doing something good with it. Just another time for me to be able to remind everyone to think about what we do and how we do it and why we do it. And we're doing something good with this money and I support the bill and I support the amendment. Thank you, Mr. President. [LB575]

SPEAKER FLOOD: Thank you, Senator Karpisek. Senator Lautenbaugh, you are recognized. [LB575]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. I do appreciate Senator Price bringing this bill. And I do appreciate his suggestions on how we might improve frogs on a go forward. I jotted that down. Next year is another year. I guess, I'm echoing a lot of what Senator Karpisek just said. As I understand what we're doing here we're hoping an existing form of gambling continues and we're using it to protect some industry in Nebraska. Well, if that kind of concept appeals to you, have I got a bill for you or I should say I had one. And if we had the ability to get in the way-back machine to go back to last year, maybe we could have a different cloture vote than we had on historic horse racing last year. We are using gambling proceeds here, we are using a form of gambling that we've said is okay. It's not one that I choose to participate in, unless the pot is big enough, but it's a form of gambling just the same. And we're using the proceeds from it because we've said this one we're sort of okay with to fund something that we want to keep. But when we talked last year about how many jobs are involved with having live racing in Nebraska, from the guy who cleans the stables, to the person who grows the hay, to etcetera, etcetera, that's the extent of my agricultural knowledge right there, it's a lot of jobs, it was in the thousands. Senator Wallman is signaling it's even higher, millions, thousands, certainly thousands it was in. And we sort of turned our back on that. We've got another bill this year that is languishing on Select File and it's yet another attempt, a halfhearted attempt, we're in polite company so I'll say halfhearted attempt to throw a lifeline again to an industry that means so much to our state historically and currently if you're one of the thousands of people that work in it. And we're struggling with that bill. We're struggling to get it back

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on floor debate. We're struggling to come up with an agreement as to how to accommodate the interests involved and the interests in opposition and hopefully build another track in Lincoln and let a way of life go on. And we had floor debate and we were told people are moving away from that, people are moving away from that particular form of entertainment and we should just let it go. I want all of you to think about where you live and think about how enamored you are with the argument people are moving away and we should just let it go because it may come back to you with a vengeance when other topics are discussed. People are moving away so we should just let it go. Well, I'm not willing to concede that regarding this particular industry. And I think if you would consider the logical implications of that argument for your various localities, districts, roads, counties, etcetera, sometimes we don't want people to move away, we want to try to do something different. And I'll admit I do support this underlying bill and I'll probably support the amendment. And we've gotten terribly far afield from what this bill actually does. But everything seems to be related on this floor one way or another, it's a rich tapestry. And when we're talking about taking proceeds from the lottery and using it to fund this admirable bill for awhile we need to be cognizant of the fact that that's what we're doing. And I don't know that it's okay that we say, okay, we'll accept this but no more. I guess, everything we do here is about drawing lines on way or another. But it's just an irony to me, especially when I consider some of the people who are supporting this and saying it's okay to take the lottery proceeds when, based upon past comments, I would expect people to look at these proceeds and consider them to be dirty money and develop a case of the vapors and shrink from touching this lottery money as the dirty money that it is and refuse, no matter how worthy your priority is, to use that money... [LB575]

SPEAKER FLOOD: Thirty seconds. [LB575]

SENATOR LAUTENBAUGH: ...for that purpose. Thank you, Mr. President. So again I do rise in support of this bill, but I was paying attention. And with Senator Karpisek I did detect a certain amount of irony in this discussion and I thought I would point it out. Thank you, Mr. President. [LB575]

SPEAKER FLOOD: Thank you, Senator Lautenbaugh. Senator Schilz, you are recognized. [LB575]

SENATOR SCHILZ: Thank you, Mr. President, members of the body. Good morning. I, too, would like to stand up and voice my support for the bill and the amendment and what Senator Price and Senator Mello are trying to get accomplished here. It always strikes me as funny, and Senator Price and I were having a conversation off mike, that you have something, for lack of a better term, that has thousands and thousands of jobs attached to it and yet we struggle to find the simple ways to support it. So with that, I do support it. I have to kind of laugh and agree also with Senator Karpisek and Senator Lautenbaugh when they talk about this. It is funny how things kind of come back and

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work in such a way. But I would hope that everybody would understand how important this is to maintain what we have in the area, in Bellevue and all that. And to make sure that we support those endeavors that actually bring us the things we need as revenue, jobs, kids getting proper education. Thank you very much. And I give the rest of my time to Senator Prices if he would like it. [LB575]

SPEAKER FLOOD: Senator Price, 3 minutes 30 seconds. [LB575]

SENATOR PRICE: Thank you, Mr. Speaker. And thank you, Senator Schilz, for the opportunity. Again, as we talked to members on the floor I wanted everybody to be clear and understand that I am supportive of the amendment and the bill. And the discussion here is to make sure that we're clarifying questions that members might have about the mechanism and the timing. I'm sure that the members here all understand the importance of what we're trying to accomplish. And that what we need to do going forward, as we do this and as the Bellevue community and the Offutt community listen in on this, that they understand there's an expectation that they're going to work to meet the obligation that was given to them that helped us move forward. Senator Cornett had tried in a previous session to get this done. And with the fiscal constraints we weren't able to. But this will allow Nebraska to join and be the 37th state to join the compact, which will again facilitate things as our military members move back and forth within those compact states. I know that there are other states that are working on passing the same and similar legislation. So at one point in time it would be a great thing that a child can move from one end of the country to another and not have to be concerned that in the middle of their senior year, as we have the seniors up there in the balcony watching, how difficult it would be to have to move and all those changes that would entail and then also be told, oh by the way, you have other requirements, you didn't meet a deadline for being involved in some activity. This is going to help ease that. It obviously won't be a cure-all, it's not a panacea, but it is definitely a very strong move in the right direction and sends a very clear message to our families. And I would let members know there are family members who are watching and listening, there are those people in Washington, D.C. who are watching and listening, and it is an important part. And I know that we're going to do what's best, what we can do within the constraints of our budget and our desires. And with that, I would yield the balance of the time back to the Chair. Thank you. [LB575]

SPEAKER FLOOD: Thank you, Senator Price. Senator Adams, you are recognized. [LB575]

SENATOR ADAMS: Thank you, Mr. President. Senator Karpisek asked a question awhile ago about where does this money go. I'm not going to pass up a teaching opportunity. Before the passage of LB333 earlier this session, lottery monies that are dedicated to education go to a scholarship program that we have for Nebraska students that choose to become teachers. We help defray a portion of that cost. It goes to

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distance education incentives and equipment purchases for all of our school districts. And a good chunk of it goes over to the higher ed side and goes into our opportunity grant program for students. It's a scholarship program for Nebraska students. Now all of those things hold in place. But with the passage of LB333 what we have done is we've kept the scholarship program, the Pell-eligible scholarship program, the Nebraska Opportunity Grant, that commitment we kept hold, our distance education incentives and equipment purchases, we'll still use lottery for that. We did not terminate but we postponed the scholarship program for students going into education, and we added to the list programs such as high ability learner, multicultural education, the Center for Leadership, FCCLA, FFA, remember that bill from last year that we were funding. We took some of those General Fund commitments, Early Childhood Education grants, and we took them off of General Fund and put them on lottery. So the list just got longer with the passage of LB333. Some of those, like Early Childhood, after this biennium will go back to General Funds. But many of them will stay on lottery. So we are making a bigger commitment to use those lottery dollars that are committed to education for more programs until this body, at a later date by statute, decides to use that money for education in some different way. Hence, when I came to the mike the first time to tell you that I wanted to shoot...a shot across the bow to say, wait a minute, we can't be dipping into those lottery dollars too much more, please realize what all we're using that money for. And the list got longer this year because of LB333, we needed to, to free up General Fund dollars. Will AM1355 work? Yes, it's about \$27,000, \$28,000. And we're hoping we may never have to use it but it will fit. But understand how that money is being used and realize we can't be going to that source anymore. Thank you, Mr. President. [LB575 LB333]

SPEAKER FLOOD: Thank you, Senator Adams. Senator Utter, you are recognized. [LB575]

SENATOR UTTER: Thank you, Mr. President. Good morning, colleagues. I wanted to rise just for a moment to tell you that I am the grandfather of children of a military family. And I have seen and observed firsthand the disruption of children's education as they're transferred from one position to the next position during the school year, and frankly even during the off school year portion. And I think this represents an extremely important and strategic move. I've been lobbied by my daughter, to be quite honest with you, that this is an important thing that Nebraska does and it's important that we become a part of this overall thing. And so this one-time expenditure I think is appropriate. I think that the fact that the ongoing expenditures are going to be met without the appropriation of state money, hopefully, is important. And I urge you to vote for this amendment and to move the bill. Thank you. [LB575]

SPEAKER FLOOD: Thank you, Senator Utter. There are no other lights on. Senator Mello, you're recognized to close on AM1355. [LB575]

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SENATOR MELLO: Thank you, Mr. President, members of the Legislature. As stated, AM1355 simply provides \$26,900 from the Education Innovation Fund the second year of the biennial budget to pay for the first year of the military compact dues. Allows the Bellevue community, the Offutt community to build a sustainable fund-raising mechanism needed to continue paying for those dues after the state provides that one-time funding source. With that, I urge the body to adopt AM1355. Thank you, Mr. President. [LB575]

SPEAKER FLOOD: Thank you, Senator Mello. Members, you've heard the closing to AM1355. (Visitors introduced.) Members, you've heard the closing on AM1355. The question before the body is, shall AM1355 be adopted? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB575]

CLERK: 37 ayes, 0 nays, Mr. President, on the adoption of Senator Mello's amendment. [LB575]

SPEAKER FLOOD: Senator Mello's amendment is adopted. [LB575]

CLERK: I have nothing further on the bill, Mr. President. [LB575]

SPEAKER FLOOD: Thank you, Mr. Clerk. Senator Larson for a motion. [LB575]

SENATOR LARSON: Mr. President, I move that LB575 be advanced to E&R for engrossing. [LB575]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. LB575 is advanced to E&R for engrossing. Mr. Clerk. [LB575]

CLERK: Mr. President, LB575A, no E&R. Senator Price would move to amend with AM1353. (Legislative Journal page 1400.) [LB575A]

SPEAKER FLOOD: Senator Price, you're recognized to open on AM1353. [LB575A]

SENATOR PRICE: Thank you, Mr. Speaker. Members of the body, what this amendment does is just codifies what we moved in the previous bill about how we were going to take the money from that Innovation Fund in the second part of the biennium. With that, I would appreciate your advancement of the amendment. Thank you. [LB575A]

SPEAKER FLOOD: Members, you've heard the opening on AM1353. Senator Carlson, you are recognized. [LB575A]

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SENATOR CARLSON: Thank you, Mr. Speaker and members of the Legislature. I simply rise to try and make a point on the process that we're going through at this stage of our session. We passed the budget yesterday and we come back here today and we go into the various bills. I voted for AM1353, I support the bill. But I would remind us that as the economy looks better and we have bills brought before us, it's going to be very, very easy to get into a spending habit again. We talked about in the budget briefing session the other day how important it was to rebuild that Cash Reserve. And that is very, very important. So I would caution myself and the rest of us as we move forward, until we get that Cash Reserve built back up let's be very, very cautious and careful about the dollars that we approve to be spent in the state of Nebraska. I do support LB575, but wanted to make that point. Thank you, Mr. Speaker. [LB575A LB575]

SPEAKER FLOOD: Senator Lautenbaugh, you are recognized. [LB575A]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. I do rise to second Senator Carlson's comments there. And I think we do have to be responsible. And heaven knows again, this is a good bill and an important bill. And I supported the amendment on it. And now we're on the A bill and I'll probably support that too. But there is a point to be made here. We did just get what I would call some good fiscal news, some good financial news, some good revenue news if you will. And we are going to, it appears, send that money to the Cash Reserve. And that's proper. We didn't have much discussion on it yesterday, but I think that is the proper approach because we do need to rebuild that reserve. But I would like to caution us that even small expenditures do add up. We had a bill a week or two ago that failed on Final Reading and it wasn't that much money. Everybody just said, oh, it's not that much money, and in the end we had to adjust the budget, adjust appropriations yesterday, appropriations bill to accommodate the fact that that bill failed. I don't feel like, and I was particularly heartened by the fact that the budget did pass yesterday. I don't feel like we're losing our focus. I think we're keeping our focus proper, and that is properly focused on limiting spending, making cuts, being responsible in these times. And this bill doesn't take us off that. This A bill certainly does not take us off that course. But we need to be mindful and we need to be vigilant. And every little bit adds up time and time again, every little bit adds up. This is not the first time I've said it, it probably won't be the last. And I know most of you share that sentiment, probably in some way all of you share that sentiment. But every little bit that we add on, every little expenditure that we want to make, I mean, I can remember last year we fought and eliminated from a bill a provision that would have, I think, require the Secretary of State to spend \$9,700 to send out voter education guides or training guides to the Election Commissioners. And we did that because we said you could e-mail them for free, you don't have print them. That's the level of thinking, I think, we need to bring to bear. And I think we have been doing that this year. I applaud much of the work the Appropriations Committee has done. I applaud Senator Heidemann's leadership. And I would ask you to maintain your focus, as we all have, but please vote for this bill. Thank you. [LB575A]

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SPEAKER FLOOD: There are no other lights on. Senator Price, you're recognized to close. [LB575A]

SENATOR PRICE: Thank you, Mr. Speaker, members. We've had great debate on this and I appreciate it. And I would ask that everybody support this amendment. Thank you. [LB575A]

SPEAKER FLOOD: Members, you've heard the closing on AM1353. The question before the body is, shall AM1353 be adopted? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB575A]

CLERK: 35 ayes, 0 nays, Mr. President, on adoption of the amendment. [LB575A]

SPEAKER FLOOD: AM1353 is adopted. Mr. Clerk. [LB575A]

CLERK: Nothing further, Mr. President. [LB575A]

SPEAKER FLOOD: Senator Larson for a motion. Senator Larson for a motion. [LB575A]

SENATOR LARSON: Mr. President, I move that LB575A be advanced to E&R for engrossing. [LB575A]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. LB575A is advanced to E&R for engrossing. Mr. Clerk, we now proceed to the next item on the agenda, LB151. [LB575A LB151]

CLERK: LB151, a bill by Senator Lathrop. (Read title.) Introduced on January 7, referred to Business and Labor. The bill was advanced to General File. There are committee amendments pending, Mr. President. (AM1243, Legislative Journal page 1334.) [LB151]

SPEAKER FLOOD: Senator Lathrop, you're recognized to open on LB151. [LB151]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I see that we have 12 minutes before lunch and barring questions, I'm going to try to get this bill moved in that period of time. LB151 may be fairly characterized as the Workers' Compensation Court bill. It was introduced on behalf of the court. Current law requires that the court maintain offices in the State Capitol. LB151 removes this requirement. LB151 additionally clarifies when actions may be dismissed and allows telephonic and videoconferencing for nonevidentiary hearings and evidentiary hearings if stipulated to by the parties. There is a committee amendment incorporating provisions of LB238 and LB346 which I

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will explain in a moment. I ask for your support of LB151. And let me just say that the Work Comp Court is moving to more suitable facilities. And the statute requires that they maintain their office in the Capitol. This just facilitates that. I don't believe there was any opposition. Thank you. [LB151 LB238 LB346]

SPEAKER FLOOD: Thank you, Senator Lathrop. Members, you've heard the opening on LB151. Mr. Clerk. [LB151]

CLERK: There are Business and Labor Committee amendments, Mr. President. [LB151]

SPEAKER FLOOD: Senator Lathrop, you're recognized to open on AM1243. [LB151]

SENATOR LATHROP: Thank you, Mr. President and colleagues. The amendments, basically, we're going to incorporate two bills into the...as the committee amendment into LB151. They are as follows: committee amendment replaces the green copy. It includes the original provisions as well as principles from LB238 and LB346. Sections 7, 9, 10, and 15 represent the original provisions of LB151. LB238 removes the three-judge panel appellate review process. Judge Sievers, from the Court of Appeals, testified in opposition. However, I've confirmed with the Chief Justice that the Supreme Court and the Court of Appeals are no longer opposed to LB238, thus Sections 1, 2, 4, 5, 8, 13, and 14 remove references to the three-judge panel. In the Work Comp Court you try your case to the court. There is a three-judge appellate review process in the Work Comp Court before you go to the Court of Appeals and that's what we'd be eliminating. LB346 authorizes the Work Comp Court judges to issue contempt orders. Section 6 represents principles by allowing judges to issue contempt orders in accordance with criminal contempt statutes, Section 25-2121. Similar to other work comp orders to enforce contempt powers, a party must file the order with the district court. The committee amendment makes an additional change in Section 3. Current law requires that workers comp judges reside in Lancaster County. If you are from greater Nebraska this will be important to you. To encourage attorneys residing outside of Lancaster County to apply for judicial vacancies on the Work Comp Court, the committee amendment strikes this language, thus facilitating the appointment to the work comp bench from outside of Lancaster County. Both LB151 and the committee amendment were advanced with a unanimous 7-0 vote. I ask for your support of both the amendment and the bill. Thank you. [LB151 LB238 LB346]

SPEAKER FLOOD: Thank you, Senator Lathrop. (Visitors introduced.) Continuing with discussion on LB151 and AM1243, Senator Wallman, you are recognized. [LB151]

SENATOR WALLMAN: Thank you, Mr. President. Would Senator Lathrop yield to a question? [LB151]

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SPEAKER FLOOD: Senator Lathrop, will you yield to a question from Senator Wallman? [LB151]

SENATOR LATHROP: Yes, I would. [LB151]

SENATOR WALLMAN: I remember about hearing, you know, we had one neutral testimony about moving it out of the Capitol. Was it mainly on account of space you feel? [LB151]

SENATOR LATHROP: Yes, I'd be happy to address that. If you were to get in the elevator and go up to, I believe, it's the 13th floor, you'd run into the Work Comp Court. And I've tried cases up there, I'm sure Senator Lautenbaugh has as well. It is a very small area, it's not large enough for the lawyers to bring the staff they need to bring the parties in. And then you literally have to shut the heat off because it makes too much noise and the court reporter can't hear the witnesses. You know, you want to stay in the Capitol. It's a great place. It's a terrific view from up there. The Work Comp Court would be happy to stay here, but it just doesn't work anymore. And with all the matters that they hear in the Work Comp Court, moving to a facility with space that is suitable for hearing cases, and I'll also mention one other thing and that is that the Work Comp Court is a cash funded agency. It's paid for by fees, we do not use General Funds. So this move will actually provide for the court to pay the rental on the space that they're moving to with the cash funds from those who participate in the process and open up space for other agencies up in the tower of the Capitol. [LB151]

SENATOR WALLMAN: Thank you, Senator Lathrop. And I, too, will support the amendment and the bill. Thank you, Mr. President. [LB151]

SPEAKER FLOOD: Thank you, Senator Wallman. There are no...Senator Lautenbaugh, you are recognized. [LB151]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of body. I'm wondering if Senator Lathrop would yield to a question? [LB151]

SPEAKER FLOOD: Senator Lathrop, will you yield to a question from Senator Lautenbaugh? [LB151]

SENATOR LATHROP: Yes, I will. [LB151]

SENATOR LAUTENBAUGH: Thank you, Senator Lathrop. And as you indicated, I did...I don't really practice that much anymore. But I did previously work in the Compensation Court from time to time, practice before it from time to time. What was the rationale, if I missed it, for doing away with the three-judge panel review? [LB151]

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SENATOR LATHROP: The concern behind the three-judge panel was that if you try...first of all, as you know, the three-judge panel would be a unique process. Most of the time, when we try a case and we go from the district court, our appeal is to the Court of Appeals. In the Work Comp Court it was different. We had set up as three-judge panel so that you would hear or have somebody listen to an appeal, three judges of the Work Comp Court, before you'd go to the Court of Appeals. And what was happening in practice, at least arguably, is it turned into a free opportunity to appeal the case. We were tying up judge hours by having them participate in the three-judge panels. And if people have a true dispute, a legal dispute over a legal principle, they're going to end up in the Court of Appeals anyway. So while not having the three-judge panel may increase, in a marginal way, the number of appeals to the Court of Appeals, it will free up a good deal of time for the judges in the Work Comp Court. And they can then move the cases that are before them in a more timely fashion which, as you know, is very, very important to the litigants. [LB151]

