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Floor Debate
May 12, 2011

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SENATOR GLOOR PRESIDING

SENATOR GLOOR: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the seventy-ninth day of the One Hundred Second Legislature, First Session. Our chaplain today is Reverend Gail Axen of Bethany Presbyterian Church in Carroll, Nebraska, Senator Bloomfield's district. Please rise.

PASTOR AXEN: (Prayer offered.)

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

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

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

CLERK: I have no corrections, Mr. President.

SENATOR GLOOR: Are there any messages, reports, announcements?

CLERK: I do, Mr. President. I have an explanation of vote from Senator Utter (re LB84). A motion from Senator Pankonin. Senator Pankonin would move that LB421 become law notwithstanding the objections of the Governor. That will be laid over. Retirement Systems, report received from the Nebraska Public Employees Retirement Systems. That report will be on file in the Clerk's Office and available for member review. And I have a series of...a lobby report as required by statute. That's all that I have, Mr. President. (Legislative Journal pages 1569-1570.) [LB84 LB421]

SENATOR GLOOR: Thank you, Mr. Clerk. We'll now proceed to the first item on the agenda, confirmation reports. Mr. Clerk.

CLERK: Mr. President, General Affairs Committee, chaired by Senator Karpisek, reports on the appointment of Bryan Tuma to the Nebraska Liquor Control Commission. (Legislative Journal page 1517.)

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Karpisek, as Chairman of the

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General Affairs Committee, you're recognized to open on your confirmation report.

SENATOR KARPISEK: Thank you, Mr. President. Good morning, members of the body. It is my pleasure to introduce and confirm the appointment of former State Patrol Superintendent Bryan Tuma to the Liquor Control Commission. He will fill the vacancy left by Robert Logsdon, whose term expires this month. The committee had a great conversation with Mr. Tuma during his confirmation hearing and it is clear that he will bring a valuable perspective and expertise to the work of the Liquor Control Commission. Having served on the State Patrol for 32 years, Mr. Tuma has gained a familiarity as well as provided leadership for many facets of law enforcement in Nebraska, alcohol enforcement being just one of them. Mr. Tuma started as a Norfolk area Trooper in 1979 and has performed an array of duties since then ranging from enforcement of traffic laws, to undercover drug investigation and surveillance, to SWAT and tactical operations. He has been heavily involved in recruitment and training of officers. As Grand Island Area Commander from 1994 to '96, he was responsible for day-to-day operations in a 17-county area and was the point of contact for community leaders and elected officials. As the Patrol's Chief Executive Officer for the last six years, he has been responsible for the many decisions impacting the operation and administration of the agency. Mr. Tuma expressed a desire to be involved in public policy after his retirement from the State Patrol. And I am so pleased at the prospect of having his expertise on the commission. He is thoughtful, well-respected on both sides of the table, and has a working knowledge of liquor control and enforcement issues that will serve him well in this position. I urge you to support Bryan Tuma on his appointment to the Liquor Control Commission. Thank you, Mr. President.

SENATOR GLOOR: Thank you, Senator Karpisek. We now move to discussion on the confirmation report. Senator Howard, you're recognized.

SENATOR HOWARD: Thank you, Mr. President and members. While I rise to support the nomination of Bryan Tuma to the Liquor Control Commission, I want to take this opportunity to be on the record with my concerns about what I see as unnecessary spending on commissioner salaries and benefits. Constituents expect us all to find efficiencies in government and to eliminate wasteful spending. One area of spending that I find completely unjustifiable is the \$12,500 annual salary being paid to the three members of the Liquor Control Commission. In addition to the salary, the commission members also receive health and insurance benefits that other boards or commissioners do not receive. Eliminating the salary and the benefits of commissioners would save the state \$81,161 per year. The issue was brought to my attention when I read the State Auditor's Attestation Review of the Liquor Control Commission dated June 23, 2009, which raised concerns about the Liquor Control Commission members receiving health and insurance and other benefits for part-time work. The Liquor Control Commission only meets regularly scheduled meetings two days a month, ten months out of the year. According to the State Auditor, the commission members only work

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approximately five days per month. It's hard to explain to my constituents why we are continuing to pay these salaries and benefits for five days of work a month. We are living in difficult times. The budget cuts facing this Legislature are monumental and will undoubtedly affect the lives of many people. I think about the families that came to us through the safe haven law and who will have to tell their family members that they will no longer have services or the teacher in my district who has been laid off because of budget cuts. We all knew what the right thing to do is for the taxpayers. As a spokesman for Governor Heineman said in the World-Herald on April 19, many small cuts can add up to have a large impact. Looking at spending expenditures for boards and commissions is nothing new. We've already passed LB332 to eliminate the per diem on the Board of Educational Lands and Funds. And I remember in the summer when we went through many hearings and we discussed that. LB292 to eliminate the per diem for the Accountability and Disclosure Commission and LB384 which reduced TERC from four to three members. I will be working in the interim with a study with the General Affairs Committee to address unnecessary spending. I appreciate Mr. Tuma's willingness to serve our state. I'm sure he's not doing this for the money. I look forward to working with him as we address these spending issues. Thank you. [LB332 LB292 LB384]

SENATOR GLOOR: Thank you, Senator Howard. (Visitor introduced.) There are no additional senators remaining in the queue. Senator Karpisek waives. The question before the body is, shall the confirmation report of the General Affairs Committee be adopted? All in favor vote aye; all opposed vote nay. Have all voted who care to? Record, Mr. Clerk.

ASSISTANT CLERK: (Record vote, Legislature Journal pages 1570-1571.) 40 ayes, 0 nays on the adoption of the report, Mr. President.

SENATOR GLOOR: The report is adopted. Continuing with the agenda, Final Reading. Mr. Clerk, we'll move to Final Reading. Members should return to their seats in preparation for Final Reading. Members, please take your seats for Final Reading. Mr. Clerk, the first bill is LB406. [LB406]

ASSISTANT CLERK: (Read LB406 on Final Reading.) [LB406]

SENATOR GLOOR: All provisions of law relative to procedure having been complied with, the question is, shall LB406 pass? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB406]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1571.) The vote is 46 ayes, 0 nays, 1 present and not voting, 2 excused and not voting, Mr. President. [LB406]

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SENATOR GLOOR: LB406 passes. We will now proceed to LB413. [LB406 LB413]

ASSISTANT CLERK: (Read LB413 on Final Reading.) [LB413]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB413 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB413]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1572.) The vote is 47 ayes, 0 nays, 1 present and not voting, 1 excused and not voting, Mr. President. [LB413]

SPEAKER FLOOD: LB413 passes. Mr. Clerk, LB423. [LB413 LB423]

ASSISTANT CLERK: (Read LB423 on Final Reading.) [LB423]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB423 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB423]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1572-1573.) The vote is 47 ayes, 0 nays, 1 present and not voting, 1 excused and not voting, Mr. President. [LB423]

SPEAKER FLOOD: LB423 passes. Mr. Clerk, LB424. [LB423 LB424]

ASSISTANT CLERK: (Read LB424 on Final Reading.) [LB424]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB424 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB424]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1573-1574.) The vote is 47 ayes, 0 nays, 1 present and not voting, 1 excused and not voting, Mr. President. [LB424]

SPEAKER FLOOD: LB424 passes. Mr. Clerk, LB453. [LB424 LB453]

ASSISTANT CLERK: (Read LB453 on Final Reading.) [LB453]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied

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with, the question is, shall LB453 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB453]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1574.) The vote is 44 ayes, 0 nays, 4 present and not voting, 1 excused and not voting, Mr. President. [LB453]

SPEAKER FLOOD: LB453 passes. Mr. Clerk, we now proceed to LB454. [LB453 LB454]

ASSISTANT CLERK: (Read LB454 on Final Reading.) [LB454]

SPEAKER FLOOR: All provisions of law relative to procedure having been complied with, the question is, shall LB454 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB454]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1575.) The vote is 47 ayes, 0 nays, 1 present and not voting, 1 excused and not voting, Mr. President. [LB454]

SPEAKER FLOOD: LB454 passes. Mr. Clerk, LB455. [LB454 LB455]

ASSISTANT CLERK: (Read LB455 on Final Reading.) [LB455]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB455 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB455]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1575-1576.) The vote is 48 ayes, 0 nays, 1 excused and not voting. [LB455]

SPEAKER FLOOD: LB455 passes. Mr. Clerk, LB458. [LB455 LB458]

ASSISTANT CLERK: (Read LB458 on Final Reading.) [LB458]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB458 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB458]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1576-1577.) The vote is 47 ayes, 1 nay, 1 excused and not voting, Mr. President. [LB458]

SPEAKER FLOOD: LB458 passes. Mr. Clerk, LB480. [LB458 LB480]

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ASSISTANT CLERK: (Read LB480 on Final Reading.) [LB480]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB480 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB480]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1577.) The vote is 48 ayes, 0 nays, 1 excused and not voting, Mr. President. [LB480]

SPEAKER FLOOD: LB480 passes. Mr. Clerk, we now proceed to LB494. [LB480 LB494]

ASSISTANT CLERK: (Read LB494 on Final Reading.) [LB494]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB494 pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB494]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1578.) The vote is 48 ayes, 0 nays, 1 excused and not voting. [LB494]

SPEAKER FLOOD: LB494 passes with the emergency clause attached. Mr. Clerk, LB502. [LB494 LB502]

ASSISTANT CLERK: (Read LB502 on Final Reading.) [LB502]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB502 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB502]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1578-1579.) The vote is 46 ayes, 0 nays, 2 present and not voting, 1 excused and not voting, Mr. President. [LB502]

SPEAKER FLOOD: LB502 passes. Mr. Clerk, we now proceed to LB525. [LB502 LB525]

ASSISTANT CLERK: (Read LB525 on Final Reading.) [LB525]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB525 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB525]

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ASSISTANT CLERK: (Record vote read, Legislative Journal 1579.) The vote is 47 ayes, 0 nays, 1 present and not voting, 1 excused and not voting, Mr. President. [LB525]

SPEAKER FLOOD: LB525 passes. (Doctor of the day introduced.) Continuing with Final Reading, Mr. Clerk, LB525A. [LB525 LB525A]

ASSISTANT CLERK: (Read LB525A on Final Reading.) [LB525A]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB525A pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB525A]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1580.) The vote is 48 ayes, 0 nays, 1 excused and not voting, Mr. President. [LB525A]

SPEAKER FLOOD: LB525A passes. Mr. Clerk, LB542. [LB525A LB542]

ASSISTANT CLERK: (Read LB542 on Final Reading.) [LB542]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB542 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB542]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1580-1581.) The vote is 48 ayes, 0 nays, 1 excused and not voting, Mr. President. [LB542]

SPEAKER FLOOD: LB542 passes. Mr. Clerk, we now proceed to LB550. [LB542 LB550]

ASSISTANT CLERK: (Read LB550 on Final Reading.) [LB550]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB550 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB550]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1581-1582.) The vote is 48 ayes, 0 nays, 1 excused and not voting, Mr. President. [LB550]

SPEAKER FLOOD: LB550 passes. Mr. Clerk, LB573. [LB550 LB573]

ASSISTANT CLERK: (Read LB573 on Final Reading.) [LB573]

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SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB573 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB573]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1582.) The vote is 48 ayes, 0 nays, 1 excused and not voting. [LB573]

SPEAKER FLOOD: LB573 passes. Mr. Clerk, we now proceed to LB591. 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. [LB573 LB591]

ASSISTANT CLERK: 45 ayes, 0 nays to dispense with the at-large reading, Mr. President. [LB591]

SPEAKER FLOOD: The at-large reading is dispensed with. Mr. Clerk, please read the title. [LB591]

ASSISTANT CLERK: (Read title of LB591.) [LB591]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB591 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB591]

ASSISTANT CLERK: (Record vote read, Legislative Journal 1583.) The vote is 47 ayes, 0 nays, 1 present and not voting, 1 excused and not voting, Mr. President. [LB591]

SPEAKER FLOOD: LB591 passes. (Visitors introduced.) Continuing on Final Reading, Mr. Clerk, LB641. [LB591 LB641]

ASSISTANT CLERK: (Read LB641 on Final Reading.) [LB641]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB641 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB641]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1584.) The vote is 48 ayes, 0 nays, 1 present and not voting. [LB641]

SPEAKER FLOOD: LB641 passes. Mr. Clerk, LB687. [LB641 LB687]

ASSISTANT CLERK: (Read LB687 on Final Reading.) [LB687]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied

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with, the question is, shall LB687 pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB687]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1584-1585.) The vote is 48 ayes, 0 nays, 1 excused and not voting, Mr. President. [LB687]

SPEAKER FLOOD: LB687 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 the follow legislative bills: LB406, LB413, LB423, LB424, LB453, LB454, LB455, LB458, LB480, LB494, LB502, LB525, LB525A, LB542, LB550, LB573, LB591, LB641, LB687. Mr. Clerk, items for the record. [LB687 LB406 LB413 LB423 LB424 LB453 LB454 LB455 LB458 LB480 LB494 LB502 LB525 LB525A LB542 LB550 LB573 LB591 LB641]

CLERK: Mr. President, thank you. New study resolutions: LR244 by Senator Avery and LR245 and LR246; Senator Haar, LR247; Senator Nordquist, LR248. All will be referred to the Executive Board. That's all that I have, Mr. President. (Legislative Journal pages 1585-1589.) [LR244 LR245 LR246 LR247 LR248]

SENATOR CARLSON PRESIDING

SENATOR CARLSON: Thank you, Mr. Clerk. Next item. [LB699]

CLERK: Mr. President, LB699 on General File. It was originally introduced by the Redistricting Committee chaired by Senator Langemeier. (Read title.) The bill was introduced on April 26, Mr. President. A public hearing was held. The bill was reported to General File. At this time I have no amendments to the bill, Mr. President. [LB699]

SENATOR CARLSON: Thank you, Mr. Clerk. Senator Langemeier, as Chair of the Redistricting Committee, you're recognized to open on your bill. [LB699]

SENATOR LANGEMEIER: Mr. President and members of the body. Colleagues, welcome to redistricting. LB699 is the first of six bills you'll see introduced on behalf of the Redistricting Committee before you. Each map starts with a population from the 2010 Census and then divides that as evenly as possible over--in this case, a judiciary map--over six districts. Each district had a goal population of 304,390 individuals as we set redistricting maps based on individuals. LB699 did have a public hearing on May 2. The testimony was short and mixed. The Supreme Court came in and testified in support of the map and the Nebraska Bar Association came in, in opposition, looking for some changes. The testimony offered by the Bar Association was, is that we should consider in our division of districts that we account for where the lawyers live and that we have an even distribution of attorneys within the districts. However, one of our fundamental principles does not recognize that. I'd like to thank the Redistricting

