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Floor Debate
March 15, 2012

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SENATOR CARLSON PRESIDING

SENATOR CARLSON: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the forty-fourth day of the One Hundred Second Legislature, Second Session. Our chaplain for today is Reverend Vern Olsen from Fullerton, serving churches in both Senator Sullivan's and Senator Dubas' district. Please rise.

REVEREND OLSEN: (Prayer offered.)

SENATOR CARLSON: Thank you, Reverend Olsen. I call to order the forty-fourth day of the One Hundred Second Legislature, Second Session. Senators, please record your presence. Members, we'd like to acknowledge Congressman Adrian Smith is in the Chamber this morning; he's underneath the south balcony. Welcome. Mr. Clerk, please record.

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

SENATOR CARLSON: Thank you, Mr. Clerk. Are there any corrections for the Journal?

CLERK: I have no corrections.

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

CLERK: Mr. President, at this time I have neither messages, reports, nor announcements for the body.

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

CLERK: Mr. President, the first bill, LB902. Senator Nordquist, would you please? Senator, there are E&R amendments. Thank you. (ER213, Legislative Journal page 922.) [LB902]

SENATOR CARLSON: Senator Nordquist for a motion. [LB902]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB902. [LB902]

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SENATOR CARLSON: You've heard the motion. All in favor say aye. Opposed, nay. Motion carries. [LB902]

CLERK: Mr. President, Senator Burke Harr would move to amend with AM2397. (Legislative Journal page 931.) [LB902]

SENATOR CARLSON: Senator Harr, you're recognized to open on your amendment. And you might give us a summary of the bill from yesterday. [LB902]

SENATOR HARR: Call me "Ned Ryerson" from Groundhog Day, but I feel like we were just here yesterday talking about LB902. (Laughter) First, I want to thank you for advancing LB902 yesterday. I'm going to be talking about LB902 for a little bit longer than normal because I have another amendment that's upstairs being drafted as we speak that I believe will replace AM2397. So as you may recall yesterday, LB902 has to do with sales financing, purchasing leases. This is something that is done across the state. As you may recall, this bill was brought because of a reinterpretation by the Department of Revenue, a change in a regulation. Too often I hear on the national stage there is no regulatory certainty; this lack of certainty is stifling growth and confidence in our government. I also hear taxes are too high. This amendment allows us--and the amendment I'm bringing will also do the same--allows us to not raise taxes, to return certainty to state law, and to help our political subdivisions. Again, as of yesterday, no taxes have been assessed, which means currently no taxes are due. With my amendment... [LB902]

SENATOR CARLSON: (Gavel) [LB902]

SENATOR HARR: ...there will be no negative fiscal impact to the state. Let me repeat that again. LB902 and the amendment to come will have no negative fiscal impact on the state. These...this type of financing is done for the reason to avoid taxes. If we don't pass LB902 and the amendment, there will be tax consequences. I'm a novice researcher. I went around and researched what senators would be affected if this bill were...if we...if the Department of Revenue decides to retroactively go after back sales tax. And I read: Senator Adams, Senator Ashford, Senator Avery, Senator Bloomfield, Senator Campbell, Senator Carlson, Senator Christensen, Senator Coash, Senator Conrad, Senator Cook, Senator Cornett, Senator Council, Senator Dubas, Senator Fischer, Speaker Flood, Senator Fulton, Senator Gloor, Senator Ken Haar, Senator Hadley, Senator Hansen, Senator Harms, Senator Burke Harr, Senator Heidemann, Senator Howard, Senator Karpisek, Senator Krist, Senator Lambert--I think you guys are getting the clue--Senator Langemeier, Senator Larson, Senator Lathrop--yes, I am delaying while I'm waiting for something to come from upstairs--Senator Lautenbaugh, Senator Loudon, Senator McCoy, Senator McGill, Senator Mello, Senator Nelson, Senator Nordquist, Senator Pahls, Senator Pirsch, Senator Price, Senator Schilz,

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Senator Schumacher, Senator Seiler, Senator Smith, Senator Sullivan, Senator Wallman, Senator Wightman. Two senators out there did not hear their names. Two senators will not be affected if this is enforced retroactively. This is my novice investigation; I have found the two senators, Senator Brasch and Senator Janssen. Otherwise, members of the Legislature, your district has a possible tax liability. What that means in common-sense terms: You have a political subdivision in your district that will owe sales tax to the state. Let me repeat that. You will have sales tax by a political subdivision in your district owed the state. So not only have we cut city and county aid, we are now taxing our political subdivisions. That is bad public policy. It's something I don't think we want to do. And so what we're doing is I have an amendment I'll be introducing shortly, and what it says is that LB902 is a clarification of what's currently statute. And what that means is LB902 does not change the law as much as clarify it. We had an IRS opinion last summer that said these type of transactions are taxable, never been said before, never believed before, never been challenged before. But based on a 1999 LB271, they've now determined that these are taxable. Well, I say they aren't. And what I'm going to do is introduce an amendment that says...we have an E clause; this sales tax will be moving from an operative date of July 1 of this year to immediately, with the E clause. And I will say it is the belief and it is the intent of the Legislature that LB902 is clarification language, so that we give some guidance to, one, the northeast corner, the Governor's Office, and, two, to the Department of Revenue, who I think is looking to us for some guidance, so that we can say this type of legislation has always been intended by the Legislature to be tax free. It is currently tax free and we're clarifying to say, gosh, darn it, it will be, until we change the law, tax free. So thank you very much. With that, I will ask you...I will go ahead and pull AM2397 and introduce my new amendment. [LB902]

SENATOR CARLSON: The amendment is withdrawn. There are senators wishing to speak on LB902. (Visitors introduced.) Senators wishing to speak include Pahls, Cornett, Lautenbaugh, Schumacher. Senator Pahls, you're recognized. [LB902]

SENATOR PAHLS: Thank you, Mr. President, members of the body. I think, Senator, you need more time, so I'm going to give you some of my thoughts. You know, we're always talking about what other states are doing, almost on anything we do. And a lot of times we mention South Dakota. And just, please, let me read just something from what the governor of South Dakota just vetoed, has vetoed a measure that seeks to exempt straw and other livestock bedding from the state sales tax. You hear that? Our neighboring state, the governor vetoed a sales tax exemption. Praise be. In his veto message, the governor says such tax exemptions hurt state revenue. South Dakota applies its sales tax to a broad range of goods and services to provide a reliable source of state revenue. He says the sales tax has remained low, at 4 percent, because the tax applies to nearly everything. So gone is the argument on tax exemptions that we're the only state that doesn't do some of that stuff. So I do praise the governor of South Dakota for wanting to say, let's stop it, because we talk about revenue, and as I stated

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yesterday, tax exemptions do give somebody revenue, but not to the state. I think we still need some time, so I'm going to refer...the other day I talked to Senator Dubas about a Nebraska Supreme Court ruling on sales tax exemptions. And I do hope the public out there, you are listening to this, because if you don't like what this body does and if you think you're unfairly not given an exemption... [LB902]

SENATOR CARLSON: (Gavel) [LB902]

SENATOR PAHLS: Thank you. If you do not feel that you have been given an exemption that you deserve, I suggest you take it to the courts. Because if we are going to give exemptions, we need to be fair. And here's an example of one ruling that was ruled on June 5, 2009. The Nebraska Supreme Court handed down a ruling that created another sales tax exemption. In this ruling, the Supreme Court reversed the department's denial of a claim and required the department to refund sales tax to Concrete Industries. This is what they said: It makes very little sense to exempt assembled machinery from sales and use tax, and to exempt each and every part of that machinery from sales tax and use tax if it's purchased to replace an original part but to impose a tax on the purchase of the same part when they are purchased or assembled the machinery in the first place. We hold that the sale of manufacturing machinery and equipment includes the sales of items that are assembled to make such equipment. So, Farm Bureau, I know you have an issue; take a look, see what...the desires that you need. Take them to court. Again, I must commend the Department of Revenue, because they are causing us to go back and double-check on some of the statutes. We are continually to accept them and making sure that the exemptions stay there. But some of these statutes are so loosely written that the interpretation of them is suspect. Again, this is the Concrete Industries. They had I say the gumption to go to court and establish the fact that they were being assessed sales taxes and they should not have been. [LB902]

SENATOR CARLSON: One minute. [LB902]

SENATOR PAHLS: Thank you. And they won. So, Nebraska public out there, if you think something should be exempted...for example, you wash your clothes, you don't pay taxes; you wash your car, you pay taxes. Start looking at some of these things. I'm asking the public out there to start taking a look at and say, wow, why is this being exempted and this is not? As you go down the list, you can find out there are a number of things, a number of things that we do tax and a like that we do not tax. Senator Burke (sic)...I guess he's still... [LB902]

SENATOR CARLSON: Time. [LB902]

SENATOR PAHLS: Thank you. [LB902]

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SENATOR CARLSON: Thank you, Senator Pahls. (Visitors introduced.) Members, please keep the conversation at a lower level, in preference to the speakers on the floor. We have Senator Cornett and Senator Schumacher wishing to speak. Senator Cornett, you're recognized. [LB902]

SENATOR CORNETT: Thank you, Mr. President and members of the body. As you can see, Senator Harr and I are in a rather animated discussion. There are a number of problems in making this bill retroactive. The Revenue Committee amended the retroactivity out of it because it is generally not good tax policy to make a tax liability not owed retroactively. Senator Harr, on the mike, said that it is the municipalities that owe this money. We have a number of legal opinions saying it is not the municipalities that owe this money on these projects but the contractors, private contractors, that will owe this tax liability if they are assessed, if they are assessed. Let me stress that. The Department of Revenue, on most of these cases--matter of fact, up until date the majority of them--has not went back, when we have changed a policy, and audited people. But I'm not speaking for the department; I'm not speaking for the Tax Commissioner, who has worked very hard on this issue also. What I am saying is I want everyone to be very clear in here, what the retroactivity does is we forgive private companies' tax liability for three years backwards. There are a couple of reasons that this is not a good policy idea. The first one was brought up to me in a meeting with the Department of Revenue and the Fiscal Office. We continually get requests for exemptions from corporations, in this body and in the Revenue Committee. We continually change our policy based on what people say they need to either come to this state or stay in this state. We have a bill that we have already passed to Final Reading like this: a company that resides in this state that says they will leave if we don't give them an exemption. Now we start making tax policy based retroactively. And now the company says, well, you have to change our exemption status; oh, and we don't mean today, we mean make it three years retroactive. And now we're paying out tax liability...or we are refunding companies money to stay in this state. This is a bad precedent to set. I understand where Senator Harr is coming from. He is going to argue that these taxes have not been assessed, and that is something I completely agree with. They have not been assessed. That doesn't mean they will be assessed. But we generally in this body do not make retroactive tax policy. We were arguing about the wheel tax last year and making it retroactive to January 1. It is an occupation tax. And, trust me, everyone on the Revenue Committee has argued one way and another about what an occupation tax is. And I've been on the record saying: If it looks like a duck and it walks like a duck, then it's probably a duck. But an occupation tax really isn't a tax which allowed us to do that. Senator Harr is going to argue that it was the companies, under the ordinance, that were ultimately liable. We refunded... [LB902]

SENATOR CARLSON: One minute. [LB902]

SENATOR CORNETT: ...taxpayers' money with that, people paying in a wheel tax. Yes,

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the argument is that ultimately the company was liable for that money. But it was the people that were paying it in, because the city of Omaha did not put in a clause saying that the people were the ones that were going to be fined but the corporations that they worked for. I can't speak for the Department of Revenue, but I know, and Senator Harr knows this, they have been working as hard as he and I have been on this issue. And, frankly, LB902 has become probably my biggest stressor this year on whether...how we make it, how we don't do it, whether we make it retroactive or prospective. If this amendment passes, I will probably make a motion to return this bill to committee. It is that important. And I believe every one of the Revenue Committee...well... [LB902]

SENATOR CARLSON: Time. [LB902]

SENATOR CORNETT: ...I can't speak for...thank you. [LB902]

SENATOR CARLSON: Thank you, Senator Cornett. Senator Schumacher, you're recognized. [LB902]

SENATOR SCHUMACHER: Thank you, Mr. President. Members of the body, I want to address two issues. One is the one that Senator Cornett was just raising. There is such a line of people and businesses that want exemptions, preferences, and everything else. If all of a sudden we decide to play Santa Claus and go back retroactively, that line is going to get longer and the threats of "we will leave the state unless you give us something" is going to expand exponentially and we won't have enough time to deal with all those bills if we were to advance them to the floor. That being said, there was a second issue that is raised by this particular... [LB902]

SENATOR CARLSON: (Gavel) [LB902]

SENATOR SCHUMACHER: ...financing mechanism that gave some concern in Revenue Committee. And we tentatively decided that it would be best addressed here, by an amendment here, rather than tacking it on in Revenue Committee under the time constraints we were. That is, you might ask, why do people, cities, do things this way? I mean, why do they set up a corporation, a nonprofit corporation, put city officials on the board and officers of it, then have that corporation take out bonds, for which the taxpayers are ultimately liable, to build a building or an improvement that they in turn can lease to the city over a period of time, and, in the end, the city ends up owning the property? Well, one of the big reasons you go through such commotions rather than just issuing a bond and building the building yourself as a city is because, under some circumstances, most circumstances, you can avoid taking the bonding issue to the voters and bypass the requirement that bonded indebtedness go past the voters first. That is a concern. Now, there's a good reason, in some cases, to do it. It takes time and expense and delay in order to take a measure to the voters. And if you take a small measure, like the remodeling of a city building or the acquisition of a city building, to the

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voters, you may cause yourself problems. On the other hand, if there's a big, massive project that is out there and the voters should have a chance to vote on, you shouldn't be able to do indirectly what you cannot do directly: an example, the ballpark in Omaha. At the same time, an example of the city building in Norfolk you probably should be able to do. Now, I had an amendment drafted to deal with that, but Bill Drafting pointed out what later became a fairly legitimate criticism, and that was that we opened up another chapter of the section of the statutes. So they're tweaking that so that that criticism is not there, and it'll be brought up and proposed as soon as we get it here. But it basically says that if the project is such that it exceeds a threshold amount, which is defined in the amendment, you cannot get these exemptions from property and sales tax unless you've first taken it to the voters for an approval. And I think that's a good measure. I believe it's going to have support from the Revenue Committee. And it addresses a problem that...our policy has been you take big things to the voters, you take bonds to the voters, because they're the ones stuck with the bill, and you should not be able to squirrel around that by using this mechanism, by creating kind of a dummy corporation in the middle. Thank you, Mr. President. [LB902]

SENATOR CARLSON: Thank you, Senator Schumacher. Senator Flood, you are recognized. [LB902]

SPEAKER FLOOD: Thank you, Senator Carlson. Members, good morning. This bill, I believe, should be passed in its current form. Senator Harr has raised concerns regarding what the policy of this state has been. I understand he has an amendment, one of which I have not had the chance to read. Something I want to call your attention to that I think is operative in this whole process is Article VIII, Section 4, of the Nebraska Constitution, where it says: The Legislature shall have no power to release or discharge any city, county, township, town, or district whatever, or the inhabitants thereof, or any corporation, or the property therein, from their or its proportionate share of taxes to be levied for state purposes, or due any municipal corporation, nor shall commutation for such taxes be authorized in any form whatever. That's in our Nebraska Constitution. I think we should read that, we should understand it, we should set the state policy and understand that any attempt to clarify what the law was or is, is a matter for a separate branch of government. But we can go forward and we can acknowledge where we're at. I make no representation on what the status of the law was before, because I think it's legitimate to say that cities, counties, community colleges, municipal corporations had relied on this process being tax exempt. I think that's a fair statement. I think Senator Harr would agree with that. I just want everybody to really focus on Article VIII, Section 4, of the Nebraska Constitution, because I do believe it is an authority here that must be respected. Thank you. [LB902]

SENATOR CARLSON: Thank you, Senator Flood. Mr. Clerk. [LB902]

CLERK: Mr. President, Senator Schumacher would move to amend the bill with

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AM2461. (Legislative Journal page 932.) [LB902]

SENATOR CARLSON: Senator Schumacher, you're recognized to open on the amendment. [LB902]

SENATOR SCHUMACHER: Thank you, Mr. President. Members of the body, I tried covering some of this a moment ago in the interest of saving us some time. The amendment is now up from Bill Drafting, and what it basically provides is that you do not get the property tax exemption, you do not get the sales tax exemption on a project that exceeds 0.4 percent of the total actual value of real and personal property of the subdivision and unless you have run it past the voters and gotten their approval. If you want to use this dummy corporation in the middle of things and not have these exemptions, you don't have to run it past the voters. But if you want the exemptions of LB902 on a big project, you need to run it past the voters. Now, how is "big project" defined? How did the 0.4 percent come to be the threshold level? It was basically this. We looked at two situations. One was the city of Norfolk: they did a acquisition of a building, they fixed up the building for purposes of being their city hall. And it was generally felt that that was okay; they should not have to run that past the vote of the people. That ran about 0.2 percent of Norfolk's valuation. So we basically doubled that. On the other hand, there was a fair amount of sentiment that the ballpark in Omaha should have been ran past the voters. And that was a big enough project that if you were going to put somebody on the hook for several hundred million dollars, you should run it past the voters first, just as we intended when you said you shouldn't be able to do a bonded indebtedness for these things unless it was run past the voters, and that that was too high. And under this standard, that would need to be run past the voters if you were going to get these tax bonuses. So it's a very simple thing. It sets a standard that if you're going to get the benefit of LB902 on a big project that exceeds 0.4 percent of your total valuation, you need to run it past the voters, because the voters are the people on the hook to pay the bill. Thank you. [LB902]

SENATOR CARLSON: Thank you, Senator Schumacher. Members, you've heard the opening on AM2461. Senators wishing to speak are Senators Mello, Cornett, Burke Harr, and Hadley. Senator Mello, you're recognized. [LB902]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. Would Senator Cornett yield to a question? [LB902]

SENATOR CARLSON: Senator Cornett, would you yield? [LB902]

SENATOR CORNETT: Yes, Senator Mello. [LB902]

SENATOR MELLO: Senator Cornett, has there been any municipality or contractor, so far to date in regard to this issue surrounding LB902, has any municipality or contractor

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been assessed by the Department of Revenue for any of these potential back taxes?
[LB902]

SENATOR CORNETT: I do not believe so. [LB902]

SENATOR MELLO: All right. Thank you, Senator Cornett. Colleagues, I raise that question because I'm trying to have conversation with Senator Harr, Senator Cornett, and Speaker Flood, because I think with what Senator Harr is seeking to try to do can be done, but at the end of the day it comes down to a matter of semantics and how we would put that in state statute. If no municipality or contractor on behalf of a municipality has been assessed these taxes at this moment in time, March 15, 2012, I believe we can put an amendment to LB902 that would be able to say that if a municipality or contractor has not been assessed by the time of the enactment with an emergency clause in LB902, that they would ultimately not be assessed those taxes and not have to pay them. Now, I asked Senator Cornett that question because it's something that we're having, I think, an ongoing conversation off the mike with. And I know Senator Harr is trying to work on a separate amendment that ultimately tries to do maybe something somewhat similar. And the question comes down to whether or not it's retroactive. And I think, legally, we can make the argument that it's not retroactive if the taxes have not been assessed yet. So, colleagues, I, to some extent, I'll continue this conversation with Senator Cornett off the mike, as well as Speaker Flood and Senator Harr. I think, as we're debating this issue for the next 45 minutes, that's the question that I'd like to see get answered by someone, whether it's Senator Cornett, someone from the Revenue Committee. The question is, if you haven't been assessed the tax, how can it be retroactive when we pass a law that states if you haven't been assessed that tax, then why should you pay it? That's the question that I hope to get an answer for...get an answer from, from Senator Harr, Senator Cornett, because it's not retroactive if you've not been assessed the tax yet. Thank you, Mr. President. [LB902]

SENATOR CARLSON: Thank you, Senator Mello. Senator Cornett, you're recognized.
[LB902]

SENATOR CORNETT: Thank you very much, Mr. President and members of the body. We're getting into some very, very complex areas of tax law. And Speaker Flood and I were just discussing the fact that he doesn't believe that we can do what Senator Mello is suggesting, because it would still be a commutation of tax. Just by saying that we will not assess them as the passage of the law doesn't mean they haven't incurred a tax liability. Now, the department can determine whether they are going to audit or assess people. That is not what we determine in here. We determine what is taxable and what is not taxable, when we tax and when we make a choice not to tax. But as Senator Flood has said, the constitution is very clear on what a commutation of tax is and what we can and can't do. Aside from being bad policy, looking at something retroactively, which I thank Senator Harr for removing...and I'm more than happy to work with Senator

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Mello on this issue and to work with the Tax Commissioner on this, but I do not believe that we can say that you can't assess something that is owed as...going backward. You have statute of limitations and issues with the statutes in place and our constitution. With that, though, I would be happy to continue working with Senator Harr and Senator Mello on this issue. Thank you. [LB902]

SENATOR CARLSON: Thank you, Senator Cornett. (Visitors introduced.) Proceeding with debate, Senator Burke Harr, you're recognized. [LB902]

SENATOR HARR: Thank you, Mr. President. We're having a healthy debate today on the floor, and it's kind of exciting. And I appreciate everyone paying attention. I feel like I need to clarify the record a little bit. Nowhere...I withdrew my amendment on retroactivity. But let's clarify the record, and let's be clear, to beat a dead horse. No taxes have been assessed. Since no taxes have been assessed, how the heck do we know who the taxes are going to? There is a question. Senator Cornett said there's a legal opinion. But let's admit it, it's just that, an opinion. There's no statement of fact as of yet as to who ultimately would be responsible. She did mention earlier about LB81 last year on the wheel tax; said, well, the corporation would ultimately be responsible, but it was the people who had to pay that tax. Well, guess what, ladies and gentlemen, if a tax is assessed and a corporation--let's hypothetically say it has to pay it--they're going to turn...and again, it's fact-specific to how the contracts were drafted in each one. But let's just assume the corporation owes it. They're going to turn around and say the city or the county or the whatever political subdivision...you owe it. And when they owe it, guess who owes it. The people owe it. It always gets back to the people. So I think there's a distinction without a difference there. That being said, going forward, I wanted to ask Senator Schumacher some questions, want to see if he would yield to a question. [LB902 LB81]

SENATOR CARLSON: Senator Schumacher, would you yield? [LB902]

SENATOR SCHUMACHER: Yes, I will. [LB902]

SENATOR HARR: Thank you, Senator. Let me just start by saying, I think it's good public policy, if we're going to bond a large sum of money, I think it's good public policy that the people do have a say, for the reasons I talked about. Ultimately, at the end of the day, they will be paying for this project. And at the end of the day, when this project is done, it'll be that political subdivision that owns that, and it'll be the people that are liable to keep that facility going. So I want to say I think the concept is a good idea. I just need some clarification. How would this work...let's start big and go small. [LB902]

SENATOR SCHUMACHER: Okay. [LB902]

SENATOR HARR: How would it work for the university system, since they don't collect

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property taxes? [LB902]

SENATOR SCHUMACHER: The state and university system, since they don't collect property taxes, it does not apply to them. They do not have a actual...a valuation. [LB902]

SENATOR HARR: So it is your intent by introducing this that, in fact, they can still use this type of transaction but that this amendment wouldn't apply to them. [LB902]

SENATOR SCHUMACHER: Right. [LB902]

SENATOR HARR: I appreciate that; that's good. Now let's go a little smaller, let's go to community colleges. How would that be determined, their property tax base? [LB902]

SENATOR SCHUMACHER: The property tax base of the property in the district. And since community colleges are huge districts, have lots and lots of resources, this 0.4 percent, you'd have to build one heck of a thing in order for it to be triggered. [LB902]

SENATOR HARR: Okay, good, I appreciate that. Now I'm going to go one smaller and talk about your local school districts. How would this affect them? [LB902]

SENATOR SCHUMACHER: It would affect them if they triggered over that valuation. [LB902]

SENATOR HARR: Okay. So for a smaller suburban school district that's building a school for the future--doesn't have the tax base yet but know it's coming--they would probably be the ones harmed the worst by this. [LB902]

SENATOR SCHUMACHER: I don't think anybody is harmed by this. I think they'd have to comply with it, and they probably should have to comply with it. [LB902]

SENATOR HARR: All right, and I appreciate that answer. Thank you very much. I want to thank the Revenue Committee for their hard work on LB902 and for bringing...Senator Schumacher, who is a member of the Revenue, for bringing this forward. I think it...like I said, I think it's pretty good public policy. [LB902]

SENATOR CARLSON: (Gavel) [LB902]

SENATOR HARR: These...this type of transaction is very good. This type of financing is a...it's a tool, another tool in the toolbox, as we like to say. [LB902]

SENATOR CARLSON: One minute. [LB902]

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SENATOR HARR: But, like anything else, it can be abused, and I think there needs to be some oversight, and that oversight is the people. And so this is per project, not in total, as I understand it from reading it. And so I think it's a good bill and--or amendment--and I would encourage everyone to, please, vote for AM2461. Thank you. [LB902]

SENATOR CARLSON: Thank you, Senator Harr and Senator Schumacher. Those still wishing to speak include Senators Hadley, Price, Pahls, and Pirsch. Senator Hadley, you're recognized. [LB902]

SENATOR HADLEY: Mr. President and members of the body, shockingly, I'd like to stand up and just talk about the amendment and the bill. I support the amendment. Senator Schumacher brought this up to the Revenue Committee, and I think we had a very thorough discussion of this amendment in the Revenue Committee. And while there wasn't a vote taken on it in the Revenue Committee, I think everybody understood it and was in general agreement. The idea is to reach some kind of compromise so that small projects...that you don't have to go through the expense of going to the election and that type of thing to bond a small project. You hope that the... [LB902]

SENATOR CARLSON: (Gavel) [LB902]

SENATOR HADLEY: ...the city government would use their good discretion as a city council in using this mechanism. On the other hand, if you have a huge project that the city taxpayers are on the line, you do wish that they would have some type of mechanism so that they could vote on this. And I think this is what Senator Schumacher's amendment does. Just talking off the mike with Senator Krist, I know that sometimes you can get situations where time is of such an essence that this can cause a problem. And I don't know how we deal with that. But I guess the expediency has to be weighed against putting the citizens of a city on the hook for bond payments. So, all in all, I think this is a good amendment, and I would ask the body to vote yes on AM2461. I would yield any remaining time to Senator Schumacher, if he would like to have it. [LB902]

SENATOR CARLSON: Senator Schumacher, you've been yielded 3 minutes, if you would like. [LB902]

SENATOR SCHUMACHER: Thank you. Members of the body, Mr. President, I think the concept is very simple, it's very good. In the process to get this particular amendment drafted this morning and tweaked in order so we could avoid a problem with dealing with two different chapters, there's a drafting thing that is being worked on right now. In the early paragraph we refer to "the state." We want to make it very clear that this does not apply to the state, it just applies to the subdivision. And so a floor amendment is being drafted at this time to strike "the state" from the opening paragraph of this

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amendment and make it perfectly clear that we do not intend this...to apply this to the state. I'll be introducing that amendment in just a moment, as soon as they get it drafted. And that should take care of that particular wrinkle. Fundamentally, this is a situation where the will of the people is what's important, because it's the pocketbook of the people that pays the bill. Thank you. [LB902]

SENATOR CARLSON: Thank you, Senator Schumacher and Senator Hadley. Senator Price, you're recognized. [LB902]

SENATOR PRICE: Thank you, Mr. President and members. I have some questions about what we're doing here, and I'm somewhat alarmed. Would Senator Schumacher yield to a question? [LB902]

SENATOR CARLSON: Senator Schumacher, would you yield? [LB902]

SENATOR SCHUMACHER: Yes, I will. [LB902]

SENATOR PRICE: Thank you, Senator. And, again, as we're reading this and going through these amendments--they're flying quickly--I want to make sure I understand something. In your amendment, where you talk about 0.4 percent of the actual and real property of the government subdivision, you're saying then...you realize that for Omaha that's a \$100 million project that will be able to go and create under this program without a vote of the people. [LB902]

SENATOR SCHUMACHER: They presently can go much higher than that, but this does put a limit around that figure, you're correct. [LB902]

SENATOR PRICE: Okay, so now...but is there any limit to them doing 30 of these projects or 50 of these projects, if they wanted to? [LB902]

SENATOR SCHUMACHER: As long as they're unrelated, there's no...if they're a related project...if you build a stadium and you build a parking lot, that's a related project that...you couldn't do that. But if you want to build a stadium and you want to build something else, you can. All this applies to is the tax exemption part of it. [LB902]

SENATOR PRICE: Well, no...and I guess I understand that. It's just that my question really comes down to, it's an alarming thing to think that a subdivision could do numerous things like this, if they wanted to not get a vote of the people, as long as it fell under that threshold. And I'm glad we're talking about this so that the citizens of Nebraska understand what can be happening. So I appreciate that. [LB902]

SENATOR SCHUMACHER: Right, and this doesn't change anything. [LB902]

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SENATOR PRICE: Right. [LB902]

SENATOR SCHUMACHER: This is more restrictive than our present law. Our present law... [LB902]

SENATOR PRICE: So now let...okay, so let me ask one...are you aware of how the...there's a difference across the different political subdivisions on how properties are assessed and when they're assessed and the tools and techniques used within it? [LB902]

SENATOR SCHUMACHER: I'm not an assessor, but in my past life I was a county attorney, and there is a very strong effort at trying to get uniform assessments and bring them into line with the actual valuations. [LB902]

SENATOR PRICE: Well, one of the great things...one of the things of consideration, Senator Schumacher, is right now the statutory authority that we've given to the political subdivisions, the counties, is that they have to assess all real property in a six-year period. And I may be bringing an amendment in to change that to a three-year period, if we have a chance here this morning yet. But I just wanted to let you know that may be up and coming also, so that way we have a uniform approach across these subdivisions. [LB902]

SENATOR SCHUMACHER: And we should. [LB902]

SENATOR PRICE: All right, thank you very much, Senator Schumacher. Thank you, Mr. President. [LB902]

SENATOR CARLSON: Thank you, Senator Price and Senator Schumacher. Senator Pahls, you're recognized. [LB902]

SENATOR PAHLS: Thank you, Mr. President, members of the body. Would Senator Cornett yield? [LB902]

SENATOR CARLSON: Senator Cornett, would you yield? [LB902]

SENATOR CORNETT: Yes, I would. [LB902]

SENATOR PAHLS: Again, I do like this discussion, because sometimes when there's confusion, we start looking deeper into the particular topic. What I've noticed this year, because...and I think you even, you may have carried the bill dealing with the... [LB902]

SENATOR CARLSON: (Gavel) [LB902]

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SENATOR PAHLS: ...exemptions for youth sports, etcetera, etcetera. Did you not carry a bill like that? [LB902]

SENATOR CORNETT: Yes, I did. I think you and I worked on that. [LB902]

SENATOR PAHLS: (Laugh) Well, I'm just trying to get a point here. Why did that become, quote, an issue? [LB902]

SENATOR CORNETT: Okay. Again, you and I have talked about this. And I appreciate the comments that you made on the mike yesterday about how the Tax Commissioner is actually going through and pointing out the obsolete or statutes that are not being currently enforced. There are a number of ways that that came to the attention of the state. One of them was, my understanding, that someone that was paying the tax asked for a ruling from the commissioner as to why they were paying the tax and other nonprofit youth sports groups were not paying it. So the Tax Commissioner...and then there was also a court case saying that unless it is specifically spelled out in statute, there are no sales tax exemptions. [LB902]

SENATOR PAHLS: Okay. So we're going through the statutes...the Tax Commissioner and his staff are going through the statutes, they're saying this is unclear; and the courts have ruled if it's not clear then we need to deal with it. Is there any merit in going back and having the...not Department of Revenue but your committee going back and reviewing the past tax exemptions just to see if there are loopholes? Is there any merit in that? [LB902]

SENATOR CORNETT: I'm sorry, could you...when you say, there are any what? [LB902]

SENATOR PAHLS: Is there any merit in going back and taking a look at some of the laws that we passed to see where...the possibility of loopholes? [LB902]

SENATOR CORNETT: Senator Pahls, this is a discussion we've had for eight years, and I've always agreed with you. We have a fairly broad sales tax exemption base, but compared to other states we rank about in the middle. But I have always agreed with you that I think we ought to go through and look at what we're exempting and see if there is still logical reasons for exempting those entities. [LB902]

SENATOR PAHLS: Okay. You know, I'm glad that you and I see eye to eye on that. We both will be gone here shortly, but at least we're going to go out seeing eye to eye on that particular topic. Thank you. [LB902]

SENATOR CARLSON: Thank you, Senator Pahls and Senator Cornett. Those still wishing to speak include Senators Pirsch, Nelson, Campbell, Loudon, and Price.

