

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Floor Debate  
May 11, 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-eighth day of the One Hundred Second Legislature, First Session. Our chaplain for today is the Honorable Lavon Heidemann. Please rise.

SENATOR HEIDEMANN: (Prayer offered.)

SPEAKER FLOOD: Thank you, Senator. I call to order the seventy-eighth 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, Mr. President.

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

CLERK: There are, Mr. President. A communication from the Clerk to the Secretary of State regarding the transmittal of LB204 and LB204A. Bills read on Final Reading yesterday afternoon were presented to the Governor at 3:40 p.m. yesterday (re LB575 and LB575A). And Senator Brasch offers LR230 calling for an interim study. That will be referred to the Executive Board. That's all that I have, Mr. President. (Legislative Journal pages 1521-1522.) [LB204 LB204A LB575 LB575A LR230]

SPEAKER FLOOD: Thank you, Mr. Clerk. Members, we now proceed to the first item on the agenda, Final Reading, budget and state claims bills. Please find your seats in anticipation of Final Reading. Mr. Clerk, the first bill is LB373. The first vote will be to suspend the...to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB373]

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CLERK: 35 ayes, 0 nays, Mr. President, to dispense with the at-large reading. [LB373]

SPEAKER FLOOD: The at-large reading is dispensed with. Please read the title. [LB373]

CLERK: (Read title of LB373.) [LB373]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB373 pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB373]

CLERK: (Record vote read, Legislative Journal page 1523.) 41 ayes, 0 nays, 8 excused and not voting, Mr. President. [LB373]

SPEAKER FLOOD: LB373 passes with the emergency clause attached. Mr. Clerk, we now proceed to LB374. The first vote is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB373 LB374]

CLERK: 33 ayes, 0 nays, Mr. President, to dispense with the at-large reading. [LB374]

SPEAKER FLOOD: The at-large reading is dispensed with. Please read the title. [LB374]

CLERK: (Read title of LB374.) [LB374]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB374 pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB374]

CLERK: (Record vote read, Legislative Journal pages 1523-1524.) 43 ayes, 0 nays, 6 excused and not voting, Mr. President. [LB374]

SPEAKER FLOOD: LB374 passes with the emergency clause attached. Mr. Clerk, we now proceed to LB375. [LB374 LB375]

CLERK: (Read LB375 on Final Reading.) [LB375]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB375 pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB375]

CLERK: (Record vote read, Legislative Journal pages 1524-1525.) 43 ayes, 0 nays, 6

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excused and not voting, Mr. President. [LB375]

SPEAKER FLOOD: LB375 passes with the emergency clause attached. Mr. Clerk, LB376. [LB375 LB376]

CLERK: (Read LB376 on Final Reading.) [LB376]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB376 pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB376]

CLERK: (Record vote read, Legislative Journal page 1525.) 43 ayes, 0 nays, 6 excused and not voting, Mr. President. [LB376]

SPEAKER FLOOD: LB376 passes with the emergency clause attached. Mr. Clerk, we now proceed to LB377. The first vote is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB376 LB377]

CLERK: 41 ayes, 0 nays, Mr. President, to dispense with the at-large reading. [LB377]

SPEAKER FLOOD: The at-large reading is dispensed with. Please read the title. [LB377]

CLERK: (Read title of LB377.) [LB377]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB377 pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Please record, Mr. Clerk. [LB377]

CLERK: (Record vote read, Legislative Journal page 1526.) 42 ayes, 1 nay, 6 excused and not voting, Mr. President. [LB377]

SPEAKER FLOOD: LB377 passes with the emergency clause attached. Mr. Clerk, LB378. The first vote is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB377 LB378]

CLERK: 39 ayes, 0 nays, Mr. President, to dispense with the at-large reading. [LB378]

SPEAKER FLOOD: The at-large reading is dispensed with. Please read the title. [LB378]

CLERK: (Read title of LB378.) [LB378]

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SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB378 pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Record please, Mr. Clerk. [LB378]

CLERK: (Record vote read, Legislative Journal page 1527.) 43 ayes, 0 nays, 6 excused and not voting, Mr. President. [LB378]

SPEAKER FLOOD: LB378 passes with the emergency clause attached. (Doctor of the day introduced.) Continuing with Final Reading this morning, Mr. Clerk, the next bill is LB379 where the first vote is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB378 LB379]

CLERK: 40 ayes, 0 nays on the motion to dispense with the at-large reading. [LB379]

SPEAKER FLOOD: The at-large reading is dispensed with. Please read the title. [LB379]

CLERK: (Read title of LB379.) [LB379]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB379 pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB379]

CLERK: (Record vote read, Legislative Journal page 1528.) 43 ayes, 0 nays, 6 excused and not voting. [LB379]

SPEAKER FLOOD: LB379 passes with the emergency clause attached. Mr. Clerk, the next bill is LB380. [LB379 LB380]

CLERK: (Read LB380 on Final Reading.) [LB380]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB380 pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB380]

CLERK: (Record vote read, Legislative Journal pages 1528-1529.) 44 ayes, 0 nays, 5 excused and not voting, Mr. President. [LB380]

SPEAKER FLOOD: LB380 passes with the emergency clause attached. Mr. Clerk, LB585. [LB380 LB585]

CLERK: Mr. President, I have a motion on the desk. Senator Howard would move to return the bill for specific amendment, AM1420. (Legislative Journal page 1487.)

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[LB585]

SPEAKER FLOOD: Senator Howard, you're recognized to open on your motion to return LB585 to Select File for a specific amendment. [LB585]

SENATOR HOWARD: Thank you, Mr. President. Members of the body, as you may remember, when LB585 was on Select File I raised some questions about one of the claims from the committee amendment. I realized as we discuss this bill that I needed to know more about the Health and Human Services case of the foster youth who sexually abused another child. On that day, the chief Attorney General's Office asked me to come to the Rotunda where this representative informed me that the girl involved was 15 years old and sexually experienced and that the 17-year-old foster male had some minor infractions but nothing predatory. I was also told that the intercourse was consensual and the mother was at fault because she left the teenagers alone for long periods of time. But here is the true story. In early 2008, the foster mother of the 17-year-old repeatedly asked the Department of Health and Human Services to remove him from her home for several reasons, including the fact that she was concerned about a growing relationship with her child, a 12-year-old daughter. One morning when she went to wake the 12-year-old daughter up for school, she found the male youth in the daughter's bed on top of her. In fact, colleagues, the 17-year-old who had been placed and left in her home, despite her pleas for removal, had a prior restraining order against him for another sexually related incident. The foster mother had not been informed of this. I find the suggestion that a 12-year-old could consent to sexual relationships with anyone, let alone a much older young man, sickening. I find the fact that I was blithely misinformed disturbing. And I find the notion that this can occur under the watch of a state agency absolutely revolting. I brought this amendment because I believe the members of this august body deserve to know the truth. I spent Mother's Day thinking about this case, about the lifetime of trauma this little girl will suffer and the fact that she was victimized, and then she was victimized again. She was victimized again by these suggestions, considering how a mother would feel when she did all she could to protect her daughter and to deal with this terrible trauma only to be characterized as more to blame than the predator. We cannot allow these things to happen in Nebraska. And if by tragic circumstance they do transpire, we have to examine them, remark on them and learn from them. We really owe this child much more than \$50,000. This is a family with not much in terms of resources. I talked to the attorney involved. He said the mother felt that this would help her daughter, she could go to college, they wouldn't be able to do it any other way. But now that this settlement has been agreed upon, the least we owe this child is no more posturing, no more defensive arguments but acknowledgement of the truth and a promise that we will do everything, we will do everything in our power to prevent this from happening again. I'd like to hear your views on this and I'm sure your constituents would as well. Thank you. [LB585]

SPEAKER FLOOD: Thank you, Senator Howard. While the Legislature is in session

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and capable of transacting business, I propose to sign and do hereby sign LB373, LB374, LB375, LB376, LB377, LB378, LB379, and LB380. Members, you've heard the opening on Senator Howard's motion to send LB585 to Select File for specific amendment. We now turn to discussion. Senator Conrad, you are recognized. [LB585 LB373 LB374 LB375 LB376 LB377 LB378 LB379 LB380]

SENATOR CONRAD: Thank you, Mr. President. Good morning, colleagues. And I rise in support of Senator Howard's important efforts this morning. And to be clear, she has been consistent in bringing not only this case but many emotional and difficult cases involving wrongdoing on behalf of the state and particularly as it relates to the welfare of state wards and children in our foster care system over many, many years. And here we have yet another tragic example. It will be of no surprise to my colleagues on the Appropriations Committee that the Attorney General's involvement with this specific case was the subject of a great deal of dialogue at our budgetary hearing in 2009. And my purpose in asking the Attorney General about it during the budget hearing was to ensure that we were only authorizing sound use of precious state resources. And I firmly believe, as many others, that pursuing a defense which again does nothing more than continually victimize a victim, a child victim of sexual assault, is a poor use of state resources. And the Attorney General's Office should have clearly known better in that regard. Been trying to find the transcript to provide that to you as well. I did copy and pass around some news articles relevant to the issue where you can see the Attorney General's Office initial stance and posture on the case and then, after extensive media attention, their change of heart, thankfully. I hope that we can talk about this issue, even if it is difficult. And I hope that we as a Legislature can ensure that we do make this payment which is necessary to this victim and to this family, but that we also call upon our Attorney General's Office to issue a formal apology to the family, because that is appropriate and necessary and would go a long way to ensuring that we have a clear record on this and a path forward. Thank you, Senator Howard. [LB585]

SPEAKER FLOOD: Thank you, Senator Conrad. Senator Lathrop, you are recognized. [LB585]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I want to weigh in a little bit. As you know, LB585 passed through the Business and Labor Committee and was brought to the floor as part of the claims bill or this particular claim was brought to the floor as part of the claims bill. And Senator Howard appropriately had questions. And I would maybe divide my thoughts into three sections. And we can talk about any one of them, but I think this is a good discussion. The first would be the failures, the failures that led to this assault in the first place. And Senator Howard would be better positioned, I think, to talk about those, that is placing a child that has these propensities in a home with a 12-year-old girl is a little bit like putting the gas can someplace and then providing a young person some matches. It is a dangerous situation. It was foreseeable that this would happen. I expect from what I know of the facts, and that is a

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failure on the part of the state, a regrettable failure on the part of the state. And should we talk about it so that we learn from that and make sure that whatever changes need to happen, happen so that this does not take place again? The answer is yes. And I think that that's an important part of our discussion this morning. And I appreciate Senator Howard for bringing that to the front. The second topic, I think, that comes up under Senator Howard's motion is you'll recall, and maybe you didn't, this was kind of a big deal in the legal community, who, when you file a lawsuit, as this young lady did for her damages, the defense in the case, the state and the Attorney General's Office, files an answer. And generally you'll say in an answer, well, we deny all the allegations, so that you can put the matter in issue. The judge then tries the facts and the circumstances to see if the state is liable. In this case they alleged contributory negligence on a 12-year-old, contributory negligence on a 12-year-old. Eventually, I think that defense was withdrawn after there was an expression of outrage, an expression of outrage that that defense would even be inserted in a pleading. I think the answer from the AG's Office was, well, we had an aggressive deputy or something like that. That was, I think, as Senator Howard has characterized it, a second victimization of the family and regrettable. The third thing I want to say in my remarks addresses whether this bill should go back to Select File for specific amendment. And for that I do have...I may part ways with Senator Howard on the wisdom of that approach. This...the circumstances in this case were egregious, they were egregious, and that means the state is liable. And the Attorney General, I think, ultimately recognized that the state had liability. That's a separate question from what the damages are. And I have to tell you, I don't know enough to say that \$50,000 is too much or too little. But I do know that this young lady was represented by a lawyer and the state of Nebraska was represented by a lawyer, and they considered all that and then came up with an agreed upon amount, \$50,000. In the law, in the law the job is once you determine liability which is, is the state responsible, you have a separate question about whether or not...what's the fair compensation... [LB585]

SPEAKER FLOOD: One minute. [LB585]

SENATOR LATHROP: ...for what the victim has been through? And that is not a simple process when you're talking about emotional injuries. This is a scar on a young person. Believe me, I appreciate that it's a scar. There may be other circumstances that were taken into consideration, and I don't know, that led both lawyers in an adversarial process to agree that \$50,000 was a good settlement instead of going to a trial in front of a district court judge in this state. While I appreciate Senator Howard's stopping this Legislature to consider these circumstances, the failure at HHS, the activities of the Attorney General's Office, believe me, this is a good time to do it, we ought to lay bare some of our mistakes and the times that the state of Nebraska doesn't live up to people's expectations. Returning this to Select File to provide for an enhanced... [LB585]

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SPEAKER FLOOD: Time, Senator. [LB585]

SENATOR LATHROP: ...settlement I think is ill advised. Thank you. [LB585]

SPEAKER FLOOD: Thank you, Senator Lathrop. Senator Wallman, you're recognized. [LB585]

SENATOR WALLMAN: Thank you, Mr. President. Thank you, Senator Howard, Senator Lathrop. I agree on the final statement he said also. But I think we have to have more integrity, what we tell our foster parents. You know, according to some of this literature, there was an incident before. So I'm sure these foster parents would have never took this young adult in if they knew this was going to be this way. So I'm sure we are definitely liable. And I would yield the rest of my time to Senator Howard. [LB585]

SPEAKER FLOOD: Senator Howard, you have 4 minutes 20 seconds. [LB585]

SENATOR HOWARD: Thank you, Senator Wallman. And I pushed my light on, and so I appreciate this extra time. While I appreciate Senator Lathrop's viewpoint as an attorney, I'm going to give you a bit of information that enters in, in terms of human beings. The girl, frankly, was afraid to testify, she was afraid to go into court. The boy had obviously groomed her, as is typical with people that are older, that on their way to becoming pedophiles. And the girl felt that she had given permission for this, 12 years old. I don't think anybody in this body would agree that 12 years old is young (sic) enough to give permission for sexual intercourse. And to say that she had previous experience, which by the way that information came from the male, the perpetrator, when would she have had that? When she was 11? When she was 10? I think any of us that would hear this story of a 10-, 11-, 12-year-old being sexually abused would say the guilty party is the perpetrator, straight up. When you get a 12-year-old and you talk to her about going into court, and let me tell you something else, this wasn't in Omaha, this wasn't in Lincoln, this wasn't on the east side of the state. This happened in Hall County, this happened in Grand Island. Senator Gloor might be interested in knowing that. This girl was afraid. I talked to the attorney for the family. The attorney, frankly, felt the deck was stacked against him. As I told you before, this is a poor family with no resources, a working mom. She didn't know the boy's history. She'd asked, she'd been told minor infractions, shoplifting. When he got into her home she found he was smoking marijuana, she found he was truant. She couldn't get him to stop smoking marijuana, she couldn't get him to go to school and she was very concerned about the attention he paid to her daughter. We have a responsibility. We have told people that we would represent them. We have told people that we would operate with integrity down here. When we have nothing to say about this matter, when we let this go right over us we are in fact saying, you know, what happens, happens. I'm going to tell you any child that was sexually molested, sexually abused does not deserve to be put in the position where she is claimed to be a part of the sexual incident. This is a age-old

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defense used against rape victims: they asked for it, they wear short skirts, they wear revealing clothing, they have a history of sexual experiences. What they're saying about this 12-year-old really falls into that same arena. I ask you to speak up on this issue and I invite your comments. Thank you. [LB585]

SPEAKER FLOOD: Thank you, Senator Howard. (Visitors introduced.) Continuing with discussion on Senator Howard's motion, Senator Campbell, you're recognized. [LB585]

SENATOR CAMPBELL: Thank you, Mr. President and colleagues. I want to start out my comments this morning by thanking Senator Howard for her vigilance and advocacy on behalf this child and the family. Senator Howard has been a longtime child advocate who has experienced in her professional life what it is to work with families who have experienced abuse and neglect and certainly in this situation sexual abuse. When Senator Howard talked about this on the floor, she and I had an off-the-floor conversation. And I pledged to her that I would go with her and meet with the Attorney General and Mr. Kerry Winterer, because it isn't enough in this situation, I know she has invited comments about this situation, but we need to use this as a springboard to visit with the officials who work with these cases day in and day out and say what more can we do to ensure that this does not happen again. And so I renew that pledge to Senator Howard and once again thank her for bringing this case to light. Thank you, Mr. President. [LB585]

SPEAKER FLOOD: Thank you, Senator Campbell. Senator Christensen, you are recognized. [LB585]

SENATOR CHRISTENSEN: Thank you, Mr. President. Unfortunately, money doesn't heal these wounds. Time, Jesus Christ, counseling are the only ways. I'm very glad this was brought forward. My questions come, did management take the appropriate steps to prevent this from reoccurring? If anyone knows, I'd love to hear. We know we have a leadership problem in HHS. Will they deal with this or hide this and other cases as happened so many times? We will continue to have these problems until caseworkers are supervised appropriately. They could have removed these kids, removed this child, taken care of the situation. You know, I think what we need to be asking ourselves as senators, are we getting the leadership changes, are we doing what we can to prevent this from happening again? I think that's where the question lies because we all know there's problems. We have dealt and talked about these problems all session. And I know we've basically come to no resolve. We're still doing interim studies, going to go forth and look at many things. But we're going too slow. When individuals are being harmed like this it's a travesty. Thank you. [LB585]

SPEAKER FLOOD: Thank you, Senator Christensen. Senator Nelson, you are recognized. [LB585]

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SENATOR NELSON: Thank you, Mr. President, members of the body. I rise in opposition to the motion to return this to Select File. I want to thank Senator Howard for bringing this forward and bringing us a chance to discuss this and take a look at the facts. With regard to my good friend Senator Christensen's comments I just want to remind the body that this goes back to 2009. And that's, as I see it, the article that was distributed here, this is when this took place, so some time, at least a year and a half, close to two years has passed by. I have to say that I think there is improvement in the leadership of the Department of Health and Human Services. This goes back a ways, right to the very beginning of where new leadership came in. And I think it's unfair to say that they aren't doing enough at this time just on the basis of what we see here. The second thing I want to add to...not add to necessarily but agree with Senator Lathrop's third comment that this was a tort claim. This has been settled by the state, between the state attorney and the attorney for the individual. There are any number of reasons as to why this was settled for \$50,000. In light of the circumstances and the amount of proof and what actually happened, this young person might not have been entitled to that much. She might have been entitled to more. We don't know. But I don't think it's appropriate for the Legislature to come in at this time and revise a settlement that was made by the Attorney General representing our state. We may feel perhaps that the young woman is entitled to more. But this is not our province to add another \$50,000, another \$500,000 and make a judgment in the case where we don't have all the facts necessarily or know both sides. If this was brought forward, the motion was brought forward just to discuss that, I'm fine with that. But I certainly think it is not our place to mess with any settlement that has been achieved. It was agreed to by the attorney for the young person, agreed to by both sides. This is what we need to approve. This is not something that we have to go back and change. Thank you, Mr. President. [LB585]

SPEAKER FLOOD: Thank you, Senator Nelson. Senator Dubas, you are recognized. [LB585]

SENATOR DUBAS: Thank you, Mr. Speaker. Good morning, colleagues. We are the people's voice. And so what Senator Howard has done this morning with this motion is to give this child and her family that voice. I've had concerns over my tenure here in the Legislature from foster families who have had placements put into their homes who knew that those placements were not in the best interests of the foster child or of their family. And I have intervened in the past and we've been able to get those things taken care of. But I think that makes the point that this, in the past anyway, has been an issue. I think in relation to the bigger picture of the child welfare reform, it is sad to say that children have not always had their best interests taken care of. I do agree with what Senator Nelson just said and what Senator Campbell has said. I think we're moving in the right direction and we need to make sure that that direction continues. What happened to this child, and I really want to emphasize the word "child," this is a child, is beyond comprehension. Not just once but over and over again this child and her family were victimized. And there is no amount of money that will buy back this childhood. This

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is a glaring example of what is wrong with the system. And, granted, we are trying to improve that system. But again, what has happened with this situation proves how serious the issue has been and I believe continues to be. Mistakes are a part of our lives. We've all made mistakes, we've all said things we shouldn't say. But most of the time we can backup, we can pick up the pieces and, hopefully, rectify the situation. But this is not the case when you're talking about the lives of children. We can't afford mistakes financially, but especially we can't afford them when children's fragile lives are at stake. I, like Senator Campbell, am very committed to working with the department to ensure the success of our welfare reform as we move forward. I think good things are going to come out of the legislative resolution and the work that the Health and Human Services Committee is doing along with the Performance Audit Committee. I am encouraged and I am very hopeful that we will see some very positive changes in the department, how the department does their work, and then ultimately in the lives of the people that the department serves. At the very least, as Senator Conrad stated, this family deserves an apology. Hopefully, valuable lessons have been learned by all of the government agencies and we'll be able to move forward. It's easy for us to move forward. It is not easy for this child and her family to move forward and I don't think we should ever forget what has happened to them at our hands. Thank you. [LB585]

SPEAKER FLOOD: Thank you, Senator Dubas. Senator Lathrop, you are recognized. [LB585]

SENATOR LATHROP: Thank you, Mr. President and colleagues. As oftentimes happens, when I sit down I think of something else I should have said. Happens a lot when I leave the courthouse and I'm thinking that closing argument might have had a few more things and I usually think of them on the ride home. But today, after I sat down, I thought one of the reasons that this has become, I think, so problematic for Senator Howard, and she can certainly speak to this, but if you go back to when this bill was up on General File Senator Howard had questions about...there were three claims in there that related to foster children, as I recall. And she had questions and we didn't have the specific answers. So I was having my legal counsel go out and talk to somebody from the Attorney General's Office and get information. And she asked about this. And the information that came back in, in other words the representative from the AG told my legal counsel, my legal counsel told me, and you've all seen that happen, it's how it works in here when we need specific information. What we were told was that this girl was much older than 12, I think it was 15 or 17. There was some confusion over whether the young man was 15 and the girl was 17 or vice versa. But we weren't told that the child was 12 when Senator Howard was asking the questions. And I think that is, in itself, problematic when we are trying to process the claims bills. When there is a claim that involves a 12-year-old, that information was important. And I think that's part of the angst that Senator Howard has with how this particular claim has been handled. It is, and I can tell you sometimes when you hear me stand up here and talk about people's right to make claims, it's these kind of things that I see day in and day out. And

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you never think it's going to happen to you and it happens to your family and then you want to make sure that there's a process in place to treat them fairly. And you've also heard me defend the process. And I will defend the process that when we have two lawyers who are advocating, one for a plaintiff and one for a defendant, and they can reach a settlement, it's hard for me even as the plaintiff's lawyer that does personal injury kind of work. I can put a value on claims, but I don't know all the circumstances and I can't drill down and read depositions. That's really beyond the scope of what I'm charged to do as the Chair of the Business and Labor Committee and what the Business and Labor Committee is supposed to do. But there is an adversarial process at play. And a lot of things enter into why someone will enter into a settlement and they did in this case. And so to some extent I'm going to defend the work of the Business and Labor Committee in approving this settlement and tell you I don't think it's necessary to take this back to Select File for an amendment. I don't know how we'd choose a different number without more and more information. And that would require literally that we sit down and read depositions. And I can tell you if I read a deposition...all the depositions in this case and Senator Lautenbaugh or Senator Nelson read all the depositions in these cases we'd probably disagree on what the value of the file is. And so we rely on the adversarial process to get us to that number and that happened here. Are the circumstances egregious? Absolutely, absolutely. And believe me, I have a keen understanding of the scars that this girl will carry as a consequence of a sexual assault. I understand it. And it is...those emotional injuries are some of the worst things in the world because, unlike a broken arm,... [LB585]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: One minute. [LB585]

SENATOR LATHROP: ...you don't get over them. But at the same time I think as a body and as an institution we have to rely upon the work of two lawyers in an adversarial process arriving at a settlement that takes into account all the strengths and the weaknesses in a particular case or in a particular defense. I think it's regrettable that when we were looking for information we got bad information from the Attorney General's Office. Much of what you're hearing today is, you know, it was terrible circumstances, the answer alleged contributory negligence, and we're on the floor trying to get information, we're told the girl is 15 and not 12 and that's problematic. And those are things that should make us a little less likely to accept without question information that we get from other agencies, including the Attorney General's Office. Thank you, Mr. President. [LB585]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. Senator Gloor, you're recognized. [LB585]

SENATOR GLOOR: Thank you, Mr. President. Good morning, members. I know as

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much as you do about this case, this sad case. And when this first came up it was a reminder to me that our challenges with the care we provide to our children within the foster care system specifically is not a new problem. This happened three years ago. And although the recent focus on foster care would have some of us believe that we have uncovered a new problem that's out there, obviously we have some systemic issues to deal with that transcend who's in charge of departments, who works in departments at all levels. And it's one of the reasons we have to continue to keep our eyes on the prize when it comes to reform of this system, the way it operates, the changes that need to be made at every level if we're to avoid this sort of thing happening again. I wonder if Senator Howard would yield to a question. [LB585]

SENATOR LANGEMEIER: Senator Howard, would you yield? [LB585]

SENATOR HOWARD: Yes. [LB585]

SENATOR GLOOR: Thank you, Senator Howard. Senator Howard, as I sit here and listen to the comments from the Chair of Business and Labor, I also struggle with what's the right dollar amount. And although Senator Lathrop, I think, did a good job, explain to me why the number may be considered, have been considered to be reasonable to go back up. Would you tell me in your own words why came up with a number that increased, that additional zero, if you were, on the amendment as the dollar amount for settlement. [LB585]

SENATOR HOWARD: Senator Gloor, if I could, I'm going to answer your question with a question. And I apologize for that. But this is the question that I have to ask: How much is a child's first sexual experience worth? How much is that loss to that little girl worth? I brought this amendment to give this body the opportunity to address what's happened. You're going to get different opinions on what that's worth. I mean, your opinion may be very different than my opinion. I think you can't put a price tag on that. And I think \$50,000 is a travesty, frankly. You're dealing with a family with no resources, who probably hasn't had much experience judicially. They're up against the Attorney General's Office, they're up against Mike Rumbaugh who wrote the first Opinion from the Attorney General's Office, no Johnny-come-lately. He's been in the system for decades. I have known him for probably 25 years during my experience working with Health and Human Services. He's always been the attorney for Health and Human Services. It's very appalling to me that Mike Rumbaugh would think a child's innocence is worth \$50,000. So I wish I could give you a more definitive answer. I would have to say that amount could only be decided by whoever wants to make the choice. Fifty thousand dollars, in my eyes, is a pittance. [LB585]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Thank you. Senator Gloor, you may continue, 1 minute 30 seconds.