SENATOR LAUTENBAUGH: Thank you, Senator Lathrop. And it is not my intent on General File to belabor this point or oppose this bill. But I do have a certain amount of hesitation regarding doing away with the three-judge panel. And I will talk to Senator Lathrop between General and Select on that. Frankly, I have appealed matters to the three-judge panel and received significant relief. And I found it to be a much cheaper way of getting an opinion reviewed, if you will, and possibly addressing something that we thought didn't go right at the trial level for whatever reason. And I'm not sure I'm comfortable doing away with that. I understand from the committee statement that there may not have been opposition beyond the Court of Appeals. And, I guess, I will not try to hold up this bill today. But certainly I will be thinking of this between General and Select and get back with you, Senator Lathrop. But thank you. [LB151]

SPEAKER FLOOD: Thank you, Senator Lautenbaugh. Senator Nelson, you are recognized. [LB151]

SENATOR NELSON: Thank you, Mr. President, members of the body. I have a question for Senator Lathrop, if he will yield. [LB151]

SPEAKER FLOOD: Senator Lathrop, will you yield to a question from Senator Nelson? [LB151]

SENATOR LATHROP: Yes, I will. [LB151]

SENATOR NELSON: Thank you, Senator Lathrop. Did this bill come up last year before the committee? Is this new this year? [LB151]

SENATOR LATHROP: I think it's new. Some of the principles that will end up in this bill have been discussed in that committee before. But the move of the court from the

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Capitol to other space we might have talked about before. But we are now, I mean, the state signed the lease and we're ready to move and this is necessary to facilitate that. [LB151]

SENATOR NELSON: Well, I recall that we talked about it in Appropriations last year with regard to costs. Do you...and I had a concern at that time. They were moving out of the tower and they were going to have to spend money to rent space elsewhere. Do you know what those costs are going to be, what the rent will cost, do you have any figures on that? [LB151]

SENATOR LATHROP: Senator Nelson, I know that we talked about it. Honestly though, as I stand here, I'd be happy to get that for you. But I don't recall the specific number. But I do know it's cash funded. [LB151]

SENATOR NELSON: All right. And I remember specifically that Judge Fitzgerald had some objections. And I see before the committee this time around that he was neutral. Do you remember his testimony at all or any... [LB151]

SENATOR LATHROP: I do remember it. You don't have Judge Fitzgerald come in without remembering what he said. And he's a wonderful guy and a good friend. Judge Fitzgerald basically said that last year he was opposed to this move, didn't think it was necessary in his judgment. This year, since the lease had been signed, it was pretty much a done deal. And so he basically came in and testified on a number of bills at the same time and expressed, you know, I suppose his dismay that we were moving and incurring lease payments. [LB151]

SENATOR NELSON: So because it was a done deal, it's just...the bill just removes the requirement that they continue to office here in the tower, is that correct? [LB151]

SENATOR LATHROP: It removes the impediment, yes. [LB151]

SENATOR NELSON: Okay. And I'm looking at the fiscal note. I'm a little curious about the fact that it doesn't seem to have much impact because they're going to be paying rent from now on. And I'm just wondering if that's going to be offset, that increase is going to be offset by some of the other things they provided. I'm... [LB151]

SENATOR LATHROP: Well, one of the things, yeah. Remember that the cost of the lease payment is going to come out of the Work Comp Court's budget, it's a cash funded agency. So the litigants are paying the cost, frankly, I think it's the defendants, are paying the cost of running the Work Comp Court. Now that doesn't mean...and obviously we'll be emptying, I think, two floors from the Capitol. And that space will be available for an agency that might be paying rent somewhere here in Lincoln. [LB151]

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SENATOR NELSON: That's true, that's true. Yeah, I can see that. Well, thank you very much, Senator Lathrop. Thank you, Mr. President. [LB151]

SPEAKER FLOOD: Thank you, Senator Nelson. There are no other lights on. Senator Lathrop, you're recognized to close on AM1243. Members, the question before the body is, shall AM1243 be adopted? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB151]

CLERK: 35 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB151]

SPEAKER FLOOD: AM1243 is adopted. Mr. Clerk, are there any other amendments? [LB151]

CLERK: Nothing further, Mr. President. [LB151]

SPEAKER FLOOD: Members, we now turn to discussion on LB151. There are no members wishing to speak. Senator Lathrop, you're recognized to close. [LB151]

SENATOR LATHROP: I will do that briefly. Thank you, Mr. President and colleagues. I appreciate the concerns expressed by Senator Lautenbaugh. And I'm always sensitive to opinions of the members of the practicing bar, particularly those that have been in front of the Workers' Compensation Court. I'll visit with Senator Lautenbaugh between General and Select about his concerns and perhaps make him more comfortable with the process of eliminating the three-judge panel. And with that, I would ask for your support moving LB151 to Select. Thank you. [LB151]

SPEAKER FLOOD: Thank you, Senator Lathrop. Members, you've heard the closing on LB151. The question is, shall LB151 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. [LB151]

CLERK: 35 ayes, 0 nays, Mr. President, on the advancement of LB151. [LB151]

SPEAKER FLOOD: LB151 advances to E&R Initial. Mr. Clerk, items for the record. [LB151]

CLERK: New resolution, Mr. President. Senator Coash, excuse me, new bill, LB216A. (Read by title for the first time.) And Senator Adams would offer a new resolution, LR198, and that study resolution will be referred to the board. (Legislative Journal page 1400.) [LB216A LR198]

Mr. President, Senator McGill would move to recess the body until 1:30 p.m.

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SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. We are in recess until 1:30 this afternoon. (Gavel)

RECESS

SENATOR CARLSON PRESIDING

SENATOR CARLSON: 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.

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Mr. Clerk, please record.

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

SPEAKER FLOOD: Thank you, Mr. Clerk. Do you have any items for the record?

CLERK: I have no items.

SPEAKER FLOOD: Thank you, Mr. Clerk. We now proceed to the first item on this afternoon's agenda, LB22. (Gavel) [LB22]

CLERK: Mr. President, first of all, LB22, I have Enrollment and Review amendments. (ER40, Legislative Journal pages 699-700.) [LB22]

SPEAKER FLOOD: Senator Larson. Senator McCoy, would you please move the E&R amendments? [LB22]

SENATOR McCOY: Mr. President, I would move the E&R amendments to LB22. [LB22]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor, say aye. Those opposed, say nay. The E&R amendments are adopted. Mr. Clerk. [LB22]

CLERK: Mr. President, Senator Conrad, I now have AM698, Senator, but I have a note you would like to withdraw AM698 and offer as a substitute AM1373. (Legislative Journal pages 1401-1402.) [LB22]

SENATOR CONRAD: That's correct, Mr. Clerk. [LB22]

SPEAKER FLOOD: Without objection, so ordered. [LB22]

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CLERK: Senator Conrad, AM1373. [LB22]

SPEAKER FLOOD: Senator Conrad, you're recognized to open on AM1373. [LB22]

SENATOR CONRAD: Thank you, Mr. President. Good afternoon, colleagues. I urge your support for AM1373. And to be clear, this is a very straightforward amendment. All that AM1373 does is to provide for a specific clarification and a specific exception for pregnancies that end or result in ectopic pregnancy or a miscarriage. I've had a chance to visit with Senator McCoy and others about this in between General and Select File. There may or may not be a disagreement in terms of whether or not this is a required or necessary amendment as we move forward. And I'd be happy to, in the context of my opening, go through why I think that it is an important clarification, based on medical research and practicality. For example, the legislation as it's currently written already provides an exception for "spontaneous abortion," which in some instances could be a synonym for a miscarriage. It is not clear, according to medical language, whether or not ectopic pregnancy would clearly fit within that definition. And it also is not clear if it fully contemplates all the different types of miscarriage. So all my amendment does is to provide a very clear, very specific exemption for two instances, those for ectopic pregnancies and miscarriages. Well, what is an ectopic pregnancy? According to the Mayo Clinic...I'm sorry if this gets a little bit long, but I think it is important that we are medically accurate as we move forward. Of course, pregnancy begins with a fertilized egg. Normally, the fertilized egg attaches itself to the lining of the uterus. With an ectopic pregnancy, the fertilized egg implants someplace else. Ectopic pregnancy is not uncommon. In fact, it occurs in 1 out of every 50 pregnancies. An ectopic pregnancy results from a fertilized egg's inability to work its way quickly enough down the fallopian tube into the uterus. An infection or inflammation of the tube might have partially or entirely blocked it. An ectopic pregnancy nearly always occurs in one of the fallopian tubes that carry eggs from the ovaries to the uterus. This type of ectopic pregnancy is also known as a tubal pregnancy. Rarely, this type of pregnancy occurs in the abdomen, ovary, or neck of the uterus or the cervix. An ectopic pregnancy cannot proceed normally. The fertilized egg cannot survive, and none of the areas where the egg attaches has as much space or nurturing tissue as the uterus for a pregnancy to develop. As the fetus grows, it will eventually burst in the organ that contains it. This can destroy various maternal structures. With an ectopic pregnancy, the stakes are very high. Treatment may lead to the loss of reproductive organs or infertility. Without treatment, the stakes are even higher. A ruptured fallopian tube may lead to life-threatening bleeding. Early treatment of an ectopic pregnancy can help preserve the chance for future healthy pregnancies. It's important that we clarify in this legislation as we move forward that we do not in any way seek to prohibit coverage for or treatment for ectopic pregnancies. And what kind of treatments are we talking about to treat an ectopic pregnancy? Again according to the Mayo Clinic: Sometimes if an ectopic pregnancy is detected early, an injection of the drug methotrexate may be used to stop

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cell growth and dissolve existing cells. After the injection, a doctor will monitor the woman's blood for the pregnancy hormone. If hCG levels remain high, a woman may need another injection of this same pharmaceutical. If the ectopic pregnancy doesn't respond to medication or is too large, or the woman is unable to use this pharmaceutical or return for monitoring, she may need laparoscopic surgery. In this procedure, the doctor makes a small incision in the abdomen near or in the navel. Then he or she uses a thin tube equipped with a camera lens and a light to view the area. Other instruments can be inserted into the tube or through other small incisions to remove the ectopic tissue and repair the fallopian tube. If the fallopian tube is significantly damaged, it may need to be removed. If the ectopic pregnancy is causing heavy bleeding or the fallopian tube has ruptured, a woman may need emergency surgery through the abdominal incision. In some cases, the fallopian tube can be repaired. Typically, however, the ruptured tube must be removed. Colleagues, I provide this information to ensure, again, that we have a clear and accurate record and to also be clear that there are significant and serious medical issues related to pregnancy that we must recognize. And we must ensure that our public policy, as it moves forward, is specifically and sufficiently clear to ensure that we are not prohibiting coverage for these types of heartbreaking situations that are real and serious medical issues. Again, I urge your consideration and support of AM1373, which only specifically exempts from the coverage prohibition situations involving ectopic pregnancy or miscarriage. Thank you, Mr. President. [LB22]

SPEAKER FLOOD: Thank you, Senator Conrad. Senator McCoy, you are recognized. [LB22]

SENATOR McCOY: Thank you, Mr. President and members. I stand in opposition to AM1373 and in, of course, support of LB22. I recognize that there are serious health concerns that arise from pregnancy. And my wife, Shauna, and I are the parents of four kids under 7. And we've been through four pregnancies in our family and have had some health complications. And I understand the serious nature of pregnancy. And that is why you'll see in the green copy of the bill, on page 5, line 6, that we talk about "spontaneous abortion," which the American Academy of Family Physicians refers to as miscarriages--where it's talked about that that is included, also the life of the mother. And also I'd refer back to not only testimony that I've heard from physicians, ob-gyns, but also again the American Academy of Family Physicians that says, by virtually any definition, an ectopic pregnancy is a life-threatening medical condition. So I believe that both of these issues that Senator Conrad brings in AM1373 are already included within the confines of this legislation. Thank you, Mr. President. [LB22]

SPEAKER FLOOD: Thank you, Senator McCoy. Senator Ken Haar, you are recognized. [LB22]

SENATOR HAAR: Mr. President, members of the body, we know that the topics we're going to talk about today are emotional as well as physical. So here we go. And we

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know that many of us will disagree on various aspects of this. I think the issue of ectopic pregnancy is an...again, I think, at least as a male, we often don't recognize that--the dangers involved with pregnancy--certainly the joys that come with a child but also the dangers that go with pregnancy. And ectopic pregnancy is one of those. And I respect it when Senator McCoy says that he's talked to various physicians and that normally they would consider an ectopic pregnancy to fall under a life-threatening situation. But I think, from a woman's standpoint, we can't leave that up to chance. And insurance companies, as all companies, are there for the bottom line, and--so I think it's really important that we be specific about things that will be exempted by this bill. Again, ectopic pregnancy is--and I found some different sources--some say 1 in 50, some say 1 in 100, some 1 in 150, and 1 in 500--but, again, it's basically the fertilized egg doesn't get where it's supposed to go, which is the uterus, where it can develop. And it can attach in all kinds of places, almost always in the fallopian tubes, as has been pointed out. It can happen in the abdomen or the cervix, even, of a woman. And it's a pregnancy that just can't come to a normal ending: the fertilized egg can't survive, and none of the areas where the egg attaches has the space to be nurtured to full development. So as the fetus grows, it can actually burst the organ that contains it. And so for the woman, as Senator Conrad had said, the stakes are high. Not only can it lead to a life-threatening situation, but it can lead to infertility, so that the woman can't have a normal pregnancy following, if she so chooses. Bleeding...and Senator Conrad talked about the effects of an ectopic pregnancy, and I think we have to talk about those again. Because so often it's just looked at as, you know, you go to the hospital and have a normal baby and that's it. There are some drugs that can be injected. Methotrexate is a drug that can stop growth, in dissolving existing cells. And sometimes more than one injection is needed. And sometimes that doesn't work, though, and so there has to be surgery from a--laparoscopic surgery, generally, where the doctor will go in through the abdomen and remove the tissue--the ectopic pregnancy. So again, I think it's such an important issue. And to say that we've talked to certain people and they would say, yeah, that an ectopic pregnancy would be considered life-threatening to a woman--I think women deserve better than that. [LB22]

SPEAKER FLOOD: One minute. [LB22]

SENATOR HAAR: I think they need the assurance. Thank you very much. [LB22]

SPEAKER FLOOD: Thank you, Senator Haar. Senator Conrad, you are recognized. [LB22]

SENATOR CONRAD: Thank you, Mr. President. Just to dovetail off what Senator McCoy noted in his initial comments related to opposition--number one, I think it is important, regardless of the outcome of this amendment, that we have a very, very clear record on this specific topic, about whether or not there was ever intended to be a mandate prohibiting coverage of the instances of ectopic pregnancy or miscarriage. And

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so I want to thank Senator McCoy for making that point very clearly on the record that indeed there really isn't a significant values difference between our positions on this topic, it is, rather, a technical difference on this specific topic. He believes that these specific instances are already exempted out by the language that exists in the bill. And in my conversation with local physicians and others with expertise in this area, they agree with that, from a general perspective. But indeed they also admit that there are specific, and small, exceptions to any rule. And so that--because of those specific but very, very real exceptions that do exist, there is no harm in ensuring that we are as careful in our language as we can be. And so by providing a very specific exception for ectopic pregnancies and miscarriages in LB22, we are neither weakening or diminishing any of the public policies LB22 seeks to effectuate and forward but, rather, ensures that we have a clear record and a clear intent in relation to these very, very specific exceptions that Senator McCoy and others believe may be covered in the existing language. This just allows us to ensure that they are covered in the existing language. So I think it is important for the record, down the road, if, for example, this amendment is not successful, that it's a clear message to all insurance companies that you are not allowed to deny coverage for complications arising from ectopic pregnancies or a miscarriage and the very real, serious, and uncertain amount of medical costs and procedures associated to deal with those kinds of instances. I'm going to try and quickly conclude my comments and continuing to build the record in relation to this amendment. If I happen to run out of time, I may have to hit my light one more time. But I wanted to also talk a little bit about the word "miscarriage." And Senator McCoy is correct where he notes that LB22 states that an "elective abortion means an abortion other than a spontaneous abortion." Well, "spontaneous abortion" is indeed often used to describe a miscarriage. But we don't want to leave anything to chance, and we want to ensure that we're all on the same page since there can be many confusing terms and moments that accompany a miscarriage. And when we're combining medical terminology and technology in issues with our public policy in a legal sense, it's important that we make these very, very clear distinctions. There are different types of miscarriage and different treatments for such. According to the American Pregnancy Association, miscarriage is the most common type of pregnancy loss. Studies reveal that anywhere from 10 percent to 25 percent of all clinically recognized pregnancies will end in miscarriage. Chemical pregnancy may account for 50 percent to 75 percent of all miscarriages. This occurs when a pregnancy is lost shortly after implantation, resulting in bleeding that occurs around the time of a woman's expected period. The woman may not realize that she has conceived when she experiences a chemical pregnancy, or miscarriage. Most miscarriages occur during the first 13 weeks of pregnancy. The reason for miscarriage is, of course, varied. And most often... [LB22]

SPEAKER FLOOD: One minute. [LB22]

SENATOR CONRAD: ...thank you, Mr. President. And most often, the cause cannot be identified. During the first trimester, the most common cause of miscarriage is

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chromosomal abnormality, meaning something that is not correct within the baby's chromosomes. Most chromosomal abnormalities are the cause of a faulty egg or sperm cell due to a problem at the time that the zygote went through the division process. Again, as I mentioned earlier, there are different types of miscarriage; and a miscarriage is often a process and not a single event. Most of the time, all types of miscarriage are just called "miscarriage." But other terms can include "threatened miscarriage"--some degree of early-pregnancy uterine bleeding accompanied by cramping or lower backache, wherein the cervix remains closed; this bleeding is often the result of implantation. "Inevitable or incomplete miscarriage"--this is defined as an abdominal or back pain accompanied by bleeding, with an open cervix; miscarriage is inevitable when there is... [LB22]

SPEAKER FLOOD: Time, Senator. [LB22]

SENATOR CONRAD: Thank you. [LB22]

SPEAKER FLOOD: Thank you, Senator Conrad. (Visitors introduced.) Continuing with discussion, Senator Schumacher, you are recognized. [LB22]

SENATOR SCHUMACHER: Thank you, Mr. Speaker. First, with regard to AM1373, it sounds like we have conceptual agreement on both sides that ectopic pregnancies and miscarriage are medical treatments and we should not be practicing medicine here and that they are intended to be the kind of things that you can buy insurance if you have hard enough luck in order to come across those things. Now, there is probably a need for AM1373 if that's the conceptual understanding. Various sources, including this one at [MedicineNet.com](http://MedicineNet.com), says that some people--women spontaneously absorb their ectopic pregnancy with no apparent ill effects; other ones aren't so lucky, and the thing keeps growing. Now, if you're a woman in the early stages, this problem is detected--do you want to take the risk of it keeping growing and maybe rupturing something and becoming life-threatening, or do you want to be able to deal with the very, very sad and painful and unfortunate circumstance in a preemptive manner so that you maybe can have more kids down the road and not have your insides kind of gutted by the process? So if we are in agreement that ectopic pregnancies and miscarriages are medical treatments that are not intended to be washed up into the debate and controversy of abortion and this insurance package, then let's just say so and spare some poor gal the situation of having to make really, really painful and delayed decisions. I do have some questions, though, specifically for Senator McCoy on LB22, and let me preface them. I had the good fortune of having a discussion with a man who spent considerable time on the district court bench and then time on our Supreme Court. And he basically said that when he wrote decisions, in order to protect himself from the appellate courts, what he would do is say as little as possible in his reasoning and just go on to his finding and his order. That way the appellate court couldn't disagree with his reasoning--which seemed to be pretty reasonable. So Section 2 goes on for (a), (b), (c), (d), (e), and (f) talking

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about the reasons why we're doing LB22. So would Senator McCoy yield to a couple questions? [LB22]

SPEAKER FLOOD: Senator McCoy, will you yield to a question from Senator Schumacher? [LB22]

SENATOR McCOY: Yes, I would. [LB22]

SENATOR SCHUMACHER: Senator, is it--is there some federal law or some reasoning that requires to set forth our reasons for this bill, instead of just doing it? [LB22]

SENATOR McCOY: Well, Senator Schumacher, if I may ask, are you looking at the green copy of Section 2 or the E&R copy of Section...? [LB22]

SENATOR SCHUMACHER: E&R amendments has... [LB22]

SENATOR McCOY: Okay. [LB22]

SENATOR SCHUMACHER: Yeah... [LB22]