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Committee for their work to this point, and we'd like for your advancement of LB699. And to add to that, I just handed out the maps as LB699 references particular bills...or excuse me, map numbers. If you flip to the very first page, that's just kind of an overall reference. But if you flip to the second page and you look at the top where it says "Supreme Court District 1, 2011, SC11-1," that is the reference number that is in the bills. So as you'll see, there's SC11-1, -2, -3, -4, -5, and -6. So there are six maps of reference. The deviation on this particular proposal ranges from a negative .09 to a positive .54--so from a half a percent almost to zero percent deviation. Within our guidelines we had established, with LR102, was to be within 5 percent, plus or minus or 10 overall. This map is under a half a percent...or at a half a percent overall, and would ask for your adoption of LB699. Thank you. [LB699 LR102]

SENATOR CARLSON: Thank you, Senator Langemeier. Members, you've heard the opening on LB699. The floor is now open for debate. Those wishing to speak are Avery, Krist, and Wightman. Senator Avery, you're recognized. [LB699]

SENATOR AVERY: Thank you, Mr. President. Good morning, colleagues. As a member of the Redistricting Committee, I would like to comment on the maps that you have before you. Many of you received e-mails from the Bar Association, arguing that we take their alternative to LB699, and Senator Langemeier referenced that in his opening comments. Let me comment just briefly on why the committee declined to support that proposal. If you remember, a few weeks ago, the committee brought to you a resolution, LR102, and that resolution was adopted by this body. In that resolution we specified criteria and procedures that we would follow in drawing these maps. If you go to page 2, item 5, of LR102, you will read that one of the principles that we adopted says that "District boundaries shall not be established with the intention of favoring a political party or any other group or person." The Bar Association made a rather extensive argument that we should draw the district boundaries for the Supreme Court and the Court of Appeals to reflect the judicial or legal character of the population of the state. They made distinctions between rural lawyers and urban lawyers, with the argument that there were somehow different communities of interest between those two types of lawyers. I never found that a very convincing argument. They also included in their statements about the character of districts, where lawyers lived, and how many lived in one district and how many lived in another. There is nothing--nothing, I repeat--in our procedures that would allow us to consider occupation of the populations of those districts. We are bound by our own procedures and by court cases to look at population and get as close to one person, one vote as we can. This map that you have before you follows those principles. And we specifically rejected the Bar Association's proposal because it does not follow those procedures. I would also point out that the Supreme Court preferred the map that you have before you over all of the alternatives, and they did not have the Bar Association's proposal even in their top two. So with that, Mr. President, I would urge this body to adopt the proposal before you from the Redistricting Committee. I do not remember the exact vote but I think it was an overwhelming

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majority in favor. Thank you. [LB699 LR102]

SENATOR CARLSON: Thank you, Senator Avery. Senator Krist, you are recognized. [LB699]

SENATOR KRIST: Thank you. Good morning, Mr. President and colleagues. And I was wondering if Senator Lautenbaugh would yield to a question or two? [LB699]

SENATOR CARLSON: Senator Lautenbaugh, would you yield? [LB699]

SENATOR LAUTENBAUGH: Yes, I will. [LB699]

SENATOR KRIST: Knowing your particularly good relationship with the Bar Association, I have to ask a couple of quick questions. Is the bar in some way credible in this subject? I mean if we're talking about actually redistricting with these particular districts in mind, what would be their interest in pressing for the one lawyer, one vote issue as opposed to the one voter, one vote...one person, one vote? [LB699]

SENATOR LAUTENBAUGH: Well, honestly, that is unclear to me and I...it's funny you would ask that question, because I did receive an e-mail from a gentleman who had corresponded with the president of the bar, as I understand it, a past-president--I'm not sure which--and asked the question, "You know, this is a mandatory bar that we're required to be members of, if we're attorneys. Is this an area in which you should be, and are allowed to be, devoting your energies, and by extension, our dues?" And I have not seen a response to that. I don't know for sure why the decision was made by the bar to weigh in on this, and I don't know that they really should have a dog in the fight, so to speak. But I'm not the one who raised that question, but...and I don't know the answer to it either, to be honest. [LB699]

SENATOR KRIST: Okay. Thank you, Senator, and thank you for yielding to the question. And I think the Redistricting Committee should be commended for the work that they've done. It follows directly in the guidelines and I will support LB699. Thank you. [LB699]

SENATOR CARLSON: Thank you, Senator Krist and Senator Lautenbaugh. Good morning, Senator Wightman. You're recognized. [LB699]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I would have a question or two of Senator Avery, if he's here. If not, I'll...yeah, I guess he's here. [LB699]

SENATOR CARLSON: Senator Avery, would you yield? [LB699]

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SENATOR AVERY: I was yielding off the mike. I will. Yes. [LB699]

SENATOR WIGHTMAN: Thank you, Senator Avery. I guess I have some questions with regard to the plan set forth by the Bar Association, and you addressed some of those when you talked earlier. Obviously, one of the things they talk about and they discuss in some of the letters that we have before us is that the rule is slightly different than the one man, one vote, under the statutory language. Is that correct? [LB699]

SENATOR AVERY: I'm sorry, Senator. Could you get closer to your mike? [LB699]

SENATOR WIGHTMAN: Okay. Some of the information that we were furnished by the Bar Association indicates that the language is slightly different with regard to the Supreme Court districts, with regard to the one man, one vote, in that the language is slightly different I think. That it will be...well, I'm not sure I can point out the exact language difference, but are you familiar with that difference? [LB699]

SENATOR AVERY: I am not. I suspect, though, that the Bar Association could probably parse a lot of language to make it suit their purposes. But my own reading of the law of the constitution and of court cases indicates that there is to be as little deviation from one person, one vote, as possible. And there is nowhere, in any literature I have ever read, that allows a redistricting process to include occupations of people. [LB699]

SENATOR WIGHTMAN: And I guess this language, as I look at it...and, quite frankly, I think you're right that the law of the United States Supreme Court no doubt takes precedence over what our statutory language says. But it says, in the legislative districts, shall be divided into separate and equal distinct legislative districts as nearly equal in possibility as may be. And in the...it just says of approximately equal population with regard to the Supreme Court districts. Do you feel that that represents any substantive difference? [LB699]

SENATOR AVERY: I can tell you this, that when you...the smaller the districts, the more difficult it is to get to zero deviation. The larger the districts, like congressional districts, it's much easier to get to zero deviation. And these judicial districts are, in fact, large enough that we can get almost to zero. If you look at the first page of the map that you have there, the deviations are, I believe, all under 1 percent. [LB699]

SENATOR WIGHTMAN: I guess the second question I would have is that the Bar Association--and you mentioned this earlier when you spoke--suggest that maybe there's some entitlement to consider by the committee, the number of lawyers within the districts as opposed to the number of...the amount of population within the district. I assume you found that of almost no validity, is that correct? [LB699]

SENATOR WIGHTMAN: Laughable. [LB699]

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SENATOR WIGHTMAN: Well, I don't know if I'd go that far. [LB699]

SENATOR AVERY: (Laugh) [LB699]

SENATOR WIGHTMAN: Thank you, Senator Avery. Thank you, Mr. President. [LB699]

SENATOR CARLSON: Thank you, Senator Wightman and Senator Avery. Senators still wishing to speak include Council, Conrad, Dubas, Flood, and Harms. Senator Council, you are recognized. [LB699]

SENATOR COUNCIL: Thank you, Mr. President. I want to begin by thanking the Redistricting Committee for the work they've put in, not only with regard to the Supreme Court judicial districts but what I expect to be receiving with regard to the other redistricting charges that they had. But I must condition that thanks with a suggestion that would be very helpful in considering these redistricting proposals. I think it's great that we have what is being proposed under LB699. Perhaps it's just me. It would be helpful to see how this proposal relates to the existing judicial districts' boundaries so that we could have a better feel for what some of the concerns and issues are that are being presented with regard to the redistricting--thank you very much; this is very helpful--and which gives rise to a couple of the questions that I need to pose right at this point. Looking at the current judicial districts, you have Cass, Otoe, and Lancaster all within Judicial District 1. And reading the constitution, it speaks to division into six contiguous and compact districts of approximately equal population. And maybe, Senator Langemeier, you're the person I should pose this question to: the committee's rationale for removing Cass and Otoe from District 1 and placing it in District 5? [LB699]

SENATOR CARLSON: Senator Langemeier, would you yield? [LB699]

SENATOR LANGEMEIER: Yes, I would. The rationale is, is that the current Judicial District 1 is, as you stated, is Cass, Otoe, and Lancaster. Unfortunately--or I shouldn't say unfortunately. Fortunately, we had population growth in that area, and so you saw a population from Otoe and Cass drop out to maintain the 304,000 people, it's population that makes that district shrink. And so in honoring...in your earlier statement, honoring that original district, you take that and start to take out areas to get down to that population. [LB699]

SENATOR COUNCIL: Okay, but so...but an option could have been, without having the numbers, Cass and Otoe could have stayed in Judiciary District 1, and a portion of Lancaster County could have been carved out and added to District 5. Is that correct? [LB699]

SENATOR LANGEMEIER: That could have been done. Yes, we could have started on

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the west side of Lancaster County and started working its way to the east and taking people out in that manner as well. [LB699]

SENATOR COUNCIL: Okay. Because again, I mean we're looking at contiguous. And, at least as the current boundaries, if there's going to be a division of a county under the proposal, Cass County is divided and it detracts from the continuity or the contiguous nature of the districts. And then the question I also pose is, I am correct in my understanding--I know I'm correct; I'm a member of the bar--that Supreme Court justices are appointed. Is that correct, Senator Langemeier? [LB699]

SENATOR LANGEMEIER: Correct. [LB699]

SENATOR CARLSON: One minute. [LB699]

SENATOR COUNCIL: And the appointments must come from lawyers residing in the judicial district. Is that correct? [LB699]

SENATOR LANGEMEIER: Correct. [LB699]

SENATOR COUNCIL: So is it arguable that if in one judicial district there are thousands more attorneys than in another judicial district, that the likelihood of an appointment to the Supreme Court is heightened if you're in one of those districts with fewer attorneys? [LB699]

SENATOR LANGEMEIER: Unfortunately, an occupation of attorneys is not a redistricting factor. It would be...Senator Pahls brought up a good point--and I don't want to steal his thunder--but when we do State Board of Education, maybe we need to consider teachers and make sure we divide those districts evenly for teachers. We don't, as a Redistricting Committee, look at occupations. We look at the population. [LB699]

SENATOR COUNCIL: I know. And I appreciate that, but the one distinction between... [LB699]

SENATOR CARLSON: Time. [LB699]

SENATOR COUNCIL: Thank you. [LB699]

SENATOR CARLSON: Thank you, Senator Council and Senator Langemeier. (Visitors introduced.) Back to debate on LB699: Senator Conrad, you're recognized. [LB699]

SENATOR CONRAD: Thank you, Mr. President, and good morning, colleagues. I rise in support of the redistricting plan that is before us today, even though I was the lone

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dissenting vote coming out of committee, because I believe we will have an opportunity to potentially make additional changes as it works its way through the process. I wasn't originally planning to hit my light this morning, but I think it is important that we clarify the record because, of course, we all have personal and political and policy differences with various organizations and interests that have business before this body. But it's clear, from where the dialogue has gone thus far, that the position of the Nebraska State Bar Association I think has been grossly misinterpreted and portrayed this morning. Number one, Senator Council, in regards to your questions, particularly as the map affects Lancaster County, one of the primary reasons that the committee put forward this proposal was because we also try to respect the existing core of districts. And because Lancaster County was really a core of that existing district, that's why you don't see dramatic changes in regards to that district. Finally, it's absolutely clear, in case law and in the Nebraska Constitution, that there is a separate and distinct standard, for redistricting purposes amongst legislative districts and among Supreme Court districts. The relevant provisions are Article III, Section 5, related to legislative districts, and Article V, Section 5, related to Supreme Court judicial districts. And there are separate and distinct standards here. And that is not by accident, which any scholar or any member of the bar can tell you, that when there are separate and distinct standards utilized within the context of a constitutional parameter, that's for good reason. They have different mediums. The purpose afforded to the standard for legislative districts is to equate and follow and adhere to the longstanding and well-established principle of protecting one person, one vote, and the citizen's right therein. There is a slightly different standard for appointed offices, as would be the case with judicial appointees, and that point needs to be clear. Of course, it is the province of the Legislature and its Redistricting Committee to hold itself to even a higher standard and to see this as a floor rather than a ceiling in terms of how we conduct our business. But to say that they're the same standard is incorrect. Our constitution dictates that and there's a plethora of case law across the country which states the reasons why for. Again, I think that if we have differences of opinion, political or policy or personality-based with different organizations or individuals who have business before the body, that's fine. But when it comes to the serious business of redistricting, I think it's wrong to denigrate the Nebraska State Bar Association, who is a prestigious organization with a long and well-established history in our state, and who we, as a Legislature, entrust many important public policy and regulatory functions thereto. They have thousands of members who are partners in public service in the administration of justice. And I believe, sitting through the public hearing, they never intended to put forward a theory or proposal that equated to one lawyer, one vote. Rather, their point was to talk about how changes in particular districts affect the appointments for their regulatory purposes. And they provided an alternative plan, which is a solution-oriented way to address and work with the Redistricting Committee. Ultimately, it was rejected by the committee for a variety of different reasons and we have this plan before us. But I think it's important that we have a clear record... [LB699]

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SENATOR CARLSON: One minute. [LB699]

SENATOR CONRAD: Thank you, Mr. President...and we do have a clear understanding of what this well-respected and prestigious organization put forward. And it's not appropriate to laugh about whether or not we are talking about one lawyer, one vote, because that was never the position or posture that was put forward. It is not relevant for redistricting purposes. And as Senator Langemeier and Senator Pahls have noted, in a lighthearted manner, we don't take professions into account for any of our various jurisdictional proposals that have to be generated through the redistricting process. Thank you, Mr. President. [LB699]

SENATOR CARLSON: Thank you, Senator Conrad. (Visitors introduced.) Returning to debate: Senator Dubas, you're recognized. [LB699]