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Senator Pirsch, you're recognized. [LB902]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. And I just want to continue the conversation with respect to Senator Schumacher's amendment, AM2461. And I do appreciate, actually, the issue spotting that Senator Schumacher has...that service that Senator Schumacher has provided to the committee and now on the floor with respect to the issue of bonding. And so, yes, that would be a substantive difference, as I understand it, in Senator Schumacher's argument that there is a prohibition against cities acting...or governmental entities acting in their own capacity going forward with bonding without first seeking approval from the voters. And so through this second method, by which governmental entities can set up these nonprofit entities to do projects, those would not be ordinarily covered, is my understanding, by the limitations about going forward with bonding without first having gained...gaining approval by a vote of the people. And so this amendment would seek to add some limitation to these new entities, the nonprofit entities. And so to that extent, I wonder, it's my understanding that for, say, a city with the property valuation, for example, of Omaha, that would equivocate (sic) into about over \$100 million worth, I think is what was figured by Senator Schumacher at committee. And so that is a significant amount and something to consider. I guess I had a question that I wanted to address to Senator Schumacher. I understand that he is currently engaged in some conversations off the floor here. But...so I'm going to reserve those questions to a later time and yield the balance of my time back to the Chair. Mr. President, I'm going to yield the balance of my time. Thank you. [LB902]

SENATOR CARLSON: Thank you, Senator Pirsch. Mr. Clerk for an amendment. [LB902]

ASSISTANT CLERK: Mr. President, I do have an amendment, but, prior to that, Judiciary will hold an Executive Session at 10:00 a.m. in Room 2022. With respect to LB902, Senator Schumacher would offer an amendment to his own amendment, FA52. (Legislative Journal page 932.) [LB902]

SENATOR CARLSON: Senator Schumacher, you're recognized to open on your amendment. [LB902]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. The amendment simply strikes "the state or" from the second line of AM2461 to make it very clear that this election requirement does not have anything to do with the state of Nebraska and remove clearly, on the record, any notion that it could possibly apply or be construed by someone to apply to the state of Nebraska, and it basically fixes a drafting error. Thank you, Mr. President. [LB902]

SENATOR CARLSON: Thank you, Senator Schumacher. Members, you've heard the

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opening on FA52 to AM2461. Senator Nelson, you're recognized. [LB902]

SENATOR NELSON: Thank you, Mr. President, members of the body. I have questions for Senator Schumacher, as well, while he's still available. [LB902]

SENATOR CARLSON: Senator Schumacher, would you yield? [LB902]

SENATOR SCHUMACHER: Yes. [LB902]

SENATOR NELSON: Thank you, Senator Schumacher. I'm looking at your amendment here, AM2461, which you've just amended with a small amendment there which doesn't affect my questions. Can we...I'd like to discuss with you, ask some questions about how you arrived at the threshold. My understanding is, with a city the size of Omaha, you're talking about a threshold figure about \$110 million. Would that be correct? [LB902]

SENATOR SCHUMACHER: That's pretty close. [LB902]

SENATOR NELSON: All right. What about small towns or school districts with a much smaller valuation, such as \$5 million? I don't know, what--maybe you have more experience with small towns than I do--what would you estimate a valuation of a city of 2,000 people? Could you come up with anything? [LB902]

SENATOR SCHUMACHER: Gosh, I don't...wouldn't have those figures now. But in tiny towns of 200--most of our towns are under 500 population... [LB902]

SENATOR NELSON: All right. [LB902]

SENATOR SCHUMACHER: ...they rarely use this mechanism anyway, and an election is not a terribly expensive thing to do. [LB902]

SENATOR NELSON: Well, but it seems to me, then, if you've got a really small valuation of the city or the school district, that one-fourth of 1 percent is so diminutive that you're going to make...they're going to have to take everything, almost, to a vote of the people, if they want to do something of this sort. Would you comment on that? [LB902]

SENATOR SCHUMACHER: If you're talking in terms of a town that maybe has 200 registered voters, it may not be a bad idea to take it to a vote of the people. To do a bonded situation, the real intent of the system is that the people vote on it. And this is a mechanism for getting around that. And the 0.4 of one percent figure was, basically, a figure that was generated from 2 times the controversial project that was in Norfolk, on the city council. Cities the size of Norfolk, Columbus, your 20,000, 10,000, it's an

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expensive proposition to go to the people, not so much if you have a tiny community. And having a tiny community go through the expense of bonding, setting up one of these, it probably is cheaper for them to just take it to a vote of the people and do it directly instead of trying to go through this middleman process. [LB902]

SENATOR NELSON: I would grant you that. When we do have such a small town as that, everybody is going to know about it anyway, I suppose. [LB902]

SENATOR SCHUMACHER: And they're going to be real mad if they don't get a chance to vote on it. [LB902]

SENATOR NELSON: Right. All right, thank you, Senator Schumacher, for your answers to those questions. [LB902]

SENATOR SCHUMACHER: Thank you. [LB902]

SENATOR NELSON: My only other comment would be with regard to the underlying bill, LB902, and the amendment that we have not yet seen, and probably it's premature to talk about that. The Speaker was reading, I think, from Article IV out of our state constitution, that we shall not...the Legislature itself cannot do these exemptions. But it would seem to me that if there hasn't been an assessment, that you're talking about something that isn't there, and it wouldn't apply. So given a little time to take another look at that, I perhaps will speak later. And at this time I will return the balance of my time to the Chair. Thank you, Mr. President. [LB902]

SENATOR CARLSON: Thank you...thank you, Senator Nelson and Senator Schumacher. Senator Louden, you're recognized. [LB902]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. I was looking at Senator Schumacher's amendment, AM2461; I was wondering if Senator Schumacher would yield for questions. [LB902]

SENATOR CARLSON: Senator Schumacher, would you yield? [LB902]

SENATOR LOUDEN: Anyway, Senator Schumacher, as I look your amendment, now, when you have 0.4 of 1 percent of the total actual value of the real and personal property of a governmental subdivision, that would be like, well, perhaps the city of Omaha would have maybe a \$38 million valuation, and that would be 0.4 percent of that valuation that the city of Omaha has, is that correct? [LB902]

SENATOR SCHUMACHER: That's correct, somewhere a little over \$100 million. [LB902]

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SENATOR LOUDEN: Yeah. And then what about some of your smaller towns would have a smaller valuation, but also that valuation is counted in the county. Now, they both count the same valuation, but that doesn't make any difference with the way your bill is drafted or your amendment is drafted? [LB902]

SENATOR SCHUMACHER: No, if the county wanted to do a project, they'd include the town's population as part of their base. [LB902]

SENATOR LOUDEN: Okay. But could the county then use that valuation basis for 0.4 percent? And then could the town turn around and use their valuation, then, for the 0.4 percent? [LB902]

SENATOR SCHUMACHER: Right. All this does is triggers a requirement, if they want the exemptions that are in LB902 to apply and the project is above the amount of 0.4 of a percent, that they have to take it to a vote of the people, just like they would if they were bonding it directly rather than using one of these middlemen organizations. [LB902]

SENATOR LOUDEN: Then, actually, what your amendment does is, mostly, is a trigger point for when they have to go to an election in order to approve some type of project. [LB902]

SENATOR SCHUMACHER: Right. [LB902]

SENATOR LOUDEN: And that's all it is, is really a trigger point. [LB902]

SENATOR SCHUMACHER: It's just a trigger point, with the intention of disincentivizing trying to get around taking things to a vote of the people. [LB902]

SENATOR LOUDEN: Okay. And the 0.4 percent seems to be...have you done quite a little research on this to figure out if...I mean, would we be faced with something in the future that perhaps that's either too high or too low or...I'm sure somebody will be wanting to change it here in the future. But have you researched this, where it seems to be a fair number? [LB902]

SENATOR SCHUMACHER: It was based upon the Norfolk project times two. [LB902]

SENATOR LOUDEN: Okay. And that would be the...that's your basis for that. Well, thank you, Senator Schumacher. As I look at the amendment, I think probably it is something that probably needs to be done in there. This floor amendment mostly takes off the word "state" in there and just has "a governmental subdivision," so it mostly cleans up the language. But I don't see any problem with having an amendment like that in there, when probably perhaps what they need to have is a trigger. I know some

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people have stated that some towns wouldn't be able to have near as large a project as they would like, but I suppose that can be changed in the future. But if this has been geared to what something that's already in progress, such as the Norfolk project, I have no problem with it. And I would support the amendment that has been stated here, the AM2281 (sic) to LB902. Thank you, Mr. President. [LB902]

SENATOR CARLSON: Thank you, Senator Louden and Senator Schumacher. (Visitors introduced.) Senators still wishing to speak include Senators Price and Schumacher. Senator Price, you are recognized. [LB902]

SENATOR PRICE: Thank you, Mr. President, members of the body. Obviously we're wrestling with a rather complex issue here. And I have a question for Senator Schumacher, if he would yield. [LB902]

SENATOR CARLSON: Senator Schumacher, would you yield? [LB902]

SENATOR SCHUMACHER: Yes. [LB902]

SENATOR PRICE: All right, thank you, Senator Schumacher. And I did get some late-breaking information, but here's a question I have. When we decide to say that a political subdivision is going to be the one to do this activity, right, it's a political subdivision, correct? [LB902]

SENATOR SCHUMACHER Yes. [LB902]

SENATOR PRICE: Okay, great. So now if I take the situation of Omaha, which is a rather large, you know, metropolitan one, we have a larger one. What about the Metro Community College, if they want to do something as a political subdivision? All the real properties within that would extend over multiple counties. So are we...as we listen to what goes on further, I wanted to hear you expound on the impacts to that. And the other part, have you had an opportunity to "crosswalk" this to other sections of statute which tend to limit the ability for the political subdivisions to go out and do something like this without a vote of the people? Because I was talking to others under the balcony and...within the Revenue Department. We were talking about there are some other limitations within statutes, perhaps, that we need to address. And as I get them, I will hit my light and we'll talk. But I didn't know...could you talk to how extensively you looked through the statutes to ensure that we're not getting sideways with other statutory requirements. [LB902]

SENATOR SCHUMACHER: First of all, Bill Drafting has gone through the statutes. Secondly, this doesn't do anything to anything except trigger a possible election. Now, I do understand that some of the math, as it crunches against some of the community colleges at the 0.4 of a percent level, may create a problem. So what I propose on doing

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now is withdrawing FA52 and AM2461 so we can proceed to a vote without...on LB902 and then addressing that community college problem and bringing it...recalling it from Final Reading for a specific amendment. [LB902]

SENATOR PRICE: Okay, thank you very much, Mr. Schumacher. Again...Senator Schumacher. As we go about this process and discuss it in depth, I'm sure we'll unpackage all the questions that we have, hopefully, and give it full and open...and I would yield the balance of my time to Senator Schumacher, if he would so like it, Mr. President. [LB902]

SENATOR CARLSON: Thank you, Senator Price. Senator Schumacher, you're yielded 2 minutes. There are no other senators wishing to speak. If you would want to use this time to close on your FA52, you may. [LB902]

SENATOR SCHUMACHER: Mr. Chairman, I'd withdraw the floor amendment and AM2461, will refine the language to address a community college issue and then will bring it back for a specific amendment from Final Reading. Thank you. [LB902]

SENATOR CARLSON: Thank you, Senator Schumacher. FA52 and AM2461 are withdrawn. Mr. Clerk. [LB902]

CLERK: Mr. President, Senator Burke Harr would move to amend with AM2466. (Legislative Journal pages 932-933.) [LB902]

SENATOR CARLSON: Senator Harr, you're recognized to open on your amendment. [LB902]

SENATOR HARR: Thank you, Mr. President and members of the body. This is the amendment I promised you earlier this morning. All I do is I...we aren't going retro in statute---I know when I've won and when I've lost--but what we do here is we put emergency clause on the sales tax, make it effective the day of the bill. And then there's a clause in here that states it's the intent of the Legislature to clarify--of this bill (sic)--the meaning of the section referenced in LB902. Thank you very much. [LB902]

SENATOR CARLSON: Thank you, Senator Harr. The floor is now open for debate. Senator wishing to speak is Senator Cornett. You're recognized. [LB902]

SENATOR CORNETT: Thank you, Mr. President, members of the body. Well, we've had an interesting morning on LB902. I want to thank the body for its indulgence, and I want to thank Senator Harr for his cooperation. This is a good amendment. It adds the emergency clause to the bill; so when the bill is signed, all of the projects existing, moving forward from that point, with the E clause, will have the tax-exempt status. I urge the body to support AM2466 and support LB902. Thank you. [LB902]

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SENATOR CARLSON: Thank you, Senator Cornett. There are no other senators wishing to speak. Senator Harr, you're recognized to close on your amendment. [LB902]

SENATOR HARR: Thank you, Mr. President. I want to give people a chance to come back in so we can vote on this. Again, this is, as Senator Cornett said, it's a very simple amendment: emergency clause, states the intent. I want to thank the Department of Revenue for all their hard work, the Revenue Committee, and specifically its Chair, and the Speaker for providing guidance on this bill and the amendment. I believe it's a very good amendment, and I would ask everyone to please vote for the underlying amendment, AM2466. Thank you. [LB902]

SENATOR CARLSON: Thank you, Senator Harr. Members, you've heard the closing on AM2466. The question is, shall AM2466 be adopted? All those in favor vote yea; all opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB902]

CLERK: 36 ayes, 0 nays, Mr. President, on the adoption of Senator Harr's amendment. [LB902]

SENATOR CARLSON: The amendment is adopted. [LB902]

CLERK: I have nothing further on the bill, Mr. President. [LB902]

SENATOR CARLSON: Senator Larson for a motion. [LB902]

SENATOR LARSON: Mr. President, I move that LB902 be advanced to E&R for engrossing. [LB902]

SENATOR CARLSON: Members, you've heard the motion. All in favor say aye. Opposed, nay. The bill is advanced. Mr. Clerk. [LB902]

CLERK: Mr. President, the next bill is LB824. It's a bill by Senator Karpisek. (Read title.) Bill was introduced on January 5 of this year, at that time referred to the General Affairs Committee. The bill was advanced to General File. There are committee amendments, Mr. President. (AM2080, Legislative Journal page 587.) [LB824]

SENATOR CARLSON: Thank you, Mr. Clerk. Senator Karpisek, you're recognized to open on LB824. [LB824]

SENATOR KARPISEK: Thank you, Mr. President. Good morning, members of the body. LB824 adds to the Liquor Control Act a definition for the term "flavored malt beverage." For all practical purposes... [LB824]

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SENATOR CARLSON: (Gavel) [LB824]

SENATOR KARPISEK: ...the current definition of the term "flavored malt beverage" has been in state policy for around a decade as part of the Liquor Control Commission's rules and regulations. Just like the Liquor Control Commission has been following the federal government's lead on the classification of alcohol since at least the 1970s, it had continued this policy when it adopted its rules and regulations--the same definition of the term "flavored malt beverage" as the Alcohol and Tobacco Tax and Trade Bureau of the U.S. Department of the Treasury had in its own rules and regulations. LB824 defines the term "flavored malt beverage" to mean "a beer that derives not more than 49 percent of its total alcohol content from flavors or flavorings containing alcohol obtained by distillation." Again, this definition mirrors the federal definition of the term "flavored malt beverage" and the definition used by 47 other states. You might be wondering why this definition even matters. One reason why this definition matters is because beer and spirits are taxed at different rates, with spirits being taxed higher, at \$3.75 a gallon, and beer at 31 cents a gallon. As I mentioned earlier, the Liquor Control Commission had adopted this definition in its rules and regulations around a decade ago. Recently the Nebraska Supreme Court ruled that the Liquor Control Commission lacked the authority to pass such a rule and regulation, and that only the Legislature could define the term "flavored malt beverage." The court went on to interpret the Liquor Control Act to say that any alcohol produced by distillation constituted a spirit, and therefore flavored malt beverages were spirits. Please keep in mind that when the Legislature adopted the Liquor Control Act in the 1930s, products like flavored malt beverages didn't even exist, let alone be contemplated. Therefore, the Liquor Control Commission and I agreed that it is time to update the Liquor Control Act by clarifying this otherwise antiquated definition to reflect a changing industry that continues to produce new types of products. I know that the recent court decision has given this bill additional attention; however, in the end, the court case doesn't change anything regarding this bill, except that an emergency clause has been added to an amendment to the committee amendment in order to provide clear direction to the Liquor Control Commission and consistency to the liquor industry. Even if the court had ruled in the Liquor Control Commission's favor, this bill would still be necessary to clarify the policy of the state in order to make clear the Legislature's intent that flavored malt beverages are to be defined the same way as they are in federal law. Keep in mind that it's the Legislature's role to set state policy, and the court clearly stated in its ruling that the Legislature can classify and tax flavored malt beverages as beer. This is what I am asking you to do. I am distributing the page in the Supreme Court's Opinion where it makes this point. I believe it is also the Legislature's role, along with the Governor, to set tax policy. If the Legislature fails to pass this bill, then there will be a tax increase for these products, due to the court's interpretation of the Liquor Control Act. I do not believe that we should raise taxes, and therefore encourage the body to advance this bill with the committee amendment and my amendment. Thank you, Mr. President. [LB824]

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SENATOR CARLSON: Thank you, Senator Karpisek. As the Clerk mentioned, there are committee amendments. And as Chair of the General Affairs Committee, Senator Karpisek, you're recognized to open on AM2080. [LB824]

SENATOR KARPISEK: Thank you, Mr. President. Members of the body, the committee amendment was originally LB781 and was introduced by Senator Smith to address the issue of when state excise tax should be paid. Currently, state excise tax is due when alcohol is considered finished or ready for sale, while the federal excise tax is due when the product is shipped or removed from the bonded location. The timing of when the state excise tax is due creates a disincentive to produce and warehouse alcohol. LB781 harmonizes the state's trigger for when the excise tax is due with the existing federal trigger. I think this only makes sense to make the state and federal triggers the same time. Thank you, Mr. President. [LB824 LB781]

SENATOR CARLSON: Thank you, Senator Karpisek. Members, you've heard the opening on LB824 and AM2080. Mr. Clerk. [LB824]

CLERK: Mr. President, I do have amendments to the committee amendments. If I might, a couple of items for the record. Enrollment and Review reports LB968, LB131, and LB969 to Select File. And a series of study resolutions: Senator Haar offers LR479, LR480, LR481; and Senator Mello, LR482; all study resolutions. (Legislative Journal pages 933-936.) [LB968 LB131 LB969 LR479 LR480 LR481 LR482]

Mr. President, Senator Karpisek, I do have an amendment to the committee amendments. First of all, Senator, though, I had AM2195 with a note you wanted to withdraw. [LB824]

SENATOR KARPISEK: Yes, Mr. Clerk. [LB824]

CLERK: Mr. President, Senator Karpisek would move to amend the committee amendments with AM2302. (Legislative Journal page 777.) [LB824]

SENATOR CARLSON: Senator Karpisek, you're recognized to open on AM2302. [LB824]

SENATOR KARPISEK: Thank you, Mr. President. And one more time, members of the body. At the request of the Liquor Control Commission, I am also offering an amendment to the committee amendment which doesn't alter the new language in the underlying bill but merely adds language to further mirror the federal definition. The amendment reads, "except that in the case of a malt beverage with an alcohol content of more than 6 percent by volume, not more than 1.5 percent of the volume of the malt beverage may consist of alcohol derived from flavors, flavorings, or other nonbeverage ingredients containing alcohol obtained by distillation." I know that there has been some

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misinformation circulating that these products have excessively high alcohol content. This amendment ensures that if the alcohol content exceeds 6 percent, which is what many of our traditional beers have, then the distilled alcohol cannot exceed 1.5 percent. Again, with this amendment, Nebraska's definition will be the same as the federal definition. And also, as I mentioned, this amendment does contain the emergency clause. Thank you, Mr. President. [LB824]

SENATOR CARLSON: Thank you, Senator Karpisek. Members, you've heard the opening on LB824 and the underlying amendments. The floor is now open for debate. Senators wishing to speak include Senators Gloor, Price, Coash, Christensen, Krist, and Harms. Senator Gloor, you're recognized. [LB824]

SENATOR GLOOR: Thank you, Mr. President. Good morning, members. The entity that I operated for a number of years had a substance abuse program, an inpatient and eventually an outpatient substance abuse program that also treated adolescents. And so I have an understanding and appreciation of the efforts of those who try and reduce youth drinking, inappropriate youth drinking, overdrinking, addictive disorders, the whole panoply of concerns we have about the abuse of alcohol. But I have some concerns about efforts to get us to not move forward with the recommendations coming from the committee, and, in fact, I am supportive of the amendments and LB824. I wonder if Senator Karpisek would yield for a question. [LB824]

SENATOR CARLSON: Senator Karpisek, would you yield? [LB824]

SENATOR KARPISEK: Yes, I will. [LB824]

SENATOR GLOOR: Senator Karpisek, part of the problem here has to do with the sticky wicket I think of the product involved. I am wondering what and how broad the definition of "flavoring" goes, and I'll give you some examples. There are vanilla porters; there are raspberry wheats; and even a very successful brewery in the state of Nebraska makes a beer called Lucky Bucket that I think is flavored by putting it in casks that have been used for aging distilled spirits. Those are all flavorings. Are those, do you think, considered flavored malt beverages? [LB824]

SENATOR KARPISEK: Yes, I do, Senator Gloor, and that is part of the sticky wicket with this, because any of those flavorings that you mentioned, vanilla, about anything that you buy at the grocery store that has a flavoring does contain distilled alcohol as a preservative. [LB824]

SENATOR GLOOR: Well, okay. As I suspected, there is a problem with a broad stroke here. I have to admit to you that when it comes to the type of beverages we're talking about, I'm sure I am not the demographic that's being kept in mind. But in the middle of the summer when it's hot and I'm playing golf and I look around the golf course, I see an

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awful lot of people drinking what by product name is known as Mike's Hard Lemonade with ice and enjoy it, and wonder why I and others of my age group, younger and older both, are now going to be forced with paying a higher price, and a higher price on a lot of other products that I don't think were the intent of efforts to get us to not vote for this particular bill. I think we have to understand that the youth who are drinking illegally these products aren't drinking it for the flavoring. They're drinking it for the alcohol and the flavoring makes it more palatable. And I wonder if our memories are so short that we don't remember that it used to be that there were debates about taking Squirt off of shelves because Squirt was used as a way to flavor hard liquor to make hard liquor more palatable. I guess nowadays you could say Mountain Dew. There are ways to flavor liquor to make it more palatable to youth palates but they're not drinking it for the flavor. They're drinking it... [LB824]

SENATOR CARLSON: One minute. [LB824]

SENATOR GLOOR: ...they're drinking it for the alcohol in those spirits. And to try and reduce that amount of drinking for alcohol by focusing on a very, very small subset of the alcohol that's available, an alcohol product that is drunk by, legally, by thousands of Nebraskans probably to me is an overreach. As well-intended as the effort may be, it is an overreach and I'm very uncomfortable with it, just very uncomfortable with it. So I'm telling you that in spite of my efforts to work with organizations to reduce youth drinking, this to me appears to not be an appropriate way to address that problem. Education and other efforts we may pursue, yes, but to limit beverage drinking and to think we can effectively address it that way, wrongful thinking and I will support LB824 and the amendments. Thank you. [LB824]

SENATOR CARLSON: Time. Thank you, Senator Gloor. Senator Price, you're recognized. [LB824]

SENATOR PRICE: Thank you, Mr. President, members of the body. Apologize for being a frequent person at the mike today but these topics are important. I drew up a couple points I want to talk about when we look at this bill, particularly in light of what we heard yesterday in another bill and a lot of conversation that we're needing to stick to the facts. One, this would be a tax increase of over 100 times, going from 31 cents to \$3.75. Two, I've heard the argument that we need to do this to stop children, particularly 8th grade young ladies who seem to be a predominant group of people consuming it from what people are saying, that by taxing this more we're going to stop them from buying it. I don't think they buy it. I don't know how many stores 8th graders go into and buy it. They're either pilfering it from home or it's being illegally purchased by another adult for them. I don't see how this affects the individual. It is a horrible thing for children to be having to drink alcohol and getting drunk and all the social ills associated. There is no debate. But we must be sure that we are chasing the right goal in the right manner. Third, we have a problem in that our statutes don't take care of this because 25, 30, 40,