SENATOR McCOY: Um-hum. [LB22]

SENATOR SCHUMACHER: ...the green copy had a whole lot more reasons. [LB22]

SENATOR McCOY: Um-hum. [LB22]

SENATOR SCHUMACHER: But these have been trimmed down, apparently, to findings about law and finding, then, that a majority of the citizens of the United States are opposed... [LB22]

SENATOR McCOY: Um-hum. [LB22]

SENATOR SCHUMACHER: ...to abortion. Why do we need to say any of that? [LB22]

SENATOR McCOY: Well,... [LB22]

SENATOR SCHUMACHER: Is--is there...? [LB22]

SENATOR McCOY: I believe it's--I believe that it's--that it's important from an intent-language standpoint to help codify in statute what our public position has been vis-a-vis public employees, state employees, the state of Nebraska, since 1981. So for 30 years now, we have done at the state level for state employees what we're seeking to do in LB22. [LB22]

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SENATOR SCHUMACHER: But why do we need to set this out? Why don't we just go to the meaty part of it and say, "We hereby say no insurance for abortion"? I mean, what if we are wrong in some of this? For example, one of the findings, the only factual finding, is that a majority of the citizens of the state of Nebraska, like other Americans, oppose the use of public funds, both federal and state, to pay for... [LB22]

SENATOR McCOY: Um-hum. [LB22]

SENATOR SCHUMACHER: ...abortions. I... [LB22]

SPEAKER FLOOD: One minute. [LB22]

SENATOR SCHUMACHER: I know of no poll--perhaps you do--of children, of infants, of people in nursing homes that are senile, all of whom are citizens, that from which we can ascertain that a majority of them agree with this. Why put it in there, unless we have facts? [LB22]

SENATOR McCOY: Well, if you go back to the green copy of the bill, Senator Schumacher, it was specifically referenced--a Quinnipiac poll, which found that 70 percent, or (inaudible) close to, of Nebraskans supported the position of no taxpayer dollars for elective abortions. [LB22]

SENATOR SCHUMACHER: But that poll did not poll children, it did not poll infants, it did not poll senile people. And we say here, "a majority of the citizens." All those people are citizens. [LB22]

SPEAKER FLOOD: Time, Senator. [LB22]

SENATOR SCHUMACHER: Thank you. [LB22]

SPEAKER FLOOD: Senator Conrad, you are recognized. [LB22]

SENATOR CONRAD: Thank you, Mr. President. And thank you to Senator Schumacher and Senator McCoy for their last exchange. I think Senator Schumacher is completely correct in understanding the very clear intent of mine behind this amendment, and that is just to ensure that what has already been acknowledged by the chief and primary sponsor of this bill--is that we provide a very specific exception utilizing appropriate and specific medical terminology that can't be argued with to ensure that these types of heartbreaking medical situations are not prohibited from insurance coverage or payment for the treatment to remedy. And I'm going to continue my comments to ensure that we do have a clear record in relation to the term "miscarriage" and why "spontaneous abortion" may not be adequate to fully encapsulate all of the different manners in which

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this term can be utilized. And, colleagues, I'll be the first to admit, I am not a medical expert, and I apologize if I am mispronouncing any of these medical terms; I'm doing my best. And I am reading a great deal and relying upon information from the Mayo Clinic and the American Pregnancy Association, who I believe can--are well established authorities on these topics--rather than this being any information I generated on my own. Again, to go back to talk about the different uses and instances related to the term "miscarriage" and why it is most likely not fully encapsulated in the exception contained for "spontaneous abortion." Inevitable or incomplete miscarriage, defined by abdominal or back pain accompanied by bleeding, with an open cervix: miscarriage is inevitable when there is a dilation or effacement of the cervix and/or there is a rupture of the membranes; bleeding and cramps may persist if the miscarriage is not complete. Complete miscarriage, defined as a completed miscarriage, is when the embryo or products of conception have been emptied out of the uterus; bleeding should subside quickly, as should any pain or cramping. A completed miscarriage can be confirmed by an ultrasound or by having surgical curettage performed. Missed miscarriage, defined as--women can experience a miscarriage without knowing it. A missed miscarriage is when embryonic death has occurred but there is not any expulsion of the embryo. It is not known why this occurs. Signs of this would be a loss of pregnancy symptoms and the absence of fetal heart tones found on an ultrasound. Recurrent miscarriage, defined as three or more consecutive first-trimester miscarriages--can affect 1 percent of couples trying to conceive. Blighted ovum, also called an embryonic pregnancy--a fertilized egg implants into the uterine wall, but fetal development never begins. Often there is a gestational sac with or without yolk, but there is an absence of fetal growth. Ectopic pregnancy--again, another definition, which I covered extensively in previous comments but I'll include at this point in the record because it follows the definitions provided by the American Pregnancy Association: a fertilized egg implants itself in places other than the uterus, most commonly the fallopian tube. Treatment is needed immediately to stop the development of the implanted egg. If not treated rapidly, this could end in serious maternal complications. Molar pregnancy: the result of a genetic error during the fertilization process that leads to growth of abnormal tissue within the uterus. Molar pregnancies rarely involve the developing embryo but often entail the most common symptoms of pregnancy, including a missed period, positive pregnancy test, or severe nausea. The main goal of treatment during or after any types of these miscarriages is to prevent hemorrhaging and/or infection. The earlier a woman is in her pregnancy, the more likely her body will expel all of the fetal tissue itself and will not require further medical procedures. [LB22]

SPEAKER FLOOD: One minute. [LB22]

SENATOR CONRAD: However...thank you, Mr. President...if her body does not expel all the tissue, the most common procedure performed to stop bleeding and to prevent infection is a dilation and curettage, commonly known as a D and C. The procedure results in removal of the tissue in the uterus by scraping and scooping. I do not want to

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leave anything to chance: I think it's important that we ensure clarity for these very specific, very serious, very significant medical issues that are common in terms of pregnancy. And we must realize that we need to have this kind of clarity in our legislation as we move forward, considering this, LB22, encapsulates a ban for every private insurance policy in the state, affecting thousands and thousands of women, families, and our citizens. So it's a very straightforward, very simple amendment that I would encourage your careful consideration and... [LB22]

SPEAKER FLOOD: Time, Senator. [LB22]

SENATOR CONRAD: ...favorable approval of. Thank you, Mr. President. [LB22]

SPEAKER FLOOD: Thank you, Senator Conrad. Senator Council, you are recognized. [LB22]

SENATOR COUNCIL: Yes, thank you very much, Mr. President. I rise in support of AM1373, although I want to make it clear I oppose the underlying bill, LB22. And I support the amendment because, as Senator Conrad just stated, the purpose of AM1373 is to make it absolutely clear and draw a clear line of distinction between ectopic pregnancies and miscarriages so that there's no question that health insurance providers can provide that kind of coverage in the state of Nebraska. And that's my understanding of the intent of Senator Conrad's amendment--and that if LB22 is to be advanced, LB22 should be advanced in the best possible form that would withstand challenges, constitutionally or otherwise. And I submit to you that the failure to adopt AM1373 lends to arguments of constitutional challenges to this particular piece of legislation. And with that said, I would yield any of my remaining time to Senator Conrad, if she wishes to utilize it. [LB22]

SPEAKER FLOOD: Senator Conrad, will you yield to Senator...you have 3 minutes and 30 seconds, Senator Conrad. [LB22]

SENATOR CONRAD: Thank you, Mr. President. And thank you, Senator Council. And, to be clear, Senator Council, I share your position. While I do bring forward AM1373 in a very serious and straightforward manner, by no means do I mean--would I suggest that this amendment would alleviate all of the policy or legal concerns that I or others may have with the underlying legislation. So I remain opposed to LB22 but do believe very strongly, because this legislation received such a strong sense of support amongst the body on the first round of debate and is very, very likely to be adopted this session, that it really does no harm or detriment to proponents of this legislation to ensure that we have specifically accurate exceptions in place for well established, well recognized medical complications such as ectopic pregnancy and miscarriage that do affect many families, that do affect many women, and that would not be specifically excepted from the application of LB22. Again, I am hopeful and grateful that Senator McCoy and

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others have acknowledged that they believe that existing language may encapsulate these specific exceptions. And I hope that is true. But rather than just relying on hope, I think it's important that we have a clear legislative record. And I think it's even more favorable if we can have a very clear, a crystal clear, exception for these well established medical issues and conditions, which, really, there should be no disagreement about. Thank you, Mr. President. [LB22]

SPEAKER FLOOD: Thank you, Senator Conrad. There are no other lights on. Senator Conrad, you're recognized to close on AM1373. [LB22]

SENATOR CONRAD: Thank you, Mr. President. And thank you, colleagues, for your good questions and thoughtful dialogue in relation to this amendment. Again I'd ask that you look at the amendment. It is very, very straightforward; it only provides a specific exception from the Mandate Opt-Out and Insurance Coverage Clarification Act for individuals who are experiencing an ectopic pregnancy or a miscarriage. Again, Senator McCoy and others have noted that there really isn't a values problem related to what's proposed in this amendment, but rather, and to be clear, he has acknowledged that he has a technical distinction and opposition thereto. But I think it's important, rather than doing anything to undermine or lessen the impact of LB22, that we just provide a crystal clear medical exception for ectopic pregnancies and miscarriages, because they're real, serious issues that do happen to people all across this great state, and the treatment therefor can be expensive. So to prohibit coverage for this medically necessary kind of treatment is, hopefully, not what we intend with LB22 and we can find a clearheaded and compassionate response to move forward with this clear exception. So I urge your favorable support. Thank you. [LB22]

SPEAKER FLOOD: Thank you, Senator Conrad. Members, you've heard the closing to AM1373. The question for the body is, shall AM1373 be adopted? All those in favor vote aye; all those opposed vote nay. Senator Conrad, for what purpose do you rise? [LB22]

SENATOR CONRAD: Mr. Speaker, I'd request a call of the house, please. [LB22]

SPEAKER FLOOD: Members, Senator Conrad has requested a call of the house. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB22]

CLERK: 31 ayes, 0 nays, Mr. President, to place the house under call. [LB22]

SPEAKER FLOOD: Thank you, Mr. Clerk. 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 Smith, Schumacher, Lathrop, Nordquist, Utter, Pankonin, Carlson, please return to the Chamber and record your presence. The house

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is under call. Senator Lathrop, the house is under call, please return to the Chamber. Senator Pankonin, the house is under call, please return to the Chamber. Senator Conrad, all senators are present or otherwise accounted for. How did you want to proceed? [LB22]

SENATOR CONRAD: Thank you, Mr. Speaker. Could I please have a roll call vote in regular order. [LB22]

SPEAKER FLOOD: Mr. Clerk, the question before the body is, shall AM1373 be adopted? Would you please read the roll in regular order. [LB22]

CLERK: (Roll call vote taken, Legislative Journal page 1402.) 14 ayes, 26 nays on the amendment, Mr. President. [LB22]

SPEAKER FLOOD: AM1373 is not adopted. I do raise the call. Mr. Clerk. [LB22]

CLERK: Mr. President, the next amendment I have is--Senator Conrad, I have AM1365 with a note that you would like to withdraw that and offer as a substitute AM1374. (Legislative Journal page 1402-1403.) [LB22]

SENATOR CONRAD: That's correct, Mr. Clerk. [LB22]

SPEAKER FLOOD: Without objection, so ordered. [LB22]

CLERK: I have AM1374, Senator. [LB22]

SPEAKER FLOOD: Senator Conrad, you're recognized to open on AM1374. [LB22]

SENATOR CONRAD: Thank you, Mr. Speaker. And thank you, colleagues. To be clear, because there seems to be a lot of misinformation buzzing around the Chamber, this is not a filibuster. Nobody needs to worry about counting to cloture, at least from my perspective. I've brought forward two very, very carefully drafted and carefully considered amendments that I believe are important for building the record on this critical issue and that I do believe are worthy of adoption and that do not undermine the intent of proponents of LB22. So, quickly, what is AM1374? AM1374 is an amendment which clarifies the health exception in LB22. And what the language is in my amendment is, word for word, a mirror of existing law. Last year, I'm sure many of you will remember well that we had a chance to look at Speaker Flood's Pain-Capable Unborn Child Act, LB1103. The language in my amendment is a 100 percent verbatim mirror to the health exception provided in LB1103. And it's to ensure that, as we move forward, that our public policy and our statutes are at least uniform and clear. And rather than having a variety of different health exceptions for a variety of different purposes, we should have a clear and understandable definition when it comes to what the

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Legislature's public policy is for health exceptions. And AM1374 ensures that clarity. Thank you. [LB22]

SPEAKER FLOOD: Thank you, Senator Conrad. Members, you've heard the opening to AM1374. Senator McCoy, you are recognized. [LB22]

SENATOR McCOY: Thank you, Mr. President and members. I also stand in opposition to AM1374, and I'd like to outline a couple of the reasons why. First part of the language that Senator Conrad has in AM1374--she is correct--is from the statute that was LB1103 that we passed last year. However, in line 3 of her amendment, where it says, "due to an emergency situation," the statute that is LB1103 defines a "medical emergency," which is a different place in statute with a different definition. So the first part of the amendment is from what is--or what was LB1103 that's now in statute; second part is not. I also have very serious reservations about line 4 of AM1374, which says: "or to preserve the life of an unborn child." I have reservations why that is not "the unborn child." And I want to make it very clear--perhaps Senator Conrad can speak to this--that we aren't in some way speaking to selective reduction of unborn children of what would be multiples. You know, many of you may know this and some of you may not, I am the oldest of five; I have triplet brothers that are 18 months younger than I am. And I would want to make it very clear for those that have multiple children across the state of Nebraska that through this amendment we are not speaking of opening the door and a pathway for selective reduction of unborn children. That is why that along with what I previously mentioned--as that it is inconsistent language vis-a-vis LB1103--are the reasons why I stand in opposition to AM1374. Thank you, Mr. President. [LB22]

SPEAKER FLOOD: Thank you, Senator McCoy. Senator Ken Haar, you are recognized. [LB22]

SENATOR HAAR: Mr. President, members of the body, I stand in support of AM1374. Again, the language is parallel to what we passed last year. And in these kind of discussions, I've tried to put myself in the position of a woman who is facing an emergency situation with her pregnancy. It's not a time when you can go to the law books, when you're going to think of going to the Web site and--the Nebraska Web site and looking up the statute to see if something will be covered or not. It's an occasion when you have to take an emergency action, an emergency decision. And I think it's only fair to Nebraska women that it be very clear what is covered and what isn't covered, so at those points of emergency the family can deal with the emergency and not have to worry about the finances, not have to worry about, shall we wait or shall we go--so that they can take immediate action. And so I rise in support of AM1374. Again, I think it's important for Nebraska women and their families to have this kind of certainty in our law. Thank you. [LB22]

SPEAKER FLOOD: Thank you, Senator Haar. Senator Conrad, you are recognized.

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[LB22]

SENATOR CONRAD: Thank you, Mr. President. And two points, quickly. Again, this language--I worked very closely with Bill Drafters; it verbatim mirrors the health exception that we have not only in LB1103 but a variety of other instances in our statutory code. And if you look at line 3, there is a specific reference to the emergency situations as detailed in Nebraska Revised Statute 28-326. So it's--there's no tricks here, folks. This is a specific and clear amendment that is meant to ensure we have uniformity in our various health exceptions, so that we don't have one health exception for insurance purposes, one health exception for the unborn pain-capable child act, and the list goes on and on--but rather that we have a clear and uniform set of specific health exceptions. Again--and if you look at 28-326, 28-3107, 28-3103, 28-327.02, 28-3106, all of these have the same health exception that is contained in my amendment, AM1374, and which differs from what is contained in LB22. That's the first point. As to the second point, Senator McCoy notes in relation to the language on line 4--let me be clear, his assertion is offensive. No one on this floor, including myself, has ever advocated for selective reduction. What this is in relation to--and it proves why we need such careful language in regard to these critical debates, is because apparently how quickly we forget, Senator McCoy, just last year, on LB1103, Tiffany Campbell testified to the Judiciary Committee about her experience being pregnant with twins when she and her husband learned both were suffering. Because of her story, Speaker Flood, the primary sponsor of the legislation, promoted amending the bill to provide an exception for situations where terminating one fetus was essential in order to save the other. That is why it says "the life of an unborn child," not "the life of the unborn child." It's to deal with the specific instances like twin-to-twin transfusing syndrome that does exist. And I'm going to read Tiffany's story that she provided the Judiciary Committee so there is no misunderstanding about what this language is. According to Tiffany Campbell's testimony to the Judiciary Committee: I am a mother of three and a native daughter of Nebraska who is here to testify in opposition to LB1103. My husband, Chris, and I, in consultation with our doctors, made the difficult decision to have an abortion in 2006. We did so so that we could bring our youngest son into this world rather than burying two babies. Chris and I were happily married with two children and looking to add to our family when we became pregnant; we were thrilled. At 19 weeks' gestation, I landed in the hospital with a severe kidney infection and received my first ultrasound. We were overjoyed when we saw we were expecting identical twin boys. Then we learned our sons were suffering from a severe case of twin-to-twin transfusion syndrome, a condition where twins unequally share blood circulation. One baby was receiving too much blood, resulting in a strained heart and an acute risk of heart failure. Meanwhile his brother was clinging to life, but his blood supply was insufficient to sustain normal development. This is an affliction where if one twin dies in utero, the other faces a significant risk of death. In fact, severe TTTS has a 60 percent to 100 percent fatal or neonatal mortality rate if left untreated. My husband and I were sent to one of the premier fetal care centers in the world and told our only hope for saving this

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pregnancy was termination of one of the babies, with hope that the other twin would survive. [LB22]

SPEAKER FLOOD: One minute. [LB22]

SENATOR CONRAD: Thank you, Mr. President. So we were faced with an awful situation that forced us to examine our most fundamental moral and spiritual beliefs. Again, if I don't finish Tiffany's story, I'm going to hit my light so that we can include this fully in the record. At first we didn't want to believe the doctors' prognosis. We wanted badly for our boys to win the fight. But we couldn't stay on the sidelines forever. Against all of our hopes and prayers, the twins' condition continued to deteriorate quickly. This was the most difficult decision of our lives: we could let nature run its course and pray that by the grace of God our boys would miraculously survive, or we could abort the sicker of the two, giving his brother a legitimate shot at life. We made the decision to abort one of our sons. Our decision was predicated on consultation with... [LB22]

SPEAKER FLOOD: Time, Senator. [LB22]

SENATOR CONRAD: ...experts...thank you, Mr. President. [LB22]

SPEAKER FLOOD: Senator Burke Harr, you are recognized. [LB22]

SENATOR HARR: Thank you, Mr. Speaker. I have not made my decision on AM1374, but I would echo--and the reason I got up was to echo what Senator Conrad is saying. I'm a twin. Big whoop. I don't think it matters if you're a twin or not. What is important is--and I was lucky enough--I think, I'm not sure--that my brother survived. Some days I doubt that. But that being said, this is a very serious issue. This is to protect--preserve the life of an unborn child. It's not for selective abortion, as was indicated. It's very important when we enter the area of abortion that we use logic and reason and that we take away rhetoric. Rhetoric has a place in argument, but this is a very serious area that does affect people in the most personal way. I had a friend December, January, February of this year who went through just the situation Senator Conrad is talking about. And it's heart-wrenching. And if it doesn't bring tears to your eyes, then you're not a human. And I hope no one ever has to go through that situation. And I think it important that money should not have to play a part or a role in this situation in determining--well, you know, this is awful--well, it's easy, we don't have the money; our insurance doesn't cover this; problem solved. So I hope money isn't an issue. And that's why I'm conflicted on this AM1374. And with that, Mr. Speaker, I would cede the rest of my time to Senator Conrad. Thank you. [LB22]

SPEAKER FLOOD: Thank you, Senator Burke Harr. Senator Council, you are recognized. Senator Conrad, I'm sorry, you have 3 minutes 30 seconds. [LB22]