SENATOR DUBAS: Thank you very much, Mr. President. Good morning, colleagues. It's really been an education for me to be on the Redistricting Committee, and I certainly am learning a lot. Many of the points that Senator Conrad just made were what I was going to make. And I guess I would just like to reiterate how seriously the committee has taken the work that we have been...has been put in front of us. We put our proposal out there. We had the public hearing. We listened to the concerns and the issues that were brought forward, both in support and in opposition to the map that we had originally supported. We took those concerns into consideration. Another map was drawn, trying to keep...currently, Douglas county is divided into three different districts. Tried to take that down to two districts. It made some changes to District 1, putting Seward County with Lancaster, and that's not how it's been in the past. We had these discussions. We really did. We took all these things into consideration. And when it came down to it, ultimately decided to stay with the map that we had put out originally in the bill. So again, I think that shows the value of the public hearings. We're going to be having more tomorrow, talking about the legislative and congressional and the rest of the maps, and I am hopeful that we will have good dialogue at those hearings, the people bringing forward legitimate concerns, whether they support or oppose the maps. And as a committee, we will take what we hear and discuss it and see what we decide to come out to the floor with. So this map, the Supreme Court justice judicial districts map, is one that was discussed, was given serious thought before bringing it to the floor. It's the one that the committee feels meets as many of the criteria as we are directed to meet, as possible. Those deviations are very important, keeping counties together, keeping boundaries, you know, as close to original as we possibly can. Those are all important things to represent our constituency. I appreciate the discussion we're having. Thank you very much, Mr. President. [LB699]

SENATOR CARLSON: Thank you, Senator Dubas. Senator Flood, you're recognized. [LB699]

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SPEAKER FLOOD: Thank you, Mr. President and members. I want to, first, thank the Redistricting Committee for their hard work. In my opinion, they have worked very hard to find common ground where possible. They've spent hours wrangling over different maps and deviations. And this map that essentially has the district that I live in going into Omaha, was one that I had a hand in looking at and starting the discussion with as it relates to 168th and Military inside Douglas County. And really, as a novice at redistricting, what I was looking at is the deviation. I think the map before you has very, very low deviations. That being said, as also a practicing attorney, it's difficult reality to confront the loss of population in northeast Nebraska. One of the best parts about practicing law where I live is that you develop a relationship with the court system in, not just one county, but 20 counties. You walk in, you see the district court clerk, you see the county court clerk. You know the judge. You have a chance to visit. You spar with the other side in an effort to find justice, and at the end of the day, there's a camaraderie among lawyers inside your district, which is something you want to protect. And I recognize the differences between Omaha and Douglas County and Madison County or Holt County or Antelope County. The reality is, the population is what it is. The census delivered the numbers. And we have an obligation not just to lawyers, but to people, to make sure that districts are similarly sized. I'm not interested in making any changes on General File. I do recognize the differences between a very urban district, like Omaha, and Madison. But I want to say one thing: Both districts have great positives and are alike in many ways. Nebraska lawyers I think perform admirably and I'm proud to be one. And as it relates to the lawyers in Omaha, they oftentimes find themselves in our courthouses, and many of ours in Norfolk and Columbus and Fremont find ourselves in Omaha. What I guess I'm trying to say at the end of the day is, I'm going to keep an open mind between now and Select File. I know why this map was advanced. I think it has value. It's hard for somebody living in Norfolk to know what the population looks like in western Douglas and western Sarpy. And so when I first saw Senator Mello's proposal, I thought, oh my gosh, we're going even deeper into the urban area. The reality is, there's a lot fewer people in some of those areas, unincorporated, of Sarpy and Douglas County than you see in the map right now, that now includes District 2. So I want you to know that I am hearing from a number of lawyers in northeast Nebraska. I'm hearing from some folks that want to know what this means for us. I will also say that in my opinion we are admirably served by our Supreme Court representative from District 3, Justice Gerard, who came from Norfolk, who grew up in Schuyler. He has done a wonderful job while on the bench, and it appears there's an opportunity looming for him on the federal bench. And we couldn't be more proud of his service, and he represents the very best of the legal community in District 3 as currently incorporated. And so with that, I look forward to the rest of the discussion and I want to visit with my colleagues between now and Select to determine what, if anything, should be done. But at this time, I think the map speaks for itself. Thank you, Mr. President. [LB699]

SENATOR CARLSON: Thank you, Senator Flood. Those still wishing to speak include Harms, Schumacher, Lautenbaugh, Council, and Pirsch. Senator Harms, you're

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recognized. [LB699]

SENATOR HARMS: Thank you, Mr. President and colleagues. I wonder if Senator Schilz would yield to a question? [LB699]

SENATOR CARLSON: Senator Schilz, would you yield? [LB699]

SENATOR SCHILZ: Yes. [LB699]

SENATOR HARMS: Senator Schilz, you're on the Redistricting Committee, is that correct? [LB699]

SENATOR SCHILZ: That's correct. Yes. [LB699]

SENATOR HARMS: You received an e-mail on Friday, May 6, that had some concerns from an attorney in western Nebraska. And what I want to know is, are those concerns valid? [LB699]

SENATOR SCHILZ: It depends on the letter you're speaking of. [LB699]

SENATOR HARMS: I'm referring to the one that came from Howard Olsen. [LB699]

SENATOR SCHILZ: Well, I can tell you this: All those letters that were received from those districts were taken into consideration by the committee. And I think that as... [LB699]

SENATOR HARMS: Well, let me walk you through this. [LB699]

SENATOR SCHILZ: Okay. [LB699]

SENATOR HARMS: I'd like to know what your views are. What he says, and I quote, he says...and he's talking about Douglas County. He said, "It can have an adverse effect on the rural districts to which Douglas County is attached in that a nomination of a lawyer living in a part of Douglas County for the district seat can thereby effectively give Douglas County more than one seat, possibly as many as three, on the Supreme Court and the Court of Appeals. Obviously, three members of either court for metropolitan Omaha would not be in the best interests of Keith County." What are your views about that? [LB699]

SENATOR SCHILZ: Well, I can tell you this, that as we looked at the map as it was configured and as we heard the arguments from the Bar Association as it came in, it was the consensus of the committee that the map that was presented was the map that best took care of all the issues for the whole state of Nebraska. Now I can tell you this:

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Not being an attorney and not being someone that has been involved in a lot of the judicial stuff, quite honestly, there were attorneys and are attorneys that sit on the committee as well. You know, we deferred a lot of the questions to them to tell us whether or not it was the right thing to do. [LB699]

SENATOR HARMS: Well, Senator, what I'm really asking you: Does it have a negative impact on Keith County--that's your county. That's where you're from. Does it or does it not? As you look at what he has said, does it not represent poorly Keith County and west? Because you are on record in an article or several articles in western Nebraska that made it very clear that you had major concerns for western Nebraska and you were going to fight to preserve western Nebraska. So where are you on this issue, as a matter of record? [LB699]

SENATOR SCHILZ: Yeah. Well, I can tell you this, Senator Harms, and that has always been my case. As you know, we've worked closely together to represent the interests of western Nebraska. And, you know, I do think that there are always issues when it comes to redistricting as to what is the best balance to find for the state as a whole. And I think that we all must remember that there are give and take. We do have to be cognizant that this is the whole state of Nebraska that we have to deal with. And yes, there may be certain things here or there that may be concerning to us in Keith County. But I can tell you this: That when it comes down to it, our biggest problem in western Nebraska is population decline and trying to figure out how to change that. Until we do that, we will continue to have to find ways to get to where we need to be. And so, quite honestly, I...as we did the negotiations and as we looked at it, once again I will state... [LB699]

SENATOR CARLSON: One minute. [LB699]

SENATOR SCHILZ: ...that the map presented in LB699 was the best map for western Nebraska, in my opinion. [LB699]

SENATOR HARMS: I'm not debating that. I'm just...what I'm really debating with you is the fact is when you truly look at that and ignore where you are as a committee, does that or does that not have a negative impact to your community? I know that you have to find a consensus in order to get things out, and I think the committee has done a wonderful job. But when you really look at the heart of this thing, does it or does it not have a negative impact on your county and my county and all the other counties in western Nebraska? That's all I'm asking you. [LB699]

SENATOR SCHILZ: You know, I guess that what you would have to look at is, as you go forward and as judges are nominated and put on the courts, depending on the judge, absolutely it could have a negative impact. But do we know that today? Not necessarily. [LB699]

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SENATOR HARMS: Do you agree that it could put as many as three people on the Supreme Court or the Court of Appeals? [LB699]

SENATOR CARLSON: Time. [LB699]

SENATOR HARMS: Oh. Thank you, Mr. President. [LB699]

SENATOR CARLSON: Thank you, Senator Harms and Senator Schilz. Senator Schumacher, you're recognized. [LB699]

SENATOR SCHUMACHER: Thank you, Mr. President, and members of the body. I think that we, first of all, need to extend some appreciation to the Redistricting Committee. When you move lines around or shift population around to try to conform with constitutional requirements, that's a tough job and there's probably no perfect answer to that job. The judicial districts are a little bit of a different animal from, like, the legislative districts. First of all, the judges are appointed, not elected. So the one man, one vote thing isn't quite the same. Secondly, I don't think there's any federal constitutional requirement that we have state judicial districts. We could have six districts; we could have no districts. We could let the Governor appoint from all one county, if he wanted. So the only hobbles on us comes from that document that we probably should listen to every once in a while to get a little feeling for what's going on--and that's the constitution of this state: The Legislature shall divide the state into six contiguous and compact districts of approximately equal population, which shall be numbered from one to six, which shall be known as the Supreme Court judicial districts. The Legislature shall redistrict the state after each federal census. In any such redistricting, county lines shall be followed whenever practicable, but other established lines may be followed at the discretion of the Legislature. Such districts shall not be changed except upon the concurrence of the majority of the Legislature. Whenever the Supreme Court is redistricted, the judges serving prior to the redistricting shall continue in office, and the law providing for redistricting shall where necessary specify the newly established districts which they shall represent for the balance of their terms. And, of course, now we know that a judge will serve unless he is recalled or at the...I believe it's every seven years that a judge comes up for a vote on the Supreme Court. And now I've begun to get calls from the lawyers in Platte County expressing some of the same sentiments as apparently Senator Flood has gotten from Norfolk. And I am trying now and as I focus on this to back up and say, why did our constitutional writers feel it was necessary to have districts? What does it add to justice--forget about one number, one vote, all this. What does it mean for justice for the people of the state of Nebraska? Why was it so important to pull them from across the state to represent different population centers, instead of a glob of population. What impact does that mean when the people on the Supreme Court go in that room to decide cases. What flavor does that give to them? And I, too, have not been able to form an opinion as to whether or not this

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adversely impacts it by putting so many Douglas County representation into the more rural counties. How does that affect those balances? But I think it's something that I want to concentrate a bit on between now and Select File to see whether or not the interests of justice is served here, because we're not so tightly handcuffed by principles of federal law with regard to how we portion our judicial districts. So with those observations, thank you, Mr. President. [LB699]

SENATOR CARLSON: Thank you, Senator Schumacher. (Visitors introduced.) Senator Lautenbaugh, you are recognized. [LB699]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I wonder if Senator Harms would yield to a question? [LB699]

SENATOR CARLSON: Senator Harms, would you yield? [LB699]

SENATOR HARMS: Oh, I'd be happy to yield. [LB699]

SENATOR LAUTENBAUGH: Senator, I believe I received the same letter you were referring to from Mr. Olsen and others. Could you explain for me again how is it you understand that this map, as proposed, would diminish rural influence? [LB699]

SENATOR HARMS: I don't, that's why I was asking the questions. I don't understand it and I'm not sure it's going to happen. And I would assume if you're on the Redistricting Committee you would have an understanding of whether it did or whether it didn't, and that's really what I was after. I would like to know. Do you have any idea of whether that's correct or not? [LB699]

SENATOR LAUTENBAUGH: Okay. And the short answer is yes, and thank you, Senator Harms. I made some comments earlier and I think they've been described...I was simply answering a question. And I think I tried to be measured, all things considered. But it was described as denigrating the State Bar Association. Let me explain a little something here that was not my intention to get into today. As attorneys, we are required to be members of the State Bar. Doctors don't have to be in the AMA; dentists don't have to be in whatever dentists do, etcetera. But attorneys, we have to be members of the bar. And there are court decisions out there that say: Fine, if you're going to a mandatory bar, there are certain things, mandatory bar, that you can't get into because you're taking money from your members by force and so you can't compel them to pay you to do certain things. And some attorney wrote an e-mail--not me--but did raise the question: Is this a proper focus for the State Bar? Should they be expending resources, sending out e-mails trying to get people to send us e-mails to talk about these districts? And of the thousands of attorneys they e-mailed, I think I heard from three. So it wasn't a successful effort. But someone raised the question--not me again--as to whether or not they should be making that effort. And that is a very fair

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question to ask and a very good discussion to have, and I don't think I'm denigrating the bar if I say that maybe there is a question about whether or not they're actually being moored firmly to where they should be or whether or not they're getting into things that they shouldn't be getting into--with my money, I can't stress strongly enough. But that's a topic for another time. And there's a lot more that could be said on that. So the bar swung into action and put out a map that was different than this one. Instead of dividing Douglas and Sarpy into three districts--parts of three districts--it divided them into four. So if you have a concern about rural representation, what you accomplished with the bar map, as I recall it, was that now Douglas and Sarpy had parts of four judicial districts, not three. So that in no way was better for rural interests by any reasonable measure. So the map is what it is. And from the minute the map came out, there were questions about: Well, how can you do this? You're drawing some attorneys in Omaha out of the district, District 2, where there are vacancies...where there is a vacancy on the Court of Appeals. Well, a Supreme Court district has about 300,000 people in it. Omaha has more than that in it. So then there's no way to put the city of Omaha in one Supreme Court district. Mathematically, that's impossible. I was even then asked the remarkable question: Well, are you sure the principle of one man, one vote applies to the Supreme Court districts? And I said: Because we have retention elections, yes, I'm confident that law would apply to Supreme Court districts as well. So we are where we are, and there were suggestions that we redraw the map for purposes that were sometimes obscure and... [LB699]

SENATOR CARLSON: One minute. [LB699]

SENATOR LAUTENBAUGH: ...sometimes stated otherwise. But the long and the short of it is, any way you draw District 2 there are going to be attorneys in Omaha who don't live within District 2, which is where the vacancy is, but they will live in District 3 or District 4 where someday there will be vacancies. Now I can't help that and no one on the committee could, but to say that somehow we need to do something different to accommodate all the attorneys in Omaha, it simply couldn't be done. And to say that we could have done a better map for rural interests, I don't know how we could do it because we had to pick up population for District 3. So...and to keep the principle of trying to maintain something similar to what we currently have, our options narrowed significantly at that point. And so the map we present to you, I think represents our best effort and was supported unanimously...well, not unanimously, but supported by a huge majority on the committee for that reason. And I would urge you to support it. [LB699]