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[LB585]

SENATOR GLOOR: Thank you. I appreciate your answer, but obviously somebody has to pick a number and somebody has picked a number. I find it interesting and as a reminder to the body that involved in this has been the Hall County Attorney's department, the very same county attorney's department that's been very actively involved, as has been pointed out to this body before, in issues around juvenile justice, truancy. And so sadly it's a reminder that we can't be nor can we protect ourselves from all things that are bad. Senator Howard's answer brings back memories of issues I used to have to deal with that fell under the category of what price do you put on a patient's life. And the answer is you can't. Yet checks have to be written, orders written, decisions made about providing care, somebody has to make a decision, somebody has made a decision. I tell the body that I am struggling with this issue, but not to the point that I think this should be returned to Select File. And if what comes back from the committee is the same as what currently has come out of the committee, I will have at least felt comfortable that outside the limelight that occurs in this Chamber it has been talked about and talked about... [LB585]

SPEAKER FLOOD: Time, Senator Gloor. [LB585]

SENATOR GLOOR: ...in more detail. Thank you. [LB585]

SPEAKER FLOOD: Thank you, Senator Gloor. Senator Schumacher, you are recognized. [LB585]

SENATOR SCHUMACHER: Thank you, Mr. Speaker. Would Senator Lathrop yield to a question? [LB585]

SPEAKER FLOOD: Senator Lathrop, will you yield to a question from Senator Schumacher? [LB585]

SENATOR LATHROP: Yes. [LB585]

SENATOR SCHUMACHER: Senator Lathrop, am I given to understand that this is a settled case? [LB585]

SENATOR LATHROP: It is. [LB585]

SENATOR SCHUMACHER: Thank you, Senator Lathrop. That being the case, a settled case is a settled case. It's over. We have no further obligation to pay money other than what was agreed to. Now our constitution addresses this kind of situation in two separate places and it limits our authority, even if we wanted to make this additional payment. Senator...or Section 18 says, of Article III, the Legislature shall not pass any

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local or special laws in any of the following cases, and then goes through a litany of items ending with, granting to any individual any special or exclusive privilege, immunity or franchise, whatever, provided the Legislature...provided...notwithstanding any other provision of this constitution, the Legislature shall have the authority to separately define and classify loans, maximum rates within the classifications of loans and regulate with respect thereto. In all other cases where a general law can be made applicable, no special law shall be enacted. Now that I read to say we cannot just say, hey, here's a case where we feel sorry, we're going to make a special 10 to 1 extra payment. If we wanted to say that henceforth into the future any of these type of cases we will pay an additional amount of ten times the settled amount we could. Going back in time there is even a question whether we can do that, because that would a retroactive law. And retroactive legislation is another thing, another provision of our constitution says the Legislature does not have authority to do. So I question whether we even have the authority to pass the amendment even if the votes were there. Thank you, Mr. Speaker. [LB585]

SPEAKER FLOOD: Thank you, Senator Schumacher. Senator Howard, you are recognized. You are the last light on. Would you like to use this as your closing? [LB585]

SENATOR HOWARD: I will, thank you. I'm troubled by the behavior of the Department of Health and Human Services. Yes, there were serious, serious errors made early on. But I'm far more troubled by the legal representation that came from the state of Nebraska and the way it's presented now. And frankly, when I was asked to go out into the Rotunda to get additional information, that information was almost entirely erroneous. David Cookson, from the Attorney General's Office, who gave me that information has written me a letter of apology, interesting but not really helpful. I agree with Senator Conrad, the Attorney General's Office owes this family a letter of apology. David Cookson was involved in this from the very beginning. Even though he has a very heavy caseload, as he said in his letter, he should have known the facts. Michael Rumbaugh, as I mentioned earlier, has decades of experience working with this. And yet in his original brief that he responded to the family's attorney, the defendant alleges that any damages suffered by M.L., that would be the 12-year-old, as a result of a consensual sexual relationship between her and T.G., that would be the 17-year-old male, were approximately caused by contributory negligence, assumption of the risk and an effective intervening cause. This is an attorney in the Attorney General's Office that's saying consensual sex between a child and a 17-year-old male with a previous history of sexual abuse and in fact a restraining order against him for that. We talk about the new system, the privatization, it was represented to me as this being handled by one of our new agencies, which in fact was not the case. I've been told that we can't address this in terms of increased funding, and so for that reason I'm not going to take this to a vote to return. But I am saying, at minimum, this family deserves an apology. Thank you. With that, I ask to withdraw the amendment. [LB585]

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SPEAKER FLOOD: Senator Howard's motion to return LB585 to Select for a specific amendment is withdrawn. Mr. Clerk, please read the bill. [LB585]

CLERK: (Read LB585 on Final Reading.) [LB585]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB585 pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB585]

CLERK: (Record vote read, Legislative Journal page 1530.) 43 ayes, 0 nays, 1 present and not voting, 5 excused and not voting, Mr. President. [LB585]

SPEAKER FLOOD: LB585 passes with the emergency clause attached. Mr. Clerk, we now proceed to Final Reading, consent calendar bills. We begin with LB15. [LB585 LB15]

CLERK: (Read LB15 on Final Reading.) [LB15]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB15 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB15]

CLERK: (Record vote read, Legislative Journal pages 1530-1531.) 44 ayes, 0 nays, 5 excused and not voting, Mr. President. [LB15]

SPEAKER FLOOD: LB15 passes. Mr. Clerk, LB17. [LB15 LB17]

CLERK: (Read LB17 on Final Reading.) [LB17]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB17 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB17]

CLERK: (Record vote read, Legislative Journal page 1531.) 44 ayes, 0 nays, 5 excused and not voting, Mr. President. [LB17]

SPEAKER FLOOD: LB17 passes. Mr. Clerk, LB56. [LB17 LB56]

CLERK: (Read LB56 on Final Reading.) [LB56]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB56 pass? All those in favor vote aye; all those opposed

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vote nay. Mr. Clerk, please record. [LB56]

CLERK: (Record vote read, Legislative Journal page 1532.) 44 ayes, 0 nays, 5 excused and not voting. [LB56]

SPEAKER FLOOD: LB56 passes. Mr. Clerk, LB73. The first vote is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB56 LB73]

CLERK: 41 ayes, 1 nay to dispense with the at-large reading. [LB73]

SPEAKER FLOOD: The at-large reading is dispensed with. Please read the title. [LB73]

CLERK: (Read title of LB73.) [LB73]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB73 pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB73]

CLERK: (Record vote read, Legislative Journal pages 1532-1533.) 44 ayes, 0 nays, 5 excused and not voting, Mr. President. [LB73]

SPEAKER FLOOD: LB73 passes with the emergency clause attached. Mr. Clerk, LB107. [LB73 LB107]

CLERK: (Read LB107 on Final Reading.) [LB107]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB107 pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB107]

CLERK: (Record vote read, Legislative Journal page 1533.) 44 ayes, 0 nays, 5 excused and not voting. [LB107]

SPEAKER FLOOD: LB107 passes with the emergency clause attached. Mr. Clerk, LB121. [LB107 LB121]

CLERK: (Read LB121 on Final Reading.) [LB121]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB121 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB121]

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CLERK: (Record vote read, Legislative Journal page 1534.) 43 ayes, 0 nays, 1 present and not voting, 5 excused and not voting. [LB121]

SPEAKER FLOOD: LB121 passes. Mr. Clerk, LB124. [LB121 LB124]

CLERK: (Read LB124 on Final Reading.) [LB124]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB124 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB124]

CLERK: (Record vote read, Legislative Journal page 1535.) 44 ayes, 0 nays, 5 excused and not voting. [LB124]

SPEAKER FLOOD: LB124 passes. Mr. Clerk, LB155. [LB124 LB155]

CLERK: (Read LB155 on Final Reading.) [LB155]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB155 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB155]

CLERK: (Record vote read, Legislative Journal pages 1535-1536.) 44 ayes, 0 nays, 5 excused and not voting. [LB155]

SPEAKER FLOOD: LB155 passes. Mr. Clerk, LB162. [LB155 LB162]

CLERK: (Read LB162 on Final Reading.) [LB162]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB162 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB162]

CLERK: (Record vote read, Legislative Journal page 1536.) 44 ayes, 0 nays, 5 excused and not voting. [LB162]

SPEAKER FLOOD: LB162 passes. Mr. Clerk, LB167. [LB162 LB167]

CLERK: (Read LB167 on Final Reading.) [LB167]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB167 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB167]

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CLERK: (Record vote read, Legislative Journal pages 1536-1537.) 44 ayes, 0 nays, 5 excused and not voting. [LB167]

SPEAKER FLOOD: LB167 passes. (Visitors introduced.) Continuing with Final Reading, Mr. Clerk, we now proceed to LB234. [LB167 LB234]

ASSISTANT CLERK: (Read LB234 on Final Reading.) [LB234]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB234 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB234]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1537-1538.) The vote is 42 ayes, 0 nays, 1 present and not voting, 6 excused and not voting, Mr. President. [LB234]

SPEAKER FLOOD: LB234 passes. Mr. Clerk, LB248. [LB234 LB248]

ASSISTANT CLERK: (Read LB248 on Final Reading.) [LB248]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB248 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB248]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1538.) Vote is 41 ayes, 0 nays, 2 present and not voting, 6 excused and not voting, Mr. President. [LB248]

SPEAKER FLOOD: LB248 passes. Mr. Clerk, we now proceed to LB254. [LB248 LB254]

ASSISTANT CLERK: (Read LB254 on Final Reading.) [LB254]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB254 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB254]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1539.) Vote is 41 ayes, 0 nays, 2 present and not voting, 6 excused and not voting, Mr. President. [LB254]

SPEAKER FLOOD: LB254 passes. Mr. Clerk, we now proceed to the next item on the

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agenda, LB261. The first vote is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Record please, Mr. Clerk. [LB254 LB261]

ASSISTANT CLERK: 35 ayes, 0 nays to dispense with the at-large reading. [LB261]

SPEAKER FLOOD: The at-large reading is dispensed with. Please read the title. [LB261]

ASSISTANT CLERK: (Read title of LB261.) [LB261]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB261 pass? All those in favor vote aye; all those opposed vote nay. Members, please remain seated. Members, we are on Final Reading. Please remain seated if you can, Senator Coash. Mr. Clerk, please record. [LB261]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1540.) Vote is 43 ayes, 0 nays, 6 excused and not voting. [LB261]

SPEAKER FLOOD: LB261 passes. Mr. Clerk, LB265. [LB261 LB265]

ASSISTANT CLERK: (Read LB265 on Final Reading.) [LB265]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB265 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB265]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1540-1541.) The vote is 42 ayes, 0 nays, 1 present and not voting, 6 excused and not voting, Mr. President. [LB265]

SPEAKER FLOOD: LB265 passes. (Visitors introduced.) Continuing on Final Reading with LB...all unauthorized personnel please leave the floor. We are on Final Reading. Members, we now proceed to LB277. [LB265 LB277]

ASSISTANT CLERK: (Read LB277 on Final Reading.) [LB277]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB277 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB277]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1541.) Vote is 42 ayes, 0 nays, 1 present and not voting, 6 excused and not voting, Mr. President. [LB277]

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SPEAKER FLOOD: LB277 passes. Mr. Clerk, we now proceed to LB292. [LB277 LB292]

ASSISTANT CLERK: (Read LB292 on Final Reading.) [LB292]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB292 pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB292]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1542.) Vote is 42 ayes, 0 nays, 1 present and not voting, 6 excused and not voting, Mr. President. [LB292]

SPEAKER FLOOD: LB292 passes with the emergency clause attached. Mr. Clerk, LB309. [LB292 LB309]

ASSISTANT CLERK: (Read LB309 on Final Reading.) [LB309]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB309 pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB309]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1542-1543.) Vote is 41 ayes, 0 nays, 2 present and not voting, 6 excused and not voting, Mr. President. [LB309]

SPEAKER FLOOD: LB309 passes with the emergency clause attached. Mr. Clerk, LB315. [LB309 LB315]

ASSISTANT CLERK: (Read LB315 on Final Reading.) [LB315]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB315 pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB315]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1543-1544.) Vote is 42 ayes, 0 nays, 1 present and not voting, 6 excused and not voting, Mr. President. [LB315]

SPEAKER FLOOD: LB315 passes with the emergency clause attached. Mr. Clerk, LB394. [LB315 LB394]

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ASSISTANT CLERK: (Read LB394 on Final Reading.) [LB394]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB394 pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB394]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1544.) Vote is 42 ayes, 0 nays, 1 present and not voting, 6 excused and not voting, Mr. President. [LB394]

SPEAKER FLOOD: LB394 passes with the emergency clause attached. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LB585, the following legislative bills on consent calendar including LB15, LB17, LB56, LB73, LB107, LB121, LB124, LB155, LB162, LB167, LB234, LB248, LB254, LB261, LB265, LB277, LB292, LB309, LB315, LB394. Mr. Clerk, any items before we proceed? [LB394 LB585 LB15 LB17 LB56 LB73 LB107 LB121 LB124 LB155 LB162 LB167 LB234 LB248 LB254 LB261 LB265 LB277 LB292 LB309 LB315 LB394]

CLERK: I do, Mr. President. Thank you. A communication from the Governor to the Clerk. (Read re LB463 and LB463A.) Mr. President, budget bills read earlier this morning on Final Reading were presented to the Governor at 9:53 a.m. (Re LB373, LB374, LB375, LB376, LB377, LB378, LB379, and LB380.) Senator Schumacher would like to print an amendment to LB357. I have an explanation of vote from Senator Ashford. (Re LB373, LB374, LB375, LB376, LB377, LB378, and LB379.) Enrollment and Review reports LB226, LB673, LB684, LB684A as correctly engrossed. And Enrollment and Review reports LB669 and LB142 to Select File, both having Enrollment and Review amendments. And that's all that I have, Mr. President. (Legislative Journal pages 1545-1546.) [LB463 LB463A LB373 LB374 LB375 LB376 LB377 LB378 LB379 LB380 LB357 LB226 LB673 LB684 LB684A LB669 LB142]

SPEAKER FLOOD: Thank you, Mr. Clerk. Members, we now proceed to the motion to override gubernatorial veto as it relates to LB283. Mr. Clerk. [LB283]

CLERK: Mr. President, Senator Haar would move that LB283 become law notwithstanding the objections of the Governor. [LB283]

SPEAKER FLOOD: Senator Haar, you're recognized to open on your motion. [LB283]

SENATOR HAAR: Mr. President, members of the body, thanks for sticking around. It's been a long morning to sit in your seat. Gee, May 11 is an important day in history. If you didn't know that, 1502 Christopher Columbus leaves for his fourth and final voyage to the West Indies; 1846 we declared war on Mexico; 1858 Minnesota became a state; 1910 an act of the U.S. Congress establishes Glacier National Park, a beautiful park in

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Montana; and here we are today. I hope you all received a notebook that I've prepared and this will take explaining because there's some new things happening, things that as you'll see are going to affect every one of the schools in your district. This is sort of a...my bill coming up right now for an override is sort of a matter of serendipity and defined as when one finds something that one was not expecting to find. And I can tell you that what I'm going to talk about today will affect every school in your district. I hope that you'll listen, that you'll ask questions, because it will affect every single school in Nebraska, every public school. And no matter how you vote today, I can guarantee that you're going to find something new and interesting about the schools in your district. I'm going to talk about LB283, which is my bill to...that has been vetoed by the Governor. I want to talk about the amendments to LB283, one of them which involves significant implications for Omaha area SIDs; something you probably haven't heard of before today, RFP 3613Z1; and then the upcoming Green Schools Summit in 2011; and how all these fit together. It's the serendipity of a bunch of things coming together that are going to affect your schools. And then I will end by talking about the Governor's veto and talking about those parts. So the first tab in here is the letter that the Governor sent in April 14, 2009, to Secretary of U.S. Department of Energy Chu making a commitment to improve energy efficiency and renewable energy. This was in response to the ARRA money that was received and I hope we maintain that commitment. Tab two is a bit of a rehash of LB283. It's part of what I would call a green schools initiative to improve the air quality, the lighting, and the environment of our schools in Nebraska for our children. And by the way, 20 percent of Americans are in school right now. This involves a lot of people and to save money. The second page under tab two again is a real brief recap of LB283. It talks about QCPUF, the qualified capital purpose undertaking fund, and the elements there that we talked about: a 5.2-cent levy, bond payments outside the \$1.05 levy limit, no vote of the people required, a ten-year limit, no effect on TEEOSA, the current expenditures, our environmental hazard, accessibility barriers--ADA in other words, life safety code violations, indoor air quality and mold abatement. And LB283 would add energy efficiency project as an allowable expenditure. The process for LB283: This came out of committee with 8 votes for coming out of committee. There were absolutely no opponents who showed up to testify against LB283. We had nobody from the Governor's Office who showed up at that to oppose us or to even represent themselves as neutral. And I got, as you can see, I received the endorsement of the Omaha Public Schools, Lincoln Public Schools, Nebraska Association of School Boards, Nebraska Council of School Administrators, the Nebraska Rural Community School Association, the Nebraska State Educators (sic) Association, and no opponents. Again for your reference, and you'll probably need to know this when you talk with your schools, is that these are the ways that schools can finance construction. The one we're talking about today as QCPUF, a maximum finance of ten years and so on. Now there are two others on there that schools have been using and we're going to talk about that in a minute. If you go down this spreadsheet there are BABs, Build America Bonds, and QSCBs, Qualified School Construction Bonds. Both of these are similar to QCPUF in that they don't require a vote of the people, they have limits as to how many years you

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can bond for. And the thing about the Build America Bonds is that they are being...they will be no more. The federal government is not renewing the Build America Bonds. The next page is a little bit about AM615, which said that if schools use QCPUF for energy efficiency, they would have to do an Energy Star rating, and what you're going to find out today is that every school in Nebraska is going to be Energy Star rated. And then the copy of my bill I put in here because there are two really important things I'd like to point out again. On page 12 there has to be a public hearing for any QCPUF expenditures. Whether it be ADA or energy efficiency, whatever, it requires a public hearing. And then there were some questions about the vagueness of the definition and starting on page 16 is the definition of each allowable expenditure under QCPUF and Bill Drafting for us really drafted energy efficiency to parallel all the other definitions in the bill. Senator Fulton gave us an amendment to narrow the definition somewhat of energy efficiency project. So I would like to simply point out again that these are similar definitions for everything under QCPUF. Tab three is one that should concern those who live in the Omaha area and it was a friendly amendment that was added by Senator Cornett and it deals with SIDs and their borrowing authority, and I would hope that a little later Senator Cornett would get up and talk about the significant impact of the amendment to LB283 clarifying SID borrowing authority and how that would affect the Omaha area. Section 4 is interesting because it's some concrete examples of what schools in Nebraska have done with energy efficiency. The first one in tab four is a report from North Bend. That's Senator Janssen's district and this particular energy project was done with QSCB...I'm sorry...yeah, Qualified School Construction Bonds backed by the government with very low interest rates by the federal government. And if you notice, I'm going to point out a few things in here, here's what they did. They will replace the original ceiling tile and grid system, update the HVAC addressing indoor air quality issues, and implementing a building management system, lighting throughout the building, and in totality the energy savings measures could potentially save as much as \$35,000 per year in energy savings. And then the next paragraph is... [LB283]

SPEAKER FLOOD: One minute. [LB283]

SENATOR HAAR: Thank you. The next paragraph is interesting as well. He said, while topics such as a second gym, additional space in the elementary, and new science wing are always under construction, maintaining a very well-built, 40-year-old building to maintain functionality for another 40 years is a primary theme for the scope of the work they did. The following page is about Hershey, Nebraska. This is in Senator Hansen's district. Again, it talks about energy project that was done by Hershey to improve and they saved about...they're intending to save about \$40,000 a year in savings from the project they did. And then from the Energy Star Web site, the annual energy bill to run America's primary and secondary schools is a staggering \$6 billion, more than spent on textbooks and computers combined. The least efficient schools use three times more energy than the best energy performers. [LB283]

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SPEAKER FLOOD: Time, Senator. [LB283]

SENATOR HAAR: Thank you. [LB283]

SPEAKER FLOOD: Thank you, Senator Haar. Senator Conrad, you are recognized. [LB283]

SENATOR CONRAD: Thank you, Mr. President. [LB283]

SPEAKER FLOOD: Before we go to Senator Conrad, my apologies, Mr. Clerk for an announcement. [LB283]

CLERK: Excuse me, Senator. Judiciary is having an Executive Session now; Judiciary in Room 2022. [LB283]

SPEAKER FLOOD: Thank you, Mr. Clerk. Senator Conrad. [LB283]

SENATOR CONRAD: Thank you, Mr. President. I'd be happy to yield my time to Senator Haar. [LB283]

SPEAKER FLOOD: Senator Haar, you have 4 minutes 56 seconds. [LB283]

SENATOR HAAR: Thank you, Senator Conrad. To continue through these tabs, again, this is something that's going to affect every school in Nebraska. I would like to then quote from a publication I think all of us got from the UNO Business of College (sic) Administration, Nebraska Business Development Center called "The Business Guide to Source Reduction," and on page 5 it talks about energy savings. There's a company called Flexsteel Industries in Dubuque, Iowa, that replaced all of their fluorescents, the old type with the new type, and here's what this booklet says about that: In updating the lighting, the old lights provided poor color balance, causing headaches and eye strain. Energy efficiency is a health issue. And many of our schools still have the old fluorescents. They cause headaches and eye strain. And again quoting: In addition to energy savings, new lighting improved visibility, safety, productivity, and employee morale. Energy efficiency is a health issue, improving visibility, safety, productivity, and employee morale, or I guess in the case of schools you could say the kids will be happier. Going on to tab 5, again I want to show you Nebraska's commitment to energy efficiency. This is a page from...and you can go to the Web site to see the whole State Energy Office, Nebraska Energy Plan. I wish you'd do that. It's well-prepared and I've complicated the director on this plan. And a highlighted point, the objective is to ensure access to affordable and reliable energy for Nebraskans to use responsibly, and one of the subpoints is to increase opportunities for demand-side management, energy management, and energy efficiency. The next page is the LB309 Task Force, as you may or may not know, it's a task force. We fund it every year and the purpose is to keep

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our state buildings up, to keep them up, to maintain them. And on the page that I copied out of here, it talks about energy conservation. Now one of the criticisms of LB283 has been that it's very vague, but if you look at how LB309 Task Force, which is what we do, when it talks about energy conservation there's really a key point here. Over the last three decades, the task force has allocated many millions of dollars towards energy conservation projects that save energy each and every year as well as agency operational funds and tax dollars. And then it goes on to say the task force has responded to increases in energy costs by placing a higher priority on funding energy conservation requests. I'm going to talk about those cost savings and how the cost of energy is getting higher and higher. The point I wish to make here is that Nebraska has made a commitment to energy conservation and I am hopeful that you will agree with me that LB283 can be part of that. Tab 6, here's something new. It's something that I had not heard about. I don't know if any of you have heard about RFP 3613Z1. I heard about it a few weeks ago and I called and they said, well, you know, we can't give you any more information than RFP. This is a proposal, a project that will affect every school in Nebraska and so I'm going to go through it with you. [LB283]

SPEAKER FLOOD: Forty-five seconds. [LB283]

SENATOR HAAR: Thank you. If you look at tab 6, the first page tells about the three phases. By the way, this is funded by \$500,000 from the Energy Office. It was set aside by the Appropriations Committee several years ago. I hope maybe somebody from the Appropriations Committee will talk about this. Phase I will be to rank and analyze every school, every school in Nebraska with Energy Star, and that will be done by somebody who's hired to do it. Phase II will be to take those schools that are, we'd say, the low-hanging fruit where the energy use is most wasteful and perform an... [LB283]

SPEAKER FLOOD: Time, Senator Haar. [LB283]

SENATOR HAAR: Thank you. [LB283]

SPEAKER FLOOD: Thank you. Senator Dubas, you are recognized. [LB283]

SENATOR DUBAS: I would yield my time. Wrong. [LB283]

SPEAKER FLOOD: Senator Dubas. [LB283]

SENATOR DUBAS: (Laugh) I would yield my time to Senator Haar. [LB283]

SPEAKER FLOOD: Senator Haar, 4 minutes 45 seconds. [LB283]

SENATOR HAAR: Thank you. Since I pressed her light one day by mistake, that's acceptable. Thank you. Okay, again in tab 6, and again this is what's going to affect