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SENATOR CONRAD: Thank you, Mr. Speaker. And thank you, Senator Harr. And it's a pleasure to be confused with my good friend Senator Council, so I will take that as a compliment. I'm going to continue reading from Tiffany Campbell's story that she presented to the Judiciary Committee on this very topic contained in AM1374, in the context of LB1103 last year, because, again, this Legislature has already been exposed to this situation, and this Legislature has already made exception in our law to address this situation. And I'm asking for the same parity and the same equity in LB22. Again, to conclude Tiffany Campbell's story: Our decision was predicated on consultation with experts in the field of fetal medicine, our personal beliefs, prayers, and a mother's intuition. This was an excruciating decision for us to make. Without the procedure, we would have buried two babies instead of one. Today we have a healthy 3-year-old boy who is a treasure of his older brother and sister. He's the family jester, the optimist, and the one with the quick smile and a contagious giggle. It's like he made a pact with his twin brother to live passionately, to live for both of them in honor of the spirit of his fallen brother. Every day our youngest son's contagious giggle reminds us that we made the right decision for our family. And, colleagues, all I'm asking with AM1374 is that we provided this exception in LB1103 last year, we should provide the same exception for families to make this decision for themselves with medical experts if they have one of the rare but real instances like Tiffany Campbell and her family experienced with twin-to-twin transfusion syndrome or another similar type of medical complication. Thank you. [LB22]

SPEAKER FLOOD: Thank you. Senator Council, you are recognized. [LB22]

SENATOR COUNCIL: Thank you, Speaker Flood. And I'm glad that Senator Conrad--because when I hit my light, I hit it initially to ask some questions of Senator McCoy, but if you hadn't had enough time to finish the Tiffany story--because, unlike those who are hearing it for the first time on the floor, I had the opportunity to hear Tiffany, as a member of the Judiciary Committee, and it is a very compelling story. But if Senator McCoy would yield to a couple of questions... [LB22]

SPEAKER FLOOD: Senator McCoy, will you yield to a question from Senator Council? [LB22]

SENATOR McCOY: I would. [LB22]

SENATOR COUNCIL: Thank you, Senator McCoy. I'm trying to make it--have it clear in my mind what the basis of the objection is to AM1374, particularly in light of the clarification of the references in the amendment to the same portions of previously adopted legislation and LB1103 in particular. I guess, and based upon some of the statements by my colleagues thus far, do you remain opposed to AM1374 if the intent is strictly uniformity? [LB22]

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SENATOR McCOY: That's not what we're talking about, Senator Council; that's not what's in the amendment. [LB22]

SENATOR COUNCIL: Okay, so tell me what...that's my understanding. It was to make the provisions of LB22 with regard to medical emergency and the situation reflected in the Tiffany scenario, which was, in my recollection, was addressed in LB1103 last year. And perhaps if you could then explain to me what your understanding of AM1374 is... [LB22]

SENATOR McCOY: I'd be happy to, Senator Council. In fact, you just mentioned it. You mentioned "medical emergency"; you are correct; that is what's in LB1103. However, that's not what's in AM1374. What is in AM1374 is "emergency situation," not "medical emergency." And if you'd like, I have the definitions exactly as it is in statute between the two, but they have two very different definitions statutorily. [LB22]

SENATOR COUNCIL: Okay, but my reading--it may be perhaps I'm looking at something different. It was my understanding that the references to "emergency situation," as those terms are defined in existing statute, and the references to the sections in Chapter 28 all contain the definition of "medical emergency" that I understand that you're concerned with. Am I in error on that? [LB22]

SENATOR McCOY: Well, I would reiterate, Senator Council, that "medical emergency" and "emergency situation" are two different terms with statutorily two very different definitions. And if we are intending to talk about "medical emergency," then we must talk about "medical emergency" as it was in LB1103. If we are talking about "emergency situation," it's a very different meaning, a very different definition. [LB22]

SENATOR COUNCIL: Okay, so then I'll ask this question: Assuming that the intent is that those terms be uniform, would you still be opposed to AM1374? [LB22]

SENATOR McCOY: I cannot answer that question at this time, Senator Council, because that is not the matter that is currently before us. [LB22]

SENATOR COUNCIL: Hmm. [LB22]

SENATOR McCOY: If that matter were to come before us, be happy to answer that question for you. [LB22]

SENATOR COUNCIL: All right. If Senator Conrad would yield... [LB22]

SPEAKER FLOOD: Senator Conrad, will you yield to a question from Senator Council? [LB22]

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SENATOR CONRAD: Of course. [LB22]

SENATOR COUNCIL: And during your response as to the intent of AM1374, you referenced numerous sections of the statute, all found in Chapter 28; I didn't write them all down, but my recollection... [LB22]

SPEAKER FLOOD: One minute. [LB22]

SENATOR COUNCIL: ...there were several references to Chapter 28. Am I correct in my understanding of the intent of your amendment, is that whatever those sections of statute state with regard to emergency, that that's the intent of AM1374? [LB22]

SENATOR CONRAD: Absolutely, Senator Council. And if you look at line 3 of the amendment, there's a specific mirrored language to the "Terms, defined" section that support all of this related legislation in 28-326(7). Senator McCoy is right; there is a different section that relates to "emergency situation," 28-327.02. But that defines a physician's duties; that does not define the medical exception. [LB22]

SENATOR COUNCIL: Okay, thank you very much. And I appreciate both of my colleagues' responses. And it just--my opinion is that the objection to AM1374... [LB22]

SPEAKER FLOOD: Time, Senators. [LB22]

SENATOR COUNCIL: Thank you. [LB22]

SPEAKER FLOOD: Senator Conrad, you may continue. [LB22]

SENATOR CONRAD: Thank you, Mr. President. And colleagues, just...I think I had plenty of time to get that in in the tail end of Senator Council's time, and so I'm happy to give her more time, if she needs. But, again, to be clear, in working very carefully with Bill Drafters, the language from this amendment mirrors LB1103, brought by Senator Flood last year, passed overwhelmingly by this body. And if you look at the existing definitions in Nebraska Revised Statutes, there's multiple references to the same health exception that is before you now in AM1374. And the definitional section related to all of these abortion-related issues is in 28-326, and "emergency situation" is specifically defined in 28-326(7). When you're looking at another section related to "emergency situation," in 28-327.02, that goes to the duties of the physician. That is not related to the definition of the emergency health exceptions that we're talking about in AM1374. Again, colleagues, there is indeed no intent for trickery or otherwise in this legislation and in this proposed amendment. It is a very, very straightforward, verbatim adoption of our existing health exceptions in this context as they are applied to other contexts, most notably in Chapter 28. And the language on--related to line 4 emanates from the same. And it's to ensure that we have a clear ability and flexibility for families and medical

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experts to make the decisions that they need to make in order to preserve the life of an unborn child, if they're in a rare situation or instance like the Campbells were. Thank you, Mr. President. [LB22]

SPEAKER FLOOD: Thank you, Senator Conrad. There are no other lights on. Senator Conrad, you're recognized to close on AM1374. [LB22]

SENATOR CONRAD: Thank you, Mr. President. Again, colleagues, I think, to be very, very clear, this amendment ensures that we have uniformity and clarity when it comes to the health exceptions contained in statutes related to abortion, whether they're in Chapter 28 or whether they're related to LB22 and insurance coverage and prohibitions contained therein. It ensures we have uniformity. It utilizes existing statutory language. And, again, it recognizes not only those health exceptions which have been specifically declared as appropriate by this body, but it also then recognizes what has also already been adopted by this body: a very clear exception for cases like the Campbells'. And I urge your favorable consideration. Thank you. [LB22]

SPEAKER FLOOD: Thank you, Senator Conrad. Members, you've heard the closing to AM1374. The question before the body is, shall AM1374 be adopted? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB22]

CLERK: 10 ayes, 20 nays, Mr. President, on the amendment. [LB22]

SPEAKER FLOOD: AM1374 is not adopted. Mr. Clerk, items? [LB22]

CLERK: I do, Mr. President, thank you. Your Committee on Enrollment and Review reports they've examined and reviewed LB641 and recommend that it be placed on Select File, likewise with LB413, LB525, LB525A, LB591, LB687, LB542, LB265, LB406, LB315, LB277, LB292, LB394, LB162, LB494, LB124, LB73, LB234, and LB502, some of which have Enrollment and Review amendments attached. Health and Human Services Committee, chaired by Senator Campbell, reports LB507 to General File, with amendments. And Senator Schilz offers LR199; that will be laid over. (Legislative Journal pages 1403-1413.) [LB641 LB413 LB525 LB525A LB591 LB687 LB542 LB265 LB406 LB315 LB277 LB292 LB394 LB162 LB494 LB124 LB73 LB234 LB502 LB507 LR199]

Mr. President, the next amendment I have with respect to LB22 is by Senator Haar, AM831. (Legislative Journal page 1413.) [LB22]

SPEAKER FLOOD: Senator Haar, you're recognized to open on AM831. [LB22]

SENATOR HAAR: Thank you. Mr. President, members of the body, my amendment is to except from this bill abortion that is performed because in the professional judgment

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of the physician there's a complication or anomaly created to the pregnancy such that the fetus has a condition incompatible with life. Now, I know in presenting this amendment what the vote will be. But I think sometimes it's important, as we've done in the past few days, to talk about things anyway. This amendment deals with fetal anomalies incompatible with life. It's a topic I've brought up in the past and will continue to do so. I do so in an effort to have our laws reflect the harsh reality of the devastation families feel and the difficult decisions they must make when faced with the detrimental news that the pregnancy they had celebrated has gone horribly wrong. It is unfortunate that some pregnancies end in this tragic way. It is fortunate that most pregnancies end with healthy infants. Such stress that this causes a family when they hear about a fetal anomaly incompatible with life--such stress on a family is unimaginable. No doubt, unless we walk in their shoes, none of us can fully comprehend what these families endure. Then for lawmakers to insert themselves in this most personal and traumatic of times only adds to their troubles. LB22 is one of those intrusions that can be devastating to a family emotionally, mentally, and financially. An insurance company can simply point to this bill, if it becomes law, and say they cannot cover a pregnancy termination unless a mother is sure to die. Simply put, I believe this is wrong. My hope is that you will listen. I ask that you put yourself in the place of a couple facing a pregnancy outcome with a child doomed to die and who perhaps will suffer mightily while doing so, even in utero. In this Chamber we have the luxury of being far removed and viewing it as a hypothetical. Real families facing these situations aren't so lucky. And as I said, I'm going to provide you with the information on some of the severe anomalies that can and do occur. I note that sometimes a fetus suffers from multiple anomalies, which compounds the problems and lessens any hope that a couple may have had for a normal pregnancy. When I talk about fetal anomalies I'm not talking about a cleft palate or a club foot. I'm talking about conditions that mean the fetus is not going to survive in utero or will die not long after birth. I don't know that all of you are aware of some of the potential abnormalities and how serious they can be; and, often, a fetus suffers from more than one condition. It's impossible to relate all potential anomalies, but I will cover a few. Now, in order to make it clear, I've distributed a page describing one of those fetal anomalies incompatible with life, and I'm going to go on to talk about this my next time on the light. These pictures are very disturbing. These facts are disturbing. But they are a fact of life and death. Now, there are people who, and I understand this, who believe that fetal abnormalities are part of life and God's plan, even if lethal to the fetus, and I respect that point of view. There are others, including myself, who steadfastly believe the decision to carry a pregnancy to term with severe complications is a personal matter and should be a decision that is made by the patient and her family in consultation with their doctor. The first anomaly I want to talk about is one that's not all that rare, and I think families need to know about this. This is an anomaly called anencephaly. And, as you see in the diagram, normally when a fetus develops, very early, between the third and fourth weeks of pregnancy, to form the brain and the spinal cord, things can go wrong. Anencephaly is a defect in the closure of the neural tube during fetal development. The prognosis for babies born with anencephaly is extremely

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poor. If the infant is not stillborn, then he or she will usually die within a few hours or days after birth. And this isn't even pleasant to look at, but it's a fact of life. A baby born with anencephaly is usually blind, deaf, unconscious, and unable to feel pain, because there is no brain. Although some individuals with anencephaly may be born with a rudimentary brainstem, the lack of a functioning cerebrum permanently rules out the possibility of ever gaining consciousness. The third picture that I show on this is a 19-week-old fetus; the one above it is actually a fetus that was brought to term. And then I included this next part because it's really important. And I'm simply quoting from the source at the bottom, the National Institute of Neurological Disorders and Stroke--the National Institutes of Health: Recent studies have shown that the addition of folic acid, Vitamin B9, to the diet of women of childbearing age may significantly reduce the incidence of neural tube defects as much as 60 percent to 70 percent. It's actually recommended that all women of childbearing age consume 0.4 milligrams of folic acid daily. And I put that last statement in there because we could prevent much of this, and it has to do with prenatal care. And as you know, last year we decided there are some women in this state that shouldn't get prenatal care. It's preventable, but it's not uncommon. Actually, approximately 1 child for every 1,000 births--and this is a statistic from central Europe--ends up with anencephaly. It's one of the what they call "neural tube defects," and I'm going to go through some of these others. Some of them are relatively minor when it comes to consequences, but many of them are incompatible with life--that if the fetus comes to term it's either stillborn or lives only a few hours at the most. Again, if you look at these pictures, the cells of the neural plate make up the nervous system; in normal development, they fold onto themselves in order to create what's called the "neural tube," which then becomes the backbone and the spinal cord. After a number of transformations, it becomes the brain. Anencephaly occurs when the head end of the neural tube fails to close. Infants with this disorder are born without a scalp or a cerebellum; their meninges, both hemispheres of the brain, and the vault of the cranium skull are also missing, though they usually have part of the brainstem. And the remaining brain tissue is protected only by a thin membrane. Again, what this amendment would do in such a case as anencephaly--it would except--exempt that or except that from LB22, so that if a family, in consultation with their doctor or, hopefully, a minister or priest, whatever, decides that it's appropriate... [LB22]

SPEAKER FLOOD: One minute. [LB22]

SENATOR HAAR: ...and...thank you...and decides to have an abortion, then the abortion would be covered by insurance. To me, this is the only--the only moral thing to do. And in my future times at the mike, I'm going to tell you about some of these other kinds of fetal anomalies that are incompatible with life and that I think should be exempted from this legislation. Thank you very much. [LB22]

SPEAKER FLOOD: Thank you, Senator Ken Haar. Senator McCoy, you are recognized. [LB22]

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SENATOR McCOY: Thank you, Mr. President and members. I stand in opposition to AM831, although I respect Senator Haar and his beliefs on this issue. It is a serious topic and one which we don't enter into lightly, I know. I stand in opposition to AM831 for several what I believe to be clear and simple reasons. In 1981, just over 30 years ago, the Legislature, with LB125, put in a statute that abortions are only allowed for state employees for the life of the mother; and I believe this amendment would fly in the face of that. It also says in state statute 28-325: "an expression of the will of the people of the state of Nebraska and the members of the Legislature to provide protection for the life of the unborn child whenever possible." I think that LB22 does that; I think that AM831 takes away from that established 30-year precedent for our state employees, that taxpayer dollars should not be used for elective abortions. And, once again, with that, Mr. President, I would stand in opposition to AM831. Thank you. [LB22]

SPEAKER FLOOD: Thank you, Senator McCoy. Senator Ken Haar, you are recognized. [LB22]

SENATOR HAAR: Mr. President, members of the body, thank you. Again, this is not going to be a filibuster, but I'd like to go through some of these because I think we need to look and view up close the consequences of our actions. One of the interesting parts I find about requiring that a woman carry a fetus to term when there's an anomaly incompatible with life is that it kind of assumes that pregnancy and birthing is just something that goes without a hitch. Well, there is still maternal deaths from childbirth; they've been--thankfully, they've been dropping greatly. I've found a number of resources, and in developing regions there are still 450 maternal mortality deaths for every 100,000 births; in developed regions it's 9 per 100,000. Not a lot when you look at percentages--in fact, the 9 out of 100,000 is 0.009 percent. But there's still a risk that women have to go through that men don't have to face. In Sierra Leone, it's as much as 2,100 deaths by mothers per 100,000 births. In United States it's 11, and, in fact, that number is going up. Nobody is quite sure why, but the number of maternal deaths is actually increasing in the United States. So this thing of saying, well, the woman should just carry the fetus to term no matter what, I think degrades women. I want to tell you about another fetal anomaly that's incompatible with life. It's called Meckel-Gruber syndrome, MKS. It's a lethal autosomal recessive disorder characterized by anomalies of the central nervous system. Children with MKS may also demonstrate a lot of other things; usually these anomalies don't just come by themselves. Unfortunately, because of the severe physical defects present in the syndrome, an infant with MKS will either be stillborn or die shortly after birth. The lungs are too small, and abnormal kidneys cannot support life. If Meckel-Gruber syndrome is detected by prenatal ultrasound, some parents choose to terminate the pregnancy, which is also a sad and difficult decision. The mortality rate is 100 percent, with most fetuses surviving only a few days to a few weeks; most die stillborn. I think to say to a family that if ultrasound detects that the fetus has MKS, that they have to carry that to term or pay a huge, huge doctor's bill, I

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think that's immoral. Another kind of fetal anomaly that's incompatible with life...and, again, I'm going through some of these because I think we need to face the reality of these matters of life and death that come to families not because they want them but as a total surprise usually. Iniencephaly is a rare birth defect caused by improper closure... [LB22]

SPEAKER FLOOD: One minute. [LB22]

SENATOR HAAR: ...of the neural tube, again. Iniencephaly is in the same family of neural tube defects as spina bifida, but it's more severe. The defect results in extreme retroflexion, backward bending, of the head combined with severe distortion of the spine. In most infants the neck is absent, and the skin of the face is connected directly to the skin of the chest while the scalp is directly connected to the skin of the back. Most infants with iniencephaly have additional birth defects such as anencephaly, which I just talked about. Other parts of the body may be affected, and infants can have cardiovascular disorders, diaphragmatic hernias, and other malformations. For reasons that are still unknown, the disorder is more common among females. And we have not been able to detect the gene yet--because it seems to be genetic--but it's most likely a mix of genetic and environmental factors. [LB22]

SPEAKER FLOOD: Time, Senator. [LB22]

SENATOR HAAR: Thank you. [LB22]

SPEAKER FLOOD: Thanks, Senator Ken Haar. Senator Conrad, you are recognized. [LB22]

SENATOR CONRAD: Thank you, Mr. President. And, colleagues, I rise in support of Senator Haar's amendment. And he's really--has the most expertise and information on these topics, so I don't want to take any time away from his clear recitation of these serious and significant fetal anomalies and medical issues that do exist. But I do want to just provide a little bit of an overview on some of these topics before we get too far down the path or, actually, as we may be concluding here shortly; I think this is the last pending amendment. There's no question about it, colleagues, every single person on this floor knows this to be true, but sometimes it doesn't always carry well in terms of public perception as they're watching debate or as they'll be reading recounts in news media afterwards, if they're so inclined. There's no question about it that people of goodwill can have a sincere and significant disagreement about the issues contained in LB22, the amendment--the issues contained in AM831 or the amendment that I brought forward today. And I think it's important that we do have a respectful dialogue about those disagreements, whether they be legal disagreements or policy disagreements or moral disagreements or emotional disagreements. But that's reality. And in a diverse society where our citizenry holds a variety of different opinions on any given topic, no

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matter how unpleasant or difficult, it's important that we have strong advocates on each side ensuring that we have a thoughtful debate so that we can move forward. And that's what I see happening today with LB22. I think it's been the appropriate tone and tenor in this dialogue and, in fact, in most instances when this body during my time here has taken up difficult issues related to reproductive health. And so I think that's a testament to the strength of the Nebraska Unicameral and a testament to the professionalism of each of the senators here. And I want to thank my friend Senator Haar for his very brave and courageous act this afternoon to bring forward this amendment and to take the time to build a careful record about issues that are sometimes very unpleasant and less than desirable to spend our precious time debating. Make no mistake about it, colleagues, I think almost all of us would prefer the time when we can talk about common-ground issues like economic development or education or otherwise. But when these issue are brought forward, we have a responsibility to ensure that those of us with different perspectives indeed do build a record, indeed do bring forward provocative and important ideas related to the medical realities that are underlying in all of these issues. And again, we can have very, very different but very respectful disagreements related to these emotional policy issues as they're brought forward. And again, I just want to thank Senator Haar and Senator McCoy for the tone and tenor of this debate. And I look forward to hearing more from Senator Haar, as I know he's given such careful research to these topics related to fetal anomaly and particularly those instances when a pregnancy is incompatible with life. And those deserve a clear and explicit exception in LB22 and elsewhere, so that we ensure a system that doesn't have a disparate set of exceptions related to Medicaid or state employees or private insurance plans. Because otherwise--and this came up briefly on General File... [LB22]

SPEAKER FLOOD: One minute. [LB22]