SENATOR CARLSON: Thank you, Senator Lautenbaugh and Senator Harms. Members, most of you are aware that about 11:00 we'll have an evacuation drill. When the alarm goes off, please maintain your position and listen for instructions. Thank you. Senator Council, you're recognized. [LB699]

SENATOR COUNCIL: Thank you again, Mr. President. And as one of the members of

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this body who also happens to be a member of the bar, I'm reminded of the fact that we all, as members of the bar, are officers of the court, and as such I certainly have an interest and a legitimate interest in the establishment of the lines of the Supreme Court judicial districts. And I would expect the association that I'm a member of to share a concern, perhaps not the same position, but a concern. And I want to make a comment on kind of the blithe remark response to the question I posed with regard to the composition of these districts and whether or not the body, the Legislature, is to take into consideration occupations. And the comparison was to the State Department of Education district, for example, and not taking into consideration the number of teachers in each district. While there is an absolute distinction between the districts drawn for the Nebraska Department of Education, the Nebraska Legislature, Congress, and the Supreme Court judicial districts, and that fundamental difference is you don't have to be a teacher to run for a seat on the Nebraska Department of Education and you don't have to be in a particular occupation to run for a seat in this body, but you absolutely and most assuredly must be a lawyer to be considered for an appointment to the Supreme Court of this state. So in my opinion, which may not be shared by anyone else, and I frankly don't care, but in my opinion the number of attorneys residing in each of these proposed Supreme Court judicial districts does have some relevance to this issue, and that being, if you want to...and Senator Conrad aptly pointed out that one person, one vote really doesn't apply in an appointive position. But if you're talking about comparable concepts, again in my opinion if one of the judicial districts has significantly fewer attorneys than another judicial district, then the judicial district with the fewer number of attorneys, the attorneys in that district have a far greater likelihood of being considered for an appointment...to an appointment to the Supreme Court than a district that has tens of thousands of attorneys present. And that's a concern of mine--again, whether shared by anybody else in this body is of no consequence. But Senator Conrad did make a point with regard to the question I posed on the change in Judicial District 1... [LB699]

SERGEANT AT ARMS: Okay. Patrick. [LB699]

SENATOR COUNCIL: ...and her statement being that the committee's objective was to retain Lancaster County as the core of that Supreme Court district because it is now the core of that Supreme Court district. I just asked you to look at District 2 by comparison. Under the current boundaries... [LB699]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: One minute. [LB699]

SENATOR COUNCIL: ...Douglas County is indeed the core of that judicial district. And, in fact, but for a small portion of Sarpy County, Douglas County comprises the second Supreme Court judicial district. Under the proposal from the Redistricting Committee,

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Douglas County loses most of its coverage. And, in fact, the bulk of it is moved to Judicial District 3. And again, my question is: If the committee's intent was to try to maintain the core of these judicial districts as close to what they are now, I'm having difficulty appreciating the reason why there was so much of Judicial District 2, which is currently almost entirely Douglas County... [LB699]

SPEAKER FLOOD: Time, Senator. [LB699]

SENATOR COUNCIL: Thank you. [LB699]

SPEAKER FLOOD: Thank you, Senator Council. Senator Pirsch. [LB699]

SENATOR PIRSCH: Thank you, Mr. President and members of the body. I will try to be short. I'm not a conspiracy theorist, but we're going to have an alarm go off here, very shortly, so this may be an effort to keep my remarks brief. I appreciate Senator Harms for raising the issue of how this will affect western Nebraska. I think that is a legitimate concern. We need to look into this as we go forward. And it seems to me there is very little science in terms of how these divisions are created, and more of an art. So in a nutshell, I would be interested in exploring how we came about with this particular proposal...proposed map here. With that, I will yield the balance of my time. [LB699]

SPEAKER FLOOD: Senator Langemeier, there are no lights on. You're recognized to close. [LB699]

SENATOR LANGEMEIER: Members, I'd ask for the adoption of LB699 before our drill. Thank you. [LB699]

SPEAKER FLOOD: Members, you've heard the closing. The question before the body is, shall LB699 advance to E&R Initial? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB699]

CLERK: 34 ayes, 0 nays, Mr. President, on the advancement of LB699. [LB699]

SPEAKER FLOOD: LB699 advances to E&R Initial. Mr. Clerk. [LB699]

CLERK: Mr. President, I have some items. Bills read on Final Reading this morning were presented to the Governor at 10:14 a.m. (re LB406, LB413, LB423, LB424, LB453, LB454, LB455, LB458, LB480, LB494, LB502, LB525, LB525A, LB542, LB550, LB573, LB591, LB641, and LB687). A series of study resolutions: Senator Burke Harr, LR249; Senator Janssen, LR250, LR251, LR252, and LR253; Senator Ashford, LR254, LR255, and LR256; all calling for interim studies, all will be referred to the Executive Board. That's all that I had, Mr. President. (Legislative Journal pages 1589-1593.) [LB406 LB413 LB423 LB424 LB453 LB454 LB455 LB458 LB480 LB494 LB502 LB525 LB525A

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SPEAKER FLOOD: Thank you, Mr. Clerk. Members, as you were previously advised, there is an evacuation drill. This is only a drill. This is a test of our evacuation procedures. We will be following a Nebraska State Patrol trooper through the southwest door, immediately to my right at the front of the Chamber. The Chamber will remain secured during our absence. We will return to the Chamber following the drill and resume our legislative day. Again, this is a test of our evacuation procedures. This is only a drill. This is not a real emergency. The Legislature will stand at ease.

EASE

SENATOR COASH PRESIDING

SENATOR COASH: Members, we will return to our agenda starting with General File, LB667A. Mr. Clerk. [LB667A]

CLERK: Mr. President, LB667A is a bill by Senator Flood. (Read title.) [LB667A]

SENATOR COASH: (Gavel) Speaker Flood, you're recognized to open on LB667A. [LB667A]

SPEAKER FLOOD: Good morning, Mr. President. Good morning, members. This is the short A bill that implements provisions of the DUI bill that I introduced, LB667, which was debated earlier this week. Section 1 makes appropriations from the Motor Vehicle Cash Fund, \$116,140 for '11-12 and \$10,350 for '12-13. These funds will be used by Department of Motor Vehicles to modify the ignition interlock permit operator's license and develop a public education campaign. Section 2 makes an appropriation of \$10,000 from the DMV Ignition Interlock Fund for both '11 and '12, and '12 and '13. These funds will be used for ignition interlock aid for people who are indigent and incapable of paying for the cost of installation, removal, or maintenance of the ignition interlock device. So again, the A bill involves DMV cash funds; no General Fund money is being used. I would ask for your support of LB667A. Thank you, Mr. President. [LB667A LB667]

SENATOR COASH: Thank you, Senator Flood. Members, you've heard the opening to LB667A. There are no members wishing to speak. Senator Flood waives closing on LB667A. The question is the advancement of LB667A to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Record, Mr. Clerk. [LB667A]

CLERK: 41 ayes, 0 nays, Mr. President, on the advancement of LB667A. [LB667A]

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SENATOR COASH: LB667A does advance. (Visitors introduced.) Mr. Clerk, we will move to Final Reading. Members should return to their seats in preparation for Final Reading. [LB667A]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Mr. Clerk, the first bill on Final Reading is LB22. [LB22]

CLERK: (Read LB22 on Final Reading.) [LB22]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB22 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB22]

CLERK: (Record vote read, Legislative Journal pages 1594-1595.) 37 ayes, 7 nays, 2 present and not voting, 3 excused and not voting, Mr. President. [LB22]

SPEAKER FLOOD: LB22 passes. Mr. Clerk, LB135. [LB22 LB135]

CLERK: (Read LB135 on Final Reading.) [LB135]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB135 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB135]

CLERK: (Record vote read, Legislative Journal page 1595.) 45 ayes, 0 nays, 1 present and not voting, 3 excused and not voting. [LB135]

SPEAKER FLOOD: LB135 passes. Mr. Clerk, LB165. [LB135 LB165]

CLERK: (Read LB165 on Final Reading.) [LB165]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB165 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB165]

CLERK: (Record vote read, Legislative Journal page 1596.) 42 ayes, 1 nay, 3 present and not voting, 3 excused and not voting, Mr. President. [LB165]

SPEAKER FLOOD: LB165 passes. Mr. Clerk, we now proceed to LB170. The first vote is to suspend the at-large reading. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB165 LB170]

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CLERK: 36 ayes, 1 nay to dispense with the at-large reading. [LB170]

SPEAKER FLOOD: The at-large reading is dispensed with. Please read the title. [LB170]

CLERK: (Read title of LB170.) [LB170]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB170 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB170]

CLERK: (Record vote read, Legislative Journal page 1597.) 44 ayes, 0 nays, 2 present and not voting, 3 excused and not voting. [LB170]

SPEAKER FLOOD: LB170 passes. Mr. Clerk, we now proceed to LB200. [LB170 LB200]

CLERK: (Read LB200 on Final Reading.) [LB200]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB200 pass? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? [LB200]

SENATOR COUNCIL: Mr. President. [LB200]

SPEAKER FLOOD: Senator Council, for what purpose do you rise? [LB200]

SENATOR COUNCIL: I request a call of the house, please. [LB200]

SPEAKER FLOOD: Senator Council, we are under call. This is Final Reading. Senator Council, would you like all members to check in? [LB200]

SENATOR COUNCIL: Yes. [LB200]

SPEAKER FLOOD: Members, please check in by pressing your green button, indicating that you are in the Chamber and available to vote. Senator Lautenbaugh, Senator Cornett, Senator Ken Haar, please return to the Chamber and check in. Senator Lautenbaugh, please return to the Chamber and check in. Senator Council, all members are present or otherwise accounted for. You've agreed to proceed without Senator Lautenbaugh. Is it my understanding you would like a roll call vote in regular order? [LB200]

SENATOR COUNCIL: Yes, please. [LB200]

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SPEAKER FLOOD: A roll call vote in regular order has been requested. Members, the question is, shall LB200 pass? Mr. Clerk, please read the roll in regular order. [LB200]

CLERK: (Roll call vote taken, Legislative Journal pages 1597-1598.) 22 ayes, 18 nays, Mr. President, on the final passage. [LB200]

SPEAKER FLOOD: LB200 does not pass. Mr. Clerk, we now proceed to LB286. [LB200 LB286]

CLERK: (Read LB286 on Final Reading.) [LB286]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB286 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB286]

CLERK: (Record vote read, Legislative Journal pages 1598-1599.) 45 ayes, 0 nays, 4 excused and not voting, Mr. President. [LB286]

SPEAKER FLOOD: LB286 passes. Mr. Clerk, members, while the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LB22, LB135, LB165, LB170, and LB286. We now move to the next item on the agenda, Select File, 2011 committee priority bill. Mr. Clerk. [LB286 LB22 LB135 LB165 LB170]

CLERK: Mr. President, Select File, Senator Larson, I have Enrollment and Review amendments to LB151. (ER125, Legislative Journal page 1432.) [LB151]

SPEAKER FLOOD: Senator Larson, you're recognized for a motion. [LB151]

SENATOR LARSON: Mr. President, I move that the E&R amendments to LB151 be adopted. [LB151]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. The E&R amendments are adopted. Mr. Clerk. [LB151]

CLERK: Mr. President, Senator Lautenbaugh would move to amend with AM1445. (Legislative Journal page 1599.) [LB151]

SPEAKER FLOOD: Senator Lautenbaugh, you're recognized to open with AM1445. [LB151]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. What

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this amendment does is very simple. There is an interest rate set forth in statute that applies to workers' compensation benefits that are unpaid. The rate set forth in statute is 14 percent. I believe that rate was established at a time when that was comparable to the prevailing interest rates. This amendment simply changes it to the judgment rate that the court announces periodically for money that is owed on a judgment. I would ask your approval of the amendment. [LB151]

SPEAKER FLOOD: Senator Lautenbaugh, thank you. Members, you've heard the opening. Senator Lathrop, you're recognized to speak. [LB151]

SENATOR LATHROP: Thank you, colleagues, and good morning, I guess. I stand in opposition to AM1445 and I want to tell you why and a couple of reasons why. Let me begin by sharing with you or reminding you where we were at on LB151. This is the Workers' Comp Court bill. It has a few important things for the Work Comp Court in it, including granting them permission to move from the Capitol to space that they've leased, and it does a couple of other things. It is intended to be a noncontroversial bill. That was the reason we put it out was so that it would contain noncontroversial items, and indeed you'll see that I have an amendment filed because Senator Lautenbaugh has an objection to a portion of LB151 and so I put an amendment up. It might not have gotten there before Senator Lautenbaugh's, but it takes out something, the contempt powers provision, that makes the bill controversial. Senator Lautenbaugh has put this up and told you that it simply changes the interest rate, and I need to give you a little more background. I'm looking at my notes. Okay. This is a...what this bill does or what this amendment would do would be to change a provision in the work comp statute that deals with the interest rate on judgments in the Work Comp Court. Let me tell you what it's tied to and why I think it ought to stay the same and what's going to happen if this amendment gets adopted. That might be important to you. There is an IPP motion that Senator Nordquist has filed. If this motion gets adopted, I intend to lay this bill over, okay? So it's not a simple matter of just saying, well, let's change the interest rate, that's something that somebody out in the lobby asked me to vote for, because if we do, the next thing we're going to take up is an IPP motion and this thing will get laid over and the court bill for the Work Comp Court will not move, okay? And I don't want to stand here and sound like the guy that's being a tough guy, but I will tell you that the Business and Labor Committee has been a little preoccupied, as you might expect, and we haven't had an opportunity to drill down and to look at the work comp bills and this one is sort of getting out of line in the process, if you will, and stepping around the committee process and trying to get something that we didn't have the ability nor the time and perhaps the interest to move from the committee. All right? If it gets adopted, this bill will be laid over and we will not advance the Work Comp Court's court bill, and they need it. Okay? That should be clear. There are reasons of merit that this amendment should not be adopted and let me tell you why. The work comp is generally a controversy between a worker, some guy that punches a time clock, and an insurance company, okay? The insurance company has a great deal of resources, and a worker