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every school in your district in the state. Phase I will be to analyze and rank every school with Energy Star. That gives us sort of a gross rating of how schools are using their energy and it will compare them to all other schools, not only in Nebraska finally but to all schools in the United States. Then those who are the low-hanging fruit, those that could save the most by doing energy upgrades, will have an investment-grade energy audit provided for their school. Now that's where somebody, an engineer, an architect comes into your school; they analyze the school in detail, in depth; and then in Phase III they would help you decide which kind of things could save you the most money. Now there's \$500 put together for this whole project that the Energy Office is putting to this project, so Phase I will happen for sure. Phase II will happen. Phase III, in terms of actually implementing building retrofits, is going to depend on how much of that \$500,000 is left. The other point I'd like to say about this, several things, one is notice the time line. The time line is very short. The opening for bids was May 3. The next page you can see all the groups who submitted bids. These are well-known companies in our state: Kiewit Building Group, M.E. Group, and so on, DLR. Phase II, that one then providing in-depth, investment-grade energy audits, will be completed by August 31, 2011, and then all the upgrades will have to be completed by April 30, 2012, because it's ARRA money and that has to be spent by April 30, 2012. And so every school will go through Phase I of getting an Energy Star audit. Phase II will be those schools...and I'll show you a little later about 10 percent of the schools will be chosen for Phase II. And Phase III will be those schools from Phase II with the money left over for upgrades. And here's where there's going to be a competition, folks, and I think you need to know this. One of the interesting and exciting things to me about this is that this comes at this time and actually even the school administrators and school boards were not aware of this project and it's going to happen soon, it's going to happen fast, and it's going to happen in your districts. Tab 7, again, no matter what you do with this notebook, this is going to be something to discuss with the superintendents in your district. Addendum one to the RFP are the questions that were asked by the vendors, and I would like you to look at tab 7, page 2, and here it's asking how these retrofits will be financed, and it says performance contracting is one way in which Phase III could be implemented. Performance contracting is where you have an energy service company or a contractor who will guarantee a certain amount of savings and then do the retrofit built on those savings. [LB283]

SPEAKER FLOOD: One minute. [LB283]

SENATOR HAAR: Thank you. And it says there may be other financing opportunities available. The type of financing will depend on the cost estimates of the upgrades and the school district's willingness to implement the upgrades--local control. So here will be a great opportunity for 10 percent of the schools in Nebraska, if the financing works for them and if the school district is willing. And then on page 3, the Energy Office expects a reasonable...question 11, expects a reasonable return to be based on a simple payback calculation that may include life cycle costing. Again, this will be done for the

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schools by professionals, by engineers and professional architects, for those schools that get through the selection process. Page 4, question 12, point f., the Energy Office expects all... [LB283]

SPEAKER FLOOD: Time, Senator. [LB283]

SENATOR HAAR: Thank you. [LB283]

SPEAKER FLOOD: Thank you, Senator Haar. Senator Campbell, you are recognized. [LB283]

SENATOR CAMPBELL: Thank you, Mr. President, and good morning, colleagues. I want to support Senator Haar's motion to override the veto. I had the opportunity to work with the Lincoln Public Schools when we did a full appraisal of all of the facilities, all the schools in the district, and at that point we reviewed quite extensively the use of what they call the QCPUF funds and what had been done in the Lincoln Public Schools to increase the health and safety of the students in those schools. We also then used the QCPUF money when we developed the \$250 million bond issue that was passed to again improve the schools for Lincoln. I think that QCPUF funds are an excellent way that we can improve the air quality, the lighting, and particularly of interest are the energy systems. Lincoln has gone to a ground coupling energy system which has extensively saved money for the taxpayers here in Lincoln. Some of the projects that have been discussed under this bill are extremely important for our schools across the state and I would hope that you would take seriously the information that is given in the notebook. Also, I hope Senator Cornett does cover LB430 because it's my understanding we need to take action on that bill this session. And with that, I'll yield the rest of my time to Senator Haar. [LB283 LB430]

SPEAKER FLOOD: Senator Haar, 3 minutes 15 seconds. [LB283]

SENATOR HAAR: Thank you very much, Senator Campbell. So we have many examples of how schools are already doing this, but this is such a great opportunity that's coming up not only to have an investment quality audit, which would cost thousands of dollars if you went to any of these companies and had it done on your own, but for 10 percent of the Nebraska schools who could save the most by upgrading their energy systems will get that investment-grade audit free of charge and those engineers and architects to work with them to prioritize where they should put their money. I'm in tab 7, page 6. Question 14, the answer: There are other financing options. It's talking about, well, how would you finance this, and they're saying, well, you could use ESCOs. There are other financing options to implement Phase III, so it's conceivable the implementation phase could last beyond April 30 but only for other monies, not for the ARRA monies. And then on page 7, the answer to question 29: The state does not have the authority to implement projects. The ultimate decision will be

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made with the school board--local control. In tab 8 I've...again, I'm sorry I'm spending so much of your time going over this but this is something that's going to affect every school in your district. Tab 8 are select pages from the proposal, the RFP, and you can go out to the Web site and see the whole thing if you want. What I've done is to highlight those sections which I think are informative about the process of this. The scope of service, again, talks about selecting a qualified contractor to benchmark and evaluate energy performance, provide investment-grade energy audits, and project management services for school districts. Phase I, II, and III: Every school in Nebraska will go through... [LB283]

SPEAKER FLOOD: One minute. [LB283]

SENATOR HAAR: ...Phase I. Thank you. Select schools will go through Phase II and III. Page 25, this is really important, again, to all of us. The technical requirements, point d., line 44, the bitter...blah, blah, blah...there are approximately 1,000 school buildings to be benchmarked using Energy Star Portfolio Manager and approximately 10 percent of these will receive an investment-grade audit and provide a time line for the task. So about 10 percent of our schools are going to get this advantage and I would hope that for each of you, you're going to be...have some schools in that 10 percent. Page 28 again talks about the deliverables. Phase I is an energy audit of every school building in Nebraska. Phase II is an investment-grade audit... [LB283]

SPEAKER FLOOD: Time, Senator. [LB283]

SENATOR HAAR: Thank you. [LB283]

SPEAKER FLOOD: (Visitors introduced.) Senator Mello, you are recognized. [LB283]

SENATOR MELLO: Thank you, Mr. President. Members of the Legislature, I rise in strong support of overriding the Governor's veto on LB283 for multiple reasons, and I'll try to get through them in 5 minutes, if possible. But I find it ironic and comical that we have a Governor who sent a letter to the federal government stating that energy efficiency will be and needs to be a key priority of our state but vetoes the biggest energy efficiency piece of legislation we have this session. And the justification, and I've only got this from a few conversations on the floor that seem to reiterate the Governor's justification, is that we want a vote of the people in regards to QCPUF; if school boards, local school boards, local elected officials want to utilize their existing QCPUF authority for projects that fall under LB283, we want to do a vote of the people. As I read it, we want to do a vote of the people for a \$75,000 bond issue? We want to do a vote of the people for a \$65,000 bond issue to replace a geothermal heat pump or a part? Colleagues, I'm all about local control. As I know Senator Lautenbaugh distinctly likes to remind us, we're for local control until we're against it. In this particular instance, we have a bill that allows local school boards the ability to save money on their energy

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costs. They are able to use existing property tax authority, levy authority through QCPUF to do exactly that. The unique component of this bill after it's been signed...after it's been vetoed by the Governor is what Senator Haar has been discussing most of the morning, which is the RFP that's come out from the Nebraska Energy Office that only accentuates the point of why we need LB283. This RFP will now have the Energy Office, through actions of this Legislature by passing a budget last year, that \$500,000 now will be utilized to give energy audits to school districts across the state. The component is what happens when those energy audits are done. How do they finance these mid- to large-scale projects that need to be done within school districts to save energy and save taxpayer dollars? That's something that the RFP even acknowledges is not fully fleshed out and LB283 helps flesh that out. This provides school districts, after they get an ARRA stimulus funded energy audit through the Nebraska Energy Office, LB283 provides them an opportunity to utilize, if they have the existing authority even available, to use some of that authority to purchase or repair a boiler, to put in more energy efficient piping, to put in more energy efficient heating and cooling systems, windows, lighting, things that we know save taxpayer dollars in the long run. And as we've discussed this issue before on the floor, this is a matter of whether or not you believe we need to invest in the long run, invest in the long term. There's been no arguments made against LB283 that Senator Haar didn't acquiesce to on General and Select File. Every change that someone has made on this floor regarding this bill has been made, but yet the Governor vetoes it under the auspice of saying it's going to lead to runaway property tax increases. Well, colleagues, I think we know that's a card he plays when he just doesn't like something or just doesn't like who the introducer is. Senator Haar has worked diligently on this issue for over a year and a half now, has put forward one of the most long-term thinking bills that help our school districts save money in an era where we have cut state aid to education to 2008 levels. [LB283]

SPEAKER FLOOD: One minute. [LB283]

SENATOR MELLO: This proposal is something that our state desperately needs to save money in the long run, and if you trust your local school board to determine whether or not buying or purchasing a new boiler or heating and cooling system is in the best interests of your local school district, that's a decision you have to make because asking it and throwing up the auspice that we need a vote of the people on a \$50,000 contract I think is trying to take away that local control, and that's what you're trying to do by not supporting the override of the Governor in this proposal. We all support a vote of the people in regards to making sure local voters have a say in local property taxes. This is a unique instance that saves taxpayers money in the long run and we're not asking them to spend more on an election for \$50,000 than what we would get by simply allowing a school board to determine whether or not they want to spend a small, meager amount of property tax dollars to save energy and money in the long run. Thank you, Mr. President. [LB283]

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SPEAKER FLOOD: Thank you, Senator Mello. Senator Cornett, you are recognized.  
[LB283]

SENATOR CORNETT: Thank you. I rise in response to Senator Campbell's request to explain the LB430, which we amended into LB283 with the permission of Senator Haar. Again, I want to thank him for that. LB430 was a bill that was passed out of the Revenue Committee 8 to 0. It deals with language in regards to bonding for SIDs. It is clarification language that was brought to our attention by the State Auditor that we needed to clarify how SIDs are able to bond, and with Senator Haar's kind permission we were able to amend that into his bill. So I rise in support of LB283 and LB430, which was amended into it, and urge the body to override the veto. Thank you. [LB283 LB430]

SPEAKER FLOOD: Thank you, Senator Cornett. Senator Wallman, you are recognized.  
[LB283]

SENATOR WALLMAN: Thank you, Mr. President. I would, too, encourage to override the veto. We had issues in here we did raise--local property, taking way state aid. So I would yield the rest of my time to Senator Haar. [LB283]

SPEAKER FLOOD: Senator Haar, 4 minutes 45 seconds. [LB283]

SENATOR HAAR: Thanks, Senator Wallman. Continuing in the notebook, tab 8, page 28, 27 and 28, three phases available to all Nebraska schools. Well, the first phase, every school in Nebraska will receive an Energy Start audit by an engineering firm or one of these firms that has applied for the RFP. Phase II, if your school could save money by an upgrade, that's Phase II--an investment-grade energy audit worth thousands of dollars free for the school. And here's a list of the things they look at and I think it's important. When you do an investment-grade energy look, you look at the energy and water equipment, the building envelope, the utility bills, the energy consumption, and so on and so forth. It is an in-depth audit of how your school can save thousands of dollars per year on energy costs. Phase III, with the money that's left over then there will be Phase III which will help individual schools design the projects that will save them the most money. Again, this will affect every school in your district. Some of the schools will get Phase II and Phase III, but what's a little bit weak in this RFP is how will those Phase III things be paid for. We can go to energy service companies, ESCOs. But I'm concerned, if a school in your district goes through Phase I, it shows you could save a lot of energy in that school with retrofits, Phase II does that in-depth audit and then you get to Phase III and there's very little money left, and especially if you're a small school, an energy service company may not want to come out and work with you. Where is the money to come from? The time line is short. The work has to be done by April 30. So I am really concerned that we're going to have schools with this great opportunity who aren't in a position then to take advantage of this. I believe LB283 would allow that for schools. Tab 9 is simply...again, I selected the glossary terms out of

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the RFP. You can go in and look at those if you'd like. And then I get...in summary, I would say this. This proposal, the RFP, is weak in funding of actual energy efficiency measures. Basically, the schools are going to have to come up with most of the money for doing that. What is strong about this RFP is that selected schools, about 10 percent of the schools of the state, will get professional help in identifying and understanding their best opportunities for saving money--that is, getting the best bang for the buck--and that will be free. If you're selected as this 10 percent of selected schools it will be free. And what is very strong about this RFP is local control because nothing will be done to the school or with the school without the cooperation of the local school board. I want to talk off-tab for just a minute. [LB283]

SPEAKER FLOOD: One minute. [LB283]

SENATOR HAAR: Thank you. In October of last year, we had the Green Schools Summit. We're going to have another one this summer. And by the way, our keynote speaker, Gil Sperling, was one of the people who received the Governor's letter in tab 1. I thought that was kind of interesting. He was our keynote speaker on why energy efficiency makes sense. For 2011, we're working to...one of the things that this has brought up as well is that the schools and the school administrators, the school boards and so on were really not aware of this RFP. They will be aware soon, but they have to be prepared. Superintendents have to be prepared for this process. And so we're hoping that the Green Schools Summit in 2011 will be in conjunction with the Nebraska Council of School Administrators to prepare superintendents for this process. Then we're working with the Nebraska Council of School Administrators to set up a database so we can see which schools have done energy retrofitting. [LB283]

SPEAKER FLOOD: Time, Senator. [LB283]

SENATOR HAAR: Thank you. [LB283]

SPEAKER FLOOD: Thank you, Senator Haar. Madam Clerk, Mr. Clerk, items for the record? [LB283]

CLERK: Thank you, Mr. President, I have a series of items, a series of study resolutions first of all: Senator Cornett, LR231, LR232; Senator Hadley, LR233; Senator Nordquist, LR234; and Senator Conrad, LR235; all calling for interim studies, all will be referred to the Executive Board. Your Committee on Revenue, chaired by Senator Cornett, reports LB400 to General File with committee amendments attached. Bills read on Final Reading this morning were presented to the Governor at 11:20 a.m. (re LB585, LB15, LB17, LB56, LB73, LB107, LB121, LB124, LB155, LB162, LB167, LB234, LB248, LB254, LB261, LB265, LB277, LB292, LB309, LB315, LB394). And I have an explanation of vote from Senator Mello. (Re LB373, Legislative Journal pages 1547-1549.) [LR231 LR232 LR233 LR234 LR235 LB400 LB585 LB15 LB17 LB56 LB73

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LB107 LB121 LB124 LB155 LB162 LB167 LB234 LB248 LB254 LB261 LB265 LB277  
LB292 LB309 LB315 LB394 LB373]

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

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

RECESS

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: 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. Please record, Mr. Clerk.

CLERK: I have a quorum present.

PRESIDENT SHEEHY: Do you have items for the record?

CLERK: I do not, Mr. President.

PRESIDENT SHEEHY: Mr. Clerk, we will now move the 1:30 Final Readings. Members should return to their seats in preparation for Final Reading. Mr. Clerk, we will now proceed to LB549. [LB549]

CLERK: (Read LB549 on Final Reading.) [LB549]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB549 pass with the emergency clause attached? All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB549]

CLERK: (Record vote read, Legislative Journal pages 1550-1551.) 44 ayes, 0 nays, 5 excused and not voting. [LB549]

PRESIDENT SHEEHY: LB549 passes with the emergency clause attached. We now proceed to LB549A. [LB549 LB549A]

CLERK: (Read LB549A on Final Reading.) [LB549A]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB549A pass with the emergency clause attached? All those

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in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB549A]

CLERK: (Record vote read, Legislative Journal page 1551.) 44 ayes, 0 nays, 5 excused and not voting. [LB549A]

PRESIDENT SHEEHY: LB549A passes with the emergency clause attached. We now proceed to LB84. [LB549A LB84]

CLERK: Senator Nordquist, I understand you'd like to withdraw AM1273, Senator. [LB84]

SENATOR NORDQUIST: That is correct. [LB84]

PRESIDENT SHEEHY: AM1273 is withdrawn. [LB84]

CLERK: (Read LB84 on Final Reading.) [LB84]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB84 pass? All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB84]

CLERK: (Record vote read, Legislative Journal page 1552.) 33 ayes, 10 nays, 1 present and not voting, 5 excused and not voting, Mr. President. [LB84]

PRESIDENT SHEEHY: LB84 passes. We'll now proceed to LB229. Mr. Clerk, the first vote is to dispense with the at-large reading. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB84 LB229]

CLERK: 40 ayes, 1 nay, Mr. President, on the motion to dispense with the at-large reading. [LB229]

PRESIDENT SHEEHY: The at-large reading is dispensed with. Please read the title. [LB229]

CLERK: (Read title of LB229.) [LB229]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB229 pass with the emergency clause attached? All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB229]

CLERK: (Record vote read, Legislative Journal page 1553.) 39 ayes, 5 nays, 5 excused and not voting, Mr. President. [LB229]

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PRESIDENT SHEEHY: LB229 passes with the emergency clause attached. We'll now proceed to LB229A. [LB229 LB229A]

CLERK: (Read LB229A on Final Reading.) [LB229A]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB229A pass with the emergency clause attached? All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB229A]

CLERK: (Record vote read, Legislative Journal page 1554.) 41 ayes, 2 nays, 1 present and not voting, 5 excused and not voting, Mr. President. [LB229A]

PRESIDENT SHEEHY: LB229A passes with the emergency clause attached. We'll now proceed to LB386. [LB229A LB386]

CLERK: Mr. President, Senator Council would move to return the bill for a specific amendment, FA22. (Legislative Journal page 1461.) [LB386]

PRESIDENT SHEEHY: Senator Council, you're recognized to open on your motion to return LB386 for an amendment. [LB386]

SENATOR COUNCIL: Yes, thank you, Mr. President. I will be brief. I filed this motion in large part due to the issue that was discussed when this bill was on Select File, with regard to the carving out of much of Douglas County and Lancaster County and Sarpy County in terms of the businesses in those areas being eligible for the enhanced internship reimbursement. My concern was that, particularly with regard to Douglas County, while a significant portion of Douglas County is considered distressed, that most of the businesses that I understood Senator Heidemann was seeking to provide incentives for employing interns resided outside of those distressed areas and, thus, would be ineligible for enhanced reimbursement of internship costs, even if the intern, him or herself, resided in a distressed area. So I filed the amendment and then engaged in conversations with representatives of the Department of Economic Development to determine whether there was any way we could fashion an amendment that would address my concerns as well as preserving the intent of the legislation as introduced by Senator Heidemann. And at this point, it appears that without additional data, without some opportunity to see how this program will actually operate, that this is not the time to try to make that adjustment. I have consulted with Senator Heidemann in that regard. I think that I can safely say that he's agreed to look at the program, along with me, during its first year of operation to see whether its intended objectives are being served, and that is to provide incentives for some of our smaller businesses across the state to provide these internship opportunities. And with that said, I will withdraw FA22. [LB386]

PRESIDENT SHEEHY: FA22 is withdrawn. Mr. Clerk, continue with the Final Reading.

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[LB386]

CLERK: (Read LB386 on Final Reading.) [LB386]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB386 pass with the emergency clause attached? All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB386]

CLERK: (Record vote read, Legislative Journal page 1555.) 43 ayes, 0 nays, 1 present and not voting, 5 excused and not voting, Mr. President. [LB386]

PRESIDENT SHEEHY: LB386 passes with the emergency clause attached. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LB549, LB549A, LB84, LB229, LB229A, and LB386. (Visitors introduced.) [LB386 LB549 LB549A LB84 LB229 LB229A]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Members, we now return to LB283 on the agenda and the motion to override a gubernatorial veto. As we left this issue in--or prior to our recess this morning, Senator Hadley, Senator Ken Haar, and Senator Dubas were in the queue. We have restored that queue. Senator Hadley, you are recognized. [LB283]

SENATOR HADLEY: Mr. President, members of the body, good afternoon. Would Senator Haar yield to a question or two? [LB283]

SPEAKER FLOOD: Senator Haar, will you yield to a question from Senator Hadley? [LB283]

SENATOR HAAR: Of course. [LB283]

SENATOR HADLEY: I'm sure you were going to get to it, but so far we haven't really addressed the Governor's reason for vetoing this. I just wondered if you would...basically, it seems to me, after reading his veto message, he's concerned that this doesn't fit the...the activities...are allowed to issue bonds without voter approval. Do you agree with that? [LB283]

SENATOR HAAR: No, sir. Would you like a more extensive answer or just a yes or no? [LB283]

SENATOR HADLEY: I think you're next in the queue and you're going to--I would assume you're going to give more answers later. Is that correct? [LB283]

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SENATOR HAAR: That's correct. [LB283]

SENATOR HADLEY: And, again, also I would assume that the bond issues outside of the levy limit--you will address those also, is that right--is that correct, sir? [LB283]

SENATOR HAAR: That's correct. My tab 10 is actually--addresses the Governor's veto point by point. [LB283]

SENATOR HADLEY: Okay. I just think these are crucial issues--to answer those fully as we go on, because to answer the first question literally answers the second question. So with that, I would look forward to listening to Senator Haar. Thank you, Mr. President. [LB283]

SPEAKER FLOOD: Senator Haar, you have 4 minutes. [LB283]

SENATOR HAAR: Mr. President, members of the body, thank you, Senator Hadley. I've given an awful lot of context to the Governor's veto message, because I think not only is it important, it's fairly technical--but because of this new creature that's coming on the scene called RFP 3613Z1, which will give an Energy Star audit to all schools in Nebraska--all public schools. It will select about 10 percent of those for a very quality audit, investment-quality audit, and then, three, work with those schools to decide where best to spend their money. So tab 10 is the Governor's veto letter, and I will address that point by point. This first thing he says is, "Historically, the authority granted to districts...has been limited to primarily life, health, and safety issues." I would simply respond that energy efficiency is a health issue. You heard earlier when I read from this bulletin from the University of Nebraska at Omaha, from their business college, when it gives a case study from Flexsteel Industries. It talks about old lights provide "poor color balance, causing headaches and eyestrain." Lighting is one of the main ways you can gain energy efficiency. And here exactly they're talking about a health issue. And for children, poor lighting is very important; in addition, energy savings. New lights improve visibility, safety, productivity, and employee morale. So I think--and there are many stories, many of them are anecdotal. I talked to a teacher at Southeast High School here in Lincoln. And as you know, Lincoln is going through and upgrading all their schools, retrofitting them. And before Southeast was retrofitted, he had to use his inhaler two or three times a day. After the retrofit, which is basically energy efficiency but vastly improved the air quality, he doesn't need that anymore at school. And these studies are more and more--there's more and more evidence of this that, actually, energy efficiency is a health issue. And not only does it improve the health of students, but it also gets them performing at higher academic levels. And all of this is actually a matter of study. Okay. So I would simply say in response to the Governor that... [LB283]

SPEAKER FLOOD: One minute. [LB283]

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SENATOR HAAR: ...thank you...that, in fact, energy efficiency is a health issue; it will affect the health of students. And our children are having more and more asthma problems, and this certainly addresses that, as well as better lighting. His second point is vagueness. My response is that is--that the definition of "energy efficiency" is exactly parallel to the other things covered in this bill. And I already showed that to you in the green section of this notebook. This same concern was discussed on General File. And Senator Fulton's amendment addressed this; that was passed. And the neat thing about this bill is that because of this RFP that's going to be carried out by architects and engineers and so on, schools will have professionals working with them to make sure that they're investing in... [LB283]

SPEAKER FLOOD: Time, Senator. [LB283]

SENATOR HAAR: Thank you. [LB283]

SPEAKER FLOOD: Mr. Clerk, announcements. [LB283]

CLERK: Mr. President, Business and Labor will have an Executive Session now underneath the north balcony; Business and Labor now. [LB283]

SPEAKER FLOOD: Thank you, Mr. Clerk. Senator Ken Haar, you are recognized. [LB283]

SENATOR HAAR: Thank you, Mr. President and members of the body. To continue, the second point the Governor made was that it's vague. And as I said, it's absolutely parallel--with... [LB283]

SPEAKER FLOOD: (Gavel) [LB283]

SENATOR HAAR: ...with just a few minor changes from Senator Fulton's amendment--to the other things addressed by QCPUF. And the great advantage, the great opportunity, we're going to have right now in Nebraska--that every school will receive an Energy Star audit, and about 10 percent of those will get an investment-grade audit. So that it's not simply a school board looking and seeing how they might save money, but also it's going to be professional architects and engineers working with schools. And this RFP has to be completed by April of 2012; our time frame is tight. The next point that the Governor makes: this "will result in significant property tax increases." First of all, I've got to say it's a fact that energy efficiency requires an initial investment. There's an old saying we've all heard: the gift that keeps on giving. Energy efficiency is one of those. By the way, just trivia: This was first used in 1924 to promote... [LB283]

SPEAKER FLOOD: (Gavel) [LB283]