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50 years ago no one would have ever gone to a store and paid for a premixed drink. You bought a beer because it was a beer, you bought a wine because it was a wine, and you bought distilled spirits and you mixed them on your own, we heard earlier where we heard conversation from Senator Gloor, whether it was Squirt or whatever. So then do we need to raise taxes on anything that can flavor anything? Because if they're going to pilfer it or someone is going to buy it illegally, it's going to happen and doing the tax isn't right. And we're still not addressing the challenge. The challenge is we have a new product and our statutes don't cover the new product, so let's take care of the problem. Let's address the issue. We could talk about the ABV, the alcohol by volume. We could talk about hydrometers and measuring the specific gravity of it. We can talk about the genesis of the product, whether it was fermented, you know, to be beer; whether it was fermented to be a wine from fruit juice, or all else is distilled. Those are great things to talk about. What we have here is we have a blend and we have a statutory system wrapped around it which is not responsive nor dynamic in understanding it. But it does...it does cause some concern for me when the emotional plea is made that we're going to change the process, add the taxes on something without addressing the problem. If the problem is that we have too many 8th graders out buying alcohol then let's deal with that, but we've had that conversation out here. We've had that conversation numerous times. We've already established well within the record we don't allow that. It is against the law and it's against the law for adults to provide alcohol to minors. This is a beer product. A lot of you probably didn't know, just like myself, that when a lot of these drinks are begun, they're begun as a beer. I've talked to numerous adults who did not know that Mike's Hard Lemonade or some other such product started out as a beer. Matter of fact, ethanol that you put in your car starts out as a beer, then it is denatured because it has to be because we're not going to collect the tax on it as a consumed alcoholic beverage. But that is a form of beer that you have in your blended gas but it's distilled. [LB824]

SENATOR CARLSON: One minute. [LB824]

SENATOR PRICE: Thank you, Mr. President. So that is a by-product. Let us stick to the facts, let's not get carried away, what we've all agreed on is wrong or illegal. Thank you, Mr. President. [LB824]

SENATOR CARLSON: Thank you, Senator Price. (Visitors introduced.) Resuming debate, Senator Coash, you're recognized. [LB824]

SENATOR COASH: Thank you, Mr. President. Good morning, colleagues. We're going to talk about these products. I'll start out by talking about these products as well. Here's the problem with these products, and it's not the way that we tax them. It's the way that they taste. They taste terrible. Be that as it may, some consumers enjoy them. We often like to talk in this body about where we rank with other states, how do we rank compared to other states? So let's talk about that for a moment. Let's talk about how we

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are taxing these products compared to the other 50 states, and here's where we are, colleagues. We, without this bill, we would be one of three states. Utah and Maine tax these products like distilled spirits. Forty-seven other states and Nebraska currently tax these products as beer. I would tell you that sometimes it's good to be in the minority but let's look at the wisdom of the other states. Let's look at the wisdom of 48 other states who said, you know what, we've looked at this, these products are beer so we're going to tax them as such. The federal government, I won't speak to their wisdom, but they have decided that these products are beer. We are mirroring the way that we tax these products, the way 48 other states and the way the federal government taxes them, and I would ask you, are they wrong? We've got a handout here from Project Extra Mile. They say that we're wrong. They say that these are alcopops. I'd like to know where that term came from. It's not our term; it's their term. It's stated here that these beverages are created for young people. Colleagues, I want to tell you something. If that's true, they're in violation of federal law. It is against the federal law to produce or market alcoholic beverages to children and for children, and I haven't seen any lawsuits against the manufacturers of these products that say they are breaking federal law. If we are to believe what was handed out to us, we are to believe that the federal government is shirking their duties in prosecuting these product manufacturers for breaking their law. It says that classifying these allows the alcohol industry to reach more young people. I don't know how that's true because nothing in this bill, the amendment or the amendment to the amendment allows a minor to purchase these products. It's not addressed here. I sit on the Judiciary Committee and one of the things we're used to looking at in the Judiciary Committee is when the Supreme Court makes a ruling, and sometimes they give us a little hint and they say, look, we're going to punt the ball over to the Legislature and if the Legislature wants to do something about this and make a clarification then the Legislature is allowed to do that. The Liquor Control Commission may have overstepped its bounds. The Supreme Court found that. This bill fixes that. We're trying to fix this. Colleagues, let's be reasonable. Let's use our common sense here and let's ask ourselves, is the way that we tax a product really going to affect what the opponents of this bill think it will affect? [LB824]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: One minute. [LB824]

SENATOR COASH: Really ask yourself that question. We raise the price on this. Is it going to change the marketing strategy? Is it going to change the way that retailers...where they put it on the shelf, how they put it on the shelf? Is it going to change that? No. This clarifies what we're already doing. And I would urge the body to adopt the bill, the amendment and the committee amendment and the amendment to the committee amendment, because this gives the clarity that the Supreme Court said we should have, and let's not lose sight of that. This is a clarification bill. This is not a bill about marketing to children alcohol. This is about who decides our tax policy. Guess

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what? We decide the tax policy. Judicial branch does not. Outside groups do not. We decide how we tax products. And we have a choice here, colleagues. We can decide if we want to tax these... [LB824]

SENATOR CARLSON PRESIDING

SENATOR CARLSON: Time. [LB824]

SENATOR COASH: Thank you, Mr. President. [LB824]

SENATOR CARLSON: Thank you, Senator Coash. Senator Christensen, you're recognized. [LB824]

SENATOR CHRISTENSEN: Thank you, Mr. President. Fellow colleagues, let's step back. We've had a lot of hearsay. Let's start out with the statute. That would be a novel place to start. Spirits, definition, Section 53-103.38: Spirits mean any beverage which contains alcohol obtained by distillation mixed with water or other substances, beer included, in solutions including brandy, rum, whiskey, gin, and other spirituous liquors and such liquors when rectified, blended, or otherwise mixed with alcohol or substance. That's current statute. So statute tells us if it has any type of distillation alcohol in it, it is a spirit. So if we pass this bill, which is not properly done because it's taking beer...whatever you call these, alcopops or whatever you want to call them, and put them into the beer section, you have a conflict within your own statutes. The statute is clear. They're not addressing it. Section 53-103.38 says anything mixed with spirits is a spirit, so it's a distillation so it has the high tax. Our Liquor Commission broke its own rules or the legislative rules, misclassified it. We haven't changed this. It's very simple. Read the statute; forget anything else, the emotion of where you think it should be or shouldn't be. I've talked to Senator Karpisek and the opponents, the lobby, and I've said, you know, until you correct that, this bill is irrelevant. It is wrong and just as well be killed. If you're going to address this section then you can start classifying where you want. I'm not opposed, if you want to come in, change the statute and say, you know, 0 to 6 percent alcohol is this tax, 6 to 12 is this, and above 12 is the third level. That's consistency. But to come in here and put a conflict within our own statutes is wrong. This bill needs work. It is not properly done. It either has to be amended, cleaned up and corrected, or it should be sent back to committee or brought back next year. It's that simple. Again, I'm just stating the facts. We've had several people stayed up and say facts. I went to the statute. The statute says anything mixed with a distilland is a distilland and must be taxed as a distilland. It's that simple. This bill is not written properly so let's get back to the facts. Until they address that section, and I forewarned them a couple days ago that I was going to say this because I'm not out here to kill the bill, I'm either going to improve it or I believe it should die. So at that stance, I don't care what you add for a distilland, and you've heard it from a lot of people in here that's injecting distilled... [LB824]

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SENATOR CARLSON: One minute. [LB824]

SENATOR CHRISTENSEN: Thank you...products into other substances and they want to classify it as a beer. Let's correct the statute if we're going to do it. It is our job to sit here and do it the right way. This bill is not correct. This amendment does not make it correct. And I told them I wasn't bringing the amendment to clean it up. If they want to clean it up, offer the amendment and make it correct. I'm telling you right now this is not in shape to go forward. It needs work and it needs to be sent back to either committee and redone, needs to add amendments brought out here. Whatever it takes we've got to get it right. It doesn't matter how you feel about it. We've got to address the statute. [LB824]

SENATOR CARLSON: Time. [LB824]

SENATOR CHRISTENSEN: Thank you. [LB824]

SENATOR CARLSON: Thank you, Senator Christensen. Those wishing to speak include Senators Krist, Harms, Coash, Lautenbaugh, and others. Senator Krist, you're recognized. [LB824]

SENATOR KRIST: Thank you, Mr. President. Good morning, Nebraska and colleagues. I am part of the General Affairs Committee and voted this bill, LB824, out of committee. I'm also thankful that Senator Smith brought the amendment, AM2080. It actually did a lot to clean up our taxable base, based upon when a product is actually taxed. As far as the additional amendment is concerned, I stand in support of AM2302 as well. I understand the comments of Senator Christensen. I think they are a bit dramatic but I understand his comments. There is an amendment that is forthcoming either now or on Select that would indeed clean up the statute problem. But as far as the drama is concerned, I think you can tone that down a bit. There is, as there always is, a dynamics involved with chemistry. Senator Price talked about it earlier. Our statute currently does not take into account all the distillation and mixing and whether Senator Coash thinks they taste good or not. But the point is that things have changed since that statute went into place. And if you look, I'm going to wrap this all up with the three amendments that are up there and just tell you what they all do is look at bringing us closer to what the federal guideline is in the changing environment that we run into. I will make a personal comment though and I hope that you look at this yourself and make your own judgment. In this term limited environment that we live in, the people behind that glass sometimes give us great information, sometimes confusing information, and it's up to us to make the decision that we need to make. There's a book that the public probably doesn't see enough of that tells us who those registered lobbyists are. And I have a great deal of respect for what they do, some of them past senators, some of them maybe future senators, but all good subject matter experts for their concentration of citizenry, the folks

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that the lobby for. I think though when it comes to a registered lobbyist, we need to realize that those people know the parameters. I have never been lobbied in an incorrect or improper fashion, but it's getting close. There's two groups that think that they can send us e-mails and ask us what we're thinking and be derogatory and make comments and blogs about how we feel or how they think we feel, and call us inconsistent, I won't use the other word "liar" but I'll use the term "inconsistent," and you know who they are. Project Extra Mile has done a wonderful job for the kids in the state and I applaud what they do, but the e-mails that I get and the information that is passed emotionally is improper, and the other is Gambling with the Good Life. Those two lobbies think it's important enough that they send us e-mails that are, in my opinion, not consistent with a code, a code that I believe that the good lobbyists would follow. So separating the emotion from the facts, I will tell you I'm in support of AM2302, AM2080, and LB824, knowing full well that my Chair, Senator Karpisek, will clean up the less dramatic statute issue that needs to be taken care of in LB824 either now or in Select, and I ask for your support... [LB824]

SENATOR CARLSON: One minute. [LB824]

SENATOR KRIST: ...for all three. Thank you, Mr. President. [LB824]

SENATOR CARLSON: Thank you, Senator Krist. Senator Harms, you're recognized. [LB824]

SENATOR HARMS: Thank you, Mr. President. I rise in opposition to LB824 and the amendments. Let me give you just a little background, first of all, and I'll lead you into some other statistics that I think are important for us to review. Between 1970 and 1997, beer was the dominant beverage that was used in this great nation and it was because young consumers began to choose beer and wine over distilled spirits. In 1990 that changed and what we found is that the preference changed and beer is losing its market. And this is what this is about. It's about greed. It's about getting a share of the market. Let me tell you, when you look at LB824, what it does, it classifies alcopops as beer instead of distilled spirits, keeping prices low so you have access to it. I believe in that very strongly. Let me give you some statistics. Alcohol is the most common used drug among high school students in Nebraska. High school students in Nebraska are more likely than high school students nationally to binge drink, 30 percent versus 25 percent. More than two out of five high school students in Nebraska drink alcohol. Nationally, the regular use of alcohol is documented to be 14, and we know it starts at lower than 9 and 10 years old. Nebraska ranks ninth in the nation in teenage binge drinking. Nebraska ranks third in the nation in teens driving after drinking. Nebraska ranks second in the nation in the number of teens riding with a driver that has been drinking. Eight young people die each year in this great state because of alcohol-related activities. Or let's look at it another way, colleagues. We're seventh in the nation for young fatalities. I don't believe we should be changing this. I do not believe it should be

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classified as a beer. Quite frankly, the price should stay high because the data and statistics prove the higher it is the less people will purchase. I heard conversation here or discussion, well, it's junior high. It's not the junior high kids that I'm so much concerned about. It's the high school kids that have the money and don't want to pay that extra price. This is wrong, colleagues. This data and these statistics is not a darn thing for us to be proud of in this great state, and making this kind of adjustment does not help us. Thank you, Mr. President. [LB824]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: Thank you, Senator Harms. Senator Coash, you are recognized. [LB824]

SENATOR COASH: Thank you, Mr. President. I do want to...Senator Harms is right. I'm not going to refute any of the statistics that he just stated. I believe that price does not control the access. Your age controls the access. The market will control the price more than the tax will. Just consider that. And I would like to yield the rest of my time to Senator Karpisek. [LB824]

SENATOR GLOOR: Senator Karpisek, 4 minutes 20 seconds. [LB824]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. First, I would also agree with Senator Harms that we do have a problem there. And the way to work at that is not through this bill. If we want to talk about raising taxes on alcohol, then let's raise taxes on alcohol. Let's have that discussion. These flavored malt beverages have been classified by some as being the worst thing because they're targeted to teens. There have been investigations to find that out; they have come back that they are not. They're federal investigations. So to raise the taxes on them just because we think that that is the case is not true. If we want to talk about keeping alcohol out of the hands of minors, we have a lot of other things to do. Obviously, they don't walk in and buy these things. They either get them from someone else, take them from their parents, their friends. So there's a whole list of things to do. And I will completely agree with Senator Harms. What I really want to talk about is Senator Christensen's point of how this is drafted wrong and all those things, and I will just say what I went and told him, that he is wrong. But we have an amendment drawn up that I gave him and he is looking over and I think that it just says it twice. I think the bill says anything with any of these distilled spirits is a spirit except, and the bill talks about the exception of flavored malt beverages. The amendment that I've showed him and would like to offer on Select File, if it's okay with him, or we could draft it to General File if it would make people feel better--I just think we have so many amendments here that we're starting to get confused--just adds spirits, does not include flavored malt beverages. The reason that we want to do that, not just strike the word "any," it would say spirits means a beverage which contains alcohol obtained by distillation. I think it opens it up too much. I think that

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would do the exact opposite thing that Senator Christensen wants to do, which leads us down the path I think again where Senator Harms is coming from. I don't think that's the right way to do it. Now if he wants to do it like that, I'm sure that the industry would be more than happy to because...but I don't think that's the right way to go about it. I think we're both talking about the same thing. Senator Christensen wants to be more clear... [LB824]

SENATOR GLOOR: One minute. [LB824]

SENATOR KARPISEK: ...that flavored malt beverage is just an exception to the spirits, means any beverage which contains alcohol obtained by distillation. Let's remember, folks, that this...the only distillation in here is by the flavoring. They're not adding vodka or any other kind of hard alcohol to get the alcohol up. We will talk more later. Thank you, Mr. President. [LB824]

SENATOR GLOOR: Thank you, Senator Coash and Senator Karpisek. Chair recognizes Senator Lautenbaugh. [LB824]

SENATOR LAUTENBAUGH: Thank you, Mr. President. Members of the body, I do rise in support of this bill and the amendments that we're contemplating at this time. I, too, do not see the problem that was alluded to with how this amendment was drafted and how the bill was drafted, for that matter. We frequently have general categories and then specific exceptions. We do that all the time. So underlying law says generally these things are this; this bill would say, except if they're this different thing then they're this different thing. We're creating an exception to the general underlying law from apparently the '30s, as I understand it. And I understand why we're doing this and I understand this puts us in line with the feds and with the other states around us as far as how these beverages, if you will, are taxed, and it's the right thing to do. And I am mindful of some of the points that Senator Krist made as well and I do get a little tired of some of the things we're told, some of the things we're sent. I think we have a new phenomenon here where I used to tell my constituents e-mail was a good way to keep in touch with me, but the volume has become such that even that doesn't work anymore because we're inundated with e-mails promoted by various groups and a lot of it I find to be offensive. I know I called one to Senator Krist's attention the other day where he was alleged to have changed his opinion or flipped his position from one day to the next and it just plain wasn't true. And I don't know how many hundreds of people that was sent out to smearing Senator Krist, but it was false. And there is a difference between the professionals, I think, who handle these issues and represent constituencies, and everybody seems to be part of a constituency and that's not a criticism of lobbying in any way, but I get angry at some of the comments that come from some of these people. There was one woman the other night who does some lobbying, an actual registered lobbyist, who was told by one of the people from one of these groups referenced that she needed to get barefoot and pregnant so she could go home and

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stop bothering people here on the floor of the Legislature. I found that just as hilarious as you could imagine. It's almost as funny as when this same person said to me, what will it get you to change your mind, can we just buy you a box a cigars? Again, laughter all around because everybody knows we're on the take and nobody is dumb enough, no one is dumb enough to not know how offensive that comment would be to me, how offensive that comment would have been to the other lobbyist. No one can be that oblivious. And a lot of us in here tend to be getting our information from these very people and I caution you about that because the truth really isn't something that comes into the mix a lot of times when we're getting these e-mails, and it just wears on you after a while, it really does. When you get e-mails, you know they're incorrect, you know they're being spurred by someone who has maybe met the truth in passing once but moved on past it relatively quickly, and at some point you have to say enough is enough. I saw this same...one of these same people was haranguing one person about gambling and then took time out of that harangue to tell some staffer standing outside he needed to quit smoking, which I guess is a branching out now. We're going to be busybodies in that particular activity too, which is a timely topic that I won't get into today. But I do rise in support of this bill and these amendments, and I think we need to be critical and read critically... [LB824]

SENATOR GLOOR: One minute. [LB824]

SENATOR LAUTENBAUGH: ...the information we receive, especially from some apparently outside the body. And I would caution all of us who...or any of us who may be of a mind to parrot some of these things that you're going to be called on it. And you know, it's your choice. I mean you can either take what they say at face value or bring to bear a healthy amount of skepticism which a few individuals have labored so hard to make warranted by their conduct and their constant misstatements and their offensive statements. Thank you, Mr. President. [LB824]

SENATOR GLOOR: Thank you, Senator Lautenbaugh. Senators in the queue include Howard, Karpisek, Harms, Coash, and Fulton. Senator Howard, you're recognized. [LB824]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I talked to Chairman Karpisek for a minute before I came on the mike to give him a heads up. I would like to have a little more information on the Supreme Court decision. When I had learned about that, I really thought the issue was resolved and that they had made their ruling and we wouldn't be dealing with this again, but if Senator Karpisek doesn't mind yielding to a question... [LB824]

SENATOR GLOOR: Senator Karpisek, would you yield? [LB824]

SENATOR KARPISEK: Yes, I will. [LB824]

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SENATOR HOWARD: Thank you. Could you go into the Supreme Court decision a little more and give some information on what they base their decision on? I heard what Senator Christensen had to say and I'm thinking maybe that was a part of what came up with them, but I'm going to yield the rest of my time to you in order to give you the opportunity to really explain that. [LB824]

SENATOR KARPISEK: All right. Thank you, Senator Howard. [LB824]

SENATOR GLOOR: Four minutes. [LB824]

SENATOR KARPISEK: What the Supreme Court found, I'll just read to you a little bit out of their notes. The question presented is not whether the Legislature could classify and tax beverages containing distilled alcohol as beer; it could. The question is whether the Nebraska Liquor Control Commission and its executive director exceeded its statutory authority in classifying and taxing these beverages as beer, despite legislative inaction. Senator Ray Janssen had this bill in 2006 and it was not passed. What ensued was the executive director of the Liquor Control Commission talking with the Attorney General and moving forward in the way that he...they decided then to tax flavored malt beverages. So that was what the Supreme Court said. The Supreme Court said, however, if this bill is not passed...they didn't say this bill but if the Legislature doesn't act then we are taxing it incorrectly and it should be taxed as a spirit. That's what they decided; that's what they said. And Senator Christensen talked about the "any" part in the bill, any beverage containing distilled spirits is a spirit. So that's what they base their determination on. Again, I want to say they said the Legislature could classify and tax beverages containing distilled alcohol as beer, it could. So that is where we are. This bill obviously was put in far before that ruling came out. Whether they came down on the Liquor Control side or not, we need to codify this. This is what the Liquor Commission, the Liquor Control Commission did, decided how to do it because it goes off of the federal guidelines. This is the federal verbiage exactly. The amendment makes it exact. So it wasn't just Mr. Rupe being rogue and running out and deciding how to tax it. He looked at the federal statutes. He also talked to the Attorney General and, of course, his commission in how they came up with this. If there's any other questions, Senator Howard, I'd be glad to answer any more. [LB824]

SENATOR HOWARD: No. Thank you so much for summing that up. [LB824]

SENATOR KARPISEK: Thank you, Mr. President. [LB824]

SENATOR GLOOR: Thank you, Senator Howard and Senator Karpisek. Senator Karpisek, you're next in the queue. Senator Karpisek waives. Senator Coash, you are recognized. Senator Fulton, you are recognized. [LB824]

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SENATOR FULTON: Thank you, Mr. President, members of the body. I have had a chance to think a little bit more about this bill and I'm going to...I've taken a position on it and I do support the bill, the committee amendment. But I thought it might be instructive to share why, because I haven't heard this argument yet and at least this is what cinches it for me anyway. There had been a practice in place in the industry with respect to these flavored malt beverages and they are being taxed at a rate, X. Sorry for speaking this way but it will...it helps. There was a decision in the courts which would cause the tax to be higher than X, and we have before us now a bill which would bring clarity to our statutes such that the practice that had been in place, the taxing at X, could indeed continue. And so, breaking it down for me anyway, I'm faced with this decision as to whether to vote for or against this. It seems that the arguments against the bill are put forward so as to allow the tax to increase. Recognizing that this actually was necessitated or put into motion by a decision of the courts, it seems to me that we would be abdicating tax policy and not precisely, but by failing to act we would be making a decision in tax policy, effectively. So by not acting we are also making a decision, a decision that really was made for us by a decision in the court. And so I look at this as a responsibility of the Legislature to make a decision as to the tax policy of these flavored malt beverages and we should. If we vote against it, we're not making any decision at all. We're allowing this ambiguity that existed before to continue. So that is one reason why I think that we should vote for this bill because the practice that had been in place, it seems to me, ought to continue. I've read a little bit more about how these beverages are created and, you know, what amounts of distillation occurs and etcetera, and these are all things that it looks like were contemplated and decided in the Liquor Control Commission, but the Supreme Court has ruled that it wasn't their prerogative or it was not their purview, is the most appropriate word. And so by not acting we are, in effect, leaving ambiguity in the law. So if the argument is that we need to come at these flavored malt beverages because they're targeting young people, because there's a disproportionate use or abuse by minors, that to me seems to be a separate issue and we ought to consider legislation in that regard if that's what we're going after. But what we're talking about now is tax policy and that is the sandbox of the Legislature, not the judicial branch. It is the sandbox, if you will, of the Legislature to act rather than not acting. So I want you...that's, at least for me anyway, that's what cinches it for me. Maybe it does for some of you. I will yield the remainder of my time to Senator Karpisek, if he wants it. Otherwise, thank you, Mr. President. [LB824]

SENATOR GLOOR: Thank you, Senator Fulton. Senator Karpisek, 1 minute 30 seconds. [LB824]

SENATOR KARPISEK: Thank you, Mr. President. And thank you, Senator Fulton. I agree with Senator Fulton about the tax implication. This would be a raise in taxes, and Senator Price told us how many times over it would be higher. Is that the incentive that minors choose to drink or not to drink? I have to say that I had a bill up in committee this year that would not allow retailers to sell alcohol as a loss leader, not sell under their

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cost. However, Project Extra Mile didn't get up and support that bill. If we're talking about price being the whole part of this, wouldn't they have supported that bill? They did not. It just leads me to wonder. We do have issues on alcohol. I don't think this is the place to fight that battle. Thank you, Mr. President. [LB824]

SENATOR GLOOR: Thank you, Senator Karpisek. (Visitors introduced.) Senators wishing to speak: Nelson, Bloomfield, Lautenbaugh. Senator Nelson, you are recognized. [LB824]

SENATOR NELSON: Thank you, Mr. President, members of the body. I rarely disagree with Senator Fulton on things, but let me make this statement and let me say first of all that I'm in general opposition to LB824 and the amendments. You could perhaps look at this as tax policy but that's not what the argument is. We already have a tax policy in place that the Legislature decided some time ago. Some things would be, such as beer, would be taxed at a lower rate. If you've got distilled spirits in there then it's taxed at a higher rate such as whiskey and scotch and things of that sort. If we're going to change that then we need to do it through a bill that really addresses tax policy and whether we want to differentiate and do things different than we are now. This is not what this bill is all about. This, through this exception, in my thinking anyway, is just simply finding a way to classify malt beverages, flavored malt beverages as beer. Senator Howard had some questions about the Supreme Court Opinion, but I'd like to just put into the record what the rules are now under the Nebraska Liquor Control Act. The act defines beer as "a beverage obtained by alcoholic fermentation of an infusion or concoction of barley or other grain, malt, and hops in water and includes, but is not limited to, beer, ale, stout, lager beer, porter, and near beer." That's 53-103.03. The present act defines spirits as "any beverage which contains alcohol contained by distillation," now that's important, "by distillation, mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin, or other spirituous liquors and such liquors when rectified, blended, or otherwise mixed with alcohol or other substances." So as far as our Supreme Court was concerned, let me just very briefly state their reasoning. A flavored malt beverage is a spirit under the Nebraska Control Act because up to 49 percent of the alcohol in flavored malt beverages is obtained by distillation and the act defines spirits as alcohol that is obtained by distillation. Therefore, malt beverages are spirits, not beer, and the commission exceeded its authority. Well, we know that's what the court ruled. Now let me ask Senator Karpisek a question, if he will yield. [LB824]

SENATOR CARLSON PRESIDING

SENATOR CARLSON: Senator Karpisek, would you yield? [LB824]

SENATOR KARPISEK: Yes, I will. [LB824]

SENATOR NELSON: Thank you, Senator Karpisek. In flavored malt beverages, is there

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distilled...are there distilled spirits in some of that flavor? [LB824]

SENATOR KARPISEK: In the flavoring, yes, like vanilla or... [LB824]

SENATOR NELSON: All right. And isn't this what gives it the zing and makes it more like alcohol and the beverages we talked about, which makes it even more potent? [LB824]

SENATOR KARPISEK: Most of them are under 6 percent, Senator, which is still lower than...like about like a regular beer that we think of a Budweiser or a Michelob. [LB824]

SENATOR NELSON: But nevertheless, spirits are in there and you've got...you get a higher reaction, you get higher and more in a hurry. I'm not much of a drinker but I think I understand that. Is that incorrect? [LB824]

SENATOR KARPISEK: That is incorrect, Senator. What they usually will do is brew it to a lower alcohol by volume or a proof if they're going to add... [LB824]

SENATOR CARLSON: One minute. [LB824]

SENATOR KARPISEK: ...that flavoring, which will bring it up. The bill states that if it's over 6 percent alcohol by...or 6 percent, 6 proof, sorry, then it has to be 1.5 percent by volume. So there would only be 1.5 percent of that alcohol. Now there are some that are higher, I will give you that, but there are some beers that are also 30 proof. So most of them, a great majority, are almost the same as a regular beer. [LB824]

SENATOR NELSON: All right, thank you, appreciate that. I think it still stands to reason, I think, that we're all aware though because you do get more of a zing, for lack of a better word, and can get high in more of a...faster, let's put it that way, than just drinking general beer; that this is the reason why, in my mind, we ought not... [LB824]

SENATOR CARLSON: Time. [LB824]

SENATOR NELSON: ...to make this exception. Thank you. [LB824]

SENATOR CARLSON: Thank you, Senator Harms (sic) and Senator Karpisek. Senator Lautenbaugh, you're recognized. [LB824]

SENATOR LAUTENBAUGH: Question. [LB824]

SENATOR CARLSON: The question has been called. Do I see five hands? I do. The question is, shall debate cease? All those in favor vote yea; all opposed vote nay. Record, Mr. Clerk. [LB824]

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CLERK: 25 ayes, 0 nays to cease debate, Mr. President. [LB824]

SENATOR CARLSON: Debate does cease. Senator Karpisek, you're recognized to close on AM2302. [LB824]