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who has been hurt has very few. And what the law says right now is that you can award interest on a judgment in a work comp case in those instances where you have a trial and they don't pay within 30 days like they're supposed to. Now anybody who wants to amend that to a lower rate wants to change the balance. You have to have something there to give these insurance companies incentives to pay people who haven't the money and they've been ordered to receive it, and having a significant interest rate makes that happen in a timely way. They can wait out an individual who doesn't have the resources, whose paycheck has been interrupted, who cannot afford to wait, and there's no penalty if you have a 2 percent interest rate. Now the interest rate that we're talking about here isn't an interest rate unique to this section of the law. It is the property tax delinquent interest rate, okay? So I have a thought here. If you think the interest rate is too high in work comp cases then lower the property tax delinquent interest rate--that's the section it's tied to--and we'll have that conversation. There needs to be a penalty for not paying your property taxes and there needs to be a penalty for not paying a judgment, what you've been ordered to pay by the Workers' Compensation Court within 30 days. That's what this is about. I appreciate the concern Senator Lautenbaugh has for the subject matter. I would love to have been able to give it more treatment, I really would have. The Business and Labor Committee... [LB151]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: Time, Senator. Thank you, Senator Lathrop. Senators wishing to be heard: Krist, Schilz, Lautenbaugh, Nelson, Utter, Fulton, and Lathrop. Senator Krist, you're recognized. [LB151]

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

SENATOR GLOOR: Senator Lathrop, would you yield? [LB151]

SENATOR LATHROP: Yes, I will. [LB151]

SENATOR KRIST: Thank you, Senator, and good morning. I need to get my own head wrapped around this. What we're talking about is if a judgment is rendered and the said business or entity does not want to pay or they go back to court, that money may be tied up for months, as I understand it. Is that correct? [LB151]

SENATOR LATHROP: If they do not pay the judgment amount as ordered, the court can order interest on top of that as a penalty. That's what we're talking about. [LB151]

SENATOR KRIST: Okay. And that interest rate established at 14 percent was indeed at a point in time when, as I recall coming back and trying to buy a house in the early '80s, interest rates were at 16 to 18 percent to buy a house. That's around the time that

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this was established. Is that correct? [LB151]

SENATOR LATHROP: I don't know about the time of it. I do know that it is tied to in the section of law that it is tied to is tied to delinquent property tax interest rate. And the idea there is that in both instances people should be given an incentive to pay in a timely manner, not just compensate somebody for the loss of use of money. [LB151]

SENATOR KRIST: And do I also understand in terms of the scenario here that if we complicate this issue that the movement outside the Capitol Building is going to be complicated with the agency involved. [LB151]

SENATOR LATHROP: That's true. [LB151]

SENATOR KRIST: Okay. Is there a compromise that you would see with this particular amendment? [LB151]

SENATOR LATHROP: Yes. Withdraw it. [LB151]

SENATOR KRIST: Okay. Well, thank you, Senator. (Laugh) With that, I'll yield the rest of my time to Senator Lathrop if he would like to have it. [LB151]

SENATOR GLOOR: Three minutes and five seconds, Senator. [LB151]

SENATOR LATHROP: Colleagues, this was a bill before the Business and Labor Committee. There were a number of bills before the Business and Labor Committee. We would like to have given everything the attention and had the committee counsel work on these issues, bring the parties together to talk about them. Honestly, honestly, our attention, my focus has been on the CIR and I've not had an opportunity to take up work comp bills. I put one out in LB151 that contains noncontroversial subject matter and that was the idea. And I would be standing here if an employee group was trying to amend LB151 as well. It's not because it comes from the insurance company industry that I stand here in opposition. The same would be true if it were some employee group or the trial lawyers. This bill was never intended to be a controversial bill. It contains very important subject matter and we're in a bit of a standoff here, and I have the resolve. There is an amendment to IPP this and we will lay it over if this amendment is adopted. Thank you. [LB151]

SENATOR GLOOR: Thank you, Senator Lathrop. Senator Schilz, you're recognized. [LB151]

SENATOR SCHILZ: Thank you, Mr. President and members of the body. I stand here in support of AM1445 and I was trying to get the number but actually last year, while I served on the Business and Labor Committee, this was a...the amendment there,

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AM1445, was a bill that I introduced. I was trying to get the number of it but I couldn't get it. And I know that last year it didn't make it out of committee too. So I think it has been around a little while. It has had some discussion on it. And I know it's been a super busy year for Senator Lathrop and the Business and Labor Committee, but I think that there has been some questions and answers and discussion on this bill in the past. And I would just urge everyone to support this and I really do hope that Senator Lathrop would not pull it back if it would get through. But thank you, Mr. President. [LB151]

SENATOR GLOOR: Thank you, Senator Schilz. Senator Lautenbaugh, you're recognized. [LB151]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I do want to clarify a few things here. This bill has been around the block. It's been introduced before. It did not come out of committee. Was introduced this year; did not come out of committee. And it is a painfully simple bill. I think you saw my opening was not what you'd call verbose by any measure, but the response to it was instructive because the statement was there needs to be a penalty for these people who don't pay. Ladies and gentlemen, this is not a penalty. Our own Supreme Court has been clear about that. Attorney's fees are penalties. If you don't pay indemnity benefits timely there's a 50 percent penalty on unpaid benefits. Those are penalties and they're substantial. This is an interest rate akin to a judgment interest rate. It was enacted, again, at a time when interest rates were much higher. But it is remarkable to me to say we cannot, after introducing this bill in respective sessions, we cannot even discuss this bill or attach it to a bill, there's no time for us to wrap our minds around this difficult concept of going from 14 percent interest to simply the interest rate that obtains in all other judgments. There's just no way to discuss that and if you try to and if you try to make this move forward after what I guess by any measure would be three years' of effort, we'll just kill the underlying bill, and it's an important underlying bill. You've heard it's an important underlying bill, but it's so important to keep the interest rate at 14 percent for some reason that we're just going to kill the underlying bill if this advances. Please don't let yourselves be held hostage to that type of a tactic. If you believe this has merit, vote for the amendment. I believe it has merit. This is not meant to be a penalty. This was not part of the scheme of penalties that was dreamt up. This is a judgment interest rate and it should reflect the judgment interest rate. And I don't believe...well, it would be unfortunate if the underlying bill were killed because of this because it is an important underlying bill as far as it goes. But this is an important point, too, and this is not the first bill that we've had discussions about this. There's another bill, LB152, where we were told, there was a suggestion, well, maybe we could amend this to that. No, if you amend it to that we'll kill the bill. If you amend it to that, LB152 will die. That is unacceptable. You cannot attach it to LB152. Well, you can't attach it to LB151 either and you can't get it out of committee. So then what are your choices? This is the choice today. If we want to deal with this at long last, this is the vehicle that's available to do it, this is the time to do it. This bill is clearly germane and it is not me

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saying we should kill this underlying bill. It is me saying we should address this issue, we should address this bill which has been in committee twice, had a hearing twice, and it is time to act on it. Thank you, Mr. President. [LB151 LB152]

SENATOR GLOOR: Thank you, Senator Lautenbaugh. The Chair recognizes Senator Nelson. [LB151]

SENATOR NELSON: Thank you, Mr. President and members of the body. I'd like to address a question or two to Senator Lathrop, if he will yield. [LB151]

SENATOR GLOOR: Senator Lathrop, will you yield? [LB151]

SENATOR LATHROP: Yes. [LB151]

SENATOR NELSON: Senator Lathrop, if I understood you correctly, this bill provides or authorizes the move of our Work Comp Court from the Capitol Building to another place. [LB151]

SENATOR LATHROP: Yes, it does. [LB151]

SENATOR NELSON: Where? Could you point out where that is, where that's stated or where that's provided? [LB151]

SENATOR LATHROP: I don't have the line and page, but I can tell you how it's referenced. Generally, the law requires that the Work Comp Court maintain its offices in the Capitol Building... [LB151]

SENATOR NELSON: All right. [LB151]

SENATOR LATHROP: ...or keep its papers and documents and files there, and that's being changed. [LB151]

SENATOR NELSON: Now there's a section in here, it provides that they can do teleconferencing and hold trials so it cuts down on the amount of travel that they have to do to other parts of the state. Is that correct? [LB151]

SENATOR LATHROP: Yes, equally noncontroversial. [LB151]

SENATOR NELSON: But it's not that section there that provides for the move. [LB151]

SENATOR LATHROP: No. The whole bill, as it sits right now, accomplishes a number of things. [LB151]

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SENATOR NELSON: Uh-huh. All right. Thank you. Thank you, Senator. You know this...I don't think we can categorize this as a noncontroversial bill because it's been controversial for some time, and I can remember when the court came to Appropriations asking, you know, if it was necessary with our permission. I think they're paying for this out of money that they've set aside for a number of years. But it's my understanding that unless we pass this bill at this time they would not have permission to move. They could not move. It's also my understanding they've already leased space in anticipation of the move. So where are we here? I think, you know, if this is a good deal that they should be moving then we better move this bill along at this time; otherwise, we're going to be paying rent, not that we have to pay rent in the Capitol here but in some other space. And frankly, I've had some misgivings about the move in the first place and I think originally one of the judges of the court did. He may be in a neutral position now. But it seems strange to me that we should go to this expense and pay rent in another location when they have the quarters here in the tower. The argument seems to be that, well, it's difficult for handicapped people to go up and down the elevator. I don't think that happens all that often that there's someone in a wheelchair, and if there is that case then certainly the hearing could be moved to another location here in the Capitol and not precipitate a move. I can't imagine, you know, that there isn't space sufficient here in the Capitol, but perhaps that's an argument for the other day...another day, rather. I have to echo what Senator Lautenbaugh says here. Fourteen percent is an exceedingly high rate. If it's not thought of as a penalty then it's certainly too high in light of our conditions at this time and this needs to be changed. There's...and I should ask perhaps Senator Louden...or Senator Lathrop one other question here before I proceed, if he would yield to another question. I should have taken care of this earlier, Senator. [LB151]

SENATOR GLOOR: Senator Lathrop, would you yield? [LB151]

SENATOR LATHROP: Yes. [LB151]

SENATOR GLOOR: On page 1 of the E&R amendments, on line 12, it talks about 50 percent shall be added for waiting time for all delinquent payments after 30 days' notice had been given. Is this the nature of a penalty? [LB151]

SENATOR LATHROP: That would be a penalty for not paying within 30 days... [LB151]

SENATOR NELSON: Right. [LB151]

SENATOR LATHROP: ...of an uncontroverted obligation. [LB151]

SENATOR NELSON: Well, but the penalty would continue for every monthly payment, would it not, if I read it correctly? I mean as month to month goes by and it's not paid, they're going to have to pay an additional 50 percent. [LB151]

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SENATOR LATHROP: It doesn't compound though. [LB151]

SENATOR NELSON: It does not...sorry? [LB151]

SENATOR LATHROP: It does not compound so you don't add 50 percent to the penalty and it grows. [LB151]

SENATOR NELSON: No, but... [LB151]

SENATOR GLOOR: One minute. [LB151]

SENATOR NELSON: Well, all right, we read that perhaps a little differently. It seems to me this is an appropriate time to bring this interest rate to a reasonable level. We could argue perhaps whether 2 percent is enough but it's enough for a lot of other instances. And if it's not a penalty, if the attorney's fees are going to be the penalty and perhaps paying an additional half for a period of time, I think that ought to be sufficient. So I would certainly argue in favor of AM1445. I think this is an appropriate time to change it and it doesn't seem appropriate to me to IPP this bill just because of this simple amendment. Thank you, Mr. President. [LB151]

SENATOR GLOOR: Thank you, Senator Nelson. Senators in the speaking queue: Utter, Fulton, Lathrop, Ken Haar, Carlson, and Krist. Senator Utter, you're recognized. [LB151]

SENATOR UTTER: Thank you very much, Mr. President and colleagues. I guess I knew this was going to happen, that sooner or later I was probably going to have a small disagreement with my colleague, Senator Lathrop, but I rise to question the advisability of maintaining an interest rate this high, particularly in this environment. It seems to me like not only with real estate taxes, with anything else that we charge interest rates on, that interest rates should reflect the cost of money in the environment that we are in at that present time. An interest rate of 14 percent in today's environment is extremely high. It's my understanding that when this interest rate was set, it was kind of a market rate. And so it has kind of gone from being a fair market rate to a punitive rate, I think in my opinion, and so I think it should fall back to a judgment. I think Senator Lautenbaugh's bill does make some sense and it makes sense from a couple of standpoints. Number one, it will reflect the changes in the rate of interest as it is periodically set, and it will represent the true cost of money. Seems to me like the punitive part of it, if a punitive part is necessary, should not be the interest rates but should be in some other form in the award somehow or another. So I rise in support of Senator Lautenbaugh's bill (sic), AM1445. It seems to me like this is a reasonable approach to take. Thank you, Mr. President. [LB151]

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SENATOR GLOOR: Thank you, Senator Utter. Senator Fulton, you're recognized. [LB151]

SENATOR FULTON: Thank you, Mr. President. First, would Senator Lathrop yield to a question? [LB151]

SENATOR GLOOR: Senator Lathrop, would you yield? [LB151]

SENATOR LATHROP: Yes. [LB151]

SENATOR FULTON: Senator, this actually has to do with the provision of the bill that is...is this the three-judge panel? Is that part... [LB151]

SENATOR LATHROP: This...you got the right bill. It's part of... [LB151]

SENATOR FULTON: Okay. [LB151]

SENATOR LATHROP: ...the underlying LB151, yes, sir. [LB151]

SENATOR FULTON: There was...and I, as you can well appreciate, have been consumed with probably similar issues that you're consumed with. I was e-mailed by someone, a constituent, who works in this area asking why we were repealing the three-judge panel, and you touched on it a little bit in General File but, granted, it's not exactly the same subject matter but it is subject of LB151. Before I do anything on AM1445, I guess I'd ask is that something that was discussed? Is that something that was probed? I'm hearing on the one hand that there's... [LB151]

SENATOR LATHROP: Yes. Yes. [LB151]

SENATOR FULTON: Okay. [LB151]

SENATOR LATHROP: We did in committee, we took testimony on repealing the three-judge panel, and I think I know who you're talking about when you talk about a constituent because we did hear one attorney express some concerns. Senator Lautenbaugh had some concern and I think indicated to me that he was not going to press his concern. But in terms of the insurance company groups, the groups that are in front of the Workers' Compensation Court, I think that the general consensus was that by eliminating the three-judge panel we actually take the three-judge panel from trial judges down there and make them sit and review a different judge's work and that ties up their time. And by eliminating the three-judge appeal and allowing people to go straight to the Court of Appeals, we free up the time of the trial judges and we probably have a number of people who are not going to appeal that would appeal to the three-judge panel because it is very simple, simple, simple process. You file a paper,