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SENATOR HAAR: ...thank you...to promote talking machines or phonographs, and it was registered in 1927: "the gift that keeps on giving." I'm going to change that a little bit and say that energy efficiency is an investment that keeps on giving. And just to show you again, to demonstrate this, we all know that energy prices are increasing. I went out to Google, which is such a great resource, to look at how the cost of wholesale electric power has gone up in this state. We're still one of the lowest cost for electricity, but this is an article by Tina Kitt in The Wauneta Breeze--I believe that's Senator Christensen's district--from 18 November 2010. Here's how the cost of electricity, of wholesale electric power, has gone up in the past few years: 6.2 percent in 2007; 9.1 percent in 2008; 7 percent in 2009; 5.9 percent in 2010; projected to be 9.7 in 2011 and 9.6 in 2012. That's according to the article in The Wauneta Breeze. Now, if you take that \$100 in 2007 spent on energy, using the numbers that she has given us, in 2012 you'll be paying \$158 for electricity what you paid \$100 before. And there are many, many reasons for that: the cost of coal has gone up; the cost of nuclear fuel has gone up; the railroads are charging more and so on. So this is a gift that keeps on giving. If you invest money in energy efficiency now--and the cost of energy is one of the greatest costs of schools--this will increase, the benefit will increase in the future. And not only is the cost of energy increasing, but also the cost of retrofits are going up. And there's a relatively short payback period. In another case study from the UNO publication there was a Via Christi Hospital in Wichita, Kansas, that replaced all its lights and used timing on the hallways and so on. They invested \$5,500. They invested \$5,500 and they're saving \$25,000 a year. So the investment, especially with the backing of trained engineers and architects, will be dramatic for schools in Nebraska. The next point of...I'm sorry, getting back to property tax. I'm going to... [LB283]

SPEAKER FLOOD: One minute. [LB283]

SENATOR HAAR: ...thank you...sound a little like a preacher here: local control. And I'm going to say, will there be a property tax increase? No, if schools can find another way to fund this, but, yes, if, and only if, and after, and let me explain that. Yes, if and only if the school board, after a public hearing, votes to use QCPUF would there be an increase in the property tax. Going back to North Bend, for a 1.6-cent levy and a short payback period--because QCPUF can't be more than 10 years' payback--they're saving \$35,000 a year. And they didn't use QCPUF but a very similar one called QSCBs. They are now saving \$35,000 a year. Now, the answer: Will there be a property tax increase? No, if the school board decides against QCPUF funding or finds other funding--local control. [LB283]

SPEAKER FLOOD: Time, Senator. [LB283]

SENATOR HAAR: Thank you. [LB283]

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SPEAKER FLOOD: Thank you, Senator Haar. Senator Dubas, you are recognized.  
[LB283]

SENATOR DUBAS: Thank you, Mr. Speaker. Members of the body, I do stand in support of this motion to override the Governor's veto. Senator Haar and his staff have spent an inordinate amount of time studying and researching this issue before coming forward with what I think is a very well-thought-out bill that really is addressing something that needs to be addressed for our local school districts. This is a decision...while the voters won't be actually going to the poll and voting on it, the local school board members will have to sell what they're trying to do to their constituency. There will be a public hearing, there will be plenty of opportunity for input from the public as far as whether they support or not support the efforts and the ideas that the school board is wanting to put forward. As Senator Haar said, these are issues that are extremely timely right now and do need to be addressed by our school districts. They're becoming more and more important all the time, dealing with energy. And especially for our schools that are dealing with an aging school building and how to update that energy environment, this is going to be even more important to them to have as a tool for their use. So I do stand, again, in support of this motion to override and would yield the remainder of my time to Senator Haar. [LB283]

SPEAKER FLOOD: Thank you, Senator Dubas. There are no other lights on. Senator Haar, my understanding, you have 4 minutes 45 seconds. [LB283]

SENATOR HAAR: Okay. Mr. President and members of the body, thank you very much. Responding to the Governor's veto. Is energy efficiency a health or safety issue? Yes, it is, and we've demonstrated that. Is it vague? I guess that depends, certainly, on your definition. Senator Fulton helped us tighten it down. And with the help of professionals through this RFP that's going out, there will be help for schools to define that. And then this thing of, he says, "significant property tax," first of all, I pointed out that there will be some investment required, and it depends on that investment. But energy efficiency investments are a gift that keep giving, because energy costs are going up. Local control of school boards: they could only use QCPUF if, and only if, and after a public hearing; no, if the school board decides against it. This is local control. "Significant," he used the term "significant." Well, it depends on the scope of improvements decided on by the school board. None of this will be done without the school board--again, local control. And, finally, the Governor said, "Energy efficiency projects should not be outside of the levy limits unless approved..." I would remind you, this morning, that we voted for \$25 million for the university Innovation Campus, because we represent the people; that's local control. There's almost nothing more local control than school boards. I would also say that smaller investments, such as lighting improvements, with a short payback make the expense and effort of a bond issue inefficient. The schools like North Bend that have bonding under federal ability and could use QCPUF in the same ways are going away. Schools are concerned about kids and teachers. And here I

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would like to refer you to the e-mail I handed out. This is from--and I...because I can't say it any better--from John Bonaiuto, who's executive director of the Nebraska Association of School Boards, and he gave me his permission to hand this out. He points out that, first of all, there used to be separate levies for building funds; that doesn't exist anymore. And I think especially important is he says: When school boards are trying to do what's best for children, it's usually about class size and programs, not about how they can make school sites more energy efficient; LB283 is the logical next step in expanding QCPUF to help school boards work on important projects without taking the money away from learning and instruction. One of the things the Education Committee was asked by the schools was to give them more flexibility, and that's what this will do. So, again, I hope I've responded specifically to the issues of health--yes, it is health. Is it vague? I don't believe so; it's similar to all the other parts of QCPUF. And schools will be helped by professional engineers and architects. There will be tax increases if, and only if, the local school boards decide to do it in that way. So, in conclusion, the serendipity for me, the good fortune right now... [LB283]

SPEAKER FLOOD: Fifty seconds. [LB283]

SENATOR HAAR: ...is that with this RFP that's coming out represents a unique opportunity for Nebraska schools; it's a short time frame; and it's strong on local control; and it does not compete with the General Fund. And all of these things--LB283, this RFP, and the Green Schools Summit--all fit together to provide a better place for our kids and to save money. And although every school in your district--every one of us--will participate in Phase I, the Energy Star audit, it's my sincere hope that a school or schools within your legislative district will qualify for Phase II and III, which is going to be the investment-grade audit, and then are prepared to take advantage of that free, very expensive audit. [LB283]

SPEAKER FLOOD: Time, Senator Haar. [LB283]

SENATOR HAAR: Thank you. [LB283]

SPEAKER FLOOD: Senator Haar, your light is on; you're also the only light on. Would you like to use this as your closing? [LB283]

SENATOR HAAR: Yes, I would. [LB283]

SPEAKER FLOOD: Okay. Senator Haar, you're recognized to close on your motion. [LB283]

SENATOR HAAR: Okay, well, I've just about completed. Again, I would like to reiterate, there's a serendipity or good fortune, I believe, between LB283, this RFP that's coming out that will give every school in Nebraska an Energy Star rating and then give more

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extensive services to those who can most benefit from this audit. My concern...the reason I believe that LB283 fits in, it will give schools one way of financing if there is not another way. My concern is that there are going to be, especially, small schools where energy service companies are not going to think it's worth their time. And we're going to have schools that are identified as being able to save, they're going to get this investment-quality audit, and then there's not going to be the money or the time--and time is of the essence here--there won't be the money or the time to carry out those improvements. I go back to the cover of this book that I presented to you. LB283, especially in connection with this RFP that's going out, will improve the health of students and teachers, raise the performance of our kids, increase energy efficiency of the schools, and save money. And with that, I appreciate your attention. This is something I hope that you'll discuss. I know we're taking a vote today, but I gave you all this background material because it is something that will come up in every school in every school district in your districts. Thank you very much. [LB283]

SPEAKER FLOOD: Thank you, Senator Haar. A reminder, members, this motion does require 30 votes. Senator Haar, for what purpose do you rise? [LB283]

SENATOR HAAR: Yes, thank you. I'd like a call of the house and then a record (sic) vote in regular order. [LB283]

SPEAKER FLOOD: Thank you, Senator Haar. Members, there has been a request to place the house under call. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB283]

CLERK: 35 ayes, 0 nays, Mr. President, to place the house under call. [LB283]

SPEAKER FLOOD: Members, 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 Langemeier, Ashford, please check in. Senator Haar, all members are present or otherwise accounted for. A reminder again, members, this motion does require 30 votes. The question is, shall LB283 become law notwithstanding the objections of the Governor? Mr. Clerk, please read the roll in regular order. [LB283]

CLERK: (Roll call vote taken, Legislative Journal page 1556.) 24 ayes, 20 nays, Mr. President, on the motion that LB283 become law notwithstanding the objections of the Governor. [LB283]

SPEAKER FLOOD: The motion fails. I raise the call. Mr. Clerk, any items? [LB283]

CLERK: I do, Mr. President. Thank you. Some study resolutions: Senator Dubas, LR236; and Senator Mello, LR237. Both will be referred to the Executive Board.

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(Legislative Journal pages 1556-1558.) [LR236 LR237]

SPEAKER FLOOD: Thank you, Mr. Clerk. We now proceed to LB642. [LB642]

CLERK: And, Mr. President, I might add, bills read on Final Reading this afternoon were presented to the Governor at 2:05. (Re LB549, LB549A, LB84, LB229, LB229A, and LB386, Legislative Journal page 1558.) [LB549 LB549A LB84 LB229 LB229A LB386]

Mr. President, LB642 is a bill originally introduced by Senator Cornett. (Read title.) Introduced on January 19, at that time referred to the Revenue Committee; the bill was advanced to General File. There are Revenue Committee amendments pending, Mr. President. (AM493, Legislative Journal page 666.) [LB642]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Cornett, you're recognized to open on LB642. [LB642]

SENATOR CORNETT: Thank you, Lieutenant Governor and members of the body. LB642 would authorize the Department of Revenue to enter into contracts to procure products and service, develop, deploy, or administer systems or programs which identify nonfilers of returns under reports or nonpayers of taxes administered by the department. Fees for services, reimbursement, costs incurred by the department or other remuneration can be funded from the amount of tax, penalty or interest collected and must be paid only after the amount is collected. The intent of this legislation came about from meetings over the course of the summer with different companies in regards to identifying uncollected revenue. The Revenue Committee looked at this as a means under the LR542 process of finding revenue for the state. The intent of this legislation is to appropriate an amount from the tax, penalty, and interest actually collected, not to exceed the amount collected, that is sufficient to pay for the services, reimbursement, costs incurred by the department or other remuneration. Ten percent of proceeds received each calendar year due to such contracts must be deposited by the Department of Revenue Enforcement Fund to help identify persons who did not file tax returns or who underreported their tax liability or do not pay their tax liability. LB642, as submitted to the committee, provides that vendors entering into the contract are subject to the requirements and penalties of Nebraska's confidentiality laws regarding tax information. Furthermore, contracts entered into pursuant to this legislation would not be subject to Section 73-201 to 73-204 which govern contracts, including contingency fee contracts, entered into in behalf of the state. With this, the Tax Commissioner must submit an annual report to the Legislature's Revenue Committee and the Appropriations Committee showing the dollars generated during the previous fiscal year, pursuant to this new statute section. What I'm going to do is explain a little bit what we're talking about in the first half of this bill, before the Revenue Committee amendments. What this

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allows the Department of Revenue to do is enter into a contingency agreement with a company. There are a number of companies out there whose sole purpose is computer programs and technology to identify uncollected revenue in a state. They are not...we are not giving them the authority to collect the revenue. We are not having them go after Nebraska taxpayers. They are simply providing the technology for our department to identify uncollected revenue. Then our department would handle those collections how they choose to handle them. The way the company receives payment from this is if the department collects money, if and only if, based on what's collected, not on what's identified, then the company that provides the technology receives 10 percent or up to 10 percent of the amount collected. A number of states have moved to this type of revenue identification. We're not talking about any new taxation here. We are simply talking about identifying taxes that are not being paid either through oversight or deliberate action. With that, I will move on to the committee amendments, sir. [LB642]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You've heard the opening to LB642. As was noted, there is a Revenue Committee amendment, AM493. Senator Cornett. [LB642]

SENATOR CORNETT: Thank you. After I had introduced LB642, I was contacted by companies that have a different way of generating revenue and that is what the amendment, AM493, to LB642 does, and I'll explain that a little bit further and I have a substantive amendment following this. The Revenue Committee amendment, AM493, makes a number of changes to the bill. It adds clarifying language in Section 1 of the bill stating that the contractual authority provided under the subsection to procure products and services which identify nonfilers, unreporters, and nonpayers of tax, administered by the Department of Revenue, also extends to improper or fraudulent payments made by any program that is administered by the department. It also adds language to the subsection stating that fees for such services, reimbursements, costs incurred by the Department of Revenue, or other...other fees can be funded from the amount of tax, penalty, interest, or other recoveries actually collected. The Legislature intends to appropriate amount from the tax, penalty, interest, and other recovery actually collected. Secondly, the amendment adds a new subsection, section (1) of LB642, which provides that the department may contract for the recruitment of entities to the state that will generate sales taxable, pursuant to Section 77-2703, if the contract is determined by the Governor to be in the best interest of the state. The contract shall not be subject to the requirements of Section 73-504. However, this language will be further amended by the amendment following this. It also amends section (3) of Section 1 to effectively provide that tax revenue received pursuant to Section 1 of the bill will go to the state's General Fund rather than requiring 10 percent of such tax revenue to be credited to the Department of Revenue Enforcement Fund. Fourth, it amends section (3) of Section 1 to clarify that 10 percent of the proceeds received during each calendar year and deposited by the Department of Revenue Enforcement Fund are to be used for, among other things, identifying improper or fraudulent payments. I would urge the body to

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support the Revenue Committee amendment and the following amendment. [LB642]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You've heard the opening of the Revenue Committee amendment, AM493, to LB642. Mr. Clerk, do you have amendments on your desk? [LB642]

CLERK: Senator Cornett, I have AM1315 with a note you want to withdraw. [LB642]

PRESIDENT SHEEHY: AM1315 is withdrawn. [LB642]

CLERK: Mr. President, Senator Cornett would move to amend with AM1401. (Legislative Journal page 1499.) [LB642]

PRESIDENT SHEEHY: Senator Cornett, you're recognized to open on AM1401. [LB642]

SENATOR CORNETT: Thank you very much, Mr. President. AM1401 has come about through the process since the committee passed the bill out in putting "belts and suspenders" on the original bill. It provides clarifying language regarding contracts with an entity to recruit the state new enterprises that will generate sales taxable pursuant to Section 77-2703. This provides tax revenue in a new way by focusing on the generation of taxable sales rather than the collection of taxes that are already owed to the state. As I stated before, this type of contract would only be entered into if the Governor determines the contract to be in the best interest of the state. The Governor's determination that a contract is in the best interest of the state shall be based on the new state sales tax revenue that would be generated as a result of the business activity of the new retailers recruiting to the state. The contract and all supporting information shall be confidential except the names of the party to the contract, the locations of their places of business, amounts of increased employment and investment made by the parties of the contract, and information required to be reported under subdivision (2)(e) of this section. Contracts entered into under this portion of LB642 may provide for the payment of an incentive that is a percentage of the new sales tax revenue generated. The department shall verify and audit all incentives paid pursuant to this subsection. A person that receives an incentive under this subsection is not entitled to sales tax refunds under the Nebraska Advantage Act, the Nebraska Advantage Act Microenterprise Tax Act, and the Nebraska Advantage Research and Development Act, and the Nebraska Advantage Rural Development Act with regards to the same sales tax transaction. In other words, this prohibits double-dipping. A new retailer recruited under this subsection will be subject to all reporting, auditing, enforcement, and confidentiality provisions of the Nebraska Revenue Act of 1967 that is applicable to other retailers in the state. The state may not contractually waive this requirement. In the event an incentive was paid under this subsection on taxes subsequently determined to have been paid in error, a purchaser may seek a refund from the retailer. If the retailer files a

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claim for a refund of taxes paid in error, the amount of refund shall be reduced by the amount of the incentive paid for the period of the refund claim. AM1401 also specifies what information must be included by the Tax Commissioner in the annual report to the Legislature. The report shall include a listing of the contracts which have been signed during the previous calendar year, a listing of the contracts which are still in effect, the identity of the parties to each contract, the locations of the places of business of the parties to each contract, total taxable sales occurring in this state as a result of the contract authorized by this section, total state sales tax revenue generated by the total taxable sales referred to in this subdivision (2)(e)(v) of this section, (vii) total incentives paid to each contract. I would like to thank the Governor and his staff for their willingness to discuss this bill and this amendment with the committee amendments. In the discussion with the Governor and his staff, he has brought up concerns about the start-up costs and the impact of sales tax policy. I hope to continue this open dialogue with the Governor's Office between now and Select File. I would ask you to support AM1401 and the committee amendment, AM493, to the underlying bill, LB642. [LB642]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You've heard the opening of the amendment to committee amendment, AM1401 to AM493. Members requesting to speak: Senator Pahls, followed by Senator Fulton, Senator Howard, and Senator Nelson. Senator Pahls. [LB642]

SENATOR PAHLS: Thank you, Lieutenant Governor and members of the body. One part I like about this is it looks like we're trying to make a marriage of the private world and government, and I'm just going to see if Senator Cornett would answer a couple questions. [LB642]

PRESIDENT SHEEHY: Senator Cornett, would you yield to Senator Pahls? [LB642]

SENATOR CORNETT: I'd be happy to. [LB642]

SENATOR PAHLS: You know, Senator, any time I hear anything dealing with taxes and you, it makes me really want to question what's going on, in a nice kind of way. And I've been very quiet on all these tax exemption bills and I want you to thank me for that at a later time. The question I have, this is a very complicated amendment that you just gave to us. Was that intentional so I didn't have time to read it all and understand it? [LB642]

SENATOR CORNETT: No, it was not. [LB642]

SENATOR PAHLS: Okay. [LB642]

SENATOR CORNETT: It's been a work in progress. [LB642]

SENATOR PAHLS: Okay. [LB642]

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SENATOR CORNETT: We've had multiple copies of this amendment drafted in different forms. [LB642]

SENATOR PAHLS: Okay. Well, I do have a question, too, about that. But let me...I looked at the individuals who testified and there were three companies, I think Teradata, Ryan Incorporated, and West Corporation. These are companies who could do this service for the state of Nebraska. [LB642]

SENATOR CORNETT: Let me explain. Ryan was the company that...one of the companies that has contacted about the second half of the bill. Teradata, West, and another company called Revenue Solutions contacted us about the first half of the bill, which is revenue identification. [LB642]

SENATOR PAHLS: Okay, because I mean they did testify, at three of these companies testified. I did look up what Teradata was doing or data did for the state of Iowa, and it does look like they recovered significant amounts of money for Iowa and Missouri. I don't know about the other two or other companies. But what you are doing, it looks to me, you are encouraging basically a marriage to some degree between private companies to help the state of Nebraska to collect, not physically collect but to bring an awareness to the taxing problems. [LB642]

SENATOR CORNETT: What we are trying to do here is, through a contingency fee with the private sector, they would provide the technology so the state of Nebraska does not have to make that capital investment. They would receive a percentage of all of the revenue identified and then collected by our department. [LB642]

SENATOR PAHLS: Okay. So right now our department does not have the ability to drill down that deep into the weeds for some of these dollars that apparently we're not receiving. [LB642]

SENATOR CORNETT: It is the job of these companies to, yes, drill down into the weeds in all of the states to find revenue and they have been very successful in other states in identifying uncollected revenues. [LB642]

SENATOR PAHLS: Okay. And the one part that I like about it, although I do have a question a little later on, is that we are involving the private world because apparently we are doing that, maybe to some people's dismay. Under HHS we are utilizing the private world, private business. If we do that here, and to be honest with you, Senator Mello brought a bill in front of Government Committee which we did not send out but basically was having private entity help with DAS manage some of the properties that DAS is involved with. So I like this idea because I think that will dispel some of the feelings out there that government is doing something wrong or business can do it

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better. I think maybe both of them working together, both the bodies, that things could actually be better for everyone. Now here's a question I have, and you may have answered this in your amendment. It says the... [LB642]

PRESIDENT SHEEHY: One minute. [LB642]

SENATOR PAHLS: Thank you. The contract shall not be subject to the requirements of Section 73-504, which as I review it is dealing with competitive bidding. Did you remove that with this amendment? [LB642]

SENATOR CORNETT: That is still in there. They do not...they can enter into these agreements based on a contingency fee basis. [LB642]

SENATOR PAHLS: And the person who makes that decision will be the Governor or his...the people who works for him. [LB642]

SENATOR CORNETT: The ability to enter into these contracts was currently in the...into contracts is the purview of the Governor, so we left it with the Governor, yes. [LB642]

SENATOR PAHLS: Okay, and nonbidding apparently. [LB642]

SENATOR CORNETT: There are sections that are not subjected to that and a contingency fee would be one,... [LB642]

SENATOR PAHLS: Okay. [LB642]

SENATOR CORNETT: ...because you assume that you would negotiate for the best contract. [LB642]

SENATOR PAHLS: Okay. Okay. I think my time is about up so I will talk to you again. Thank you. [LB642]

PRESIDENT SHEEHY: Thank you, Senator Pahls. Mr. Clerk, do you have an item for the record? [LB642]

CLERK: Mr. President, Judiciary will meet in Exec Session at 2:45 in Room 2022. [LB642]

PRESIDENT SHEEHY: Thank you. Senator Fulton. [LB642]

SENATOR FULTON: Thank you, Mr. President. Members of the body, the winds come down, the clouds settle in, and the storm begins to close on this bill perhaps. Senator

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Cornett, I'm reading through the amendment and I have a number of questions. I'll just start if Senator Cornett would... [LB642]

PRESIDENT SHEEHY: Senator Cornett, would you yield to Senator Fulton? [LB642]

SENATOR CORNETT: I'd be happy to. [LB642]

SENATOR FULTON: Okay. First of all here, this is AM1401. First question is the department and I assume this is...this is in line 3 of that amendment, "The department may contract with a person to recruit to the state," etcetera. The department means the Department of Revenue? [LB642]

SENATOR CORNETT: That would be the Department of Revenue, yes. [LB642]

SENATOR FULTON: Is there a reason why it wouldn't be...it seems to me that what is described in this amendment would fall under the purview of the Department of Economic Development. Had that been contemplated? [LB642]

SENATOR CORNETT: Yes, it was, except these are regarding sales tax. So if you read further, the department may contract with the person to recruit to the state new retailers that will generate sales taxable pursuant to this section if the Governor determines the contract to be in the best interest of the state. [LB642]

SENATOR FULTON: Okay. But that which will be generated is sales... [LB642]

SENATOR CORNETT: Tax. [LB642]

SENATOR FULTON: Right. Wouldn't that be the responsibility of Department of Economic Development? [LB642]

SENATOR CORNETT: Well, if you look at Advantage and Super Advantage or in Micro advantage (sic), there is a partnership between the DED and the Department of Revenue in regards to who handles what section of that. The Department of Economic Development tends to go out and find companies to do this. The Department of Revenue would administer the, oh, how it's collected, making sure...determine that it is collected correctly and determines the tax issues on a lot of the companies that fall under these. [LB642]

SENATOR FULTON: Okay. The next part is probably the...well, I'll just ask. This is line 3: "The department may contract with a person." This is somewhat new and my suspicion is that there's somebody in mind. Can you...is there someone in mind? [LB642]

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SENATOR CORNETT: There are a number of companies. [LB642]

SENATOR FULTON: Well, but this specifically says person. [LB642]

SENATOR CORNETT: Well, that may be something that we can correct in drafting because one of the drafts actually said something else, so that is something that if we need to change that is fine. We've been working very closely on the language to make sure it was correct. "Person" could be any person or any company. That is one thing that I wanted to be very clear with, with this bill, is that because there were a number of companies out there that do both the first part of the bill and the second part of the bill, that it was not company specific. A company called Ryan is the one that first came to me in regards to the second half of the bill and a company called Revenue Solutions is a company that came to the Revenue Committee last summer in regards to the first half of the bill. [LB642]

SENATOR FULTON: Okay. [LB642]

SENATOR CORNETT: But there have been a number of companies besides that involved. [LB642]

SENATOR FULTON: Okay. Okay. Well, there's...I'll just express concern. I'm just getting caught up on this amendment. I had an idea on LB642, definitely have questions on LB642. But this amendment is...I'm just getting caught up. This is something that stands out and it is a concern. When we say that the department may contract with a person to recruit new retailers and then we go on to say that the contract and all supporting information shall be confidential except for, and there are notable exceptions here, and that a person is able to be paid based on... [LB642]

PRESIDENT SHEEHY: One minute. [LB642]

SENATOR FULTON: ...a percentage of new state sales tax revenue generated, this person has the ability to make an awful lot of money confidentially off of sales, new sales in the state, which it seems to me is the purview and responsibility of the Department of Economic Development. So I'll just...I'll yield the rest of my time and let you... [LB642]

SENATOR CORNETT: I was going to say I just want to be clear that that was one of the "belts and suspenders" that we put in, in regards to putting in the same confidentiality in place that we have on LB775, Advantage, Super Advantage, Microenterprise. Because these companies do have proprietary information, you do want the confidentiality. But like all of the other companies that we have entered into incentive agreements with, the amounts both collected and turned back have to be reported, just not the individual components, per se. [LB642]

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PRESIDENT SHEEHY: Time, Senator. [LB642]

SENATOR FULTON: Thank you. [LB642]

PRESIDENT SHEEHY: Senator Howard. [LB642]

SENATOR HOWARD: Thank you, Mr. President and members. Senator Fulton brings up a very good point. I, in listening to this discussion, there are a lot...a lot of information here that's pretty vague and pretty general, and if Senator Cornett would yield to some questions maybe that would... [LB642]