SENATOR CONRAD: ...we're...thank you, Mr. President--thank you, Mr. Speaker...we're putting forward a really unfair and disparate system, which ensures--with the availability of a potential rider as contained in LB22--in essence, the best abortion care that money can buy. And that kind of disparity is inappropriate in our public policies but is more related to the underlying issues in LB22 than it is in AM831. Thank you, Mr. Speaker. [LB22]

SPEAKER FLOOD: Thank you, Senator Conrad. Senator Council, you are recognized. [LB22]

SENATOR COUNCIL: Thank you, Mr. President. And again I rise because I'm trying to gain understanding. I understand Senator Haar's amendment. It's an amendment that he has advanced with respect to previous legislation. And I, too, want to join in commending Senator Haar for doing something that I would think is rare for men to do, and that is to place themselves in the position of a woman who is faced with this incredibly difficult decision. But with respect to his amendment and what he's seeking to

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accomplish, I again need to be sure that I understand the basis of Senator McCoy's objection. As I heard Senator McCoy in response to Senator Haar's introduction of AM831 was that he objected to it because it ran counter to the current Nebraska law relating to the insurance coverage that can be...insurance coverage, the group health insurance coverage applicable to state employees. If Senator McCoy would yield to a question, I just want to confirm that that's my...that I'm correct. [LB22]

SPEAKER FLOOD: Senator McCoy, will you yield to a question from Senator Council? [LB22]

SENATOR McCOY: I would. [LB22]

SENATOR COUNCIL: And if you didn't hear the question, was I correct in understanding you to say that your objection to AM831 was by adding the language that the amendment proposes to add in Section 3 on page 4 of LB22. To do so would be to run counter to current Nebraska law that provides that group health insurance plans for its employees shall not include coverage for an abortion except in the case of the death of a woman? [LB22]

SENATOR McCOY: Life of the mother is, I believe, how it's termed, Senator Council. But that is a large part of my concern with this. And I, personally, object to the amendment as well, but I believe it's significant enough that what has been in statute since 1981 in the state of Nebraska should stay such. [LB22]

SENATOR COUNCIL: Okay. And let me clarify that. If I can refer you to page 3 of the green copy of LB22, (e), I just want to make sure that this is what you're referencing. The laws of the state of Nebraska provide that group health insurance plans or health maintenance agreements paid for with public funds shall not cover abortion unless necessary to prevent the death of the woman. Is that what you're referring to? [LB22]

SENATOR McCOY: Are you looking at the green copy, Senator Council or the E&R amendment... [LB22]

SENATOR COUNCIL: Yes. [LB22]

SENATOR McCOY: ...because the E&R amendment... [LB22]

SENATOR COUNCIL: It's the... [LB22]

SENATOR McCOY: ...changes to the section that you're referencing. [LB22]

SENATOR COUNCIL: Okay. And what do the E&R amendments changes make to (e)? [LB22]

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SENATOR McCOY: Well, it certainly changed around some of the intent language. I... [LB22]

SENATOR COUNCIL: No, it's not the...no, it's (e), which would be Section 2(e). [LB22]

SENATOR McCOY: And what about it, Senator Council? [LB22]

SENATOR COUNCIL: Am I...as currently placed on Select File does that section read, the laws of the state of Nebraska provide that group health insurance plans or health maintenance agreements paid for with public funds shall not cover abortion unless necessary to prevent the death of the woman? [LB22]

SENATOR McCOY: That is not subsection (e) in the E&R copy, Senator. [LB22]

SENATOR COUNCIL: Okay. I know it has been moved around because of the elimination of a section. But is that the law that you're referencing that Senator Haar's amendment runs counter to? [LB22]

SENATOR McCOY: Well, that's, I believe in the E&R copy, you may be... [LB22]

SPEAKER FLOOD: Thirty seconds. [LB22]

SENATOR McCOY: ...you may be referring to (d). I can be happy to reference the exact place in statute if you would so wish, Senator Council. [LB22]

SENATOR COUNCIL: All right. And I would be happy to have you do that, Senator McCoy, because if that is in fact what you are saying then your bill itself flies in the face because whatever number it is now, Section 3, no abortion coverage shall be provided by a qualified health insurance plan. And then it goes, this subsection shall not apply to coverage for an abortion... [LB22]

SPEAKER FLOOD: Thank you, Senator Council. [LB22]

SENATOR COUNCIL: Time? [LB22]

SPEAKER FLOOD: Time. [LB22]

SENATOR COUNCIL: Thank you. [LB22]

SPEAKER FLOOD: Senator Ken Haar, you are recognized. [LB22]

SENATOR HAAR: Cover one more. Again my amendment would allow insurance

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coverage without the special rider in the case of a fetal anomaly incompatible with life. And by the way, Senator McCoy and I have had some discussions on this. So we obviously disagree, but I think we respect each other's opinions. Encephalocele, and I'm not a doctor, I'm not a medical person, so I may not have pronounced that exactly right, is a rare disorder in which the bones of the skull do not close completely creating a gap through which cerebral fluid, brain tissue and the membrane that covers the brain can protrude into a sac-like formation. In other words, the brain begins, some part of the brain at least begins to form outside the skull. The neural tube is the tissue of an embryo that becomes the brain's spinal cord and bone surrounding each. Encephalocele are frequently associated with other cranial head, skull or brain and/or facial anomalies and in the United States Encephalocele occur in approximately 1 to 4 per 10,000 live births. It's not all that unusual. And I think we should all understand that what we're talking about here is not something that just falls into a family once in every decade or something. It's not all that uncommon. It's seen most commonly in females than in males. Nobody knows why, but it has nothing to do with what the mother did during the pregnancy. So I'm going to end then by saying again that there are people who believe that fetal anomalies are part of life and God's plan, even if lethal to the fetus. And I can respect that. But there are others, including myself, who steadfastly believe the decision to carry a pregnancy to term with severe complications is a personal matter and should be a decision that's made by the patient and her family in consultation with their doctor. And with that, I'd like to withdraw my amendment, Mr. President. [LB22]

SPEAKER FLOOD: AM831 is withdrawn. Mr. Clerk. [LB22]

CLERK: At this time, Mr. President, I have nothing further pending to the bill. [LB22]

SPEAKER FLOOD: Senator Larson for a motion...Senator McCoy for a motion. Senator motion...or Senator Larson is here. Senator Larson, you are recognized for a motion. [LB22]

SENATOR LARSON: Mr. President, I move that LB22 be advanced to E&R for engrossing. [LB22]

SPEAKER FLOOD: Members, you've heard the motion. Returning to discussion on the motion. Senator Council, you are recognized. [LB22]

SENATOR COUNCIL: Thank you, Speaker Flood, because that may have clarified something because now I'm looking at the E&R amendments. And I'm going to again ask Senator McCoy to yield to a question, if Senator McCoy will yield. [LB22]

SPEAKER FLOOD: Senator McCoy, will you yield to a question from Senator Council? [LB22]

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SENATOR McCOY: I would. [LB22]

SENATOR COUNCIL: Okay. Now I have Section 2(d) of LB22 with the E&R amendments. And Section 2(d) reads, the laws of the state of Nebraska provide that group health insurance plans or health maintenance agreements paid for with public funds shall not cover abortion unless necessary to prevent the death of the woman. Am I correctly reading what is now Section 2(d) of LB22? [LB22]

SENATOR McCOY: You are. [LB22]

SENATOR COUNCIL: Okay. And previously in discussing Senator Haar's amendment, his amendment was going to add language to Section 3(1) of LB22. Is that correct? [LB22]

SENATOR McCOY: I believe so. [LB22]

SENATOR COUNCIL: Okay. And specifically his amendment was going to add language to Section 3, beginning at what was line 7 of LB22. It may change with the E&R amendments. But Section 3(1) second sentence reads, this subsection shall not apply to coverage for an abortion which is verified in writing by the attending physician as necessary to prevent the death of the woman or to coverage for medical complications arising from an abortion. Is that a correct statement of the language found in Section 3(1) of LB22? [LB22]

SENATOR McCOY: I believe so. And I'd be happy to read to you from the statute that I referenced, it's from 1981, if you'd so desire. [LB22]

SENATOR COUNCIL: Please do. [LB22]

SENATOR McCOY: State Statute 44-1615.01, "No group insurance contract or health maintenance agreement providing hospitalization, medical, surgical, accident, sickness or other health coverage paid for in whole or in part with public funds shall include coverage for abortion, as defined in Section 28-326. This section shall not apply to coverage for an abortion which is verified in writing by the attending physician as necessary to prevent the death of the woman or to coverage for medical complications arising from an abortion." [LB22]

SENATOR COUNCIL: Okay. So in terms of uniformity, why was that phrase ordered "coverage for medical complications arising from an abortion" left off of Section 2(d)? [LB22]

SENATOR McCOY: I don't believe that it was, Senator Council. In what way? [LB22]

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SENATOR COUNCIL: Well, Section 2(d) just says, "The laws of the state of Nebraska provide that group health insurance plans or health maintenance agreements paid for with public funds shall not cover abortion unless necessary to prevent the death of the woman." Based upon what you just read that's inaccurate. [LB22]

SENATOR McCOY: Well, I don't believe that it would be, Senator Council. It mentions the death of the mother, and that is what is the nature of LB22 following along behind the statute that I just read, which was LB125 in 1981. [LB22]

SENATOR COUNCIL: No, you...Section 3 speaks to "or coverage for medical complications arising from an abortion." [LB22]

SENATOR McCOY: Is that a question, Senator Council? [LB22]

SENATOR COUNCIL: It doesn't state "or to coverage for medical complications arising from an abortion." [LB22]

SENATOR McCOY: Senator Council, this refers to the statute. You could certainly... [LB22]

SPEAKER FLOOD: One minute. [LB22]

SENATOR McCOY: ...I'm not...I guess I'm not sure what you're trying to get at. [LB22]

SENATOR COUNCIL: Okay. What I'm trying to get at is if it's your intent that language mirror language of the statutes, which was the basis of your objection to Senator Conrad's amendment, your own bill doesn't mirror the language of the statute that you're referencing. If the language of the existing statute relative to employee group health insurance plans includes the language "or to coverage for medical complications arising from an abortion," Section 2(d) should also contain that phrase "or to coverage for medical complications arising from an abortion" because that is in fact what the law of the state of Nebraska is. And I submit to you that if we're going to be consistent about our arguments when we're dealing with objections to legislation, let us be consistent. Senator Conrad made reference to a specific statute... [LB22]

SPEAKER FLOOD: Time, Senator. [LB22]

SENATOR COUNCIL: Thank you. [LB22]

SPEAKER FLOOD: Senator Schumacher, you are recognized. [LB22]

SENATOR SCHUMACHER: Thank you, Mr. Speaker. I had the good fortune or bad

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fortune of attending Georgetown University's law school a few blocks from the Supreme Court building right after the Roe v. Wade decision. So all of these interesting angles bring back a lot of memories of deep philosophical decisions and the difficulty of this particular issue. If you were to take course 101 in fighting pro-life legislation, it would tell you probably to take advantage of the big hearts, the good nature and the fervent and justified zeal of pro-life forces to make sure that every bill that moves from the legislative floor is fraught with difficulties and fraught with things which probably a court would throw down. Consequently, I raised one issue before about why we need the section which might be picked apart and adds nothing to the particular legislation in Section 2. Let's look at some of the language now in Section 3. And I've got some questions so that we can clarify the record, if Senator McCoy will yield. [LB22]

SPEAKER FLOOD: Senator McCoy, will you yield to a question from Senator Schumacher? [LB22]

SENATOR McCOY: I would. [LB22]

SENATOR SCHUMACHER: Looking at Section 3 it says, no abortion coverage shall be provided by a qualified health insurance plan offered through a health insurance exchange created pursuant to the federal act within the state of Nebraska. Two questions then. Number one, can the exchange policy provide for coverage of an abortion if the abortion takes place out of state? [LB22]

SENATOR McCOY: Well, how would we address that, Senator Schumacher, in our body here, in Nebraska? [LB22]

SENATOR SCHUMACHER: I'm just asking the question, yes or no. [LB22]

SENATOR McCOY: Well, I don't believe that we can create statutes, Senator Schumacher, that deals with things that happen outside the confines or the state of Nebraska. [LB22]

SENATOR SCHUMACHER: Okay. So then a Nebraska resident can purchase a policy that will pay for an abortion in Iowa? Yes? [LB22]

SENATOR McCOY: Not that I'm aware of, no. The company would have to be domiciled in the state of Nebraska, in which case they would have to abide by statute that is defined by us here in the Legislature. [LB22]

SENATOR SCHUMACHER: So a Nebraskan cannot purchase a policy providing for out of state coverage. That's the intent of this...coverage for an abortion out of state, that's the intent? [LB22]

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SENATOR McCOY: That's my understanding, yes. [LB22]

SENATOR SCHUMACHER: Okay, all right. Then can an out of state plan provide for coverage in Nebraska? [LB22]

SENATOR McCOY: No, they would have to abide by the statutes of the state of Nebraska in order to write business in the state of Nebraska. [LB22]

SENATOR SCHUMACHER: I'm an employee of a large corporation, large corporation has as one of its health benefits an insurance package. It's written in Massachusetts. I've been assigned for six months to Nebraska. Can I pay for my coverage here? [LB22]

SENATOR McCOY: When you say assigned to the state of Nebraska, are you talking about a citizen of the state of Nebraska? [LB22]

SENATOR SCHUMACHER: Yeah, the company sends me here for six months and I have my policy with me. [LB22]

SENATOR McCOY: Well, if that policy is not written in the state of Nebraska, Senator Schumacher, I'm not sure how statutes that are written by us here and passed in the Legislature here would apply to that. [LB22]

SENATOR SCHUMACHER: So that person... [LB22]

SENATOR McCOY: That would apply to...in the state of Massachusetts. [LB22]

SENATOR SCHUMACHER: So that person can get an abortion covered by an insurance policy in the state of Nebraska? [LB22]

SENATOR McCOY: Not if the insurance company is writing business in the state of Nebraska, no. [LB22]

SENATOR SCHUMACHER: Well, suppose I was in a car accident. That insurance be no good in Nebraska for just accidents and car...I had a heart attack while I was in Nebraska? [LB22]

SENATOR McCOY: Well, I think that's an entirely different situation, Senator Schumacher. [LB22]

SENATOR SCHUMACHER: My Massachusetts coverage wouldn't work? Well, I mean, I've got my coverage in Massachusetts provides for coverage for abortion. I am in Nebraska, I want an abortion now. They can't pay for it here? [LB22]

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SENATOR McCOY: Not that I'm aware of. [LB22]

SENATOR SCHUMACHER: Well, under this law can they or can't they? [LB22]

SPEAKER FLOOD: One minute. [LB22]

SENATOR McCOY: Senator Schumacher, reiterate, not that I'm aware of. I don't see how that would be possible. [LB22]

SENATOR SCHUMACHER: Then let me follow up with these particular questions. What if I'm a Nebraskan on a Congressional staff in Washington, can my coverage pay for it? [LB22]

SENATOR McCOY: I would assume you would be talking about federal insurance, would you not, Senator Schumacher, if you were a staffer on a Congressional staff? [LB22]

SENATOR SCHUMACHER: Right or if I'm a Congressman or Congresswoman in this case. [LB22]

SENATOR McCOY: I don't know what's contained in the confines of health insurance for federal employees, Senator Schumacher. I'm not qualified to answer that question. [LB22]

SENATOR SCHUMACHER: Well, is this bill going out of here with unequal situations for some people, depending on the location of their job, even though they are Nebraska residents? [LB22]

SENATOR McCOY: Not in my view. If it is an insurance carrier that writes business in the state of Nebraska they are going to abide by this legislation, if advanced. The regulations that we institute in this legislation... [LB22]

SPEAKER FLOOD: Time, Senators. [LB22]

SENATOR SCHUMACHER: Thank you, Mr. Speaker. [LB22]

SPEAKER FLOOD: Senator Conrad, you are recognized. [LB22]

SENATOR CONRAD: Thank you, Mr. President. Thank you, colleagues. I'm going to be brief and talk about my overall opposition to LB22. And I'd be happy to yield additional time to Senator Schumacher, if he needs it. I found that dialogue particularly instructive. It kind of reminded me of law school days in terms of hypotheticals, which are important for education, are important for teaching moments, are important for exploring intended

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or unintended consequences with any proposal that's before us. But in relation to LB22 I do stand in opposition, colleagues. And that's because we may not all feel the same way about abortion and reproductive health, but indeed it is important that a woman's health and safety comes first. There is no question that abortion is an emotional issue with individuals having very deeply held opinions and beliefs. But my belief is that politicians should not meddle in these profound medical and family decisions. While we may disagree about reproductive health, a woman's health and safety should come first. And we should not deny her the care that she needs. Many things can happen in pregnancy that is beyond a woman's control. For example, she learns that her baby has severe fetal anomalies which are incompatible with life, as Senator Haar noted in his amendment. A family can find out that there's an ectopic pregnancy situation or a miscarriage situation that requires treatment and there's no exception for these fetal anomalies that are incompatible with life. There's no exceptions for ectopic pregnancies or miscarriage clearly defined in this legislation, which caused me to oppose it. And additionally, LB22 has no exception for rape or incest, as we discussed on General File and which was rejected by this body. I find that more than unfortunate but rather disappointing that we were not able to find common ground on the most heartbreaking of circumstances. A woman and her family should be able to make the decision regarding pregnancy for themselves resulting from such violence. And inserting the political dynamic into those heartbreaking situations and providing no exception for rape or incest isn't appropriate. Banning or taking away a woman's insurance coverage, as LB22 will do, will not reduce the number of abortions. There's not one penny or one sentence in this legislation about prevention or education, which is the common ground we should all be focused on when we talk about these topics. And we do have proactive legislation to try and move forward in that ground that has yet to reach the floor of this body. And I hope that one day it does because every single one of us would like to see a lower number of unintended pregnancies and a lower number of abortions. But in order to do that, according to common sense and research we got to get serious about education and prevention. And LB22 doesn't have one penny or one sentence related to any of those issues. A woman facing an unintended pregnancy should not have to make the decision about whether or not to end her pregnancy based on whether or not her insurance coverage is there and whether or not she has enough money. This decision should be based on what's best for her health and her family in consultation with her family, her doctor, her clergy and others whose opinion she respects and seeks. Government has no role in this dialogue. Each woman's and each families circumstance is unique. The better that each woman is able to make her own decision with her family, the better, better than having politicians like us interfering with this decision. If abortion coverage is available to some then it should be available to all. That's a matter of basic fairness. And indeed this legislation does set up a disparate system for state employees, those in private coverage, those on Medicaid or at least the potential therefore. We shouldn't treat a woman's health needs differently because of the type of insurance she has or the amount of money she has in her pocket. And that's what LB22 allows. Politicians shouldn't be making medical decisions for a family just because it

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can't afford health insurance and that's the result of... [LB22]

SPEAKER FLOOD: Thirty seconds. [LB22]

SENATOR CONRAD: ...thank you, Mr. President, LB22. We also shouldn't require riders which create barriers for companies and the insured alike. We shouldn't take away coverage from a family buying insurance on the open market or through their own private employer or from working with families who can't afford insurance on their own. Requiring families to purchase a rider for abortion coverage is not logical. No woman plans on needing abortion care anymore than she plans on having a stroke. Insurance is about risk and protection from the unknown. LB22 runs counter to that principle and puts a woman's life and health at risk when she needs serious medical care. Colleagues, I ask that you give careful consideration and vote to... [LB22]

SPEAKER FLOOD: Time, Senator. [LB22]

SENATOR CONRAD: ...not advance LB22. Thank you, Mr. Speaker. [LB22]

SPEAKER FLOOD: Thank you, Senator Conrad. Senator Cook, you are recognized. [LB22]

SENATOR COOK: Thank you, Mr. President. Good afternoon, colleagues. My fellow Hoyas raised some questions in my mind and I would like to get some clarification and get his interpretation, actually one of them, of a point that he just made. Would Senator Schumacher yield to a question? [LB22]

SPEAKER FLOOD: Senator Schumacher, will you yield to a question from Senator Cook? [LB22]

SENATOR SCHUMACHER: Yes, I will. [LB22]

SENATOR COOK: Thank you, Mr. President. And thank you, Senator Schumacher. You seem to be saying that based on your reading of the statute as it is amended now and as it is presented now that a woman, let's say someone gainfully employed through an organization that is headquartered in Stamford, Connecticut, who is here on a temporary assignment, here in the state of Nebraska on a temporary assignment. If her health insurance covers it in Stamford, Connecticut, that it would be unavailable to her in the state of Nebraska based on your interpretation of the statute, the way it's drafted now. Am I understanding your interpretation correctly? [LB22]