SENATOR KARPISEK: Thank you, Mr. President. Again, AM2302 adds the language that we didn't have in from the federal part of the bill that we intended to have in our committee amendment and, for some reason, didn't make it, and I apologize for that. And it also adds the E clause. The reason for the emergency clause is because the Liquor Control Commission right now would have to start changing the way that they collect this tax. They'd have to collect it at the higher tax because of the Supreme Court's ruling. Then, if LB824 passes, they would have to go back and start collecting it the way that they are now. So to avoid all that confusion and extra work and money, the E clause would be added to do away with all that extra work. Thank you, Mr. President. [LB824]

SENATOR CARLSON: Thank you, Senator Karpisek. Members, you've heard the closing. The question is, shall the amendment to the committee amendment to LB824 be adopted? All those in favor vote yea; all opposed vote nay. Record, Mr. Clerk. [LB824]

CLERK: 35 ayes, 0 nays, Mr. President, on adoption of the amendment to the committee amendments. [LB824]

SENATOR CARLSON: The amendment is adopted. We return to discussion on LB824 and AM2080. There are no senators wishing to speak. Senator Karpisek, you're recognized to close on AM2080. [LB824]

SENATOR KARPISEK: Thank you, Mr. President. Members of the body, the AM2080 is Senator Smith's bill that would allow the tax to be collected on alcohol when it is sold from the bonded warehouse of the manufacturer. Right now it has to be paid when the product is done or ready for consumption. So if it sits in a warehouse or in their bonded warehouse, the tax is paid right away and it sits there. This would change it to the federal guideline of when the alcohol is actually shipped out then the tax is paid. So it would just make it run the same as the federal does and that way the producers would only have to pay at one time, plus not have a lot of money tied up in something that is sitting and aging for years. I'd appreciate your green vote on this. Thank you, Mr. President. [LB824]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Thank you, Senator Karpisek. Members, you've heard the closing

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on AM2080. The question before the body is, shall this amendment be adopted? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB824]

CLERK: 40 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB824]

SPEAKER FLOOD: AM2080 is adopted. Mr. Clerk. [LB824]

CLERK: Mr. President, Senator Louden would move to amend, AM2325. (Legislative Journal page 843.) [LB824]

SPEAKER FLOOD: Senator Louden, you're recognized to open on AM2325. [LB824]

SENATOR LOUDEN: Thank you, Mr. Speaker and members of the Chamber. I've introduced AM2325 to LB824. LB824 gives authority to the Liquor Control Commission to decide on flavored malt beverages. This amendment may prohibit the sale of certain liquor products for the consumption off the premises based on alcohol content, manufacturing process, or price. AM2325 is a simple amendment that allows the Nebraska Liquor Control Commission the authority to control the sale of certain alcoholic liquor products for consumption off the premises. This is for consumption for off-sale liquor. Consumption off the premises is important to the amendment. There are some products that are sold to be used as an individual consumption. We see pop machines that serve a product for individual consumption and that isn't illegal because it is a nonalcohol product. AM2325 addresses a situation where products for individual consumption that have an alcohol content could be controlled. At the present time, the Liquor Control Commission only has authority over the way alcohol is sold, as it's either sold on-sale or off-sale, and also the type of alcoholic beverage that a licensee may sell, whether it is spirits or beer or both. AM2325 would allow the commission the authority to prohibit the sale of certain liquor products for consumption off the premises based on alcohol content, manufacturing process, or price, such as we were just talking about the alcohol pops. If the price is decided to be at a lower rate and they get...and they decided to sell them in "single-serves," then the Liquor Commission could have some control over how that is sold. This is one thing you want to remember, that times change all the time and 25 years ago who knew what alcohol pops were or some of your flavored malt beverages? Now we've come up with different kinds of beverages, different ways they're marketed, different people they're marketed to, and different types of brewing process that's more or less lined up or set up for certain people in certain areas, especially your high alcohol beers that are sold for mostly people that are looking for this \$1.50 single-serve drink that they can probably satisfy some type of an addiction on. What this AM2325 will do will actually give the Liquor Control Commission some authority to be more proactive rather than reactive to anything that's coming down in the future for the consumption of off-sale liquor. Thank you, Mr. President. [LB824]

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SPEAKER FLOOD: Thank you, Senator Louden. Members, you've heard the opening on AM2325. Senator Larson, you raise today for a point of order? [LB824]

SENATOR LARSON: Yes, Mr. President, I would like to challenge the germaneness of AM2325 to LB824. Reading our 2012 rule book, Rule 7, Section 3(d) says, "Germane amendments relate only to details of the specific subject of the bill and must be in a natural and logical sequence to the subject matter of the original proposal. A nongermane amendment includes one that relates to a substantially different subject." AM2325 greatly expands the scope of LB824 by granting the commission additional authority related to all alcohol products where such products can be sold. LB824 is solely a definition change, so this additional language in AM2325 does not relate to the same details of the specific subject. AM2325's language does not logically follow the changes in LB824. [LB824]

SPEAKER FLOOD: Thank you, Senator Larson. Senator Louden, I'd grant you time to respond to Senator Larson's concerns regarding the application of Rule 7, Section 3(d) of the rules. [LB824]

SENATOR LOUDEN: Thank you, Mr. President. As you look there, I guess you look on the green copy on LB824, it's listed right there, "to define and redefine terms" when you're talking about the Nebraska Liquor Control Act, so and this what we're doing in LB824 is...and it's listed there, "to define and redefine terms," and that's what the amendment does. The AM2325 I guess would define some terms that the Nebraska Liquor Commission would have. I don't see but what it isn't germane. It's all in the same section of statutes, goes on with what we were talking about on the taxes and control of liquor and who sells it. And that's what this alcohol pops is all about is how you're going to tax it and how you're going to sell it. So I say that it is germane to LB824. [LB824]

SPEAKER FLOOD: Thank you, Senator Louden. We'll stand at ease for a moment. In the opinion of the Chair regarding Rule 7, Section 3(d) of the Rules of the Legislature, whereas the rules say that no motion, proposition, or subject, different from that under consideration, shall be admitted under color of amendment. Any amendment that is not germane is out of order. Germane amendments relate only to details of the specific subject of the bill and must be in a natural and logistical (sic) sequence to the subject matter of the matter originally proposal. A nongermane amendment includes one that relates to a substantially different subject. In the case here, the underlying bill, LB824, in Section 4 of the green copy defines what a flavored malt beverage is and ties that to its alcohol content. The amendment that was just adopted, AM2302, further clarifies the alcohol content, and after the word "distillation" adds additional language where it says, "except that in the case of a malt beverage with an alcohol content of more than six percent by volume," again going to alcohol content. Senator Louden's AM2325 relates to three different subjects that seem to be in a logical sequence, pursuant to Rule 7,

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Section 3(d), those being alcohol content, the manufacturing process, which is similar to the distillation issue in the underlying amendment that was just adopted, or price. For that reason, in the opinion of the Chair, AM2325 is deemed to be germane and Senator Loudon is allowed to proceed. Seeing no objections to the ruling, Senator Coash, as we begin discussion on AM2325, you are recognized. [LB824]

SENATOR COASH: Thank you, Mr. President. I want to speak on the amendment that is now up for debate. Senator Loudon has brought a bill to the General Affairs Committee similar to this which had to do with establishing some alcohol impact zones. These are zones that can be drawn. We've talked about having the municipalities draw them. We've talked about having the state draw them. We've had them talk about the Liquor Control Commission draw these zones. And Senator Loudon has done his work in trying to find a way forward and it was the committee's opinion that we could not move forward with some of the thoughts that he had put together, and so now he's brought AM2325. I have to tell you, colleagues, I'm in opposition of AM2325 and it's very simple. This gives...this amendment gives enormous latitude and power to the Liquor Control Commission. It lets them, without any oversight, without any boundaries via legislation, it allows them to say you can't sell this here, you can't sell it at this time, you can't sell this product at this price. This amendment is very broad and gives the commission way too much power. This is power within this amendment that is not, in my opinion, acceptable to give to the Liquor Control Commission. This is power that is acceptable at the local level, at the legislative level, but we give very specific duties in the Liquor Control Act to the commission and I believe that this amendment expands them way too much. And I would urge the body to reject AM2325. Thank you, Mr. President. [LB824]

SENATOR CARLSON PRESIDING

SENATOR CARLSON: Thank you, Senator Coash. Senator Christensen, you're recognized. [LB824]

SENATOR CHRISTENSEN: Thank you, Mr. President. Yeah, I've seen the amendment that Senator Karpisek is going to bring on Select File about the conflicts in the statute that I talked about. I believe it will address that. I'm still...as I first read it, I appreciate him doing that. Now it just comes down to where you believe this really is. Just because it has a beer base and distilled spirits in it, is it a beer? That's your vote. That's really what you're voting on. Because when you look at this, even with their 51/49 rule, I believe is in that amendment, it's still got a lot of distillands in it and how do you believe that should be? And you know, to me there's a definite distinct difference in the taste of beer and distillands. And if you have one of these flavored malt beverages, it has no taste like beer. So we have the rights to legislate it to put it there. That's the choice of this body. But at the same time I ask you, is that where it belongs? I told Senator Karpisek up-front that I probably wouldn't vote for this bill either way, if he put that in

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there or not, but I thanked him for putting that amendment in or the one he will add on Select because I believe it does clarify, clean up the statutes. I think that's important. I still don't agree that this is a beer. So again, I just state this out. I believe facts are it's not a beer, but that's a category this bill will put it under. And if that's the choice that the body wants to make, that is a legitimate choice. So you know, I guess what I would like to have people think about is if that's the way they want to start doing it, because there's going to be more and more of them added to put them there. You know, there's all kinds of...you may call them moral issues, you may call them family issues, thought issues that can come into this also. Because when you look at...you know, everyone that talked early when I was here, and I apologize I was gone for a while at a previous speaking engagement, but when you look at the people have said this is a gateway drug or an opportunity to lead people in, they're not saying it has to be underage. Age 21 and above it's going to have the same effect. People can wait till they're legal to start drinking. They're still young people and I think 21-year-olds enjoy being called young adults. And I'm going to be 50 this year and I still feel young so...but the fact, you know, if you have a very sweet, flavorful drink, the fact is it's easier to start. And it does... [LB824]

SENATOR CARLSON: One minute. [LB824]

SENATOR CHRISTENSEN: Thank you...it doesn't matter if someone starts drinking, gets an alcohol problem or gets in that wreck or whatever. We all feel the pain of it. And there are going to be...there is people that start with this and that's fine. That's their choice if they're of age. Has nothing to do with this bill. All I'm saying is that is an issue everybody thinks about. They don't want to have their family caught up in it. They don't want to have. But again, if they follow the law, they won't have that problem. So as I said, there's many facets that always get drug into every bill, from the emotional side to the factual side, and that's why I appreciate Senator Karpisek working on the amendment he's bringing on Select. I think it could have been done here but it really doesn't matter. [LB824]

SENATOR CARLSON: Time. [LB824]

SENATOR CHRISTENSEN: Thank you. [LB824]

SENATOR CARLSON: Thank you, Senator Christensen. Senators still wishing to speak: Senators Karpisek, Price, Nelson, and Bloomfield. Senator Karpisek, you're recognized. [LB824]

SENATOR KARPISEK: Thank you, Mr. President. Members of the body, I want to give Senator Louden credit for giving me a heads up that he was bringing this amendment. Not everyone does such and the communications are lacking sometimes, and I do appreciate it. I also appreciate Senator Christensen working with me on the underlying

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bill. I could have brought the amendment on General. I just think there were so many amendments that it was getting a little confusing. Part of that is my fault. I will bring it on Select. On Senator Louden's amendment, as the Chair of the General Affairs Committee, I do feel that I have to talk about it and that Senator Louden did introduce a similar bill on alcohol impact zones in committee. We've worked on it. We've tried to get it where the committee could agree to it but we just haven't been able to kick it out on the floor. I do know that Senator Louden is trying to do something for his district and also a couple other districts that are seeing terrible alcohol problems. I feel that the Liquor Control Commission already has a lot of leeway on what they can and don't have to permit, and I agree with Senator Coash that this would give them far more power than they already have and what the original bill was like. I'm a little concerned about constitutional issues with the amendment, if it would be applied to select licenses or if it would be applied statewide. It does not give me any pleasure to stand up and say that I can't vote for the amendment, because I know that Senator Louden has worked very hard, legal counsel in General Affairs Committee has worked very hard to try to come to some sort of an agreement and we just haven't been able to quite get there. But I cannot support this amendment. I think it gives the Liquor Control Commission way too far-reaching powers. Thank you, Mr. President. [LB824]

SENATOR CARLSON: Thank you, Senator Karpisek. Senator Price, you're recognized. [LB824]

SENATOR PRICE: Thank you, Mr. President. Members of the body, as I read this amendment, it looks like we put the meat of a bill or a bill that was put into committee that didn't come out of committee and we're going to amend it in right here. It's what it looks like we're doing here. We're going to create on the fly something here. So I'm going to read it exactly as I have it, "may prohibit the sale of certain alcoholic liquor products for consumption off the premises based on alcohol content, manufacturing process, or price." Can anybody out here tell me what product would not fall under those three criterion: content, process, or price? So we have said that we're going to allow them, the alcohol...the Liquor Commission, to prohibit the sale of all alcoholic liquor products for consumption off premise, and they're going to be able to do this anywhere at any time. I'm thinking, is this an alcohol impact zone light? Am I thinking we're going to run afoul of, well, we decided we don't want it here but we want it there, and now we've set up separate classes? Would Senator Louden yield to questions? [LB824]

SENATOR CARLSON: Senator Louden, would you yield? [LB824]

SENATOR LOUDEN: Yes, I would. [LB824]

SENATOR PRICE: Senator Louden, am I anywhere near the...what you're trying to do here? Am I to understand you would like to give the authority to the commission to say

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in this place you may and that place you may not? [LB824]

SENATOR LOUDEN: Well, probably, probably so. The reason you give the Liquor Control Commission some authority to do things like that, I mean it isn't just north Omaha or Whiteclay or someplace like that. What if you had some outfit come in here close to your college, university and start selling some of this high-alcohol-type sweet liquors, or whatever you want to call it, and they were selling it in "single-serves" all the time and you had...game day you had people run in by their "single-serves" and they run up and down the street there and drink it, throw the bottles on the floor or on the ground or on the street or whatever and go from there? [LB824]

SENATOR PRICE: Thank you. [LB824]

SENATOR LOUDEN: So this is what...this is what I'm talking about. We need to be proactive with this and you don't want to be reactive. By giving them some authority to have some control over that we would be...at least give them the authority to head off some of those issues like that. And if they had that authority, those kind of liquor sales wouldn't happen. [LB824]

SENATOR PRICE: Thank you very much, Senator Louden. We got to the heart of what you want to say. I want to focus on one other word we have here. The word is "prohibit." So we are going to wield a sword with one blade--it may only deny. I don't think this is what our statutes in previous years have wanted us to do. Right now if you're going to come in and sell a high octane or a high-alcohol-content product and you're a college campus, we have a process. I can remember back to days younger when people would buy Everclear. I don't think you can buy anything stronger than Everclear and you can add that to all the fruit juice you want to and you can distribute it in whatever medium you want. But my challenge with this is we are going to say they can...we're going to give the authority to someone and we haven't prescribed enough boundaries to ensure we don't get in further trouble because they said, well, in this place you may and this one you cannot, and we're picking winners and losers, and I think the current system tries to address that so we don't have these things going on. So I'm going to listen to the debate and see where we really go with this and... [LB824]

SENATOR CARLSON: One minute. [LB824]

SENATOR PRICE: Thank you, Mr. President,...see what it is we're trying to actually get done. I don't think we're talking about the bill, the underlying bill, LB824, anymore. Even though it's germane, we're not talking about that bill anymore. What we're doing is we're taking something that a committee heard and we're amending it in here, and the body has a right and we have the ability to do so and we will, but we'll have full debate on this to understand what we're getting into. Thank you, Mr. President. [LB824]

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SENATOR CARLSON: Thank you, Senator Price and Senator Louden. Senator Nelson, you're recognized. [LB824]

SENATOR NELSON: Thank you, Mr. President. Members of the body, I do stand in support of Senator Louden's amendment, AM2325, not because I support the underlying bill, LB824, I am still opposed to that, but I do think it makes the bill better. And I appreciate the ruling of the Chair saying that this was germane, this amendment, because it really is. It gets to the substance here of what the Nebraska Liquor Control Commission is all about. The title of the commission itself suggests that it's appropriate to have an amendment such as this to give them the control that they need. If there are times when the Liquor Commission decides that there need to be some limitations placed on the distribution or the manufacture or the content, then I think it's appropriate that they be authorized to do that. And if in the case of Senator Louden, where he's worked hard on this and there were certain areas of his district that will benefit by this, then I think the same thing can be applied to all of the other districts that you represent here. My point would be, if it does no harm and can do some good, then we ought to adopt this amendment and put it in here. I don't think the Liquor Commission is going to go far afield with a single-bladed sword, as Senator Price. I think they're there to control and monitor and regulate for the benefit of the people of Nebraska and the consumers and for the protection of some groups. So I do endorse and support this amendment, and I will yield the remainder of my time to Senator Louden if he has more to say. Thank you, Mr. President. [LB824]

SENATOR CARLSON: Thank you, Senator Nelson. Senator Louden, you have 2 minutes. Excuse me, you have 2 minutes. [LB824]

SENATOR LOUDEN: Thank you, Mr. President. And thank you, Senator Nelson. As everybody seems to be concerned about the power that we're giving to the Liquor Control Commission and you stop and think, and I don't know if I look around here if anybody was around here 40 years ago or not, I'm beginning to wonder at times, but anyway 40 years ago people could send their kids downtown and buy a carton of cigarettes. They could buy the cigarettes. I mean, I seen kids eight, nine years old go into stores and buy cigarettes for their parents, so called, and go on from there, and perhaps for the parents and for themselves, whatever. Now if you want to go buy a package of cigarettes, they're under lock and key. If you look a little bit too young, which hasn't been my problem lately, but you have to show a card in order to buy them. Now that's how you controlled tobacco. Now, where are we going to be at with alcohol? Are we still in the deal that, oh my Lord, we've got to let them buy all the alcohol they want out there. Alcohol is an addiction. And let me tell you, I've been around areas where it shows up as an addiction, so by giving the... [LB824]

SENATOR CARLSON: One minute. [LB824]

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SENATOR LOUDEN: ...Liquor Control Commission a little bit more authority, we're not doing any more, probably, than what has been done with the tobacco industry over the years. In fact, we stuck it on the tobacco industry. They had to pay a huge sum of money and we're still using that money. When are we going to stick it onto the liquor or the alcohol industry on fetal alcohol syndrome on children? As Senator White, or used to be Senator White, he's got a half a billion dollar lawsuit now against some of them up there from the Pine Ridge Reservation so we're probably on the threshold of something different here. And my option is...or my opinion is this amendment will just help us along the way and will give the Liquor Control Commission some authority that they're going to be needing in about five years or less. Thank you, Mr. President, and thank you, Senator Nelson. [LB824]

SENATOR CARLSON: Thank you, Senator Louden. Senator Bloomfield, you're recognized. [LB824]

SENATOR BLOOMFIELD: Thank you, Mr. President. Good morning, colleagues. I, like Senator Coash, have seen this bill before, this amendment in the form of a bill. It did come through the General Affairs Committee. It did not come out of the General Affairs Committee. I would have preferred we IPPed it in the General Affairs Committee. The other folks serving in there were too kind to do that to Senator Louden's bill. So it just kind of laid there. It needs to go away as an amendment. It gives too much power to the control people and I cannot support AM2325; I do support LB824. Thank you. [LB824]

SENATOR CARLSON: Thank you, Senator Bloomfield. Senator Louden, you're recognized to speak. You're the only one wishing to speak, if you wish, you could close on your amendment. [LB824]

SENATOR LOUDEN: Thank you, Mr. President. And I'll close on the amendment. As we talked here, they talk about seeing the bill and it was in committee and we worked on it. And when the bill first came in to committee, it was something that was probably...was reasonable. The time you got done with some of the lobbyists and they worked on that thing and they tinkered around with it, they tinkered with it until nobody could support it. So it stayed in committee. I don't have a problem with that. That's what committee work is for and that's what lobbyists are for. They do their best to set the thing off to one side and derail something, and that is exactly, when they talk about that bill, I think it was, what, LB829 or whatever the bill was. I don't even remember anymore because it's history now. Because right now we're talking about this amendment and this is the amendment that gives the Liquor Control Commission more authority, gives them more leeway on how they can handle the sales of some of these single-serve sales primarily, and it's off-sale liquor is what it's geared to and how they can handle that. I don't see where it's anything that's over the ordinary. The Liquor Control Commission probably needs this authority. A lot of that stuff they'll set up in regulations. Are you not trusting them to do what's right? That was part of the trouble when I brought

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that bill before the committee before. They were afraid that there was only two or three people who could make big decisions. Well, let me tell you, the Liquor Control Commission is still the same way; there's two people in there; two out of three can make the decisions. They don't have to allow liquor licenses to different people. They can decide and pick and choose where they're going to have the liquor license and how they do that, and there's processes that people can petition them to get it done. So when they talk about giving more authority to Liquor Control Commission, I really don't see that. But eventually this...this amendment is something that will help this bill. It will improve it. It will also improve the way alcohol is sold and taken care of in the state of Nebraska. And I think it's probably something that...it's probably two years ahead of schedule, but let me tell you, in a few years from now you'll be back here again trying to figure out a way to control some of these liquor sales because they will be getting out of hand in different areas. So with that, I would ask you to vote for the amendment to the bill, and with that I could support the bill. Thank you, Mr. President. [LB824 LB829]

SENATOR CARLSON: Thank you, Senator Louden. Members, you've heard the closing. The question is, shall AM2325 be adopted to LB824? All those in favor vote yea; all opposed vote nay. Have all voted who wish to vote? [LB824]

SENATOR LOUDEN: Mr. President. [LB824]

SENATOR CARLSON: Senator Louden. [LB824]

SENATOR LOUDEN: Yeah, could I have a recap on the votes, please? No, I'm not calling the house. I want to list the votes while we have on the votes. [LB824]

SENATOR CARLSON: Senator Louden, you're asking for a record vote? Record, Mr. Clerk. [LB824]

CLERK: (Record vote read, Legislative Journal pages 937-938.) 12 ayes, 14 nays on the amendment, Mr. President. [LB824]

SENATOR CARLSON: The amendment is not adopted. Mr. Clerk, any items for the record or announcements? [LB824]

CLERK: I do have items, Mr. President. Revenue Committee reports LB749, LB1050, LB1080, LB1128 to General File; LB872 to General File with amendments. New resolution, Senator Harr, Burke Harr, LR483, study resolution; Senator Cook, LR484, that will be laid over. (Legislative Journal pages 938-939.) [LB749 LB1050 LB1080 LB1128 LB872 LR483 LR484]

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

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SENATOR CARLSON: Thank you, Mr. Clerk. (Visitors introduced.) Members, you have heard the motion to recess. All in favor say aye. Opposed, nay. We are recessed until 1:30 p.m.

RECESS

SENATOR COASH PRESIDING

SENATOR COASH: Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. Senators, please record your presence. Mr. Clerk, please record.

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

SENATOR COASH: Thank you. Do you have any items for the record?

CLERK: I do not have items at this time, Mr. President, thank you.

SENATOR COASH: Thank you, Mr. Clerk. We are going to continue on our discussion of LB824. Mr. Clerk, you have an item on your desk? [LB824]

CLERK: I do, Mr. President. Senator Karpisek would move to amend the bill with AM2426. (Legislative Journal page 940.) [LB824]

SENATOR COASH: Thank you. Senator Karpisek, you are recognized to open on AM2426. [LB824]

SENATOR KARPISEK: Thank you, Mr. President, and good afternoon, colleagues. AM2426 is the amendment that Senator Christensen and I talked about that I would bring on Select File. We had time to get it done since we adjourned before the bill was done so we thought we'd get it on now and that way we don't have to worry about not getting it on later. What it does, and I think you all have it in front of you, adds "spirits" on line 6; then on line 9 says "spirits does not include flavored malt beverages." So I think that speaks for itself. One reason why we, again, didn't want to take the "any" out in line 4 is because I'm concerned that someone might come up with some other type of drink, bring it in and somehow try to get it in under the beer provision or the flavored malt beverage provision. So I am trying to make sure that that doesn't happen. Senator Christensen has seen the amendment and from what I know he's okay with it; he knows I was bringing it after lunch. I did see him out my window talking to a group of students, so if he's just a little bit late that's probably where he is. But he knows about it. He thinks that this is all right; legal counsel for the General Affairs Committee thinks that it addresses his problems. I do think that it is redundant. I don't think that it needs,

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absolutely, to be in there. I think that the bill states what this says. So when Senator Christensen said how it is written wrong and all those things that he went on for a while on, and I told him I thought he was wrong, this is what I was talking about. However, if it makes him feel better to put it in there, to say it twice, so be it. If it does clear it up, which it may, again, to keep anything else out, something new that they could come up with, I'm fine with doing it. I'd appreciate a green vote on AM2426. Thank you, Mr. President. [LB824]

SENATOR COASH: Thank you, Senator Karpisek. Members, you've heard the opening to AM2426. The floor is now open for debate. Seeing no members wishing to speak, Senator Karpisek, you are recognized to close on AM2426. Senator Karpisek waives his opportunity to close. Question before the body is, shall AM2426 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Record, Mr. Clerk. [LB824]

CLERK: 31 ayes, 0 nays, Mr. President, on the adoption of Senator Karpisek's amendment. [LB824]

SENATOR COASH: The amendment is adopted. [LB824]

CLERK: I have nothing further on the bill, Mr. President. [LB824]

SENATOR COASH: Returning to discussion on LB824. Seeing no other members wishing to speak, Senator Karpisek, you are recognized to close on LB824. [LB824]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I appreciate the questions on this today. I know that the Supreme Court ruling has caused some questions to come up. I think, again, or I know what the Supreme Court said was that we could set this tax where we decided to set it, hence, why the bill is here. But like I said, even if the Supreme Court would have sided with the Liquor Control Commission, we still need to codify this language. I think Senator Christensen wanted to ask me why the Liquor Control Commission went the way they did and I'll answer, because they talked to the Attorney General and they also followed federal law. This is federal language in 47 other states. I don't think that we always have to do everything that everybody else does either, but to do it differently and different than federal law, to me, really doesn't make a lot of sense. I know that this also strikes an emotional chord. I realize that and I know that there are problems with underage drinking. Are flavored malt beverages the problem or is society problem? If we're going to look at how we do this and we want to do it by amount of alcohol, then that's a different subject, because not all of these flavored malt beverages are even the same alcohol content as a beer that we think of like Budweiser. They're lower. Some are higher, but there's also some beers that are higher. There have been federal investigations of the way that these are marketed. There's been two; it's come back to say that they're not marketing to

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underage people. People may disagree with that, however, the findings by the feds said no. As I said before, there are a lot of different ways that we can talk about underage drinking, binge drinking, drinking in general, but just because this is the bill and the Supreme Court said that we've been doing it the wrong way because of our 1930s statute doesn't mean this bill is wrong. This will keep things going the way it has been going for the last decade and more. I'd appreciate your vote on LB824. Thank you, Mr. President. [LB824]

SENATOR COASH: Thank you, Senator Karpisek. Members, you've heard the closing to LB824. The question is, shall LB824 advance? All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Record, Mr. Clerk. [LB824]

CLERK: 27 ayes, 7 nays, Mr. President, on the advancement of LB824. [LB824]

SENATOR COASH: LB824 does advance. Mr. Clerk, do you have items? [LB824]

CLERK: I do, Mr. President. Thank you. Senator Burke Harr would like to print an amendment to LB817. Senator McGill offers a new A bill, LB787A. (Read by title for the first time.) That's all that I have, Mr. President. (Legislative Journal pages 940-941.) [LB817 LB787A]

SENATOR COASH: Thank you, Mr. Clerk. We'll continue to General File, senator priority bills, Sullivan division. Mr. Clerk, next bill.