PRESIDENT SHEEHY: Senator Cornett, would you yield to Senator Howard? [LB642]

SENATOR CORNETT: I'd be happy to. [LB642]

SENATOR HOWARD: Thank you. I'm trying to really get a picture of how this will work. Will this involve possibly Internet sales? You know, there's a lot of Internet selling that goes on that we don't capture that in terms of sales tax. I've often wondered if there was a mechanism to do that. Is that one of the things that you would see entering into this? [LB642]

SENATOR CORNETT: Let me explain. You're talking about two separate entities here. Internet sales are...have been determined by the federal government there is no sales tax policy in place. When we do collect Internet sales it's because we're part of a compact called the streamlined sales tax and we collect sales tax from the other states, which I believe are 29 now that have entered that compact, and by entering that compact you have to abide by the rules of it which was LB211 which we passed earlier, brought us back into compliance with that so we could continue collecting sales tax on Internet sales with the other states that we had entered into the compact with. But because the federal government says if a state does not enter into the compact, we do not collect sales tax on Internet sales from those states because we can't by law. They have to be a member of the compact before we can collect sales tax from them. But any time a purchase is made on the Internet, and I've said this until it's becoming my mantra over the last seven years, if sales tax is not collected at the time of purchase, the purchaser, by law, is required to submit a sales and use tax. [LB642 LB211]

SENATOR HOWARD: Well, will that enter into this? Is this one of the sources of revenue that would be out there that's untapped currently that whichever company was awarded this by the Governor would be looking at? [LB642]

SENATOR CORNETT: We are looking at bringing companies to the state of Nebraska by giving them an incentive on sales tax, turnback for their sales tax. An example of it is

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California entered into one of these agreements with, I believe, Dell. I believe it was California. Texas has a number of these agreements. They've just enacted them in other states and cities are actually entering into these agreements with companies to turn back a portion of their local option sales tax to recruit companies to the area. We're talking a physical presence in the state of Nebraska. [LB642]

SENATOR HOWARD: So it really has nothing to do with Internet sales in either way. I appreciate knowing that, which leads to another question. It seems to me that--there's no way to say this but bluntly--we give a lot of money away to businesses to lure them in here. I question how effective these are: We'll do this; we'll do that; we'll give back money; we'll give them tax breaks. I mean I think of G.E., which is a major company that's been around for a long, long time, and we all know they're not paying any federal taxes. They're not paying any taxes, as big as they are and as much money as they take in. Do you worry that something like this could have that sort of a result? [LB642]

SENATOR CORNETT: I have frequently questioned, since the beginning of my time in the Legislature, the different incentive programs, but the numbers bear out every year that we are bringing more in to the state and particularly jobs and higher paying jobs to the state... [LB642]

PRESIDENT SHEEHY: One minute. [LB642]

SENATOR CORNETT: ...to outweigh the loss, that there's a positive balance on these incentive programs. And you can look at the numbers from the Department of Revenue for the Advantage and the Super Advantage Act. [LB642]

SENATOR HOWARD: Well, I appreciate that information. I appreciate the dialogue. One concern I have is that businesses locate in particular areas and then that area is really not able to benefit from the sales tax or the property tax that they might be. But thank you so much for the information. [LB642]

PRESIDENT SHEEHY: Thank you, Senator Howard. Members requesting to speak on AM1401, we have Senator Nelson, followed by Senator Pankonin, Senator Brasch, Senator Hadley, Senator Price, and Senator Fulton. Senator Nelson. [LB642]

SENATOR NELSON: Thank you, Mr. President, members of the body. If Senator Fulton thought that he could read through this and understand this, I want him to know it took me about 15 minutes last night. Because of the progression of amendments, it gets a little confusing. But let me make a statement. We've got two separate things here. We've got Section 1, which deals with the collection of unpaid tax or people who are underpaying and that sort of thing, and that's going to be based on a contingent fee. Is that correct? [LB642]

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PRESIDENT SHEEHY: Senator Cornett, would you yield? [LB642]

SENATOR NELSON: And if I may ask a question then, if she will yield, Senator Cornett. [LB642]

SENATOR CORNETT: Yes, Senator Nelson, you are correct. [LB642]

SENATOR NELSON: Okay, so that is correct. And 10 percent of whatever is going to be collected comes into this pot. Now my question is this: Is the person that collects that going to get all of that 10 percent, I mean regardless of how large a repayment is received, or is it limited, the contingent fee? [LB642]

SENATOR CORNETT: Let me just explain. The Department of Revenue will do the collection. That is one thing that I wanted to make sure. We want, and I think it was a very good statement, when I was working with the department on this, we want our Department of Revenue dealing with Nebraska citizens. We don't want an outside company doing that. What the company will do is identify revenue and the contract can be set up on a percentage with a cap, so up to 10 percent of revenues collected, up to a certain amount. That is up to the Governor to enter into the contract, but it would be based on contingency fees only on the amount collected. [LB642]

SENATOR NELSON: So the Governor enters into this, not the department. That applies to both Section 1 and Section 2. Is that correct? [LB642]

SENATOR CORNETT: Yes. [LB642]

SENATOR NELSON: And if for some reason we don't collect the amount, the contingent fee, they just don't get paid. Is that right? [LB642]

SENATOR CORNETT: Correct. [LB642]

SENATOR NELSON: All right. Now we've got a second section here. The only thing in common that I can see with Section 1 is that it perhaps brings in revenue. Does that satisfy the germaneness issue here, it's bringing in revenue in a different way by sending headhunters out, for instance, to bring in new retailers? [LB642]

SENATOR CORNETT: Yes, by incorporating it in the committee amendment when it came out of committee, then it's one bill at that point,... [LB642]

SENATOR NELSON: All right. And... [LB642]

SENATOR CORNETT: ...so, yes, and it was drafted to that section. [LB642]

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SENATOR NELSON: ...that's not on a contingent fee. That's...it's an incentive that's set by the Governor or by the contract. It could be 2 percent or 3 percent? [LB642]

SENATOR CORNETT: It could be. The companies enter into...some of the companies that we've talked to and we have information enter into huge percentages in turnbacks, some enter in smaller, some enter in very little. It all depends on whatever is determined by the contract. [LB642]

SENATOR NELSON: But they're really not going to get paid until the sales tax revenue comes in and there's a determination then that what they did for us brought forth fruit. Is that correct? [LB642]

SENATOR CORNETT: Yes. They do not receive their money till we receive ours. [LB642]

SENATOR NELSON: All right. The confidentiality aspect that applies both to Sections 1 and 2, that was expanded in AM1401. [LB642]

SENATOR CORNETT: The confidentiality agreement was basically drafted. We were trying to work out the amendment to cover all of the bases and make sure that we were in line with any of the other incentive-type programs, so we included the confidentiality language from the other incentive programs. And that's why there's been more than one amendment because I was working on getting it right. [LB642]

SENATOR NELSON: All right. So it's uniform. [LB642]

SENATOR CORNETT: Yes. [LB642]

SENATOR NELSON: Is that correct,... [LB642]

SENATOR CORNETT: Yes. [LB642]

SENATOR NELSON: ...the confidentiality? It applies to all in the same way. And it's not any different from other contingency fee contracts that we do elsewhere through the state of Nebraska, so far as you know? [LB642]

SENATOR CORNETT: I do not know about other contingency fees. I know that it is uniform in regards to other incentives. [LB642]

SENATOR NELSON: All right. Thank you, Senator. Thank you, Mr. President. [LB642]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Senator Pankonin. [LB642]

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SENATOR PANKONIN: Thank you, Mr. President. Senator Cornett, I know you've been answering a lot of questions. I've got a couple more for you. [LB642]

PRESIDENT SHEEHY: Senator Cornett, would you yield? [LB642]

SENATOR CORNETT: I'd be happy to, Senator Pankonin. [LB642]

SENATOR PANKONIN: As you mentioned, this AM1401 is subsequent to what the committee action was. And being on the Revenue Committee, was familiar with the concept of LB642 and the collection of past-due taxes and that sort of thing that could help the state's revenue picture, but AM1401 is a different concept. I guess my first question is, where did this concept come from and when in the process? It must have been fairly late here. [LB642]

SENATOR CORNETT: Actually, no. The Revenue Committee amendment includes language that allows us to enter into contracts for sales tax. It was very, very broadly drafted at that time. This language clarifies what the Revenue Committee sent out and adds "belts, suspenders," adds the language that we need in regards to privacy or confidentiality into the amendment that the Revenue Committee adopted, because the first half of the...the first of the bill that I introduced, LB642, dealt with identification of revenue. The amendment that I offered at the committee that we adopted dealt with identifying new sales tax. [LB642]

SENATOR PANKONIN: And that's true. I saw that in there. But with more detail than AM1401, can you give me an example? I'm going to give you one, of what this...I presume this could be. And as someone else has said, now we're having Department of Revenue recruiting companies to come so we can hopefully get marginal sales tax. I say marginal sales tax because if we're paying another individual or whatever a certain percentage of that sales tax, we're not getting the whole benefit. We'd get a portion of it. But on the other hand, I'd be concerned if they're...those companies are ones that are competing with existing Nebraska companies. We're splitting the pie but yet they're getting to keep part of their sales tax. Tell me a little more about the business model here that we're proposing and why we should enact this or, you know, get into this more specifically like AM1401 does. What's the example? [LB642]

SENATOR CORNETT: Well, there are a number of examples that I cited earlier. One of the companies that testified was Ryan. They have a model where they bring in like a holding company or one of their companies. They represent a number of companies. They do their purchases in Nebraska, pay sales tax to Nebraska, and then receive an incentive back. But Dell has entered into this contract, which I mentioned earlier, with the city of Round Rock and that was a city. There have been a number of these done in Texas and California and a lot of them deal with major companies that do a lot of purchases. And an example from Ryan was that we could expect up to \$100 million in

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the first year of sales tax revenue, but that is only one company. And it is not company specific and I made sure of that because there are other companies out there that might offer better percentages in regards to the sales tax turnback. [LB642]

SENATOR PANKONIN: So under that scenario, we'd be taking that sales tax away from another state. I mean it's kind of almost like the incentives to get businesses to move here. We would be...is that a true statement? [LB642]

SENATOR CORNETT: It's exactly what we do in that regard to bring businesses. We go out and we recruit businesses from other states to come here and we recruit them by offering them benefits... [LB642]

PRESIDENT SHEEHY: One minute. [LB642]

SENATOR CORNETT: ...under LB775 or Advantage, Super Advantage, Microenterprise. This would just be a new form of offering them an incentive to come here. [LB642]

SENATOR PANKONIN: So if other states are doing it, isn't this going to just become a war back and forth about who can cut the best deal and out of the 5.5 percent we're going to give you 3.5 of it or something like that? [LB642]

SENATOR CORNETT: To be honest with you, Senator Pankonin, it's already a war. That was a conversation Senator Raikes and I continually had and I agreed with him that in a textbook world we don't need incentives, but frankly we don't live in a textbook world and part of the reason Nebraska is doing so well is our programs that we have in place and our business friendly environment. [LB642]

SENATOR PANKONIN: Thank you, Senator Cornett. I'm going to keep listening. Obviously, some of the details here are new to, I think, members of the committee even, but we'll see where the discussion takes us. Thank you. [LB642]

PRESIDENT SHEEHY: Thank you, Senator Pankonin. Senator Brasch. [LB642]

SENATOR BRASCH: Thank you, Mr. President. Thank you, body. I believe this concept is very progressive and very workable. I like it, I do. However, I do have some questions, if Senator Cornett would yield to a couple questions. [LB642]

PRESIDENT SHEEHY: Senator Cornett, would you yield to Senator Brasch? [LB642]

SENATOR CORNETT: Yes, I'd be happy to. [LB642]

SENATOR BRASCH: When I looked at the committee statement, I only saw proponents

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and I recognized they are vendors of this service. One is a very well-established, reputable, national company. That was the only one I recognized. But I'm familiar with data warehousing and companies like this, so that was a good sign. But my next question is the vetting of these companies, should this bill be passed, will it go through DAS for vetting to know...like a lot of these companies, if it's a new, young company, there's acquisitions. Some of the education companies I worked for, I was acquired twice. The whole companies moved. The smaller companies got purchased by a bigger company and consolidation basically is what happened. Someone, do they look at the companies? Who does the vetting? What are the fire walls? What are the servers, the redundancy servers? [LB642]

SENATOR CORNETT: First of all, are you... [LB642]

SENATOR BRASCH: Who handles that, Revenue or DAS? [LB642]

SENATOR CORNETT: Okay. It would be the Governor's Office. The Governor would be the one that enters into these contracts. But just for clarification, all of these are well, well, as you said, nationally known companies. [LB642]

SENATOR BRASCH: Uh-huh. [LB642]

SENATOR CORNETT: I believe Ryan is the largest tax company in the United States, tax service company. Obviously, Teradata and West are also very large firms. But, no, that would be up to the Governor, who would enter into these contracts, and I assume that the Governor's Office would only have the best interests and would fully vet everything like they already do. [LB642]

SENATOR BRASCH: Very good. I have no other questions. I'll yield my time to Senator Cornett if she'd like it. [LB642]

PRESIDENT SHEEHY: Senator Cornett, you're yielded 2 minutes 45 seconds. [LB642]

SENATOR CORNETT: Thank you very much. I just wanted to clarify with the members of the body, AM1401 came about because of suggestions that we had in regards to putting clarifying language on the committee amendment because it did not have the safety features in it as originally drafted that the Advantage and Super Advantage have in them. With that, I urge the body to support AM1401. [LB642]

PRESIDENT SHEEHY: Thank you, Senator Brasch. Thank you, Senator Cornett. Senator Hadley. [LB642]

SENATOR HADLEY: Mr. President, members of the body, would Senator Cornett yield to a question? [LB642]

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PRESIDENT SHEEHY: Senator Cornett, would you yield to Senator Hadley? [LB642]

SENATOR CORNETT: I would be happy to. [LB642]

SENATOR HADLEY: When we talked about this as the Revenue Committee and talked about the Revenue Committee amendment, I guess we didn't get...at least I'm probably slow enough that I didn't pick up that we were going to be turning back sales tax. I thought they were going to enter into a contract and the funding would be whatever agency had to fund the contract, and now this has turned into a turnback of sales tax dollars. Is that correct? [LB642]

SENATOR CORNETT: That's what we talked about at the Revenue Committee that Ryan that came in and testified. That's what the committee amendment allows us to do is enter into negotiations with companies to come to the state. There is no company set. There is no amount set. That would be part of the contractual arrangement. But that was what...the intent of the first part of the bill is the identification of revenue; the second portion of the bill is the recruitment of revenue. And then when that came out and there were significant concerns in regards to...and they were very justified concerns in regards to did we have the language in place that we had in place with other types of incentive programs, and so we have worked very carefully drafting the amendment to make sure that those concerns were met in regards to this. [LB642]

SENATOR HADLEY: Well, I guess I probably didn't pay as close of attention because I was thinking the bill dealt more with income taxes and collections and such as that. And I guess I probably was not attuned to it, but I really don't remember much discussion about a turnback of sales taxes in the recruitment process. And I certainly don't want to speak for Senator Utter, he can certainly speak for himself, but we've talked a lot about what we're doing in giving away the state, how do we grow the state with new businesses and such as that if we consistently are giving back, whether it's cities with arenas or LB775, which is very specific about what we do, to here we're entering into contract where, as a Legislature, we don't know how much we're going to give up. Is the contract that's going to be signed, is it going to be 75 percent of the new revenue brought in or what? So I just have some concerns about this and I will certainly listen as we go forward to do it. But to my knowledge, I guess I didn't remember, and maybe some of the other committee members can get up and tell me that I missed that part of the discussion but I just didn't remember hearing about turnback of sales tax dollars. My understanding would be more of a contract with a company that would be paid for by the Department of Revenue or whoever it would be, and if they were going to collect delinquent tax dollars and such as that there could be a percentage. But I just don't remember hearing things about sales tax turnback. Thank you, Mr. President. [LB642]

PRESIDENT SHEEHY: Thank you, Senator Hadley. Additional members requesting to

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speak on AM1401 to AM493, we have Senator Price, followed by Senator Fulton, Senator Smith, Senator Pahls, and Senator Heidemann. Senator Price. [LB642]

SENATOR PRICE: Thank you, Mr. President. Would Senator Cornett yield to some questions? [LB642]

PRESIDENT SHEEHY: Senator Cornett, would you yield to Senator Price? [LB642]

SENATOR CORNETT: Yes. [LB642]

SENATOR PRICE: Good afternoon, Senator Cornett. I understood and my ears perked up when I heard the word "compact" used in the earlier discussion you were talking about there, and so am I to understand that we have to join a compact here or we already are a member of the compact? What's the compact? [LB642]

SENATOR CORNETT: Senator Price, we discussed that on LB211 that was passed earlier this year. Nebraska has been a member of the streamlined sales tax for a number of years now, I believe 12, and we passed LB211 to bring us back into compliance because some of our laws were outside the changes that were made at the compact level. So I introduced LB211 to keep us in that. [LB642 LB211]

SENATOR PRICE: Okay, great, because the question I had was it almost sounded as if the federal government was compelling us to belong to a compact and I was wondering what that...obviously, someone has already addressed the interstate commerce clause about making the state have to belong to a federalized type thing and pay some type of dues. [LB642]

SENATOR CORNETT: No, the federal government, the only way it influences us to join the compact is by not making federal policy in regards to collection of taxes on Internet sales. The way we are able to collect taxes on Internet sales from other states is by being a member. These are a group of states that have joined together and agreed to remit sales tax to one another. [LB642]

SENATOR PRICE: Okay. Okay. And I understand that now and thank you for the refresher. That really helps. Thank you, Senator Cornett. Well, I just have to stand up here. I was a little concerned with the acquisitions background. It seemed as if we were perhaps going to be...I don't want to say circumventing but not utilizing, how about that, the Department of Accounting (sic) and Services for the awarding of contracts. And as we all know, we can only pay for goods and services that a state receives and that we have to be very careful of how we go about engaging in commerce with private companies if we don't have all the things in place to ensure that there was a fair, competitive bidding process on this. Of course, in the federal area, you'll always get a waiver for something if there was no other company or ability to have that service

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performed in a competitive manner. But I will be listening to understand when we say...and discussion out here on the floor has been that there may be a target company looking at this. Earlier in the Government Committee we'd had a company come before us asking us to allow for a study of buildings in state government and how we're managing that, but then they were going to do the study but then they wanted the resulting contract to manage it, and, obviously, that wasn't going to float. And what I don't want to see here, and I want to make sure it's a part of the record, is that should we go forward on this we're not going to be directly awarding this contract to a company without having full and open and fair competition amongst all entities that are capable of providing the service and that we cover our (sics), so to speak, and don't end up having to have another payout because we didn't observe proper contractual processes. Thank you, Mr. President. [LB642]

PRESIDENT SHEEHY: Thank you, Senator Price. Senator Fulton. [LB642]

SENATOR FULTON: Thank you, Mr. President. Let's see, AM1401, I'm in...I'm on lines 6 through 8 and I'll ask...I'll eventually ask Senator Cornett a question but I'll go ahead and just...I think she's consumed right now. The contract shall not be subject to the requirements of Sections 73-201 to 73-204 and 73-504. And so I checked those sections and you can check them for yourself but the applicable sections anyway, 73-201, "Fee-for-service contracts are the usual, customary, and accepted manner of contracting on behalf of the state." Later on, 202 talks about contingent fees and what contingent fees are. 73-203, "Any contingent fee contract of any kind whatsoever reasonably anticipated to result in the payment of a contingent fee or fees in excess of \$25,000 per annum executed by the state or by any person on behalf of the state after September 9, 1995, is void unless executed by the Governor upon 30 days' notice to the public at large." Now that's one of the areas of statute that the contract shall not be subject to and so that's one of the reasons for concern is that we have confidentiality here in AM1401, which I can understand there could be proprietary reasons for that, but we have to be careful nevertheless. Earlier in AM1401 we learned that the department may contract with a person, and person, I do understand, is not just an individual, can be a company, an LLC, what have you, but it can also be an individual. The department may contract with the person to recruit to the state new retailers that will generate sales tax pursuant to Section 77-2703. The contract shall not be subject to the requirements of sections...so, in other words, we could contract with a person, with an entity, who goes out to try to find companies that will generate sales tax revenue for our state, which is a good thing, but the amount of money that we pay him, the person, which is a percentage of the new state sales tax revenue generated, is not subject to the \$25,000 cap that exists statutorily, nor is it subject to the provision that we post this for the public at large for 30 days. So the concern here is this could be quite a bit of money that comes into...that comes into an individual with whom we contact or with a person with whom we contract. I will stop there but certainly hopefully Senator Cornett will have an opportunity to respond to that and to other concerns out here. But this is a big concern.

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LB642, I'll just say that I had concerns about it previously but I was content to listen to debate and if it comes to a point where I need to vote no, I'll just vote no. I've no need to bring anything up. AM1401, however, enters this area where we have some obligation to speak up. Unless there are some changes made to AM1401, I don't know that the public is going to buy this. I certainly don't know that we should buy on to it. So I think Senator Cornett is having discussions right now. She will eventually come back to the microphone. With that, I will just stop. Thank you, Mr. President. [LB642]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Senator Smith. [LB642]

SENATOR SMITH: Thank you, Mr. President. Senator Cornett, would she please yield to a couple of questions? [LB642]

PRESIDENT SHEEHY: Senator Cornett, would you yield to Senator Smith? [LB642]

SENATOR CORNETT: I'd be happy to. [LB642]

SENATOR SMITH: Thank you, Senator Cornett. I have a couple of questions and then I'm going to make a couple of comments and I'm going to yield the remainder of my time to you so you can, you know, answer some of the...or respond to some of the comments I make. But down into the weeds on this, how would nonfilers or nonpayers be assigned to this private contractor? So if I understand, not all of the nonfilers, nonpayers would be turned over to this third party. Some of it would be retained within the Department of Revenue. [LB642]

SENATOR CORNETT: No, I think...I think you're under...I think you're under a misconstrued, and I probably wasn't clear enough. It is a very complicated issue. These companies provide particularly computer programs or technology for our Department of Revenue to identify people that are underreporting, nonfiling, or have made a mistake in regards to their filings or commit fraud in their filings. Our department uses that technology and the people that are identified and determines, as they do now, their collection procedures with Nebraska taxpayers. The people that provide the technology to identify the underreporting, nonreporting, however you want to phrase it, receive a percentage of the revenue identified. [LB642]

SENATOR SMITH: Okay. So these would just be the back room, investigative-type of contractors. They would not be the customer service, the front line, doing the audits or anything of that nature. [LB642]

SENATOR CORNETT: Absolutely not. That was one thing that when...our discussions with the Revenue Committee last summer, is that we want Nebraska employees of the Department of Revenue dealing with Nebraska citizens in regards to their tax issues. [LB642]

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SENATOR SMITH: That's interesting. That answers a lot of my questions right there. I do want to give you high marks on this, that this is a tremendously creative solution to controlling the growth of government, the cost of government, and making it work more efficiently and effective. So I give you high marks for that and I appreciate you answering my question. I'm inclined to support this amendment and this bill but I thank you for bringing this forward and I turn the remainder of my time over to you. [LB642]

PRESIDENT SHEEHY: Senator Cornett, you're yielded 2 minutes 15 seconds. [LB642]

SENATOR CORNETT: Thank you very much. What I want to make sure everyone understands on the amendment is the idea coming out of Revenue was loosely drafted. Between now...you'll have seen LB642 on the agenda a number of times and the Speaker was kind enough to remove it because when it came out it became very apparent that we needed to build a box around what these contracts...or how they were administered. So with...I'm not saying that the Governor's Office is in support of these bills. We plan on working now, between now and Select File on that. But they were very helpful and I do nothing but thank them and the Department of Revenue in regards to helping us draft the language correctly. This brings the bill into line with our other incentives. I was speaking with Senator Pankonin and I understand it's a very complicated amendment and it is. But what it does is puts the "belts and suspenders" on what we sent out of committee. Now Senator Pankonin said that...or suggested maybe I withdraw the amendment on General File and just go with the Revenue Committee amendment,... [LB642]

PRESIDENT SHEEHY: One minute. [LB642]

SENATOR CORNETT: ...and that is something that I am willing to do to give the body time to read the amendment and investigate it. But it has been carefully drafted to make sure that we have the same continuity that we do in other programs. With that, I thank Senator Smith for his time. [LB642]

PRESIDENT SHEEHY: Thank you, Senator Cornett. Thank you, Senator Smith. Senator Pahls. [LB642]

SENATOR PAHLS: Thank you, Lieutenant Governor and members of the body. Again, I did take a look what Teradata, what they do for a living, and they manage a variety of companies--Verizon, PayPal, Wells Fargo, Applebee's, Hallmark, Cabela's, Burlington Northern, Union Pacific. So these are probably companies that have quite a stature, you might say. And they have worked in Iowa, and I'm just looking, Iowa and Missouri, and I see in Iowa...and I just have 2003 data, they recovered \$9 million, in 2004 they recovered \$11 million. But the part that really struck me and caused my hair to curl a little bit is when Senator Cornett said that she could envision \$100 million. So that's a

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question I'd like to ask Senator Cornett. How did the \$100 million...how does that come about? [LB642]

PRESIDENT SHEEHY: Senator Cornett, would you yield? [LB642]

SENATOR CORNETT: Yes, Senator Pahls, I'd be happy to. [LB642]