SENATOR SCHUMACHER: I'm not sure I'm understanding my interpretation correctly because there's one of two things that happened. Either her insurance is good here or it's not. And it's unclear from my reading, that's why I was trying to ascertain what the

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intent of this thing is, whether or not, if she had an ectopic pregnancy, whether or not she would have...and she didn't have the means to get right back to Connecticut or out of Nebraska, whether or not she would have to suffer until it became life-threatening before we could operate in Nebraska or whether or not she could go in and say, hey, my Connecticut insurance covers this, let's take care of it before it bursts the fallopian tube. And I want to have more kids, but come on, help me out. So I don't know the answer to that question. And I don't know whether or not somebody could deliver, if a Nebraska company could write a policy for coverage out of state that would vice versa. They write a policy and say, but you shall not have this procedure in Nebraska, you got to go to Iowa to have it. And that's what is frustrating with this particular piece of legislation because it's going to leave the floor, and I'm going to vote for it, I'm pro-life. But it's going to leave the floor with all these questions that our Attorney General is going to have to spend money on in order to litigate, that the courts are going to roll the dice on. And we could clean it up, but it's going to go right on through today, I think. So I honestly can't answer your question. [LB22]

SENATOR COOK: All right. Well, I appreciate your analysis because I am in opposition to LB22 and voted to attempt to amend it this afternoon. And your analysis just raises even more questions for me. I agree with Senator Conrad that I don't think that it is the purview of an elected official to make a very, very personal decision for a woman or for a family. And I find it somewhat ironic that particularly in this body which votes continually in favor of the free market, maybe there's somebody in Nebraska that would want to offer a specific kind of insurance. That a body such as this that votes continually in favor of the free market and continually in favor of letting businesses make their own decisions would support the current language of this bill. It's not really, I guess, surprising to me, having sat here and listened for three years. But I won't take it there this afternoon. Just somewhat ironic. Once again I rise in opposition. I think it is... [LB22]

SPEAKER FLOOD: One minute. [LB22]

SENATOR COOK: ...I just simply can't imagine the scenario of a woman coming to Nebraska, finding herself in an emergent situation, perhaps with an ectopic pregnancy and having to potentially, based on this statute which we'll in all likelihood advance, be faced with that horrible, horrible situation and risk her future fertility. And with that, Mr. President, I will yield my time back to the Chair. [LB22]

SPEAKER FLOOD: Thank you, Senator Cook. Members, Senator Larson's motion was to advance LB22 to E&R for engrossing. All those in favor say aye. Those opposed say nay. The Chair is unable to determine, based upon the voice vote. For that reason, all those in favor of advancing LB22 to E&R for engrossing vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB22]

CLERK: 30 ayes, 8 nays on the advancement of LB22. [LB22]

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SPEAKER FLOOD: LB22 advances to E&R for engrossing. Mr. Clerk, we move to the next item on the agenda which is returning to LB142. Mr. Clerk. [LB22 LB142]

CLERK: LB142, Mr. President, a bill introduced by Senator Lautenbaugh. (Read title.) The bill was introduced on January 7, at that time referred to the Government, Military and Veterans Affairs Committee. The bill was reported to General File. I do have committee amendments pending, Mr. President. (AM934, Legislative Journal page 1307.) [LB142]

SPEAKER FLOOD: Thank you, Mr. Clerk. Senator Lautenbaugh, you're recognized to open on LB142. [LB142]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body, ladies and gentlemen, friends all. I've become aware that there is an evil among us, an evil that we need to discuss and an evil that we need to act upon. And that evil is smoking. I've seen children with cigarettes. So to address this problem I've brought you a bill that says that children may only smoke indoors so we don't have to see it anymore. This bill does more than that. I've seen people partaking of alcohol, partaking to excess. So this bill says they can only drink alcohol to excess between midnight and 6 a.m. so we don't have to see them anymore. I've also heard about people gambling. And that's a vice we can all agree. So this bill says that if you're going to gamble you have to do it underground where we can't see it, so we don't have to worry about it anymore. And if those all sound like good solutions to you, then you probably would have voted for the CFLA when it was passed because it identifies a problem of money and politics. And what does it do? It forces it underground where you can't see it unless you look really hard. And then we pat ourselves on the back. So if you're interested in identifying a problem and then running with a solution that doesn't address it, then this is not the bill for you because the CFLA was the bill for you. It identified a problem, and then it, after much debate both back in '92 and again and again and again, it offered a solution that has not been a solution but we're supposed to be sort of fine with that and just move on because, by gosh, we did something. That was proposed opening number one. Here's proposed opening number two. Welcome to 1992 and have I got a bill for you. On a go forward we hereby declare that elections are just too darned expensive. So if you're going to run for the Legislature you should spend \$92,000, that's what we think you should spend. If you're going to run for the Public Service Commission, I don't know, you should spend \$30,000. And if you're going to run for Board of Regents, because they did away with wrestling at UNO, you should only be able to spend \$10,000. And if you want to run for State Board of Education, which does something different, but we're not going to trouble ourselves with what, you should only spend \$20,000. And if you're going to run for Treasurer, that's supposedly more important than Board of Education, but we tried to eliminate it, so we're going to say \$40,000 because it's statewide. If these limits sound arbitrary to you and capricious to you, then again the CFLA is the

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regime that you'd be happy to live under as we all do currently. I'm hoping though, and I think I've gotten to know all of you fairly well, I'm hoping this is a different body than the one that saw fit to substitute its judgment on this crucial, most basic First Amendment issue for that of the voters and that of the campaigners and that of the candidate and that of the contributors. I don't believe for a minute, for a minute that the CFLA would pass if offered today. This is a different body and I will say happily a produce of term limits. All of you have been relatively recently elected and I think you remember your mooring and you're aware of your limitations. We all are aware of our limitations. And one thing I think we could all agree upon that if you were asked today to say how much should be spent on a legislative race, you would say, how could I possibly say that. How could I possibly know that and why would it be up to me to tell you how much we think you should spend? I'm reminded of a Woody Allen movie, Bananas, where towards the end some important edicts came down and as the list went on and on, much like the CFLA reads, it got to be ridiculous. All children under 16 were declared to be 16. And underwear was determined to be changed daily and it was to be worn on the outside on a go forward basis so we could check. That's the level of micromanagement in my mind that we get to when we pass laws like the CFLA. And again, I believe if any of you were confronted with this possibility of voting for a bill like this today, voting for the CFLA today you would recoil, you would pull back and say, my gosh, how could we possibly do that. How could we possibly think we should substitute our judgment? And let me go through a list, and I won't get through it all in the opening, of the problems with the CFLA. The CFLA imposes spending limits for various races that differ from race to race. According to the CFLA, I think this was two years ago, you could spend \$92,000 for a legislative district which has about 37,000 people in it; a regent or state board race, the spending limit is \$75,000 and those districts have about a quarter of a million people in them. So how do we make that determination? How do we know that that is the right breakdown, that you should spend so much per voter in a regent race but a different amount per voter in a legislative race? How can we say that and should we be in the business of making that determination? Similarly, the CFLA is discriminatory toward various geographic and economic realities of legislative districts. The CFLA makes no attempt to take into account the difference in cost of running in different areas. Our districts are very different and we're working on redistricting right now, so I know of what I speak. And you all have been looking at the maps so you do too. In Senator Fischer's new district the race will be run very differently than in my district, which will be a very small and urban area it appears, certainly all within in one county, one small part of one county. Well, how do you run a race in those areas? In Senator Fischer's, I assume, you'd want to buy radio, maybe even television because it's huge, it's geographically huge. In my race the cost for radio and television is prohibitive because the markets are different, the ad rates are different. I can't do that same thing. I have to rely on mail, which is imperfect or go door-to-door. The point is that it is different everywhere you are and how you choose to do it. How is it conceivable that we ever thought we should be in a position to say what the proper amount to be spent should be? How could we know that? How can we say that? Not only between different offices, regents versus

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legislators, but between a race in the Panhandle and a race in downtown Omaha, how do we set the same limit for both when they are so different, so entirely different, leaving aside the differences in the candidates and the differences in what you might choose to spend? How is it possible that this is the proper policy for us? Another problem with the CFLA. The purpose of the CFLA was to cleanup, quote unquote, politics. Then why is it not important enough to apply to the highest office, the Governor's Office? If we really had some concern about corruption in our races, which I think was what was implied or maybe even stated back in the day, are we just not willing to believe that it happens at the gubernatorial level or are we just again sort of fine with it? Why doesn't it apply? Similarly but kind of in the opposite direction,... [LB142]

SENATOR CARLSON PRESIDING

SENATOR CARLSON: One minute. [LB142]

SENATOR LAUTENBAUGH: Thank you, Mr. President. Why does it not apply to local races? Accountability and Disclosure rules still apply to them, why shouldn't we be in the business of funding school board races and mayoral races? By the way, there are no spending limits on mayoral races and they're spending a lot of money in mayoral races in the bigger cities. Are we bothered by that? Are we not bothered by that or do we have sort of a selective concern about this kind of thing? I also believe the CFLA drives candidates away from the political process because when you start to look at running one of the things you have to do is find a treasurer and familiarize yourself with all the various rules that apply under the CFLA. I would submit to you that this process, which is not simple by any measure, is a huge disincentive for people to run for office. [LB142]

SENATOR CARLSON: Time. [LB142]

SENATOR LAUTENBAUGH: Thank you, Mr. President. [LB142]

SENATOR CARLSON: Thank you, Senator Lautenbaugh. As the Clerk indicated, there are committee amendments. And Senator Avery, as Chair of the Government, Military and Veterans Affairs Committee, you're recognized to open on AM934. [LB142]

SENATOR AVERY: Thank you, Mr. President. The amendment from the committee removes all provisions from the bill relating to the new reporting requirements under the Political Accountability and Disclosure Act. If you look at the green copy you'll see that a good part of the green copy deals with new reporting requirements. For example, the provisions lowering the reporting thresholds of contributions and expenditures to \$50 are completely eliminated. Also eliminated are the requirements that reports and statements be filed electronically the next business day after receipt of a contribution or making of an expenditure. The provisions repealing the Campaign Finance Limitation

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Act remain in the bill under the committee amendment that was brought to us by Senator Lautenbaugh. The repeal of the CFLA is the only thing left in the bill with the committee amendment. The bill was advanced by the committee 6 to 2. Thank you, Mr. President. [LB142]

SENATOR CARLSON: Thank you, Senator Avery. Members, you've heard the opening on LB142 and AM934. The floor is now open for debate. Senator Price, you're recognized. [LB142]

SENATOR PRICE: Thank you, Mr. President, members of the body. As a member of the committee I voted on this bill to move it out of committee and I thought I'd share some time with you and some of my thoughts. With the CFLA what we have is we've picked winners and losers in a way. We said that there were two classes of donors, just two, you have individuals and you have other than individuals. And for individuals we didn't put any limitation, no limitation. But if you are other than an individual we said, you as an entity, whatever it is, may not participate as you want. You we will limit. You will hear people say, well, that's special interests getting involved. And how could you possibly support a special interest being involved and all the money going to campaigns and things. We already know what has happened with many election laws at the federal level and otherwise. We have 527 groups, you have all these other. It went underground and came up as like that. I think of that game, that gofer game, you know, where you hit one little thing on the head then another one pops up in the arcade, that's what is happening. Where before it was pretty well defined. But getting back to the original analogy, we said there are only two classes of donors: individuals and other than individuals. And we put a restriction on half of them. And I wonder if that just rings proper and true. And I don't want to get into a legal discourse on this because I'm not an attorney. But it just seems unrealistic that we took so much effort because someone will say about special interest, but I contend if a person wanted to give you, if an individual wanted to give somebody here half a million dollars or a million dollars for their campaign, there is no limit. Would the money have to be returned? Perhaps. But there is no limit placed on individuals. And if a person gave one of us a million dollars or \$500,000 or \$100,000 would there be a charge of some special interest? So what's happened is we didn't uniformly apply the principle. What we did is we said half may not. And I don't even know if it's half. It's actually probably even smaller if you think about it because there are probably more individual contributors than there are other than individual contributors at least in the potential pool. So when this came up to me I started to look at it in that light. Right now, in what a former colleague would say, in my opinion what we have here and the issue we have here in picking these winners and these losers is I think what this helps people or let's say you have a candidate who may not be in the mainstream. This helps that candidate. You know, an other than individual contribution may be someone, let's just say it's a business. And you have someone who is form the fringe. And you can pick fringe and define fringe anyway you want. But that fringe individual won't be able maybe to raise capital from other than individuals. So

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what we did is we said, hey, we won't let anybody, because we tried to put this artificial leveling effect. And isn't the effect already there when you try to get your message out to the voters? If you can't message with your voters, if you can't message with your constituents why do we have to add an extra limitation and inhibitor to it? I believe that there will probably be some more amendments to come forward, put some limits in the bill to say what the reporting times are or the level at which we report. We saw different ones when we were in committee. And I'll be listening and hoping to hear those. But again, listen to it from the perspective of we've made it only two classes of contributors. And all of you should have been able to understand the difficulty between raising funds with individuals versus other than individuals. [LB142]

SENATOR CARLSON: One minute. [LB142]

SENATOR PRICE: Thank you. And so again, as we look at this, two classes, did we apply it evenly? And did the logic that was used, was the logic used actually well-founded and can it be applied anywhere else? And I find for myself it cannot be applied evenly. We just said we don't want special interests. But we've also said on the other hand there could possibly, there in no way could possibly be a special interest individual because we didn't put that limitation on an individual. Thank you. [LB142]

SENATOR CARLSON: Thank you, Senator Price. Those wishing to speak include Avery, Lautenbaugh, Fulton, Schilz, and Janssen. Senator Avery, you are recognized. [LB142]

SENATOR AVERY: Thank you, Mr. President. I think the most fundamental question raised by this bill is, what is its public purpose? What compelling public interest does this bill serve? I submit to you that no public purpose is served. The CFLA in Nebraska is subtle law. It goes back to the early 1990s and I'll give you some history on that in a few minutes. It became law, I believe, in 1992. And it first affected an election in 1996. So for three...so what you have here is a law that we crafted in this state in the mid-1990s, early 1990s and very carefully connected it in a vital way to federal court decisions. For more than three and a half decades the Supreme Court has recognized the fundamental importance of limiting money in political campaigns. Going back to 1976, Buckley v. Valeo, clearly established that restricting money in campaigns serves a compelling public interest. Now let me be clear about this because you will hear later arguments made that this current law is a restriction of free speech. It is not. The Supreme Court has clearly said that limiting money in campaigns, that limiting contributions and limiting spending is not a free speech issue if you do it the way they specify. The courts have determined that this is not a limitation on free speech because money potentially exerts a corrupting influence on the political process. Let me say this and I'll probably say it more than once. Special interest money is influence money, pure and simple, it is money that is given to candidates with expectations. And that's unlike most of the money that you get from individuals in \$25 and \$50 contributions. Special

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interest money often provides funding for large expenditures that crowd out participation by the average citizen. If you listen to what Senator Price had to say, essentially what he was saying was special interest money is easier to raise so let's not have any limitations on it. Individual contributions are harder to get. Let me say to you that it is probably true that special interest money is easier to get. But is that the way we want to conduct our business? Individual contributors, especially small donors, and that's where most of your individual contributors are, they facilitate and enlarge the participation in public discussion. They enlarge participation in the political system. They can't compete with the deep pockets of special interest. But when special interest is limited the small donors, your neighbors, your friends, ordinary citizens become a bigger part of campaigns. That's important to democracy. Candidate interaction with the electorate is improved when candidates have to go to voters for support rather than special interest. Yeah, you can go to a special interest and get a \$1,500 check, probably most of us have received some of those, but that comes with expectations. You go to a rally and you raise money from individuals, your friends and your neighbors in \$50 contributions and \$25 contributions. They don't have any expectation that you're going to do something for them. [LB142]

SENATOR CARLSON: One minute. [LB142]

SENATOR AVERY: The only thing they expect from you is that you will work hard and do the best job you can. Restricting special interest influence money in campaigns forces candidates to reach out to voters. It forces us to go to the ordinary voters and citizens and to engage in retail politics, face-to-face interaction with voters. You don't want to turn the political process in this state into a system in which the voters have no ownership, that only the big moneyed interests own us. I don't think you want that, I certainly do not. I want a system where everybody feels they can participate. I want a system where all of us go out and campaign among ordinary citizens rather than spending huge amounts of money on glitzy advertising paid for by special interest. [LB142]

SENATOR CARLSON: Time. [LB142]

SENATOR AVERY: Thank you, Mr. President. [LB142]

SENATOR CARLSON: Thank you, Senator Avery. Senator Lautenbaugh, you're recognized. [LB142]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. And this will take a while, and so I'm going to continue with my opening that I was part of the way through and then I will address some of the things that are being said in opposition to this bill. But I'd be remiss if I didn't point out at the outset that what you just heard was someone's desire of how this should work but not a constitutional mandate of how

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elections should work. And to stand here and talk about special interest money as opposed to individual money and that people who give individual checks don't want anything, but people who somehow represent a corporate entity or a nonindividual entity do is...well, that doesn't comport with the realities as we've experienced them, I don't believe. And I don't believe it is for us to make that call and to make that determination and we'll deal with that, I think, more as this goes on. Continuing with the many deficiencies of the CFLA, which my bill would repeal by the way as amended, the CFLA's intention was to bring sunshine to campaign contributions but instead as a result of the formation of hard to identify groups with vague names that hide the real entities funding these campaigns. One last minute campaign committee listed its address as a dorm room on UNL's campus and the treasurer is a 19-year-old sophomore who happened to know political direct mail firms in Texas and consulting firms in D.C. and was funded by more than \$25,000 of special interest money. That's pretty enterprising for a 19-year-old sophomore in college living on campus. But we're fine with that, we're really fine with it because the CFLA permits it. And think about what we're talking about here. You just heard a very lengthy discourse as to why this is a good idea and how we're supposed to prefer one type of money over another, so apparently we're going to continue to delude ourselves in this debate as to what the CFLA actually accomplishes because how many of you, I won't ask for a show of hands because we're not supposed to do that, how many of you believe that we have forced special interest money out of politics with the CFLA? How many of you believe that every individual donor is just like your neighbor next door who's giving a \$50 contribution or a \$25 contribution and has no desire that you represent any particular policy down here or interest? Is that really your experience in running for office? Speech is one of our most fundamental freedoms in this country. Money facilitates speech in politics. Money is speech in politics if you're the contributor. And I'm sorry if that sounds crass and I'm sorry if that doesn't comport with how we think the world should be, but it does have the virtue of being how the world is, it actually is a statement of reality. And what do we do now in the interest of not being associated with these horrible special interest groups? As I was going on about what the CFLA actually does, it sets forth a series of bizarre and arbitrary limits that we think should be spent on a race, depending on what you're running for, for certain offices but not all of them, just certain offices. And you can only raise half of your...half of that arbitrary amount from nonindividuals. So as we all know with that limit firmly in place what has transpired in reality, of course, is that all of these nonindividual contributors have just stopped giving money to politics. We've cleaned up the system. Is that what any of you believe? Is that what any of you have seen in your races? I would say clearly no. The amount of money available to be spent on politics has not changed. There was a... [LB142]

SENATOR CARLSON: One minute. [LB142]

SENATOR LAUTENBAUGH: Thank you, Mr. President. There was a breathtakingly disingenuous column in the World-Herald, and op ed. piece, from Common Cause the

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other day talking about, look, the system has worked. The spending on campaigns by candidates has tapered off, leveled off. Well, sure, if you don't count all the independent expenditure groups where we forced the money to go, then the system has worked. No one believes that unless you are part of Common Cause and you were one of the proponents of this original monstrosity known as the CFLA. It has not worked. It has not worked. And let me say that I believe it to be unconstitutional. So even if it worked, which it hasn't, it doesn't matter because it's illegal. And we'll discuss that more as my time goes on here and I have more time to talk we will discuss that further. And we've had a lot of discussions from a lot of newfound experts as to what... [LB142]

SENATOR CARLSON: Time. [LB142]

SENATOR LAUTENBAUGH: Thank you, sir. [LB142]

SENATOR CARLSON: Thank you, Senator Lautenbaugh. Mr. Clerk, items for the record. [LB142]