CLERK: Mr. President, LB799 is a bill originally introduced by Senator Cornett. (Read title.) The bill was introduced on January 5 of this year, referred to the Judiciary Committee. The bill was advanced to General File. There are Judiciary Committee amendments. (AM2208, Legislative Journal page 689.) [LB799]

SENATOR COASH: Thank you, Mr. Clerk. Senator Cornett, you're recognized to open on LB799. [LB799]

SENATOR CORNETT: Thank you, Mr. President and members of the body. Today I introduce LB799. I'd like to thank the Attorney General for drafting LB799 and Senator Hansen for making it his priority bill. LB799 enhances the penalties for negligent child abuse. As the law currently stands, child abuse can be committed if a person either knowingly or negligently abuses a child, and LB799 does not change that. Under LB799, negligent child abuse that does not result in the death or serious bodily injury will continue to be a Class I misdemeanor. LB799 makes negligent child abuse resulting in serious bodily injury a Class IIIA felony. If the negligent child abuse results in the death of the child, it is a Class III felony under this bill. The distinction of the wrongdoer's intent determines whether he or she is charged with a felony or a misdemeanor. Originally, the punishments proposed in LB799 included a Class III felony for negligent

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child abuse resulting in serious bodily injury and a Class II felony for negligent child abuse that resulted in the death of a child. After working with the Judiciary Committee and Senator Harr to address some of these concerns, a compromise was reached and is reflected in the committee amendment. AM2208 lowers the punishment to the previously mentioned Class IIIA felony and Class III respectively. LB799 creates a middle ground between the intentional child abuse resulting in death, which is a Class IA felony, and negligent child abuse, which is currently only a Class I misdemeanor. This addition will give prosecutors more options to address the wide variety of abuse situations they encounter. Additionally, AM2208 establishes a definition of negligence for the purpose of this legislation. Currently in Nebraska if a person unintentionally kills another while in the commission of an unlawful act, he or she is guilty of manslaughter, a Class III felony. However, if a person who negligently abuses a child has led either to the serious bodily injury or death of that child is guilty only of a Class I misdemeanor. To put it simply, as the law stands now, the killing of a child is a lesser offense than the similar killing of an adult. This bill and its amendment fill the gaps and hold those who abuse children accountable. A recent example of why the gap between two existing levels of punishment needs to be filled is the case of Micheal Wiles that took place in Lancaster County...Wills, pardon me. Wills killed a 23-month-old named Carter through blunt-force trauma. The jury had to decide whether he had intentionally abused the boy, a Class IB felony punishable by 20 years to life in prison, or whether the abuse was committed negligently. The only option for negligent child abuse was a Class I misdemeanor punishable by only one year in jail and a \$1,000 fine. The jury found that Wills should not be guilty of intentional child abuse resulting in the death but did convict him of the lesser offense including that negligent child abuse. If jurors had more options to address the wide variety of abuse situations, justice would be better served. Again, this bill and its amendment fill the gaps and hold those who abuse children accountable. Thank you. [LB799]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Thank you, Senator Cornett. Members, you've heard the opening to LB799. Mr. Clerk. [LB799]

CLERK: Mr. President, Judiciary offers committee amendments. [LB799]

SPEAKER FLOOD: Senator Ashford, as Chair of the Judiciary Committee, you're recognized to open on AM2208. [LB799]

SENATOR ASHFORD: Thank you, Mr. Speaker. The...Senator Cornett has outlined the penalty provisions that the committee adopted. We...just to reiterate, AM2208 decreased the felony provision provided under subsection (5) from a Class III felony, which is punished by 1 to 20 years, to a Class IIIA felony, which is 0 to 5 years, as well as decreasing the felony provision provided under subsection (6) from a Class II felony,

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1 to 50 years, to a Class III felony, 1 to 20. We believe that the change in penalties will provide the state a wider range of sentencing options. We also include a definition of "negligently" in the act: negligently refers to criminal negligence and means that a person knew or should have known of the danger involved and acted recklessly, as defined by Section 28-109, with respect to the safety or health of the minor child. With these changes, we urge the adoption of AM2208 and advancement of LB799. Thank you. [LB799]

SPEAKER FLOOD: Thank you, Senator Ashford. Members, you've heard the opening on the Judiciary Committee amendment, AM2208. Mr. Clerk. Turning now to discussion to AM2208 to LB799, we begin with Senator Council. Senator Council, you are recognized. [LB799]

SENATOR COUNCIL: Yes, thank you, Mr. President. I rise in strong support of AM2208 and LB799. I want to thank Senator Harr for identifying the need to make it clear which definition of negligence would control in these situations. And clearly, this was an area of where there was a gap in terms of our ability to prosecute those who are responsible for causing serious bodily injury or the death of a child. And I would urge the body's adoption of AM2208 and the underlying bill. Thank you. [LB799]

SPEAKER FLOOD: Thank you, Senator Council. Senator Hansen, you're recognized. [LB799]

SENATOR HANSEN: Thank you, Mr. President. Members of the Legislature, I've chosen to make LB799 my priority this session and I thank Senator Cornett and the Attorney General's Office for bringing this bill forward. This piece of legislation, LB799, allows justice to be served on the behalf of the children that the court has found victims of neglect and child abuse. Our system should not draw a distinction where the killing or serious abuse of a child is a lesser offense than a similar crime committed against an adult. The penalty for killing a child should not be less than the penalty for killing an adult. On July 18, 2011, a passerby rescued two children, a three-year-old and a one-year-old from a burning home...a mobile home in Fremont. A third child, only eight years old, was forced to jump out a window to escape the harm. Luckily, no one was injured in the fire. At the time the fire was started, the children's mother, Kellie Ortega, was at the grocery store shopping. She knowingly left her children at home without any adult supervision. The Nebraska Fire Marshal's Office said the fire was started by one of the unattended children playing with a lighter. As a result of her negligence, Ortega was found guilty of a Class I misdemeanor and sentenced to 90 days in jail. Under the current law, if one of Ortega's children had been seriously injured or died in the fire, it would not have affected her penalty. LB799 holds those who abuse children accountable. I support the committee amendment and the underlying bill, LB799. Thank you, Mr. President. [LB799]

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SPEAKER FLOOD: Thank you, Senator Hansen. Senator Pirsch, you're recognized. [LB799]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. And I'm just, I guess, getting up to speed on the intricacies of it and so I wonder if Senator Cornett might yield to a question or two. [LB799]

SPEAKER FLOOD: Senator Cornett, will you yield to a question from Senator Pirsch? [LB799]

SENATOR CORNETT: I will. [LB799]

SENATOR PIRSCH: Thank you. With respect, there's a definition that would come about in this amendment, correct, AM2208, of negligent, what "negligence" is for the purpose of meeting this enhanced penalty? Is that what it is? [LB799]

SENATOR CORNETT: Yes. [LB799]

SENATOR PIRSCH: And the definition then is tied to, I guess, an already existing definition that falls in Section 28-109. Is that correct, that's the definitional language? And isn't that subsection (19) then, which deals with the definition of "recklessly"? [LB799]

SENATOR CORNETT: Correct. If you look at lines 5 through 9, it says for the purpose of this section, "negligently" refers to criminal negligence and means a person knew or should have known of the danger involved and acted recklessly, as defined in that section you just stated. [LB799]

SENATOR PIRSCH: Okay. So then tied to that would be the additional language of "recklessly" as defined in subsection (19) of Section 28-109 then which...and just...I'll read it. I don't know if you have it in front of you. [LB799]

SENATOR CORNETT: I do not have that specific subsection in front of me. [LB799]

SENATOR PIRSCH: Okay. So, "Recklessly shall mean acting with respect to a material element of an offense when any person disregards a substantial and unjustifiable risk that the material element exists or will result from his or her conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to the actor, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation." I think that that's the language that's being referenced there. Am I correct? [LB799]

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SENATOR CORNETT: Senator Pirsch, if you just read from that section, then you are correct. [LB799]

SENATOR PIRSCH: Okay. And does this...is this a change, the definition of "negligent" as case law? There is no specific instruction so I assume we look to case law to...for helping defining what the term "negligent," how that's been interpreted by courts in the past. Is this a material change or is it substantially the same as the courts have been interpreting it? [LB799]

SENATOR CORNETT: I believe it's substantially the same as the courts have been interpreting it. That question might be better raised with the Chair of the Judiciary Committee. [LB799]

SENATOR PIRSCH: Okay. And then, I will then address that question to Senator Ashford, if he could address that. [LB799]

SPEAKER FLOOD: Senator Ashford, will you yield to a question from Senator Pirsch? [LB799]

SENATOR ASHFORD: Yes. Thank you, Mr. Speaker. The...this is an added definition. You're right, Senator Pirsch, and it takes the language from existing statute. And it's intended to heighten or enlarge the...we're talking about a felony now, a 0 to 5 or...if it results in injury, 1 to 20 if it results in death. So we are requiring that the language that Senator Harr worked on that's in the amendment is the language with the burden would be...have to adhere to that standard. [LB799]

SENATOR PIRSCH: Okay. Well, I do appreciate it. Thank you. [LB799]

SPEAKER FLOOD: Thank you, Senator Pirsch and Senator Ashford. Senator Hadley, you are recognized. [LB799]

SENATOR HADLEY: Mr. President, thank you. As I was reading this bill I thought to myself that it certainly does cover the physical damages that are done as a result of child abuse and the punishment to those that perpetuate it. But, obviously, there are long-term serious mental problems that can result from child abuse. I wonder if Senator Howard would yield to a question. [LB799]

SPEAKER FLOOD: Senator Howard, would you yield? [LB799]

SENATOR HOWARD: Yes, I will. [LB799]

SENATOR HADLEY: Senator Howard, in your experience, are long-term psychological problems common from children who have been abused? And do we have an

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appropriate method to respond to that in the state? [LB799]

SENATOR HOWARD: Senator Hadley, that's a really important question and the answer is yes. Yes, every form of abuse to a child has long-term consequences and especially if the abuse is perpetrated by someone close to the child or someone the child trusted. The best ways we have to deal with that are through counseling, placing the child...if the child is not able to remain with their biological family, to place the child in a secure environment where they receive nurturing and feel safe. But the consequences really do affect every aspect of the child's life and enter into the child's relationships, not only currently but as that child grows older in future relationships. [LB799]

SENATOR HADLEY: Thank you, Senator Howard. I think that's a very profound statement because...and it's so true. And we do...we try to do a good job of punishing those that do the act and making sure that they have the punishment, but we also have to have that safety net for the children in there long term so that they can get back as much to normal as they can. Thank you, Senator Howard, and thank you, Mr. President. [LB799]

SPEAKER FLOOD: Thank you, Senator Hadley. There are no more lights on. Senator Ashford, you're recognized to close on AM2208. [LB799]

SENATOR ASHFORD: Just very briefly, thank you, Mr. Speaker. And thanks to Senator Cornett and Senator Harr and Senator Hansen for prioritizing this bill. It is important. It does fill a gap, I think, with the committee amendments that bring the penalties in line with the offense. And I would urge the adoption of the amendment. Thank you. [LB799]

SPEAKER FLOOD: Thank you, Senator Ashford. Members, you've heard the closing on AM2208. The question for the body is, shall AM2208 be adopted? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB799]

CLERK: 37 ayes, 0 nays, Mr. President, on the adoption of committee amendments. [LB799]

SPEAKER FLOOD: The committee amendments are adopted. (Visitors introduced.) Mr. Clerk. [LB799]

CLERK: Mr. President, the next amendment I have is offered by Senator Schilz, AM2164. Pursuant to the offering of that amendment, Senator Schilz would move to suspend Rule 7, Section 3(d), the germaneness rule, so as to permit consideration of AM2164. [LB799]

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SPEAKER FLOOD: Thank you, Mr. Clerk. A reminder that any motion to suspend any rule does require 30 votes. Senator Schilz, you're recognized to open on your motion to suspend the rules. [LB799]

SENATOR SCHILZ: Thank you, Mr. President, members of the body. Good afternoon. First of all, I want to say thank you to Senator Cornett and Senator Hansen for agreeing to let me attach this amendment which formerly was LB814, which if you don't keep track of numbers was the bath salts bill and the prohibition of bath salts. I must say that I would also like to, somewhat, give up an apology to the floor for not having this in place on its own right. I do believe that it is way too important not to have a conversation. And I tried, as we looked at the agenda before and we watched it creep up there and creep up there, we were one away from getting it heard on the floor before priority bills took over. And I was hoping that we could get that in place without having to waste somebody else's or a committee priority to do that. Unfortunately, that did not happen. So with that, I think that what I would like to say is that it's a very important piece of legislation that I think needs to get through. This was the best spot we could find to keep it as close as possible to the germaneness issue. But just to allay all concerns, I would like your support in suspending the rules to let this be heard to amend to LB799. Thank you very much. [LB799 LB814]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Thank you, Senator Schilz. You have heard the opening on the motion to suspend the rules. The floor is now open for discussion on that motion. Senators wishing to speak, we have Senator Council and Senator Lautenbaugh. Senator Council, you're recognized. [LB799]

SENATOR COUNCIL: Thank you, Mr. President. Colleagues, I rise in strong opposition to the motion to suspend the rules to allow the amendment of LB799 by AM2164. There is no question, no question, by virtue of the motion to suspend the rules, there is an acknowledgement that the subject matter of AM2164 is not germane to the subject matter of LB799. The rule that we are suspending is Rule 7, 3(d) which expressly provides that, "No motion, proposition, or subject, different from that under consideration, shall be admitted under color of amendment. Any amendment that is not germane is out of order. Germane amendments relate only to details of the specific subject of the bill and must be in a natural and logical sequence to the subject matter of the original proposal. A nongermane amendment includes one that relates to a substantially different subject." And that is what is at the core of my opposition to this motion to suspend the rules. AM2164 is completely out of order as an amendment to LB799. The subject of LB799, as reflected in its title, is to change penalties for child abuse. LB799, and you need to focus in on this, specifically creates new felony offenses for negligently causing serious bodily injury to or the death of a child. And it's important. We're creating new felony offenses under LB799. I, along with all of the other members

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of the Judiciary Committee, voted to advance LB799 with the committee amendment that you have already approved. We did so because LB799 is a good bill. No one opposes the creation of these new felony offenses, for the reasons outlined by Senator Hansen. LB799 is a good bill but it should not be compromised by allowing it to be amended by AM2164. But that is exactly what we are being asked to do with this motion to suspend the rules. AM2164, as Senator Schilz has admitted, is actually LB814, a bill he introduced to add bath salts as a controlled substance. Now if you look at the title of LB814, it is an act to amend Section 28-405 to include additional substances in the schedule of controlled substances under the Uniform Controlled Substances Act, not under the Uniform Child Abuse Act, it's the Uniform Controlled Substances Act. As with the underlying bill, LB814 was unanimously advanced to General File by the Judiciary Committee. LB814 is a good bill. No one disputes it. However, it bears absolutely no relationship to the subject of LB799, nor is it a natural or logical sequence to creating new felony offenses for child abuse. Rather, LB814 relates to an entirely different subject matter, and by the express terms of our rules is nongermane. Now I know that this body can vote to suspend the rules of germaneness. [LB799 LB814]

SENATOR LANGEMEIER: One minute. [LB799]

SENATOR COUNCIL: However, that action does not alter the fact that AM2164 represents an entirely different subject. And while we can suspend our rules, we cannot suspend the provisions of the Constitution of the State of Nebraska. Article III, Section 14, expressly states, "No bill shall contain more than one subject, and the subject shall be clearly expressed in the title." Where in LB799's title that deals with child abuse do you see any reference to the Controlled Substances Act? It cannot, and for that matter it should not be asserted that AM2164 addresses the same subject. And all that can be asserted is that AM2164 represents good policy, I agree, but there are other ways to enact that policy. And Senator Schilz had a variety of avenues open to him, none of them requiring this body to take an action which actually violates the constitution. [LB799]

SENATOR LANGEMEIER: Time. Thank you, Senator Council. Senator Lautenbaugh, you're recognized. [LB799]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I do rise in support of this motion. And I would point out that sometimes we do shy away from procedure that's out of the norm here. There's a reluctance to do some things and I think over the years we've become particularly reluctant to embark on anything that is not day in, day out routine in this body as far as the rules go. But I would point out that what Senator Schilz is requesting us to do...for us to do is specifically provided for in the rules. And I work from the assumption that if things are in the rules, that means that it's assumed we're going to use them from time to time, and not just the common ones but the ones near the back, you might say. And this is one of those. And I understand why

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he wants to do this. And both of these bills are very important bills, both dealing with criminal law, and the germaneness issue is separate from any sort of single subject constitutional issue. And I do believe that recent decisions have pretty much not done away with the single subject distinction but made it very clear that we have a certain amount of latitude in what we choose to put in our legislation. And that provision has been interpreted broadly, I would say, much more broadly than even the germaneness challenge. So while I don't necessarily agree that a germaneness challenge would have been successful, this was a measure to deal with it head on, I guess is the best way to put it. I do believe that both the underlying bill and the amendment represent important things that we should be taking care of in this session. And I don't believe that adding the amendment will make the underlying bill, or the amendment that becomes part of the bill, subject to constitutional challenge. That's very different from our germaneness issue, which is just an internal rule for the Legislature, and that is what you're being asked to suspend, if you will. I would urge you to look favorably upon this motion and vote for it and please support the underlying amendment. Thank you. [LB799]

SENATOR LANGEMEIER: Thank you, Senator Lautenbaugh. Senator Schumacher, you're recognized. [LB799]

SENATOR SCHUMACHER: Thank you, Mr. President. Members of the body, I pushed my button before Senator Council made a point that our constitution, reasonably clearly, says that the bill shall contain only one subject. And I think there's a solid inference here that the fact that it is admittedly not germane to this thing, and deals with a completely different area of the law, that it brings into question whether or not this legislation, if it were integrated, would bring into jeopardy the very important provisions of LB799. As such, I think that it may be prudent to do what AM2164 seeks to do by some other mechanism this year or next year rather than jeopardize the two together. Two distinctly different things and to suspend the rules is a pretty extreme action, can be taken, and if this sets our standard why we suspend the rules to integrate two distinctly different pieces of legislation, then it may be a pretty low bar in the event later on in this session we want to suspend the rules to do some things. Thank you, Mr. President. [LB799]

SENATOR LANGEMEIER: Thank you, Senator Schumacher. Those still wishing to speak, we have Senator Council, Senator Burke Harr, Senator Schilz, Senator Avery, Senator Harms, and others. Senator Council, you're recognized. [LB799]

SENATOR COUNCIL: Thank you, Mr. President. Again, colleagues, no one disputes the importance of the policy set forth in LB799 or the policy set forth in AM2164. The fact remains they are two separate and distinct policies. They are two separate and distinct provisions of statute. They are two separate and distinct subjects. I appreciate my colleague, Senator Lautenbaugh's statement. Yes, we have rules and there's a provision that we can suspend the rules. But I maintain that our suspension of the rules does not permit us to suspend the provisions of the constitution. We can suspend the

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rules. We've done it before. We'll do it again. But we can't amend the constitution. And the constitution specifically says, the bill, one subject, clearly expressed in its title. The title to LB799 is to provide for penalties for child abuse. It makes no reference to the Uniform Controlled Substance Act or the schedules thereunder. We all want to rid our state of bath salts and the horrible effects that it has on the people who use it. But are we willing to jeopardize what Senator Hansen said was important to him, to fill this gap, to provide prosecutors with the range of options to deal with people who harm our children? As a practicing lawyer for a number of years, closing in on four decades, I know, I know that brilliant defense lawyers who have their client charged under LB799, if AM2164 is attached, will challenge their conviction on the grounds that LB799 was enacted in violation of Nebraska Constitution, and the result we are trying to prevent is the result that we will actually achieve if we amend it with AM2164. That which is now charged as a Class I misdemeanor will go back to being charged as a Class I misdemeanor because LB799 will be found to be invalid. And if we thought we were stopping people from selling the components, the compounds and the materials that comprise this new controlled substance, bath salts, we won't be because our actions will also invalidate AM2164. And I stated we had all other kinds of avenues and I think we need to know. You know, Senator Schilz made it clear to the Judiciary Committee when we had the hearing on what was then LB814, which is now AM2164, of how important it was to him. He, as did I, had a priority designation. This bill wasn't important enough to warrant his priority designation. The Speaker has 25 priority designations. This bill wasn't important enough to warrant a request for a Speaker designation, yet Senator Schilz feels comfortable coming and asking you to violate the constitution to enact this legislation. It should be enacted. I question him as to why it wasn't a consent calendar item. There was no opposition at the hearing. It came out of the committee on a unanimous vote. The last time I checked, that met all of the parameters for a consent calendar item. But instead, Senator Schilz is willing to risk a bill that was important to Senator Cornett enough to designate it as her priority, a bill that was important enough to be introduced but yet not important enough to designate as a priority. Colleagues, we should not utilize a suspension of the rules to accomplish a violation of our constitution because one of our colleagues wants to enact what we all agree is a good piece of legislation. But is it worth it? Is it worth it? Is it worth placing Senator Cornett's priority bill in jeopardy? I say that it is not. I say that it shouldn't be. We should look at other avenues. If we want this legislation enacted this session... [LB799 LB814]

SENATOR LANGEMEIER: Time. [LB799]

SENATOR COUNCIL: Was that time, sir? [LB799]

SENATOR LANGEMEIER: Time. [LB799]

SENATOR COUNCIL: Thank you. [LB799]

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SENATOR LANGEMEIER: Thank you, Senator Council. Senator Burke Harr, you're recognized. [LB799]

SENATOR HARR: Thank you, Mr. President. Thank you, Senator Cornett, for bringing LB799. Thank you, Senator Hansen, for prioritizing this bill. It is a very important bill. For those of you who aren't on the front line or weren't on the front line, this is very, very important. We have the case of a shaken baby. It's hard to prove that that parent or guardian, or whoever had the child, intended to shake the baby so much as to kill the baby, but it happens. So I think we all agree that that's a bad thing. AM2164, bath salts, nobody advocates for that...against that bill for the use of bath salts. It's a good bill. It's what Senator Council said. The issue here is, we are on questionable constitutional ground, thin ice, gray area. Do we want to go there? If we have two good bills, why do we want to jeopardize both of them? And the answer is, we don't. There is a way...a different way we can pull back AM2164. It can be the first one up in committee next year and can be out with an E clause and next January it will be illegal. Now, we are threatening both bills on constitutional grounds. If someone is convicted under LB799, it's as Senator Council said, a good defense attorney will raise a constitutional issue. And if it's found unconstitutional, are you willing to look that parent in the eye whose child was killed and convicted under LB799 and say, but we got a bath salt bill passed that was very, very important to us at the time? And I don't think you can. We can't risk LB799 being found unconstitutional because of AM2164. LB799 is that important. I want to be able to sleep at night. I don't want to look a parent in the eye and say, I'm sorry, we thought...we suspended the rules to do it. Well, but we thought it was the right thing to do. The answer is, it isn't. Rules exist for a reason, ladies and gentlemen. Yes, we can suspend them in an emergency situation but this is not a situation to suspend the rules. Again, all for AM2164 as LB814, I think we need to do something there, but it's not worth risking the underlying bill, LB799. Thank you. [LB799 LB814]

SENATOR LANGEMEIER: Thank you, Senator Harr. Senator Schilz, you're recognized. [LB799]

SENATOR SCHILZ: Thank you, Mr. President, members of the body. Thanks, everyone. Thank you, Senator Council, for trying to, you know, protect the integrity of the Legislature, the integrity of the laws. You know, as I looked at this and saw this and worked with the AG's Office and Senator Cornett to find out how best to try to move this forward, we looked at the bills themselves. Both bills are about criminal penalties. It's about illegal things going on. The other thing, I worked closely with the AG's Office to prepare this and bring it to the floor. They also worked closely with Senator Cornett to bring LB799 to the floor and they worked closely with myself and Senator Cornett and Senator Hansen to bring these two bills together to move them forward, which seemed to me that if the Attorney General is comfortable in saying, yes, you can go ahead and try to attach it to this one, that they probably aren't as concerned as some of my other colleagues about whether or not this will be considered constitutional. Many times in

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committees we bring bills out, bring amendments out in bills that deal with all sorts of different issues. And if it's actually a matter of the constitution, it wouldn't matter where we did that in the Legislature. We do it every day in committees. Everybody that sits on a committee has brought a bunch of bills together and put them on the table and said, let's throw these out to the floor. Well, that's got nothing to do with the rules either. We've done that all the time. But if what Senator Council is saying is true, then every one of those that we have done could be considered constitutional or you could make an argument, just like some are making today on the other side. To say that there is not an emergency, two or three years ago the calls to the Poison Control Center for these things, there were 600 calls. Last year that number has jumped to 6,000 calls. People are hurting because of this and I've said, I'm...hey, I'm as...I'm more than willing to take on the responsibility and the accountability of not getting this here, but don't let my mistakes hurt what's happening out there. There are people that are being affected every day. Look at the letter that I sent out to you and sent around. Listen to the sergeant from the police force that had to tackle a guy and hold him down and use four officers to get it done while his mom stood there and had to watch. Talk about the people that are mutilating themselves from the hallucinations that they see. To say that this is not an emergency is wrong, people. And for this kind of thing I'm willing...I want to make sure that we get the things in place that we need to. Could it have gone on consent? We might have tried that, but you get 15 minutes and then you vote. And there were quite a few people that said, hey, I would love to be able to stand up and talk about this because they have constituents that have needs, they have constituents that need to have this taken care of. I brought this bill for the people of the state of Nebraska. I understand we have rules. I'm trying to follow those rules as closely as possible by making the right motions, doing the right things to see this move forward. The people of the state of Nebraska, the Attorney General of the state of Nebraska, law enforcement folks of the state of Nebraska say this is a needed bill, that it is an emergency. All I'm asking you is to understand. We've heard, we've heard from everyone that this is a good bill. It makes sense. We've heard that. We had four proponents in the committee, no opponents. I believe it came out of the committee 8-0. All I'm asking for is the support to suspend the rules to get this where it needs to be, and that's put into law. Thank you very much. [LB799]

SENATOR LANGEMEIER: Thank you, Senator Schilz. Senator Avery, you're recognized. [LB799]

SENATOR AVERY: Thank you, Mr. President. I wonder if Senator Schilz would be willing to yield to a question or two. [LB799]

SENATOR LANGEMEIER: Senator Schilz, would you yield to a question? [LB799]

SENATOR SCHILZ: Yes. [LB799]

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SENATOR AVERY: This had a public hearing, is that correct? [LB799]

SENATOR SCHILZ: Yes, sir. [LB799]

SENATOR AVERY: What was the number of the bill itself? [LB799]

SENATOR SCHILZ: The bill number was LB814. [LB799 LB814]

SENATOR AVERY: LB814. And you say no opposition, no opponents appeared at the hearing? [LB799 LB814]

SENATOR SCHILZ: Yeah. As far as I can tell from the transcripts, that is true. [LB799]

SENATOR AVERY: In my reading of this amendment suggests to me this is the...is a bill dealing with what is known as bath salts? [LB799]

SENATOR SCHILZ: Yes, sir. [LB799]

SENATOR AVERY: A fairly toxic, addictive new form of drug that young people have access to? [LB799]

SENATOR SCHILZ: Yes, Senator Avery. [LB799]

SENATOR AVERY: I think it's important for us to know why Senator Schilz is bringing this motion to suspend the germaneness rule. This is an important bill. This amendment addresses an important subject. And I would suggest to you that the motion to suspend the germaneness rule is not a dilatory motion. We have provisions in our rules, Rule 7, Section 11, that deals with dilatory motions. We have procedures in place to be used. I think there...a motion of this kind is not something that you would want to invoke frequently, but I think in this circumstance, where you have a compelling reason to want to pass this bill in the form of an amendment, and it addresses a section of law that is contained in LB799, that it is an appropriate way to go about it, and I commend Senator Schilz for doing so. I intend to vote for this motion to suspend, and I will vote for the amendment and the underlying bill. Thank you, Mr. President. [LB799]

SENATOR LANGEMEIER: Thank you, Senator Avery. (Visitors introduced.) Returning to discussion on the motion to suspend the rules, those still wishing to speak, we have Senator Harms, Campbell, Council, Lautenbaugh, and Carlson. Senator Harms, you're recognized. [LB799]

SENATOR HARMS: Thank you, Mr. President. I rise in support of LB799. I oppose the rule suspension. I think it's the wrong thing to do. And I guess as I look at this, I think that in listening to Senator Council and Schumacher and Harr, they're right on target

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with what the views and thoughts are, colleagues. If this bill was so important, which I think that it is, why was it not made a priority? Why did Senator Schilz not make it his priority bill if it's that important to do? Why did the committee not make it a priority bill? And if it was so important, why didn't we submit a letter to Senator Flood to make it a priority bill? I guess I object to this. I object to the fact that now we bring it at the last moment and say it's so important and all these letters are coming, 6,000 communications. Well, if I got 6,000, I'd tell you right now, this would have been my priority bill. I'd have gotten after it. So I object to this and I think there's other ways we can do this, but I object to what we're doing here. Thank you, Mr. President. [LB799]

SENATOR LANGEMEIER: Thank you, Senator Harms. Senator Campbell, you're recognized. [LB799]

SENATOR CAMPBELL: Thank you, Mr. President. Would Senator Schilz yield to a question? [LB799]

SENATOR LANGEMEIER: Senator Schilz, would you yield? [LB799]