SENATOR PAHLS: Okay. I know you were in discussion but I made a comment that a couple of these companies, they've found \$9 million and \$11 million for the state of Iowa for a couple years in early 2000s. I don't have the updated information. But the thing that caught me a little bit off guard--and that may be...whether it's the difference between with the additional amendment, maybe that's how this is being...this can be made more clear to me--I heard you say \$100 million. Now if we can find \$100 million I say let's vote for the bill right now. [LB642]

SENATOR CORNETT: Let me be very clear. That is the second half of the bill. [LB642]

SENATOR PAHLS: Yes. [LB642]

SENATOR CORNETT: That is one of the companies that has come to us and said that they would like to enter into one of these sales tax agreements. The first part of the bill, I have numbers estimated from all of the different companies,... [LB642]

SENATOR PAHLS: Right. [LB642]

SENATOR CORNETT: ...what they feel the state of Nebraska is not currently collecting in revenue, and I can...because we do not have the technological capacity to do that at this time,... [LB642]

SENATOR PAHLS: Right. [LB642]

SENATOR CORNETT: ...and I would be happy to provide those numbers to you. [LB642]

SENATOR PAHLS: So in the first part of the bill, what you're telling me, let's say I'm a company. If I find \$100 out there, I may get \$10 of it, \$90 would go back to the state... [LB642]

SENATOR CORNETT: Yes. [LB642]

SENATOR PAHLS: ...because that's money as a state... [LB642]

SENATOR CORNETT: Only after the state collects that \$100. [LB642]

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SENATOR PAHLS: Right. The state has to collect it and I get the \$10 as, quote, as my reward for... [LB642]

SENATOR CORNETT: And some of the companies, even after the time period of the contract, then the part of that is we keep all of the software involved. It's not just a rental agreement. [LB642]

SENATOR PAHLS: Okay. Well, then to the second part or the amendment you're talking about, and that's coming into the \$100 million, are we talking about basically what I call headhunters? Would they be a headhunter out there looking for companies to come here? Am I understanding that correctly? [LB642]

SENATOR CORNETT: Very similar. There are a number of different...a lot of companies enter into these agreements with individual cities where the cities turn back. There is agreements with large computer companies to locate in a certain area... [LB642]

SENATOR PAHLS: Right. [LB642]

SENATOR CORNETT: ...based on these types of agreements. [LB642]

SENATOR PAHLS: When you talk about forgoing sales tax, we would be giving back sales tax... [LB642]

SENATOR PAHLS: Right. Yes. [LB642]

SENATOR CORNETT: ...but to bring in sales tax,... [LB642]

SENATOR PAHLS: Right. [LB642]

SENATOR CORNETT: ...similar to what we do with income tax in the incentives. [LB642]

SENATOR PAHLS: If you, and I know that you said \$100 million, I'm just going to go with that. [LB642]

SENATOR CORNETT: That's fine. [LB642]

SENATOR PAHLS: If we can bring those type of dollars to the state of Nebraska and then we are concerned about other incentives which I don't think bring that much to the state of Nebraska, this seems like it...just looking on the outside, not really understanding everything, this looks like a pretty good concept. [LB642]

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SENATOR CORNETT: That's why I went ahead and offered the amendment to the bill in committee that I had already introduced,... [LB642]

PRESIDENT SHEEHY: One minute. [LB642]

SENATOR CORNETT: ...because the potential for generating revenue for the state... [LB642]

SENATOR PAHLS: Okay. [LB642]

SENATOR CORNETT: ...is very high with these companies. [LB642]

SENATOR PAHLS: Okay. What I'm going to say, if you do happen to pull this, this, without my having the background knowledge that you have, this is like...it feels like something that shouldn't be left on the floor. You know, I'm hoping we can get this straightened out because this apparently has a good deal of merit, if I'm understanding what you're trying to get across to us. [LB642]

SENATOR CORNETT: I, like I said, I introduced this because I felt that this was a very good way to generate revenue for the state. Understand it is like any of the other incentive programs. We have to give up a percentage. And each of these companies bring in different plans on what they want you to give up and that's why I've left the authority in the bill with the Governor to enter, like with the other contracts, to enter into what they feel is the best contract for the state. [LB642]

SENATOR PAHLS: Yeah. And if he would like to involve the Department of Economic Development... [LB642]

PRESIDENT SHEEHY: Time, Senator. [LB642]

SENATOR PAHLS: Thank you. [LB642]

PRESIDENT SHEEHY: Thank you, Senator Pahls. Senator Heidemann. [LB642]

SENATOR HEIDEMANN: Thank you, Mr. President and fellow members of the body. I have been gone for a little bit and I apologize for that so I haven't heard the whole conversations. I have looked into this bill a little bit. I do have some concerns with at least part of it, if not all of it. I was wondering if Senator Cornett would yield to some questions. [LB642]

PRESIDENT SHEEHY: Senator Cornett, would you yield to Senator Heidemann? [LB642]

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SENATOR CORNETT: I would be happy to. [LB642]

SENATOR HEIDEMANN: There's two parts to this bill really. One is kind of the data mining part. [LB642]

SENATOR CORNETT: Correct. [LB642]

SENATOR HEIDEMANN: I do have some concerns with that because I really think that if we would just give the Department of Revenue more money, they could do this themselves. I won't hit on that right now. I'm going to hit on what I have more concerns with and that's the other part of it, setting up purchasing companies or whatever in the state of Nebraska. Can you explain that to me? Talk slowly so that I can understand this. (Laugh) [LB642]

SENATOR CORNETT: Well, first of all, I just...I have...can't resist this. You can give the Department of Revenue more money. [LB642]

SENATOR HEIDEMANN: Correct. [LB642]

SENATOR CORNETT: And that has been... [LB642]

SENATOR HEIDEMANN: And if I think that's the best way to do this, we need to have somebody come to the Appropriations Committee and say, we need money, we can do this data mining. And we can actually. And actually they always tell us if you give us more auditors we're going to make you for every \$1 you spend you're going to get you \$3 back. [LB642]

SENATOR CORNETT: I don't think that it's necessarily data mining the data that we already have. It is purchasing technology that the state has not had the money to do up until now or has not been willing to commit. You and I are both well-aware of how much we've cut out of the Department of Revenue over the last four years, and they are trying to generate as much revenue as they can for the state of Nebraska, and this would be a tool that allowed them to identify revenue or to receive technology to identify further revenue and collect it. [LB642]

SENATOR HEIDEMANN: Okay. The part that I'm really, really concerned about, though, is the other part. [LB642]

SENATOR CORNETT: Well, you mentioned that, I forget, what did you call it? [LB642]

SENATOR HEIDEMANN: Like the way I understand it, they would set up some kind of a purchasing... [LB642]

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SENATOR CORNETT: (Inaudible) company. Well, no, no, no, no, that is one company that talked to us and we've talked about that company on the mike, but there are...this is simply enabling language that allows the state to enter into an agreement with any...with someone to locate here for a sales tax incentive. There are...there is one that you're referring to would be talking about establishing something like a holding company and making purchases in the state of Nebraska. But other cities and states have done this with everything from single companies, depending on their size, like Dell computers, to companies that make purchases from a number of different entities. [LB642]

SENATOR HEIDEMANN: So would they pay the sales tax in Nebraska even though...and then this other state where the product would be used and utilized wouldn't get the sales tax? [LB642]

SENATOR CORNETT: It depends. Well, it depends on if they're a member of streamlined or not. If they are a member of streamlined, then we remit the difference between our sales tax and their sales tax back to the state where the company would be...if you're talking about a holding company. If you're talking about a company that is actually located here then there would be no state to turn it back to except ourselves. [LB642]

SENATOR HEIDEMANN: But I'm just thinking about just throw a state out there and if there was a company out in this state that this company in Nebraska would be purchasing for, they would pay the sales tax in the state of Nebraska, thus... [LB642]

PRESIDENT SHEEHY: One minute. [LB642]

SENATOR HEIDEMANN: ...eliminating that sales tax revenue for that other state. I mean... [LB642]

SENATOR CORNETT: Well, now again you're talking about whether they're a streamlined state or not. If they are, then we remit the difference between our sales tax and their sales tax to them. The sales tax would be collected due to our title passage law where the sale was made, which if this company is located in Nebraska and makes the purchase in Nebraska then the, because of title passage, would be... [LB642]

SENATOR HEIDEMANN: Even though it's not utilized here. [LB642]

SENATOR CORNETT: It could be utilized here. It all depends on the contract or which company we contract with. [LB642]

SENATOR HEIDEMANN: Wouldn't a company like this actually then...you're talking about the Streamlined Agreement, they're going to avoid those states and go to states

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that aren't part of that compact and focus on them and not pay sales tax in those states. [LB642]

SENATOR CORNETT: Actually, they're looking at Nebraska, who's a member of the compact. They came...one of these companies came to us. [LB642]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Heidemann. Mr. Clerk, do you have items for the record? [LB642]

CLERK: I do, Mr. President, thank you. Business and Labor, chaired by Senator Lathrop, reports LB152 to General File with amendments. New A bill. (Read LB667A by title for the first time.) Senator Coash has an amendment to be printed to LB669. Study resolutions: Senator Langemeier, LR238; Senator Fischer, LR239; Senator Mello, LR240 and LR241. That's all that I had, Mr. President. Thank you. (Legislative Journal pages 1558-1562.) [LB152 LB667A LB669 LR238 LR239 LR240 LR241]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Continuing with floor discussion on AM1401 to AM493, members requesting to speak are Senator Avery, followed by Senator Price, Senator Heidemann, and Senator Campbell. Senator Avery. [LB642]

SENATOR AVERY: Thank you, Mr. President. I wondered if Senator Cornett would yield to a question or two. [LB642]

PRESIDENT SHEEHY: Senator Cornett, would you yield to Senator Avery? [LB642]

SENATOR CORNETT: Yes. [LB642]

SENATOR AVERY: Am I correct in my reading of the committee statement that under this proposed new statute that we would be suspending or exempting sections of current law that govern contingency contracts? [LB642]

SENATOR CORNETT: We are...no. The laws that currently govern contingency contracts would still be there. We're exempting the competitive bidding on some of them, which is already not included in a lot of those. [LB642]

SENATOR AVERY: But the committee statement reads that LB642 also provides that contracts entered into pursuant this...into pursuant...should be to this new statute section are not subject to Section 73-201 to 73-204, which governs contracts, including contingency fee contracts. So it... [LB642]

SENATOR CORNETT: Which I believe has to do with the competitive bidding, but I would be happy to get back with you on that. I would have to go double-check. [LB642]

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SENATOR AVERY: Well, I have the statute open here and I was... [LB642]

SENATOR CORNETT: Okay. [LB642]

SENATOR AVERY: ...trying to read through it and my time came up on the mike but... [LB642]

SENATOR CORNETT: And I was going to say I would have to read through it also. [LB642]

SENATOR AVERY: Okay, my... [LB642]

SENATOR CORNETT: I'd be happy to do that with you. [LB642]

SENATOR AVERY: ...my question would be, and you can contemplate this when you take a look at it, why...if you would be willing to explain to me and the body why this would be a good idea. [LB642]

SENATOR CORNETT: We followed the language that a lot of the other ones with contingency contracts that you can enter into these so you could...with like the sales tax one where you could enter into a contract with one company and then set a contract with a different company at a different rate, as from what I understand. [LB642]

SENATOR AVERY: Well, I'm referring to the...specifically to Section 73-201 to 204. These were enacted in 1995. I'm going to read those sections. I may have more questions for you. [LB642]

SENATOR CORNETT: Okay. [LB642]

SENATOR AVERY: But if you would take a look at that, too, that would be good. [LB642]

SENATOR CORNETT: I would be happy to. [LB642]

SENATOR AVERY: Thank you, Senator. [LB642]

PRESIDENT SHEEHY: Thank you, Senator Avery. Senator Price. [LB642]

SENATOR PRICE: Thank you, Mr. President, members. And I'm glad that Senator Avery started on that line of questioning because, again, I have grave concerns when we're talking about forgoing competitive bidding. Senator...would Senator Cornett yield to a question, please? [LB642]

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PRESIDENT SHEEHY: Senator Cornett, would you yield to Senator Price? [LB642]

SENATOR CORNETT: Yes. [LB642]

SENATOR PRICE: All right. Thank you very much, Senator. The question I have is what are we talking again? I've heard a lot of different numbers going by and I didn't write them down. What is the potential size of this revenue being generated for the state and then the potential revenue generated for a contractor? [LB642]

SENATOR CORNETT: On the first half or the second half of the bill? [LB642]

SENATOR PRICE: On the part that we're forgiving, letting go with the competitive bidding of a contract, any monies that a contract let out. [LB642]

SENATOR CORNETT: Okay. The first half of the bill, we have everything from \$9 million, I believe, \$17 million in revenue. I'd have to look at the numbers... [LB642]

SENATOR PRICE: Okay. [LB642]

SENATOR CORNETT: ...the different companies have said that they could collect that is currently not being identified. The second half of the bill, one of the companies said that they project that it would be about \$100 million in sales tax that they would generate for the state of Nebraska in the first year. [LB642]

SENATOR PRICE: And the fee they...and the percentage of fee their fee structure would be? [LB642]

SENATOR CORNETT: That would be based on the contract that they enter into. [LB642]

SENATOR PRICE: Well, what's up... [LB642]

SENATOR CORNETT: Now that would be up to the... [LB642]

SENATOR PRICE: Do you have a ballpark of what that contracts that they have in other states, other entities? [LB642]

SENATOR CORNETT: Some...well, some states give away 100 percent just based on the jobs they bring, and that is not something that we're looking at. Some states give away 95 percent. Some cities are giving away 100 percent. [LB642]

SENATOR PRICE: So... [LB642]

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SENATOR CORNETT: That would again be based on the contract. [LB642]

SENATOR PRICE: So, in other words, it's foreseeable that, because it happened in other places, that 80 percent of the total of \$100 million would be forgiven and that company would keep the \$80 million. [LB642]

SENATOR CORNETT: Actually, I think they were saying that the \$100 million would be what the state of Nebraska would keep. We're talking about a much larger number than that. [LB642]

SENATOR PRICE: Okay. So just to make sure, how much would a company potentially keep from doing business here? [LB642]

SENATOR CORNETT: It depends on the contract with each individual company. So whatever they enter into, if you want to say 50 percent, then if they generate \$200 million, they get \$100 million, we get \$100 million. [LB642]

SENATOR PRICE: Okay. Okay, thank you. [LB642]

SENATOR CORNETT: If the contract is 80 percent, do the math. [LB642]

SENATOR PRICE: All right. And I've got that down pretty good. Thank you, Senator Cornett. Well, ladies and gentlemen, I have to be honest with you, if we're talking about \$1 million or \$17 million or \$100 million, I am deeply concerned that there's a contract with that much value on it that would not be...that would not go through the competitive bidding process. I shudder to think, as we have sat out on the floor here and that the Appropriations Committee and the Revenue Committee, others have painstakingly worried about a couple of thousand dollars in our budget that we would say, oh, by the way you can forgo competitive bidding and award a contract valued over \$100 million. That...I don't know that that's where we want to go at this point in time. And again, I'll be listening to hear what comes back after hearing that we won't be following 73-201, 204, and 504, that DAS may not be involved in this and that a company could be lobbying the state of Nebraska for this type of bill and not want to go through the competitive process. It doesn't seem healthy. Thank you, Mr. President. [LB642]

PRESIDENT SHEEHY: Thank you, Senator Price. Senator Heidemann. [LB642]

SENATOR HEIDEMANN: Thank you, Mr. President and fellow members of the body. I still have continued concerns and thoughts in trying to figure out how this actually works. I was wondering if Senator Cornett would yield to some more questions and try to get some more information on how this would actually all unfold. [LB642]

PRESIDENT SHEEHY: Senator Cornett, would you yield? [LB642]

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SENATOR CORNETT: Yes. [LB642]

SENATOR HEIDEMANN: Would these companies even have to be physically present? The way the words are...the way it is worded right now, would they even have to be physically present in the state of Nebraska? [LB642]

SENATOR CORNETT: They would have to have a physical presence in the state of Nebraska, yes. [LB642]

SENATOR HEIDEMANN: What's the definition of a physical presence? An address? A company with people working inside of them? [LB642]

SENATOR CORNETT: You would have to have a company, an address. If you're talking about contracting with an individual company, as they did with Dell, then the company would be here. All the employees would be here. If you're talking about a company like Ryan, they could set up potentially a holding company with employees of the companies that they are purchasing for here in Nebraska. But you would have to have a physical presence and you would have to have employees in the state of Nebraska. [LB642]

SENATOR HEIDEMANN: You did mention one company and I'm trying to...someone told me, and say yes or no or correct, however, that there could be underneath the bill, the way it's written now, a company could come in and purchase for another company in another state and say...we're just going to throw out the figure \$500 million that they would collect, we would collect in sales tax that another state we didn't pay, they didn't pay in another state. Out of that, say, \$500 million, we keep \$100 million and we give this company \$400 million of which they would keep part and then give the rest of it back to the company that they was working for or purchased for. [LB642]

SENATOR CORNETT: Again, under this language, that could be a contract that the state entered into. This is enabling language. It does not establish the percentages or the contract. We have left that up to the state to enter into the contract. [LB642]

SENATOR HEIDEMANN: If you was another state, if this was happening to the state of Nebraska, what would that make you feel like? [LB642]

SENATOR CORNETT: It's already happening to the state of Nebraska. Other states and cities are doing this. [LB642]

SENATOR HEIDEMANN: Can you tell me another state that has participated to this level that we would participate in this? Can you name some other states? [LB642]

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SENATOR CORNETT: Individual cities in California have entered into... [LB642]

SENATOR HEIDEMANN: States. [LB642]

SENATOR CORNETT: States. There is one that just passed legislation in this regard this session and I do not...I would have to go down and look at my notes on that one. It's a southern state. [LB642]

SENATOR HEIDEMANN: So right now, no other state actually does this. [LB642]

SENATOR CORNETT: Not...other states, Maryland does this currently, I cannot remember the other state, and other states allow...have language that allows themselves or their municipalities to do this, yes. [LB642]

SENATOR HEIDEMANN: And you even stated that sometimes they give away 100 percent of their sales tax. What are they gaining? [LB642]

SENATOR CORNETT: Well, again, like I said, this is not...this would be up to the contract. This is only enabling language if the department...or the Governor felt that they wanted a company here that had such a economic boon that from the property tax and from the employees that would be brought here that they do do that. [LB642]

SENATOR HEIDEMANN: But there's nothing in this bill that says that's going to happen here. [LB642]

SENATOR CORNETT: There's nothing that says it wouldn't either. We're not... [LB642]

PRESIDENT SHEEHY: One minute. [LB642]

SENATOR CORNETT: The percentage... [LB642]

SENATOR HEIDEMANN: But we could give away all this sales tax and there's nothing to say we're going to create jobs or we're going to have property tax increase. [LB642]

SENATOR CORNETT: And I told you that I'd be very happy to offer an amendment requiring a job requirement because most of the companies that I had contact with were talking about bringing 50 to 65 employees to start with to the company with an average of \$100,000 to \$150,000 a year in salaries. [LB642]

SENATOR HEIDEMANN: And when it gets to that point and they're doing that, couldn't they qualify under Nebraska Advantage? [LB642]

SENATOR CORNETT: That is why the language in AM1401 is there that does not allow

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them to qualify for both. [LB642]

SENATOR HEIDEMANN: Why don't we just do it underneath Nebraska Advantage then? [LB642]

SENATOR CORNETT: Pardon me? [LB642]

SENATOR HEIDEMANN: Why don't we just do it underneath Nebraska Advantage and not do this? [LB642]

SENATOR CORNETT: Because the amount that the company...the incentive that the company would receive back would be more this way than it would be, frankly, under the Advantage Act for just employment, and that would be where they would hit, would be employment. [LB642]

SENATOR HEIDEMANN: Is that wise for us to do as a state? [LB642]

SENATOR CORNETT: It comes down to, Senator Heidemann,... [LB642]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Heidemann. Senator Campbell. [LB642]

SENATOR CAMPBELL: Thank you, Mr. President, and I've been trying to read the amendments and the bill and get caught up. Would Senator Cornett entertain a question, if she would? [LB642]

PRESIDENT SHEEHY: Senator Cornett, would you yield to Senator Campbell? [LB642]

SENATOR CORNETT: Yes. [LB642]

SENATOR CAMPBELL: Senator Cornett, I want to follow up a little bit on what Senator Heidemann talked about. Under the contract with such a company, and let's just say that company had four subsidiary companies under that they were buying for. In the contract, can we control whether the main company returns or rebates any of the sales tax to those companies? [LB642]

SENATOR CORNETT: We can establish whatever we want in the contract. That is why this is enabling language. If we want, we say, per se, what percentage, the companies that can be included and cannot be included. One example is if you did do a holding company, a lot of states have chosen not to enter into contracts with purchasing agreements for companies, say for instance, that deal in pornography. The states make their choices on what they want to enter into under these contracts. They don't have to deal with gambling. They don't have to deal with pornography. They have the right to

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pick and choose. [LB642]

SENATOR CAMPBELL: But using my example, the four companies that are working with the major company that is located in Nebraska, those four companies, we could require that they have a presence here but that wouldn't...it wouldn't...the bill and the amendment doesn't require that. Is that correct? [LB642]

SENATOR CORNETT: For the sale, to collect the sales tax, there would have to be a physical presence in the state of Nebraska. [LB642]

SENATOR CAMPBELL: By the major company but not necessarily the four that they're working on behalf? [LB642]

SENATOR CORNETT: It is my understanding that they would have to...they would have a presence or an employee for that company. [LB642]

SENATOR CAMPBELL: So the four would still have to have a presence of at least a person with the major company. [LB642]

SENATOR CORNETT: That is my understanding. [LB642]

SENATOR CAMPBELL: Okay. And to our knowledge there's no... [LB642]

SENATOR CORNETT: If you're talking about the...like if you set up a holding company type, but this also extends to other businesses. [LB642]

SENATOR CAMPBELL: Correct, because I can see where the holding company would then go out and offer to, if Senator Sullivan had a company and Senator Haar/Harr, these companies would come under this umbrella of the major company who put this whole apparatus together. [LB642]

SENATOR CORNETT: It is my understanding that they would have to each have a physical presence. [LB642]

SENATOR CAMPBELL: Okay. And there is...and at this point there is no federal limitation on any percentage that the four companies would receive back from the major company. [LB642]

SENATOR CORNETT: No. [LB642]

SENATOR CAMPBELL: Okay. I'll yield the rest of my time if Senator Heidemann has a last question. [LB642]

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PRESIDENT SHEEHY: Senator Heidemann, you're yielded 1 minute 45 seconds. [LB642]

SENATOR HEIDEMANN: Thank you, Senator. I would have a few more questions for Senator Cornett if she would yield to them. [LB642]

PRESIDENT SHEEHY: Senator Cornett, would you yield? [LB642]

SENATOR CORNETT: Yes. [LB642]

SENATOR HEIDEMANN: There was talk, and like I said, I've been only catching parts of the conversations, that this could bring in retailers, because someone came up to me and asked are we trying to incentivize retailers coming in. [LB642]

SENATOR CORNETT: We are trying to allow language to allow any of the larger companies that look for these types of incentives. [LB642]

PRESIDENT SHEEHY: One minute. [LB642]

SENATOR CORNETT: To give you an idea would be RadioShack, like I had mentioned before, Dell. There are a number of companies that enter into these programs around the country to move to states because it is a competitive process. [LB642]

SENATOR HEIDEMANN: Okay. So this isn't...doesn't really have anything to do with retail except maybe trying to bring retail companies in. [LB642]

SENATOR CORNETT: We're not...we are looking at...yes, either that... [LB642]

SENATOR HEIDEMANN: But how would that work, because we're not exempting? If RadioShack comes in here...explain to me how it could work with RadioShack. [LB642]

SENATOR CORNETT: Well, RadioShack was just an example that I used and this is not something that I would...I am saying we do but this is an agreement that Texas entered into with Dell and they give away five-eighths of every 1 cent of sales tax generated to keep...to bring the company there. [LB642]

PRESIDENT SHEEHY: Time, Senator. [LB642]

SENATOR HEIDEMANN: Thank you. [LB642]

PRESIDENT SHEEHY: Thank you, Senator Campbell. Thank you, Senator Heidemann. Members requesting to speak on AM1401 to AM493, we have Senator Bloomfield, followed by Senator Avery, Senator Brasch, and Senator Fulton. Senator Bloomfield.