CLERK: Thank you, Mr. President. Enrollment and Review reports LB384, LB384A, and LB386 as correctly engrossed. New resolution. Senator Pahls, LR200 calls for an interim study, to be referred to the Executive Board. Senator Cook, an amendment to LB628; Senator Gloor, to LB590. I have a new A bill, LB590A by Senator Gloor. (Read by title for the first time.) And finally, notice of hearing regarding a confirmation hearing on General Affairs. That's all that I have, Mr. President. Thank you. (Legislative Journal pages 1414-1418.) [LB384 LB384A LB386 LR200 LB628 LB590 LB590A]

SENATOR CARLSON: Thank you, Mr. Clerk. Continuing with our debate on LB142 and AM934, Senator Fulton, you're recognized. [LB142]

SENATOR FULTON: Thank you, Mr. President, members of the body. I'd like to start by thanking Senator Lautenbaugh for his persistence in this regard with respect to this issue. I had not really tuned in when he first brought it forward, but I have listened because he has been persistent. And I have to say the man makes a lot of sense. The issue that I am going to bring forward has more to do with fairness than it does about constitutionality and free speech. Having gone through, you know, elections, particularly my legislative election, my own experience was that I went out and I was told I had to knock on a lot of doors and I did. I think...I still say that's the best way to get elected, I think it's the best thing for our republic is to have that type of person to person contact. But I also knew there's a reality that I had to communicate my message via varying media. And to do that one has to raise money. And many of you know my situation. My family and I we're not in a situation where we can fund a campaign. And so I had to go out and raise a lot of money from individuals. Now I accepted the money from nonindividuals, but the bulk of what I raised came from individuals. I think the number was something like 1,100 or so individuals and the average contribution was

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somewhere like \$70 or \$80. So I hustled, worked and picked up the phone and did something that I really don't like doing. I was taken aback when I realized that in the process of doing so that my opponent would be receiving public dollars. Now from my vantage, and granted there could be another side to this. But from my vantage I went out and was able to persuade 1,000-some people to contribute small amounts of money to my campaign so that it would be a lot of money that would allow me to get a message out to people. And I think I did a better job than my opponent at that, yet my opponent was able to receive public dollars to match me, which I saw as an injustice and I still do. I don't think that's right. If a person goes out and hustles and meets the most people and gets his message across and is able to persuade people about his or her message, then I don't know that we should reward that person's opponent, particularly with public dollars to allow a contrary message, indeed a message which oftentimes used to attack, which in my case that's what happened. So I'll ask Senator Avery if he would yield to a question, if he's still here. [LB142]

SENATOR CARLSON: Senator Avery, will you yield? [LB142]

SENATOR AVERY: I will. [LB142]

SENATOR FULTON: Senator, you...did you hear my own...did you hear my ramble there? [LB142]

SENATOR AVERY: I wouldn't describe it as a ramble, but I heard every word. [LB142]

SENATOR FULTON: Okay. Present the other side to me. Am I...it seems to me that going out and raising money from individuals, \$40, \$60, \$70, \$80 at a time or whatever the average turns out to be, it seems to me that that is something that would be desirable. Would you agree with that? [LB142]

SENATOR AVERY: Absolutely. You made my point for me. In fact, I was making that point when I had the mike earlier that if we accept this bill there will be no more limits on special interest contributions. So you won't need to go out and talk to individual voters anymore, you can... [LB142]

SENATOR FULTON: Yeah, but, Senator,... [LB142]

SENATOR AVERY: ...special interests can buy your election for you. [LB142]

SENATOR FULTON: With respect, Senator, I'm running out of time, that could happen. But if my position is desirable and I want to, if it's desirable among the people and I want to be elected then it should be incumbent upon me to go out and hustle and raise money from individuals. [LB142]

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SENATOR CARLSON: One minute. [LB142]

SENATOR FULTON: So, I guess, the other side of this question, I understand your desire to remove special interest money from this process. Is it because it's special interest money or is it because it's a lump sum of money, a large sum of money that allows one to, you know, be lazy in the campaign and yet still be able to fund a campaign? [LB142]

SENATOR AVERY: I have never said that I'm trying to eliminate special interest money. I just think it needs to be controlled. [LB142]

SENATOR FULTON: Okay. Well, what my concern here is, Senator, that the way the law stands now a person can receive a lump sum of money from our government which would not encourage that person to go out and hustle and get his votes from individual people. It seems to me that the way the law is set up right now maximize your special interest money and then perhaps the government will fund the other side of it. [LB142]

SENATOR CARLSON: Time. [LB142]

SENATOR FULTON: Thank you, Mr. President. [LB142]

SENATOR CARLSON: Thank you, Senator Fulton and Senator Avery. Those still wishing to speak include Schilz, Janssen, Price, Loudon, Avery, and others. Senator Schilz, you're recognized. [LB142]

SENATOR SCHILZ: Thank you, Mr. President, members of the body. I tend to agree with Senator Fulton and Senator Lautenbaugh. I think that when you look at this...I guess I just have to ask the rhetorical question, we talk about special interest, we've heard people talk about whether or not, you know, if you take special interest money do they expect something for that? Well, I can tell you that I've taken, quote unquote, special interest money and (laugh) what I've always said is, if you agree with my stance then give me money. If you don't, then maybe you want to give it to my opponent. Now if Senator Avery actually believes that then I sure hope that he hasn't taken any of that money and hasn't had to come up with those favors or whatever you call them. But anyway, as I said before, I don't have a lot to say on this bill. I do agree with it. I will be voting for the bill itself. And with that, I'd like to yield my time to Senator Lautenbaugh. [LB142]

SENATOR CARLSON: Senator Lautenbaugh, 3 minutes and 40 seconds. [LB142]

SENATOR LAUTENBAUGH: Thank you, Senator Schilz. And I think that's a valid point that Senator Schilz just touched on at the end there, and that is if we're going to stand here and say that somehow special interest money taints the process, I'm assuming

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anyone who says that hasn't actually taken the tainted money or if you're only able to raise 50 percent of your money from special interests are you merely 50 percent tainted. And is that good enough? Is that what we're shooting for is 100 percent taint-free senators? Is that possible? Or are we saying one thing and doing another? Are we defending an indefensible system with glittering generalities and pie in the sky good government rhetoric that we ourselves don't actually comport to, that we ourselves actually kind of ignore and work around? And it's infinitely work "aroundable," by the way. As I was saying before, I still have yet to get through my opening here as the issues keep mounting. But I'll get there. There will be time. We get around it, we have what are called independent expenditure groups. And those groups can raise as much as they want and spend as much as they want without regulation from whomever they want, by the way, without regulation. They have to report, but that's really the extent of it. And why don't we stop that, because we can't stop that constitutionally. We cannot tell those groups, you can't spend that money, you can't support the candidates you want to support. So what do we do about it? We seek to limit the amount of money that nonindividuals can give to individual candidates. Well, think about what the practical affect of that is. Think about where that takes us. What you're saying is we can only get 50 percent of the arbitrary spending limit from these disfavored sources, but these disfavored sources are still free to go out and spend as much money as they want in groups that they set up. And don't be deluded and don't buy the argument that these groups are run solely by bad special interests and that everyone who writes a big check is a bad special interest, a nonindividual special interest, by the way,... [LB142]

SENATOR CARLSON: One minute. [LB142]

SENATOR LAUTENBAUGH: ...thank you, Mr. President, because we had an example in the 2008 election of a group that was pretty much one-third funded by one individual. But he didn't want anything out of the process. He didn't expect to influence anyone. He just gave \$50,000 because that's what people do. And we're sort of fine with that again because that's individual money, not the evil money that he could have taken from his company and written the check to one of these groups, and that would have been bad because that's different money somehow. Folks, we need to stop deluding ourselves. We say we're doing something, we say we're striking a blow for transparency. The CFLA is transparent and good government only in the most Orwellian sense. It is arbitrary, it is obfuscatory, it is difficult, it is incumbent protection,... [LB142]

SENATOR CARLSON: Time. [LB142]

SENATOR LAUTENBAUGH: Thank you. [LB142]

SENATOR CARLSON: Thank you, Senator Lautenbaugh and Senator Schilz. Senator Janssen, you're recognized. [LB142]

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SENATOR JANSSEN: Thank you, Mr. President, members. I, too, sit on the Government, Military and Veterans Affairs Committee and did vote this particular bill, LB142, out and AM934 that Senator Avery opened on. And I would like to take a moment to say this is probably not, as you realize, Senator Avery's favorite bill in the world. I think it probably would be on the other end of the spectrum, but would like to give him kudos, being the committee Chair, to have the openness to...he could have not allowed this out. And I think that says something about the way we do business in the Nebraska Legislature. Not saying it made it easy all the time, but he could have certainly had tools that he could have used. And for him to open on this amendment also in a fair manner, I think, deservedly needs to be noted here this afternoon. Turning my comments to LB142 and the amendment, I am supportive of repealing the CFLA. Like many of you, like all of you, you decided to run for the Legislature and you get this big booklet. And at first it's somewhat confusing as you go through it and you try to find a treasurer, you find a friend at first, and then the friend realizes, hey, this is maybe a little bit more than I thought and there's this Accountability and Disclosure dealing with all of this. But that alone is not a reason to repeal it because it's confusing to me or to any of you. I think it can be complied with once you get into it. But I would say there was some confusion for me in the beginning. I didn't know people from outside the state were considered just because they were my friends. If they were considered like corporate money from that category, since it's out of state, it's not. But that was confusing to me at first. In fact, I questioned whether or not I could take money from my mother who resides in Illinois or where I could count that money and still stay within those limits. I'm not sure that the argument that it created, in fact I don't think that it creates more transparency. Having the CFLA for instance if I have an electrician that...a local electrician in, say, Fremont or Hooper that wants to give me \$250, maybe they expect something for that, I don't know, but mostly small businesspeople. Say I'd rather pay for it this way, I'd like to support you, whomever, in this manner and go through my business account. As we all know there's advantages, many of us should know there's advantages going through your business when spending money instead of private money. Well, if I ask him to do it from private money somehow it's not tainted. But let's say this person gives me \$2,500 or \$5,000, but now it's just Tom Smith, local electrician, and he gives me other donations. And it's not tainted. I think Tom Smith at some point is going to come to me and want something somehow to do with electricians. So I'm not certain that it helps, hurts transparency. I think it is what it is. If Tom Smith wants to give me money, he's going to give me money. They expect something, myself I'm held to the standard to make sure that I'm doing the right thing for all my constituents, not just the ones that donate money to me. You know, I question the tapering off when they talk about I think Common Cause came out and said that this is actually tapered off, the spending. Well, if you only give somebody a 5 gallon bucket and you dump 15 gallons of water in it, yes, it will taper off, you'll only get 5 gallons. That doesn't mean the other 10 gallons aren't being disbursed somewhere or 50 gallons for that matter are getting disbursed somewhere. The spending, that's an absolute ruse if anybody is going to sit here and say... [LB142]

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SENATOR CARLSON: One minute. [LB142]

SENATOR JANSSEN: ...thank you, Mr. President, spending has somehow tapered off due to the passage of the CFLA. You can argue other points but I don't think that one should get much weight or any weight for that matter. And Senator Fulton brings up a point that I had not thought of, talking about how fair is it that he can go out and knock on doors. In my case, how fair is it that I've built a lot of business relationships with small business owners, belonging to my local Chamber of Commerce, a lot of my friends. I own a business, it makes a sense. A lot of my friends in my social circles also probably would own businesses. When I go to them I raise money from them. All of a sudden that makes me bad because I'm taking money from my friend that wants to give me \$200 out of his business account as opposed to his private account. And if I raise so much money then the person that doesn't have these contacts, the person that hasn't worked to build up these contacts, whether they be private, you know, businesswise... [LB142]

SENATOR CARLSON: Time. [LB142]

SENATOR JANSSEN: Thank you, Mr. President. [LB142]

SENATOR CARLSON: Thank you, Senator Janssen. Senator Price, you're recognized. [LB142]

SENATOR PRICE: Thank you, Mr. President, members of the body. So begins the debate and questions and definitions and what is and what isn't. So let's start with what is. What is, is you're still reporting dollars received. There's no removing of the reporting requirements. You still have to report the dollars. It isn't like all of a sudden that no reporting if this were repealed. All right? So we're going to be reporting dollars. Let's talk about maybe what isn't. It was said because the law has been here since the mid-nineties, it has the gravity, it has the reason, it is mandated because it has been here since the nineties. I would challenge it, I think we've had laws that were here longer than we've changed. So it isn't that we have an inability to be adaptive to the situation. We've had many a bill come before us become law and then we went afterwards, oh, wait a minute, maybe that wasn't the final solution. We've done it, we can do it again. You know, we talked and we heard about people, well actually special interests having expectations. How are we to sit here and differentiate and say, this person has a special interest and has an expectation. And then we're going to sit there and say, the individual expectations they're okay. Special interest, not okay. But we don't report special interest, do we. We report other than individual. We cannot sit here and just say intuitively what their intention is or isn't, whether for a penny or \$1,000. So I question that. And then I believe Senator Fulton brought up a very good point and I'm sure that I'll get educated on this one. We have a situation where people can receive

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dollars from an entity other than an individual. They're getting it from the state. Is there a limitation on their giving? So actually in reality we have three groups of people providing monetary sources to campaigns: individuals other than individuals and the government, and we said there's no limit on the government, no limit on people, but other than individual we have a limitation. So we have not applied evenly across the spectrum our expectations and limitations. I think that should give rise to concern because really in the end, in the end what are we saying here with CFLA? We're saying we will determine who wins and who loses and who has what intentions. And we will differentiate between them without ever having met them, without ever knowing. And that obviously no individual who gives you \$50 or \$100 or \$250 has any intention. But yet we heard they do have an intention, they do have an expectation. They have an expectation that you'll go and work for them. So here again we have an expectation, but that's an acceptable expectation. And then we have other expectations that are unacceptable, only we can't define them. There's some nebulous, nefarious expectations. Kind of reminds me almost like that nefarious bad actor, you know, that we talk about many times. Now I'm not trying to make light of this. I just want to make sure that we actually are dealing with apples to apples, oranges to oranges,... [LB142]

SENATOR CARLSON: One minute. [LB142]

SENATOR PRICE: ...thank you, and that we understand we've created multiple classes and we limited one of them. We didn't set any limits to the others because somebody has fears. And meanwhile there still is no limitation because they have these other groups they form, they can give all sorts of money. I just think that we're all over the map on this. It's not a consistent policy that we can look at and see a common thought and thread through it. All we see limiting one element of those defined. Thank you. [LB142]

SENATOR CARLSON: Thank you, Senator Prices. Senator Louden, you're recognized. [LB142]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. As I look around here in the Chamber I think that probably Senator Ashford is the only one here that's been in more campaigns than I have because I've run for three legislative campaigns. And there are some questions that I would like to ask, and the reason, as I always said, this campaigning is about like feeding cattle, if you really want to learn how it works, why just get involved with it. Would Senator Avery yield for questions? [LB142]

SENATOR CARLSON: Senator Avery, will you yield? [LB142]

SENATOR AVERY: I will. [LB142]

SENATOR LOUDEN: Senator Avery, as I look over this amendment, which becomes

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the bill, and it come out of the committee, and I see in there where they changed the calendar year where it used to be that you had to file the prior year of the election or something like that. And you've changed that. So now the calendar year is just the year of the election? That's the only time you have to form a committee and file is just during that election year? [LB142]

SENATOR AVERY: I think that is correct. But that is not the essence of the amendment, Senator. If you want me to clarify that I can. [LB142]

SENATOR LOUDEN: Well, I was just looking on page 8 there and that's what...the old language is stricken and new language was added so that it ended up with just a calendar year. The other part as this amendment or this bill comes forwards does this affect everybody that's running for county commissioner, county clerks and everywhere down the line, do they have to file a campaign statement? At one time, if you didn't spend \$5,000 for a campaign you didn't have to have a committee or file a campaign statement. And I looked through your bill here or your amendment, I don't see any wording to that effect. What became of that? [LB142]

SENATOR AVERY: You're correct. The reporting requirements that are in the green copy are removed in this amendment. So all that remains is a straight-up repeal of the spending limits and the contributions limits. [LB142]

SENATOR LOUDEN: Okay. Then everybody that runs for county commissioner, if they spend \$750 for their campaign they're going to have to file and have a campaign committee? [LB142]

SENATOR AVERY: No, there are thresholds you have to reach before you have to file. [LB142]

SENATOR LOUDEN: And what is that threshold? [LB142]

SENATOR AVERY: Five thousand dollars. [LB142]

SENATOR LOUDEN: That's still in there? [LB142]

SENATOR AVERY: That is for legislative races anyway. [LB142]

SENATOR LOUDEN: Okay, because I have a little bit...I always get a little bit uneasy when I look at the end of the bill here and there's a list of about 25 statutes that are being repealed. And until I get them all looked up, why, I kind of wonder, for all I know there could be the death penalty being repealed down in that thing, too, for that matter. [LB142]

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SENATOR AVERY: No, I don't think so. [LB142]

SENATOR LOUDEN: Well, good. I'm glad you mentioned that. And then what about this electronic filing? I see in your committee statement it said something about that you had to file any receipts within so many days or any expenditures over a certain amount within so many days. Now is that during the whole election campaign or is that...and that has to be done electronically or what's the... [LB142]

SENATOR AVERY: The committee amendment removes that language. That was in the green copy. And Senator Lautenbaugh requested that this amendment be drafted, and that's the one you have there, and it removes that requirement. There is no electronic filing immediately within 24 hours after you receive a contribution. [LB142]

SENATOR LOUDEN: Okay. That's what I was looking through this amendment and to see where that showed up at. And I noticed it wasn't in there. So that was some of the questions I had. Thank you, Senator Avery. I'm wondering when we do this, I guess, what we're trying...if we're trying to solve a problem or if we're trying to create one. I think Senator Fulton, if I was listening to him correctly, he was worrying about government money. Well, the way I understand it if you sign to be under that lid, the other person... [LB142]

SENATOR CARLSON: One minute. [LB142]

SENATOR LOUDEN: ...doesn't get any government money. You have to overspend your lid levy in order for the other person to receive some of this money from the Accountability. My understanding, that hasn't happened very often because usually most people sign for under that lid. So I'm wondering, as I said, I went through three elections with the rules we had. And I found out that they weren't that hard to follow and that hard to work with. So I'm questioning what we're trying to improve with this other than the fact that somebody can give someone beaucoup bucks. And I guess you can...you have to file. I don't know what you're trying to do. You had to file anyway. Is this \$39,000 deal, is it going to be left out of there for some of these...I think the legislative races? So there's some question I still want to have answered here before I vote for this bill. Thank you, Mr. President. [LB142]

SENATOR CARLSON: Thank you, Senator Louden and Senator Avery. And, Senator Avery, it is your turn. [LB142]

SENATOR AVERY: Thank you, Mr. President and thank you, Senator Louden. I think it's fair to say, at least I would characterize this bill as an attempt to fix something that's not broken. The Campaign Finance Limitation Act in this state has served us well. At the time that it was drafted there were huge increases in campaign spending. From 1978 to 1990 there was a 329 percent increase in spending in campaigns in the state. That

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caused a lot of people to be alarmed that if we didn't do something to put a lid on it that there would be...we'd get to the point where the citizens would be crowded out. And the only people that would really be influencing campaigns would be the big moneyed interests. There was a task force formed, to give you a little bit of history here, a task force was formed to study this issue. It was a broadly bipartisan task force. The cochairs of that task for were Duane Acklie, who at the time was the national committeeman of the Republican Party; the other was John Cavanaugh, former democratic Congressman from Omaha. We had 17 people on that bipartisan task force and it included various interests using the idea that if you want to get a consensus on a good piece of legislation, you want to make sure you've fashioned the legislation in such a way that most people can support it. You bring the people who are most likely to oppose it to the table to help shape it. That's what we did. We had people, for example, representing labor, representing teachers, representing the lobby, Walt Radcliffe was a member, representing the NSEA, we had former national committee woman of the Republican Party and the current committee woman, Pat Dort, of the Republican Party. All of these people were on this committee. We had newspaper people on the committee, former elected officials. And we met for six months until we could come up with language that we could agree on. This was a very large effort and we believed, I believe, looking at the data since then, that it worked. Spending today is not increasing the way it was when this task force went to work on it in the early 1990s. Most people today abide by the spending limits. And those who do not abide by the spending limits estimate that they will spend about at the spending limit. So it is providing a lid on spending. Now if you think that more money in the political system is a good thing, I can see why you would want this bill. If you think more special interest money contributes to a healthy political process, yes, vote for this bill. If you want to go back to your district and say to your voters, I'm so proud of what I did yesterday because I just voted to have unlimited special interest money in campaigns of this state and I'm proud of that. My guess is you wouldn't want to do that. My guess is you would not want to go to the coffee shop and tell your friends what you just did. I think you'd be ashamed to do it because it's not good public policy. And we need in this body to ask ourselves every time we look at that green or red button, we need to ask ourselves what is the public purpose of this legislation? Is the public purpose to improve the... [LB142]