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you show up, you argue it and you tie up the court's time looking at the record. [LB151]

SENATOR FULTON: Is it possible that if the three-judge panel is able to, for lack of a better term, weed out cases that could otherwise take up money, is it possible that by eliminating the three-judge panel there will be less expertise exercised generally with respect to a case and, number two, end up clogging the system which indeed we're hoping to unclog? Is that a potentiality? [LB151]

SENATOR LATHROP: Great question. Great question. And that's why I went to the Chief Justice and asked him, what's your view on this, and he was okay with it. Their concern isn't that we will take the same number of appeals to the three-judge panel and move them up a step to the Court of Appeals. They think there will be a lot of people who will appeal, some of whom were appealing from the three-judge decisions anyway, and they will end up in the Court of Appeals and that in the end we'll just have more people accepting the judgment of the trial judge in the Work Comp Court. [LB151]

SENATOR FULTON: Okay. I appreciate that opportunity. Now to this amendment. I guess just quickly, two questions: Who pays the 14 percent and who receives the 14 percent? [LB151]

SENATOR LATHROP: The 14 percent is paid by someone who didn't pay the judgment in a timely manner and it goes to the person who's been injured. [LB151]

SENATOR FULTON: Does it go to the person who's been injured or does it go to his counsel? [LB151]

SENATOR LATHROP: No, to the person that's been hurt. [LB151]

SENATOR FULTON: So we'd be saying that the 14 percent...am I correct in saying that the 14 percent is ultimately paid by a business, or is this a 14 percent that's apprehended... [LB151]

SENATOR LATHROP: Typically an insurance company. [LB151]

SENATOR FULTON: Okay. Then directly from the insurance company what could be concluded there is that it's reflected in the price that ends up getting paid by businesses for workers' compensation insurance. Is that accurate? [LB151]

SENATOR LATHROP: Only time it would affect them is if they're not paying judgments in a timely manner. [LB151]

SENATOR FULTON: Okay. [LB151]

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SENATOR LATHROP: So if they don't pay...this only affects the few people that don't pay judgments in a timely manner. [LB151]

SENATOR GLOOR: One minute. [LB151]

SENATOR FULTON: Okay. Then the 14 percent is received by the injured worker. Is that directly? [LB151]

SENATOR LATHROP: True. [LB151]

SENATOR FULTON: That's accurate. [LB151]

SENATOR LATHROP: Yes, that's accurate. [LB151]

SENATOR FULTON: Okay. And lastly, if there's time, it doesn't...this is where I'm losing your rationale. This is tied to delinquent property taxes. The rate is tied to delinquent property taxes. Was that done consciously... [LB151]

SENATOR LATHROP: Yes. [LB151]

SENATOR FULTON: ...and why? [LB151]

SENATOR LATHROP: It was deliberate. They could have, when they did this, I think this was an amendment done in the '80s. You've heard people say that. They could have tied it to the judgment interest rate and chose to tie it to the delinquent property tax rate, and if you look at the statute, we the Legislature set that rate. If we think 14 percent is too high for the judgment rate, what we ought to be doing is changing the rate found in 45-104.01. [LB151]

SENATOR FULTON: Okay. [LB151]

SENATOR GLOOR: Time. [LB151]

SENATOR FULTON: Thank you, Mr. President. [LB151]

SENATOR GLOOR: Thank you, Senators. Senator Lathrop, you are up next. [LB151]

SENATOR LATHROP: Thank you, Mr. President and colleagues. And I may have just made the point I intended to make by answering Senator Fulton's questions. Here is how the interest rate works in work comp. It doesn't say in the statute the interest rate shall be 14 percent. It says, and you'll find this on page 3 of the bill, that the interest rate shall be equal to the rate of interest allowed per annum under Section 45-104.01 as such rate may from time to time be adjusted by the Legislature. So if we want to adjust

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the interest rate or if we want to affect the interest rate here that applies to work comp cases, we can go into 45-104.01 that we have. We set that rate as a Legislature. Okay. If we want to...if we think that rate is too high, we can go in there and change it. But it's the same rate that applies to delinquent property taxes, okay, and if you think it's too high I'll support you on whatever you want to make it. But I don't think we should carve out work comp cases and say we're going to treat you differently, because the principle is the same and it goes back to a very simple proposition. You have an insurance company with a great deal of resources and a guy who hasn't been working, okay, and all this does is provide incentive for the insurance company to pay the guy that's been hurt, what he's got coming as determined in a courtroom. This isn't just a guy that sends a claim in and didn't get paid. It's after there's been a hearing, after there's been a judgment. It's incentive to make the payment and that's kind of what they do with the delinquent property tax interest rate. But if you think it's too high, I'll join you in lowering it. But let's not carve out work comp claims and let the interest rate on delinquent property taxes go on at 14 percent if you think that's oppressive and it violates your conscience. Let's change the interest rate in 45-104.01 and I'll probably vote for it if that's what you'd like to do. But what we're doing with this amendment is not touching the interest rate. That doesn't change. That's still going to be 14 percent or whatever we've let it remain at. What we're doing is carving out work comp, and there's a reason we use the property tax delinquency interest rate and that's to provide incentive, make sure the people pay in a timely manner. And if you think that's a little too much incentive, we can take a bill up on 45-104 and lower the rate. It's that simple. I'll probably support it. So with that, again, I would urge you to oppose AM1445. Thank you. [LB151]

SENATOR GLOOR: Thank you, Senator Lathrop. Senator Ken Haar, you're recognized. [LB151]

SENATOR HAAR: Mr. President and members of the body. We learn and we learn when we're in here, and I want at least in the written record I did not intend to vote for LB22. I was distracted with a heated discussion, in heated discussion with my desk mate. We're working on Keystone pipeline. And so I just wanted that in the record. Apparently there could have also been a...I could have put out the motion to reconsider to get...make the same point, but I just want that for the record. I hope it won't happen too many more times in the future that I push the wrong button. Thank you very much. [LB151 LB22]

SENATOR GLOOR: Thank you, Senator Haar. Senator Carlson, you're recognized. [LB151]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. First of all, I want to indicate the respect that I have for Senator Lathrop. I respect his knowledge, I respect his demeanor. I really respect and admire the time and effort that

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he's put in working on the CIR bill, along with Senator Utter and Senator Ashford and others. I have some kind of an idea of the amount of time and effort that's gone in that direction and it's been huge. I also respect the contribution that he's made to the Ag Committee this session, even though he's had no experience and doesn't pretend to be any kind of an expert on ag issues. But now I want to talk about LB151. This is a bill to change the location, the hearing, and the document provisions of the Workers' Comp Court. And it also has a provision in there for telephonic and videoconferencing to be permissible for hearings under certain circumstances. I think that LB151 is an important bill. I think it should be passed. At the same time, unless I have completely missed something, we in the committee have not voted on whether to put out LB184 or not. I can understand a little bit of Senator Lathrop's view that maybe this amendment isn't germane to the bill. I think it's a reasonable amendment in terms of interest rate and a fair interest rate. If we go back to the 1980s, when this interest rate was put into effect, I remember back then that mortgage rates were 17 percent at that time, and it hasn't been changed. And so as a committee member, I'm sitting here struggling with listening to debate and I don't think I don't want to see this bill held hostage because of dialogue back and forth and a difference of opinion with Senators Lautenbaugh and Senator Lathrop. How much time do I have, Mr. President? [LB151 LB184]

SENATOR GLOOR: Two minutes thirty-five seconds. [LB151]

SENATOR CARLSON: And appreciate Senator Lathrop listening. If he's got anything he'd want to say on this, I'd yield the balance of my time to Senator Lathrop. [LB151]

SENATOR GLOOR: Senator Lathrop, 2 minutes 25 seconds. [LB151]

SENATOR LATHROP: Just to say thank you, Senator Carlson, and I...we are. Right now LB151 is hostage to AM1445. I wish that wasn't the case. I made it very clear before that motion got filed that that was going to be the case and, frankly, I had requests to put other things on it. And when Senator Lautenbaugh...the irony is when he had an objection to the contempt powers of the Work Comp Court, I put an amendment in to take it out so that this bill would be clean of controversy, and now we're going to put AM1445 in it and that makes it a controversial bill and it will end up laid over on an IPP motion if we proceed down this road, and I don't want to do that. I'm the one with a gun to my head and I'm going to tell you that I have no other alternative. Thank you. [LB151]

SENATOR GLOOR: Thank you, Senator Lathrop. Senator Krist, you're recognized. [LB151]

SENATOR KRIST: Thank you again, Mr. President. Colleagues, I don't really know what is fair or not fair but I know that based upon the committee amendment that the annual interest rate for someone who does...for an insurance company or a private business

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that is so big that they don't need an insurance company is tied to a section of law, 45-104.01. So we've been dancing around it. Let me read it to you: "Unless otherwise specifically provided, the interest rate assessed on delinquent payments of any taxes or special assessments owing to any political subdivision of the state of Nebraska shall be assessed at a rate of 14 percent per annum," laws 1981, dah, dah, dah, dah, dah. "Annotations: This statutory provision does not mandate the assessment of interest on delinquent taxes; rather, it sets the rate at which such interest will be assessed." So here is my question: As taxpayers, if we don't pay on time they're going to hit us with 14 percent interest. And we're not going to apply that same standard to a big business or an insurance company that decides not to pay a workmen's comp claim? Yo, listen, you're going to get charged 14 percent interest by law. So what are we talking about here? To me, a pilot, it goes down to one thing. If it's good for the goose, good for the gander. If it's good for me to pay 14 percent taxes for not paying on time then it's good for the insurance company, it's good for the big business to do that. I've heard arguments that this was all established in the '80s and I kind of segued with that in the question I had to Senator Lathrop earlier. But, folks, if AM1445 is supposed to make things fair then let's make it fair for everybody. Let's change the statute in law that says 14 percent because, gosh knows, I don't want to pay 14 percent because I don't want to pay the government. Or if it's meant to be what I think it's meant to be, that is if you don't pay then we're going to make you pay for his lawyer fees and on top of that we're going to give you 14 percent, that's a bit punitive and it's a bit stiff. But my goodness, it's a dual standard. As a private citizen, I'm charged 14 percent for not paying on time, but they're not. So my point is if we want to change the statute, as Senator Lathrop said earlier, with all due respect to my colleague and friend, Senator Lautenbaugh, if we want to change the 14 percent then let's change the 14 percent across the board. LB151 needs to be passed. It needs to be as clean as possible because there are people that need it to be passed in order for them not to physically be required to have a presence here in the Capitol and move on with their business life. So let's separate, I think, the two issues here. If we're talking about not making this punitive and insurance companies can't afford to pay the 14 percent then neither can I. Thank you, Mr. President. [LB151]

SENATOR GLOOR: Thank you, Senator Krist. (Visitors introduced.) Senators in the speaking queue: Howard, Wallman, Fulton, Lautenbaugh, Bloomfield, and Nelson. The Chair recognizes Senator Howard. [LB151]

SENATOR HOWARD: Thank you, Mr. President and members. Bravo, Senator Krist. I stand to applaud you. Absolutely, we're not going to make businesses pay, let them off the hook, we need them, we're desperate to have them in this state, but the average citizen, we're going to make you pay. That's just the way it is here. We reduce your education allotment. If you've got more kids in school, in the classrooms, you know, live with it because that's the way it is here. We're going to give our money, we're going to give our breaks, we're going to give our favoritism, we're going to give our support to

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businesses. Pretty soon maybe this will just be a state full of businesses and people will move out to someplace a little more favorable. If Senator Lautenbaugh would yield, I have a question or two. I'm sorry, Senator Lathrop. (Laugh) [LB151]

SENATOR GLOOR: Senator Lathrop, would you yield? [LB151]

SENATOR LATHROP: We're confused all the time. [LB151]

SENATOR HOWARD: Yeah. No, Senator Lathrop is... [LB151]

SENATOR LATHROP: Yes, I'd be happy to answer your question. [LB151]

SENATOR HOWARD: Thank you so much. If I could better understand this, the 14 percent interest rate that's up for discussion right now, that's only paid when the claim is delayed or I mean that doesn't start day one when a claim is filed, does it? [LB151]

SENATOR LATHROP: No, it's if there is a judgment entered. [LB151]

SENATOR HOWARD: All right. So let me see, here's somebody who is injured, I assume on the job, who's really needing money to keep a roof over their head and probably to feed their family, and here's the big business company who it doesn't help them any to pay a claim on a timely basis. That's really not particularly to their benefit. So the 14 percent is really an incentive for them to move along in what they should be doing anyway. Am I kind of reading that correctly? [LB151]

SENATOR LATHROP: Yes. [LB151]

SENATOR HOWARD: Well, I'm just astonished that we would like to help them a little more, make it a little easier on the insurance companies so that, you know, they're not quite suffering as much because the poor person over here who's been injured, he can deal with it. He can deal with it because he's just your average middle-class person and heaven knows he's used to it by this time. I stand in support of you. I hope you don't have to exercise the IPP prerogative here, but I just find it just astonishing that again and again and again we hear let's give the breaks to the business, the companies, the insurance because, you know what, they deserve it. Thank you, Senator Lathrop. [LB151]

SENATOR GLOOR: Thank you, Senator Howard. Senator Wallman, you're recognized. [LB151]

SENATOR WALLMAN: Thank you, Mr. President and members of the body. Would Senator Lautenbaugh yield to a question? [LB151]

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SENATOR GLOOR: Senator Lautenbaugh, would you yield? [LB151]

SENATOR LAUTENBAUGH: If you really mean me then, yes, I will yield. [LB151]

SENATOR WALLMAN: Yes, I mean you. Do you have any idea how many cases this affects per year? [LB151]

SENATOR LAUTENBAUGH: No. [LB151]

SENATOR WALLMAN: So...and is it the state's fault some of these cases get drug on or... [LB151]

SENATOR LAUTENBAUGH: Well, and it's not really a question even of dragging on. The interest can be awarded in an award but backdated to when a court determines there's no reasonable controversy. Now the determinations of reasonable controversy aren't without controversy sometimes too so...but I can't say that it's specifically tied to the state delaying anything that would bring this circumstance about. I'll have to think on that. [LB151]

SENATOR WALLMAN: Thank you. And I'd yield the rest of my time to Senator Lathrop, if he'd like. [LB151]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Senator Lathrop waives his opportunity to use the rest of your time. Senator Fulton, you are recognized. [LB151]