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[LB642]

SENATOR BLOOMFIELD: Thank you, Mr. President. Members of the body, we not too long ago overrode a veto that the Governor sent down on LB600. Part of the reason that he vetoed that was because he thought it looked like a gimmick. I wonder if we're not treading that same path again here. This...I admittedly don't understand everything we're doing here, but this certainly has the appearance of a gimmick to me. I'm intrigued by the line of questioning that Senator Fulton was proceeding down and if he would like some extra time, I would yield him the rest of my time. [LB642 LB600]

PRESIDENT SHEEHY: Senator Fulton, you're yielded 4 minutes 10 seconds. [LB642]

SENATOR FULTON: Thank you, Mr. President, members of the body. I wonder if Senator Avery is...would yield to a question. [LB642]

PRESIDENT SHEEHY: Senator Avery, would you yield to Senator Fulton? [LB642]

SENATOR AVERY: Yes, I will. [LB642]

SENATOR FULTON: Senator, I think you are embarking upon the same line of questioning that I was when you had your turn at the microphone. Have you looked at Section 73-201 through 73-204? [LB642]

SENATOR AVERY: Yes, I have it open right here. [LB642]

SENATOR FULTON: Okay. I'm interested in 73-203. [LB642]

SENATOR AVERY: So am I. [LB642]

SENATOR FULTON: Okay. Your understanding here, what, in your estimation and if you've been able to research this, we had this 30 days' notice to the public at large. We had this requirement in place for contingency fees. Do you know why? [LB642]

SENATOR AVERY: For accountability and to make sure the public knows what we're doing. [LB642]

SENATOR FULTON: Okay. That's...have you made a look into the record or is that ostensibly how you read the statute? That's how I read it. It stands to reason that's probably why it's there but have you been able to do any more research into... [LB642]

SENATOR AVERY: Well, I called my staff and they recall this being something that was done I believe back in 1995 for the express purpose of making sure that any contracts that involve contingency fees would be, in fact, open to the public and that within 30

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days there would be a full hearing so the public would know. [LB642]

SENATOR FULTON: Okay. Okay. Thank you, Senator Avery. Would Senator Cornett yield? [LB642]

PRESIDENT SHEEHY: Senator Cornett, would you yield to Senator Fulton? [LB642]

SENATOR CORNETT: Yes. [LB642]

SENATOR FULTON: Okay. Thank you, Senator. The sections of statute that AM1401 is excepting, the one in particular is 73-203 in which, "Any contingent fee contract of any kind whatsoever reasonably anticipated to result in the payment of a contingent fee or fees in excess of \$25,000 per annum executed by the state or by any person on behalf of the state...is void unless executed by the Governor upon 30 days' notice to the public at large." There's a concern there that if we have a contingent fee that's paid in excess of \$25,000, if we adopt AM1401, that doesn't have to be made public to anybody. And so we could have conceivably no limit, millions of dollars paid to a person through the state without report or accountability. That's a concern. I guess can you respond to that? [LB642]

SENATOR CORNETT: I would have to check on why it was drafted that way. [LB642]

PRESIDENT SHEEHY: One minute. [LB642]

SENATOR CORNETT: Like I said, we had had so many multiple redrafts of this amendment that I would be happy to look at that, but that was language that we had worked on to make sure that it was drafted correctly. [LB642]

SENATOR FULTON: Would it be your intention to provide, insofar as it's possible, insofar as it's not divulging proprietary information, which I do understand what your argument is there... [LB642]

SENATOR CORNETT: I would definitely...I am always for transparency in government... [LB642]

SENATOR FULTON: Okay. [LB642]

SENATOR CORNETT: ...and that was part of the reason for AM1401, was to put in the reporting requirements to the Department of Revenue and the reporting to the Legislature. [LB642]

SENATOR FULTON: Okay. Thank you, Senator. Thank you, Mr. President. [LB642]

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PRESIDENT SHEEHY: Thank you, Senator Fulton. Senator Avery. [LB642]

SENATOR AVERY: Thank you, Mr. President. I believe the way we do business in this state is in a fully transparent manner. And traditionally we have authorized state agencies or agencies acting on behalf of the state to enter into contracts for fees for service. We did, however, in 1995 make an exception to that fee for service practice to allow for contingency fee contracts. But under Section 73-203 or actually 201 through 204, it's very clear that the Legislature intended and explicitly specified that if we're going to do contingency fee contracts that they have to involve a fee or fees in excess of \$25,000 per annum executed by the state or any...by any person on behalf of the state after September 9, 1995, and that they also must be executed by the Governor upon 30 days' notice to the public at large. Otherwise, they are void. So no contracts involving contingency fees are permitted under our statutes unless they are in excess of \$25,000 and, if they are, then they must be subject to a public notice. That is there for a reason. The Legislature, I believe, was saying that if we're going to change a fee for service method of doing business and go to or at least permit a contingency fee contract to be established by this state, then it's going to have to be transparent. And it seems to me that what you see in the green copy on page 2, line 15 and 16, it reads, "Contracts under this section are not subject to Sections 73-201 to 73-204." Those are specifically the sections I was referring to. That's in the green copy. Now to make it even worse, the committee amendment, if you look at that, which is AM493, on line 10 and 11 it reads, "The contract shall not be subject to the requirements of Section 73-504," which is the point raised by Senator Price. That's the section of law that deals with competitive bidding. I'm sorry, this does not sound like good policy and I'm going to have to be...hear a lot more persuasive discussion before I can vote for it. Thank you, Mr. President. [LB642]

PRESIDENT SHEEHY: Thank you, Senator Avery. Members requesting to speak on AM1401 to AM493, we have Senator Brasch, followed by Senator Cornett. Senator Brasch. [LB642]

SENATOR BRASCH: Thank you, Mr. President. Thank you, body. I just...the concept is great. It is very good. However, what I find very interesting that I hesitate on is that all of the proponents were vendors listed and that is...there was no neutral, opponent or anything from DAS. To select a vendor for this process, the company I had worked with was very similar in providing Medicaid recovery services in 35 states across the country, and some states had laws where a vendor could not charge a percentage of the fee, and it was a per-transaction fee. So I wonder, with this select few vendors, you know, how many others are there. You know, are we being competitive? There is such a detailed...usually there's an RFI, request for information, and then an RFP issued. There is no way, in my experience in data services, to shortcut this process. And having worked at the Revenue Department for 15 years, 20 years ago, I'm confident it's changed a lot, but I believe there's a lot of details in selecting the right vendor for this

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process. If Senator Cornett would like my remaining time, I would yield it to her. [LB642]

PRESIDENT SHEEHY: Senator Cornett, you're yielded 3 minutes 10 seconds. [LB642]

SENATOR CORNETT: Thank you very much. I would wish to withdraw AM1401. [LB642]

PRESIDENT SHEEHY: AM1401 is withdrawn. Next amendment, Mr. Clerk. [LB642]

CLERK: Mr. President, Senator Pankonin would move to amend the committee amendments with FA23. (Legislative Journal page 1562.) [LB642]

PRESIDENT SHEEHY: Senator Pankonin, you're recognized to open on FA23 to AM493. [LB642]

SENATOR PANKONIN: Thank you, Mr. President. We've had good discussion or a lot of questions for Senator Cornett today and the Revenue Committee members that are here also are somewhat, I'm going to use the word, embarrassed. Part of this issue that was part of the committee amendment in AM493 had to do with this concept of the sales tax issue that was talked about in AM1401. I don't think we had a real clear idea. We were, I think, very cognizant of the issue of the collection activity that could help the Department of Revenue with some of their collections, but this concept we didn't ask enough questions to understand the implications, and I think the questions have come up today. And Senator Cornett had a long day on the microphone but this isn't her fault, as committee Chairman. The committee probably should have asked some more questions, delved into this issue longer at the hearing. But saying that, now that she's withdrawn AM1401, this amendment would, if you look at your laptop and/or if you printed a copy of the committee amendment on LB642, the committee amendment which is up there, AM493, this amendment would take line 7 through line 15 out of the committee amendment. So it takes this concept for the present time about generating these sales tax...this program, potential program, out of the committee amendment and out of the bill to be maybe looked at, whether it's later this session, which I know we're running out of time possibly, and/or in the future. It maybe has a valid purpose and we need to know more about it, but I think the concern for the Revenue Committee today and for the body is that we're not quite ready to make that step and there may be questions about the underlying bill, and even the Revenue Committee even if this is done. But at least we're on a topic that the rest of Revenue Committee was familiar with and I think many of you are. So with that, I'd urge your green vote on FA23 to AM493 to divide this issue and we can move forward then. Thank you. [LB642]

PRESIDENT SHEEHY: Thank you, Senator Pankonin. You've heard the opening to FA23 to AM493. Member requesting to speak: Senator Cornett. Senator Cornett waives. Senator Heidemann. [LB642]

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SENATOR HEIDEMANN: Thank you, Mr. President, fellow members of the body. I would just like to ask...probably Senator Cornett would be the one to ask this question to or questions to, if I could. [LB642]

PRESIDENT SHEEHY: Senator Cornett, would you yield to Senator Heidemann? [LB642]

SENATOR CORNETT: Yes, I would. [LB642]

SENATOR HEIDEMANN: So now we're getting back to data mining, is that correct, Senator Cornett? [LB642]

SENATOR CORNETT: With the amendment Senator Pankonin has offered, it separates out the first part of the bill. We will be discussing, inside the Revenue Committee, the second part of the bill, but the first part will just be the data mining for the contingency fee, yes. [LB642]

SENATOR HEIDEMANN: And we had...when I started my conversation originally with you, we had the short conversation about we could actually do this as a state. We could actually do this within the Department of Revenue by giving them more resources. We wouldn't actually have to let them contract with an outside entity to be able to do this. Why don't we just do this as a state if this is good policy? [LB642]

SENATOR CORNETT: I think that we will be able to generate way more revenue in this manner without the cost of trying to purchase the technology. It's not even so much the people that we have in place currently in the department. They do an amazing job with the resources they have. But this is contracting for resources and technology that we do not currently have and so far the Legislature has not made the commitment to purchase those types of programs for the state. [LB642]

SENATOR HEIDEMANN: Would you say that the Department of Revenue, looking at with FA23, would be okay with LB642 and would implement this? [LB642]

SENATOR CORNETT: I would not...I would not venture to guess what the department or the Governor will do in regards to a contract. This allows them to contract, but it is my...my position is to offer the language that allows them to contract to be able to enter into a contingency fee to purchase...or not to purchase but to identify uncollected revenue. But I would not...I will not suppose whether they will do this or not. [LB642]

SENATOR HEIDEMANN: So if the department... [LB642]

SENATOR CORNETT: It would be the Governor. [LB642]

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SENATOR HEIDEMANN: It is a code agency. You are correct, yes. If they're not for this, we could pass this bill and gain nothing. Wouldn't we be better off just putting more money in the Department of Revenue and allow them to get more auditors and to allow them to purchase software if they so desire? [LB642]

SENATOR CORNETT: Senator Heidemann, I have pushed for that for seven years and during that seven years all I have been able to do is cut their budget and cut their employees. [LB642]

SENATOR HEIDEMANN: I've been here for seven years though and I have never been aware of a bill that was brought to the Appropriations Committee that would have allowed that. I could be wrong here but... [LB642]

SENATOR CORNETT: No. All I get every year or have since I've been Chair of Revenue is bills to cut the Department of Revenue further because of cost savings and moving towards downsizing government, and this is a means for downsizing government. We get to contract with an outside agency to provide technology so that our current employees can utilize. I agree that our department needs more employees. You and I have had that discussion a number of times. But on top of the new employees, we would also have to spend money on technology that we do not have to spend with this. [LB642]

SENATOR HEIDEMANN: Yeah, but that company is going to pay for that technology,... [LB642]

PRESIDENT SHEEHY: One minute. [LB642]

SENATOR HEIDEMANN: ...pay for their employees and then make money on top of it. So why don't we give...if the department actually wants to do this, give them the resources to buy this software and technology, give them the people to do it and just do it ourselves? [LB642]

SENATOR CORNETT: You would have to look at weighing how much the technology costs versus the amount of the contingency fee and the fact that the department would be able to keep the technology at the end of the contract period. [LB642]

SENATOR HEIDEMANN: Thank you, Senator Cornett. I will state that I am a whole lot more comfortable with FA23 being added on to the committee amendment, being added on to the bill, than I was before. I am still not to the point that I am ready to support the bill though. Thank you. [LB642]

PRESIDENT SHEEHY: Thank you, Senator Heidemann. Additional members

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requesting to speak on FA24...correction, FA23: Senator Nelson, followed by Senator Schumacher, Senator Dubas, and Senator Brasch. Senator Nelson. [LB642]

SENATOR NELSON: Thank you, Mr. President. Members of the body, I support FA23 to AM493. I think in light of the conversation and all the questions that we have and the lack of knowledge that we have, I think this is just a good amendment to do away with Section 2 and perhaps readdress it and come up with something a little more definitive at a later time. I am going to speak though in favor of AM493. I think this is an opportunity for us to get some expertise in at perhaps much less cost than if we had to go out and hire people and pay for equipment and then have them trained to use it. We, as far as contingency fees are concerned, 10 percent isn't that big compared to 20 or 25 percent or even higher on other types of contingency fees. Seems to me like if...through the expertise...and I should ask Senator Cornett a question if she will yield. [LB642]

PRESIDENT SHEEHY: Senator Cornett, would you yield to Senator Nelson? [LB642]

SENATOR CORNETT: I would be happy to. [LB642]

SENATOR NELSON: Senator Cornett, you had testimony at the committee, didn't you, from companies that do this sort of thing? [LB642]

SENATOR CORNETT: We actually met over the course of the interim with a number of companies. A number of the Revenue Committee members met with them also. [LB642]

SENATOR NELSON: Was there any indication on the part of...the amount of personnel it would take to do this type of work and the costs of equipment or anything? Do you remember any of that data? [LB642]

SENATOR CORNETT: Are you talking about for the company or for the department? [LB642]

SENATOR NELSON: No, for a company that you go out and hire, you know, on a contingency fee basis. [LB642]

SENATOR CORNETT: No. [LB642]

SENATOR NELSON: Well, I...yes, I'm interested in the other side of it, too, what it would cost if the Department of Revenue had to do this. [LB642]

SENATOR CORNETT: It was my understanding that it would cost a tremendous amount of money for the department to do this, not to mention the fact that they would have to basically reinvent the wheel, so to speak, that our technological capabilities at this time are not capable of doing the data mining that we're talking about. [LB642]

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SENATOR NELSON: Because of the reductions that we've had over the years in personnel and resources, I feel, and correct me if I'm wrong, that they're hard-put to perform the tasks that we ask them to do, let alone go out and try and find people that are cheating the system. [LB642]

SENATOR CORNETT: You know... [LB642]

SENATOR NELSON: And it would seem to me that we are better off to work with a private enterprise at this time that's had a lot of experience in this and has the equipment, has it nailed down. I think we could bring in really a lot of money here and pay a pretty low contingent fee. And the contract could say this could last for a year or two or, you know, when this got started and people finding out that they're going to be uncovered, we may not need this service anymore. Would that be correct? [LB642]

SENATOR CORNETT: That would be correct and you are perfectly also correct in the fact that we have reduced the Department of Revenue every year. And I think you and I have had debates on the fact of mandatory electronic filing because they simply do not have the money for seasonal employees to process tax forms any longer. [LB642]

SENATOR NELSON: So I haven't switched positions, but I am (laugh)...I'm on your side at this time. So thank you, Senator Cornett. And I am in support of AM493 to LB642. Thank you. [LB642]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Senator Schumacher. [LB642]

SENATOR SCHUMACHER: Thank you, Mr. President and members of the body. I rise to articulate both a concern and also what I see as an opportunity for some synthesis. The concern I see with outsourcing this data mining to a company, a private entity, is that it isn't just some magic word "technology." What we're talking about is some protocols, some programs, some ways to get into the data on our system, compare it to other things, back and forth like that to come up with a suspect list of people who are cheating on their taxes or making mistakes on their taxes. Now when you do that, if I'm that company, the first thing I'm going to do is I'm going to tell you that you need to modify your data and the way you're doing things a little bit so my system can work better. And over a relationship of a few years I'm going to have yours, the state system, dovetailing with my system so much so that you can't get any other competitor to compete with me without going through a whole lot of expense and redoing your system because your system won't dovetail with my system, and I gotcha. And I think that that may be something we need to consider in the "I gotcha system." There's no rules or regulation here that prevents an "I gotcha" from developing and somebody getting a really nice source of revenue off of this system. And you know where those sources of revenue usually end up. It's not in the good old state of Nebraska. Which then leads to

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the second point. This year in economic development legislation we've talked about angels, we've talked about interns, we've talked about keeping our kids here with some microenterprise development. And now we're talking about the state having a need for something, the state having a need to have some type of data mining. How about putting some of these things together? How about putting the signal out that we're ready to microenterprise, develop a company to do that here in Nebraska with our data? And we've got like \$8 million we threw at it already this year. Why don't we use this as an opportunity to develop a private enterprise to use some of these economic development, oh gosh, we hope it will work and keep our kids here, money things and put together a project internally that ultimately the state of Nebraska will have the option to buy out this company and let them go on to do something else, and retain the revenue and retain the technology here, and maybe these kids can actually bring business in here from other states instead of other states getting the benefit of our own inadequacies? I think this is an opportunity but I'm deeply concerned that if we get involved with a private company, we will get so involved that we're married and the divorce could be painful or expensive. Thank you. [LB642]

PRESIDENT SHEEHY: Thank you, Senator Schumacher. Senator Dubas. [LB642]

SENATOR DUBAS: Thank you very much, Mr. President. I wholeheartedly agree with what Senator Schumacher just said. This is an opportunity and we need to take advantage of that. Would Senator Heidemann yield to some questions, please? [LB642]

PRESIDENT SHEEHY: Senator Heidemann, would you yield to Senator Dubas? [LB642]

SENATOR HEIDEMANN: Yes. [LB642]

SENATOR DUBAS: Thank you, Senator Heidemann. I don't have my budget book up here. I guess I could have pulled it up on-line, but could you just give me a brief summation of the types of cuts or the impacts that the budget made on the Department of Revenue this cycle? That's a pretty big question (inaudible). [LB642]

SENATOR HEIDEMANN: Actually, we had...I had printed this off and I was going to hand this out and I decided not to. I'll just let you know, operations, we have to take state aid out of their budget. But operations in '07-08 they was a little bit above \$49 million; in '08-09 they did drop down to \$48,658,000; in '09 they was back up to \$49,757,000; and actually in '10-11 they're at over \$50 million, which is as high as they've ever been. They have not actually taken a cut. They have been held flat. Some would consider that to be a cut because they have to then absorb salary and health benefits. But actually, as far as taking a cut, four years ago they was at \$49 million, now they're about \$1.5 million above that. [LB642]

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SENATOR DUBAS: And if I remember some conversations from the past, those decisions have been made because, understanding what the Department of Revenue does, we recognize that making any types of actual cuts to that department will actually probably cost us money in the long run. Am I remembering that correctly? [LB642]

SENATOR HEIDEMANN: There is a certain point that you couldn't give them too much money, but usually for every dollar you give them they're going to get you way more than a dollar back. They just...they go out and they're able to do more audits and do the things that will bring more money into the state of Nebraska, yes. [LB642]

SENATOR DUBAS: So our audit... [LB642]

SENATOR HEIDEMANN: We have been, as Appropriations Committee, we've been very diligent as not to cut the agency that brings in the money for the state. [LB642]

SENATOR DUBAS: So our auditors do have an understanding of what they would need to do to go out and capture these dollars that we aren't capturing right now. We just maybe don't have all the technology available to do that? Is that (inaudible)? [LB642]

SENATOR HEIDEMANN: I think there's software and technology out there that Senator Cornett had talked about and then, in my mind, even if you did have the technology and the software, you still would need personnel to do that. I think even if you did contract this out, you still would probably need some personnel to make sure it all was going to work and you brought that money in. [LB642]

SENATOR DUBAS: To your knowledge, do we have an idea of what it would cost to purchase this software and do that additional training? Has that request ever been brought to the Appropriations Committee before? [LB642]

SENATOR HEIDEMANN: No. I wouldn't have any clue. [LB642]

SENATOR DUBAS: So we don't have a real accurate comparison here as to what we would be doing with a private company versus what we may have a capability of doing in-house then. [LB642]

SENATOR HEIDEMANN: No, I don't believe that we've ever been presented that. [LB642]

SENATOR DUBAS: Okay. Thank you very much, Senator Heidemann. I do have many of the same concerns that Senator Schumacher and Senator Heidemann have outlined sending money out of state. Especially in light of our revenue picture right now, we can't afford to be sending money anywhere but to the state of Nebraska. And I am, more often than not, probably supportive of public-private partnerships. I think there are

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advantages to those types of things. But I also think that they have to be very carefully scrutinized. And when we're looking at the type of work that we would be asking a company like this to do, you know, they're dealing with proprietary information and, again, you know, the points that Senator Schumacher outlined in a marriage such as that, I just think there's still an awful lot of gray area in what we're attempting to do through LB642. [LB642]

PRESIDENT SHEEHY: One minute. [LB642]

SENATOR DUBAS: And there may be some very worthwhile benefits to this bill but I think we need to have that side-by-side comparison to see what is it that our own department could do versus what an outside entity could do for us. And at this point in time, we don't have that information. And from the git-go, I had some serious questions about LB642 and whether I would support it and, as this conversation has unfolded, I at this point in time just do not feel that this is a bill that will get us what we really need, without having all of the information in front of us. Thank you. [LB642]

PRESIDENT SHEEHY: Thank you, Senator Dubas. Members requesting to speak to FA23, we have Senator Pahls, followed by Senator Adams and Senator Cornett. Senator Pahls. [LB642]

SENATOR PAHLS: Thank you, Lieutenant Governor and members of the body. I do want to thank Senator Cornett because I think she's coming here...she came here with an idea. We may not all grasp it because we haven't studied it probably as deeply as she has or as her staff has. So I do believe there probably is some merit there. I think if we can be brought up to speed and see the good, the bad, and the ugly about it, and maybe we'd be in more agreement with it. I'm sort of stretched on both sides on this issue because I do believe that private enterprise ought to be more of a part of government, but then I hear people on the other side, well, we got to be a little careful here. So all of a sudden, instead of government being the big evil devil out here, maybe business is the big evil devil. It's really interesting. It depends. One day we're this way; another day we're that way. I do think though that hopefully, Senator, with further study, you can enlighten us. Because again, if there are monies out there available to us that we, as a state, can use legitimately, I think we ought to not be afraid to venture for that different path down the road. Again, I think if both bodies, the government and the business, work together, I see that as a check and balance and we get hopefully the best from both partners. Another thing I find interesting is I'm going to say shame on you, Senator, because you haven't asked for more people at the Department of Revenue. You've been trying to keep their head down too low. I just heard a little bit ago that if you can find a way we might be able to see who will supply you with...your department with more people in the future. I think that we probably have caused a number of our departments to slim down, and they didn't take Slim-Fast, they took legislative fast. The part...and just to give you an example, a year or so ago I dealt with

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a bill that had something dealing with recycling and etcetera, etcetera, how do they collect those fees. The Department of Environmental Quality did not even have the personnel to go out and check to make sure that the people who should have been giving them the fees that should be coming to the state of Nebraska, they didn't have the people out there to even see that it was being...they were being fairly paid back, the state was being fairly paid back for some of the fees that they needed. Again, it could be a trust factor or perhaps, with some additional staff, they could have done their job even a little bit better. Again, I just want to point out that even though I do not know this company, Teradata, I mean they do do work for, as I said earlier, for Verizon, PayPal, Wells Fargo, Applebee's, Hallmark, Burlington Northern, Union Pacific. These are legitimate companies out there. They're not some fly-by-night. I'm assuming if something like this would go through in the future that the Governor and his staff would really take a look at those companies. It would not be something like Pahls's incorporated, I can assure you, because I couldn't get past the mining of my own background. So I do think there are legitimate companies out there, if we can do that. And, Senator Cornett, I know today, as I said earlier, I hope you don't just drop your ideas to the floor, like they do when they edit a film. Take a look at that again and perhaps come back and enlighten us and we'd feel, you know, maybe more comfortable in moving something like what you're asking us to do in the future and move along. [LB642]

PRESIDENT SHEEHY: One minute. [LB642]

SENATOR PAHLS: Again, I do support the general overall bill. Thank you. [LB642]

PRESIDENT SHEEHY: Thank you, Senator Pahls. Senator Adams. [LB642]

SENATOR ADAMS: Thank you, Mr. President. Members, I only have two things to say as a member of the Revenue Committee. First of all, I didn't do my homework. I voted the bill out. I still vote...I still support the underlying bill. I voted the committee amendment out and my focus in that amendment was on the underlying bill, not on that portion of the amendment that Senator Pankonin's floor amendment will cut out. And that's not Senator Cornett's fault, it's not committee staff's fault, it is my fault. And I'm going to support the amendment to cut that out. But let me say one other thing. I believe, and I'm speaking only for myself, my reason for voting LB642 out was this. We spent how many hours during the interim in Revenue Committee hearings on LB642 just like everybody else, trying to find every nickel and dime. And I can recall more than once Senator Cornett saying in the committee, we can't cut staff at the Revenue Department any more or we're going to start having negative fiscal notes because we're going to cut auditors out who may be worth \$80,000 and they might be able to collect \$1 million for us. And this bill, LB642, the underlying bill became a solution that the committee brought out here to the floor for you. And if you don't like the solution then my guess is in a few minutes you'll have an opportunity to vote it down. But keep that in

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mind when we're thinking about Revenue Department budget, just keep that in mind. But I do support the floor amendment and again I will say, as a member of the committee, I personally did not do my homework on the second half of the committee amendment. Thank you, Mr. President. [LB642]

PRESIDENT SHEEHY: Thank you, Senator Adams. Senator Cornett. [LB642]