SENATOR SCHILZ: Yes. [LB799]

SENATOR CAMPBELL: Senator Schilz, I just want to be very clear here as we debate this. And so the question is, did either you or the committee apply for a Speaker priority? [LB799]

SENATOR SCHILZ: You know, we had discussed that and for whatever reason we did not get that done. [LB799]

SENATOR CAMPBELL: And neither you nor the committee applied for an item on the consent calendar? [LB799]

SENATOR SCHILZ: No, we did not. [LB799]

SENATOR CAMPBELL: Okay. And I...thank you, Senator Schilz. I guess I'd like to ask a question and, Senator Council, if you wouldn't mind yielding to a question. [LB799]

SENATOR LANGEMEIER: Senator Council, would you yield? [LB799]

SENATOR COUNCIL: Yes. [LB799]

SENATOR CAMPBELL: Senator Council, I'm going to pick on you because you're on the Judiciary Committee. Did the committee at any point consider this for the consent? Because...and I have to preface by saying that in the Health Committee, I mean, we took a look at a number of bills, not just those that people ask us to, but did the

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committee consider that? [LB799]

SENATOR COUNCIL: No, Senator Campbell, let me put that in context. If you look at the committee statement, this bill, LB814, which is AM2164, was one of the first bills we heard at the start of this session. It was one of the first bills we "execed" on. It was on General File, so...I mean at the point in time where we started to move to priority items, again Senator Schilz wants to refer to it as a mistake, in all due respect it was a conscious decision. You know, which of the bills that are important to you are you going to prioritize, and he didn't choose to prioritize this one. [LB799 LB814]

SENATOR CAMPBELL: Mr. President, I would yield the rest of my time and ask Senator Council to review one more time the part of the Nebraska Constitution she is referring to. [LB799]

SENATOR LANGEMEIER: Senator Council, 2:54. [LB799]

SENATOR COUNCIL: Yes, thank you very much, Mr. President, and thank you, Senator Campbell. And I also would like to state that as far as I know, Senator Campbell, the committee was never asked to designate it as a priority, nor were we asked to request the Speaker to designate it as a priority. But the section of the constitution is Article III, Section 14, which specifically states, "No bill shall contain more than one subject, and the subject shall be clearly expressed in the title." And when you look at the title to LB799, it talks about penalties for child abuse, an act relating to penalties for child abuse. If you look at LB814, which is now AM2164, the title was an act to add additional substances to the Uniform Controlled Substance Act. These are clearly entirely different subjects. Do they both affect the criminal code? Admittedly, they do. And there were comments about what kind of amending goes on in committee. And oftentimes bills are amended into other bills before they get out on the floor. But as a member of the Judiciary Committee, I can say that we go to great pains...I mean, we are probably the committee that's accused most of advancing "Christmas tree" bills. But if you look at our Christmas tree bills, it will be...if it's a court bill, all the bills that we amend into those bills are court bills. If it's a juvenile justice issue, all the bills that we amend into that bill are juvenile justice bills. So, you know, we understand how the constitution works. But it's even... [LB799 LB814]

SENATOR LANGEMEIER: One minute. [LB799]

SENATOR COUNCIL: ...it's even more important, Senator Campbell and colleagues, when you're talking about a statute that creates a criminal offense, because you give rise to people having their convictions set aside if they can successfully challenge the constitutionality. And with all due respect to my colleague, Senator Lautenbaugh, there is no definitive ruling on single subject that says, you know, how broad or how narrow. The issue will be whether the court believes that this bill, if it's amended, covers a single

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subject. I submit to you that it absolutely does not. [LB799]

SENATOR LANGEMEIER: Thank you, Senator Council and Senator Campbell. Speaker Flood, you're recognized for an announcement. [LB799]

SPEAKER FLOOD: Well, thank you, Mr. President. Members, good afternoon again. Well, in air traffic control we can always find a different way and I think Senator Council has raised some issues that I think resonate with a number of folks in the Legislature. Based on a conversation I had with Senator Schilz and his office staff, it's my understanding he's going to pull his motion to suspend the rules, and he's going to pull his amendment, AM2164. We'll back up, we'll look at it, we'll find an appropriate avenue for this to cross the finish line, because it's my sense that there isn't opposition to the policy decision here. There's opposition to the procedure. And I respect and admire the effort that Senator Council has devoted to her concerns. And I think she has made an argument that resonates with the majority of members in the Legislature. So that's where we're going to go. I'd ask that the Clerk have the opportunity to visit with Senator Schilz regarding his next steps and that should allow LB799 to proceed and we'll allow the Legislature to deal with the underlying policy question in AM2164 at a later date this session. Thank you, Mr. President. [LB799]

SENATOR LANGEMEIER: Thank you, Speaker Flood. Senator Schilz, you're recognized. [LB799]

SENATOR SCHILZ: Yes, thank you, Mr. President. I would like to pull the motion to suspend. [LB799]

SENATOR LANGEMEIER: The motion to suspend the rule is withdrawn. [LB799]

SENATOR SCHILZ: And then I would like to withdraw AM2164. [LB799]

SENATOR LANGEMEIER: AM2164 is withdrawn. Mr. Clerk. [LB799]

CLERK: I have nothing further pending to the bill, Mr. President. [LB799]

SENATOR LANGEMEIER: We return now to discussion on LB799, the bill itself. Those wishing to speak, we have Senator Lautenbaugh and Senator Carlson. Senator Lautenbaugh, you're recognized. Senator Lautenbaugh waives his opportunity. Senator Carlson, you're recognized. [LB799]

SENATOR CARLSON: Mr. President and members of the Legislature, I've observed something this afternoon that I thought was worthwhile in sharing. We all have a very healthy and high regard for the institution of the Legislature. And Senator Schilz brought forth this amendment because he thinks it's a good bill. There is no question that many

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people on the floor think that this is a good bill. I was impressed with Senator Avery's comments. Senator Council thinks it's a good bill. Senator Cornett thinks it's a good bill. Senator Hansen thinks it's a good bill. Many others think it's a good bill. So as I sit here observing what happens, instead of a number of people just sitting around and doing nothing, there was all kind of activity around me. And it's a good example to me of the nonpartisanship of the Legislature and the attitude that can come about when there's something that needs to be done, let's figure out a way to do it. I've observed that this afternoon. I'm proud of the Legislature. Thank you. [LB799]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Seeing no other lights on, Senator Cornett, you're recognized to close on LB799. [LB799]

SENATOR CORNETT: Thank you, Mr. President and members of the body. Just as a refresher to what the underlying bill was, this has to do with holding child neglect or negligence resulting in serious bodily injury or death to the same standard that we hold and for the same punishments that we hold for an adult that is similarly treated. I urge the body to support LB799 and thank them for their support. [LB799]

SENATOR LANGEMEIER: Thank you, Senator Cornett. You have heard the closing on LB799, the motion to advance to E&R. All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB799]

CLERK: 36 ayes, 0 nays, Mr. President, on the advancement of LB799. [LB799]

SENATOR LANGEMEIER: LB799 does advance. Mr. Clerk, items? [LB799]

CLERK: Thank you, Mr. President. Enrollment and Review reports LB902 as correctly engrossed. And Senator Hadley offers LR485. That will be laid over. That's all that I have. Thank you. (Legislative Journal pages 941-942.) [LB902 LR485]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We will now proceed to the next item on General File, LB1104. [LB1104]

CLERK: LB1104 is a bill offered by Senator Adams relating to Postsecondary Education Institution Act. (Read title.) Introduced on January 19, referred to the Education Committee for public hearing, advanced to General File. There are committee amendments, Mr. President. (AM2077, Legislative Journal page 617.) [LB1104]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Adams, you are recognized to open on LB1104. [LB1104]

SENATOR ADAMS: Thank you, Mr. President. Members of the body, this is, for the most part, the technical bill this year for higher education. Now there is a rather

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substantive amendment, committee amendment that is forthcoming. And, Mr. President, what I would like to do is to yield my opening time to Senator Avery and let him open on the underlying bill and then I'll take the committee amendment. [LB1104]

SENATOR LANGEMEIER: Senator Avery, 9 minutes 30 seconds. [LB1104]

SENATOR AVERY: Thank you, Mr. President. Thank you, Senator Adams. I have named LB1104 as my priority bill. This...I'm going to talk about the green copy and then I will defer to Senator Adams who will discuss the committee amendments. This bill makes three simple changes to the Postsecondary Institution Act, which you may remember we enacted last year. That legislation last year replaced outdated set of statutes dealing with the commission's approval of institutions operating in our state. The three changes are the following: LB1104 would allow institutions offering only graduate degrees to qualify for the status of authorization to operate on a continuing basis. This is an authorization that does not require renewal, which is currently available to institutions that have offered a four-year undergraduate degree in the state for 20 years or more under the same ownership. In that bill that we passed last year there was no intention to exclude institutions offering graduate degrees, and this bill will correct that oversight. The...we have the University of Oklahoma, Central Michigan University, each have been offering graduate degrees at Offutt Air Force Base for some 30 years and we did not intend to exclude them. The second simple change addresses institutions offering short courses or seminars which are exempt from the act. When I say the act, that was the bill we passed last year, the Postsecondary Institution Act. This bill would limit them from offering more than two such classes within a calendar year. If more are offered, the institution must be approved by the commission. The third change and final change contained in LB1104 would clarify the distinction between the two categories of authorization to operate established in the act. One is the authorization to operate on a continuing basis. The second and more routine type of authorization is one that must be renewed and approved by the commission at least every five years. A new term is created for this called a recurrent authorization. This is only a clarification meant to emphasize the distinction between the two types of authorization established in the original legislation last year. That's about as simple as I can make it. It's not especially complicated. The complicated part comes in the amendments and that's why I'm having Senator Adams take over that. Thank you, Mr. President. [LB1104]

SENATOR COASH PRESIDING

SENATOR COASH: Thank you, Senator Avery. As the Clerk has stated, there is an Education Committee amendment. Senator Adams, as Chair of the committee, you are recognized to open on AM2077. [LB1104]

SENATOR ADAMS: Thank you, Mr. President. This is the committee amendment and there are two parts to it. The first part is very technical in nature. It is basically taking

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LB954, that was brought to us by the State Treasurer, and incorporating it here in this higher ed bill. The State Treasurer brought to us several language changes that he would like to see in the College Savings Plan, and fundamentally what this does is to take language that is currently in the 529 section of the IRS Code and make our state College Plan language harmonize with that. And at the risk of putting it asleep, I'll just give you some examples. For instance, changing higher ed costs with higher ed qualified expenses; outlining what those expenses are so that they match up with federal language; giving the Treasurer a power to terminate or freeze if there's false information that's provided to them; and then also establishing, as in federal code, a penalty if money is withdrawn for reasons other than what's allowable under the law, the penalty being having to pay the tax on those dollars that was not otherwise assessed. That basically is what LB954 did, brought to us by the State Treasurer, trying to complement our College Savings Plan with the IRS Code. Now the second part, and please follow me carefully. I bring this to you, folks, because I messed up. I messed up. In the course of the several months that I was negotiating with the six community colleges trying to find common ground on a distribution formula, as we got closer and closer to the end result there were numbers flying everywhere. There was understanding and handshakes. And when we, my office and the six community colleges, walked away right before Christmas, we had an agreement. We had a bill drafted, a bill that we have already passed and has been signed by the Governor, which creates the distribution plan for monies for the community colleges. And it wasn't until after that, that I realized that in the midst of our negotiations we had one area where I wasn't clear enough, and that one area is this: Community colleges prior, prior to the passage of the Community College Aid distribution bill, LB946, had three things that they could levy for. They could levy for general fund, they could levy for capital, and they could levy for environmental hazards and ADA--three separate things. And the environmental hazards and the ADA is similar to the QCPUF that public schools can levy for. All right? So three different funds that could be levied for. As we were negotiating, the thought pattern was we're going to take all of that and put it under a lid of 11.25. And there was agreement to that and we went away. Here's where the problem lies. My understanding was we were taking all three funds and putting them under 11.25. It wasn't until the bill got knee-deep down the path that, oh-oh, wait a minute, Adams, did you also include the environmental hazard levy? Yes. Won't work--for one community college that won't work. I struggled with this. I struggled with it. And the essence of it is that the committee amendment will give three-quarters of 1 cent authority to the community colleges for mold, asbestos abatement, and ADA. Now I would tell you that I have an amendment forthcoming that's going to shrink that. But I want you to understand this was a miscommunication, a misunderstanding, I think primarily by me. Central Community College is really the one that is impacted by this, not the others, and I'm trying to fix it. Thank you, Mr. President. [LB1104 LB954 LB946]

SENATOR COASH: Thank you, Senator Adams. Mr. Clerk, you have an amendment to the committee amendment. [LB1104]

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ASSISTANT CLERK: Mr. President, Senator Adams would move to amend the committee amendments with AM2168. (Legislative Journal page 631.) [LB1104]

SENATOR COASH: Senator Adams, you're recognized to open on AM2168. [LB1104]

SENATOR ADAMS: Thank you, Mr. President. This is not the amendment; it's a different one. All it does is we go back into that College Savings Plan again and match up another section of our law with federal law on what qualifies as beneficiary--a disabled beneficiary. It defines it. That's all this amendment does. Thank you, Mr. President. [LB1104]

SENATOR COASH: Thank you, Senator Adams. Members, you've heard the opening to LB1104, the committee amendment, and the amendment to the committee amendment. The floor is open for discussion. Members wishing to speak: Senators Christensen and Gloor. Senator Christensen, you're recognized. Senator Gloor, you are recognized. [LB1104]

SENATOR GLOOR: Thank you, Mr. President. It would be appropriate at this point in time I think for the body to know that any time Senator Adams says "I messed up," he is heaping inappropriate abuse upon himself. Given his responsibilities in K through 12 education and with the community college, he spends a considerable amount of time working on behalf of this body and the people of the state of Nebraska. And when it comes to the community college and some of the challenges involved in bringing this legislation forward, coming to agreements, he was trying to get eagles to fly in formation, and so I think we could forgive him an oversight when you consider how much of a balancing act that may be. But I do want to emphasize the fact that what he had a challenge in including is a reasonable expectation to include, and that is the whole environmental hazard abatement issue and ADA compliance. Obviously, we made allowances for that previously in calculations. And in going through this process, bringing this all together, I think it's appropriate that we continue to realize that that above and beyond what we've already got in place with lids is an appropriate thing to do. If not, I know in the case of Central Community College they could be looking at an expense and I believe, if calculated, that they would be looking at an expense of \$8 per credit hour to those students. So to shift that from it being an "appropriatic" expense borne by the taxpayer, to all of a sudden all being borne by those students who enroll, is inappropriate and puts a considerable hurdle in front of students trying to further their education. And with that, I would yield the remainder of my time to Senator Adams if he wishes to use it. Thank you. [LB1104]

SENATOR COASH: Senator Adams, 3 minutes. [LB1104]

SENATOR ADAMS: Thank you. And thank you for the kind words, Senator Gloor. I

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still...I do take responsibility for this. In the midst of all of our communication, this one area that apparently we weren't clear enough. And quite simply I'm trying to fix a problem that is right now unique to one community college area and that is the Central Community College area. Thank you, Mr. President. [LB1104]

SENATOR COASH: Thank you, Senator Gloor and Senator Adams. Senator Seiler, you are recognized. [LB1104]

SENATOR SEILER: Mr. President, members of the Unicameral, I rise to support this procedure and bills. The reason is, is that much of this money will be spent at Hastings campus, which was built from about 1941 to 1945, and back then we didn't have a problem with asbestos and other EPA rules. So as this college campus is expanding and they're adding on to these old 1940 buildings, it thus becomes necessary to control the EPA asbestos and other chemicals. So I'm asking that you vote green on this bill to help us remodel those programs...those buildings. Thank you. [LB1104]

SENATOR COASH: Thank you, Senator Seiler. Seeing no other members wishing to speak, Senator Adams, you're recognized to close on AM2168. [LB1104]

SENATOR ADAMS: Thank you, Mr. President. There really isn't much to be said, but I do want to clarify something. The amendment that we're voting on right now is merely a language change that further harmonizes the 529 section of the IRS code with our current College Savings Plan code. There is yet another amendment that deals more directly with Central Community College. Thank you, Mr. President. [LB1104]

SENATOR COASH: Thank you, Senator Adams. Members, you've heard the closing to the amendment to the committee amendment, AM2168. The question before the body is, shall AM2168 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Record, Mr. Clerk. [LB1104]

ASSISTANT CLERK: 31 ayes, 0 nays on the adoption of the amendment, Mr. President. [LB1104]

SENATOR COASH: The amendment is adopted. Do you have other amendments, Mr. Clerk? [LB1104]

ASSISTANT CLERK: Mr. President, I do. The next amendment is offered by Senator McCoy, but I have a note he wishes to withdraw that. [LB1104]

SENATOR COASH: So ordered. Do you have another amendment? [LB1104]

ASSISTANT CLERK: Senator Adams would move to amend the committee amendments with AM2367. (Legislative Journal page 903.) [LB1104]

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SENATOR COASH: Senator Adams, you're recognized to open on AM2367. [LB1104]

SENATOR ADAMS: Thank you, Mr. President. Here's the amendment to correct the Central Community College levy situation. What the amendment basically would say is that if there is a community college area with a campus located on the site of a former ammunition depot, that they would be allowed to levy three-quarters of 1 cent for mold, asbestos abatement, and ADA. It narrows it down significantly. And I would tell you that if Central levies this, what it really does, it would just bring them up to where they're at right now. That's the essence of it. It brings their levy up to where they're at right now. It's very narrow, and I hope that that will satisfy the issue created at Central. Thank you, Mr. President. [LB1104]

SENATOR COASH: Thank you, Senator Adams. You've heard the opening to AM2367. Members wishing to speak: Senators Wallman and Nelson. Senator Wallman, you're recognized. [LB1104]

SENATOR WALLMAN: Thank you, Mr. President. Would Senator Adams yield to a question? [LB1104]

SENATOR COASH: Senator Adams, will you yield? [LB1104]

SENATOR ADAMS: Yes. [LB1104]

SENATOR WALLMAN: Thank you, Senator Adams. And I, too, want to thank you for what you do on this issue. I know that's tough stuff. But this ammunition, these chemicals and what other stuff may be there, doesn't the federal government help out on this or do they not? [LB1104]

SENATOR ADAMS: You know, I don't have an answer to that, Senator. All I know is, and maybe Senator Seiler can better answer this or Senator Gloor possibly or any of the other senators in the Central Community College area, it's their Hastings campus and therein lies their issue. [LB1104]

SENATOR WALLMAN: Thank you. I would sure hope they would because they caused some of this problem and they dump it off on the states. And so that's all, Mr. President. [LB1104]

SENATOR COASH: Thank you, Senator Wallman. Senator Nelson, you are recognized. [LB1104]

SENATOR NELSON: Thank you, Mr. President and members of the body. We'll do our dance once perhaps a session. I have a question for Senator Adams if he would yield.

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[LB1104]

SENATOR COASH: (Gavel) Senator Adams, will you yield? [LB1104]

SENATOR ADAMS: Yes. [LB1104]

SENATOR NELSON: Thank you, Senator Adams. I just want to be sure in my own mind that I understand this. And I am looking at the committee statement rather than the bill, because it's simpler. You set an aggregate levy lid of 11.25. [LB1104]

SENATOR ADAMS: That's correct. [LB1104]

SENATOR NELSON: Okay. So then that's not going to be reduced or changed. You're leaving that alone. [LB1104]

SENATOR ADAMS: No, that's being left alone, with the exception, Senator, that if we pass this amendment, then in effect Central Community College would be allowed up to three-quarters of a cent more beyond that 11.25. [LB1104]

SENATOR NELSON: Central Community. [LB1104]

SENATOR ADAMS: Yes. [LB1104]

SENATOR NELSON: Yes. All right. So then that's going to add on another, and they're still going to participate in that 11... [LB1104]

SENATOR ADAMS: Absolutely. [LB1104]

SENATOR NELSON: All right. [LB1104]

SENATOR ADAMS: Their general fund and their capital fund is still capped at 11.25. [LB1104]

SENATOR NELSON: Okay. And with this amendment we're talking about, that's just going to address that specific situation for Central. [LB1104]

SENATOR ADAMS: Yes. [LB1104]

SENATOR NELSON: All right. Thank you, Senator Adams. I have no further questions, Mr. President. [LB1104]

SENATOR COASH: Thank you, Senator Nelson and Senator Adams. Senator Schumacher, you're recognized. [LB1104]

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SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. Central Community College is in my district. I went to school there when it was under a different name. The problem here is they've got to clean up some old construction, and there's no ifs, ands, or buts about it. If we do not recover this fumble in the way that Senator Adams suggests, the president of the community college indicates there's only one way to get the money, and that is to raise the rates of tuition by the guesstimate is \$8 a credit hour. So the choice is we recover the fumble this way or we put a burden on the kids who are probably having a hard time making it the way it is, hopefully will graduate and stay in the area as most of the kids who graduate from those community colleges will do, and they will be parts of our work force staying here in the state, contributing taxes, making this all work. So this is really a pretty simple choice. We recover the fumble this way or we lay it on the backs of the children. Thank you. [LB1104]

SENATOR COASH: Thank you, Senator Schumacher. Seeing no other lights on, Senator Adams, you're recognized to close on AM2367. [LB1104]

SENATOR ADAMS: I'm going to take the opportunity, Mr. President, because I know there's been a lot of things that this amendment has in it, but I'll be very quick. Senator Nelson made a good point. This amendment does not change LB946 that is now law that puts general fund and capital fund under an aggregate levy of 11.25. This simply allows the community college area to go up to three-quarters of a cent for environmental hazard. Thank you, Mr. President. [LB1104 LB946]

SENATOR COASH: Thank you, Senator Adams. Members, you've heard the closing to AM2367. The question before the body is, shall AM2367 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Record, Mr. Clerk. [LB1104]

ASSISTANT CLERK: 33 ayes, 0 nays on the adoption of the Adams amendment to the committee amendments, Mr. President. [LB1104]

SENATOR COASH: The amendment is adopted. Anything further on the bill, Mr. Clerk? [LB1104]

ASSISTANT CLERK: Mr. President, I have nothing further pending to the committee amendments. [LB1104]

SENATOR COASH: We return to discussion of the committee amendment. Seeing no members wishing to speak, Senator Adams, you are recognized to close on AM2077. [LB1104]

SENATOR ADAMS: I'll waive my closing, Mr. President. [LB1104]

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SENATOR COASH: Senator Adams waives closing to the committee amendment. The question is, shall the committee amendment, AM2077, be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Record, Mr. Clerk. [LB1104]

ASSISTANT CLERK: 34 ayes, 0 nays on the adoption of committee amendments. [LB1104]

SENATOR COASH: Committee amendments are adopted. Return to discussion on LB1104. Seeing no members wishing to speak, Senator Adams, you're recognized to close on the advancement of LB1104. Senator Adams waives closing. The question before the body is, shall LB1104 advance to E&R Initial? All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Record, Mr. Clerk. [LB1104]

ASSISTANT CLERK: 37 ayes, 0 nays on the motion to advance the bill, Mr. President. [LB1104]

SENATOR COASH: LB1104 does advance. Next item, Mr. Clerk. [LB1104]

ASSISTANT CLERK: Mr. President, the next bill is LB845 introduced by Senator Sullivan. (Read title.) The bill was read for the first time on January 6 of this year, referred to the Natural Resources Committee. The committee reports the bill to General File with committee amendments. (AM2146, Legislative Journal page 687.) [LB845]

SENATOR COASH: Thank you, Mr. Clerk. Senator Sullivan, you're recognized to open on LB845. [LB845]

SENATOR SULLIVAN: Thank you Mr. President. Good afternoon, colleagues. LB845 is the reclamation bill that I promised to bring you during the special session last fall. It builds upon the basic oil pipeline reclamation work that I began last session with LB629, which, if I would remind you, was passed on the very last day of the session. But this bill, LB845, amends the Oil Pipeline Reclamation Act to add legislative intent language which states that reclamation is to be part of the oil pipeline construction process, and unless otherwise agreed to by the landowner, reclamation is intended to do the following: It should restore construction areas as close as reasonably practicable to the condition, contour, and vegetation that existed prior to construction. It says that we need to stabilize disturbed areas; we need to establish a diverse plant environment of native grasses and forbs to create a safe and stable landscape; we need to restore active cropland; and we need to mitigate noxious weeds and manage invasive plants. Under LB845 the new statutory requirements include a time frame. It says that final grading, topsoil replacement, installation of erosion control structures, seeding and mulching shall be completed within 30 days of backfill except when weather conditions,

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extenuating circumstances, or unforeseen developments do not permit the work to be done within 30 days. It says that all reclamation efforts, including choice of seed mixes, methods of reseeding, weed and erosion control measures, and monitoring must be conducted in accordance with the Federal Seed Act, the Nebraska Seed Law and the Noxious Weed Control Act. It also says that genetically appropriate and locally adapted native plant materials and seeds must be used based on the site characteristics and vegetation as determined by a preconstruction site inventory, and mulch must be installed as required by site contours, seeding methods, weather conditions, or when requested by a landowner. I will also note that LB845 has an emergency clause. These requirements that I've developed as part of LB845 are based on reclamation requirements in other states, including Montana and South Dakota. In addition, the requirements incorporate time frames and practices already being used by large pipeline companies as part of their permit applications. And I should also note that there's been opposition for these requirements on the part of pipeline companies. I also want to be clear that in placing these reclamation requirements in statute they in no way hinder pipeline construction in Nebraska. It's also important to note that there was no opposition to LB845 at the committee hearing. In my estimation, LB845 actually assists in efforts to restore Nebraska's land after pipeline construction. It protects Nebraska landowners and actually provides guidance to pipeline companies doing business in our state. There is also a Natural Resources Committee amendment which follows, which I support. I strongly encourage you to adopt the Natural Resources Committee and advance LB845 to Select File. Thank you. [LB845 LB629]

SENATOR COASH: Thank you, Senator Sullivan. As the Clerk has stated, there are committee amendments. Senator Langemeier, you are recognized to open on the committee amendment. [LB845]

SENATOR LANGEMEIER: Mr. President, members of the body, thank you. The committee amendment strikes section (3) in Section 5 of the bill on page 4. The language requires that a pipeline carrier ensures that all their seed mixes used in the reclamation process be state certified. At the hearing we heard from native prairie grass producers that produce this seed had indicated that it takes two to four years to produce a proper seed bed, and then to make it state certified could take another five years. So it could be up to ten years to create a state-certified seed. They sell a lot of seed that is native seed that is not state certified, and so they said you would really hamper them if you left that state certification title in there. They think they can produce this seed without it. So with that, that's what the committee amendment does. I rise in support of the committee amendment as well as LB845, and ask that you adopt both as well. Thank you, Mr. President. [LB845]

SENATOR COASH: Thank you, Senator Langemeier. Members, you've heard the opening to LB845 and the committee amendment. Members wishing to speak: Senators Hansen and Sullivan. Senator Hansen, you're recognized. [LB845]

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SENATOR HANSEN: Thank you, Mr. President and members of the Legislature. This is a bill that certainly is needed, and I thank Senator Sullivan for bringing it into the...especially the intent part of recovery through anyone's land. We have had probably close to ten oil wells drilled on our property over the years, and I remember about as far back as I can remember, the first one we still have trash scattered over that site. There were metal pans left. There were some of the drilling parts that broke that were left there. And it kept getting better and better and better until the last one that was drilled was natural gas, just a test hole, and I thought that we were going to have to go up there and clean that site up. I just assumed we probably would. But when they left, there was no trace of that drilling rig. There was no trace of the construction area at all, so that is possible. That was in the Sandhills and that was over the Ogallala Aquifer, just a side note. But there is reclamation processes in place and I appreciate what Senator Langemeier was saying about the certified seed. That's an interesting concept that they can develop that seed to recover that. But the recovery process, no matter what type of soil it is, it's going to be slow, and the intent of this language is good to have in our intent language. Thank you, Mr. President. [LB845]

SENATOR COASH: Thank you, Senator Hansen. Senator Sullivan, you're recognized. [LB845]