SENATOR CARLSON: One minute. [LB142]

SENATOR AVERY: ...political process, to make good policy? Now I admit to you that the Campaign Finance Limitation Act is inconvenient. As a candidate, I've gone through two campaigns and it's not fun filling out those forms. But that is not what's important here, what's convenient for me or for Senator Lautenbaugh. What's important here is the public interest, what is in the public interest. And I submit to you that unleashing special interest money in our campaigns is not in the public interest, it's corrosive to politics and I do not want to be associated with it, and I don't think you should either. Thank you, Mr. President. [LB142]

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SENATOR CARLSON: Thank you, Senator Avery. Senators wishing to speak: Larson, Lautenbaugh, Fulton, Haar and others. Senator Larson, you're recognized. [LB142]

SENATOR LARSON: Thank you, Mr. President, members of the body. I have a few questions if Senator Avery would yield. [LB142]

SENATOR CARLSON: Senator Avery, would you yield? [LB142]

SENATOR AVERY: I will. [LB142]

SENATOR LARSON: Senator Avery, I wasn't around in this body in 1992. And honestly, I don't really remember 1992 when CFLA was passed. How did they determine what the spending limits would be then? [LB142]

SENATOR AVERY: We consulted with experts in campaigns to find out what was a reasonable limit in terms of what do you need to run an effective, competitive campaign. And that's where we started out. It started at \$40,000 in legislative races, it's now \$93,000. And it has been indexed to inflation, I think, that bill was passed in 2005. [LB142]

SENATOR LARSON: What is needed to run a successful campaign? I mean, I think, you know, my district is much different than District 28. It's extremely large and I knocked on a lot of doors. I mean, each district is different. I just...what was the underlying factor that did determine those then? [LB142]

SENATOR AVERY: Well, the...every campaign has some basic expenses. You're going to have to have money for literature, you need to have money to perhaps, I presume you'd want to have a door hanger or a piece of literature to hand out when you go door to door. You need...sometimes you may need to spend money on paid staff. I did my campaigns with volunteers. But there are a lot of things like that, if you went through a campaign, you know the kind of stuff you have to pay money on. [LB142]

SENATOR LARSON: I did go through a campaign. And I think you illustrate, you know, each campaign is different. So I think we...we're a little fuzzy on how we exactly determine what each campaign is like across the board. Earlier you mentioned that repealing this means that voters would have no ownership. Why would they have no ownership? I think...aren't they still the ones voting for us? [LB142]

SENATOR AVERY: The point I was making, Senator, you were not in the room I believe,... [LB142]

SENATOR LARSON: I was here. [LB142]

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SENATOR AVERY: The point I was making is this, that if we allow unlimited special interest money into our campaigns then special interest money can crowd out the small contributors, regular donors, and that will be a negative effect on ordinary citizens participating in our campaigns. You, with enough money, you don't have to go door to door, you don't have to talk to the voters in townhall meetings, you don't have to have rallies where you solicit votes, you don't even have to do candidate forums. With enough money you can buy TV and TV works but it's expensive. [LB142]

SENATOR LARSON: I'd beg to differ. I think especially in a race such as mine I definitely had to get out there and meet the people. And I was outspent 3 to 1 and, honestly, if I outspent him 3 to 1 I doubt I would have won still. You bring up a lot of these big business or special interests. Would people like Warren Buffett or Dick Holland or even my good friend, Loran Schmit, who are individuals, would those count as big business interests? You know, are you owing them something for them donating to your campaign because they do represent a very big interest in this state. [LB142]

SENATOR AVERY: Well, I don't know if they are actively involved in large contributions. [LB142]

SENATOR LARSON: I do know they are actively involved in large contributions. It's through Accountability and Disclosure and so we do, as individuals of the state are able to go in and look at who they've donated to and how much they've donated to. And I know some members of this body have received donations from... [LB142]

SENATOR CARLSON: One minute. [LB142]

SENATOR LARSON: ...a lot of those. You know, I guess, I'm getting to the point that, you know, we can go look and see how much people do donate to our campaigns. And I think the fact of saying that big business would steal the ownership from the little guys, the individual voters isn't necessarily correct because I think if we consider people like I named, like a Mr. Buffett or a Mr. Holland as the little guys and that they don't want anything for their big businesses we're fooling ourselves. They have as much special interest in this state as anybody else. And they donate to our campaigns. Let's just make it transparent. Let's make it accountable. Why does it matter how much they (inaudible)? Why does it matter how much a business donates to my campaign? As long as it's transparent and the people can see who is donating to my campaign, that's what really matters. They can criticize me for who I've taken money from and how much, but don't restrict how much we can get or how much we can spend. Each race is different. My race is different than Senator Avery's. My race is different than... [LB142]

SENATOR CARLSON: Time. [LB142]

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SENATOR LARSON: ...Senator Lautenbaugh's. Thank you. [LB142]

SENATOR CARLSON: Thank you, Senator Larson and Senator Avery. Senator Lautenbaugh, you're recognized. [LB142]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. Someone observed once that a camel is a horse built by a committee. Well, the CFLA is a law built by a task force. And we have what we have. Here's something that we seem to struggle with from time to time, and I spoke about it in one of my many attempts to get through my opening, the arrogance with which we approach some of the topics that we tackle. We believe we can create markets. We can certainly destroy markets but I don't think we can create markets. I think there are incentives and behaviors that are beyond our control. And we are being told that if we do away with the CFLA, we will somehow crowd out individual donors. Now think about that statement. We will be crowding out individual donors if we allow nonindividual donors. [LB142]

SENATOR CARLSON: (Gavel) [LB142]

SENATOR LAUTENBAUGH: Those of you who are still paying attention may wonder, how is that possible? The answer is, it's not possible because it just doesn't happen that way. And we are maintaining this false, supposedly important, distinction between individual donors and nonindividual donors. And again I would make the assumption that everyone who thinks it is important to have more individual money than nonindividual money, actually did raise more individual money than nonindividual money. If that's important, if it matters, and if it is not true, and you took most of your money from nonindividuals, that somehow you are suspect or corrupt or you shouldn't be elected. These are issues for the voters to decide, ladies and gentlemen. These are issues that can be raised in campaign literature and campaign materials. And you can say, look, this person was supported by so and so, so and so, and so and so. I actually did that in my race. I looked at who was contributing, because again we still would have to disclose our contributions under this just as we do now, but you would be able to know, and you could raise that issue and people can decide. One of my constituents took out a full-page ad in the Blair paper, most of which contained information as to who was supporting my candidate, or my opponent, I should say, because it was knowable. It was from Accountability and Disclosure and it was disclosed publicly, and that mattered to some apparently, hopefully. We aren't doing this because this is an inconvenient law. I'm bringing this bill because the existing law is a bad law. It's not inconvenient. It's unsound. It is a horrible intrusion upon our First Amendment rights with a justification that I think we've shown doesn't really pass muster. We're talking about how this would somehow crowd out individual contributions. That doesn't happen in reality and no one believes that. We're talking about how we have kept money out of politics and it's had an effect. Again if anyone tells you that we could keep money out of politics by capping donations to individuals by nonindividuals, I would say you should

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point out to them the proliferation of independent expenditure groups, which we're just supposed to ignore because we redefined what good campaigning is and what bad campaigning is. And so we're sort of fine with all the money flowing underground through obscurely named groups into attack ads and whatnot, but that's okay because we're pure. But we're only 50 percent pure, best case scenario because we can get 50 percent of our arbitrary limit from nonindividuals. So, you know, there's purity and then there's purity, I guess. Veering back to the opening, and we still haven't got to the main reason to repeal this, but it's coming. [LB142]

SENATOR CARLSON: One minute. [LB142]

SENATOR LAUTENBAUGH: Not this time, but it's coming. The CFLA should be called the Incumbent Protection Act. Here's why. A main purpose of the CFLA was supposed to open up the process and give new candidates a means to challenge well-funded incumbents. CFLA has done nothing to help that process and has the unintended, or perhaps intended, consequence of making it more difficult to challenge an incumbent. For a candidate to comply with the CFLA and accept state dollars, the candidate must itemize every single contribution and expenditure, no matter the size. That has a chilling effect on potential donors who may not want to publicly oppose the incumbent but who also don't want to incur the retribution for not supporting the incumbent. Currently a campaign only has to report contributions of \$250 or more. If someone complies with the CFLA limits, you have to report every contributor. [LB142]

SENATOR CARLSON: Time. [LB142]

SENATOR LAUTENBAUGH: Thank you, Mr. President. [LB142]

SENATOR CARLSON: Thank you, Senator Lautenbaugh. Senator Fulton, you're recognized. [LB142]

SENATOR FULTON: Thank you, Mr. President. I'm going to continue where I was last time, and then I'll touch on a comment by Senator Avery and then I'm going to yield that time, yield the remainder of my time to Senator Avery for his response. The concerns that are being brought up here pointwise and systematically by Senator Lautenbaugh are important. And I hope folks are paying attention because it seems to me that what we have is an intention that was ascribed to the Campaign Finance Limitation Act, which indeed is not coming to fruition. Sometimes we are confused to believe that our good intentions are adequate to justify the existence of a law or justify the vote for a bill. But we have to take a look at what our intentions yield. So one of the reasons I have interest in Senator Lautenbaugh's bill is because I perceive an injustice to those who have gone out and worked and done it in such a way as to...as to include more people in the political process. I'm a big believer that the more people you include, the better it is for the republic. And I think that our existing CFLA actually inhibits that. It penalizes

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those who go out and include many people. Now to the point that I heard, and then I will yield time to Senator Avery. Something that the Senator said was that, unleashing special interest money is corrosive to the process. Now no one wants to be associated with unleashing special interest money. I don't think anyone here would raise his hand and say, I'm hoping we can unleash some special interest money. But I ask, has special interest money left the process because of CFLA? And I've experienced it in my own elections. I've watched it in other elections, and I've also paid attention to the way that the public reacts to the utilization of special interest money. The public is very intelligent. The people of Nebraska get it right. And if someone is saying something that's true, it's meritorious such that one ought to listen. If something is saying that...something that is not true, people can generally discern that. But to say that CFLA, by repealing the CFLA, we will be unleashing special interest money, I don't think is the case. Special interest money has been unleashed. Just take a look around. And so I think there's some merit to what Senator Lautenbaugh is saying. I don't think that this is something we could control. It's like taking water flowing downhill and using a toothpick to try to push it back. It isn't going to work. The collegiality of our body allows for this and I'd like to yield the remainder of my time to Senator Avery for his response. [LB142]

SENATOR CARLSON: Thank you. Senator Avery, 1 minute and 50 seconds. [LB142]

SENATOR AVERY: Thank you, Mr. President and thank you, Senator Fulton. You said something near the end there that I'd like to respond to first before I say a few other things. The CFLA was never expected to be a perfect solution to the problems in the political process. We...I'm not naive. I know that you cannot eliminate special interests from politics. What the CFLA has tried to do is improve the process by putting limits on special interest money. Nobody that has their feet on solid ground would expect that you can completely eliminate special interest. You cannot do that. I can tell you that... [LB142]

SENATOR CARLSON: One minute. [LB142]

SENATOR AVERY: ...the people who were crafting this legislation back in 1992, '91, were very realistic people. The person who sponsored the bill, it was his priority bill was the Speaker of the Legislature, Dennis Baack. Elroy Hefner was a cosponsor. Don Wesely, Chris Beutler, George Coordsen and Brad Ashford. And it was Brad Ashford who sponsored the amendment to the bill that put limits on special interest money. I was here. I was there on the other side of the glass and I remember that. And he was my hero then and he is now and I expect him to vote green. Not on this bill though. (Laugh) But let me tell you, when you think about legislation, you have... [LB142]

SENATOR CARLSON: Time. [LB142]

SENATOR AVERY: ...to think about what is the possible. Thank you. [LB142]

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SENATOR CARLSON: Thank you, Senator Avery and Senator Fulton. Senator Ken Haar, you're recognized. [LB142]

SENATOR HAAR: Mr. President and members of the body. Senator Ashford is my hero too. (Laughter) I have to smile sometimes because early this afternoon we were debating...the debate was to retain precedents and now we're arguing that...(laugh)...not to retain precedents, but we all do that. What I want to talk about is... [LB142]

SENATOR CARLSON: (Gavel) [LB142]

SENATOR HAAR: Thank you. What I want to talk about is the cap. People may or may not know that when we sign up for office we have to say we're going to abide or not abide, and I think this is what Senator Fulton was talking about. And if you say you're going to abide, then you abide by the cap for that year. If you say you're not going to abide, then you can raise as much money as you can, but if you raise over the cap, that's the only point where the so-called fair fight money goes is if one candidate overspends the cap. And the fair fight money is money that's been put there by fines, not taxpayer money. And so I got to tell you about my own situation. I won by 20 votes and I abided, my opponent did not abide, and he put \$100,000 of his own money into the race. Now, luckily, I didn't know that to begin with or I may just not have run because that would be daunting to think that your candidate can raise an unlimited amount of money, including \$100,000 of his own money. But he chose not to abide and he put in his own money and he spent over the cap. I stuck to the cap, so I got some of that fair fight money. Again it wasn't taxpayer money. It was money that had come in because of fines to elected officials and candidates from the past. So the whole discussion here primarily has been about this thing of whether we limit the contributions of special interests. But the other really important thing is this cap on campaign spending, and it doesn't matter where you raise it from...you know, I could raise 100 percent from individuals, but as long as I was abiding, I couldn't raise more than the cap. And unlike the Senate, the U.S. Senate, where I believe now everybody is a millionaire, most of us in here aren't millionaires, and so if we have to think of this whole thing of, wow, I've got to be able to raise an unlimited amount of money, it would certainly dissuade those of us who are citizens from running for the Legislature in many cases. So I think that cap where you either abide by the cap or you don't abide, is really an important part of the CFLA and I would...I really treasure that because when I ran I think the cap was around \$90,000 and to me that was a daunting task. To think that there was no cap at all would probably have dissuaded me, and I think dissuade a lot of other people from that process. So the CFLA is not perfect. But because of the cap, because of the abiding and the not abiding, it levels the playing field in my opinion. And that's an important part of the CFLA. I can't imagine what the people of Nebraska are going to say if we say, yippee, we've destroyed all the caps... [LB142]

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SENATOR CARLSON: One minute. [LB142]

SENATOR HAAR: ...and now we can raise and spend as much money...obviously, in my race I did get some fair fight money. It was not taxpayers money. It was money that had been fined from candidates and elected officials. And so I think CFLA again is not perfect, but it's a good starting point. Maybe it can be improved, but I don't think it's improved by removing limits because that indeed does allow some of us who are pretty ordinary citizens to run for this office. Thank you very much. [LB142]

SENATOR CARLSON: Thank you, Senator Haar. Senator Schilz, you're recognized. [LB142]

SENATOR SCHILZ: Thank you, Mr. President and I would yield my time to Senator Lautenbaugh. [LB142]

SENATOR CARLSON: Senator Lautenbaugh, 4 minutes and 50 seconds. [LB142]

SENATOR LAUTENBAUGH: Thank you, Mr. President and thank you, Senator Schilz. My continuing effort to get through my opening on this. Something Senator Haar said does lead to another important part of this, by the way. Yeah, this is not taxpayer dollars, the fair fight funds, but they are funds that come from fines, which I believe under our constitution go to schools. So it's at least possible that the provision of this law that says we collect these fair fight funds from fines, still public money, and it's money that's supposed to go to the schools. So in the off chance that any of you have schools in your districts, you may note that we have pocketed, I think, about \$800,000, \$900,000, I think is the amount currently. And it's sitting there waiting to be spent on political campaigns because that's how we do things. We apparently want to fund political campaigns now with the CFLA. I know I'm talking about it like it's new and it's been around for 20 years. That doesn't make it better, and it certainly doesn't make it constitutional. And careful observers of the Legislature will note that this is not the first time that I've stood up and raised these issues. I've done this, I think, every year I've been here. And in the years in the past we've heard the CFLA isn't perfect. I can vigorously agree with that statement, and then some. But this solution of Senator Lautenbaugh's is wrong and we'll work towards something better. Well, have you all noticed that there is no solution that's being offered by the people who say I'm wrong, other than, this is the best we can do. So we must continue to live with this. And I'm not making this up. Believe me that was one of the statements made on one of the prior debates of this bill. Yes, Senator Lautenbaugh, is wrong about the repeal, we'll work on something better. Here's the reason they're not working on something better because Supreme Court decisions keep coming down and controlling in this field, and limiting what we can do, and limiting what we can limit. And rightly so. I believe this act is just plainly unconstitutional. So if you are asked by your constituents, how could you vote for this, what's the public policy behind it? You could say, it is wrongheaded and illegal and

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so we undid it. It is unconstitutional and so we did away with it. You could also add in, if you want to, that it's un-American and we did away with it. And I think that's infinitely defensible. But let's talk about just the constitutional aspect of it. The main argument against the CFLA is that it places an unconstitutional burden on a candidate's ability to fully exercise one's free First Amendment right to campaign speech. Decision handed down on June 26, 2008, the U.S. Supreme Court has clearly stated that statutes similar to the CFLA violate the constitution. In Davis v. Federal Election Commission, Judge Alito struck down a federal statute known as the millionaire's amendment. This provision came into play when self-financing candidates, that is millionaires, who ran for federal office and spent their money. The free-spending candidates faced heightened disclosure requirements so their opponents knew what they were spending, and the nonmillionaire candidates benefited from relaxation of contribution and expenditure... [LB142]

SENATOR CARLSON: (Gavel) One minute. [LB142]

SENATOR LAUTENBAUGH: ...requirements that would otherwise apply. Thank you, Mr. President. The millionaire's amendment created what Judge Alito termed an asymmetrical regulatory scheme, which we can think of as different rules apply when one candidate spends a lot of money. With respect to the different rules that were before the Supreme Court, certain candidates, the big spenders, face burdens that other candidates, the nonspenders, obtained advantages from solely because of the spending candidates decision to use money and partake of campaign speech. It's important to note that the Supreme Court has consistently held that the decision to engage in campaign speeches protected First Amendment speech. It's not money. It is money that enables speech and speech is protected by the constitution. Any candidate who exercises the First Amendment right robustly by spending a lot, would be subject to different rules that imposed a penalty on that candidate, and provided benefits to opposing candidates. [LB142]

SENATOR CARLSON: Time. [LB142]

SENATOR LAUTENBAUGH: Thank you, Mr. President. [LB142]

SENATOR CARLSON: Thank you, Senator Lautenbaugh and Senator Schilz. The Chair recognizes Speaker Flood for an announcement. [LB142]

SPEAKER FLOOD: Thank you, Mr. President. Good evening, members. We are going to adjourn now and end our work for the day. A reminder that tomorrow, LB397, which relates to the Commission on Industrial Relations as offered by Senator Lathrop, will be up at 1:30. I'd encourage members to look at the Journal this evening as Senator Lathrop has filed an additional amendment, and Senator Fulton has filed an amendment for your review in advance of tomorrow's session. Thank you again for your effort today.

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We'll see you in the morning at 9:00 A.M. Thank you, Mr. President.

SENATOR CARLSON: Thank you, Speaker Flood. Mr. Clerk, announcements.

CLERK: Mr. President, Enrollment and Review reports LB380, LB379, LB378, LB377, LB376, LB375, LB374, LB373, and LB585 to Select File, some having Enrollment and Review amendments. Senator Hadley wants to print an amendment to LB226. Senator Lathrop, an amendment to LB397, and Senator Fulton, an amendment to LB397. Mr. President, name adds: Senator Cook would like to add her name to LB575. (Legislative Journal pages 1418-1422.) [LB380 LB379 LB378 LB377 LB376 LB375 LB374 LB373 LB585 LB226 LB397 LB575]

And a priority motion. Speaker Flood would move to adjourn the body until Wednesday morning, May 4, at 9:00 a.m.

SENATOR CARLSON: Thank you, Mr. Clerk. Members, you've heard the motion. All in favor say aye. Opposed nay. We are adjourned.