SENATOR FULTON: Thank you, Mr. President. And I will ask Senator Lathrop if he would yield. [LB151]

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

SENATOR LATHROP: Yes. [LB151]

SENATOR FULTON: Okay. The 14 percent that we're talking about here, I think I have a better understanding now. And so I want to hear your rationale as to why you don't want this changed. The 14 percent is calculated back to this point that Senator Lautenbaugh pointed out that there was no controversy, but it occurs over the course of an appeal usually. Is that correct, the elapsing of time is due to an appeal that has been filed? [LB151]

SENATOR LATHROP: Not necessarily. [LB151]

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SENATOR FULTON: Well, would you say most of the time that's the case? [LB151]

SENATOR LATHROP: No. It can be...the statute says that you can award interest in those occasions when you can award attorney fees, and you can award attorney fees whenever the employer refuses payment of compensation or medical payments subject to Section 48-120. [LB151]

SENATOR FULTON: Is it common practice for businesses to refuse payment? I guess why would a business refuse payment? [LB151]

SENATOR LATHROP: This is going to sound like I'm...why would they? They have a tremendous economic advantage over a guy who's lost his job to an injury. And if you don't pay somebody and they're about to lose their house, their car, their family life is a mess and you offer them a lump sum settlement that's not the full value of a case, they're more likely to take it. Is that what happens? I've seen it happen. Is that a common practice? Do they all do it? No. Okay? [LB151]

SENATOR FULTON: I guess that's my question, Senator. [LB151]

SENATOR LATHROP: But the ones that are paying on time don't have a concern about this. [LB151]

SENATOR FULTON: What's the common practice? It seems to me that this 14 percent is calculated based on a chronology, and a chronology begins at the point at which a business says, I will not yield to one who has authority to cause me to yield. And so that chronology is going to begin at some point. It seems to me that this is going to be most of the time during the course of appeal, and so that's what I'm asking here, most of the time. [LB151]

SENATOR LATHROP: It's not uncommon in an appeal. If the employer appeals and they do not get a reduction in the award, attorney fees can be ordered. [LB151]

SENATOR FULTON: Okay. So is that the case most of the time or am I hearing that most of the time the businesses are just trying to exercise an economic advantage over a worker? [LB151]

SENATOR LATHROP: No, I wouldn't say that this is about one particular practice where they're trying to take advantage, okay? I wouldn't say that. I think what...the system is loaded to provide incentive for employers to pay where there isn't a controversy. That's what it is and the public policy gets back to the difference in economic positions of an injured worker versus an insurance company. [LB151]

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SENATOR FULTON: What I'm hearing, you practice in this area I think. Well, you have some experience in this area. [LB151]

SENATOR LATHROP: I have a good deal of experience but it certainly isn't my specialty. [LB151]

SENATOR FULTON: And there is some experience out here on the floor in this area anyway. I'm trying to apprehend this from the vantage of a taxpayer, from a small business owner, and ultimately as a senator. And if I'm hearing that most of the time these businesses are simply disobeying an order and hoping to wait out the worker, well, that's a problem. [LB151]

SENATOR LATHROP: Senator Fulton, I would not tell you that that is...that the entire industry and every self-insured has a business practice that is trying to take advantage of these people. [LB151]

SENATOR FULTON: Well, Senator, I'm trying to choose my language carefully, logically. I'm not saying every, I'm asking for most, because certainly one can find one instance to disqualify that which would otherwise be every. And so if most of the time this is due to the appeal that is followed by a business, then it seems to me that a 14 percent interest rate is going to provide a disincentive to appeal, and if that's what our policy is doing then it seems to me we need to change this,... [LB151]

SPEAKER FLOOD: One minute. [LB151]

SENATOR FULTON: ...regardless whether it's been tied to property taxes. Because to say that one isn't paying his property taxes and comparing that to the policy where a business wants to appeal, those are different things. And so if I'm hearing that most of the time businesses are just acting such that they can exercise an economic advantage, that's going to inform my decision here. But I don't think that's the case. That's why I'm asking you. [LB151]

SENATOR LATHROP: And I would tell you that I can't tell you that most of the time or more times than not that this is about we have more money, we'll wait you out, Mr. Small Guy. I can't tell you that, Senator Fulton, that that happens. But does it happen? It certainly does. [LB151]

SENATOR FULTON: Okay. Fair enough. Thank you, Senator. This is what I think is happening here. This 14 percent payment is due to...is time and it's not normally the case where a business is simply going to say to a judge or one who is an authority to order to pay, I'm just not going to pay. It seems to me that... [LB151]

SPEAKER FLOOD: Time, Senator. [LB151]

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SENATOR FULTON: Thank you, Mr. President. [LB151]

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

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. In some ways we're getting a little far afield here and I'm going to try to bring it back, I hope. We've heard the argument that what's good for the goose is good for the gander. That only works if you're talking about geese and ganders. These are not the same thing and I don't see anyone yet articulating why a workers' compensation judgment is like unpaid taxes. And now we've gone down this rabbit hole of...I don't want to...well, I won't use that word but I'll say, oh, why are we helping out the bad insurance companies, etcetera, etcetera. Here's how I've seen this work in practice, if we're going to have actual illustrations. An insurance company is defending a suit and says there's a reasonable controversy as to whether you were injured at work at all. The trial judge agreed and said I'll find benefits but there certainly was a controversy as to whether or not you were injured at work at all. The appellate three-judge panel disagreed. That's not even correct. The Court of Appeals disagreed and said, no, there was no reasonable controversy; you owe interest all the way back to when we believe reasonable controversy stopped. Now there's a controversy about whether or not there's reasonable controversy. That's when you get penalties is if there's no reasonable controversy and you withhold payment. Penalties, by the way, as stated by our Supreme Court, are attorney's fees and the 50 percent penalty on unpaid indemnity benefits. Penalties do not include an interest. The court has been clear this is not a penalty. So what we have here is a rate that's tied to property taxes and I've heard no one articulate why these are geese and ganders, if we will; why the property tax that is unpaid is so much like workers' compensation benefits that are unpaid that the same interest rate should obtain. That doesn't make any sense to me. I don't know why they picked this rate. I know interest rates were high at the time so it probably didn't seem offensive at the time when it was picked to tie it to the property tax rate, but it is not accurate to say, well, if taxpayers pay this why shouldn't workers' compensation carriers pay this. And don't be fooled, many employers are self-insured so you're not really saying, well, why shouldn't the insurance company pay it. You're saying why shouldn't the employer pay it. Well, why shouldn't the employer just pay everything? Why don't we go down that road for a little bit if we're going to stand up here and talk about, oh gee, we're helping the insurance company again? Well, that's not what we're doing here. We are restoring something that I think would be a little bit more of a measured, reasonable interest rate on unpaid judgments just as surely as someone who was injured in a car accident would obtain on a judgment once they've obtained it. This is someone who's injured in a work-related accident. Awarding interest on unpaid money is meant to compensate for the time value of the money. You don't get in a time machine and give them interest to tide them over until they get the money. They get the

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interest at the same time they get the money, ultimately. Again, the court has been clear. The penalties are meant to be attorney's fees and a 50 percent penalty on unpaid indemnity benefits for the time you're off work or the disability you have. So this is not meant to be a penalty. It is tied to something that has nothing to do with. This is not a case where the argument what's good for the goose is good for the gander should apply unless you're going to say that every rate should be 14 percent because the property tax rate is 14 percent, because I think every other interest rate in the world has as much in common with property taxes as the workers' compensation interest rate has with property taxes. They are very different things. Whether they were tied to this as a matter of convenience or as some kind of compromise or whatever the case may be, they do not reflect market realities for interest rates currently and have not for years. And... [LB151]

SPEAKER FLOOD: One minute. [LB151]

SENATOR LAUTENBAUGH: ...it was said that this money goes directly to the plaintiffs. It was my understanding that there are others who are compensated out of it as well out of all funds recovered on a compensation matter. I usually do the defense side or did when I did these types of cases so I don't know that to be true, but I believe that there is some division of this interest. I also know that this is not, again, what's meant to be the penalty to compensate someone for unpaid benefits. This is meant to represent the time value of money. That's why we call it interest, not a penalty of 14 percent. We call it interest. And the rate is out of whack with the current reality. That's what this amendment seeks to address. Thank you, Mr. President. [LB151]

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

SENATOR NELSON: Thank you, Mr. President and members of the body. Senator Lautenbaugh has done a good job of stating what I was about to state. I'm going to amplify it a little bit. We are talking basically about two separate statutes here and the one that the bill now imposes on unpaid payments is 45-104.01 Interest. This is the one that's used. Let me read the title: "Interest; political subdivisions; delinquent taxes; special assessments." And this is the statute that was read into the record by Senator Krist and it says: Unless specifically otherwise provided, the interest rates assessed on delinquent payments of any taxes or special assessments owing to any political subdivision shall be assessed at a rate of 14 percent. And that's all that it applies to, this 14 percent delinquent taxes. Now let's take a look at the statute that Senator Lautenbaugh wants to put in here in lieu of the one I just read: 45-103: Interest; judgments; decrees; and the rate. And it talks about judgment and decrees and says what that will be after July 20, 2002, and then it goes into a formula which perhaps amounts to 2 or 3 percent. What do we have here in the Compensation Court? We don't have a delinquent tax. We have an order. We have a decree, a judgment. It's actually

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called an award I think in Compensation Court, but it amounts to the same thing. There has been a determination that a certain amount must be paid just as any court, any county court might determine, if you're there as a defendant, that you owe \$100 to the plaintiff, and if you don't pay it there's interest that you have to pay. That's the same thing we have here with the Compensation Court. So it's a goose and gander, just as Senator Lautenbaugh, they're two different things. It's apples and oranges. We've got a statute that applies an effective interest rate to judgments, decrees, awards; we have one that is specifically related to delinquent taxes. And I, too, I wonder why it is that they're both 14 percent. But I still continue to argue that 14 percent is a penalty, it's not interest on monies due. I think it needs to be changed. I think this is an appropriate time to change it. I don't see what possible harm it can do to the bill, to LB151 that we have here before us. I simply don't understand why it would be necessary to pull that bill. That seems a very unusual procedure at this time when we're simply trying to be a little more fair in the amount of interest that's going to be assessed and we ought to relate it to the statute then, 103 that relates to judgments and orders and awards. Thank you, Mr. President. [LB151]

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

SENATOR CARLSON: Thank you, Mr. President, members of the Legislature. In listening to remarks and debate this morning, I just felt like I had to stand up and speak once more. We talk about business and too often hear comments about how bad business is. In Nebraska, we talk about the good life. The good life I think is made up of a healthy family where there is security, where there's peaceful living, where there's harmony in our surroundings, where there are happy neighborhoods. Now I believe there's a big factor in making this environment possible, this kind of situation possible that we'd all like to live in, that we'd all like to have as a part of the good life. It's a good job. It's a job you like. It's a job you look forward to going to. And who provides the most meaningful, satisfying jobs in the United States and numerically the most jobs in the country? It's business. It's big business. It's small business. Now those of us on the floor that like to call ourselves conservative like to blame government when the economy goes into recession, and I think those in our body who tend to be liberal like to blame big or wealthy business for the same thing. But I'd like us to remember the best, the best tax dollars come from business salaries and profits. As the source of dollars disintegrates, the entire system is at risk. We can grow private business to escape recession but growing government is not the answer to solving a recession. And as we put blame in different directions, let's remember the real source of economic security which is a big factor in the kind of environment, neighborhood, peaceful living that we all like to enjoy. Thank you, Mr. President. [LB151]

SPEAKER FLOOD: Thank you, Senator. Senator Krist, you are recognized. And, Senator Krist, this is your final time. [LB151]

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SENATOR KRIST: Thank you, Mr. President. This is my third time. Thank you very much. I have to ask both of the lawyers or any lawyer in the room specifically for definition before I make my mind up on AM1445, and if that sounds like I'm rebounding, I'm not. I'm trying to evaluate what this is that we are talking about. I wonder if Senator Lautenbaugh would yield to a question. [LB151]

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

SENATOR LAUTENBAUGH: Yes, I will. [LB151]

SENATOR KRIST: Section 45-104.01, which I read into the record before, the title of the category is interest; political subdivisions; delinquent taxes; and special assessments. Is any part of LB151 content any one of those categories? [LB151]

SENATOR LAUTENBAUGH: No. [LB151]

SENATOR KRIST: Okay. Section 45-103, which is partly what Senator Nelson read in, has interest, judgments, decrees, rates and exceptions. So is it your assessment that this penalty or, I'm sorry, that this interest paid would be one of those? [LB151]

SENATOR LAUTENBAUGH: If not, and it would depend on how any one of those is defined, it is clearly akin to those without necessarily being...and I should have paid better attention when you were reading the three categories and I should probably read the statute. [LB151]

SENATOR KRIST: Interest, judgments, decrees, rate, or exceptions. [LB151]

SENATOR LAUTENBAUGH: Well, this would certainly operate as a judgment. You could transfer it to district court and collect it in that way. So I would say, yes, a workers' compensation award is a judgment. [LB151]

SENATOR KRIST: Okay. And, Mr. President--thank you, Senator Lautenbaugh--if Senator Burke Harr would yield to a question. [LB151]

SPEAKER FLOOD: Senator Harr, Burke Harr, will you yield to a question from Senator Krist? [LB151]

SENATOR HARR: Yes. [LB151]

SENATOR KRIST: Same question. Section 45-104.01 lists the category by definition which is exactly what we currently have, interest, political subdivisions, delinquent taxes, or special assessments. Does any of those categories qualify for this kind of

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interest? [LB151]

SENATOR HARR: Well, the answer is those titles are put on there not by us lawmakers. Those were put on by someone else and they really don't have much standing. I mean they're not... [LB151]

SENATOR KRIST: These are statutes we follow, are they not? [LB151]

SENATOR HARR: They are statutes we follow and we control the wording, but the titles of those we do not control. [LB151]

SENATOR KRIST: Well, I'm having a hard time as a layman here figuring out where the interest rate that we charge for the percentage that we're talking about would actually fall in which one of these... [LB151]

SENATOR HARR: Yeah. [LB151]

SENATOR KRIST: ...because, in essence, that is the question for me. Does it fall into 45-104.01, which is interest, political subdivisions, delinquent taxes, or special assessments, or does it fall into 45-103, interest, judgment, decrees, rates, exceptions? Because if we can come to that answer, I think we can vote one way or another on whether AM1445 has relevance. [LB151]