SENATOR SULLIVAN: Thank you, Mr. President. And I just wanted to speak in strong support for Senator Langemeier's amendment. It actually came from me as a suggestion to remove the state-certified seed requirement, because prior to the public hearing on this bill I was contacted by several experts on the use of local native seed sources. These experts were concerned that by requiring the state-certified seed, that was going to limit the access to actually the locally adapted prairie seeds. And really when you think about it, NRCS is actually recommending those locally adapted prairie seeds for the reclamation efforts, and so it's just...and if we just were to limit it to the state-certified seed, sometimes, as Senator Langemeier said, that takes a good number of years to develop. And we're looking at pipeline reclamation activity that potentially could start right now, and to not have this seed available in bulk would be problematic. So as long as we say in this bill that the seed is going to be free of noxious weeds and that it's native to the area, that those are the kinds of things that we want to make sure take place. And as I said, too, that I want to assist in the reclamation process, I don't want to hinder it, so I think this is a very good amendment. Thank you. [LB845]

SENATOR COASH: Thank you, Senator Sullivan. Senator Pahls, you are recognized. [LB845]

SENATOR PAHLS: Good afternoon, Mr. President. I'm going to talk about how simple the world could be or it is, and I'm going to use Senator Langemeier and myself. We're in this business. We are going to go out and make sure that all that seed is planted, and

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this is how exemptions work. If he prepares the land and I plant the seed, he has...no sales tax is charged except for the grass. Now, if I prepare the land and I plant the seed, there's a sales tax on both. Isn't it interesting how the world does work? I need to hire him because it'll save some sales tax, but if I do it myself, prepare the land and plant the seed, there's taxes on that. Thank you. [LB845]

SENATOR COASH: Thank you, Senators. Seeing no other members wishing to speak, Senator Langemeier, you're recognized to close on the committee amendment. Senator Langemeier waives his opportunity to close. The question before the body is, shall AM2146 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Record, Mr. Clerk. [LB845]

CLERK: 37 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB845]

SENATOR COASH: The committee amendments are adopted. Returning to discussion on LB845, Senator Nelson, you're recognized. [LB845]

SENATOR NELSON: Thank you, Mr. President. Members of the body, I rise in support of LB845, but I do have a concern about some language here and I'd wonder if Senator Sullivan would yield to some questions. [LB845]

SENATOR COASH: Senator Sullivan, will you yield? [LB845]

SENATOR SULLIVAN: Yes, I would. [LB845]

SENATOR NELSON: Thank you, Senator Sullivan. Do you have the green copy before you there? [LB845]

SENATOR SULLIVAN: I do. I do. [LB845]

SENATOR NELSON: If you would turn to page 2 and go down to line 21. In the intent language there you speak about restoring active cropland. What do you understand cropland to be? [LB845]

SENATOR SULLIVAN: Well, I would...I understand that to mean any ground that is tilled where seeds are planted that will ultimately be harvested. [LB845]

SENATOR NELSON: All right. The pipeline has purchased the right of way there, but my understanding is from pipelines that once it's down in the ground then it's possible to plant crops above that. Is that correct? [LB845]

SENATOR SULLIVAN: Yes, it is. [LB845]

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SENATOR NELSON: And we would be talking probably about corn and soybeans and things like that in this part of Nebraska. [LB845]

SENATOR SULLIVAN: Yes. [LB845]

SENATOR NELSON: Now I would...you're a lot more specific about seed beds and planting seeds and things like that. I think of that as grassland and pasture and things of that sort. Would that be true? [LB845]

SENATOR SULLIVAN: Right. [LB845]

SENATOR NELSON: Okay. And who's responsible then over a period of time once that seed is planted? And I think is there a period of ten years mentioned or something like that, that it has to be maintained? Is that the responsibility of the pipeline? [LB845]

SENATOR SULLIVAN: Well, these reclamation efforts continue for the life of the pipeline. [LB845]

SENATOR NELSON: All right. [LB845]

SENATOR SULLIVAN: So that means that if for some reason the seeds do not germinate appropriately on the grassland, that there's a responsibility on the part of the pipeline company to help with that restoration. [LB845]

SENATOR NELSON: All right. That's the initial seeding...the bedding and seeding. But then whoever owns the land, if it's pastureland or grassland, it's being grazed and things of that sort. Is there any responsibility on their part once the grass is there and the seed has germinated and everything is grown to a...if there has to be reseeding done, does the landowner do that, or for that ten-year period, or is that the responsibility of the pipeline? [LB845]

SENATOR SULLIVAN: Well, again it has...perhaps in part has to do with the way the land is used and grazing, and also the other thing that enters in is the contract, the reclamation contract that is developed between the landowner and the pipeline company. So there are some basics that are outlined in this statute, but it does not supersede anything that might be developed between the landowner and the pipeline company. [LB845]

SENATOR NELSON: Well, that...yes, and that's my point. I think a lot of those things would be covered in the agreement... [LB845]

SENATOR SULLIVAN: Absolutely. [LB845]

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SENATOR NELSON: ...between the pipeline and the party. Now my next concern is about cropland, and the language says restoring active cropland to its previous productive capability. You know, you've dug a deep ditch there and you've thrown up a lot of dirt and then you've got the backfill, and you try to put topsoil in there, or I would suppose that they would. They use the best type of soil at the very top. But I'm wondering if we are...are we imposing an undue burden on the company when we're asking them to restore it to its former productive capacity? Because that doesn't always happen when you're moving a lot of dirt around. I'm saying you might be getting 60 bushels an acre of soybeans before, and now it's 50 as a result of a little different type of soil there: clay, gumbo, that sort of thing. So what would be your comment about that? [LB845]

SENATOR SULLIVAN: Well, first of all, we say restoring active cropland. We don't say anything about restoring it to its original... [LB845]

SENATOR COASH: One minute. [LB845]

SENATOR SULLIVAN: ...production capacity or former yields or anything like that. We're talking about restoring active cropland. So that means that it's feasible for a producer to come back in and plant a crop. And I will also tell you that, as I indicated in my opening, these parameters that I'm establishing aren't anything that is not currently being required in other states and with pipeline companies that are familiar with restoring the land. And with respect to taking the dirt out and then setting the topsoil aside, you know, they're very good actually about knowing how to separate some of this topsoil from the lower backfill, and I think they know how to accomplish that without putting an undue burden on either themselves, the pipeline company, or the landowner for that matter. [LB845]

SENATOR COASH: Time, Senators. [LB845]

SENATOR NELSON: Thank you. Thank you, Mr. President. [LB845]

SENATOR COASH: Thank you, Senator Sullivan and Senator Nelson. Senator Karpisek, you're recognized. [LB845]

SENATOR KARPISEK: Thank you, Mr. President. Members of the body, I did not intend to speak on this, but as Senator Nelson was bringing up the returning the land to where it was, I just had a quick story about the pipeline that came through already; not the new one but the one that went through. It went through my district. I had a constituent send me pictures of crops that looked not as good where they planted over the pipeline. I showed them to TransCanada when they were here. They quickly took down her contact information and wanted to get out and make sure that things were okay with

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her. So I don't think that it's too much to ask of them. In fact, I would think that they want to do that because they were very willing and really got on the ball to go and make sure that that landowner was all right with what happened there. So just judging from that experience, they wanted...said they want to be good neighbors and they acted in good faith on that too. I think that everything was resolved. So to make them, even if they aren't made to in this situation, I think that they want to. So I don't see that it is a horrible inconvenience. If it is a little bit short on bushels, I think that they could probably restore them to where they would have been compared to the rest of the ground. That's all I have. Thank you, Mr. President. [LB845]

SENATOR COASH: Thank you, Senator Karpisek. (Visitors introduced.) Returning to discussion on LB845. Seeing no other members wishing to speak, Senator Sullivan, you are recognized to close on the advancement of LB845. [LB845]

SENATOR SULLIVAN: Thank you, and I thank you for the questions and comments that were made. I think this legislation is straightforward. It simply outlines a little more directly what reclamation efforts are supposed to include. It does not, as I said, supersede anything that might be developed on an individual contract between a pipeline company and a landowner, but at least it gives some broad parameters. And I hope for approval to Select File. Thank you. [LB845]

SENATOR COASH: Thank you, Senator Sullivan. Members, you've heard the closing to LB845. The question before the body is, shall LB845 advance to E&R Initial? All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Record, Mr. Clerk. [LB845]

CLERK: 39 ayes, 0 nays, Mr. President, on the advancement of LB845. [LB845]

SENATOR COASH: LB845 does advance. We will now go to the 3:30 portion of our agenda, colleagues, LB1072. Items first, Mr. Clerk. [LB845 LB1072]

CLERK: Thank you, Mr. President. Amendments to be printed: Senator Ashford to LB969; Senator Dubas to LB969; and Senator Ashford to LB357. (Legislative Journal pages 943-948.) [LB969 LB357]

Mr. President, LB1072, a bill originally introduced by Business and Labor, relates to claims against the state. It provides for payments of claims. Senator Lathrop presented the committee bill yesterday, Mr. President. At that time he also opened on the committee amendments. The committee amendments are currently pending. (AM2358, Legislative Journal page 848.) [LB1072]

SENATOR COASH: Thank you, Mr. Clerk. Senator Lathrop, would you give us brief update on both the bill and the committee amendment. [LB1072]

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SENATOR LATHROP: I'd be happy to. Thank you, Mr. President. And, colleagues, good afternoon. LB1072 is our annual bill to approve claims. The underlying bill includes claims for a number of tort actions or claims against the state for injuries that an employ...one employer or another has caused to somebody within the state of Nebraska based on negligence. One of those claims is a judgment; the other is a settlement. They all come to us by way of the Attorney General's Office. There is a claim included in the underlying bill for \$275,000 for attorney fees for the successful challenge of a statute pertaining to initiative and referendum petition circulation process. The underlying bill also includes a number of agency write-offs, which we went through and I itemized for you yesterday. The amendment, AM2358, is that portion of the claims bill that I've asked for your adoption that relate to paying the subcontractors or paying the vendors, if you will, who perform services for wards of the state and their families, as ordered by the court and sometimes outside the court process, which claims are...were not satisfied when Boys and Girls Home went under and stopped providing services to the state or coordinating those services. You will recall the rationale for paying the claims of those vendors under AM2358 went something like this. I provided you three statutory provisions that make these children the responsibility of the state. We are as a state obligated to pay for the services. And the question for us was whether or not that obligation had been discharged by paying Boys and Girls Home, and I suggested to you that it had not and it had not been satisfied because, in my judgment, the contracts were flawed from their inception and flawed during their existence in this respect. The contracts were not put out for a public bid. The contracts were not run through the Department of Administrative Services. Those are procedural, to be sure. The contracts were underfunded. The vendor, Boys and Girls Home, was not vetted. They were not qualified to do this work. They were undercapitalized. They only were worth \$107,000 when we gave them a \$14 million contract to administer. We did not put enough money into this process. And so, ultimately, the payment of these claims or the fact that they would be unsatisfied was perfectly predictable. Last night I also provided a number of you copies of the contracts or an example or an exemplar, if you will, of a contract between Boys and Girls Home and one of its providers, and it refers to Boys and Girls Home as a fiscal agent, a fiscal agent which would fairly be construed by one of these vendors as a pass-through agency and not creating a relationship that would discharge a responsibility of the state to pay. I think, and perhaps the most compelling argument is, our friends over in the Appropriations Committee and we as a body have already approved the very same thing for KVC. Our friends on Appropriations Committee included a \$6 million appropriation to KVC; \$4.2 million of that was to do exactly what we're doing here today but for KVC's vendors. In other words,... [LB1072]

SENATOR COASH: One minute. [LB1072]

SENATOR LATHROP: ...Boys and Girls Home, their folks haven't been paid. They've gone through the miscellaneous claims process. KVC's vendors were not paid. They

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just sent KVC down to the Appropriations Committee who obliged with a \$4.2 million appropriation and that will get all of KVC's vendors satisfied. So there are equitable reasons. And finally I will reiterate, this is not a contract action. If it were a contract action, it would be a separate process. These folks would have litigated and gone through that process. It is a miscellaneous claim. It is not to be judged by contract standards but by other standards set out in statute which are pretty general. And I think this fits the bill and I would encourage your adoption of AM2358 as well as LB1072. Thank you. [LB1072]

SENATOR COASH: Thank you, Senator Lathrop. Members, you've heard the recap of LB1072 and the committee amendment. Members wishing to speak: Senators Krist, Campbell, Fulton, Hansen, and others. Senator Krist, you're recognized. [LB1072]

SENATOR KRIST: Thank you, Mr. President. Good afternoon, Nebraska and colleagues. First of all, I want to thank Senator Flood and all of you for your indulgence, allowing me to participate in the General File discussion on this matter. I know many of you have heard this before, but in the effort of putting it on the record with specific intent to AM2358, I had 21 years in the Air Force. During that time I participated in contracts at all levels, both in letting the contracts, writing the contracts, and requests for quotes in almost every year that I was in the Air Force. Since retiring from the Air Force, I have been a contractor with the federal government and I can tell you, from my perspective and my experience, these are the worst written, executed contracts I have seen ever. There were five areas where there were prime contractors, five areas, five service areas. Of those five areas, within the first four months all five, all five notified the department that it wasn't going to work. It was not going to work. There wasn't enough money. DHHS was notified through Mr. Todd Reckling, then the division chief, in writing, and in discussion through the HHS Committee, which was then the Chair, Senator Gay, they had many, many meetings discussing the lack of money in order for execution to be successful. Of those five areas, within just a year, we were down to two. A \$105 million initial contract, arguably, depending upon whose numbers you looked at, we threw another \$50 million to \$75 million at those contracts to make them work. And the reason I say depending upon whose numbers you're looking at is we're not really sure. We're not sure because that large area, that Program 347 contract area or program area that we spend money out of, they were moving money from one area to the next, trying to cover what they couldn't pay for, what they didn't pay for or allow for in the beginning. We're not sure. We're really not sure because financial and management oversight, and management oversight in particular, was lacking. Section 68-1206, social services, administration, contracts, payments: The Department of Health and Human Services will administer the program of social services in this state. The department may contract with these services...social agencies for this purpose (sic) of social services at the rate not to exceed dah, dah, dah, dah, dah. I'm quoting from the section now. DHHS initiated the Families Matter reform in 2009 and, as I said before, before the year was out we were down to two contractors. Again quoting from Section 68-1207,

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"The Department of Health and Human Services shall supervise all public child welfare services as described by law." I don't think we gave up that supervisory role when we contracted the services out. And those service contracts in the federal government, what you would find in the service's FARs is that you would be given an administrative fee that was capped, would allow you to make a profit, and then a variable cost that would allow you to charge by invoice for those services you had provided. But we didn't do that. We just gave them millions of dollars and said here's 2,000 kids, oops, there's 3,000 kids, oops, there's 3,500 kids, oops; same amount of money. One of those contractors early on said we can't do this for this amount of money. They filed Chapter 11. [LB1072]

SENATOR COASH: One minute. [LB1072]

SENATOR KRIST: They got the department's attention. After they did that they were given another \$2.5 million in contract to settle out their claims with their vendors. They didn't have to go through Chapter 13 because we, as a state, bailed them out. I'm going to stop there because what I have to say next is about as much as I've said. Again, I thank you for your indulgence in allowing me to weigh in on this today and I'll punch my light again. Thank you, colleagues. [LB1072]

SENATOR COASH: Thank you, Senator Krist. Senator Campbell, you're recognized. [LB1072]

SENATOR CAMPBELL: Thank you, Mr. President, and good afternoon, colleagues. Several of you yesterday afternoon said to me, you're uncharacteristically silent on this issue, and I like to think that was more of a question than a comment about my talking on the mike, but I didn't want my silence to be misconstrued by all of you in this room. All of us, from time to time, file and should file a conflict of interest and in this case I filed a conflict of interest and will not vote nor speak further on this bill, nor the underlying amendment, because the agency, that while I am on an unpaid leave to finish out some work, does have a claim and I felt that that posed a direct conflict of interest that I should restrain from voting and speaking on this bill. Thank you, Mr. President. [LB1072]

SENATOR COASH: Thank you, Senator Campbell. Senator Fulton, you're recognized. [LB1072]

SENATOR FULTON: Thank you, Mr. President. I'll have a question for Senator Lathrop if...actually, I'll just go ahead and ask it now if he's here. [LB1072]

SENATOR COASH: Senator Lathrop, will you yield? [LB1072]

SENATOR LATHROP: Yes. [LB1072]

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SENATOR FULTON: Senator, I was able to listen to part of your response yesterday and you may have addressed this in your response, but I'll pose this question to you as it will be effectual, with me anyway, making the decision here. That money that we appropriated, which you mentioned, in our preliminary recommendation which we've done here as a body to KVC, what would happen in the event that KVC were to choose not to pay their subcontractors? Would you contend that we still as a state have an obligation then to pay those subcontractors? [LB1072]

SENATOR LATHROP: Probably not, and the reason is that we have...well, there's a couple things. KVC is not undercapitalized. They're a capable but private company. They could probably pay these claims without us giving them \$4.2 million to do it. That's the first thing. So there is a difference in the very nature of KVC versus Boys and Girls Home, which was worth \$100,000 when it took on a \$15 million responsibility. So I wouldn't suggest that if KVC spent the money somewhere else and didn't pay the contractors that we should once again pay them. [LB1072]

SENATOR FULTON: Is it your understanding that when Boys and Girls Home was paid that there was some understanding on the part of the state, in this case DHHS, that their obligations would be met? Or are you saying that there could...that...it sounds to me that your argument is that a reasonable person would have concluded that it would have been impossible to pay these subcontractors. But my question is, is there any indication that we had knowledge that the contractors would get paid from Boys and Girls Home? Is my question clear or am I making myself... [LB1072]

SENATOR LATHROP: No, I'm not clear. I'm not clear. [LB1072]

SENATOR FULTON: Okay. [LB1072]

SENATOR LATHROP: If you're asking me did HHS know that Boys and Girls Home wasn't paying people in a timely fashion before they quit, the answer to that is yes. [LB1072]

SENATOR FULTON: I guess it's more pointed than that. If...so we have made a decision, an informed decision on the part of the Legislature, at least on General File, to provide some remuneration to KVC, with an understanding that part of that money is going to pay subcontractors, and that's an informed decision that we have made. Are you saying that that was a decision that was made by DHHS in similar fashion, paid to Boys and Girls Home, was misinformed or uninformed or...? [LB1072]

SENATOR LATHROP: They're two different...two completely different circumstances. I think the department learned from Boys and Girls Home that when KVC was going out of business and they were going to stop providing the service, they said to themselves,

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we don't need another Boys and Girls Home situation. When we give you \$4.2 million it is to pay your vendors so we don't have another Boys and Girls Home unpaid vendors situation. So what we have are...and I appreciate that the department learned something from the Boys and Girls Home experience. They're making sure that KVC's subs are paid. But in a very real sense the vendors for Boys and Girls Home are in the very same situation and we're treating them differently. On the way out, KVC...if we treated KVC the way we treated Boys and Girls Home, we would have shut off the money, given them nothing more, asked for our files back, asked for the information out of the computer, and said you pay the subs and if they don't get paid, tough. We didn't. The Appropriations Committee gave KVC \$4.2 million more for the explicit purpose of paying their subs off. [LB1072]

SENATOR FULTON: Is there an indication that there wasn't an explicit...this is where I'm...we're having the disconnect,... [LB1072]

SENATOR COASH: One minute. [LB1072]

SENATOR FULTON: ...or at least I am maybe. Is there some indication that DHHS did not provide money with that same explicit purpose? [LB1072]

SENATOR LATHROP: Yes. [LB1072]

SENATOR FULTON: Okay. [LB1072]

SENATOR LATHROP: We did not give any golden parachute, is the term somebody has used and I don't use that to try to conger up anybody's negative emotions. We did not give Boys and Girls Home a bunch of money on the way out the door to make sure they paid their contractors. Rather, when Boys and Girls Home said, we're done, we stopped giving them any more money, took the \$1.6 million we owed them, spread it around the vendors, right, who have been paid for the most part 35 cents on the dollar, and their claim today is for the balance. [LB1072]

SENATOR FULTON: Okay. That's helpful. I'll stop there. Thank you, Mr. President. [LB1072]

SENATOR COASH: Thank you, Senators. Senator Hansen, you are recognized. [LB1072]

SENATOR HANSEN: Thank you, Mr. President. Members of the Legislature, I'd like to weigh in on this on...just on the Western, Northern, and Central Areas, the service areas of the department. I attended a meeting several years ago now where...and it was in Boys and Girls Home office in North Platte where several providers got together and talked about the contract and they invited me because I was, at that time, serving on the

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HHS Committee in the Legislature. They asked me what I thought. I didn't know what to think about their contract. But they were talking and they were just kind of dropping off one at a time because the contract was too big, the area was too big. When you talk about the Northern, Central, and Western Service Area, that's a huge amount of ground out there. But I read through the...what was on the gadget and it's kind of a who's who and where is where of small towns in Nebraska: Alliance, Curtis, Wayne, Fremont, Norfolk, Omaha, Lincoln; then there were two out-state providers that Senator Hadley likes to mention about out-state providers, they were from Milwaukee, Wisconsin, and Mason City, Iowa; Ogallala, Kearney, York, Walton, and Madison. Boys and Girls Home, I'm not sure if they were the winner or the survivor. They were the last one standing and I think that was the problem. Probably looking back, in hindsight, I went to my optometrist two weeks ago and he told me my hindsight was 20/20. And I think that's what we have a tendency to do, is look back and say, well, they should have known, they could have known. But they didn't know. I hope this is not a precedent, as Speaker Flood mentioned yesterday. This is not a...this should not be a precedent. We can't let it become a precedent. But we do have...owe some bills here. Ask yourself some questions like I did. Did Boys and Girls Home have more intake than they expected? Yes. Did Boys and Girls Home bite off more than they could handle? Yes. Did Boys and Girls Home receive all the payment that was due from HHS? No. That's where they got the...that's where the department got that \$1.6 million that they owed Boys and Girls Home when Boys and Girls Home found out they couldn't handle the job, they couldn't do the job that they were asked to do. That's where they got the 35 cents on the dollar. You cannot run a business anywhere, western, eastern, northern, southern Nebraska, on 35 cents on the dollar. Everyone in here that has a business has probably made a bad contract. In western Nebraska we sold hundreds of thousands of dollars of cattle at a time on a handshake. We don't need contracts; more and more we do, I admit that. But this was not a handshake. This was a contract, whether it was poorly written or not. But when you talk about the Central, Northern, and Western Service Areas, we have a limited number of providers. We have a limited number of people. We have a limited number of problems, thank God. But when we lose a provider out there, nobody fills up the gap. We have a gap. We have a gap in services and that's a direct...that has a direct repercussion on kids that need service. We're trying probation in Lincoln County as a provider. That's going to be an expensive trial. It's a trial program that Senator Ashford brought and it's an expensive solution. But we're trying that because we can't find the providers. It's certainly true that KVC got a different deal, they really did. The department had to buy out their last three months of the contract. That's what Senator Lathrop called the golden parachute. Really isn't a golden parachute. They said they had to have... [LB1072]

SENATOR COASH: One minute. [LB1072]

SENATOR HANSEN: ...90 days' notice if they were going to...either party was going to terminate their contract. The contract was bought out, yet KVC is a provider for the

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department. They remain a provider in the state of Nebraska. And then they were paid \$4 million, which is true, to make sure all the subcontractors were paid. In the case of Boys and Girls Home, that was not done. Ladies and gentlemen of the Legislature, this is a bill we got...we have to pay. If we don't pay this bill, if I was a provider I wouldn't sign a contract with the state. Thank you, Mr. President. [LB1072]

SENATOR COASH: Thank you, Senator Hansen. Those still wishing to speak: Senators Dubas, Wallman, Wightman, Gloor, and others. Senator Dubas, you are recognized. [LB1072]

SENATOR DUBAS: Thank you, Mr. President. Good afternoon, colleagues. Boys and Girls represented or was the lead agency that worked out in my particular area of the state, and early on, after they began their contract, I began to hear from the subcontractors who said, we're not getting paid, we're not getting paid. I was hearing from foster parents who were saying, we're not getting paid. So I had...I began to have conversations with the department, with Director Winterer, with Todd Reckling, saying what's going on here, with constant assurances that they were on top of it, it was an accounting problem, we just need to help them get the right software, we need to get, you know, we just need to help them get their house in order, you know, it will be taken care of. But yet I continued to hear over and over, I'm not getting paid, I'm not getting paid, they're behind in their payments, we're providing these services, I'm having to borrow money so that I can pay, I'm having to tap into my cash reserves so that I can pay. I mean these are...these are local businesses in our communities who our citizens know and have a comfort level with. And so they recognize that if they aren't upholding their end of the contract, they lose their reputation in the area. And again, continuing to have conversations with the department, continuing to be told we're handling it, we're handling it, we're handling it, and then all of a sudden Boys and Girls is no longer providing lead agency services out in our area. What is our obligation as a state? What do we owe the citizens of our state? First and foremost, I think we owe them a thorough and appropriate vetting process if we are going to put these types of contracts out. These subcontractors should be able to have a level of confidence that the people that they're signing on with that represent the state are...have the ability to carry out what the contract says they were. And just to back up a little bit, some of these subcontractors that I was hearing from, these are very prominent providers in the area who have worked in this field many, many decades who even considered putting in a proposal to be a lead agency but began to quickly realize there was no way they were going to be able to be a lead agency and provide the services that are going to be required on the money that was being talked about. So again there were those warnings early on, before these contracts were even signed, from people out in my area of the state who are saying this isn't going to work. So maybe that should have been a red flag for them. But I think as a state, again, we do have that obligation to vet these agencies that are going to represent us and work for us. We lost CEDARS early in, but CEDARS left making sure that their subcontractors were made whole. They lived up to their

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obligation. If we don't make these agencies whole, just like Senator Hansen said, you know, these are very important businesses in our smaller communities. It's very difficult for them to weather these kinds of losses and stay in business. And we already struggle to have the appropriate types of providers out in the more rural areas of the state and if we can't make them whole, if we can't help them keep their doors open, if we can't give them a level of confidence to move forward...because now, as we move forward with the child welfare reform and the package of bills that we put together, we're going to need these people. They are going to be a critical component in helping us be successful in this welfare reform package that we're putting out there. If we don't have them, we're already starting out a little bit behind the curve in trying to make this reform effort be successful. We've got to make them whole. [LB1072]

SENATOR COASH: One minute. [LB1072]

SENATOR DUBAS: We do have a responsibility. Thank you, Mr. President. We do have a responsibility as a state. Yes, we paid the lead agency but, I think Senator Lathrop has stated this multiple times, this is a different set of circumstances. There is a reason why we should make them whole. We pumped millions and millions of dollars, additional dollars, above and beyond what we contracted with KVC for originally, trying to keep them afloat, trying to keep them whole. Was that not outside of their contract language? It certainly was. So we were able to come up with millions and millions of additional dollars, plus this extra money to buy them out of their contract. Why is it that they should receive that type of treatment but yet these subcontractors out in...across Nebraska should not receive that same type of consideration and be made whole? This is...we do things honorably in Nebraska,... [LB1072]

SENATOR COASH: Time, Senator. [LB1072]

SENATOR DUBAS: ...and this is what we should do to maintain that honor. Thank you. [LB1072]

SENATOR COASH: Thank you, Senator Dubas. Those still wishing to speak: Senators Wallman, Wightman, Gloor, Lathrop, and others. Senator Wallman, you're recognized. [LB1072]

SENATOR WALLMAN: Thank you, Mr. President. Members of the body, I had a phone call yesterday from a lady. She talked about 45 minutes about what went wrong with our system, part of it evaluation, how do we...and the wards of the state. These children, folks, we can talk about not paying, paying, these children are wards of the state. We cannot abscond our authority or our responsibility when they are wards of the state. So do we take children out of their house too early? Does it cost too much money? That's for somebody else to decide besides me. And...but do we have good foster parents? We're losing some. Why? This lady told me why; couldn't seem to get a decision, too

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much management, too much management, too much management. So who's at the head of the ship? We got to start doing things better but we got to pay the people who took their...put their business on the line, their finances on the line. And, folks, these aren't rich people. They do it for the love of the kids. And so it's asinine to me that we're debating not to pay them. Thank you, Mr. President. [LB1072]

SENATOR COASH: Thank you, Senator Wallman. Senator Wightman, you're recognized. [LB1072]

SENATOR WIGHTMAN: Thank you, Mr. President. Members of the body, if Senator Lathrop would yield, I have a couple, three questions I might ask him. [LB1072]

SENATOR COASH: Senator Lathrop, will you yield? [LB1072]

SENATOR LATHROP: Yes, I would. [LB1072]

SENATOR WIGHTMAN: Senator Lathrop, if you know, when did the Department of Health and Human Services learn that Boys and Girls Home would be unable to complete the contract? Do you know a date or...? [LB1072]