SENATOR CORNETT: Thank you very much. What I want to be clear on, on the first half of the bill, LB642, which is separated out with the floor amendment, this is a process that we went through over the summer. The majority of the committee members, at one time or another, met with the different companies, once with a company called Revenue Solutions, I met with a member of the committee with West, I've met with Teradata. This is technology that was determined that the state could not afford. It was also determined that it would take years to be able to get the system up and running. These are companies that said they can immediately identify revenue, uncollected revenue, for the state of Nebraska. We are not talking about tax increases. We are not talking about going after the little guy. We are talking about looking for uncollected revenues for either underreporting, not filing, or fraud. This is technology that the state can use with their existing employees for collection of revenue. It is not a mandate for the state to enter into the contract. It allows the state to enter into a contract to identify uncollected revenues. On the second half of the bill, it is a new concept and it will be coming at you again. We, as a state, should do everything we can to grow, to grow our sales tax base, to grow our businesses here. It was a new idea and it won't be a new idea next time you hear it or the time after that. But to let everyone know, the budget may have remained fairly level with the Department of Revenue but since our term here, with the combined...they've combined the Property Tax Administrator and the Department of Revenue together. That was two separate departments. There are...I can't even remember the number but it is a significant number less employees than when both agencies were still there. You're now asking one agency to do the job of two agencies. And I guarantee that if we need these employees and, Senator Heidemann, be ready because I am partial to my department and I know how hard they are working and I know they have brought me the bills to reduce their expenditures, but I will be bringing a bill next year, if we do not have the revenue, to increase the budget of the Department of Revenue to do what you've suggested on the mike. And then we will have that discussion here next year on whether we should have entered into this or should have passed this out with the ability to enter into the contract so we do not have to spend the money up-front and we just collect money and technology or whether we spend it and it takes years for us to get the program up and running. Thank you. [LB642]

PRESIDENT SHEEHY: Thank you, Senator Cornett. Senator Heidemann. [LB642]

SENATOR HEIDEMANN: Thank you, Mr. President. Fellow members of the body, I will

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say that I'm at a whole lot more of a comfort point right now, and I've said that before, than I was before. I do have a couple of questions or at least one that I would like to ask Senator Cornett and could have a conversation with her if she would yield. [LB642]

PRESIDENT SHEEHY: Senator Cornett, would you yield to Senator Heidemann? [LB642]

SENATOR CORNETT: Of course, Senator Heidemann. [LB642]

SENATOR HEIDEMANN: If we go down this path in that we contract with Teradata... [LB642]

SENATOR CORNETT: Well, now that...not with Teradata specifically. There are a number of companies. [LB642]

SENATOR HEIDEMANN: Right, with a company like Teradata. Can I say that? [LB642]

SENATOR CORNETT: That's quite all right. [LB642]

SENATOR HEIDEMANN: Okay. And they provide the technology and the software, they mine the data, they come back to us and say we have identified this, then it would be up to the Department of Revenue to have somebody to follow up. Is that correct? [LB642]

SENATOR CORNETT: That was something that we were very clear on, and me, myself particularly, that I do not want an outside company or a company from outstate dealing with our taxpayers directly. If there is uncollected revenue, it should be our Department of Revenue that sets up payment plans and sets up the process for collecting it, so yes. [LB642]

SENATOR HEIDEMANN: And actually, I like that, what you just talked about there very much because I don't want some outside corporation harassing our taxpayers, whether what they was doing was right or wrong or whatever. The only point I'm trying to make here then, if we are going to go down this path, the Department of Revenue right now does not have the resources, the personnel, the full-time people to follow up with what a company like Teradata would tell them that they need to do. We're going to have to add people so that they can make this work, correct? [LB642]

SENATOR CORNETT: I do not know the number of people that they would have to add, but to collect revenue I am assuming, because they have been...they do not have the employees that they once had, that you may have to appropriate money for that. But again, it is only upon...we would only be turning money back upon collection. So there would be a period there where the money would be...you would need new employees for this. [LB642]

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SENATOR HEIDEMANN: Okay. I just wanted to make sure that we were both on the same page. [LB642]

SENATOR CORNETT: Yes. [LB642]

SENATOR HEIDEMANN: I think we are because... [LB642]

SENATOR CORNETT: You and I have had this discussion off mike before that, yes, to actually collect revenue we have to staff our Revenue Department. [LB642]

SENATOR HEIDEMANN: And then eventually, if we actually went down this path, there would be enough money that we could put in enforcement that it would...it would better pay for itself and then some. [LB642]

SENATOR CORNETT: Yes. None of the companies came in with less than \$9 million, and it was more than that, considerably more than that for a number of the companies, on what they projected they would collect. [LB642]

SENATOR HEIDEMANN: Okay, thank... [LB642]

SENATOR CORNETT: Or not collect, pardon me, identify. [LB642]

SENATOR HEIDEMANN: All right. Thank you. [LB642]

PRESIDENT SHEEHY: Thank you, Senator Heidemann. Senator Gloor. [LB642]

SENATOR GLOOR: Thank you, Mr. President. I've had an opportunity to listen to this for the better part of the afternoon, walk around, ask some questions, do a little reading of the bill and the amendments. And I think we are finally boring down into the heart of what I see as the classic management challenge of "make or buy." This bill seems to be one of those issues within state government where we've had to make a decision: Do we make our own opportunity here or do we buy it elsewhere? And it seems to me that the decision is an appropriate one that we buy it. From the questions asked and the answers that I've heard, to build it at this time is not within the scope of what we would...maybe we'd be able to do it, but I'm not sure that we would be comfortable. I also doubt that the software would be readily available in as quick a time. I like Senator Schumacher's comment about what a great opportunity this may present us, and I hope people within the Department of Revenue and elsewhere are listening to the opportunity that may present, in a small way. But overall I think the decision to buy it seems to be the right one, and I have no doubt that it will be effective. Then the challenge is: What are paying for it? Are we paying the right price for it? Are we paying too much for it? What are we going to get for our money? All of those decisions I have to trust were part

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and parcel of what the Department of Revenue was thinking and looking at when they brought this to us. To do otherwise is to micromanage something I am not willing to do. I have this visual image of people within the Department of Revenue's halls and offices, listening to this debate, and moaning and groaning as things that they have vetted very well get challenged by us. I certainly hope that's a correct visual image. Again, I'm going to have to trust it is. And because of that, I'll be supportive of both the amendments and also the underlying bill. Make or buy, I think this bill is a clear case of we're going to make a decision right now to buy it. Thank you. [LB642]

PRESIDENT SHEEHY: Thank you, Senator Gloor. Members requesting to speak on FA23 to AM493, we have Senator Bloomfield, followed by Senator Lautenbaugh and Senator Cornett. Senator Bloomfield. [LB642]

SENATOR BLOOMFIELD: Thank you, Mr. President. I stand in support of FA23 and I think with that in there I am in support of LB642. But I kind of want to take this down to an old farmer's routine. I've got 200 acres of corn standing out there that's worth somewhere around \$200,000. I can hire Lydia's husband to come in with his \$300,000 combine and take that out for around \$10,000, or I can buy the \$300,000 combine. Which one is going to make sense to me? And that's what we're doing here. We are buying the technology. We are hiring the customer, basically is what we're doing. And I don't believe that's a bad thing right now. I too like what Senator Schumacher had to say. I believe there may be an opportunity there for us to grow our own technology. I am not able to build a combine; the University of Nebraska probably could. Let's take a look at it but let's go forward. Thank you, Mr. President. [LB642]

PRESIDENT SHEEHY: Thank you, Senator Bloomfield. Senator Lautenbaugh. [LB642]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I do rise in support of this bill and I think it's kind of a brilliant concept, actually. I think Senator Bloomfield's analogy was spot on, largely. If I knew what a combine did, I would say it was probably 100 percent dead on. But that said, I think this makes perfect sense. We don't want to reinvent the wheel. This is a product available and it's helping us obtain revenue that we should be obtaining now under our existing tax code. I do rise in support of both amendments and the underlying bill. I would give any time I have left to Senator Cornett if she would use it. [LB642]

PRESIDENT SHEEHY: Senator Cornett, you are yielded 4 minutes 10 seconds. [LB642]

SENATOR CORNETT: Yes. I wanted to clarify something on the mike that Senator Gloor had said. The Department of Revenue was very helpful with...in regards to making sure that our bill was technically correct. This is a bill, though, from the Revenue Committee. This was not a bill brought to us by the Department of Revenue. This was

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part of the LR542 process for identifying means of either cutting money or identifying sources of revenue. None of this was brought by the department. This was looking for revenue. How do we bring revenue into the state without increasing taxes? Where are we missing revenue? How do we grow our base? That's what both the original bill and my underlying amendment that I withdrew was about. How do we increase our tax base? How do we bring revenue into the state without increasing taxes? How do we think outside of the box? Some of these public-private partnerships are ways to think outside of the box. The way this is structured, though, is it still leaves all of the control of collection with our department. That is one thing that Senator Heidemann and I have discussed and he has agreed that he very much likes, is we do not want an outside company or a company from outstate working...or collecting our taxes and dealing with our citizens. That is for our department to do. But this is thinking outside the box as ways to identify that revenue and giving them the power to do that. With that, I urge the body to support the amendment and the underlying bill. Thank you. [LB642]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Thank you, Senator Cornett and Senator Lautenbaugh. Senator Cornett, your light is on. You're recognized. Senator Cornett waives her opportunity. Seeing no other lights on, Senator Pankonin, you are recognized to close on FA23. Senator Pankonin waives closing on FA23. The question before the body is, shall FA23 be adopted to AM493? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB642]

CLERK: 38 ayes, 0 nays, Mr. President, on adoption of the amendment to the committee amendments. [LB642]

SENATOR LANGEMEIER: FA23 is adopted. Mr. Clerk. [LB642]

CLERK: I have nothing further on the committee amendments at this time, Mr. President. [LB642]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We return now to discussion on AM493, the committee amendment. Senator Schumacher, you are recognized. [LB642]

SENATOR SCHUMACHER: Thank you, Mr. President. You know, this is a small state. We have just a little more population than the island of Manhattan. Most of our tax revenue comes from small farmers, small business people, people who are trying to make a living in a small way. That's where we get our incomes taxes and our sales taxes from. We have very, very few--unfortunately very, very few--big, big businesses that we need a sophisticated computer program to run through our data to try to flush them out. And I think that even though we're talking again in terms of the wonderful things that some big company is promising us, we're getting involved in a situation here

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where we're going to be married to that big company and become interrelated with that big company, and in the end, have to pay tribute to that big company. There's nothing so magical about the tax of auditing tax returns and nothing so magical about managing a tax collection system in a small state with small businesses, that we need to hire masterful, big corporations to come in and to marry us. I think that we probably would be making a mistake to head down this road. It is noteworthy that the Department of Revenue is not here saying, golly, gee whiz, we need help. The approach of common sense--and let's put some auditors on there who know this state, who know our businesses, who know how we produce our revenue--is an approach that is probably a lot better. And since we are a small state and there probably isn't all that many mistakes being made out there and all that many cheaters out there that we need to get...that that's the way to go to collect any revenue that we're due that may be laying around. I just feel that we're getting involved in a situation here that we don't understand and that, in the end, we'll find it hard to get out of and maybe won't ever want to get out of because it would just be too darn big a hassle to do it. Thank you, Mr. President. [LB642]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Thank you, Senator Schumacher. Seeing no additional requests to speak, Senator Cornett, you're recognized to close on AM493 to LB642. [LB642]

SENATOR CORNETT: Thank you very much. I just want to urge the body to support AM493 and the underlying bill. Again, this is for the collection of unidentified revenue. It is for the technology to identify that revenue. It's not just the manpower. It's the technology that would take millions of dollars and years to put into place in the state. With that, I urge the body to support the amendment and the underlying bill. Thank you. [LB642]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You have heard the closing. The question before the body is on the adoption of AM493 to LB642. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB642]

CLERK: 33 ayes, 0 nays on adoption of committee amendments. [LB642]

PRESIDENT SHEEHY: AM493 is adopted. [LB642]

CLERK: Senator Avery would move to amend with FA25. (Legislative Journal page 1563.) [LB642]

PRESIDENT SHEEHY: Senator Avery, you're recognized to open on FA25. [LB642]

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SENATOR AVERY: Thank you, Mr. President. This amendment addresses the issue that I raised when I was on the microphone last time. On page 2 of the green copy, lines 15 and 16, it would strike "contracts"...in line 15, "Contracts under this section are not subject to Sections 73-201 to 73-204." What this does is restore the requirement of a 30-day public notice for all contingency fee contracts in excess of \$25,000 per year. I think this improves the bill. I will support the bill with this amendment because I think the underlying concept is worthy, but I do think that we need to have transparency. Thank you. [LB642]

PRESIDENT SHEEHY: Thank you, Senator Avery. You've heard the opening to FA25 to LB642. Are there members requesting to speak? Senator Cornett. [LB642]

SENATOR CORNETT: Yes. Having spoke with my legal counsel, it does not make a substantive change to the underlying bill and we would support the amendment. [LB642]

PRESIDENT SHEEHY: Thank you, Senator Cornett. Seeing no additional requests to speak, Senator Avery, you're recognized to close. Senator Avery waives closing. The question before the body is on the adoption of FA25 to LB642. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB642]

CLERK: 36 ayes, 0 nays, Mr. President, on adoption of Senator Avery's amendment. [LB642]

PRESIDENT SHEEHY: FA25 is adopted. [LB642]

CLERK: I have nothing further on the bill, Mr. President. [LB642]

PRESIDENT SHEEHY: Are there members requesting to speak on LB642? Seeing none, Senator Cornett, you're recognized to close. Senator Cornett waives closing. The question before the body is on the advancement of LB642. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB642]

CLERK: 25 ayes, 7 nays, Mr. President, on the advancement of LB642. [LB642]

PRESIDENT SHEEHY: LB642 advances. Mr. Clerk, do you have items for the record? [LB642]

CLERK: I do, Mr. President. Study resolutions: LR242, Senator Fischer; and LR243 by Senator McGill. Judiciary reports LB296 to General File; LB670, General File with amendments; LB690, General File with amendments, those signed by Senator Ashford. That's all that I had, Mr. President. (Legislative Journal pages 1563-1565.) [LR242 LR243 LB296 LB670 LB690]

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PRESIDENT SHEEHY: Thank you, Mr. Clerk. We'll now move to items under Select File.

CLERK: Senator Larson, with respect to LB617, I have Enrollment and Review amendments, first of all, Senator. (ER84, Legislative Journal page 1131.) [LB617]

PRESIDENT SHEEHY: Senator Larson, you're recognized for a motion. [LB617]

SENATOR LARSON: Mr. President, I move that the E&R amendments to LB617 be adopted. [LB617]

PRESIDENT SHEEHY: You have heard the motion on the adoption of the E&R amendments. All those in favor say aye. Opposed, nay. They are adopted. [LB617]

CLERK: Senator Flood would move to amend with AM1443. (Legislative Journal page 1514.) [LB617]

PRESIDENT SHEEHY: Senator Flood, you're recognized to open on AM1443. [LB617]

SPEAKER FLOOD: Thank you, Mr. President. Good afternoon, folks. Following the debate on this bill on General File, in April we worked in my office with Performance Audit, the Governor's Policy Research Office, the Attorney General's Office, and others including Senator Harms, Senator Mello on a Select File amendment to address some of the concerns that were raised, and I had promised on General File we'd come back with an amendment. AM1443 does make some clarifications to the bill. It clarifies the changes made by this bill do not affect the validity or effectiveness or rules or regulations adopted prior to LB617. It spells out that this bill applies only to bills that require rules and regs. In other words, LB617 doesn't apply to bills that give agencies the option to adopt regs. The version of the bill adopted on General File provides that an agency shall adopt and promulgate rules and regs within one year after the public hearing. This amendment keeps the one-year time frame but it excludes from that one-year time frame the time necessary for submission of the rules and regs to the Attorney General and the time necessary for submission of the rules and regs to the Governor. Lastly, the bill is advanced from General File and includes a requirement that on or before July 1 of each year, each agency shall provide to the Performance Audit Committee a status report on all rules and regs pending before the agency that have not been adopted and promulgated. AM1443 keeps this reporting requirement and makes a change to the last sentence in Section 4. Instead of, "Other content and the format of the report shall be established by the committee," this amendment strikes the words "other content" so that the sentence reads, "The format of the report shall be established by the committee." I think these are changes in clarifications we can live with and still accomplish the goals of LB617. With that, I'd like to thank Janice Satra,

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Martha Carter, Cheryl Wolff over in PRO for their work on this amendment. Thank you, Mr. President. [LB617]

PRESIDENT SHEEHY: Thank you, Senator Flood. You've heard the opening of AM1443 to LB617. Members requesting to speak are: Senator Harms, followed by Senator Mello. Senator Harms. [LB617]

SENATOR HARMS: Thank you, Mr. President and colleagues. I support AM1443 and the underlying bill LB617. I think it gives the Performance Audit Committee the necessary information that they need, necessary tools they need to be able to monitor legislation that requests that we need to promulgate rules or create rules. This (inaudible) gives a time line that we can follow. It will also give us the opportunity to work with those particular agencies that are not getting this accomplished. It gives the Governor the opportunity to be involved. And I think this is a good amendment. I think Senator Flood has done an excellent job, we appreciate that, and I think it will make it much better for all of us. I don't think we'll find any more in the future and we will have agencies that have not promulgated the rules six years later or five years later, and for that I think we'll be much better off. So I would ask you to support AM1443 and the underlying bill, LB617. Thank you, Mr. President. [LB617]

PRESIDENT SHEEHY: Thank you, Senator Harms. (Visitors introduced.) Senator Mello. [LB617]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. I, too, rise in support of AM1443 and the underlying bill, LB617. One point that I wanted to make clear and it was something that was brought to me by the Legislative Fiscal Office, if you check out our Chamber Viewer, it appears the fiscal note has not been changed from General File even though the Fiscal Office has told me in advance that they will change it. Even by what we adopted on General File and with the adoption of AM1443, the fiscal note is zero. There is no cost associated with it, and they wanted to make sure that I had put on the record that it was a slight oversight in preparation for today's debate. And so even with adopting AM1443 and the current LB617 in its current form, there is no fiscal note. So I urge the body to adopt AM1443. I'd like to thank Senator Harms and Senator Flood for their work on AM1443 as it clarifies what we discussed on General File. Thank you, Mr. President. [LB617]

PRESIDENT SHEEHY: Thank you, Senator Mello. Senator Nelson. [LB617]

SENATOR NELSON: Thank you, Mr. President, members of the committee (sic). I want to thank Senator Mello for bring this bill to the Executive Committee. It had good ideas on speeding up the process of rule making and establishing rules by the various agencies. His bill was pretty much or greatly modified by the Executive Committee and came out on the floor and then has been amended here with Senator Flood's

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amendment to make the bill even better. So I stand in support of AM1443 and the underlying bill, LB617. Thank you, Mr. President. [LB617]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Seeing no additional requests to speak, Senator Flood, you're recognized to close on AM1443. Senator Flood waives closing. The question before the body is on the adoption of AM1443 to LB617. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB617]

CLERK: 37 ayes, 0 nays, Mr. President, on adoption of Senator Flood's amendment. [LB617]

PRESIDENT SHEEHY: AM1443 is adopted. [LB617]

CLERK: Senator Larson, I have nothing further on the bill, Senator. [LB617]

PRESIDENT SHEEHY: Senator Larson, you're recognized for a motion. [LB617]

SENATOR LARSON: Mr. President, I move that LB617 be advanced to E&R for engrossing. [LB617]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB617 advances. We will now proceed to LB589. [LB617 LB589]

CLERK: LB589, Senator, I have Enrollment and Review amendments, first of all. (ER103, Legislative Journal page 1340.) [LB589]

PRESIDENT SHEEHY: Senator Larson, you're recognized for a motion. [LB589]

SENATOR LARSON: Mr. President, I move that the E&R amendments to LB589 be adopted. [LB589]

PRESIDENT SHEEHY: You've heard the motion on the adoption of the E&R amendments. All those in favor say aye. Opposed, nay. They are adopted. [LB589]

CLERK: Senator Smith would move to amend with AM1408. (Legislative Journal page 1514.) [LB589]

PRESIDENT SHEEHY: Senator Smith, you're recognized to open on AM1408. [LB589]

SENATOR SMITH: Thank you, Mr. President, and good afternoon, colleagues. A recap of the bill LB589: It was introduced and we had the good fortune of it being prioritized by the Speaker to provide for consistency with respect to the use of state highways for special events. It allows cities, counties, and villages to provide 30 days notice to the

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Department of Roads of its intent to use portions of the state highway for a special event, and it also requires the local political subdivision to assume all liability for any claims that may occur during the time the city, county, or village is using the state highway. At the time the bill was originally introduced, several senators requested added language that would clarify the issue of liability, and AM1408 was introduced to address their liability concerns that were raised during the General File discussion. This amendment was drafted with input from the League of Municipalities, the Trial Attorneys, the legal counsel for the Transportation Committee, my office, and representatives of individual cities. I also previously provided a copy to those colleagues that had raised the liability questions, and it is my hope that this amendment covers those concerns. The amendment does clarify that the city, county, or village assumes liability during the time it is in control of the state highway and that the state is indemnified and held harmless should any claim arise during that time. It tightens the language that the political subdivision is responsible for protecting the property from damage as well as assuming the existing statutory or common-law duty to protect the public from damage, injury, or death. The amendment also references the Political Subdivisions Tort Claims Act and the State Tort Claims Act to make sure all parties...or in all parts of our statute are in sync. Finally, the amendment specifies that the written notice provided by the city, county, or village must specify the date and time it will take responsibility for the state property and the time it will relinquish such responsibilities. So in conclusion, the bill and AM1408 does not put any additional burden on the local political subdivision. Under current law, the city, county, or village wishing to utilize the state highway system must already purchase liability insurance. Also, the cities' need to use due diligence when staging such an event is the same for use on a portion of state highway as it would be should the event be held solely on city property. And, finally, AM1408 and LB589 ensures the continuation of time-honored events held throughout Nebraska in the same responsible manner as always and provides consistent rules with respect to the temporary use of state highway system. Thank you, Mr. President. [LB589]

PRESIDENT SHEEHY: Thank you, Senator Smith. You've heard the opening of AM1408 to LB589. Member requesting to speak: Senator Sullivan. [LB589]

SENATOR SULLIVAN: Thank you, Mr. President, and I think I rise in support of this amendment by Senator Smith. I just have one quick question if he would yield. [LB589]

PRESIDENT SHEEHY: Senator Smith, would you yield to Senator Sullivan? [LB589]

SENATOR SMITH: Yes, I will. [LB589]

SENATOR SULLIVAN: Thank you, Senator. In your explanation, if I understood you correctly, what you were saying in this amendment does not provide or allow any additional burden to a community that does maybe currently have a celebration going

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on in their community where it involves the state highway. Is that correct? [LB589]

SENATOR SMITH: That's right. It just provides consistency as to when the allowance is granted. [LB589]

SENATOR SULLIVAN: Okay. That's what I needed to hear that because as I said earlier, I know I have one particular community in my district where it involves a state highway going right through the middle of town and they have a longstanding celebration and I wouldn't want this to be any more onerous for them. So thank you very much. [LB589]

PRESIDENT SHEEHY: Thank you, Senator Sullivan. Seeing no additional requests to speak, Senator Smith, you're recognized to close. Senator Smith waives closing. The question before the body is on the adoption of AM1408 to LB589. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB589]

CLERK: 38 ayes, 0 nays, Mr. President, on the adoption of Senator Smith's amendment. [LB589]

PRESIDENT SHEEHY: AM1408 is adopted. [LB589]

CLERK: I have nothing further on the bill, Mr. President. [LB589]

PRESIDENT SHEEHY: Senator Larson. [LB589]

SENATOR LARSON: Mr. President, I move that LB589 be advanced to E&R for engrossing. [LB589]

PRESIDENT SHEEHY: You have heard the motion. You have heard the motion. All those in favor say aye. Opposed, nay. LB589 advances. Speaker Flood, you're recognized for an announcement. [LB589]

SPEAKER FLOOD: Thank you, Mr. President. Good evening, late afternoon, members. We completed our agenda today, which is very good, and tomorrow we're going to come back at 9:00 in the morning. We've got the other half of consent calendar Final Reading and we'll have some other Final Reading bills to take up. We're going to take up the judicial redistricting bill on General File tomorrow. And I want to explain to everybody the reason you're seeing that before the rest of the redistricting bills is because of the death of a judge which has created a vacancy at the Nebraska Court of Appeals from the Omaha area. And the reason you're seeing this bill is we're trying to accommodate the court system as there's a very defined structure set in place after a vacancy exists on an appellate court to fill the vacancy. And so by taking up the judicial redistricting bill and fast-tracking it to the extent we can within our system, we will allow

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potential applicants to understand where those lines will be drawn. In addition to that, we're going to have some other bills. We will most likely work through the noonhour tomorrow, but it remains to be seen, based on how we do on the agenda. So thank you very much and we will see you in the morning. Have a good night.

PRESIDENT SHEEHY: Thank you, Speaker Flood. Mr. Clerk, do you have items for the record?

CLERK: I do, Mr. President. I have a communication from the Governor. (Read re LB421.) A second communication. (Read re LB137, LB181, LB181A, LB305, LB305A, LB360, LB384, LB384A, LB449, LB500, LB535, and LB665.) An explanation of vote from Senator Janssen (re LB575 and LB575A). (Legislative Journal pages 1566-1567.) [LB421 LB137 LB181 LB181A LB305 LB305A LB360 LB384 LB384A LB449 LB500 LB535 LB665 LB575 LB575A]

And finally, Mr. President, a priority motion: Senator Flood would move to adjourn the body until Thursday morning, May 12, at 9:00 a.m.

PRESIDENT SHEEHY: You have heard the motion to adjourn until Thursday, May 12, at 9:00 a.m. All those in favor say aye. Opposed, nay. We are adjourned.