SENATOR HARR: And the answer is it falls under 45-104.01 because we said it falls under 45-104.01. The fact that there's a title on there is completely irrelevant. That's there to help us, guide us, but that's not the determining factor. The determining factor are the words that are contained within the statute and those statutes say you go to 45-104.01 is the answer. [LB151]

SENATOR KRIST: So your judgment is that we...that 45-103, which is what AM1445 tells us to go to, is a better fit than 45-104, and we can make that decision. [LB151]

SENATOR HARR: I'm not saying one is better than the other. What I'm saying is we should be careful not to go by the titles of the statutes. The titles are there to guide us. They are not there to tell us what to do. We are told what to do by the actual words in the statutes. [LB151]

SENATOR KRIST: Well, I think I'm more confused than I was before the first time I spoke, but thank you, Mr. President. [LB151]

SPEAKER FLOOD: Thank you, Senator Krist. Senator Campbell, you are recognized. [LB151]

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SENATOR CAMPBELL: Thank you, Mr. President. Colleagues, I just want to make a couple of comments, listening to the discussion here, and that is I think 14 percent is too high but I have to tell you I also think that's too high in the property tax. For years I've watched, when I was on the county board, I watched large, large, outside-of-Nebraska companies come in and buy up delinquent taxes. That's a whole different issue but it's a major issue that has come...that has bubbled up here. So the section dealing with what should be the interest rate on a delinquent property tax is probably one that we should take up and we should discuss, but I'm not sure that we need...I'm not sure that it would be in any of the county's best interests across the state to say we're just going to change that today. Want to make that perfectly clear. I think both are too high and both need to be relooked at. I'd also like to comment that I don't believe that in the situation we're talking about here it is always some large corporation or large insurance company that is involved in these cases. I come from a family business and we will celebrate 100 years next year in the state of Nebraska. You have a lot of small businesspeople across the state who, when we come to looking at workers' comp issues, they affect our companies, and for some of us across the state, may be self-insured. So I don't want to leave the impression that this is only a bunch of large corporations and insurance people who care about this issue. There are a lot of small businesses across the state who care about this issue. The third point is I keep going around talking to people trying to find out if there's some other index that this should be tied to or how do we deal with this. I think there's a number of senators in the body who we understand the importance of keeping LB151, the underlying, but we also very much do understand the concept that Senator Lautenbaugh is trying to bring forward. And I hope we continue the discussion to see if we can come to some issue of compromise which a favorable index can be looked at. Thank you, Mr. President. [LB151]

SPEAKER FLOOD: Thank you, Senator Campbell. Senator Burke Harr, you are recognized. [LB151]

SENATOR HARR: Thank you, Mr. Speaker, and I'll be brief. This debate is good. I like it. If you really are against, if you think we need to change the amount, as Senator Campbell said, we need to introduce an amendment or a bill next year, probably the best way, 45-104.01, and probably be, get put in front of a different committee and you'll have a better chance. But we are here today on AM1445 and, guess what, Senator Lathrop has said we vote on this bill, we pass this amendment and LB151 is going to be postponed. Now what does that do? Well, it puts a lot of people in a very bad spot. What it does is this bill, the Workers' Comp Court has signed a lease and that lease did not contain a provision subject to legislative approval that the new lease would go forward. What that lease did, it starts July 1, August 1, something, I can't remember now. But what happens is they're still stuck in this building. We're paying for property we're not using. Now that's ridiculous. We're playing games here, guys. Let's stop this. Let's vote on this bill. This bill, you know, we have better ways of presenting this bill, this amendment. Let's vote on it, up or down, and then let's see the chips fall where they

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may. Thank you very much. [LB151]

SPEAKER FLOOD: Thank you, Senator Burke Harr. Senator Nordquist, you are recognized. [LB151]

SENATOR NORDQUIST: Thank you, Mr. President and members. I think we need to look at the section in context of other sections we have when we're talking about tax code. And there really are three standards here. We have the time interest of money on one end, we have penalties on one end, and then in the middle here we have an incentive to...a policy to incentivize prompt payment or payment on time. In our tax code, whether it's sales tax, inheritance tax, income tax, there are penalties if you fail to file or understate or I was just going through some of those, inheritance taxes, there's a penalty in 77-2010. In 77-2703 there's a penalty for sales tax underpayment or failing to file in an appropriate manner. This section that we're talking about here is not a penalty. It's to incentivize people to pay in a timely manner. And I think, you know, Senator Carlson mentioned the good life and what it takes to have a good life, the security and the financial security of a job, but that same financial security should apply to Nebraskans who are injured on the job. That's the good life too, that if you are harmed on the job and there is a judgment, that that should be paid in a timely manner so you, as an injured worker, have financial security as well. And that's what this is about. It's about incentivizing timely payment so those workers that are injured are able to continue on with their lives the best they can and receive the judgment that they're entitled to. So I think we need to look at this section in context of everything else. It's not intended to be a penalty. It's intended to incentivize payment for property taxes and for this. I assume that's why the legislators that enacted this in the '80s did that, because they wanted to incentivize payment in a timely manner, not penalize somebody. That's what this...this section does not use the word "penalty," like many other sections of our tax code. Thank you, Mr. President. [LB151]

SPEAKER FLOOD: Thank you, Senator Nordquist. Senator Smith, you're recognized. [LB151]

SENATOR SMITH: Thank you, Mr. President, and good afternoon, colleagues. I stand in support of LB151. That bill came out of committee with the full support of the committee. I think it's a good bill and I would hate to see that it be IPPed and I do stand in support of that bill. I also have to stand in support of the concept of what Senator Lautenbaugh is doing with AM1445 because the interest rate imposed under Section 45-104.01 is excessive at 14 percent. Under 45-103, the rate that this amendment seeks is 2 percentage points above the 26-week T-bill rate, or roughly, as Senator Nelson pointed out, it's between 2 and 3 percent. It's about 2.2 percent. So seven times the rate, under what exists today, over what is being proposed is excessive. And I believe I heard Senator Lathrop, he was talking about, you know, being open to look at the Section 45-104.01. He seemed to imply that he, too, thought that it may be a good

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argument that the 14 percent is excessive. I don't mean to put words in his mouth but from that conversation he had, he seemed to imply that, you know, that there might be some wiggle room there. But what we have before us right now is AM1445 that would help to address this situation. And I really do appreciate Senator Campbell's words of moderation, and happy birthday on your business' 100 years in business. What we want to make certain we do here is something that is fair, that's not overreaching, that is not unreasonable, and I believe that getting this interest rate in line with other judgments is not an unreasonable request. You know, I would certainly...you know, if we can get this passed and, you know, in subsequent years if we want to come back and make certain these types of judgments are something, you know, different than the rate that's in 45-103, I would certainly be happy to help out with that if we wanted to make that somewhere in between the 2 percentage points above T-bill rate and the 14 percent punitive rate. But, you know, I think what we need to do here is look for something that's reasonable and I don't believe what Senator Lautenbaugh is requesting here is unreasonable. Thank you, Mr. President. [LB151]

SPEAKER FLOOD: Thank you, Senator Smith. There are no other lights on. Senator Lautenbaugh, you are recognized to close. [LB151]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. And I think we've done a good job of keeping the lid on, on this debate, when sometimes these issues can become contentious, but I think it's important that we proceed ahead. And we were talk...this was described as playing games somehow. I'm sorry if you don't like this particular amendment. I appreciate Senator Nordquist reinforcing what the court has said, this is not meant to be a penalty, it's a compensation for unpaid...an unpaid judgment, basically. We have a rate for that. We already have a rate for that. This is, for reasons that have not been articulated, somehow tied to property taxes, even though they are not similar. This bill is on...this amendment represents a bill that's been introduced twice before and has not made it out of committee, so there it sits. But yet, it is somehow described as a game to attach it to a bill that is obviously germane out on the floor. There's another bill that it would have been probably germane to and were told, if you attach it to that, that bill gets killed too. There's a point at which there should be a vehicle that allows things to come from committees even if the committee isn't putting them out. And sometimes things do need to actually be discussed on the floor and addressed, and this is one of those topics. I don't think we've heard anything about how, well, it will come back next year then or it will see a more favorable treatment next year or maybe there some compromise right in the middle. No. What the response is, is this bill is going to languish in committee and if you try to attach it to this bill we're going to kill the underlying bill. Well, there's a part of me that doesn't believe that because the underlying bill is important. And again, I kind of resent having my amendment being described as game playing when, you know, maybe that accusation can be thrown around in other directions, so we don't need to go down that road. This complies with the rules. It's a bill that's been introduced twice. It's a bill that has merit. And again, there

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are penalties that exist under the workers' compensation law for wrongfully not paying benefits. This is not a penalty. This is interest. If it was meant to be a penalty they would have said we're going to have a 14 percent penalty. No. They said interest will apply and they picked the rate that, for whatever reason, is attached to unpaid property taxes. That's not what this is so it doesn't make any sense to say, well, sauce for the goose, sauce for the gander. If I have to pay 14 percent of my unpaid property taxes, someone should pay 14 percent on a workers' compensation judgment. That doesn't follow at all. You might as well say, well, someone should have to pay 14 percent on a late car payment or someone should have to pay 14 percent on anything, because these two things have nothing in common except a reference in statute. And while Senator Harr was technically correct that the titles of the statute are not the statutes, I think it's very telling that one of them that my amendment would point us towards actually references judgments, which is what workers' compensation awards are, and the other one references political subdivisions and property taxes. And when you get down into the body of those bills, it doesn't...there is not language there, I'm sorry, into those statutes. When you get down in the body of those statutes, there is not language there that provides any more comfort and says, oh yeah, this property tax one is clearly related to workers' compensation. It isn't there. You can't find it. This would restore something to the prevailing market rate and it's probably overdue to do. This is entirely within our procedures, entirely appropriate to do, and I would request your support for the underlying...or, I'm sorry, for the amendment, AM1445. [LB151]

SPEAKER FLOOD: Members, you've heard the closing on Senator Lautenbaugh's AM1445. The question before the body is, shall AM1445 be adopted? All those in favor vote aye; all those opposed vote nay. Senator Lautenbaugh, for what purpose do you rise? [LB151]

SENATOR LAUTENBAUGH: I would request a call of the house. [LB151]

SPEAKER FLOOD: Members, there has been a request to place the house under call. The question before the body is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record please, Mr. Clerk. [LB151]

CLERK: 38 ayes, 0 nays, Mr. President, to place the house under call. [LB151]

SPEAKER FLOOD: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Ashford, Council, Fulton, Pirsch, Cornett, please return to the Chamber and record your presence. The house is under call. Senator Fulton, Senator Ashford, Senator Pirsch, please return to the Chamber and record your presence. Senator Lautenbaugh, all members are present or otherwise accounted for. How did you wish to proceed? [LB151]

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SENATOR LAUTENBAUGH: A roll call vote, reverse order, please. [LB151]

SPEAKER FLOOD: A roll call vote in reverse order has been requested. Members, the question before the body is, shall AM1445 be adopted? Mr. Clerk, please read the roll in reverse order. [LB151]

CLERK: (Roll call vote taken, Legislative Journal pages 1599-1600.) 24 ayes, 14... [LB151]

SPEAKER FLOOD: We are under call, members. Please remain seated. [LB151]

CLERK: 24 ayes, 14 nays, Mr. President, on the amendment. [LB151]

SPEAKER FLOOD: AM1445 fails. I raise the call. [LB151]

CLERK: Mr. President, the next amendment I have to the bill, Senator Lathrop, AM1454. (Legislative Journal page 1600.) [LB151]

SPEAKER FLOOD: Members, before we proceed to the next amendment, a quick note regarding scheduling. Instead of going back into session on Tuesday at 10:00 a.m. it is my intent to go back in at 9:00 a.m., so we have a 9:00 a.m. start next Tuesday. In addition, we will work from 9:00 a.m. to noon. We will not work in the afternoon on Tuesday. We will not work in the afternoon on Tuesday. Mr. Clerk, as you stated, there is another amendment, AM1454. Senator Lathrop, you're recognized to open on AM1454. [LB151]

SENATOR LATHROP: Thank you, Mr. President. Colleagues, thank you very much. AM1454 strikes the sections that provide the Workers' Compensation Court with contempt powers. It clarifies the emergency clause only applies to sections pertaining to the location of the Workers' Compensation Court. [LB151]

SPEAKER FLOOD: (Gavel) [LB151]

SENATOR LATHROP: AM1454 additionally clarifies that cases pending on the operative date that have had a hearing on the merits will not be affected by the changes made to the three-judge panel process. I ask for your support. And I might add that this is, in some cases or primarily, an accommodation of Senator Lautenbaugh who had a concern with the provision in the bill that provided contempt powers to the Work Comp Court. I'd ask for your support of AM1454. Thank you. [LB151]

SPEAKER FLOOD: Thank you, Senator Lathrop. There are no other lights on. Senator Lathrop, you are recognized to close. Senator Lathrop waives closing. The question

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before the body is, shall AM1454 be adopted? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB151]

CLERK: 33 ayes, 1 nay, Mr. President, on the adoption of Senator Lathrop's amendment. [LB151]

SPEAKER FLOOD: Senator Lathrop's amendment is adopted. Mr. Clerk. [LB151]

CLERK: Nothing further on the bill, Mr. President. [LB151]

SPEAKER FLOOD: Senator Larson for a motion. [LB151]

SENATOR LARSON: Mr. President, I move that LB151 be advanced to E&R for engrossing. [LB151]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. All those opposed say nay. LB151 advances to E&R for engrossing. Mr. Clerk, nothing further? Items for the record? [LB151]

CLERK: Mr. President, Senator Pirsch has an amendment to LB675 to be printed. New study resolutions: Senator Mello, LR257. Bills read on Final Reading later this morning and this afternoon were presented to the Governor at 11:55. (Re LB22, LB135, LB165, LB170, and LB286.) Senator Ashford would move to reconsider the vote on the final passage of LB200; that will be laid over. Senator Coash would like to add his name to LB629. (Legislative Journal pages 1601-1602.) [LB675 LR257 LB22 LB135 LB165 LB170 LB286 LB200 LB629]

And, Mr. President, Senator Wightman would move to adjourn the body until Tuesday morning, May 17, at 9:00. And excuse me, Mr. President. I might indicate Natural Resources is meeting now in Room 2022; Natural Resources in Room 2022 now. That's all that I have, Mr. President. Motion to adjourn.

SPEAKER FLOOD: Thank you, Mr. Clerk. Members, you've heard the motion to adjourn until next Tuesday at 9:00 a.m. All those in favor say aye. Those opposed say nay. We are adjourned. (Gavel)