SENATOR LATHROP: I would say that that was a process, Senator Wightman. Like many of the other providers, this contract was amended to give them more money, so there had to be an expression early on that the money that was in the contract amount was insufficient. They also had reason, I think, in the summer from the circumstances and from complaining subs, that the subs weren't getting paid and there was some question about slow pay and no pay by the summer of 2010. [LB1072]

SENATOR WIGHTMAN: So generally, the Department of Health and Human Services knew this well in advance of some of the payments they made to Boys and Girls Home or at least in advance, maybe not... [LB1072]

SENATOR LATHROP: They had paid money to Boys and Girls Home pursuant to the contract. They were aware that some of the people that were actually providing the care were not getting paid, and I think that became evident to them in the summer of 2010. They had a meeting where I think Boys and Girls Home, if I recall correctly, said they would provide services through the end of September to October 1, 2010, and by the 15th of September Boys and Girls Home effectively walked away. [LB1072]

SENATOR WIGHTMAN: Thank you, Senator Lathrop. It seems to me there was a lot of discussion yesterday, well, if this was a private contract between two different parties that there wouldn't be a requirement of payment and probably the subcontractor might have no claim. But I believe the situation we have here could be likened substantially to construction liens that are allowed under Nebraska law. Under the construction liens, if

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a owner of a piece of land contracts for construction out on his farm or on his building where his business is located or wherever it may be, and if he failed to pay subcontractors or if he failed to pay materialman or he fails to pay laborers who perform the labor under the main contract, the subcontractor, materialman or whoever it may be has a method by which he can come in and file a lien and eventually get paid. And it may well result in the owner paying twice. It has in many, many instances across the state of Nebraska. I had somebody telling me about a situation I think in Kearney where an attorney even, believe it or not, ended up paying for his home twice, maybe not the entire home, but he didn't look to see if the subcontractors were being paid, the owner didn't. And it seems to me we could liken it a great deal to that. Now I realize that's statutory and I'm sure members of this body can point out a lot of differences between subcontractors' liens because it is provided for in the statutes, but I still think that there's some similarity in the situation. And that does include a rather large number of people. Somebody that's providing under a subcontract, just somebody who is working for the contractor can come in and can get paid if he does it according to statute, can get paid just by filing a lien and then litigating his right to that lien on the real estate. So... [LB1072]

SENATOR COASH: One minute. [LB1072]

SENATOR WIGHTMAN: ...I can't think that you can say that there aren't parallels to this between two contracting parties. It seems to me the state had an obligation to look beyond, the Department of Health and Human Services, look beyond just how much was owing the contractor. They had the right to inquire of the subcontractors whether they were being paid. I think they could have even demanded some sort of a waiver of lien by the subcontractors. So it seems to me the state had less (sic) opportunity to correct this situation and they didn't correct it, and for this reason I do think it is important that we pay this or make arrangements for its payment. Thank you, Mr. President. [LB1072]

SENATOR COASH: Thank you, Senator Wightman and Senator Lathrop. Senator Gloor, you're recognized. [LB1072]

SENATOR GLOOR: Thank you, Mr. President. Let me add some knowledge I have of efforts that the state made to get subcontractors of Boys and Girls paid. This information comes from a dialogue I had with the director of the department, Director Winterer, who unfortunately for him stepped into his new position about the time this began to unravel. But based upon concerns and complaints that I also received, as Senator Dubas has relayed, from constituents who weren't getting paid, had conversations with Director Winterer. Give him credit for doing a good job I think of trying to keep be apprised of the dialogue and discussion. But I do know this in those discussions and that is that the department withheld payments to Boys and Girls Homes, payments that they were contractually obligated to; withheld payments to them as they tried to work out payment

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to the subcontractors, knowing that there were subcontractors who were going to be left holding the bag; withheld...and somewhere in my voluminous notes on all this that have been compiled over the past two years is a dollar amount, but considerable sums of money that Boys and Girls were due to be paid under the contract. Walking away from the contract, the state was trying to make sure that the subs got paid, and I point that out for those of you who are looking at this under precedent-setting contract law, not my area of expertise. But clearly the state felt an obligation at that point in time to try and get subs paid, and ultimately, after months and months and months and months of withholding these dollars, trying to figure out a way, realized that the state, the department, could not bypass Boys and Girls and make payments to subcontractors with whom they had no contract. The state can't pay somebody it doesn't have a contract with, is what it boils down to. There were negotiations during those months and it was from those negotiations that the small amount that did eventually go to those subcontractors was paid out through Boys and Girls, but clearly not the full amount and that's the reason that we are there. Here's the predicament. There may not be a legal argument that many of you are comfortable with; there may be a legal argument that some of you are comfortable with. There may not be a moral argument that some of you are comfortable with; some of you clearly have a moral argument, including me. But I'm also concerned about the resources argument because some of these organizations are still waiting to get paid. Some of these organizations have to make decisions about their future and about the future of programs that they're going to be providing based upon whether they're able to recoup monies owed them as a result of Boys and Girls folding up their teepee and walking away, and that's a resource argument, especially for those of us in out-state Nebraska where there is nobody to step in and fill the gap in the provision of these services and where, as a result of not having these dollars, services and programs that are currently being provided are going to have to be packed away because the dollars aren't there to support them any longer. It's a resources argument, too, and that's the frightening aspect when you're looking at an area of the state that's already underserved... [LB1072]

SENATOR COASH: One minute. [LB1072]

SENATOR GLOOR: Thank you, Mr. President...that already has challenges in the provision, again not just to services to children but services to all Nebraskans that are out there, adults as well as children. And that's a scary proposition for me, a very scary proposition for me. Thank you, Mr. President. [LB1072]

SENATOR COASH: Thank you, Senator Gloor. Senator Lathrop, you're recognized. [LB1072]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I thought it would be useful, at the risk of repeating myself, to make a couple of points. The one thing is yesterday I had a conversation with a member of the Appropriations Committee, who

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looked at this like a strictly contract question and he suggested that we shouldn't pay. And I look at the appropriation and I see that we're paying KVC. Now I want to be really clear about this. I appreciate the time I had with Senator Fulton, but whatever rationale our friends over in Appropriations used and we used when we moved this I'm going to ask you to employ today because I'm not sure what you were thinking when you voted for the \$6 million to KVC but it's the very same rationale. And if you were on Appropriations and you listened to KVC come tell you why they needed \$4.2 million, that's the same rationale I would use today, because the contracts were problematic, they weren't properly entered into, they weren't properly minded once we entered into them. And that's probably the pitch our friends over at KVC made when our Appropriations Committee appropriated \$4.2 million to make sure their subs got paid. Now here's the question, here's the question I'd like to hear somebody answer who thinks we shouldn't pay this: What's the difference between giving KVC \$4.2 million to pay its subs after they're done doing the business we hired them to do, what's the difference between giving them \$4.2 million to pay their subs and us taking care of Boys and Girls Home's subs in a miscellaneous claim? It is...whatever rationale you want to use for paying KVC \$4.2 million to pay its subs, the very same rationale would apply here. So that I'm not missing your rationale or what you used to be okay with paying KVC, I'll just say whatever you thought was a good reason to pay KVC \$4.2 million so they could pay their subs, that very same rationale works here. And Senator Hansen made a very important point, as did Senator Dubas. We are decimating our provider infrastructure. We are doing it in the developmental disability area and we are doing it in the child welfare area. These people, when they get done with their experience with Nebraska, they're going to go wait tables or do something else because we don't live up to our agreements. We are a bad person to count on as...to provide services to or for. This is about making sure that there are people left in greater Nebraska, this isn't an Omaha thing, in greater Nebraska, these are the people that are going to be paid. They're in Madison County, they're in Senator Dubas' district, they're all the way out to Senator Hansen's district. They are all over the state, west of Omaha and Lincoln. And I'm just going to say we have to pay these people. They have it coming (a), we've already got comfortable with it in Appropriations Committee when we gave KVC the money to pay their guys, and there's no reason, no reason to discriminate against the people who had the misfortune to be vendors of Boys and Girls Home. There is no rational reason to take care of KVC's vendors and not the Boys and Girls Home. Thank you. [LB1072]

SENATOR COASH: One minute. Thank you, Senator Lathrop. Those still wishing to speak: Senators Krist, Adams, Howard, Smith, Carlson, and others. Senator Krist, you're recognized. [LB1072]

SENATOR KRIST: Thank you, Mr. President. Just to review for you where I think my key points will be, we started out in 2009 with five primes, five primary contractors. Colleagues, within four months, to answer Senator Wallman's point, Senator Fulton's

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point, and Senator Wightman's question, within four months all five of those contractors said, we can't do this, we can't do this for this amount of money. Now I want you to look around the room at the 49 that are supposed to be in here and I want you to look at their other areas and you tell me what's different between the eastern area, the southeastern area, the central area, the west. Tell me what's different. Because while all of these contractors were at one time saying there's not enough money, one of them was going back to the department through its lobby and it was getting more money and getting more money. The contract was added to and added to and amended. Boys and Girls made the same claim to the department: We don't have enough money. I told you that because it was reported in writing to Todd Reckling, it was reported in writing to then the Chair of the Health and Human Services Committee. So when did we start knowing there was a problem? In 2009. October 1, 2010, Boys and Girls' contract was terminated, was terminated. There's a lady in Norfolk and a lady in Scottsbluff that both told me it took four months, four months more. It was February before they were formally informed that the contract had been terminated with the prime. They had heard, they had asked questions, but formal notification didn't come until four months later. And you know what those people did? This is why this state is so great. They continued to provide the services for those kids and those families and they took money out of their nonprofits. We have ridden on the backs of the nonprofits with these contracts, we've ridden them into the ground. We destroyed services in out-state Nebraska--sorry for that term, Senator Hansen, out-state Nebraska--and we have forced some of these people out of business. There's a couple of companies in Scottsbluff that no longer exist. The father did have to go back to his normal job. The company is not there anymore. How do we restore these services? Senator Lathrop is absolutely right. We have to restore these services because we have to pay what is due, what this state needs to pay. That current contract with NFC, still not a good contract. We amended it, we put more money on it, but there's no accountability, financial or otherwise, in my estimation, for what services are being provided. That's all being developed with a case rate that's coming down the road. If I'm wrong, anybody who's heard this discussion, stand up and tell me I'm wrong. If you've been doing it and hearing it for the last 18 months as I have, I can tell you the key to managing these contracts was good financial and management oversight. It wasn't there. We messed it up from the very beginning and now it's our opportunity to make it right and move forward. I'm going to make one other key point and I hope Senator Fulton is listening and others who have a problem justifying where we are on this thing. The key point is this: The state of Nebraska maintained case management responsibility throughout the entire existence of the Boys and Girls Home. And if you don't trust that judgment from me, ask my Chair. We didn't change case management by contract with... [LB1072]

SENATOR COASH: One minute. [LB1072]

SENATOR KRIST: ...Boys and Girls. Thank you, Mr. President. We had case management responsibility to the bitter end. Do you know what that means? Ask

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Senator Howard. It means that we, the state, were telling the contractor how to do business and how to spend the money. Think about that for a second. We had case management responsibility throughout the whole contract. We were telling them how to do business. They were asking us for money. They were telling us it wouldn't happen. They were telling us they couldn't succeed. We turned a deaf ear, while in other parts of the state we gave them more money. Our responsibility is to vote yes on AM2358, vote yes on LB1072, and move on to fix the rest of the things that we need to fix this session. Thank you, colleagues. [LB1072]

SENATOR COASH: Thank you, Senator Krist. Senator Adams, you're recognized. [LB1072]

SENATOR ADAMS: Thank you, Mr. President. Members, I'm going to keep this very short. Yesterday the Clerk, I believe, announced that I had filed a conflict of interest, and I think Senator Campbell has gone to the mike earlier this afternoon to indicate the same. And I have done that on this and I had to because my wife is on the board of Epworth Village and Epworth Village has a claim here of \$100,000-plus. So I probably won't be casting a vote. But for whatever it may be worth I'm going to tell you I came into this, aside from the fact that I had a spouse really bending my ear pretty hard long before we got to even yesterday on this, and we did verbal battle over it more than once at the dinner table, I was taking a pretty hard-core approach that we're going to get something started here on every unpaid claim that comes through the door. And I'm no attorney; I certainly don't have the expertise. Listening to Senator Flood and Senator Lathrop on contract law has been fascinating. I don't know that it's resolved anything for me but it's been good to listen to. What I worry about, will this close the doors of Epworth Village if they don't get paid? I don't know. I don't know. But I'm very concerned about our providers in out-state Nebraska and I'm wrestling with this, despite the fact that I may not be able to cast a vote because of the conflict. I really am, I'm wrestling with this. But I'm very worried that, it's been said a dozen times, we are cutting some of these folks so thin there isn't going to be anybody left to help us out. Thank you, Mr. President. [LB1072]

SENATOR COASH: Thank you, Senator Adams. Senator Howard, you are recognized. [LB1072]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I'm going to start this out the way I've started every time I've spoken on this, and that's we have to pay the bill. In '09 when I found out that this was in the works, I'm going to reminisce here, I went to Senator Heidemann and I said, Senator Heidemann, these are state wards; the state is responsible. The court says the state acts in lieu of the parents for these children. We will have to pay. Senator Heidemann said, no, no, we're going to contract out and so it will be the contractor's responsibility. Maybe he's right; maybe I'm right. I think we're responsible. These children are state wards. Having said that, I can't

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imagine any business operating with millions and millions and even more millions of dollars and making the horrific mistakes this administration has made in child welfare. To top it off, these weren't corporate dollars or shareholder dollars; these were taxpayer dollars and they were taken away from things that we desperately need in this state. We keep reducing dollars to education, keep reducing funding to the disabled. Those services were cut back to shore up a failing, failing system. Now I'm going to ask Senator Ashford if he would mind if I ask him a question, because I know he's a darn good attorney. [LB1072]

SENATOR COASH: Senator Ashford, will you yield? [LB1072]

SENATOR HOWARD: I'm taking you completely by surprise. [LB1072]

SENATOR ASHFORD: Yes, I'm...yes, yes, I'm... [LB1072]

SENATOR HOWARD: I'm asking you these questions because I know from years of experience that you are a very good attorney. [LB1072]

SENATOR ASHFORD: Oh, thank you. And that's what... [LB1072]

SENATOR HOWARD: I'm going to read you something, you tell me what you... [LB1072]

SENATOR ASHFORD: Haven't heard that in a while. [LB1072]

SENATOR HOWARD: ...how you would interpret this. [LB1072]

SENATOR ASHFORD: What? [LB1072]

SENATOR HOWARD: This is in the contract, the most recent amendment to the contract that was signed. It says here: Contractor will make the best effort to identify all subcontractors and vendors that have provided services through February 29, 2012, and those that have not been paid in full. It is further the intent of the parties that the contractor will pay all claims rightfully due and owing for services performed through February 29, 2012, as quickly as practical prior to April 30, 2012. Am I right in reading that to say there's an obligation on the part of the contractor to pay the subcontractor? [LB1072]

SENATOR ASHFORD: Yes. That's the most recent KVC contract? [LB1072]

SENATOR HOWARD: Absolutely. You're right. It's the most recent amendment, Amendment 10 with KVC. This is the difference. This is written in the KVC contract. This is why I object to the additional money being paid to KVC because they signed this

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agreement, they signed this agreement the 29th of February of this year. Kerry Winterer signed this agreement the first of March of this year. So it was clearly understood what each party was going to do. B. Wayne Sims, chief executive officer, KVC behavioral health Nebraska, signed this contract. So I adamantly oppose giving KVC any additional money, golden parachute, buyoff, whatever you want to call it. On the other hand, these claims that we're addressing today that have been brought to us, that agency had no such agreement in their contract. They ran out of money, couldn't pay these bills, they walked away. That's not right but the fact is it's our responsibility. [LB1072]

SENATOR COASH: One minute. [LB1072]

SENATOR HOWARD: Thank you. We have the obligation to pay these subcontractors. They operated in good faith. They've had contracts before with the state. They've been paid. Sometimes they've been paid late, but they've been paid. We owe them payment. We do not owe payment to KVC. KVC has agreed to pay the subcontractors. They've agreed to return all of our files, all of our records, and they accepted the money that was owed them up-front in this contract and it's their responsibility to make good to their subcontractors. Thank you. [LB1072]

SENATOR COASH: Thank you, Senator Howard. Senator Smith, you're recognized. [LB1072]

SENATOR SMITH: Thank you, Mr. President. Colleagues, I voted...I sit on the Business and Labor Committee and I voted to advance AM2358 and LB1072, and I plan to also vote in support of both of these. And I just want to share with you my train of thought as to why I advanced these out and why I'm in support of them. Two primary reasons, and the first one was what I perceived to be an inadequate contracting process. During committee hearings, I determined that there was at least an absence of some measures that normally would exist in a project owner, general contractor, subcontractor-type of relationship. And, for example, one of those might be performance bonds, and from what I understand there is none that were present in this contracting process. So I did see things lacking in the way these contracts were executed. And then secondly, just the securing access to future service providers, and some of my colleagues were mentioning this earlier, that as you look at some of these subcontractors, many of them are from rural communities that are in dire need of these type of services in the future. And if we do not recognize the hardships that this has placed on some of these subcontractors, I'm not certain they will be there in the future. And this is just too critical, too sensitive for us not to consider that aspect as well. So those are the two primary reasons that I found that this was something very, very different than what I was expecting prior to these committee hearings beginning. Senator Lathrop referenced a little bit earlier some conversations he may have had with colleagues from the Appropriations Committee. And he was questioning, well, what is the difference between paying subcontractors and paying KVC? And I just...I can also see my

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colleagues that are standing in opposition to this and understand why they are, that there is a traditional relationship that exists in these types of relationships normally. And this is a little bit different. We all have our fence posts that we try to establish in making our decisions. And I certainly understand my colleagues that are standing in opposition to this. They are applying common-sense business thoughts to this. They are trying to be protective of the taxpayer dollars. But there are times to allow free market principles to prevail, particularly when the business relationships are of a for-profit nature. And then there are other times when we have to make considerations that secure our societal responsibilities, responsibilities that take care of our citizens. And I believe that this bill and this amendment reflect the latter case, and I ask you to support AM2358 and LB1072. Thank you. [LB1072]

SENATOR COASH: Thank you, Senator Smith. Senator Carlson, you are recognized. [LB1072]

SENATOR CARLSON: Mr. President and members of the Legislature, I think being a member of the Business and Labor Committee, I was in the same frame of mind that many of you may be right now prior to our Executive Session and discussing this bill. And one question is, what is the state legally responsible for? But then I talk and think about what is legal and what is right. I understand a statement would say we've already paid money once, why do we have to do it again. And of course the problem is the subcontract providers didn't get paid. Senator Krist testified about what happened to the money and he made the statement, we don't know. Now I think when he says we don't know, he's talking about the department. We don't know. They don't know; we don't know. So who's responsible? Who can we go after for the money to pay the balance to the providers? And if we don't want to pay, who can we make responsible? Well, maybe it's the HHS Committee. Maybe it's HHS Department. Maybe it's the Director of HHS. But it's not Kerry Winterer. He wasn't even here when the problem got as deep as it did. And no one person has the capability or the resources to be held responsible. We can go after the executive branch, and some of you already have. Or somebody else can go after the Legislature. The point is, in any of these that I've mentioned, it all falls back on the state of Nebraska. It falls back and it's our decision. I've appreciated testimony from Senator Hansen, Senator Bloomfield, Senator Janssen, Senator Lathrop, Senator Smith, and others who have taken the stance that the providers should...the subcontract providers should be paid. And if that's true, then we have to authorize it. And there may be a legal stance that we have not to pay, but just because something is legal doesn't make it right. We are never wrong to do the right thing. And the right thing is to pay the subcontract providers and pay them now. And the right procedure may also be to pursue the primary contractors to try and recover what HHS gave to them. But the subcontractors should be paid now. There may be a legal way. There definitely is the right way. And we're never wrong to do what's right. I will support AM2358 and the underlying bill, LB1072, and I ask those of you in this body to do the same. Thank you. [LB1072]

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SENATOR COASH: Thank you, Senator Carlson. Senator Nelson, you're recognized. [LB1072]

SENATOR NELSON: Thank you, Mr. President, members of the body. Senator Carlson, yes, we may be wrong but we have to do what's right. Well, I hate to tell you, in my opinion, that if we do something wrong here, we might wind up paying a third time. And I appreciate what you're saying and I'm not unmindful of the contractors, subcontractors, especially in the western part of state. At Epworth, for instance, they're down a lot of money. But it's kind of interesting. In the case...or rather the bill that we had this morning on LB824, in looking over the Supreme Court Opinion, one of the first questions they answered was the standing of the person who filled the suit. And here's the rule: A resident taxpayer has standing to challenge a state action that allegedly violates statutory law as an unlawful expenditure and waste of public funds. Senator Lathrop likes to use the terms: well, we don't really have a contract here; it's problematic; it should never have been entered into. Senator Krist said they're terrible contracts. That may well be. Nevertheless, there were contracts. Both parties went into them with eyes wide open. And if we go ahead and don't pay any attention to that and we look at the end result and we pay again, I maintain we're going to be subject to a lawsuit for doing what we did. And I think it's incumbent on us, if you want to reimburse these subcontractors, to find another way to do it. May I ask Senator Krist to yield to a question or two? [LB1072 LB824]

SENATOR COASH: Senator Krist, will you yield? [LB1072]

SENATOR KRIST: Absolutely. [LB1072]

SENATOR NELSON: Thank you, Senator Krist. You mentioned government contracts. You have a lot of familiarity with that and I do to a certain extent. And they're very complex and they spend a lot of time and they're very detailed. If there's a contract between the government and the contractor, it's by mutual agreement of both the parties that they're satisfied with the terms. Would that be correct? [LB1072]

SENATOR KRIST: That's correct. [LB1072]

SENATOR NELSON: If, for instance, you had a contract with the government to supply transportation for a certain price and gas went from \$2 a gallon to \$5 a gallon and you found out you couldn't make it under that, is the government going to let you abrogate that contract? [LB1072]

SENATOR KRIST: Yes, sir, they will. I'll go back and ask for a fair and equitable adjustment under the FARs and present my case. In fact, I'm involved with doing that right now with a contract that, because health insurance has gone up sky high, I've gone

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back and asked for an amendment. And so far I'm on the track of proving that that will be successful. And so I bring to mind that Boys and Girls, along with the other contractors, went back to the state and said, we can't do that for this amount of money. And four of them were told that they couldn't get any more money. They would not renegotiate, that is the state would not renegotiate. One of them, on the other hand, was given monies after monies after monies. [LB1072]

SENATOR NELSON: Well, what's the difference? The state came along and did provide additional money for them. [LB1072]

SENATOR KRIST: To one contractor that was well-represented by a lobby, not to the other four who simply went in and asked for additional money because the contract wasn't possible. Therefore, in my estimation by the FARs, we denied them the fact of having fair and equitable adjustment to an existing contract. [LB1072]

SENATOR NELSON: Well, was it a modification of the contract? [LB1072]

SENATOR KRIST: The state refused to talk about giving them any more money or modifying or amending the contract to give them any more money, specifically in the Boys and Girls Home case. [LB1072]

SENATOR NELSON: Did the state have to do that under the contract? [LB1072]

SENATOR KRIST: Well, I think the state was responsible for taking care of the people. [LB1072]

SENATOR COASH: One minute. [LB1072]

SENATOR NELSON: Well, that's our judgment here, isn't it, and we're... [LB1072]

SENATOR KRIST: That is. [LB1072]

SENATOR NELSON: ...making a judgment as a part of...and thank you, Senator Krist. [LB1072]

SENATOR KRIST: You bet. [LB1072]

SENATOR NELSON: We're making a judgment here as the part of the Legislature that these were poor contracts and...but we have to remember they were contracts, nevertheless, and they were entered into and the parties have to abide by those contracts. And if we're going to be sued eventually, which I think we might, there's a danger of that, and it's going to go to the Supreme Court, what do you think they're going to do? They're not going to exercise or they're not going to substitute their

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judgment. They're going to look at the terms of the contract, if the parties realized what they were doing, if there was any misrepresentation of any sort. But if it's a valid contract, then the parties are subject to it and they have to abide to it. And if subcontractors have lost out as a result of this, then I claim, you know, that that's unfortunate. But we need to find another way to reimburse them than through payment of claims. [LB1072]

SENATOR COASH: Time, Senator. [LB1072]

SENATOR NELSON: Thank you. [LB1072]

SENATOR COASH: Thank you, Senator Nelson. Senator Bloomfield, you're recognized. [LB1072]

SENATOR BLOOMFIELD: Question. [LB1072]

SENATOR COASH: The question has been called. Do I see five hands? I do. The question before the body is, shall debate cease? Record, Mr. Clerk. [LB1072]

CLERK: 26 ayes, 0 nays to cease debate, Mr. President. [LB1072]

SENATOR COASH: Senator Lathrop, you're recognized to close on the amendment to LB1072. [LB1072]

SENATOR LATHROP: Mr. President, prior to closing, can I ask for a call of the house? [LB1072]

SENATOR COASH: There has been a request for a call of the house. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB1072]

CLERK: 35 ayes, 0 nays, Mr. President, to place the house under call. [LB1072]

SENATOR COASH: The house is under call. All senators, unexcused, please return to the Chamber and record your presence. All unauthorized personnel please leave the Chamber. The house is under call. Senator Lathrop, would you like to proceed? [LB1072]

SENATOR LATHROP: Yes, I'll proceed with my close if that's all right, Mr. President. [LB1072]

SENATOR COASH: Yes. [LB1072]

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SENATOR LATHROP: All right. Colleagues, thank you for the time and the attention you've given the subject matter. Obviously LB1072 is noncontroversial. It is the AM2358. And before addressing the substance in my close, I want to acknowledge that when we got four boxes of these claims in my office, I sat down with Kerry Winterer. And I will say that Mr. Winterer was very cooperative in this process. We may have a difference of opinion over the conclusion we would reach from the circumstances, but he has been, in my dealings with him on this subject matter, a model of professionalism. I will also indicate to you, so that you are clear and we do not leave you with the impression that these were contracts that he entered into, this was all done before he showed up on the scene. We are today, with AM2358, cleaning up the last remnants of the failed privatization. It is not an emotional subject, although there may be some emotion associated with the privatization effort. This is about whether we take care of those people who were taking care of our obligation. I have, I think, given you three statutory provisions that make this our responsibility. This is not a contract action or it would have been filed in a lawsuit and gone through the courts. It is a miscellaneous claim, and we have every right in the world to pay this claim because we had a statutory duty to these children, we had a statutory duty to pay. The contracts that we entered into were not effective, for all of the reasons you heard, to discharge that responsibility. We owe the money. The amount is about \$2.5 million. The providers are itemized in the amendment. There is an additional reason besides the equities in this case, and that is the infrastructure of service providers in greater Nebraska. We have to have a good partnership with these people. We cannot continue to abuse them by not paying them, paying them slow, having contractors that don't pay them. We need to take care of these people. They are our partner in providing services to children in the child welfare system. Again, colleagues, I think we've covered this issue thoroughly. I would appreciate your support of AM2358, and I would ask for a machine vote. Thank you. [LB1072]

SENATOR COASH: Thank you, Senator Lathrop. Members, you have heard the closing to AM2358. All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Record, Mr. Clerk. [LB1072]

CLERK: 29 ayes, 2 nays, Mr. President, on the adoption of committee amendments. [LB1072]

SENATOR COASH: The committee amendment is adopted. Raise the call. Returning to discussion on LB1072. Senator Mello, you are recognized. Senator Mello waives. Seeing no other members wishing to speak, Senator Lathrop, you're recognized to close on LB1072. [LB1072]

SENATOR LATHROP: Very briefly, just a thank you for your support on the amendment and ask for your support on LB1072. Thank you. [LB1072]

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SENATOR COASH: Thank you, Senator Lathrop. Members, you've heard the closing to LB1072. The question before the body is, shall LB1072 advance to E&R Initial? All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Record, Mr. Clerk. [LB1072]

CLERK: 34 ayes, 0 nays, Mr. President, on the advancement of LB1072. [LB1072]

SENATOR COASH: LB1072 does advance. Do you have items, Mr. Clerk? [LB1072]

CLERK: I do, Mr. President. Senator Burke Harr would offer a new A bill. (Read LB1046A by title for the first time.) Amendments to be printed: Senator Ashford to LB968; Senator Mello to LB731; Senator Heidemann to LB968; Senator Flood to LB969, LB131, LB968; Senator Langemeier to LB902. (Legislative Journal pages 949-954.) [LB1046A LB968 LB731 LB969 LB131 LB902]

Mr. President, priority motion: Senator Gloor would move to adjourn the body until Friday morning, March 16, at 9:00 a.m.

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